

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JEREMIAS GOMEZ, DEFENDANT AND APPELLANT.

G. R. No. 25303. August 06, 1926

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The present appeal was taken by the accused Jeremias Gomez from the judgment of the Court of First Instance of Oriental Negros, convicting him of the crime of homicide, and sentencing him, in view of the mitigating circumstance that he had no intention to commit so great a wrong as that committed, to suffer twelve years and one day reclusion temporal, with the accessories prescribed by law, to indemnify the heirs of the deceased Santos Abalos in the sum of P1,000 and to pay the costs.

As the grounds for this appeal, the appellant assigns the following errors as committed by the trial court, to wit:

- The trial court committed an error in not finding that no correct conclusion of facts could be arrived at from the testimony of the witnesses for the prosecution in view of its improbability and their contradictions;
- The trial court committed an error in not finding as a fact that the provocation of the quarrel which resulted in the death of the deceased Santos Abalos came from the latter and not from the accused;
- The trial court committed an error in not accepting the testimony of Juan Dandoy and in not drawing such conclusions therefrom as would have a bearing on the defense of the accused;
- The trial court committed an error in not finding that the accused acted in self-defense in firing a shot from his revolver at the deceased Santos Abalos, which caused his death; and
- The trial court committed an error in convicting the accused of the crime of homicide, and in sentencing him to the penalty stated in the appealed judgment.

The prosecution tried to prove the following facts:

At about 6 o'clock in the morning of November 4, 1925, the accused Jeremias Gomez, manager of the Hacienda Santa Teresa, in the municipality of Tanhay, Oriental Negros, went to that part of said hacienda where the deceased Santos Abalos and other laborers were plowing, and upon approaching the said Santos Abalos remarked in an angry tone: "Why did you take the guyuran (a sort of sled)?" Santos replied that he had taken it to haul lumber. The accused repeated the same question, receiving the same reply. Thereupon Jeremias Gomez struck Santos Abalos with his cane, Exhibit A, on the left shoulder with such force as to make him lean towards said side, and, at the same time, said: "You have that habit, like dogs and pigs." Upon receiving the blow Santos unsheathed his bolo and attacked the accused with it, who drew his revolver from his belt and fired at the former, hitting him in the middle of the occipital frontal region, causing a wound which resulted in his instant death. The accused immediately left the scene of the incident.

The defense tried to prove the following facts:

The deceased Santos Abalos was a laborer whose services on the hacienda were not very satisfactory. On Monday before the day of the crime the accused reprimanded the said laborer for having been absent from his work on the hacienda, claiming to have had a headache. Early in the morning of November 4, 1925, as was his custom, Jeremias Gomez came down from his house to inspect the work on the hacienda. Two of the boys who were in charge of the transportation of the sugar-cane plants to the place where they were to be planted, informed him that Santos Abalos had taken the guyuran belonging to the hacienda, thus causing a damage to it. Upon receiving said information, the accused immediately ordered Juan Dandoy, a carpenter on the hacienda, to fetch said guyuran and to fasten it to the balsahan or carosa (resembling a cart), so that it might be used in the transportation of the sugar-cane plants; that after giving said order Jeremias Gomez continued his inspection, going to the place where the laborers were plowing. Upon seeing Santos Abalos, he asked why he had taken the guyuran. Santos Abalos answered him in a rude manner, saying that Mundo had ordered him to take it. The accused then said to him: "You have no manners, get away from here." Upon hearing this, Santos Abalos unsheathed his bolo and attacked him with it, wounding him on the left temple. The attacks were so rapid that Jeremias Gomez dropped the cane which he was carrying and tried to get away from them. After the first wound, he received another on the right clavicle, another on the shoulder, another on the throat and another on the breast near the stomach. As it was getting more difficult to get away due to the many large clods of earth in the field, on receiving the sharp wound in the breast, the accused remembered his revolver, drew it and fired a shot at Santos Abalos who fell face downward. Upon seeing him fall, Jeremias Gomez immediately ran towards the town. On arriving at the house on the hacienda, Jose Villegas notified the municipal authorities of the incident. The municipal president with two police officers immediately arrived and carried him to the municipal building where a physician examined him and ordered him sent to the hospital for first-aid treatment of his wounds.

The only question of fact to be determined in the present appeal is whether or not the accused struck Santos Abalos on the left shoulder with his cane.

According to the justice of the peace of Tanhay, Rafael Montenegro, he ordered the clothes of the deceased taken off and examined the body, but found no wales on either shoulder of the deceased. According to Dr. Vicente Locsin, a light wale would disappear in two hours, but a wale produced by a heavy blow may last longer than two hours.

The fact that no sign of violence was found on the left shoulder of the deceased where, according to the testimony of the witnesses for the prosecution, he was hit by the blow with the cane given by the accused with such force as to make the latter lean over, shows that said accused did not strike said blow or, at least, there is some doubt about him doing so. It is possible that the disrespectful and insolent reply made by Santos Abalos to Jeremias Gomez so wounded his dignity and authority as manager of the hacienda that he made a gesture as to strike him with said cane in order to punish him for his insolence and to maintain discipline among the other laborers. It is true that the accused had no need to resort to such a means to gain his end inasmuch as discharging the laborer for insubordination would have been sufficient for his purpose. But at that psychological moment it was not to be expected, in view of the circumstances of the case, that he should have sufficient calmness to control the impulses of his passion and to adopt an attitude less violent. The fact, however, that Jeremias Gomez had raised his hand as if he were to strike Santos Abalos with his cane was not sufficient motive for the latter to draw his bolo and attack him with it with the evident intention of doing him bodily harm as, in fact, he did, wounding him on different parts of his body, especially if it is taken into consideration that at the beginning of the fight the cane with which Jeremias Gomez threatened to strike Santos Abalos fell from his hand to the ground. In view of the rapidity of the attacks by the deceased with his bolo against the accused, the latter began to retreat until he saw that it was impossible to go any further due to the many large clods of earth in the field, and, being in danger of his life, when he received a thrust which wounded him in the umbilical region, he remembered his revolver, drew it and

fired a shot at his aggressor while he continued to stab him, the bullet hitting Santos Abalos in the occipital frontal region, which caused his instant death.

It will be seen then that in shooting the deceased the accused did nothing but repel, with a deadly weapon, the unlawful aggression of the deceased, also armed with a deadly weapon, without sufficient provocation on the part of the former, and, therefore, all the elements required by article 8, No. 4, of the Penal Code, for his complete exemption from criminal liability are present.

For all of the foregoing, the judgment appealed from is reversed, the defendant-appellant Jeremias Gomez is declared exempt from criminal liability, and the case dismissed, with costs de oficio. So ordered.

Street, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

DISSENTING

Avanceña, C. J.,

I do not agree. I think that the appellant is not entirely exempt from liability as the element of lack of provocation on his part, which is one of the requirements for complete self-defense, is lacking.

Judgment reversed; defendant acquitted.

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