

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JOAQUIN SIOJO, DEFENDANT AND APPELLANT.

G.R. No. 41746. March 27, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

The appellant was tried in the Court of First Instance of Bulacan on a plea of not guilty to an information for the crime of homicide, wherein it was alleged:

"Que en o hacia el 17 de agosto 1933, en el Municipio de San Miguel, Provincia de Bulacan, Islas Filipinas, y dentro de la jurisdicci6n de este Honorable Juzgado, el acusado arriba referido voluntaria, maliciosa,. ilegal y criminalmente, agredio, acometio y di6 tiros con su revolver, calibre 45, a Gregorio Esguerra, causando a este dos heridas mortales que causaron su muerte. Hecho cometido con infraccion de la ley, con la agravante de que el acusado cometio el delito en desprecio y con ofensa a la autoridad publica, pues, el occiso era entonces el Jefe de Policia de San Miguel, Bulacan, e iba uniformado entonces."

The lower court found the defendant guilty of the crime charged, and that the homicide was committed in contempt of and with insult to public authority, but that this aggravating circumstance was offset by the mitigating circumstance of voluntary surrender or the equivalent thereof, and sentenced the defendant to suffer an indeterminate sentence of not less than eight years and one day of prision mayor and not more than fourteen years, eight months, and one day of reclusion temporal, to indemnify the family of the deceased in the sum of P1,000, and to pay the costs.

Appellant's attorneys allege that the trial court erred:

"1. In finding that the fight between the deceased and the accused was preconcerted.

"2. In finding that the accused was the challenger and the one who provoked the fight which resulted in the death of the deceased.

"3. In finding that the deceased was, on the day of the crime, not bearing any weapon other than the caborrata, Exhibit 2.

"4. In not finding that the accused¹, in killing the deceased, acted in the lawful defense of his person and hence, exempt from criminal liability.

"5. In not finding in favor of the accused the mitigating circumstance of incomplete self-defense, granting without admitting that not all the circumstances for complete selfdefense were attendant.

"6. In finding against the accused the aggravating circumstance of having committed the crime in contempt of and with insult to authority, and in off-setting the same with the mitigating circumstance in favor of the accused of having voluntarily surrendered himself to the agents of authority.

"7. In not finding for the accused the following mitigating circumstances:

"(a) That the accused had no intention to commit so grave a wrong as that committed;

"(b) That sufficient provocation on the part of the deceased immediately preceded the act;

"(c) That the act was committed in the immediate vindication of a great offense to the accused;

"(d) That of having acted upon an impulse so powerful as naturally to have produced passion and obfuscation.

"8. In admitting and giving weight to the supposed, dying declaration, Exhibit B.

"9. In believing the witnesses for the prosecution and in not giving credit to the testimonies of the accused and his witnesses.

"10. In finding the accused guilty beyond a reasonable doubt of the crime charged and in sentencing him to an imprisonment of from eight years and one day of prison mayor to fourteen years, eight months and one day of reclusion temporal."

After finding that the deceased Gregorio Esguerra was the chief of police of the municipality of San Miguel, in the Province of Bulacan, and at the time of the assault was wearing his uniform and discharging his official duties, and that the defendant was a secret agent of the Constabulary, and that there existed ill feeling between them, the trial judge made the following findings of fact as to the incident in question:

"El occiso que se hallaba en la tarde de la citada fecha 17 de agosto de 1933, en el Barrio de San Jose, Municipio de San Miguel, de esta Provincia, al pasar un truck de pasajeros procedente de Manila y que se dirigia a la poblacion de San Miguel, se embarco" en el colocandose en el asiento delantero al lado del chauffeur. Dieho truck se componia de 5 hileras de banco para asientos y podia llevar ordinariamente unos treinta pasajeros, pero en aquella ocasion no estaban montadas mas que unas 8 personas. Despues de 2 kilometros poco mas o menos de viaje, al llegar al Barrio de Camias del mismo municipio, frente a una estacion de gasolina, el acusado, que se hallaba alli, lo hizo parar para embarcarse e"l a su vez. El acusado, en vez de pasar a otros asientos vacios, se habia colocado en el asiento delantero del truck entre el occiso y el chauffeur. Este asiento delantero estaba aparente y completamente ocupado. Bajo la influencia de las relaciones existentes entre ellos, el acusado al colocarse alli, se quejo de que estaban apinados, a lo que el occiso replicó que si era así, que se trasladara el acusado, a otro asiento, de otro modo, que tuviera paciencia. El acusado quejose de nuevo que aquel queria. oprimirle. Despues de este primer cambio de palabras, continuaron disputando con cierto tono de enfado. El acusado le dijo al occiso que si estaba enfadado, que bajaria, y, en efecto, ordeno al chauffeur que parara el truck; a lo que replied el occiso que no le hacia bajar sino que saliera, si queria, puesto que el truck no era de ellos. Asi que se hubo parado el truck y se hubo apeado el acusado, este le invito al occiso a que bajara con el objeto de continuar hablando los dos en tierra. El occiso trato en efecto de apearse tambien, pero al ver que el acusado demostraba una actitud hostil y al observarle que tenia su mano derecha en el bolsillo trasero donde llevaba su revolver, retrocedió hacia los altos del truck, y mientras se hallaba en el estribo del mismo, el acusado le pegó con su puño en la espalda y en la nalga profiriendo, que aunque el occiso era mayor de cuerpo que el, pero que era un cobarde. Irritado de este modo el occiso, bajó a tierra y se puso en frente del acusado. -En represalia al maltrato referido, el occiso uso inmediatamente de su caborrata de hierro envuelto con cuero y le habia golpeado al acusado; este, por esquivar los golpes, sufrio ciertas contusiones en el antebrazo y brazo izquierdo, en la región parietal y occipital de la cabeza. Casi inmediata y simultaneamente con estos golpes, el acusado arrancó su revolver automatico y disparó con el al occiso dos tiros que le hicieron blanco, el uno, en el abdomen habiendo interesado los intestinos, y el otro, en la parte inferior de la oreja izquierda; a consecuencia de estos disparos, el occiso cayó hacia delante bocabajo y en medio de sus convulsiones, pudo ponerse boca arriba y sentarse. Entonces el acusado se habia apoderado del caborrata del occiso, conminandole ademas que si era valiente, que embistiera. El occiso no llevaba en esta ocasión otra arma alguna, fué llevado a la Presidencia de San Miguel, de aqui al Hospital de Emergencia del pueblo y despues al Hospital Provincial de Malolos, y a consecuencia de las heridas asi recibidas, falleció a los dos dias. Mientras estaba en el Hospital de San Miguel, el occiso pudo prestar una declaración ante mdrtem, Exhibit B, en la que consta los hechos que acaban de ser reiatados en

