

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FILEMON BAYUTAS, DEFENDANT AND APPELLANT.*G. R. No. 10470. October 01, 1915*

Ponente: TORRES, J.

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These proceedings were instituted in the Court of First Instance of Cebu by a complaint filed by the deputy provincial fiscal on October 21, 1914, charging Filemon Bayutas with the crime of lesiones graves (serious physical injuries). On November 25 following, judgment was rendered whereby defendant was sentenced to the penalty of one year and one day of prision correccional, to pay an indemnity of P50 for medicine furnished by the physician, without prejudice to the institution of the proper action with respect to the latter's fees, to suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs. From this judgment Bayutas appealed.

Upon the night of October 8, 1913, after Esteban Paras and Alfonso Carvajal had finished playing a game of billiards in a hall of the pueblo of Barili, Province of Cebu, and just as they were about to commence a new one, the defendant, Filemon Bayutas, suggested laying a wager on Carvajal and against Paras. The latter then told Bayutas not to do so, as it would not be proper, inasmuch as he, Paras, and defendant were cousins and treated each other like brothers. To this Bayutas answered by telling Paras to keep still and to go on playing. Then Paras replied saying "All right, as you wish; name the bet; that is my proposition." Just then, with the cue in his hand, Esteban Paras put himself in position to make a stroke with it to start the game. At this moment the accused Bayutas struck Paras with a piece of hard wood about two inches in diameter a heavy blow on the nape of the neck and when the latter turned around to face his assailant, he received another blow on the forehead from the effects of which he fainted. When the defendant attempted to strike Paras a third blow, one of the witnesses present at the time of the occurrence restrained him.

After an examination by Dr. Cesar Mercader it was found that Paras had received a contused wound in the middle of his forehead extending obliquely from the medial lino in a downward and outward direction, as well as another wound, also contused, in the right side of occipital region, also running in an oblique direction. The wounds required 58 days to heal, during which period he at first showed symptoms of brain fever, a consequence of the habitual drinking of tuba.

Defendant pleaded not guilty and alleged; that while he happened to be in a billiard hall watching a game between Paras and Carvajal, the former, without any cause whatever, thrice challenged defendant to fight with him, and the third time, even challenged his father, who was also in the said billiard hall; that to avoid a quarrel defendant moved away; that while passing behind Paras the latter assaulted him, dealing him a blow with a billiard cue; that against this attack he defended himself first with his left arm and then with a club which he took from the hands of Juan Alesna; that in so doing he hit his assailant accidentally with the said club on the forehead and the nape of the neck; and that Fructuoso Bargamento, one of the witnesses present during the occurrence, succeeded in preventing Paras from dealing defendant another third blow with the billiard cue.

The contradictory testimony of both the injured man and the defendant is supported by their respective witnesses. If we are to believe the statements of defendant and his witnesses, the provocation and the actual assault were commenced by the injured man Esteban Paras, and the wounds which Paras bore in the forehead and the nape of the neck were inflicted by the defendant, Filemon Bayutas, in defending himself against Paras' attack with the billiard cue after Paras had several times challenged Bayutas and Bayutas' father to fight.

However, the testimony of the injured man and his witnesses unquestionably shows that Paras did not make any prior unlawful assault, but that after a slight altercation with Paras the defendant, undoubtedly angered by Paras' reproach in saying that being relatives and treating each other like brothers the defendant ought not to bet against him in the billiard game, placed himself behind and to the left of Paras at the time the latter was partly stretched out and bent over the table in the act of making a stroke to start the game, and Unexpectedly, with a thick, hard club, struck Paras a heavy blow on the nape of the neck; that when the latter turned his face to see by whom he had been hit the defendant dealt him another blow on the forehead which rendered him temporarily unconscious; and that Paras did not receive a third blow from his assailant because one of the eye-witnesses, Fructuoso Bargamento, restrained Filemon Bayutas.

