

4 Phil. 339

[G.R. No. 1580. March 27, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. PAULINO VALLADOS,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

We think that the testimony of the witnesses for the Government is to be believed rather than of the defendants and their witnesses, and we hold that Francisco Calvo and his companion, Placido Echanes, being unarmed, were upon a hunting expedition for small birds when they were fired upon by the defendant Paulino Vallados, the result of the one shot being the wounding of Calvo and the death of Echanes. We find that Calvo and Echanes made no attack upon the defendants and were not attempting to steal the palay which the defendants were guarding.

On the other hand, we believe that the defendants, who were watchmen upon the estate of Agripino de la Rama, believed that the persons approaching them were robbers and that Vallados fired at them with that belief. Notwithstanding these facts, the offense committed makes the crime of homicide with *lesiones*. We take into consideration in favor of the appellant paragraph 7 of article 9 and article 11 of the Penal Code, and applying article 81, paragraph 5, we fix the penalty at ten years *prision mayor*.

The defendant Nicolas Villeta was acquitted by the court below. The widow of Placido Echanes took part in the prosecution and appealed from the judgment so far as it acquitted Nicolas Villeta. Under the decision of the United States Supreme Court in the case of *Kepner vs. the United States* her appeal is dismissed.

The judgment of the court below is reversed and the defendant, Paulino Vallados, is convicted of the crime of homicide with *lesiones* and is sentenced to ten years of *prision mayor*, with the costs of this instance and one-half of the costs of the court below against him.

Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.

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