

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FIDEL GONZALEZ, DEFENDANT AND APPELLANT.

G. R. No. 3458. August 29, 1907

Ponente: TORRES, J.

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TORRES, J.:

On the 20th of June, 1905, between 10 and 11 a. m., Gregorio Morales and Lucas Isaías had a dispute in the office room of Charles D. Nelson, superintendent of the Atlantic, Gulf and Pacific Company at Sisiman, Mariveles; Nelson intervened in order to settle the dispute. After this the said Isaías and Morales went toward the pier, and as they passed by a pile of lumber, the accused, Fidel Gonzalez, who walk behind them, assaulted Isaías and struck him on the back; at the same time Morales also struck the assaulted man with the handle of a hammer which he used for breaking stone. The deceased defended himself with his hands. The accused, Gonzalez, then attacked him with a pen knife, wounding him in the back, and from the wound blood rushed out and spurted to a distance of 4 feet. Superintendent Nelson, upon seeing from his office what was taking place, ran to the spot where the struggle was going on, but when he reached it the fight had already ceased, and while Nelson was taking away from the hands of the accused the penknife with the blade still open and stained with blood, other workmen together with McDall, an American, attended the wounded man, who had gone to the beach and got into the water. The latter was then put on a steam launch and taken to the hospital at Corregidor where he died an hour after arrival.

The postmortem examination held on the body by the surgeon of said hospital showed that the deceased had a penetrating wound on the left side of the back which traversed the muscles, the bladder, and the back wall of the stomach, and another wound in the right lung affecting the muscles; both wounds were necessarily mortal. The deceased had also other wounds on the shoulder, on the right breast, on his back, in the belly, and in other parts of his body, to the number of ten, all of a character more or less important and serious.

By reason of the foregoing, on July 28, 1905, a complaint was filed by the fiscal, as follows:

"Fidel Gonzalez is hereby accused of the crime of homicide, committed as follows:

"That on or about the 20th of June, 1905, in the barrio of Sisiman, Mariveles, Bataan, P. I., the said Gonzalez maliciously, unlawfully, and feloniously, and by means of a penknife, did wound Lucas Isaías on the breast and abdomen, from the result of which wounds he died shortly after. All contrary to law."

In view of the result of the proceedings, the judge by his decision of October 12, 1905, found the accused, Fidel Gonzalez, guilty of the crime of homicide, and sentenced him to twelve years and one day of reclusion temporal, to the accessory penalties, to pay an indemnity of 1,000 pesos to the family of the deceased, and costs. From this judgment the accused has appealed.

From the evidence adduced at the trial it has been proven that Lucas Isaías died in consequence of ten wounds, more or less serious, two of them mortal, inflicted with a penknife, as appears from the examination and autopsy held on the body. Therefore, the violent death in this case, as described in the complaint, constitutes the crime of homicide, defined and punished by article 404 of the Penal Code, which provides that:

"He who, without being included in the provisions of article 402, shall kill another without the attendance of any of the circumstances specified in the foregoing article is guilty of homicide.

"A person guilty of homicide shall be punished with the penalty of reclusion temporal."

The sole author of the crime through direct participation, confessed and convicted, is Fidel Gonzalez, who, as it has been proven, quareled with the deceased and attacked him with a penknife on the morning of the 20th of June, 1905.

The only question to be determined in this cause is whether or not the exemption alleged by the accused, to the effect that he was obliged to defend himself from the unexpected attack which the said Lucas Isaias made on him with an iron bar, is true; because if this allegation had been proven, the accused should have been acquitted on account of the exemption from liability under the provisions of article 8, No. 4, of the Penal Code.

The alleged unlawful aggression on the part of the deceased while living, however, was not established, and the petition of the defense can not therefore be granted, nor can the culprit be acquitted.

It appears from the record in this case that it has been clearly proven by the testimony of eyewitnesses that Lucas Isaias was attacked from behind with a penknife by Fidel Gonzalez; that from the wound, which the former had received in the back, blood rushed out and at first spurted to a distance of 4 feet; that the deceased had also received other wounds from the accused, as afterwards found on his body; that the deceased was not seen to attack nor defend himself with the iron bar 2 feet in length and more than an inch thick, with which it was said he was provided.

As to the statement made by the accused to the effect that, after being attacked by the deceased with the iron bar, he clasped him and struggled with him until they both fell down, and that as Isaias continued to strike him with the bar, he drew the penknife from the righthand pocket of his trousers, and, opening the same, defended himself by hitting his antagonist in the back with said penknife this allegation is contradicted by the witnesses for the prosecution, and it is impossible to explain how the deceased could have received ten wounds of the importance, extent, and depth of some of them, and on different parts of his body, inflicted with a penknife, if the assailant was stretched on the ground and lying under the person attacked, who had his arms around him. Such details make the allegation incredible because it is improbable.

That the accused did not show or allege to have received any wound or bruise on any part of his body, confirms the testimony of the witnesses for the prosecution as to the fact that, when Lucas Isaias was attacked and wounded in the back by Fidel Gonzalez, the former did not have with him the iron bar which was afterwards offered in evidence by the defense, nor was he provided with it during the struggle, as considering the weight and the character of the bar, if it were true that the accused had been assailed and attacked with it about twenty times, he would not have come out so entirely unharmed, as he did, from the blows received.

Hence there is nothing in this case to determine either the partial or the complete exemption from liability of the accused, on the ground of self-defense, since it does not appear that there were present in the commission of the crime such requirements as those of an unlawful aggression, a reasonable necessity for the means employed to prevent or reject the assault, and a lack of provocation on the part of the person who claims to be the assailed party. Nevertheless, extenuating circumstance No. 7 of article 9 of the Penal Code must be taken into account, considering the fact that the accused, as stated by the trial judge in his decision, acted under excitement which produced in him a loss of reason and self-control, no aggravating circumstance being present to neutralize the effects of the extenuating one mentioned above.

Inasmuch as it was alleged in the complaint, whereby Fidel Gonzales is accused of the crime of homicide, that he

wounded Lucas Isaias in the breast and in the abdomen, and that in consequence of said wounds the latter died shortly after, the complaint was sufficient in law, having alleged the acts committed by the accused, the consequences thereof, and the denomination of the crime which resulted therefrom.

Accepting the conclusions contained in the judgment appealed from, we are of opinion that the same should be affirmed, provided, however, that the accessory penalty of article 59 of the Penal Code be imposed with the costs of this instance, and it is so ordered.

Arellano, C. J., Johnson, Willard, and Tracey, JJ., concur.

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