

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALEJANDRO ZAMORA, DEFENDANT AND APPELLANT.

*G.R. No. 10615. November 16, 1915*

Ponente: ARAULLO, J.

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### ARAULLO, J.:

These proceedings were brought by a complaint, filed by the provincial fiscal of Oriental Negros, couched in the following language:

"The undersigned fiscal charges Alejandro Zamora with the crime of homicide, committed as follows:

"That said accused, Alejandro Zamora, at or about the hour of 6 p. m. of the 8th of December, 1914, in the municipality of Sibulan, Oriental Negros, Philippine Islands, did maliciously, unlawfully, and feloniously approach Custodio Pisan who was sitting chopping wood at the foot of the stairs of his house, situated in the center of population of said municipality, and without justifiable motive did assault said Custodio Pisan with a pocketknife which he was carrying, dealing him by means of the same a blow in the abdomen, thereby inflicting a wound in the right iliac region which affected the skin, the subcutaneous tissue, muscular sheath, the peritoneal serous membrane and the intestines. From the results of this wound said Custodio Pisan died at 3 p. m. on the 10th day of December, 1914, that is, two days later.

"An act committed in violation of law and within the jurisdiction of this court."

Defendant pleaded not guilty, the case was tried and the Court of First Instance of said province, on January 16 of the present year, rendered judgment in which he found defendant guilty of the said crime of homicide, without any modifying circumstance. Holding that the penalty which should be imposed upon defendant was reclusión temporal in its medium degree, the court sentenced him to fifteen years' imprisonment in Bilibid, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs of the trial. From this judgment defendant has appealed and alleges that the lower court erred in finding him guilty of said crime of homicide, in sentencing him to said penalty, and in basing judgment on conclusions drawn from other cases and not from the one at bar.

The following are the facts proven at the trial: that about 6 o'clock in the evening of December 8, 1914, the defendant, Alejandro Zamora, who was courting Francisca Fonollera, met her in one of the streets of the municipality of Sibulan, Oriental Negros, where they both resided; that when he spoke to her, she did not reply and showed herself indifferent, so he caught her hand to detain her; that as she was making an effort to get loose he tried to slap her; that thereupon she started to run, but was overtaken by defendant who caught her by the hair; that then they both fell to the ground, and he embraced her; that attracted by her outcries the municipal president with other persons came to assist so he with their assistance succeeded in securing the defendant and in releasing Francisca Fonollera; that a few moments afterwards, defendant, having succeeded in freeing himself from those who were detaining him, said: "Let go of me for I'm not going to hurt her;" that he then stepped aside, put his hand into his pocket, and saying, "Don't come near me," started to run towards his sweetheart's house; that not finding her at home, he went on; that when passing in front of the house of Custodio Pisan who was at the foot of

the stairs gathering firewood, he approached, said good evening, sat down beside Pisan and stated that his sweetheart would not marry him unless the marriage was celebrated in the Catholic Church, exclaimed, "Ah, Diong, what a fix I'm in;" that with a pocketknife carried in his hand, he struck Pisan a blow inflicting a very serious wound which penetrated the abdomen in the right iliac region, injured the muscular sheath and the serous peritoneal membrane, and caused an intestinal hernia; that after inflicting this wound defendant immediately began to run away but was arrested in a few moments by the chief of police who seized the pocketknife defendant was carrying with him at the time; that two days later Custodio Pisan died on account of the wound.

The defense alleges that defendant did not act willfully and intentionally when wounding Custodio Pisan, that he was unaware of having then in his hand the pocketknife with which he wounded said Pisan, and that just at the time he was arrested did he become aware that he was carrying it.

The facts that occurred and the defendant's own testimony show, however, that such a plea is unsustainable.

When the defendant testified in this case for the first time, as a witness in his own behalf, he related all that occurred that afternoon between himself and his sweetheart, as well as between himself and those who came up to separate him from her, said that after he had succeeded in freeing himself from the persons who were holding him, he went to look for his sweetheart again; that as he did not find her, he ran to where Custodio Pisan was seated at the foot of the stairs of his house; that he remarked to Pisan: "What a fix I'm in," and added that he then arose, struck himself blows on the breast, started off on a run and met the chief of police who halted and conducted him to the municipal building, asking whether he was the one who had inflicted the wound upon the deceased; that he replied he was not, he had wounded nobody; that the chief of police then put him in the municipal jail; and that upon Custodio Pisan being asked there who had inflicted the wound replied that the defendant had done so. But when the defendant was asked whether he had learned who it was that had wounded Custodio Pisan, he replied: "I don't know; I didn't notice. I did not inflict any wound upon him." When asked whether he had wounded Pisan, he replied: "No, because I did not know that I was carrying anything in my hand." Asked whether he was carrying a pocketknife that night, he replied: "I did not know whether I was carrying anything in my hand when I met Cuotodio." On cross-examination, defendant also said that as he did not find Francisca in her house, he had started for his own; that he ran because he did not realize what he was doing; that he met Custodio; that afterwards when meeting the chief of police who commanded him to halt, he said to the officer that he had not wounded anybody; that he did not know whether he was carrying any pocketknife in his hand; that the chief of police caught him by the hand and took away the pocketknife he was carrying. Defendant finally admitted that he was carrying a pocketknife when the chief of police caught him, but said that he did not know whether it was then open or not, and he added that in going towards his house he went on a run because he was bewildered and did not know what he was doing.

