

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. IGNACIO CABELLON AND SIMEON GAVIOLA, DEFENDANTS AND APPELLANTS.

G.R. No. 29221. August 08, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

After the legal proceedings, Ignacio Cabellon and Simeon Gaviola were prosecuted for the crime of murder, found guilty of homicide with the aggravating circumstance of dwelling, and sentenced: Simeon Gaviola to seventeen years, four months and one day reclusion temporal, and Ignacio Cabellon, the aforementioned aggravating circumstance being offset by the mitigating circumstance of drunkenness, to fourteen years, eight months and one day reclusion temporal, besides imposing on both of them the accessory penalties, to indemnify the deceased's heirs in the sum of P1,000, and to pay the costs.

While the defense alleges that the accused acted in self-defense, the Attorney-General maintains that they were the instigators and the aggressors.

The witnesses for the prosecution, who claim to be eyewitnesses of the crime, are Juliana Abadon and Pedro Tabora, wife and son, respectively, of the deceased. There is a certain tendency in the former to assure as facts, what are no more than her own conjectures. Thus, referring to whether or not the accused Ignacio Cabellon had inflicted a wound on the deceased, she testified as follows:

"Q. Did Ignacio Cabellon inflict any wound on your husband on that night?—A. I did not notice, because when my husband fell with his face downward, I ran away.

"Q. Is it not a fact that you testified before the fiscal and before the police yesterday afternoon, that this cane Exhibit D was used by the accused Ignacio Cabellon to strike the deceased ?—A. He struck with that stick, because the deceased also had a wound on his right calf.

"Q. And you assured yesterday afternoon at the fiscal's office that you saw the accused strike the deceased with that cane, isn't that so?—A. Yes.

"Q. Then you saw the accused Ignacio Cabellon strike the deceased with this cane Exhibit D?—A. I did.

"Q. And why is it that just now you testified that you did not see the accused Ignacio Cabellon strike the deceased with that cane?—A. I only surmise that that stick has been used, because it is blood-stained.

"Q. And why did you say yesterday in the fiscal's office that you saw, and now you say that you did not see?—A. I saw.

"Q. Tell us the truth: Did you see the accused Ignacio Cabellon strike the deceased with that cane, or not?—A. I did; and there is my son who saw it.

"Q. Did you see the accused Ignacio Cabellon strike the deceased with that cane, or not?—A. I did.

"Q. And when did you see the accused Ignacio Cabellon hit the deceased with the cane?—A. The two accused attacked the deceased at the same time. Simeon strike him with a spear, Ignacio also struck him.

"Q. Is it not a fact that yesterday afternoon you said in the fiscal's office that you did not see the accused, Ignacio Cabellon, strike the deceased with the cane, but that the one who saw it was your sister, whom you brought to the fiscal's office?—* * * A. She came here yesterday because she is the one who gave the alarm of the incident.

"Q. Then that woman did not see the accused Ignacio Cabellon strike the deceased with a cane?—A. She did, because she was plucking tender coconut shoots." (Pp. 4, 9, 10 and 15, t. s. n.)

But the woman referred to, the witness' sister, far from corroborating her, denied that she was present when Agapito Tabora was killed, as appears from her testimony as follows:

"Q. Please relate to the court what happened at the time the accused killed your brother-in-law?—A. When I was gathering tender coconut shoots, the incident had not yet taken place; but when I arrived home, Pedro, that witness who testified here just now, came running, and said to me, 'Mother, father is dead.'

"Q. Proceed with the narration.—A. When he told me that he was dead, I asked Pedro who had killed the deceased, and Pedro answered 'The persons responsible for the deceased's death are the accused Ignacio and Simeon.' When I learned that the victim was already dead, I ran to the police station to notify them of the murder committed at that time. When the police came with me to the scene of the crime, we found the body of the deceased under the stairs.

"Q. Were you present, or not, when the two accused killed your brother-in-law, Agapito Tabora?—A. No, sir; I was not." (Pp. 33, 34, t. s. n.)

This is not a case of a merely ignorant witness. It is observed that there is a certain tendency in Juliana Abadon to bring charges against the accused Cabellon, with no more data than her own deductions. It is true that there are cases of ignorant witnesses who, in spite of hesitation and contradiction, give indubitable testimony, but when, as in the instant case, such hesitation and contradiction seem to arise, not so much from ignorance as from an interest in exaggerating the accusation, then the hesitating testimony, in itself contradictory, and contradicted, moreover, by that of the witness' sister, it deserves no credit at all.

