

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CONSTANTE SOTELO ET AL., DEFENDANTS. CONSTANTE SOTELO, APPELLANT.

G.R. No. 33304. December 13, 1930

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

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The Sotelo brothers, namely, Constante, Dominador, and Vicente, were prosecuted in the Court of First Instance of Ilocos Sur for the crime of homicide under the following information:

"That on or about the night of December 24, 1929, in the municipality of Narvacan, Province of Ilocos Sur, Philippine Islands, the said accused Constante, Dominador, and Vicente Sotelo, armed with a penknife, a stick, and an iron bar, respectively, acting together and helping one another, did willfully, maliciously, unlawfully, and feloniously with treachery and evident premeditation attack, beat up, and commit assault upon the person of Ignacio Cambaliza, inflicting a mortal wound upon him on the level of the left nipple, which penetrated the left lung and the left ventricle of the heart, another on the outward surface of the right arm, a bruise on the nose and another on the upper lip: as a result of which said Ignacio Cambaliza died after a few minutes.

"Contrary to law; with the aggravating circumstance of abuse of superior strength."

After trial, the court below found the defendant Constante Sotelo guilty of the crime of homicide, and the defendants Vicente and Dominador Sotelo of slight physical injuries, sentencing the former to suffer twelve years and one day of reclusion temporal, to indemnify the heirs of the deceased in the sum of P1,000, with the accessories of law, and to pay one-third of the cost³; and ordering the release of Vicente and Dominador Sotelo in view of the fact that they had already been imprisoned since December 24, 1929, with two-thirds of the costs de oficio. The defendant Constante Sotelo appealed from this judgment, and his counsel has made the following assignments of error:

"I. The trial court erred in accepting the whole theory of the prosecution:

"Despite the obvious incongruity between the information and the evidence adduced at the trial;

"Despite the proof that the iron bar, Exhibit B of the prosecution and Exhibit 1 of the defense, belongs to the principal witness, Baltazar Capistrano, and not to any of the defendants;

"Despite the fact that it has been proved that the incident took place in the yard of the defendants' house and not on the public road;

"Despite the fact that Baltazar Capistrano deliberately concealed the place where the deceased expired, fearing

his participation in the tragedy should come to light; and

"Despite the fact that the chief of police acted with evident partiality towards Cambaliza and Capistrano, in intervening immediately after the incident had occurred, hiding the whip or riding crop, which the other local authorities found hanging from the right arm of the deceased, and for other reasons.

"II. The trial court erred in finding the following facts: that Dominador Sotelo hit the deceased across the mouth with the crop Exhibit B, Vicente Sotelo stabbed him on the right shoulder with the penknife Exhibit D, and Constante Sotelo stabbed him under the left nipple.

"III. The trial court erred in refusing to consider the plea of self-defense alleged and proved by the defendant-appellant, Constante Sotelo, notwithstanding the fact that said defense is strongly corroborated by Exhibits O, 5, and 4, which form a part of the *res gestae*.

"IV. The lower court erred in refusing to consider the motion of February 1, 1930, declaring afterwards that, as the defendant has shown graphically, the latter could not have touched the victim's left breast in stabbing him, or the wound would not have been in the direction described in Dr. Nolasco's certificate; in spite of the fact that it had made contrary declarations during the trial, which estop it from making the subsequent holdings.

"V. The trial judge erred in convicting the defendant-appellant, Constante Sotelo."

The record shows that at about 8 o'clock in the evening of the 24th of December, 1929, Ignacio Cambaliza started for the barrio of Ravadabia, in the municipality of Narvacan, Ilocos Sur, accompanied by Baltazar Capistrano. They took the provincial road leading to said barrio and as they approached the Sotelo house, they bid the time of day, asking whether they might pass by, according to the custom of the place. They were barely 20 meters away from the house, when the defendant Constante Sotelo, who had just finished his supper, descended from the house towards the road, and, from the entrance of his yard, turned his flashlight on the passers-by to see who they were. When Ignacio Cambaliza saw this, he walked back to where Constante Sotelo stood and inquired why he turned his flashlight on them, and what it was he wanted, winding up with a vulgar remark. When Constante's brothers, who were then in the yard on the side of the road, saw Cambaliza's attitude, they approached their brother to separate or defend him, whereupon Cambaliza commenced beating them with his iron crop, once striking Constante's arm. The brothers, in turn, fell upon Cambaliza, Dominador striking him across the face with the stick he carried, and Vicente wounding him in the right shoulder with a penknife. At this juncture, Capistrano attempted to intervene, but he was warned by Vicente and probably by Dominador also, for which reason he withdrew from the scene, and the fight then continued between Cambaliza and Constante. In the course of this fight, Constante thrust a penknife into Cambaliza at about the level of the left nipple, producing a wound which penetrated the left lung into the left ventricle of the heart, resulting in his death a few minutes later.