As is seen, the defendant has given a perfect account of all that he did and said on this afternoon, of all that then happened between him and his sweetheart Francisca Fonollera as well as those who seized him in order to separate him from her; that he recollected what he had said and the efforts he had made to free himself from them; his having afterwards gone to Francisca's house to look for her, and his not having found her there; his having afterwards gone towards his own house on a run; his having then met Custodio Pisan; what he said to the latter, lamenting his own sad situation; his having struck himself blows on the breast and starting to run again; his having been arrested by the chief of police, and the latter having, on arresting him, found in his hand the pocketknife he was carrying. According to defendant's testimony, the only thing which he did not recollect was that he was carrying the pocketknife in his hand and that it was open when he approached Custodio Pisan, while he was beside him, when he left, and when he again started to run; just at the very moment he was arrested by the chief of police and this officer caught him by the hand and took the pocketknife away from him, did he realize

that he had it in his hand.

It is decidedly unlikely and cannot be believed that defendant could realize all that he did and said on such an occasion (as shown by the fact of his recalling with such detail those events and sayings and by his relating them in his testimony), but that he could not then perceive that he was carrying an object in his hand, such as the pocketknife, during all the time that elapsed from even before the time he approached Custodio Pisan and while he was beside him, until he was arrested by the chief of police, and that he had opened the knife; for it was open when he inflicted with it the wound in Pisan's right side, and there is no evidence that it was any other person who opened it.

That which most shows the lack of truth in the testimony of the defendant with respect to the point under discussion, shows his testimony in connection with this incident was studiously framed for the purpose of making believe that he could not even have intended to wound Pisan for the reason that he did not know that he was carrying a pocketknife in his hand, is that when he succeeded in getting away from the municipal president and the persons who were holding him, on their separating him from his sweetheart, and when he stepped aside, as the municipal president himself testified, defendant put his hand into his pocket, saying: "Don't come near me," and shortly afterwards started to run. Rafael Banaynay, one of those who held defendant and from whose hands he succeeded in freeing himself, testified defendant then said: "Don't come near me." Defendant's gesture of putting his hand into his pocket when he said: "Don't come near me" indicates that he was carrying something in his pocket with which he could injure those who had held him had they tried to catch him again, and that "something" must have been the pocketknife that he used a few moments afterwards to wound Custodio Pisan. It cannot therefore be believed that defendant did not know that he was then carrying it with him, and still less can we believe him since if he was not carrying it open when he had it in his pocket, he must have opened it before he approached Pisan, or, as we have said before, while he was beside him.

Furthermore, Nicanora Abiera, Pisan's wife, being at the window of her house, saw defendant approach her husband while the latter was engaged in chopping wood at the foot of the stairs of the house and testified that the defendant came from the house of Francisca Fonollera; that he walked slowly toward her husband; that he slowly drew nearer to Pisan, sat down beside him and, after a few moments, assaulted him with the pocketknife which he was carrying in his hand; that he immediately thereafter ran off. This witness added that when defendant came toward her house (Pisan's) he had his hand in his pocket.. This virtually confirms the truth of the conjecture that what defendant had in his pocket when, putting his hand into it, he told the municipal president and those who had been holding him not to approach him, must have been the pocketknife with which he wounded Pisan. Besides, it is difficult to believe that defendant, on returning to his house when passing in front of Custodio Pisan's went on a run because, as he said, he did not realize what had happened to him (and also to give the impression that he did not know what he was doing), for, besides the fact that Pisan's wife testified that he was then walking slowly, one cannot understand, if defendant was then running because he did not realize what had happened to him, how it is that he approached Pisan, stopped and even sat down beside him. It is more likely that defendant was walking along slowly, stopped on his way to see Custodio Pisan, went up to the latter to relate his misfortune and to lament over his sad situation, and afterwards wounded Pisan with the pocketknife carried in his hand.

