

G.R. No. 299, October 29, 1901 THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JULIAN BERTUCIO ET AL., DEFENDANTS AND APPELLANTS.

DECISION

It appears from the record that on the night of March 24, 1897, in the town of Lumban, near Pila, a quarrel broke out between Geronimo Linac and Julian Bertucio. The cause of the quarrel was the refusal of Linac to work for Bertucio in order to pay off a dollar which he owed the latter, as he had been requested to do. In the course of the quarrel Bertucio seriously wounded Linac on the right wrist with a bolo. Bernabe Gasapangra, taking part in the affray in aid of Linac, attacked Bertucio in turn and inflicted three bolo wounds upon the latter's head. These wounds were healed with medical assistance in ten days and left no ill results. Geronimo Linac died on the night of the day following the occurrence as the result of a hemorrhage from the wound in his wrist.

When Bernabe Gasapangra was found by the police in a cane field, where he hid himself after the occurrence, he attempted to escape and refused to surrender when called upon to do so. In order to prevent his escape and owing to the fact that he was armed with a bolo, some of the arresting party were forced to throw stones at him and employ violence as a result of which he received several wounds of lesser gravity, which healed in the course of some twelve days without causing any permanent injury.

The facts proved in the present case constitute two crimes one of homicide committed upon the person of Geronimo Linac, included in the terms of article 404 of the Penal Code; the other, that of an assault of lesser gravity upon Julian Bertucio, prohibited and penalized in article 418 of the said Code. In the crime of homicide there appear none of the specific qualifying circumstances enumerated in articles 402 and 403 of said Penal Code to be considered.

The guilt of the defendant Bertucio of this crime of homicide has been conclusively established by the evidence. His exculpatory allegations can not be admitted on account of the lack of proof and because of the self-contradictory character of his statements. Furthermore, the fact is proven that he was the only person who had a disagreement with the deceased. The accused himself stated that the deceased might have been the one who inflicted the wounds which he had received upon the head. It is likewise a fact shown at the trial that the other defendant, Bernabe Gasapangra, is responsible for these wounds of the prisoner Bertucio, the former's guilt being likewise established by conclusive evidence. Notwithstanding his denial and the representations he made to demonstrate his innocence, the case offers sufficient data and merits to fully convince the court that Bernabe Gasapangra attacked Bertucio after seeing the latter inflict a grave wound upon his relative, Geronimo Linac, and that he then hid himself in a canebrake, where it was necessary for the authorities to use force and violence in order to apprehend him.

With reference to the commission of the homicide there must be considered the presence of the extenuating circumstance, No. 3 of article 9 of the Code, in that the aggressor Bertucio confined himself to the giving of a single blow of his bolo upon the right arm of the injured party and that he did not repeat this blow thus showing that he had no intention of occasioning an injury as grave and irreparable as the death of Linac. Although the latter died on the night of the succeeding day, this was due to neglect and the lack of medical treatment, his death having resulted from a hemorrhage which they did not know how to stop or control in time. This circumstance, as well as that established in article 11 of the Code, deemed very applicable in the present case, determine that there should be

imposed upon the culprit the penalty next lower in grade to that designated for the crime in article 404, there being no aggravating circumstance to consider which might neutralize the effect.

With reference to the crime of assault of lesser gravity (*lesiones menos graves*), the presence of the mitigating circumstance established in article 11 must be considered, as well as that of No. 24 of article 10 of the Code, since the defendant Gasapangra in committing the offense made use of a weapon of a kind prohibited by the prevailing laws.

As for the assault of lesser gravity committed upon Gasapangra by the authorities, inasmuch as the latter acted in the performance of their duties and in the legitimate exercise of their authority they are exempt from criminal responsibility and must be acquitted.

For the reasons stated, Julian Bertucio should be condemned to eight years and one day of *prision mayor*, together with the subsidiary penalties designated in article 61 of the Code and to the payment of the one-third part of the costs in both instances, without judgment of money indemnity by reason of the express waiver of the heirs of the deceased; and Bernabe Gasapangra as the perpetrator of the assault should be condemned to two months and one day of *arresto mayor*, together with the payment of an indemnity of 50 pesetas to Julian Bertucio and in case of insolvency to the corresponding subsidiary imprisonment and to the payment of another third part of the costs, computing in the principal penalty and in the subsidiary imprisonment one-half of the time spent in provisional imprisonment; and the charge of assault of lesser gravity inflicted upon Gasapangra should be absolutely dismissed with the remaining third part of the costs *de officio*; the bolos used should be confiscated and the order declaring the insolvency of the parties made in the incidental proceeding of attachment should be approved.

In these terms the present cause should be decided, affirming the judgment appealed from in so far as the same agrees with this decision and reversing it in so far as it conflicts therewith. It is so ordered.

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