

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CALIXTO VALDEZ Y QUIRI, DEFENDANT AND APPELLANT.

G. R. No. 16486. March 22, 1921

Ponente: STREET, J.

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STREET, J.:

The rather singular circumstances attending the commission of the offense of homicide which is under discussion in the present appeal are these:

At about noon, on November 29, 1919, while the inter-island steamer Vigan was anchored in the Pasig River a short distance from the lighthouse and not far from where the river debouches into Manila Bay, a small boat was sent out to raise the anchor. The crew of this boat consisted of the accused, Calixto Valdez y Quid, and six others among whom was the deceased, Venancio Gargantel. The accused was in charge of the men and stood at the stern of the boat, acting as helmsman, while Venancio Gargantel was at the bow.

The work of raising the anchor seems to have proceeded too slowly to satisfy the accused, and he accordingly began to abuse the men with offensive epithets. Upon this Venancio Gargantel remonstrated, saying that it would be better, and they would work better, if he would not insult them. The accused took this remonstrance as a display of insubordination; and rising in rage he moved towards Venancio, with a big knife in hand, threatening to stab him. At the instant when the accused had attained to within a few feet of Venancio, the latter, evidently believing himself in great and immediate peril, threw himself into the water and disappeared beneath its surface to be seen no more.

The boat in which this incident took place was at the time possibly 30 or 40 yards from shore and was distant, say, 10 paces from the Vigan. Two scows were moored to the shore, but between these and the boat intervened a space which may be estimated at 18 or 20 yards. As it was full midday, and there was nothing to obstruct the view of persons upon the scene, the failure of Venancio Gargantel to rise to the surface conclusively shows that, owing to his possible inability to swim or the strength of the current, he was borne down into the water and was drowned.

Two witnesses who were on the boat state that, immediately after Venancio leaped into the water, the accused told the remaining members of the crew to keep quiet or he would kill them. For this reason they made no movement looking to rescue; but inasmuch as these witnesses are sure that Venancio did not again come to the surface, efforts at rescue would have been fruitless. The fact that the accused at this juncture threatened the crew with violence is, therefore, of no moment except to show the temporary excitement under which he was laboring.

On the next day one of the friends of Venancio Gargantel posted himself near the lighthouse to watch for the body, in the hope that it might come to the surface and could thus be recovered. Though this friendly vigil lasted three days nothing came of it.

It may be added that Venancio has not returned to his lodging in Manila, where he lived as a bachelor in the house of an acquaintance; and his personal belongings have been delivered to a representative of his mother who lives in the Province of Iloilo. His friends and relatives, it is needless to say, take it for granted that he is dead.

The circumstances narrated above are such in our opinion as to exclude all reasonable possibility that Venancio Gargantel may have survived; and we think that the trial judge did not err in holding that he is dead and that he came to his death by drowning under the circumstances stated. The proof is direct that he never rose to the surface after jumping into the river, so far as the observers could see; and this circumstance, coupled with the known fact that human life must inevitably be extinguished by asphyxiation under water, is conclusive of his death. The possibility that he might have swum ashore, after rising in a spot hidden from the view of his companions, we consider too remote to be entertained for a moment.

As to the criminal responsibility of the accused for the death thus occasioned there likewise can be no doubt; for it is obvious that the deceased, in throwing himself into the river, acted solely in obedience to the instinct of self-preservation and was in no sense legally responsible for his own death. As to him it was but the exercise of a choice between two evils, and any reasonable person under the same circumstances might have done the same. As was once said by a British court, "If a man creates in another man's mind an immediate sense of danger which causes such person to try to escape, and in so doing he injures himself, the person who creates such a state of mind is responsible for the injuries which result." (Reg. vs. Halliday, 61 L. T. Rep. [N. S.], 701.)