Testifying for the second time, when questioned in regard to his position defendant stated that he was at the right of the deceased who was thus at his left; that he beat himself on the breast on account of his trouble; that in doing so he swung his arms toward his sides in a downward direction, and that he did not remember whether he was carrying a pocketknife or not. On being asked why he had remembered beating himself on the breast, making an exclamation and afterwards going away, he replied: "Because we were great friends." On being asked why he

could remember the things in his favor, but not what he did, he made no reply. As may be seen, when defendant testified the second time he entered more into detail of what occurred between himself and Custodio Pisan; he described his position with respect to the latter, and tried in a way to explain how he could then have wounded Pisan while striking himself blows on the breast and swinging his arms down toward his sides, though he added that he did not remember what he was doing; but these explanations only bring out in bolder relief his pretended ignorance of the fact that he was then carrying a pocketknife, for it is seen that he tried to make believe that he could have wounded Pisan in making those movements with his arms, while he held the knife in his hand without knowing it, which, as has been shown, was impossible. Given the situation of the wound, according to Dr. Miciano who made the post mortem examination of the deceased, as somewhat oblique and running from behind downward toward the front, in the opinion of said physician, the deceased must have been at one side and the defendant must have passed behind him in order to stab him; and, besides, the wound being in the right iliac region, that is, in deceased's right side, it is consequently inexplicable that the defendant on swinging his arms, as he said, down toward his sides should have chanced to wound Pisan with the knife for, whether he was at Pisan's left or right (which latter supposition is the most probable as the wound was in the victim's right side), whether he had the knife in his left hand or in his right, he could not have caused the wound by the movements he made, as he said, by swinging his arms toward his sides, but must have inflicted it by guiding the blade of the knife directly toward the place where the deceased was wounded or, better said, in the language of the physician himself, defendant must have stabbed in that part of the body of the deceased.

Taking into account, then, the facts as they occurred, in connection with the statements made by defendant himself, it cannot be held that he acted unconsciously in wounding Custodio Pisan, as he claims, nor that the act performed by him was not free and voluntary.

Neither is there any proof whatsoever that defendant was not then of sound mind; or that he performed the act at the moment of madness or mental derangement; or that he was generally considered to be insane. As he was habitually healthy, the legal presumption is that he acted in his ordinary state of mind, and this presumption was not refuted by any evidence of the defense.

On the contrary, the disdain with which defendant was treated by his sweetheart a few moments before the crime; the quarrel which he had with her on that account; the vexation which he undoubtedly felt on account of the mediation of the municipal president and the others who, by holding and separating him from the girl, allowed her to get out of his reach; the disappointment and annoyance he must have experienced at not finding her in her house immediately afterwards must have created in him the desire to cause some harm to the girl herself and also must have predisposed him to injure any other person whomsoever, blinded as he was by anger and the desire for revenge, as in fact he did harm Custodio Pisan, notwithstanding his intention may have been to do injury to the girl. Therefore there was intention, there was will on the part of the defendant, and although it be considered that his purpose was to cause the harm to his sweetheart, Francisca Fonollera, and that, while frantic and controlled by this purpose, he chanced to wound Custodio Pisan whom he met on his way, he must be held liable for the act he performed and for all its consequences, notwithstanding that such act and its effects were inflicted upon and suffered by a different person than the one upon whom he intended to wreak his vengeance, because "any person voluntarily committing a felony or misdemeanor shall incur criminal liability, although the wrongful act done be different from that which he intended." (Article 1, par. 3, Criminal Code.)

As it has been proven that defendant killed Custodio Pisan and that the crime was not attended by any of the circumstances specified in article 403 of said code, under the provision of article 404 of the same code he is guilty of homicide and the lower court did not err in finding him guilty of said crime, as a principal.

In the commission of the crime, no circumstance modifying defendant's criminal liability is to be taken into

account, for, even though it be considered that the disdain and indifference displayed by his sweetheart, Francisca Fonollera, was such a powerful stimulus that it produced in him ungovernable passion and obfuscation, such a circumstance cannot be taken into consideration for the purpose of mitigating his liability, because Custodio Pisan, the deceased, had absolutely nothing to do with the quarrel between defendant and his sweetheart and took no part whatever in the acts performed by defendant as a result of those causes.

Finally, it cannot be said, as the defense avers, that the trial court, in making the following statements in said judgment, based its judgment in the case at bar on conclusions drawn from other cases:

"This is the fourth case of this nature that has come before this court since yesterday, and all are alike; they all have the same motives; they quarrel or have some trouble with their wives and then sally forth to kill anyone they may meet. This class of crime is the most common or general of all the crimes committed in this province; it is the same motive that actuates nearly all or the majority of the criminals who appear before this court; and as things have reached such a point, the court can have no sympathy or feeling for the culprits, because it is necessary to protect and safeguard the rights and the lives of those citizens who attend to their own affairs."

As may be seen, the statements made in the preceding paragraph had no other object than to record that crimes of the class of the one committed by defendant are not rare in the Province of Oriental Negros, and that they should not go unpunished.

For the foregoing reasons, we affirm the judgment appealed from, with the costs against appellant, provided, however, that the penalty of fifteen years' imprisonment imposed upon him shall be one of reclusion temporal, and that, besides, he shall be sentenced to the accessory penalties of absolute temporary disqualification in its full extent and subjection to the vigilance of the authorities during the period of the sentence, and for a like period which shall begin to run from the expiration of the first; but in view of the nature of the principal penalty, he shall not suffer subsidiary imprisonment for insolvency with regard to the indemnity of P1,000, to which he was likewise sentenced. So ordered.

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

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