

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LEON DIANA, DEFENDANT AND APPELLANT.*G.R. No. 10362. November 29, 1915*

Ponente: TORRES, J.

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This cause was instituted by a complaint filed on October 6, 1914, by the prosecuting attorney in the Court of First Instance of Cebu, charging Leon Diana with the crime of homicide upon the person of Cayetano Gomez. On the 14th of the same month, judgment was rendered in which the defendant was sentenced to the penalty of fourteen years eight months and one day of reclusion temporal, to the corresponding accessory penalties, to pay an indemnity of P500 to the family of the deceased, and the costs. From this judgment the defendant has appealed.

About one o'clock in the afternoon of August 31, 1914, Cayetano Gomez was playing a game of billards with Zenon Licaroz. Losing, the game, and being desirous of continuing to play, he asked for the loan of a small sum of money from Dionisio Legara who, with several others, among them Leon Diana, was in the billard room watching the game. Legara refused, so Gomez offered him as security the ring he was wearing, but Legara still refused to lend Gomez the small sum he desired. Thereupon the latter took offence and with the billard cue he was holding gave Legara a light punch. At this Legara picked up a stone from the floor with which to assault Gomez. Gomez, on seeing this, caught Legara by the shoulders and the two men immediately grappled with each other and struggled until they fell against the partition of the apartment. At this juncture Leon Diana, Gomez' uncle, arose from the bench where he was sitting and, seizing one of the cues near the billiard table, roughly addressed his nephew Gomez, asking him why he had picked a quarrel with Legara, with whom he was struggling, and immediately thereafter struck a blow with the handle of the cue at a moment when Gomez, on hearing the words turned his face toward his uncle and so received the blow on the upper part of his forehead. As a result of this assault the struggle ended and Gomez bled through his mouth and nose. On account of his injury, without saying a word and without any dispute or altercation between himself and his assailant, Gomez left the place, the people there present believing that he had started home. Leon Diana struck his nephew only this one blow and, though he saw Gomez bleeding at the mouth and nose, said nothing to him and left the billiard room shortly after the assault and as soon as he heard some of the by-standers say that the blow with the cue had struck the deceased on the forehead.

The defendant in his testimony admitted having made use of the billiard cue on seeing the struggle between Cayetano Gomez and Dionisio Legara, and that the latter struck the former on the forehead with a stone and, in spite of the defendant's interference, would not separate from Gomez, but soon after caught him by the neck. Diana testified that he therefore seized the billiard cue and struck at Dionisio Legara with it, although, as he was told by some of the eye-witnesses, it was Cayetano Gomez who received the blow on his forehead. The defendant denied that he had had any trouble whatever with the deceased or with the latter's family, but this statement is contradicted by the eye-witnesses Pedro Cardente and Juan Obeda (pp. 5 and 13, record).

The municipal policeman Angel Tecson testified that, in consequence of a report sent by the lieutenant of the

barrio of Armenia that, very late at night or very early one day, the date of which was not given by the witness, a man had been found lying stretched out on the provincial highway near the barrio of Montañesa, municipality of Malabuyoc, the justice of the peace of this pueblo, accompanied by witness and others, went to the place designated, situated at a distance of three and a half kilometers from the barrio of Montañesa, where they found the man referred to; that as the latter did not reply to the questions addressed to him he was taken to the municipal building of the pueblo, where he died a few hours afterwards; that an examination of the body of the deceased disclosed quite a pronounced inflammation which indicated a bruise on the forehead and a little higher up, toward the top of the head, it was observed that there was a small depression in the skull large enough to admit a finger; that a lot of blood flowed from the nose; and that the next morning witness took from the billiard room the cue that had been the instrument of the crime, on the butt of which blood stains were found. He added that no blood issued from the depression in the victim's skull.

