7 Phil. 713

[G.R. No. 1878. March 09, 1907]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANTONIO NAVARRO, DEFENDANT AND APPELLANT.

D E C I S I O N

ARELLANO, C.J.:
This is an appeal from a judgment of the Court of First Instance of Manila sentencing the accused Antonio Navarro to suffer the penalty of death by hanging.

The facts as brought out in the trial are as follows:

That on November 19, 1903, during the early hours of the morning of that day, Ricardo Garces and Antonio Navarro, the accused, after having had an altercation in the bar or saloon of the Paz Theater, district of Binondo of Manila, and in the presence of other persons, left the saloon together for the purpose, as has been proven in this case by the testimony of various witnesses, of fighting in another place.

The facts most important in connection with this case are testified to by the accused himself, who states that he and Garces left the theater together, and taking a *carromata* went as far as Calle Rosario, where they stopped for the purpose of purchasing two knives, one for each. The knives purchased, as is stated by the accused, were known as "marineros," having a blade about one foot in length; that after making the purchase they then paid for the *carromata* and separated, each taking a conveyance, both going in the direction of Santa Mesa, the extreme end of the district of Sampaloc; that when about halfway on the road the accused stopped at a store for the purpose of asking for a piece of ice, but without losing sight of the vehicle of Garces, which had taken the lead; that the accused, not being able to obtain the ice, followed to the place of meeting.

The prosecuting attorney in this case, in alleging the acts of the accused, sets forth the same in the following words: "* * * That they fought there, during which fight the accused

was slightly wounded on the upper lip, Ricardo Garces receiving a large and deep wound on his right arm; that after the fight they left the place, proceeding to a small house wherein lived Ambrosio del Rosario and Hilaria Bernardo, husband and wife, respectively; that while at this house the accused requested and obtained from Hilaria Bernardo a piece of an old skirt with which he bound the wounded arm of Ricardo Garces, which wound was then bleeding profusely; that immediately thereafter they left the house, Garces being assisted to some extent by the accused; that upon arriving at the Santa Mesa road the accused was detained by a policeman who had been called by the witness Ambrosio del Rosario; that the policeman rang up from the alarm box for the police ambulance, and after having waited some time for the ambulance, which ambulance arrived a half hour later, conducted in the said ambulance the accused, Navarro, to the police station and Ricardo Garces to the Civil Hospital, where, about the hour of 1.30 of the afternoon, Garces was operated on by the hospital surgeons in the operating room of said hospital; that, notwithstanding the assistance and attendance of the hospital surgeons, Ricardo Garces died in the said hospital at the hour of 5 on the morning of the following day." (Allegation 2.)

In view of the fact that it was impossible to secure the testimony of Garces bearing on the presence of the accused and Garces on the ground where the fight took place, this court is compelled to take into consideration the evidence given by the accused, and Ambrosio del Rosario, in whose house the cloth was obtained with which the accused bound the arm of the wounded man; but this witness, Ambrosio del Rosario, does not testify to more than the fact that he heard the taller man, Garces, cry out, and whom he saw with doubled arm, which arm was then bleeding, and a shorter man, Navarro, with raised arm holding high an instrument which he could not distinguish as a knife, but which instrument he saw was one foot in length and white, and that when he saw blood flowing he left for the purpose of calling the police (p. 59 of the record).

Benford Warren, a member of the police, who was in charge of the ambulance wagon, testifies that he saw the wounded man assisted to the ambulance on the arm of the policeman who had been called; that the wounded man then had his right arm doubled up and bandaged at the elbow; that the wounded man's coat and all of his clothing were covered with blood; that he removed this bandage, leaving it hanging from the sleeve below the elbow; that the wounded man, after having been assisted into the ambulance, remained on his feet with arm doubled up; that upon the arrival at the hospital the witness, assisted by a Filipino, took the wounded man from the ambulance and thereafter these two assisted the wounded man up the stairs of the hospital; that when taken from the ambulance the wounded man was in a faint and weak condition, not being able to hold up his arm, which

arm had then fallen, causing another flow of blood from the wound, which flow continued profusely while ascending the stairs and on the way to the operating room (p. 123 of the record).

Joseph J. Keith, a member of the secret-service police, who was detailed to go out to the place where the fight occurred for the purpose of making investigation, testified that he found there but one knife, and that this knife was closed when found, and belonged to Garces.

