

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SILVINO ONGJUNCO AND BASILIO ONGJUNCO, DEFENDANTS AND APPELLANTS.

*G. R. No. 41098. October 30, 1934*

Ponente: HULL, J.

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### HULL, J.:

Appellants were convicted in the Court of First Instance of Manila of the crime of homicide. This is a type of case all too frequent in these Islands of a dispute over a trifle, a mutual passage of insulting words, a period of time utilized not for reflection and cooling of blood but for the nursing of a grievance, an affray, a death, and two brothers sentenced to long terms in the penitentiary.

Silvino Ongjunco on the 3d of August, 1933, was a lodger in the house of the deceased Maximo Padal. Early in the morning of that day deceased had switched off the electric light that appellant was using. Hot words at once ensued. The landlord was denounced for his rudeness, while appellant was abused for burning a light during the daytime at the expense of the landlord. As a result of this altercation in which Pedro Padal, brother of the deceased, also took a part, Silvino and his wife moved to another house.

The next evening Basilio Ongjunco, an older brother, was told of the occurrence and at about 7.30 of that evening, appellants went to the house of the deceased asking the deceased for Pedro Padal. Angry words were at once exchanged, and a challenge to a "fair fight" was issued and accepted, a "fair fight" meaning with fists and not with arms.

The fight took place in the street a few feet from the house of the deceased, but instead of being a "fair fight", both the appellants wielded their knives, and Maximo Padal received, according to the post mortem examination, fifteen injuries, two of them being penetrating stab wounds of a lethal character. Maximo died at the General Hospital about an hour after the fight.

Not all of the eyewitnesses to the affray were presented as witnesses at the trial, and those witnesses that did testify obviously testified in a passionate way according to whether they were friendly with the Ongjunco or Padal faction.

The testimony of Silvino that he was flat on the ground with the deceased choking him when he got out his knife and stabbed the deceased in the back, is obviously untrue.

The principal defense of Basilio is based on the fact that his knife, some two hours after the affray, was clean, while Silvino's knife was still bloody.

Martin Aragon, a brother-in-law of the deceased, reached the scene of the affray towards the end thereof and testified that he was stabbed by Basilio. Basilio was the elder brother and was the leader of the two. There is no reasonable doubt that he took an active part in the fight.

The appeal presents no real questions of law but only raises the credibility of the various witnesses. We have reviewed the evidence with great care and find no reason to disturb the finding of the trial judge, who had the advantage of observing the various witnesses while giving their testimony.

In the commission of the crime there appear neither aggravating nor mitigating circumstances, and therefore we fix the period of confinement at seven years of prision mayor as a minimum and at fourteen years, eight months, and one day of reclusion temporal as a maximum.

As thus modified, the judgment appealed from is affirmed. Costs against appellants. So ordered.

Avancena, C. J., Street, Abad Santos, and Diaz, JJ., concur.

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