In this connection a pertinent decision from the Supreme Court of Spain, of July 13, 1882, is cited in the brief of the Attorney-General, as follows: It appeared that upon a certain occasion an individual, after having inflicted sundry injuries upon another with a cutting weapon, pointed a shotgun at the injured person and to escape the discharge the latter had to jump into a river where he perished by drowning. The medical authorities charged with conducting the autopsy found that only one of the wounds caused by a cut could have resulted in the death of the injured person, supposing that he had received no succour, and that by throwing himself in the river he in fact died of asphyxia from submersion. Having been convicted as the author of the homicide, the accused alleged upon appeal that he was only guilty of the offense of inflicting serious physical injuries, or at most of frustrated homicide. The Supreme Court, disallowing the appeal, enunciated the following doctrine: "That even though the death of the injured person should not be considered as the exclusive and necessary effect of the very grave wound which almost completely severed his axillary artery, occasioning a hemorrhage impossible to stanch under the circumstances in which that person was placed, nevertheless as the persistence of the aggression of the accused compelled his adversary, in order to escape the attack, to leap into the river, an act which the accused forcibly compelled the injured person to do after having inflicted, among others, a mortal wound upon him, and as the aggressor by said attack manifested a determined resolution to cause the death of the deceased, by depriving him of all possible help and putting him in the very serious situation narrated in the decision appealed from, the trial court, in qualifying the act prosecuted as consummated homicide, did not commit any error of law, as the death of the injured person was due to the act of the accused." (II Hidalgo, *Codigo Penal*, p. 183.)

The accused must, therefore, be considered the responsible author of the death of Venancio Gargantel, and he was properly convicted of the offense of homicide. The trial judge appreciated as an attenuating circumstance the fact that the offender had no intention to commit so great a wrong as that committed. (Par. 3, art. 9, Penal Code.) In accordance with this finding the judge sentenced the accused to undergo imprisonment for twelve years and one day, reclusion temporal, to suffer the corresponding accessories, to indemnify the family of the deceased in the sum of P500, and to pay the costs. Said sentence is in accordance with law; and it being understood that the accessories appropriate to the case are those specified in article 59 of the Penal Code, the same is affirmed, with costs against the appellant. So ordered.

Mapa, C. J., Malcolm, Avancena, and Villamor, JJ., concur.

DISSENTING

ARAULLO, J.,

I dissent from the majority opinion in this case.

The only fact that the evidence shows is that Venancio Gargantel, one of those who were in a boat of the steamer Vigan subject to the orders of the accused Calixto Valdez and who at the time was engaged in the work of raising the anchor of that vessel, which was then lying at the Pasig River, a short distance from the lighthouse and not far from its mouth at the Manila Bay, upon seeing that the accused was approaching him, armed with a big knife, and in the attitude of attacking him, threw himself into the water and disappeared from the surface and had not been seen again. This event took place at noon on November 29, 1919, the boat being then about 30 or 40 yards from land and about 10 steps from the Vigan, there being two lighters moored to the shore and at a distance of about 18 or 20 yards from the boat. All of these facts are stated in the decision itself.

The original information in the present case, charging Calixto Valdez y Quiri with the crime of homicide and alleging that as a result of his having thrown himself into the river under the circumstances mentioned, Venancio Gargantel was drowned, was presented on December 8, 1919, that is, nine days afterwards.

There is no evidence whatever that the corpse of Venancio Gargantel had been found or, what is the same thing, that he had died. From November 28, the day when the event occurred, until December 8, when the information was filed, it cannot in any manner be maintained that the necessary time had passed for us to properly conclude, as is alleged in the information, that said Gargantel had died by drowning, as a consequence of his having thrown himself into the water upon seeing himself threatened and attacked by the accused. Neither does it appear in the evidence that all the precautions necessary for us to assure ourselves, as a sure and proven fact, that Venancio Gargantel then died by drowning, were taken; nor is there any evidence that it would have been impossible for him, by swimming or by any other means to rise to the surface at a place other than the Pasig River or that where the boat was, from which he threw himself into the river, and in that manner save himself from death.

From the evidence of the witnesses for the prosecution which is the only evidence in the record, for the accused did not take the stand, it only appears that Venancio Gargantel, after having jumped from the boat, did not rise again to the surface. Such was the statement of two of those witnesses who were members of the boat's crew at the time. Another witness also declared that Gargantel was afterwards not again seen at the house where he lived in this city, No. 711 San Nicolas Street, where he kept his trunks and some effects, a fact which caused his mother, who lived in the municipality of Guimbal, in the Province of Iloilo, upon being informed of it and upon the failure of Venancio to appear in said place, to give special power on the 28th of that month of December, that is, one month afterwards, to a student, Ignacio Garzon, to get the trunks and effects of Venancio from said house. Said Garzon himself testified, upon being asked whether Venancio Gargantel had returned to the house of his parents since November 29, 1919, that he had no information about it, and another witness, Pedro Garcia, of the prosecution, stated that he had probably died, because he had not seen Venancio Gargantel.

