

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. KIICHI OMINE, EDUARDO AUTOR, LUIS LADION, AND AGAPITO CORTESANO, DEFENDANTS AND APPELLANTS.

G.R. No. 42476. July 24, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

Defendants appeal from a decision of the Court of First Instance of Davao finding them guilty of frustrated homicide, with the aggravating circumstance that advantage was taken of their superior strength, and sentencing each of them to suffer an indeterminate sentence from six years of prison correccional to twelve years of prison mayor, to indemnify Angel Pulido jointly and severally in the sum of P540, without subsidiary imprisonment in case of insolvency, and to pay the corresponding costs.

The only assignment of error made by the attorneys for the defendants is that the lower court erred in convicting the appellants, and in not acquitting them with the costs de oficio.

The first question to be considered is the participation of the several defendants in the commission of the crime.

It appears from the evidence that the defendants Eduardo Autor, Luis Ladion, and Agapito Cortesano were working on the hemp plantation of Angel Pulido under the direction of their co-defendant Kiichi Omine, who was the overseer or manager, with a compensation of ten per cent of the gross receipts. The four defendants lived together in a house on the plantation.

Kiichi Omine asked Angel Pulido for permission to open a new road through the plantation. According to the offended party he refused to grant this request because there was already an unfinished road. Kiichi Omine on the other hand contends that Angel Pulido gave him the permission requested and he began work on December 24, 1933. When Angel Pulido and his son, Hilario, accompanied by Saito Paton and a Moro by the name of Barabadan, were returning home from the cockpit that evening they noticed that a considerable number of hemp plants had been destroyed for the purpose of opening a new road. Angered by the destruction of the hemp plants, Angel Pulido and his party went to the house of the defendants, who had just finished their supper. There is a sharp conflict in the evidence as to what followed. The witnesses for the prosecution contend that while the offended party was talking with Omine, Eduardo Autor attempted to intervene, but was prevented by Hilario Pulido; that Eduardo Autor attacked Hilario Pulido with a bolo, but did not wound him except on the left thumb; that Luis Ladion and Agapito Cortesano then held Angel Pulido by the arms, and when Eduardo Autor approached, Omine shouted to him "pegale y matale", and Autor struck Angel Pulido in the breast with his bolo.

Kiichi Omine, Luis Ladion, and Agapito Cortesano on the other hand maintain that the offended party and his son were the aggressors; that the first to arrive was Hilario Pulido, who after applying to Kiichi Omine an offensive epithet and asking him why he had grubbed up the hemp plants, struck him in the breast with brass knuckles; that when Eduardo Autor attempted to intervene, Angel Pulido and his son attacked him with their fists, Hilario striking him on the right cheek with brass knuckles; that Luis Ladion and Agapito Cortesano ran away before

Angel Pulido was wounded by Eduardo Autor; that Kiichi Omine never uttered the words attributed to him or urged Autor to strike Angel Pulido.

The only eyewitnesses for the prosecution were the offended party and his son, and a Bagobo, named Saito, who was their relative and lived with them. Barabadan was not presented as a witness. The witnesses for the defense were the four appellants.

The offended party received only one wound. Only one blow struck, and it was struck by Eduardo Autor. The anger of Angel Pulido and his son was, however, directed chiefly against Kiichi Omine, who was responsible for the destruction of the hemp plants. There was obviously no conspiracy among the defendants, but the offended party and his son and his relative, Saito, narrated the facts of the incident in such a way that all the four defendants would appear to be equally responsible for the injury sustained by the offended party. The evidence does not convince us that Ladion and Cortesano took any part in the fight; on the contrary it inclines us to believe that they ran away and were not present when Angel Pulido was wounded. This impression is strengthened by the fact that they were not included in the original complaint subscribed and sworn to by the offended party on December 29th. They were not included as defendants until the amended complaint was filed on February 19, 1934. But if they were present and held the offended party by the arms¹, as alleged by him, the evidence does not show that they held him for the purpose of enabling Eduardo Autor to strike him with his bolo. If they did in fact intervene, it may have been for the purpose of preventing the offended party and his son from continuing their attack on Omine. There was no need for Ladion and Cortesano to hold Angel Pulido in order to enable Eduardo Autor to strike him with his bolo, or for Kiichi Omine to induce him to do so by shouting "pegale y matale". According to the witnesses for the prosecution, Hilario Pulido and Eduardo Autor had already struck each other in the face with their fists, and Eduardo Autor had received a blow in the right eye, and then struck Hilario Pulido with his bolo. Angel Pulido would naturally intervene in the fight between his son and Eduardo Autor, and if he did so, Autor, who had already drawn his bolo, would strike him without the need of any inducement from Omine. Furthermore, under the circumstances of this case, even if it were satisfactorily proved that Kiichi Omine uttered the words in question, we are of the opinion that they would not be sufficient to make him a principal by induction, because it does not appear that the words uttered by Kiichi Omine caused Eduardo Autor to strike Angel Pulido. In the first place, as we have indicated, Eduardo Autor had already other reasons for striking Angel Pulido when Omine is alleged to have uttered the words of inducement. In the second place, the words in question were not in this particular case sufficient to cause Eduardo Autor to strike the offended party with his bolo. Although Eduardo Autor was working under the direction of Omine, apparently according to the testimony of Angel Pulido, he was being paid by Pulido. It does not appear that Omine had any particular influence over Eduardo Autor. The cases cited by the Solicitor-General of a father giving orders to his son are obviously different from the case at bar.

