

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND
APPELLEE, VS. DOMINGO GONZALEZ ET AL., DEFENDANTS.
DOMINGO GONZALEZ AND HILARIO GONZALEZ, APPELLANTS.**

G.R. No. 26481. March 02, 1927

Ponente: OSTRAND, J.

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OSTRAND, J.:

Domingo Gonzalez, Hilario Gonzalez and Modesto Organo were accused of the crime of murder upon the following information:

"That on or about April 11, 1926, in the municipality of Catanauan, Province of Tayabas, Philippine Islands, and within the jurisdiction of this court, the above-mentioned accused, armed with a revolver, bolos and a wooden club, working and conspiring together and mutually helping each other, did voluntarily, illegally and criminally enter Jose Ilustre's house through the kitchen, and with treachery and evident premeditation and with the intention of taking the life of any member of Jose Ilustre's family whom they might find in said house, assaulted and attacked the said members of Jose Ilustre's family, firing at Gregorio Ilustre, a sick old man 75 years of age, inflicting several mortal wounds from which the said Gregorio Ilustre died instantly. Crispin Encarnacion was also wounded by the discharge of firearms, which wound was of such a grave character as to take more than 40 days to heal with the aid of medical attendance. Jose Ilustre received various contusions caused by blows given by the accused."

Upon trial Modesto Organo was acquitted, but Domingo and Hilario Gonzalez were found guilty of homicide and each of them was sentenced to suffer fourteen years, eight months and one day of reclusion temporal, with the accessory penalties and one-third of the costs. From this sentence both of the convicts appealed.

The evidence for the prosecution is to the effect that the deceased, his son Jose Ilustre and grandson Teodoro Ilustre were living in the same house. About 11 o'clock in the morning of Sunday, April 11, 1926, Teodoro, a young man 24 years of age, while in a privy in the back yard of the house, saw the defendant Domingo Gonzalez, a municipal policeman, go up one of the stairways to a balcony in the rear of the house and attempt to enter the house through a door leading into it from the balcony. Teodoro, suspecting the motives of Domingo, followed him up to the balcony and asked him what he wanted. Domingo answered that he wanted to get into the house, whereupon Teodoro advised him to go to the main entrance. Domingo nevertheless insisted upon entering from the balcony and finding the door closed, tried to effect his entry through a window giving on the balcony, but Teodoro dragged him away from the window and asked him if he had a search warrant; Domingo answered that he had no warrant and immediately drew his revolver and threatened to discharge it at Teodoro, but the latter succeeded in seizing Domingo's hand and endeavored to disarm him. Jose Ilustre then came to Teodoro's assistance and a violent struggle ensued. While the struggle was going on, Modesto Organo, an uncle of the other defendants and a near neighbor of them and of the Ilustres, also came up on the balcony and struck at Jose Ilustre's head with a stick and thereupon ran away. At that moment Jose Ilustre succeeded in wresting the revolver

from Domingo and handing it to Domingo's brother, the defendant Hilario Gonzalez, who just then arrived on the scene, told him to take it away. Teodoro and Jose Ilustre thereupon went into the house to rest, leaving Domingo on the balcony.

As Teodoro and Jose Ilustre went into the house, Jose's father the deceased Gregorio Ilustre asked them what had occurred and, being told by Jose that nothing had happened, he went out on the balcony to investigate for himself. Three or four minutes later, several pistol shots were heard and through a window Jose Ilustre saw Hilario Gonzalez point Domingo's revolver at Gregorio, Jose then went into the sala of the house to get his own revolver, but could, not find it. So far we have followed the testimony of Teodoro and Jose Ilustre. It may be noted that Teodoro does not claim to have seen Hilario Gonzalez point the revolver at the deceased and neither of the two witnesses saw Hilario discharge the revolver.

