

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DOMINGO DEGUIA, FLORENTINO DEGUIA, AND FRANCISCO DEGUIA, DEFENDANTS AND APPELLANTS.

G. R. No. L-3731. April 20, 1951

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is the story of two jack fruits, the dispute over whose ownership ended in the tragic death of Jesus Ogalisco on the morning of June 4, 1949, in sitio Binog, barrio of Makiwalo, municipality of Mondragon, province of Samar. According to the medical certificate, Exhs. "G" and "2", the deceased sustained 20 wounds in all, 4 on the head, 3 on both sides of the neck, and 1 on the back, all of which were mortal, the other wounds being found on the chest, shoulders and the right arm. For the killing, Domingo Deguia, and his two sons, Florentino and Francisco, were charged with murder in the Court of First Instance of Samar, were found guilty of the crime and sentenced each to life imprisonment with the accessories of the law, to jointly and severally indemnify the heirs of the deceased in the sum of P2,000 without subsidiary imprisonment in case of insolvency, and to pay the costs. The case is here on appeal by the three defendants. Domingo Deguia readily admitted responsibility for the killing, but he claims that he alone killed Jesus Ogalisco, and in self-defense. According to the version given by Domingo and his witnesses, at about two o'clock in the afternoon of the day in question, he was riding on his carabao drawing a sled loaded with two jack fruits, a sack of casava and five bunches of bananas. On passing near the house of Jesus in the sitio of Binog, the latter stopped him, claiming the two jack fruits as his and accusing Domingo of having stolen and taken them from his tree. Domingo denied the accusation and was in the act of continuing on his way when Jesus without warning, boloed him on the right side of his face, inflicting an ugly wound that is described in the certificate (Exh. "1") as a wound "five inches long and one inch deep." In retaliation Domingo unsheated his own bolo and struck Jesus on the head. But his assailant countered with another blow on the head. Domingo, however, in the course of the fight, succeeded in inflicting several wounds on different parts of the body of Jesus who thereafter fell down and succumbed to his injuries.

After considering the testimonies of the defense witnesses given during the trial, the lower court rejected the story told by them as improbable, and found the version given by the witnesses for the prosecution, particularly by Petra Liwanag, the widow of Jesus and Juanito Barcelon, as the more credible and acceptable.

After carefully going over the record of the case, we find no reason for disturbing the action of the trial court in giving more credit to the witnesses for the prosecution and in rejecting the story of the defense.

On the basis of the evidence, oral and documentary, we find the following facts to have been duly established. On June 4, 1949, Jesus Ogalisco was living in his small house in the sitio of Binog, barrio of Makiwalo, Mondragon, Samar, with his wife Petra Liwanag and his minor children. At about ten o'clock in the morning, Francisco Deguia, riding on his carabao drawing a sled containing two jack fruits, passed near the house. Jesus, suspecting that the said fruits had been surreptitiously taken from his tree, accused Francisco of having stolen the same, and

summarily got the two fruits from the sled and took them into his house. Francisco, apparently resenting the charge of theft, hurried to his home about a kilometer away and told his father Domingo, his mother Gregoria Toltol, and his brother Florentino Deguia, of what had happened. About two hours thereafter, Domingo accompanied by his two sons, Florentino and Francisco, each armed with a bolo and a bamboo spear, arrived in front of the house of Jesus, Domingo asking in a loud voice why Francisco had been unjustly accused of stealing the two jack fruits, at the same time demanding that Jesus come down. Jesus, sensing danger and considering the prospects of an unequal combat and heeding the dictates of caution, kept quiet and made no move to comply with the demand. Then, Domingo in the same tone warned Jesus that if he did not come down, he (Domingo) would .kill every member of Jesus' family in the house, and immediately the three men deployed around the house and thrust the points of their spears through the sidings of the low dwelling.

Fearing that his family, specially his children might be hurt, Jesus decided to face the situation and went down his house by the oak door, with his bolo hanging from his waist. Father and sons immediately closed upon and surrounded him, Domingo from in front, boloing him on the head, Francisco spearing him in the right arm and Florentino from behind, stabbing him with his bolo on the back. It was then that Jesus unsheated his own bolo to defend himself, and in the course of which, he inflicted the wound on the right side of the face of Domingo. But being outnumbered and surrounded, the outcome of the encounter was not hard to see. Jesus, overcome by the numerous blows inflicted on him from all sides, tried to run away from his assailants and finally fell down face downward at a spot about seventeen meters away from his house. His wife Petra, seeing the predicament of her husband, jumped down from the house to aid him. Florentino met her and threatened to kill her but she begged him to spare her and her children. At that moment, Gregoria Toltol, wife of Domingo and mother of Florentino and Francisco, appeared at the scene and urged her husband and sons to kill the entire family, but fortunately, her wishes were not carried out. While the two sons retired with their mother, Domingo approached Jesus and asked him if he wanted some more, meaning, if he had not had enough, but the question remained unanswered for Jesus was already dead.

It so happened that that same mottling, two "boys named Juanito Barcelon and Agapito Taroma, both nephews of Jesus, had come from their homes in the neighboring barrio of Cawayan, to get palawan, and about the same time that the three defendants Domingo and his two sons arrived at the scene, they (the boys) were resting under a cabac tree, near the house of Jesus, slicing some vines. Naturally they witnessed all that transpired near and around the house.

