

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FERMIN MARASIGAN, DEFENDANT AND APPELLANT.

G.R. No. 28593. March 13, 1928

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellant was arraigned before the Court of First Instance of Tayabas on a charge of homicide, by virtue of the following information:

"That on or about March 24, 1927, in the barrio of Mangalang, municipality of Sariaya, Province of Tayabas, Philippine Islands, and within the jurisdiction of this court, Fermin Marasigan, the above-named accused, armed with an edged and pointed weapon, and a piece of wood, did wilfully, unlawfully, and feloniously assault and attack Pedro de Chavez, inflicting upon him the following wounds:

"(1) A piercing wound in the right side of the chest, between the third and fourth ribs, about 2 centimeters long and deep enough to take in the right lung;

"(2) Another wound in the abdomen, towards the left hypochondrium of the epigastric region, with some abdominal viscera protruding from it, about 8 centimeters long and deep enough to take in the stomach and part of the transverse portion of the large intestine;

"(3) Another wound about 18 centimeters long in the left lateral portion of the neck;

"(4) A surface wound about 18 centimeters long in the left forearm on the inferior third and anterior portion; and

"(5) A bruise in the left cheek bone, which wounds were necessarily fatal and caused the instantaneous death of the said Pedro de Chavez.

"Contrary to law."

The trial court found the accused Fermin Marasigan guilty of the crime of homicide alleged in the information, and sentenced him to fourteen years, eight months and one day reclusion temporal, with the accessories of the law, to indemnify the deceased's widow in the sum of P1,000, and to pay the costs of the action.

The appellant alleges that the trial court erred: (1) In making its findings without taking into account the fact that to prove the allegations in the information, the prosecution presented the testimony of two relatives of the deceased, and did not summon the following disinterested persons, who, according to the prosecution itself, were eyewitnesses of the incident, to wit, Francisco Vergara, Mariano Vergara, Moises Hernandez and Alipio Albiondo; (2) in holding that the aggression came from the deceased, and not considering that it was impossible, in view of (a) the utter lack of motive on the defendant's part to kill, wound, or otherwise attack the deceased; (b) the state of aggressive drunkenness in which the deceased was a few moments before his encounter with the accused; (c) the deceased's repute in that barrio as a bully and a quarrelsome person, and his criminal antecedents; (d) the evidently greater strength of the deceased than that of the accused; (e) the good name of the defendant and

the fact that he has no criminal antecedents; (f) the fact that the very self-styled eyewitnesses, who were summoned by the prosecution, did not, by their own confession, see the beginning of the aggression; (g) the serious mutual contradictions of the several witnesses for the prosecution; and (3) in not finding that the accused, in killing Pedro de Chavez, acted in self-defense. The appellant's contention, that the suppression by the fiscal of the testimony of some witnesses to the crime in question raises the presumption that their testimony would be unfavorable to the prosecution, is untenable. The incident was witnessed by several persons. The prosecution presented the testimony of three of them: Agapito de Silva, Casimiro de Chavez and Juan Resurreccion. The testimony of the other persons who witnessed the act would have been only cumulative evidence, and as such, its suppression or omission cannot give rise to the presumption that it would have been unfavorable to the prosecution. It was so decided in the case of *United States vs. Gonzalez* (22 Phil., 325), where it was held:

"When an act has been witnessed by several persons, the prosecution is not obliged to present all such witnesses, but only a sufficient number to prove the occurrence of the alleged act. The presumption prescribed by paragraph 5 of section 334 of the Code of Civil Procedure, to the effect that when proof is suppressed it shall be deemed to be unfavorable to the party suppressing it, does not arise from the mere fact that the prosecution fails to present all the eyewitnesses to an act."

The defense contends that the accused was justified in inflicting upon the deceased the wound that caused his death, alleging that the aggression came from the deceased and that the defendant acted in self-defense.

Considering the facts found by the trial court, the appellant's contention in his two last assignments of error is untenable.

