

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GREGORIO LARA, DEFENDANT AND APPELLANT.*G.R. No. 24014. October 16, 1925*

Ponente: STREET, J.

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This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Abra, finding the appellant, Gregorio Lara, guilty of the offence of homicide, committed upon the person of one Cayetano Querido, and sentencing him to undergo imprisonment for fourteen years, eight months and one day, reclusion temporal, with the accessories prescribed by law, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs.

Gregorio Lara, the appellant, is a resident of the municipality of La Paz, in the Province of Abra, and at the time of the homicide which is the subject of this prosecution, was about 32 years of age and married; while the deceased, Cayetano Querido, age not stated, was a resident of the same municipality. At about 8 o'clock on the night of September 25, 1924, the deceased, accompanied by four other persons, planted himself at the crossing immediately in front of the appellant's house and began to entertain his companions by speaking insulting words of and to the appellant. These expressions were to the effect that a concubine to whom the appellant was supposed to be devoted had been, or was about to be, enticed away by some other person. Among the words attributed to Querido on this occasion are the following: "Wake up, Ramon, they are eating your chow" (meaning in local slang that some one else was enjoying Lara's concubine). Another expression, having about the same significance, was: "They are burning your clothes"; and again, yet more broadly: "Gregorio Lara, they are enticing your concubine, and nevertheless you permit it." These expressions were greeted with loud guffaws from Querido's companions. Another statement made by Querido on this occasion was to the effect that he had been anxious to run up against Lara for some time but that Lara was not now coming out of nights. It is further stated that, upon addressing to Lara the offensive expressions which we have quoted concerning his concubine, the deceased placed the palms of his two hands in such a position as to form the tube of a trumpet, for the purpose of changing the pitch of his voice.

Now, it happened that upon the same night an employee of the Bureau of Lands, named Rufino Roque, had occasion to stop in La Paz upon an official errand and, being acquainted with Gregorio Lara, he stopped at the latter's house as a guest for the night. Being an employee of the Bureau of Lands, Roque carried a revolver, and upon retiring to bed he suspended the weapon, with its holster, from a peg on a beam in the house. The fact that the revolver had been placed in this position was noted by Lara; and after his patience had become exhausted towards Querido and his companions he took the revolver down, and as it was unloaded, placed two cartridges in the cylinder, at the same time starting for the street. Upon seeing this movement on the part of Lara, Querido and his companions scattered. Querido went in an easterly direction along one of the streets, accompanied by Artemio Casel, a high-school student of the age of 16 years. The two went along together for a little way, perhaps a hundred meters, when Querido stopped and hid behind the corner of a fence in front of the house of Nicolas

Velasco. At the same time Querido said to Casel, "Move away a little as I am going to smash him." Artemio, therefore, instead of hiding in the same place with Querido, turned to the other side and hid himself also behind a fence, in order to see what Querido was going to do to Lara.

Lara, meanwhile, had emerged from his house with pistol in hand, and reaching the centre of the street, he found that his entertainers had all disappeared. Seeing this, he discharged his pistol into the air, as a sort of warning against a repetition of the incident; and instead of going immediately indoors again, he turned into the street and went in an easterly direction, being desirous, so he says, of ascertaining from his neighbors the identity of the members of the party. The direction pursued took him over the same course that had been followed by Querido and Casel; and after he had passed the spot where the two were hiding, Querido jumped out from behind and threw his arms around Lara in an effort to pinion his hands and get possession of the pistol. Lara at once attempted to free himself from his assailant and succeeded in breaking Querido's hold. At the same time he turned so as to confront Querido, and the struggle for the possession of the revolver was continued. In the course of this struggle, perhaps immediately after Lara turned, the revolver was discharged. The bullet passed into Querido's abdomen on the left side, passed entirely through the body, and emerged in the right gluteal region. The shot did not immediately disable Querido, who continued his efforts to get possession of the pistol. This he was unable to do, but being a man of strength, he succeeded in throwing one of his arms around Lara's neck, in which position he held him as in a vice while he called to Mariano Dolor, whose house was only a few paces away, to come to his assistance.

