

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ILDEPONSO D. YAP, DEFENDANT AND APPELLANT.

G.R. No. 42154. April 22, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

The defendant appeals from a decision of Judge Pedro Ma. Sison in the Court of First Instance of Manila, finding the defendant guilty of the crime of homicide, committed by shooting Hernan Donoso Cortes in the Heacock Building on October 7, 1933. The trial judge condemned the defendant to suffer an indeterminate sentence from eight 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 in the sum of P1,000, and to pay the costs.

The attorneys for the appellant make the following assignments of error:

"I. The trial court erred in declaring that Yap called up Cortes by telephone at two o'clock in the afternoon of October 7, 1933, and after an altercation, Yap threatened to do away with the mode of living of Cortes.

"II. The trial court erred in holding that the accused and his brother did not sit down from the time they arrived at the legal department of H. E. Heacock and Company until the shooting took place, notwithstanding the invitation of Cortes for them to sit down.

"III. The trial court erred in holding that there was very little interchange of conversation between the accused and Cortes on the afternoon of the shooting in question and that said conversation was carried on in a low tone.

"IV. The trial court erred in holding that there was no substantial contradiction between the statements of Jose V. Roldan and Juan S. Madarang given outside the court and before the police and news reporters and their testimonies given in court.

"V. The trial court erred in giving full credence to the declarations of Jose V. Roldan and Juan S. Madarang whom it declared to be disinterested eyewitnesses to all the events from the arrival of the accused and his brother at the legal department of H. E. Heacock and Company to the time of the shooting between Cortes and Yap.

"VI. The trial court erred in holding that nothing in the testimony of the accused as to what happened from his arrival up to the firing of the first shot, contradicts the declarations of Jose V. Roldan and Juan S. Madarang.

"VII. The trial court erred in declaring that it was impossible for Yap at the time he shot Cortes to have been sitting with his right foot extended towards the seat of Cortes outside the base of the latter's table and with his left foot placed inside the base of the same table; and in relying on the arrangement made by Roldan of the furniture of the legal department of H. E. Heacock & Co. during the ocular inspection.

"VIII. The trial court erred in declaring that the gunshot wound of Yap was inflicted after the first shot which Yap fired against Cortes and that it was not caused by the discharge from the 38-caliber revolver of Cortes.

"IX. That the accused acted in self-defense and in not acquitting him of the crime charged."

The defendant admits that he killed Cortes, but claims that he acted in self-defense. The only question therefore is whether or not the evidence sustains defendant's contention.

The evidence shows that the defendant was indebted to the H. E. Heacock Co. for four typewriters. The company secured two judgments against the defendant, which became final, and in the afternoon of October 5, 1933, Simeon. Cerdana, a deputy sheriff, accompanied by Herman Donoso Cortes, who was the chief of the legal department of the H. E. Heacock Co., levied upon the deposits of the defendant in the Bank of the Philippine Islands, and then went to the Harvardian Institute, of which the defendant was the director, to take possession of the typewriters, but the defendant secured a suspension of the execution for a few days by telephoning at the suggestion of Cortes to the assistant manager of the company. The next morning, the defendant, who had not been informed of the levy on his bank deposits, went to the Bank of the Philippine Islands for the purpose of depositing ₱275, but when he learned that the balance in his current account had been levied upon he refrained from making the deposit. On the same date, October 6th, the president of the Bank of the Philippine Islands addressed two letters to the defendant formally notifying him of the garnishment of the balance in his current account amounting to ₱358.31 and the balance of ₱1.03 in his savings account. These letters were not received by the defendant until October 7th. Between 2 and 3 o'clock on that date the defendant called up Cortes in the Heacock Building and asked him why he had done what he had in the bank, meaning the garnishment of defendant's deposits, and when Cortes replied that he had merely done what it was proper for him to do, the defendant said that if that what Cortes was going to do, it was equivalent to taking away his means of livelihood, and in that case he would put an end to Cortes means of livelihood.

Cortes replied: "It is in your hands. The responsibility is yours." Yap then told to Cortes that he was going to his office. This conversation between the defendant and the deceased was overheard by Felisa G. de Sison, a telephone operator in the Heacock Building. Cortes then went downstairs and got from C. Alkan & Co. a 38-caliber revolver and 6 cartridges. About 4 o'clock the defendant and his brother, Macario Yap, arrived at the office of Cortes. After greeting each other the defendant and Cortes engaged in conversation. Cortes was seated behind his desk, and the defendant in front of him. Jose Roldan and Juan Madarang, employees of the legal department of the H. E. Heacock Co., were present. Madarang was writing on a typewriter near the desk of Cortes, and Roldan was putting some papers in the files behind Cortes. Roldan and Madarang did not listen to the conversation between the defendant and Cortes. After a few minutes they heard the report of a revolver, and when they looked around they saw the defendant standing with a revolver in his hand, which was smoking, and Cortes in the attitude of getting to his feet, with his left hand holding his abdomen and his right arm extended in the direction of a drawer of his desk. The first shot was followed almost immediately by several shots. Cortes dropped down dead with a 38-caliber revolver in his right hand. The defendant, with his revolver still in his hand, had a wound on the forehead that was bleeding. The defendant pointed his revolver at Roldan and told him not to interfere. Assisted by his brother, the defendant left the Heacock Building and went to the Philippine General Hospital. The police found in his possession a 32-caliber revolver with six empty cartridges in it. The defendant had a superficial lacerated wound on the forehead and a bullet wound extending from the right side of the abdomen to the right lumbar region.

