

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. APOLONIO HITOSIS, DEFENDANT AND APPELLANT.

G.R. No. 33426. November 17, 1930

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

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On December 16, 1929, Apolonio Hitosis and Espiridion Losada had a dispute in the barrio of Batan, municipality of Irosin, Province of Sorsogon, over a dam which the latter was constructing. Believing that his property would be injured by such a dam, Hitosis stopped the work upon it. Whereupon Pedro Janaban and Policarpo Escopete, the workmen, reported the suspension of the work on account of Hitosis' opposition, to Losada, who went over to the land. A quarrel ensued in the course of which Losada brandished his bob at Hitosis, but went no further, because the latter thought it wise to return to his home.

A few days later, that is, on the 20th of December, Hitosis was examining a sledge that lay in the road in that barrio, when Losada unexpectedly came up, and the two renewed their quarrel. This time they came to blows: Losada hit Hitosis in the chest and across the mouth, knocking out half a dozen teeth, and Losada also received a blow on the left wrist. That same afternoon Hitosis went to the town of Irosin, apparently in search of a physician to treat his mouth and to secure a certificate from him as to his wounds, with a view to filing a complaint against Losada. There is here no necessity to relate certain conversations between Hitosis and his sister-in-law Tecla Dollentas, for they have no bearing on the case. At 8 o'clock the next morning, Hitosis returned to the barrio with the same shotgun which he carried the day before. On reaching Caracdacan River, which separates the barrio of Batan from the municipality of Irosin, he suddenly came upon Espiridion Losada, accompanied by Janaban and Escopete, the workmen of the dam who started the trouble. Seeing their hostile attitude, for the three of them had bolos, Hitosis warned them to stop and not to move or he would fire his shotgun, and directly he said this he fired a shot into the air. He was then some 4 meters away from them. Losada lunged at him, and Hitosis then discharged the gun at him, hitting him in the left thigh. Losada dropped instantly, bathing in his own blood.

On this account Hitosis was prosecuted for murder in the Court of First Instance of Sorsogon.

The trial court, in view of the evidence, found the defendant guilty of the crime of homicide, and sentenced him to fourteen years, eight months, and one day of reclusion temporal, to indemnify the heirs of the deceased in the amount of P1,000, and to bear the costs.

The defendant appealed from this judgment, assigning the following alleged errors in this instance:

"1. In finding in its judgment 'that it is unaccountable why Espiridion Losada dared attack Apolonio Hitosis

with his bolo when the latter had his gun in position ready to shoot.'

"2. That if he had really fired in the air, and Espiridion Losada had really lunged at Apolonio Hitois, the latter would not have had time to lower the barrel of the shotgun and aim at Losada, because four or five meters is too short a distance to allow of firing into the air and then aiming down at a person's foot.

"3. That if Espiridion Losada had really lunged at him, that is, advanced towards him, we cannot understand how the wound came to be on the right side of the left thigh. It certainly should have been in front and not on the side.

"4. That Espiridion Losada carried no bolo, nor did his companions, for when the place was examined, no bolo was found, and it has not been shown that Policarpo Escopete and Pedro Janaban, the dead man's companions, forgot to pick up the bolo which Espiridion Losada carried; and

"5. In not acquitting the defendant because the shot was fired in self-defense."

We do not consider it necessary to discuss the assignments of error one by one: The only question to decide really is whether the defendant, as he contends in the fifth assignment of error, shot the deceased in self-defense.

The appellant testified that when he met the three men that morning¹, seeing their hostile attitude, he discharged his shotgun twice: Once in the air to prevent them from advancing, and the second time at Losada who was 4 meters away and lunged at him, bolo in hand. That the second shot was aimed at Losada's feet because the appellant says he only meant to disable him. That the defendant fired two shots is a fact corroborated by witnesses both for the prosecution and the defense. He fired the first shot in the air to warn them not to advance, but as Losada attempted to rush at him, he fired the second shot which hit the latter between the anterior and posterior parts of the left thigh.

Policarpo Escopete and Pedro Janaban, who were at that time in company with the deceased, testified that the latter was on the river bank washing his feet with his back to Hitois when the latter fired on him. This is not true because otherwise Losada would have fallen into the water and his body would not have been found 1 meter from the brink of the river in the direction of the town of Irosin. Neither can we credit Escopete's testimony placing Espiridion Losada behind him when the defendant aimed at the two witnesses Janaban and Escopete, for in such a situation the second shot which Hitois fired would probably have hit one of the two witnesses and not Losada. In view of all this, we are inclined to believe Hitois when he says that he discharged the second shot because Losada tried to rush at him with a bolo in hand.

