

EL PUEBLO DE FILL INAS, QUERELLANTE Y APELADO, CONTRA RESTITUTO BAUDEN, ACUSADO Y APELANTE.

G.R. No. L-270. August 30, 1946

Ponente: PABLO, J.

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PABLO, J.:

Esta causa esta ante Nos en grado de apelacion. El acusado admits que did muerte a Alejandro Piso en el pueblo de Manapla, Negros Occidental en la tarde de agosto 2, 1945; pero lo hizo en defensa de su vida.

Declarando como testigo a su favor, el acusado dijo que en aquella tarde Alejandro Piso le encontro a el en un campo sacando unas mazorcas de maiz, y le increpo "Quo estas hacicndo, Kokoy? Tu mismo estas hurtando mi maiz." Ofendido, Alejandro le dirigio una palabra

insultante, abalanzandose hacia el. El acusado corrio hacia su casa y Alejandro le persiguio, le tiro piedra, y despues le dijo: "Esperame, te voy a matar." El acusado consiguio refugiarse en su casa. Alejandro apedreo dzcha casa, y al ver a un gallo del acusado salir de un palayal, le tiro una piedra matandole en el acto. Alejandro Piso reto otra vez al acusado diciendole "Vente abajo, loco, te matare como mate a tu gallo." Como el acusado no contestaba, Alejandro Piso fue a su casa para recoger un bolo y, a su vuelta, corto dos platanos del acusado y despues invito al acusado que bajase. Cuando Alejandro estaba cerca de la puerta de la casa con intencion de subir, el acusado salio pasando por la puerta de la cocina llevando consigo una tranca (una madera de un metro de largo, dos dedos de grueso y tres dedos de ancho) y con ella pego a Alejandro acertandole en la mano derecha y en la cadei'a derecha, y el bolo de que estaba armado Alejandro cayo al suelo. El acusado se apodero del bolo y Alejandro aiTebatd de el la tranca. Con ella, Alejandro ataco al acusado varias veces en rapida sucesion mient'as el acusado, retrocediendo, se defendfa con el bolo. Asi fue como el acusado consiguio herir varias veces a Alejandro hasta dejarle tendido y muerto en el suelo. Inmediatamente, fue a buscar a su es-posa y la encontro en la casa de su hermano. Por la noche, despues de despedirse de ella, de su hercnano e hijos, se dirigio al cuartel de policia en la poblacion, diciendo al policia Vicente Rosales "guardia, arrestame porque mate a un hombre." "Este es el bolo que use al matar."

Merece credito esta defensa? Opinamos que no, por varias razones. Primera: si es verdad que Alejandro inten-taba subir, el acusado le luibiera esperado que subiera y contra tranca derribarle en vez de dejar la casa pasando por la cocina. Uno que sube no puede ofrecer resistencia efectiva contra el que esta en un piso seguro y mas alto. Su casa era su mejor fortaleza. Cualquiera, en su lugar, no la hublera abandonado para exponerse a los azares de una lucha en terreno igual. Segunda: esfee intento de Alejandro de subir por la escalera de la casa es un. hecho nuevo que no revelo el acusado cuando presto su affidavit en agosto 14, 1945 ni lo dijo al policia cuando se presento. Preguntado por el motivo, contesto: "que el mato a Alejandro Piso porque Alejandro mato a su gallo." Esta declaracion hecha mmediatamente despues del suceso debe ser la verdad liana y sencilla y no el cuento de la legitima defensa. "La declaracion de un acusado no merece credito ni inspira confianza si es inconsistente e incompatible con sus otras declaraciones heclias en otras ocasiones." (Pueblo contra Ramos, pag. 4, .) Tercera: el acusado es zurdo, y si es verdad que daba los bolazos frente a frente contra Alejandro mientras iba retrocediendo y defendiendose de los garrotazos, las heridas se hubieran infligido en el lado dereclio de Alejandro. Las siete

heridas encontradas en el cadaver de este estaban todas en el lado izquierdo. Estos datos son elocuentes: denuncian que el acusado estaba detras de Alejandro cuando daba los tajos. Caído el bolo, Alejandro no tenia otro remedio mas que la fuga. Le perseguia indudablemente el acusado cuando le daba los bolazos. Cuarta: es raro que el acusado no haya recibido ninguna contusion si es verdad que Alejandro le atacaba con la tzanca (de un metro de largo) mientras el se defendia solamente con el bob que es mucho mas corto, Esta circunstancia hace insostenible la teoria del acusado: de legitima defensa.