A pool of blood was found by this witness running from the spot or place where the fight evidently took place to the spot where the knife was found, and that in the latter place there were several spots or pools of blood which would evidence the fact that the wounded man had stood there several minutes; that there were also spots of blood running from the place where the knife was found to the Santa Mesa road; that the place where the fight took place had been pointed out to him, the witness, by the wife of Ambrosio del Rosario, and that the witness saw there during his examination the signs of the fight as evidenced by the crushed and disturbed vegetation and much blood, this being a distance of about 25 yards from the house of the woman, the wife of Ambrosio del Rosario (p. 136 of the record).

The wound of Garces was, as is testified to by Dr. G. B. Cook, a cut or incision about one inch in length, made above the elbow, and on the inner part of the arm, running from the outer part of the arm to the center of the same; that the wound extended in depth to the bone, cutting or severing the main artery; also that the wound or cut was directed or ran from the inside in an upward direction, and that the artery mentioned was completely severed—that is to say, leaving unsevered a small connecting thread of said artery (p. 4 of the record).

Dr. Stafford, physician in charge of the Civil Hospital, testifies that: “The wound was an incision reaching to the bone, and of about the length of one inch, just above the joint of the forearm (elbow joint); that the wound or cut was incisive in character and had been inflicted or caused by a sharp instrument; that the wounded man was almost dead when received at the hospital, by reason of having lost so much blood; that the wounded man was unconscious when received at the hospital, being absolutely without pulse, notwithstanding the fact that an hour afterwards he, the wounded man, recovered his senses and his pulse became somewhat perceptible; that there was much blood on the bandage, and that the arm or wound was bleeding at the time that the policeman carried the wounded man to the operating table; also that there was a great deal of blood in the office” (p. 65 of the record).

And, as is testified to by Dr. William J. Mallory: “The face of the wounded man was pallid, you might say white; he seemed to me to be unconscious. His eyes were closed and his face and hands wet with perspiration; the cuticle or skin fresh; respiration short and rapid, and the cheeks fallen and loose; I saw a wide wound on the right arm, of an inch or an inch and a half approximately, above the turn or curve of the elbow—that is to say, above the bend and to the front” (p. 104 of the record).

These three doctors give as an immediate cause of death that of hemorrhage and nervous convulsion or condition, all of which is corroborated and admitted by three other doctors who have testified for the defense and as appears from the evidence of the latter given and bearing on a hypothetical case as presented by said defense.

The conclusion of the court below as set forth in its judgment is: That Antonio Navarro took the life of the deceased willfully, unlawfully, criminally, and with malice aforethought and deliberate premeditation and treachery, fighting a duel without seconds in a retired and isolated place, all of which the court is convinced is without reasonable doubt and has been proven; there are no mitigating circumstances connected with this case, but to the contrary aggravating circumstances. The conclusion or finding of the court below relative to the qualifying circumstance of treachery is set forth in these words: “I believe that after the arrival of the accused on the ground, and at the moment the deceased was in the act of taking off his coat for the purpose of preparing himself for the fight, the accused availed himself of such occasion and opportunity and attacked him, the deceased, with the knife, wounding him in the right arm, all of which is set forth in the proofs herein as well as from the fact that the deceased never at any time succeeded in taking his coat off of his left arm; that it was the intention of the deceased to take his knife from an inner pocket, but only after the removal of his coat; also that the deceased could not prepare himself for the fight for the reason that the accused wounded him before he could remove his coat from his left arm; that upon leaving the spot where the fight occurred, the knife of the deceased fell from deceased’s inner pocket to the ground, where it was afterwards found by the policeman Keith. It is natural to believe and this court does believe that at the moment the deceased removed his coat from his right arm and shoulder first, the accused finding the deceased in such a position and being afraid to fight with the deceased, he, the accused, availing himself of the same, inflicted the wound upon the deceased from which wound the deceased died.” (Record, 113.)

But this court has no way of knowing, from the proofs and evidence in the case, as to just how the strife was fought. There is no proof whatever as to how or in what manner the

deceased was wounded, nor could the doctor who examined such wound testify positively with regard thereto. Taking into consideration the proofs which are referred to in the judgment of the court below, it is impossible to arrive at any other than deductions, more or less logical; it is true that no certain conclusion can be arrived at. It is an established doctrine of jurisprudence, again and again reiterated by this court, that qualifying and aggravating circumstances should appear proven during the progress of the trial, with equal certainty and clearness as the act, itself. (U. S. *vs*. Candido Ulat,[1] No. 3255, February 27, 1907; U. S. *vs*. Barbosa, 1 Phil. Rep., 741.)

Therefore it follows that, taking into consideration the basis as to the circumstances, whether qualifying or aggravating, pertaining to treachery, this court can not consider in any way or manner nor can it accept the conclusion of the court below with respect to the same.

