

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN DINOLA, DEFENDANT AND APPELLANT.*G.R. No. 13314. March 13, 1918*

Ponente: AVANCEÑA, C.J.

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From the admission and testimony of the defendant, Juan Dinola, it appears that on January 31, 1917, in the municipality of Alangalang, Province of Leyte, he had been distilling tuba, was carrying P5, and, on passing in front of a house where a festival was being held, saw on the stairs his cousin Guillermo Dinola, the deceased, to whose inquiry as to whether he had any money by him, the defendant replied that he had, for the purpose of paying some laborers. The deceased asked him for that sum, giving as a reason for his request, that he, Guillermo, had lost in gambling and had to pay a person from whom he had borrowed money. The deceased excused himself for making the request, by saying that he was afraid that his wife would scold him because of that loss. Guillermo inquired for how many laborers the money was that the defendant was carrying, and when the defendant drew forth the money to show it to Guillermo, the latter tried to seized it from him, but the defendant, understanding the evil intention of the deceased, would not let go of the money. Then the deceased, with his left hand, caught hold of the defendant's thumb and. with his right hand drew from his own pocket a penknife, with which he assaulted the defendant, wounding him with it, first in the shoulder, then in the belly. The defendant had been receding until he reached a partition-wall, and thereupon the deceased, seeing that the defendant was wounded, let go of the money and caught him by the throat, to strangle him. Thereupon, the defendant, believing that the deceased intended to kill him, made use of the knife that he was carrying and had been employing in connection with the distillation of tuba, and with it wounded the deceased in the stomach, on which account the deceased let go of the defendant, but again assaulted him. The defendant went on warding off his assailant's blows and, on the occasion of this defense, inflicted upon him other wounds. When the deceased gave cries for help, calling his brother, the defendant asked the deceased to pardon him, left the place and forthwith surrendered himself to the chief of police.

This admission and testimony of the defendant is the only corroborative evidence there is in this cause, bearing on the commission and details of the alleged crime. One Isidoro Tañada was present when the occurrence took place, but was not presented as a witness. No evidence whatever was introduced to rebut the testimony given by the defendant.

When the evidence in a cause for homicide is the uncontradicted testimony of the defendant, and the facts declared by him are likely, they should be accepted; and when they involve exculpatory circumstances that show that the defendant acted in self-defense, he should be held to be exempt from criminal liability.

We find nothing unlikely in the facts testified to by the defendant. The Attorney-General, in his brief, has called our attention to the very unlikelihood of the deceased having been able to open his pocketknife while he was holding the defendant with his left hand. Whether or not he could have done so, depends on the conditions of that weapon: they might have been such that it could have been opened with only one hand. The pocketknife was not

presented in evidence. In order to show its conditions, reference was made to another pocketknife which, as the defendant testified, was similar to the one used by the deceased; but neither was this other pocketknife introduced in evidence. We have nothing in sight that might guide us in establishing any positive conclusion that the pocketknife used by the deceased was of such conditions that it is unlikely that he could have opened the blade only with his right hand. For want of such data, we should not accept a conclusion adverse to the defendant. But even supposing that that knife could not have been opened with only one hand, the conclusion does not necessarily follow that the deceased could not have opened it. By a slight movement he might have joined both hands for the purpose of opening it, as with his left hand he was holding the defendant only by the thumb, and, to a certain extent, had the fingers of this hand free to open the blade; and, as all this required but a simple manipulation, performable in a very brief space of time, it is not unlikely that the deceased may have been able to open the knife under these circumstances.

The trial court rejected the defendant's testimony in the part thereof disculpatory to him, found him guilty of the crime of homicide, and sentenced him to 14 years, 5 months, and one day of reclusion temporal, with the corresponding accessory penalties, and to pay an indemnity of P1,000 to the family of the deceased.

In rejecting the defendant's testimony in the part thereof favorable to him, the court founded the rejection on two considerations:

One was his finding the defendant's testimony contradictory. The defendant, answering repeated and insistent crossquestions, stated that the deceased with his left hand was holding the defendant by the thumb, and with his right hand assaulted him with the pocketknife. In order to show that the defendant contradicted himself in respect to this detail, the court reproduced the following part of the interrogatory: "Q. But how could, he wound you, if he did not let go of you?—A. With his right hand he caught me by the thumb." This quotation appears in the record as follows: "Q. But, then, how could he wound you, if he did not let go of you?—A. With his right hand he caught me by the thumb, and wounded me with his right hand." Note that the last words of the answer were omitted by the court. After the defendant had repeatedly and uniformly answered that the deceased with his left hand caught him by the thumb, his last answer, that he did so with his right hand, might have been only a slip of the tongue, made after wearisome cross- questions on this same detail. It is strange that he should have given this answer which is so at variance with what he had most satisfactorily explained in his previous answers. At all events, there appears to be no just reason why the defendant's liability should be made to depend on so trivial a detail.

The other consideration which the court took into account in convicting the defendant is, as stated in the judgment, that the eyewitness Isidoro Tañada was biased in favor of the prosecution. The court arrived at this conclusion from the attitude of the defense as manifested by the statement it made before the court and which is as follows: "The defense closes its evidence. I call attention to the fact that Isidoro Tañada, places himself at the disposal of the prosecuting attorney. It is to save time." The court appears to maintain the opinion that if this witness had been presented he would have testified against the defense. We do not deem this deduction good. The testimony of this witness would have been merely corroborative evidence for the defense. The presumption that the evidence omitted by a party would, if presented, be adverse to him, is not applicable to merely corroborative evidence. But such omission is rebutting evidence for the prosecution, and to this latter that presumption is more properly applicable. Be this as it may, such presumption is not applicable when the evidence is at the disposal of both parties, because, in such a case, it has the same weight against the one as against the other party.

Accepting the theory of the defendant, it follows that he was unlawfully assaulted by the deceased, without having provoked the assault, and, in view of the kind of weapon that the deceased used in this assault and his resolute intention to assault the defendant, the latter, in repelling the assault with another weapon of similar conditions, thereby causing his assailant's death, acted in self-defense.

For the foregoing reasons, the judgment appealed from is reversed and the defendant is relieved from all criminal liability, with the costs de officio; and it is ordered that he be immediately released from custody.

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

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