

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND
APPELLEE, VS. EVARISTO CABANTUG ET AL., DEFENDANTS.
EVARISTO CABANTUG AND PAULINO CABANTUG, APPELLANTS.**

G. R. No. 25702. October 21, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The record shows that on July 26, 1925, several persons met in Jose Acebedo's rice field situated in the barrio of Entampilan, municipality of Panitan, Province of Capiz, who had been invited to reconstruct ridges and plow said land, the work being called daguiao in that locality. Those who are invited to participate in this class of labor receive no pay, but food is served and some of them drink what is called tuba. Later in the afternoon of the same day Egmidio Deviente happened to pass by the place, coming from his brother Laureano Deviente's house, and upon being seen by the accused and his companions, was invited to drink tuba. Egmidio agreed and joined them, when one of those present, named Severino, offered him some tuba, remarking that no one could beat the said Egmidio in a finger contest, called juego al tornillo (screw game) in that locality. The accused Evaristo Cabantug responded to Severino's remark, offering to play al tornillo with Egmidio Deviente, but the latter refused saying that he did not wish to contest with Evaristo. By this time it is to be presumed that they all had been drinking tuba; in fact, Severino offered Egmidio some tuba and while the latter held the receptacle to his mouth Evaristo Cabantug, who, by that time must have been under the influence of the tuba, unsheathed his bolo and struck the said Egmidio, inflicting a wound on the calf of his right leg, the record not showing any cause for the attack. When Egmidio saw that he was wounded on the calf of the leg he immediately threw down his receptacle of tuba, seized his bolo and a fight followed between him and the accused Evaristo Cabantug. Undoubtedly this unexpected bolo fight caused excitement among those present. Some of them caught Egmidio Deviente around the waist, who leaned towards the floor, it is not known whether from the exertion or he was pushed by some of those who were holding him, and at that moment he was stabbed on the shoulder by the accused Evaristo Cabantug, while the other accused Paulino Cabantug also stabbed him on the side. It appears that the other accused Melecio Cadiz caused the wound on Egmidio Deviente's hand.

As a result of said wounds, especially the one on the side marked No. 1 on the certificate of the health officer, Egmidio Deviente died the following day in the municipality of Panitan, where he was taken after the incident.

Such are the facts shown by the evidence introduced by the prosecution, and upon which the trial court rendered judgment sentencing each of the accused, Evaristo Cabantug and Paulino Cabantug, to twelve years and one day reclusion temporal, to indemnify jointly and severally the widow of the deceased in the sum of P500 and to pay the costs of the action. The other accused Melecio Cadiz was acquitted.

From this judgment the accused appealed and through their counsel in this instance allege that the trial court erred: (a) In finding the accused and appellants guilty of the crime of homicide; (b) in not considering the evidence of alibi presented by the appellant Paulino Cabantug; (c) in not taking into consideration the exempting

circumstance of self-defense in favor of the accused Evaristo Cabantug; and (d) in not acquitting the accused and appellants.

We are convinced, in view of the testimony of the witnesses for the prosecution, that the guilt of the accused was duly proven beyond a reasonable doubt. One of the eye witnesses Jesus Deviente, a 14-year old boy, who had accompanied his father the afternoon of the incident, gave a clear and natural account of the details of the fight which his father had with the accused on the afternoon of the crime. While the witness is the son of the deceased, yet his manner of testifying was plain and simple and we are convinced of the truth of his story, the more so because there is nothing in the record to show any motive for testifying falsely against the accused. His testimony, furthermore, is substantially corroborated by the other witness Geronima Dasal who was in front of Laureano Deviente's house, wherefrom the deceased had come, which is not very far from the place of the crime. Geronima Deviente testified in the same terms as the preceding witness corroborating Jesus Deviente. This witness is the deceased's sister and at the time was in her other brother Laureano Deviente's house looking out of the window, watching the fight between the deceased and the accused. This witness was a distance of about 50 meters from the place of the crime and was able to see clearly what happened on the occasion when they were working on Jose Acebedo's land by daguiao.

The chief of police, Patricio del Fin, who went to the place of the crime the same afternoon of July 26, 1925, found the deceased lying on the grass and upon being asked by the court to tell what took place in connection with the wounded, said: "I asked him his name and what had happened to him and he told me that on that afternoon, as he was coming from his brother's house where they had had a christening and passed a rice field, he was called by one Severino Dula and, according to Egmidio Deviente, shortly after, and while they were talking, he was wounded by Evaristo Cabantug on the calf and, according to him, when he felt the wound he stooped and unsheathed his bolo. Upon seeing this Jacinto Destura, Adriano Paderes and Paulino Cabantug caught hold of him and while they were thus holding him he was wounded here (the witness pointing) on the side, but did not know who had wounded him. It was when Jacinto Destura and the former who was holding him pushed him. After being pushed he got up and started to run and while he was running he was pursued by those people without knowing who they were, and after receiving many wounds he fell."

In view of the testimony of the witnesses for the prosecution the defense of alibi set up by the appellant Paulino Cabantug is without merit. The witnesses for the prosecution know this accused and saw him inflict the wound on the deceased Egmidio Deviente's side. There being no legal reason for discrediting the witnesses for the prosecution, the defense of alibi cannot overthrow the weight of their testimony.

In regard to the defense alleged by the other accused Evaristo Cabantug to the effect that he wounded the deceased in self-defense, the evidence, in our opinion, likewise shows that this is untenable. The witnesses for the prosecution unanimously testified that Laureano Deviente did not take any part in the fight. And while it is true that the accused Evaristo Cabantug had several injuries upon his body, yet it is also true that the deceased, after he had been wounded on the calf, had to defend himself from the blows of the accused, Evaristo Cabantug, and it is not strange that during the fight the said accused received blows inflicted by his opponent. It is also alleged by the defense that the accused Evaristo Cabantug was attacked by the brothers Egmidio and Laureano who had been angry on account of the trouble the deceased had with Evaristo first in August, 1924, for having built a toilet on a rice field, and later in May, 1925, the said deceased having suspected that the said accused Evaristo had struck a goat belonging to him. Aside from the testimony of Evaristo Cabantug upon this point which has not been corroborated by any evidence, it is incredible that the deceased would risk his life in a bolo fight with the accused for such a trifle which happened in August, 1924.

We find no substantial error in the judgment appealed from which should be corrected by this court and

considering that the trial court must have taken into account the intoxicated condition of the accused which was not habitual, in imposing upon them the penalty in its minimum degree, we are of the opinion that it must be, as it is hereby, affirmed, with the costs against the appellants. So ordered.

Avanceña, C. J., Johnson, Street, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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