

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SABINO AVIADO, DEFENDANT AND APPELLANT.

G.R. No. 13397. April 01, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

This appeal from a judgment of the Court of First Instance of Pangasinan, in which under an information charging murder, the defendant, Sabino Aviado, was convicted of homicide and sentenced to six months and one day of prison correccional, to indemnify the heirs of the deceased in the amount of P500, and to pay the costs, presents an issue of fact and an issue of law.

FACTS.

There are three accounts more or less repugnant to each other of the occurrences which gave rise to this prosecution. There is, first, the so-called dying declaration of the deceased, not signed by him but by the justice of the peace, not in the deceased's language but only a purported translation, which in reality is no more than a memorandum by the justice of the peace, and as to the genuineness of which grave doubt exists. There is, second, the testimony of the witness Cariño for the prosecution, the owner of the illicit still, which as a whole is found to be absolutely unworthy of belief. On the other hand, the plain and straightforward account of the accused is corroborated in all its essential features by at least two other witnesses and in many of its details by the witnesses for the prosecution. We accept the testimony of the accused as disclosing the true facts. This story, in the exact language of the accused, is as follows:

"I am 29 years old, married, assistant agent of the internal revenue, live in Dagupan, Pangasinan. I am an officially appointed agent of the Internal Revenue. About 10 o'clock on the night of the 15th of March of this year I received information from one of my companions, a spy, that there were certain persons in Alitaya who were distilling vino without a license. We went from Dagupan to the road leading to Santa Barbara in a carromata and from there to the distillery on foot. When we arrived at the place, which I calculated to be about 50 meters from the distillery, I divided my force, three of them being ordered to go along one side of the canal, and I and my companions going direct to the distillery. Rufino S. Cruz and Fernando Soriano went with me. I entered the distillery with my two companions. There were six persons in the distillery, who were Leoncio Cariño, Juan Soriano, Cornelio Quinones and three other persons. I immediately caught hold of a person who I afterwards learned was Juan Soriano. Leoncio Cariño started to run away and we pursued him. I continued to hold Juan Soriano and said 'Alto, justicia, soy agente de rentas internas, y en nombre del agente de este distrito yo le arresto.' Juan Soriano spoke several words to me which I did not understand. I had caught him by the front of his camisa and as he continued to talk to me in Pangasinan, which I did not understand, I called Fernando Soriano, who was at that time searching and looking for the apparatus of the distillery. And when he came to the place where we were I told Fernando Soriano to tell me what this man said, and he replied, 'Turn him loose because he says he will not do anything wrong.' When he said this I told him to ask the man if he recognized his crime for conducting

this distillery without a license. As I said these words to Fernando Soriano I turned Juan Soriano loose and when I turned to find out what he was going to say I saw that he had raised his bolo over my head, and as I did not have time to do anything else I leaned forward with my left hand raised up. He struck me here on the arm, (showing an oblique scar on the front of his left forearm a little distance from the elbow). When he ran away Fernando Soriano and I pursued him, and as we were running I cried, 'Canlas, Cruz, come here, because I have been wounded.' And as I ran faster than Fernando I passed him and just as I passed him I heard the voice of my companion, Juan Canlas, say, 'Who is this?' and when I looked I saw that it was Juan Canlas. And after Juan Canlas said, 'Who is this?' Juan Soriano raised his hand with the bolo in it with which he had cut me. I was at that time about 12 meters off. Upon seeing Juan Soriano raise his hand to strike my companion, Juan Canlas, in order to go to save the life of my companion, Canlas, I pushed my companion Soriano out of my way and continued to run toward Juan Soriano. Canlas warded off the first blow, but Juan Soriano attacked him and struck a second blow; and in order to save the life of my companion Canlas I fired at Juan Soriano. After I fired the shot I went to the place where Juan Soriano was, but I did not know until Juan Canlas told me that I had wounded him."

LAW.

The legal issue, which arises out of these facts, may be stated as follows:

Whether a peace officer (an internal-revenue agent) is justified in killing an escaping prisoner in order to protect another peace officer, whom the prisoner is attacking.

Sabino Aviado, the accused, is an internal-revenue agent. As such, the Administrative Code of 1917 gives him authority to make arrests and seizures for the violation of any penal law or regulation administered by the Bureau of Internal Revenue. (Sec. 1434.) The same Code provides the penalty for persons who operate a distillery without a license. (Sec. 2722, in connection with sec. 1464 [a].) It was therefore the duty of the accused as an internal-revenue agent to suppress illicit distilleries and to arrest the persons who were responsible for them.

All recognize the right of a person to take life in his own defense or in defense of another who bears to him a close relationship. The common law goes further and permits human life to be taken for the protection of a companion or any other person, even a stranger. The rule then is that what one may do in his own defense, another may do for him. In other words, persons acting in defense of others are in the same condition and upon the same plane as those who act in defense of themselves. Not burdening the opinion with almost countless applicable decisions of the English and American courts, we only pause to note the historic and sensational case of *In re Neagle* ([1889], 135 U. S., 1). It was held in this case that in the protection of the person and the life of a Justice of the United States Supreme Court while in the discharge of his official duties, a deputy United States marshal was authorized to resist the attack of another upon him; that the marshal was correct in the belief that without prompt action on his part the assault upon the judge would have ended in the death of the latter; and that such being his well-founded belief, he was justified in taking the life of the assailant as the only means of preventing the death of the man who was intended to be his victim.

The Penal Code, in article 8, paragraph 6, exempts from criminal liability "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." (Note also paragraph 11 of the same article.) Applying these provisions to our facts, we find in the first place that there is not the slightest intimation that the accused was influenced by any evil motive. The facts also demonstrate the presence of the first and second circumstances mentioned in paragraph 4 of article 8. The defendant was acting in defense of his companion, exactly as he would act in defense of his own person and there concurred unlawful aggression on the part of the deceased, and reasonable necessity for the means employed to

prevent or repel it.

The decision in *The United States vs. Salazar and Villanueva* ([1910] 15 Phil., 315) is in point. In that case, the defendants, who were convicted of homicide in the court below, were acquitted on appeal, it appearing that they were two officers of the law, having in custody a notorious criminal, who suddenly assaulted them and seizing a revolver attempted to use it against his captors, the court saying that the shooting was justifiable because there were no other means by which the officers could protect themselves. (See also Decision of the supreme court of Spain of October 19, 1904.)

If in a faithful attempt to perform the duty explicitly imposed by law, the internal-revenue agent was under the necessity of killing a person arrested in order to defend the person of a companion, the homicide was justifiable. Considering the imminence of the danger to the accused's companion, and endeavoring to put ourselves in the position of the accused at this time, we are firmly of the opinion that he did only what any red-blooded man would do under similar circumstances. Certain it is that the ordinary man would not stand idly by and see a companion killed without attempting to save his life.

Judgment is reversed and the defendant and appellant is acquitted, with costs of both instances de officio. So ordered.

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

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