

EL PUEBLO DE FILIPINAS, QUERELLANTE-APELADO, CONTRA ALFREDO NERI, ACUSADO-APELANTE.

G.R. No. L-271. December 03, 1946

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BRIONES, M.:

Esta apelacion se ha interpuesto por Alfredo Neri de la sentencia del Juzgado de Primera Instancia de Negros Occidental en que se le condena, por el delito de homicidio, a sufrir una pena indeterminada de lo años y l día a 12 años de prision mayor, con las accesorias de ley, a indemnizar a los herederos del occiso Eugenio Bojeris en la suma de P2,000, y a pagar las costas del juicio.

De las pruebas de la acusacion se desprenden los siguientes hechos: El apelante debia a .Eugenio Bojeris, occiso, la cantidad de P2.50. Ambos vivian y eran vecinos en el barrio de Jalangdon, ciudad de Bacolod. Al mediodia del 4 de Octubre, 1945, Enrica Soliman, esposa de Eugenio, de apersono en la casa del apelante para cobrarle la deuda. Parece que este dijo que no estaba en condiciones de pagar, y de ello surgio una fuerte disputa entre ambos, llegando Enrica a decir sarcasticamente que optaba por dar el dinero al acusado como limosna. Indudablemente esto le molesto a Neri, el cual no pudo entonces reprimir su colera diciendo: “Ya estoy cargado da tantas habladurias; si Ud. no fuese una mujer, yo le daria una bofetada; haga venir aqui a su varon.” Eugenio oyo esto desde su casa, distante solo unas 30 brazas de la del apelante, y fue entonces ,para socorrer a su mujer, llevando un palo de un pie de largo. Gracias, sin embargo, a la intervencion de un nieto del occiso llamado Francisco .Bojeris, pudo evitarse un violento encuentro entre aquel y el apelante.

Pero la cosa no paro aqui, por lo menos respecto del apelante. A la medianoche de aquel mismo dia, el acusado, al volver de su trabajo en una fabrica de zuecos (bakiya) donde habla desvelando en aquella ocasion, y despues de haber bebido dos vasos de tuba en una tienda que hallo abierta en el camino, fuese derecho al entresuelo donde vivia Eugenio Bojeris con su familia y dando fuertes golpes en la puerta le lanzo a gritos el siguiente desafio: “Sal, porque ya .ha llegado tu hora”. Eugenio, despues de despertarse al ruido de los golpes en la puerta y por los gritos de Neri, salio del entresuelo portando un farol con la mano izquieirda y un palo o garrote con la diestra, al parecer para ericontrarse con el retador. Efectivamente, ambos se enzarzaron en una pelea, en medio de la calle, tumbandose de pronto Eugenio y colocandose encima del mismo el apelante. (Las pruebas de muestran que Eugenio tenia 71 años de edad y era debil de complexion, en contraste con el acusado que en la fecha de autos tenia 39 años y era evidentemente mas robusto y fuerte). Viendo que el viejo quedaba malparado en la lucha, Felix Ibañez, nieto-del mismo, y Filomeno Cervantes, un vecino, trataron con grandes asfuerzos de librarlo de los brazos del apelante que continuaba aplastandolo sobre el suelo, hasta que dicho apelante se avino a soltarle a Eugenio, cediendo a los ruegos de Cervantes que le decia: “Pidoy, basta ya, que tengas compasion de ese Viejo.”

Despues de la pelea Eugenio fue llevado al Hospital Provincial de Bacolod donde murio en aquella misma noche a consecuencia de una hemorragia externa resultante de heridas causadas con un bolo en la. parte antero-interior del brazo y antebrazo izquierdo.

El acusado se exculpa alegando que obro en legitima y propia defensa. No niega haber causado las heridas de que se trata con un bolo que llevaba, pero se justifica diciendo que las infirio mientras paraba los golpes que el occiso

le diera con el farol o linterna que llevaba. En apoyo de esta asercion se ha presentado el certificado medico Exh. 1 en donde se especifican las contusiones que diz sufrio el apelante en la pendencia. Respecto de como comenzo la pelea, la version del apelante es que fue el occiso quien le provoco aguardandole en la calle y pegandole subita y tracioneramente en la espalda con un palo.

La resolucion, pues, del caso depende enteramente de la credibilidad de las pruebas. Ha logrado el acusado y apelante probar satisfactoriamente su alegacion de propia y legitime defensa? Juzgamos que no. Nos parece completamente inverosimil la asercion de que el occiso, a medianoche, espero al acusado en la calle con un farol en una mano y con un palo en la otra, para pegarle. Si se trataba de una emboscada, de un ataque traicionero por que el occiso habia de aguardarle al apelante con un farol? Este artefacto constituia un serio estorbo, por dos razones: 1) porque con su luz descubria la .presencia del atacante, haciendo inutil la emboscada; 2) porque el agarrarlo quitaba fuerza y libertad de movimiento al aggressor. Esto, por una parte.