On March 24, 1927, there was a feast at Agapito de Silva's house in the barrio of Mangalang, municipality of Sariaya, Province of Tayabas, upon the occasion of the baptism of one of his children. Among those present, were the accused Fermin Marasigan and the deceased Pedro de Chavez. The latter offered Fermin Marasigan a cup of wine, which he declined saying that he was not in the habit of drinking much, and besides he had already taken wine during the meal, and he asked to be excused for not being able to drink any more. The deceased then replied: "Well, I did not think you would slight me in that way." To which the accused answered: "What was I to do since I could take no more, having drunk during the meal?" What followed does not clearly appear in the record; the accused says that Pedro de Chavez himself drained that cup of wine, and after having done so, became flushed. The accused, noticing it, sought to slip away—he went into the house, took his hat and left. The defendant's testimony on this point reveals to us that his refusal to take the wine offered by the deceased was to the latter a slight that must have provoked a discussion between them before the accused left the house. And that incident must have produced some commotion among those present at the house, who soon descended also, after the example of the deceased and the accused. The first one who descended was the defendant Fermin Marasigan, who, while yet on the staircase, opened his penknife and held it in his hand while leaving the house, and in the street picked up a club from the ground. A few moments later the deceased followed and as there was only a distance of about 5 brazas between them he overtook the accused on the street. As soon as the deceased reached the accused they prepared for combat and immediately Fermin Marasigan beat the deceased's face with the club he carried. Whereupon the accused and the deceased grappled and engaged in a fist fight. During the struggle, the accused Fermin Marasigan stabbed the deceased several times with his penknife (Exhibit C) and they both fell to the ground. A few moments later, they got up and separated, the accused going towards the right, taking the direction of the street, and the deceased towards the left. The deceased had scarcely taken a few steps, when he fell to the ground dead.

The deceased's body was examined by the head of the Health Service Division of Sariaya and Candelaria, Tayabas, and said official found thereon the wounds described in the information.

The court below admitted the facts as related by the witnesses for the prosecution and not as stated by the witnesses for the defense. Accepting, as we do, the trial court's findings as being more in conformity with the facts, we are of opinion that the accused cannot set up the plea of self-defense. In the case of *United States vs. Navarro* (7 Phil., 713), this Supreme Court said:

"Notwithstanding that the fact be taken as proven and as alleged by the defense in this instance, that the accused repeatedly expressed his desire and wish to the deceased not to fight and that he, the accused, begged the deceased that there be no fight between them, and that the deceased paid no heed or attention to such request and attacked and assaulted the accused, this aggression or attack could not be considered as one of the elements or requisites of selfdefense, because, 'in a fight arranged under agreement, like the one that has taken place, the result of the provocation and an accepted challenge, the aggression is reciprocal and legitimate as between two contending parties, although the same cannot be qualified as a duel for the reason that the conditions and elements necessary to constitute this crime are not present.' (Judgment of the Supreme Court of Spain, July 11, 1871.) 'The acceptance of a personal encounter or fight excludes the application of paragraph 4 of article 8 of the Penal Code, for the reason that the fight, once accepted, the first aggression or attack is an accident or incident of the fight and without judicial effects modifying the imputability resulting from the accepted act.' (Judgment of the Supreme Court of Spain, May 30, 1892.)"

And in the case of *United States vs. Cortes* (36 Phil., 837), this court confirmed that ruling, saying:

"The right of lawful self-defense cannot validly be set up in behalf of a person who voluntarily exposes his person to the consequences of a hand to hand struggle with his adversary in which, for the reason that each of the combatants has no other intention than to injure the other, the first act of force, come from whichever of the two it may, cannot be held but to be an incident of the fight itself and in nowise whatever as an unwarranted and unexpected aggression which alone can legalize self-defense."

The judgment appealed from, being in accordance with the law and the evidence, must be, as it hereby is, affirmed, with costs against appellant. So ordered.

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

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