Witness Baltazar Capistrano, who was with the deceased, says: that after Ignacio Cambaliza had fallen lifeless, he went over to the municipal building to ask for help, and at once the chief of police, the justice of the peace, and the municipal president repaired to the place where the incident had occurred, placing the brothers under arrest that same night: Constante with a penknife, Vicente with another penknife, and Dominador with a cane.

Doctor Antonio Nolasco examined Ignacio Cambaliza's body, and found a knife wound at about the level of the left nipple, 21/2 centimeters long, and 21/2 inches deep; a knife wound on the outward surface of the right arm, 4 centimeters deep; and bruises at the base of the nose and on the upper lip, produced by a blunt instrument. According to the doctor the breast wound which pierced the left lung and the left ventricle of the heart was the cause of Ignacio Cambaliza's death.

The appellant admits he inflicted the injury which resulted in Ignacio Cambaliza's death, but maintains he did so in self-defense. In support of this allegation it is insisted that the fight took place in the yard of the defendants'

house; that Vicente and Dominador went to help their brother Constante when they saw Cambaliza attack him, but ran behind some sugar cane near by in order to conceal themselves when pursued by Cambaliza; that the latter fought hand to hand with Constante, choked him and threw himself upon him, and at that instant Constante thrust a penknife into his ribs below the left nipple; that Capistrano answered Cambaliza's call, saying that Constante had stabbed him, and, with the assistance of Capistrano, Cambaliza succeeded in leaving the Sotelo yard and after a few steps fell lifeless on the roadside, where his body was later found.

After examining the evidence of record, we believe the defense is, in a measure, supported by the testimony of Baltazar Capistrano given before the justice of the peace of Narvacan. In considering this proof it is well to remember that the justice of the peace of Narvacan testified in the case that Baltazar Capistrano made two statements before him—in the investigation prior to the arrest of the defendants, which is Exhibit 9, and in the course of the preliminary investigation, embodied in Exhibit 10. Counsel for the defense attempted to examine Capistrano on these two statements, but the fiscal objected, and the court sustained the objection on the ground that the best evidence would be Capistrano's own statements taken down in writing. Counsel then required the fiscal to present said documents, and the latter delivered to him the aforementioned Exhibits 9 and 10, which were offered in evidence by the defense. The-fiscal reiterated his objection to that evidence on the ground that the documents were not identified; but the record shows that they had been delivered by the fiscal himself to counsel for the defense, and he is therefore precluded from setting up the lack of identification, whereupon the court doubtless ruled them in, and the fiscal failed to take exception therefrom.

The record further shows that counsel for the appellant sought to have the witness Capistrano explain the contradiction between his statement in Exhibit 10 and his testimony at the hearing, but the fiscal objected and the court sustained the objection. Capistrano has thus failed to explain the contradiction noted between Exhibit 10 and his testimony before the trial court.

We believe the trial judge erred in sustaining the fiscal's objection to having witness Capistrano explain the contradiction between his statement in Exhibit 10, and his testimony before the trial court at the hearing. But be that as it may, we are of opinion that said documents Exhibits 9 and 10 have been duly introduced into the case as evidence for the defense and must therefore be taken into consideration in rendering judgment. In said Exhibit 10, witness Capistrano, among other things, affirms the following:

"As we passed by Constante was flashlighting us and he was standing by the door of their yard. I did not see any body by him. We were then about 20 meters away from him when he rushed to us.

"Ignacio was the first one who uttered bad words against Constante. Ignacio had a whip wrapped with lead.