sintesis, los cuales estan corroborados por el testimonio de otros testigos de la acusacion."

The defendant admitted at the trial that he shot the deceased, but claimed that he acted in self-defense.

Under the eighth assignment of error, which we shall consider first, it is contended that the lower court erred in admitting the dying declaration, Exhibit B, because the prosecution failed (a) to prove that it was made under the consciousness of impending death, and (b) to submit with this document, which is written in Tagalog, an English or Spanish translation of it.

The evidence shows that Javier Pabalan, the justice of the peace of San Miguel, was called to the Emergency Hospital in that municipality to take the statement of Gregorio Esguerra, who had been shot in the abdomen and through the face, and was about to die; that the injured man told the justice of the peace that he was in a critical condition and was going to die (Me manifesto de que el estaba en una critica situacion, de que iba a perder la vida). It further appears that the justice of the peace asked the doctor as to the condition of the injured man and the doctor said that he was going to die; that the justice of the peace then asked the injured man if he heard what the doctor said, and he replied that he had (El medico me dijo de que se iba a morir; yo le dije entonces al occiso: "¡Oyes lo que dijo el medico?" y me dijo: "Si, seiior"). Furthermore, it appears from the dying declaration itself that the wounded man realized that he was about to die. Under these circumstances, we are of the opinion that the document in question was admissible as the dying declaration of Gregorio Esguerra. It is contended, however, that this document, which is written in Tagalog, was not admissible for the further reason that it was not accompanied by any English or Spanish translation, Appellant's attorneys rely on Rule 29 of the Rules of Courts of First Instance, which reads as follows: "Documents written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Spanish. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial." The attorneys for the appellant call attention to the fact that when Exhibit B was offered in evidence, counsel for the accused objected to its admission. This is true, but it does not appear that appellant's counsel objected to its admission because it was not accompanied by a translation. He objected to it as incompetent, "por no haberse establecido todas las exigencias legales para que dicha declaraci6n pueda ser admisible como prueba".

No decision of this court is cited in support of the contention of the appellant.

More than once this court, as shown by its published decisions, has taken into consideration documents written in a Philippine dialect, which had been admitted into evidence without being accompanied, by translation. In the case of Ahag vs. Cabiling (18 Phil., 415), it was said that when there is presented in evidence an exhibit written in any language other than Spanish, if there is an appeal, that exhibit should be translated into Spanish by the official interpreter of the court, or a translation should be agreed upon by the parties, and both original and translation sent to this court. In the present case we ordered the Solicitor-General to submit a translation of the document in question. This order was complied with, and no exception to the translation made by the Solicitor-General was taken by the attorneys for the appellant.

Undoubtedly the trial judge should have required the fiscal to submit with Exhibit B an English or Spanish translation of it, but in view of the failure of defendant's attorneys to object to the admission of Exhibit B on that specific ground, and because of the particular facts of this case, namely, that the document in question is written in the language of the province where the crime was committed, and this language was known by the accused and his attorneys, there was no error, certainly no reversible error, in the admission of the document in question.

We cannot accept appellant's contention that no weight should be given to Exhibit B because Javier Pabalan, who prepared it, was a near relative of the deceased, and for the further reason that the accused had filed administrative charges against Pabalan as a justice of the peace. There is nothing in the record to justify the insinuation that

Pabalan took advantage of the situation to pervert the words of the dying man to the prejudice of the accused.