In order to take into consideration the existence or circumstance of known premeditation, whether as a qualifying or aggravating circumstance, the court says: "An hour approximately must have elapsed from the time that he, the accused, and the deceased left the Paz Theater until the time the accused arrived at the place indicated for the fray. There was not a moment during this entire period in which the accused could not have stopped his persecution of the deceased and retired from the fight. If the accused had felt sorry as he testifies to and as he states he expressed himself to the deceased upon his arrival there, he would not have gone to the place, and after his arrival on the ground, being at that time, as he says, some distance from the deceased, he could have abandoned his purpose and retired from the ground" (p. 111 of the record).

The prosecuting attorney, in the Court of First Instance, said: "The fact of the accused having provoked the quarrel, challenged the deceased to a fight, purchased a dangerous and fatal instrument, proceeding thereafter a long distance to a chosen place for the purpose of fighting, and there insisting that he and the deceased proceed with the fight, is direct and positive proof of the existence of known premeditation" (p. 86 of the record).

And finally the Solicitor-General in this instance says in the following terms: "If premeditation be characterized and shown, not so much by the time or lapse of time from the moment of conceiving the idea of a crime to the moment of its accomplishment, but by the persistency of this same idea and the voluntary and firm intention of carrying out the same, it is evident that this said premeditation is shown and is in accordance with the fact in the records herein, in that the accused first challenged the deceased, the election and

acquisition or securing of the arms, the designation of a place of combat, and finally in his selection for such a place, a spot retired and secluded, for such combat. This signified clearly that from the moment he conceived and intended the same to a criminal end he carried out and executed a series of acts to overcome all obstacles and difficulties which he might encounter in so doing. The accused and deceased did not go together in the same *carromata* to the place of the duel; as is testified to by the accused himself during the trial, the deceased went on ahead in a different *carromata*, and he, the accused, stopped at a bar or saloon situated on the San Sebastian Plaza and there asked for and drank a small quantity of ice water. This shows that the accused had more than enough opportunity to find and adopt means for refusing or retiring from the duel agreed upon. But no, the accused was firm and had already decided to carry out his criminal design and intent. Nothing could have caused him to desist from such idea and intent" (p. 5 of the record).

According to interpretive jurisprudence, and in this case applicable to the aggravating circumstances of paragraph 7, article 10 of the Penal Code: "Known premeditation should not be taken into consideration when the proven facts do not show the same with connection and relation bearing directly on the criminal act itself, which proven facts and the execution of the same were carried out within a time sufficient to give place to serious thought, meditation, or cool reflection—all of which if proven constitute the essence of aggravating circumstances, and as it connected with the idea and the intent to kill the other the same night, the acts of the accused evidence this intent toward the accomplishment of the criminal act." (Judgment of the supreme court of Spain, November 16, 1888.)

Navarro and Garces left the Paz Theater, each with the deliberate intention to fight outside of such place. Both had criminal intent (no matter which one of the two provoked the quarrel), from that time and moment, to carry out the purpose of fighting in another place. Both of them agreed and decided to do this, and immediately thereafter, without loss of more time, and with criminal intent, went to an isolated place designated for the encounter, and this in the accomplishment of a criminal design and intent which encounter took place one hour thereafter, as is shown in the judgment of the court below. It is also shown that during this time nothing occurred to induce them to desist from carrying out their original purpose, and, notwithstanding this, Navarro proceeded with and insisted in carrying out his design of fighting—all of which was necessary to show cool meditation, reflection, and known premeditation, whether with qualifying circumstances or aggravating, all of which goes to show the serenity and coolness in the intent to do ill, and consequently of more malignity or obstinate wickedness on the part of the delinquent, Navarro. The acts that intervened from the time of the quarrel and fight as first had to the time of the wounding of

the deceased were nothing more than acts carried out for the purpose of the realization of a design or intent caused by the passion of a moment and while excited and rash, and during the fever of such moment; that these were the circumstances and conditions which existed between two excited and angry parties, and who, excited by such passion and anger, and without anything happening within this short space of time to cause them to recover their serenity went to the place for the purpose of carrying out a crime.

Inasmuch as known premeditation, the same as any other aggravating circumstance, should not be inferred but proven, which in this case has not been proven by acts clearly showing such aggravating circumstance and premeditation, or which imply that such determination was meditated or after reflection with respect to carrying out the offense in a manner or form first thought of, and this outside of any details tending to exculpate as given by the accused himself, the court below in its judgment fails to take into consideration these attendant conditions or characteristics, and there are no fit terms or reasons by which the court could accept or find that such circumstances were either qualifying or aggravating.

