

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DOMINGO ACUSAR, MARCELINO ACUSAR, IGMIDIO ACUSAR,
ANSELMO ACUSAR, AND OTHERS UNKNOWN, DEFENDANTS,
DOMINGO ACUSAR AND I...**

G.R. No. L-1798. December 29, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

At about eleven o'clock in the morning of August 21, 1946, the brothers Domingo and Marcelino Acusar went to the U.S. Army Ammunition Depot at barrio Balete, Batangas, to which formerly they used to go to rather some firewood. Domingo boarded a truck, used by the depot for carrying trash, when it was about to move out. After the truck had traveled some distance, about fifty meters, Domingo threw out from the truck three spades. Upon seeing it, Romero Velasquez, the foreman of the depot, ordered the laborers to take the spades. Laborer Francisco Orcns went running to pick them up, Marcelino coming behind him, evidently in a race to reach for the spades. Orense placed the spades among the implements used, in the depot.

At about twelve o'clock that same day, accompanied by Anselmo Acusar, another brother, Domingo returned to the depot and asked the laborers, who were then taking their noontime rest, who took the three spades. Orense answered that he was the one on orders of the foreman. At this juncture Romero approached the group and was asked by Domingo who ordered the taking of the spades. Romero answered that he was the one because, as foreman, he was responsible for them. Domingo demanded that the spades be given to him because he had promised them to somebody else. Romero rejected the demand, alleging that the spades were placed under his care and responsibility, he had signed receipts for them and he would be accountable for their loss. Domingo insisted in his demand and Romero in his refusal.

The discussion became heated, and Domingo went to one side where he picked a bolo and with it he hacked twice Romero at the back. Romero fell down. Although he was able to stand up once, he fell down again under the continued -attacks of Domingo, who was helped by his brothers Anselmo and Marcelino, both using knives to wound Romero. One of the assailants said that Romero should be left alone because he was dying and Romero was left alone lying wounded on the ground.

At the time he was being attacked, an old man, Gregorio Velasquez, father of Romero and who was in the depot as one of the laborers, had been shouting to the assailants to leave alone his son because he was not offering any resistance. Upon noticing it, Igmidio Acusar, father of Domingo, came down from his house, accompanied by two persons not identified in the record, went directly towards Gregorio and started pounding him with the butt of a rifle, while his two companions beat the old man with bakawan sticks.

After leaving Romero alone and upon seeing what was happening where Gregorio Velasquez was, Domingo, Anselmo and Marcelino, each armed with a crowbar that they picked lying among the empty boxes, joined their father in beating Gregorio Velasquez and when the latter was about to fall, Domingo hacked him once on the back

with a bolo, Gregorio fell unconscious and the assailants fled.

As a result of the affray, Gregorio Velasquez died a few minutes after his arrival in the Station Hospital of the American Army in Batangas, due to multiple and severe fractures of the skull, which appeared like an egg that had been pounded and battered to pieces by blows. The deceased had received an incised wound on the shoulder.

The right thumb of Romero Velasquez was severed and he suffered several wounds. He had to stay for many days in the hospital, less than a month, and had an additional two-week medical treatment at the dispensary after he left the hospital.

The facts of the case, as above narrated, have been conclusively proved. Direct participation of Domingo and Igmidio Acusar in causing death of Gregorio Velasquez and of Domingo in almost kill ins Romero Velasquez, has been established by the testimonies of Francisco Orense and Crisanto Atienza.

Igmidio tried to establish an alibi, alleging that in the morning of August 21, 1946, he vent to the town of Cuenca to look over a bull he was intending to purchase from Fausto Dipasupil. He was accompanied by his son, Marcelino, and both started from Cuenca to their home at about 1:00 o'clock in the afternoon and, therefore, ho could have not taken part in the assault that caused the death of Gregorio Velasquez. Marcelino Acusar and Fausto Dipasiipil testified to corroborate him but the lower court has correctly rejected the defense. The testimonies of the three witnesses for the prosecution appear to be more reliable. No improper motive was shown why laborers Francisco Orense and Crisanto Atienza would have falsely imputed to Igmidio active participation In, and the commencement of, the assault against Gregorio Velasquez.

