

5 Phil. 396

[G.R. No. 2106. December 08, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE R. PADILLA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

In an information filed in the Court of First Instance of Zamboanga on July 8, 1904, Jose R. Padilla, an enlisted man of the Constabulary, was charged with the crime of homicide, in that while acting as sentry at the barracks in Isabela de Basilan, on the 6th day of July, 1904, he killed Emiliano de los Santos by firing a shot at him with his rifle, under the circumstances set forth in the information, an act constitutive of the crime of homicide committed within the jurisdiction of the said court, and contrary to law.

As a result of the cause formulated upon the information, the judge sentenced the defendant to twelve years and one day imprisonment (*reclusion temporal*) at hard labor, together with the costs and other accessories mentioned in the judgment.

From the evidence adduced at the trial it was disclosed that at half-past 6 o'clock on the morning of the said 6th day of July, while the defendant, Jose R. Padilla, was doing sentry duty as an enlisted man of the Constabulary and singing in front of the barracks and jail on the Island of Isabela de Basilan, he passed near the deceased, Emiliano de los Santos, who told him that he had no voice for singing; to this Padilla replied that as he was doing sentry duty he would permit no jesting, as he was not allowed to talk, and thereupon continued walking his post; but on passing Santos again, the latter repeated the jest and the defendant warned him that, if he did not keep

still he would strike him with the butt of his rifle. On hearing this, the deceased, still in a spirit of fun, grasped Padilla around the throat with both hands, but the defendant was able to free himself at once and fired a shot at Santos, which entering the right cheek, passed out close to the left ear.

There is no doubt that the crime of homicide, as denned in article 404 of the Penal Code, was committed, it having been proved that Emiliano de los Santos lost his life by violence as the result of a gunshot wound, without there having been attendant in the commission of the crime any of the qualifying circumstances enumerated in article 403 of the Penal Code.

The defendant did not plead guilty and yet he was proved the sole, direct, and confessed author of the crime of which he was convicted, he having fired upon the deceased Emiliano de los Santos, and caused his instant death as the result of a mortal wound inflicted by the rifle ball which entered his right cheek and passed out near his left ear, said wound having been inflicted by Padilla because Santos had made game of him and seized him by the throat in a spirit of fun.

In the commission of the crime only the two attendant extenuating circumstances 4 and 7 of article 9 of the Penal Code can be considered, there being no aggravating circumstance to offset their effect, as it was established in the trial that the deceased provoked the occurrence by his persistent jesting, to which the defendant objected from the beginning; the defendant having at last been driven to act in a sudden and blind burst of passion, when grasped by the throat by the deceased, even though the latter did so in a spirit of fun, though without consideration of the fact that the defendant was then on sentry duty. These two circumstances in the case are held to be of a qualifying character, with the result that the proper penalty ought to be the one immediately below that fixed by law in the corresponding degree, according to the number and importance of said circumstances under the provisions of article 81, paragraph 5, of the Penal Code.

The acquittal of the defendant by virtue of the exempting

circumstance of self-defense is not right, there having been no previous illegal aggression, the first and principal element of that circumstance, without which essential requisite paragraph 4 of article 8 of the Penal Code can not be applied.

The fact that the deceased seized the defendant around the throat and exerted pressure thereon in one of his frolics which he had persistently kept up with notorious imprudence, and in spite of the opposition of the defendant, can not be considered as an illegal aggression in the case of two companions in arms quartered in the same barracks.

It is true that the defendant had warned the deceased that he would strike him with the butt of his rifle if the latter persisted in making game of him and that the deceased kept on doing so, but nevertheless this, and the fact that the defendant was on sentry duty, did not justify him in shooting and killing the imprudent joker; nor can the shot be called accidental, as it was established in the trial that the sentry is not in the habit of carrying his rifle loaded, and it is to be presumed that the defendant intended to punish the man who had been plaguing him, by killing him unlawfully and that to do so he was obliged to load his gun.

He might have complained to his superior officer instead of committing a crime which, under the circumstances in which he committed it, deserves at least mitigated punishment, as he has no right to deprive a fellow-being of life, except in those cases of absolute necessity expressly exempted by the penal law.

In view of the above considerations, it is right in our opinion that the sentence appealed from be reversed and the defendant, Jose R. Padilla, be sentenced to six years and one day imprisonment (*prision mayor*), the accessory penalties provided by article 61 of the Penal Code, the payment of an indemnity of 1,000 pesos to the heirs of the deceased, without subsidiary imprisonment considering the nature of the penalty, and to the costs in both instances. Let the case be remanded to the trial court together with a certified copy of this judgment and of the

sentence which shall be entered for execution. So ordered.

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

Carson, J., dissents.

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