

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BENIGNO PALAMOS ET AL., DEFENDANTS. BENIGNO PALAMOS AND VENANCIO PALACAIN, APPELLANTS.

G. R. No. 25912. November 15, 1926

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On February 3, 1925, on the occasion of the anniversary of a deceased, which was celebrated in Cecilio Pajula's house, situated in the barrio of Bonbonon municipality of Siaton, Oriental Negros, several persons were gathered there, some of whom later on the afternoon went to Adelo Palalu's house, a distance of about 100 brazas, apparently to witness a clandestine cockfight known as topada,. It seems that at nightfall these people played monte (game of card) in Adelo Palalu's yard.

If the game was incidentally the cause of the quarrel between the accused and the deceased, such fact was not disclosed by the evidence presented by the prosecution; but the record contains the testimony of the witness Juan Palopalo, who saw the accused assault the deceased Bonifacio Pajulas, which testimony is as follows:

* * * * *

"A. I saw Bonifacio, Venancio and Benigno; Venancio, at the time, struck Bonifacio on the neck, as a result of which he fell to the ground face downward, and while on the ground, Benigno trampled upon and still beat him. Adelo Palalu remarked: 'What has he done that you are going to kill him?' at this juncture Venancio ran away, and Benigno faced Adelo and said: 'It being none of your business you should not meddle in this matter;' and Benigno also ran away following Venancio.

"Q. And what did you do?—A. When Benigno and Venancio had gone, Adelo and I went up to Bonifacio, and Adelo asked him: 'Why were you maltreated by those two men, what have you done?' and Bonifacio replied: 'I have done nothing, but when Venancio met me here, he began to beat me'; I also asked Bonifacio: 'What pains you?' and he replied: 'My body, especially my neck'; and continued: 'Let us return home'; and so we accompanied him."

Bonifacio Pajulas was conducted with great difficulty by Adelo Palalu and Juan Palopalo to his father's house which was not far from the scene of the trouble. Bonifacio's father, in the presence of the other members of the family, asked Bonifacio what had happened to him, and the only reply he could give was that he was maltreated by Venancio and Benigno. Feeling very weak, he asked that he be placed in a hammock; after which he began to vomit blood and continued to complain of the pains in his body, until he died the following morning.

The appellants were accused of the crime of murder of Bonifacio Pajulas. After due trial the lower court found the accused guilty of the crime of homicide, and taking into consideration the aggravating circumstance of superior strength set off by the mitigating circumstance of lack of instruction, sentenced each to 14 years, 8 months and one day reclusion temporal, with the accessories of the law, to indemnify the heirs of the deceased, jointly and severally, in the amount of P1,000, and each to pay one half of the costs.

From this judgment the accused appealed and their counsel, in this instance, alleges that the lower court erred:

"I. In not giving credit to the witnesses of the defense, and in considering only the evidence for the prosecution without any justifiable motive.

"II. In not considering the exempting circumstance of self-defense in favor of the accused Venancio Palacain.

"III. In not sustaining the defense of alibi, set up by the defense, in favor of the accused Benigno Palamos.

"IV. In finding the accused-appellants guilty of the crime of homicide, committed upon the person of Bonifacio Pajulas, and in sentencing them to the penalties specified in the decision."

After an examination of the evidence before us, we are of the opinion that the guilt of the appellants is established beyond a reasonable doubt. The witness Juan Palopalo testified positively that he saw Venancio Palacain strike Bonifacio Pajulas on the neck, and when the latter fell on the ground, the other accused Benigno Palamos, grandson of Venancio, also attacked him with a stick and then trampled on him. The testimony of Palopalo was not contradicted by any evidence, nor was it shown that he had any motive for falsely testifying against said accused. His testimony, therefore, must be given full credit. On the other hand, the deceased Bonifacio Pajulas, upon arriving at his house accompanied by Juan Palopalo and Adelo Palalu, on the night in question, told his mother that he felt very bad, and that the accused Venancio and Benigno had beaten him. If the deceased's statements cannot be considered strictly as an ante mortem declaration, it is undeniable that said declaration, repeated before the court by the witness Cecilio Pajulas, without any objection on the part of the defense, is admissible evidence as part of the *res gestae*.

The accused Venancio, testifying in his own behalf, said, in substance, that he struck Bonifacio with a piece of cane to defend himself, because while they were playing monte or albur, as it is called in their locality, that night, at which Bonifacio was the banker, the latter not only refused to pay the bet which he had won but also attempted to stab him with a penknife, which he succeeded in dodging. And his counsel now alleges that the lower court erred in not considering the exempting circumstance of self-defense in favor of the accused. Such an allegation is untenable. Even supposing that Bonifacio was the banker in the game, we do not believe that the evidence of the defense is sufficient to establish the alleged aggression on the part of the deceased, especially in view of the fact, according to the accused, that there were about fifty persons present at the game, both men and women, and, yet, the only one witness testified about the alleged aggression, namely, Amado Palacain, grandson of the accused Venancio, whose testimony, exaggerated and improbable in many respects, is not worthy of credit. For instance, he said, that Bonifacio stepped backward after receiving a blow on the neck, stumbled on a post and fell, his back striking said post; that Adelo approached him to disarm him of his knife, and while in this position, said Adelo took hold of his feet and dragged him to his house, a distance of five brazas. If the fact that the witness Amado Palacain is a grandson of the accused Venancio is taken into consideration, one can readily understand the effort of said witness to testify, even to the point of incredibility, to save his grandfather.

The defense of alibi set up by the accused Benigno Palacain is without merit, for, even admitting as true that on the afternoon in question the accused Benigno was plowing Francisco Gajelomo's land, that does not preclude the possibility of his being at the place, where the trouble occurred, at about 8 o'clock that night, if it is considered that Gajelomo's land is only about 300 brazas from the scene of the crime. The lower court found in its judgment that the witnesses, who testified as to the defense of alibi, left much to be desired in the details, and we believe that their testimony cannot prevail over the positive testimony of Juan Palopalo and Cecilio Pajulas in regard to the statements of the deceased, upon arriving at his home, as to the persons who had assaulted him on the night in question.

The assignments of error made by the accused not being sufficiently supported by the evidence, and the judgment

appealed from being in accordance with law, the same must be, as it is hereby, affirmed, with costs against the appellants. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, and Ostrand, JJ., concur.

ROMUALDEZ, J., with whom concurs VILLA-REAL, J., dissenting :

With due respect to the majority opinion, I believe that an incomplete self-defense was proven in this case as to both defendants for the reason, at least, that the provocation came from the deceased and not from them and that the penalty must be imposed accordingly.

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