THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ZACARIAS RAGAZA (ALIAS PAYE), DEFENDANT AND APPELLANT.

G.R. No. 22557. September 26, 1924

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The Court of First Instance of Oriental Negros found the appellant guilty of the crime of homicide, as alleged in the complaint, and sentenced him to the penalty of twelve years of reclusion temporal with one-half of the costs, and to indemnify the heirs of the deceased Pelagio Quinamot in the sum of P500.

His Honor, the judge who tried this case, after the introduction of evidence, rendered the following decision: "The complaint in this case charges Zacarias Ragaza (alias Paye), and Domingo Quiquilat with the crime of homicide committed upon the person of Pelagio Quinamot.

"On or about January 24, 1924, in the barrio of Atimo, municipality of Siaton, Oriental Negros, Pelagio Quinamot, with his wife Dominga Imbo and his son Alfonso Quinamot, was accidentally in the house of one Tomas resting from a trip, where, a few moments later, the defendants appeared accompanied by one Marcelino. The defendant Zacarias asked for a buyo (compound of bonga-fruit, betel-leaves and lime for chewing) from the deceased, who gave him one, and the accused immediately struck him with his lance which he was then carrying. Upon seeing said aggression, Dominga and Alfonso ran away for fear and came back on the morning of the next day to the place of the event, where they found the corpse of Pelagio with the lance thrust into the body from side to side. These facts were established by the testimony of the witnesses for the prosecution and of the aforesaid wife and son of the deceased, Dominga and Alfonso, who have also testified that the accused Domingo assisted his coaccused in the aggression. The accused Zacarias admits having killed the deceased with his lance, but alleges that he acted in lawful self-defense. The testimony of the accused Zacarias, as witness on his own behalf, is as follows:

" 'That on reaching the place of the event he saw the deceased, Dominga and Alfonso roasting some tubers of ube and bolot on a fire prepared for the purpose about three brazas from the line of the exterior of the house; the accused squatted beside the fire at a distance of one meter, and told Alfonso that he wanted to help roast the tubers and eat with them. That at the time the accused Zacarias said those words, Alfonso began to throw the firewoods to one side of the fire until nothing remained but the live coals. That the deceased, who was also seated in the same way at a distance of three brazas from the fire, making an angle with the accused and Alfonso, on seeing what Alfonso had done, approached the latter and slapped him on the face several times. That immediately after slapping Alfonso, the deceased, who was on the opposite side of the fire at a distance of about two brazas from him, approached the accused making a curve or semi-circular line up to the back of the accused Zacarias, who kept himself seated in a squatting position beside the fire, and held the accused by the two shoulders, tramping upon the left foot of the accused, whereby the accused Zacarias assumed a position in which his right knee was in

contact with the live coals and the left knee, with the leg extended backwards, also in contact with the ground, but outside of the radius of the fire; and that the two hands of the accused were resting on the ground supporting his body while the deceased was mounted on the back of the accused; that the accused Zacarias has been in such a position, held by the deceased, for an hour, at the end of which the deceased left him and went to take a bolo from a place about three brazas from the fire; that while the deceased was coming back toward the accused, with the bolo in his hand, the accused, who was standing erect and quite near the fire, went to the place where his lance was, which was two brazas from the fire; that the accused Zacarias wounded the deceased with the lance he had in his hand, there being a distance of one braza between them. The accused exhibited a scar which was round in form and one inch in diameter, on the inferior part of the right knee.'

"Exhibit 2 of the defense speaks of a round burn on the right knee of the accused Zacarias and a bruise on the left.

"Exhibit 1 of the prosecution, which is a certificate of the autopsy made of the body of the deceased, describes the following wounds found on the body:

"'Wound, incised, longitudinal, on the abdomen little above the umbilicus; ½centimeter long, 1 centimeter wide and depth penetrating down the abdominal cavity, thus exposing part of the large intestines.

