

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JULIAN SUMICAD, DEFENDANT AND APPELLANT.*G.R. No. 35524. March 18, 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, Julian Sumicad, guilty of the offense of homicide and sentencing him to undergo imprisonment for twelve years and one day, reclusion temporal, and requiring him to indemnify the family of the deceased in the amount of P1,000, as well as to pay the costs of prosecution.

On February 23, 1931, the accused, a resident of Buena voluntad, in the municipality of Plaridel, Occidental Misamis, was engaged with others in the gratuitous labor of hauling logs for the construction of a chapel in the barrio above-mentioned. At about 5.30 o'clock in the afternoon on the day mentioned, when the laborers were resting from the work of the day, one Segundo Cubol happened to pass the place where the accused was sitting. Prior to this date the accused had rendered five and one-half days service to Cubol, and as the latter passed, the accused said to him, "Segundo, pay me for the five and one-half days work for which you owe me." , Cubol replied, "What debt," an exclamation which was followed by an insulting expression. At the same time he struck the accused with his fist. The accused arose from the log upon which he was sitting and moved backward, trying to escape, but Cubol pursued him and continued striking him with his fists. As the accused receded he found himself cornered by a pile of logs, the wings of which extended out on either side, effectually preventing any further retreat. As Cubol pressed upon him, the accused drew his bolo and delivered a blow on Cubol's right shoulder. Upon this Cubol lunged at the accused with the evident intention of wresting the bolo from the accused. To prevent this the accused struck two other blows with the bolo, inflicting two deep cuts on Cubol's forehead above the left eye, One of these blows broke through the cranium. The other made a cut extending" from the left eyebrow to the nose arid upper lip. Upon receiving these wounds, Cubol gave down and crawled away, finding a seat on a log nearby. A witness, named Francisco Villegas, who came up in a moment, after learning something about the matter, asked Cubol whether he had struck the accused blows with his fist. Cubol replied that he had. The witness Villegas then turned to the accused, who was standing a short distance away, and told him to put up his bolo and go to the poblacion. Acting upon this suggestion the accused immediately repaired to the office of the justice of the peace and surrendered himself to the authorities. Cubol lived only an hour or so, and died from the effect of the wounds received. In one of the pockets of the deceased a knife was found, and the accused testified that, when he struck the deceased with his bolo, the latter was attempting to draw a knife from his pocket.

The accused was 25 years of age when this case was tried, has a height of 5 feet and 1 1/2 inches, and a weight of 105 pounds. The deceased appears to have been a taller, larger and stronger man. The evidence shows that the deceased was quarrelsome and in the habit of making frequent trouble by fighting in the places where he happened to be present with others. In the local courts he had been convicted and sentenced to jail for assault and battery in two different cases. In another case he was convicted of the offense of inflicting minor physical injuries,

being sentenced to imprisonment for one month and one day. In still another case he had been convicted of theft and sentenced to imprisonment for the same period of one month and one day. The proof leaves no reason to doubt that the deceased was hot-tempered and that he had the reputation of being a trouble maker. It is a safe inference from this proof—and there is nothing to the contrary,—that the deceased was with good reason considered by his neighbors to be a dangerous man.

From the facts above stated it is evident that the quarrel which resulted in the death of Segundo Cubol was of his own making, and that the accused was not materially to blame in bringing about the trouble. Two of the elements of self-defense were therefore clearly present, namely, that the deceased was the aggressor and that there was lack of sufficient provocation on the part of the accused. The only further question that can therefore arise in discussing the criminal liability of the accused is whether there was reasonable necessity for the means employed by him to prevent or repel the aggression to which he was subjected. Upon this point it will be noted that, when the aggression was begun by the deceased, the accused retreated until he was cornered in the angle of a pile of logs. His further retreat was thus effectually cut off both in the rear and at the sides. In response to the blows which the deceased delivered with his fists, the accused first delivered a cut on the left shoulder of the deceased; but, if we rightly interpret the transcript of the record on this point, the sanitary officer who examined the body of the deceased meant to say that this wound alone could not have resulted in death. This we consider to be the decisive turning point in the case. Upon receiving that cut the deceased should have been admonished that further aggression on his part would be met by determined resistance and that any further advance would be at grave peril to himself. Instead of acting upon this warning, the deceased pressed forward in the attempt to possess himself of the bolo, the only means of defense then at the command of the accused.

