

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ZOILO DEL CASTILLO, DEFENDANT AND APPELLANT.*G.R. No. 15453. January 13, 1920*

Ponente: TORRES, J.

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Upon an information filed on July 29, 1918, with the Court of First Instance of Bulacan by the provincial fiscal accusing Zoilo del Castillo of the crime of murder, the present cause was instituted and, on October 18, 1918, judgment was rendered therein condemning the accused, as author of the crime of homicide, to suffer 14 years, 8 months and 1 day of reclusion temporal, to indemnify the family of the deceased in the sum of P500 and to pay the costs. From this judgment counsel for the accused appealed.

It appears that on July 16, 1918, about 5 p. m., Zoilo del Castillo appeared in the store of Juana de la Cruz situated in the barrio of Banga, municipality of Quiñgua, Bulacan; that he was carrying in his right hand, placed under his left arm, a handkerchief with its four ends loose, in the middle of which was a knife with its blade opened (Exhibit C); that upon seeing Alvaro Tuason, who was near the store, Zoilo demanded of him the payment of 9 pesos which Tuason owed and furthermore asked him what he had told the boy who must have been the servant of the accused Castillo; that because Tuason had replied that he could not pay until the end of the month inasmuch as he had no money then and had not yet received the purchase price of the hog he had sold, a quarrel arose between the two; that then Castillo said that he did not like to talk any more with Tuason, whereupon the latter replied that if such was the case, he (Castillo) ought not to have approached and talked with him; that then and there the accused Castillo assaulted Tuason, delivering upon him, with the hand holding the handkerchief, two successive blows on the left side of his chest; that as a result of the aggression, Tuason fell on the ground but afterwards could stand up, took hold of a bolo, which was on the cart near him, and with said bolo gave his aggressor Castillo a blow, inflicting upon the latter a wound in the head; that when Tuason tried to repeat the blow, Castillo was able to snatch away the bolo from Tuason's hands; that when Tuason tried to withdraw from his aggressor, the latter immediately gave him another blow on his back with the same hand holding the handkerchief with loose ends, the aggressor not having made use of the bolo taken from the deceased; that Castillo at once left the place of the occurrence; and that Tuason, from whose breast a considerable amount of blood flowed, as seen by the witness Perez, and who was then very weak upon rising from the ground, was conducted in a carromata to the municipal building, aided by one called Patricio who was asked by said witness Perez to accompany the wounded man to said municipal building. The foregoing facts of this case were related in her testimony by the witness Dalmacia C. Perez, who witnessed the incident from the beginning, adding that when Castillo delivered the blows with his hand, he had the handkerchief in his fingers; that after the second blow the deceased fell and, when he stood up, blood was gushing from his chest; that at that moment the witness was sitting on the handrail of the store, about 2 meters from the place where the aggressor and the deceased disputed and quarrelled; that when the latter turned his back to leave the place after the bolo was snatched from him, he received from his aggressor another blow on the back.

From an examination conducted by the physician, Cristobal Santiago, (Exhibit A, rec., 10), it appears that Alvaro Tuason had five wounds: one on the left side of the chest about 3 centimeters long with smooth edges penetrating from the outside into the thorax; another on the left side of the chest outside of the nipple at the level of the fifth space between the fifth and sixth ribs about 4 centimeters long with smooth edges and 6 centimeters deep penetrating from below; another on the back at the right scapula penetrating from outside, another in the posterior extremity of the sternum penetrating only the skin; and the fifth is a scratch in the edge of the left inferior maxillary. Of these wounds inflicted with a sharp pointed instrument, the first was necessarily mortal, from which the wounded man died seventeen hours after having received it. After conducting the corresponding autopsy of the corpse, it was found that said first wound about 7 centimeters long penetrated the thorax and pierced the apex of the left lung. A great quantity of coagulated blood was found in the muscular lining and the inferior of said thorax. Said physician believed that this wound caused the death of the deceased because of the internal hemorrhage produced.

In the affidavit (Exhibit B) executed and attested by the justice of the peace of the municipality aforesaid, the wounded man, Alvaro Tuason, declared under oath that he knew and was conscious of the dangerous condition in which he was due to the wounds he had received, and referred to the incident saying that when the accused Castillo demanded of him the payment of his debt and he replied that he had no money with which to pay till after he could sell his hog, Castillo told him he was mad and immediately wounded him with a knife, and that there were present at this moment the woman Dalmacia and the so-called Teodoro and Gregorio. It appears also that this affidavit sworn to before the justice of the peace was taken early in the morning of July 17, 1918.