From the facts above related it is concluded that the crime of homicide was committed, as provided for and punished by article 404 of the Penal Code. No qualifying circumstance whatever concurred to classify the crime as murder or as one for which a severer penalty is provided, inasmuch as Cayetano Gomez, on an occasion when he was struggling in a quarrel with Dionisio Legara, received a heavy blow on the upper part of the forehead which crushed in his skull and caused him to bleed abundantly at the mouth and nose; and, although the injured man did not fall down at the time of receiving the blow, but succeeded in walking along the highway for a distance of three and a half kilometers in the direction of the town, yet he must have fallen at the place in the road where the lieutenant of the barrio of Armenia found him lying and from where he was afterwards picked up, about three o'clock in the morning, by the justice of peace and the police who had gone to that place. The victim who was found speechless and unconscious died several hours afterwards, in the municipal building.

The defendant pleaded not guilty, but his defense is absolutely unsupported by evidence and the record affords satisfactory and conclusive evidence of his guilt as the sole perpetrator by direct participation, fully convicted beyond all doubt, of the crime of homicide here prosecuted.

It makes no difference whether the defendant's intention was to strike Dionisio Legara with the butt of the billiard cue or not, for the blow fell on the head of Cayetano Gomez, and no one is authorized or allowed, on the pretext of separating two combatants in a quarrel, to strike either of them a heavy blow on the upper part of the forehead or on the head with a billiard cue held at the smaller end, a circumstance which, aside from the vigorous impulse given to the cue by the assailant, undoubtedly imparted greater force to the blow on account of the heavy weight of the butt, which was the end that struck and crushed the victim's skull.

The same crime would have been committed if the injured man and the deceased had been Dionisio Legara, instead of the defendant's nephew, Cayetano Gomez; the crime of homicide would have been committed just the same and one man would have been deprived of his life by the criminal act of another.

The eye-witnesses Pedro Cardente and Juan Obeda testified that, after the defendant had addressed to the deceased the reproof, "Why have you picked a quarrel with this man?", he immediately struck the deceased a blow on the upper part of the forehead with the billiard cue; that it was not true Gomez was assaulted with a stone or held by the throat by Dionisio Legara, inasmuch as Gomez, on seeing that Legara was picking up a stone, immediately sprang at and caught him by the shoulders; that, as a result of the struggle that ensued between them, Legara dropped the stone from his hand.

The defendant who, in order to separate the combatants, seized a billiard cue by the smaller end and struck one of them therewith squarely on the head, must have known of course that the butt of the cue would fall with, greater weight and force and would therefore inflict greater injury than if he had wielded the cue with the thick end of it

in his hand; and he also must have known that, by striking the blow on the head, a very delicate part of the body, for the wounds and bruises inflicted on it are often very serious, as it and the other important organs are more susceptible to injury by blows than are other parts of the body, the damage caused might produce fatal results, as happened in this case. For these reasons, the defendant cannot be allowed the benefit of the third circumstance of article 9 of the Penal Code.

However, it must be held that the commission of the crime was attended by the circumstance that the defendant acted on an impulse of passion and obfuscation (circumstance No. 7 of said article 9), on seeing his nephew struggling with Dionisio Legara, for he reproached Gomez for having engaged in a quarrel with the latter. In view of the scanty education and other personal qualities of the defendant, who is a fisherman by occupation and can neither read nor write, account should also be taken of the circumstance specified in article 11 of the Code, as amended by Act No. 2142. As there are, then, two extenuating circumstances with no aggravating one to offset their effects, he should be sentenced to the penalty next lower in degree than that provided by law for the crime.

For the foregoing reasons the judgment appealed from must be reversed and we should, as we do hereby, sentence Leon Diana to the penalty of eight years and one day of prision mayor, to the accessory penalties of article 61 of the Code, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs of both instances. So ordered.

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

DISSENTING OPINION

MORELAND, J.:

I agree with the Attorney-General, who, on behalf of the State, asks that the accused be acquitted on the ground that the evidence does not show that the injury inflicted by the accused caused the death for producing which he is being prosecuted. Only one blow was struck; yet two different and distinct injuries were found on the deceased just before he died,—one on the forehead caused by the accused, and another near the top of the head caused no one knows how. The latter appeared to be more serious of the two; and, from the evidence, no one can say which really caused death. The Attorney-General moves the discharge of the accused and I agree.

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