

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FRANCISCO MENDAC, DEFENDANT AND APPELLANT.*G. R. No. 10735. August 05, 1915*

Ponente: TORRES, J.

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This case has been brought up on appeal filed by the defendant from the judgment of March 18, 1915, whereby the Honorable W. E. McMahon, judge, sentenced him for the crime of homicide to the penalty of fifteen years of reclusion temporal, to an indemnity of P1,000 to the heirs of the victim, and to the costs.

Between 2 and 3 of the afternoon of March 8 of this year when, along with others, the victim Anselmo Badan and the defendant Francisco Mendac had been gambling in the house of Nicolasa Piñol, situated in Dumaguete, Oriental Negros, these two quarreled and started to fight but were separated by the lieutenant of the barrio, Crispulo Patron, and others present. The disputants then retired to their respective houses; but about an hour later the defendant Mendac, who lived on the hill beside the place where the gambling had occurred, left his house and went along the road at the side of the house of the victim Badan, distant some 20 brazas from the house in which they had been on the point of fighting, to a place opposite that in which the defendant lived with respect to the house where the gambling occurred. At that moment when the victim Badan saw the defendant coming he asked him if he was willing to fight, to which the defendant replied affirmatively, whereupon the victim came down out of his house with a bolo for the purpose of fighting with the defendant who was also armed with a bolo. Thereupon the defendant immediately attacked the victim and inflicted upon him a serious and fatal wound in the abdomen, from which his intestines protruded. He died an hour and a half later, and the physician who examined his corpse certified that he had found a slash in the abdomen near the navel from which protruded a large portion of the intestines, and that the victim had died as a consequence of this serious wound.

The facts set forth, duly proven in the present case, constitute the crime of homicide, provided for and penalized in article 404 of the Penal Code, for after the altercation the defendant had with Anselmo Badan in Nicolasa Piñol's house, when they were prevented from coming to blows through the intervention of the lieutenant of the barrio, Crispulo Patron, and others there present, the disputants returned to their respective houses and at the end of an hour the defendant Mendac, who lived on the hill near by, came back along the street beside the house of the victim Badan, who upon seeing him asked him if he was willing to fight. The defendant replied affirmatively and waited, bolo in hand, for the victim to come down out of the house, and when the latter reached the ground the two confronted each other, whereupon Anselmo Badan immediately received a slash in the abdomen near the navel which made a serious wound that let out his intestines and caused his death an hour and a half afterwards.

It has not been proven that in the commission of the homicide there concurred any of the qualifying circumstances set forth in article 403 of the Code to determine the classification as murder. Nor does any unlawful aggression, with the other requisites established in No. 4 of article 8 of the Penal Code, appear to have preceded the violent death inflicted upon Anselmo Badan: there is therefore no ground for the allegation that the court incurred the fourth error assigned in the brief of the defense. If the defendant Francisco Mendac, an hour after he had been

separated by the lieutenant of the barrio from the deceased when they were at the point of fighting on account of a violent dispute, had not left his home, which was located some distance away from that of the deceased, and had not appeared in front of and close to this latter house in the street, they would not have had the meeting that gave rise to the crime under prosecution, because each had been on his guard against the other for some hours previous in the house where the gambling occurred. When Anselmo Badan saw from his house the approach of the defendant and immediately understood that the defendant was looking for a fight, he asked the latter if he was willing to fight underneath his house, saying, according to the witnesses Crispulo Patron and Damian Barba: "Now that we're here, we can do as we like; so let's end it now." This demonstrates that one was as anxious as the other to fight, the defendant when he left his house and approached that of the deceased and the latter in leaving his house when he saw his opponent in the street in front of it; and if it were true that the defendant passed in front of the house of the deceased on his way to work he would have done so at the usual hour when the laborers begin the work they are engaged in, and if he had not been looking for a quarrel he would have turned aside and away from the scene of the occurrence when he saw Anselmo Badan coming down out of his house to fight.

Both were armed with bolos, Anselmo Badan came down out of his house, the defendant Francisco Mendac waited for him in the street ready to quarrel, so when the struggle between the two had begun the fact that one of them was the first to attack, as is natural, is a mere accident of the contest. It would be improper to apply to the case the exempting circumstance of self-defense, established by No. 4 of article 8 of the Penal Code, for when the disputants were face to face mutually ready to attack, as occurred, it is improper to admit unlawful aggression on the part of either of them and the need of self-defense, especially when both by mutual consent made preparation and placed themselves ready to attack each other. Nor can the affair be classified as a duel, although both disputants exhibited a decided willingness to quarrel and to attack each other, because the conditions required by law to constitute the crime that of dueling, as especially penalized by the Code, were not present.

We accept the ruling of the lower court and the classification it made in view of the evidence adduced at the trial, because there is no ground or reason for making a different finding from the facts that occurred; and as there did not concur in the perpetration of the homicide any extenuating or aggravating circumstance, the penalty the law fixes for the crime must be imposed in its medium degree.

As for the first error assigned by the defense, it cannot be denied that the ruling of the lower court in denying the motion to dismiss filed during the trial by counsel for the defendant is in accordance with law, especially when such ruling is within the sound discretion of the court that tries the case and passes upon the merits which the evidence develops; and the result of the trial has justified the correctness of said ruling. Also the allegation is to be held groundless that the second error was incurred by the court in finding that the defendant had appeared in the vicinity of the victim's house, not in order to go to work in the town of Dumaguete, but to continue the fight that had been interrupted some time before through the intervention of the lieutenant of the barrio, and to kill the victim.

The trial court made no error in not holding in the defendant's favor any extenuating circumstance, such as Nos. 3 and 4 of article 9 of the Code, for even though the defendant in attacking his adversary only inflicted upon him a single wound the fact is that he slashed him in the abdomen with perverse intention and inflicted upon him a serious and fatal wound; and therefore in doing so it is to be presumed that he definitely intended to inflict upon him the greatest injury possible and even death. Nor can it be held that there was provocation on the part of the victim, for if the defendant had not appeared in the street in front of the victim's house, perhaps the crime would not have been committed. Therefore it must be held that the two were ready and willing to fight, for one sought the other and both at once confronted each other armed, although the defendant, impelled by the instinct of self-preservation, did not wait for his adversary's attack and was beforehand in striking him, thus inflicting a fatal

wound.

For the foregoing reasons the judgment appealed from should be affirmed, as we do affirm it, with the costs of this instance against the defendant, with the further understanding that he be sentenced to the accessories of article 59 of the Code. So ordered.

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

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