

3 Phil. 333

[G.R. No. 1509. February 16, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. NICOLAS GLORIA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On May 23, 1903, the provincial fiscal of Bulacan filed an information in the Court of First Instance of that province charging Nicolas Gloria with the crime of homicide in that, on the night of April 7, 1903, and as the result of a quarrel between the defendant and Tiburcio de la Cruz about some rice straw, upon meeting in the street at a place called Bambang, of the township of Bulacan, they had a quarrel, followed by a fight; that in the course of the struggle between them Gloria inflicted upon Cruz with a pocketknife he was carrying, a wound in the left side of the trunk above the abdomen, from which wound the said Tiburcio died, the crime having been committed willfully, feloniously, and contrary to the statute in the case made and provided.

Dr. Pedro Pagua, who examined the deceased and attended him up to the time of his death, testified that the deceased had received a mortal wound in the left hypogastrium, inflicted by a sharp instrument which had pierced the peritoneum and the intestines, producing a hemorrhage which caused death in two or three hours; that he was unable to save the man, having been called in three hours after the wound was inflicted; that the patient had almost bled to death by that time; that the aspect of the wound was such as to lead him to entertain the belief that the assailant must have been below the deceased, as the direction of the wound was upward and backward.

The witnesses for the prosecution were Romualdo Asuncion, Gregorio Rodriguez, and Mariano Gonzalez. The first testified that the deceased himself told him

that the wound had been inflicted by Nicolas Gloria. The second testified that he knew about the case because a woman had told him. The third witness said that his information was derived from a message which he had received from the witness Rodriguez about 11:30 at night, and that upon receiving the message he immediately gave instructions that a report of the occurrence be made to the local president, stating further that he believed that the assailant and the deceased were of equal age, height, and weight. The witness Rodriguez testified, however, that the deceased was about 18 years of age and was taller and somewhat thinner than the accused.

In view of the testimony of the defendant and the result of the evidence for the prosecution, the judge decided that the facts constituted the crime of assault (*lesiones*) with the concurrence of circumstances 1 and 3 of paragraph 4 of article 8 and paragraph 2 of article 9, and condemned Nicolas Gloria to the penalty of six years and one day of *prision mayor* and to the payment of the costs, from which decision the defendant's attorney appealed.

One who kills another without the concurrence of any of the circumstances enumerated in article 403 of the Penal Code is declared by article 404 thereof to be guilty of homicide.

In this case the evidence shows clearly that Nicolas Gloria, while fighting with Tiburcio de la Cruz, inflicted upon him with a pocketknife a serious wound which caused his death a few hours after. These facts constitute the crime of homicide, none of the qualifying circumstances inherent in the crime of murder having been concurrent with the commission of v the criminal act.

The crime must be classified as homicide and not as assault (*lesiones*), notwithstanding the opinion of the trial judge. All acts punished by the law are presumed to be voluntary in the absence of proof to the contrary. With respect to crimes of personal violence, the penal law looks particularly to the material results following the unlawful act and holds the aggressor responsible for all the consequences thereof.

The defendant, Nicolas Gloria, is under 17 years of age, as appears from his certificate of baptism. (Record, p. 41.) He plead not guilty, but the evidence

shows conclusively his guilt of the crime charged. His exculpatory allegations can not be believed. Without the consent of the accused, the deceased carried away some rice straw belonging to the former. He had paid no attention and made no reply to the objections of the accused to this conduct, consequently there can be no doubt that when the accused left his house, with a knife, after this occurrence he did so with the intention of going in search of the deceased, and that when he met the latter a fight took place between them, in the course of which he attacked Cruz with the pocketknife, inflicting the mortal wound which a few hours after caused his death. It is improbable that the accused, stretched on the ground and while the deceased was choking him with both hands, could have got his hands together above his assailant's back for the purpose of opening the knife, as he says, because, if the deceased had really been choking him, as the accused alleges, his body would have been separated from that of the deceased and consequently it would have been impossible for the accused to open the knife with one hand while holding it in the other above the back of the deceased.

If it were true that the accused acted in self-defense in wounding the deceased, he would have introduced the testimony of his brother, Felipe, as a witness in his behalf, for Felipe, even if he did not take part in the struggle in aid of the accused, was at least an eyewitness to the occurrence, and it is remarkable that Felipe was not called upon to testify at the trial.

In the commission of the crime the fact that the accused is a minor, 17 years of age, is to be considered as a circumstance favorable to him and, therefore, in accordance with the provisions of article 85, the penalty to be inflicted is that immediately below the one prescribed by article 404 of the code. We also apply in favor of the defendant the circumstance established by article 11 of the Penal Code in mitigation of the penalty, in consideration of the personal condition of the accused. No aggravating circumstances exist to offset the effects of the mitigating circumstances mentioned.

For the reasons stated we are of the opinion that the judgment appealed from must be reversed and the defendant, Nicolas Gloria, condemned, as guilty of the crime of homicide, to the penalty of six years and one day of *presidio mayor*, with the accessories established in article 61, to the payment of 1,000 insular pesos to the heirs of the deceased, and to pay the costs of both instances.

Judgment will be entered accordingly and the case remanded to the trial court for its execution, with a certified copy of this decision. So ordered.

Arellano, C. J., Cooper, Willard, Mapa, McDonough, and Johnson, JJ., concur.

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