THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FELIX GAYRAMA, DEFENDANT AND APPELLANT.

G. R. No. 39270_71. October 30, 1934

Ponente: DIAZ, J.

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DIAZ, J.:

Felix Gayrama was charged in the Court of First Instance of Leyte in two cases with murder with assault upon agents of persons in authority, the victim in the former case being policeman Placido Delloro (criminal case No. 8922), and in the latter chief of police Fernando Corpin (criminal case No. 8923); with frustrated murder with assault upon an agent of persons in authority in another case (criminal case No. 8924), and furthermore with serious physical injuries in another (criminal case No. 8925).

The accused was convicted in all said cases but the trial court declared him guilty only of homicide with assault upon agents of persons in authority in each of the former two cases and of slight physical injuries in the latter two. In the latter cases he was sentenced to pay a fine of P300 and to indemnify Eugenio Nierras in the sum of P192.70 (case No. 8924), and to two months of arresto mayor (case No. 8925), with costs; and in each of the former cases he was sentenced to sixteen years of reclusion temporal with the corresponding accessories of the law, and to iffifemnify the fteirs of each of his victims in the sum of P1,000, also with costs. He did not appeal from the sentence imposing upon him the penalties of fine and arresto mayor but appealed from that sentencing him to sixteen years of reclusion temporal with the accessories of the law plus indemnities in the sum of P1,000.

In support of his appeal Felix Gayrama assigns in his brief six alleged errors as committed by the lower court in its decision and sentence in case No. 8923 (G. R. No. 39271): and five alleged errors as committed by it in its decision and sentence in case No. 8922 (G. R. No. 30270), which are stated as follows:

"(Criminal case No. 8923; G. R. No. 89271)

> "The court a quo erred:
>
> "I. In. having declared that the accused-appellant volunr tarily and intentionally assaulted the deceased Fernando Corpin, although the wound that resulted in his death was actually and truly caused by an accident in the fight when both the accused and the deceased, struggling for the possession of the weapon, fell to the ground because the deceased stumbled against a fallen coconut tree, and it was in his fall that the injury was accidentally caused.
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> "II. Granting for the sake of argument that the wound in question had been the effect of an intentional aggression on the part of the accused, nevertheless, the court a quo erred in not considering that said act of the accused had been committed in legitimate self-defense as he was at that moment the subject of an unlawful aggression on the part of the deceased and several other persons who pursued and threw stones at him.
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> "III. The court, therefore, erred in not considering that all the requisites of a legitimate self-defense were present in this case.

"IV. The court a quo erred in declaring that the deceased Fernando Corpin was acting as an agent of persons in authority during the incident in question.

"V. Even granting that the deceased was chief of police and that he was acting as such, that is, he was trying to arrest the accused at the time of the incident in question, nevertheless, the court a quo erred in not declaring that said deceased exceeded his authority in unjustifiably assaulting the accused who was then fleeing not certainly to avoid arrest but from the mobs that were pursuing and throwing stones at him with danger to his life, one of which mobs was led by the deceased himself.

"VI. The court a quo also erred in declaring the accusedappellant guilty of homicide with assault upon agents of persons in authority and in imposing upon him the penalty of reclusion temporal in its maximum period, without furthermore taking into consideration the presence of several mitigating circumstances, to wit: (1) unlawful aggression; (2) lack of provocation on the part of the defendant; (3) passion and obfuscation; and (4) voluntary surrender to the authorities, which circumstances, by their number and weight, produce the effect of reducing the penalty by two periods in the general scale."

"(Criminal ease No. 8922; G. R. No. 39270)

"The court a quo erred:

"I. In not having taken into consideration the presence in this case of all the exempting circumstances in favor of the accused-appellant who acted in legitimate self-defense.

"II. In having declared that the deceased policeman DeIloro aimed his revolver at the accused-appellant 'perhaps for the purpose of snatching the bolo from the latter'.

"III. If the deceased, as municipal policeman, was acting as such on said occasion, the court, however, erred: (a) in assuming that the accused-appellant, in assaulting said deceased, knew said circumstance and (b) in not declaring that the deceased acted with abuse of his authority.

"IV. The court, therefore, erred in declaring the accused guilty of the complex crime of homicide with assault upon an agent of persons in authority.