Passing to the testimony of another witness claiming to have been an eyewitness, Pedro Tabora, neither do we find it believable. The lower court itself did not give him full credence as to how the accused Ignacio Cabellon's wounds were caused. This is what the judgment appealed from, says on this point:

"The deceased was carrying an hoz in a scabbard at his belt, but according to Pedro Tabora, son of the deceased, his father did not have a chance to make use of it and the wounds of Ignacio Cabellon were inflicted by Simeon Gaviola with a lance through mistaking Cabellon for the deceased after the latter had fallen to the ground. The court is constrained to think, however, that the witness is mistaken on this point due to the confusion and darkness."

That the accused Ignacio Cabellon attacked the deceased in any way, is not sufficiently proven; nor is there any sufficient evidence that he conspired with his coaccused for the purpose of attacking the deceased, or that he did anything leading to that end, which had any connection with other act or acts of his coaccused. And, considering the quality and weight of the evidence of the prosecution, it cannot be held proven that Ignacio Cabellon provoked the fight.

If this appellant is not responsible for the wounds which caused the death of Agapito Tabora, and all the witnesses both for the prosecution and for the defense agree that he is not; if there was no conspiracy between him and his coaccused; if, likewise, he did not provoke the fight, nor take any part in the attack upon the deceased, certainly he cannot be found guilty of homicide, or in any manner be held criminally liable.

With respect to the guilt of the accused Simeon Gaviola, it is a proven fact which he himself admits, that he caused the injuries which produced the deceased's death. However, he alleges that he acted in defense of his wife's brother-in-law, Ignacio Cabellon. Although in some minor respects we consider the accused's version of the incident inadmissible, nevertheless, we deem it proved in the record that the deceased was the instigator and unlawful aggressor in that fight. The lower court reached the right conclusion that the deceased was then armed with a sickle, and the injuries sustained by Ignacio Cabellon have no other credible explanation, under the circumstances of the case, than that they were caused by the deceased. We have already indicated, as was done by the trial court, that Pedro Tabora's statement that it was the accused Gaviola himself, who, by mistake, inflicted the wounds upon Cabellon, cannot be admitted.

But unlawful aggression is not sufficient to exempt Simeon Gaviola from all liability. Paragraph No. 6 of article 8 of the Penal Code, which would be applicable, in view of the fact that the relationship of these two men, married to two sisters, is not the one provided for in the preceding paragraph, requires, besides the unlawful aggression, a reasonable necessity of the means employed to prevent or repel the attack, and that the defender be not impelled by revenge; resentment or any other evil motive.

As to the means employed by Simeon Gaviola to repel the attack upon Ignacio Cabellon, it seems clear to us that it was not reasonably necessary. And the nature and number of blows dealt the deceased by him, in addition to precluding the idea of any reasonable necessity of the means used, give rise to a strong suspicion that the appellant Gaviola, in thus defending his wife's brother-in-law, acted also from an impulse of resentment against the deceased, who, according to the testimony of the witnesses for the defense, had been persecuting Ignacio Cabellon and his family to the point that said Cabellon's wife, Simeon Gaviola's sister-in-law, had become mentally unbalanced in consequence of a shock suffered by the challenges and provocations of the deceased to the people of that place.

Therefore, of the three elements required by the law for exemption from guilt, only one may be held to be present in the crime in question, and that is, the unlawful aggression on the part of the deceased. And by virtue of the provision of article 86 of the Penal Code, the penalty to be imposed upon the appellant Gaviola must be the penalty one degree lower than that prescribed by law.

Wherefore, the criminal act dealt with in this proceeding is held to be homicide for which the defendant Cabellon is in no way liable, but Gaviola is, with the circumstance of incomplete defense with no other to qualify the criminal liability, the aggravating circumstance of dwelling not being properly taken into account since the provocation came from the deceased, and the judgment appealed from is reversed with respect to Ignacio Cabellon, who is hereby acquitted with one-half of the costs of this action de oficio; and with respect to Simeon Gaviola, said judgment is modified, the latter being sentenced to eight years prision mayor, the same being affirmed in all other respects as to him, with one-half of the costs against him. So ordered.

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

Malcolm, Villamor, and Ostrand, JJ., dissent and vote for the confirmation of the judgment.

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