

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SANTOS QUINTO, DEFENDANT AND APPELLANT.

G.R. No. 32948. November 01, 1930

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

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In the Court of First Instance of Tayabas, Santos Quinto was accused of murder in the following terms:

"That on or about December 26, 1929, in the municipality of Tiaong, Province of Tayabas, Philippine Islands, within the jurisdiction of this court, the said accused Santos Quinto, wilfully, unlawfully, and feloniously, with evident premeditation, treachery, and cruelty, making use of a pistol and a bolo which he then had in his possession, assaulted and fell upon Bartolome Perez, firing upon him twice, and hitting him in the right umbilical region, and after thus wounding him mortally, stabbed him twice with the bolo, cutting open his skull along the lower occipital region causing his instant death.

"Contrary to law."

After hearing the case, the trial court found the accused guilty of homicide, in view- of the fact that none of the alleged qualifying circumstances had been proved, and sentenced him to fourteen years eight months, and one day
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of reclusion temporal, the accessories of the law, to pay P1,000 indemnity to the deceased's family, and the costs.

The defendant appealed, and his counsel makes the following : ASSIGNMENT OF ERRORS

"1. The lower court erred in basing its decision upon the improbable, contradictory, and incompetent testimony given by the witnesses for the prosecution.

"2. The lower court erred in failing to find that the defendant acted in self-defense, and in not acquitting him.

"3. The lower court erred in finding the defendant's plea of self defense, to be improbable and unbelievable.

"4. The trial court erred in. refusing to admit the mitigating circumstances of an unlawful attack, the absence of provocation and of the intention to inflict so serious an injury."

The record shows that in the afternoon of December 26, 1929, a fight occurred between Santos Quinto and Bartolome Perez almost in front of the rice mill of one Inocencio Laygo in the barrio of Buliran, Tiaong, Tayabas, in which the former fired two shots of a revolver at the latter hitting him in the umbilical region, and after he fell

to the ground stabbed him twice with a bolo in the occipital region, causing the instant death of Bartolome Perez.

Doctor Mariano Marefla, who performed the autopsy, found a wound in the occipital region about 15 centimeters long and 8 centimeters deep, produced by two strokes of a sharp-edged instrument, which wound was fatal; and another wound in the umbilical region produced by a firearm, very serious in character, having punctured the intestines.

There is no doubt that the defendant inflicted the injuries which caused Bartolome Perez's death. He took the stand on January 23, 1930, on his own behalf and testified in substance: That while both he and the deceased formed part of a Yuletide gathering at Pablo Resurreccion's house that afternoon, where wine was drunk, the deceased asked certain women to sing. Upon their declining, he suggested that the defendant try his hand at inducing them to sing. The defendant excused himself, and thereupon the deceased said: "You are good for nothing." The defendant retorted in a heat; and a quarrel ensued. The defendant then left the house and went to Inocencio Laygo's rice mill. He had already entered, when the deceased appeared with Valentin Padilla, and called him out. Valentin said to him, "Prepare yourself, we shall kill each other now!" and rushed at him with his bolo. The defendant dodged the blows and at that moment Inocencio Laygo intervened, dragging Valentin into the shed. But the deceased then turned upon Quinto with a ten-inch knife and a stick, and again the defendant successfully evaded the attack. He says he fell back step by step, until coming out of the shed, and seeing that further retreat was cut off by a fence and a cart, in order to defend himself, he drew his revolver, fired two shots at his pursuer, then striking at the deceased with his bolo, and finally closed in for a hand-to-hand struggle. When he saw the deceased stretched out on the ground, he took to his heels and gave himself up to the deputy barrio lieutenant.

As may be noted, the defendant admits that he fired his revolver at the deceased, and even dealt him two bolo blows in the occipital region, causing his instant death. But he now contends that he took the man's life in self-defense. Let us consider the evidence in support of this plea.