A postmortem diagnosis showed that the deceased Cortes had received six bullet wounds; one penetrating the skull and brain; another penetrating the chest, piercing the left lung, heart, and liver; two perforating the right arm; one perforating the left arm; and one non-penetrating wound in the chest.

The contention of the accused is that Cortes told him on October 5th of the garnishment of the bank deposits; that he never saw the letters from the president of the Bank of the Philippine Islands until long after the incident in question; that he went to the office of Cortes on October 7th because Cortes called him on the telephone that

morning and requested him to come to his office that afternoon before 4.30; that he had no such conversation over the telephone with Cortes as related by Felisa G. de Sison; that during his conversation with Cortes in the Heacock Building Cortes became angry when he was compared by the defendant to a fly on the back of a carabao because he considered himself more important than the managers of the Heacock Co., stood up, suddenly took a revolver from a drawer of his desk and struck the defendant, who had also risen, in the forehead, knocking him down; that while the defendant was sitting on the floor between the end of the desk and the wall, Cortes shot him through the right side of the abdomen; that the defendant then got his revolver from its holster and shot Cortes four times in succession; that Cortes with a revolver in his right hand then tried to rush towards the defendant, who pushed him back and fired two more shots at him, which caused his death instantaneously.

In our opinion defendant's account of what took place is obviously false. There is no satisfactory explanation of why Cortes borrowed a 38-caliber revolver about 3 o'clock in the afternoon of October 7th, loaded it and put it in his desk, when he already had a 22-caliber revolver of his own, if he had not received from the defendant the threat related by the telephone operator. There was no occasion whatever for Cortes to call the defendant to his office. The levy on the typewriters had been suspended for a few days, but the attachment of defendant's money in the bank was still in force. The defendant probably felt aggrieved when he received the letters from the bank on October 7th and learned that the attachment of his money in the bank had not been lifted notwithstanding his agreement with the assistant manager of Heacock's for the suspension of the execution as to the typewriters. It was for this reason that the defendant called Cortes on the telephone, and failing to get a satisfactory reply from him threatened to kill him. It explains why the defendant went to Cortes' office armed with a revolver and accompanied by his brother. The statement of the defendant that he carried his revolver because if he left it in the school building some of the students might play with it cannot be taken seriously. The defendant had an office in which he kept his check-book and money. In our opinion the refusal of Cortes to release defendant's money in the bank from attachment constitutes the motive for the commission of the crime.

The revolver that Cortes borrowed from Alkan's was a short-barreled revolver. The defendant claims that Cortes struck him in the forehead with the barrel of this revolver and knocked him down. The defendant was thirty-three years old, 5 feet, 9 inches in height, and weighed 174 pounds. Cortes was about 5 feet, 6 inches in height, and weighed 135 pounds. It is incredible that Cortes could reach across his desk, strike the defendant in the forehead with the barrel of the revolver and knock him down. Another circumstance which tends to show the falsity of defendant's testimony is the fact that the attention of neither Roldan nor Madarang was attracted by defendant's falling to the floor. If the defendant had been knocked down, striking against his chair, as he alleges that he was, this fact could not have failed to attract the attention of Roldan and Madarang as well as the employees of the accounting department, which adjoined the legal department. There was only a railing[^] between the two departments.

The defendant testified that when he was struck with the revolver he fell to the floor between the end of the desk of Cortes and the wall, in a sitting posture, with his legs extended; that seeing Cortes pointing a revolver at him he tried to lower his head below the level of the desk and to take out his revolver, but before he could do so and while he was still in that position, Cortes shot him through the right side of the abdomen. This testimony is clearly false. In the first place the evidence shows that the distance from the end of the desk of Cortes to the wall was only 20 centimeters. It was impossible for the defendant to bend over in that space and hide his head under the desk, and it was likewise clearly impossible for Cortes to shoot the defendant through the right side of the abdomen while he was in the position indicated by him, because defendant's abdomen would have been protected by the upper part of his body, and the right side of his abdomen would have been the part of defendant's body farthest from Cortes.

Another fact that discredits the story of the defendant is that, if we are to believe him, Cortes after shooting the defendant through the right side of the abdomen stood at his desk with a loaded revolver in his hand and allowed himself to be shot four times by the defendant sitting on the floor, notwithstanding the fact that Cortes was a good marksman. It is too much to expect us to believe such a story.

