

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ROBERTO PANGILION, DEFENDANT AND APPELLANT.*G.R. No. 11480. August 17, 1916*

Ponente: MORELAND, J.

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It is charged, and the prosecution introduced evidence to prove, that, on the early morning of the 11th of August 1915 one Braulio Owano asked Candida Ancero to send her sons to his house to assist him to shell com. He made the request from the lower part of Candida's house and, after making it, proceeded on his way. He had no more than started when Candida heard him crying for help. She ran from the house to ascertain what was going on. On coming in sight of Owano, she saw the accused, Roberto Pangilion, striking him from behind with a bolo. After being struck several blows he fell to the ground face down sustaining himself with his arms. Candida then hastened towards Owano's house to inform his wife of what was occurring; but the latter, having also been attracted by the cries of her husband, had gone to the place of the assault by a different way. On arriving on the scene she saw the accused on top of Owano in the act of cutting his throat with a bolo, passing it backward and forward across his neck as if he were using a saw. Horrified by the sight she ran for help. The village authorities soon arrived and found Owano covered with wounds but still alive. He died shortly afterwards of the wounds thus inflicted.

The accused pleads self-defense. He asserts that the deceased laid in wait for him behind some bushes for the purpose of killing him; that, on arriving at a point just opposite the place where the deceased was hidden, the latter suddenly attacked him with a bolo; that he leaped aside to evade the attack and, after various movements, succeeded in striking the bolo from Owano's hand. They then grappled and while they were fighting hand to hand the accused succeeded in approaching the bolo so closely as to be able to obtain possession of it. He then asserts that, after having obtained the bolo, the deceased again attacked him fiercely; whereupon he struck him a blow on the left side of the neck and, as the deceased still persisted in assaulting him, he inflicted other wounds with the bolo from which the deceased finally fell to the ground. It is claimed that the accused did not carry a bolo on the day in question and that, at the time of the fight, he was entirely unarmed.

It was shown by the evidence of the prosecution that, at the time the crime was committed, there was bad blood between the accused and the deceased and it is claimed that this was the motive which led the accused to attack Owano.

The trial court convicted the accused of homicide and sentenced him to fourteen years eight months and one day of reclusion temporal, with the accessories provided by law, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs of the trial. This appeal is from that judgment of conviction.

The first error assigned by the appellant is to the effect that the court erred in finding that there was bad feeling between the accused and the deceased at the time the crime was committed. It is established by the testimony of the wife of the deceased that, prior to the commission of the crime, the deceased and the accused had had

difficulty over one or more pieces of land and that the accused became angry toward the deceased. It also appears from the testimony of the witness Fausto Cogal that sometime prior to the commission of the crime the accused said to him in substance that it would not be a great while before something very serious happened to Owano as he, the accused, was going to cut his throat. The accused denied that there was any feeling on his part against the deceased or that he had made the statement attributed to him in the testimony of Cogal.

On conflicting evidence the trial court found that there existed at the time of the killing a feeling of resentment on the part of the accused toward the deceased and that that feeling was one of the causes which moved the accused to the commission of the crime charged. Counsel for the appellant admits that there was a transaction concerning land between the accused and the deceased and that certain instruments were executed between the parties relative thereto; but claims that there was no feeling engendered as a result of that transaction and, as clear proof thereof, pointed out that the accused executed the paper requested by the deceased in a friendly spirit. He points also to the lapse of time between the transaction and the commission of the crime as being so extended as to destroy the theory that the one could be the moving cause of the other. After a careful examination of the record and the argument of counsel, we are forced to conclude that there was something quite different from a friendly feeling between the parties following the real estate transaction referred to. It appears clearly from the evidence that the accused was resentful and angry and that he subsequently threatened to cut the throat of the man with whom he had had the transaction. We are unable to find such error in the findings of the trial court in this regard as would warrant a reversal or a modification thereof.

The second error assigned charges that the court erred in finding that the bolo with which the crime was committed belonged to the accused and that he used it in the commission thereof. Here again we find the evidence conflicting. It is admitted that only one bolo was used in the conflict. The accused strenuously claims that the bolo belonged to the deceased and not to him and offered witnesses to substantiate that assertion and also to prove the further fact that he was unarmed at the time the fight commenced. Felix Sumayang and Victorio Sinining testified that they saw the accused immediately before the affray and in the immediate vicinity of the spot where it took place and that he did not carry a bolo but was entirely unarmed. The witness Calixto Tequin also testified that he saw the deceased immediately prior to his death and that he carried a bolo in his hand; while Marcos Collantes swore that he recognized the bolo with which the crime was committed as the property of the deceased as he had theretofore seen it frequently and was familiar with it. On the other hand the witness Juan Ropal, as we have already seen, saw the accused immediately before the crime was committed armed with a bolo and proceeding toward the residence of the deceased. Domingo Aballe, another witness for the prosecution, testified that he lived near the place where the crime was committed; that he saw the accused just after the commission of the crime and that he stated to him that he had killed Braulio Owano of Mandaue, and that he carried a bolo in his belt. He also stated that he observed that a portion of the clothing of the accused was blood stained.

