

1 Phil. 517

[G.R. No. 970. December 01, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE VS. TEODORO REYES,
DEFENDANT AND APPELLANT.**

D E C I S I O N

LADD, J.:

It will not be necessary to decide whether in admitting the declaration of the deceased, made in the course of the preliminary investigation a few hours before his death, the court below erred, because we are of opinion that even if this evidence is to be considered as properly in the case, the defendant must be acquitted

The deceased was surprised by the defendant cutting bamboo on what the latter claimed was his land. An altercation ensued between them, and the deceased received a wound which caused his death. The only evidence as to what took place offered by the prosecution was the declaration referred to and some statements by the deceased to his brother. The declaration is in such vague and general terms as to detract greatly from its value as evidence. It is in substance that the defendant found the deceased cutting bamboo as stated; that he took him to task for it, using insulting language; that the deceased replied, and that the defendant thereupon attacked him and stabbed him in the stomach with a clasp penknife. The statements made by the deceased to his brother differ somewhat from the declaration. They are to the effect that the deceased when surprised by the defendant asked his pardon, and offered to pay for the bamboo if the defendant was not willing to give it to him, but that the defendant made no reply but at once attacked him.

The defendant, who testified in his own behalf, gave quite a full and circumstantial account of what occurred. He says, omitting unimportant details, that he found the deceased cutting bamboo on his land; that he asked him why he was cutting such young cane; that the deceased replied in effect that it was none of his business as the land was not his; that he then threatened to arrest the deceased (the defendant being *teniente* of the barrio),

whereupon the deceased approached him and aimed a blow at him with his bolo, which he avoided by letting himself fall from his horse; that he retreated, the deceased pursuing and striking at him with the bolo; that at last he opened his knife and put himself in an attitude of defense; that the deceased not desisting he grappled with him and succeeded in wresting the bolo from him, and that in the course of the combat he thinks he must have wounded the deceased with the knife.

The defendant's account of the occurrence is corroborated to a certain extent by the evidence of two persons who witnessed the encounter from a field some four hundred yards distant, and who say they saw a man fall from his horse and another man pursue him and finally grapple with him, although they were not near enough to be able to distinguish who the men were.

The defendant's testimony appears to us in effect, and especially as thus corroborated, more worthy of credence than the declaration and statements made by the deceased. At all events, in such a conflict of evidence we should not be justified in rejecting it as untrue.

Accepting the defendant's statement as true, it is clear that he was acting in the legitimate exercise of his right to defend himself by repelling the unprovoked and wrongful attack of the defendant, and is therefore relieved from responsibility under No. 4 of article 8 of the Penal Code.

The judgment of the court below is reversed, and the defendant is acquitted, with costs of both instances *de officio*.

Arellano, C. J., Cooper, Smith, Willard, and Mapa, JJ., concur.