In his sworn testimony Zoilo del Castillo admitted that he had inflicted several wounds upon his brother-in-law, Alvaro Tuason, who was married to his sister; that in fact he had a quarrel with him in the afternoon in question for the non-payment of the sum of 9 pesos which his said brother-in-law, Tuason, owed him; that at this moment the deceased took hold of a bolo which was in a cart and immediately gave him a blow with it, whereupon the witness, in turn, returned the blow with the knife he had with him. But on page 118 of his testimony he said that upon seeing Tuason take the bolo from the cart, he, the witness, immediately took hold of the knife he had in his pocket, so that when the former gave him a blow with the bolo, he at once stabbed him with his knife; that because he was able to ward off the bolo, he was only hit in his head; that they then fought hand to hand until they fell on the ground; that he afterwards managed to stand up notwithstanding that Tuason was over him; that at once he went to the municipal building in order to denounce the incident; that as a coachman, he had the habit of carrying with him a knife used in fixing his harness; that when he took the knife from his pocket he also took his handkerchief (Exhibit C) so that the hand with which he gave the blow to the deceased was holding his handkerchief; and that when he was asked whether the witness Dalmacia Perez, whose testimony he had heard, was in bad terms with him, he replied in the affirmative, saying that said witness was angry at his wife because the latter refused to loan her P40, part of the purchase price of a horse he had sold, an incident that took place the preceding April.

The witness Dalmacia Perez denied the motive of this alleged ill-feeling, saying that she never borrowed money from the wife of the accused.

The same physician who examined the wounded man before his death and conducted the autopsy of his corpse after his death also examined the accused, having found in the right temporal region of his head a wound about 5 centimeters long more or less, which penetrated only the subcutaneous lining and could be cured without medical attendance, except in case of complication, in 3 days, and a superficial scratch in the posterior part of the left armpit.

Of the witnesses produced for the defense of the accused Gregorio Javier, who was at the place of the occurrence

fixing the window of the house next to the store, testifies that after a quarrel between the deceased and the accused, the deceased Tuason took a bolo from a cart near by and then the accused Castillo took hold of the knife he had in his pocket and opened it; that when Tuason gave him a blow with the bolo, Castillo in turn assaulted his aggressor with his knife; that they then fought hand to hand and both of them fell on the ground; that he did not see whether Tuason, being over Castillo, gave him any blow; that when Castillo took his knife from his pocket, a box of matches fell therefrom; that Castillo took his handkerchief together with his knife, so that when he delivered the blows with the knife, he had in his hand said handkerchief; that Tuason was the first to assault Castillo with the bolo taken from the cart; and, furthermore, that Castillo is his (the witness) brother in baptism. The second eye-witness, Victor Anzores, said that, while passing on the street near the place of the incident, he saw Alvaro Tuason with a bolo assaulting Zoilo del Castillo, who returned it with a blow; that they at once grabbed each other and fought hand to hand; that he then continued on his way and went to his house; and that he did not approach and separate them because he was afraid.

With the handkerchief, Exhibit C, before him, the municipal policeman, Vicente Lucas, testified that, knowing that when the accused gave the deceased a blow with his hand he had in it a handkerchief, when said accused arrived at the municipal building and changed his clothes, he (witness) found in the pocket of his (accused) camisa said handkerchief, which was rent and had blood stains on it; and that he afterwards delivered said handkerchief to his chief, who in turn delivered it to the justice of the peace.

The foregoing facts constitute the crime of homicide under article 404 of the Penal Code inasmuch as from the proceedings had, it is conclusively proven that during a fight, preceded by a quarrel or dispute, between Zoilo del Castillo and Alvaro Tuason on account of a debt the latter owed and could not pay the former, said Castillo, undoubtedly vexed by not having been able to collect his money, assaulted and wounded the deceased Tuason with a knife he was carrying wrapped up in a handkerchief, and inflicted upon him five wounds the first of which was so serious and mortal that the wounded man died a few hours after having received it.

The accused alleges complete exemption from criminal liability on the ground that he was compelled to inflict said wounds upon the deceased in defense of his person from the unlawful aggression of the former.

