

43 Phil. 240

[G. R. No. 18203. March 27, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
TELESFORO DORADO AND ESPIRIDION DIAZ, DEFENDANTS. ESPIRIDION DIAZ,
APPELLANT.**

D E C I S I O N

ROMUALDEZ, J.:

On May 1, 1921, Cirilo Dorado was drinking *tuba* (a native beverage) in the lower part of the house of Fortunato Altoveros, within "the municipal jurisdiction of Panitan, Capiz. Telesforo Dorado happened to be passing" and was invited by the former to have a drink of *tuba* with him which he accepted, but as he was in a hurry, he proceeded on his way together with Benita Diaz and Marcelina Batancila. Perhaps, because he wished Telesforo to continue drinking with him, Cirilo became offended when the former proceeded on his way, so he chased and threatened him and finally attacked him with the unsheathed *bolo* in his possession. Telesforo dodged the attack with a walking stick which he was carrying, but a struggle followed between the two during which Telesforo struck Cirilo with a bottle wrapped in a piece of cloth and containing petroleum, as a result of which he fell to the ground, but was able to get up. The fight between the two continued until they arrived at a fish vivary in which the water was waist deep, when they still proceeded to fight and Telesforo was wounded on the foot.

Witness for the prosecution, Nicolas Daylos, states that at that moment Espiridion Diaz intervened by pushing Telesforo aside and holding Cirilo by the neck and shoulders and submerging him into the water.

On the following day Cirilo Dorado was found dead in said vivary with several contusions and finger impressions on his neck and cheeks, according to the examination performed by Doctor Quisumbing who testified that the deceased had died of asphyxia by immersion in water.

The investigation that followed resulted in the filing of a complaint against Telesforo Dorado and Espiridion Diaz for the death of Cirilo Dorado.

After trial had been had in the Court of First Instance, under an information charging them with homicide, Telesforo Dorado was freed from responsibility for the death of Cirilo Dorado, and Espiridion Diaz was convicted of the crime charged and sentenced to fourteen years, eight months, and one day of *reclusion temporal*, with the accessories of the law, to indemnify the heirs of the deceased in the sum of F500 and to pay one-half of the costs. From this judgment, Espiridion Diaz appeals to this court assigning as errors committed by the court below: (a) The holding that the appellant was harboring enmity against the deceased during the two weeks prior to the act complained of; (b) the finding that Cirilo Dorado had died by drowning; and (c) the finding that the appellant was responsible for the death of the deceased beyond a reasonable doubt.

The enmity alleged is based upon a statement of the appellant made about sixteen days before the fatal event, when, in the course of a quarrel between the deceased and a person by the name of Juan, the deceased struck the latter with an umbrella, whereupon the appellant admonished the deceased, and the latter asked if he felt offended, for his having struck Juan, to which Espiridion Diaz answered: "If you continue doing that, before the year is ended we will all die." According to the Attorney-General this statement was taken as a threat or an expression of enmity. Let it be noted, however, that in making that statement the speaker does not say "you shall die," in which case it would undoubtedly be a threat, but uses the phrase "we will all die," which may mean, not necessarily a challenge or a threat but a forecast, meaning "if you continue doing that," that is, "if you assault anybody whom you please, without cause, *the year will not be ended* without all of us being your victims to the extent of killing all of us." We think this interpretation is perfectly reasonable. The original testimony on this expression, which must have been given in the Visayan dialect, is free from doubt as to its meaning, because the Spanish pronoun "*nosotros*" (we) has two different meanings in the Philippine dialects: *kita* in Visaya (meaning *we*, including the person addressed) and *kami* (meaning *we*, excluding the person addressed); so that if in the phrase "we will all die" the pronoun *we* is equivalent to *kita*, then it would mean that "you and all of us will die," including the deceased himself as he was the person addressed by the appellant, in which case the expression would imply a resentment or a threat; however, if the pronoun *we* is a translation of *kami* then it would not include the deceased and would be equivalent to saying that "we will all die *except you*," a statement which does not necessarily imply any resentment or threat.

As the testimony of Benito Dacles, who testified as to this point, was taken in Spanish, it is rather difficult to establish the exact meaning of that pronoun, and so it results that the doubt as to the true intention and meaning of the accused in making such statement is well founded and reasonable, wherefore it must be resolved in his favor

Now, coming to the second assignment of error, it is an undisputed fact that the deceased was found dead in the waters of the aforesaid vivary. It is true that no autopsy was performed, because the signs of violence upon his body consisting of blood oozing from the nose, blood and water coming from his mouth, several contusions and finger impressions on his neck and cheeks, and a wound on the lower part of his thigh caused by a sharp weapon were evident. So positive was the Doctor that death was caused by asphyxia that he did not deem it necessary to perform an autopsy. The result of all the evidence leads to this conclusion and we cannot but declare that the deceased Cirilo Dorado died of asphyxia. We hold that the second assignment of error is groundless.