La exculpacion, en caso de homicidio, como defensa pro-pia, es una alegacion afirmativa que debe ser demostrada con pruebas convincentes y no de dudosa veracidad; en caso contrario, la condena del acusado es forzosa. (Estados Unidos contra Coronel, 30 Jur. Fil., 119; Pueblo contra Ba-guio, 43 Jur. Fil., 715; Pueblo contra Gutierrez, 53 Jur. Fil., 648; Pueblo contra, Ramos, pag. 4, ante.)

"Incumbe al acusado establecer clara y bastantemente haberlo hecho en legitima defensa propia." {Pueblo contra Silang Cruz, 53 Jur. Fil., 677.)

"Para que la defensa propia como tal defensa pueda prosperar es preciso que las pruebas la demuestren de una manera clara y convincente." (Pueblo contra Berio, 59 Jur. Fil., 562.)

Por otra parte, el acusado respondio al reto de Alejandro bajando de su casa armado con una tranca: no puede invocar con exito el derecho de legitima defensa porque voluntariamente se expuso a las contingencias de una lucha con su contrario, y porque no puede ser otra la intencion de los contendientes mas que el de danarse reciprocamente, el primer ataque que puede venir de cualquiera no es mas que un incidente de la misma pelea, y de ninguna manera debe considerarse como agresion injustificada e inesperada. (Sentencia del Tribunal Supremo de España de 6 de febrero de 1899, citada en Pueblo contra Cortes, 36 Jur. Fil., 892.) "Es ya jurisprudencia"—dijo el Presidente Arellano en la misma causa—"bien sentada en reiteradas decisiones interpretativas del articulo 8 delCodigo Penal, que aceptado un desafio y colocandose por ello el agente en un estado legal y de fuerza, la agresion previa de su contrario, que por no ser inesperada no puede hallarse desapercibido, excluye la situacion de defensa legitima, pues el reto o desafio excluye por si mismo el concepto de defensa personal eximente, total o parcialmente, de responsabilidad." (Sentencia del Tribunal Supremo de España de 8 de marzo de 1897.)

Opinamos que el acusado no ha probado su alegada defensa legitima. Ha infringido el articulo 249 delCodigo Penal Revisado, con dos circunstancias atenuantes, la de provocacion inmediata de parte del ofendido y presentacion voluntaria del acusado los agentes de autoridad. (Articulo 13, pars. 4.a y 7.a delCodigo Penal Revisado.)

Confirmamos la sentencia del juzgado inferior que impone al acusado la pena indeterminada que no baje de dos (2) años, cuatro (4) meses y un (1) día de prision correccional y que no exceda de ocho (8) años y un (1) día de prision mayor, indemnizacion a los herederos del occiso en la cantidad de P2,000, sin prision subsidiaria en caso de insolvencia, con las costas del juicio.

Paras, Hilado, y Padilla, MM., estan conformes.

DISSENTING

PERFECTO, J.:

Restituto Bauden was found guilty of homicide, committed on the person of Alejandro 'Piso on August 2, 1945, and sentenced to an indeterminate penalty of from two (2) years, four (4) months and one (1) day of prision correccional to eight (8) years and one (1) day of prision mayor, and to indemnify the heirs of the deceased in the

sum of P2,000. He appealed from the decision.

At the trial three witnesses testified for the prosecution.

Salomon Losande, a sanitary inspector, identified Exhibit A as the certificate he issued on August 4, 1945, on the result of the post mortem examination he made of the cadaver of Alejandro Piso.

Adoracion Piso, 11 years old child of Alejandro, testified that "I was watching the chickens in the field. My father scolded me because the chickens were picking up the seeds of our field, but my uncle, Tatay Totong, intervened. They made an altercation. They were arguing with each other. Tatay Totong picked up a stone and threw it at my father who was riding on a carabao. My father was not hit. So, he jump from the carabao and ran away. Tatay Totong went up to his house and got a bolo and went after my father. He immediately boloed my father. That is all. He (my father) fell on the ground." Her father was hit by the bolo on the left side in front of the ear. Tatay Totong is Restituto Bauden.

