

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JULIAN APOLINARIO, FEDERICO BARRIENTOS, AND GERVASIO LAMES, DEFENDANTS. JULIAN APOLINARIO, APPELLANT.

G.R. No. 38562. October 18, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

The defendants, Julian Apolinario, Federico Barrientos, and Gervasio Lames, were charged in the justice of the peace court of Dumarao, Province of Capiz, with the crime of homicide, committed in said municipality on July 29, 1932 by voluntarily, feloniously, and criminally attacking Saturnino Cabaylo with bolos and inflicting upon him four wounds, two of which were mortal, thus causing his death. The defendants were arrested and brought before the justice of the peace, and after they had been informed of the charge against them by the translation of the complaint into the local dialect they pleaded guilty. The accused were bound over for trial in the Court of First Instance of Capiz, and the provincial fiscal there charged that the defendants conspiring together and mutually aiding one another voluntarily, illegally, and criminally killed Saturnino Cabaylo by attacking him with the bolos with which they were provided and inflicting on him various mortal wounds. The defendants pleaded not guilty in the Court of First Instance.

After considering the evidence, Judge Geronimo Paredes found the appellant Julian Apolinario guilty of the crime of homicide, and sentenced him to suffer seventeen years of reclusion temporal, and the accessories of the law, to indemnify the heirs of Saturnino Cabaylo in the sum of P500, without subsidiary imprisonment in case of insolvency, and to pay one-third of the costs, but acquitted Federico Barrientos and Gervasio Lames because of a supposed conflict between the testimony of Alfonso Salamone and Emilio Salamone, two of the witnesses for the prosecution.

Appellant's attorney de oficio alleges that the lower court erred in convicting the accused as the author of the crime of homicide with which he was charged in the information instead of acquitting him because he acted in self-defense.

The appellant admitted that he inflicted upon the deceased Saturnino Cabaylo the wounds which caused his death, but maintained that he acted in self-defense. The plea of self-defense in order to exculpate the accused must be duly proved. There could be no self-defense until there had been unlawful aggression. The case for the appellant rests upon his own testimony. His contention that he was attacked by the deceased with a bolo is refuted by the fact that both Alfonso Salamone and Guillermo Arellano, the latter a witness for the defense, testified that although the deceased had a sickle hanging from his belt he did not make use of it, but tried to defend himself with his hands. Another significant fact tending to disprove the contention of the appellant is that he did not receive even a scratch in the alleged attack which the deceased, armed with a sickle and a stick, made upon him. Appellant's testimony at the trial that he acted in self-defense is also impeached by the fact that he did not make any such claim in the statement, Exhibit F, sworn to by him before the justice of the peace on July 31, 1932, and

by the further fact that he pleaded guilty in the justice of the peace court.

Appellant alleges that he was beaten and threatened by two Constabulary soldiers, Alayon and Escubio, but the trial judge, who heard the witnesses testify, and who was in the best position to pass upon their credibility, did not credit the testimony of the appellant as to the alleged mistreatment to which he was subjected by the soldiers, and we see no reason for rejecting the findings of the lower court. Appellant's statement, Exhibit F, was prepared by the chief of police in his office from the dictation of the appellant. The two Constabulary soldiers were present, it is true, but also various other persons.

Macario Alayon denied having mistreated the appellant. We think that the fiscal should also have called the soldier named Escubio in rebuttal.

The appellant never intimated to the justice of the peace that he had been maltreated by the Constabulary soldiers, nor did he mention the matter to the warden or the guards of the provincial jail, against whom, he said, he had no cause for complaint. He testified that he kept the matter of the alleged maltreatment a secret, to be revealed only to the trial judge; that he never mentioned the matter to his attorney before the trial. Furthermore, it appears from the testimony of the appellant that the alleged maltreatment and intimidation of the soldiers was only for the purpose of forcing the appellant to incriminate his coaccused, Barrientos and Lames.

Although we do not know the motive, we are satisfied from an examination of the record that the appellant was the assailant; that his claim that he acted in self-defense is untrue. He is therefore sentenced to suffer fourteen years, eight months, and one day of reclusion temporal, and to indemnify the heirs of the deceased Saturnino Cabaylo in the sum of P1,000. 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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