Por otra, mientras no le corrobora nadie al apelante en su version de que fue Eugenio quien provoco la fatal reyerte, obran en autos dos testimonies en apoyo de la version contraria, esto es, que fue el acusado el provocador. Enrica Soliman, la viuda del occiso, asegura positivamente que Neri fue quien a hora intempestiva de la noche despertó a Eugenio dando golpes en la puerta del entresuelo en donde este vivia y desafiandole a gritos para una pelea. Felix Ibañez, nieto del occiso, declara:

A At that time I was sleeping in the porch of our house, I think it was about twelve o'clock that night, it so happened that there was a big noise at the door of our house. I did not know what that noise was about and then woke up and sat down on the floor and look out of the porch and when I looked down I saw this fellow (witness pointing to the accused). I distinguished him for the first time and my grandfather came out of the house bringing with him a lamp and a piece of wood. (n.t., p.37.)

Se hace hincapie en los siguientes hechos: (a) que el occiso parecia ser un .hombre de caracter irascible y violento, como lo demuestra el incidente del mediodia, cuando provisto de un pelo fuese a la casa del apelante en auxilio de Enrica, su mujer, evitandose solo que la pelea cobrase mayores proporciones mediante la intervencion de Francisco Bojeris, su nieto; (b) que ya por la noche, despues de la pelea, estando ya herido, todavia se le oyo decir al viejo, segun el testigo Filomeno Cervantes: "Minong, esta es la pelea que busco, esta es una buena lid", queriendose insinuar con esto que el occiso era realmente un pendenciero; (c) que, segun certificado medico, el apelante sufrio contusiones en la brazo izquierdo, lo cualprueba, segunse dice, que el apelante recibio palos del occiso.

Se puede admitir que el occiso no era pusilanime ni cobarde, que era un valiente si bien no pendenciero ni camorrista, pues no hay prueba sobre tal cosa. Pero de esto no se sigue que el occiso haya sido el provocador de la pelea a medianoche, pues ya hemos visto que las pruebas establecen positivamente, fuera de toda duda razonable, que fue el apelante quien despertó al Viejo para desafiarse. El que este haya aceptado el reto efectuandose despues la lucha no exime de responsabilidad al provocador por el homicidio resultante de las heridas que el mismo causó con su bolo. Tampoco le exime de responsabilidad al apelante la circunstancia de que haya causado dichas heridas al defenderse, segun afirma, contra los golpes que la diera el occiso con el farol o la linterna, porque, provocado este ultimo a pelear, tenia indudablemente derecho a defenderse contra la aggression, maxima si, como en este caso, el provocador esgrimia un bolo, arma mucho mas mortifera que el farol y el palo que llevaba el occiso.

Mientras, por un lado, se debe tomar en cuenta en contra del apelante la circunstancia. agravante de nocturnidad, estimamos que deben apraciarse a su ravor dos circunstancias atenuantes: 1) la de no haber tenido intencion de causar un mal de tanta gravedad como el que produjo; 2) la de haber ejecutado el hecho en estado de embriaguez.

No hay prueba en autos de que esta era habitual o deliberada.

El delito cometido es el de homicidio penado con reclusion temporal. Habiendo una circunstancia agravante y dos atenuantes, la pena se debiera imponer en su period minimo, o sea, de 12 años y 1 dia a 14 años y 8 meses. Bajo las disposiciones de la Ley de Sentencia Indeterminada, la pena imponible debe ser prision mayor de 6 años y 1 dia a no mas de 12 años como minimum, y reclusion temporal de no menos de 12 años y 1 dia ni mas de 14 años y 8 menses como maximum.

Por tanto, se condena al apelante a sufrir una pena indeterminada de 6 años y 1 dia de prision mayor, a 12 años y 1 dia de reclusion temporal. Con esta sola modificacion, se confirma la sentencia apelada en todo lo demas. Con las costas a cargo del apelante.

Asi se ordena.

Paras, Feria, Pablo, Padilla and Tuason, JJ., conformes.

DISSENTING OPINION

Bengzon, J.:

I can't find it in me to jail herein defendant for having refused to take a beating at the hands of a vindictive old man. Age may have its privileges; but youth certainly has its own rights.

There is no question that in the night of October 4, 1945, Eugenio Bojeris, aged 67, (Exhibit A), and Alfredo Neri, aged 39 fought in the barrio of Jalangdoon, city of Bacolod; that during the fight, the former was wounded in the left arm, and that as a consequence, he died hours later.

Neri swore that Bojeris waylaid and attacked him with a piece of lumber, and that acting in self-defense, while trying to parry the assailant's blows, he used his bolo and cut, the latter in the arm.

Background of the encounter was the ill-feeling resultant from a heated exchange of words between the appellant and Enrica Soliman, wife of Eugenio, in the forenoon of that day, when she repaired to his house to collect his debt of P2.50. It appears that overhearing the altercation, Eugenia hurried to the scene, carrying a piece of wood, about one foot long, and joined the wordy brawl; but a physical clash between him and the appellant was averted by the intervention of his grandson Francisco Bojeris, -who had to drag his grandfather away.

Contradicting the appellant's version, Enrica Soliman, the only prosecuting witness as to the beginning of the mortal affray, declared that on that night appellant repeatedly knocked at their door and loudly challenged her husband to a fight, saying, "come out, this is now your time"; that her husband accepted the challenge, went down with a lamp, only to be defeated in a short struggle.