Meanwhile, Rufino Roque had heard the first pistol shot and was aroused by it from the borders of sleep. Roque's first thought was of his revolver, and, upon looking up, he saw that it was missing from its holster. He immediately slipped on his clothes and hastened out into the street. Hearing the second shot, he went in the direction of the sound and arrived at the scene of trouble before any other person. His first effort of course was directed towards the recovery of the pistol, and his movements towards this end were apparently interpreted by Querido as of an unfriendly nature. At any rate Querido at once threw his unoccupied arm around the neck of Roque and held him prisoner in the same manner as he was already holding Lara. At this moment Mariano Dolor came upon the scene, where he found Querido holding both Lara and Roque firmly with his arms around their respective necks, while he appeared to be supporting himself by leaning upon their shoulders. Mariano Dolor says that Querido called to him twice that he had been shot by Lara, and he asked Dolor to take possession of the pistol, which Dolor did. Querido then freed his prisoners, and all went together to the municipal building, for the purposes of the official investigation. On the way thither Querido, weakened by the wound he had received, needed assistance, and Lara assisted others in supporting him as he walked.

The wound, produced in the manner above stated, caused the death of Querido within about three days. In this interval he signed two written statements concerning the homicide. The first of these statements was made before the justice of the peace immediately after the arrival of the principals at the municipal building; and the document would hardly be admissible as a dying declaration, since it does not appear that the declarant then really thought that death was certain. His words on this point were these: "Perhaps I am going to die very soon, justice." However, the statement was introduced in evidence, apparently without objection, and on examination it will be found to contain nothing prejudicial to the appellant aside from the fact (which is admitted) that Lara did the shooting. The declarant added: "We were able to take from the hands of Lara the revolver which a friend had lent him." In a later statement, signed by Querido in the presence of E. Parado and Feliciano Fariñas, after he had given up hopes of life, he stated in substance that Lara entertained rancor towards him because he (Lara) suspected that the declarant had induced his concubine to seek another man. There is nothing in either of these statements that throws any light upon the immediate circumstances of the shooting, additional to what is revealed by the testimony of the living witnesses. The failure of the declarant to state any fact unfavorable to the accused

with respect to the conditions under which the shot was fired strongly confirms the contention of the appellant that it occurred while the two combatants were struggling over the pistol.

It appears that a few days after the homicide the appellant himself was subjected to an examination by Lieutenant Garcia, and on that occasion he stated that he discharged the revolver as soon as he succeeded in breaking loose from the person who had seized him. From this it has been argued that the danger had then passed and that the firing of the pistol at this juncture was not justifiable. We are of the opinion, however, that the struggle for the possession of the revolver was continuous and that the deceased was still engaged in his attempt to get the revolver when the shot was fired.

Upon the foregoing state of facts, we are of the opinion that a case of self-defense is completely made out, under subsection 4 of article 8 of the Penal Code, and that the appellant is entitled to an acquittal. There was no provocation whatever on the part of the appellant and the provocation given by the deceased was of a nature to provoke wrath in the mind of any spirited person. Again, there was unlawful aggression on the part of the deceased, in this, that while the appellant was passing along the street during the nighttime the deceased sprang upon him from ambush and began a struggle, primarily for the possession of the revolver and with the criminal design of beating the appellant up. That this assault was characterized by *alevosia* is manifest.

It only remains to inquire whether there was reasonable necessity for the means employed by the appellant to repel the attack. In this connection it is necessary to bear in mind the following circumstances, namely, the darkness of the night, the element of surprise involved in the assault, and the revealed intention of the deceased to beat the appellant up. Under these conditions the appellant might well have reasoned that if the struggle continued upon equal terms his assailant would undoubtedly in a moment get possession of the revolver. If this should happen there was great and real danger that in the excitement of the moment the deceased would have shot the appellant,—a thing which he could have done with impunity. The appellant, therefore, on the peril of his life, could not permit the deceased to get possession of the weapon, and the only means of preventing it was the firing of the pistol for the purpose of defense. When the deceased sprang from behind on the appellant in the dark, when the latter was known to have a pistol in his hand, the deceased acted at his peril, for it was but reasonable to suppose that in the moment of surprise and struggle the appellant would use the pistol against his assailant, if it should be within his power to do so.

It will be remembered that the struggle for the possession of the pistol continued for some time after the deadly shot was fired. While the appellant was under cross-examination his attention was called to this fact, and he was asked why he continued to fight for the retention of the pistol when, as he then knew, there was no other cartridge in the cylinder. He replied, very reasonably, we think, that he knew that if the deceased should get the weapon in his hands he could easily kill the appellant by using it as a cudgel.

It should be borne in mind that in emergencies of this kind human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation; and when it is apparent, as in this case, that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction the act and to hold the actor irresponsible in law for the consequences.

