

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CRISPO LARA E ILANO, DEFENDANT AND APPELLANT.

G.R. No. 31320, December 03, 1929

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought upon appeal to the Supreme Court for the purpose of reversing a judgment of the Court of First Instance of the Province of Cavite, finding the appellant, Crispo Lara e llano, guilty of the offense of murder and sentencing him to undergo imprisonment for twenty years, cadena temporal, with the accessories prescribed by law, and requiring him to indemnify the heirs of the deceased in the amount of P1,000, and requiring him to pay the costs.

The deceased, Juan Advincula, was, in life, a resident of the barrio of Salitran, in the municipality of Dasmariias, Province of Cavite. About three weeks prior to the occurrence which gave rise to this prosecution, the deceased was aroused in the nighttime by the barking of his dog; and, upon looking into the cause of the noise, he found the accused, Crispo Lara e llano, in his yard. Advincula thereupon asked the accused what he was doing, and the latter replied that he was not after anything. Advincula nevertheless scolded him, supposing that he had designs upon the chickens in the stable. So strong was this impression in the mind of Advincula that he reported the incident the same night to the municipal authorities.

In the late afternoon of July 22, 1927, the date of the homicide, Advincula was returning to his home, after having taken his carabao's to the corral of one Valentin Janoba. On the way he met the accused, and as to what occurred in this encounter, we have only the statement of Advincula, as delivered by him a short while thereafter in the house of his neighbor, Felix Ramirez. According to this statement the accused asked Advincula, "Are you angry at me?" Whereupon Advincula replied, "How should I not be angry with you, since if my dog had not barked you would have taken my chickens." To this the accused replied, saying "You are a liar," at the same time firing an automatic revolver at Advincula, wounding him in the left shoulder. Upon receiving this wound Advincula fled.

Directing his course to the house of a neighbor, one Felix Ramirez, Advincula found the family of Ramirez sitting at the table eating their evening meal; and he told them that he had been shot by the appellant under the circumstances above stated, at the same time exhibiting the bloody stain on his left side. Ramirez at once called, or sent for, the barrio lieutenant, one Ciriaco Reyes; and upon the arrival of the latter, Advincula repeated his account of the occurrence, adding that he was weak from the pain resulting from his wound and that he would not survive. The next day the justice of the peace of the municipality, one Restituto Paman, took Advincula's affidavit (Exhibit C), in which the declarant reiterated what he had told the lieutenant, but upon this occasion he said he felt better and he indicated to the justice of the peace that he thought he would not die of the wound. On the next day Advincula was taken to the Philippine General Hospital in the City of Manila where he remained for three weeks, at the end of which time he was discharged. In a few days, however, the bullet, which had never been extracted

from the shoulder, began to make trouble again, and Advincula was taken back to the hospital, where blood poisoning from the internal wound soon developed and on August 30 Advincula died. A post-mortem examination showed that the bullet had lodged at the fifth rib on the left side and that the fourth and fifth ribs were broken.

Immediately following his conversation with Advincula in the house of Ramirez, in the evening of July 22, 1927, Ciriaco Reyes, the barrio lieutenant, went to the home of the accused, Crispo Lara, and was there told that Lara had gone to get a doctor for his mother who was then in the last stages of illness. It turned out, however, that Lara had fled to Silang, a municipality about 13 kilometers distant from Dasmarinas. Here he remained for about a week and did not return even for the funeral obsequies of his mother, who in the meantime died.

The only testimony directly connecting the accused with the shooting of the deceased is contained in the statements made by the deceased subsequent to the shooting and prior to his death; and it is insisted for the appellant that these statements are not admissible in evidence. We are of the opinion that this contention is well taken with respect to the affidavit (Exhibit C) given to the justice of the peace by the deceased on the day after the fatal injury was inflicted, for the reason that when that declaration was made the deceased indicated that he was under the impression that the injury would not be fatal. On the other hand the statement made to Ciriaco Reyes, the barrio lieutenant, in the house of Felix Ramirez, was in our opinion admissible as a dying declaration, because when this declaration was made the deceased was weak, complained of the pain which he was suffering from the wound and stated that he would not survive. It is true that the deceased lived for nearly six weeks after that statement was made, and in this interval recovered, to external appearances, almost completely from the wound. Nevertheless it appears that in the end the deceased died from the same wound; and the admissibility of the first declaration depends upon the state of mind of the deceased when the declaration was made, and not upon the length of time that elapsed between the infliction of the wound and the declarant's death. This statement supplies ample proof that the accused was the author of Advincula's death.

With respect to the nature of the offense the Attorney-General suggests that it is murder, qualified by the circumstance of alevosia, and this view of the case was adopted by the trial court. The finding of alevosia rests, it appears, exclusively upon the fact that, in the statement made to Ciriaco Reyes, the deceased used the word "unexpectedly" in describing the act of the accused in firing the fatal shot, meaning that the act was unexpected to the deceased. But it appears that the two actors in the homicide were confronting each other and the use of the deadly weapon followed upon the words spoken by the deceased in which he charged the accused with an attempt to steal his chickens. These words were certainly of a provoking nature, whether true or false; and we are of the opinion that the circumstance that the use of a revolver by the accused may have been unexpected to the victim does not, under the circumstances, show that the shooting was qualified by treachery (alevosia) in the sense understood in the law, for there was nothing in the means, form, or method of the killing which could have been adopted for the purpose of insuring the execution of the homicide without risk to the agent. The case in our opinion is simple homicide, in which no aggravating or attenuating circumstance should be estimated, with the result that the appellant is amenable to imprisonment for a period within the medium degree of reclusion temporal.

It being understood, therefore, that the penalty of imprisonment is reduced to fourteen years, eight months and one day, reclusion temporal, with the accessories incident thereto, the judgment, as thus modified, is affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Malcolm, Ostrand, Johns, and Romualdez, JJ., concur.

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