Concerning this witness, the lower court said: "The court had examined the witness for the purpose of finding out whether she had the necessary power of observing and transmitting what she observed. She has some but not fully. So, if it is only the testimony of this girl, I don't think the court would make any finding."

Vicente Rosales, the last witness for the prosecution, is a policeman of Manapla, Negros Occidental, and testified that in the evening of August 3, while he was on duty in the municipal building, the accused approached him and cried, "Guard, catch me because I killed a man. This is the bolo that I used in killing." The witness surrendered the bolo to the sergeant. He investigated the accused, who said that he killed Piso because the latter killed his chicken. No attempt was made to put any "statement of the accused into writing.

Evaristo Padilla, 63 years old, uncle of Piso's wife, testified that in the afternoon of August 2, "I heard Alejandro Piso saying, 'wait for me because I will kill you,' and I turned back my face and saw Alejandro Piso following Restituto Bauden having a stone in his hand after he had thrown a stone once at Restituto" Restituto went to his house. And then Alejandro arrived and he stoned the house of Restituto Bauden. Alejandro Piso saw some chickens in the field and he picked up some stones and stoned the chickens and one was hit and was killed. The chicken came from the rice field. The field is near the house of Alejandro Piso. Alejandro said to Restituto, "Come down, you fool, because I am going to let you die with your chickens." Restituto just kept silent. Alejandro returned to his house hurriedly. He came back with a bolo in his hand. "That Exhibit 1 is the very bolo. When he arrived at the house of Restituto, he immediately boloed a piece of banana tree and another tree was cut. So I shouted to Alejandro, you are still challenging Restituto when in fact he does not accept your challenge and he would not fight with you.' Then after that Alejandro turned at me and he said, 'You do not have anything to do with us. You are going to intervene in this matter? You, too?' After I heard him saying that way, I immediately pulled out the rope of my carabao with the belief that the devil entered on him. After that, I went home." About the character of Piso, the witness said: "He was a troublesome fellow. He even gave blows to some small children, who were troubling him. His father-in-law, my second-grade cousin was driven by him sometimes. His two brothers-in-law were even chased by him with bolo. He chased his father-in-law for whatever cause and anything he might have." Alejandro Piso "was about 40 years old more or less. He was physically well-built."

Restituto Bauden testified that in the afternoon of August 2, after buying viands from the town, he went home. Not finding there his wife, "I went down immediately and went to my camote plantation. I tried to look for my Mrs. who, I believe, was there, digging some camotes, but I did not see her there. I stood up and look somewhere and I saw a person in the middle of my corn field. I saw him gathering my ears of corn, so I approached near him, and at a distance of about 10 brazas, I recognized him to be 'Kokoy'," my uncle Alejandro Piso. "I told him, 'what are you doing Kokoy? You yourself are stealing my corn/ When he heard me, he immediately addressed to me:

'Fool'. At the same time, he rushed toward me, ran after me and at the same time, stoning me. He said, 'Wait for me. I will finish you.' Just after I arrived at home, he also came. He threw stone at my house. I was inside my house. He saw my chickens, which were in his rice field so he stoned the chickens. My chicken was hit and killed. After killing the chicken he went back to my house and said: 'You come down, fool, I will also let you die with your chicken.' As he did not hear anything, he went home to his house. A few minutes after, he came back with a bolo. When he arrived at the stairs of my house, he bo-loed the two banana trees. After he had cut two banana trees, he shouted, 'Come down, fool.' Because my house was very low that if one would stand up, his breast would be seen inside my house, when I saw him with the intention of getting inside my house, I was frightened, so I pulled out a bar of wood by the window of my house to be free from danger. I went down around the house, so when I was already down, he met me and said: 'You are here now' in the attitude of stabbing me with his bolo. So, I immediately hit him in his right hand. After he had dropped his bolo, I immediately picked it up. When he saw that I was picking up his bolo, he immediately grabbed the piece of wood, which I was holding. So, when I saw him, I immediately stopped him with his bolo. I retreated back. As I retreated, he followed me with the intention to hit me with the piece of wood he took from me. He struck me, but every time I parried with the bolo that I have. While he was chasing me we were able to reach the rice paddies. Because he was trying to strike me with the cane, I boloed him several times. He staggered and fell down. Upon seeing him fall down, I went to the house of my brother, who is sick. I found my Mrs. and the children. I kissed my wife and children and told them: 'You have got to live alone because I have killed Kokoy.' Then I told my brother, who is sick, ""You have to take care of my children because I am going to town.' I surrendered to the policeman." Exhibit 1 is the bolo of deceased Piso. Piso is bigger than the accused, although the accused is taller.

