

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE ABIOG AND LUIS ABIOG, DEFENDANTS AND APPELLANTS.

G.R. No. 12747. November 13, 1917

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal from a judgment and sentence of the Court of First Instance of Batangas finding the defendants Vicente Abiog and Luis Abiog guilty of homicide and sentencing each of them to eight years of presidio mayor, with the accessory penalties provided by law, to pay jointly and severally to the heirs of the deceased Anacleto Cudiamat, the amount of P1,000, and to pay one-half of the costs.

The proven facts are these: The deceased Anacleto Cudiamat (hereafter denominated C), coming upon the defendants cleaning a caua said to them, "What of it if you throw away the water as I also can ^get water as easily as you can?" Vicente Abiog (hereafter denominated V), indignant at this allusion replied. "Do you want a fight? Wait there." Immediately proceeding to the house, V procured a revolver and returned to the field. A brother of V. Marcelino Abiog, attempted to gain possession of the revolver and was killed (probably accidentally) for his pains. Loading the revolver anew, V pointed it at C wounding him in the stomach. The wife of C tried to succor her husband, but the other brother Luis Abiog (hereafter, denominated L) stopped her and attacked C with a bolo. C's nephew, Urbano Banastas, was also wounded. While the points indicated stand out sharply in the record, they fail adequately to portray the passing of events or the words spoken during this affray.

The defense attempts to show that V acted in self-defense with the result that if this be admitted, then it is contended that L is in no way criminally responsible. Whatever else might be said to refute the claim of self-defense, certainly it is incontestable that C made no such attack as warranted V in deliberately proceeding to the house to get a revolver and in shooting C even after the interference of his brother. As to the culpability of L, this is included in what hereafter will be said.

Our decision must center around this most unique situation: C was wounded by a pistol fired by V. It was a mortal wound. The doctor in charge of the sanitary division so testified. C, almost immediately after receiving the pistol shot, was wounded with a bolo by L. The same doctor testified that this likewise was a mortal wound although shaken slightly on cross-examination. Asked as to what he attributed death, the doctor replied "to the wounds." (See also his medical certificate, Exhibit A.)

A result is best arrived at by a process of elimination. And first of all, let us dispose of the obvious suggestion of a conspiracy including criminal responsibility of both defendants as principals. No conspiracy or concerted plan was charged in the information. No conspiracy or concerted plan was proved at the trial. There were no joint acts of preparation or execution. The intention to kill was conceived at approximately the same time but independently of each other. Each apparently acted on his own behalf and upon his own motive without regard to the motive of the other. Picture the panoramic view before us: Three brothers are working together; another person approaches and makes a passing remarks; one brother is insulted and procures a revolver. What the other two brothers then

thought or said, we do not know. A second brother waiting until the assault was about to begin interferes and is killed. The first brother continues with his murderous intention. What the third brother was doing during this time, we are not informed. But, after the deceased was down and injured, the third brother also proceeds to assault him. Obviously, there is shown no preconceived attack, no concerted plan, no conspiracy, but each brother acting on his own behalf.

With this diagram of events before us, the applicable legal doctrine is found in *The United States vs. Magcomot* ([1909] 13 Phil., 386). In the opinion of this case, Mr. Justice Mapa considered the legal principles embodied in different decisions of the supreme court of Spain and found in all of said decisions that it was "uniformly laid down that, in the absence of a previous plan or agreement between the culprits, the criminal liability resulting from different acts committed against one and the same person is individual and not collective, each one of the culprits being responsible only for those acts committed by himself." (See also *U. S. vs. Macuti* [1913], 26 Phil., 170.) As applied to the subject at hand, where several individuals, acting independently, do acts which are calculated to produce the death of another, each is responsible only for the consequences of his own acts. (See 13 R. C L., p. 724 showing that the American rule is practically identical with the Spanish rule.)

Narrowed down still further, our facts now are—C died as a result of wounds received from V and L, acting independently of each other, either of which wounds would cause death. Legally, V and L are liable only for the acts committed by himself.

