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[G.R. No. 1041. April 02, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. RICARDO LUCIANO, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

At about 1 o'clock in the afternoon of the 6th of March, 1902, Ricardo Luciano went to a warehouse in which was stored sugar belonging to his brother, Jose Luciano, situated in the barrio of Talimundoc, in the town of Magalang, Pampanga. He found among several empty sugar pots a piece of *bojo* cane full of molasses. Upon inquiring from the laborers which of them had hidden it there, Francisco Dunca replied that he was the person who had done so, after having asked Don Antonio Luciano to give it to him. The accused, annoyed by this conduct on the part of Dunca, prejudicial to the interests of his brother, picked up the piece of bojo cane full of molasses—about half a yard in length—and struck Dunca two blows. These caused slight bruises, a slanting one in the middle of the right thigh, and another in the left lumbar region, between the ninth and twelfth ribs, the blow falling longitudinally to the body. After this Dunca left the warehouse, walking in the direction of a cane field. At a distance of about 250 yards he fell to the ground. Felipe de los Santos, seeing this, went to assist him. Finding him in a bad condition, he called some other laborers, and among them they picked Dunca up and carried him to a shed at the side of the warehouse. Here he died a few hours afterwards. The record discloses the fact that the deceased was in a sickly condition, and had been suffering from fever before this occurred.

An autopsy of the body of Francisco Dunca was held by two physicians. From statements made by them it appears that they found on the exterior of the body the two bruises which have already been mentioned. In the interior cavity of the body the spleen was found to be enormously hypertrophied, it being three times its usual size. In the lower portion was found a large cavity with a rupture; and the tissues were found to be exceedingly weak and friable.

Hematoma was noted in the interior of the cavitv, and between the intestines were clots of blood. It was observed, also, that the stomach was dilated with food.

The two physicians agreed that the death of Dunca was due to the hemorrhage resulting from the rupture of the spleen, which, owing to the abnormal condition of that organ hypertrophied and triplicated in size, might have been occasioned by a fall, a simple emotion or moral impression, a physical effort, or by overeating. Dr. Mesina affirmed, however, that the rupture of the spleen could not be attributed to the blow received, because the bruise found on the back of the body was not in the region of the spleen, but in the region of the kidneys, which were not affected; that if the patient had staggered after receiving the blow, by reason of the abundance of hemorrhage, then the rupture might be attributed to the blow, but that if this were not so, then the rupture of the spleen must be due to some other cause; and that, in view of the antecedents of the deceased and the state of his spleen, his death could not bo attributed to violence.

Dr. Liongson averred that if the spleen as it was found at the time of the autopsy had been ruptured in consequence of a. blow received near the region in which that organ is situated the patient would have fallen mortally wounded in less than two minutes after receiving the blow? and that therefore he did not believe that the said blow had occasioned the rupture of the spleen, the pathological condition of which was due to the malaria with which Dunca had suffered during the preceding months. The doctor expressed the opinion that Dunca’s death was in consequence of the rupture of the hypertrophied spleen, caused by some one of the causes previously enumerated, because Dunca, after receiving the blow, walked without difficulty about the warehouse, and through the field for a distance of some 250 yards, and the fall which he suffered might have been either the cause of the rupture of the spleen or the consequence of this accident.

The accused, having been arraigned on the charge of homicide, pleaded not guilty. His counsel introduced witnesses who, among other things, testified that Dunca, after having been struck by the accused, but not heavily, with a piece of *bojo* cane, left the warehouse, going toward his house, and at a. distance of some 250 yards fell to the ground, and, having been picked up, died shortly after near the warehouse. They added that the deceased was a chronic sufferer from fever and chills.

From the facts related it appears that the crime of homicide, defined and punished by article 404 of the Penal Code, has been committed. The death of Francisco Dunca took place in consequence of a rupture of the spleen, producing a. copious internal hemorrhage, as shown

by the autopsy and post-mortem examination made by the two physicians, which rupture must have4 been occasioned, among other efficient causes, in view of the pathological condition of the deceased, by the blows which he received on the body some minutes before falling to the ground. If, as the physicians affirmed, such a rupture of the spleen might have been the effect of a moral impression, a physical effort, or overeating, it is unquestionable that the violent acts of which Dunca was the victim, if they were not the direct cause of the rupture of that important organ, at least produced a strong physical and a considerable moral shock. The complication produced thereby, owing to his feeble condition, resulted in his death, an event which the blows possibly would not have caused had he been a strong and healthy man.

