

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FLORENTINO Q. EISMA, DEFENDANT AND APPELLANT.

G. R. No. 32294. February 17, 1930

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

The appellant was prosecuted in the Court of First Instance of Leyte for the crime of murder upon the following information:

"That on or about December 27,1928, in the municipality of Biliran, Province of Leyte, Philippine Islands, and within the jurisdiction of this court, said defendant wilfully, unlawfully, and feloniously, under the circumstances of dwelling place, evident premeditation, and treachery, fired at Pedro Aragon with an ordinary shotgun, killing him instantly; for which shotgun, the defendant has no license.

"Contrary to law."

In view of the evidence adduced by the parties, the trial court found the defendant guilty of murder and sentenced him to seventeen years, four months and one day of cadena temporal, the accessory penalties of the law, to pay the heirs of the deceased the amount of P1,000, and the costs.

The defendant appealed, alleging that the trial court erred in giving no credit to his testimony, and in not considering in his favor the exempting circumstance of self-defense; in giving credit to the testimony of witnesses Lucia Diles, Juan Rosal, and Apolonio Aragon; and in not acquitting the defendant.

The record shows that on the afternoon of December 27, 1928, a female goat belonging to the deceased entered the defendant's premises, destroying the coconut plants thereon.

The defendant chased away said goat, which was also pursued by his dogs. This happened while the deceased was absent visiting his fish pond. Upon his return his wife, Lucia Diles, who was pounding rice in front of their house, told him what had happened. The deceased then told her that the defendant should not have chased his goat, for he never injured the defendant's animals. This conversation between husband and wife was overheard by the defendant, who, according to the record, lives in a house hardly three arm's lengths (brazas) distant from that of the deceased. He interrupted the conversation saying that he was going to kill the deceased's goat and chickens and feed them to his dogs. This, doubtless, provoked Pedro Aragon, the deceased, who approached and faced the defendant.

What Pedro Aragon said at that moment was related differently by the two eyewitnesses—the defendant and the wife of the deceased. Lucia Dilea testified before the justice of the peace of Biliran on the day following the incident, that Pedro told the defendant "that he should do no such thing, lest the goat might be bitten by the dogs, and as they were neighbors, each having his own animals, they should live in harmony."

According to the defendant, Pedro came in front of the defendant's house armed with a bolo, and said to him: "Come down and let us fight," to which lie replied that he (the deceased) should not act that way for they were neighbors. Notwithstanding which, Pedro went on to say: "You are a robber of checks. Come down and I'll kill you, otherwise, I will go up your house though every door be locked."

It is true that at the trial the deceased's wife tried to explain what she had intended to declare before the justice of the peace; but a careful reading of her testimony shows that, after she had told her husband what happened to their animals that afternoon, something must have happened between the deceased and the defendant, when the wife herself says that while she and her husband were talking the defendant intervened, whereupon the deceased came face to face with the defendant. If this is so, we do not believe, considering the impression produced by the wife's declaration, that the deceased should have faced the defendant without any motive. If the deceased and the defendant came face to face, it is natural for the deceased to have demanded an explanation of the defendant for what he had done to his animals, and considering the preexisting hostility between the two families, it is not improbable that the deceased then challenged the defendant to fight, as related by the defendant, and as found by the trial court.

It must be noted that on the day of the occurrence, the defendant and his wife's uncle, Lorenzo Pelin, the owner of the shotgun, had been to a certain island to hunt wild chickens, and on returning to the house of the defendant, where said Lorenzo Pelin was staying, it seems the shotgun was placed on a table in the living room of the house.

While the deceased armed with a bolo was challenging the defendant to fight, the latter went into the living room of his house, took the shotgun, and, from a window of the kitchen, fired at the deceased. Some of the shots lodged in the end of a wooden pestle which was being used by the deceased's wife in pounding rice, and some struck the face, chest and left arm of Pedro Aragon. The wounds received by the latter were the cause of his almost instantaneous death.

There is no doubt that the defendant fired a shotgun at Pedro Aragon, causing the injuries which produced his death. Neither is there any question that there, was ill feeling between the defendant, on the one hand, and the deceased and his father, on the other, on account of the denunciations made by the deceased and his father against the defendant, which resulted in the latter's dismissal from the office of postmaster of Biliran which he had held theretofore. The denunciations were caused by the postmaster's refusal to deliver to the deceased's father certain checks belonging to him as a pensioner¹ of the United States Government, which refusal was due to the fact that on a certain occasion, the defendant asked the deceased's father for some money, which the latter declined to give. But the question in this case is whether or not in firing the shotgun at Pedro Aragon, the defendant acted in self-defense. The appellant's contention is untenable. Taking into account all the circumstances of the instant case, we are of opinion that when two persons, voluntarily engage in a fight, neither can invoke the plea of self-defense, in order to avoid responsibility for the result of the fight. (Decision of the Supreme Court of Spain, January 27, 1902.) We gather from the record that on the afternoon of the occurrence, Pedro Aragon and Florentino Eisma were ready and willing to fight, the former with his bolo, and the latter with a hunting shotgun. From the nature of the weapons used by the two, it would seem that the deceased carried a less effective weapon; but as he accepted the fight, We do not believe that the defendant acted treacherously in using a shotgun against his adversary. (U. S. vs. Ferrer, 1 Phil., 56; U. S. vs. De Jesus, 2 Phil., 514; and U. S. vs. Mangado, 4 Phil., 171.)

In view of the foregoing, we are of opinion that the facts of record constitute the crime of homicide without any modifying circumstance. Wherefore, the judgment appealed from must be, and is hereby, modified, and the defendant Florentino Q. Eisma is hereby sentenced, in accordance with article 404 of the Penal Code, to suffer the penalty of fourteen years, eight months and one day of reclusion temporal, with the accessory penalties of the law, and to indemnify the family of the deceased in the amount of P1,000, with costs. So ordered.

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

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