The witnesses for the prosecution, Escopete and Janaban, also testified that on the occasion mentioned they carried no weapons, for they were going to town in order to testify for Losada who intended to file a complaint against Hitois for destroying his dam. But against this testimony is that given by the witnesses for the defense, Simeon Gamba and Fabian Gabion. The former testified that as he was going to Irosin that morning, when reaching the Caracdaan River, he saw four persons at the river bank, one of whom was facing the others. The three were standing on the bank of the river and Apolonio Hitois was farther on guarding them with a shotgun. As he was thus covering the three men, he first fired in the air and immediately followed it with another shot downwards; whereupon the witness saw one man fall and two run away. The witness added that after the first shot in the air, Espiridion Losada stooped a little and took two steps forwards handling a bolo, when the second detonation sounded which brought him down, after which his two companions ran away. Upon being cross-examined, the witness said that his attention was attracted by the sight of those four persons, one of them with a shotgun, and he therefore stopped and hid himself behind some bushes at the side of the river, and was thus able to see what happened. The second witness, Fabian Gabion, testified that as he was working in his field near the place, he heard two shots and then saw Escopete and Janaban run past him, bolo in hand.

As to their alleged reason for not having their bolos about them on that occasion, suffice it to say that, as a rule, barrio folks do not carry bolos when they go to town; but remembering the fight between Losada and Hitosis on the day before, they had a reason for taking their bolos with them against all contingencies, and Hitosis must have been of the same opinion when he took his shotgun with him in going to town in the afternoon of the day of the fight which cost him six teeth. Besides which there are witnesses who affirm that they saw Losada with a bolo, and another witness who saw Escopete and Janaban also with bolos. The failure to present Losada's bolo is explained by the fact that after the incident and before the municipal authorities arrived upon the scene, several persons from the barrio of Batan went there, among them, the relatives of the deceased and witness Simeon Gamba.

A corroboration of the appellant's testimony as to the distance between him and Losada when he fired the shot is found in Doctor Sierra's testimony, who extracted the shot from the victim's left thigh. The doctor testified that the corpse's left thigh showed five wounds half a centimeter in circumference, through which the shot entered. The wounds were near one another forming a circle of about 5 centimeters in diameter. The same witness testified that the shot from a shotgun, on leaving the barrel, spread out in direct ratio to the distance traversed, or, to use his own words, open up like a fan. That is to say, the greater the distance the larger the circle formed by the shot, and vice versa. If this is so, the fact that the wounds formed in the deceased's thigh by the shot only made a circle about 5 centimeters in diameter shows, in our judgment, that the appellant fired at Losada at very close range.

In view of the foregoing, we are of opinion and so hold, that the appellant shot the deceased in self-defense, in the circumstances required by article 8, number 4 of the Penal Code for exemption from criminal liability. There may be cited in support of this conclusion, amongst others decided by this court, the case of *United States vs. Batungbacal* (37 Phil, 382), wherein it was stated:

"M, being abruptly awakened by shouts that P was pursuing H and M's two children, and seeing, upon awakening, that in fact P was infuriated and pursuing H with a bolo in his hand and his arm raised in an attitude as if to strike, took up a shotgun lying within his reach and fired at P, killing him at once. Held: That M was justified in believing that the lives of his two children and that of H were in imminent peril; and that the means employed by him to prevent or repel the aggression, was necessary, under the circumstances."

In the same case it was also held that:

1 "The act of a person armed with a bolo, pursuing another, may signify the pursuer's intent to assault with this weapon. It is not necessary that the aggression be actual, in order that it may be repelled; it is sufficient that it be attempted, to give rise to the right to prevent it." (*U. S. vs. Patala*, 2 Phil., 752; *U. S. vs. Paras*, 9 Phil., 367; *U. S. vs. Bunsan-Ian*, 9 Phil., 571; *U. S. vs. Bardelas*, 16 Phil., 46; *U. S. vs. Molina*, 19 Phil., 227; *U. S. vs. Banzuela and Banzuela*, 31 Phil., 564; *U. S. vs. Del Castillo*, 40 Phil., 665.)

Wherefore, the judgment appealed from is reversed, and the defendant Apolonio Hitosis acquitted, with costs de oficio. So ordered.

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

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