Pedro Lopez, the defendant's brother-in-law, appears to corroborate the defendant's testimony, testifying that during the party at Pablo Resurreccion's house on the day in question, the deceased and the defendant had an argument. Bartolome Perez, being one of the visitors, according to the witness, asked some of the married women present to sing, and upon their declining to do so, he said to Quinto: "Won't you help me to persuade them to sing?" To which Quinto replied: "If they have refused you, they will surely refuse me, especially as they are married women." Perez then said to him: "You are good for nothing." And Quinto retorted: "You are good for nothing yourself." After this, Santos Quinto left the house for Inocencio Laygo's shed, followed by Bartolome Perez and one Valentin Padilla. The witness adds that before leaving, Perez said to Padilla, "He has ridiculed me. What shall I do?" And Padilla answered: "Give him a thrashing," referring to Santos Quinto. The people in Resurreccion's house then crowded to the windows to see what would happen, and, the witness testifying that Valentin Padilla, after calling to Santos Quinto, rushed at him with a bolo, but missed him, and was dragged into the shed by Inocencio Laygo. Then Perez went towards Quinto with an open penknife and a club in his hands. Santos Quinto kept on retreating until he fired at Perez with his revolver, and as his assailant continued to strike at him both with the knife and the club, Santos Quinto drew his own bolo and closed in upon the other, and in the course of the ensuing struggle, the witness saw Perez fall and Quinto run away.

Patricio Lulasin, deputy lieutenant of the barrio and best man at the defendant's wedding, testified that the latter surrendered to him, bolo and all, confessing that he had killed Bartolome Perez. The witness then went to see the dead body and found it was not within his jurisdiction. When he came upon the body he saw that the left hand held a penknife, and that a club lay by his side.

The last witness for the defense, Modesto Marasigan, gave corroborative testimony touching the discovery of the penknife (10 inches long, and, strangely enough, never seen by the witness) and the club near the body, as stated by the barrio lieutenant. The last two witnesses testified that it was night when they saw the body.

In the face of this testimony we have that furnished by the witnesses for the prosecution. Quintin Amparo testifies that on that afternoon he was standing at the door of the rice mill in the barrio of Buliran Kanluran, municipality of Tiaong, Tayabas, when the defendant and the deceased passed by him walking side by side. When they had gone about 7 meters away from him they faced each other, and the defendant, who carried a pistol, suddenly put the muzzle against the deceased and fired, hitting him in the umbilical region. The deceased fell forward, leaning on his elbows, and as he lay thus, the defendant unsheathed his bolo, and struck him twice across the occiput, whereupon the wounded man fell flat on his face. The witness stated that when the two passed by him, the defendant had the revolver in his right hand with which he fired at the deceased; but he did not know the mental state the two were in, and was equally at a loss to assign a motive for the act.

Inocencio Laygo testified that he was inside the shed about five arm's-lengths from the door, preparing food for his hogs, when he heard a quarrel outside. He had scarcely looked out of the door when he heard the two shots and saw the defendant firing at the deceased. Valentin Padilla testified that the day before the crime, he met the defendant at Pablo Resurreccion's shop. That the accused asked him where the deceased was, saying he had been looking for the man since the night before, because he was angry and would kill him, whether he showed fight or not, for he could endure him no longer. That on the afternoon in question, having gone to Buliran in search of some bondsmen for another case, he came upon Bartolome Perez's corpse.

In view of the evidence adduced, has the plea of self-defense been conclusively established? The learned trial judge answered the question in the negative, and set forth his findings in the following terms:

"The defendant's plea of self-defense is improbable and unbelievable. In spite of the attacks made on him, he came out without a scratch. If, as he says, they closed in at the last for a hand-to-hand struggle, the penknife which the deceased then had would have left its mark upon the defendant. And the plea becomes all the more incredible when it is considered that neither Valentin's bolo nor the dead man's penknife were found or produced at the trial. Although the witnesses for the defense testified that they saw a penknife in the corpse's left hand that night, that is, some two or three hours later, the court cannot credit this testimony, coming as it does from partial witnesses biased by their relationship with the defendant, and because if there had really been a weapon, witness Patricio Lalusin, both as barrio lieutenant and as best man for the defendant, and therefore interested in clearing the latter, would have picked it up as an exhibit for the defense. The fact that he did not do so reflects upon the veracity of his testimony. Modesto Marasigan, who seemingly corroborates Patricio Lalusin, did not testify to the satisfaction of the court. The witness mentioned a penknife of enormous size which he had never seen, and he showed by his answers that he did not tell the truth.

