

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GREGORIO BERIO, DEFENDANT AND APPELLANT.

G. R No. 40602. February 20, 1934

Ponente: DIAZ, J.

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DIAZ, J.:

The herein appellant was charged with homicide in the Court of First Instance of the Province of Leyte and, having been found guilty of such crime after due trial, was sentenced to fourteen years, eight months and one day of reclusion temporal with the corresponding accessory penalties, to indemnify the heirs of his victim Vicente Zapanta in the sum of P1,000, and to pay the costs. From said sentence he interposed timely appeal and now contends that the trial court erred: (1) In holding that the evidence presented against him was sufficient, although it was not so, to establish his guilt beyond a reasonable doubt; and (2) in finding him guilty and imposing the aforesaid penalty upon him.

The record shows that, at about 11 or 12 o'clock on the night of August 13, 1933, while a theatrical show was taking place in the theatre at Julita, of the municipality of Burawen, Province of Leyte, the appellant, for a motive entirely unknown due to lack of adequate investigation during the trial, threw a lighted cigarette butt which burned the dress of a seventeen-year old girl named Aurea Zapanta, who at that time was accompanied by another girl named Encarnacion Zapanta and her cousin Vicente Zapanta. Vicente, upon seeing such act of the appellant which he considered unjustified, approached the latter for an explanation. Following a brief exchange of words, Vicente Zapanta gave the appellant a blow with a stick, to use the latter's words. The said appellant, testifying in his favor and explaining the incident, stated as follows:

"On the night of Sunday, August 13th, I was attending a theatrical show at Julita, Burawen. At about one o'clock in the morning, while I was seated on the bench, Vicente approached me and immediately struck me with a stick. I then said to him: 'Vicente, think first. I have not committed any offense. Do not punish me'. 'Your mother's fault', Vicente replied and struck me with his fist on the base of my left ear. I fell behind the bench and lost consciousness from the pain of the blow. When I was about to get up, he took a chair and struck me with it. Inasmuch as I was still dazed by the blow he gave me on the ear, I again fell and while I was on the floor he placed himself on top of me and kept striking me with his fist. Several persons came to separate us but I did not know them nor where they had gone later. Upon regaining consciousness, I looked for my hat but could not find it. I found a stick and took it with me. At first I was afraid to go home alone as I was, but because the public was disturbed, I went home with the people. After I had passed the first acacia tree and upon arriving near the second on my way home, he immediately struck me with a bolo." (It is believed that the phrase "your mother's fault" is due to an error of the stenographer. The witness must have said "your mother's private * * * ", an insulting phrase expressing anger which is common in several places.)

Immediately after the incident, which took place inside the theatre, Vicente Zapanta escorted the two girls to their home and after leaving them he went to a butcher's house for some money. As he was passing near an acacia tree at the plaza, the appellant met him and stabbed him in the abdomen just below the ribs and in line with the nipple, thereby causing a wound which penetrated the duodenum, colon, diaphragm and other internal parts of the

abdominal region and caused his death the following day.

In his ante mortem declaration, the deceased Vicente Zapanta affirmed that it was the appellant who wounded him and that he had struck said appellant with his fist while they were in the theatre. The pertinent part of his said declaration is as follows:

"Q.

Did you know the person who burned the dress?

—

A.

Yes, sir, Gorio de Abe.

"Q.

What did you do when your relative's dress was burned?

—

A.

A. I rebuked him.

"Q.

After having rebuked him, what did you do?

—

A.

He denied it.

"Q.

And what did you do when he denied it?

—

A.

I struck him with my fist.

"Q.

After you had struck Gorio with your fist, where did he go?

—

A.

He left.

"Q.

Why did you go to an acacia tree where you were wounded by Gorio de Abe?

—

A.

I was going to take some money from a butcher.

"Q.

Did you see where Gorio de Abe was?

—

A.

No, because I was suddenly attacked."

The above quoted declarations of the accused and of the deceased Vicente Zapanta disclose that because the former got the worse of the fight inside the theatre, he desired to get even and for that purpose he armed himself with a bolo or knife (the record is not absolutely clear on this matter because the dimensions of the weapon in question were not given nor does this court have said weapon before it) and waited for an opportunity to attack his victim under an acacia tree at the plaza near which the latter would necessarily pass on his way home after escorting the aforesaid two girls to their house.

The appellant attempted to prove that it was the deceased who, having waited for him under the said acacia tree, attacked him with a bolo or a knife as soon as the latter saw him there, but fortunately, as he was then carrying a stick, he succeeded in parrying the blows, and in wresting the weapon from the deceased by means of a blow which he gave on the hand which carried it. The defense witnesses Leon Pelino and Gerardo Escarlan testified in the same sense but the testimony of the three could not be true on the ground that that it has not been proven, neither was any attempt made to prove, that the deceased had any other that below the ribs which resulted in his death. Were it true that the appellant used a stick in repelling the aggression of which he was the alleged victim and that some of his blows with said stick landed on the body of the deceased, said blows would have left some marks. However, in the autopsy certificate Exhibit A, nothing is stated except the fact that the deceased had a wound, with the dimensions stated therein, on the left side below the ribs and in line with the nipple on that side. The defense failed to present the stick not even for the purpose of demonstrating or, at least, of corroborating the appellant's testimony that he had successfully used it in parrying the blows directed at him by the deceased. This proves that the plea of self-defense is groundless. In order that the plea of self-defense may prosper, it is necessary that such plea be established by clear and convincing evidence.

On the other hand, the scabbard of the bolo or knife used in the commission of the crime was found in the appellant's house. This fact, together with the circumstance that it was the appellant, not the deceased, who had a greater motive for committing the crime on the ground that the latter had already sufficiently punished the appellant on account of his misbehavior and because he was publicly humiliated, having been worsted in the fight between the two inside the theatre, leads this court to the conclusion that the appellant's defense is really

untenable.

Therefore this court holds that the court a quo did not commit any of the alleged errors attributed to it and that the appealed judgment is strictly in accordance with the law.

Wherefore, the said appealed judgment is hereby affirmed in toto, with costs against the appellant. However, in view of the provisions of the Indeterminate Sentence Law, Act No. 4103, the minimum of the penalty imposed by the court a quo upon the accused is hereby fixed at eight years and the said penalty shall be understood to be from eight years of prison mayor to fourteen years, eight months and one day of reclusion temporal, without prejudice to the right of the accused to be credited with one-half of the time of his preventive imprisonment, in conformity with the provisions of article 29 of the Revised Penal Code. So ordered.

Villa-Real, Abad Santos, Butte, and Goddard, JJ., concur.

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