

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MAXIMO MALLARI, DEFENDANT AND APPELLANT.

G.R. No. 10037. December 23, 1914

Ponente: TORRES, J.

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TORRES, J.:

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MAXIMO MALLARI, DEFENDANT AND APPELLANT. body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }This case has been brought up on appeal filed by the defendant from the judgment dated April 22, 1914, whereby the Honorable Julio Llorente, judge, sentenced him to the penalty of twelve years and one day of reclusion temporal, accessories, the payment of an indemnity of P1,000 to the heirs of the deceased, and the costs.

On the morning of September 25, 1913, in the barrio of Batasan, municipality of Macabebe, Province of Pampanga, before going to his work, the defendant Maximo Mallari went to the house of the married couple, Vicente Sunga and Canuta Flores, and from the shed outside asked Vicente Sunga to cure his wife of a sickness from which she had been suffering for several days, and which he thought was due to enchantment on the part of the said Vicente. As the latter refused, averring that he was not a wizard and that he had not caused the illness of defendant's wife, the former became enraged and insulted the said spouses. Threatening to kill them, he ascended the stairway carrying in his hand a thin, sharp bolo. At his wife's suggestion Vicente Sunga tried to get out to report the matter to the teniente of the barrio, who lived at some paces from their house, but as he met the defendant on the stairway, he immediately went back inside and jumped out of a window. He was straightway pursued by the defendant and on arriving almost in front of the house of the teniente saw that the defendant was following closely behind him. He therefore turned to face his pursuer and defend himself as well as he could with his hands. Thereupon the defendant with a single slash of the bolo wounded Vicente Sunga in the abdomen, so that his intestines protruded therefrom. In this condition the victim sat down, endeavoring with his hands to keep his intestines from falling out, while his assailant took to flight.

The justice of the peace of Macabebe arrived on the scene a few moments later and in his presence the wounded man declared that his assailant was Mallari, who had been in his house, and who had inflicted the serious wound he had in the abdomen. As a consequence of this wound he died three days later.

An autopsy was held on the corpse by the physician who is president of the municipal board of health of Macabebe, and as a result of the examination made, it appeared that the deceased had received an incised wound in the epigastric region, which penetrated the gastrocolic epiploon, the middle part of the transverse colon and the rectoabdominal muscles and which had caused severe peritonitis, the entire length of both intestines having become gangrened with sanious discharges. This wound was necessarily fatal, especially in view of the scarcity of antiseptics available in the towns of the provinces.

The facts set forth appear to have been duly proven in the case and constitute the crime of homicide, provided for and penalized in article 404 of the Penal Code, for the reason that the defendant appeared at the house of deceased with the demand that the latter treat his wife, whom he believed to be bewitched by the artifices of the deceased. As the latter refused to do so, saying that he was not a wizard, the defendant Mallari insulted the Sunga spouses, threatened them with death and straightway went up into the house of the deceased with a bolo in his hand. When the deceased saw this he immediately leaped out of the window in flight but the defendant pursued him and upon coming up with him in front of the house of the teniente of the barrio, to whom he was going to complain, struck him a blow in the abdomen with the bolo, inflicting a serious and fatal wound that caused death on the third day thereafter.

Defendant declared that on the morning of the occurrence his wife, who was ill, told him before going to work to stop in at Isidro Sunga's house and ask the latter's wife to treat her, for it was reported that she was a witch; that when he reached the yard of Isidro Sunga's house he asked the latter's son, Silvino Sunga, for his mother; that at Silvino's invitation he entered the yard and Isidro Sunga asked him from the window what he wanted and invited him to come in; but that he refused to enter, saying that he could tell what he wanted from outside; that thereupon Isidro Sunga's wife appeared at the window and upon seeing him called to her children, saying that a bad man had come. Then they began to insult him, and when he tried to get away, Vicente Sunga, Silvino Sunga, Isidro Sunga, and Florentino Sunga, armed with long bolos, pursued him. At that instant Vicente Sunga, who was foremost among them, struck him a blow with a pocket-knife on one of his rumps. Upon feeling the wound he turned and slashed his assailant in the belly with his bolo, and then forthwith took to flight, for the others continued to pursue him. Defendant attempts to show by this testimony that he was through necessity defending himself from the unlawful assault made upon him by the deceased.

But it appears fully proven in the case that the defendant Mallari did not go to Isidro Sunga's house to perform his wife's errand but that he went directly to another house, in which Vicente Sunga lived apart, to compel the latter to cure his sick wife; that when the defendant pursued him in the direction of the house of the teniente of the barrio, Sunga's wife, Canuta Flores, and her brother, Dalmacio Flores, came out of the house unarmed and saw the assault; that upon approaching Sunga, whom they found seated on the ground with a wound in his belly, they rendered him aid. At that time the defendant, who had assaulted him, was no longer there, as he had straightway taken to flight. The agents of the authorities and the justice of the peace who went to the place of the assault found no weapon in possession of the deceased, or of his wife and his brother-in-law.

