

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ANSELMO IGNACIO Y VELASCO, DEFENDANT AND APPELLANT.

G.R. No. 40140, November 27, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal from a decision of the Court of First Instance of Manila, finding the defendant guilty of the crime of homicide and sentencing him to suffer fourteen years, eight months, and one day of reclusion temporal, with the accessory penalties provided by law, to indemnify the heirs of the deceased Jose Vizcarra in the sum of P1,000, and to pay the costs.

From this judgment the defendant appealed to this court, and his attorney now makes the following assignments of error:

"1. The trial court erred in not giving due weight and credit to the evidence presented by the accused Anselmo Ignacio y Velasco, not successfully contradicted by the prosecution, to the effect that he acted in defense of his person or rights.

"2. The trial court likewise erred in finding the accused Anselmo Ignacio y Velasco guilty of the crime of homicide imputed to him in the information, and sentencing him to suffer fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, to indemnify the heirs of the deceased Jose Vizcarra in the sum of P1,000 and to pay the costs, notwithstanding the fact that his guilt was not proven beyond a reasonable doubt."

It appears from the evidence that on the evening of April 25, 1933 Jose Vizcarra, the deceased, was at the Paco railroad station attending to the unloading of some boxes of fish belonging to his father which had arrived about half past six that evening. Anselmo Ignacio, the accused, was one of the two laborers that unloaded the boxes, one of which dropped to the ground and was damaged. This provoked Jose Vizcarra, and he addressed some injurious epithets to the accused. A fight ensued, but they were separated after Jose Vizcarra had received a blow in the face. The accused was then hired by a woman to take a box of fish to the Quinta Market in Quiapo, and left with her in a carretela. Jose Vizcarra sent a messenger to inform his father, Felix Vizcarra, in Baclaran, Parañaque, as to what had occurred. Upon receiving the message, Felix Vizcarra notified his brothers, Julian and Fernando, and the three of them set out for the Paco station in an automobile of Sebastian Vizcarra, driven by Sabino Morento. When they reached the station the accused had not yet returned from the Quinta Market.

There is a sharp conflict in the evidence as to what subsequently took place. The trial judge, accepting the prosecution's version of the incident, found that Julian Vizcarra asked a laborer named Totoy where the accused was, while Felix Vizcarra went towards a carretela where Jose Vizcarra was watching the boxes of fish; that Felix Vizcarra took charge of the loading of the boxes, and while he was thus engaged the accused arrived and began to wrangle with Julian Vizcarra; that a fight ensued, but that after they had exchanged a few blows they were separated; that Julian Vizcarra, who used only his fist, was wounded in the left arm with a cutting instrument; that

the accused then attacked Felix Vizcarra and wounded him twice in the shoulder, causing him to lose consciousness and fall to the ground; that when Jose Vizcarra saw what had happened to his father he ran to help him, but before he could reach his father, the accused attacked Jose Vizcarra and stabbed him in the back with a knife, and that as a consequence thereof the injured man died three days later; that when the accused saw that Jose Vizcarra had also fallen to the ground he began to run, and meeting Fernando Vizcarra coming out of a shop in the station where he had gone to buy cigarettes the accused attacked him with a pocketknife, wounding him in the left shoulder; that Julian Vizcarra, as well as Felix and Fernando Vizcarra, struck the defendant in the face and on the head with their fists.

The court further found that if it be granted that the accused was provoked by Julian Vizcarra when he asked the accused why he had assaulted Jose Vizcarra, and that if it be also conceded that the first aggression in the form of blows with the fist came from Julian Vizcarra, nevertheless the accused was not justified in making use of his pocketknife, and still less in attacking the other Vizcarras, because there was no reasonable necessity of the means employed to repel the aggression.

The case for the prosecution rests upon the testimony of the chauffeur, Sabino Morento, and of Julian, Fernando, and Felix Vizcarra. This chauffeur, who was employed by Sebastian Vizcarra, can scarcely be regarded as a disinterested witness. The attorney for the appellant points out this man's name was not included in the prosecution's list of witnesses, but that he was the first witness called. The evidence shows that he had been examined in the fiscal's office. His name ought to have been included in the list of witnesses furnished by the fiscal to the attorney for the defendant.