The facts proved show that accused, in killing Piso, acted in legitimate self-defense. The act of the deceased who intended to attack the accused with a deadly weapon, a bolo, followed by threatening words, constitute an unlawful aggression and it is lawful for the one assaulted to repel such act of force. "During an unlawful attack by another, and while a struggle is going on, and the danger to his person or to his life continues, the party assaulted has a right to repel the dangfir by wounding his adversary and if necessary to disable him. This is justifiable homicide." (United States vs. Molina, 19 Phil., 227.)

The accused in this case cannot be found guilty by this Supreme Court without revez'sing itself when in 1917 it ruled as follows:

" 'The defendant was where he had the right to be, when the deceased advanced upon him in a threatening manner, and with a deadly weapon; and if the accused did not provoke the assault and had at the time reasonable grounds to believe and in good faith believed, that the deceased intended to take his life or do him great bodily harm, he was not obliged to retreat, nor consider whether he could safely retreat, but was entitled to stand his ground and meet any attack made upon him with a deadly weapon, in such a way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, was necessary to save his own life or to protect himself from great bodily injury.'" (United States vs. Doman [1917], 37 Phil., 57; Beard vs. United States [1894], 158 U. S., 550; Erwin vs. State [1876], 29 Ohio St., 186.)

We believe that the foregoing words of the Supreme Court embody the correct legal philosophy on the question of self-defense and justifiable homicide. A person who is assaulted, who is the object of unlawful aggression, is not obliged to retreat, nor consider whether he could safely retreat, but is entitled "to stand his ground and meet any attack made upon him with a deadly weapon, in such a way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, was necessary to save his own life or to protect himself from great bodily injury."

This is what accused Bauden did. Upon surprising Piso stealing his corn, Bauden merely called the attention of

the thief to his act. The transgressor of the law, instead of humbly accepting his guilt, with shocking insolence, assumed the role of the offended party, as if he was the one being robbed of his property, and insulted, pursued and stoned Bauden, the real victim. Since then, Bauden had a perfect right to stand his ground to face his assailant, and with manly courage repel as effectively as he could the illegal aggression of the deceased. But because of excessive prudence or, perhaps, due to his pusillanimous reluctance to meet the challenge of the aggressor, he fled to his house. Emboldened by the retreat of Bauden, Piso killed the former's chicken, went home to fetch his bolo, cut with it two banana trees of Bauden, stoned the house of Bauden, insulted again Bauden, menaced him with death, and for said purpose intended to get inside Bauden's house. Under this situation, Bauden says: "I was frightened, so I pulled out a bar of wood by the window of my house to be free from danger. I went down around the house, so when I was already down, he met me and said: 'You are here now' in the attitude of stabbing me with his bolo. So, I immediately hit him in his right hand." It appears from the circumstances that the situation had placed Bauden in such a position that, even if he wanted to, he could not retreat without exposing himself to the imminent danger of being stabbed at his back, in the same way as Piso cut the banana trees with his bolo, and killed without any opportunity of resisting or defending himself, as his chicken was killed by Piso. Like grabbing a red-hot nail, Bauden pulled out a piece of wood by the window of his house, the best defensive weapon which he could lay hands on under the circumstances, and went down the house to defend himself the best he could, instead of remaining in his house, where he had no freedom of movements to elude the impending attack, and apathetically wait for his sure death at the hands of his aggressor.