"The court deems that Quintin Amparo and Inocencio Laygo, witnesses for the prosecution, gave a more truthful version of the affair. According to their testimony, the defendant and the deceased, being slightly intoxicated and at odds with each other even at Pablo Resurreccion's house, on the afternoon in question, passed by the rice-mill quarreling and with a view to settling their differences. Quintin Amparo testified that when he saw the defendant pass by him, the latter already had the revolver in his hand. That is where it was before the defendant fired at the deceased. Inocencio Laygo heard the quarrel, and as there was no other dispute, it must have been the one between the defendant and the deceased. The noise of it was such that the witness went to the door to see what was the matter, and it was then he saw the defendant shoot the deceased. These facts and circumstances show beyond all doubt that a quarrel or fight preceded the crime, and that both men were in such a condition as precluded premeditation and treachery as alleged in the information, both of them being prepared for the incident which ended fatally for the deceased."

In the opinion of the court there was some rivalry between the two men over some woman in the locality. And this

became manifest when, upon the occasion referred to, a mere trifle sufficed to kindle their passions and provoke them to a duel to death. There was a party at Pablo Resurreccion's house on the day after Christmas of 1929. Among the visitors were Bartolome Perez and Santos Quinto. Perez asked the women to sing, and upon being refused, he appealed to Quinto: "Won't you help me to persuade them to sing?" Quinto replied: "If they have refused you, they will surely refuse me, and especially since they are married women."; Then Perez said to him: "You are good for nothing." Quinto retorted using the identical words: "You are good for nothing." Whereupon the two left the house, Perez armed with a cane or club, and Quinto with a bolo and a pistol.

Ordinarily, the incident of the songs would not have set the two at loggerheads; but their words show that they were rivals in a love affair and agreed to fight it out.

The defense contends that the defendant left Resurreccion's house first and went to Inocencio Laygo's rice mill some distance away; that from the door of the mill, Valentin Padilla called out to him: "Prepare yourself; we shall kill each other now!" and immediately began striking with his bolo from right to left, which the defendant fortunately succeeded in dodging, having some knowledge of fencing. Laygo caught Padilla by the arm and drew him into the shed. At this Perez turned upon him with an open pen-knife, stabbing at him with it, thus compelling him to retreat until he came up against a fence and a cart. At this point, seeing his danger, Quinto fired twice at Perez, and as the latter kept striking at him with knife and club, he closed in and a struggle ensued, during which Quinto stabbed him twice with the bolo in the occipital region which caused his instant death.

The trial court discredited the account of the defendant and his witnesses, with regard to Padilla's intervention and the attack of Perez. And after a study of the evidence, this court is more inclined to accept the version given by witnesses Quintin Amparo and Inocencio Laygo. It should here be noted that the witnesses for the defense overstated the facts, exaggerating the details of the crime, while the witness for the prosecution, Quintin Amparo, understated the facts, limiting himself to what he personally saw of the fight at its most critical moments, and leaving a gap as to what happened between the time the two men were in front of Resurreccion's house and their arrival at the place of the crime. But a careful consideration of the whole record convinces the court that the testimony of Quintin Amparo and Inocencio Laygo contains the truth of the matter.

The court believes that Valentin Padilla was not with Perez at the door of the rice mill calling to Quinto, for no plausible reason has been advanced why witnesses, Laygo and Amparo should conceal this fact, and, considering that, in the ordinary course of events, they would have been more inclined to favor the defendant, who is a-resident of said barrio, than Valentin Padilla and Bartolome Perez, who are from Batangas, and accidentally happened to be at the place. Neither does the court believe that Bartolome Perez attacked Quinto with a penknife, for if he really had such a weapon on him when he fought the defendant, according to the latter, the fight would have ended differently, for Perez knew that his antagonist was armed with a bolo and a revolver. And such a result should have been inevitable, notwithstanding the defendant's alleged knowledge of fencing; for, having grappled with the deceased, the latter would certainly have used his knife at that critical moment.

Valentin Padilla testified that as he was going to the town of Tiaong that morning, he passed by Pablo Resurreccion's house, where the defendant Quinto was at that time. The latter inquired about Bartolome Perez, and he replied that he did not know where he was, and, in turn, asked him what he wanted with Bartolome Perez. Santos Quinto replied that he had been looking for him ever since the night before as he had a grudge against him, because he had a mistress and Bartolome Perez was his rival. After this conversation, the witness continued on his way to Tiaong, and upon returning to Buliran in the afternoon, came across the body of Bartolome Perez. It is true the defendant denies he had such a conversation with Padilla at that time; but be that as it may, the fact that Amparo and Laygo said nothing about Padilla taking any part in the fight tends to corroborate the latter's testimony to the effect that he was not present at said fight. And witness Amparo testified that Padilla arrived

from Tiaong after 4 o'clock that afternoon, when Perez was already dead and he could not have witnessed the crime. Moreover, it is very strange that, without even being displeased with the defendant, said Padilla should say to him, "Prepare yourself, we shall kill each other now!"

