

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARIANO BATUNGBACAL, DEFENDANT AND APPELLANT.*G.R. No. 12936. January 10, 1918*

Ponente: AVANCEÑA, J.

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In the sitio of Balanga, Province of Bataan, the defendant for the past eight years had had in his service the married couple Pedro Dilig and Hilaria Tianko. It appears that the latter took care of two children of tender age belonging to the defendant. Although Pedro Dilig and Hilaria Tianko used to quarrel with each other, for, when the husband got drunk, he would beat his wife, yet they never had any trouble with the defendant, by whom they were always treated kindly and paternally, as stated by the trial court.

On the morning of February 25, 1917, the defendant, in his official capacity as councilor of the municipality, was inspecting the country roads. On his return home at noon he took his dinner, after which, as he felt a little tired, he laid himself down on a native mat in the sala adjoining the kitchen, for the purpose of resting. There he fell asleep and was awakened only by the cries of Hilaria Tianko, who said: "Itoy, Itoy, (the defendant) get up. Pedro is chasing us with his bolo in hand." The defendant raised himself and immediately saw Hilaria Tianko and his two children, clinging to Hilaria's dress, come running from the kitchen, pursued by Pedro, who was infuriated and was carrying a bolo in his hand. The defendant then seized a loaded shotgun that was near him, aimed it at Pedro Dilig, ordered him to drop the bolo, and fired at him, killing him at once. Pedro Dilig received nine wounds: One, in the inner, middle part of his right arm, destroying the brachial muscles; and the other eight, all mortal, in the right mammillary region. The gun was loaded with a shell containing nine buckshot.

Dilig's conduct toward his wife was due to the fact that on his arrival at the house he missed some hen's eggs which his wife had eaten. Infuriated by this, he told his wife that he was going to give her a slash, and bolo in hand went toward the foot of the stairs, indicating by his attitude that he meant to put his threat into execution. Hilaria tried to escape, and, seeing that Pedro would finally meet her, endeavored to struggle with him and wrest the bolo from his hand. As she did not succeed in this attempt, she started to run with the children toward the sala of the house, where the defendant was sleeping, the woman and children being pursued by Dilig, bolo in hand, and when she thought that her pursuer was about to strike her a blow with the weapon, she uttered the stream that awoke the defendant.

Article 8 of the Penal Code exempts from criminal liability:

"5. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first and second circumstances prescribed in the next preceding paragraph are present, and the further circumstance, in case the provocation was given by the person attacked, that the one making defense had no part therein.

"6. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second

circumstances mentioned in paragraph four are present, and the further circumstance that the person defending be not actuated by revenge, resentment, or other evil motive."

Paragraph 4, of the same article to which paragraphs 5 and 6 just quoted refer, provides:

"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."

The trial court held that the evidence disclosed no facts whereby the conclusion might reasonably be reached that the defendant made use of the shotgun as a necessary means to avoid any harm; and that the exempting circumstances mentioned ought not to be reckoned in the defendant's favor. Batungbacal was therefore sentenced for homicide to 14 years 8 months and one day of reclusion temporal, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs of the trial.

From this judgment the defendant appealed.

In this instance the sole question raised is whether there should be credited in the defendant's favor the exempting circumstances of having acted in lawful defense of his two children and Hilaria Tianko.

In not allowing these exempting circumstances, the court took the ground that the deceased did not assume an aggressive attitude toward anybody and did not raise the bolo he was carrying, in any way to indicate that he intended to strike his wife and the defendant's two children.

Even supposing that the facts were such as the court admitted they were, it should be held that the defendant acted in lawful defense of his two children and Hilaria Tianko. The deceased was infuriated and was pursuing Hilaria Tianko and the defendant's two little children, and this is enough to imply that, under the circumstances of this case, he performed an act of aggression, because, as a general rule, the person who pursues another with the intent and purpose of assaulting him does not raise his hand to discharge the blow until he believes that his victim is within his reach. The mere fact that a person carrying a bolo pursues another may signify the pursuer's intention to assault with this weapon. In order that the assault may be repelled, it is not necessary that it have been actually perpetrated; it is sufficient that there be an attempted assault, in order that the right may arise to prevent the assault. The law protects with this exemption from liability, not only the person who repels an aggression, but even the person who tries to prevent an aggression that is expected.