The majority opine that Bauden should have remained in his house and waited for Piso to come in and then hit him with the piece of wood on the theory that, in a personal encounter, the one who is in a lower position is at a disadvantage. We disagree, Piso had the following advantages: (1) of being armed with a bolo, the deadliest weapon in the hands of barrio folks; (2) of coming from outside the house, Piso had the necessary space for freedom of movements and, therefore, to brandish effectively his bolo; (3) located in a lower position, it was easy for Piso to immediately disable Bauden by stabbing either of his legs which were within easy reach; (4) Bauden could not, inside the house, make effective use of the piece of wood, because in wielding it, it was liable to be hampered by the sidings of his small house; and (5) if the floor of the house is made of strips of bamboo, as usually is the case in small houses in our country, it would not give sure footing for one who is struggling for his life, because it is slippery and springy.

But, even in the false hypothesis that the majority's theory is correct, it is too much to expect that Bauden should have adopted it necessarily. Because his judgment of what was best for his defense and self-protection did not coincide with what the majority was expecting of him, it is not right to find him guilty of so serious a crime as homicide. Let us remember that Bauden is not endowed with the same mental perspicuity by which the members of the Supreme Court were able to be placed in the highest tribunal of the land; that Bauden had not the benefit of the weeks and months we employed in studying what he should have done under the circumstances; that he had not the benefit of enlightenment from briefs of competent lawyers; that he had not the advantage of a thorough deliberation with jurists and men of ability as Justices of the Supreme Court; and that even we, with all the benefits and advantages that were denied Bauden, are not unanimous in the opinion that Bauden erred in his judgment as to the best means to save his life.

Because Bauden went down the house armed with a piece of wood, the majority maintain that he accepted Piso's challenge and, by exposing himself to the contingencies of a struggle, he can not invoke with success the legal protection for having acted in legitimate self-defense. Why? Does self-defense preclude the contingencies of a struggle? Had these contingencies anything to do to change the nature of self-defense and to make what is legitimate illegitimate?

The acceptance of a challenge, with or without contingencies, can not make illegal a legitimate self-defense. In fact no self-defense can be offered without accepting the challenge of an aggressor. The acceptance of a challenge from an aggressor is an essential and indispensable element of self-defense.

Evidently, the prosecution, the lower court, and the majority of the Justices taking part in this case would have it that Bauden, on going down the house armed with a piece of wood, should have avoided meeting Piso by fleeing in a shameful and cowardly manner. Brushing aside the question of moral and legal philosophy involved, which we shall presently discuss, no one can deny that an honest difference of opinion may arise as to the effectiveness of the escape as a means, not only to end trouble, but to save Bauden's or even Piso's life. The record is completely silent as to who, between the two actors in the bloody drama, was the better runner; and there is no assurance that if Bauden should flee for his life, Piso would not overtake him. Placed at a distance remote from the scene of the happenings, lacking sufficient information or evidence as to the physical and athletic abilities of Piso and Bauden, we should be acting against the most elemental principles of judicial wisdom, if we should rashly pronounce and conclude that, if Bauden had fled, all would have the happy ending of children's tales.

Logic and reason advise us that the course taken by Bauden was, he honestly believed, the best to save his life; and if he did not flee when he went down armed with a piece of wood, it was because he was convinced that in the supreme crisis of his life no other alternative was open to him. If, by fleeing, he believed he could save his life, there is ground and reason to assume that he would run again, considering that -when, for the first time, he was pursued and stoned by Piso, he ran for cover to his small house where Piso continued stoning him, instead of meeting his assailant.

In the serene atmosphere of our individual offices in the Supreme Court, by giving free reign to our imagination, we may coolly reflect upon physical probabilities and possibilities in order that we may determine what would have been wiser for Bauden to do to save his life from Piso's criminal aggression. Let us not be unjust by condemning Bauden because he followed a course which we do not believe to be the best. In the fleeting moments at his disposal, he had to make his decision with the speed of a flash and take action without an instant's delay.

The next question appears to us to be even more serious and transcendental. In the face of the illegal attack, the brutal onslaught, the criminal aggression, what would the victim do? To give ground, to retreat, to flee, or to accept destruction with fatalistic attitude? Or, instead, should he stand his ground, valiantly face the aggressor, and meet and crush the challenge? There are opposing points of view, irreconcilable philosophies; but we must not hesitate in choosing the point of view and philosophy which, to our mind, is in conformity with the highest standards of moral law and justice.