In *United States vs. Patala* (2 Phil., 752, 757), the deceased assaulted the appellant with a knife. In the course of the ensuing struggle the appellant wrested the knife from his assailant and with it inflicted upon him a fatal wound. In support of the conviction it was suggested that when the appellant got possession of the knife, the danger from the assailant had so far passed that the appellant was not justified in using the knife. But the Supreme Court, in reversing the decision and acquitting the appellant, speaking through Mr. Justice Mapa, said: " * * * If through a fortunate accident he came into possession of the knife, he could have lost control of it through a similar

accident and then found himself at the mercy of his assailant. Therefore the act of the defendant rendering his assailant powerless as well as he could under the critical circumstances of the moment, and repelling his aggression, constitute, in our opinion, a true case of self-defense, which exempts the defendant from any criminal liability under paragraph 4 of article 8 of the Penal Code."

In *United States vs. Molina* (19 Phil., 227), the assailant carried a bolo. In the course of the struggle this weapon came to the hands of the appellant and with it he slew his assailant. The court held that the use of the weapon by the appellant was justified, notwithstanding the fact that the deceased had become disarmed by the loss of his bolo. "The court, again speaking through Mr. Justice Mapa, said: "* * * Considering the decidedly aggressive attitude of the deceased from the commencement of this struggle until its termination, it cannot be said that there was a cessation of the danger for the accused, even for a single instant. If, through the various incidents of the struggle, or any favorable accident whatever, the deceased had succeeded in recovering the bolo or in possessing himself of the hatchet, as he attempted to do to the last, the result of the combat would probably have been very different; perhaps the accused, instead of being the slayer, would himself have been killed. The accused certainly was not in duty bound to expose himself to such a contingency, and while the struggle continued, and, consequently, the danger to his person or to his life subsisted he had a perfect and indisputable right to repel such danger by wounding his adversary, if necessary, as from the circumstances of the case it was, without any doubt whatever, and even to disable him completely so that he could not continue the assault. In our opinion, the means employed by the accused were rationally necessary to repel the assault, and as the latter was in all respects unlawful and was not preceded by any provocation of any kind on the part of the accused himself, we declare the said accused to be exempt from criminal liability, in accordance with the provisions of paragraph 4 of article 8 of the Penal Code."

If these considerations correctly express the law in a case where the assaulted party has slain the assailant with his own weapon, no less must they be applicable to a case like the present, where the appellant has acted in his own self-defense against an aggressor of superior strength and for the purpose of preventing the aggressor from obtaining possession of the only weapon which the party assailed could use. (*U. S. vs. Salazar and Villanueva*, 15 Phil., 315.)

From what has been said it follows that the judgment appealed from must be reversed, and the appellant will be absolved from the information, with costs of both instances de oficio. So ordered.

Avanceña, C. J., Malcolm, Ostrand, Johns, and Villa-Real, JJ., concur.
Villamor, J., took no part in this decision.

DISSENTING

ROMUALDEZ, J.:

I believe that the extraordinary superiority of strength which the foregoing decision seems to attribute to the deceased over the accused was not proven by the evidence.

The evidence does not show, in my opinion, that the deceased, after having been wounded, was holding the accused and Rufino Roque by the neck in an aggressive attitude. While the witness Mariano Dolor, at the beginning of his testimony on this point, seems to convey the idea that the deceased caught them by the neck, yet when during the trial he was asked to show it to the court, undoubtedly for the reason that his testimony was not

quite clear on this detail, he said that "the deceased was leaning on the shoulders of Gregorio Lara and Rufino Roque" (p. 10, st. n.). And in this sense the accused himself has in effect testified (p. 58, *idem*), who said on this point the following:

"Q. After the second shot, did the deceased Cayetano Querido say anything?—A. Yes, sir, he told me, 'I was shot, Lara.'

"Q. And what did you do?—A. I immediately held him in order to take him to the municipal building and there Rufino Roque also came afterwards and the two of us held the deceased in order to take him to the municipal building." (*Italics mine.*)

If the deceased, before being wounded, and in spite of having been attacked by the accused without risk to himself, did not succeed in snatching from the latter the revolver, nor to hold him, much less could he, after having been seriously wounded, have held not only the accused but also Rufino Roque by his strength.

The deceased, then, after having been wounded, did not hold the accused nor Rufino Roque, but having lost his strength, he had to support himself on them.

I believe that what was proven by the evidence is that the accused acted in self-defense but that the same is incomplete.

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