

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BIENVENIDO ORBILLO, DEFENDANT-APPELLANT.***G.R. No. L-2444. April 29, 1950*

Ponente: REYES, J.

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This is a prosecution for murder originally instituted against three defendants, namely: Bienvenido Orbillo, his son Carlos Orbillo, and his servant Jesus Mina. But before trial, the case was, as to the two last named, provisionally dismissed for lack of evidence, and the fiscal thereafter filed a new information against Bienvenido Orbillo alone.

It appears from the evidence that in the evening of April 19, 1946, the now deceased Liberato Deligero, an octagenarian who had a tienda in sitio Pandanan, Sagay, Occidental Negros, was playing cards in said tienda with several persons, among them the defendant Bienvenido Orbillo, his son Carlos and his servant Jesus Mina. Also with the old man at the time was his eleven-year old granddaughter, Shirley. Around 10 o'clock when the old man was winning and defendant was losing, the latter's turn to deal came, but he was substituted by his son Carlos, who, in distributing the cards, tried to conceal one of them by dropping or putting it on his lap. Noticing the deception, the old man protested and broke up the game. Either because the exposure hurt his pride or because he did not want the game stopped before he had had a chance to recoup his losses by fair means or foul, defendant was peeved, told the old man to get himself a gun and shoot it out with him. But the challenge was not accepted, and defendant, his son, and his servant left the place. Soon thereafter, the old man, who did not live in the tienda but in a house some 300 yards away, also left and headed for home, taking the child Shirley with him. But he did not get home alive, for on the way he was attacked and killed by defendant who, armed with a carbine, had waited for him in a coconut grove by the side of the road.

The killing was described in detail by Valentin Callado, who claimed to have seen both the card game and the attack. Telling the court what he saw, this witness said that the coconut grove where the old man met death was being exploited for its tuba by his son and he had to guard it every night Against thieves; that on the night in question he dropped in at the old man's tienda and watch the card game but went back to the grove when the game broke up; that soon his attention was attracted by a noise and, as he looked in the direction where the noise had proceeded, he there saw defendant hitting the old man with a stone; that when the old man fell, defendant's companions, Carlos Orbillo and Jesus Mina, dumped his body under the banana trees nearby, but noting that the old man was still alive, Jesus Mina hit him again with a stone by order of defendant, while the latter, on his part, shot him twice with his carbine; and that thereafter the trio left.

Shirley, who was with the old man when he was ambushed, on seeing him attacked, ran home to inform his father, Jose G. Poblador, and hardly had she finished her story when Poblador heard two shots. Going with Shirley to the place where he calculated the shots were fired, he there found under the banana trees a short distance from the road the old man already dead.

Later that same night, while Juanito Mabug-at, a special policeman of Cadiz, was with a companion in a store in barrio Tiglawigan of said municipality about two or three kilometers from the scene of the crime, they saw defendant passing by with a carbine. Mabugat 's companion tried to approach defendant but was held back by Mabug-at when defendant told him to beware because his carbine was, so he said, a "criminal", having already killed a man. Mabug-at, however, shadowed defendant till he saw him go up the house of Tomas Magalona. From downstairs Mabug-at heard defendant narrate what had happened and ask Magalona to do something for him. Learning from defendant's own story that he was a criminal, Mabug-at went up the house, grabbed the carbine from the defendant, put him under arrest and took him to the municipal building of Cadiz. On the way Mabug-at asked defendant what had happened and the latter confessed that he had had an incident in a game and that on his way home he waited for the deceased on the road and there struck and shot him with the carbine and also hit him with a rock, killing him, after which he went to Tiglawigan where he met Mabug-at. After delivering his prisoner to the sergeant on duty, Mabug-at went with the latter and some policemen and a doctor to the place in Pandanan indicated by defendant and there found the cadaver of the deceased.

The doctor who made a post mortem examination found the following on the body of the deceased:

- "1. Head. Contusions (2 in number) and bruises on the frontal region.
2. Contused wound on the left temporal region.
3. Ecchymosis of the left eye.
4. Fractures and contused wounds of the nasal and maxillary bones and nose respectively. The fatal lesion causing the internal hemorrhage .
5. Contused wound on the upper lip.
6. Bullet wound on the buttock passing through the abdomen near the base of the testicle."

Of these injuries, the doctor singled out the fracture of the nasal and maxillary bones, and the contused wounds on the nose, which produced internal hemorrhage, as the cause of death. He also testified that the bullet wound in the buttock was inflicted while the deceased was in a sitting position with a shot fired from a distance of less than one foot as indicated by the presence of powder burns on the body, and that the ingress of the bullet on the buttock indicated absence of a struggle.

Testifying in his own defense, the accused admitted having inflicted injuries on the old man, but claimed that he had to do it in self-defense, because on the way home he was intercepted by the old man and threatened with a carbine. His testimony on this point reads as follows:

"P Now, please explain clearly to the Court how Liberato Deligero intercepted you and what followed?

T Deligero me atajo con ese carbine siendo ya imposible para mi el escaparme no tuve otro remedio que defenderme.

P How did you defend yourself? 'Please explain to the Court what action did he put up and what was your defense?

T El me apuntaba asi. (indicando.)

JUZGADO:

El testigo hace que el interprete que re~ presenta al occiso doblase una rodilla hincandola en el suelo y con las dos manos cogidas al carbine apuntando al acusado. El acusado agarra el carton del carbine y se puso detras del interprete cogiendo con la otra mano la culata, mientras que el interprete quedo con la mano derecho medio torcida y el acusado aprovechando de esa ocasion logro arrebatar el carbine por encima del hombro del interprete con el canon apuntando hacia el trasero del interprete. While you were struggling for the possession of that carbine Exhibit B, what happened with the carbine?