In the leading case of the United States vs. Indanan (24 Phil., 203), it was held that in order that a person may be convicted of a crime by inducement it is necessary that the inducement be made directly with the intention of procuring the commission of the crime and that such inducement be the determining cause of the commission of the crime. In that case various decisions of the Supreme Court of Spain illustrating the principles involved and their application to particular cases were cited with approval. One of the decisions cited was that of April 14, 1871, where it was held that one who, during a riot in which a person was killed, said to one of the combatants, "Stab him! Stab him!", it not appearing that he did anything more than say these words except to be present at the fight, was not guilty of the crime of homicide by inducement. The Supreme Court of Spain said; "Considering that, although the phrases pronounced were imprudent and even culpable, they were not so to the extent that they may be considered the principal and moving cause of the effect produced; direct inducement cannot be inferred from such phrases, as inducement must precede the act induced and must be so influential in producing the criminal act that without it the act would not have been performed." Another decision cited was that of December

22, 1883, where it was held that a father who simply said to his son who was at the time engaged in combat with another, "Hit him! Hit him!", was not responsible for the injuries committed after such advice was given.

Commenting upon No. 2 of article 13 of the Penal Code, which has been incorporated in the Revised Penal Code without change as No. 2 of article 17, Viada says that in order that, under the provisions of the Code, such act can be considered direct inducement, it is necessary that such advice or such words have great dominance and great influence over the person who acts, that it is necessary that they be as direct, as efficacious, as powerful as physical or moral coercion or as violence itself. (2 Viada, 386, 5th Edition.)

We are therefore of the opinion that the co-defendants of Eduardo Autor are not responsible for the injury inflicted by him on Angel Pulido.

The lower court, taking into consideration the nature and location of the wound of the offended party, found that it was the intention of the defendant Eduardo Autor to kill the offended party, and accordingly found said defendant guilty of frustrated homicide, but in our opinion the evidence does not justify this finding. It is true that the wound was serious and in a vital part of the body, but judging from the nature of the wound, which was about eleven inches in length, extending from the breast to the lower ribs on the right side, we think it is probable that it was caused by the point of the bob on a downward stroke. It was not a stab wound, and was probably given during a commotion and without being aimed at any particular part of the body. As we have already stated, Eduardo Autor struck the offended party only once. This fact tends to show that it was not his intention to take the offended party's life. If he had so intended, he could easily have accomplished his purpose, so far as the record shows. It might be contended that Eduardo Autor did not strike the offended party a second time, because he thought that he had already killed him. This was apparently the theory of the prosecution, because the offended party and his witnesses testified that the offended party dropped down unconscious when he was wounded, but the evidence does not seem to us to sustain that contention. In the first place a cutting wound like that in question would not ordinarily render the injured man immediately unconscious.

In the second place it appears from the affidavit of Saito, one of the witnesses for the prosecution, that Angel Pulido did not fall down unconscious; but swayed and asked for help, while the blood was flowing from his breast and stomach; that Saito approached the wounded man to support him and take him home.

It is a rule that in a case of physical injuries the court must be guided by the result unless the intent to kill is manifest.

"When criminal liability is made to consist in the intention to perform an act which was not realized, the facts from which it is claimed that intention sprang must be such as to exclude all contrary supposition. When this intention is not necessarily disclosed by the acts performed by the defendant, greater importance should not be given to such acts than that which they in themselves import, nor should the defendant's liability be extended beyond that which is actually involved in the material results of his act. Intention may only be deduced from the external acts performed by the agent, and when these acts have naturally given a definite result, the courts cannot, without clear and conclusive proof, hold that some other result was intended." (U. S. vs. Mendoza, 38 Phil., 691.)

There is no merit in the contention of Eduardo Autor that Angel Pulido was accidentally wounded in a struggle for the possession of the offended party's bolo. That claim is disproved by the affidavit of Autor, Exhibit E, executed on December 26, 1933, where he stated that he snatched out his bolo and struck Angel Pulido in the stomach because Pulido was very aggressive.

We are therefore of the opinion that Eduardo Autor is guilty of lesiones graves, since the offended party was incapacitated for the performance of his usual work for a period of more than ninety days, and not of frustrated

homicide.

For the foregoing reasons, the decision appealed from is reversed as to Kiichi Omine, Luis Ladion, and Agapito Cortesano, and they are acquitted with the proportionate part of the costs de oficio. As to the appellant Eduardo Autor, the decision of the lower court is modified, and he is convicted of lesiones graves and sentenced to suffer one year, eight months, and twenty-one days of prision correctional, to indemnify the offended party in the sum of P540, with subsidiary imprisonment in case of insolvency, which shall not exceed one-third of the principal penalty, and to pay the corresponding costs. In accordance with the Indeterminate Sentence Law, the minimum sentence to be served by him is fixed at one year of prision correctional.

Avanceña, C.J., Hull, Diaz, and Recto, JJ., concur.

Judgment reversed and modified.

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