Moreover, the evidence sufficiently shows that the deceased, when he was shot, had his right hand in which he held the bolo, raised and drawn back considerably, in an attitude such as is ordinarily assumed when one endeavors to strike a blow. The shotgun which the defendant discharged at the deceased was loaded with a cartridge that contained nine buckshot, and the deceased received nine wounds, each of which apparently was made by one of the nine bullets. The defendant testified that when he shot at the deceased, he was in front of the latter. The president of the municipal board of health, who examined the deceased's wounds, testified that the defendant, when he shot, must have been "a little to one side." The Constabulary captain, A. L. Estelle, also presented as a witness for the prosecution and who likewise, examined the deceased's wounds, testified that Pedro Dilig, when he was shot, must have had his right side turned toward the defendant. The wound received by the deceased in the arm was, according to the certificate issued by the president of the board of health, in the middle and inner part of the arm. All of that testimony precludes the supposition that the deceased, when he was shot, was holding his arm at his side, in a normal, hanging position, because, in this position, the inner part of the arm

would be protected and would not be like a target, if the shot came from the front, and, more especially, if it was fired from the right side. In that position, the wound would have been made in the outer part of the arm.

The hypothesis that one of the buckshots passed through the deceased's body and embedded itself in his arm, offered with the purpose of conciliating this location of the wound with the supposition that the deceased had his arm hanging in its natural position, cannot be accepted. To do so, we should also have to accept arbitrarily the other hypothesis that only seven, and not nine, buckshots took effect, for, in this latter case, the deceased would have had eleven, instead of only nine, wounds. It would also be necessary to admit that the shot came from the left side, which is contrary to the testimony given by the prosecution's own witnesses.

The location of this wound in the arm, under the circumstances in which it was inflicted, is only compatible with the supposition that the deceased, when he was shot, had his right arm raised backward, because only in this position could the inner part of this arm be hit by a bullet coming from in front or from the right side.

If, in order to consider that a defendant acted in lawful defense, it is sufficient that he had well-founded reasons to believe that, under the attendant circumstances, the means employed by him to prevent or to repeal the aggression, was necessary, then the defendant in this cause undoubtedly acted in lawful defense of Hilaria Tianko and his two children. Abruptly awakened by the information that Hilaria Tianko and the defendant's two children were being pursued by the deceased, and, upon awakening seeing that the deceased in fact was pursuing them, bolo in hand and with his arm raised as if ready to strike with this weapon, the defendant was justified in believing that the lives of Hilaria and his two children were in imminent danger. Under these circumstances, in view of the imminence of the danger, the only remedy which could be considered reasonably necessary to repel or prevent that aggression, was to render the aggressor harmless. As the defendant had on hand a loaded shotgun, this instrument was the most appropriate one that could be used for the purpose, even at the risk of killing the aggressor, since the latter's aggression also gravely threatened the lives of the parties assaulted. It could not be required that the defendant engage in a hand to hand struggle with the aggressor, because not only would such a struggle have added to the danger already impending against the lives of Hilaria and his two children, the danger to his own life, but also it would have been of very uncertain results, as might be expected in an unequal struggle between two combatants, one of whom is armed and the other is not.

We have stated that the defendant was justified in believing reasonably that the lives of his two children and that of Hilaria Tianko were in imminent peril. But we can say more. We agree that Hilaria Tianko's life was in fact in imminent peril. The deceased, from the kitchen stairs, had already resolutely assaulted her with a bolo, and she was able to escape the blow only by having taken timely flight with the children. Undoubtedly, if the deceased had overtaken Hilaria in the sala of the house, where the defendant was sleeping, the aggression would have been consummated there. The danger, as regard the person of Hilaria Tianko, was not only apparent in the defendant's mind, under the circumstances surrounding him, but it was also a real danger.

For the foregoing reasons, and in consideration of the fact that, according to the evidence, the assaulted parties did not provoke the assault, nor was the defendant moved by sentiments of revenge or resentment, or any other unlawful motive, and finding that the defendant acted in lawful defense of the persons of his two children and Hilaria Tianko, we hold that he should be exempted from criminal liability, and we acquit him, with the costs de officio. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Araullo, Street, and Malcolm, JJ., concur.

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