

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DIOSCORO ALCONGA AND ADOLFO BRACAMONTE, DEFENDANTS. DIOSCORO ALCONGA, APPELLANT.

G.R. No. L-162. April 30, 1947

Ponente: HILADO, J.

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HILADO, J.:

On the night of May 27, 1943, in the house of one Mauricio Jepes in the municipality of San Dionisio, Province of Iloilo several persons were playing prohibited games (t. s. n., pp. 95, 125). The deceased Silverio Barion was the banker in the game of black jack, and Maria de Raposo, a witness for the prosecution, was one of those playing the game (t. s. n., p. 95). Upon invitation of the said Maria de Raposo, the accused Dioscoro Alconga joined her as a partner, each of them contributing the sum of P5 to a common fund (t. s. n., pp. 95, 125). Maria de Raposo played the game while the said accused posted himself behind the deceased, acting as a spotter of the cards of the latter and communicating by signs to his partner (t. s. n., pp. 95-96, 126). The deceased appears to have suffered losses in the game because of the team work between Maria de Raposo and the accused Alconga (t. s. n., pp. 96, 126). Upon discovering what the said accused had been doing, the deceased became indignant and expressed his anger at the former (t. s. n., pp. 96, 126). An exchange of words followed, and the two would have come to blows but for the intervention of the maintainer of the games (t. s. n., p. 96). In a fit of anger, the deceased left the house but not before telling the accused Alconga, "tomorrow morning I will give you a breakfast" (t. s. n., p. 96), which expression would seem to signify an intent to inflict bodily harm when uttered under such circumstances.

The deceased and the accused Alconga did not meet thereafter until the morning of May 29, 1943, when the latter was in the guard house located in the barrio of Santol, performing his duties as "home guard" (t. s. n., pp. 98-100). While the said accused was seated on a bench in the guard house, the deceased came along and, addressing the former, said, "Coroy, this is your breakfast," followed forthwith by a swing of his "pingahan" (t. s. n., p. 100). The accused avoided the blow by falling to the ground under the bench with intention to crawl out of the guard house (t. s. n., pp. 100-101). A second blow was given but failed to hit the accused, hitting the bench instead (t. s. n., p. 101). The accused managed to go out of the guard house by crawling on his abdomen (t. s. n., p. 101). While the deceased was in the act of delivering the third blow, the accused, while still in a crawling position (t. s. n., p. 119), fired at him with his revolver, causing him to stagger and to fall to the ground (t. s. n., p. 101). Rising to his feet, the deceased drew forth his dagger and directed a blow at the accused who, however, was able to parry the same with his bolo (t. s. n., pp. 101-102). A hand-to-hand fight ensued (t. s. n., p. 102). Having sustained several wounds, the deceased ran away but was followed by the accused (t. s. n., p. 6). After running a distance of about 200 meters (t. s. n., pp. 21, 108), the deceased was overtaken, and another fight took place, during which the mortal bolo blow—the one which slashed the cranium—was delivered, causing the deceased to fall to the ground, face downward, besides many other blows delivered right and left (t. s. n., pp. 6, 28). At this instant, the other accused, Adolfo Bracamonte, arrived and, being the leader of the "home guards" of San Dionisio, placed under his custody the accused Alconga with a view to turning him over to the proper authorities (t. s. n., pp. 102-105).

On their way to San Dionisio, the two accused were stopped by Juan Collado, a guerilla soldier (t. s. n., pp. 80, 104). Adolfo Bracamonte turned over Alconga to Collado who in turn took him to the headquarters (t. s. n., pp. 81, 104). In the afternoon of the same day, Collado delivered Alconga to Gregorio Barredo, a municipal policeman of San Dionisio, together with the weapons used in the fight: a revolver, a bolo, and a dagger (t. s. n., pp. 81, 104).

The injuries sustained by the deceased were described by Police Sergeant Gil G. Estaniel as follows:

"P. ¿Y que hicieron ustedes cuando ustedes vieron a Silverio Barion?—R. Examine sus heridas.

"P. ¿Donde ha encontrado usted las heridas, en que parte del cuerpo?—R. En la cabeza, en sus brazos, en sus manos, en la mandibula inferior, en la parte frente de su cuello, en su pecho derecho, y tambien en el pecho izquierdo, y su dedo meñique habia volado, se habia cortado, y otras pequeñas heridas mas.

"P. ¿En la cabeza, vio usted heridas?—R. Si, señor.

"P. ¿Cuántas heridas?—R. Una herida en la region parietal derecha y una contusion en la corona de la cabeza.

