

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BEATRIZ YUMAN, DEFENDANT AND APPELLANT.***G.R. No. 43469. August 21, 1935*

Ponente: RECTO, J.

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Marciano Martin and Beatriz Yuman without being joined in lawful wedlock, lived as husband and wife for three or four years until February 26, 1935, when Marciano left their common dwelling. On the afternoon of March 5, 1935, Beatriz went to look for him at the cockpit of Mandaluyong. From there they came to Manila in a vehicle and while on the way they talked of "his absence and the many debts they had". Marciano intimated to Beatriz his determination to end their relations, and urged her to return home alone. When they arrived in the district of Sampaloc at the corner of Legarda and Bustillos streets, they alighted and she suggested that they go home together, to which Marciano, rude and hostile, objected warning her at the same time not to meddle with his affairs and to do as she pleased, whereupon Beatriz stabbed him with the penknife she was carrying thereby inflicting a wound in the "right lumbar region which injured the kidney". When Marciano realized that he had been wounded, he started to run pursued by Beatriz, weapon in hand. In his flight Marciano ran into traffic policeman Eduarcto Dizon whom he asked to arrest "that woman" who had wounded him. Policeman Dizon saw Beatriz and commanded her to surrender the penknife, which she did instantly. When asked whf she had wounded Marciano she replied that Marciano "after having taken advantage of her" had abandoned her. Immediately the aggressor was arrested and! placed in custody, where she freely and voluntarily gave to the police officials the statement Exhibit D, from which we took, with respect to the act and circumstances of the aggression, the foregoing statement of facts because in our opinion the said statement constitutes a true, correct and spontaneous version of the occurrence.

The following day Marciano Martin died as a result, according to expert testimony, of the wound inflicted upon him by Beatriz Yuman. Charged in the Court of First Instance of Manila with the crime of homicide, Beatriz Yuman, after the usual proceedings, was sentenced to suffer an indeterminate penalty ranging from six years and one day of prison mayor as minimum to twelve years and one day of reclusidn temporal as maximum, and to pay to the heirs of the deceased an indemnity of P1,000, and the costs. From said sentence the defendant appealed, alleging as error the failure of the trial court to take into consideration the presence of all the elements of legitimate self-defense, or at least certain circumstances mitigating her criminal liability.

Inasmuch as this court is of the opinion that the act complained of occurred in the manner and under the circumstances stated in the statement Exhibit I) the Spanish translation of which is Exhibit D-1, and not in accordance with the subsequent testimony of the accused given at the trial as a witness in her favor, it is evident that our conclusion will have to be that her act of mortally wounding her lover Marciano Martin had not been preceded by aggression on the part of the latter. There is no occasion to speak here of the "reasonable necessity of the means employed to prevent or repel it", nor is it necessary to inquire whether or not there was "sufficient provocation" on the part of the one invoking legitimate self-defense because both circumstances presuppose

unlawful aggression which, we repeat, was not present in the instant case. Even in her testimony given during the trial, the appellant, momentarily forgetting her theory, admitted that the act performed by her was not justified:

"Q. And was there no motive on your part to justify your assaulting him?—A. There was none.

"Q. And why did you stab him?—A. I did not have any intention of attacking him either; as a matter of fact I was looking for him so that we could live together.

"Q. If you had no intention to attack him, and much less to kill him, why did you open that penknife?—A. That penknife was closed<sup>1</sup>, so much so that I only opened it when I felt dizzy and my sight became dim and in fact I do not know where I hit him." (Beatriz Yuman, transcript pp. 27-28.)

The obfuscation alleged by the accused was due according to her to the fact that "the deceased compelled me to alight from the vehicle and pushed my head on account of which I felt dizzy and hit my leg against something which hurt me" and it was then when "I took from my under-garments the penknife I was carrying and I opened it \* \* \*".

We do not think that such an incident took place as no reference thereto has been made by the accused in her written statement of March 6th, regarding which the only comment she made during the trial upon being questioned, was that "I was not able to declare very well because they had been intimidating me during the night", without making any attempt, however, to deny or attack openly its contents.

