# THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TRANQUILINO BALANSAG, DEFENDANT AND APPELLANT.

*G. R. No. 41568. August 02, 1934*

Ponente: DIAZ, J.

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**DIAZ, J.:**

The defendant has appealed for the purpose of reversing the judgment rendered in this case, claiming to be innocent, in the eyes of the law, of the death of Agapito Tandong. The latter died as a result of a wound two and a half inches long which he received on the left parietal region on the date and at the place stated in the information.

At the trial, the appellant testified that he was compelled to inflict the wound on the deceased with a bolo which he found in the kitchen of Bernardo Bagsican's house because said deceased, without any motive whatsoever, attacked him with a similar instrument or weapon, wounding him on the left temporal region, after having seen him provoked and challenged to a fight by his (the deceased) brother-in-law named Leopoldo Cagbabanua who was at that time armed with a bolo, and also after he had succeeded in disengaging himself from the former's other brothers-in-law named Flaviano or Bibiano Cagbabanua and Gregorio Leatila who had held him by the hands.

Appellant's counsel de oficio, believing that the defense set up in the trial court is untenable, in this instance insists only on the argument that the appellant should be given the benefit of the fourth mitigating circumstance, which is that of immediate provocation or sufficient threat on the part of the deceased. To that effect said counsel, however, states in his brief that "the version most consistent with the truth is the testimony of the witness for the prosecution, named Bernardo Bagsican, which is partly corroborated by the other witness Leopoldo Cagbabanua and also by the witness Inocenta Imperial, to the effect that the trouble arose from said Leopoldo Cagbabanua's refusal to deliver the losing cock, and that during the fistic encounter between Bernardo Bagsican and Leopoldo Cagbabanua, the deceased intervened and assaulted the defendant without having been provoked and without being an original party to the affair." Such conclusion certainly does not justify the recommendation that the most that may be conceded to the appellant is to estimate in his favor the aforesaid mitigating circumstance.

In reviewing the case, we find the aforesaid conclusion of defense counsel to be fully supported by the evidence and there is absolutely nothing in the record to justify the trial court's conclusion that the appellant, upon seeing the deceased intervene in the fight between Leopoldo Cagbabanua, brother-in-law of the latter, on one side, and Bernardo Bagsican, on the other, because the deceased thought that his brother-in-law was in danger, attacked said deceased with a bolo, inflicting the wound which resulted in his death.

The evidence both for the defense and the prosecution shows that, immediately before the deceased was wounded by the appellant, the latter received from him a wound on the left temporal region, a fact showing that said deceased, and not the appellant, was the first aggressor.

The incident originated from a very trivial affair. After the various persons invited by Bernardo Bagsican to help him harvest his palay had been drinking tuba, and after some of them had eaten, it was found that the remaining