"P. ¿Vio usted el craneo?—R. En el craneo llevaba una herida, en que el craneo se ha roto.

"P. ¿En el pecho, que herida ha encontrado usted?—R. Debajo de la tetilla derecha, una herida causada por una bala.

"P. ¿Y otras heridas en el pecho, puede usted decir que clase de heridas?—R. Heridas causadas por bolo.

"P. ¿Como de grande aquellas heridas en el pecho?—R. No recuerdo la dimension de las heridas en el pecho.

"P. ¿Pero en la cabeza?—R. La cabeza se rajo por aquella herida causada por el bolo." (T. s. n., p. 25.)

It will be observed that there were two stages in the fight between appellant and the deceased. The initial stage commenced when the deceased assaulted appellant without sufficient provocation on the part of the latter. Resisting the aggression, appellant managed to have the upper hand in the fight, inflicting several wounds upon the deceased, on account of which the latter fled in retreat. From that moment there was no longer any danger to the life of appellant who, being virtually unscathed, could have chosen to remain where he was. Resolving all doubts in his favor, and considering that in the first stage the deceased was the unlawful aggressor and defendant had not given sufficient provocation, and considering further that when the deceased was about to deliver the third blow, appellant was still in a crawling position and, on that account, could not have effectively wielded his bolo and therefore had to use his "paltik" revolver—his only remaining weapon—; we hold that said appellant was then acting in self-defense.

But when he pursued the deceased, he was no longer acting in self-defense, there being then no more aggression to defend against, the same having ceased from the moment the deceased took to his heels. During the second stage of the fight appellant inflicted many additional wounds upon the deceased. That the deceased was not fatally wounded in the first encounter is amply shown by the fact that he was still able to run a distance of some 200 meters before being overtaken by appellant. Under such circumstances, appellant's plea of self-defense in the second stage of the fight cannot be sustained. There can be no defense where there is no aggression.

"Although the defendant was not the aggressor, he is not exempt from criminal liability for the reason that it is shown that he struck several blows, among them the fatal one, after the necessity for defending himself had ceased, his assailant being then in retreat. Therefore one of the essential ingredients of self-defense specified in No. 4, Article 8 of the Penal Code is wanting" (now Article 11, Case No. 1, Revised Penal Code). (United States vs. Dimitillo, 7 Phil., 475, 476; words in parenthesis supplied.)

"* * * Even if it be conceded for the moment that the defendants were assaulted by the four (offended parties), the right to kill in self-defense ceased when the aggression ceased; and when Toledo and his brothers turned

and ran, without having inflicted so much as a scratch upon a single one of the defendants, the right of the defendants to inflict injury upon them ceased absolutely. They had no right to pursue, no right to kill or injure. A fleeing man is not dangerous to the one from whom he flees. When the danger ceases, the right to injure ceases. When the aggressor turns and flees the one assaulted must stay his hand." (United States vs. Vitug, 17 Phil., 1, 19; italics supplied.)

Upon the foregoing facts, we hold that appellant's guilt of the crime of homicide has been established beyond reasonable doubt. The learned trial court appreciated in his favor two mitigating circumstances: voluntary surrender and provocation on the part of the deceased. The first was properly appreciated; the second was not, since it is very clear that from the moment he fled after the first stage of the fight to the moment he died, the deceased did not give any provocation for appellant to pursue, much less further to attack him.

The only provocation given by him was imbibed in, and inseparable from, the aggression with which he started the first stage of the fight. The evidence, as weighed and appreciated by the learned trial judge, who had heard, seen and observed the witnesses testify, clearly shows that said stage ended with the flight of the deceased after receiving a bullet wound in his right breast, which caused him to stagger and fall to the ground, and several bolo wounds inflicted by appellant during their hand-to-hand fight after both had gotten up. The learned trial judge said:

"The evidence adduced by the prosecution and the defense in support of their respective theories of the case vary materially on certain points. Some of these facts have to be admitted and some have to be rejected with the end in view of arriving at the truth. To the mind of the Court, what really happened in the case at bar, as can be disclosed by the records, which lead to the killing of the deceased on that fatal morning of May 29, 1945 (should be 1943), is as follows:

* * * * *

"In the morning of May 29, 1943, while Dioscoro Alconga was alone in the guard house performing his duties as guard or 'ronda' in barrio Santol, the deceased Silverio Barion passed by with a 'pingahan.' That was the first time the deceased and the accused Alconga had met since that eventful night of May 27th in the gambling house of Gepes. Upon seeing the accused Alconga, who was then seated in the guard house, the deceased cried: 'Coroy, this is now the breakfast!' These words of warning were immediately followed by two formidable swings of the 'pingahan' directed at the accused Alconga which failed to hit him. Alconga was able to avoid the blows by falling to the ground and crawling on his abdomen until he was outside the guardhouse. The deceased followed him and while in the act of delivering the third blow, Dioscoro Alconga fired at him with his revolver thereby stopping the blow in mid-air. The deceased fell to the ground momentarily and upon rising to his feet, he drew forth a dagger. The accused Alconga resorted to his bolo and both persons being armed, a hand-to-hand fight followed. The deceased having sustained several wounds from the hands of Alconga, ran away with the latter close to his heels."

