

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EMILIO CABRERO, DEFENDANT AND APPELLANT.

G.R.No. 3956. January 10, 1908

Ponente: TORRES, J.

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TORRES, J.:

On the afternoon of the 24th of November, 1906, (several laborers working for the street-railway company, being assembled in the district of Santa Ana, city of Manila, for the purpose of receiving their wages, were directed to remain in single file and then successively approach a small house, where the paymaster had his office, in order to be regularly paid. The accused, as foreman in the service of the company, was in charge of the preservation of order and for such purpose he provided himself with a pick or spade handle, one end of which he daubed with mud and threatened to push against the clothing of the laborers if they left the line or created trouble. Benedicto Dio Pito left his place and forced his way into the file; the accused ordered him out, but he still persisted, and the accused then gave him a blow with the stick on the right side of the head, above the ear, in consequence of which the deceased, Benedicto Dio Pito, fell to the ground holding his head with his hands; thereupon the accused and another laborer rendered him prompt assistance and took him to the interior of a warehouse close by; the injured man shortly afterwards asked for water, which, however, he was unable to drink, and became unconscious, and upon being taken to St. Paul's Hospital died there a few hours later.

In consequence of the foregoing, an information was filed with the Court of First Instance charging Emilio Carrero with the crime of homicide, and after proceedings in prosecution, the court entered judgment on the 4th of December, 1906, sentencing the accused, as guilty of the crime of homicide, to the penalty of six years and one day of presidio mayor.

The fact that the deceased received a heavy blow with a stick, on the right side of the head, above the ear, and that in consequence thereof he died shortly after, was fully proven in the trial, and constitutes the crime of homicide as defined in article 404 of the Penal Code; in the commission of the above crime none of the characteristics of the crime of murder, as described in article 403 of said code, were present.

The accused pleaded not guilty, although he confessed to having struck the deceased on the right side of his head with a pick handle, one of the working tools; it is therefore unquestionable that he is the author of the violent death of Benedicto Dio Pito.

The accused, however, alleges that when he struck the blow he merely acted in self-defense in view of the attitude of the deceased, who, after insulting him, thrust his hand into his pocket as if for the purpose of drawing a dagger or a pocketknife and that in order to defend himself, because he believed that the deceased, owing to his attitude, was about to attack him, he struck him the blow with the stick he had provided himself with, in consequence of which the deceased fell to the ground, then arose at once, vomited, and then sat down; that he and two other men then assisted the deceased and conducted him to the interior of a warehouse, where he became unconscious, and later on he died in St. Paul's Hospital, whereto he was removed.

The statement of facts as made by the accused, by his counsel, and witnesses is lacking in truth; it is rather exaggerated and is not supported by the evidence adduced at the trial. But even taking the same to be true, it is unquestionable that there was some insult or provocation on the part of the unfortunate Benedicto Dio Pito, but no attack or aggression was made by him upon the accused to justify the violent assault by the latter with a stick, for it has not been shown that the deceased carried in his pocket or elsewhere any weapon or deadly instrument, so that there was not even an actual threat or imminent peril of an attack upon the accused.

Unlawful aggression is the main and most essential element to support the theory of self-defense and the complete or incomplete exemption from criminal liability; without such primal requisite it is not possible to maintain that a person acted in self-defense within the terms under which unlawful aggression is subordinate to the other two conditions named in article 8, No. 4, of the Penal Code. When an act of aggression is in response to an insult, affront, or threat, it can not be considered as a defense but as the punishment which the injured party inflicts on the author of the provocation, and in such a case the courts can at most consider it as a mitigating circumstance, but never as a reason for exemption, except in violation of the provisions of the Penal Code.

The theory that by the simple belief of a person that he would be attacked, a deadly blow may be inflicted on the ground of self-defense, even though it be with a stick, is not authorized by the law nor is it a doctrine established by the decisions of courts. In the judgment of the supreme court of Spain, dated October 31, 1889, not only was the belief of the individual who was obliged to defend himself considered but also the hostile attitude and other acts which, in the opinion of the court, were considered as real and ostensible acts of aggression; and, in other decisions of October 30, 1884, March 19, 1885, and November 15, 1889, a uniform doctrine was established to the effect that a threat even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient, but that it is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression. In this case the attitude and behavior of the deceased at the time certainly did not constitute the unlawful aggression which the law requires, and the insulting words addressed to the accused, no matter how objectionable they may have been, could not constitute so important a requisite as the aggression defined in the Penal Code.

