

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO PEREJA, DEFENDANT AND APPELLANT.

G.R. No. 22682. March 02, 1925

Ponente: STATEMENT This is an appeal by the defendant from a judgment of the Court of First Instance of Laguna convicting him of the crime of homicide based upon the following information: "That on or about April 13, 1923, in the municipality of Cavinti, Province of Laguna, Philippine Islands, the accused, Pedro Pereja, did willfully, unlawfully and criminally and with premeditation, cruelty and treachery, assault Ignacio Pasion with a bolo which he was carrying, inflicting upon the latter with said bolo the following wounds: One wound on the anterior left lateral part of the thorax, two wounds on the left forearm, one of which is on the right anterior lateral part of the left forearm and the other on the anterior part thereof, and other wounds on the anterior parts of the right forearm, which were mortal by necessity, and were the direct and only cause of the death of the aforesaid Ignacio Pasion. "Contrary to law." The defendant was sentenced to seventeen years, four months and one day of reclusion temporal, with the corresponding accessories, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs, and assigns the following errors: "1. The court a quo erred in pronouncing judgment against the accused for a felony in the absence of the accused. "2. The court a quo erred in admitting as evidence the document Exhibit B of the prosecution as the dying declaration of the deceased. "3. The court a quo erred in holding that the dying declaration of the deceased has been duly proven by oral testimony of Capt. J. C. Quimbo and Felix Flores. "4. The court a quo erred in failing to appreciate the testimony of the witnesses for the defense." JOHNS, J.

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"3. The court a quo erred in holding that the dying declaration of the deceased has been duly proven by oral testimony of Capt. J. C. Quimbo and Felix Flores.

"4. The court a quo erred in failing to appreciate the testimony of the witnesses for the defense."

JOHNS, J.:

The evidence for the prosecution tends to show that the children of Ignacio Pasion fell asleep in another house, and that he told his wife to remain with them and to sleep in that house, and that he would go home and sleep alone which was done. Early the next morning, the deceased was found on the azotea of his own house with several wounds on his body. When he was asked by the chief of police as to the cause of the wounds, the deceased told him that while he was sleeping, he felt some one piercing his back through the openings between the bamboo floor, and that upon coming out of the house to see what it was, he was assaulted and attacked by the defendant whom he well recognized, because at the time the moon was shining bright. That the defendant harbored a bad feeling towards him on account of some land question between them. This statement was reduced to writing by the justice of the peace of Cavinti, who went to the place where the deceased was at that time. That morning at his own request, the deceased was taken to the hospital of Pagsanjan where the document purporting to be a dying declaration and known in the record as Exhibit B was prepared by the auxiliary justice of the peace. It appears that during the preparation of Exhibit B, the deceased was in a very serious condition, and after it was read to him and he signed it, that he had a fainting spell, and that the doctor, fearing that he was going to die, gave him an injection.

Exhibit B is as follows:

"I, Ignacio Pasion, of age, married, resident of Cavinti, Laguna, Philippine Islands, do hereby state under oath the following:

"On the dawn of this 13th day of April, 1923, being alone in my house sleeping I felt that some one was piercing me on the back, and what I did is to stand up and go down, and once downstairs Pedro Pereja met me whom I recognized because the moon was then clear.

"The said Pedro Pereja above mentioned I know is angry against me on account of a question regarding a lot in Cavinti.

"When he met me he immediately attacked me with the bolo he was carrying and hit me under the left nipple.

"Inasmuch as at this time when I am making this declaration I feel near to death, I swear to the truth, besides the doctor having told me of the gravity of my situation and that I may die."

After the prosecution rested, the defense moved for a dismissal on the ground that the evidence was not sufficient to sustain the conviction, and the court denied the motion.

Eulogio Benitez, now the attorney for the defendant, was called as a witness for the defense and testified that he was in the hospital when the justice of the peace prepared Exhibit B. That when it was about finished, he, Benitez, suggested to him that it was not a complete dying declaration, and that in view of his suggestion, the last paragraph of the writing was added by the justice of the peace, and that the last paragraph was not inserted at the suggestion of the deceased, but was made without him being consulted. But Benitez did testify that all of Exhibit B, including the last paragraph, was read to the deceased before he signed it.

Based upon this testimony, the defense again moved for a dismissal which was again denied.

To rebut the evidence of Benitez, the prosecution called Juan C. Quimbo, who testified that before Benitez arrived at the hospital, he and the justice of the peace had finished the questioning of the deceased, and that for such

reason, Benitez could not have heard his statements.

Felix Flores testified that he would have written the last paragraph of the exhibit without regard to the suggestion of Benitez, because he had been told by Captain Quimbo that it was necessary.

The case was then submitted, and the trial judge prepared his decision, but at the request of the defendant, it was reopened, and he then offered testimony tending to show that the crime was committed in self-defense. Suffice it to say that there is no merit in that plea. It is both incredible and unreasonable, and, if anything, it tends to support the prosecution.

The defendant claims that he saw a man sitting on the staircase of his house, who, upon seeing him, stood up and said: "Your time has come and I have been waylaying you for a long time." Saying which, the man "began to assault and attack him," and that to avoid the attack, he stepped back, but because of some obstacle, he could not step back any further, and that he then drew his bolo, which he usually carried, and offered resistance to defend himself.

The evidence is conclusive that the defendant was not wounded or injured in the least. Neither is there any evidence worthy of belief that the deceased had a bolo or any kind of a weapon.

The defendant vigorously contends that the dying declaration is not admissible, for the reason that at the time it was made, there is no evidence that the deceased had any fear of his impending death, and that the last paragraph of it was not inserted at the instance or request of the deceased, but because the justice of the peace thought it was a legal requisite to make it admissible, and for such reason he inserted it on his own motion. That contention is not tenable. It clearly appears from the testimony of Felix Flores and Juan C. Quimbo that at the time the dying declaration was made, the deceased was conscious of his impending death. Regardless of the language of the dying statement, it is competent to show by evidence aliunde the condition, actions and conduct of the deceased, and anything which his medical adviser may have said to him, which met with his approval. (U. S. vs. Virrey, 37 Phil., 618, 625.)

Again, the evidence is conclusive that the dying statement was prepared at the suggestion of the deceased, and that it was read to him before he signed it, and that he was conscious of what he signed, and it recites:

"Inasmuch as at this time when I am making this declaration I feel near to death, I swear to the truth, besides the doctor having told me of the gravity of my situation and that I may die."

Upon the facts shown, it was clearly admissible.

The defendant's counsel has submitted a very able and adroit brief. Be that as it may, we are clearly of the opinion that the defendant is guilty of the crime charged.

The judgment of the lower court is affirmed, with costs. So ordered.

Johnson, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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