The foregoing statement of the pertinent facts by the learned trial judge is in substantial agreement with those found by us and narrated in the first paragraphs of this decision. Upon those facts the question arises whether when the deceased started to run and flee, or thereafter, until he died, there was any provocation given by him for appellant to pursue and further to attack him. It will be recalled, to begin with, that the first stage of the fight was provoked when the deceased said to appellant "Coroy, this is now the breakfast", or "This is your breakfast", followed forthwith by a swing or two of his "pingahan". These words without the immediately following attack with the "pingahan" would not have been uttered, we can safely assume, since such an utterance alone would have been entirely meaningless. It was the attack, therefore, that effectively constituted the provocation, the utterance being, at best, merely a prelude to the attack. At any rate, the quoted words by themselves, without the deceased's act immediately following them, would certainly not have been considered a sufficient provocation to mitigate

appellant's liability in killing or injuring the deceased. For provocation in order to be a mitigating circumstance must be sufficient and immediately preceding the act. (Revised Penal Code, Article 13, No. 4.)

Under the doctrine in *United States vs. Vitug*, supra, when the deceased ran and fled without having inflicted so much as a scratch upon appellant, but after, upon the other hand, having been wounded with one revolver shot and several bolo slashes, as aforesaid, the right of appellant to inflict injury upon him ceased absolutely—appellant "had no right to pursue, no right to kill or injure" said deceased—for the reason that "a fleeing man is not dangerous to the one from whom he flees." If the law, as interpreted and applied by this Court in the *Vitug* case, enjoins the victorious contender from pursuing his opponent on the score of self-defense, it is because this Court considered that the requisites of self-defense had ceased to exist, principal and indispensable among these being the unlawful aggression of the opponent (Rev. Penal Code, Article 11, No. 1; 1 Viada, 5th ed., 173).

Can we find under the evidence of record that after the cessation of said aggression the provocation thus involved therein still persisted, and to a degree sufficient to extenuate appellant's criminal responsibility for his acts during the second stage of the fight? Appellant did not testify nor offer other evidence to show that when he pursued the deceased he was still acting under the impulse of the effects of that provocation, be it anger, obfuscation or the like. The Revised Penal Code provides:

"ART. 13. Mitigating circumstances:

* * * * *

"4. That sufficient provocation or threat on the part of the offended party immediately preceded the act."

It is therefore apparent that the Code requires for provocation to be such a mitigating circumstance, that it not only immediately precede the act but that it also be sufficient. In the Spanish Penal Code, the adjective modifying said noun is "adecuada" and the Supreme Court of Spain in its judgment of June 27, 1883, interpreted the equivalent provision of the Penal Code of that country, which was the source of our own existing Revised Penal Code, that "adecuada" means proportionate to the damage caused by the act. Viada (Vol. 11, 5th ed., p. 51) gives the ruling of that Supreme Court as follows:

"El Tribunal Supremo ha declarado que la provocacion o amenaza que de parte del ofendido ha de preceder para la disminucion de la responsabilidad criminal debe ser proporcionada al daño que se cause, lo cual no concurre a favor del reo si resulta que la unica cuestion que hubo fue si en un monton de yeso habia mas o menos cantidad, y como perdiera la apuesta y bromeando dijera el que la gano que beberia vino de balde, esa pequeña cuestion de amor propio no justificaba en modo alguno la ira que le impelio a herir y matar a su contrario." (S. de 27 de junio de 1883, Gaceta de 27 de septiembre.)

Justice Albert, in his commentaries on the Revised Penal Code, 1946 edition, page 94, says: "The provocation or threat must be sufficient, which means that it should be proportionate to the act committed and adequate to stir one to its commission" (*italics supplied*).

Sufficient provocation, being a matter of defense, should, like any other, be affirmatively proven by the accused. This the instant appellant has utterly failed to do. Any way, it would seem self-evident that appellant could never have succeeded in showing that whatever remained of the effects of the deceased's aggression, by way of provocation after the latter was already in flight, was proportionate to his killing his already defeated adversary.

