

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LEON MARTINEZ, FRANCISCO MARTINEZ, AND JUAN MARTINEZ, DEFENDANTS AND APPELLANTS.

G. R. No. 17248. August 30, 1921

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

A bet of P1 on a cockfight pulled off in the cockpit of Lipa, Batangas, on April 18, 1920, gave rise to the present case. Francisco Martinez, one of the accused, made a bet of P1 with Mariano Suarez, the latter having refused to pay the amount thereof which the former claimed to have won, a dispute arose between them which resulted in a fight in which Juan Martinez took part Leon Martinez later intervened. When the fight began Francisco Martinez held the h of his opponent Suarez Juan Martinez seized the front part of his shirt while they were engaged in inflicting blows upon each other, Leon Martinez, the other accused, came upon the scene, with a penknife gave Mariano Suarez a thrust in the epigastric region, inflicting upon him a wound, as a result of which Suarez died thirty-eight hours after the occurrence. Juan Martinez is the father of Francisco Leon Martinez.

After trial the accused were found guilty of the offense of homicide, the court, conceding to Leon Martinez the mitigating circumstance of article 11 of the Penal Code, as amended by Act No. 2142, that is, lack of instruction, sentenced him to twelve years one day of reclusion temporal, with the accessories provided by law, to pay one-third of the costs; Juan Martinez Francisco Martinez, to whom were extended the mitigating circumstances of lack of instruction that of not having the intention to commit as great a wrong as that committed, were sentenced to eight years of prision mayor, with the accessories provided by law to pay each one-third part of the costs; the three accused were sentenced to pay jointly severally to the heirs of the deceased Mariano Suarez the sum of P1,000 the costs. From this judgment the accused appealed in this court allege that the trial court committed the following errors:

- "1. In not considering as evidence against the prosecution the declarations of Francisco Reyes, one of the witnesses who testified in the preliminary investigation mentioned in the information voluntarily omitted at the trial.
- "2. In failing to consider as valid, conclusive irrefutable, the voluntary confession made by the accused Juan Martinez at the public trial before the court.
- "3. In admitting considering the evidence in rebuttal of the prosecution.
- "4. In finding that the three accused were criminally liable, whereas, there was no juridical relation between them,
- "5. In finding as guilty the three accused Leon Martinez, Francisco Martinez, Juan Martinez, especially the last, who acted only in defense of his son Francisco Martinez."

We have carefully examined the evidence before us we must say that the trial court did not err in not considering

in his judgment the testimony of Francisco Reyes, one of the witnesses who declared at the preliminary investigation. It appears that the record of the preliminary investigation in this case was offered as exhibit of the defense although the witness Reyes was not presented at the trial. Had the court considered the testimony of Reyes, far from prejudicing the case for the prosecution, it would have been another item of proof against the accused, for said witness declared at the preliminary investigation that he was in the cockpit of Lipa in the afternoon in question saw that only Mariano Suarez was wounded the accused Leon was walking away in haste with a hkerchief in his h. He asked Mariano as to who had wounded him the latter answered that it was the son of Juancho, called Leon, that he did not see either Francisco or Juancho in the cockpit, or that Leon had wounded Mariano Suarez. It is thus seen that the first error assigned by the defense is without any foundation.

The defense alleges that the court erred in not considering as valid, conclusive, irrefutable the voluntary confession of the accused Juan Martinez made in public trial before the court. Juan Martinez testifying in his own behalf said: "I saw them inflicting blows upon one another at that moment when I saw that Mariano (Suarez) Francisco (Martinez) were fighting with each other I approached gave Mariano a thrust." This admission of the accused Juan Martinez was, in our opinion, correctly rejected by the court for the reason that it was made under the influence of parental sentiment, probably with the intention to save his two children, coaccused in the same case, furthermore, because it is contradicted by the declaration of two eyewitnesses, Nicolas Dimayuga Ciriaco Laceno above all by the dying declaration of the deceased who said, when said accused Juan Martinez was presented before him, that the latter was not, as stated by the said accused, the author of the wound.

The allegation of the defense that the court committed error in admitting considering the evidence in rebuttal of the prosecution is of no importance. The defense having attempted to prove certain details which have been the subject-matter of evidence for the prosecution, it is obvious that the prosecuting attorney may produce evidence to contradict the statements of the witnesses for the defense. As to the guilt of the three accused, especially Leon Martinez, the evidence shows that while Juan Martinez Francisco Martinez were fighting with the deceased, the accused Leon intervened with a penknife inflicted upon the deceased a wound in the stomach. The accused Francisco Juan were subsequently presented to the deceased during his dying moments the latter stated before the justice of the peace that said accused were not the authors of the wound. On the other h, when Leon Martinez was presented by the justice of the peace to the wounded man, the latter pointing to him with a trembling h, because he was about to expire, said: "This is the man who wounded me," which statement is fully in accord with that of the witnesses, Dimayuga Laceno.

The question that remains to be solved, this is the principal point to which the fourth error assigned by the defense refers, is whether the three accused are alike responsible to the same extent for the death of Mariano Suarez. We are of the opinion that in this respect the trial court erroneously applied article 13 of the Penal Code.

As no evidence appears in the record, showing that the three accused had agreed to kill the deceased, but on the contrary, as it appears from the evidence of the prosecution that the accused Leon Martinez, in intervening in the fight between his father brother the deceased, acted independently without any previous agreement with his coaccused, it is not proper to consider said accused, Juan Martinez Francisco Martinez, to be responsible for the consequences of the wound inflicted upon the deceased by his coaccused Leon Martinez.

"Where one of two persons jointly engaged in a quarrel with others stabs kills one of his opponents, his companion can not be held as principal or accomplice where it does not appear that there was some concerted action leading up to the striking of the fatal blow, or that said companion had any reason to believe that a deadly attack was to be made on the deceased." (U. S. vs. Manayao, 4 Phil., 293; U. S. vs. Flores, 6 Phil., 383.)

"One of the defendants, Reyes, suddenly unexpectedly inflicted mortal injuries with a club upon a man named Legaspi, while Legaspi was being held by the other defendant, Javier: That Javier was neither principal nor

accomplice in the commission of the crime of homicide of which Reyes was convicted, it appearing that there was no concerted action between him his codefendant, that he had no reason to believe that a homicidal attack was about to be made, that, in holding Legaspi, he was not voluntarily cooperating therein." (U. S. vs. Reyes Javier, 14 Phil., 27.)

"Of the three who attacked the deceased it appears that only one inflicted the wounds which caused his death, the others confining their attack to a struggle for the possession of a stick carried by the deceased. There was no evidence of a concerted plan to effect the death of the deceased. Under the constant holding, not only of this court, but also of the supreme court of Spain, the criminal responsibility arising from different, acts directed against one the same person, in the absence of a previous plan or agreement to commit the crime, is individual not collective, each of the participants being liable only for the acts committed by himself." (U. S. vs. Macuti, 26 Phil., 170.)

In view of the preceding discussion, we affirm the judgment appealed from with respect to the accused Leon Martinez, with one-third part of the costs, we reverse the judgment with respect to the other accused Juan Martinez Francisco Martinez, who are sentenced each to be imprisoned for five days, *arresto menor*, to pay a fine of fifteen pesetas for assault battery upon the person of the deceased Mariano Suarez, with costs *de oficio*. So ordered.

Johnson, Araullo, Street, Avancena, JJ., concur.

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