

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ESTEBAN CABAJAR, DEFENDANT AND APPELLANT.*G. R. No. 34638. September 09, 1931*

Ponente: VILLAMOR, J.

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The appellant Esteban Cabajar (together with Simeon Sabal, who was acquitted) was tried for homicide as charged in the information by the Court of First Instance of Cebu, found guilty, and sentenced to twelve years and one day of reclusion temporal, the accessories of law, to indemnify the heirs of the deceased in the amount of P1,000, without subsidiary imprisonment in case of insolvency, and to pay one-half of the costs.

From this judgment the accused Esteban Cabajar appealed, alleging that the trial court erred in not finding that he acted in self-defense when he wounded the deceased which caused his death, and in not acquitting him on the ground of reasonable doubt.

The record shows that ill-feeling existed between the deceased and the appellant, caused by the betrothal of the deceased Mariano Taborada's son and Esteban Cabajar's daughter. When the latter's hand was asked for, her father demanded that, the prospective groom give him a P150 in cash, a carabao, and a house, by way of dowry, or what was formerly called "bugay" in Visayan, "bigay kaya" in Tagalog, and "sab-ong" in the Ilocano dialect. The young man and his father were agreeable, but Esteban Cabajar then asked for P160 more. As Mariano Taborada and his son could not pay the additional amount, they consulted a lawyer in Cebu, who advised them to try to arrange matters amicably with Cabajar. After another interview with Cabajar, they obtained his consent, and he told them they could apply for the marriage license. They did so, and the wedding took place on October 1, 1930, after which the couple called upon Esteban Cabajar to ask his blessing. But he refused, saying it was not a custom in his family. This, however, did not prevent them from holding a marriage feast, which Esteban Cabajar himself attended.

The trouble between the two fathers-in-law thus seemed to have been patched up by their children's marriage. But Cabajar heard that Taborada, his daughter's father-in-law, went about saying that he (Cabajar) had asked too much for his daughter's hand, and this soured their relations.

One afternoon in the month of October, 1930, Mariano Taborada was in the barrio of Himaomaoan, municipality of Cebu, Province of Cebu, in a coconut grove where one Simeon Sabal was distilling tuba. Besides Simeon Sabal, there were tuba. It is not known whether it was intentional or a mere coincidence, but Esteban Cabajar came upon the scene. According to the witnesses for the defense, when Mariano Taborada caught sight of him, he exclaimed: "I'm glad you have come, Compadre, now we can settle our little difference," and drew his bolo or dagger; Esteban Cabajar also pulled out a long, pointed bolo. According to witnesses Simeon Sabal, his son, Simeon Sabal, jr., Arcadio Labrador, and Severo Gabucan, the barrio lieutenant, all ran away upon seeing Tabprada and Cabajar draw their bolos and left them facing each other, battling with the bolos in their hands.

Pedro Padayao, witness for the prosecution, testifies that he was present at the scene and remained until Cabajar

had struck at Mariano Taborada twice, when Simeon Sabal stepped in and stabbed Mariano Taborada twice in the back with a sickle or curved bolo used in extracting tuba. But the trial court refused to believe this witness, not only because the witnesses for the defense are unanimous in declaring that Padayao was not present, but also, and perhaps mainly, because he did not report Simeon Sabal's alleged part in the crime to the authorities until he was called to Cebu a week later. Pedro Padayao affirms that he told Mariano Taburada's son of Simeon Sabal's part in the fight, but if this were true, says the trial court, we cannot understand how the son of the deceased did not report this fact to the authorities when Esteban Cabajar was prosecuted.

The trial court, as we have stated, refused to believe witness Padayao of the prosecution, and we do not feel justified in departing from this finding. Upon the strength of the testimony adduced by the defense, the trial court found that the accused and Mariano Taborada fought face to face and, in consequence, the latter died on the sixth day.

The appellant contends that he wounded the deceased in self-defense. But since the fight occurred, as the trial court found, with both combatants ready to settle the differences between them by force, and considering the eleven wounds in the face, back, and other parts of the corpse, whereas it does not appear that the accused sustained a single wound, and considering, furthermore, the defendant's own testimony of record, he cannot be said to have acted in self-defense.

In applying the minimum period of the penalty, the trial court took into account the defendant's lack of education as a mitigating circumstance, which was quite within his discretion. Since the judgment appealed from is in accordance with the law, it must be affirmed with costs against the appellant. So ordered.

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

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