

1 Phil. 478

[G.R. No. 951. November 13, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JUAN SALANDANAN,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

One afternoon, while the defendant was absent from his house, Domingo Alba Clemente entered and proposed to the wife of the defendant that she have illicit intercourse with him. As she refused to accede to his desires he endeavored to rape her. He seized her and was about to throw her on the ground when he was surprised by the defendant, who at that moment returned to the house and who rushed in upon hearing his wife's screams for help. Alba, upon seeing the defendant, turned on the woman and inflicted upon her a serious wound in the right forearm with a bolo he was carrying and then immediately attacked the defendant, wounding him in the breast. A hand-to-hand struggle followed between them, in the course of which the defendant succeeded in snatching the bolo from Alba's hands and with it inflicted upon him a wound from which he died shortly after.

Such are the facts established by the evidence in the record. Upon them the court below held the defendant to be guilty of the crime of homicide, and applying in his favor the mitigating circumstances of immediate provocation and of excitement sufficient to overcome reason and self-control, condemned him to six years and one day of *prision mayor*.

The court below was of the opinion that the complete defense of section 4 of article 8 of the Penal Code could not be applied, because, "although it may be admitted," he says, "that the defendant acted in self-defense, and that there was an unlawful aggression without provocation on his part, nevertheless the reasonable necessity of the means employed to repel the aggression has not been proven, because after the deceased was deprived of the weapon with which he made the attack he, the defendant, had no necessity to employ the weapon to ward off the attack of his adversary."

We do not concur in this opinion of the court below. The deceased, having attacked the defendant and his wife with a bolo, and having wounded both of them, and having made an unsuccessful attempt, frustrated by the defendant, to rape the latter's wife, and having continued his aggression up to the point of commencing and maintaining a hand-to-hand struggle with the defendant, it can not be said that the latter exceeded the limits of a just defense in wounding the aggressor with the act with the same bolo with which he had been attacked and wounded. It does not appear that the struggle ceased after the weapon was taken from the aggressor. Consequently it can not be asserted that the danger to the defendant had ceased. If the struggle continued the defendant might in turn have been disarmed by the deceased in the course of the changing fortunes of the fight; in which case he would have been completely at the mercy of his adversary. This was a contingency which the accused might well have reasonably feared, more especially in view of the fact that having received a somewhat serious wound in the breast which might well, under these critical circumstances, have appeared to him to be much more serious than it really was, he was in a disadvantageous position with respect to his adversary for a continuation of a prolonged hand-to-hand struggle. This fear, added to the natural instinct of self-defense, strongly excited by this fierce attack, must have instinctively impelled him to avail himself of the advantage momentarily thrown in his way by a fortunate accident of the affray to put his aggressor *hors de combat* in the only way possible in the heat of the fight. We can not require a man who finds himself so forcibly and persistently attacked as was the accused to retain the presence of mind necessary to pick and choose, and to employ some other less violent means, more especially when we remember the natural rapidity with which the defense must necessarily be made if it is to produce the effect of repelling the aggressor.

For these reasons, there having been an unlawful aggression on the part of the deceased without provocation of any kind on the part of the accused, we are of the opinion that his act in defense of his person complies with all the conditions which in accordance with section 4, article 8, of the Penal Code wholly exempt him from criminal liability.

We therefore acquit the defendant and reverse the judgment below, with the costs of both instances *de officio*. So ordered.

Arellano, C. J., Torres, Cooper, Smith, Willard, and Ladd, JJ., concur.