As for the penknife which witness Patricio Lulasin said he saw clutched in the left hand of the dead Perez, suffice it to say, that in view of the manner in which the deceased fell upon being shot by the defendant, and upon being stabbed twice with the bolo in the neck, it is improbable that he could have retained said penknife in his hand. Moreover, this weapon has not been exhibited in the case as evidence, when, the most natural thing would have been for the defendant or those seeking to help him, to pick it up together with the club, for presentation as evidence for the defense.

The court concludes that after the interchange of words at Resurreccion's house, the defendant and the deceased left the house still quarreling, in such a manner that the visitors all went to the windows to see what would happen between the two, until they came to the place of the fight; that they were both prepared to fight with the weapons each carried, and that under such circumstances, each was likewise assailant and victim, and neither could invoke the right of self-defense.

In *United States vs. Navarro* (7 Phil., 713), it was held:

"Notwithstanding that the fact be taken as proven and as alleged by the defense in this instance, that the accused repeatedly expressed his desire and wish to the deceased not to fight and that he, the accused, begged the deceased that there be no fight between them, and that the deceased paid no heed or attention to such request and attacked and assaulted the accused, this aggression or attack could not be considered as one of the elements or requisites of self-defense, because, 'in a fight arranged under agreement, like the one that has taken place, the result of the provocation and an accepted challenge, the aggression is reciprocal and legitimate as between two contending parties, although the same cannot be qualified as a duel for the reason that the conditions and elements necessary to constitute this crime are not present.' (Judgment of the Supreme Court of Spain, July 11, 1871.) 'The acceptance of a personal encounter or fight excludes the application of paragraph 4 of article 8 of the Penal Code, for the reason that the fight, once accepted, the first aggression or attack is an accident or incident of the fight and without judicial effects modifying the imputability resulting from the accepted act.' (Judgment of the Supreme Court of Spain, May 30, 1892.)"

In *United States vs. Mendac* (31 Phil., 240), it was said:

"When two armed disputants mutually enter into the fight for which they have prepared themselves, and for this purpose confront each other in the middle of the street, the fact that one of them through the instinct of self-preservation is beforehand in attacking the other, without waiting to be attacked, is a mere accident of the struggle, so it would be improper to apply to the case the exempting circumstance of self-defense, established in No. 4 of article 8 of the Penal Code; nor can the affair be classified as a duel, even though both disputants exhibited a decided willingness to quarrel and attack each other, for the conditions fixed by the law for the crime of dueling, especially penalized by the Code, were not present."

And in *United States vs. Del Castillo* (40 Phil., 665), it was also held:

"When in his own testimony the accused declares that he himself took hold of the knife he was carrying upon seeing the deceased take a bolo, it is therefrom inferred that there was a quarrel between them; that they were excited, specially the accused who did not succeed in collecting the amount due him from the deceased; that they then fought an open fight with mutual aggression; and that it cannot be affirmed that there preceded any unlawful aggression on the part of the deceased or there was reasonable necessity for personal defense as authorized by law. From the result of the case, the truth is that the aggression originated from the accused, who was mad when he appeared on the spot carrying with him a knife wrapped up in a handkerchief; that said handkerchief was in his right hand so that it was afterwards stained with blood as a consequence of the

aggression; and that this aggression was carried out by him by means of the knife aforesaid whose blade was coming out of the middle of the handkerchief with which it was wrapped."

The Supreme Court of Spain has also decided repeatedly that the plea of self-defense will not lie in the following cases:

"Since it does not appear who began the assault, and as the findings show that the appellant and the dead man attacked each other, it must be admitted that the attack was voluntary and reciprocal, the acts performed not being reasonable means to prevent or resist it. (Decision of February. 21, 1881.)"