That provocation gave rise to a fight between the two men, and may be said, not without reason, to have spent itself after appellant had shot the deceased in his right breast and caused the latter to fall to the ground; or—making a concession in appellant's, favor—after the latter had inflicted several bolo wounds upon the deceased, without the deceased so much as having scratched his body, in their hand-to-hand fight when both were on their feet again.

But if we are to grant appellant a further concession, under the view most favorable to him, that aggression must be deemed to have ceased upon the flight of the deceased—upon the end of the first stage of the fight. In so affirming, we had to strain the concept in no small degree. But to further strain it so as to find that said aggression or provocation persisted even when the deceased was already in flight, clearly accepting defeat and no less clearly running for his life rather than evincing an intention of returning to the fight, is more than we can sanction. It should always be remembered that "illegal aggression" is equivalent to assault or at least threatened assault of an immediate and imminent kind.

"Agresion ilegítima.—Agresion vale tanto como acometimiento. Para que exista el derecho de defensa es preciso que se nos acometa, que se nos ataque, o cuando menos, que se nos amenace de atacarnos de un modo inmediato e inminente; v. gr., desenvainando el puñal para herirnos con el o apuntando la pistola para dispararla contra nosotros." (Viada, 5.[a] edición, 173.)

After the flight of the deceased there was clearly neither an assault nor a threatened assault of the remotest kind. It has been suggested that when pursuing his fleeing opponent, appellant might have thought or believed that said opponent was going to his house to fetch some other weapon. But whether we consider this as a part or continuation of the self-defense alleged by appellant, or as a separate circumstance, the burden of proof to establish such a defense was, of course, upon appellant, and he has not so much as attempted to introduce evidence for this purpose. If he really thought so, or believed so, he should have positively proven it, as any other defense. We cannot now gratuitously assume it in his behalf.

It is true that in the case of *United States vs. Rivera* (41 Phil., 472, 474), this Court held that one defending himself or his property from a felony violently or by surprise threatened by another is not obliged to retreat but may pursue his adversary until he has secured himself from danger. But that is not this case. Here from the very start appellant was the holder of the stronger and more deadly weapons—a revolver and a bolo, as against a piece of bamboo called "pingahan" and a dagger in the possession of the deceased. In actual performance appellant, from the very beginning, demonstrated his superior fighting ability; and he confirmed it when after the deceased was first felled down by the revolver shot in his right breast, and after both combatants had gotten up and engaged in a hand-to-hand fight, the deceased using his dagger and appellant his bolo, the former received several bolo wounds while the latter got through completely unscathed. And when the deceased thereupon turned and fled, the circumstances were such that it would be unduly stretching the imagination to consider that appellant was still in danger from his defeated and fleeing opponent. Appellant preserved his revolver and his bolo, and if he could theretofore so easily overpower the deceased, when the latter had not yet received any injury, it would need, indeed, an unusually strong positive showing—which is completely absent from the record—to persuade us that he had not yet "secured himself from danger" after shooting his weakly armed adversary in the right breast and giving him several bolo slashes in different other parts of his body. To so hold would, we believe, be unjustifiably extending the doctrine of the *Rivera* case to an extreme not therein contemplated.

Under article 249, in relation with article 64, No. 2, of the Revised Penal Code, the crime committed by appellant is punishable by reclusion temporal in its minimum period, which would be from 12 years and 1 day to 14 years and 8 months. However, in imposing the penalty, we take into consideration the provisions of section 1 of the Indeterminate Sentence Law (Act No. 4103), as amended by Act No. 4225. Accordingly, we find appellant guilty of the aforesaid crime of homicide and sentence him to an indeterminate penalty of from 6 years and 1 day of prision mayor to 14 years and 8 months of reclusion temporal, to indemnify the heirs of the deceased in the sum of P2,000, and to pay the costs.

As thus modified, the judgment appealed from is hereby affirmed. So ordered.

Moran, C.J., Pablo, Bengzon, Briones, Hontiveros, Padilla, and Tuason, JJ., concur.

MORAN, C. J.:

I certify that Mr. Justice Feria concurs in this decision.

DISSENTING

PARAS, J.:

I agree to the statement of facts in so far as it concerns what is called by the Majority the first stage of the fight. The following narration dealing with the second stage is not, however, in accordance with the record: "Having sustained several wounds, the deceased ran away but was followed by the accused (t. s. n., p. 6). After running a distance of about 200 meters (t. s. n., pp. 21, 108), the deceased was overtaken, and another fight took place, during which the mortal bolo blow—the one which slashed the cranium—was delivered, causing the deceased to fall to the ground, face downward, besides many other blows delivered right and left (t. s. n., pp. 6, 28)."