The defendant and his witnesses, Marcelino Baltazar and Jose Torno, testified on the other hand that the Vizcarras were the aggressors; that Felix Vizcarra struck the accused, and that when he ran, the Vizcarras pursued him; that the accused retreated until he reached the iron railing of the station, where he was cornered by the Vizcarras and struck by them with their fists and with sticks; that believing his life to be in danger and remembering his knife he snatched it out and struck at his assailants until he was able to free himself.

Jose Torno, 49 years old, married, and a watchman at the Paco station, who would appear to be the most disinterested of the eyewitnesses, testified as follows:

"P. En la tarde de ese dia 25 de abril de 1933 ¿recibio Ud. instrucciones del Jefe de la Estacion de Paco, a eso de las seis de la tarde?—R. Si señor.

"P. ¿Cuales fueron esas instrucciones?—R. El Jefe de la Estacion me ordeno que yo fuese al sitio donde se estaban descargando los cajones de pescados porque segun el Jefe de la Estacion hubo una riña o pelea entre un cargador de la estacion y un tal Jose y que estuviese alli para estar alerta por lo que pudiera ocurrir, en vista de que el mencionado Jose mando llamar a algunos companeros suyos desde Baclaran.

"P. ¿Y que hizo Ud. en relacion con esas instrucciones?—R. Yo entonces me dirigi al sitio donde se estaban descargando los pescados y antes de llegar alli, vi a Julian Vizcarra que venia hacia mi. Yo entonces le dije que sea cual fuere el motivo de la pelea que tuvo lugar entre Jose y el cargador Anselmo, que ellos no causen ningun desorden y que si tenian alguna reclamacion que la presenten al Jefe de la Estacion. Poco despues de decir yo esto, vi que venia detras de mi Anselmo que iba perseguido por otros individuos y cuando le dieron alcance unos le pegaban con palos y otros le propinaron puñetazos.

"P. ¿Y vio Ud. a donde se dirigio Anselmo?—R. Entonces vi que Anselmo corrio en direccion a Pandacan y cuando vi que le salio al encuentro uno de aquellos individuos, Fernando Vizcarra y vi a este sacar del cinto un pedazo de madera y empezo a pegar a Anselmo. Este retrocedio hasta llegar a la reja que alli habia entre los rieles y alli le acorralaron los hermanos. Yo me puse muy nervioso cuando vi aquello y fui casi corriendo al telefono para pedir socorro en la estacion de Bagumbayan."

No specific reference to the testimony of this witness was made by the trial judge in determining who was the aggressor. Defendant's account of what occurred is as follows:

"P. Diga Vd. ¿que ocurrió entre Vd. y Felix Vizcarra?—R. Me llamo Felix Vizcarra en cuanto me vio y al acercarme a el me pregunto si yo era el Emong que le habia golpeado a su hijo, y yo conteste 'si, señor'.

"P. ¿Y que paso?—R. Luego me pregunto 'por que le habia yo golpeado con el puño a su hijo' y yo empecé a dar una explicacion y apenas habia explicado, enseguida me dio un puñetazo.

"P. ¿Le toco aquel puñetazo?—R. Si, señor, en la cara, cerca de mi ojo izquierdo.

"P. ¿Qui ocurrió a Vd.?—R. Yo me eche a correr en direccion a Pandacan.

"P. ¿Llego Vd. al sitio donde Vd. queria ir?—R. No, señor, porque uno de los Vizcarras me atajo el paso y me pego con un palo.

"P. ¿Quien era si Vd. recuerda?—R. Fernando Vizcarra.

"P. ¿Y le toco a Vd.?—R. Pude esquivar el golpe.

"P. ¿Donde ha ido Vd. despues de aquello?—R. Volvi al sitio donde habia venido con la intencion de saltar la reja que habia entre los rieles.

"P. ¿Pudo Vd. saltar sobre aquellas verjas de hierro?—R. No, señor, porque muchos me acorralaron.

* * * * *

"P. Antes de huir de aquel sitio, ¿puede Vd. informar al Juzgado si ha hecho Vd. algo a aquellos que le acorralaban?—R. Cuando yo pense que yo no saldria vivo de aquel trance, se me ocurrió que yo llevaba un cortaplumas.

"P. ¿Uso Vd. ese cortaplumas?—R. Yo eche mano del cortaplumas para defenderme."

