

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DOMINGO ABILES, DEFENDANT AND APPELLANT.

G.R. No. 44023. October 26, 1935

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

The appealed judgment sentences the appellant for the crime of homicide committed on the person of Maximo Rodas to suffer from six years and one day of prision mayor, as the minimum, to twelve years and one day of reclusion temporal, as the maximum, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs.

On the night of May 11, 1935, carom was being played in the billiard saloon of Simeon Pereyra in the municipality of Iloilo, Province of Iloilo. A quarrel ensued between the appellant and the deceased, then present at the saloon, because the latter proposed, that the game be changed to dice. Upon seeing this and fearing that the appellant and the deceased should engage in a fight, the saloon owner told them to leave the place. The deceased left, followed five minutes later by the appellant because the owner was about to close the saloon. Shortly after appellant's exit, the saloon owner heard a noise near the door, and when he went to find out what it was all about, he saw the appellant and the deceased in a hand-to-hand fight and noted that the appellant's head was bleeding and that he was about to fall because the deceased was on top of him, Pereyra called for a policeman and told the incident to policeman Felipe Cortez whom he found on duty in the street. The policeman repaired to the scene and there found the deceased seated and almost prostrate on the street, with many wounds and a knife nearby. After the deceased was taken to the hospital, the policeman looked for the appellant, and on reaching Blumentritt Street, the appellant approached him and voluntarily surrendered to him as the person who had wounded the deceased.

On examination, Br. Ferrer found several wounds on the deceased's body, one on the left side, another on the right, clavicular region, another on the right side of the face, and another on the head, all of a serious nature, especially that on the left side which was mortal having resulted in acute peritonitis. He also found other wounds of little consequence.

The evidence shows that the deceased was bigger and sturdier than the appellant, was feared in the community, and was previously convicted of the crime of physical injuries.

According to the appellant, while he was out in the street after leaving the billiard saloon, he was stoned on the head without warning and shortly thereafter the deceased held him by the arms and threw him to the ground, and following on top of him and kneeling on his chest, the deceased choked him. In this position, the appellant took his knife and with it defended himself and stabbed the deceased until he succeeded in breaking away from him. The appellant then stood up, cast his weapon, and looked for a policeman. Two eye-witnesses have corroborated this testimony of the appellant.

There is no evidence counter to appellant's version. The prosecution has not presented any witness to the beginning and outcome of the incident. The owner of the billiard saloon only saw the appellant and the deceased

grappling one another, and he left the scene in search of a policeman when the appellant was about to fall. This last circumstance, to a certain extent corroborates appellant's testimony that he dropped to the ground.

Moreover, the circumstance that the appellant did not immediately leave the saloon after the deceased had left shows that he did not intend to attack the deceased. But the fact that the latter, five minutes after he had left the saloon, was still in the vicinity of the door, shows that he was waiting for the appellant. These tokens warrant the conclusion that the deceased was the aggressor in the manner testified to by the appellant. Additionally, we do not find it impossible, the testimony of Dr. Ferrer notwithstanding, that the appellant, while the deceased was kneeling on his chest and was strangling him, was able to open his knife and to stab the deceased therewith. We, therefore have to accept the testimony of the appellant in this respect, and this being so, we believe the appellant was reasonably justified in defending himself as he did, although it resulted in the death of the deceased.

Wherefore, the appealed judgment is reversed, and the appellant acquitted, with costs de oficio. So ordered.

Abad Santos, Hull, Vickers, and Diaz, JJ., concur.

Judgment reversed and defendant acquitted.

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