The blows given Dunca were illicit, and acts contrary to law, whatever may have been the motive which led up to them. In order to determine the character, extent, and consequences of the punishable act and to define and classify the offense, it is necessary to take into consideration its results and the effect produced on the deceased.

It is true that, in consequence of former ill health, Dunca's spleen was in a hypertrophied condition and was three times its natural size; but it is also true that the rupture of the spleen and the consequent hemorrhage occurred a few minutes after the blows were received. Therefore, even in case the lesion of the organ was due to a supervenient accident to the deceased, already seriously ill, it is unquestionable that the ill treatment given him provoked this fatal result and hastened the death of a man who a few moments before had been working in the warehouse and able to move about freely.

The person guilty of the ill treatment referred to is the sole responsible author of the crime committed. He who executes an illicit act, in violation of law, is responsible for all the consequences which such an act may produce. He can not free himself from responsibility by reason of the circumstance that he did not intend to kill the man he injured. The defendant willfully struck Dunca two blows with a *bojo* cane, with the wrongful intent of punishing him. This was an unauthorized act, and constituted a breach of the penal law. Being illicit, the accused is presumed to have acted with malice and is criminally responsible. (Article 1 of the Code and judgments of March 10, 1871, and June 26, 1880.)

The act committed by Luciano having been a perfectly voluntary and intentional one—an act entirely illegal, and reproved by the penal law—and the injured man having fallen to the ground after having walked a distance of some 250 yards, an a consequence of the rupture of his spleen, it is unquestionable, notwithstanding the fact that the two physicians who held

the post-mortem examination could not affirm with certainty what was the direct cause of the rupture, that the violence with which the deceased was treated more or less directly caused his death; or, at least, it was a concomitant cause which largely contributed to and hastened his death. Consequently the aggressor is certainly responsible for all the consequences of his criminal action, even if his intention was not that of causing death. Ricardo Luciano, therefore, must be adjudged the responsible author of the crime of homicide.

This lack of intention, however, decreases his responsibility, and must be taken into consideration, together with the other mitigating circumstance—that is, that the accused acted on the impulse of passion, produced in his mind by the conduct of the deceased. The trifling value of the sugar or molasses stolen is a matter of indifference in this case. The theft committed by Dunca might have been imitated by the other laborers, and if each were to have taken an equal quantity of molasses, and were to do it frequently and repeatedly, the loss would in a short time become considerable. It will be readily seen, therefore, how and why the knowledge of the theft of the small amount of sugar stolen might have produced this burst of anger.

In the commission of the crime defined no aggravating circumstance was present, and therefore, there being two strongly marked mitigating circumstances, to wit, Kos. 3 and 7 of article 9 of the Code, the accused should, in accordance with the precept of paragraph 5 of article 81 of the Code, be convicted, the penalty imposed to be that immediately inferior in degree to that assigned for the crime by article 404—that is *prision mayor* in its minimum degree.

With respect to the allegation of the defense as to the withdrawal of the complaint by the provincial fiscal, we hold that under the accusatory system the Government may abandon the criminal action and withdraw the information, if unable to obtain evidence, before the trial has commenced; but after the trial has begun and after the evidence is taken and the defense has been made, the accusation can not be so withdrawn. The judge, in the performance of his duty, may continue the proceeding and render such judgment as he may deem proper under the law, as was done in this case.

Upon the foregoing considerations, therefore, the judgment below must be affirmed, with the costs of this instance to the defendant, the indemnity to the widow and heirs of the deceased being fixed, however, in the sum of 1,000 Mexican pesos.

This decision is strictly in accord with the rigorous precept of the penal law; but a consideration of the circumstances under which the act resulting in the homicide was committed, the cause which induced Ricardo Luciano to strike Francisco Dunca, and the pathological condition of the latter, leads Judges Torres and Ladd to consider excessive the penalty assigned by the law and which has been imposed. This is not a case in which an abandoned criminal, armed with a deadly weapon, attacked the deceased with the intention of killing him, but that of the unfortunate victim of an accident which has brought him under the operation of the penal law. It can not be said, furthermore, that he was guilty of great cruelty in the punishment he intended to inflict upon Dunca. Consequently the judges mentioned are of the opinion that it would be equitable to refer this case to the Chief Executive, in order that he may exercise clemency, should he see fit to do so, by granting a partial pardon and thereby mitigating the marked severity of the penalty imposed upon the accused, this action being authorized by article 2, paragraph 2, of the Penal Code. So ordered.

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

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