Arguments may be advanced in favor of the attitude expressed in the Christian injunction that if one is slapped in the face, one should also offer the other, and that of the Gandhian political philosophy of non-resistance and civil disobedience. But, however, laudable the attitude may be when viewed from the purely moral light, it appears to us to be futile in the face of realities. The philosophy of appeasement is irretrievably bankrupt. It is a philosophy that serves only to encourage more lawlessness and to embolden criminals. Chamberlain and Daladier practised appeasement at Munich in the mistaken belief that they were saving peace. They sacrificed Czechoslovakia and threw chunks of that nation to the voracity of the Hitlerian tiger, the Nazi Moloch. Peace was not saved. The criminal aggressors became stronger and the defenders of democracy weaker. As a result, many millions of human beings all over the world were sacrificed in the greatest hecatomb known in history.

It is already a well-known maxim that the best defense is offense. The most effective way of protecting the victim of an illegal aggression is to liquidate or annihilate the aggressor. The aggressor, no matter whether he is an

individual or a nation, acts at his risk. The victim of an aggression is entitled to use, in the protection of his rights, the most effective means to repel the aggression. We are unwilling to advocate a legal philosophy that would compel the victim of an aggression to retreat when, on being attacked by an aggressor, he can in his own judgment defend himself better by counter-attacking. We can not see any social usefulness in a philosophy of cowardice for peaceful and law-abiding citizens. We can not find any moral justification in allowing offender's and criminals to having their own way freely, by admonishing the victims to submit or retreat, under penalty of not being entitled to invoke the benefits of legitimate self-defense in case they happen to be more fortunate in the struggle.

Democracy must be assertive and dynamic. The rights and liberties of the people require the positive qualities of vigilance, courage, manliness and fighting spirit to assert and exercise them. The struggle of law began more than fifty thousand years ago, when human beings began to appear on earth, and must go on perpetually if humanity is to survive. The fight for human rights is essential for the survival of man. The negative qualities of pusillanimity, of defeatism, of relinquishment, of resignation, of slavish surrender, of servile submission, of giving the back to aggressors, of avoiding to meet criminals, are incompatible with law and justice. They serve only as a stimulus to encourage and embolden aggressors and criminals. Law and order may not be kept by fatalistic passivity, nor by the habit of fear in the face of blustering bullies or by panic at any menace or danger coming from would-be assassins. Criminals can not be stopped by unconditional surrender or timorous evasion of the victims. The most peaceful democracy in the world had to invent and develop the most powerful weapons, including the atomic bomb, to crush and defeat the aggressor nation. We hate to imagine what would have happened to the democratic countries, including our own, if the democracies had followed the policy of retreat and "evasion, in pursuance of which victim Bauden has been prosecuted and is to be condemned to long years of imprisonment as a criminal, only because he was fortunate enough, in trying to save his life, in killing his would-be killer.

We refuse to give our approval to any judicial doctrine that, in the final result, will make of our law-abiding citizens effeminate weaklings who would, at the mere sight of an insolent aggressor, run for safety, although armed, prepared, and ready to effectively defend themselves and to crush the aggression. That doctrine will make of the swaggering aggressors, under a regime of terror, flaunting a new version of the Nazi gamadion, the masters of the situation, and the rest of the population will be constituted by cowering slaves.

Legitimate self-defense can not mean retreat, renunciation, or submission. Legitimate self-defense means the assertion of one's own rights by effective measures against all illegal onslaughts. It implies not giving ground, but resistance against invasion. It requires counter-attack to nullify and defeat a criminal attack. It does not admit surrender to criminal offenders; it indicates physical repulsion, by destruction if need be, of the illegal attackers. The aggressors act at the risk of their lives. By their criminal aggression, they forfeit for themselves the protection of the law. That is what makes legal, "justifiable, and just the reasonable physical means employed by the victim in his defense.

For all the foregoing, we vote for the reversal of the lower court's decision and for the complete acquittal of Restituto Bauden of the crime of homicide imputed to him, he having acted only in legitimate self-defense.

Se confirma la sentenda.

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