

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FLORENCIO PARAS, DEFENDANT AND APPELLANT.*G.R. No. 3959. December 16, 1907*

Ponente: TORRES, J.

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TORRES, J.:

Between 9 and 10 p. m. on September 9, 1906, as Florencio Paras and Feliciano Gadula were in a carenderia or eating place situated near the market of the town of Angeles, Pampanga, James Reed, an American negro, made his appearance therein and at once approached the said Paras and entered into conversation with him; shortly thereafter the aforesaid two individuals left in the direction of the market; Keed followed them, and on nearing Paras attacked the latter, striking him in the face with his fist In consequence the assaulted man fell to the ground, where Reed repeatedly kicked him, but immediately after this aggression the accused fired four shots with a revolver at the deceased, wounding him in the right arm, in the lumbar region, and in the gluteal region, from the result of which wounds he fell dead. Upon hearing the shots, three members of the municipal police of the town, Maximino Samia, Lucas Ocampo, and Monico Pingal, repaired to the place of the occurrence and found the accused with a .38-caliber Colt revolver and leather holster, in his hand, and at a distance of about 12 meters the body of James Reed was lying on the ground with three wounds upon it.

For the above reasons, a complaint was filed by the provincial fiscal with the Court of First Instance accusing Florencio Paras 'of the crime of homicide, and in view of the result thereof the judge, on the 16th of January, this year, entered judgment sentencing the accused to the penalty of twelve years and one day of reclusion temporal, to pay an indemnity of P1,000 to the heirs of the deceased James Reed, and the costs. From said judgment the accused appealed.

The above-stated facts, fully proven in the present case, constitute the crime of homicide defined and punished by article 404 of the Penal Code since it is an unquestionable fact, confessed by the accused himself, that owing to his having been violently assaulted by James Reed, the American negro, he fired four shots at his aggressor, and that three of such shots seriously wounded said aggressor and caused, his death shortly after, None of the characteristics of the crime of murder as enumerated in article 403 of the code were present herein.

The accused, Florencio Paras pleaded not guilty and alleged in his defense that without any cause or reason whatever he was assaulted by the deceased and knocked down and in consequence of the blow he received in the face it swelled up and his nose bled; that while on the ground Reed kicked him; therefore, in proper self-defense he fired several shots at his aggressor with the revolver which he carried in his hand.

It is true that the accused alleged that the weapon belonged to his assailant, from whom he managed to snatch it a moment before when the deceased tried to shoot the~ accused, the revolver, however, missing fire; but this allegation of the accused is incredible and we consider it as a defense resorted to since the particulars of the case do not establish the conviction that the weapon belonged to the deceased. Persons who know him and conversed frequently with him never saw any firearm in his possession, and. it is not likely that if Paras managed to snatch

the revolver from the deceased as the latter attempted to shoot him he also succeeded in getting hold of the holster.

However, in considering the allegation made by the accused in his defense it is immaterial to us whether the revolver belonged to the deceased or to the accused, because the essential point in the case is that without any known cause or reason, Florencio Paras, in the darkness of night, was assaulted in a brutal manner by James Reed, who knocked him down, and the assaulted party in self-defense fired at his assailant several shots with the revolver he carried in his hand.

From the facts proven in these proceedings it is inferred that the three requisites named in No. 4 of article 8 of the Penal Code are present in the homicide, inasmuch as without previous provocation on the part of the accused Paras, he was suddenly and violently assaulted, being struck in the face, the blows causing blood to flow, and as a result of the aggression he was laid flat on the ground, where he was kicked; given the rapidity with which the act was carried out and the imminence of the danger, it is impossible to affirm that being already prostrate on the ground the assault of which he was the victim would have ceased. It is reasonable to believe that the accused, when he defended himself by shooting his assailant, did not exceed his rights in his defense or employ unnecessary means to repel an attack already commenced in a cruel and violent manner or to prevent its continuation, because from the suddenness of the attack, the end thereof, without risk to his person, could not be assured. It would not be proper or reasonable to claim that he should have fled or selected a less deadly weapon, because in the emergency in which, without any reason whatever, he was placed, and being attacked by a person larger and stronger than himself, there was nothing more natural than to have made use of the weapon he held, in order to defend himself; anyone, upon being assaulted in a similar manner, would have acted likewise. In the natural order of things, following the instinct of self-preservation, he was compelled to resort to a proper defense; an impossibility can not be demanded of the injured person when it can not be affirmed that he could have done less than he did in defending himself by shooting at his assailant who had maltreated him and knocked him down.

The reasonable necessity of the means employed in the defense, according to the jurisprudence of courts, does not depend upon the harm done, but rests upon the imminent danger of such injury. (Decision of Dec. 22, 1887.)

With the sole purpose of setting forth herein the constant opinion of the supreme court of Spain in respect to the application of paragraph 4 of article 8 of the Penal Code of 1870, similar in this connection to the one in force in these Islands, the opinion of the well-known and reputable writer Sr. Viada, on page 99, Volume I of his, work, is here quoted. It reads:

"The questions of lawful defense are undoubtedly those which in greater number are submitted to the decision of the supreme court, by means of cassation proceedings, generally instituted by the counsel of the culprits on account of violations of article 8, No. 4, of the Penal Code. Therefore the decisions rendered in this matter are very numerous. It being impossible to make an extract of all of them, we will limit ourselves to pointing out the cases, unfortunately too frequent, wherein the supreme court has declared that an appeal should be considered by it because the sala sentenciadora (sentencing chamber) failed to apply in part or in whole, as it should, the exemption from criminal liability in favor of the culprit pursuant to said article and number, or according to article 87, which directs that the penalty lower by one or two degrees than that imposed by law shall be applied when the number of the concurrent requisites is greater than is needed to exempt from criminal liability in the respective cases dealt with in article 8.

"On the other hand, the jurisprudence of the supreme court does not register but a very limited number of cases wherein it has been held that the sentencing court has improperly applied the said circumstance of exemption from criminal responsibility in favor of the culprit or that the prosecuting attorney, the ever-faithful representative and keeper of the law, has instituted cassation proceedings in said sense. This is a most peculiar phenomenon which ought justly to call the attention of judges and tribunals, and give them to understand the

necessity of somewhat mitigating the excessive severity shown by them in this important matter, as a general rule, in connection with the judgments finally reversed and annulled by the supreme court."

Following the doctrine of the courts and the settled interpretation of said article and number of the Penal Code, the accused in the present case should be exempted from all liability as to the homicide in question, and therefore, under the considerations above set forth, it is our opinion that the judgment appealed from should be reversed and, by virtue of his complete exemption, Florencio Paras is hereby acquitted, with the costs of both instances de oficio. and his bail is hereby canceled. So ordered.

Arellano, C. J., Johnson, Carson, and Willard, JJ., concur.

Mapa and Tracey, JJ., dissent.

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