The crime committed in this case is not that of dueling, "A duel implies or means an agreement to fight under determined conditions and with the participation and intervention of seconds, who fix such conditions; and the code has taken same into account and fixes the penalty therefor according to the result of said duel. And even though the act could be qualified as that of dueling, if, in the duel, there was no particitation of seconds, there should be taken into consideration, by all means, the provisions of paragraph 2, article 446 of the code (art. 431 of the Philippine Code), according to which the general penalties of the same should be applied, in the event of death or injuries, with a limitation as to the aggravating circumstances but restrictive in that the punishment or penalty be not less or come below that of *prision correccional*." (Judgment of the supreme court of Spain, October 9, 1890.)

Notwithstanding that the fact be taken as proven and as is alleged by the defense in this instance, to wit: That Navarro repeatedly expressed his desire and wish to Garces not to fight, and that he begged him, Garces, that there be no fight between them, and that Garces paid no heed to such request and attacked Navarro (p. 52 of the record), this aggression or attack could not be considered as one of the requisites or elements of self-defense, because "in a fight arranged under agreement like the one that has taken place, the result of provocation and an accepted challenge, the aggression is reciprocal and legitimate as between two contending parties, though the same can not be qualified as a duel, for the reason that the conditions and elements necessary to constitute this crime are not present."

(Judgment of the supreme court of Spain, July 11, 1871.)

It is held in the decision of date May 30, 1892, as follows: "That in accordance with the many findings of *Sala segundo*, the acceptance of a personal fight excludes the application of paragraph 4 of article 8 of the Penal Code, which application and law relieves from all responsibility he who acts in defense of his person (self-defense) whenever, in so doing, the three essential requisites are present, for the reason that the fight once accepted, the first aggression or attack is an *accident* or incident of the fight and without judicial *effects* modifying the imputability resulting from the accepted act."

The crime committed is not that of *lesiones* (personal injuries resulting from the attack), but that of homicide. "The firm and unalterable jurisprudence of the supreme court," as is stated in a judgment of that court of Spain, "is that the crime of homicide is committed when death ensues or follows, as the result of a wound inflicted by another, whether the death be the precise and necessary consequence of the injuries or wounds, or whether death resulted from accidents caused by reason of such wounds or injuries received by the patient; and that the trial court in finding or establishing as proven facts that the wound received or suffered by the murdered man or victim was the cause, however remote, of his death, notwithstanding that a rare fever came on during the illness, found it evident that the death was the result or resulted from the injury although by accident and *not imputable* to the offended party who in consequence of said injury, died." (Judgment of the supreme court of Spain, May 8, 1890.)

> "It is the unalterable doctrine and so held by the Court of Cassation that the aggressor is responsible for all the natural consequences of the aggression, when these consequences do not owe their origin to acts or malicious omissions imputable to the assaulted party." (Judgment of the supreme court of Spain, May 30, 1892.)

There is no proven fact that can be accepted by this court, nor has it even been accepted by the court below, according to which the death, and if not the death the prostration or condition following the encounter, were the immediate consequences of the intervention of a third party, or were due to improper medical treatment. The expert evidence and testimony presented by the defense in the Court of First Instance bearing on a hypothetical case does not establish as the cause of death, nor as the cause of the convulsion, the medical treatment received by the wounded man, in order that this court can arrive at a

similar conclusion or finding as that of the court below in its findings as to the exemption from or lessening of the responsibility of the accused. “Is it possible, Doctor,” such was the last question asked by the Government, “to arrive at a very positive conclusion in regard to the proper treatment in a case, without seeing the patient or knowing his true or exact condition, particularly pertaining or with reference to a state of convulsion or hemorrhage?” “No, sir,” answered Dr. McDill, witness for the defense, who, after all, approved the treatment adopted and applied, and only offered his opinion or observations as to how long a time would be necessary in the application of a torniquet on the arm of the wounded man to stop the hemorrhage.

Neither can this court arrive at a finding or conclusion with respect to the effect or influence of the doses of strychnine administered to the wounded man, or that the same was the cause or joint cause of death or of the convulsion.

Therefore, we reverse the judgment appealed from and find Antonio Navarro guilty of the crime of homicide, in accordance with article 404 of the Penal Code, without extenuating or aggravating circumstances, and sentence him to fourteen years eight months and one day’s imprisonment *(reclusion temporal)*, together with the accessory penalties as prescribed by article 59, to pay to the heirs of the deceased an indemnity in the sum of 1,000 pesos, Philippine currency, together with the costs of both instances.

After the expiration of ten days let judgment be entered in accordance herewith, and ten days thereafter let the cause be remanded to the court from whence it came for proper action. So ordered.

Torres, Mapa, Johnson, Carson, and *Willard, JJ.,* concur.

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[1] Page 559, *supra*.

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