THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CRISTOBAL FRANCISCO, DEFENDANT AND APPELLANT.

G.R. No. 22061. October 11, 1924

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

After considering the evidence introduced in this case, the Court of First Instance of Pangasinan rendered judgment, finding the defendant guilty of the crime of homicide, as charged in the complaint, and sentencing him to the penalty of twelve years and one day of reclusion temporal, to indemnify the heirs of the deceased in the sum of P500 and to pay the costs.

Counsel for the accused prays for the reversal of the judgment appealed from, alleging that the lower court erred: (a) In compelling, as it in fact did compel, the accused to be present during the trial, notwithstanding that he had waived his right thereto; (b) in finding as a fact proven that the deceased Luis Abulencia died as a consequence of the wound received by him from the accused at about 7 o'clock in the morning of December 7, 1924; (c) in not holding that the facts proven fully prove that in wounding Luis Abulencia, the accused acted in self-defense with all the circumstances that are essential in order that the same may constitute an exemption from criminal liability; and (d) in not acquitting the defendant with all pronouncements in his favor.

As to the first error, it was held in the case of Diaz vs. United States (223 U. S., 442), that except in cases in which the accused is in custody and in which the crime charged is a capital offense, the presence of the accused is indispensable only at the following stages: (1) At the arraignment; (2) at the time of the defendant's answering the complaint, if he pleads guilty, and (3) at the pronouncement of the judgment; that his presence at any other stage is not indispensable, and may be waived by the accused. So that in denying the petition of the accused, waiving his presence at the trial of this case, the trial court erred, but such an error is not reversible because it did not prejudice any right of the accused.

The second error finds no support in the case. There is plenty of evidence showing that Luis Abulencia died as a consequence of the wound received on the left side of the parietal region.

The defense contends that the trial court erred in not holding that the facts proven justify the acquittal of the accused for having acted in lawful self-defense with all the circumstances required for exemption from criminal liability.

The prosecution and the defense maintain opposite theories as to the time and manner in which the event took place. The witnesses for the prosecution uniformly testify that the accused struck Luis Abulencia with his bolo while the latter was plowing a field not far from the former's house. On the other hand the witnesses for the defense say that the act complained of occurred in front of the house of the accused about 3 or 4 meters from the staircase of said house; and that the event took place, according to the accused and his son, because said accused refused to drink the wine that Luis Abulencia was offering him, which caused the latter to assault him with a bolo,

which aggression the former dodged by placing himself behind Domingo Zulueta, but pursued by Abulencia, before running away, he was able to take the bolo that Domingo Zulueta had on his belt, and with it he struck a blow against Luis Abulencia.

The trial court gave more credit to the witnesses for the prosecution than those for the defense, and we believe that it did right, for we find in the record that the chief of police who repaired to the place of the event saw blood stains on the rice field outside the fence of the defendant's house, which sEows that it was there where the deceased received the wound on the left parietal region, and not in front of the staircase of the defendant's house. On the other hand, Domingo Zulueta affirms that on that occasion he had no bolo, and if so, the accused could have taken none from him with which to strike the deceased.

The lower court says the following on this point:

"The court, however, does not consider the defense set up by the accused to be of any merit:

"1. Because said defense can in no way overthrow the conclusive and uncontradicted testimonies of the three eyewitnesses presented by the prosecution, who positively testified to having actually seen the accused inflict the wound that caused the death of the deceased in the manner above stated;

"2. Because such a defense was absolutely denied and overthrown by the witness of the prosecution, Domingo Zulueta, in testifying in rebuttal;

"3. Because at all events, it does not constitute complete exemption from liability; and

"4. Because by a careful examination of the attitude and manner of testifying of the witnesses for each party, the court has arrived at the conclusion that the witnesses for the prosecution are entitled to more credit than the witnesses for the defense.

"Although the motive of the criminal act was not duly established, owing to the fact that the prosecuting attorneys did not make the necessary effort to show the same to the court with certainty, yet such a circumstance does not exempt the accused from criminal liability, there appearing in the record direct and positive evidence that it was the accused who inflicted the wound that caused the death of the deceased, and specially if it is taken into consideration that the defense interposed by the accused does not come within the provisions of article 8 of the Penal Code so as to constitute a lawful defense." We have examined the record before us and find nothing justifying a modification of the findings set out in the judgment appealed from.

The Attorney-General calls our attention to the fact that the commission of the crime was not attended by any circumstance modifying liability, and therefore the penalty fixed by the law shall be imposed upon the accused in the medium degree, that is, from fourteen years, eight months and one day to seventeen years and four months of reclusion temporal The trial court imposed the penalty of twelve years and one day of reclusion temporal, that is to say, the minimum degree of the penalty fixed by the law, taking undoubtedly into consideration, as mitigating circumstance, the lack of instruction of the accused, as shown by the record.

For the foregoing, the judgment appealed from must be, as is hereby, affirmed, with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Avancena, Ostrand, and Romualdez, JJ., concur.

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