

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ESTEBAN AUSTRIA, DEFENDANT AND APPELLANT.

G.R. No. 27352. August 04, 1927

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The information charges the accused as follows:

"That on or about December 23, 1926, in the municipality of Candelaria, Province of Tayabas, Philippine Islands, and within the jurisdiction of this court, the above-named accused wilfully, unlawfully, and feloniously attacked Severino de los Reyes with a bolo, inflicting a mortal wound on the left side of the neck, about 20 centimeters long and so deep as to reach in its course the lobule of the left ear, and another surface wound about 12 centimeters long in the left lumbar region, as a result of which the said Severino de los Reyes died instantly.

"Contrary to" law."

After due hearing the trial court found that on the said date, December 23, 1926, Jacinto de los Reyes, Casio Lopez and Tomas Baeta, met in the accused's store located in the barrio of Maasin, municipality of Candelaria, Province of Tayabas, and drank wine which they had purchased in the accused's store. Having drunk four bottles of wine contained in what are called Tansan bottles, the said Jacinto de los Reyes asked the accused for another bottle of wine on credit, which the latter refused to let him have, either because Jacinto de los Reyes already owed him over P13 and did not pay, or because, seeing the three already drunk, he feared some trouble might arise if he let them have any more. Jacinto de los Reyes, displeased at said refusal, pulled out a brass-knuckle from his pocket and dealt the accused a blow on the forehead, which started a fight between the accused and Jacinto de los Reyes, as a result of which Jacinto was left stretched out face downwards on the ground, weltering in his own blood flowing from the wounds inflicted on him by the accused with a bolo previously taken from the wall of the store.

The court also found that while Severino de los Reyes, father of Jacinto de los Reyes, was in his house on that morning, he received word that his son Jacinto lay stretched out on the ground in front of the accused's store, and hastened to the scene of the incident accompanied by his wife, Ramona Garcia, and his daughter-in-law, Calixta Ramos. Upon arriving in front of the accused's store, Severino de los Reyes rebuked the said accused, who was then standing at the door of his store, bolo in hand, inquiring of him why he had wounded his son. The accused, by way of reply, gave him such a well-aimed blow with his bolo on the left side of the neck, that it cut his throat, causing instant death.

In view of these facts, the court found the accused guilty of the crime of homicide, and, considering the mitigating circumstance of having acted upon an impulse so powerful as naturally to have produced passion and obfuscation, sentenced him to twelve years and one day reclusion temporal, with the accessories of the law, to indemnify the heirs of the deceased in the sum of P500, without subsidiary imprisonment in case of insolvency on account of the

penalty imposed, and to pay, in addition, the costs of the action.

The principal error assigned by the defense is the fact that the lower court gave greater weight to the witnesses for the prosecution than to those for the defense.

The prosecution contends that the deceased, Severino de los Reyes, arrived upon the scene of the trouble after the fight between the accused and Jacinto de los Reyes; while the defense contends that the deceased Severino de los Reyes and his son Jacinto, both arrived at the scene of the trouble, and together attacked the accused who defended himself with the bolo which he carried.

We have carefully examined the testimony of the eyewitnesses Ramona Garcia, widow of the deceased, and Calixta Ramos, wife of Jacinto de los Reyes, in connection with that of the accused himself, Romana Bolios, his wife, and Tomas Baeta, one of those who had been drinking wine in front of the accused's store, and we are convinced that the trial court rightly considered the facts in giving credence to the witnesses for the prosecution.

The accused admits that the three above-mentioned individuals, Casio Lopez, Tomas Baeta and Jacinto de los Reyes had been drinking wine that morning in front of his store and that it ended in a fight between the accused and Jacinto de los Reyes, provoked by the former's refusal to give the latter any more wine on credit. Up to this point, Romana Bolios and Tomas Baeta corroborate the accused; but neither one of them speaks of the presence of Severino de los Reyes at that particular moment. Tomas Baeta testifies that, not being able to prevent Jacinto de los Reyes from fighting with the accused, he left the place and does not know what took place afterwards. Casio Lopez did not testify in the case.

The court considered the testimony of the witnesses for the prosecution, Ramona Garcia and Calixta Ramos more probable, and we believe with reason, who testified that the deceased hastened to the scene of the trouble, having received word that his son Jacinto was weltering in his own blood on the ground in front of the store of the accused; and that, having demanded of the accused why he had wounded his son, in reply the accused struck him with his bolo in the neck, causing his death.

The trial court, in explaining the motive of the accused in wounding the deceased, says: "That the accused who was undoubtedly still in a frenzy, passion and obfuscation produced by the actions of Jacinto de los Reyes, either because the aged Severino de los Reyes showed a certain hostile attitude, quite natural for a father who sees his son in such a state, or because he saw that the old man carried a stick, perhaps to support himself, with which the accused thought he meant to attack him, he struck Severino de los Reyes a blow with his bolo."

In this case, the trial court, taking into consideration the state of mind of the defendant, who had just fought with the son of the deceased, and left him stretched out on the ground, held that the father's rebuke made in a hostile manner when he appeared upon the scene with a stick, had the effect of producing passion and obfuscation in the accused. Granting that the deceased hastened to the scene of the incident after the fight between the accused and the former's son, named Jacinto de los Reyes, the accused who, in the opinion of the court, was still overexcited, was obfuscated by the hostile attitude of the father who rebuked him with a stick for what he had done to his son. Thus it is that the lower court, in holding that the determining impulse of the acts of the accused was sufficient to naturally disturb his mind, has considered the circumstances surrounding the act and the aggressor. And, the trial court did not err in taking into consideration in this case the mitigating circumstance No. 7 of article 9 of the Penal Code. (Decision of the Supreme Court of Spain of October 8, 1904.)

The judgment appealed from must, therefore be, as it is hereby, affirmed, with the costs against the appellant. So ordered.

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

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