

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGAPITO BUENO, DEFENDANT AND APPELLANT.

G. R. No. 16783. March 08, 1921

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The information which gave rise to the present action is of the following tenor:

"That on or about the night of December 23, 1919, in the municipality of Santa, Province of Ilocos Sur, Philippine Islands, said accused, Agapito Bueno, voluntarily, illegally, and criminally attacked Eusebio Alvior with a small bolo, inflicting upon him a wound in the abdomen which reached part of the small intestines and the peritoneum, as a result of which said Eusebio Alvior died the next day. Act committed in violation of law."

The appellant was found guilty of the crime of homicide and sentenced by the Court of First Instance of Ilocos Sur to fourteen years eight months and one day of reclusion temporal, with the accessories provided by law, to indemnify the heirs of the deceased in the sum of P1,000 and to pay the costs.

The accused duly appealed to this court. In his brief he assigns several errors, which resolve themselves into this one, namely, the improper weighing of the evidence by the trial court.

The facts proved are the following:

At about 8 o'clock in the evening of December 23, 1919, the deceased, Eusebio Alvior, Fidel Bello, Carlos Corpus, and Elo Corpus, while going to the house of Felix Laurente to ask him about a certain transaction on fish in which they were interested, met near said house the accused Agapito Bueno who had also just arrived. Fidel Bello had conversation with the latter as to the share of the palay due him which they had to collect from certain farmers, and upon being asked why he did not comply with the agreement they had made before the municipal president, Agapito answered that it was because the agreement was made by the president for him (Fidel) and Eusebio Alvior only, and he added that he had no complaint against Fidel but against Eusebio because the latter spoke ill of him (Agapito) and collected payment from the farmers who, for that reason, no longer wanted to give more palay. Eusebio then intervened in the conversation, reprimanding Agapito because of the allusion made by the latter although he (Eusebio) had not spoken ill of him. In answer to this, Agapito took a step backward and, drawing his bolo, he gave Eusebio a thrust in the abdomen and the latter fell down. He was aided by his companions Fidel Bello, Carlos Corpus, and Elo Corpus, who took him to his house, in a serious condition, while the accused went away from the scene of the crime. The next day Eusebio Alvior died as a result of the wound.

How the question as to the palay awakened in Agapito feelings of resentment against Fidel and Eusebio is explained by the following circumstance. In the municipality of Santa, Ilocos Sur, it appears that there existed certain fields belonging to certain farmers which they used to fence during the planting and harvesting season, to protect the crops from animals. A person was in charge of the fencing and for his services the farmers gave him a part of the harvest. This was the position which for several years before the month of December, 1919, was occupied by the accused Agapito Bueno. That month, for a part of the harvesting season, Fidel Bello and Eusebio

Alvior, the deceased, were appointed watchers of the fence and since then there arose between them and the accused some trouble as to the partition of the palay which they would collect from the farmers, because, while the latter rendered services in that year during the planting season, the latter were appointed by the municipal president only since the beginning of harvesting season.

There is no question as to the cause of the death of Alvior. It was the wound inflicted upon him in the abdomen by the accused Agapito Bueno. The difficulty lies in the determination of the circumstances under which the act charged was committed. The theory of the defense is that Fidel Bello and Eusebio Alvior forcibly entered the house of the accused on the night in question, beat the accused and his wife in the kitchen of his house, and the latter in defense of himself and his wife took hold of the bolo that was on the wall of the house and with it he attacked Alvior, wounding him in the abdomen, after which Bello and Alvior hurriedly fled from the house, while the accused went to the municipal building to give an account of the occurrence, after first examining the wounds caused to his wife.

If the act took place under the circumstances described by the defense, it is undisputed that the accused is entitled to be acquitted, for in such case, the plea of self-defense, which exempts him from criminal responsibility, should be applied to him. But there are numerous points in the case which prevent us from accepting the theory of the defense.

