

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FILEMON ALMENDRALEJO, DEFENDANT AND APPELLANT.

G.R. No. 23948. November 19, 1925

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendant and appellant Filemon Almendralejo from a judgment of the Court of First Instance of Iloilo, finding him guilty of the crime of homicide, committed upon the person of Basilio Nicetas Panes, and sentencing him to suffer fourteen years, eight months and one day reclusion temporal, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs of the action, under an information charging him with the crime of murder.

The appellant assigns four errors, which he contends the trial court committed: (1) In not allowing the defendant to bail; (2) in not finding as proven the following circumstances: (a) Unlawful aggression on the part of the deceased and his companions; (b) reasonable necessity of the means employed to prevent or repel the aggression; and (c) lack of sufficient provocation on the part of the deceased; (3) in not considering the exempting circumstance of article 8, No. 8, of the Penal Code, that is, that the defendant, on the occasion of performing a lawful act with due diligence, caused the arm to be discharged, the bullet hitting the deceased and killing him by mere accident, without fault or intention to do so; (4) in not giving the defendant the benefit of reasonable doubt.

The following are the facts proven at the trial by the prosecution: On November 11 and December 13, 1924, the municipal council of Alimodian passed two municipal ordinances levying a municipal license tax and on January 15, 1925, an ordinance providing penalties for violations of the preceding ordinances, series of 1924, all of which were approved by the provincial board of Iloilo. The persons affected by said ordinances caused the justice of the peace, Basilio Nicetas Panes, to write a protest addressed to the provincial fiscal of Iloilo. Said protest did not meet with the approval of the municipal president of Alimodian and he tried by all means possible to prevent the inhabitants from signing it, through the municipal policemen, one of whom, the herein defendant Filemon Almendralejo, went to the extreme of threatening to throw into the grave and shoot whoever should sign it, and of saying that "some day something will happen with the justice of the peace." On the night of January 24, 1925, about 7 o'clock, the defendant Filemon Almendralejo was making an investigation of a certain trouble between one Carlos and his own mother" in their house, when the justice of the peace Basilio Nicetas Panes passed by, and called the policeman from the middle of the street and asked what was the matter. Having been informed of the nature of the trouble, the justice of the peace told the defendant to arrest Carlos if he continued making noise. Filemon Almendralejo answered that he could not do so without a written order from the chief of police. Upon hearing this, the justice of the peace raised his voice a little. After a while, a whistle was heard, followed by three shots of revolver and the cry of the justice of the peace of "Help me because I am wounded in the abdomen and I am going to die." The witness Telesforo Almenaza, who was passing near the place of the affair and heard the first words exchanged by the justice of the peace and the policeman, went to the place and asked Filemon

Almendralejo, "why shoot and not speak only? " For his answer, the policeman pointed his revolver at the one making the question, who pushed him aside to deviate the point of the revolver, from which a shot came out. Upon seeing himself thus threatened, Telesforo Almenaza seized the policeman by the body and threw him to the ground, having fallen with his mouth downward. As the policeman was younger and robust, Telesforo availed himself of his advantageous position, placing himself upon his adversary and seizing him by the neck until the other witness Saturnino Santa Cruz arrived, whom he told to wrest the revolver from the hands of Filemon Almendralejo because he wanted to shoot everybody. Saturnino, in turn, placed himself on Filemon and grabbed the latter's hand which was holding the revolver, but was not able to wrest it because the defendant bit him on the left forearm and would not have released him had he not, in turn, bit him on the back. Right at this moment, Maximo Teña arrived. Upon seeing him, Saturnino told him to get the revolver from Filemon. Maximo came down to the canal and from there helped Saturnino take away the arm of the policeman. Once in possession of the arm, Maximo lifted him up by the head to prevent him from doing any more harm, and the justice of the peace, who was beside him, snatched it away and with its handle, struck Filemon Almendralejo on the head, the latter being already in a standing position. Once order was restored, the justice of the peace was taken in an automobile to the Iloilo St. Paul's Hospital, where he was examined by Dr. Mariano Arroyo, who found in the middle of the abdomen above the umbilicus, an orifice indicating that it was caused by a bullet which went in a vertical direction. The defendant being in the police station of Alimodian, said that it was lucky that he had not killed the other four, as he would have done no matter whether he be hanged on the following day or not.

