

5 Phil. 269

[G.R. No. 2184. November 11, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. APOLONIO PALANCA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On the 27th of May, 1904, the defendant, Apolonio Palanca, was charged by the provincial fiscal of La Laguna with the crime of homicide committed as follows: Between 8 and 9 o'clock in the evening of April 30, 1904, the accused attacked the deceased Jose Monteagudo in Calle Dolores, town of Nagcarlang, La Laguna, inflicting upon his body with a bolo several wounds which resulted in his death shortly afterwards, contrary to the statute in such case made and provided.

After hearing the evidence introduced at the trial, the court, on August 12 following, entered judgment convicting the accused of the crime charged in the complaint and sentenced him to twelve years and one day imprisonment (*reclusion temporal*), to indemnify the heirs of the deceased in the amount of 1,000 pesos, Philippine currency, and to pay the costs. From this judgment the defendant appealed.

It was conclusively proved at the trial of this case that on the night in question several young men (among them being Sergio Cruzare, Luis Gosaico, Crisanto Gosaico, Melchor Angeles, Bernardo Ibanez, and Jose Monteagudo) gathered in the street referred to; that the defendant, Apolonio Palanca, approached them, and calling Sergio Cruzare, asked him whether his brother-in-law Monteagudo was among those present. Upon being answered in the affirmative, Palanca called

to Monteagudo and stabbed him with a bolo; that the young men in the group heard the deceased cry out that he had been stabbed by the defendant, and they immediately ran to his assistance; that the deceased then repeated that Palanca had stabbed him; that Bernardo Ibanez asked Palanca why he had stabbed the deceased, and Palanca rushed at him threatening to kill everyone present; that Ibanez then went in search of the police, who arrived shortly afterwards and arrested the defendant. The witnesses further testified that they had seen the deceased, who died an hour later, his clothes being saturated with blood.

According to the autopsy made by the president of the local board of health who shortly after the occurrence went to the drug store where Monteagudo had been taken for treatment, he found the latter in a dying condition with a wound in the left forearm, severing the humeral and other arteries, causing a hemorrhage which the said president of the board of health was unable to stop. The wound was inflicted with an ordinary bolo.

The act committed by the accused constitutes the crime of homicide as defined and punished in article 404 of the Penal Code. There is no evidence that the commission of the crime was attended by any circumstance which would increase the penalty.

The evidence introduced by the prosecution shows that Apolonio Palanca is the sole author of the death of Jose Monteagudo. The defense was unable to overcome the positive testimony of the prosecution, notwithstanding the denial of the accused that he killed the deceased, his plea of not guilty, and the evidence introduced by him at the trial to establish his innocence.

It was Palanca who, prior to the occurrence, ascertained from Sergio Cruzare that the deceased was among those present and who called to Monteagudo, who, shortly after he had approached Palanca, was heard to cry that he had been stabbed by the latter, repeating the same thing in the presence of certain witnesses before he died. Palanca attempted to attack with his bolo the young men who were present, particularly

Ibanez, upon the latter asking him why he had stabbed the deceased. There is no doubt, therefore, that Palanca killed Jose Monteagudo. The allegation that Eusebio Vita, one of the policemen called by the eye witnesses, was the aggressor, is not borne out by the record. When the police arrived at the place of the occurrence, the deceased had already been wounded. Moreover, according to the testimony of the defense, the policeman was armed with a dagger, while the proof shows that deceased was wounded with a bolo.

The only witness who testified in support of the contention of the defense was Mariano Manas, but he was not present at the time of the killing. When he arrived, Monteagudo had, according to the testimony of Manas himself, already been wounded. He did not see anyone else stab the deceased, but was informed at the place where the killing occurred that Palanca was the one who did the killing.

We agree with the trial court that the extenuating circumstance of paragraph 5, article 9, of the Penal Code should be taken into consideration. There being no aggravating circumstances, the penalty should therefore be imposed in its minimum degree.

Even admitting that the statements made by the witnesses in the affidavits presented with the motion for a new trial were true, they could not overcome the proof introduced by the prosecution. Nor has it been shown that the evidence sought to be introduced at the new trial could not by the exercise of due diligence, have been discovered before the trial in the court below. The evidence could not therefore be considered "*newly discovered*," under section 42 of General Orders, No. 58, and the rule laid down by this court in the case of the United States vs. Francisco de Leon (1 Phil. Rep., 188).

The judgment appealed from should be affirmed with costs of this instance, and the accused further sentenced to the accessory penalties prescribed by article 59 of the Penal Code, and to pay an indemnification of 1,000 pesos to the heirs of the deceased. Let the case be remanded to the trial court with a certified copy of the judgment entered in accordance herewith for execution. So ordered.

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

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