In the first and second errors assigned it is alleged that the lower court erred in finding that the fight between the deceased and the accused was preconcerted, and that the accused was the challenger and the one who provoked the fight which resulted in the death of the deceased. Apparently the lower court did not make any finding to the effect that the fight in question was preconcerted, and in our opinion the evidence for the prosecution, consisting of the dying declaration of Gregorio Esguerra and the testimony of Julio Oreta and Alberto Domingo, sustains x the finding of the trial judge that the accused was the one who provoked the fight and challenged the deceased, although what subsequently took place was not a mutual I fight, but an assault, in which the appellant was the aggressor. The existence of ill feeling between the accused and the deceased is fully established, and the fact that the accused under those circumstances seated himself between I the deceased and the driver, where there was scarcely room enough for him, although there were vacant seats in the I motor bus, clearly tends to show that the accused was bent on making trouble.

The contention of the defense that the deceased was carrying a revolver at the time is not proved. This contention rests upon the conjectures of the defendant and his witnesses. No revolver was found on the person of the deceased, and none of the witnesses for the defense claims to have actually seen a revolver in the possession of the deceased on that occasion. Furthermore, the deceased stated in his dying declaration that he was not carrying at the time any arm except a black-jack. The accused carried away the black-jack belonging to the deceased, and when asked by the court why he did not take possession of Esguerra's revolver, he replied that if he had seen the revolver during the fight as he did the black-jack, he would have taken it.

Under the fourth and fifth assignments of error it is contended that the lower court erred in not finding that the accused, in killing the deceased, acted in the lawful defense of his person and hence was exempt from criminal liability, or at least entitled to the mitigating circumstance of incomplete self-defense, if it be conceded that all the requisites necessary to exempt from criminal liability were not attendant. The trial judge found that the defendant provoked the fight, challenged the deceased, and began the aggression by striking the deceased on the back and on the buttocks with his fist.

The evidence shows that Esguerra desisted from accepting defendant's challenge to fight when he saw that the defendant was armed with a revolver, and that when Esguerra attempted to resume his seat in the motor bus and had turned his back to the defendant, the defendant struck him with his fist. Esguerra then stepped down and struck the defendant with a black-jack, the only weapon that the deceased was carrying at the time. Almost simultaneously therewith the defendant shot the deceased twice with a revolver. It is evident that in such a case there was no self-defense. Instead of the accused being the object of an unlawful aggression without provocation on his part, he was the aggressor, although the deceased had given him no provocation.

It is contended that it was necessary for the appellant to shoot the deceased because the latter turned upon the appellant and began striking him with his black-jack; that the deceased was larger and stronger than the appellant, and that the appellant had to make use of his revolver to protect his life. This defense of the appellant cannot prosper. Although it is ttrue that the deceased was larger and stronger than the appellant, and under ordinary circumstances could have protected himself with his fists, but on this occasion the appellant, who had treacherously assaulted the deceased, was armed with a revolver and had attempted to draw his revolver when the deceased first got out of the bus. This is not a case of self-defense, complete or incomplete.

With respect to the sixth assignment of error, we are of the opinion that according to the evidence the deceased at the time of the assault was discharging his duties as the chief of police of the municipality in which the crime was committed, but there is no allegation in the information that would justify us in finding the appellant guilty of the

complex crime of assault upon an agent of the authorities with homicide.

As to the finding of the lower court that the crime was committed in contempt of and with insult to the authorities, we think this finding is not justified by the facts of the case. In the first place, the deceased was not a public authority, but an agent of the authorities. In the second place, the provision of law in question is not applicable when the person in authority is the offended party (*U. S. vs. Rodriguez*, 19 Phil., 150, where it was held that this aggravating circumstance can exist only when the public authority is engaged in the exercise of his functions, and is not the person against whom the crime is committed in which that circumstance appears; decision of the Supreme Court of Spain, January 24, 1881; 1 Viada, 310).

As to the mitigating circumstance of voluntary surrender appreciated by the lower court in favor of the appellant, we are constrained to hold that the evidence does not justify this finding. The reason why the lower court gave the appellant the benefit of the mitigating circumstance of voluntary surrender is explained as follows: "Consta en autos de que el acusado procuró medio para presentarse inmediatamente a la autoridad, como así hizo, haciendo entrega al teniente Ferreol de la Constabularia, del revólver usado en autos y otras armas de fuego que poseía."

Lieut. Ferreol of the Constabulary, who arrested the accused, testified that he received a telephone message in Malolos from the police of San Miguel stating that the accused had not been arrested, and requesting the aid of the Constabulary; that he went to San Miguel to make the necessary investigation and to arrest the accused, and that when he arrested the accused, who was at home, the accused voluntarily handed him the revolver, Exhibit D; that he required the accused to deliver to him his rifle and shotgun; and that after that he arrested the accused and took him to the Constabulary headquarters in Malolos.

The result is the same as that reached by the lower court.

The other assignments of error are included in those already considered and require no further discussion.

The sentence of the lower court is affirmed, with the costs against the appellant.

Avanceña, C.J., Abad Santos, Hull, and Diaz, JJ., concur.

Judgment affirmed.

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