

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SERGIO OÑAS, DEFENDANT AND APPELLANT.

G.R. No. L-17771. November 29, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a decision of the Court of First Instance of Negros Occidental, Hon. Francisco Arellano, presiding, finding Sergio Oñas guilty of the crime of murder and sentencing him to reclusion perpetua, to indemnify the heirs of his victim Simeon Gallego in the sum of P6,000, with cost.

The following facts are not disputed: On or before September 4, 1958, Sergio Oñas lived in and maintained a store in the sitio of Pantao, Pontevedra, Negros Occidental. The store was situated near a road. Near the house of Oñas, about some seven meters away, was a billiard hall where people used to play in the afternoons and evenings. Sergio Oñas had some camineros living in his house on September 4, 1958.

The deceased Simeon Gallego had a debt of P5.80 to Sergio Oñas on the said day. In the evening of September 4, 1958, Simeon Gallego was assaulted with a bayonet by Sergio Oñas in front of the latter's house. When the chief of police arrived at the place in the evening, he made an investigation and was told by the wife of Oñas that Simeon Gallego was about to enter their house; that she and her daughter blocked Simeon's way but Simeon pushed the daughter aside and hit the left and right arm of Oñas's wife; and that upon seeing his wife hurt Oñas rushed with his bayonet and in the struggle with Simeon, the latter died.

The autopsy report showed that Simeon had a stab wound one inch long penetrating the thoracic cavity and the right lung and passing through the right back; an incised wound two inches long on the face at the right mandible penetrating the masseter muscle and piercing the back at the neck.

That same evening Oñas was brought to the office of the chief of police of the municipality where he executed an affidavit submitted at the trial as Exhibit "C" (no translation).

The prosecution maintained at the trial through the testimony of Isabelo Gallego, son of the deceased Simeon Gallego, that in the afternoon of that day, September 4, 1958, at about 2 o'clock in the afternoon, he went to the store of Sergio Oñas offering to pay the sum of P2.50, which his father had sent to Oñas in part payment of his debt; that on finding that the amount was less than the amount of the debt of P5.80, Oñas refused to accept it uttering these threatening words: "If he does not pay this afternoon something will happen to him (Simeon)"; that that same evening Isabelo went to the billiard hall beside the house of Sergio Oñas to watch the games and while there he also saw his father watching the games; that at about 6 o'clock in the evening Sergio Oñas appeared at the hall and called his father outside and the latter followed Sergio Oñas out of the pool room; that after a while he heard a woman's voice shouting "Ha", so he went out of the billiard hall and to his surprise he saw that his father was lying on his back with Sergio Oñas hitting the former in the face; that when the chief of police arrived he lifted his father, placed him in a pickup and brought him home. The bayonet used by the accused, together with its scabbard, was introduced in court.

The defendant-appellant did not deny that he was the one who inflicted the wounds that caused the death of Simeon Gallego, but he declared that the said wounds were inflicted under the following circumstances; that it is not true that Isabelo Gallego had gone to his store offering to pay the indebtedness of his father; that he treated the deceased Simeon Gallego with respect, and as a matter of fact he loaned him money; that Simeon Gallego had asked for a loan of P10.00, but he (Oñas) had only P5.80 which he gave to the deceased, promising to complete the amount later; that in the evening of September 4, Simeon Gallego appeared at the store with a cane, accompanied by a son-in-law and a son and immediately called Sergio out; that when Sergio went out of the store in the answer to the call, Simeon immediately struck him on the right part of the head and Oñas fell down in a sitting position supporting himself with his hands; that as Simeon proceeded to continue the attack his wife came out to protect him (Sergio) and as a consequence his wife suffered a blow on the left arm; that as Simeon appeared to continue the attack, Sergio went inside the store and took, from the place where it was being hung, a cane with a bayonet and with it rushed to the door of the store meeting Simeon thereat; that in trying to ward off the blows given by Simeon, defendant unconsciously thrust the bayonet at him and wounded him as a consequence, Simeon fell down; that fearing that the companions of Simeon would continue the attack, he closed the store.

