

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. A. H. BARNES, DEFENDANT AND APPELLANT.*G.R. No. 4774. November 18, 1908*

Ponente: TORRES, J.

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At about 10 o'clock on the morning of the 15th of December, 1906, A. H. Barnes, J. A. Ryan, and three Filipinos, one of whom was Pedro Leonardo, were out duck shooting and went through the barrio of San Pablo, sitio of Muyot, in the municipality of San Antonio, Nueva Ecija; when they were about to return it was noticed that there were ducks on an estero or stream; Barnes at once fired his gun twice, the said Pedro Leonardo being near to him at the time; when trying to reload the weapon, the cartridge would not go in easily, and Barnes had to force it by closing the breech of the gun which is automatic, pressing the same upon his knee, at which moment the gun was discharged, Barnes being still on his knees; when he rose to look for the ducks he saw the said Leonardo sinking beneath the water, for which reason he left his gun on the ground and told his friend Ryan that it looked as if the said individual was hurt; they went into the river and with the assistance of the other men recovered the body of Pedro Leonardo who was already dead; a surgeon who examined the body found a gunshot wound in the back of the head; bones had been broken, and the wound was of necessity a mortal one.

The provincial fiscal therefore filed a complaint against A. H. Barnes on the 27th of March, 1907, charging him with the crime of reckless negligence; the prosecution was begun, and the trial judge, in view of the conclusions, sentenced the accused to the penalty of six months of arresto mayor, to pay an indemnity of P300 to the heirs of the deceased, or, in case of insolvency, to suffer subsidiary imprisonment, not to exceed one-third of the term of the main penalty, and costs, one-half of the time during which he suffered prision preventiva to be credited in his favor. From that judgment the accused has appealed.

For the proper and just classification of the deed ending in the violent death of Pedro Leonardo, caused by the discharge of a firearm loaded with shot, and taking into consideration the result and merits of the case, the classification of murder and homicide comprised in articles 403 and 404 of the Penal Code must of course be discarded, since it does not appear, nor has it even been indicated that the shot was purposely fired, with the malicious and criminal intent to kill the man or to cause him some bodily harm, so much so that the provincial fiscal, in view of the result of the preliminary investigation made immediately after the affair, in his written complaint limited the charge against Barnes to homicide committed through imprudence, defined and punished by article 568 of the said code, which reads as follows :

"He who shall execute through reckless negligence an act that, if done with malice, would constitute a grave crime, shall be punished with the penalty of prision mayor in its maximum degree to prision correccional in its minimum degree, and with arresto mayor in its minimum and medium degrees, if it shall constitute a less grave crime."

If, according to article 1 of the said code crimes or misdemeanors are voluntary acts and omissions punished by law, once having been fully demonstrated in this case that the third shot fired from the gun which the accused

Barnes had in his hands on the morning, of the occurrence and which caused the death of the said individual, was an entirely involuntary act, as it has not been proven in any manner that he fired the weapon purposely in the direction of the ducks, but that it went off at the moment when he pressed the gun against his knee in order to force the cartridge into the chamber which showed some kind of obstruction, and without aiming at the birds, or doing something to cause the weapon to discharge, it follows that such act being an involuntary one, should not be considered as constituting reckless negligence, inasmuch as in order to apply thereto the provisions of article 5608 of the code, apart from the circumstance that no malice was present, it is above all indispensable that the act in question should be a voluntary one according to the doctrine established by the supreme court of Spain, when applying the provisions of article 581 of the Peninsular Code, equivalent to the said article 568 of the code in force in this country, in its decision of June 28, 1881.

It is true that the second paragraph of article 1 of the code above cited provides that acts and omissions punished by law are always presumed to be voluntary unless the contrary shall appear; but as it is proven in the proceedings, by undeniable evidence, that the gun which is of the automatic class, and for the use of which the accused carried a license, went off at the moment when the accused was placing the cartridge into the chamber and pressing the gun against his knee, and not when he was in the act of aiming and firing; and inasmuch as it has not been proven, even by circumstantial evidence, that the accused saw or was aware that the deceased Leonardo, who stood behind him, had moved near him and in front of the muzzle of the gun; the conclusion to be arrived at must necessarily be that the said death was not the result of a voluntary and criminal act, nor of an omission or reckless negligence, but an involuntary act devoid of a criminal character, that is a regrettable and unfortunate accident without any effort of the will.

In view of the foregoing, and as the facts proven in the case do not constitute a crime, not even that of homicide through imprudence, it is our opinion that the judgment appealed from should be reversed, and that A. H. Barnes should be acquitted and he is hereby acquitted of the charge, with the costs of both instances de oficio. So ordered.

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

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