In order that the author of the violent death of a human being may be exempted from criminal liability on the plea of self-defense, it is necessary and indispensable that the acts constituting the defense and causing the death of his aggressor must have been attended with the three requisites of (1) unlawful aggression, (2) reasonable necessity for the means employed to prevent or repel the unlawful aggression of which he was the object, and (3) lack of sufficient provocation on the part of the person defending himself or that he has not given rise to said aggression.

The case does not offer any conclusive and satisfactory proof that Zoilo del Castillo has been unlawfully and without cause assaulted by Alvaro Tuason before the latter was assaulted by him with the knife wrapped up in the handkerchief from the center of which its blade was coming out. It is true, and it is an established fact, that between them there was a quarrel and dispute, and that, undoubtedly, Castillo was offended and angry with his brother-in-law, Tuason, because the latter would not pay the 9 pesos he owed him. But it is not justified in the case, in any manner whatever, that Tuason has assaulted him on account and as a result of said quarrel. On the contrary, Castillo was the first to assault Tuason with the open knife the blade of which protruded out of the hole in the middle of the handkerchief, which he had in his right hand placed under his left arm that was crossed upon his chest, while they were discussing over the delay and non-payment of said debt.

We cannot find any reason or motive for not accepting the conclusion arrived at by the trial court after considering the result and weight of the oral evidence and other circumstances which the proceedings show, and having found it adjusted and in conformity with the merits of the case, we believe the findings of the court to be

accurate and impartial.

From the testimonies of the two witnesses for the defense, we are of the opinion that the findings of the trial court is correct relative to the testimony of the witness Victor Anzores that the latter either did not witness the incident and saw nothing of what happened or did not wish to tell the whole truth which would perhaps prove damaging to the accused. Regarding Gregorio Javier, this witness, being then busy and perhaps attentive to his work as carpenter, could not have seen the beginning of the assault upon the deceased Tuason by the accused with the knife with which the former was mortally wounded, and for this reason his testimony could not rebut that of the eyewitness of the prosecution, Dalmacia Perez, who witnessed and saw when the accused Castillo, after the quarrel was over, gave two blows on the chest of the deceased and afterwards another blow on the back as he turned to leave the place of the incident after the bolo, which he took from the cart, was snatched away from him. Even disregarding his affirmation that he was a brother of the accused in baptism and accepting his testimony that he had seen the deceased assaulting the accused with a bolo, we can admit that Gregorio Javier only witnessed that part of the tragedy when Tuason (already wounded and upon rising from the ground on which he had fallen) took the bolo from the cart and with it gave the accused a blow on the head. It was when he tried to repeat said blow, that said accused could snatch away the bolo from him. This would have been the part of the tragedy seen by said witness and not that part preceding the aggression of the deceased. This witness capriciously testified when he said that they (the deceased and the accused) fought hand to hand and that the deceased was over him, because if such was the case, excited as the contestants were, with a determination to return the blow of Castillo who had seriously wounded him, if Tuason was really over Castillo, and armed with a bolo as was assured by the witness Javier, he would have inflicted many wounds upon the accused. But the fact is that the latter had only one slight wound in the head. This capricious, if not false, testimony will not be able to rebut the natural, logical and uncontradicted testimony of the only witness Dalmacia Perez, who affirms having witnessed all that took place from the beginning until the offended party was conducted to the municipal building in a cart. It must also be noted that this witness absolutely denied, without any rebuttal, that she had any ill-feeling with the wife of the accused and that in spite of her cross-examination concerning the facts to which she had testified, it has not been shown that she has received any instructions or lessons from another in order to cite facts which she did not witness. Her testimony as shown by her firm and insisting answers, proves that she really witnessed what took place then and that she has mentioned and explained its details.

After all, it should be noted that the accused, contradicting his own testimony and that of his witness Javier as far as how the quarrel began, concluded by affirming that he took hold of the knife upon seeing the deceased take a bolo from a cart. From this testimony the inference is that there was between them an open fight and a mutual attack not preceded by an unlawful aggression and without the necessity for self-defense sanctioned by law.

From the foregoing consideration, the judgment appealed from, being in conformity with law, is affirmed, as we do hereby affirm it, with the costs of this instance against the accused, who is further condemned to suffer the accessory penalty mentioned in article 59 of the Penal Code. So ordered.

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

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