The defense does not deny, but admits that Orense and Atienza were in the scene of the incident and were eyewitnesses to the wounding of Romero and the killing of Gregorio. It is unquestioned that the whole incident took place In the presence of other persons, aside from those who testified at the trial, and if the accusation against Igmidio were false, there should not be any doubt that among those many persons there would have been one or more who, not enduring to see an innocent falsely accused of a crime he has not committed, would have come in the open to testify in court and champion his cause. The more or less widespread cynicism notwithstanding, human experience has conclusively shown that the essential feeling of righteousness in the average human being is a reality that cannot be ignored.

Domingo tried to show by his own testimony, unsupported by any other witness, that in wounding Romero he acted in self-defense, but not one of the many actors and witnesses of the whole incident corroborated him. He said that between Romero and himself there was exchange of words and counter-charges as thieves for the pilferage of goods in the depot and that Romero, provoked by the counter-accusation against him, drew out an open knife and tried to stab Domingo who evaded the blow and ran away. But Romero chased him until Domingo was able to hold a bolo which was on top of some boxes. There was a scuffle. While Romero suffered many wounds and lost his right thumb, Domingo, due to his dexterity in fencing, was able to come out unscathed.

The inverisimilitude of Domingo's version is apparent. It Is unbelievable that in such a long struggle narrated by Domingo, the latter should come out without a single scratch on the skin, while Romero should suffer so many wounds. Not even extreme ability in fencing can explain such an extraordinary result, considering that Romero was not a weakling. On the contrary, his survival from the many wounds he received is an evidence that he was endowed with unusual vitality. According to Dr. Schrank, two back woundn of Romero and one on hi? thigh were caused by a sharp instrument like a knife, not a bolo. The three wounds belie completely the story of Domingo.

The lower court found the two appellants guilty of murder for the death of Gregorio Velasquez and found Domingo guilty of serious physical injuries caused to Romero Velasquez. The Solicitor General is of opinion that

the crime committed for the killing of Gregorio should not be considered murder but homicide. The abuse of superior strength to make the crime murder, not having been aliened in the information, should only be considered as aggravating circumstance for the crime of homicide. As regards to the attack on Romero, the Solicitor General maintains that, from the evidence, Domingo's intention to kill was manifest, he and his co-assailants having used deadly weapons such as bolos and knives. As a matter of fact, they left Romero for dead. But as Dr. Schrank, witness for the prosecution, has expressed the doubt that the wounds suffered by Romero would, without medical assistance, have caused his death, the Solicitor General is of opinion that the crime committed by Domingo is only attempted homicide. The position of the Solicitor General is well taken. Igmidio is responsible as principal of homicide for the slaying of Gregorio. Both prosecution and defense, correctly agreed that Domingo should only be found guilty as accomplice in the homicide, their being no conspiracy and his contribution being a mere lacerated wound on the shoulder of the deceased which was described by Dr. Schrank as moderate and not fatal.

According, Igmidio Acusar is sentenced to an indeterminate penalty of from six years and one day of prision mayor to seventeen years and one day of prision mayor to seventeen years, four months and one day of reclusion temporal, and Domingo Acusar, as compliance in the crime of homicide, to suffer an indeterminate penalty of from two years, four months and one day of prision correccional to eight years and one day of prision mayor, and as principal of the crime of attempted homicide, to suffer from one month and one day of arresto mayor to two years, four months and one day of prision correccional.

For the loss of the right thumb of Romero Velasquez, the latter shall be indemnified by Domingo Acusar in the sum of P500, and both Igmidio and Domingo Acusar shall indemnify jointly and severally the heirs of the deceased Gregorio Velasquez, as recommended by the prosecution and in accordance with the doctrine laid down in *People vs. Amansec* (L-927, 45 Off. Gaz. [Supp. to No. 9] 51)[1] in the sum of P6,000, and to pay the costs.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

Judgment modified.

[1] 80 Phil., 424.

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