"V. The court a quo also erred in imposing upon the accused the maximum period of reclusion temporal, without furthermore taking into consideration the presence of the very qualified mitigating circumstances, to wit: (1) unlawful aggression; (2) lack of provocation on the part of the accused; (3) passion and obfuacation; and (4) voluntary surrender to the authorities, which produce the effect of reducing the penalty by two periods in the general scale."

The evidence for the prosecution and that for the defense agree on the following facts, to wit: that the chief of police Fernando Corpin received a necessarily mortal wound on his left side level with the stomach, which wound was caused by a bolo, piercing the abdominal cavity from side to side; that safd wound resulted in Fernando Corpin's death two hours later; that policeman Delloro, in turn, received twelve wounds on various parts of his body, five of which were, as Fernando Corpin's wound, necessarily fatal, and resulted in said Delloro'g death at the scene of the crime. The appellant, in open court, admitted having been the author of die aggression and of the death of said two deceased, but defended himself, as he now defends himself in this instance, by alleging that he had merely acted in legitimate selfdefense.

The two crimes with which the appellant was charged were the climax of some encounters which took place at noon on April 18, 1931, in the municipality of Biliran, Leyte, between Francisco Gayrama, a brother of said appellant, and Amado Aragon, on one side, and Higino Corpin, Simeon Rosales, Manuel Nierras and others, on the other. On said date the registration of voters in the electoral census took place in the different election precincts of said municipality. The electors therein were then divided into two factions: one in favor of the

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candidacy for municipal president of the then incumbent Eugenio Nierras who ran for reelection and the other which, in turn, favored the candidacy of Francisco Tonelete who aspired for the same office.

Inasmuch as the majority of the election inspectors of election precinct No. 2, composed of Higino Corpin and Simeon Rosales of the Nierras faction, had rejected the. applicationof electors Eustaquio Dincong and Remigio Aragon of the Tonelete faction, who were at that time accompanied by. Francisco. Gayrama, to be permitted to cast their votes with the aid of another person by reason of defective eyesight, said inspectors engaged in a discussioHi which at timesbecame heated, with the other inspector Jose Napalit of the Tonelete faction,* in the presence not only of said Francisco Gayrama and those of his faction but also of those of theNierras faction, due to the insistences of the former (Napalit) that said applications of itbetwo elector^ in question should be favorably considered. President Eugenio Nierras, who was informed of the incident, upon going to said precinct sometime before noon on that day, gave orders to policeman Clodoalcfo Abrigo, his brother, to arrest Francisco Gayrama if the latter should again go up into the precinct (the precinct tor all appearances was in the upper story of a building), after Gayrama had been ordered to go down with his followers.

While Francisco Gayrama and his followers were going home without having attained the purpose which brought them to the election precinct, he told Amado Aragon, almost shouting because he was sufficiently far from the latter to inform their candidate Francisco. Tonelete of the result and incidents of their petition to the board of election inspectors. Inspector Higino Corpin, who was not far away because he was also on his way home with the other inspector Simeon Rosales, thinking himself alluded to, challenged Francisco Gayrama to a fight forthwith hitting the latter on the arm with his fist, and both grappled. They were separated by Amado Aragon who was near by, telling them not to fight because both of them as the others, were from Biliran. This intervention of Amado Aragon must not have been pleasing to Simeon Rosales for, approaching Aragon, he seized the latter by the body and threw him to the ground. This incident having made things worse, Higino Corpin ordered policeman Clodoaldo, who was near by, to arrest Francisco Gayrama who, in order to avoid being arrested, ran away followed by Amado Aragon in the direction of the house of one Juan de Paz. They were pursued by Higino Corpin, Simeon Rosales, policeman Abrigo and followers who were informed of the incident while the latter were in the house of president Nierras. Manuel Nierras, son of said president, upon overtaking Francisco Gayrama, intercepting him in order to block his way, caught Francisco Gayrama by the neck and one of the legs and lifting him in the air flung him to the ground thereby causing a dislocation of one arm. Amado Aragon, coming to Francisco Gayrama's defense, hit Manuel Nierras on the back with his fist and, seeing that things were going from bad to worse, seized a stake to defend himself from the aggression of Nierra's followers. Amado Aragon and Francisco Gayrama, taking advantage of the desistance, rather than indecision, of the former from continuing to attack them, went on their way to take refuge in Francisco Gayrama's house.