It is to be presumed that the injury in the nape of the neck was the first one that the victim received, as the eye-witnesses testify he had his back turned toward his assailant, because if the wound in the forehead had been the first, the victim not having fallen face downwards on the floor (a detail which no witness maintained) it is not likely that he would have received the second blow on the nape of the neck. Furthermore, if it were true that the victim was attacked in front or that he had advanced toward his assailant to defend himself, or if he had retreated for the purpose of avoiding the second blow which his assailant dealt him immediately, or if he had turned his back to his assailant in order to escape, the contused wound would not have taken the direction observed by the physician who examined him. The testimony of the eyewitnesses who confirmed the charge preferred by the prosecution and the statements made by the wounded man appear corroborated by the description given by the physician of the situation and direction of the two wounds of Paras. The injury which he exhibited in the occipital region, according to the said physician, extended in an oblique direction toward the right side, which proves that the assailant inflicted the blow from behind and at the left side of the wounded man. If defendant's statement were true, namely, that, to defend himself from the blows which Esteban Paras was giving him with a cue he touched the latter accidentally, without striking him with the club with which he was provided, on the nape of the neck and the forehead, we fail to understand how it was his assailant happened to be seriously wounded in the nape of the neck, for it is not a natural sequence that in the very moment of the assault from which the defendant had been defending himself, the defendant should have placed himself behind his assailant; because then we must believe that no such assault happened and that what the supposed assailant did was to avoid and run from the supposed assaulted party. If it is true that Bayutas restricted himself to warding off with the club the furious assault which Paras made and only accidentally hit the nape of the neck and the forehead of his assailant with the said club we fail to understand, nor is there any explanation of how the victim received the serious wounds inflicted with force by means of a hard and thick club. The testimony, then, of the witnesses for the prosecution, as well as the situation and direction of Paras' wounds, give the true story of the affair just as the wounded man and his witnesses have narrated it and completely refute defendant's allegations. Bayutas did assault Paras at the moment the latter was turning his back toward his assailant and was leaning over the billiard table in position to begin the game, off his guard, and not believing that he could be attacked from behind, as did happen.

From the facts aforesaid it results that there has been committed the crime of lesiones graves, qualified by the circumstance of treachery, provided for and punished by article 416 of the Penal Code in its 4th and penultimate paragraph, inasmuch as defendant, when he assaulted Paras without prior provocation, employed means, methods or forms in the assault conducive especially to the consummation of the crime without those risks to himself

which could arise from any defense that the injured man might be able to make inasmuch as, after being struck on the back of the neck, Paras was hardly able to turn his head to see his assailant, and before he was able to recover from either the effects of the pain or the disturbance which the blow produced he immediately received another blow on the forehead. The wounded man was completely cured without any injurious after effects with 58 days' treatment.

We consider the classification of the crime by the number of days required to cure the wounded man to be in accordance with the law. It is unquestionable that the two wounds of the injured man took the said number of days to heal, with medical attendance. He might have been cured sooner, had he not been addicted to tuba drinking, but this circumstance, however, does not mitigate the defendant's responsibility, since he willfully assaulted and injured the victim with a club, thus violating a prohibitive law; and if the wounded man, owing to his physical condition and the state of his health, was not cured in a less number of days than that specified, the perpetrator of the crime is responsible nevertheless for all the consequences of the personal injuries that resulted. No consideration can be given to the circumstance that defendant did not intend to cause such serious harm as he did, inasmuch as he, the assailant, availed himself of a club of hard wood, two inches in diameter, for the purpose of assaulting the wounded man on the nape of the neck and the forehead, in which parts of the human body wounds are almost always considered by physicians as of uncertain prognosis. Therefore it cannot be believed that defendant did not intend to cause the greatest possible injury to the victim.

However, in the commission of the crime, one must take into consideration the concurrence of the extenuating circumstance No. 7 of article 9 of the Penal Code, as the reproach which Paras addressed to defendant must have caused the latter temporarily to lose his reason and self-control. As this extenuating circumstance is not offset by any aggravating one, the penalty of prison correctional in its minimum and medium degrees, prescribed in the penultimate paragraph of the aforementioned article 416, must be imposed upon defendant in the minimum degree, as the trial judge has done in the judgment appealed from, which is in accordance with the law and the merits of the case.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from have been refuted, the said judgment should be, as it is hereby, affirmed; provided, however, that the defendant shall be sentenced to pay the offended party P29 as damages for the wages which the latter lost and failed to earn, and P80 as the cost of the medicine and the fees of the physician who attended him, and, in case of insolvency, to suffer the corresponding subsidiary, imprisonment, with the costs of this instance.

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

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