

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LORENZO GABAY, DEFENDANT AND APPELLANT.

G.R. No. 41758. February 27, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

The accused appeals from a decision of the Court of First Instance of Zambales, finding him guilty of the crime of homicide and sentencing him to suffer from six years and one day of prision mayor to fourteen years, eight months, and one day of reclusion temporal, to indemnify the heirs of the deceased Benito Trapsi in the sum of P1,000, and to pay the costs.

Appellant's attorney alleges that the trial court erred in not finding that the accused committed the assault with the presence of the mitigating circumstance of incomplete selfdefense, and in not taking into account the said special mitigating circumstance in fixing the penalty for the offense committed.

The facts of the case as found by the trial judge are as follows:

"The deceased, Benito Trapsi, was an uncle of the accused and was very much older than the latter. Before March 24, 1933, Lorenzo Gabay and his sister Juliana Gabay, thru the intervention of the deceased Benito Trapsi and his brother Apolinario Trapsi, entered into a written agreement relative to the partition of the property left by their deceased father consisting of a house situated in San Felipe, Zambales. Under the terms of the agreement, the accused was to receive the main part of the house, while his aforesaid sister, the kitchen part thereof. Later on, however, the accused had shown inclination to disregard the agreement and had learned that the Trapsi brothers and Juliana Gabay would some day go to him to have him respect the' agreement. March 24, 1933, was the day when the accused wanted to demolish the house and reconstruct the same. He had carpenters to work for him on that day. The deceased Benito Trapsi had his house right near the house of the accused, a street only separating the two. On that day, the accused, together with his carpenters, proceeded to demolish not only the main part of the house but also the kitchen and the carpenters had begun chopping the posts of the kitchen. For this reason, Juliana Gabay, accompanied by her uncles Apolinario Trapsi and the deceased Benito Trapsi, Juan Farinas and Tiburcio Feria (brother-in-law of the accused), went to the solar of the accused and there Juliana Gabay pleaded to her brother, the accused, not to touch the kitchen part of the house or the materials thereof as the same pertained to her in the partition they had. Her uncles Apolinario Trapsi and Benito Trapsi, as well as Tiburcio Feria, tried also to plead for Juliana and asked the accused to respect the partition they had already made. The accused on that day was already prepared for any eventuality as he knew beforehand that his sister and uncles would go there to prevent him from utilizing the materials of the kitchen. That is why he was armed with a bolo and an unlicensed revolver. Angered by the intervention of his brother-in-law Tiburcio Feria, the accused told the latter 'What do you like?' and immediately tried to get his bolo> but was able to pull his revolver from his waist. Just theny Feria ran away from the solar of the accused. The accused chased Feria, firing twice but did not hit him. He did not overtake Feria and soon thereafter he returned to his' solar. When the accused began to chase Feria with his revolver the carpenters, as well as Apolinario Trapsi and their companions, with the exception of the deceased

Benito Trapsi, ran away from the solar. When the accused failed to overtake Feria, he returned to his solar and as he was entering the gate, he met the deceased Benito Trapsi who was then about to leave the place to go to his house nearby. The accused on meeting the deceased at the gate asked: 'Uncle, will you fight also and Benito Trapsi said: 'No, my son.' Just then, the accused fired twice. Whether he aimed at Trapsi or fired in the air is not clearly shown. The accused then put back his revolver in its holster and pulled his bolo and with it, he attacked Benito Trapsi who at the time could not offer any resistance as he was without any weapon whatsoever. The accused boloed Benito Trapsi several times, inflicting upon him the following injuries found by the district health officer, as evidenced by Exhibit A:

- "1. One superficial incised wound, right scapular region, 5 inches long.
- "2. One wound, right wrist, 2 inches long, f inch deep.
- "3. One wound, incised, 5 inches long, 2 inches deep, left elbow.
- "4. Fracture of left ulna.
- "5. Two wounds on left arm dorsal aspect.
- "6. One wound on right small finger.
- "7. One wound on head li inches long.