Maria Ilagan, the wife of Jose Ilustre; testifying for the prosecution, stated, in substance, that she saw Hilario Gonzalez go down the stairs from the balcony carrying a revolver; that she went after him and asked him to let her have the revolver to take care of; that Hilario paid no attention to her request, but turned around and, placing himself on the second step from the bottom of the stairs, fired two shots at Gregorio Ilustre; that she, being greatly frightened, left the stairs where Hilario was standing and ran around the house approaching the other end of the balcony; that she then saw Domingo Gonzalez standing on the balcony and firing a shot at Gregorio, who was reclining against the railing; and that she then heard another shot whereupon she ran into her nephew's drug store and closed the door. She also stated that in the morning of the same day, Domingo Gonzalez asked her to lend him P5; that she was unwilling to lend him more than one peso and handed him a one peso bill, but that he returned the bill brusksly saying that he did not need it; and that on leaving he showed considerable resentment.

Testifying for the defense, Domingo Gonzalez stated that between 10 and 11 o'clock in the forenoon of April 11, 1926, he, in passing the house of Jose Ilustre, saw a number of persons sitting or standing around a table in the dining room of the house and that he, from their actions and attitudes, suspected that they were gambling; that he entered the house through the back door and found that the persons he had seen were playing monte, one Carmino, captain of the steamer Kim-Kiat, being the banker; that Domingo succeeded in taking a pack of playing cards away from Captain Carmino and at the same time seized 57 cents and a score card lying on the table; that Jose Ilustre tried to take the articles seized away from Domingo, who at the same time was attacked from behind by Crispin Encarnacion and Teodoro Ilustre; that Teodoro fired a revolver shot at him but missed; that at the same time Gregorio Ilustre struck him on the head with a palasan (heavy stick or club) inflicting a wound which bled profusely ; that immediately thereafter, Jose and Teodoro Ilustre dragged him out on the balcony and threw him downstairs; that by reason of the injuries sustained by him through the blow dealt him by Gregorio Ilustre and from rolling down the stairs, he became insensible for a moment; that on regaining consciousness, he called for assistance and fired a shot in the air to attract other policemen; that Jose and Teodoro Ilustre, probably thinking that the shot was aimed at them, began to shoot at him with their revolver; and that in self-defense, and his mind still being confused, he fired several shots in the direction of the balcony without aiming at any particular person. He denied that Hilario Gonzalez was present.

Though it seems evident that the principal witnesses for the prosecution did not tell the unvarnished truth, there can nevertheless;be no doubt that the defendant Domingo Gonzalez is guilty of homicide and that his plea of selfdefense cannot be sustained. It is rather improbable, considering the location of the house of Ilustre, that there was any gambling there at 11 o'clock Sunday morning in full view of the public. It is likewise improbable that Domingo, without a warrant and without advising the chief of police, who was living in a house situated a very short distance from that of Ilustre, should singlehanded, in violation of the instructions issued to the policemen of the town of Catanauan, have undertaken to enter Ilustre's house with the purpose of apprehending a number of

persons whom he merely suspected of gambling. There can hardly be any doubt that the theory of the prosecution is correct and that his purpose was only to embarrass the Ilustres by accusing them of gambling and that his motive was revenge for the imaginary affront inflicted upon him by Maria Ilagan in refusing to give him credit for five pesos.

As to the defendant Hilario Gonzalez, the situation is somewhat different. His defense is an alibi and while the veracity of the witnesses testifying in his behalf is far from being above suspicion, it is quite possible that they in the main told the truth. The chief of police, who had a good view of the premises from the window of his house, stated in an affidavit executed immediately after the commission of the crime that he saw Modesto Organo in the yard of Ilustre's house, but did not see Hilario. As he had no greater reason to shield Hilario than he had to protect Organo and, as the affidavit in general bears the impress of truth, we are inclined to believe that Hilario was not present after the firing of the first shot.

