

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. EULOGIO ESPENILLA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 43816. October 08, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

Tried in the Court of First Instance of Leyte for the murder of Simplicio Tomandao, the seven appellants were found guilty by the trial judge of homicide and sentenced to suffer a penalty ranging from eight years and one day of prision mayor to fourteen years, eight months, and one day of reclusion temporal, to indemnify the heirs in the sum of P1,000, and to pay the costs.

Appellants' attorney de oficio, who appears to have studied the case with commendable zeal, argues that the evidence is insufficient to sustain the decision of the lower court. The Solicitor-General on the other hand thinks the appellants are guilty of murder, and recommends that all seven of them be sentenced to life imprisonment.

The story told by the witnesses for the prosecution is that about four o'clock in the afternoon of March 21st of this year some people were playing "heads or tails" with pieces of coconut shell in the barrio of Tagkip, Burauen. One of the players was Eusebio Bueno. Felix Sosing was also present, but he did not take part in the game. Komualdo Idara, who had been watching the gambling tried to get change for ten centavos. Bueno told him he was disturbing the game, but Idara insisted, and Bueno knocked him down. Simplicio Tomandao intervened and told Bueno it was a small matter that could be settled and they ought not to fight. Bueno resented the intervention of Tomandao and told him to shut up, adding that they would meet later. Felix Sosing did not do or say anything, but he appeared to be angry. Bueno and Sosing went away together.

About two hours later, Felix Sosing accompanied by his six coaccused, knocked at the door of Felix Cuizon's house in the barrio of Tagkip and asked Cuizon to send his visitor outside. Tomandao was eating with Cuizon, but the latter replied that he did not have any visitor. Sosing said Simplicio Tomandao was there, and entered the house with a shotgun in his hand and a bolo in his belt and pointed his gun at Tomandao. Cuizon halted him, and Tomandao ran and jumped out through a hole in the side of the house. As soon as he struck the ground, Eulogio Espenilla stabbed him in the abdomen with a small bolo. Tomandao ran towards the stairway, and Felix Sosing struck him on the head with a bolo, and Eusebio Bueno knocked him down with a stick. Then the other four defendants struck the wounded man with sticks and bolos, and he died almost immediately.

The evidence for the defense is that when Felix Sosing went home from work that afternoon, his wife told him she had heard that clandestine cockfights were being held near Felix Cuizon's house. He decided to investigate the matter because he was an agent of the Government, and the municipal president had ordered the barrio lieutenants to put a stop to illegal cockfighting in the municipality. When Sosing reached Cuizon's house he found there only Sotero Lastimado, Simplicio Tomandao, and Felix Cuizon. He asked Cuizon why he allowed illegal cockfights to be held there, and told him that it was no use for him to try to conceal it, because many persons had told him

about it, some of them being Eusebio Bueno, Balbino Tomas, Antonio Sosing, Pedro Arrosado, and Cesareo Tomas. Cuizon denied the charge. The defendant Sosing then said he would like to call those persons and file a complaint against Cuizon with the chief of police. Simplicio Tomandao intervened and asked who had anything to do with what they might do in that place. Just then Eulogio Espenilla arrived and said: "Hey! you have been caught by the encargado for allowing illegal cockfighting here." Tomandao replied: "What have you, the bully of the barrio of Caridad, to do with this; if you wish to fight, let us fight now", and drew out his bolo to strike Espenilla. Sosing intervened, and reminding them that he was an agent of the authorities he ordered Tomandao to hand over his bolo, whereupon Tomandao struck at Sosing with the bolo and wounded him on the left arm, and said: "Do not come near me, although you be an agent of the authorities." Sosing then ran away.

Tomandao and Espenilla then confronted each other. Tomandao struck at Espenilla with his bolo, but did not hit him. Espenilla struck Tomandao with the stick he was carrying, and then tried to snatch Tomandao's bolo from him and was wounded in the arm. Espenilla then pulled out his own bolo and wounded Tomandao on the left side of the head, behind the left ear, on the neck, on the right shoulder, on the left arm, and in the abdomen. A large artery in the neck was cut, and the wounded man died from the resulting hemorrhage.

After stating the substance of the evidence for the prosecution and the defense, the trial court stated his conclusions as follows:

"The court is inclined to give credit to the evidence for the prosecution which tallies more with the location of the numerous wounds and contusions found on the body of the deceased, which showed that they were caused, not by one aggressor only, nor by one merely acting in self-defense as Espenilla did according to his own testimony, and in the absence of any explanation why the other five accused, who had no knowledge of, or took no part in the commission of the offense according to the defense, were prosecuted, inasmuch as it cannot be presumed that they were prosecuted solely for the sake of prosecuting them. Although it may be inferred from the evidence that there was a conspiracy among the accused, in view of the manner in which they made the attack, there is no proof, however, as to the time when they decided to kill the deceased, and by reason thereof the existence of premeditation cannot be admitted. Nor is there evidence to establish treachery, which was alleged in the information, and therefore the crime committed is homicide only without the presence of any general modifying circumstance."