While the foregoing incident was taking place, the appellant whose turn was to stay in the house of his other brother, Prudencio Gayrama, the Tonelete faction's candidate for vice-president, in order to prepare food for the electors of their faction, observed from the movement of various persons from one place to another that something extraordinary was taking place, and was furthermore informed by Crispin Barili that his brother Francisco Gayrama and Amado Aragon had been assaulted by many people. The appellant, upon going down from his brother Prudencio's house, carried a bolo on his belt as he had just slaughtered a pig, and he left the house in order to make sure and see with his own eyes what was really happening to his brother Francisco. He arrived in front of Petronilo Jadulco's house and as soon as he was seen by president Nierras, who had already been informed of the incident between the latter's followers on one side, and Francisco Gayrama and his followers on the other, said president Nierras approached him and asked him whether he had also come there to challenge the president and followers to a fight Without waiting for a reply, the president slapped him on the left cheek. Almost simultaneously, Esteban Nierras, the president's brother, kicked the appellant, felling him. When said appellant

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noted that the president was about to repeat the aggression by slapping him, he unsheated his bolo and slashed the president on the posterior part of the left arm inflicting thereon a wound 4 inches long, 3 inches wide and 1 inch deep. Said president, upon feeling himself wounded, cried for help saying that Felix Gayrama had wounded him, at the same time ordering his men and chief of police Fernando Oorpin to arrest Gayrama. The appellant, after wounding the president, ran away, pursued by chief of police Fernando Corpin, Manuel Nierras, Godofredo Corpin, Clodoaldo Abrigo and others who in their pursuit threw stones at said appellant, hitting and injuring him on various parts of the body. The stone which Fernando Corpin threw at the appellant hit the latter on the right cheek, causing him to stagger for the moment, for which reason said Fernando Corpin, the deceased chief of police, succeeded in overtaking him and holding him by both hands. Thus held, the appellant struggled to free himself from Fernando Corpin who, unfortunately, stumbled against something—a fallen tree according to some witnesses—and fell, exposing his left side. The appellant, taking advantage of this opportunity, plunged the bolo which he carried into Corpin's body, piercing his abdomen. The appellant immediately fled and in doing so came upon the deceased policeman Placido Delloro who, as he shouted to the appellant: Justice! Justice! suggesting to the latter to surrender, discharged his revolver at the appellant missing him. The appellant, seeing said policeman about to shoot at him again approached the policeman and, striking the latter on the wrist with his bolo, made him drop his firearm. The policeman attempted to pick up his firearm from the ground but the appellant shoved him and after he had fallen slashed him several times, with his bolo, furthermore plunging it into the policeman's body until the latter died. The autopsy later disclosed that one of the wounds received by the deceased Delloro was inflicted on his right wrist.

Before the acts with which the appellant is charged were committed, there were in the house of president Nierras about 50 or 60 of the latter's followers and some of them, upon seeing the appellant and thinking that he was trying to join his brother Francisco Gayrama and Amado Aragon in order to resist policeman Clodoaldo Abrigo and his companions, such as Manuel Nierras and his followers, who had received orders to arrest said Francisco Gayrama and Amado Aragon, threw stones at said appellant forcing him to retreat and take another way until president Eugenio Nierras saw him and maltreated him as above stated.

From the foregoing proven facts, the following questions arise: (1) Does the appellant's act of killing chief of police Fernando Corpin constitute homicide with assault upon an agent of persons in authority? (2) Does the appellant's act of depriving policeman Placido Delloro of his life also constitute homicide with assault upon an agent of persons in authority?

As to the first question, the evidence shows that Fernando Corpin was wearing a felt hat with a cord usually worn by chiefs of police as part of their uniform, a faded khaki shirt and also khaki pants. There is no question but that this uniform, which is undoubtedly a policeman's, was sufficient to call the appellant's attention to the fact that he was dealing with a peace officer. Furthermore, the appellant himself kneW Fernando Corpin to be the municipal chief of police. He assaulted said officer while the latter was performing his duties as such inasmuch as said chief of police had been ordered by president Eugenio Nierras, his immediate superior, to arrest the appellant for having wounded said president with his bolo, and furthermore because, as said chief of police had witnessed the aggression, it was inevitable for him to-make the arrest. The reason for this is that it is the duty of peace officers to arrest violators of the law not only when they are provided with the corresponding warrant of arrest, but also when they are not provided with said warrant if the violation is committed in their own presence; and this duty extends even to cases the purpose of which is merely to prevent a crime about to be consummated. (U. S. vs. Bertucio, 1 Phil., 47; U. S. vs. Resaba, 1 Phil., 811; U. S. vs. Vallejo, 11 Phil., 193; U. S. vs. Santos, 36 Phil., 853.) This same power was authorized by rule 28 of the Provisional Law for the application of the provisions of the old Penal Code, which was in force at the time the two complex crimes under consideration were committed; and from the provisions of article 124 of the Revised Penal Code, it may be reasonably inferred that peace officers

until now have such authority, notwithstanding the fact that the former law has been repealed by article 367 of said Revised Penal Code.

