

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BENEDICTO CORTES ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 33614. November 04, 1930

Ponente: STREET, J.

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STREET, J.:

This case has been brought to the Supreme Court upon appeal, for the purpose of reversing a judgment of the Court of First Instance of the Province of Masbate, finding the appellants, Benedicto Cortes, Santiago Cortes, and Honestorio Bellocillo, guilty of the offense of homicide, the first in the character of principal, and the other two in the character of accomplices, and sentencing the principal, in view of the aggravating circumstance that advantage was taken of superior strength, to undergo imprisonment for seventeen years, four months and one day, reclusion temporal, with the accessories prescribed by law, and sentencing the accomplices, in view of the same aggravating circumstance, to undergo imprisonment for ten years and one day, prision mayor, with the accessories prescribed by law, and requiring all the accused to indemnify, jointly and severally, the heirs of the deceased in the amount of P1,000, without subsidiary imprisonment in case of insolvency, and requiring each to pay one-third part of the costs.

It appears that on the afternoon of February 16, 1930, there occurred in the cockpit of Punta Buri, barrio of Guiom, municipality of Milagros, Province of Masbate, a contest between two cocks, one of which belonged to Raymunda Cortes, a brother of the appellant Benedicto Cortes and uncle of the appellant Santiago Cortes. The causes of the two feathered champions were respectively sustained by individuals of the barrio of Guiom, on one part, and of the neighboring barrio of Cawayan, on the other. Both of the birds were wounded in the first onset, and a discussion ensued between the partisans of the respective birds as to which of the two had gained the victory, a contention of chief interest to those who had laid their wagers on the one or the other. As no judge was functioning with authority to decide the matter, Candido Malapitan, the owner of the cockpit, declared the fight a draw. Apparently this decision was not satisfactory to all of the persons interested, and after a futile attempt to stage an additional fight between two other cocks, the sport was abandoned.

The two factions chiefly concerned in this matter consisted of Benedicto Cortes and others, of the barrio of Guiom, and a number of individuals, including one Simeon Kilantang, pertaining to the barrio of Cawayan. After the sport had been concluded, and the ring in the cockpit was being cleared, one Anacleto Aballe stepped into the inclosure and asked Candido Malapitan, who had been serving as stakeholder, to return P1 which Anacleto, as one of the Cawayan crowd, had wagered upon one of the birds. Malapitan handed Anacleto the money, and the latter started out. As he turned towards the door, he met the appellant Santiago Cortes to whom he addressed the question why the cockfight had not been proceeded with. Santiago answered, "What business is that of yours?" (Que tiene listed que ver?) Anacleto did not respond but continued on his way out. However, before reaching the threshold, Santiago came up behind him and wounded him in the back with a dagger. Upon being thus attacked Anacleto started to run but was presently confronted by Alejo Cortes, an uncle of Santiago, who struck Anacleto

in the breast with a stick. This blow caused Anacleto to fall, but he sustained himself for a moment on his hands and knees. While in this position Benedicto Cortes, the father of Santiago, in turn struck Anacleto on the back with the stem of a coconut branch.

At this juncture Cipriano Aballe, uncle of Anacleto, came hurrying from the seashore, where he had been standing, to the spot where trouble had arisen, in the hope of aiding his nephew. But as Cipriano Aballe approached, Benedicto Cortes, now armed with a piece of wood called tognod, struck Cipriano on the left forearm. The blow thus delivered was of sufficient force to fracture Cipriano's arm. At this moment Simeon Kilantang, one of the Cawayan crowd, came within reach of the same weapon wielded by Benedicto Cortes, and the latter, confronting Simeon, struck him in the forehead, smashing the frontal bone. Simeon fell to his knees and hands, and while he was in this position, Santiago Cortes struck him on the back of the neck with a round piece of bamboo. Immediately thereafter Honestorio Bellocillo also struck Simeon on the right hip with a club. The three assailants—the present appellants—then ran away, whereupon two daughters and a brother of Simeon took him up and carried him to the beach where they chafed him with water and brought him back momentarily to his senses. When consciousness was restored, Simeon said that he did not know why he had been attacked, as he had done nothing. The same affectionate hands then took up the wounded man to carry him home, but he died in a few moments on the way.

Such is the story of the homicide as constructed from the testimony of five of the witnesses for the prosecution, and a study of the record leaves no doubt in our mind that this narrative is in the main true.

This version of the affair is, however, contradicted by a number of witnesses for the defense, whose testimony tends to show that the fatal blow upon the forehead of Simeon Kilantang was delivered by the hands of Santiago Cortes, and not by the father, Benedicto Cortes; while, according to the same witnesses, the only blow struck by Benedicto Cortes was the one that landed on the back of the neck of Simeon after he had fallen to his hands and knees. It will thus be seen that the two sets of witnesses, for the prosecution and defense respectively, impute the two blows on the forehead and back of the neck of the deceased to precisely different agents. At the same time the testimony of the defendants witnesses tends to show that in the outbreak of the quarrel between Anacleto Aballe and Santiago Cortes, the former was the aggressor. The defense, therefore, is directed along the line of showing that Santiago Cortes acted in self-defense and that Benedicto Cortes merely intervened to assist his son.