The defense attempted to prove that when Filemon Almendralejo passed in front of the house of Cayetano Almeria, the latter called him and asked what he should do with Carlos Almenaza and the latter's mother, who were causing a public disorder. Filemon answered that he did not think there was any disturbance. While they were thus talking at the foot of the stairs of the house of Cayetano, the justice of the peace, Basilio Nicetas Panes, arrived and asked him, "What is the matter?" Cayetano and Filemon said good evening to him, and the former related what was happening between Carlos and his mother. The justice of the peace immediately became angry and shouted, "Damn it, you policemen have no right nor authority to arrest any person or family and much less a married couple who are in their house because that is against the law." While the justice of the peace was saying this, he was face to face with Filemon and was raising his rattan cane, which was one meter long, getting more and more angry. As the justice of the peace told the policeman that he could not arrest any person without any order in writing from him, Filemon answered, "Mr. justice, if for instance this Carlos and his mother should be fighting day and night in their own house, and among the neighbors there should be one who should complain to the chief of police, and the latter should designate a member of the police force to arrest Carlos and his mother, may not the policeman arrest them?" Upon this answer, the justice of the peace got more angry and shouted "H * * *; what power do you policemen have? Without my order you cannot arrest any person." After saying this, the justice of the peace seized him by the left hand and attempted to pull him to the street, but was prevented from doing so because the defendant told him, "Mr. justice, let us be moderate, I am still talking here upstairs. Wait a minute, because I also respect you, Mr. justice. Please talk to me in a low voice." Shortly thereafter Maximo Teña, Telesforo Almenaza, and Saturnino Santa Cruz came. When Telesforo arrived at the foot of the staircase, he asked, "Who is that man there?" Cayetano and Filemon said good evening to him. Telesforo recognized Filemon by his voice and said, "So you are the damned fool, presumptive, strict, wild policeman, who looks like an egg that can be stirred within a pocket? Even if you should have eight crowns, I would not be afraid of you. What do you want? Do you want to fight? " At this juncture the justice of the peace again pulled the policeman downward taking him by the left wrist. Then Filemon told him, "Mr. justice, wait a minute, because I am talking with Telesforo." Basilio Nicetas Panes did not pay him any attention and went on dragging him down on the staircase. In view of this, the defendant blew his whistle. The justice of the peace ordered Maximo to take the revolver from the belt of the policeman, but the latter drew it out therefrom and fired in the air outside of the house. Saturnino

seized him by the feet, while the justice of the peace was dragging and seizing him by the neck. Thereafter, Saturnino and Maximo beat him on the head with a stone. Filemon fired another shot in the air. The justice of the peace caught him by the wrist, while Telesforo was holding him by the neck. All were trying to wrest his revolver. The justice of the peace was holding the barrel with his left hand, while with the right he was trying to wrest it, and as a result of that struggle, another shot came out. After seizing him by the neck, Telesforo threw him down to the canal where he fell with his face downward. Once he had thus fallen, Telesforo placed himself upon him; and Maximo and Saturnino beat him with stones on the head and the back. When Saturnino succeeded in wresting the revolver from the hands of the defendant, he handed it to Maximo and the latter to the justice of the peace. Once the revolver was in the hands of the justice of the peace, Saturnino held Filemon by the neck, and the latter bit him in the arm. The justice of the peace attempted to shoot him, but the arm did not operate. Not having accomplished his purpose, the justice of the peace held the revolver by the barrel, and beat him with the handle on the head, pounding on the same wound inflicted by the strikes with the stone, as a result of which, he fell down unconscious. Filemon had no intention to kill the justice of the peace.

In rebuttal, the prosecution tried to establish that the contusions found on the head of the defendant were caused by a hard body, such as the handle of a revolver, but none of them with stone.

As may be seen, the theory of the prosecution and that of the defense as to who provoked the fight are directly in conflict with each other. The ante mortem declaration of the deceased upon this point also differs somewhat from that of the witnesses for the prosecution, for while the former affirms that he called the defendant from the middle of the street and asked him why he was threatening the people of the barrio of Buhay to prevent them from signing the protest against certain ordinances recently adopted by the municipal council of Alimodian, and that without just cause said policeman showed an intention to shoot him, the witnesses for the prosecution assert that the deceased called the defendant to the street in order to ask him what was the matter, there arising a difference of opinion between the one and the other, as to the proper time of arresting those who commit a breach of the peace and order, the justice of the peace saying that if the disorder would not stop he could arrest Carlos, while the policeman believed that he could not do so without a written order from the chief of police. The deceased then talked insolently. The witnesses for the prosecution, as well as the defense, agree upon the dispute between the justice of the peace and the policeman about the police authority of the defendant to arrest with or without writ those who disturb the peace within their house and that in this dispute the justice of the peace raised the pitch of his voice. Notwithstanding the great consideration to which the declaration of a person at the point of death is entitled when he is about to appear before the Supreme Judge to render an account of his acts on earth and receive the deserved reward or punishment, without any more interest than that of the salvation of his soul, when there exist circumstances showing that his declaration might have been influenced by the passion of anger and vengeance, said declaration must be taken with great caution, in view of the natural inclination of man to exonerate himself and justify his conduct (Underhill on Criminal Evidence, par. 102). In the instant case, there is the circumstance that the deceased was in bad terms with the defendant because the latter was threatening the people in order that they should not sign the protest written by him; that he made a statement of the motive of the fight which is distinct from that testified to by the witnesses for the prosecution; and that when he felt wounded, he attempted to take vengeance against the policeman and tried to shoot him with the latter's own revolver with which the policeman had shot him, and as he failed on account of the arm having become useless, he beat him on the head with the handle thereof. Taking into consideration the antagonism existing between the justice of the peace and the defendant on account of the protest written by the former in favor of the persons affected by certain municipal ordinances of an economical character and the difference between the social and official positions of the two, it appears more probable that the authority of the deceased having been disregarded when his opinion upon the law on the matter of arrest was questioned he wanted to impose a punishment by pulling him toward the

