

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE REYES AND SEVERO JAVIER, DEFENDANTS.-SEVERO JAVIER, APPELLANT.

G.R. No. 5111. August 18, 1909

Ponente: CARSON, J.

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CARSON, J.:

The defendants in this case were charged with the crime of homicide, committed as follows:

"That on or about the 21st day of August, 1908, in the city of Manila, Philippine Islands, the said Vicente Reyes and Severo Javier did then and there, willfully, unlawfully, and feloniously, in the nighttime, engage in a tumultuous affray with Pedro Legaspi, Jose de la Cruz, and others whose names are unknown, and did then and there strike and beat the said Pedro Legaspi on the head and body with a dangerous and deadly weapon, to wit, a heavy club of wood, then and there inflicting upon the head and body of said Pedro Legaspi numerous deadly fractures of the skull, wounds, bruises, and physical injuries, from which wounds, bruises, and physical injuries and said fractures of the skull the said Pedro Legaspi then and there died. All contrary to law."

Both defendants were convicted of the crime with which they were charged, and sentenced to fourteen years, eight months, and one day of reclusion temporal and to the payment of the costs, but the record of the proceedings is now before us upon the appeal of Javier alone, no appeal having been entered by or on behalf of Reyes.

The evidence of record is contradictory to a degree, and it is extremely difficult to ascertain precisely what occurred during the tumultuous affray in the course of which the death blows were inflicted, partly as a result of the uncertainty and confusion which marks the story of the affair as related by the few really disinterested witnesses, and partly as a result of the partisan bias which marks the testimony of most of the witnesses for the prosecution as well as for the defense.

We are satisfied, however, that, giving the defendants the benefit of all reasonable doubts, the following findings of fact, as set out in the opinion of the trial judge, are sustained by the weight of the evidence; and that, so far as they go, they contain a correct statement of the part taken by the appellant, Javier, in the affray in the course of which the death blows were inflicted:

"Upon seeing the witnesses, hearing them testify, and observing their conduct in court, and upon considering all the evidence introduced upon the trial of the cause, together with the arguments of counsel submitted therein, the court finds the following to be the facts proven:

"1. That at the time and place mentioned in the complaint at about 10 o'clock in the nighttime of said day, the defendant Javier and Pedro Legaspi were engaged in a quarrel, resulting in the fight between the two, the said Pedro Legaspi having at the time and using the same a club, marked 'Exhibit A,' admitted upon the trial of the cause; thereupon the defendant Vicente Reyes, standing some distance, and within sight of said affray, immediately passed thereto, attempted to separate the said two parties, was stricken with said club by the said Pedro Legaspi, and then and there the said Vicente Reyes seized said club, took the same into his own

possession, and struck with said club the said Pedro Legaspi two mortal blows upon his head from which within a few hours the said Pedro Legaspi died, in one of the hospitals in the city of Manila.

"2. That while the defendant, Vicente Reyes, was striking the said Pedro Legaspi over the head with said club as aforesaid, the defendant Severo Javier was holding firmly the said Pedro Legaspi, so that the said defendant, Vicente Reyes, could inflict said wounds without serious or substantial resistance; that there was no necessity for the use of said club by the defendant Vicente Reyes, as aforesaid, as if he had been in earnest and had only desired to save further trouble between the defendant Severo Javier and Pedro Legaspi, the same could have been easily accomplished without the use of any weapon whatever. The defendants, according to their testimony submitted upon the trial, and according to their appearance upon the trial, are men abundantly able to have determined the controversy between Severo Javier and Pedro Legaspi without the employment of any weapon, or even the necessity of inflicting any wounds upon the person of the said Pedro Legaspi."

Accepting these findings of fact as correct, there can be no doubt of the guilt of Vicente Reyes, but we think they fall far short of sustaining a judgment of conviction of his codefendant, Javier, since it does not expressly appear therefrom that there was any concerted action between Reyes and Javier looking to the infliction of the fatal blows; and in the case of *The United States vs. Manayao et al.* (4 Phil. Rep., 293), we held that-

"Where one of two persons jointly engaged in a quarrel with others stabs and kills one of his opponents, his companion can not be held as principal or accomplice where it does not appear that there was some concerted action leading up to the striking of the fatal blow, or that said companion had any reason to believe that a deadly attack was to be made on the deceased."

Reyes admitted that when he intervened to stop the quarrel between Javier and Legaspi, he became so blindly enraged when he was struck with the club in the hands of Legaspi that he seized the club, and with eyes closed began to rain blows upon the offender. Other witnesses testified that at the time when Reyes intervened for the purpose of stopping the fight, Javier, who was unarmed, was holding Legaspi in such a position as to prevent Legaspi from striking him with the club which he had in his hand; that when Reyes came within range of the club in the hands of Legaspi, he received a blow which appeared to enrage him, and that immediately thereafter he got possession of the club and forthwith struck Legaspi twice over the head. This testimony, taken together with the findings of fact by the trial judge, would seem to establish conclusively that in inflicting the fatal blows Reyes acted wholly upon his own initiative; and that taking advantage of the fact that Javier happened to be holding Legaspi, he struck Legaspi over the head, so suddenly and so unexpectedly that it would be wholly unreasonable to say that Javier voluntarily cooperated with him in committing the offense. It is impossible to say from the record whether Javier or Legaspi was the original aggressor in the fight which was in progress when Reyes intruded himself between them, and it well may be that Javier, who was wholly unarmed, was within his rights when he took hold of Legaspi to prevent him from making use of his club; but, however this may be, it is quite clear from all the record that he did not take hold of Legaspi or continue to hold him for the purpose of aiding Reyes in striking Legaspi upon the head; and that there was no concerted action between Javier and Reyes nor voluntary cooperation on the part of Javier, in the homicidal attack, the sudden and unexpected intervention of Reyes not having given any opportunity therefor.

The judgment of conviction and the sentence of the trial court, in so far as they relate to the appellant, Javier, should be and are hereby reversed, and Javier should be and is hereby acquitted of the crime of homicide with which he was charged, with his share of the costs de oficio, and he will be discharged forthwith.

Arellano, C. J. Torres, Johnson, and Moreland, JJ., concur.

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