

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SIMON CABONCE, DEFENDANT AND APPELLANT.

G.R. No. 4513. August 28, 1908

Ponente: TORRES, J.

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TORRES, J.:

In the afternoon of the 8th of September, 1907, Eulogio Criselda and Pedro Diaz had a misunderstanding in the presence of Simon Cabonce, at the cockpit of Cabadbaran, Province of Surigao, in connection with the payment of a wager of 0.50 which Diaz refused to satisfy. They parted without further trouble and Criselda returned to his home. Shortly thereafter he went to the house of Cabonce to gamble, and, as he saw that the latter had a dagger in his hand, without saying anything, he took the weapon away from Cabonce who made no objection but immediately said to him: "Have courage; I will look out for you." Criselda then left Cabonce's and on passing near the house of Pedro Diaz he met the latter on the road; Criselda said "good evening," as it was almost 7 o'clock, and immediately struck him in the stomach with the dagger. In consequence of the wound received Diaz died some hours later.

Proceedings were instituted against Eulogio Criselda, and the court below entered judgment on the 9th of November, 1907, sentencing him to the penalty of cadena perpetua. On the 7th of November, the provincial fiscal filed a complaint against Simon Cabonce basing it on the foregoing proceedings, and charged him with the crime of murder. The case was then heard and the judge held that he was guilty of the crime of homicide as author thereof by instigation, and sentenced him to the penalty of fourteen years eight months and one day of reclusion temporal, to suffer the accessory penalties, and, together with Eulogio Criselda, to indemnify the heirs of the deceased Diaz in the sum of 1,000, with costs. From this judgment the accused has appealed.

In view of the crime of murder committed by Eulogio Criselda on the person of Pedro Diaz, for which he was prosecuted and sentenced to cadena perpetua, Simon Cabonce was also accused of the same crime on a separate complaint presented by the provincial fiscal charging him with having instigated the violent death of the said Pedro Diaz, executed by Eulogio Criselda, the actual author of the crime in question; therefore, there only remains now to examine and fix the part that the accused Simon Cabonce took in the said crime, and whether, as affirmed by the prosecution, he was the instigator thereof and consequently liable as coprincipal.

Article 13 of the Penal Code provides:

"The following are considered as principals:

"1. Those who take a direct part in the execution of the act.

"2 Those who directly force or induce others to execute it.

"3. Those who cooperate in the execution of the act by another act without which it could not have been accomplished."

From the bulk of the evidence offered in the case it can not be deduced that Simon Cabonce did directly force or

induce Eulogio Criselda to kill Pedro Diaz with a dagger; as to the statements by Criselda that Cabonce had ordered him to kill Diaz because he was a nuisance in the pueblo and that he would look after his wife's maintenance in case he lost his liberty, upon rectification it appears that Criselda testified that Cabonce, when handing him the dagger, said to him, "Have courage, and I will take care of you." Such statements, differing from each other where not absolutely contradictory do not establish the fact that the accused participated in the act by directly instigating the execution of the crime, and with greater reason if it is remembered that the accused denied that the dagger belonged to or came from him, or that he had ever uttered the words that Criselda, without corroboration, attributed to him.

The mere presence of the accused Cabonce at the time of the commission of the crime, suspected but not satisfactorily proved in the case; the contents of the letters or notes that passed between Criselda and Cabonce when they were both in jail, and the other data in the case, do not fully prove the guilt of Cabonce, nor that between the latter and Criselda there had been an agreement to commit the crime, or that Cabonce had ordered, instigated, or induced Criselda in a direct and efficient manner to commit it; because, even if the words, as alleged by Criselda, were uttered by the accused in the latter's house, they do not constitute an actual intentional instigation, or a direct and efficient inducement showing criminal participation; the killing of Pedro Diaz by Criselda was his own voluntary act and was not induced by foreign influence:

Even though doubt may exist as to the innocence of Simon Cabonce, on account of certain data which appear in the record, this is not sufficient to warrant a finding of guilty, and he should therefore be acquitted in accordance with the provisions of section 57 of General Orders No. 58, which provides that—

"A defendant in a criminal action shall be presumed to be innocent until the contrary is proved, and in case of a reasonable doubt that his guilt is satisfactorily shown he shall be entitled to an acquittal."

For the reasons above set forth it is our opinion that the judgment appealed from should be reversed, and Simon Cabonce, the accused herein, is hereby acquitted with the costs in both instances de oficio, and he will at once be liberated if he is not detained on any other charge. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.

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