

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ARTEMIO MOJICA, DEFENDANT AND APPELLANT.

G. R. No. 17650. February 15, 1922

Ponente: OSTRAND, J.

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OSTRAND, J.:

The defendant is charged with the crime of homicide, the information alleging that on or about the 14th day of December, 1920, in the city of Manila, the accused, Artemio Mojica, voluntarily, illegally, and criminally, without any justification and with intent to kill, attacked one Crispin Macasinag, discharging against him a revolver and inflicted upon him a wound in the chest from the effects of which said Crispin Macasinag died. The lower court found the accused guilty and sentenced him to fourteen years, eight months and one day of reclusion temporal, with the accessory penalties of the law and the costs, and to indemnify the heirs of the deceased in the sum of P1,000. The case is before this court upon appeal from this sentence.

The deceased was a Constabulary soldier stationed at the Santa Lucia Barracks and the accused a policeman in the city of Manila. The evidence shows that on the evening of December 13, 1920, a Constabulary soldier and a woman, having been found on the City Wall under somewhat suspicious circumstances, were taken in charge by the police and subjected to an investigation. The incident caused considerable irritation among the Constabulary troops stationed at Santa Lucia Barracks and later in the evening the appellant, who had taken no part in the arrest and investigation, and another police officer by the name of Evangelista, were stopped on a public street by three Constabulary soldiers, armed, respectively, with a rifle, a bayonet, and a stone, and were made to hold up their hands and threatened with death if they did not produce the soldier and the woman who had been arrested. The timely arrival of a patrol wagon saved the policemen from further indignities.

On the afternoon of the following day the appellant was detailed to patrol Calle Real in the Walled City from the Santa Lucia Barracks to the Parian Gate. An unusual number of Constabulary men congregated on the street patrolled by the appellant and displayed a decidedly hostile attitude towards him, on one occasion going so far as to push him off the sidewalk causing him to fall down. The appellant also heard some of them remark that he was the one who had made the arrest above-mentioned. He also observed that most of the Constabulary soldiers kept one hand in their pockets holding open knives in such manner that the outlines of the points could be seen through the cloth. The appellant advised the Luneta police station by telephone at various times during the afternoon of the hostile attitude of the soldiers. Finally, he appears to have become seriously alarmed and took refuge in a restaurant from which, he telephoned to the police station for assistance. In response to his call, police reserves from the Luneta station arrived on the scene. The appellant did not leave the restaurant until the arrival of the reserves.

The reserves having arrived, the policemen undertook to clear the street of the Constabulary men, who showed a defiant attitude and in some instances resisted the police.

One of the Constabulary soldiers, the deceased Crispin Macasinag, was placed under arrest by an American police

officer who endeavored to conduct him from the middle of the street and over to the sidewalk. He resisted the officer and finally succeeded in freeing himself. He then confronted policeman Duque whom he struck with his fist and who returned the blow with his club. Macasinag reeled from the blow inflicted on him by Duque and while apparently in a somewhat dazed condition, drew his mess kit knife and brandishing it attacked the appellant. The appellant retreated a step or two, drew his revolver and discharged it at Macasinag inflicting a wound from which the latter died a few days later.

This statement of facts is supported by practically all the evidence in the case except the dying declaration of the deceased and the testimony of the Constabulary soldiers Bactoctoy and Odazco. Their testimony, in part, corroborates the testimony of the other witnesses, but in other respects is to the effect that the Constabulary soldiers were abroad casually and with entirely peaceful intentions. This is hardly consistent with the admitted fact that both the deceased and the witnesses Bactoctoy and Odazco carried knives. Their endeavor to show that the deceased was peacefully resisting arrest can hardly be taken seriously.

The appellant admits having killed Macasinag, but maintains that he did so in self-defense and that he, therefore, is exempt from criminal liability under paragraph 4 of article 8 of the Penal Code. The pertinent part of that article reads:

"ART. 8. The following are exempt from criminal liability:

* * * * *

- Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

"(1) Unlawful aggression;

"(2) Reasonable necessity for the means employed to prevent or repel it;

"(3) Lack of sufficient provocation on the part of the person defending himself."

That there was unlawful aggression on Macasinag's part cannot be disputed. Neither does there appear to have been any provocation on the part of the accused, who, as far as the evidence shows, took no part in the acts of violence alleged by the Constabulary soldiers to have been committed against them by the police officers. This leaves only the question of the reasonable necessity for the means employed by the appellant to repel the unlawful aggression of the deceased.

A police officer, in the performance of his duty, must stand his ground and cannot, like a private individual, take refuge in flight; his duty requires him to overcome his opponent. The force which he may exert therefore differs somewhat from that which may ordinarily be offered in self-defense. Bearing this in mind, we do not think that the appellant in using his revolver against the deceased can be said to have employed unnecessary force. The deceased attacked him with a deadly weapon; he might, perhaps, have saved himself by running away, but this his duty forbade. Was he to allow himself to be stabbed before using his arms? It may, perhaps, be argued that the appellant might have used his club, but a policeman's club is not a very effective weapon as against a drawn knife and a police officer is not required to afford a person attacking him the opportunity for a fair and equal struggle. (State vs. Phillips, 119 Iowa, 652; 67 L. R. A., 292; North Carolina vs. Gosnell, 74 Fed., 734; Boykin vs. People, 22 Colo., 496; 45 Pac, 419; Adams vs. State, 72 Ga., 85.) And if it was necessary for the appellant to use his revolver, he could hardly, under the circumstances, be expected to take deliberate and careful aim so as to strike a point less vulnerable than the body of his adversary. (U. S. vs. Mack, 8 Phil., 701; U. S. vs. Domen, 37 Phil., 57.)

Considering the threatening attitude of Macasinag, the appellant had the best of reasons for believing that his life was in imminent danger and we think the means employed by him for his defense were, in the circumstances,

reasonably necessary.

The judgment of the trial court is therefore reversed and the appellant acquitted of the crime with which he is charged, with the costs in both instances de oficio. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.

Johnson, J., did not take part.

Street, J., was absent when this case was decided.

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