One line of American decisions would here simplify our task, if we were to follow them strictly, by acquitting both defendants. Some of these exculpatory doctrines follows:

"If two or more are acting independently, and the actual perpetrator of the homicide cannot be identified, all must be acquitted, although it is certain that one of them was guilty." (21 Cyc, pp. 692, 693, citing *People vs. Woody* [1873], 45 Cal., 289; *Campbell vs. People* [1854], 16 111., 17; *State vs. Goode* [1903], 132 N. C, 982; *State vs. Edwards* [1900], 126 N. C, 1051; *Reg. vs. Turner*, 4 F. & F., 339.)

"The death must be traced to the blow charged to the defendant." (1 Wharton's Criminal Law, p. 626, citing *McDaniel vs. State* [1884], 76 Ala., 1; *People vs. Ah Luck* [1882], 62 Cal., 503; *Hall vs. State* [1892], 132 Ind., 317; *Denman vs. State* [1883], 15 Neb., 138; *State vs. Hambright* [1892], 111 N. C, 707.)

Where several wounds were inflicted upon a person by different persons, and it is uncertain which was the mortal wound, or whether all were mortal, a person who inflicted one of them should not be convicted of murder for inflicting it. (*Miller vs. State* [1871], 37 Ind., 432.)

"And where two persons strike another, there being nothing to indicate a conspiracy between them, and death results, if the jury have a reasonable doubt as to which struck the blow causing death, it should acquit them both. (*State vs. Goode* [1903] 132 N. C., 982; *State vs. Finley* [1896], 118 N. C, 1161.)

Two reasons impel us not to follow blindly the authorities just cited. In the first place, it is believed that the facts in the present instance can be distinguished from these American Cases. However this may be, there is another doctrine embodied in our jurisprudence which reaches the same result. To elucidate—the principles of the Anglo American Common Law are for the Philippines, just as they were for the State of Louisiana and just as the English common law was for the United States, of far-reaching influence. The common law is entitled to our deepest respect and reverence. The courts are constantly guided by its doctrines. Yet it is true as heretofore expressly decided by this court that—"neither English nor American common law is in force in these Islands, nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law." (*U. S. vs. Cuna* [1908], 12

Phil., 241.)

What we really have, if we were not too modest to claim it, is a Philippine common law influenced by the English and American common law, the *derecho comun* of Spain, and the customary law of the Islands and builded on a case law of precedents. Into this Philippine common law, we can properly refuse to take a rule which would estop other courses of reasoning and which, because of a lack of legal ingenuity, would permit men guilty of homicide to escape on a technicality.

Returning again to our narrowed facts and law, we proceed anew by elimination to our conclusion. A number of truisms must be set down. Groizard says that when a wound is of necessity mortal then the basis of homicide is perfectly established. (4 *Codigo Penal*, 419.) Yet it would be an absurdity to state that a man can be killed twice. For example, if the pistol wound of V killed C, the bolo wound of L could not kill a man already dead. Or if the bolo wound killed C, V may not be culpable. In other words, one may not be punished for the act of another. Participation in both the homicidal design and act is essential.

Concede these truisms and we must admit that the Government has proved not only the death of C, but that he died from the effect of wounds received from V and L. Under such circumstances, it is established that the onus is on each defendant to show that the wound inflicted by him did not cause death. The supreme court of Georgia, speaking through Little, J., in the course of an opinion, said:

"It has been ruled that, 'if a person receives a wound wilfully inflicted by another, which might cause death, and death actually follows, the burden is on him who inflicted it to show that it did not cause the death.' (Hughes' *Crim. Law and Proc.*, sec. 87.) The converse of this proposition must be true—that is, if the person inflicting such wound in fact shows that it did not cause the death, as for instance by showing that death actually occurred in consequence of a wound inflicted by another—he meets this burden, and can not be convicted. * * * In an individual case one cannot be lawfully convicted of murder when it is shown that the deceased really died from another and a distinct wound inflicted by a different person." (Walker vs. State [1902], 116 Ga. 537; 67 L. R. A. 426; see also State vs. Briscoe [1878], 30 La. Ann., 433.)

Applied to the present facts, for V to escape culpability, it was incumbent upon him to prove that death resulted from a cause other than the wound inflicted by him. For L to escape culpability, a similar burden of proof was on him. The two defendants cannot jointly escape by merely standing still and doing nothing.