It should be noted that the testimony of witness Luis Ballaran for the prosecution has been completely discarded by the lower court and we can do no better in this appeal. Had said testimony been given credit, the accused-appellant would appear to have been the aggressor from the beginning, and the facts constitutive of the first stage of the fight, as testified to by said accused, should not have been accepted by the lower court. Now, continuing his testimony, the accused stated: "Cuando yo paraba las puñaladas el se avalanzaba hacia mi y yo daba pasos atras hasta llegar al terreno palayero (t. s. n., p. 102). Y mientras el seguia avalanzandome dandome puñaladas y yo seguia dando pasos atras, y al final, cuando el ya quiso darme una puñalada certera con fuerza el se cayo al suelo por su inercia (t. s. n., p. 102). Si, señor, yo daba pasos atras y tratando de parar la puñalada (t. s. n., p. 108)."

It is thus shown that the accused never pursued the deceased. On the contrary, the deceased tried to continue his assault started during the first stage of the fight, and the accused had been avoiding the blows by stepping backward.

There may be error as to the exact distance between the guard house and the place where the deceased fell. What is very clear is that it was during the first stage of the fight that the deceased received a wound just below the right chest, caused by a bullet that penetrated and remained in said part of the body. According to the witness for the prosecution, that wound was also fatal.

Since the lower court by its decision has considered the testimony of the witnesses for the prosecution to be unworthy of credit, and, as we also believe that said witnesses were really not present at the place and time of the occurrence, this Court is bound by the testimony of the witnesses for the defense as to what in fact happened, under and by which the appellant is shown to have acted in self-defense.

Wherefore, he should be acquitted.

DISSENTING

PERFECTO, J.:

Four witnesses testified for the prosecution. In synthesis their testimonies are as follows:

Luis Ballaran.—On May 29, 1943, at about 9 o'clock a. m., while the two accused Dioscoro Alconga and Rodolfo Bracamonte were in search for home guards, Silverio Barion passed by. Alconga invited him for breakfast. But

Barion ran and Alconga followed him. When Barion looked back, Bracamonte hit him with a stick at the left temple. The stick was of bahi. Barion fell down. Alconga stabbed him with his bolo. Then he fired with his paltik. After having been fired at with the paltik, Barion rose up and ran towards his house. The two accused pursued him. Alconga stabbed him right and left and Bracamonte hit him with his bahi. When Barion breathed no more, the two accused went to the municipal building of San Dionisio. The witness went home without approaching Barion. During the whole fight, the witness remained standing in the home guard shed. At the time there were no other people in the place. The witness is an uncle of the deceased Barion. The shed was about half a kilometer from the farm in which the witness was working. The place where Barion fell was about the middle between the two places. The witness did not intervene in the incident nor shouted for help. He did not tell anybody of the incident, neither the chief of police, the fiscal, or the justice of the peace.

Gil G. Estaniel, Police Sergeant of San Dionisio.—He went in the company of the justice of the peace to the place of the incident. He saw the body of the deceased Barion and examined his wounds. The deceased had wounds in the head, arms, hands, lower jaw, neck, chest. The small finger of his right hand was severed. There were other wounds. The cranium was broken. At the right side of the chest there was a gunshot wound. After the inspection, the body of the deceased was delivered to the widow. The accused were arrested, but refused to testify.

Ruperto L. Libres, Acting Clerk of Court since May 16, 1943.—He received one paltik with blank cartridge, one bolo, one cane of bahi and one dagger, which weapons he could not produce save the paltik. The other effects were missing due to transfers caused by frequent enemy penetration in Dingle. The bolo was a rusty working bolo. The dagger was 6 inches long, made of iron. The bolo was 1½ feet long. The bahi was a cane of average length, about 2 inches wide and ¾ of an inch thick.

Maria de Raposo.—On May 29, 1943, the witness was walking following Silverio Barion. When the latter passed in front of the home guard shed, Bracamonte pursued him and hit him with the bahi. Barion fell down; Alconga approached him and stabbed him with his bolo, after which he shot him with his paltik. When Barion saw that the accused were looking at Luis Ballaran he rose up and ran towards a rice-field where he fell down. The accused pursued him and stabbed him right and left. When Barion died, the accused went away. Bracamonte shouted that he was ready to face the relatives of the deceased who might feel aggrieved. The witness was about twenty meters from the place of the incident. The deceased was her cousin. The witness also passed in front of the shed, but does not know whether Luis Ballaran who was in the shed was able to see her. She passed at about three meters from Luis Ballaran. Before Bracamonte delivered the first blow to Barion, the witness did not hear any exchange of words. When Barion fell, the witness remained standing at the canal of the road at about twenty meters from Ballaran. On Thursday night, May 27, there was gambling going on in the house of Mauricio Gepes. The witness played black jack with Dioscoro Alconga against Silverio Barion.

