

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO NARVAES, DEFENDANT AND APPELLANT.

*G. R. No. 39799. March 20, 1934*

Ponente: DIAZ, J.

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### DIAZ, J.:

Charged with homicide, the herein appellant, on May 13, 1933, was convicted of said crime and sentenced by the Court of First Instance of Laguna to fourteen years, eight months and one day of reclusion temporal, with the corresponding accessory penalties, to indemnify the heirs of his victim Benito de Silva in the sum of P1,000, and to pay the costs of the proceedings. He appealed from that sentence, and now assigns the following alleged errors as committed by the trial court, to wit:

"I. The court a quo erred in not holding that the defendant Primo Narvaes acted in self-defense.

"II. The trial court erred in not sustaining that Benito de Silva's ante-mortem declaration (Exhibit 8) was not admissible as evidence.

"III. The court a quo erred in not declaring that the defendant's true name is Primo Narvaes instead of Pedro Narvaes.

"IV. The trial court erred in sentencing the accused to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal; to suffer the corresponding accessory penalties; to indemnify the heirs of the deceased in the sum of P1,000; to pay the costs, and in not acquitting the defendant."

It has been established without question that on August 28, 1932, in the barrio of Pitlan of the municipality of Cabuyao, Province of Laguna, the appellant inflicted on Benito de Silva three wounds, one, an inch long, on the left elbow; another, four inches long and triangular in form, on the upper part of the right arm, penetrating the entire thickness of the deltoid muscle, and another, five inches long, on the upper left side of the abdominal region, exposing his intestines. It is stated in the medical certificate Exhibit A that the wounds in question were caused by a sharp pointed instrument, and the oral evidence on that point is to the effect that they were caused by the penknife Exhibit C.

Benito de Silva died as the result of his wounds a few minutes after eight o'clock on the night of September 1, 1952.

The evidence of both the prosecution and the defense agrees on the following facts: That the deceased Benito de Silva was the foreman of one of several groups of tenants of the Calamba Sugar Estate; that for several years the appellant was one of the tenants belonging to that group under the supervision of said Benito de Silva, and as such tenant, said appellant and the other members of the group were, on the morning in question, obliged to plow a part of the hacienda where they worked, and that, when the other tenants were already busy at their work the appellant was still engaged in threshing palay close to where the others were plowing. Both parties also agree on the fact that Benito de Silva, upon seeing that the appellant had not yet joined the other tenants in the work they had to

perform that morning, rebuked said appellant in the following or similar words: "We are already plowing here and you still are engaged in threshing palay; are you not ashamed of yourself?" They likewise agree in that the appellant forthwith left his work in order to get his plow and carabao, with which he returned a few minutes later.

The evidence of the prosecution further shows that after the appellant had made two turns with his plow on the land which he and his companions were plowing, he stopped to await the arrival of Benito de Silva. When De Silva had come near enough, the appellant, with his right hand in his pocket, told the former that he had embarrassed him before his companions with the remarks he had made a few moments before, and, without hearing any further explanation, he forthwith attacked De Silva with the penknife with which he was armed, as it later turned out, inflicting upon said De Silva the three wounds hereinbefore described.

The defense tried to prove that when the appellant was already plowing, the deceased continued to insult him saying that he and his father were lazy and that both were "hijos de p. . ."; that the appellant answered the deceased asking him not to insult him so much because he was already plowing; that the deceased, who was bigger than the said appellant, disgusted at the latter's answer, caught him by the neck, choking him until his fingers sank deep in the flesh, and later throwing him to the ground; that while the appellant lay on the ground, the deceased mounted on top of him and placed his knee on the appellant's abdomen without loosening his grip on his neck; and that it was under these circumstances when the appellant remembered his penknife and with it dealt the deceased several blows, inflicting upon him the three wounds above-described. It is on these grounds that the appellant pleads justification of his acts, insisting that he justly acted in self-defense.

