

6 Phil. 449

[ G.R. No. 2949. September 17, 1906 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EDUARDO DE OCAMPO,  
DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**CARSON, J.:**

Fortunato Reyes, deceased, in an *ante-mortem* statement to the justice of the peace of the municipality of Lipa, in the Province of Batangas, alleged that, having been taken sick on his way to a church procession on the night of the 8th of June, 1905, he entered the house of Eduardo de Ocampo, the accused in this case, and asked and obtained permission from the accused and his wife to lie down to rest; that he fell asleep and did not wake up until about midnight, when he was suddenly attacked, while still sleeping, by the accused, who inflicted the fatal bolo wounds from which he was suffering when he made this statement; that he knew of no motive for this unprovoked attack, no enmity or feeling of resentment having existed theretofore between himself and the accused and no cause for such feelings having arisen at the time, and that at the moment of the attack the only persons in the house were himself, the accused, and the wife and child of the accused. At the trial of the case the accused made the following statement in his own defense, which was corroborated by the testimony of his wife: On the night of the 8th of June, 1905, Fortunato Reyes, since deceased, called at the house of the accused and, being a friend of the family and explaining that he had been taken sick, asked and was granted permission to lie down upon the bed of the accused. The accused, who was by occupation a policeman, left the house shortly afterwards to go upon his rounds. Passing near the house about "midnight, he heard the voice of his wife calling for aid and, running in, he found the said Fortunato Reyes struggling with his wife and endeavoring to throw her down, with the evident intention of raping her. On seeing this, the accused attacked his wife's assailant and struck him a blow with his bolo. Reyes was unarmed, but after the first blow made a motion as though to take hold of the accused, who again struck him with his bolo, inflicting six additional wounds

before Reyes could make his escape through the window. The accused went immediately to the *teniente* of the barrio and surrendered himself to that authority, giving him an account of all that occurred. Thereupon the accused, with the *teniente* of the barrio and a number of other persons, went in search of the wounded man and found him lying fatally wounded about 200 yards from the house of the accused.

After careful examination of the evidence, we are agreed with the trial judge that the *ante-mortem* statement of the deceased can not be accepted as true and that the frank, full, and evidently honest and truthful statement of the accused, corroborated as it is in every important particular by that of his wife, must be accepted as the true version of the occurrence.

The trial court sentenced the accused to eight years and one day of imprisonment (*prision mayor*) because he was of opinion that the accused was guilty of homicide, but that in imposing the penalty the fifth and seventh extenuating circumstances as set out in article 9 of the Penal Code should be taken into consideration, the fatal wounds having been inflicted in "immediate vindication of a grave offense committed against the wife of the accused," and at a time when the accused "acted under, such powerful excitement as would naturally produce entire loss of reason and self-control." We think, however, that the homicide was committed in "defense of the honor of the wife of the accused" rather than in "vindication" of a wrong already committed.

Article 8 of the Penal Code exempts from criminal responsibility "one who acts in defense of the person or rights of his spouse, ascendants, descendants, natural or adopted brothers or sisters, or of his relatives of affinity in the same degree and those of consanguinity within the fourth civil degree," provided there are the following attendant circumstances:

First. Illegal aggression.

Second. Reasonable necessity for the use of the means employed to prevent or repel the attack.

Third, Lack of sufficient provocation on the part of the person attacked or, where provocation did exist, that the defendant took no part therein.

In this case there was illegal aggression and it does not appear that there was any provocation on the part of the wife of the accused or of the accused himself, but we think that the means employed by the accused to repel the attack upon his wife's honor went

beyond those reasonably necessary to attain the object in view. The deceased was wholly unarmed and, while perhaps we should not be disposed to hold the accused to too great a degree of accountability for the first blow struck, nor to insist that there was no reasonable necessity to strike that blow, yet we are not prepared to hold that under all the circumstances the defense of his wife's honor required that he should continue his attack upon the unarmed and defenseless offender.

We can not, therefore, hold the accused wholly exempt from criminal responsibility, but we think that the most favorable provisions of article 86 of the Penal Code should be applied in this case. That article prescribes that "a penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed were not wholly excusable by reason of the absence of some of the conditions required to exempt from criminal liability in the respective cases mentioned in article 8, provided that the greater number thereof be attendant, the penalty being imposed in the degree the courts may consider proper, taking into consideration the number and importance of the requisites absent or present."

A penalty two degrees less than the penalty prescribed for the crime of homicide in the Penal Code should be imposed upon the accused, but that reduced penalty should be applied in its minimum degree, taking into consideration the fact that the accused "acted under such powerful excitement as would naturally produce entire loss of reason and self-control," that being one of the extenuating circumstances defined in article 9 of the Penal Code. The penalty prescribed for homicide is from twelve to twenty years of *reclusion temporal* and the penalty two degrees less than that of *reclusion temporal* is from six months and one day to six years of *prision correccional*. For the reasons hereinbefore set out, the judgment and sentence of the trial court is reversed, and we find the accused guilty of homicide and sentence him to six months and one day of imprisonment (*prision correccional*), with the accessory penalties prescribed in article 61 of the Penal Code, and to the indemnification of the heirs of the deceased, Fortunato Reyes, in the sum of 100 pesos, Philippine currency, and to the payment of the costs in both instances. Let judgment be entered in accordance herewith and at the proper time the record remanded to the court from whence it came for proper action. So ordered.

*Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ., concur.*

