

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TELESFORO ALVIAR, DEFENDANT AND APPELLANT.*G. R. No. 34283. September 11, 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 Cagayan, finding the appellant, Telesforo Alviar, guilty of the offense of homicide and sentencing him to undergo imprisonment for fourteen years, eight months and one day, reclusion. temporal, with the accessory penalties prescribed by law, and requiring him to indemnify the heirs of the deceased (Nicolas Alviar) in the sum of P500, as well as to pay the costs of prosecution.

At about 7 p. m. on the night of January 5, 1930,. Rufino Usigan, a policeman of Buguey, Cagayan, while passing along a road or street, in the municipality of Buguey, heard groans coming from an injured person. Upon stopping to investigate he found Nicolas Alviar lying in or near the way. Upon inquiring what was the matter, Nicolas replied that he and Telesforo Alviar had had a fight, and that he was wounded. Usigan accordingly conveyed Nicolas to the municipal building, where examination was made into the nature of his injuries. Upon examination by the local sanitary officer, it was found that Nicolas had received two wounds, the most serious being a cut in the right breast 8 1/2 centimeters long, 2 centimeters wide, and 3 centimeters deep. The second was located on the left side of the back in the lower scapular region. This wound measured 2 centimeters in length, was 1 centimeter wide, and 2 centimeters in depth. The injured man, after being conveyed to the local hospital, succumbed from peritonitis somewhat less than seventeen days from the time when the wounds were inflicted.

On January 6, 1930, the chief of police of the municipality of Buguey went to the hospital and took what was offered in evidence as the dying declaration of the deceased (Exhibit A). We are of the opinion that this declaration is inadmissible, inasmuch as it does not appear from said declaration, nor from other proven facts, that the declarant believed at the time that the wounds he had received would result in his death. It merely appears that he was weak, probably a result of the loss of blood; and but for the complications which ensued more than two weeks later, the deceased might possibly have recovered and at least he may well have entertained hopes of recovery. In other words it does not appear that the hope of recovery was extinct. This makes the declaration inadmissible.

The case for the prosecution must therefore be rested upon other evidence than the declaration of the deceased, and this evidence consists in the first place of the signed confession given by the appellant himself on January 6, 1930, in connection with his own testimony given at the trial. In both these statements he admits having inflicted the wounds that resulted in the death of Nicolas Alviar, but attempts to exculpate himself on the ground that he acted in self-defense. We find, however, that these two statements, the written confession and the testimony given by the accused at the trial, are materially different, so much so that both cannot be entirely true; and after weighing the statements, we are inclined to attach greater weight to the written confession of the accused since it was given when the facts were fresh in his mind and before he had had time to weigh their effect.

It appears that the accused and the deceased were cousins and that, upon the evening when this homicide occurred, they had been together on an errand to deliver a fighting cock, the property of Nicolas, to a neighbor, one Pedro Palapos. It was after the two companions had left the house of this neighbor that the quarrel ensued which resulted in the homicide.

The cause of the quarrel appears to have arisen from a reference to certain offenses for which Nicolas had been prosecuted in the past; and the appellant asserts that Nicolas drew his bolo and attempted to assault the appellant, whereupon the latter snatched the bolo from the deceased and inflicted the fatal wounds. The circumstance that the wounds referred to were inflicted with a bolo belonging to the deceased is common to both the confession and the statement of the appellant in court as a witness; and in the state of the proof we are constrained to accept this fact. That there was unlawful aggression upon the part of the deceased should therefore be accepted as proved. But it does not appear that the infliction of the wounds which caused the death of the deceased was a necessary and proper means to the protection of the appellant. In view of the fact that the deceased was then unarmed, from the loss of his bolo, the use made of the same weapon by the accused was unjustifiable. Furthermore, the fact that one of the wounds appearing on the body of the deceased was evidently inflicted from behind is inconsistent with the idea that the appellant was entirely justified in the means and measures used by him to repel the alleged attack.

The most, therefore, that we are able to concede to the appellant is that he is entitled to the benefit of the consideration of incomplete self-defense. When the perpetration of a homicide is admitted, it is incumbent upon the individual who inflicted the fatal injuries to prove the facts which serve as his exculpation. In order to establish this defense the proof submitted should be reasonable in itself and sufficiently convincing at least to engender a reasonable doubt on the fundamentals of the case. In the case before us the appellant is not entitled to the benefit of the consideration of complete self-defense, because of the inconsistencies between his confession and his statement as a witness in court, and the manifest impossibilities and falsehoods contained in the latter statement. The trial court was, we think, well justified in discrediting the testimony of Emeterio Pagador, a witness for the defense, who pretended to have seen the fight and who (strange to relate) saw Nicolas Alviar run away, although he was later found by the policeman Usigan in a helpless state near the place where the altercation occurred.

From what has been said, conceding to the accused the benefit of incomplete self-defense, and lowering the penalty by one degree, the appellant is sentenced to undergo imprisonment for eight years and one day, prison mayor, instead of fourteen years, eight months and one day, reclusion temporal, as ordered by the trial court. In other respects the judgment is affirmed. So ordered, with costs against the appellant.

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

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