

ERIBERTO DE LAS ALAS, RECURRENTE Y APELANTE, CONTRA EL PUEBLO DE FILIPINAS, RECURRIDO Y APELADO.

G.R. No. 49212. July 31, 1947

Ponente: PABLO, J.

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PABLO, J.:

En la causa No. 5 del Juzgado de Primera Instancia de Batangas, Melchor de las Alas y Eriberto de las Alas, padre e hijo fueron acusados del delito de homicidio. El Juzgado absolvió a Melchor. Eriberto alegó que mató a Jovencio Atienza por defensa propia y por defender a su padre. El Juzgado aceptó la defensa incompleta y condenó a Eriberto de las Alas a la pena indeterminada que no baje de 6 meses y un día y que no exceda de 4 años y 2 meses de prisión correccional con las accesorias, a indemnizar a los herederos del occiso en la suma de P2,000 con prisión subsidiaria y mitad de las costas.

El Tribunal de Apelación confirmó esta sentencia el 31 de mayo de 1943. La moción de reconsideración ha sido denegada.

El recurrente acude ante este Tribunal en apelación por certiorari señalando tres errores cometidos, a saber:

"1. The Court of Appeals erred in incorporating in its decision alleged findings or conclusions of fact which are in no way supported by the evidence of record, and in making the same unsupported findings or conclusions the basis of a judgment of conviction.

"2. The Court of Appeals erred in holding that the petitioner had been guilty of provocation sufficient to prevent the complete allowance of his plea of self-defense.

"3. The Court of Appeals erred in rendering judgment of conviction and in denying petitioner's motion for reconsideration."

El apelante alega que las conclusiones de hecho del Tribunal de Apelación no están claramente apoyadas por ninguna prueba; que son claramente contrarias a las pruebas que obran en el expediente. Es fácil alegar ese argumento especialmente hoy que el expediente ha sido ya destruido por la guerra; pero no es justo hacerlo. Es improcedente.

En apoyo de su contención el recurrente copia parte de la moción de reconsideración presentada ante el Tribunal de Apelación. Esta moción ha sido denegada por otra división. Creemos que esta otra división, compuesta de otros magistrados, ha tenido en cuenta todas las pruebas que se han tomado durante la vista. El acusado ha tenido la rara oportunidad de ser juzgado por dos distintas divisiones del Tribunal de Apelación.

Al discutir el segundo y tercer errores, el recurrente reproduce parte de la moción de reconsideración presentada ante el Tribunal de Apelación, y arguye que aunque el acusado haya pronunciado palabras de amenaza a Jovencio Atienza dichas palabras no pueden considerarse suficiente provocación porque no había proporción entre la amenaza y la agresión. El Tribunal de Apelación que ha tenido la oportunidad de leer todas las pruebas dijo en su decisión: "In this appeal, Eriberto's attorney submitted a carefully prepared brief, analyzing the facts and the law

applicable to the case, maintaining that when defendants persisted in making the ditch notwithstanding the request of Jovencio and his wife, they committed no vexatious act inasmuch as they merely exercised their lawful right to work upon premises belonging to them. We are unconvinced. The provocation consisted not only in the act of building a ditch that caused Jovencio's dike and soil to slip into the excavation, but also the retort that they will not only keep on opening the canal but they will also open Jovencio's stomach. That insulting remark was sufficient provocation. (See *U. S. vs. Ampar*, 37 Phil., 201.) But even disregarding such irritating answer, defendants' insistence in so excavating on their lot as to imperil Jovencio's wall, constituted enough provocation, because defendants' ownership over the land gave them no privilege to use it in such manner as to threaten their neighbor's property. More, they were actually encroaching upon Jovencio's natural right to support for his land from neighboring land." Si hubo suficiente provocacion o no es cuestion de hecho; es cuestion de apreciacion de las pruebas en que este Tribunal no debe inmiscuirse.

El Tribunal Supremo no tiene facultad en su jurisdiccion apelada para revisar las pruebas y decidir si las conclusiones de hecho del Tribunal de Apelacion son erroneas o no, si estan justificadas o no. La jurisdiccion de este Tribunal en asuntos elevados ante el procedentes del Tribunal de Apelacion queda limitada a revisar y examinar los errores de derecho en que este ultimo haya podido incurrir. (Sec. 138, Cod. Adm. Rev., tal como ha sido enmendado por seccion 2, Ley del Com. No. 3; *Mateo contra Administrador Insular de Aduanas y Tribunal de Apelaciones*, 63 Jur. Fil., 500.) Este Tribunal no tiene autoridad para cambiar, alterar o modificar las conclusiones de hecho del Tribunal de Apelacion. (Regla 46, sec. 2; *Guico contra Mayuga*, 63 Jur. Fil., 352; *Mamuyac vs. Abena*, 67 Phil., 289; *Meneses vs. Commonwealth of the Philippines*, 69 Phil., 647; *Onglengco vs. Ozaeta and Hernandez*, 70 Phil., 43; *Hernandez vs. Manila Electric Co.*, 71 Phil., 88; *Gerio vs. Gerio*, 71 Phil., 106; *Garcia de Ramos vs. Yatco*, 71 Phil., 178; *Zubiri vs. Quijano*, 74 Phil., 47; *People vs. Benitez*, 73 Phil., 671.)

Se deniega el recurso con costas.

Moran, Pres., Paras, Feria, Hontiveros, Padilla, y Tuason, MM., estan conformes.

DISSENTING

PERFECTO, J.:

Appellant's case appears to have been decided by the Court of Appeals on May 31, 1943, during the Japanese occupation, and therefore, by a tribunal established by the invaders and not one under the authority either of the laws or the Constitution of the Philippines. For the reasons stated in our opinions in *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113), the judgment against appellant is one of those judicial processes that we consider null and void.

It appearing that the evidence in the case has been destroyed, we are of opinion that the reconstitution of the evidence should be ordered so that this Court may proceed to revise it and render what it might deem a just decision. In case the evidence cannot be reconstituted, a new trial should be ordered.

This is how we decide this case.

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