But, be that as it may, the evidence for the prosecution in regard to Hilario's participation in the shooting suffers from such glaring improbabilities as to create grave doubt of his guilt. It is, for instance, difficult to believe that Jose Ilustre, having succeeded in getting the revolver away from Domingo after a violent struggle, should have turned it over to Domingo's brother. If Hilario came up on the balcony at all, the inference would naturally be that he came there to assist his brother Domingo who was then bleeding profusely from a wound in his head and was carrying on an unequal struggle with two men in which he was very decidedly worsted. It is further to be noted that, according to the evidence for the prosecution, Modesto Organo, the uncle of the two brothers, aimed a blow at Jose immediately before the alleged delivery of the revolver to Hilario. In these circumstances, it seems wholly improbable that Jose should have regarded Hilario as a special friend and entrusted him with the custody of a dangerous weapon which it had cost so much effort to get away from Domingo. There were other people present to whom the gun might have been given with much greater safety. And there is no reason to think that Jose was, at that time, so bewildered that he did not know what he was doing; neither he nor his son Teodoro had received any physical injuries and Teodoro alone must have been much more than a match for Domingo, who, according to the testimony of Teodoro, was then in a state of complete exhaustion.

It also seems somewhat improbable that Jose and Teodoro Ilustre would have left Domingo on the balcony while they themselves went into the house to rest. Domingo's testimony that he was thrown bodily downstairs and that he began to fire his revolver as soon as he got on his feet seems much more reasonable, and the character of the injuries received by him, which according to the testimony of Doctor Dimaano required twelve days for their cure, corroborates his statement. After having been beaten and having suffered the indignity of being thrown downstairs he, no doubt, felt in a mood for wreaking vengeance on all of the inhabitants of the house and to do the shooting himself. Hilario, on the other hand, could not have had such strong motives for an assault upon the old and decrepit Gregorio Ilustre. If he had harbored violent hostility towards the Ilustre family, the probabilities are that he would have used the revolver immediately after he had obtained possession of it and while his brother was being mishandled, and that he would not have waited until three or four minutes afterwards when the situation had become peaceful.

As we have already stated, there is room for a reasonable doubt as to the guilt of the defendant, Hilario Gonzalez, and this doubt is strengthened by the fact that an effort was made to bring the appellants' uncle, Modesto Organo, and their brother, Ananias, into the case. In order to obtain complete revenge, there is sometimes a tendency on the part of the offended parties to charge innocent members of the family of the perpetrator of a crime with participation therein and such may have been the case here.

In their fifth and last assignments of error, the appellants contend that the judgment of the court below is null and void because the judge who signed the decision had been transferred to another Judicial District at the time of the

signing and had ceased to be a Judge, of the District in which the case was tried. This contention is based on the facts that the crime was committed in the Province of Tayabas and that the case was tried there by Judge Servillano Platon, who was subsequently appointed Judge of the Court of First Instance of Albay and took his oath of office there on August 4, 1926; that the decision in the present case bears the same date as that upon which the judge qualified for his new office and was signed "Servillano Platon—Juez de Primera Instancia de Albay." We do not think that these facts are sufficient to overcome the presumption "that official duty has been regularly performed" (par. 14, sec. 334, Code of Civil Procedure), though on the same date, the decision may have been signed before the Judge took his oath of office and the words "Juez de Primera Instancia de Albay" is probably a mere clerical error.

For the reasons hereinbefore stated, the judgment appealed from is affirmed as to the appellant Domingo Gonzalez with one-half of the costs of this instance against said appellant. The judgment is reversed in regard to the appellant Hilario Gonzalez, who will stand acquitted of the crime charged in the information with one-half of the costs of this instance de oficio. So ordered.

Johnson, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

CONCURRING AND DISSENTING OPINION

STREET, J.:

I concur in the affirmance of the judgment against Domingo Gonzalez but dissent from the acquittal of Hilario Gonzalez, since, from a careful reading of the proof, I am convinced that he is the precise personage who fired the first fatal shot, or shots, at the unoffending octogenarian who was the victim of this homicide.

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