

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. VEDASTO PANCHO, DEFENDANT AND APPELLANT.*G.R. No. 35523. February 13, 1932*

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 Occidental Misamis, finding the appellant, Vedasto Pancho, guilty of the offense of homicide and sentencing him to undergo imprisonment for fourteen years, eight months, and one day, reclusion temporal, and requiring him to indemnify the heirs of the deceased, Catalino Aurigue, in the amount of P1,000, and to pay the costs of prosecution.

At about 5 o'clock in the afternoon of February 10, 1930, four individuals, namely, Vedasto Pancho, the accused, Catalino Aurigue, the deceased, Romualdo Solis, and Ambrosio Pacatang, were together in the kitchen at the home of Romualdo Solis, resident of Jimenez, in Occidental Misamis. The four appear to have been engaged in drinking tuba. In the course of the talk that ensued upon this occasion, Catalino Aurigue told Pancho that he had adjusted the blade loosely on a fighting cock belonging to Catalino. Vedasto replied that if he had put the blade on loosely, Catalino's rooster would not have won. Catalino continued to express his dissatisfaction, asserting that Vedasto's method of adjusting the blade was objectionable. Vedasto thereupon told Catalino to shut up. Upon this Catalino flew into a rage and reached under the stove for his bolo. With this he struck at Pancho, inflicting, it is claimed, a wound on the calf of Pancho's left leg. In the struggle that resulted Pancho succeeded in snatching the bolo from Catalino's hands. At the same time Pancho drew back. Catalino, however, pressed the attack, attempting to get the bolo back, whereupon Pancho, fearing that Catalino might recover the weapon, struck a blow upon Catalino's left arm; and as Catalino again threw himself upon Pancho, the latter dodged and delivered another blow with the bolo upon Catalino's forehead inflicting a slight wound. Catalino then seized Pancho's right hand, but with great effort Pancho disengaged his hand and gave another cut with the bolo, wounding Catalino on the face and forehead. This wound involved, but not deeply, Catalino's left eye. Catalino then fell to the floor and the contest ended, while Pancho handed the bolo to Romualdo Solis. It appears that Catalino was the larger and stronger of the two contestants, and also that the two were related by marriage. The only wound that could be considered at all dangerous was the one which involved the left eye. This wound was about 4 inches in length and li decimeters deep. The left eyeball was injured and the cut extended into the left side of the nose. Death resulted four days later from infection and hemorrhage.

The sole witness for the prosecution in this case is Romualdo Solis, a half-brother of the deceased, and also a brother-in-law of the appellant, Vedasto Pancho. The witness Ambrosio Pacatang is an uncle of Pancho.

Although, as already stated, the four individuals above-mentioned had been present together in the room before the quarrel broke out, nevertheless Solis went downstairs on an errand immediately before the two came to blows, and he did not return until he heard the noise caused by the struggle. On the other hand, Ambrosio Pacatang was present when the fight began, but he got so frightened that he ran away, leaving the room before or about the same time that Romualdo Solis returned. There was therefore one eyewitness present in the room during the whole

affair, in addition to the principals, Pacatang seeing the first half and Solis the second half of the struggle. The testimony of Pacatang concerning the manner in which the altercation began, corroborates in every respect the account given by Pancho, and the witness Solis likewise corroborates Pancho on every material point with respect to what happened in the last half of the altercation.

Upon these facts we are of the opinion that the appellant is entitled to an acquittal. In the first place, it would have been proper no doubt to concede to him the benefit of the mitigating circumstance that he had been, like his companions, drinking tuba, and was therefore, to some extent, intoxicated. But it is unnecessary to discuss the propriety of this mitigating circumstance, for the reason that, in our opinion, the appellant acted in justifiable self-defense. The quarrel was begun by" Catalino, and an unjustified assault was made by him upon the appellant with a dangerous weapon. When, contrary to what might have been expected, the appellant succeeded in getting possession of the bolo, the deceased resolutely pressed the attack, attempting to recover the weapon. Under these circumstances it is but natural that the appellant should have used the same weapon to defend himself, and more properly so because his antagonist was larger and stronger than himself. In dealing with situations of this kind some allowance must be made for the excitement naturally incident to the physical contest; and it cannot fairly be said that in using the bolo as he did, the appellant passed beyond what was reasonably necessary for his own defense. It might very well have happened that the deceased would have recovered the bolo, and, enraged as he then was, the most probable thing is that he himself would have struck the appellant with the weapon, inflicting perhaps a fatal injury, or injuries, upon him. In the light of these considerations, we are of the opinion that the appellant should be acquitted.

The judgment is therefore reversed and the defendant absolved from the complaint, with costs of both instances de oficio. So ordered.

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

OSTRAND, J., dissents.

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