

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FEDERICO ZAPATA ET AL., DEFENDANTS. FEDERICO ZAPATA, APPELLANT.

G. R. No. 42757. August 22, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

The brothers Federico Zapata and Celestino Zapata were tried for frustrated murder in the Court of First Instance of Abra on an information alleging:

"Que en o hacia el 13 de marzo de 1934, en el Municipio de Dolores, Provincia de Abra, Islas Filipinas, los referiobos acusados, cooperando y ayudandose mutuamente y obrando de consuno, voluntaria, ilegal y criminalmente, y sin motivo justificado agredieron con alevosia y premeditacion conocida con armas mortiferas, a saber, con bolos, a Simeon Turqueza, infiriendole al efecto varias heridas mortales en diferentes partes de su cuerpo, ejecutando asi todos los actos de ejecucion que hubieran causado la muerte del ofendido, y si dichas heridas no le causaron la muerte del mismo, esto era debido a causas independientes de la voluntad y propio desistimiento de los referidos acusados."

The trial judge found that the guilt of Celestino Zapata was not proved beyond a reasonable doubt and acquitted him, with one-half of the costs de oficio, but found Federico Zapata guilty of frustrated homicide, and sentenced him to suffer an indeterminate sentence from two years of prision correccional to eight years and one day of prision mayor, to indemnify the offended party in the sum of P210, and to pay one-half of the costs.

The attorney for the appellant Federico Zapata alleges that the lower court erred in not finding that the appellant acted in legitimate self-defense, and in finding him guilty of frustrated homicide and sentencing him therefor.

It appears from the evidence that the two brothers, Federico and Celestino Zapata, attacked the offended party in the provincial road at the time and place mentioned in the information and inflicted upon him several wounds with their bolos; that the injured man took refuge under the batlan of a nearby house where he fell down unconscious; that" his assailants continued to strike him with their bolos until they saw Calixto Reyes approaching, when they ran away. The offended party received wounds on the head and neck, in the back and on the arms and legs and the left heel, sixteen in all. Many of them were serious, and some of them might easily have proved fatal. All the wounds were caused with a, cutting instrument or instruments. Some of the more serious were the wound on the back of the neck 2 1/2 inches long and one-half inch deep; that in the back 7 inches long and 2 1/2 inches deep; two wounds on the right leg, one 2 inches long and 1/2 inch deep, the other 5 inches long an 1 1/2 inches deep; the wound on the left leg 4 inches long and 1 inch deep; two wounds on the left heel 3 to 4 inches long and 1 1/2 inches deep. The injured man received medical treatment for two months, for which he paid his physician P200. The lower court found that, the offended party was entitled to recover a further sum of P10 for loss of wages.

The appellant testified that he was alone when he met the offended party, armed with a bolo and a cane; that the offended party challenged him to fight and struck him on the left arm with the cane; that the offended party

stooped down to pick up a stone and the appellant struck him on the head and back with his bolo; that the offended party then went under the house of one Josef a Bajo and began to throw stones at the appellant; that the appellant followed the offended party, and they had a fight with their bolos, but as the bolo of the offended party was shorter than that of the appellant the offended party was not able to wound the appellant; that the offended party fell down and the appellant continued to slash him with the bolo. The appellant took the offended party's bolo and went home.

The story of the appellant impresses us as being obviously untrue. The motive for the commission of the crime was shown to be the fact that the offended party had¹ seduced the sister of the defendants but refused to marry her. If the offended party was provided with a bolo and a heavy cane as alleged by the appellant, it seems most improbable that he would stoop down to pick up a stone to throw at the appellant. Although the appellant received a bruise on the arm, and claims that he was struck by the offended party with a cane, no cane was found at the place where the incident occurred. Likewise improbable seems the testimony of the appellant that he took possession of and carried home the bolo of the offended party. Two bolos were found in the house of the appellant, the longer of which he admittedly made use of in wounding the offended party; the shorter one was claimed by the appellant to be the bolo of the offended party. The offended party testified that he was unarmed, and that he parried the blows with arms. This testimony of the offended party seems to be corroborated by the wounds he received on the arms and the fact that the appellant was not scratched. The offended party identified the smaller bolo, Exhibit B, as the bolo used by appellant's brother.

The trial judge found that the qualifying circumstance of treachery was not duly proved, and in this we concur, because it does not clearly appear that the offended party was suddenly attacked from behind without any warning. Taking into consideration the number and seriousness of the wounds inflicted upon the offended party, we agree with the lower court that it was clearly the intention of the appellant to take the life of the offended party. In view of the circumstances of the case, we increase the minimum sentence to be served by the appellant from two to four years of prision correccional. As thus modified, the decision appealed from is affirmed, with the costs against the appellant.

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

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