

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARIANO LUMASAG, DEFENDANT AND APPELLANT.

G. R. No. 34666. August 29, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

A mere trifle gave rise to a fight between Mariano Lumasag and Paulino Lumasag in the municipality of Aloran, Province of Occidental Misamis, at midday on July 22, 1930. In that fight Paulino Lumasag received two wounds, one on the left elbow and the other on the left calf, which produced his death that afternoon.

According to the witness Paulino Lapura, there was an interchange of words between the deceased and the accused over the care of the latter's carabao, but the defendant in his testimony before the court said he did not know why Paulino Lumasag should have attacked him with his bolo, although in the sworn statement before the municipal president he intimated that there had been a disagreement between himself and the deceased on that occasion. In said statement, the accused said:

"Q.

Who were your fellow laborers?—A. Enoc Lapura, Tiburcio Gere, Leon Igdaw, Ambrosio Pinid, Victorio Mutia, Jorge de Quina, Paulino Lumasag, and the owner Cresencio Aranas.

"Q.

What time did the dispute begin?—A. At 11 in the morning. Tiburcio Gere and Enoc Lapura said: 'When parents want to dispose of their lands, no children can stop them, I answered. Yes, that is true, so long as they really are owners. Here Paulino joined in, saying: 'Yes; go and tell mother to sell it.' I replied: 'Why tell her to sell it, when we need lands?' He became angry and unsheathed his bolo, but Enoc prevented him from going further. At midday we rested from our work, and went home. Paulino was ahead; I followed behind him. When I came in front of his house, he threw a bolo at me, which I dodged, and it fell to the ground. I caught up and he attacked me with a scythe, which I succeeded in dodging; and it was then I struck at him with the bolo on his left foot, and he fell on his knees.

"Q.

Where did this take place, up or downstairs in the house?—A. On the staircase.

"Q.

Who were present when you were fighting?—A. Tibu (Tiburcio), and Victorio Mutia.

"Q.

How far away were they from the two of you?— A. Twenty arm's lengths. After attacking him I went home taking his bolo and stick, and my own bolo with me. A short time after arriving at my house, Mr. Feliciano Naranjo, the lieutenant in charge, passed by. I called him and delivered the bolo and stick to him."

Feliciano Basilasi, mother-in-law of the deceased, testified that she saw the accused Mariano Lumasag stab Paulino Lumasag with his bolo, wounding him, on the left calf and on the left arm; that Mariano Lumasag first struck at Paulino; and that the latter died that same afternoon.

According to the accused, that morning he, Enoc Lapura, Tiburcio Gere, Leon Igday, Ambrosio Pinid, Victorio Mutia, Jorge de Quina, Paulino Lumasag, and the owner, Cresencio Aranas, had been working in the latter's field. Besides the accused, Paulino Lapura ("Enoc") testified to the effect that while they were working, he heard Paulino Lumasag say to Mariano: "You, Mariano, are always making me take care of your carabao." To which, Mariano answered, "Why you take care of that carabao, I don't know." Feliciano Naranjo, the barrio lieutenant of Conat, also testified in the case, saying that as he came from Oroquieta to that barrio, he saw Mariano in the direction of Paulino Lumasag's house, with an arm raised as if to defend himself; and the witness also saw Paulino Lumasag leave his house, jumping down the stairway which consisted of two steps, and go towards Mariano. Paulino carried a scythe and a stick with which he attacked the accused.

After considering the evidence of record, we find that on the morning of July 22, 1930, there were working in the fields of one Cresencio Aranas, a number of persons, among them the deceased and the accused. In the course of conversation these two mentioned the care of the defendants carabao. The deceased seems to have been displeased because the accused entrusted the care of his carabao to the former's son. They continued working until midday, when the laborers went home. The two, Paulino Lumasag and Mariano Lumasag, had to go along the same road to their respective homes; the former went first, followed at a certain distance by the latter. Paulino was already in his house when Mariano passed by. The record does not show the words which must have been exchanged between them then, but the fact remains that they came to blows in front of the deceased's house. The latter, with a scythe and a stick, and the accused with his bolo, must have tilted at each other, if we are to believe the testimony of the barrio lieutenant, until Paulino received a wound on the leg and was left there stretched out, while Mariano went away with the bolo, to the municipal building, so he says, to surrender himself to the authorities.

There is no doubt that the two of them, Paulino and Mariano, were ready to settle their differences by force, though we cannot say for certain who began the attack, for, although the accused testifies that the deceased had thrown his bolo at him from the stairs of the house; such a statement cannot be relied upon since it is unreasonable to think that the deceased would have thrown his weapon to his opponent. In such a case, the accused, who accepted the fight, certainly cannot invoke the right of self-defense.

The trial court sentenced the accused to the penalty of seventeen years, four months, 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; and considering the aggravating circumstances of dwelling-place and abuse of superior strength, imposed the penalty upon the defendant in the maximum degree. Neither of these circumstances may be taken into consideration in the present case. The evidence does not show clearly that the defendant entered the house of the deceased to attack him. In view of the evidence, we incline to the belief that the fight took place in front of the deceased's house, and outside the ground floor thereof. And as for the abuse of superior strength, the record does not furnish one reasonable ground for considering such a circumstance. On the contrary, account should be taken of the extenuating circumstance that the defendant did not intend to commit so serious an injury as that which he really produced, and consequently, the penalty should be imposed upon the accused in its minimum degree, that is, twelve years, and one day of reclusion temporal, with the accessories of law. With this modification, the judgment appealed from is 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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