

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. VICENTE CO ARQUIZA, DEFENDANT AND APPELLANT.

G.R. Nos. 42128, 42129. December 19, 1935

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This appeal concerns two criminal cases tried and decided by the Court of First Instance of Occidental Misamis and numbered 817 and 818, respectively, in the docket of that court. In case No. 817 appellant was convicted of the crime of homicide, with the mitigating circumstance of obfuscation and voluntary surrender, and sentenced to suffer from eight years and one day to ten years of prision mayor, to indemnify the heirs of the deceased Irineo Clarete in the sum of P1,500, and to pay the costs; and in case No. 818, wherein he was charged with the crime of discharge of firearm with serious physical injuries, appellant was likewise found guilty, and sentenced to one year and eight months of prision correccional, to indemnify the injured party, Lorenzo Enerio, in the sum of P500, and to pay the costs.

In support of this appeal, counsel for the appellant have assigned six errors against the judgment below. All the alleged errors relate to the question of the weight of evidence. No new or important question of law is involved.

In view of the mass of conflicting evidence presented in the two cases under consideration, it is by no means an easy task to arrive at a definite conclusion as to the truth of the opposing claims advanced by the prosecution, on one side, and by the defense, on the other. Considering, however, the appellant's admission that he fired the shot which caused the death of Irineo Clarete and inflicted wounds on Lorenzo Enerio, the inquiry is reduced to the question of whether the appellant acted in self-defense. The trial court, after an extended discussion of the evidence, rejected the claim that the appellant fired the fatal shot because he was assaulted by Clarete and his men. The following quotation from the decision of the trial court is, in our opinion, substantially in accordance with the weight of evidence:

"El Juzgado encuentra probado, fuera de toda duda racional, y declara que el acusado Vicente Co Arquiza es responsable criminalmente de la muerte de Irineo Clarete y del disparo de su arma de fuego en la persona de Lorenzo Enerio. Es evidente que este acusado sabia de antemano de los propósitos de Irineo Clarete de recolectar el palay en la noche de autos. Tomas Siachon le habia visto en aquella noche antes del suceso, en el terreno cocalero de Leoncio Cajita, distarite unas 200 brazas del terreno palayero, armado de una escopeta y acompaiado de Eugenio Baloran que portaba una lanza y de Roman Arquiza que llevaba un saco, Es tambien evidente que dicho acusado, por lo mismo que se habia preparado con su escopeta saliendo de su casa en la pot?laci6n de Aloran y haciendose acompa?ar de sus dos coacusados tambie"n armados para ir al lugar de autos, abrigaba una intencion preconcebida de impedir por la fuerza de sus armas a que Irineo Clarete y su gente recolectara el palay. El mismo acusado manifest6 al Sargento Nagal, cuando se present6 en Oroquieta despues del suceso, que disparo a alguien por haber hallado robando su palay. Las pruebas demuestran concluyentemente que este acusado dispar6 contra Lorenzo Enerio e Irineo Clarete cuando encontr6 a 6stos y sus companeros en el mismo terreno palayero caminando uno en pos de otro por encima del dique de tierra del

palayero regadio para retirarse a la casa de Francisco Mutia que estaba al otro lado de la carretera provincial. El acusado no tenia justificacion alguna de hacer uso de su escopeta ode tomar la justicia por sus manos para impedir a aqu&los a recolectar el palay, aun en el supuesto de que hubiese hallado a los mismos haciendo. la siega del cereal. £1 debia de haber acudido a los tribunales si se creia con derecho al terreno palayero, cual era la insinuacion de este Juzgado cuando ordeno el sobreseimiento de las causas criminales Nos. 744 y 745 en que uno de los acusados era el occiso, teniendo en cuenta que este mismo terreno palayero estaba disputado entre Ponciano Montes, yerno de Irineo Clarete a quien Filomeno Querque vendio el terreno cuestionado en la causa civil No. 3078 y Julia Ancheco, suegra del acusado Vicente Co Arquiza, por mas que e"ste asegura en su testimonio que el terreno palayero donde tuvo lugar el suceso es distinto del litigado en dicha causa civil. No cabe duda de que el acusado Vicente Co Arquiza al ir al terreno palayero sabedor de los prop6sitos de Irineo Clarete de recolectar el palay en la noche de autos, estaba poseido de una tensi6n de animo que naturalmente le produjo ofuscacidn cuando sorprendio a dicho Irineo Clarete y su gente dentro de aquel terreno, y aunque las pruebas demuestran que estos no llegaron a realizar sus prop6sitos, pues que se retiraron de aquel lugar dirigiendose a la casa de Francisco Mutia para dormir, el acusado, el cual, segun ha podido observar el Juzgado, es de caracter impulsivo, no pudo refrenar su pasion y asi al encontrar a aquellos disparo su arma a Lorenzo Enerio e Irineo Clarete que iban delante, obsesionado por la idea de que robaban su palay. Cabe, por tanto, acreditar a este acusado su ofuscacion como una circunstancia que atenua su responsabilidad."

We are inclined to disagree with the trial court as to the existence of the mitigating circumstance of obf uscation. It seems more fitting to appreciate in favor of the appellant the mitigating circumstance of provocation, which, in addition to that of voluntary surrender, requires the imposition of the penalty next lower to that prescribed for the crime of homicide, under article 249 of the Revised Penal Code. In other words, in criminal case No. 817, the applicable penalty is that of prision mayor. (Revised Penal Code, article 64 [5].) Pursuant to the provisions of the Indeterminate Sentence Law, the appellant is hereby sentenced to suffer not less than two years of prision correctional and not more than eight years and one day of prision mayor.

In criminal case No. 818, the Solicitor-General suggests that the penalty prescribed for the crime of discharge of firearm under article 254 of the Revised Penal Code should be applied in its maximum period, in accordance with article 48 of the Revised Penal Code. From the testimony of Dr. Jose M. Contreras, the wounds of Lorenzo Enerio required medical attendance for a period of from ten to fifteen days. The offense thus committed by the appellant against Lorenzo Enerio comes within the purview of article 265 of the Revised Penal Code, and constitutes the crime of less serious physical injuries. The provisions of article 48 of the Revised Penal Code, as amended by Act No. 4000, relate to two or more grave or less grave felonies resulting from the same act, and is therefore applicable here. Appreciating in favor of the appellant the two mitigating circumstances already mentioned, without any aggravating circumstance, the penalty next lower to that prescribed for the crime of discharge of firearm with less serious physical injuries, should be imposed on the appellant, that is to say, from one year, eight months and twenty-one days to two years, eleven months and ten days of prision correctional Pursuant to the Indeterminate Sentence Law, the appellant is further sentenced to suffer not less than six months and one day and not more than one year, eight months and twenty-one days of prision correctional.

Modified as above indicated, the judgment appealed from is affirmed with costs against the appellant. So ordered.

Hull, Vickers, Diaz, and Recto, JJ., concur.

Judgment modified.

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