After properly and carefully analyzing and weighing the evidence of both the prosecution and the defense, this court cannot escape the conclusion that the evidence of the former carries more weight and deserves more credit than that of the latter.

According to the testimony of the eyewitness Ambrosio Dimapilis, who was one of the four tenants who were plowing on that occasion, not counting the deceased, the appellant was the aggressor. The appellant himself, giving his version of the crime to police sergeant Francisco Villanueva, who arrested him shortly thereafter, and while he was being conducted to the office of the municipal police of Canlubang, stated that he inflicted the knife-wounds on the deceased because the latter had made certain insulting remarks to him.

The defense claims that the remarks made by the deceased were not sufficient to provoke the appellant and contends that, not being so, it was impossible for the appellant to have felt so suddenly offended as to immediately resort to violence for the purpose of avenging with bloodshed and insult which in fact never existed. Such remarks might not have been insulting to some but the truth is that in the case under consideration they were so to the appellant. The reason for this is that there are moments in which, when a person is not in his right mind or his judgment is not calm and clear—and it may be assumed—that at that time the appellant was in such state of mind because he was prevented from finishing a task which he had began—the most harmless remarks seem to be insulting and provoking, particularly taking into consideration the tone, the occasion, and the circumstances under which they are uttered.

The testimony of the appellant's mother and that of his witnesses Valentin Carandang and Joaquin Prescilla, who claimed to have witnessed the crime, his mother, very closely, and the other witnesses, from a distance of thirty armlengths, are undeserving of credit for several reasons, to wit: (1) The appellant's mother testified that she had approached the deceased to beg him to spare her son's life but that she walked away because the said deceased told her that he would also strangle her; and the other two witnesses, in turn, testified that the said woman did not approach the deceased but remained at a distance of ten arm-lengths from him, confining herself to shouting for help. Be that as it may, it is improbable that the appellant's mother would merely confine herself to shouting for

help without approaching her son for the purpose of helping him herself, seeing as she in fact saw, according to her testimony, that her son's aggressor was unarmed, because it is instinctive in every mother to run to the aid of her son when he is in danger, as the appellant was on that occasion; (2) at that time the said two witnesses were residents of the barrio of Bagbag, Tanauan, Batangas, a far distant town from Cabuyao, which is within the Province of Laguna and where the crime was committed, and it is a singular coincidence that they should be passing by the scene of the crime precisely at the time the same was being committed, and it is highly improbable that they, being the appellant's friends and townmates, would merely leave the place without inquiring of him the cause of his fight with the deceased, particularly after having seen that the said deceased emerged therefrom with several wounds and that he fell to the ground, unable to arise, facts which must necessarily be assumed to have been witnessed by them if their testimony that they had really seen the fight is to be accepted, because the truth is that after the deceased had received the wound on his abdomen, he fell to the ground with his intestines exposed; (3) the wound on the shoulder of the deceased is inconceivable unless the theory of the defense that the appellant inflicted it while he was lying on the ground, face upwards, with the deceased on top of him and one of the latter's knees on his abdomen, is rejected, and the reason for this is that inasmuch as the appellant had the weapon in his right hand while he was lying face upwards and being held by the neck by the deceased who was on top of him, according to the same theory of the defense, the wound should have been inflicted on the left shoulder of the deceased, not on the right.

With respect to the third alleged error, which the appellant claims to have been committed by the court a quo, the weight of the evidence shows that the appellant's true name is Pedro Narvaes, not Primo Narvaes. Exhibits 2 and F, which are the baptismal certificates of Primo Narvaes and Pedro Narvaes, respectively, and which were duly admitted without any objection on the part of the defense, show that the said two persons are brothers by the same father and mother and are furthermore grandsons of the same paternal and maternal grandparents.

