

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FRANCISCO DE LA CRUZ, DEFENDANT AND APPELLANT.

G.R. No. 41487. May 02, 1935

Ponente: DIAZ, J.

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DIAZ, J.:

As a result of a rifle discharge loaded with buckshots, which caught him on both legs below the knee, causing nine wounds in the left leg and one in the right, Leoncio Nafios died in the sitio of Boroon, municipality of Iligan, Prov' ince of Lanao, during, the early hours in the morning of February 1, 1933. The shot was fired by Francisco de la Cruz who, after being charged with and tried for the crime of homicide, was found guilty and1 sentenced by the Court of First Instance of Lanao to suffer an indeterminate sentence of six years and one day of prision mayor, to twelve years and one day of reclusion temporal, to indemnify the heirs of the deceased, in the amount of P1,000, and to pay the costs. Francisco de la Cruz appealed from this sentence and in his brief makes the following assignment of errors committed by the trial court:

"1. In finding as a fact proved by the prosecution and admitted to a certain extent by the accused, that he fired at Leoncio Nanos from a distance of approximately fifteen yards; in not holding that, considering the entire diameter of the holes produced in the left leg of the deceased by the buckshot of the cartridge-shell Exhibit C, the accused could not have fired from said distance; and in holding, as a consequence of its first finding that there existed no immediate danger to the accused justifying his firing at the deceased.

"2. In holding that, even granting that the deceased carried unsheathed weapons in his two hands, it is unbelievable that he would dare approach the accused seeing that the latter had his rifl p raised and in the act of firing at him.

"3. In holding that the most logical and natural thing for the deceased to do was to rush upon the accused in order that the latter may not have time to raise and fire his rifle, but the accused himself testified that he saw the deceased approaching him with measured steps although the deceased saw him with his rifle raised and aimed at him, all of which is incredible because it would amount to courting sure death.

"4. In holding not worthy of belief that Eustaquio Cabasan, in whose house the deceased lived, had intended to attack the accused in the morning in question, because the proven facts show otherwise.

"5. In not holding that the accused, in firing at Leoncio Nafios, acted in legitimate defense of his person and that of his wife.

"6. In not taking into account in favor of the accused three mitigating circumstances, to wit: that he had no intention to cause so grave a wrong as that committed; that there was sufficient provocation or threat on the part of the offended party immediately preceding the act; that the accused voluntarily surrendered himself to the authorities and voluntarily confessed having committed the crime charged prior to the presentation of the evidence for the prosecution.

"7. In rendering judgment convicting the accused instead of acquitting him."

Although friends at one time, the friendly relation between the deceased Leoncio Nanos and the appellant nevertheless cooled off to the point of unpleasantness for sometime prior to the day when the occurrence in question took place) and still worse, on the day before the occurrence. Business rivalries were the principal cause of this rupture, and the spark which fired the animosity of Francisco de la Cruz seems to have been the intervention of the deceased in a certain incident had between the spouses Eustaquio Cabasan and Librada Bunghanoy on the one hand and said appellant on the other. The appellant had required the said spouse with whom, let it be said in passing, lived the deceased at the time, to vacate the house owned by the appellant and at the same time to leave the premises. They earnestly requested him to allow them to live there at least until the completion of their house then under construction not far from the place, but he lent a deaf ear to their entreaties. In view of this, the deceased interceded in behalf of the spouses and told the appellant to permit them to stay. The appellant disliked this intervention of the deceased, for he was heard to grumble and left the place reluctantly without being able to contain his displeasure. Sometime after six on the morning of the following day, the appellant carrying his loaded rifle, and accompanied by his wife Petra Salcedo, returned to the place of the spouses Eustaquio Cabasan and Librada Bunghanoy. After coming to Eustaquio Cabasan and asking him if his men had already arrived—referring to Nestorio Salcedo, brother of his wife, and Pancracio Macatol—because he or his wife had told one of them to go there and see if their copra had been soaked by the rain the day before, he sighted Leoncio Naiios, who was a short distance from Librada Bunghanoy, the latter being then busy feeding her chickens¹ under the house, the same house which the appellant wanted her and her husband Eustaquio Cabasan to vacate. Addressing the deceased, he spoke thus "unsa na?" meaning, "so what?" or "what do you want?" Leoncio Nanos then had with him his kris and a small bolo, as was his custom in going to the field, for purposes of defense against the Moros and the animals. He carried the kris in its sheath in his right hand and the bolo on his belt, also sheathed. Believing that the deceased as well as Eustaquio Cabasan whom he met moments before had evil intentions against him because the first, as already said, was armed with a kris and the latter with a bolo, the appellant, on seeing the deceased approaching him, fired at him hitting his legs in the manner just related.