In reality, under the proven facts, C was living when wounded by V, and C was living when wounded by L. Both wounds operated to cause death. Death, therefore, can be traced to the independent act of each defendant. Death is imputable to each defendant. To summarize, common sense rules, and ones founded on authority, are believed to be these: V and L, acting independently are responsible for their individual acts only. The burden rests upon each defendant, charged with an act which might cause death, to show that death resulted from a cause different from the act imputed to him. Neither V nor L has met this burden of proof. As the spark of life went out, each wound was a contributing cause. Death was the joint result of their acts.

We are not without well-considered American authority to back up our conclusion. As to L, the supreme court of Louisiana has held that it is not essential that the violence inflicted by the defendant should have been the sole cause of death; but if it hastened the termination of life, or really contributed, mediately or immediately, to the death in a degree sufficient to be a clear contributing cause, that is sufficient. (State vs. Matthews [1886], 33 La. Ann., 795.) Fenner, J., in the course of his opinion in this case, includes this philosophical reflection—

"In a certain sense, every man is born and lives mortally wounded; that is, subject to laws which inevitably doom him to death. No murder does more than to hasten the termination of life."

As to V, in *People vs. Lewis* ([1899] 124 Cal., 551), the facts were as follows:

"Defendant and deceased were brothers-in-law, and not altogether friendly, although they were on speaking and visiting terms. On the morning of the homicide the deceased visited the residence of the defendant, was received in a friendly manner, but after a while an altercation arose, as a result of which defendant shot deceased in the abdomen, inflicting a wound that was necessarily mortal. Farrell fell to the ground, stunned for an instant, but soon got up and went into the house, saying: 'Shoot me again; I shall die anyway.' His strength soon failed him and he was put to bed. Soon afterward, about how long does not appear, but within a very few minutes, when no other person was present except a lad about nine years of age, nephew of the deceased and son of the defendant, the deceased procured a knife and cut his throat, inflicting a ghastly wound, from the effect of which, according to the medical evidence, he must necessarily have died in five minutes. The wound inflicted by the defendant severed the mesenteric artery, and medical witnesses testified that under the circumstances it was necessarily mortal, and death would ensue within one hour from the effects of the wound alone."

It was contended that where one languishing from a mortal wound is killed by an intervening cause, then the deceased was not killed by the defendant; though mortally wounded by the defendant, as the deceased actually died from an independent, intervening cause, the defendant at the most could only be guilty of a felonious intent. The court said:

"We have reached the conclusion by a course of argument unnecessarily prolix, except from a desire to fully consider the earnest and able argument of the defendant, that the test is—or at least one test—whether, when the death occurred, the wound inflicted by the defendant, did contribute to the event. If it did, although other independent causes also contributed, the causal relation between the unlawful acts of the defendant and the death has been made out. Here, when the throat was cut, Farrell was not merely languishing from a mortal wound. He was actually dying—and after the throat was cut he continued to languish from both wounds. Drop by drop the life current went out from both wounds, and at the very instant of death the gunshot wound was contributing to the event. If the throat cutting had been by a third person, unconnected with the defendant, he might be guilty; for, although a man cannot be killed twice, two persons, acting independently, may contribute to his death and each be guilty of a homicide. A person dying is still in life, and may be killed, but if he is dying from a wound given by another both may properly be said to have contributed to his death." ([1899] 124 Cal., 551.)

The lower court gave the defendants the benefits of the mitigating circumstances of ignorance and of having acted upon an impulse so powerful as naturally to have produced passion and obfuscation. The first can be admitted. As to the latter, the rule is that passion and obfuscation should not be taken into consideration as a mitigating circumstance unless it appears that the offense was provoked by prior unjust and improper acts. (*U. S. vs. Taylor* [1906], 6 Phil., 162, following decisions of the supreme court of Spain.) In the case at bar, so far as we know, the offense was merely provoked by a chance remark. The proper penalty is therefore reclusion temporal in its minimum degree.

The defendants and appellants are each sentenced to twelve years and one day of reclusion temporal, with the accessory penalties provided by law, and to pay one-half of both instances, and are jointly and severally made liable to the heirs of the deceased Anacleto Cudiamat in the amount of P1,000. So ordered.

Arellano, C. J., and Araullo, J., concur.

Johnson and Carson, JJ., concur in the result.