There are reasons to question the accuracy of this woman, firstly, because she said her husband carried no weapon going down; and yet all witnesses agree he wielded a piece of wood, about two feet long. Secondly, because she untruthfully swore that her mate had not attempted to strike Neri during the angry dispute they had earlier in the day. But she was belied by her grandson Francisco Bojeris, who stated that Eugenio struck Neri, but the blow landed on him (Francisco) while lie was endeavouring to separate the disputants. This incident is significant, because it shows wherein lie the probabilities of the occurrence. It tallies with defendant's version that, prevented from chastising the younger man who had wrangled with his wife, Eugenio Bojeris - whose violent temper is confirmed by the record - sought to punish him later, that evening. In the natural order of things, one who believed himself offended was more likely to provoke and bring about the bloody affair. (See U. S. v. Laurel, 22

Phil. 252, 264). And when we consider that the prosecution witnesses Filomeno Cervantes and Felix Ibañez heard the wounded combatant exclaim that that was the fight "he had been looking for", we should no longer doubt the plausibility of defendant's story that the showdown was noway his choice.

On the other hand, there is plain common sense in the following remarks of counsel de officio;

" x x x Now we ask, is the fact of having had a hot discussion, or of having exchanged words with Eugenio Bojeris, sufficient to make Neri plan for a night attack, as was the theory of the prosecution? We respectfully submit, that it is not, for the following reasons: (1) Neri was not hit by the baratija, but the blow landed on the back of Francisco Bojeris. (2) After that noon incident, Neri went up his house, finished his meal and went to his work in the wooden shoe factory as usual. (3) When Neri learned that he had extra work or that he had to work overtime that night, he entrusted the care of his children to Rosario Advincula. Therefore, Neri could not have acted in that way, 'had his mind been troubled by that incident at noon, x x x "

More about Enrica Soliman. This "star" witness was not presented when the criminal complaint was sworn to before the municipal judge. Only Filemon Cervantes and Francisco Bojeris were examined. Why?

She says she heard the accused challenging her husband: she witnessed her husband preparing to go down to fight. Did she try to dissuade him? Did she call on the neighbors to stop the duel? No.

The truth seems to be, as explained by counsel for defendant in the lower court, "We will call the attention of this Hon. Court to the affidavit of Francisco Bojeris, a witness for the prosecution during the preliminary investigation of the case before the Municipal Court, of the City of Bacolod, attached to the records. From its contents, the first logical deduction we could make is that the witnesses Enrica Soliman and Felix Ibañez and the other inmates of the house were all sleeping." (Underscoring ours). They only awoke during the course of the fight.

The above three paragraphs apply with equal force to Felix Ibañez, whose testimony, the majority believes, corroborates that of Enrica. It is very significant that the name of this alleged principal witness does not appear in the complaint.

Rejecting defendant's version, the majority argues it is incredible that the deceased had sought him, because Bojeris was admittedly carrying a lamp and (a) with such light he could not have "ambushed" Neri and (b) one does not start a fight with such a handicap.

These observations are inconclusive. Defendant never claimed that the deceased had "surprised" or "ambushed" him. And if, according to the majority's theory, the old man accepted Neri's challenge and went down with a lamp to fight, it is not incredible that he should have waylaid, (i.e. looked for and met), the defendant with such a lamp.

On the other hand, Keri's presence in the vicinity was adequately explained: He was a worker in a "bakia" factory where he utilized the bolo to carve wooden shoes; that afternoon a rush order came, and overtime labor had to be done until late in the evening; before going home, he passed, as was his want, by a tuba store which was located on the street where Bojeris lived, almost in front of the latter's dwelling; there he was met and cudged by Bojeris.

It must be observed, in further corroboration of appellant's theory, that the Government expert, Dr. Ledesma, admitted the likelihood that the gash had been caused in the manner described by him; and Dr. Del Rosario saw the contused wounds Keri had gotten at the hands of his assailant.

That Neri only intended to save himself is apparent from the condition of the wound, his contemporaneous statement to the eyewitness Filomeno Cervantes that he did not mean to kill his antagonist, and the circumstance

that he did not inflict - even if he could - other wounds on the elder man. And there is uncontradicted evidence that with proper medical attendance Bojeris would have survived.

Now then, when a man is attacked by another with a piece of wood, can he lawfully use a bolo in defense of his person?

In *U.S. v. Domen*, 57 Phil. 57, the deceased attacked the defendant and struck him several times with a three-foot piece of lumber about the size of one's wrist. The accused did not retreat, but struck back, cutting his adversary on the forearm, and caused the latter's death. This Court absolved the accused on the ground of self-defense.

In *People v. Peradilla*, 53 Phil. 9, wherein defendant used his bolo in repelling an unlawful attack with a wooden club, the plea of self-defense was sustained.

To sum up, Eugenio Bojeris believed he could humble his younger opponent and sought him out. He was sadly mistaken. The tragedy is indeed to be deplored. But it is worsening matters to deprive two children of tender age of that protection and care which only their widowed father can give. Appellant should be cleared.

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