

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DONATO BINDOY, DEFENDANT AND APPELLANT.

G. R. No. 34665. August 28, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellant was sentenced by the Court of First Instance of Occidental Misamis to the penalty of twelve years and one day of reclusion temporal, with the accessories of law, to indemnify the heirs of the deceased in the amount of P1,000, and to pay the costs. The crime charged against the accused is homicide, according to the following information:

"That on or about the 6th of May, 1930, in the barrio of Calunod, municipality of Baliangao, Province of Occidental Misamis, the accused Donato Bindoy willfully, unlawfully, and feloniously attacked and with his bolo wounded Emigdio Omamdam, inflicting upon the latter a serious wound in the chest which caused his instant death, in violation of article 404 of the Penal Code."

The accused appealed from the judgment of the trial court, and his counsel in this instance contends that the court erred in finding him guilty beyond a reasonable doubt, and in convicting him of the crime of homicide.

The record shows that in the afternoon of May 6, 1930, a disturbance arose in a tuba wineshop in the barrio market of Calunod, municipality of Baliangao, Province of Occidental Misamis, started by some of the tuba drinkers. There were Faustino Pacas (alias Agaton), and his wife called Tibay. One Donato Bindoy, who was also there, offered some tuba to Pacas' wife; and as she refused to drink having already done so, Bindoy threatened to injure her if she did not accept. There ensued an interchange of words between Tibay and Bindoy, and Pacas stepped in to defend his wife, attempting to take away from Bindoy the bolo he carried. This occasioned a disturbance which "attracted the attention of Emigdio Omamdam, who, with his family, lived near the market. Emigdio left his house to see what was happening* while Bindoy and Pacas were struggling for the bolo. In the course of this struggle, Bindoy succeeded in disengaging himself from Pacas, wrenching the bolo from the latter's hand towards the left behind the accused, with such violence that the point of the bolo reached Emigdio Omamdam's chest, who was then behind Bindoy.

There is no evidence that Emigdio took part in the fight between Bindoy and Pacas. Neither is there any indication that the accused was aware of Emigdio Omamdam's presence in the place, for, according to the testimony of the witnesses, the latter passed behind the combatants when he left his house to satisfy his curiosity. There was no disagreement or ill feeling between Bindoy and Omamdam, on the contrary, it appears they were nephew and uncle, respectively, and were on good terms with each other. Bindoy did not try to wound Pacas, and instead of wounding him, he hit Omamdam; he was only defending his possession of the bolo, which Pacas was trying to wrench away from him, and his conduct was perfectly lawful.

The wound which Omamdam received in the chest, judging by the description given by the sanitary inspector who attended him as he lay dying, tallies with the size of the point of Bindoy's bolo.

There is no doubt that the latter caused the wound which produced Emigdio Omamdam's death, but the defendant alleges that it was caused accidentally and without malicious intent.

Pacas and the widow of the deceased, Carmen Angot, testified having seen the accused stab Omamdam with his bolo. Such testimony is not incompatible with that of the accused, to the effect that he wounded Omamdam by accident. The widow testified that she knew of her husband's wound being caused by Bindoy from his statement to her before his death.

The testimony of the witnesses for the prosecution tends to show that the accused stabbed Omamdam in the chest with his bolo on that occasion. The defendant, indeed, in his effort to free himself of Pacas, who was endeavoring to wrench his bolo from him, hit Omamdam in the chest; but, as we have stated, there is no evidence to show that he did so deliberately and with the intention of committing a crime. If, in his struggle with Pacas, the defendant had attempted to wound his opponent, and instead of doing so, had wounded Omamdam, he would have had to answer for his act, since whoever willfully commits a felony or a misdemeanor incurs criminal liability, although the wrongful act done be different from that which he intended. (Art. 1 of the Penal Code.) But, as we have said, this is not the case.

The witness for the defense, Gaudencio Cenas, corroborates the defendant to the effect that Pacas and Bindoy were actually struggling for the possession of the bolo, and that when the latter let go, the former had pulled so violently that it flew towards his left side, at the very moment when Emigdio Omamdam came up, who was therefore hit in the chest, without Donato's seeing him, because Emigdio had passed behind him. The same witness adds that he went to see Omamdam at his home later, and asked him about his wound when he replied: "I think I shall die of this wound." And then continued: "Please look after my wife when I die: See that she doesn't starve,"* adding further: "This wound was an accident. Donato did not aim at me, nor I at him: It was a mishap." The testimony of this witness was not contradicted by any rebuttal evidence adduced by the fiscal.

We have searched the record in vain for the motive of this kind, which, had it existed, would have greatly facilitated the solution of this case. And we deem it well to repeat what this court said in *United States vs. Carlos* (15 Phil., 47), to wit:

"The attention of prosecuting officers, and especially of provincial fiscals, directed to the importance of definitely ascertaining and proving, when possible, the motives which actuated the commission of a crime under investigation.

"In many criminal cases one of the most important aids in completing the proof of the commission of the crime by the accused is the introduction of evidence disclosing the motives which tempted the mind of the guilty person to indulge the criminal act."

In view of the evidence before us, we are of opinion and so hold, that the appellant is entitle to acquittal according to article 8, No. 8, Penal Code. Wherefore, the judgment appealed from is reversed, and the accused Donato Bindoy is hereby acquitted with costs de oficio. So ordered.

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

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