

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EPIFANIO MAGCOMOT ET AL., DEFENDANTS AND APPELLANTS.

G.R No. 4329. March 30, 1909

Ponente: MAPA, J.

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MAPA, J.:

Among the four defendants in this case, one Pedro Magnave died in the course of the proceedings in the lower court, and the complaint was dismissed as to him. The other three were convicted as principals by direct participation in the commission of the crime charged in the complaint, Epifanio and Clemente Magcomot being sentenced to the penalty of cadena perpetua and the accessories thereof, and the third, Isidro Magcomot, to seventeen years, four months and one day of cadena temporal, the circumstance of his being less than eighteen years of age having been deemed in his favor. These three defendants appealed from the judgment, and Epifanio Magcomot having died during the pendency of the proceedings, in accordance with the law it is hereby ordered that this case be dismissed as to him.

Only two of the witnesses for the prosecution were eyewitnesses to the commission of the crime, Braulio Pasco and Hilario Gozon. The former, besides saying that the facts which led to the commission of the crime had their inception at a gambling house, wherein he, the witness, and the deceased Bonifacio Gabaleo chanced to be present, made the following statement:

"It happened that the deceased Bonifacio made a wager of five centavos on a card, with the statement that, whether he won or lost his bet, he would leave the place; he won his bet and cashed it, whereupon Clemente Magcomot who was dealing, with Pedro Megnave as paying teller, stood up and shouted: 'We be d- (mal rayo nos parta); it looks as though we are among swindlers; then he left the table and the gamblers, of whom I was one, got up, and went down stairs. While on the ground floor of the house a quarrel began between Pedro and Clemente on the one side, and the deceased Bonifacio on the other, and in the meanwhile Epifanio approached them and also participated in the dispute and stabbed the deceased Bonifacio with a flamenco."

It clearly appears from the record that Epifanio Magcomot is the only one who inflicted a wound on the deceased, and that said Epifanio at the beginning of the quarrel between the deceased and Clemente and his companions, was visiting the house of one Esteban Vasquez, situated at a distance of about five brazas-according to the judgment of the lower court-from the place of the occurrence, Epifanio arriving at the very moment when Isidro and Clemente Magcomot had overpowered the deceased. It was recounted by the trial judge in the following words: "The said Isidro and Clemente Magcomot had Bonifacio Cabaleo overpowered until Epifanio Magcomot suddenly appeared on the scene * * *. It is fully proven, beyond reasonable doubt," the judgment continues, "that Epifanio Magcomot inflicted the wound which caused the death of Bonifacio Gabaleo, while his sons, Isidro and Clemente, had the deceased overpowered."

If the appearance of Epifanio on the scene of the crime was without any warning, his assault on the deceased was in like manner sudden and without warning. The testimony of the two aforementioned witnesses for the prosecution touching this point is very explicit. Braulio Pasco testified that Epifanio, on arriving at the scene of

the crime, stabbed Bonifacio at once. Hilario Gozon testified that "I saw Epifanio carrying a flamenco, and on arriving at the place of the crime he stabbed Bonifacio at once;" the witness also testified that the accused acted without saying a word. This shows in the most unquestionable manner that the aggression on the deceased was not the outcome of a plan arranged previously or at the time, by Epifanio Magcomot and his coaccused. Said aggression was carried out by the former on his own account and without any connection with the acts of the latter. Their quarrel with the deceased arose out of a question about the sum of five centavos; neither the trivial cause of said quarrel nor the actions of Isidro and Clemente Magcomot during the dispute lead us to believe that it was their intention to take Bonifacio's life, because, in reality, they did the deceased no harm of consequence, in spite of the fact that they had the chance so to do, had they wished, before the arrival of Epifanio.

The arrival of the latter was entirely accidental and unexpected, and the assault he made on the deceased was so unexpected, so sudden, as stated by the witnesses for the prosecution, that in all probability his codefendants would not have been able to check it even though they had wished so to do, it being, furthermore, very likely that they had no knowledge of the assault until after it was consummated, the same having been so rapid and having been committed in the darkness of night, and while they were then engaged in overpowering the deceased. In view of all the circumstances of the case we are satisfied that the assault was committed without the concurrence of the will of Isidro and Clemente Magcomot, and in the absence of that volition, which is the fundamental source of criminal liability, these codefendants can not lawfully be held liable for the aggression and its consequences. On the other hand, it can not be pleaded that the acts committed on the body of the deceased by said codefendants and by Epifanio were perpetrated at the same time, because this simultaneousness does not of itself demonstrate the concurrence of wills nor the unity of action and purpose which are the bases of the responsibility of two or more individuals, and in the absence of which it is strictly just, in accordance with the sound principles of law, that each one should only be held liable for the acts perpetrated by him.

A case similar to the one before us is that expounded in No. 7, page 130, volume 7, of Viada's commentaries on the Penal Code, in the following terms:

"If, on account of a quarrel, two persons assault another, one of them striking the latter on the face with a stick and inflicting injuries which would have healed in thirty days, while the other aggressor caused him a deep wound in the breast with a cutting weapon, from which instant death resulted, should both accused be held liable as authors of the homicide so committed, if, according to the verdict of the jury, it has not been shown that there existed between the two a previous agreement to kill? It was so held-says Viada-by the audiencia of Malaga, whose decision was reversed for the following reasons by the supreme court as violating articles 13 and 433 of the code so far as concerned the accused who inflicted only the less grave injuries: 'Inasmuch as the judgment appealed from clearly and distinctly established the participation of the defendants Joaquin and Antonio Ramirez in the less grave injuries inflicted upon, and the sudden killing of Jose del Rio, by holding the appellant liable for said injuries, and by making said Antonio specifically responsible for the death of the victim; and inasmuch as in the commission of both crimes it does not appear that there existed previous agreement, connivance or persuasion for its execution, the criminal liability should be limited to the acts independently committed by each defendant; on this supposition, and whereas it does not appear that Joaquin Ramirez had, previously or at the time, any knowledge of the crime of homicide perpetrated by his brother, he must be held to answer only for the crime by him committed, to wit, that of less grave injuries as defined and punished by article 433 of the Penal Code. For the above-stated reasons the audiencia provincial of Malaga committed the error and violation of the law alleged in the appeal, etc. (Decision of January 27, 1896.)"

The same legal principle is embodied in the decisions of the supreme court of Spain, rendered on April 9, 1878; October 14, 1887; October 8, 1889; February 19, and March 6, 1896; and July 6, 1897. In all of said decisions it is uniformly laid down that, in the absence of a previous plan or agreement between the culprits, the criminal liability resulting from different acts committed against one and the same person is individual and not collective,

each one of the culprits being responsible only for those acts committed by himself.

For these considerations, and on the supposition that there existed no agreement between Isidro and Clemente Magcomot and Epifanio Magcomot to commit the aggression which caused the death of Bonifacio Gabaleo, which death was caused solely by the latter, while the former, acting independently and without agreement with Epifanio, were overpowering Bonifacio Gabaleo, we hold that said Isidro and Clemente are not responsible for the death of Bonifacio Gabaleo and are therefore entitled to an acquittal.

The judgment appealed from is reversed and Isidro and Clemente Magcomot are acquitted, and, with the costs of both instances de oficio, it is hereby ordered that they be set at liberty at once.

Arellano, C. J., Torres, Carson, and Willard, JJ., concur.

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