

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. KERBA N., DEFENDANT AND APPELLANT.

G.R. No. 43066. May 23, 1935

Ponente: HULL, J.

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HULL, J.:

Appellant was convicted in the Court of First Instance of Iloilo of the crime of homicide and sentenced to undergo imprisonment for an indeterminate period running from eight years and one day to fourteen years, eight months and one day, with appropriate accessory penalties, to indemnify the heirs of the deceased Sa Baan in the amount of one thousand pesos, and to pay the costs.

Appellant, through his attorney de oficio, assigns the following errors:

"1. The lower court erred in finding that the wound on the face of the deceased, Sabaan, was of a mortal character.

"2. The lower court erred in finding that Kerba N. was a member of an armed band who fought against another armed band of which the deceased, Sabaan, was a member.

"3. The lower court erred in not finding that Kerba N. acted in self-defense.

"4. The lower court erred in finding the accused guilty as principal of the crime of homicide and in imposing upon him the penalty of from eight years and one day of prision mayor to 14 years, 8 months and 1 day of reclusion temporal, to indemnify the heirs of the deceased in the sum of P1,000, to the other accessory penalties, and to pay the costs."

The judgment of conviction was based upon the findings of fact contained in the following passage of the appealed decision:

"El 13 de noviembre de 1934, día martes, a eso de las diez del día, en el Barrio Hagakhak, Municipio de Calinog, Provincia de Iloilo, Islas Filipinas, con motivo de una pelea de gallos y juegos de azar que el hoy occiso Sa Baan celebraba con sus companeros Du Lugan, Honorato y Binoy, que no eran del agrado de Bu Soy quien alegaba que aquellos siendo montescos de la Provincia de Antique no debian ocupar el territorio de dicho Bu Soy y de los suyos, llamados Sito, Sebío, Tapo y el hoy acusado Ker Ba, hubo una pelea a mano armada entre dichos dos bandos, en la que echaron mano de bolos de combate y lanzas de que estaban provistos. En aquel combate a mano armada Sa Baan dio dos golpes de tajo a Ker Ba, que e"ste paró con su bolo y con su bastón de bejuco; Sito entonces le asestó un lanzazo a Sa Baan en la región abdominal izquierda atravesandola de parte a parte por detras, y luego otro en la region pectoral derecha; volvió hacia un lado Sa Baan y recibió de Ker Ba un tajo en la cara izquierda, mortal por necesidad, de cinco pulgadas de largo, cuatro pulgadas de ancho y una pulgada de profundidad, con incision de las venas y arterias importantes en dicha parte del cuerpo; y despues de caído Sa Baan, Ker Ba le dió otro tajo que le hirio en el antebrazo derecho; en cuanto Binoy viera caído a Sa Baan, largo un lanzazo en el vientre a Sito. Como resultado de aquella tragedia, murieron Binoy, Sito y Sa Baan."

We are of the opinion that, upon the evidence of record, the guilt of appellant has not been established beyond a reasonable doubt. When the deceased was reprimanded by the uncle of the accused for engaging in cockfighting, he became enraged, threw his cock aside, and drew his bolo in a menacing manner. The accused was surprised to see the attitude and manner of the deceased, sprang to his feet, drew his bolo and stood in an attitude of defense. So far as the record shows, the accused said or did nothing to bring about the affray. Outside of putting himself in an attitude of defense against the threatened unlawful aggression, he took no aggressive attitude until an attack was made upon him by the deceased. The evidence even for the prosecution indicates that, before the accused struck a single blow, he parried at least two blows directed at him by the deceased. He did not wound the deceased until after his father inflicted upon the deceased a mortal wound, and the father was then killed by a companion of the deceased. The theory of the Solicitor-General that there was an invitation and acceptance to a mutual combat is not sustained by the evidence. On the whole evidence it seems to us that the accused was suddenly confronted, without any fault on his part, with a serious situation in which his life was threatened. It was necessary for him to act instantaneously and without any period for reflection. Nor did he use more force than was necessary for his own protection. We therefore hold that he acted in self-defense and direct his acquittal.

Accordingly, the judgment will be reversed, with direction that appellant be immediately released. So ordered, with costs de oficio.

Malcolm, Vickers, Goddard, and Diaz, JJ., concur.

Judgment reversed and defendant acquitted.

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