

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. EMILIO ORONGAN AND PEDRO JEREZ, DEFENDANTS. EMILIO ORONGAN, APPELLANT.

G.R. No. 38435. September 19, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

Emilio Orongan and Pedro Jerez were charged in the Court of First Instance of Occidental Misamis with the crime of homicide, committed as follows:

"Que en o hacia el 25 de junio de 1932, en el Barrio de Pangabuan, Municipio de Tangub, Provincia de Misamis Occidental, y dentro de la jurisdiccion de este Juzgado, los acusados Emilio Orongan y Pedro Jerez, voluntaria, ilegal y criminalmente, obrando juntos y ayudandose mutuamente acometieron y agredieron a Carlos Caparoso, policia rural, quien fue herido en el abdomen con un cortaplumas por el acusado Emilio Orongan, mientras que su coacusado Pedro Jerez pegaba con sus puños en la espalda del referido Carlos Caparoso, habiendo este muerto al dia siguiente de la agresion por causa de las lesiones recibidas, con infraccion del articulo 249, delCodigo Penal Revisado."

After hearing the evidence, Judge Jose M. Hontiveros found the appellant, Emilio Orongan, guilty of the crime with which he was charged and sentenced him to suffer fourteen years, eight months, and one day of reclusion temporal, with the accessories of the law, to indemnify the heirs of the deceased in the sum of P500, and to pay one-half of the costs. The trial judge found Pedro Jerez guilty of having struck the deceased with his fist, without causing any injury, and sentenced him to suffer fifteen days of arresto menor and to pay one-half of the costs.

The attorney de oficio for the appellant Emilio Orongan makes the following assignments of error:

"PRIMER ERROR

"El Juzgado erro al encontrar al acusado culpable del delito de homicidio sin tener para nada en cuenta la circunstancia eximente de defensa propia, prevista en el articulo 11 delCodigo Penal Revisado.

"SEGUNDO ERROR

"El Juzgado erro al condenar al acusado a la pena de catorce años, ocho meses y un dia de reclusion temporal sin tener en cuenta las reducciones que concede y dispone el citadoCodigo, en el supuesto de que la defensa propia invocada en el error que antecede no pueda considerarse como completa, pues aparte de esta existen atenuantes como son las previstas en los incisos 3 y 4 del articulo 13 delCodigo Penal Revisado."

It appears from the evidence that at the time and place mentioned in the information, the defendants, Emilio Orongan and Pedro Jerez, and other persons were engaged in playing hantak. Emilio Orongan was acting as banker. A dispute arose between him and one of the players named Eusebio Patalinghug, and the players withdrew their bets.

The rural policeman Carlos Caparoso arrived, and in attempting to break up the gambling game he stepped on the

foot of Pedro Jerez. The latter was infuriated thereby and pushed or struck the policeman. Carlos Caparoso looked around, and the appellant Orongan stabbed him in the abdomen with a long-bladed knife, perforating the intestines. Caparoso died as a result thereof the next day.

The defense tried to prove that the deceased was playing hantak with the accused; that the appellant refused to continue playing, and the deceased pushed the appellant, causing him to fall face down; that when the appellant tried to get up, Eusebio Patalinghug pushed him down again, and Ceferino Tuhoy struck him with a cane; that the deceased then threw himself on the appellant and choked him; that when the appellant was half unconscious and could scarcely breathe he got out his pocket-knife and wounded the deceased, believing that the deceased was the person that had struck him with the stick. The defendant presented two witnesses, Pedro Barobo and Hilario Catoria, in support of that contention, but Eusebio Patalinghug and Ceferino Tuhoy, who participated in the hantak game and were the principal witnesses for the prosecution, testified that they did not know Barobo and Catoria, that is to say, they did not see Barobo and Catoria when the incident in question occurred.

We see no reason to disturb the findings of the trial judge. Patalinghug and Tuhoy were certainly in a position to see what occurred, and no reason has been adduced to explain why they should testify falsely against the appellant. The story of the defendants on the other hand impresses us as a mere fabrication designed to meet the case of the prosecution, and this impression is confirmed by the fact that in the statement, Exhibit C, made by the appellant the day after the incident he did not mention the alleged attempt of the deceased to strangle him. The only motive which is suggested for the alleged assault of the deceased on the appellant is that the appellant refused to accept the invitation of the deceased to bet. This is an insufficient motive to explain the action attributed to the deceased by the appellant. It was the appellant and not the deceased that had cause to be angered. By reason of the intervention of the policeman, the appellant could not collect his winnings or continue the game.

There is no merit in the contention of appellant's attorney that the appellant did not intend to cause so great an injury. When a man stabs another in the abdomen with a knife six inches long, a fatal injury is the natural and almost inevitable consequence. Furthermore, the evidence shows that the appellant attempted to stab the deceased a second time, but was prevented by Ceferino Tuhoy.

Taking into consideration the fact that the deceased was discharging his duty as a rural policeman when he was attacked, and that the assault was unprovoked, the prison sentence of the appellant is increased from fourteen years, eight months, and one day to seventeen years of reclusion temporal. As thus modified, the decision appealed from is affirmed, with the costs against the appellant.

Avanceña, C. J., Street, Abad Santos, and Butte, JJ., concur.

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