

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANDRES VILLANUEVA, DEFENDANT AND APPELLANT.

G. R. No. 10606. September 11, 1915

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

This case has come up on appeal from a judgment of the Court of First Instance of Mindoro, by which Andres Villanueva was sentenced to two months, and fifteen days' *arresto mayor*, accessory imprisonment, to indemnify the aggrieved party, Isidoro Benter, in the sum of P21, or, in case of insolvency, to suffer subsidiary imprisonment and to pay the costs.

According to the complaint Villanueva is charged "while quarreling with his opponent, Isidoro Benter, with having suddenly snatched the bolo which the latter was carrying at his belt and with it inflicting upon him a wound in the palm of the right hand that incapacitated the aggrieved party from performing work for more than thirty days and which rendered the said principal member entirely useless."

But it turns out that Villanueva was not Benter's opponent nor was there any quarrel between the two. Neither did Villanueva inflict any wound upon Benter. The latter injured himself by an accident arising out of his own act.

Benter himself testified that he had agreed to take Villanueva to the town of Pola in his boat; that on arriving at the landing the boat was not there; that, thereupon he told Villanueva that to avoid being late the latter ought to start right away; that while both of them were standing with their arms folded it occurred to Villanueva to take hold of the bolo which complainant carried at his belt; that the complainant tried to retain it and that in doing so he caught it by the blade and cut himself in the palm of the right hand; that without a word being said, either before or afterwards, Villanueva being in the best of temper, on finding himself injured the complainant left the spot while Villanueva remained there. The court:

"Q. When the accused took the bolo from you was he angry or was he in a good temper?—A. He was in a good temper.

"Q. What was his object in securing the bolo when he took it from your belt?—A. Because he suddenly snatched my bolo and I caught at it.

"Q. When did the accused note that you were wounded in the hand?—A. When I was leaving.

"Q. So that you did not show the cut to the accused right after you wounded yourself?—A. No, sir; I left at once.

"Q. When you told the accused that you did not have a banca at your disposal, what sort of a temper was he in?—A. He did not speak.

"Q. Had there been any dispute between you prior to that date?—A. No, sir."

Rufino Cabe and Nicolas Montejo, witnesses for the prosecution, learned at the time from Benter that he was wounded, but the first did not discover from Benter how it came about and the second testified that Benter had

said nothing as to who had wounded him.

And that is all there is in the record with respect to the act complained of.

Said act took place on the 5th of July, 1914, and the complaint was not filed until the 10th of October, 1914. Thus Benter was able to testify that the wound delayed in healing for more than forty days. The trial was held on December 8, and then Benter showed a scar in the right palm that ran from the base of the little finger to the first joint of the index finger. The judge noted that the index finger was stiff and that the man could not extend the ring finger. Neither was the allegation contained in the complaint, to the effect that the right hand had been rendered entirely useless, proven at the trial. The court asked the *ctrujano ministrante* called as an expert witness to look at the scar to see if Benter could work as well with his hand in that state as when it was in its former normal condition. The witness said no, for the reason that it was not entirely healed inside; that on the other hand no arteries were injured, for if they were, articulation would be impossible.

The principal charge of the accusation, that Villanueva inflicted upon Benter the wound in question, is not proven in the slightest. The defense prayed for dismissal. The prosecution did not oppose it. But the lower court denied the petition. The defense renounced its right to present evidence. And the court pronounced judgment of conviction in which he sums up the act complained of in the following language: "That the accused, suddenly and without saying a word, drew the bolo from the sheath in which the aggrieved party Isidoro Benter was carrying it at his belt; that the said Isidoro Benter instinctively caught at the bolo to retain it and in so catching it with his right hand, the said bolo, in sliding through with all its edge (with all its weight?) wounded him across the entire width of the palm of the hand in a direction perpendicular to the base of the fingers; the wound was not healed for more than 40 days."

According to this opinion it was the bolo that wounded Benter, not the accused. But this notwithstanding—"In the opinion of the court, the act complained of, as proven at the trial, constitutes *lesiones graves* by reckless negligence, a crime provided for and punished by article 568 of the Penal Code, because the accused, in taking the prosecuting witness' bolo from its sheath, without intending to wound the latter, performed an act which occasioned the wound in question, because he did not employ that care and precaution which any person who was in the least careful would have taken to avoid the evil which he produced."