street, in which he was assisted by the witnesses for the prosecution, Telesforo Almenaza, Maximo Teña, and Saturnino Santa Cruz; but it cannot be accounted for how Filemon Almendralejo had to sound an alarm with his whistle if he did not think that his person was in danger. The aggression of which he was the subject on the part of the justice of the peace and his companions was not, however, of such a nature as to require the use of his revolver, firing it not only once but five times, to give an alarm and defend himself, taking into account the presence of strangers and the fact that his aggressors were not armed. His defense that the arm was discharged while he was struggling with his aggressors for the possession thereof is refuted by the statement made by him at the police station that it was accidental or lucky that he had not killed all the four of them, and that he did not care being hanged on the following day.

For the foregoing reasons, we are of opinion that the evidence shows conclusively and beyond a reasonable doubt that the defendant is criminally liable as principal for having taken direct part in the commission of the crime of homicide defined and punished in article 404 of the Penal Code, the penalty provided by the law being reclusion temporal in all its extent. For the application of the penalty, it must be taken into account that the provocation and aggression came from the deceased and his companions, the defendant having only exceeded in his defense by using a means which was reasonably unnecessary to repel the aggression; wherefore the penalty lower in one degree than that provided by the law is the one to be imposed in accordance with the provision of article 86 of the same Code, there having been present the greater number of the requisites which are prescribed by article 8, case No. 4, for exemption from criminal liability. The penalty lower in one degree than reclusion temporal is prision mayor, that is, from six years and one day to twelve years. No other modifying circumstance of criminal liability having attended the commission of the crime, said penalty must be imposed in the medium degree, that is to say, eight years and one day prision mayor.

For the foregoing, the judgment appealed from is modified, and the defendant-appellant sentenced to suffer the penalty of eight years and one day prision mayor, the same being affirmed in all other respects, with the costs of the action against the appellant and with allowance of one-half of imprisonment suffered by the defendant as detention prisoner. So ordered.

Avanceña, C. J., Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.
Johnson, J., did not take part.

DISSENTING

STREET, J.:

I have examined the record in this case and can by no means concur in the modification of the sentence by which the term of imprisonment of fourteen years, eight months and one day imposed upon the appellant by the trial court is reduced to eight years and one day. The ante mortem declaration of the deceased is quite clear and I believe that it states with substantial truth the manner in which the homicide was perpetrated. The most material part of this statement is as follows:

"On January 24, 1925, at about 7 p. m., in Alimodian, Iloilo, Telesforo Almenaza, Maximo Teña, Saturnino Santa Cruz and myself came from the house of Agustin Albila, and when we came to Roosevelt Street of Alimodian, I saw Filemon Almendralejo, municipal policeman of Alimodian, conversing with Cayetano Almeria at the stairs of the house of the latter. I called Filemon Almendralejo to the middle of the street and asked him why he coerced the people of barrio Buhay not to sign the protest against certain ordinances recently

passed by the municipal council of Alimodian. I had been advising him and told him that I had worked much in his appointment as municipal policeman. When he drew out his revolver and showed intention to shoot me, I caught his other hand not holding the revolver and tried to get the revolver to avoid being shot but he fired five shots and I was hit at my abdomen by the second or third shot. He shot me intentionally by directing his revolver right at my body when he fired. When my companions could seize the revolver, I grabbed it from them and beat the head of Filemon Almendralejo with it several times but this was after I was already shot. My companions and myself did not bring any kind of weapon and we did not have the least intention to cause trouble."

This statement is corroborated in substantial features by the testimony of Telesforo Almenaza, Maximo Teña and Saturnino Santa Cruz who were near the scene of the homicide and heard what had passed, though all did not see the fatal shot fired. The testimony of the witnesses for the accused tending to show that the deceased justice of the peace was the aggressor seems to me to be strained and unnatural and permeated with perjury, as the trial judge believed it to be. It is my opinion that the judgment appealed from is just and should have been affirmed.

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