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[G. R. No. 17933. March 23, 1922]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ATANASIO NANQUIL, DEFENDANT AND APPELLANT.

D E C I S I O N

ROMUALDEZ, J.:

A cart and a carabao belonging to Juan Rosas had disappeared. To recover them and find the wrongdoer he requested the help of the Constabulary. A sergeant and two soldiers were then commissioned to make investigation. During their investigation these Constabulary men called Severino Ramiscal, and one of them, surnamed Masiglat, examined him, and not having obtained from him any clear information, he turned him over to his companion, the other soldier, Atanasio Nanquil, for examination by the latter. The sergeant who commanded that patrol had remained in a house in the neighborhood, as he was feeling ill. The soldier, Atanasio Nanquil, was examining Severino Ramiscal on a road, the other soldier, Masiglat, being about 20 *brazas* from them, when all of a sudden, Masiglat heard a blow and saw Severino Ramiscal fall to the ground.—he had been struck by the soldier, Atanasio Nanquil, with his gun, as a consequence of which, Severino Ramiscal died after a few moments.

Atanasio Nanquil was prosecuted for the crime of homicide and sentenced by the trial court to fourteen years, eight months and one day of *reclusion temporal*, with the accessory penalties, to indemnify the heirs of the deceased in the sum of one thousand pesos (P1,000) and to pay the costs.

From this judgment the defendant, Atanasio Nanquil, has appealed, his counsel alleging that the court below erred: (*a*) In giving more credit to the witnesses for the prosecution than those for the defense; (*b*) in finding that the deceased was maltreated by the defendant and his companion, Masiglat, on the night of the commission of the crime; (*c*) in holding that the crime was simple homicide and in imposing the aforesaid penalty; (*d*) in finding that the

crime was attended with the aggravating circumstance of nocturnity; (*e*) in declaring that it was only at the trial of the cause when the accused alleged having acted in self-defense; and (*f*) in not finding the exempting circumstance of self-defense to have been proven.

Anent the first error, it should be noted that the appellant admits being the author of the homicide. It was, therefore, incumbent upon him to establish by sufficient evidence his allegation of self-defense, with all the elements constituting it. Even supposing that the court below had not attached more credit to the testimony of the witnesses for the prosecution, even if the evidence both for the prosecution and the defense had been given equal weight on the controverted point, namely, that of the self-defense alleged by the appellant, such an allegation cannot be held proven, as it must be established by positive and sufficient proof. But the fact is that there exist sufficient reasons for giving more credit to the witnesses for the prosecution than those of the defense, who, being members of the same organization to which the accused belongs, were naturally interested in his success in the present case, as most of them have sincerely admitted it in their testimony. And it not having been proven, that the witnesses for the prosecution had any special interest against the appellant, after weighing the evidence of both parties, we find no ground for holding that the first error assigned by the defense was committed.

As to the second, error assigned, it is of no importance to determine in this case whether or not the soldier Masiglat, who is not accused in these proceedings, also maltreated the deceased. The fact is that the accused did, as is admitted by him, to the extent of having caused the death of the unfortunate Severino Ramiscal.

Under the third assignment of error, the defense contends that the most that can be said to have been proven by the evidence of record is the crime of homicide through reckless imprudence. We find that the accused did not intend to commit so grave an evil as that which resulted, for such an intention is incompatible with the purpose he had then in view, which was that of obtaining a proof against the deceased if his declaration was a confession, or of using the deceased as a witness for the prosecution, if his testimony was a substantial revelation. But whether he had that intention or not, the fact is that he willfully maltreated the deceased, and such an act of willfully causing an evil is, as the Attorney-General very properly observes, incompatible with reckless imprudence.

The fourth error is made to consist in the fact of the trial court having taken into account the aggravating circumstance of nocturnity. We hold with the defense and the prosecution that such circumstance cannot be taken into account in the present case to aggravate the

penalty. To our mind, the event took place in the nighttime due to the fact that the sergeant who commanded the patrol of which the appellant formed a part fell sick, and if nocturnity was deliberately sought at all, it was not in order to maltreat the deceased (which idea was not proven to have been conceived prior to the deceased's refusal to tell anything about the theft which was under investigation) y but rather to take advantage of the secrecy of the night to render the investigation more effective.

With reference to the fifth error assigned, it is true that the witnesses for the defense have testified that, shortly after the event, the accused alleged having acted in self-defense, but a serious doubt arises from the record as to the truth of this statement of said witnesses, which doubt prevents us from finding this allegation of the defense to have been sufficiently established.

The last assignment of error contains the whole theory of the appellant. From what we have hereinbefore stated, it is seen that the defendant's allegation of self-defense cannot be held proven. It was not sufficiently shown that the deceased was the aggressor, which, on the other hand, is highly improbable under the circumstances then attending his situation. There not having been, as we find that there was not, any unlawful aggression, the accused had nothing to defend himself against; wherefore we need not go into the question whether or not the means employed to repel the aggression, which had not been made, was reasonably necessary. Neither do we need determine whether or not the accused had sufficiently provoked the aggression, which was not sufficiently proven.

We find no sufficient reason from the record for holding the allegation of self-defense to have been established.

We do not find that any aggravating circumstance has concurred in the commission of the crime, but we do find that there was present the aforesaid mitigating circumstance of the accussed not having had the intention to cause the death of the deceased. For this reason the penalty of *reclusion temporal* must be imposed in its minimum degree.

Wherefore, the judgment appealed from is modified, and the appellant sentenced to twelve years and one day of *reclusion temporal*, to the accessory penalties provided by article 59 of the Penal Code, to indemnify the heirs of Severino Ramiscal in the amount of one thousand pesos (P1,000), and to pay the costs of both instances. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, and *Johns, JJ.,* concur.

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