In regard to the last assignment of error, that is, as to the responsibility of Espiridion Diaz for the death of the deceased, we have the testimony of the eyewitness Nicolas Daylos of whose veracity, according to the record, there is no doubt. His testimony is corroborated by finger impressions appearing on the neck of the deceased and which could not have been caused by any person other than the herein appellant, because Telesforo Dorado affirms not to have touched the deceased at all, and it does not appear that there was at that time any other person at that place, except these three, the deceased, Telesforo, and the herein appellant. Our conclusion is further strengthened by the exchange of words, already referred to, between the deceased and the appellant, about sixteen days before the incident, which, as we have said, were very doubtful as to give rise to an enmity between the appellant and the deceased, but nevertheless, must have caused the appellant to be in such a state of mind as to be on his guard with respect to the deceased, which, on this occasion, manifested itself in a sudden intervention, not precisely to kill the deceased, but to wrest Telesforo, who was already wounded on the foot, from his clutches and thus save Telesforo from further aggression.

If the evidence establishes that the attack by the appellant upon the deceased was a reasonable means to prevent his assaulting Telesforo Dorado we would declare the appellant exempt from all responsibility. However, this is not shown by the evidence of record and we hold that the defense urged by appellant is not sufficient to exempt him from liability.

We find that in the present case there is the circumstance of the defense of a stranger, No. 6 of article 8 of the Penal Code, but it is incomplete inasmuch as it was not proven that the means employed by the appellant was reasonably necessary. Considering this circumstance, and applying the provisions of article 86 of the Penal Code, the penalty two degrees lower than that of *reclusion temporal* prescribed for the crime of homicide must be imposed, which is *prision correccional*, and there being no modifying circumstance, the same is fixed at the medium subdegree of its minimum degree.

Wherefore, modifying the judgment appealed from, the appellant Espiridion Diaz is sentenced to one year, one month, and eleven days of *prision correccional*, with the accessories provided by article 61 of the Penal Code, to indemnify the heirs of the deceased in the sum of P1,000, with subsidiary imprisonment in case of insolvency, which shall not exceed four months and thirteen days, and to pay one-half of the costs of both instances, crediting him with one-half of the time that he has served as a detention. prisoner. So ordered.

Araullo, C. J., Malcolm, Avanceña, Ostrand, and Johns, JJ., concur.

DISSENTING

Villamor, J.:

I regret to dissent from the respectable opinion of the majority. In my judgment, the evidence does not establish the guilt of the accused beyond a reasonable doubt. The testimony of the witness, Dayalo, is contradicted not only by that of the appellant, but also by that of his coaccused, Telesforo Dorado. The following is all the proof that, in my opinion, bears on the criminal responsibility of the accused.

Testimony of Tomas Dayalo, pp. 6-7, stenographic notes:

“Q. Who is Cirilo; the accused?—A, Yes, sir.”

“Q. Proceed.—A. When Cirilo arrived at the place where Telesforo was walking, the latter struck him on the chest with a bottle, and Cirilo fell down; and when he was trying to get up, Telesforo struck him on the hand.”

“Q, With what did he strike him?—A. Telesforo struck Cirilo on the hand with a

walking stick; and while they were striking each other, I did not approach them and I went home, but before reaching home and on passing by Cirilo's rice field, I met Espiridion who asked me where Cirilo and Telesforo were."

"Q. Who is Espiridion? Where is he? Point him out.—A. There he is. (Pointing out the accused Espiridion Diaz.) And I answered Espiridion: 'I do not know where they went because they disappeared from my sight.' And Espiridion went directly to Cirilo's rice field and then further on and upon arriving at a point somewhat elevated, pushed Telesforo."

"Q. Why! In what position were Telesforo and Cirilo?—A. I mean that when Espiridion reached the brook where Telesforo and Cirilo were, he jumped into the water immediately pushed Telesforo."

"Q. Who pushed?—A. Espiridion."

"Q. But what was the accused Telesforo's position with regard to Cirilo before Espiridion pushed Telesforo?—A. They were clasping each other and fighting."

"Q. What else?—A. They were clasping each other but had not fallen into the water as yet. When Espiridion arrived, he pushed Telesforo in order to separate him from Cirilo and took the latter by the nape of the neck and immersed him in the water."

"Q. And did Cirilo fall?—A. I do not know; I did not see anything more, because seeing that there were already three who were fighting, I left them."

"Q. But what was Cirilo's position?—A. Cirilo was face downward when Espiridion was submerging him into the water."

Testimony of Espiridion Diaz, p. 42, stenographic notes:

"Q. Is it true that you struck Cirilo on a Sunday?—A. No, sir."

"Q. Did you see Telesforo and Cirilo fighting and striking each other?—A. No, sir."

"Q. Is it not true that you met Nicolas Dayalo on a Sunday, and that you were

carrying” a *bolo* in your hand, and inquired where Telesforo and Cirilo were?—A. It is not true.”

“Q. Is it not true that in the afternoon of that Sunday, the first of May, you asked Nicolas Dayalo as to where Cirilo and Telesforo were?—A. It is not true.”

Testimony of Telesforo Dorado, p. 47, stenographic notes:

“Q. And was Espiridion Diaz with you at that time?—A. No, sir.”

“Q. Nicolas Dayalo said here that Espiridion Diaz pulled and pushed you, and it was he who fought against Cirilo Dorado; is that true?—A. It is not true.”

“Q. During the time that you were fighting with Cirilo Dorado, did you see Espiridion Diaz?—A. I did not.”

The testimony of Benita Diaz may be ignored, who affirms having met Espiridion Diaz in his mother’s house after she had left Telesforo Dorado, and states, moreover, that she did not see Nicolas Dayalo on the road or in any other place; but a comparison of the above-quoted testimonies with one another makes me doubtful of the guilt of the appellant. In my humble opinion, he is entitled to an acquittal.