In this connection it should be observed that the defendant told substantially the same story when he was investigated by a policeman two hours after the incident took place.

We find it difficult to believe that the incident occurred as related by the witnesses for the prosecution. It is an admitted fact, as already stated, that after the fight between Jose Vizcarra and the accused, the former sent word to his father, Felix Vizcarra, in Baclaran, as to what had happened, and Felix Vizcarra and his brothers Julian and Fernando immediately went to the railroad station to find out, according to them, the cause of the fight between Jose Vizcarra and the accused. It seems to us more likely that they went there for the purpose of thrashing the accused in retaliation for what he had done to Jose Vizcarra. If it had been the intention of Felix Vizcarra merely to ascertain the cause of the fight between his son and the accused, it would not have been necessary for him to take his two brothers with him. Furthermore, it seems to us improbable that Felix Vizcarra should go off to look after the loading of the boxes of fish and leave it to Julian Vizcarra to ask the accused for an explanation. At any rate, if the incident had begun with the fight between the accused and Julian Vizcarra, it is unreasonable to believe that Felix Vizcarra, and Jose Vizcarra would have refrained from participating therein and waited to be stabbed one after the other by the accused. The very testimony of the witnesses for the prosecution proves the falsity of their story. They testified that the accused first stabbed Julian Vizcarra, and then Felix, Jose, and Fernando Vizcarra one after the other with the same knife; but they also testified that each one of the Vizcarras struck the accused with his fists, and defendant's bruises clearly prove that he received several blows.

We are constrained to find, as appears from the testimony of the watchman at the station, that the Vizcarras were the aggressors, and that the accused made use of his knife in self-defense after he had been attacked by the four

Vizcarras and was cornered and could not escape and had no other means of protecting himself.

The lower court lays stress upon the fact that although the witnesses for the defense testified that some of the defendant's assailants struck him with clubs and others with their fists, no clubs were found by the policeman who investigated the incident shortly after it had occurred. This fact does not necessarily prove that none of the defendant's assailants made use of clubs. The watchman testified positively to seeing the clubs; but in any event the accused was cornered, he had his back to the iron railing, and three or four men, who were larger and stronger than he, were striking him with their fists, if not with clubs. Although under ordinary conditions the use of a knife in repelling an aggression when one has been assaulted by another with his fists is not sanctioned by the law, nevertheless under the special circumstances of this case we are convinced that there was reasonable necessity of the means employed by the accused to protect his life.

In the case of the People vs. Sumicad (G. R. No. 35524, promulgated March 18, 1932, 56 Phil., 643), this court said:

"It is undoubtedly well established in jurisprudence that a man is not, as a rule, justified in taking the life of one who assaults him with his fist only, without the use of a dangerous weapon. The person assaulted must, in such case, either resist with the arms that nature gave him or with other means of defense at his disposal, short of taking life. But that rule contemplates the situation where the contestants are in the open and the person assaulted can exercise the option of running away. It can have no binding force in the case where the person assaulted has retreated to the wall, as the saying is, and uses in a defensive way the only weapon at his disposal. One is not required, when hard pressed, to draw fine distinctions as to the extent of the injury which a reckless and infuriated assailant might probably inflict upon him (Brownell vs. People, 38 Mich., 732)."

"* * * it is not true as a matter of law that in all cases an attack with the fists alone or an attack by an unarmed man does not justify accused in the use of a deadly weapon in such manner as to produce death; there may be other circumstances, such as the very violence of the attack or a great disparity in the age or physical ability of the parties, which give deceased [accused] reasonable ground to apprehend danger of death or great bodily harm and justify him in employing a deadly weapon in self-defense." (30 C. J., 74.)

As we have seen, the incident began when Jose Vizcarra insulted the accused and struck him because the accused had dropped one of the boxes; and when Jose Vizcarra was joined by his father and uncles at the railroad station they attacked the accused because of the fight over the dropping of the box of fish. All the essential elements of self-defense, namely, lack of sufficient provocation on the part of the accused, unlawful aggression, and reasonable necessity of the means employed to repel it, were present when the accused stabbed the deceased.

For the foregoing reasons, the decision appealed from is reversed, and the appellant is acquitted, with the costs de oficio.

Avanceña, C. J., Street, Abad Santos, and Butte, JJ., concur.

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