It is to be noted as a fact of some significance that, after killing the deceased, the accused, although he claimed that the bolo with which the deed was committed belonged to the deceased, nevertheless carried it away with him.

The learned trial court considered the evidence with respect to the ownership and possession of the bolo in question very carefully and at length. His conclusions are clearly sustained by the evidence and we find nothing which would require modification of them. After a review of the testimony of the various witnesses for the accused touching this point, the trial court took up the evidence of Marcos Collantes, one of the chief witnesses, and said :

"With respect to the testimony of Marcos Collantes in which he identified the bolo as one he had frequently seen in the possession of the deceased prior to the crime and which belong to him it is to be noted that the bolo in question together with the sheath and the handle are of the most ordinary style. The court has seen bolos without

number that look like this bolo. The only support which Collantes gave of the fact of his identification of the bolo was that he identified it from its shape and from the shape of the handle, both the handle and the blade being of very ordinary and conventional type. He was not able to identify it by reason of any special mark as those which might be worked in the sheath or any other of the special marks which almost any bolo will present by constant use and which had attracted his special attention."

While the trial court does not mention it, we regard the fact that the accused carried the bolo away with him after having killed the deceased as somewhat striking. Ordinarily it would have been left at the spot where its owner was killed and would not have been carried away by one who did not claim to own it.

The third error assigned declares that "the court erred in accepting as true the testimony of Paulino Trinidad with respect to the wounds which he found in the body of the deceased." The contention of the appellant under this assignment of error is that: "It is entirely impossible to determine in a conclusive way the manner in which the wounds were inflicted on the deceased either with respect to the number, size and depth thereof at the time they were examined by the witness, which was twenty-four hours after the death of Braulio Owano; yet Dr. Trinidad, notwithstanding this, declares that the wound in the neck of the deceased was not produced by a blow but rather by pulling the bolo backward and forward across the neck as if it were a saw. Notwithstanding the scientific knowledge of the witness we believe that his statement is not conclusive because, by reason of the time which elapsed between the death of the deceased and the examination of the witness, the wounds might have changed their appearance; and that such might be the case is shown by the doctor's own testimony when he stated that the blood was still coagulated and in view of the fact that putrefaction might have set in in that portion of the body in which the wounds had been inflicted."

The reasons given in the argument of counsel furnish no basis for the rejection of the testimony of Dr. Trinidad as valueless. They rather tend to show that the doctor might have been mistaken and that his testimony relating to the results of his examination was unreliable. The court exercised its powers and functions properly in taking into consideration all of the evidence in the case with respect to the number, locality, size, and appearance of the wounds on the body of the deceased whether the testimony respecting them was given by Dr. Trinidad or other witnesses, and, after weighing all of such evidence carefully, arriving at a conclusion which satisfied his judgment. We see no reason for doubting the substantial correctness of the evidence of Dr. Trinidad. He testified that he was able, despite the lapse of time, to obtain a fairly correct idea of the number of the wounds, their location and character. We have carefully considered the argument of counsel against the testimony of Dr. Trinidad, but we are unable to find any satisfactory basis for modifying the conclusion of the trial court in respect thereto.

The fourth objection raised by counsel to the judgment of conviction is that "the court erred in convicting the accused and not acquitting him." Under this heading counsel goes into a lengthy and thorough examination of the evidence and arrives at the conclusion that it is not sufficient to sustain the conviction. It is true that the evidence is conflicting. The accused tells a story quite different from that which the witnesses for the prosecution who saw the crime committed, or at least the greater part of it, relate, and it is also true that there is a sharp conflict as to whether the accused was armed and whether the bolo with which the crime was committed belonged to him. We are satisfied from all the evidence in the case that the judgment of conviction is thoroughly sustained by the record; and we come from a reading of the evidence convinced beyond a reasonable doubt that the accused is guilty.

The Attorney-General recommends that the crime be qualified as murder and not as homicide, claiming that the evidence establishes beyond a reasonable doubt that the crime was qualified by alevosia. It is true that two witnesses for the prosecution testified that the deceased was attacked from behind suddenly and unexpectedly and

that he was given no opportunity to defend himself. But it also appears, as the trial court in considering this branch of the case, correctly says, that these witnesses, according to their own statements, did not see the beginning of the struggle. Their evidence shows that the struggle had been in progress for sometime before they became eye witnesses. Indeed, both Candida Ancero and Sixta Cortes state that they heard the deceased call for help, and that they were obliged to go some distance after they heard the call before they came in sight of the struggling men. This fact demonstrates that they did not see the beginning of the fight; and, that being the case, it is impossible to determine whether the attack was treacherous or not. We are of the opinion that the trial court was justified in its conclusion that the crime should be qualified as homicide instead of murder.

The evidence in the case discloses no aggravating nor extenuating circumstances and the penalty imposed should be that imposed by the court below.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

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

Johnson, J., dissents. In his opinion the recommendation of the Attorney-General should have been accepted.

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