Finally, neither Roldan nor Madarang heard the defendant fall to the floor or saw him sitting on the floor, but when they looked around immediately after the first shot was fired, they saw the defendant standing, with a smoking revolver in his hand, while Cortes was leaning over towards the right, with his right arm extended in the direction of a drawer of his desk. Cortes was undoubtedly reaching for the revolver he had borrowed from Alkan's. He was still unarmed when he was first wounded by the defendant.

The foregoing considerations leave no doubt in our minds that the defendant fired the first shot and that he was the aggressor. It is unnecessary for us to determine, even if it were possible to do so with any certainty, the order in which the six wounds of Cortes were inflicted by the defendant. As to the wounds received by the defendant, the first of these, or the wound in the forehead, may have been caused by the ricochet of the first bullet fired by the defendant. Defendant's wound in the abdomen appears to have been caused by a 38-caliber bullet, but it was not received by the defendant until Cortes, who had already been wounded by the defendant, succeeded in getting his revolver from a drawer in his desk.

It seems to us that too much stress is laid by defendant's attorneys on the direction of the wounds sustained by the deceased. Since the course of most of these wounds was upward, and the defendant was taller than Cortes, it is argued that the defendant was sitting on the floor when he fired at the deceased, but the fallacy of the argument consists in the assumption that the defendant and the deceased were both in upright positions when the shots were fired. The expert testimony shows that if the defendant was crouching when he fired or the deceased was leaning over to one side, that fact would account for the upward direction of wounds of the deceased.

The credibility of the telephone operator, Felisa G. de Sison, and of the eyewitnesses Roldan and Madarang is assailed in a plenitude of words. The trial judge, who considered their testimony at length, found them to be trustworthy witnesses, and no reason has been adduced which shows he erred in giving credit to their testimony. Our study of the record satisfies us that these witnesses were singlerminded, and that their account of what occurred is substantially correct. It is argued at length in appellant's brief that these three employees of the H. E. Heacock Co. were not disinterested witnesses worthy of credit, because they were constrained to testify as they did in order to retain their positions; that Gaches, the manager of the company, warned them that they would be dismissed if they did not testify in favor of the prosecution. There is nothing in the record which in the slightest degree tends to sustain such a contention. When asked on cross-examination if it was not true that Gaches had admonished all the employees of Heacock's that they must testify as they were told to do, Felisa G. de Sison said that she had never heard of such a thing; that Gaches had not said anything to her about the matter. Fortunato R. Guzman, chief accountant, testified to the same effect. Defendant's attorneys did not question Roldan or Madarang as to this matter, or present any witnesses in support of their present contention.

Appellant's attorneys have made statements in their brief reflecting upon the good faith of the trial judge, the fiscal, and the attorneys for the private prosecution that we cannot allow to pass unnoticed. Some of these objectionable statements are as follows: "In the case at bar, public opinion, newspaper reports, and even certain groups or associations of professionals who fancy themselves aggrieved due to an imaginary wrong done one of their friends, and even capital itself, exerted no little influence in the determination of the fate of the accused"—p. 2; "But in his zeal to enter a judgment of conviction, the trial judge has overlooked material and important evidence, which, if properly considered, would undoubtedly show that the accused, in causing the death of Attorney Herman Donoso Cortes, merely acted in the defense of his own life and, therefore, is exempt from

criminal responsibility"—p. 2; "Indeed, such an array of prosecutors could have had but one purpose: to insure the rendition of a judgment of conviction at any cost"—p. 3; "Fortunately for the accused, however, it is not very difficult to show that the trial judge was so overcome by his prejudice and zeal to avenge an imaginary wrong done the deceased, Herman Donoso Cortes, that he was ready and disposed to convict an innocent person on flimsy or even unexisting evidence."—p. 18; "The foregoing clearly shows that the finding of the trial court under discussion is entirely unfounded and that judge thereof had a strong prejudice against the accused"—p. 23.

There is absolutely nothing in the record which affords any excuse, much less justification, for impugning the motives of the trial judge or the attorneys appearing for the prosecution. This court by resolution and in various decisions has condemned the practice of some attorneys of making such statements in their briefs. If the Solicitor General had called our attention to the foregoing statements before the hearing, we would have stricken the brief from the record and required appellant's attorneys to file a new one at their own expense. As it is, we can only condemn again the use of such language, with a warning to appellant's attorneys that any further disregard of the orders of this court in the premises will bring more drastic action.

We find the errors assigned to be devoid of merit, because the defendant was the aggressor, and there was no self-defense, complete or incomplete.

The decision appealed from is affirmed, with the costs against the appellant.

Malcolm, Hull, Butte, and Diaz, JJ., concur.

Judgment affirmed.

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