

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ESTANISLAO GALLOS, DEFENDANT AND APPELLANT.

*G.R. No. 22531. November 20, 1924*

Ponente: VILLAMOR, J.

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### VILLAMOR, J.:

On May 7, 1923, several persons, among them, the deceased and the accused, were invited by Graciano Gadon to sow palay, according to some witnesses, or to celebrate, according to others, the holiday of "San Isidro Labrador."

Gadon prepared tuba (wine) for his guests, and killed a pig, the flesh of which he served at the dinner. After the meal, the accused Estanislao Gallos suggested to the host to drink tuba, while eating viand (which act is called sumsuman in that locality), and to that end, he took his companions to the house of Laurencio Galido, Graciano carrying a part of the flesh of the pig killed, and once in the house of Laurencio, the accused asked him if he could furnish them tuba. While Laurencio at the beginning made some excuse, yet he at last yielded, and so he went out to find tubaf while one of his companions, by the name of Lazaro Gallos, was busy cooking the pork they had carried there.

The table having been prepared with the tuba brought by Laurencio Galido in a vessel, the attendants got ready for the sumsuman, taking seats around the improvised table.

The accused Estanislao Gallos told Laurencio Galido to invite also his wife Petra to sit with them and drink tuba, and while they were thus eating and conversing, the accused announced that that reunion had its meaning, with which he wanted them to understand that they had gone there to ask for the hand of the daughter of the hosts. named Francisca Galido, on behalf of Gadon. Petra answered that if that was their object, they should not drink tuba, for, added she, in order to pick a flower, it was necessary to climb the trunk, and then the branches up to the end where the flower was. At that time Graciano Gadon went out, and when he came back he had a branch of gumamela (Philippine plant) with a flower on it, which he laid before the persons there assembled, and addressing the accused, said: "Estanislao, as I liked the flower, so I took and brought it here."

The conversation was thus being held about that flower when Flaviano Ursua said: "Talking about flower, why should there be any necessity of climbing the trunk, if it can be reached right at the branch and picked from it?," citing, by way of example, the case of one Talia, who had married without the formality mentioned by Petra in her figurative language.

While this conversation was taking place, the accused Estanislao Gallos, who had left the house for some excuse, heard downstairs the conversation between those within the house. Then he came up and with his unsheathed bolo, Exhibit A, hidden below his arm, stood face to face with Flaviano Ursua and asked him why he spoke against his sister Talia. Flaviano Ursua denied having spoken against the said Talia, but as the accused would not believe him, the deceased Ciriaco Gallos intervened, telling the accused that he needed not bother himself about the conversation that had taken place during his absence, because having been present, he himself (the deceased) would not have permitted anyone to speak against the said Talia, who was his (deceased's) sister-in-law.

Estanislao answered: "What do you want?," to which Ciriaco replied, "What do you mean?" and thereupon the accused attacked the deceased, striking him on the abdomen with the bolo he was carrying. Ciriaco fell to the floor, and his aggressor left the house, but on reaching the staircase, was met by Francisca Galido, who wrested the homicidal bolo, which she later delivered to the chief of police who repaired to the place of the event on the same evening to investigate the matter. Before the chief of police arrived, the wife of Ciriaco by the name of Inocenta Tandog came, who asked her husband what had happened and obtained from him the following answer: "What am I going to do! Estanislao Gallos assaulted me," and shortly afterwards he breathed his last.

Defendant's counsel contends that it was not the accused who inflicted the wound that caused the death of Ciriaco Gallos. And in support of this contention, he argues that on the occasion of the conversation about the flower, and when the accused came upstairs, a fight took place between him and Flaviano, wherein Lazaro Gallos, Ciriaco Gallos and Graciano Gadon intervened to help Flaviano, all of them attacking the accused. The latter succeeded in escaping and was pursued by Flaviano with the bolo in his hand, which was wrested by Francisca Galido.

The lower court rightly gave no credit to the testimony of the witnesses for the defense whose version of the affair is quite different from that given by those for the prosecution. And we do not believe them either. If the facts occurred as stated by these witnesses, if the accused got the worst of the fight, with four fighters armed with bolo on top of him, as alleged by himself, it cannot be explained how he could escape harmless, while the deceased Ciriaco was mortally wounded. Moreover, the spouses Laurencio Galido and Petra Comalague and their daughter Francisca Galido, who at the preliminary investigation testified to the same effect as the witnesses for the prosecution, now allege having done so on account of having been threatened by Flaviano Ursua, but it must be noted that the supposed threat was made, according to these witnesses, the next day following the event, and when they were examined by the chief of police who repaired to the place of the event on the same evening, they told him that the aggressor was Estanislao Gallos, and that the bolo that Francisca delivered to the said chief of police had been wrested by her from the hands of Estanislao Gallos. Then, that is, when they spoke with the chief of police, they had not yet been threatened by Flaviano Ursua, as admitted by themselves, and yet they made declaration to the same effect as the other witnesses for the prosecution. There is, therefore, no reason for holding that the declarations made before the justice of the peace at the preliminary investigation were induced by the supposed threat of Flaviano Ursua; and the fact that they testified to the contrary in the Court of First Instance simply means that they are not entitled to any credit. If to the testimony of the witnesses for the prosecution, the fact is added that the deceased Ciriaco Gallos, before dying, told his wife Inocenta Tandog that he had been wounded by the accused, the conclusion is inevitable that the evidence introduced by the prosecution in this case shows beyond a reasonable doubt the guilt of the accused.

After due hearing, the trial court found the accused guilty beyond a reasonable doubt of the crime of homicide, as charged, and sentenced him to suffer fourteen years, eight months and one day of reclusion temporal, with the accessories prescribed by the law, to indemnify the heirs of the deceased in the sum of one thousand pesos, and to pay the costs. There must be considered, as a mitigating circumstance, in the imposition of the penalty provided by article 404 of the Penal Code, the fact that the accused, as the other attendants at that reunion, was drunk, he not being a habitual drunkard; and as no aggravating circumstance is present to offset it, the penalty to be imposed upon the accused Estanislao Gallos, is twelve years and one day of reclusion temporal with the accessories provided by the law.

As thus modified, the judgment appealed from is affirmed with the costs against the appellant. So ordered.

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

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