

[G.R. No. 1098. April 06, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. LICERIO MENDOZA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

That the deceased, Rufino Dizon, was creating a disturbance in front of the store of Alejandro Guevara, and that the defendant, a policeman, attempted to arrest him and take him to the presidencia and that he declined to go, was clearly proved. We think that it was also proved that the deceased did not content himself with a passive resistance, but carried it to the extent of attacking the defendant. The defendant himself so testifies, and his testimony is corroborated by that of said Alejandro Guevara. The latter says that he intervened between the two men in order to separate them and that the defendant's revolver was discharged almost in his face. If the resistance of Dizon had been passive, Guevara would hardly have intervened, for fear that he himself might be arrested for interfering with an officer in the performance of his duty. His intervention can be explained only on the theory that the deceased was making an attack on the defendant. We accordingly hold that the proof shows an unlawful aggression on the part of the former. It was also shown that there was no provocation moving from the defendant.

The complete defense of article 8, No. 4, of the Penal Code, is, however, not made out because the second requirement, thereof was not proved. When the defendant fired his revolver and killed Dizon the latter, according to the defendant's own testimony, had already struck twice at him with a *calicut*. The character of this weapon is such that in our opinion the defendant could not then have reasonably believed that it was necessary to kill his assailant in order to repel the attack.

The incomplete defense is, however, made out, and, applying article 86 of the Penal Code, we revoke the judgment of the court below in respect to the penalty and fix the same at six

years and one day of *prision mayor*. In other respects the judgment, so far as it is not inconsistent with this opinion, is hereby confirmed, with costs of this instance *de officio*.

Arellano, C.J., Torres, Cooper, Mapa, and Ladd, JJ., concur.

Date created: April 14, 2014