We cannot accept the theory of the prosecution. The alleged motive is entirely insufficient to account for it. It is too much to expect us to believe that because of the friendly intervention of Simplicio Tomandao in the fight between Eusebio Bueno and Romualdo Idara over a petty gambling game, Felix Sosing, who had not participated in the game or the fight, headed a group of seven armed men and went to the house of Felix Cuizon to kill Simplicio Tomandao. It does not appear that there was any existing enmity between Sosing and Tomandao, or that Sosing had any particular interest in Eusebio Bueno or Romualdo Idara. Furthermore, the evidence for the prosecution consisting of the testimony of Felix Cuizon and Justo Luanco does not explain how Felix Sosing and Eulogio Espenilla were wounded on the occasion in question. Roman Tablada, a provincial sanitary inspector, testified that on March 23rd he washed and dressed a bolo wound which Felix Sosing had on the left arm, and this defendant exhibited at the trial a scar an inch in length, which was identified by the sanitary inspector as the scar of the wound he treated. The sanitary inspector further testified that on the same date he washed and dressed a wound of Eulogio Espenilla that was five inches in length, Espenilla exhibited at the trial a scar three inches long and one-eighth of an inch wide on his right arm. It was identified by the sanitary inspector as the scar of the wound he had treated.

According to the testimony of Cuizon and Luanco, Sosing was armed with a shotgun and a bolo, but it was not shown that Sosing was the owner of a shotgun or how he had obtained possession of one.

Felix Sosmg was an assistant barrio lieutenant, and his testimony to the effect that he went to the house of Felix Cuizon on the occasion in question because he received information that clandestine cockfights were being held near Cuizon's house seems to us much more probable than the theory of the prosecution that he went there at the head of an armed band to attack Simplicio Tomandaa. Sosing testified that the only persons he found near Cuizon's house were Felix Cuizon, Simplicio Tomandao, and Sotero Lastimado; that while he was talking with them Eulogio Espenilla arrived and intervened in the conversation. In weighing the testimony of Cuizon and Luanco, it is proper to take into account the fact that Simplicio Tomandao was engaged to marry the daughter of Cuizon and was living with Luanco. Sotero Lastimado as well as Sosing and Espenilla testified that Eusebio Bueno, Balbino Tomas, Cesareo Tomas, Antonio Sosing, and Pedro Arrosado were not present at the house of Felix Cuizon, and the story of Cuizon and Luanco being in our opinion untrue, it results that it is not proved that the above-mentioned five defendants had anything to do with the incident in question.

Felix Sosing had gone to the house of Felix Cuizon for the purpose of putting a stop to the illegal cockfighting and had spoken to Cuizon about it in the presence of Simplicio Tomandao and Sotero Lastimado, and taking into consideration the relation between Tomandao and Cuizon and the fact that Tomandao was undoubtedly armed, we find that the evidence for the defense to be credible and that Tomandao attacked Sosing and wounded him on the left arm with his bolo. Sosing then ran away without wounding Tomandao. In the fight that ensued between Simplicio Tomandao and Eulogio Espenilla, Tomandao was killed, and Espenilla admits that he killed him. The burden was therefore upon him to prove that he acted in self-defense. Sotero Lastimado testified that he did not know for what reason Espenilla beat Tomandao with a stick and wounded him. A portion of Lastimado's testimony tends to show that Tomandao and Espenilla were both angry and that the fight between them was a mutual combat. Tomandao received seven wounds besides various bruises and scratches, while Espenilla sustained only a superficial cut on the arm, which according to his own statement he received in trying to get possession of Tomandao's bolo. Espenilla first made use of a stick, and then inflicted the fatal wounds with his bolo. His testimony does not convince us that he acted in self-defense in taking the life of Simplicio Tomandao, because it is not satisfactorily proved that Tomandao was the aggressor and Espenilla killed him in defending himself. If Espenilla got possession of Tomandao's bolo when he received the wound on the arm, that would explain why he received no other wounds; and if he had disarmed Tomandao, then there was no necessity for him to make use of his bolo and kill the deceased.

For the foregoing reasons, the decision appealed from is reversed as to the appellants Felix Sosing, Eusebio Bueno, Balbino Tomas, Cesareo Tomas, Antonio Sosing, and Pedro Arrosado, and they are acquitted with the proportionate part of the costs de oficio. The appellant Eulogio Espenilla is found guilty of homicide, and it appearing that he is entitled to the mitigating circumstances of voluntary surrender and lack of instruction, which are not offset by any aggravating" circumstance, he is condemned to suffer an indeterminate sentence from two years of prision correctional to eight years and one day of prision mayor, to indemnify the heirs of the deceased in the sum of P1,000, without subsidiary imprisonment in case of insolvency, and to pay the proportionate part of the costs.

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

Judgment partly reversed and partly modified.

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