After finding that Jesus was already dead, Domingo discovered the presence of the two poys, Juanito and Agapito, near the premises and he chased them away. While Agapito remained and hid in the bushes, Juanito ran toward his home and notified his grandmother and other relatives of his uncle's death. The grandmother hurried to the pobladon of Catarmam, being the town nearest to the scene, and notified the police authorities, and policeman Porfirio Marquez hurried to the sitio of Binog where he found the body of Jesus in the same place where he fell. In the meantime, for fear that Domingo and his sons might return, Jesus' widow, Petra Liwanag, was still hiding in the bushes and policeman Porfirio Marquez had to blow his whistle threetimes before she ventured out from her hiding place. Policeman Marquez found three bamboo spears near the body of Jesus, and in the house he found the two jack fruits already mentioned.

That same afternoon, Domingo, rather weak from loss of blood due to his wound, accompanied and supported by his sons, Florentino and Francisco, repaired to the house of Sinforiano Coche, lieutenant of the barrio of Makiwalo, and informed the said official that he had killed Jesus. Domingo was later sent to the poblacion of Mondragon where he was treated and then placed under arrest.

The two brother Florentino and Francisco, interposed the defense of alibi, claiming that it was their father who

drove the sled where the two jack fruits were loaded; that they remained at home that morning, stripping abaca, and that it was only later in the afternoon that they were informed by one Felix de la Cruz that their father had met with an accident; that they (Florentino and Francisco) with their mother went to the house of Jesus and there saw his body; and that at some distance along the trail, they found their own father lying on the ground nursing his wounds.

There are several reasons why this story of the defense can not be accepted. As pointed out by the trial court, Felix de la Crua was not presented as a witness in order to support the theory of alibi. Moreover, the participation of the two brothers, Florentino and Francisco, in the attack was witnessed by Petra Liwanag and Juanito Barcelon, whose testimonies were accepted by the trial court. These same testimonies as transcribed, we have read, and they appear to be straightforward and sincere. Besides, as observed by the trial court and the Solicitor General, it is incredible that Domingo who was far inferior to Jesus in build, stature, and strength could, alone, have overcome him and inflicted so many wounds on different parts of the body, in front and from behind, especially if we bear in mind the claim of Domingo that it was Jesus who initiated the fight and therefore had a distinct advantage and opportunity in killing his foe instead of himself being overcome and killed. Furthermore, the version given by the prosecution that the three appellants, father and sons, were armed not only with bolos but also with bamboo spears, is confirmed by the finding near the body of Jesus of said three spears by Policeman Porfirio Marquez who was the first agent of persons in authority to arrive at the scene." The story of the defense that Jesus had taken the two jack fruits from the sled to his house was also confirmed by the finding of the two fruits by Porfirio in the house of Jesus. There are other details pointed out by the Solicitor General in his brief against the acceptance of the theory of said defense which we consider unnecessary to mention and discuss.

We agree with the Solicitor General that the trial court should have considered as a mitigating circumstance in favor of Domingo his having voluntarily surrendered to the authorities. We, however, disagree with the Solicitor General in his contention that the aggravating circumstance of uninhabited place be considered as having attended the commission of the crime. It is true that the house nearest to the dwelling of Jesus was about a kilometer away but it should be remembered that the appellants did not select the place either to better attain their object without interference, or to secure themselves against detection and punishment. We are, moreover, inclined to find as we do find in favor of the three defendants the existence of the mitigating circumstance of provocation. In our opinion the act of Jesus in accusing Francisco Deguia of having stolen the two jack fruits and in summarily taking the same from the sled into his house was an insult and provocation not only to Francisco but also to his family, particularly his father who must have resented the accusation. We do not, for certain, know who really owned the fruits. Petra Liwanag, widow of Jesus, admits that neither she nor Jesus saw the taking away of the fruits from their tree. On the other hand, Domingo claims that he did not have to steal jack fruits because he had plenty of them at home, giving us to understand that the two jacks fruits in question, belonged to him.

In conclusion, we agree with the trial court and the Solicitor General that the appellants are guilty of murder, the killing being raised to that category because of the qualifying circumstance of superior strength. In relation with Art. 64 of the Revised Penal Code and because of the existence of a mitigating circumstance without any aggravating circumstance to offset the same, the two brothers, Florentino Deguia and Francisco Deguia, deserve the imposition of the penalty for the crime of murder in the minimum degree. As to Domingo, with the existence of two mitigating circumstances, namely, voluntary surrender and provocation, with no aggravating circumstance to offset the same, the penalty next lower to that prescribed by law should be imposed. We also agree with the Solicitor General that the indemnity which the appellants are sentenced to pay should be increased to P6,000.00.

Florentino Deguia and Francisco Deguia are hereby sentenced each to not less than fourteen (14) years and eight (8) months and not more than twenty (20) years of reclusion temporal. Domingo Deguia is hereby sentenced to

not less than ten (10) years of prision mayor and not more than seventeen (17) years and four (4) months of reclusion temporal. The three should be credited with any preventive imprisonment they may have already suffered. The indemnity to be paid by them is increased from P2,000 to P6,000. With these modifications, the decision appealed is hereby affirmed, with costs. So ordered.

Paras, C. J., Feria, Pablo, Bengzon, Tuason and Jugo, JJ., concur.

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