

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. APRONIANO DIAZ, DEFENDANT AND APPELLANT.

G. R. No. 40935. March 26, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Leyte convicting the defendant of the crime of homicide upon the following information:

"Que en o hacia el 19 de junio de 1932, en el Municipio de Abuyog, Provincia de Leyte, Islas Filipinas, y dentro de la jurisdiccion de este Juzgado, el acusado arriba nombrado voluntaria, ilegal y criminalmente mediante alevosia, premeditacion conocida y ensanamiento ataco y agredio con un bolo que entonces consigo llevaba a Patricio Granados, causando a este las siguientes heridas:

"(a) Una herida en la region parietal frontal izquierda;

"(b) Una contusion con equimosis en la frente;

"(c) Una herida en la region occipital;

"(d) Una herida en la parte anterior del cuello;

"(e) Una herida en la parte anterior del cuello debajo de la anterior herida;

"(f) Una herida en la parte superior posterior del cuello;

"(g) Una herida en la parte posterior del cuello;

"(h) Otra herida en la parte posterior del cuello debajo de las dos anteriores;

" (i) Una herida en el lado derecho del cuello que se extiende desde el medio del cuello hacia la boca; y

"(j) Una herida en el hombro derecho; a consecuencia de las cuales el referido Patricio Granados murid en el mismo acto de la agresion. Hecho cometido con infraccion del articulo 248 delCodigo Penal Revisado."

The attorney for the appellant makes the following assignments" of error:

"1. The trial court erred in finding appellant guilty under the proofs.

"2. The trial court erred in holding that there was present the aggravating circumstance of cruelty."

The evidence in this case leaves no doubt that in the encounter which took place between the defendant and Patricio Granados, the latter was unarmed and that the defendant inflicted the injuries which resulted in the instant death of Patricio Granados. The plea of self-defense must be rejected because the evidence clearly shows that Patricio Granados was unarmed and the defendant sustained no injury whatsoever. The three wounds received by Granados on the back of the neck show that he was attacked from behind and without any provocation whatsoever from him.

The Solicitor-General calls attention to the well settled rule that when a confession is accepted in evidence "it must be admitted in its entirety, as well in respect to what is prejudicial to the defendant as to what is beneficial to him," citing *United States vs. Alano* (32 Phil., 381, 388, 389). From the defendant's confessions, Exhibit D, it appears that he had on a former occasion quarreled with Granados because of some expressions which Granados had used with relation to the defendant; that Granados struck at him with his fist but defendant warded off the blow; and that afterwards he slashed Granados¹ with his bolo. When the defendant took the stand and testified, he contradicted that portion of his confession referred to from which an inference might be drawn that he injured Granados in self-defense because he testified that when Granados struck him with his fist he, the defendant, retreated; that he, the defendant, did not draw his bolo until Granados attacked him a second time with bolo in hand. Plainly, therefore, according to his testimony and in contradiction to his confession, he injured Granados not in self-defense against the first assault but in alleged self-defense against the second assault. As to the second assault, his testimony is false and his confession is silent.

The fact that the defendant continued to inflict grave injuries upon Patricio Granados after he was already mortally wounded and disabled is a circumstance that further negatives the defendant's theory that he acted in self-defense.

The judgment below is affirmed with this modification: that the minimum term of imprisonment, in accordance with the provisions of Act No. 4103, the Indeterminate Sentence Law, is hereby fixed at eight years of prison mayor and the indemnity to the heirs of the deceased is fixed. at P1,000. Costs against appellant.

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

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