" '2. Wound, incised, on the left side between the eighth and ninth ribs; 8½ centimeters long, 1½ centimeters wide and depth penetrating down the abdominal cavity.

" '3. Wound, incised, on the right side little below the axilla between the 3d and 4th ribs; 3 centimeters long, 4/5 centimeter wide and depth penetrating down the chest cavity.'

"The question here to be decided is whether or not the accused Zacarias acted in lawful self-defense, with all the requirements fixed by the law for his exemption from criminal liability. The testimony of the accused Zacarias, explaining how he happened to kill the deceased, is not corroborated by any other evidence, even circumstantial; beside the lack of corroboration, said testimony is in itself deficient and appears improbable on many points—according to the facts of the case there was a short distance between the accused and the deceased when the latter took his bolo, and the deceased was very near the accused when he had the bolo in his hand and the accused was without his weapon, that is, before taking his lance, and in spite of all of this the accused did not receive any blow or scratch with the bolo of the deceased; the position of the accused with his two hands resting on the ground and supporting his body, with a knee on the fire and the other knee backward, as if he were in an attitude to run, or of that of a quadruped watching some prey and held by the deceased for one hour, is in the opinion of the court too improbable to prove the fact that the deceased held the accused in the manner stated by him, and under such circumstances it cannot be explained how the accused could have kept himself in that position for an hour without having fallen to the ground and over the fire by the force of the deceased, or at least by the very force of gravity. Furthermore it cannot be explained how, the accused and the deceased being in front of each other at a distance of about three brazas and with the fire between them, the deceased, in order to approach and reach the back of the accused, should have had the necessity of making a curve— a semicircular figure—when in a straight line there was no obstruction or difficulty. Besides, there appears no such motive as was explained by the accused why Alfonso, upon the mere request that he wanted to help, and have a part of the tubers they were roasting, should have behaved himself in that manner, putting out the fire and stopping the roasting; and the same thing is true with regard to the conduct of the deceased who, upon seeing Alfonso throw the firewoods, approached the latter and slapped him in the face and axter slapping him, rushed upon the accused, causing him to take the position above described.

"In view of the allegation of the accused in this case, it was entirely incumbent upon the defense to show all the circumstances that must concur in order to establish the fact that the accused acted in lawful defense.

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"The court finds that the accused Zacarias has not duly shown that he had acted in lawful defense. Exhibit 1 shows that the deceased received three tremendous mortal wounds inflicted by a lance; this quantity and quality of the wounds show that the accused acted cruelly and nega- tives the idea of a mere defense. The court finds that the testimony of Dominga and Alfonso, as witnesses for the prosecution, appear to be more natural and in harmony with the facts, which testimony is in itself sufficient to prove the guilt of the accused, and is, moreover, corroborated in part by the testimony of the accused Zacarias himself. The evidence of both parties does not show the guilt of the accused Domingo.

"For all of the foregoing the court finds the accused Zacarias Ragaza (alias Paye), 32 years of age, a native from the mountains, guilty, beyond a reasonable doubt, of the crime of homicide as principal, as stated in the complaint, and taking into consideration that he is ignorant, without Bishop of Nueva Caceres vs. Municipality of Tabaco any kind of instruction, he is sentenced to twelve years of reclusion temporal with one-half of the costs, and to pay an indemnity to the heirs of the deceased Pelagio Quinamot in the sum of P500. The accused Domingo Quiquilat is acquitted with one-half of the costs de officio. So ordered."

We have thoroughly examined the testimony of the witnesses for the prosecution and the defense, and find nothing authorizing the reversal of the judgment appealed from.

The testimony of the accused as to how the fight between him and the deceased occurred is so improbable that we cannot give it entire credit, as the trial judge also did not believe it.

Defendant's counsel does not point out in his brief any substantial error committed by the trial court prejudicial to the rights of the appellant; and the judgment appealed from being in accordance with the merits of the cause, the same must be, as is hereby, affirmed with costs, with the modification that the penalty to be imposed is twelve years and one day of reclusion temporal. So ordered.

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

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