The artificial nature of this line of proof is conspicuous in the testimony of Santiago Cortes who pretends that, when the altercation occurred between him and Anacleto in the ring of the cockpit, Anacleto drew a knife, whereupon a struggle ensued between the two for the possession of this weapon, and while they were thus contending, Anacleto Aballe cut himself in the back with his own knife. It is evident, however, that the knife referred to was in the hands of Santiago Cortes in the beginning and that the instrument was wielded by Santiago when Anacleto received a wound from it in the back. In this connection we note that the wound referred to was located about one and one-half inches from the backbone, at the level of the eleventh dorsal vertebra, and was one and one-half inches deep. Our conclusion from reading the proof is that the trial court committed no error in holding that the blow which resulted in the death of Simeon Kilantang came from the hands of the appellant Benedicto Cortes.

The offense committed was undoubtedly homicide, and we concur in the estimate made of the offense by the trial court to the effect that Benedicto Cortes is guilty in the character of principal and Santiago Cortes and Honestorio Bellocillo in the character of accomplices only. In this connection two decisions of the Supreme Court of Spain are pertinent, which are summed up respectively as follows:

"Two individuals attacked a third person inflicting two lesions, one fatal, the other curable in twenty days. The Supreme Court declared that the author of the latter injury is responsible for the crime of homicide, in the

character of accomplice, and not of the crime of inflicting physical injuries, on the ground that, although the injury inflicted by the other codefendant was the one that caused death to the person slain, it is nevertheless undeniable that, by the infliction of the other wound at the same time, the author of the latter cooperated in the tragic result, and that consequently, in accordance with article 15 of the Code, he should be considered as an accomplice in the homicide, since, without having taken part in its execution in either of the three ways indicated in article 13, he cooperated in the offense by means of a simultaneous act," (Sentence of December 1, 1873; Hidalgo, *Codigo Penal*, 303.)

"When two persons attack another with clubs and strike him to the ground, and then a third person gets upon (him, trampling upon his face and breast, will such third person be properly characterized as an accomplice in the homicide, if the assaulted person dies as a result of the blows from the clubs? The Supreme Court has resolved the point affirmatively, basing its resolution upon the proposition that even though such third person did not take part in the infliction of the fatal injury with the club, for which reason he cannot be brought under article 13 (as principal), he nevertheless cooperated simultaneously in the tragic result by kicking the person slain, who was on the ground wounded; and this simultaneity of acts contributing to the homicide makes him an accomplice in the same." (Sentence, December 29, 1884, *Gazette* of August 22, 1885; 2 Viada, *Codigo Penal*, 5th ed., 431.)

But while we concur with the trial court in the qualification of the principal feature of the case, we are of the opinion that his Honor erred in estimating as present in the case the aggravating circumstance that advantage was taken of superior strength (art. 10, subs. 9, *Penal Code*).^f The estimation of this circumstance is essentially inconsistent with the finding that only one of the three accused is guilty in the character of principal, while the other two participated in the character of accomplices only. Where the abuse of superior strength is to be estimated as an aggravating circumstance from, the mere fact that more than one person participated in the offense, it must appear that the accused cooperated together in some way designed to weaken the defense; and if, in the case before us, the two accomplices really participated in the sense necessary to enable the court to estimate against them the aggravating circumstance mentioned, this would make them guilty in the character of principals./ But the court having found that only one of the three was a principal and that the other two did not cooperate in the way necessary to make them principals, it is evident that the single principal cannot be said to have taken advantage of superior strength; nor can said aggravating circumstance be estimated against the accomplices. It is difficult to see how the distinctive aggravating circumstance now under consideration could ever be present in a contest between two individuals of approximately equal powers. In the case before us the blows delivered by the three accused upon the body of the deceased, though simultaneous in the sense necessary to determine complicity on the part of Santiago Cortes and Honestorio Bellocillo, such acts having been part of the same fatal assault, nevertheless those blows were not delivered in unison. It is evident also that the element of prior conspiracy among the three accused was wanting. It results that the respective penalties imposed upon all of the accused must be reduced to the medium degree.

To correct the error above indicated, as well as to adjust the provision regarding indemnity to the requirement of articles 124 and 125 of the *Penal Code*, the dispositive part of the appealed decision is hereby amended in the sense that the appellant Benedicto Cortes, as principal, is sentenced to undergo imprisonment for fourteen years, eight months and one day, *feclusion temporal*, with the accessories prescribed by law, and to pay indemnity to the heirs of the deceased in the amount of P500, without subsidiary imprisonment in case of insolvency; and that the appellants, Santiago Cortes and Honestorio BeUocillo, as accomplices, are each sentenced to undergo imprisonment for eight years and one day, *prision mayor*, with the accessories prescribed by law, and to pay, jointly and severally, to the heirs of the deceased the sum of P500 as indemnity, without subsidiary imprisonment in case of insolvency. And it is further ordered that, in case of insolvency of Santiago Cortes and Honestorio Bellocillo, Benedicto Cortes shall be subsidiarily liable for their share of the indemnity; and in case of the

insolvency of Benedicto Cortes, as principal, the accomplices Santiago Cortes and Honestorio Bellocillo shall be subsidiarily liable, jointly and severally, for the indemnity due from said principal. As thus modified, the judgment is affirmed, with proportional costs against each of the appellants. So ordered.

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

DISSENTING

Johns, J.:

As we analyze the evidence, the judgment of the lower court is right and should be affirmed, and to that extent we dissent.

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