

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LORENZO MACASAET, DEFENDANT AND APPELLANT.*G.R. No. 11718. October 31, 1916*

Ponente: CARSON, J.

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The defendant and appellant was charged in the court below with the crime of homicide. The evidence of record conclusively discloses that at about 7 o'clock on the night of the 10th of April, 1915, the accused was standing just outside a neighbor's house in conversation with a friend, discussing his marriage which was to take place two days later; that without warning one Raymundo Briones approached him from behind and struck him over his shoulder with a cane 1½ centimeters thick and 75 centimeters long; that the accused snatched a knife from his pocket, opened it and stabbed his assailant to death; and that the assault upon the accused, which was made from behind, was wholly unexpected.

In addition to the cane with which the deceased struck the accused, he was armed with a heavy whip made of iron wire, 56 centimeters long, 5 centimeters in circumference at the handle, and 2 centimeters in circumference at the end, attached by a string to his left wrist. The motive for the unprovoked assault upon the accused was the feeling of jealousy that had been aroused by his successful suit for the hand of the young woman to whom he was betrothed.

These facts were conclusively established by the evidence of record and are not in dispute.

The accused swore that when he was struck by the deceased he attempted to make his escape, but was pursued by his assailant and that he did not draw his knife until he found it necessary to protect himself against further assault by his pursuer, from whom he was unable to escape. The only eyewitness of the assault, the man with whom the accused was talking when the deceased approached him from behind, testified that when the deceased struck the accused with the cane, it slipped from the assailant's hand and that the accused immediately drew his knife and stabbed his assailant several times. The trial judge refused to believe the account of the incident as given by the accused and, accepting the testimony of the eyewitness, was of opinion that while there was unlawful aggression on the part of the deceased and no provocation for the assault on the part of the accused, there was no "reasonable necessity for the means employed to prevent or repel" the assault. Accordingly the trial judge convicted the accused of the crime of homicide with which he was charged and sentenced him to eight years and one day of prison mayor, together with the accessory penalties prescribed by law.

The sentence thus imposed was fixed at one degree less than that prescribed for the crime of homicide as defined and penalized in article 404 of the Penal Code, the trial judge being of opinion that the convict was entitled to the benefit of the provisions of article 86 which prescribes that:

"A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed were not wholly excusable by reason of the lack of some of the conditions required for exemption from criminal liability in the several cases mentioned in article eight, provided that the majority thereof be present. The court shall

impose the penalty in the degree which may be deemed proper, in view of the number and weight of the conditions of exemption present or lacking."

Subsection 4 of article 3 prescribes that:

"ART. 8. The following are exempt from criminal liability :

* * * * *

"4. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

"(1) Unlawful aggression;

"(2) Reasonable necessity for the means employed to prevent or repel it;

"(3) Lack of sufficient provocation on the part of the person defending himself."

We are inclined to agree with the trial judge in declining to accept the account of the assault as given by the accused, which bears all the earmarks of an attempt on his part to emphasize the necessity for the means adopted by him to defend himself from his aggressor; but we cannot agree with the trial judge in holding that under all the circumstances of the case as described by the witnesses for the prosecution, the accused should not be held wholly exempt from criminal liability on the ground that he acted in self-defense.

Taken by surprise by a wholly unprovoked assault from behind made by a jealous competitor for the hand of his betrothed, with a cane in one hand and a heavy iron whip attached to the other, in the darkness of the night, and on a public highway, we are not willing to hold that there was no "reasonable necessity for the means employed to prevent or repel" the assault, and that the accused was not justified in defending himself from the assault with his pocketknife, that being the only available weapon at hand. Even admitting that the cane fell from the hand of his assailant as a result of the force of the first blow struck, the assailant still had in his left hand a heavy iron whip, and was presumably in position readily to recover the cane which had slipped from his right hand. It was not merely a question of repelling an assault under circumstances which would not justify the assaulted party in believing that it would be necessary to take his assailant's life in order to defend himself from grave physical injuries. The heavy iron whip held in reserve by the assailant, and the cold-blooded and unprovoked character of the assault may well have led the accused to believe that the deceased intended to do him a grave injury, and by surprising him in the dark, without any arm in his hand, make it impossible for him to defend himself.

It appears that the accused struck the deceased several blows and it has been suggested that after having inflicted one fatal blow, there was no need to repeat it. Having concluded, however, that under all the circumstances the accused was justified in making use of his knife to repel the unprovoked assault as best he could, it would be impossible to say that a second or third blow was unnecessary under all the circumstances of the case, it appearing that the accused instantly and without hesitation inflicted all the wounds at or about the same time.

The judgment convicting and sentencing the defendant and appellant should, therefore, be reversed, with the costs in both instances de officio; and, on the ground that the accused took the life of the deceased in legitimate self-defense, he should be acquitted and set at liberty forthwith. So ordered.

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

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