

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE AGBAYANI, DEFENDANT AND APPELLANT.

G.R. No. 4962. March 12, 1909

Ponente: CARSON, J.

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CARSON, J.:

The trial court acquitted the accused of the crime of *asesinato frustrado* (frustrated murder) with which he was charged, but convicted him of the crime of *lesiones graves* (grave injury), and sentenced him to one year and one day of *prision correccional*, together with the accessory penalties prescribed by law.

Hilarion Agayan, the complaining witness, testified as follows:

"On the 15th day of March of the present year, after 5 o'clock p. m. of the same day, two game cocks were ready to fight in the cockpit of the municipality of the said pueblo, and being armed with the corresponding knives and the money for bets being upon the table, the accused told me that he would bet ₱2 with me; the two cocks did not fight on account of a difference in the bets, and they were then untied. After 6 o'clock, I believe, I left the cockpit together with Ciriaco Concepcion and we went toward the principal street, and were scarcely in front of Captain Dorot's house, when the accused Vicente Agbayani came to us and said to me: "My brother, for having said to you *llamado P2 de aquellas resatas soltada sera el motivo de haber Vd. dicho que se desatan aquellos gallos*, I ask you to excuse me." He said this, and immediately he gave me a stab with a pocket knife in his hand, which wounded me under the left knee." (Folios 9 and 10 of the record.)

Ciriaco Concepcion, another witness for the prosecution, who according to the complaining witness was the only person other than himself and the accused who was present when he was wounded, gave the following version of the incident:

"That after the evening prayers on a Sunday of the said month, in the municipality of Sinait, Ilocos Sur, I was coming from the cockpit with Hilarion Agayan, and when I was in the street I stopped to speak with him, when the accused came to the place where Agayan and I were talking and spoke to Agayan, and scolded him by saying that Agayan had been wrong in having the knife of his fighting cock untied because he had bet ₱2 on his behalf; Agayan replied that the knife of the cock had not been untied at his request but upon that of the owner; then the accused told Agayan, that he always behaved himself in that way, and at the same time he attacked the latter stabbing him with a penknife, and Agayan, in consequence of this attack, was wounded in his left foot." (Folio 13.)

The only other witnesses for the prosecution were a municipal policeman, Diego Bayuga, who arrested and searched the accused, without finding a knife or other weapon in his possession, and who did not arrive upon the scene until after Agayan was wounded and Francisco Esposo, the president of the municipal board of health, who stated that he treated Agayan's wound, which was located below his left knee, and which was so severe that it required medical treatment for two months, more or less.

Vicente Agbayani, the accused, testified in his own behalf as follows:

"I can state that the reason why Hilarion Agayan was injured in one of his feet is because he attempted to strike me on the day of the occurrence when I was speaking with Ruftno Ines in the street, at which time Hilarion Agayan, accompanied by Ciriaco Concepcion, came to the place where we were, and being asked by me as to the luck he had in the cockpit, he answered that, if it had not been due to my craziness he would probably have won; I told him that he should be moderate, that he was more crazy than I was, and for this reason he took out of his pocket a penknife with which he attempted to stab me, but I caught him by the arm and, while in this position, he kicked me with the toe of his shoe, and in order to avoid the attack I held him by both wrists, and restrained him by putting down his arms each time he tried to kick me; in this manner he was wounded in the foot as he held the knife in his right hand." (Folios 16 and 17 of the record.) Rufino Ines, a witness for the defense, made the following statement:

"One Sunday evening in the month of March, while I was converging with the accused in the main street of Sinait, Ilocos Sur, Hilarion Agayan, accompanied by Concepcion, came up to where we were standing and the accused having asked Agayan what luck he had at the cockpit, the latter replied that if it were not due to his being crazy, he would have won; the accused, after hearing this, answered by telling Agayan not to treat him in that manner, and as the latter continued to call him crazy, the accused told him that he was still more crazy, whereupon Agayan took out of his pocket a penknife which he opened, and, in making an attempt to stab the accused, the latter caught Agayan by both hands and while in this position, as Agayan kicked the accused, the latter moved backward each time, putting down Agayan's hands, and after the accused was kicked three times Agayan said that he was wounded." (Folio 20 of the record.)

Manuel Palpal-latoc, another witness for the defense, testified as follows:

"That the accused and Agayan fought because the latter stabbed the former with a penknife and then the accused suddenly caught Agayan by both arms and while in this position Agayan told the accused to release his arms, but the accused replied that he was not willing to do so, so that Agayan kicked the accused three times, as I could see, and at the third kick Agayan said that his foot was wounded, whereupon they parted and then policemen arrived." (Folio 23 of the record.)

The various witnesses were examined and cross-examined at some length, but no testimony of value appears in the record other than that set out above, except the statement by the accused, that the complaining witness and Ciriaco Concepcion arrived together on the scene of the quarrel,

"Agbayani holding the arm of Concepcion who was intoxicated."

Giving the accused the benefit of the presumption of innocence in his favor, we do not think that the evidence of record establishes his guilt of the crime of which he was convicted. The story of the affair as told by the witnesses for the prosecution does not appear to be a full and frank statement of all that occurred, for, if, as they allege, the complaining witness and the accused were quietly standing face to face when the accused suddenly and without warning stabbed his opponent, it is, to say the least, very improbable that the wound would have been inflicted in the leg below the knee. The testimony of the accused and his witness rings true, and explains very satisfactorily the manner in which the wound was inflicted, and accounts for the fact that but a single wound was inflicted, and this wound in the leg of his opponent.

Accepting the testimony of the witnesses for the defense as true, it is quite clear that whatever part the accused had in inflicting the wound upon the complaining witness, he was acting in legitimate self-defense which, under the provisions of subsection 4 of article 8, of the Penal Code, wholly exempts him from criminal responsibility therefor. As required by the provisions of that article, what he did was done in repelling "unlawful aggression," there was "reasonable necessity for the means employed" by him, and he had given his adversary "no sufficient provocation" for the attack made upon him.

It has been suggested that the accused might have avoided the conflict by taking to flight, but, as was said in the case of *The United States vs. Mack* (8 Phil. Rep., 701), "one who is unlawfully assaulted need not attempt to retreat where there is no reasonable ground to believe that by so doing he can safely avoid the threatened attack." It can not be said that flight always affords a safe means of escape from an attack at close quarters with an open knife, and in the case at bar, we think that the accused adopted a reasonable and natural means of defending himself when he seized his assailant by the arms and attempted to hold him so that he could do no mischief.

The judgment and sentence of the trial court are reversed with the costs of both instances de oficio, and the accused is acquitted of the crime with which he was charged, and will be set at liberty forthwith. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Willard, JJ., concur.

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