It cannot be said that there was a previous unlawful aggression, on the part of the deceased Fernando Corpin because the fact that he threw stones at the appellant while the latter was running away was not entirely unjustified, taking into consideration the fact that the purpose of the deceased in so doing was to succeed in capturing and arresting the appellant who was escaping because he had assaulted municipal president Eugenio Nierras. It is not strange that the deceased employed said means to detain the appellant because he was then entirely unarmed. If he had been armed with a revolver and had used it against the appellant, his act under those circumstances would have been fully justified.

There is not the least doubt but that there was no reasonable necessity of the means employed by the appellant to repel Fernando Corpin's aggression because the evidence shows that there was not even any aggression from which he had to defend himself and that the fact of holding a person by the hands in order to place him under arrest is not the aggression referred to in the law constituting one of the elements of legitimate self-defense. At any rate there was absolutely no necessity for the appellant to use his bolo because the deceased was unarmed, it being evident, therefore, that there was no proportion between the aggression—even granting by way of a hypothesis that such an ¦aggression existed—and the means employed to repel it, particularly because said deceased had fallen to the ground.

As regards the deceased Placido Delloro, the evidence shows that he was on guard in the municipal building when he was informed of the aggression committed by the appellant on municipal president Eugenio Nierras and chief of police Fernando Corpin. As soon as he had received the municipal president's order to capture said appellant, he left his post in order to comply with said order and, before discharging his revolver at the appellant, he made himself known as a peace officer by shouting to said appellant, Justice! Justice! for the purpose of suggesting to the latter to surrender. Inasmuch as the appellant would not stop but instead continued to run toward him, bolo in hand, said policeman prepared to fire another shot at the appellant and it was while he was in this position that the appellant rushed at him to strike him on the wrist of his hand holding the revolver, forcing him to drop said weapon. While the deceased Delloro was trying to pick up said revolver with his left hand, the appellant shoved him, felling him to the ground, -and forthwith repeatedly struck him with his (appellant's) bolo until he died.

The record discloses, although it does not so state clearly, that the place where the policeman dropped his revolver by reason of the bolo wound inflicted on his wrist, was quite a distance from where he was killed by said appellant, which fact leads us to the conclusion that when said appellant repeatedly struck the deceased with his bolo, all danger that might have come from said deceased had already ceased and therefore there was no necessity of killing him.

Under the circumstances when policeman Delloro suggested to the appellant to surrender by shouting to him, Justice! Justice! he was justified in firing the shot from which the appellant claims to have defended himself with his bolo because it was evident that the case involved the detention of a man who had committed two crimes, one on the person of municipal president Eugenio Nierras and the other on that of chief of police Fernando Corpin, whichcrimes were both serious in nature. Furthermore, said deceased reasonably believed that the appellant, being armed, might injure more persons, taking into consideration the strained relations between the followers of the two rival political factions in Biliran.

Now then, inasmuch as this court is already convinced that the appellant committed the two complex crimes of homicide with assault with which he was charged, the next question to be decided is that which concerns the penalty or penalties which should be imposed upon him.

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Article 89 of the old Penal Code, which was still in force when the two crimes in question were committed, provides that the penalty for the more serious crime, the same to be applied in its maximum period, should be imposed upon a person found guilty of a complex crime. Homicide is punished in said Code with reclusion temporal to its full extent, and that of assault upon an agent of persons in authority with prision correccional in its medium period to prisidn mayor in its minimum period and a fine of not less than 625 and not more than 6,250 pesetas. This seems to justify the imposition upon the appellant, in both cases, of the penalty corresponding to homicide, in its maximum period, that is, from seventeen years, four months and one day to twenty years of reclusion temporal, which penalty is exactly the same as that prescribed in article 48, in connection with article 249, of the Revised Penal Code.