food was not enough for those who had not yet eaten. The defendant-appellant, who had taken charge of the preparation of the food, then proposed that Bernardo Bagsican permit them to conduct cockfights at that place so that the cocks which might be killed in the games could be cooked to feed those who had not yet eaten. Bernardo consented and two cocks were forthwith chosen to fight, arming them with their respective gaffs. In the first cockfight, Leopoldo Cagbabanua bet on one cock and the appellant on the other. The appellant lost and those present, particularly said appellant and Leopoldo Cagbabanua, decided to have another cockfight and the gaffs were put on the remaining two cocks for that purpose. In the second cockfight the appellant won over Leopoldo Cagbabanua. The understanding among the players and the owners of the cocks was that the loser (and it is presumed that he would pay to the owner the value of the cock) should deliver the losing cock to the appellant to be cooked for those who had not yet eaten. Immediately after the second cockfight, the appellant returned to the kitchen to boil water to enable him to clean and prepare the losing cock for the stewpan. Leopoldo Cagbabanua, instead of complying with said agreement, ordered a boy who was present to take the losing cock to his house, to which the appellant objected, telling Cagbabanua to deliver the cock to him so that he might prepare and cook it. Appellant's remark apparently did not please Leopoldo Cagbabanua for, drawing his bolo, he invited the appellant to come down if he was brave, accompanying such words, which constituted a real challenge, with bolo strokes on the stairs of the house. Not content with this, he went up to the kitchen to challenge the appellant, and upon seeing that the latter had boiled water to clean the cock, he threw said water away, striking the stove three times with his bolo. The appellant, who had not lost his equanimity because he had drunk no tuba, went inside the house where there were then gathered Flaviano or Bibiano Cagbabanua, brother-in-law of the deceased and brother of Leopoldo, the deceased, Gregorio Leatila, another brotherin-law of said Bibiano and Leopoldo Cagbabanua, and the owner of the house Bernardo Bagsican, for the purpose of calling Flaviano's attention to said Leopoldo's behavior. Seeing Leopoldo's hostile attitude as he tried to approach the appellant, Bernardo Bagsican embraced him and struggled with him, and the two fell, rolling down the stairs of the house. Upon seeing this incident, Bibiano or Flaviano, brother of Leopoldo, and Gregorio Leatila, brother-in-law of both, held the appellant by the hands between them, and the appellant, in order to free himself, kicked them. The deceased, who was so far passive, unsheathed his bolo and wounded the appellant on the left temporal region probably because he, being deaf, did not hear that the provocation came from his brother-in-law Leopoldo. The appellant, upon feeling that he was wounded, and seeing that the deceased was going to repeat the attack, retreated to the kitchen. When the deceased, who followed him there, again raised his hand in the act of wounding him for the second time, the appellant grabbed a bolo that was there and made use of the same more to defend himself from the aggression directed against him than to attack, with the result that he struck the deceased with the bolo on the left parietal region, inflicting upon him the wound which produced his death a few minutes later. The deceased afterwards fled from the house, expiring on the roadside some distance from the scene of the trouble.

Bernardo Bagsican and Inocenta Imperial, who witnessed the incident, corroborated the appellant's testimony that if he wounded the deceased, it was merely to defend himself from the armed assault and aggression directed against him by said deceased, placing his life in real danger.

The prosecution and the trial court have given much weight to Leopoldo Cagbabanua's testimony in which he withheld many things because it suited him, undoubtedly for fear that the responsibility for the incident might be shifted to him, having caused the same by his refusal to comply with the agreement relative to the disposal of the losing cock and having furthermore challenged the appellant to a fight. Leopoldo himself testified that he did not know how or why the deceased Agapito Tandong was wounded; that he had not observed anything extraordinary in the house, and that although he had been very much worsted in the fight which he admitted having had with Bernardo Bagsican, he did nothing, nor did he harbor any grudge whatsoever against Bagsican, nor did he take any interest in inquiring how the deceased died. All this appears in the following portions of the testimony of said


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witness:

**"Q.**

Do you know whether Agapito Tandong was wounded on that day?

—

**A.**

I do not know. I only saw it when he was dead.

**"Q.**

Where did you see him dead?

—

**A.**

On the road to my house.

**"Q.**

Far or near Bernardo Bagsican's house?

—

**A.**

Less than a kilometer.

**"Q.**

Do you know the motive behind Agapito Tandong's death?

—

**A.**

I do not know, because Bernardo Bagsican threw me out of the house.

* * * * * * *

**"Q.**

Was there no misunderstanding during that cockfight?

—

**A.**

None. I have not even heard any verbal altercation.

**"Q.**

And did not Bernardo Bagsican strike you with his fist?

—

**A.**

He gave me a blow with his fist here (indicating the temporal region).

**"Q.**

Was that black spot on your temporal region caused by the blow given you by Bagsican with his fist, or by the impact of your fall to the ground ?

—

**A.**

Possibly when I hit the stairs when I was thrown out.

**"Q.**

And did Bernardo Bagsican, without any explanation or any word, take hold of you while you were on the stairs and throw you down the same?

—

**A.**

Without any word.

* * * * * * *

**"Q.**

And how did it happen that Agapito Tandong was wounded?