It is not shown in the record of the case that the serious injury suffered by the deceased, and which caused his death, was not due to the blow he received from the accused, but to the striking of the head of the deceased against the ground when he was allowed to fall by the two men who removed him to the warehouse, as alleged by the accused; apart from the fact that the floor of the warehouse is of pine wood and not of stone, even though the shock was received, one can not believe that it was so heavy as to produce cerebral hemorrhage, and that death ensued in consequence thereof. Therefore, the lower court has rightly concluded that the death of the deceased was due to the blow he received on the head, not to the shock of his fall, and this conclusion is supported by the evidence which counsel for the accused has not rebutted nor contested in this instance.

In the commission of the homicide in question the circumstance of the accused being under 18 years of age must be considered, according to No. 2 of article 9 of the Penal Code, which requires, in connection with paragraph 2 of article 85 of said code, that the penalty next lower to the one imposed by article 404 should be applied. The penalty of prision mayor should ordinarily be imposed on the accused, but taking into account the mitigating circumstances 3 and 4 of said article 9, viz, that he never intended to cause so serious a harm as the death of Benedicto Dio Pito, and owing to the fact that provocation on the part of the latter immediately preceded the attack by the accused, and also considering that no aggravating circumstance is present, and, under rule 5 of article 81 of the code, the appropriate penalty to be inflicted on the accused should be the next lower to the above-mentioned penalty of prision mayor, that is, prision correccional in its medium degree. Therefore,

In view of the foregoing, it is our opinion that the judgment appealed from should be reversed and that Emilio

Carrero should be sentenced to the penalty of two years four months and one day of prision correctional, to suffer the accessory penalties of article 61 of the code, to pay P1,000 to the heirs of the deceased, or, in case of insolvency, to suffer subsidiary imprisonment not to exceed one-third of the principal penalty, and to pay the costs of both instances, and it is so ordered.

Arellano, C. J., and Mapa. J., concur.

CONCURRING

TRACEY, J.,

Concurring fully in the majority opinion, I desire to add the observation that the laws of America and of Spain appear to be in substantial accord as to the requisites of self-defense in cases of homicide. The unqualified doctrine that a man is justified in acting on the facts as they appear to him, whether his belief is well founded or not, is by no means established in the United States. There must exist a reasonable ground for his belief.

"* * * before one can justify the taking of life in self-defense he must show that there was reasonable grounds for believing that he was in great peril, and that the killing was necessary for his escape from peril and that no other safe means of escape was open to him." (People vs. Johnson, 139 N. Y., 358.) See also People vs. Kerrigan, 147 N. Y., 210, 215; People vs. Constantino, 153 N. Y., 24; People vs. Kennedy, 159 N. Y., 346.

Even in cases cited to sustain the extreme claim of self-defense it is held that the person defending himself must be "without fault or carelessness" (People vs. Miles, 55 Cal., 209), and must have "reasonable ground for his belief" (People vs. Herbert, 61 Cal., 544), and that "threats alone never justify a homicide" (People vs. Lynch, 101 Cal., 229). The California doctrine is fully stated in People vs. Hecker (109 Cal., 451).

It may be noted, however, that this court has not been disposed to recognize the obligation of escaping or retreating to avoid an attack, to the extent laid down in the American cases. (U. S. vs. Mack, 8 Phil. Rep., 701; U. S. vs. Grafton, 6 Phil. Rep., 55; XI. S. vs. Dimitillo, 7 Phil. Rep., 475.)

The rule maintained by the Federal courts may be found in U. S. vs. Outerbridge (Fed. Case 15978) and U. S. vs. Wiltberger (Fed. Case 16738). In this latter case Mr. Justice Washington said (p. 729):

"The present case is one which defendant's counsel have contended is justified by law —justified, they say, upon the ground of self-defense. As to this, the law is that a man may oppose force to force, in defense of his person, his family, or property, against one who manifestly endeavors, by surprise or violence, to commit a felony, as murder, robbery, or the like. In this definition of justifiable homicide, the following particulars are to be attended to. The intent must be to commit a felony. If it be only to commit a trespass, as to beat the party, it will not justify the killing of the aggressor. No words no —gestures, however insulting and irritating—not even an assault, will afford such justification; although it may be sufficient to reduce the offense from murder to manslaughter."