As a result of the injuries received by him, Benito Trapsi felled and reclined on a fence. His wife Paulina Francia, who was then at the yard of her house nearby and who saw the attacks made upon her husband by the accused, went to the rescue of her husband, picked him up and tried her "best to carry her wounded husband to their house. In the meantime, the accused tried to reload his revolver and stationed himself at the gate of his fence. Apolinario Trapsi, who saw the assault made by the accused upon his brother Benito, immediately ran to the presideTicia of San Felipe and notified the district health officer and Dr. Misolis, as well as the police officers. Dr. Pascual and Dr. Misolis shortly thereafter arrived at the house of Benito Trapsi and found that the wounds of the latter were serious. The wounded man was in a dying condition. His left forearm needed to be amputated in order that he might have a chance to live and advised the wife and the brother of Benito Trapsi that the wounded man be brought to the Olongapo hospital. He was brought to Olongapo and Dr. Summers of the U. S. Army Medical Corps, U. S. Naval Station at Olongapo, had to perform an amputation of the arm because, without amputation, Benito's chances of living were nil, but with the amputation, he might have a fifty-fifty chance of recovery. After the amputation, he became fairly well, but on the night of March 27, the patient suddenly became very dyspnceic, gasping for breath, always sighing and then died within about three minutes. The cause of the death was given as pulmonary embolism and the contributory cause of death was the multiple wounds and loss of blood. No autopsy was performed but Dr. Summers, as well as Dr. Pascual, district health officer of Zambales, agreed that, in view of the nature of the wounds inflicted upon the deceased,-the latter would have died any way from loss of blood and toxic absorption of the gangrene of the arm even if amputation had not been performed, as at least two of the injuries inflicted were necessarily mortal. When the police officers arrived at the place, the accused at first refused to surrender, saying that nobody should approach him as he was then mad and angry. The police officers, however, told him to drop his bolo and he did, and then surrendered himself to the chief of police who found in his person the unlicensed revolver Exhibit C and got from him the bolo Exhibit D with which he used in attacking the deceased, which bolo at the time of the arrest of the accused was full of fresh blood stains. The accused was taken to the presidencia of San Felipe and before the justice of the peace of said municipality, he signed an affidavit (Exhibit F) admitting voluntarily that he boloed Benito Trapsi."

The contention of the defendant is that when he was returning to his lot after chasing Tiburcio Feria he was met at

the gate by Benito Trapsi, defendant's uncle, who struck the defendant with his fist f that the defendant dodged the blow and fired his revolver twice; that as Benito Trapsi continued to strike at the defendant, the latter pulled out his bolo and in the struggle that followed Benito Trapsi was injured.

The contention of the appellant is obviously incredible. The deceased was unarmed. The accused on the other hand was armed with a bolo and a revolver, and he was so enraged that he had shot at Tiburcio Feria and chased him out of the yard immediately prior to meeting the deceased. It is too much to expect the court to believe that under those circumstances Benito Trapsi attacked the defendant barehanded, and it is likewise incredible that Benito Trapsi received the serious wound on the forearm in the struggle for the possession of the bolo. The bone of the arm was cut in two. It is obvious that this could be the result of only a heavy blow with the bolo. In attempting to explain the alleged attack of Benito Trapsi upon the defendant, the attorney for the appellant says: "When deceased was so excited, passion ruled his being, his reason was gone, and, boldness,—nay rashness,—gave way to reason. Thus he met the raving lion; he plunged himself to certain death. Is it the fault of the accused that deceased had done ^so ? Is it the fault of the raving lion that a man, in his rashness, come across his way and attack it? This, we say, when we reason with our heads cool and fresh, did not happen. But in fact and in tr^th, that is what happens when the mighty hand of Fate has so decreed."

There is nothing in the record to justify the contention that Benito Trapsi was beside himself with anger, or that he had taken any part in the discussion between the defendant and Apolinario Trapsi, Juliana Gabay, and Tiburcio Feria. The defendant had run amuck, and he, not the deceased, was the aggressor. The plea of self-defense is therefore without merit.

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

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

Judgment affirmed.

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