Isidro Sunga, who lived in another house with Silvino Sunga and Florentino Sunga, was not in his house at the time of the occurrence and none of these persons saw the affair, so they could not have pursued the defendant with weapons, as he affirms. The two neighbors, Bernardo Saul and Esteban Yama, who lived in houses adjoining the deceased's, stated that when they heard the cries of Canuta Flores calling for help they left their houses and thereupon saw the defendant pursuing the deceased Vicente Sunga; that upon arriving in front of the house of the teniente of the barrio, at the moment when Sunga turned toward the defendant, who was pursuing him, said defendant slashed him in the belly and straightway took to flight. They did not at that time see Sunga carrying any weapon, or that he attacked his assailant before being wounded in the belly.

The witnesses for the defense, Bonifacio Ignacio and Diego Yabut, assert that they saw four armed men pursuing the defendant on that occasion, the foremost of whom was the deceased, who was carrying a pocket-knife, while the others were provided with bolos, wherefore the defendant, upon being wounded in the right rump by the deceased, defended himself and slashed the latter with his bolo. To offset these declarations, the case affords positive proof that the defendant, without provocation or prior aggression, attacked the deceased with a bolo and wounded him in the belly.

The affirmations of said witnesses cannot prevail against the testimony of two impartial neighbors who came up at the cries of the deceased's wife calling for help and who, along with the brother-in-law of the wounded man, witnessed the occurrence and rendered him aid, without having seen those two witnesses of the defense on the spot or the alleged prior aggression of the deceased against the defendant.

Moreover, when the defendant was asked by the chief of police how he came to be wounded in the rump, he replied that he did not know who had inflicted that wound, and this statement of the chief was not impugned at the trial, so it may be that the defendant in preparing his defense wounded himself with a pocket-knife, for the wound was of a trifling nature; and at the investigation held by the justice of the peace who went to the defendant's house, the latter made no statement regarding the person who had inflicted said wound, while the physician who examined him said that it must have been received when he was standing still.

It does not therefore appear to be duly proven in the case that the defendant was attacked and wounded with a pocket knife by the deceased, and consequently that there was any prior unlawful aggression on the part of the deceased, to justify the finding that the defendant was compelled to wound him in the belly with a bolo in lawful self-defense. The plea or circumstance of exemption from responsibility must be fully proven in the same way as the principal fact, in order to hold that the perpetrator of the crime is not responsible therefor.

With reference to the classification of the criminal act, it does not appear in the case that this was erroneous, for in spite of the statement of the health officer that the deceased might have been saved if the wound had been aseptically treated from the first, its seriousness and fatal character being due to lack of antiseptics, still the person inflicting it is responsible for all the consequences of his criminal action, and therefore for the death that occurred some days after the deceased received the wound.

With respect to the third error assigned to the court for having held that the declarations made by the deceased before the justice of the peace had the character of ante mortem declarations, when the death of the deceased did not occur for three days and the wound was not in itself of a fatal nature, it must be remembered that as a result of the wound inflicted upon the deceased his intestines protruded and for this reason the wound was of a serious if not fatal nature. Therefore the opinion of the court with reference to the nature and force of the statements made by the victim before the justice of the peace at the time of the investigation is quite proper, because the credibility of statements made by a person severely wounded rests not only on the serious situation resulting from his wound but also on his physical and mental condition, which, given the depressed state of his mind, has induced the profound conviction that his life is actually slipping away, and that he is in positive and imminent danger of dying sooner or later from the wound; nor can the force of such declaration be affected by the circumstance that he died later, hours or days after it was inflicted, for when the patient did finally die his death was due to the wound whose gravity did not diminish from the time he made his declaration until the hour of his death.

In the case of *Moore vs. State* (96 Tenn., 209) the principle was maintained that "a dying declaration, otherwise competent, will not be excluded because it was made five days before death."

In the syllabus of the decision in the case of *Daughdrill vs. State* (113 Ala., 7, 9) it is held: "Where it is shown that deceased had received a dangerous wound and stated several times that he was dying, and wanted witness to take a message to his wife, and was gasping for breath at the time he was talking, and trembling from fear or excitement, a sufficient predicate is laid for the admission of a statement made at that time, as a dying declaration; and it is no objection to its admission that such declaration took the form of a message to another."

In the syllabus of the decision rendered in the case of *United States vs. Castellon* (12 Phil. Rep., 160) it is held: "Notwithstanding the fact that hearsay evidence is not admissible at a trial, the statements made by an individual who is seriously wounded, at a moment when he was dying, being convinced that there was no hope of

recovery, constitute per se at least a grave, conclusive and decisive indication of the culpability of the persons designated by the dying man, inasmuch as it must be assumed that he, being in so precarious a condition, spoke truthfully, and that he was not induced by a desire to tell a lie and to injure an innocent person."

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are refuted and said judgment found to be in accordance with the law and the merits of the case, it is affirmed, with the costs against the appellant.

Arellano, C. J., Johnson, Trent, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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