

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. HONORATO BERGAÑO ET AL., DEFENDANTS.
HONORATO BERGAÑO, APPELLANT.**

G.R. No. 29398. November 01, 1928

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On the night of December 5, 1927, on the occasion of the novena of the death of one of the members of the family of Hermenegildo Franco, there were many people in the latter's house, situated in the barrio of Burias, of the municipality of Mambusao, Province of Capiz. Among those present were Mariano Franco, the deceased, and the defendants. At about 10 o'clock at night, while the second table was being served, Mariano Franco arose from the table and went into the kitchen, and coming face to face with Honorato Bergaño, who was then acting as cook, said to him: "Why (ribaldry) have you given us the filth, the leavings on the plates?" To which the defendant answered that was not true for there was plenty of meat; but the deceased answered him, once more saying that he always did so and thereupon kicked him in the stomach; and when the defendant got up, he grabbed a bolo nearby and dealt him three blows with it, but only touched him on the cheek. As a result of the blow in the face the deceased fell and while getting up, Hermenegildo Franco, one of the defendants and father-in-law of Honorato Bergaño, approached and stabbed the deceased in the back. As a result of these wounds the deceased died the following day. Such is the incident that gave rise to the information against the four defendants. The sanitary inspector who conducted the autopsy issued the following certificate, Exhibit A:

"To whom it may concern:

"This is to certify as sanitary inspector of Mambusao, Capiz, that I had examined the corpse of Mariano Franco and found out the following wounds:

"1. On the left cheek cutting the upper part of the ear transversal to the lower jaw, 4 inches long, 2 inches wide, H inches deep.

"2. On the left side of the back, 5 inches distance from the shoulder, 3/4 inch long, 1/3 inch wide, and 1 1/2 inches deep.

"In testimony whereof, I sign this 7th day of December, 1927, at Mambusao, Capiz."

(Sgd.) "S. KAPUNAN

"Sanitary Inspector"

On the other hand, the defendant Bergano presented himself to the authorities of Mambusao after the fight, and under oath, made the following statement (Exhibit B), before the justice of the peace of said municipality :

"I, Honorato Bergano, married, a resident of the barrio of Burias, Mambusao, Capiz, being duly sworn, do hereby declare:

"That Mariano Franco, the deceased, was having supper in the house of my father-in-law Hermenegildo Franco during a wake on Monday December 5, 1927, that after said deceased had finished his supper and had drunk water, he came up to me in the kitchen and asked me: 'Why is it (ribaldry) that you made us eat the dirty food, giving us the leavings on the plates?' I answered him that was not true because there was plenty of meat, but he replied, saying once more that I always did so and then kicked me in the stomach, thus knocking me down almost unconscious, and when I got up, having my bolo, nearby, I immediately grabbed it, and struck him three times, but I saw that he was wounded only on the cheek, and when he was about to fall face downward, my last blow struck him, but I don't know where, and with this, I immediately went down to return to my house, and I noticed that while we had been fighting, there were many people in the kitchen, but when I went down I did not look to the right or to the left. And from my house I came to the town in order to give myself up to the authorities taking with me the bolo which I used in committing the crime.

In testimony whereof, I sign these presents in Mambusao, Capiz, on this 7th day of December of 1927.

(Sgd.) "HONORATO BERGAÑO"

The court below found the defendant Honorato Bergaño guilty of the crime of homicide and sentenced him to twelve years and one day reclusion temporal with the accessories of law, to indemnify the deceased's family in the sum of P1,000 and to pay one-fourth of the costs of action, absolving the other defendants Hermenegildo Franco, Lucio Ulit and Claro Delgado, with their part of the costs de oficio.

Counsel for the defendant assigns the following errors: "(a) The trial court erred in finding that the accused inflicted on the deceased more than one wound; (b) the trial court erred in finding that the wound inflicted on the deceased by the accused caused the death of the deceased; and (c) the trial court erred in finding the accused guilty of homicide and in sentencing him to imprisonment for twelve years and one day."

There is no doubt that the defendant Bergano on the night in question inflicted on the deceased Mariano Franco a wound with his bolo on the left cheek, across the lower jaw cutting the ear, the wound being 4 inches long, 2 inches wide, and 1 1/2 inches deep. An eyewitness, Bienvenido Franco, 16 years of age and one of those present at that gathering, testified that the defendant Bergaño struck the deceased Mariano Franco a blow with his bolo, and that Hermenegildo later caught hold of Mariano Franco and stabbed him with a dagger. This witness was asked why Honorato Bergano and Hermenegildo Franco respectively stabbed Mariano Franco with a bolo and a dagger; and he answered he did not know the motive.

The defendant Bergano, testifying in his own behalf, substantially reiterates the statement in Exhibit B above quoted. He admits that he struck the deceased several blows with his bolo, but only remembers having touched him once, that is, on the cheek; that the deceased had gripped his hand and said defendant could not disengage it because the other was a husky man; that he had had no disagreement with the deceased before the incident in question; that he did not intend to injure him; and that, if he struck him with his bolo it was because of the fear that the deceased's son, who was then approaching, might kill him. In rebuttal Romualdo Franco, the son of the deceased, testified that when he reached the place of the incident the defendant had already left.

With respect to the nature of the wound inflicted by the defendant Bergano on the deceased, conflicting statements were made by the health officer Salvador Kapunan, and Dr. Trinidad Yusay, provincial physician of Capiz, the former, or the health officer, stating that the wound which caused the death of Mariano Franco was the one in the back, while Doctor Yusay states that, according to the description of the wounds made by the health officer, the wound on the face of the deceased could have been mortal, basing his judgment upon the fact that said wound cut the principal artery in that region, producing a hemorrhage which caused the death of the deceased.

Admitting as a proven fact that the appellant inflicted the injury that caused the death of the deceased, it must

likewise be admitted, according to the same evidence, Exhibit B, adduced by the prosecution, that the appellant acted in self-defense against the unlawful aggression of the deceased and without any provocation from the defendant, that is, with the first and third requisites of paragraph 4 of article 8 of the Penal Code; for it appears from said document and from the uncontradicted statement of the defendant that when the deceased faced him not only did he utter insulting words but that, moreover, he kicked him in the stomach without the defendant's having done anything to provoke the deceased. That there was no reasonable necessity to use the means employed by the defendant to repel the aggression grabbing the bolo at his side in order to attack the deceased, seems indubitable to us and the more so as it does not appear of record that the deceased carried any weapon with him on the occasion in question. Therefore, applying article 86 of the Penal Code, the proper penalty to be imposed upon the defendant is that of two degrees lower than that prescribed by the law for the crime of homicide, or presidio correccional in its minimum degree.

The judgment appealed from is modified and the accused is sentenced to two years prision correccional, with the accessories of law. In all other respects the judgment appealed from is affirmed with costs against the appellant. So ordered.

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

DISSENTING

MALCOLM AND OSTRAND, JJ.:

In our opinion the judgment should be affirmed.

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