Appellant's defense at the trial and in his brief on appeal to this court is, that he did nothing more than to defend himself, because knowing as he did that the deceased was a [^]tnan of violent temper, quarrelsome, and irritable, on seeing him approaching them with a kris, he had no other recourse but to shoot him before the deceased could harm him and his wife, thereby making it appear that all he did was to prevent and avoid an aggression directed against them.

The evidence, however, shows that there was no necessity for the appellant to defend himself, because although the deceased carried a kris in his hand, the said weapon was sheathed.

It is true that the accused and his wife testified that said deceased has his kris unsheathed, but the witnesses for the prosecution to whom the lower court gave more credit, and we believe correctly, because their answers impress us as having been given in a very natural manner, categorically stated that said weapon was in its scabbard. Moreover, the distance between the two was such that the danger to the appellant was and could not be real or even imminent. According to the eyewitnesses, the distance between the appellant and the deceased when the shot was fired was fifteen yards; and according to the experiments made by Lieutenant Villanueva of the Constabulary, a discharge with buckshot of the same kind used by the appellant"against the deceased, from a distance of fifteen yards, produced holes their farthest distance from one another being eight inches; and from a distance of seven yards, the holes were not more than four inches from one another. This belies the testimony of the defense witnesses to the effect that when the appellant fired the shot Leoncio Naiios was seven yards from him and was in the act of rushing upon him. But even granting that this was the distance, still there was no necessity for the

appellant to fire at the deceased because the latter's weapon was in its sheath.

It is a fact not controverted by the appellant that the farthest distance between the upper and lower wounds in the deceased's left leg was six inches, which shows that when the appellant fired at the deceased, the latter was fifteen yards from him more or less.

The fact that the accused had gone to the house of Eustaquio Cabasan with his rifle loaded in advance, and the fact that he fired at the deceased without any prior provocation which could properly be considered as such, are indicative not only of appellant's intention to defend himself in case of aggression, but also to provoke and commit the same. This explains why, on seeing the deceased, he said, "so what?" a question which can mean no other than a challenge. Furthermore we cannot believe that the deceased would have set upon the appellant, because the latter was accompanied by two of his men: Nestorio Salcedo who is his own brother-in-law, and Pancracio Macatol, who is a street cleaner, working under him as a foreman. It would have been sheer foolhardiness on the part of the deceased to attempt such a thing, not only because the appellant was accompanied by his men, but also because he was armed with a rifle which is doubtless more effective than a kris. In order that legitimate self-defense may be taken into account and sustained as a defense, it is necessary, above all, that the aggression be real, or at least, imminent, and not merely imaginary.

It is likewise a proven fact of record, not controverted by the prosecution, that after the shooting, and after Leoncio Naiios put down his kris at the instance of the appellant, the latter came to help him and invited others to help take him to a truck which had arrived to get him. There is also the further fact that after all this occurrence, the accused went to town to surrender to the authorities, as in fact he did to Lieutenant Villanueva of the Constabulary whom he met on the way.

In view of the position of the wounds of the deceased and the surrender of the appellant to Lieutenant Villanueva, we believe that mitigating circumstances 3 and 7 should be taken into account in his favor, without any aggravating circumstance to detract therefrom.

In conclusion we are of the opinion, and so hold, that the first, second, third, fourth, and fifth assigned errors attributed to the trial court are without merit, and that in the commission of the crime the two circumstances abovementioned were present, that is, lack of intention to cause so grave a wrong as that committed and voluntary surrender to the authorities immediately following the commission of the crime.

Wherefore, the appealed judgment is modified, and the appellant is hereby sentenced, in accordance with the provisions of Act No. 4103 and article 64, number 5, of the Revised Penal Code, to an indeterminate penalty of 3 years; of prison correctional to 8 years and one day of prison mayor. Said judgment is affirmed in all other respects, with the costs to the appellant. So ordered.

Malcolm, AJbad Santos, Hull, and Vickers, JJ., concur.

Judgment modified.

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