The wife of the accused, in corroboration of the latter's testimony, declared that before Fidel Bello and the deceased Alvior succeeded in opening the door of the house, she gave cries for help from her neighbors, but nobody came. Nevertheless, a witness of the defense, Julio Banez, testified that on that night while passing near the house of the accused on his way from Narvacan, he heard cries for help, and he went to the scene and saw Eusebio Alvior wounded, having also aided two persons who were there to carry Alvior to his house. This witness, besides contradicting the statements of the wife of the accused, that nobody came to help them, was also completely contradicted by Fidel Bello, Carlos Corpus, Elo Corpus, and the wife of the deceased, Jacoba Baggayan, who categorically stated that they did not see Julio Banez on that night, nor did the latter go to the house of the deceased on the night in question. The trial judge declared, in this judgment, that the testimony of this witness is wholly false. After reading the evidence we are of the opinion that the finding of the trial judge is supported by the evidence.

The defense presented the testimony of Enrique Jimeno, health inspector of the municipality of Santa, who declared that he had a conversation with the deceased on the night in question while he was seaming his wound, and in said conversation the deceased told him that he had been wounded by the accused at the latter's house. This witness stated to the court that he examined Agapito Bueno and his wife Priscila Bello, and found on their bodies wounds that could be cured in seven days. The testimony of this witness cannot stand the slightest criticism., It is true that on the night in question he was called to apply the first remedy but not to investigate the occurrence for, among others, there were also present the municipal president and the justice of the peace of the municipality. The widow of the deceased, testifying on this point, stated that her husband had no conversation with the inspector, who was very busy cleaning and curing the wound, and she stated this because she never left the bedside of her husband from the time he was taken to the house already wounded in the abdomen. She also stated that the deceased, upon being asked by the justice of the peace as to who wounded him and where he was wounded, answered that he was wounded by Agapito Bueno near the house of Felix Laurente.

As to the injuries which the inspector states he saw on the face of the accused, we have the testimony of the municipal president, according to which the accused had no marks of injury on the night in question nor on the morning of the next day; and the wound which was on one of his lips on the afternoon when the justice of the peace informed the president that the accused had been to his court to file a charge of trespass to dwelling,

appeared to be a burn from a cigar, and the bruises which he had on the temple could not have been caused with a stick. The municipal president is a witness of great credibility in this cause and his testimony shows that the statement of the inspector Enrique Jimeno deserves no credit.

The defense furthermore presented the testimony of the municipal policeman, Nicolas Buenavista, whose house was not far from that of Felix Laurente, near which the act charged took place. This witness declared that he was in his house at almost the same time, that the event occurred according to the witnesses for the prosecution, and he stated that he heard nothing and knew of no quarrel until he was called by the other policeman Nicanor Bello to look for the accused. As is seen, his testimony is purely negative and cannot prevail against the positive statements of the eyewitnesses, Fidel Bello, Carlos Corpus, and Elo Corpus.

There is another circumstance which weakens the theory of the defense. According to the accused and his wife, the deceased after having received that wound in the kitchen of his house, ran away, following his companion, Fidel Bello. The nature of the wound inflicted upon the deceased is incompatible with the account given by the accused. He could not have run but would have fallen down in the kitchen, due to the flow of blood. Nevertheless, no proof whatever as to the blood stains, which should have been left by the deceased in the kitchen of the house of the accused, was presented.

Lastly, the policeman Nicanor Bello stated that he went to the house to the accused to arrest him shortly after being informed that he wounded Eusebio Alvior, but his wife wept and told him that her husband (the accused) left home the previous evening and had not yet returned. Then Nicanor called the other policeman Nicanor Buenavista and the two returned to the house of the accused and, not having found him, they went to the old road and in front of the house of one Dona Agustina they arrested him with the weapon in question. If the encounter took place in the house of the accused, it cannot be explained why his wife merely answered the policeman that her husband had left home the previous evening and had not yet returned at the time when they were searching for him and why the accused carried the deadly weapon when he was arrested in the street by the policeman.

In view of what has been said, we consider as of little or no importance the filing of the complaint for trespass to dwelling in the justice of the peace court by the accused and his wife against Fidel Bello and Eusebio Alvior at about the same time that the preliminary investigation for the crime of homicide, which is the object of this cause, was being held. Our conclusion is that the trial court correctly weighed the evidence and committed no error prejudicial to the rights of the accused. Much less were those assigned by the accused in his brief committed.

The act charged constitutes the offense of homicide defined and penalized in article 404 of the Penal code; and the judgment appealed from being in conformity with law, it should be as it is now affirmed, with costs. So ordered.

Mapa, C. J., Araullo, Street, and Malcolm, JJ., concur.

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