The two accused and three witnesses testified for the defense, and their testimonies are synthesized as follows:

Juan Collado.—This witness is a soldier who took part in the arrest of Dioscoro Alconga, whom he delivered to Barredo with a revolver, a bolo, and a dagger.

Felix Dichosa.—In the morning of May 29, 1943, the witness was in the home guard shed. When Bioy (Silverio Barion) was about to arrive at the place, the witness asked him if he had fish. He answered no and then went on his way. The witness went to the road and he heard Bioy saying: "So you are here, lightning! Your hour has come." The witness saw Bioy striking Dioscoro Alconga with the lever he used for carrying fish. Alconga was not hit. Bioy tried to strike him again, but Alconga sought cover under the bench of the shed. The bench was hit. When Bioy pursued him and gave him a blow with a bolo, the witness heard a gunshot and he saw Bioy falling down. Upon falling in a sitting position, Bioy took a dagger with the purpose of stabbing Alconga. Upon seeing

this, Alconga stabbed Barion right and left, while Barion was coming against Alconga. When Barion fell into the canal, the witness shouted for help. Rodolfo Bracamonte and Dalmacio Mendoza came. When the witness came out from the shed and was at a distance of ten brazas, he saw Ballaran, and requested him to intervene in the fight, because the witness felt that Bioy was about to kill Alconga. Ballaran went to their shed and the witness went to his house. At noon, Ballaran went to the house of the witness to ask him to testify and gave him instructions to testify differently from what actually had happened. The witness told him that it would be better if Ballaran himself should testify and Ballaran answered: "I cannot because I was not present. You can testify better because you were present. I will go down to look for another witness."

Dalmacio Mendoza.—On the morning of May 29, 1943, he went to the house of Rodolfo Bracamonte to borrow a small saw and one auger. While the witness was conversing with Bracamonte, a gunshot was fired. Bracamonte announced that he was going to the home guard shed and stated: "That Coroy is a fool, because he fired a revolver which has but one bullet. The witness followed. Upon reaching the shed they saw Felix Dichosa, who said that Bracamonte and the witness should hurry because Coroy was to be killed by Bioy. The witness saw Bioy falling. In front of him was Alconga who took a dagger from the ground. The dagger was in Barion's hand before he fell. Bracamonte asked Alconga: "Coroy, what did you do to Silverio?" Alconga answered: "I killed Bioy, because if I did not he would have killed me. My shirt was pierced by the dagger, and, if I did not evade I would have been hit." Bracamonte said: "Go to town, to the authority, I will accompany you." After leaving the place, Alconga, Bracamonte and the witness met Luis Ballaran who asked: "Rodolfo what happened to the boys?" Rodolfo answered: "Go and help Bioy because I am going to bring Coroy to the town officer." Ballaran went to the place where Barion was lying, while Alconga and Bracamonte went to town.

Adolfo Bracamonte.—His true name is Adolfo and not Rodolfo as stated in the information, which was amended accordingly. He belies the testimonies of Luis Ballaran and Maria de Raposo. At about 7 o'clock a. m. on May 29, 1943, he went to the home guard shed, he being the leader. When he found it without guards, he called Alconga to mount guard and delivered to him the paltik Exhibit A. The witness returned home to take breakfast. Dalmacio Mendoza came to borrow a small saw and auger, because the witness is also a carpenter. He heard a gunshot, and he went to the shed, followed by Dalmacio. When they were approaching shed, Felix Dichosa shouted: "Come in a hurry, because is going to kill Dioscoro Alconga." The witness asked: "Where are they?" Dichosa showed the place. The witness went towards the place and he saw two persons fighting. One fell down. Upon seeing Barion falling, the witness shouted to Alconga: "What happened to you?" Alconga answered: "Manoy, I stabbed Bioy, because if I did not he was to kill me," showing his shirt. When Barion fell down the witness saw him with a dagger. Upon meeting him coming from the opposite direction, Ballaran addressed Bracamonte: "Rodolfo what happened?" Bracamonte answered: "Bioy is in the rice land. Help him because I am going to bring Dioscoro to the town and I will return immediately." Ballaran went to the place where Barion fell. On the way, Alconga was taken by soldier Juan Collado who later brought him to the town of San Dionisio. The witness did not carry at the time of the incident any cane of bahi nor did he carry one on other occasions. The occupation of the deceased was selling fish and he used to take much tuba. He was of aggressive character and sturdier than Alconga. Once, Barion gave a fist blow to the witness and on another occasion stabbed him with a bolo, wounding him in the head. For such stabbing, Barion was held in prison for one month.