—

**A.**

That is precisely what I cannot tell because I tried to go up to the house but before I could do so I was shoved and thrown out.

* * * * * * *


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**"Q.**

But while you were going up did you not notice anything extraordinary upstairs?

—

**A.**

No sir.

* * * * * * *

**"Q.**

And can you not explain, or did you not know how it came to pass that you saw your brother-in-law dead on the road?

—

**A.**

I cannot explain it."

The trial court failed to make any finding with respect to the wound received by the appellant from the deceased, when the very evidence for the prosecution shows that he received said wound and that, had it not been for the presence of Inocenta Imperial who somehow succeeded in deflecting the arm of the deceased as he raised it against said appellant, the latter's wound would have been of more serious consequences, if not fatal.

If the version of the appellant and of the witnesses Bernardo Bagsican and Inocenta Imperial is not correct, why did the fiscal not present Flaviano or Bibiano Cagbabanua and Gregorio Leatila who saw the incident and took part in the same, to testify and refute them? Such failure to present them necessarily constitutes an argument against the prosecution, in accordance with the rule that "evidence wilfully suppressed would be adverse if produced." (Section 334, No. 5, Act No. 190.)

It is superfluous to state that, except with respect to the fact that they saw the deceased with a wound on the left parietal region, the witnesses for the prosecution Fidela Cagbabanua and Cecilia Galanido, who are the widow and sister-in-law of the deceased, deserve no credit There are such incongruencies in their testimony that what they said relative to the manner in which the aggression, of which the deceased was the victim, took place, becomes absurd. It is absurd that from a distance of 50 brazas they could see said deceased pursued by the appellant, bolo in hand. It is likewise absurd that they had time to reach said house, ask the deceased what was the matter and afterwards hold him by the shoulder to be invited by his wife to go downstairs. It is also absurd that, while said deceased and his wife were going down the stairs, which were very narrow and did not permit more than two persons to go down at the same time, and while they were on the third step, the deceased at the left side and the wife at the right, the appellant, who had the bolo in his right hand, had given him a blow on the left parietal region. If such things had happened, it cannot be explained why the deceased, in order to save himself from the danger that threatened him, did not jump out of the house, the same being open on all sides as, according to the same two witnesses, it did not yet have walls. Neither can it be explained why he had received only one wound, precisely on the left parietal region, the house in question being very small, for, according to the evidence for the prosecution, it was only three brazas long and two brazas wide. It is not surprising that said two witnesses should so testify, because they were interested not only in the conviction of the appellant but in the exoneration of Leopoldo Cagbabanua, brother of said Fidela and brother-in-law of Cecilia, from all possible charges.


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Furthermore, the testimony of said two women does not tally with that of said Leopoldo Cagbabanua in various important details. It should be borne in mind that the latter testified that, before he was thrown out of the house by Bernardo Bagsican, nothing strange had occurred therein.

From the foregoing it is at once clear that the first justifying circumstance of article 11 of the Revised Penal Code, which is that of having acted in self-defense, should be estimated in favor of the appellant because of the concurrence in his act of the three requisites of justification provided by law, to wit: (1) Unlawful aggression, on the ground that the aggression directed against him was not only imminent but real, actual; (2) reasonable necessity of the means employed to prevent or repel the aggression, because the weapon with which he defended himself and inflicted the wound which caused Agapito Tandong's death was of the same nature as that employed by the deceased in attacking him; and (3) lack of provocation, because the provocation proven at the trial was not given by him but by Leopoldo Cagbabanua, brother-in-law of the deceased.

In view of the foregoing considerations, our conclusion is that the appellant was erroneously convicted of the crime charged against him in the information. He is entitled to acquittal, having acted in lawful self-defense.

Wherefore, reversing the judgment appealed from, said appellant is acquitted of the crime of which he was accused and convicted, and it is ordered that he be released immediately, with costs de oficio.

Street, Abad Santos, Hull, and Vickers, JJ., concur.


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