THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GABRIEL DIAZ, DEFENDANT AND APPELLANT.

G.R. No. 5155. February 02, 1910

Ponente: TORRES, J.

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TORRES, J.:

At about 7 o'clock on the morning of the 30th of May, 1906, Cornelio Alcansaren, a laborer employed on the hacienda of San Antonio, went to Gabriel Diaz, an employee in charge of said hacienda, and asked to be excused from work that day because he had been confessed the day before in preparation for his marriage. Diaz became angry and, instead of granting the permission asked for, illtreated the laborer, Alcansaren, striking him with his clenched fist and kicking him, thereby inflicting upon the said laborer various contusions and bruises, in consequence of which the illtreated man was rendered unable to work and took to his bed, where he was confined until he died at 5 o'clock on the afternoon of June 26, following.

The affair was reported on the 31st of May, 1906, to the justice of the peace of San Carlos, within whose jurisdiction the said hacienda lay. The justice at once investigated the matter, and, after examining some witnesses, sentenced the accused on June 4,1906, to pay a fine of 50 pesetas and costs.

However, as the injured party died on the 26th of said month, the justice of the peace, by order of the Court of First Instance, ordered Luis Garcia Suarez, a Spanish surgeon, to make a post-mortem examination of the body of the deceased. After the autopsy the surgeon reported that he had found discolorations upon the neck and abrasions upon the throat, both sides, and the abdomen, from which when opened discolored blood emanated, and that the stomach, bladder, kidneys, liver, and the spleen were discolored. The justice of the peace thereupon found the accused guilty of homicide and forwarded the record of the preliminary investigation to the provincial fiscal.

On the 5th of September of the same year the last-named officer filed a complaint with the Court of First Instance, charging Gabriel Diaz with the crime of homicide. Proceedings were instituted, and the trial court entered judgment on the 24th of December, 1907, sentencing the accused to the penalty of six years and one day of prision mayor and the accessory penalties, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs. From said judgment the accused appealed, in writing, on the 17th of January, 1908.

From the above-stated facts it appears that the crime of homicide, defined by article 404 of the Penal Code, has been fully proven, inasmuch as it has been satisfactorily established in the present case that in consequence of blows struck with the clenched fist and kicks inflicted upon Cornelio Alcansaren, an agricultural laborer, on the morning of May 30, 1906, he received serious internal injuries in the neck, sides, stomach, and lower abdomen, which caused his death on the afternoon of June 26, 1906.

The accused, Gabriel Diaz, pleaded not guilty at the trial for homicide, but when being tried for misdemeanor before the justice of the peace of San Carlos, Occidental Negros, upon being informed of the complaint presented on the 31st of May, by Maria Condeno, the mother-in-law of the deceased, he answered that he would plead guilty because he had given decedent two or three slaps in the face.

Notwithstanding the deficiencies and irregularities that are observed in the prosecution of this case, the following facts undeniably took place: That Cornelio Alcansaren was cruelly maltreated by being punched and kicked by Gabriel Diaz on the morning of May 30; that in consequence of said maltreatment the injured man was rendered unable to work and became seriously ill; that, prostrated in bed and unable to urinate, he was found on the following day, first by two policemen who went to see ,him, and afterwards by the justice of the peace who called at the house; that the said justice of the peace testified that the injured man had the right thumb dislocated, a black swelling on the abdomen, at the navel, a scratch on the right side of the chest, another on the throat, and a contusion in the face; he said that the scratches were,not serious, but that the contusions on the abdomen and chest appeared of doubtful prognosis, all of which details were corroborated by the result of the autopsy; that besides the injured man and his mother-in-law, several eyewitnesses, Fabian Aracan, Miguel Bataen, and Juan Lanag, testified to the truth and reality of said maltreatment, the two last named having testified in the first trial for misdemeanor; that twenty-eight days after the aggression the injured man died on the afternoon of the last day, and the record does not show that his death was due to illness other than that produced by the ill treatment he received. All this was shown in the proceedings in said trial (folios 36-40) as well as in the preliminary investigation made by the aforesaid justice of the peace after the 27th of June, following the death of the injured man, by virtue of the complaint filed by his mother-in-law, Maria Condeno, wherein appears the result of the autopsy previously referred to.