Dioscoro Alconga.—On May 27, Thursday, at night, he went to gamble in the house of Mauricio Gepes. Mahjong, poker, monte and black jack were being played in the house. Maria de Raposo invited Alconga to be her partner in black jack against Barion who was then the banker. Each put a share of P5. When Alconga placed himself behind Barion, the latter saw Maria winking to Alconga. Barion looked back at Alconga saying: "Coroy it seems that you are cheating. Son of a whore." Alconga answered: "Bioy you are also son of a whore. I am not like you who lives on cheating." Barion stood up to give a fist blow to Alconga who pinned him to his sit and attempted to give him

a fist blow. The owner of the house separated them. Barion struck Maria de Raposo, because he was losing in the game, threw away the cards, took the money from the table, and rose to leave the place. While he was walking he addressed Alconga: "Coroy you are son of a whore. Tomorrow I will give you a breakfast. You failed to take lesson by the fact that I boloed the head of your brother," referring to Bracamonte. When Alconga saw Maria leaving the place, he pursued her asking for his share of the winnings. Maria answered: "What winnings are you asking for?" Alconga said: "You are like your cousin. Both of you are cheaters." Maria went away insulting the accused. On the morning of the 29th, Alconga went to one of his houses carrying an old working bolo to do some repairing. He left his long combat bolo in one of his houses. On the way he met Bracamonte who instructed him to mount guard in the home guard shed, because no one was there. Bracamonte gave him a paltik. After staying about two hours in the shed, Bioy came and upon seeing him, threw away his baskets and with his carrying lever gave a blow to Alconga, saying: "This is your breakfast." Alconga was not hit because he dodged the blow, by allowing himself to fall down. He sought cover under a bench with the purpose of going away. Barion gave him another blow, but his lever hit the bench instead. When Alconga was able to come out from under the bench, Barion went to the other side of the shed with the intention of striking him. Alconga took the paltik and fired. Barion fell down losing hold of the lever. Both stood up at the same time; Barion took his dagger and stabbed Alconga with it saying: "You are son of a whore, Coroy, I will kill you." Alconga took his bolo to stop the dagger thrust. Barion continued attacking Alconga with dagger thrusts, while Alconga kept stepping back in the direction of the rice lands. In one of his dagger thrusts, Barion fell down by his own weight. Alconga took the dagger from his hand, and at the same time Alconga heard his brother Bracamonte asking: "Coroy, Coroy, what is that?" Alconga answered: "Manoy, I killed Bioy, because if I did not he would have killed me." Bracamonte took the paltik, the bolo and the dagger and pushing Alconga said: "Go to town." Alconga added: "Look, Bioy gave me dagger thrusts, if I did not escape he would have killed me," showing his torn shirt. Bracamonte said: "Go to town, I will bring you to the town officer." On the way, they met Luis Ballaran who asked: "Rodolfo, what happened to the boys?" Bracamonte answered: "Uncle Luis, go to help Silverio at the rice land because I am going to bring my brother to town and I will return soon."

For all the foregoing we are convinced:

- That the testimonies of Luis Ballaran and Maria de Raposo are unworthy of credit. Both have been contradicted by the witnesses for the defense, and the fact that the lower court acquitted Adolfo Bracamonte, shows that it believed the theory of the defense to the effect that it is not true, as testified to by Luis Ballaran and Maria de Raposo, that Bracamonte took active part in the fight and it was he who gave the first blow to the deceased with his bali cane, causing him to fall. Ballaran's declaration to the effect that aside from the two accused, the deceased and himself, no other people were in the place, is directly contradicted by Maria de Raposo who said that she even passed in front of Ballaran, within a few meters from him. There being no way of reconciling the contradicting testimonies of Ballaran and Maria and of determining who, among the two, declared the truth, we cannot but reject both testimonies as unreliable. Felix Dichosa testified that Ballaran went to his house to request him to testify with instructions to give facts different from those which actually happened. Upon Dichosa's suggestion that Ballaran himself testify, Ballaran had to confess that he did not see what happened and he was going to look for another witness. The prosecution did not dare to recall Ballaran to belie Dichosa.
- That Adolfo Bracamonte did not take part in the fight which resulted in Barion's death. When Bracamonte arrived at the place of the struggle, he found Barion already a cadaver.
- That after rejecting the incredible version of Luis Ballaran and Maria de Raposo, the only version available of what happened is the one given in the testimony of Alconga, well-supported and corroborated by all the other witnesses for the defense.

