

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ESMAEL SUSUKAN, DEFENDANT AND APPELLANT.

G. R. No. L-18030. October 31, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a decision of the Court of First Instance of Sulu, Hon. Geronimo R. Marave, presiding, finding accused-appellant guilty of the murder of Amilhamja Asaali, and sentencing him to reclusion perpetua, to indemnify the heirs of his victim in the sum of P6,000, with the accessories provided by law, and to pay the costs.

It appears that in the afternoon of February 16, 1958 a group of seven Moros, namely, Amilhamja Asaali, Ibboh Asiddin, Adjalawi Isnani, Salip Jalani, Janjani Sadda, Tarang Ahamil and Asnawi Langhob left the market of Siasi, Sulu, bound for Pagatpat and Tulling. The road passed through swampy and muddy places, so upon reaching a dug well on their way, they stopped, drew water from the well and washed the mud off their feet. While washing their feet another group composed of Esmael Susukan, Jumah Alian, Talib Madisa and Ahamad Moro came to the well. These four also washed their feet at the well. After washing their feet the first group of seven went ahead on a narrow path to Pagatpat and Tulling. At a coconut grove on the way, where a path branches out to the right past the house of Tuan Barok in sitio Sondo, Siasi, Sulu, an encounter took place between Amilhamja and Esmael Susukan during which Amilhamja received the following principal wounds: one on the right side of the head, another on the top of the head, and a third at the back of the neck. Those at the head exposed the brain and were fatal. There were wounds also at the back, to the left side, one near the nose and mouth, another on the left thigh and another at the right arm.

The evidence also shows that Amilhamja was a public school teacher, five feet, two inches tall and had a barong some 21-1/2 inches long. Esmael was bigger, being five feet, nine inches tall and carried a longer Barong, about 24-1/2 inches long. When the authorities went to the scene where the body of Amilhamja was found they found his barong near him, the scabbard tied to his waist.

The theory of the prosecution is that as Amilhamja and his companions were walking along the path in the direction of their destination, in a single file with Amilhamja leading the way, upon reaching the coconut grove of Hadji Bulla, Esmael suddenly ran from behind with barong unsheathed, and upon reaching Amilhamja Esmael immediately hacked him with his barong on the right side of the head. Amilhamja turned around and tried to parry a second blow but was hit again on the back of the head. Upon receiving this second blow Amilhamja fell down.

The accused claims that when the party of Amilhamja and his party reached the house of Hadji Bulla and Tuan Barok, Amilhamja unsheathed his bolo and hacked the trunk of a coconut tree three times, then said, "My barong is sharp and it wants to eat a person" and then, directing himself to accused, said that the latter is the one he had been looking for. Then Amilhamja told accused to prepare, unsheathed his barong and walked towards the accused with his barong unsheathed and made ready to hack the accused; that accused tried to escape but Amilhamja blocked his way, and so they started fighting; that the deceased was first hit in the upper left forehead above the

eyebrow, then in the mouth, etc. Accused also claims to have received also six wounds. But the certificate he showed is dated March 14 (about a month after the supposed fight).

The judge below assessed the value of the conflicting evidence and arrived at the conclusion that the theory of the prosecution is nearer the truth, thus:

"Which of the two versions represents the truth?

"The Court has carefully examined the evidence adduced, and is satisfied that Amilhamja met his death in the manner testified to by the Government witnesses. The Court had observed these witnesses to be candid and sincere. Their testimonies ring with truth.

"The accused does not deny having killed Amilhamja. The victim was then a public school teacher. He was on his way to his station, Tulling. He was not a native of the place, but of Parang, Island of Jolo. He was walking ahead of the group while the accused was following behind. Amilhamja was much smaller than the accused. His bladed weapon was inferior to that of the accused. The probability that the victim was the aggressor under the circumstances is remote.

"The incident took place right on the trail leading to Tulling. The accused, a native thereof, was returning home to Tulling. The trail leading to the interior does not go to Tulling. The accused left his companions, Talib and Abdurasid sixteen feet behind him on the same Tulling trail when the accused rushed from behind and slashed the victim. Amilhamja sustained eight injuries, most of which were fatal while the accused sustained just a few excoriations and two slight ones at the knee and on the leg. These latter injuries must have been sustained by the accused while Amilhamja was already down, parrying the blows of the accused. Thus, the version of the prosecution that it was the accused who rushed from behind and slashed Amilhamja many times until he died, is more in agreement with the truth. Had the theory of the defense been true, the incident would have taken place at the trail leading to the interior and not at the trail leading to Tulling. The accused would have suffered the eight serious physical injuries while the victim would have suffered the excoriations and slight ones. It is however, the other way around, a result which even extreme proficiency in fencing would not be able to explain had the victim been the aggressor. The offer of self-defense must fail."

Our study of the evidence leads us to the same conclusion. In the first place, if the deceased made the attack, it is very improbable that he would have received the fatal wounds on the neck and head as he did, and the accused-appellant would have certainly received more serious injuries as were the skin deep wounds he showed a physician a month later. In the second place the testimony of the two prosecution witnesses to the effect that the accused suddenly ran from behind and hacked the deceased on the right side of the head is confirmed both by their (witnesses') position as they walked behind the deceased and by the mortal wound found on the right side of the head of the deceased.

In the third place, it is improbable that the deceased would have attacked, as accused-appellant and his witnesses pretend, a much bigger adversary who was, besides, armed with a bigger weapon than that he was carrying. With his position also as public school teacher, it is difficult to believe that, without provocation, he would have been the one to start the fight.

For all the foregoing, we agree with the findings of the court below that the accused-appellant suddenly attacked the deceased from behind and that the injuries were not caused to the deceased in a face to face fight provoked by the deceased as claimed by the accused-appellant.

We, therefore, find no error in the findings of the court below and the sentence it imposed, and, therefore, affirm it in toto with costs. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and

Makalintal, JJ., concur.

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