"Other than this time I declared before the justice of the peace.

"As Dominador came he struck Ignacio, but Ignacio defended. Vicente struck and Gonstante rushed in and then they wrestled against each other and I tried to separate them.

"I was only 5 meters away from them when they first wrestled. It was dark at that time but I saw what happened by the aid of my flashlight,

"I am very sure that Exhibit A was the bar which Vicente was holding and Exhibit B was the knife that Constante used in stabbing Ignacio.

"While they were wrestling Constante was under Ignacio during which time, I saw Constante bring out his knife."

The same witness testified before the trial court as follows:

"Q. Do you know whether anything extraordinary took place along the road ?—A. Yes, sir; for when we came near the house of Francisco Sotelo, we saw Constante, Dominador, and Vicente Sotelo in the yard of the house. I and my companion said 'we are passing, sir,' but they did not answer, and they focussed their flashlight on us. And when we came to within ten meters, they still kept the flashlight focussed on us, and then my companion said: 'Why do you turn your flashlight on us? Have we not greeted you in passing?'"

"Q. What did the Sotelo brothers, Constante, Dominador, and Vicente do when they heard Ignacio Cambaliza say this?—A. After Ignacio Cambaliza had said that, they switched off the light, and we continued on.

"Q. What else?—A. After we had proceeded about 20 meters, someone came up behind us with a flashlight saying: 'Wait! your mother's . . . you cannot say bad words when you pass here.'

"Q. What else?—A. When they had said this, Ignacio Cambaliza stopped and said: 'I have used no bad word.'

"Ignacio Cambaliza interrupted Constante Sotelo saying 'I did not say that.' And Dominador, in turn, said, 'You didn't say anything, your mother's'

"Q. And what did Dominador Sotelo do then?—A. Immediately after saying, 'you didn't say anything, your mother's ... ! he struck him across the face with a stick.

* * * * *

"Q. And what else happened?—A. After that blow delivered by Dominador Sotelo, he was stunned. While he was so stunned, Vicente Sotelo stabbed him with a pen-knife on the right shoulder; and Ignacio Cambaliza, still stunned, turning about; and Constante Sotelo stabbed him in the region of the heart with a penknife."

Comparing the two statements quoted above, it will be seen that the witness Capistrano affirmed in Exhibit 10 that he saw Constante standing at the entrance of his yard, alone; that the deceased was the first to make vulgar remarks to Constante; and that during the fight Constante was under Cambaliza when he drew his penknife to stab him. On the other hand, testifying before the trial court, the said witness Capistrano stated that he and the deceased saw the three brothers, Constante, Dominador, and Vicente Sotelo in the yard of the house; that one of these brothers was the first to make insulting remarks to Cambaliza, and that while the two brothers were attacking Cambaliza, Constante stabbed him in the chest with a penknife.

We believe Capistrano's testimony appearing in Exhibit 10 as to Constante's position when he wounded Cambaliza, must be accepted, not only because it was given two days after the incident, but because it has been corroborated by the witnesses for the defense. (U. S. vs. Capisonda, 1 Phil., 575; and IT. S. vs. Rafael, 23 Phil., 184.)

As to who started the aggression, there is an obvious contradiction between the testimony of Capistrano and that of the witnesses for the defense. But in the light of sound judgment, we are inclined to believe that the deceased started the aggression, provoked by the offensive language used by Constante and his brothers, imputing to him the utterance of vulgar language against them. In such a situation the deceased naturally used his whip against those who were in front of him, striking Constante's arm. We therefore believe this is a case of incomplete selfdefense, wherein the appellant was unlawfully attacked by the deceased and compelled to employ reasonable means to defend himself, but he is responsible for provoking the attack. (U. S. vs. Ancheta, 1 Phil., 30; U. S. vs. McCray, 2 Phil., 545.) According to article 86 of the Penal Code the penalty next below that provided in article 404 of said Code must be imposed upon the appellant, that is, prision mayor in its minimum degree, or six years and one day, with the accessories of law, and to indemnify the family of the deceased in the amount of P500. And with this modification the judgment appealed from is affirmed in all other respects, with costs against the appellant. So ordered.

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

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