T Cuando estabamos caidos en tierra el carbine disparo.

P Who was holding the carbine when the carbine exploded, both of you?

T El occiso tenia cogido el mango y yo el canon cuando el carbine se disparo.

P How many times did the carbine explode while struggling for the possession of the same?

T Dos veces.

P Then what happened next when both of your (you) fell down end after the two explosions?

T Despues de haberse disparado el carbine dos .veces el carbine se separp y yo podia palpar una piedra y con la misma le di un golpe tocandole aqui en la frente y en la cara y despues me apodere del carbine y me march!.

P Kow many tine s did you strike Deligero on the face and on the nassal bone with stone that you were able to hold while you were struggling for the possession of the carbine?

T Dos veces.

P What happened to Deligero as soon as you had given him two blows with the stone?

T Cayo boca arriba.

P And how about his carbine, his carbine where was it after you have struck him two times in the face?

T Lo saque y lo lleve.

P Where did you go?

T Me fui a Cadiz' pasando antes a la casa de Tomas Magalona."

To bolster defendant's story, an attempt was made to show that the old man had a carbine and was a bully and a sharpshooter, and that he had reason to be resentful of the defendant because of what happened in the card game.

Disbelieving the witnesses for the defense but without accepting the truth of what some of the prosecution witnesses said, the trial court came to the conclusion that, while defendant was the one who inflicted the bullet wound upon the old man, the latter's death was actually caused by injuries inflicted by other persons, for whose acts defendant can not be held liable in the absence of allegation of conspiracy in the information. The trial court, however, found defendant guilty of frustrated homicide, with the aggravating circumstance of premeditation, and sentenced him to the corresponding penalty. Not satisfied with this sentence, defendant appealed to the Court of Appeals. But being of the opinion, after examining the evidence, that the crime committed was murder, with the aggravating circumstance of disrespect to age, that court has certified the case here.

The appeal is made to rest on the contention that the trial court erred in giving more weight to the testimony of the witnesses for the prosecution than to that of the witnesses for the defense, as well as on the alternative plea that at most appellant should be held guilty of less serious physical injuries only.

After going over the testimony, it seems to us clear that the version given by the witnesses for the Government is the one that should be believed. To begin with the motive for the crime, it appears clearly proven that the old man stopped the game when he was winning and before defendant could recoup his losses. The State's evidence on this point is in a way corroborated by the defense witness, Manuel Paez, who said that, when the game broke up, the old man threw a piece of paper in their midst, saying: "There is your money." if anybody left the gambling table aggrieved and discontented, it must, therefore, have been the defendant, as he was the one who had lost. As a matter of fact, he gave eloquent expression to that discontent by challenging the old man to a gun duel. How bitterly he really felt may well be judged by this apparent readiness on his part to fight and kill a man old enough to be his grandfather.

On the other hand, it does not seem probable that the old man should be the aggressor. If he had really wanted a fight, then why didn't he accept defendant's invitation to shoot it out with him, specially if, as the defense claims,

he was a bully and a dead shot? It should be recollected in this connection that defendant himself did not claim that the old man had sought to kill him in ambush. What he testified is that the old man waited for him on the road and threatened him with a gun, and the clear implication from this testimony is that the old man merely wanted a fight. The testimony must be sheer invention, for it is not reasonable to suppose that an octogenarian like the deceased would, in an isolated place and at the late hours of the night, deliberately seek a fight with defendant, who was in the prime of his life and accompanied by his son and a servant 3 specially when the old man had with him at the time his eleven-year old grandchild. The improbability of defendant's story is heightened by his most unlikely account of the manner in which he was able to wrest the gun from the old man as may be judged from the demonstration he gave at the trial, an account which, on its face, does not merit belief.

As we see it, while defendant admits having inflicted the injuries which caused the old man's death, he has, on the other hand, failed to prove that he has acted in self-defense. On the contrary, from all indications he would appear to be the aggressor.

The trial court discounts the testimony of Valentin Gallado, who claims to have seen how defendant, with the aid of his companions, attacked and killed the old man, on the ground that said testimony is exaggerated or obviously false. The trial court also gives no credence to the little girl, Shirley. But even eliminating the testimony of these witnesses, we would still have defendant's confession made to the special policeman, Mabug-at, whose disinterestedness and credibility have not been put in doubt. In said confession defendant admits having been the aggressor and having inflicted the injuries from which the old man died.

It was clear error for the trial court to hold defendant guilty only of frustrated, homicide with the aggravating circumstance of premeditation. The crime committed by him, as shown by the evidence, is homicide. But as the Solicitor General himself admits, premeditation has not been proved. There is, however, the aggravating circumstance of disrespect to an older person, considering that the aggressor was only forty-five years old while the victim was an octogenarian. As this circumstance is not offset by any mitigating circumstance, the penalty prescribed by law must be applied in the maximum degree.

Wherefore, with the modification of the judgment appealed from, appellant is hereby declared guilty of homicide, with the aggravating circumstance above mentioned, and, in accordance with the Indeterminate Sentence Law, sentenced to an indeterminate penalty of from 12 years of prision mayor to 20 years of reclusion temporal, to indemnify the heirs of the deceased in the sum of P6,000, and to pay the costs.

Moran, C.J., Ozaeta, Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

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