

43 Phil. 950

[G. R. No. 18794. October 19, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
VALENTIN MERCADO, DEFENDANT AND APPELLANT.**

D E C I S I O N

STATEMENT

The defendant is accused of having on the 31st of October, 1921, in the municipality of Guagua, Province of Pampanga, assaulted Pascasio Manalo with a bolo and inflicting upon him serious wounds from which he died on the night of the same day. The defendant admits the killing, but claims that it was done in self-defense. He was convicted and sentenced under the provisions of article 404 of the Penal Code to fourteen years, eight months, and one day of *reclusion temporal* with the accessories of article 59, and to indemnify the heirs of the deceased Pascasio Manalo in the sum of P1,000 and to pay the costs, from which he appeals, claiming that his plea of self-defense should have been sustained, and that he should have been acquitted.

JOHNS, J.:

The testimony is conclusive that the defendant and the deceased were personal enemies, and that bad feeling existed between them, growing out of a dispute over some land and the alleged burning of some palay by the defendant. It appears that on the morning in question they met, and the defendant said to him: "This is a brave man," and the deceased at once got off of his carabao and said to the defendant: "Now what do you want?" The defendant was armed with a bolo and the deceased with a piece of bamboo called "balila," a struggle ensued and the deceased received a wound from the bolo on the head, two in his face and one in the right clavicular region, and another on the elbow, and it was the wound in the frontal region which caused his death. The defendant received a wound in the frontal region and several contusions none of which were very serious. There were no eye-witnesses to the

struggle. The deceased was later found at the place where the fight occurred by Lorenzo Guanlao who took him to the municipality of Santa Rita where he died that night. Before his death and in the presence of Lieutenant Manuel Atanasio of the Philippine Constabulary, and through an interpreter, the deceased made a statement which was then reduced to writing, known in the record as Exhibit C, in which he said that after the above conversation the quarrel occurred, and that both of them fought each other, and that when the deceased was underneath, he requested the defendant not to kill him, and that the defendant then got up and went away.

We do not believe the testimony of the defendant to the effect that after the conversation he walked away, and that the deceased pursued him and that upon his turning around and meeting him face to face, the deceased struck him with a bolo, and that not being able to defend himself with his hands, he took his bolo from his belt and struck the deceased with it. The "balila" was identified as a piece of bamboo 28 inches long, 3 inches in width and ½ inch in thickness.

As we analyze the testimony it was a mutual combat in which both parties were ready and willing to fight. The defendant was armed with a bolo and the deceased with nothing but a "balila." With such weapons and on account of the superior strength of the defendant, it was an unequal contest in which the deceased soon fell as a victim. It must be said to the credit of the defendant that when the deceased begged him not to kill him that he quit fighting and went away. But it later developed that he had already inflicted the fatal wounds. Each party is equally to blame for the fight. Although the defendant was justified in defending himself, he had no legal right to use any more force or to inflict any more injuries than were necessary for his self-defense. For this reason, the defendant ought not to be acquitted, but as we analyze the evidence, he is entitled to the provisions of article 86 of the Penal Code.

That part of the judgment of the lower court, which sentences the defendant to 14 years, 8 months, and 1 day of *reclusion temporal* is reversed, and one will be entered here, sentencing him to 2 years, 4 months, and 1 day of *prision correccional*, and to indemnify the heirs of the deceased Pascasio Manalo in the sum of P500, with the costs *de officio* on this appeal. So ordered.

Street, Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

DISSENTING

ARAULLO, C. J.,

It was not proven that there had been any unlawful aggression on the part of the deceased against the accused, nor that the latter sufficiently provoked the former before the fight between them, which resulted in his death. Neither was the means employed by the accused, in the fight to repel or prevent the aggression which might come from the deceased, reasonably necessary, for while the latter defended himself with a piece of bamboo known as "balila," the accused was armed with a bolo with which he inflicted several wounds on the former, among which, was one on the frontal region which caused his death.

The accused, therefore, is in no way exempt from criminal responsibility and no application can be made, in his favor, of the provision of article 86 of the Penal Code, but on the contrary, he is liable as principal, for the crime of homicide defined and punished in article 404 of said Code, without the attendance of any circumstance modifying said responsibility, as was held by the lower court in the judgment appealed from.

Therefore, dissenting from the respectable opinion of the majority, I hold that said judgment must be affirmed with the costs against the defendant and appellant.