The law speaks of a person who by reckless imprudence commits an act which, if maliciously performed, would constitute a grave felony. (Art. 568, Penal Code.) But the act of the accused in the case at bar does not constitute a felony, grave, or *menos grave*, nor is it a misdemeanor. The only act which he performed was to take, or attempt to take, from its sheath the bolo which Benter was carrying at his belt, and that was an act which is not defined in any law as being a crime or misdemeanor.

If the accused, in drawing the bolo from its scabbard, or if any other person in taking a revolver from the belt of a person carrying it, should, by not employing proper care, wound the latter, clearly, then, he would have to answer for his act of injuring the other, as guilty of having caused an injury without malice and merely by reckless negligence by reason of not using proper care. But the defendant did not wound Benter. It was the latter who, by his own act in catching hold of the edge of the blade of the bolo, wounded himself, or as is said in the judgment appealed from, the bolo, by its edge or by its own weight, in slipping from Benteu's hand into the scabbard because he did not grasp it firmly, wounded Benter; the bolo did this, not the defendant.

The crime of *lesiones graves* (physical injuries) which the trial court understands to be committed without malice or with reckless imprudence is thus classified in article 416 of the Penal Code: "Any person who shall wound, beat, or assault another * * * shall suffer: 1. * * *. 2. The penalty of prison etc., if in consequence of the physical injuries inflicted the injured person shall have lost an eye or any principal member, etc."

The defendant did not wound, beat, or assault Benter; consequently he cannot be guilty of the crime of inflicting serious physical injuries, not even by reckless imprudence. A similar case was decided by the appellate court on June 11, 1880: "Whereas it appears that on the evening of the 26th of April, 1879, Cipriano Belinchon, a mute, in company with his servant, Salustiano Sanchez, went to cut some grass on the side of a declivity in a garden belonging to Evaristo Gomez; that the latter came up and warned Cipriano not to do it again because he was keeping the grass for use in his stables; that thereupon the mute became angry; that raising his sickle he threatened Evaristo with it, whereupon the latter, in order to frustrate the blow, caught hold of the sickle, saying, 'Ah, you rascal, you have cut me!' inflicting upon himself various cuts on the three last fingers of the right hand that took until the 18th of May to heal, * * *": Whereas, according to article 1 of the Penal Code, crimes are willful acts and omissions punished by law: Whereas the only action attributed to the defendant Cipriano Belinchon in the judgment appealed from is that of having threatened to strike Evaristo Gomez with the sickle with which, a few moments before being warned, he was cutting grass, it cannot therefore be doubted that this simple act on the part of Belinchon cannot fall squarely within the penal sanction of article 431 that was applied by the trial court, the latter being of the opinion that a person is responsible who wounds, beats or assaults another, causing him any of the physical injuries set forth in the four paragraphs that constitute the article: Whereas the injuries of this character, which render a member not a principal one useless, which were inflicted upon Evaristo Gomez and are provided for in paragraph 3 of the said article, were not the direct effect of a wound, blow or assault made upon him by Belinchon, but by the indiscretion with which, when the sickle was raised and without the necessary blow being struck, he seized the tool and cut his fingers—an act which could not possibly have been foreseen by the defendant nor have been prevented on account of the rapidity with which it is to be imagined Gomez grasped the sickle that was raised in the attitude to strike. * * * we therefore decree that the appeal taken by Cipriano Belinchon Lucas from the judgment of the criminal sala of the Audiencia de Albacete be sustained and the judgment is hereby reversed."

In the present case we have to take into consideration the fact that the defendant, in taking or attempting to take the bolo from its scabbard, made not the slightest threat or any indication of striking with it. His action appears to have been motivated by mere curiosity.

The judgment appealed from is reversed. We freely acquit Andres Villanueva with the costs of both instance de officio. So ordered.

Torres, Johnson, Carson, Trent, and Araullo, JJ., concur.

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