THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. IGNACIO MACASPAC AND RAFAEL PAULE, DEFENDANTS AND APPELLANTS.

G. R No. 40597. September 28, 1934

Ponente: AVANCEÃ‘A, C.J.

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AVANCEÃ‘A, C.J.:

The appealed judgment declares the appellants guilty of the crime of homicide committed on the person of Silvino Sabado, and sentences Ignacio Macaspac, as principal, to twelve years and one day of reclusion temporal, and Rafael Paule, as accomplice, to six years and one day of prision mayor, and both to indemnify the heirs of the deceased in the sum of P1,000.

The appellants lived on a parcel of land belonging to the deceased. One day, Rafael Paule's horses destroyed the growing crops of the deceased. The latter reproached Paule for having let his horses loose and Paule apologized because it was merely due to negligence on his part. According to the evidence for the prosecution, at this juncture Ignacio Macaspac arrived, entered into the conversation and immediately stabbed the deceased with a penknife, inflicting upon him the wounds which resulted in his death. According to the evidence for the defense, the deceased, during his conversation with Macaspac, struck the latter with a bob and it was then that Macaspac attacked him with a penknife.

The court arrived at the conclusion that the deceased and Macaspac had agreed to fight it out. This court finds that this conclusion is supported by the evidence. Before the fight between the deceased and Macaspac began, both were facing each other, the deceased being armed with a bolo and Macaspac with an open penknife, according to the witness for the defense Feliciano Bernal, and each was cautiously advancing towards the other, according to Paule's affidavit made before the trial. Under such circumstances, and in a fight which had been acceptable to both combatants, the fact that it was the deceased who started the aggression is of no moment, and in such case, it cannot serve as a ground for a plea of legitimate self-defense by Macaspac. The beginning of the aggression is but a mere incident, in view of the attitude of the combatants prior to the fight. The fight starts from the time it is accepted by both combatants and thereafter the aggression may come from one or the other, according to the circumstances, and it cannot be alleged that when one commenced it, the other acts in legitimate self-defense.

As to Paule, his alleged liability merely consists in having held the deceased by the arm before the fight commenced and because Macaspac attacked the deceased while Paule was thus holding him. In his affidavit presented before the trial, Paule stated that he did so in order to separate the combatants in view of the fact that the deceased carried a bolo in one hand and a knife in the other. This court has not found in the record sufficient evidence to prove, beyond all doubt that this intervention on Paule's part was for the purpose of enabling Macaspac to stab the deceased.

The appealed judgment is affirmed as to Macaspac, who is hereby sentenced in accordance with Act No. 4103 to a penalty of from seven years of prision mayor, as the minimum, to twelve years and one day of reclusion

temporal, as the maximum, affirming the same in all other respects as to said defendant, with half of the costs; and Rafael Paule is acquitted of the charge, with the other half of the costs de oflicio. So ordered.

Santos, Hull, Vickers, and Diaz, JJ., concur.

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