"Where a fight has been agreed upon, the person taking part therein cannot be said to have acted in self-defense, because neither law nor reason recognizes in it the circumstance of an unlawful attack or any other circumstance stated in article 8, number 4. (Decision of March 8, 1890.)"

"When a quarrel or dispute precedes an attack or personal assault with weapons, and it does not exactly appear what phrases were interchanged by the parties, nor the motives of the altercation, nor which of them started it, it is not legally possible to determine whether the resulting attack was lawful or not, and therefore to apply the legal doctrine of exemption from criminal liability based upon the right of self-defense. (Decision of March 29, 1890.)"

"The case of self-defense provided for in article 8, number 4, of the Penal Code does not include a quarrel accepted by both contending parties when, in consequence thereof, they come to blows, no matter who may be the first to make the physical attack. (Decision of October 24, 1891.)"

"A personal fight freely and voluntarily accepted create an illegal state of affairs which comes within the sanction of criminal law, during which no application can be made to either party of the circumstances modifying criminal liability, arising from facts or accidents, physical or otherwise, of the fight itself. (Decision of May 10, 1892.)"

"When one is provoked into a fight, the first attack, whether it came from him or from the person provoking him, is a mere accident of the fight, and does not give rise to exemption from criminal liability. (Decision of July 14, 1892.)"

"The condition of a fight in which all acts performed during it are accidents, by itself alone precludes the juristic idea of self-defense which exempts from liability wholly or in part, and may only be considered when preceded or called forth by an unexpected attack which has not been provoked, reasonably impelling the person attacked to resist or avert a peril independent of his own will. (Decision of February 28, 1896.)"

(Hidalgo: The Penal Code, Vol. I, pp. 70, 71, 73-75, 77.)

In our opinion, the errors assigned by the appellant in his brief have no merit, and in accordance with the doctrine laid down in the above citations from our own and from Spanish decisions, the plea of self-defense must be rejected. And the defendant being criminally liable for the death of Bartolome Perez, without any modifying circumstance, he must suffer the penalty provided in article 404 of the Penal Code in its medium degree. The trial court imposed upon the defendant the penalty of fourteen years, eight months, and one day, of reclusion temporal, with the accessories of the law, to pay the deceased's family P1,000 by way of indemnity, and to defray the costs. This sentence is in accordance with the law, and must therefore be affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street and Ostrand, JJ., concur.

DISSENTING

Villa-Real, J., with whom concur Malcolm, Johns and Romualdez, JJ.:

The majority accept the theory that the deceased Bartolome Perez became angry at the accused Santos Quinto because the latter had refused to help him in inducing the married women, who were present in the house of Pablo Resurreccion, to sing in the morning in question, and that after leaving the house at about 3 o'clock in the afternoon of the same day, and upon arrival in front of the rice mill of the witness for the prosecution Inocencio Laygo, a dispute took place between the two, during which the said accused fired two revolver shots at the deceased, hitting him in the umbilical region and afterwards stabbed him twice, inflicting a wound at the nape of the neck, whereupon he fell to the ground and died instantly.

The only question to determine is, from whom the aggression came.

The witness for the prosecution, Inocencio Laygo, testified that at the time he was inside of his barn preparing feed for pigs, he heard a noise similar to that produced by persons in dispute and also heard the words—"patience, patience."

The accused testified that when he was attacked by Valentin Padilla, who was in company with the deceased, he was moving backward and saying: "Patience, patience." The word of peace was undoubtedly what Inocencio Laygo heard from the inside of his barn. If it is true that the accused uttered this word and if it is true that the deceased became angry at him, it is not natural to suppose that the accused was the aggressor but Valentin Padilla and his companion, the deceased. The fact that the accused was uninjured does not by itself indicate that he was not assaulted, as he was not obliged to wait until he was injured in order to repel the aggression, it being sufficient that at that psychological moment he was afraid that he might be.

The alleged rivalry in love affairs between the deceased and the accused has not been proved, for the testimony of the witness for the prosecution on the matter is all hearsay.

If, according to the testimony of the accused, which is corroborated by the witness for the prosecution Inocencio Laygo and all the circumstances of the case, the aggression came from the deceased, and it being of record that the accused did not provoke the aggression and that, on the other hand, he advised his aggressor to have patience, these two circumstances should be taken into consideration in favor of the accused and it should be held that there existed an incomplete self-defense on his part which entitles him to one degree lower than the corresponding penalty.

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