Therefore, in short, the only fact proved is that since Venancio Gargantel threw himself into the river, upon being threatened with a knife by the accused, his whereabouts has remained unknown even at the moment of rendering judgment in this case, or, February 9, 1920, that is, two and one-half months after the occurrence of the event.

It is stated in the decision that the friends and parents of Gargantel give him up for dead. There is nevertheless in the record no statement of any parent of Gargantel to that effect; for his mother Maria Gatpolitan, a resident of the municipality of Guimbal, merely stated in the power of attorney executed in favor of Ignacio Garzon that 'the latter should take steps in order that the city fiscal might investigate the death of her son which, according to

information, was caused by another member, of the crew of the steamer Vigan; and none of his friends, that is, none of the two members of the party in the boat at that time and of the crew of the steamer Vigan, nor Maximo Gumbog, the owner of the house in which Gargantel lived in this city, nor Pedro Garcia, another member of the crew of that steamer, and finally, nor Ignacio Garzon himself has stated that he gave up Gargantel for dead, for the simple reason that this was not possible, for they only knew that he did not again rise to the surface and was not seen again after having thrown himself into the river from the boat.

For this reason it is stated in the decision that the circumstances therein stated are such that they exclude all reasonable possibility that Venancio Gargantel could have survived and that the circumstance that never rose to the surface after having jumped into the river, as witnessed by the persons present, together with the admitted fact that human life is necessarily asphyxiated under the water, is conclusive that he died. Then, there is nothing more than a deduction that Gargantel had died based upon those facts and circumstances.

In my opinion this is not sufficient to convict the accused as guilty of homicide, because there is the possibility that Gargantel had risen to the surface at some place away from that where he threw himself into the river and had embarked on some other vessel in the same river or out of it in the bay and had gone abroad, or to some province of these Islands and is found in some municipality thereof, cannot be denied. And this is very probable inasmuch as it does not appear in the record that the necessary investigation has been made in order to determine even with only some measure of certainty, not to say beyond all reasonable doubt, that it was and is impossible to find said person or determine his whereabouts.

Furthermore, there is not even a presumption juris tantum that he had died, for in order that this presumption may exist, according to section 334 of the Code of Civil Procedure, it is necessary that no information about him should have been received for seven years from his disappearance upon his throwing himself into the river, which occurred on November 29, 1919, that is, only about one year and four months ago. And if, in order that a finding of a civil character in favor of or against some person, may be made, by virtue of that presumption, it is necessary that seven years should have elapsed without any notice being received of the person whose whereabouts is unknown, it is not just, reasonable, or legal that the period of one year and four months from his disappearance or since Venancio Gargantel threw himself into the water should suffice for us to impose upon the accused Calixto Valdez such a grave penalty as that of twelve years and one day of reclusion temporal, merely assuming without declaring it, as a proven fact, that Gargantel has died and at the same time finding said accused to be the author of that death.

Lastly, the decision of the English Supreme Court or that of the Spanish Supreme Court dated July 13, 1882, cited by the majority opinion is not applicable. The first, is not applicable because in the present case it is not proved, beyond reasonable doubt, that some damage resulted to Gargantel, just as it cannot be considered as proved that he had died, or that he had been injured or that he had suffered some injury after having thrown himself into the river as a result of the threat of the accused. The second is not applicable because the decision of the Supreme Court of Spain refers to a case, in which the injured party had already been wounded with a cutting instrument by the accused before throwing himself into the river upon the latter aiming at him with his gun, it having afterwards been proved upon his being taken out of the river that the wound inflicted upon him by the accused was mortal; and, consequently, it was declared by said court that, even if the death of the deceased be considered as not having resulted exclusively and necessarily from that most grave wound, the persistence of the aggression of the accused compelled his adversary to escape it and threw himself into the river, by depriving him of all possible help and placing him in the serious situation related in the judgment appealed from—a case which, as is seen, is very different from that which took place in the present case.

For the reasons above stated, I am of the opinion, with due respect to the opinion of the majority, that the accused

Calixto Valdez y Quiri cannot be found guilty of homicide and should be acquitted.

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