Under these circumstances what might the accused have been reasonably expected to do. Was he to surrender the weapon to his assailant, a larger and stronger man than himself, who was now infuriated by the blood that had been drawn from his shoulder? Or was he justified in keeping the weapon in his hands and, as an ultimate resort, in using it as a means for his own defense? Our reply is that he was justified in pursuing the latter alternative; for it would probably have been an act of suicide to permit that weapon to pass into the hands of his assailant. In judging a question of this kind the reputation of the deceased for violence is pertinent, for it tends to show that when the fatal blows were struck the accused had reasonable grounds for believing that he was in grave peril to life or limb.

It is undoubtedly well established in jurisprudence that a man is not, as a rule, justified in taking the life of one who assaults him with his fist only, without the use of a dangerous weapon. The person assaulted must, in such case, either resist with the arms that nature gave him or with other means of defense at his disposal, short of taking life. But that rule contemplates the situation where the contestants are in the open and the person assaulted can exercise the option of running away. It can have no binding force in the case where the person assaulted has retreated to the wall, as the saying is, and uses in a defensive way the only weapon at his disposal. One is not required, when hard pressed, to draw fine distinctions as to the extent of the injury which a reckless and infuriated assailant might probably inflict upon him (*Brownell vs. People*, 38 Mich., 732). And it was not incumbent on the accused in this case, when assailed by a bully of known violent disposition, who was larger and stronger than himself, to take the risk of losing possession of his bolo and of having it turned upon him with probable fatal results to himself. On the contrary, under the circumstances stated, he had the right to resist the aggression with the bolo, and if he unfortunately inflicted a fatal blow, it must be considered to have been given in justifiable self-defense. Upon this point it may be recalled that the deceased, when asked about the circumstances of the homicide, admitted that he himself was the aggressor; and it is noteworthy that he used no word placing blame upon the accused.

We are of the opinion that all the elements necessary to constitute justifiable self-defense were present in this case and the accused should have been acquitted.

The judgment appealed from will therefore be reversed and the appellant absolved from the information, with costs of both instances de oficio. So ordered.

Malcolm, Romualdez, Villa-Real, and Imperial, JJ., concur.

Johnson, J., reserves his vote.

Avanceña, C. J., with whom concurs Villamor, J., dissenting :

I dissent. In my opinion, there is but an incomplete self-defense here. The defendant's act in wounding the deceased with a bolo so as to bring about the latter's death, was not a reasonably necessary means of defending himself against the other's attack, which was but a matter of fisticuffs. The Supreme Court of Spain has held this doctrine in many cases; e. g., where the deceased attacked the defendant with his fists (November 29, 1883; May 3, 1888; and May 9, 1911) ; where the deceased, for no particular reason, threw himself upon the defendant, caught him by the throat, and tried to choke him (November 4, 1910); where the deceased boxed the accused, knocking him down, and keeping him underneath (November 28, 1910) ; and where the deceased attacked the accused with an umbrella (April 22, 1896). In all these cases it was not held that the, defendant acted with full justification in self-defense. Our own reports contain rulings of the like tenor; in the earliest case, the deceased attacked the accused with a piece of bamboo (IT. S. vs. De Castro, 2 Phil, 67), and in the latest, he attacked the defendant with his fists (G. R. No. 34750).[1] In neither was it held that a complete case of self-defense had been made out. Nor is the defendant's case improved by the consideration that he aimed the first blow at the deceased's arm, and delivered the last two blows, which caused death, after the other had attempted to wrench away the bolo; for, having received the first blow on the arm, the deceased was justified in acting as he did, in the reasonable belief that the defendant would continue the attack with that weapon.

DISSENTING

OSTRAND, J.

I cannot fully agree with the majority in this case and therefore dissent.

[1]

People vs. Montalbo, page 443, ante

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