STREET, J., concurring:

The case appears to be this: One of the accused (Vicente Abiog) inflicted a mortal wound upon the deceased by shooting him with a pistol. The other accused (Luis Abiog) subsequently inflicted a wound on the deceased by cutting off his hand with a bolo. This wound was also probably of a deadly nature, and if not necessarily itself mortal it was of such character as to weaken the victim from loss of blood, thereby contributing to his death. No previous conspiracy between the two accused to take the life of the deceased is shown; and it will be here assumed that Luis Abiog acted independently of his brother. We think, however, that if the point were necessary to the decision, it could be properly held, upon the facts appearing of record, that the attack of Luis Abiog was made in furtherance of the unlawful design upon the life of the deceased which had been manifested in the act of his brother Vicente.

The authorities bearing on the problem here presented seem to us to be harmonious, considering the differing facts upon which the courts have been required to pass. Discussion of course proceeds primarily upon the assumption that where the parties act independently, each actor is responsible only for the consequence of the act or acts committed by himself. (U. S. vs. Magcomot, 13 Phil. Rep., 386.)

In applying this principle it is necessary to take account of two wholly different classes of cases, namely: (1) Where the wound or wounds which cause death are inflicted by one or the other, but not all, of two or more persons; (2) where two or more wounds are separately inflicted by each of two or more persons. In the case first supposed there can of course be no conviction until the actual perpetrator of the crime is identified. (People vs. Woody, 45 Cal., 289; Campbell vs. People, 16 111., 16; State vs. Goode, 132 N. C, 982.) Thus, where two persons fire at another but only one bullet hits the victim neither of the assailants can be convicted until it is shown that his shot killed the deceased. Of course it is different if conspiracy or concert is shown. In the principal opinion it is suggested that the doctrine of these decisions is unsound. We believe that this doubt must disappear when the particular situation involved in these cases is considered.

In the second class of cases, i. e. where two or more injuries are inflicted by each of two or more actors, the question is not one as to the identity of the person but as to the extent of the responsibility of each for acts done by himself. The cases in which this problem has been presented show that there is a clear distinction between the situation where one of the injuries is considered to be the immediate or proximate cause of the death and that where the two or more injuries cooperate in bringing about the death. There is of course here involved a preliminary question of fact to be determined upon the evidence adduced in each case.

Where it appears that the first injury, though serious, is not immediately fatal, and a second injury is inflicted which is the more immediate and more obvious cause of death, the authorities hold that the homicide should be attributed to the second assailant, and that the first is at most guilty of an attempt, or as we would hold under the Penal Code, of the frustrate offense. (State vs. Scates, 50 N. C, 420; State vs. Wood and Smith, 53 Vt., 560; Walker vs. State, 116 Ga., 537; 67 L. R. A., 426.) In this situation we discover a natural tendency on the part of the courts to ascribe the homicide to the more serious injury being nearest in point of time to the death. This would seem to be the proper assumption in the absence of clear proof that the first and less serious injury also contributed materially to the death. For instance, suppose that poison is administered in sufficient quantity to cause death ultimately but not immediately and that while the victim is languishing another actor appears on the scene and dispatches him by some violent and instantaneous mode of destruction. Authority would hardly be found to support the idea that the person who administered poison should be held guilty of the homicide.

Where it appears that the first assailant inflicts a dangerous, possibly mortal, injury and that subsequently another person inflicts a similar serious injury, and death results from their combined effect, the authorities hold that both assailants are guilty of the homicide. (People vs. Ah Fat, 48 Cal., 61; Fisher vs. State, 10 Lea. [Tenn.], 151; State vs. Matthews, 38 La. Ann., 795.) Both upon general principle and upon the authority of the decided cases it is not

really necessary here that either injury should be in itself of mortal character. It is sufficient that each should contribute materially to the death. Cases are constantly arising where injuries in themselves apparently trivial have been followed by death, by reason of inattention, neglect, or some cause unconnected with the injury itself. No one can question the responsibility of the person who inflicts such an injury, provided the death can reasonably be ascribed to it as a natural and proximate result. The principle applicable is in no wise changed by the number of the agents whose acts may have contributed to the result. Each must stand acquitted or condemned by the consequences properly attributable to his own act, and he will not be relieved by the circumstance that the act of another person contributed to the same end. It is enough that his own act contributed materially to the death. The case at bar is in my opinion governed by this principle, still assuming, as stated at the outset, that Luis Abiog was acting independently of his brother.

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