

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PAMBAYA BAYAMBAO, DEFENDANT AND APPELLANT.

G.R. No. 29481. October 31, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

Pambaya Bayambao was charged with the crime of murder, was found guilty thereof by the Court of First Instance of Lanao and sentenced to twenty years cadena temporal, the accessories of law, costs and to indemnify the heirs of the deceased in the sum of P1,000.

He does not deny having caused the deceased's death. He alleges, however, that he did it by mistake, believing the deceased malefactor who attacked him in the dark. He thus related the occurrence:

"A. While my wife was cooking she called out to me saying, 'Pambaya, Pambaya, someone has thrown a stone at the house.' So I took my revolver and went down. Having gone under the house, I looked around, but did not see anybody; however, I did not go far because I was alone. Then, while I was near the staircase, about to ascend, I heard a noise and saw a black figure that rushed at me, with hands lifted up as if to strike me, and becoming frightened, I fired at it.

"Q. Why did you shoot him?—A. Because I thought he was an outlaw and he also thought that I was another outlaw, but found out later that it was my brother-in-law.

"Q. Why did you not shout before shooting?—A. I had no time, because the man was already very near, when I saw that black figure with uplifted arms behind a pillar, and, fearing he would attack me with his kampilan or dagger, I shot him before he could kill me.

"Q. Why did you think that black figure was an outlaw?—A. Because my wife screamed that there were evildoers below, and in our place there are many outlaws, and those outlaws hate me because I help the Government to collect taxes. Some days before, there was killing near my house, a soldier killing two outlaws.

"Q. After you had fired at that black figure, what did you do?—A. After having fired, I waited a moment to see if he had other outlaw companions, and I was prepared to go up and get my gun. As I did not see anybody else, I cried out, 'Brother-in-law, come down, Imo, bring a light.' At that Imo and Morid came down with a light and we discovered that the person who was moaning was my brother-in-law. Upon seeing him I ran towards him, embracing and kissing him, saying: 'Forgive me, I thought you were an outlaw,' and he answered: 'And I also thought you were an outlaw.' " (Pages 33-34, t. s. n.)

The wife of the victim gives another version of the occurrence. She testified that when the accused's wife informed him that someone had thrown a stone at the house, the accused suggested that the deceased go down and see who was throwing stones at them; that the deceased went down and told the accused that there was no one under the house; that thereupon the accused, telling him to wait there for he was going to use his flashlight, went down carrying an automatic revolver in his right hand and a flashlight in the left; that, on coming downstairs the

accused asked the deceased if the hens there belonged to him, and the latter asked the accused to focus his light there in order to gather all the hens together; that at this the accused shot the deceased, whose wife peered out of the door and saw her husband with the accused focusing his flashlight on him and then firing at him again; that the deceased told Pambaya that he was wounded; that the deceased's wife upbraided the accused telling him that he did wrong, and asked why he had shot the deceased; that the accused turned upon her telling her to shut up or he would shoot her also.

Morid, widow of the deceased, is the only witness testifying to these facts. Her testimony is uncorroborated. The alleged ante-mortem declaration contained in the document Exhibit B, is of doubtful authenticity, because, while the justice of the peace and the witness Urunaga state that such statement was made by the deceased, Constabulary Lieutenant Cramer, who arrived at where the deceased was a few moments before said justice of the peace, positively states that the deceased could no longer speak. Consequently, he could not very well have made the alleged statement. Of course, it appears that it was not the deceased who wrote it, but Urunaga, and upon a typewriter. It does not appear that the deceased read it or that it was read to him, or that the deceased acknowledged it as his own statement. This proof of identity is indispensable for the admissibility of such an ante-mortem declaration as evidence. (*People vs. Dizon*, 44 Phil., 267.) We cannot give any probatory value to document Exhibit B.

Alone and uncorroborated, therefore, stands the testimony of Morid, which, besides being incongruous in parts, is flatly and stoutly denied by the accused and his wife. Considering the circumstances of the case, it is very improbable that, without a previous dispute or even an exchange of words, the accused should suddenly and unexpectedly attack the deceased. The disagreement that, according to the tatter's widow, arose between the accused and the deceased ten days before the incident, has not been proven in the record, and it is inconsistent with the conduct of the two during the subsequent days up to the time of the incident, with both living peacefully and sleeping together in the same house on the night in question, a few moments before the occurrence, according to the testimony of Morid herself.

On the other hand, the accused's narration seems natural. And as it is corroborated not only by his wife's testimony, but on some points by that of Lieutenant Cramer and Sergeant Tumindog, to the effect that immediately after the occurrence the accused betook himself to the commanding officer of the place in order to give an account of the incident, and to ask for prompt medical help for his unexpected victim, it cannot but produce in the mind a conviction that what happened to the unfortunate Mangutara was an accident, without fault or guilt on the part of the herein appellant.

The latter, on that occasion, acted from the impulse of an uncontrollable fear of an ill at least equal in gravity, in the belief that the deceased was a malefactor who attacked him with a kampilan or dagger in hand, and for this reason, he was guilty of no crime and is exempt from criminal liability (art. 8, No. 10, Penal Code.)

Furthermore, his ignorance or error of fact was not due to negligence or bad faith, and this rebuts the presumption of malicious intent accompanying the act of killing. In an analogous case, this court acquitted the accused (*U. S. vs. Ah Chong*, 15 Phil., 488), and we deem the doctrine laid down in that case applicable to this one.

The judgment appealed from is reversed and the appellant acquitted, with costs de officio, and other pronouncements in his favor. So ordered.

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

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