The accused was not without fault. His mistaken appreciation of personal danger may have been due to his youth and inexperience, but for that the law makes liberal allowance in adjusting the penalty.

DISSENTING

JOHNSON AND CARSON, JJ.,

We can not agree with the findings of fact nor with the conclusions of the majority opinion.

After a careful study of the facts adduced during the trial of the cause, we have reached the conclusion that the attorney for the appellant has correctly stated the facts, which statement we adopt as being true and correct. These facts are as follows:

Appellant was tried and convicted by the Court of First Instance of Manila on a complaint for homicide, charging him with having caused the death of one Benedicto Dio Pito by striking the latter with a hammer handle, on the 24th day of November, 1906. The penalty imposed by the court was six years and one day of presidio mayor.

It seems that on November 24, 1906, in the district of Santa Ana, of this city, the paymaster of J. G. White & Co. was engaged in paying off some hundreds of laborers employed on the construction of the Fort McKinley electric tram line. The defendant, a boy of 16 years; was an employee of the company, and was engaged on that day in assisting the general foreman to keep the workmen in single file, so that they might be paid in a regular and orderly manner. During a temporary absence of the general foreman, the boy was left alone, and the workmen seem to have taken advantage of the opportunity to make trouble. The deceased, Benedicto Dio Pito, undertook to force his way into the line, and persisted in so doing, notwithstanding the repeated orders of the defendant. Defendant carried a stick (Exhibit A), and this he had daubed with mud and used to keep the men in place by threatening to put it against their clothing. It does not appear that he made such a threat to the man Dio Pito, but the latter after being removed from the line for the third time, stepped toward defendant and said: "Don't you hit me with that stick, you....." Several other men left the line and followed Dio Pito as he advanced toward the defendant, and the crowd of workmen shouted "Hit the Spaniard," "Kill him," "Fight the Spaniard," and the like. It seems that defendant had once seen a quarrel between two Filipinos, in which one drew a knife and stabbed the other. He had seen a vicious assault on the paymaster by the same gang of laborers, including Dio Pito, only two weeks before, when knives and bolos had been in evidence. "There had been trouble in there before," as defendant says (p. 38 of the record), "and I was afraid of this man." As he stepped forward, Dio Pito thrust his hand into his pocket, and this action together with the language and demeanor of deceased, the shouts and conduct of the by standers, and defendant's previous experience and his knowledge of the dangerous character of his assailant, led him to believe that deceased was about to draw a knife and attack him. Defendant took a step back and struck with the stick which he carried and deceased fell to the ground. The blow appeared at first to have had no serious effect, and defendant was foremost in rendering aid, but after a short time Dio Pito became unconscious, and he died in the hospital on the same day, the immediate cause of death being cerebral hemorrhage.

We are of the opinion that under these facts the defendant should have, been discharged. The doctrine seems to be well established both by the supreme court of Spain, as well as by the various courts of the United States, that whenever a man undertakes self-defense he is justified in acting on the facts as they appear to him. If, without fault or carelessness, he is misled concerning the facts and defends himself according to what he supposes the facts to be, he is justifiable, though they are, in truth, otherwise and he really had no occasion for the extreme measure taken by him. Actual danger is not necessary to justify the right of self-defense; a necessity, apparently real, is real so far as the defendant's conduct is regarded. Either is sufficient to protect the defendant. (People vs. Miles, 55 Cal. 209; People vs. Herbert, 61 Cal. 544; Bishop's Criminal Law, sec. 305; Viada, Vol. I, pp. 98, 136; U. S. vs. Dimitillo,[1] 5 Off. Gaz., 201; U. S. vs. Mack,[2] 5 Off. Gaz., 792.)

The judgment of the lower court should be reversed.

WILLARD, J.:

I dissent.

Defendant convicted; penalty reduced.

[1] 7 Phil. Rep., 475.

[2] 8 Phil. Rep., 701.

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