Inasmuch as the mitigating circumstances of obfuscation, lack of instruction and voluntary surrender to the authorities should be taken into consideration in favor of the accused on the ground that the evidence shows that he scarcely knows how to write his name and that he voluntarily surrendered to the provincial fiscal of Leyte on the day following the incidents under consideration, should his penalty be necessarily fixed at seventeen years, four months and one day of reclusion temporal with the corresponding accessories and the indemnity provided in the appealed judgment? Undoubtedly not, because it is a rule that when an act is attended by two or more mitigating circumstances with no aggravating circumstance to change their value, the penalty next lower to that prescribed by law should be imposed upon the accused in the period that the court may deem applicable, according to the number and nature of such circumstances. (Rule 5 of article 64 of the Revised Penal Code, which is the same as rule 5 of article 81 of the old Penal Code, as amended by Act No. 2298.)

By virtue of said rule, the penalty which should be imposed upon the accused is the one next lower to reclusion temporal in its maximum period which is no other than reclusion temporal in its medium period. This is evident, taking into consideration rule 5 of article 61 of said Revised Penal Code, which is literally rule 5 of article 75 of the old Penal Code. Said rule reads as follows:

> "When the law prescribes a penalty for a crime in some manner not specially provided for in the four preceding rules, the courts, proceeding by analogy, shall impose corresponding penalties upon those guilty as principals of the frustrated felony, or of attempt to commit the same, and upon accomplices and accessories."

The four rules to which rule 5 refers read as follows:

> "1. When the penalty prescribed for the felony is single and indivisible, the penalty next lower in degree shall be that immediately following that indivisible penalty in the scale prescribed in article 70 of this Code.
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> "2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the above mentioned scale.
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> "3. When the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum period of another divisible penalty, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum period of that immediately following in said scale.
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> "4. When the penalty prescribed for the crime is composed of several periods, corresponding to different divisible penalties, the penalty next lower in degree shall be composed of the period immediately following the minimum prescribed and of the two next following, which shall be taken from the penalty prescribed, if possible; otherwise, from the penalty immediately following in the above mentioned scale."

It will be seen from said four rules that the appellant's case does not fall directly under any of them. It follows, therefore, that the question should be determined by proceeding by analogy to rule 4, in conformity with said rule

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5. And it should be so because the penalty of reclusion temporal in its maximum period is divisible into three periods, the duration of the maximum period thereof being from nineteen years, one month and eleven days to twenty years; that of the medium period from eighteen years, two months and twenty-one days to nineteen years, one month and ten days, and that of the minimum period from seventeen years, four months and one day to eighteen years, two months and twenty days. Such procedure is expressly authorized in article 82 of the old Penal Code which has become article 65 of the Revised Penal Code. Said article reads as follows:

> "In cases in which the penalty prescribed by law is'not composed of three periods, the courts shall apply the rules contained in the foregoing article, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions."

There can be no doubt but that the penalty prescribed by law for the crimes committed by the appellant is reclusion temporal in its maximum period, on the ground that it is so expressly provided in said article 89 of the old Penal Code or article 48 of the Revised Penal Code. In the case of People vs. Co Pao (58 Phil., 545), this court, notwithstanding what has been stated in the case of United States vs. Fuentes (4 Phil., 404), held that the penalty next lower to prision mayor in its maximum period is prision mayor in its medium period. Without repeating the reasons stated therein and proceeding by analogy, taking into consideration said rule 5 of article 75 of the old Penal Code (article 61, rule 5, of the Revised Penal Code), this court is of the opinion that the penalty which should be imposed upon the appellant in each of the two cases under consideration, is reclusion temporal in its medium period, or fourteen years, eight months and one day, which is the minimum of said penalty, tlue to the weight and number of the attendant mitigating circumstances in his favor, which are lack of instruction, passion or obf uscation and voluntary surrender to the authorities; and in order to grant him the benefits of Act No. 4103, the minimum of said penalty of fourteen years, eight months and one day would have to be fixed at twelve years and one day because, following the rule already stated, the penalty next lower to reclusion temporal in its medium period is correctly reclusion temporal in its minimum period.

Wherefore, with the modification that the appellant is sentenced in each of said cases Nos. 8922 and 8923 of the Court of First Instance of Leyte (G. R. Nos. 39270 and 39271, respectively), to the indeterminate penalty of from twelve years and one day to fourteen years, eight months and one day of reclusion temporal, and to indemnify the heirs of the deceased Fernando Corpin and Placido Delloro in the sum of P1,000, the appealed judgment is affirmed in all other respects, with costs against the appellant. So ordered.

Street, Abad Santos, Hull, and Vickers, JJ., concur.

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