To corroborate his story Sergio presented the medical certificate of the wounds that he had received and also what his wife had suffered on the occasion of the attack by the deceased Simeon Gallego. The certificate is as follows:

"Lacerated wound, 3/4 of an inch in length by scalp depth supra orbital region and severe acchymosis both left upper and lower lids.

"That in the opinion of the undersigned the lesion mentioned above may take to heal from 7 to 8 days with daily medical treatment provided no untoward complication may ensue.

"2. Gliceria Geron 28 years old, married, resident of Sitio Pantao Bo. Antipolo, Pontevedra, Negros Occidental with the following:

"Contusion, lower anterior aspect, left forearm."

Sergio Oñas also testified that when he was brought to the office of the chief of police he made a statement containing the facts that had been set forth above, which is contained in an affidavit presented to the court as Exhibit "1". Unfortunately no translation of the affidavit has been presented.

A consideration of the above facts given in evidence, especially the wounds found in the person of Sergio Oñas and the contusion found in the arm of his wife, and the testimonies of two witnesses who corroborated the testimony of Sergio Oñas, leads us to believe that the deceased Simeon Gallego must have previously attacked Sergio Oñas with a cane in front of the store of Sergio Oñas, as a consequence of which attack Sergio Oñas was compelled to defend himself. The wounds found in the person of the defendant-appellant and his wife would not have been caused if the testimony of the sole witness for the prosecution that Sergio Oñas attacked the deceased without provocation were to be believed. It is probable that the deceased Simeon Gallego was told by his son that Oñas refused to accept the offer of P2.50 in partial payment of his indebtedness, and as a result, he had gone to the store of Oñas to ask for an explanation for what he considered as an insult to himself, he holding a position of importance in the community and Oñas being merely a storekeeper.

In view of this circumstance we find that the encounter must have been provoked by the deceased Simeon Gallego who wanted to seek an explanation for the conduct of Sergio Oñas. Since there is no question that the appellant had a wound on the head and so did his wife in the arm, the deceased Simeon Gallego must have started the aggression, because if the defendant-appellant was already provided with a bayonet before Simeon attacked him with his cane, Oñas and his wife would never have received said injuries, because a bayonet is a more deadly and effective instrument of attack than the cane with which the deceased was provided. In other words, the attack

made by the deceased Simeon Gallego must have been previous to the assault with the bayonet made by the accused. This theory is supported not only by the wounds found on the person of the defendant-appellant and that of his wife but also by the testimonies of two eyewitnesses of the defendant who completely corroborated the story given by the defendant-appellant. We find in consequence that the stabbing of the deceased was preceded by an unlawful aggression without provocation on the part of the accused.

However, we do not believe that defendant-appellant is entitled to a complete acquittal because of the absence of the third element of self-defense, namely, the reasonableness of the means used to repel the unlawful aggression. With his cane the defendant-appellant could have warded off the blows made by the deceased; and even if he had actually drawn his bayonet this drawing of the bayonet would have been sufficient to prevent the deceased from continuing with the attack. In other words, if the accused had only drawn his bayonet in defense, that would have been enough to discourage and prevent the deceased from further continuing with his attack or sufficient to ward off the blows given by the deceased when he attacked the accused. In stabbing the deceased with his bayonet, the defendant-appellant went beyond what was necessary to defend himself against the unlawful aggression made by the deceased.

The above circumstances also belie the finding of the court below that the killing of the deceased was attended by alevosia. If the deceased started the aggression and received the dagger thrust after he had already inflicted blows on the defendant and his wife, it cannot be stated that the defendant-appellant made the assault on the deceased with treachery.

For the foregoing considerations, the judgment appealed from is hereby set aside and the accused is declared guilty of homicide with the mitigating circumstance of incomplete self-defense and the sentence imposed by the trial court is hereby reduced to 4 months of arresto mayor to 2 years, 4 months and 1 day of prision correccional. The indemnity provided for, however, shall remain together with the costs.

Padilla, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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