

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FRANCISCO SARA, DEFENDANT AND APPELLANT.*G. R. No. 34140. August 15, 1931*

Ponente: STREET, J.

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This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Cavite, finding the appellant, Francisco Sara, guilty of the offense of homicide and sentencing him to undergo imprisonment for twelve years and one day, reclusion temporal, with the accessories prescribed by law, and requiring him to indemnify the heirs of the deceased in the sum of P1,000 and to pay the costs of prosecution.

It appears that on August 2, 1930, the appellant, Francisco Sara, armed with a shotgun, was out in the barrio of Caong in the municipality of Silang, Cavite, with the design of shooting birds. At the same time one Gabriel Catapang and his wife, Ruperta Mendoza, were out collecting bananas. The witness Fructuoso Villanueva, who was at work building a house close to the scene of the incident with which we are here concerned, says that Ruperta Mendoza was in a path several paces in front of her husband, Gabriel Catapang, while the latter, in turn, was proceeding ahead of the accused, Francisco Sara. This is corroborated by the statement of Ruperta Mendoza that she was going along about 5 brazas in front of Gabriel. Suddenly the report of a gun was heard, and Ruperta, hearing the discharge, turned around and saw Gabriel stretched on the ground and Francisco Sara running away carrying a gun. The report of the gun also attracted the attention of Fructuoso Villanueva, who came from the house where he was working, likewise finding Gabriel lying on the ground. When the gun went off, Fructuoso says he was unable to see clearly the two principals in the occurrence because of intervening coconut trees. When Ruperta and Fructuoso arrived on the scene, they found that Gabriel Catapang had been shot in the right lower part of the abdomen. Assistance was at once called and the injured man was carried to the house of his wife's uncle, where he was asked by his brother-in-law who had shot him. In response Catapang pointed to Francisco Sara. Death followed as a result of the wound within a few hours. The proof shows that no enmity existed between the accused and the deceased, who in fact were related to each other.

The medical officer who examined the wound reports that it was of circular form, with a diameter of 2 inches, and that in the space around the principal cavity there were fourteen small holes produced by scattering bird shot which had entered the body. The wound involved two of the floating ribs as well as the ascending colon and the right kidney.

The accused, testifying in his own behalf, stated that, seeing a bird sitting on a tree, he raised his gun intending to shoot, when Gabriel Catapang approached and asked that he be permitted to shoot the bird, at the same time seizing the barrel of the gun and pulling it around towards his own body. As the accused at this moment had his finger on the trigger, the weapon was discharged and Gabriel received the load in his abdomen. Upon seeing Gabriel fall, the accused says he was seized with fright and ran away. Testifying as a witness in rebuttal, Ruperta Mendoza stated that she did not hear her husband ask the accused to let him shoot the bird. Reflection on the facts thus revealed leads us to the conclusion that the accused did not testify with truth or candor in imputing the

discharge of the gun to the act of the deceased. The wound was too large in circumference to have resulted from the discharge of the gun if the muzzle had been in proximity to the body of the deceased. There must have been an intervening distance of a few feet at least in order to permit the shot to scatter to the extent shown in the medical report. The cause of the discharge of the gun must therefore be sought in an act, or acts, of the accused; and inasmuch as he admits that his finger was on the trigger when the gun was discharged, the conclusion must be that the accused was the responsible author of the homicide. The relation of the parties, however, shows, we think, that the killing could not have been intentionally committed and the result is reached, by exclusion of the higher degree of criminality, that the homicide should be attributed at least to the reckless and imprudent act of the accused in handling and discharging the weapon in his hands. We therefore consider the accused guilty of homicide by reckless imprudence, and we impose upon him the penalty of imprisonment for one year, prison correctional, under paragraphs 1 and 3 of article 568 of the Penal Code.

It being understood, therefore, that the period of imprisonment is reduced from twelve years and one day, reclusion temporal, to one year, prison correctional, the judgment is in other respects affirmed. So ordered, with costs against the appellant.

Avanceña, C. J., Johnson, Malcolm, Villamor, Romualdez, Villa-Real, and Imperial, JJ., concur.

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