

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. NARCISO CABUNGICAL, DEFENDANT AND APPELLANT.

G.R. No. 28451. August 01, 1928

Ponente: AVANCEÑA, J.

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AVANCEÑA, J.:

The appellant, Narciso Cabungcal, was sentenced by the Court of First Instance of Tayabas for the crime of homicide to fourteen years, eight months and one day reclusion temporal, with the accessories of the law, to indemnify the heirs of the deceased in the sum of P500 and to pay the costs of the action.

On March 21, 1926 the appellant invited several persons to a picnic in a fishery on his property in the barrio of Misua, municipality of Infanta, Province of Tayabas. They spent the day at said fishery and in the afternoon returned in two boats, one steered by the appellant and the other by an old woman named Anastasia Peñaolas. Nine persons were in the boat steered by the appellant, the great majority of whom were women and among them the appellant's wife and son and a nursing child, son of a married couple who had also gone in this boat. The deceased Juan Loquenario was another passenger in this boat. Upon reaching a place of great depth the deceased rocked the boat which started it to take water, and the appellant, fearing the boat might capsize, asked the deceased not to do it. As the deceased paid no attention to this warning and continued rocking the boat, the appellant struck him on the forehead with an oar. The deceased fell into the water and was submerged, but a little while after appeared on the surface having grasped the side of the boat, saying that he was going to capsize it and started to move it with this end in view, seeing which the women began to cry, whereupon the appellant struck him on the neck with the same oar, which submerged the deceased again. With the movement that the appellant made in giving him the second blow, the boat upset and then the appellant proceeded to save his passengers. In the meantime the aged Anastasia Peñaolas, who steered the other boat, and who at that time was about 200 or 300 meters away, having heard the cries of the wrecked persons, quickened its speed, repaired to and arrived in time to pick up the passengers who are clinging to the side of the capsized boat, taking them later to the river bank. The appellant, after having thus saved his passengers, proceeded to search for the deceased but was unable to find him and his body was recovered later.

The Attorney-General is of the opinion that the mitigating circumstances described in the first, third, fourth and seventh paragraphs of article 9 of the Penal Code are present without any aggravating circumstance, and the penalty to be imposed on the appellant should be one or two degrees less than that prescribed by the law.

In view of the facts stated, we are of the opinion that the appellant is completely exempt from all criminal liability.

Due to the conditions of the river at the point where the deceased started to rock the boat, if it had capsized the passengers would have run the risk of losing their lives, the majority of whom were women, especially the nursing child. The conduct of the deceased in rocking the boat until the point of it having taken water and his insistence on

this action, in spite of the appellant's warning, gave rise to the belief on the part of the plaintiff that it would capsize if he did not separate the deceased from the boat in such a manner as to give him no time to accomplish his purpose. It was necessary to disable him momentarily. For this purpose the blow given him by the appellant on the forehead with an oar was the least that could reasonably have been done. And this consideration militates with greater weight with respect to the second blow given in his neck with the same oar, because, then the danger was greater that the boat might upset, especially as the deceased had expressed his intention to upset it.

In view of all the circumstances of the case, in doing what the appellant did was in lawful defense of the lives of the passengers of the boat, two of whom were his wife and child. The recourse of taking the boat to the shore was not adequate in those circumstances, because that would require sometime, whereas the deceased might in an instant cause the boat to capsize without giving time to arrive at the shore.

The appellant having acted in defense of his wife and child and the other passengers in the boat and the means employed having been reasonably necessary in this defense, while it was at the cost of the life of the deceased, he is completely exempt from criminal liability.

Reversing the judgment appealed from, the appellant is acquitted, with the costs de oficio. So ordered.

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

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