According to Exhibit F, Pedro Narvaes was born on January 17, 1913, and is the son of Leoncio Narvaes, a native of Bagongbayan, in the municipality of Tanauan, Batangas, and of Teodora Castillo, of the same barrio and town, and that he is the grandson of Geronimo and Francisca Reyes on his father's side, and of Eustaquio and Dorotea Molinyane on his mother's side, his godfather being Eugenio Quiachon.

According to Exhibit 2, Primo Narvaes was born on June 9, 1915, and is the son of Lucio Narvaes, a native of Bagongbayan, Tanauan, and of Teodora Castillo, also of the same barrio of Bagongbayan, Tanauan, and is a grandson of Geronimo and Francisca Reyes on his father's side, and of Eustaquio and Dorotea Molinyane on his mother's side, his godfather being Julio Austria.

It will be noted that the said two documents, Exhibits 2 and F, coincide in their statement that the children therein referred to are sons of the same mother and grandsons of the same grandparents. The only difference that may be noted relates to the name of the alleged father of the said children for, while the first certificate gives Leoncio as the name of Primo's father, the second states that the name of Pedro's father is Lucio. This discrepancy, however, is of no consequence because Leoncio and Lucio sound practically the same, and the error in their spelling must have been due to carelessness on the part of the clerk who prepared and wrote in the baptismal record of the parish of Tanauan, Batangas, the two entries from which the documents in question were copied. Were not this sufficient to show that the herein appellant is really the elder son of the spouses Teodora Castillo and Lucio Narvaes, the record of the case supplies other data as deserving of credit, if not more so, than the documentary evidence above stated. The residents of the Calamba Sugar Estate, who had testified in this case as witnesses for the prosecution and who know the appellant and his entire family, maintain, and the census of the said hacienda's tenants shows, that the appellant is the same Pedro Narvaes, elder son of the spouses Leoncio or Lucio Narvaes and Teodora Castillo, not Primo Narvaes, who is the second son of the said spouses, and who does not live with

them during the schoolyear because he is studying in another municipality different from Cabuyao, Laguna. Furthermore, when the appellant was arraigned under the name of Pedro Narvaes, which is the name appearing in the information, he merely entered his plea of "not guilty" under the said name. It was on that occasion that he should have for the first time raised the question of his identity, by filing a demurrer based on the court's lack of jurisdiction over his person, inasmuch as he was then considered as Pedro Narvaes, not Primo Narvaes. Not having filed the said demurrer, it must necessarily be understood that he renounced it and therefore he is now estopped from raising, or insisting to raise, the same question, not only in this appeal but even at the trial. Therefore, whether the said question be considered from one angle or another, at all events, the conclusion must be the same, that is, that the trial court did not err in considering the appellant as Pedro Narvaes, not as Primo Narvaes.

As to the last alleged error relied upon by the appellant in his brief, it should be stated that, from what the record discloses and according to the above statement of the facts of the case, and also according to the foregoing considerations, the act committed by the appellant clearly constitutes the crime of homicide, which is penalized by article 249 of the Revised Penal Code with reclusion temporal in its full extent. Inasmuch as there is no evidence of record showing the presence of any aggravating or mitigating circumstance at the commission of the crime, which may serve to modify the said appellant's liability, the penalty which he deserves is reclusion temporal in its medium period, that is, from fourteen years, eight months and one day to seventeen years and four months. (Article 64, rule 1, of the Revised Penal Code.) Therefore the appealed sentence is in accordance with law.

Wherefore, the said sentence is hereby affirmed in toto, with costs against the appellant. However, in view of Act No. 4103, which provides for an indeterminate sentence, and taking into consideration the youth of the appellant, who had scarcely arrived at the age of 19 years when he committed the crime, the minimum of the said penalty imposed upon him is hereby fixed at six years and one day of prision mayor, so that the same shall be understood to be from six years and one day of prision mayor to fourteen years, eight months and one day of reclusion temporal. So ordered.

Street, Abad Santos, Butte, and Goddard, JJ., concur.

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