- That according to the testimony of Alconga, there should not be any question on the following:

(a) That Barion had a grudge against Alconga in view of the gambling incident on the night of May 27, in which he promised to give Alconga a breakfast, which, upon what subsequently happened, was in fact a menace to kill him.

(b) That while Alconga was alone in the home guard shed, Barion, upon seeing him, suddenly attacked him with blows with his carrying lever.

(c) That Alconga, to defend himself, at first fired the only bullet available in the paltik given to him by Bracamonte.

(d) That although Barion had fallen and lost hold of his carrying lever, he was able to stand up immediately and with a dagger continued attacking Alconga.

(e) That Alconga took his old rusty bolo to defend himself, against the dagger thrusts of Barion, while at the same time stepping backwards until both reached the rice land, where Barion fell dead.

(f) That the wounds received by Barion, who was sturdier and of aggressive character, were inflicted on him by Alconga while defending himself against the illegal aggression of Barion.

(g) That in view of the number of wounds received by Barion, it is most probable that Alconga continued giving blows with his bolo even after Barion was already unable to fight back.

(h) The theory of dividing the fight which took place in two stages, in the first one, Barion being the aggressor, and in the second one, as the victim, finds no support in the evidence. It seems clear to us that the fight, from the beginning to the end, was a continuous and uninterrupted occurrence. There is no evidence upon which to base the proposition that there were two stages or periods in the incident, in such a way that we might be allowed to conclude that in fact there were two fights.

The fact that Barion died with many wounds might be taken against appellant and may weaken the theory that he acted only in legitimate self-defense. To judge, however, the conduct of appellant during the whole incident, it is necessary to consider the psychology of a person engaged in a life or death struggle, acting under the irresistible impulses of self-preservation and blinded by anger and indignation for the illegal aggression of which he was the victim. A person placed in such a crucial situation must have to summon all his physiological resources and psychical forces to rally to the one and indivisible aim of survival and, to that end, placed his energies on the level of highest pitch. In that moment of physical and spiritual hypertension, to ask that a man should measure his acts as an architect would make measurements to achieve proportion and symmetry in a proposed building or a scientist would make a calibration, so that his acts of self-defense should stop precisely at the undeterminable border line when the aggressor ceases to be dangerous, is to ask the impossible. Appellant's conduct must be judged not by the standards which may be exacted from the supermen of the future, if progressive evolution may happen to develop them. Appellant's conduct can only be tested by the average standards of human nature as we found it, which has many limitations and defects. If in trying to eliminate an actual danger menacing his own existence, appellant was not able to moderate his efforts to destroy that menace, to the extent of actually killing his aggressor, he is certainly not accountable. He is not an angel. We must judge him as a man, with its average baggage of faults and imperfections. After all, the aggressor ought to know that he acted at his risk, and that by trying to kill a human being he defied fate, he gambled his own life. Fate is always stronger than all its challengers. He who gambles with life, like all gamblers, in the end becomes the loser.

Peace cannot remain undisturbed and justice cannot remain unchallenged unless all aggression is stopped,

individual or collective. A great number of human miseries are the natural fruits of aggression. One of the means of curbing it is to give a conclusive notice to all aggressors, that not only are they to pay very dearly for their acts, but that the victims of their aggression are entitled, in self-defense, to avail themselves of even the most devastating weapons. Those who allow themselves to run amuck in an aggression spree cannot complain because the means of defense of the victims happen to be destructive. There may be some narrow-minded persons who would hold illegal use by the Americans of the atomic bomb to compel Japan to surrender. They must be followers of the philosophy of the sheep. We prefer to follow the principle of dynamic self-defense for the innocent. Those who are bent on destroying human beings, must, before they are able to achieve their diabolical objective, be first destroyed. Those who were killed at Hiroshima and Nagasaki may appeal to our pity, but the millions whose lives were spared by the prompt and spectacular ending of the war with the help of atomic energy, are entitled to justice, a justice which would have been denied them if the Americans, swayed by unreasonable feminine compunctions, should have abstained from using the weapon upon which were pinned the hopes and salvation of those millions of innocent human beings. While those who cannot offend and the defenseless may merit all our sympathy and kindness, those who constitute an actual menace to human life are liable to be relentlessly crushed, until the last residuum of menace has been wiped out.

We vote to acquit appellant.

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