

[G.R. No. 1047. March 24, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JUAN DE CASTRO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

This case leaves no room for doubt as to the guilt of the defendant. Both the witnesses for the prosecution and those for the defense agree that the defendant was the slayer of Juan Palileo, whose death has given rise to this prosecution. There is not, however, the same unanimity of testimony with respect to the manner and circumstances under which the crime was committed. Witnesses for the prosecution testified that the accused inflicted upon Palileo two stabs which caused his immediate death, because Palileo had attempted to separate him from Luceno Silleno, with whom he was quarreling at that time. According to their statements the deceased was completely unarmed, and did nothing more than to attempt to separate the other two. According to the testimony of the witnesses for the defense the deceased arrived at the scene of the occurrence armed with a piece of bamboo, and without saying a word struck the defendant on the head with it from behind, and that the defendant thereupon turned around and inflicted the stab which left the deceased stretched on the ground. These witnesses state that there had been no provocation on the part of the defendant for the attack made upon him by the deceased.

The many and serious contradictions between the statements of the witnesses for the prosecution lead us to seriously doubt the truth of their testimony. Among other serious conflicts we have noted, for example, the following: (1) Petra Manalo, the widow of the deceased, testifies that she was with the latter at the time of the occurrence of the crime, and that she was an eyewitness, and gives details of the crime in her testimony; on the other hand, Ysidro Palileo, a brother of the deceased, who also says that he was an eyewitness, testifies that the woman Manalo arrived at the place after his brother was dead, and that he

does not know how it was that she heard that the deceased had been killed. This same witness, Ysidro Palileo, testifies that he did not see any woman at the place in question, or in its vicinity, at the time of the occurrence of the crime. Nevertheless Adriana Ramos testifies that she was there and saw the defendant stab the deceased in the back. (2) From the testimony of Petra Manalo it clearly appears that the killing in question occurred suddenly and instantaneously in the middle of a field at a place some hundred meters away from the nearest house. According to her statement, when her husband, who happened to be going by, drew near for the purpose of separating the accused and his adversary, Luceno Silleno, the accused suddenly turned upon him and inflicted two stabs which stretched him on the ground, and then immediately turned and fled. If this be true, the other witnesses for the prosecution, Adriana Ramos, Jose Rivera, Ysidro Palileo, and Hermongena Bonifacio, who, according to their own testimony, were in a house, would certainly not have had time to see the beginning of the occurrence, leave the house (supposing it to be the house nearest to the place), traverse the distance of 100 meters, and arrive at the scene of the affray in time to find the defendant in the act of stabbing the deceased. Nevertheless this is what these witnesses in effect swore to in their respective testimony. We find the testimony of these witnesses incompatible with the sudden and instantaneous manner in which the crime was committed, as described by the widow of the deceased. (3) The witness Jose Rivera is absolutely self-contradictory in his testimony. In one place, in reply to a question as to whether he was present at the quarrel between the defendant and the deceased, he says that all he knows about it he knows by hearsay. In another part of his testimony he says that he went to the place of the affray and saw the occurrence at a distance of some fifteen yards, and gives prolix details of the occurrence, as though he were actually present at the time. Of course we do not take into consideration the statement made by this same witness and by Adriana Ramos in the documents on folios 3 and 4 attached to the complaint (p.1), in which both of them state that they saw the occurrence from their respective houses, and according to the statement of the former, at a considerable distance. We do not take these statements into consideration because these documents were not introduced as testimony in the course of the trial. If it were allowable to consider the contents of these documents it might also be said that they are in open contradiction with the testimony of these same witnesses as given at the trial, in which they stated that they went to the place of the affray and that they were there present when the crime was committed.

In view of these contradictions, in connection with the emphatic statement made by the witnesses for the defense that the witnesses Ysidro Palileo, Petra Manalo, and Hermogena Bonifacio were not present when the occurrence took place, we can not give credence to the

testimony of the witnesses for the prosecution. Considering the testimony of the witnesses for the defense to be true, we must apply in favor of the defendant the mitigating circumstance of incomplete self-defense, comprised in paragraph 1 of article 9 of the Penal Code, inasmuch as there was an unlawful aggression on the part of the deceased in the attack made upon the defendant from behind with a cane, with which he struck him a blow on the head, the defendant, on the other hand, having not in the slightest degree provoked this attack. We can not, however, consider the defendant to be wholly exempt from criminal liability, because it is evident that he exceeded the limits of the necessity of the defense in using the dagger which he carried, and with it inflicting a mortal wound upon the deceased. Such means were not reasonably required or necessary to repel the attack, in view of the fact that it was made with nothing more than a piece of bamboo, a weapon insufficient to put the life of the person attacked in imminent peril, more especially in consideration of the insignificance of the attack itself, for, according to the witnesses the blow struck by the deceased did not even bruise the accused. It follows that there is absent in this case one of the three requisites of section 4 of article 8 of the Code—that is, the reasonable necessity of the means employed to repel the attack—in order that the necessity for self-defense may be a complete exemption from criminal liability.

In view of the character of the extenuating circumstances referred to, the penalty to be inflicted upon the defendant is that inferior by one or two degrees to that assigned by law for the crime of homicide, of which he is convicted in accordance with the provisions of article 86 of the Code.

We therefore condemn the defendant to suffer the penalty of six years and one day of *prision mayor* and to pay the sum of 500 Mexican pesos to the heirs of the deceased. The judgment appealed, so modified, is hereby affirmed, with the costs of this instance to the defendant. So ordered.

Arellano, C. J., Torres, Cooper, Willard, and Ladd, JJ., concur.