However, admitting as true the act imputed by the accused to the deceased,—a slight push of the head with the hand—which, according to her was the cause that led her to stab him, such act does not constitute the unlawful aggression mentioned by the Code, to repel which it is lawful to employ a means of defense which may be reasonably necessary. "Considering that an unlawful aggression, as a fundamental requisite of self-defense is not necessarily implied in any act of aggression against a particular person, when the author of the same does not persist in his purpose or when he desists therefrom to the extent that the person attacked is no longer in peril: \* \* \*" (Decision of November 30, 1909, Gazette of April 21, 1910.) "Considering that the trial court in finding that the now deceased Manuel Quiros insulted and gave Jose Izquierdo a hard blow on the head without specifying whether he used his hand or any instrument, and this being the only act preceding the pulling of the knife and the mortal wounding of his adversary, it is clear that there is no evidence of a situation calling for legitimate defense by reason of unprovoked aggression, etc." (Decision of November 19, 1883, Gazette of February 3, 1884.) "Considering that from an examination of the findings of the verdict as a whole, it is evident that from them the existence of unlawful aggression constituting the first requisite of article 8, No. 4 of said Code cannot be inferred; because the act of the deceased of holding the appellant by the necktie and of giving him a blow -on the neck with the back of the hand without injuring him, are not acts which would really put in danger the personal safety of the appellant and would justify the defense referred to by the aforesaid provision, but were real provocations correctly appreciated by the trial court, whose effects would be restricted to a mitigation of criminal liability, thus giving them the full extent claimed by the appellant, inasmuch as nowhere in said verdict is found an assertion showing that the deceased had drawn a weapon or had it in his possession at the time he was provoking the accused with said acts; and because the aforesaid unlawful aggression did not exist in the criminal act referred to in the verdict, there is no doubt that the appeal cannot be sustained etc." (Decision of January 25, 1908, Gazette of July 12, 1909.) "Considering that the juridical concept of the exempting circumstance of article 8, No. 4 of the Penal Code requires, as characteristic elements, an act of violence amounting to an unlawful aggression which would endanger the personal safety or the rights of the offended party; and this being so, it is evident that neither the shove which the deceased gave the accused, nor the attempt to strike him with a bench or chair, all of which took place in the bar, constitutes a real aggression etc." (Decision of May 4, 1907, Gazette of October 16 and 22, 1908.)

From the foregoing it may be inferred that, with respect to the question of legitimate self-defense, whether complete or incomplete, the appeal is without merit. But the appellant prays as an alternative that the following mitigating circumstances be taken into consideration:

(a) Lack of intention to cause so grave an injury as that committed.

In the sentence appealed from, this circumstance was taken into consideration, which we think was an error. The stab-wound inflicted upon the deceased by the accused was not only mortal, but the victim thus wounded and running away was also pursued by the accused, knife in hand, and the latter would perhaps have inflicted upon him other wounds had it not been for the timely arrival of policeman Dizon who calmed her bellicose attitude and placed her under arrest. This marked obstinacy of the accused in her aggression clearly reveals her intention to cause to its full extent the injury she has committed.

(b) That provocation on the part of the deceased has immediately preceded the attack. The appellant claims that the deceased pushed her head, by reason of which her foot was injured. As stated above, this belated allegation made by the accused at the trial while testifying as witness in her favor, and of which she made no mention in her statement before the police, is in the opinion of the court not established by the evidence.

(c) That she acted under obfuscation. We believe that this mitigating circumstance should be taken into consideration in favor of the accused, in view of the peculiar circumstances of the case, especially the fact that the accused had been abandoned by the deceased after living together for three or four years, and the harsh treatment which the deceased gave the accused on the afternoon of the day in question, a short time before the aggression. The facts of the instant case are different from those upon which a contrary ruling was laid down by the court in the cases of *United States vs. Hicks* (14 Phil., 217), and *People vs. Hernandez* (43 Phil., 104), cited in the brief for the prosecution.

(d) Voluntary surrender of the accused to the authorities. The trial court acted correctly in not taking into consideration this circumstance. (*People vs. Siojo*, p. 307, *imte.*)

(e) Lack of instruction of the accused. This circumstance should be taken into consideration in her favor, it appearing from the record that she is a mere wage-earner and could not sign her statement before the police and had to affix thereto her thumbmark.

Except that, in view of the presence of two mitigating circumstances, without any aggravating circumstance, the appropriate indeterminate penalty to be imposed upon the appellant is from four years of prison correctional as minimum to eight years and one day of prison mayor as maximum, in all other respects, the sentence appealed from is affirmed with costs. So ordered.

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

Judgment modified.

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