Hence the culpability of the accused Gabriel Diaz as the sole convicted principal in causing the violent death of Cornelio Alcansaren is evident and unquestionable. His exculpatory allegations can in no manner weaken or destroy his own confession to having illtreated the man by giving him only two or three slaps, nor the testimony of various witnesses who saw the defendant punch the deceased, and, with his shoes on, kick him, nor the result of the post-mortem examination of the body, on which signs of internal injuries were found on the neck, stomach, and lower abdomen.

Not the least proof is contained in the record that the injured man died in consequence of disease, and lacking proof to the contrary, it must be presumed that he was in good health on the morning of May 30, 1906, and inasmuch as it. appears from the record that after the ill treatment Alcansaren commenced to suffer pains in various parts of his body, that he could not drink water, swallow any food, urinate, nor much less work, and death came twenty-eight days thereafter, signs of internal injuries being discovered, it follows that Diaz, who illtreated him, is logically responsible for his death, because it has not been proven that Alcansaren lost his life by reason of causes other than the ill treatment that he received.

The defense, in order to prevent the prosecution and trial of the case, pleaded that the accused had already been placed in jeopardy, he having been tried, convicted, and sentenced to pay a fine of 50 pesetas and costs by the judgment rendered by the justice of the peace of San Carlos in the action brought for maltreatment, and as prima facie evidence presented the record of the preliminary investigation, at the foot of which the proceedings had in said trial for misdemeanor appear. (Folio 45.)

As the above plea was overruled, the defendant only offered as evidence at the trial a certified copy of the proceedings at the trial for misdemeanor, which appears attached to the record of the preliminary investigation at folios 36-40, forwarded by the aforesaid justice of the peace to the provincial fiscal of Occidental Negros in view of the fact that the defendant had committed the crime of homicide, and it was the duty of the latter official to have produced the same in the Court of First Instance upon the filing of his complaint for the said crime.

Therefore, the record of the preliminary investigation and the proceedings in the trial for misdemeanor were offered in the present case by the defense as evidence that the accused had already been in jeopardy, and subsequently, at the close of the trial, the defense again presented them as such evidence. In view of the repeated

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presentation of the record of said trial, it was not necessary for the provincial fiscal to offer the said proceedings for a third time as evidence for the prosecution, and he is entitled to avail himself of them to prove the crime and the guilt of the principal, inasmuch as it is a rule of law that a document presented in evidence by one party may likewise be used by the adverse party as evidence for his cause of action.

If in the opinion of the defense the copy of the proceedings at the trial prove his plea of jeopardy, and to that end he presented it, together with the proceedings in the preliminary investigation, the contents of both clearly prove the crime and the guilt of the accused. Still further, taking into account merely the result and the merits of the proceedings in the action for misdemeanor, one acquires the fullest conviction, beyond all peradventure of doubt, that Gabriel Diaz inflicted the ill treatment that occasioned the violent death of Cornelio Alcansaren.

A calm, careful, and impartial examination of the case discloses the helpless and abandoned condition in which the illtreated man was left in his house, without attendance by a physician or even a curandero up to the time of his death; the haste made by the justice of the peace of San Carlos to try the charge for misdemeanor; that of the author of the ill treatment in pleading guilty and complying with the sentence by paying the fine of P10 and costs imposed upon him; and, as the proceedings commenced', the reluctance of the witnesses, most of whom were laborers of the hacienda on which the defendant was employed, to appear and testify in the case, to the extent that at the request of the fiscal an order for the arrest of the witnesses for the prosecution had to be issued, and after being arrested they testified in a manner and in such terms that, as the Attorney-General states in his brief, lead one to presume that the first trial was fraudulently prepared by the accused.

Notwithstanding the fact that the action of the provincial fiscal has been obstructed in this case, in which he should have displayed more zeal in the performance of duties prescribed by the law, and that of the four witnesses offered in the Court of First Instance, Tomas Ferrer, a laborer from the hacienda of Sugbuncogon, said he did not know what was the cause of the death of the injured man, Estanislao Francisco did not remember anything that had occurred and denied having testified before the justice of the peace of San Carlos, although said official contradicted him and averred that the witness Estanislao testified under oath to the declaration that appears in the record of the preliminary investigation; yet, Matias Ferrer, an employee of said hacienda, affirmed that Cornelio died in consequence of the ill treatment he received thereat, although he did not know who inflicted it; and Santos Priano declared in turn that he testified in the preliminary investigation that the injured party had died in consequence of the maltreatment inflicted by Gabriel Diaz, and further stated that, with regard to the other points of his testimony, he heard them from.the deceased while living and from the latter's cousin, Fabian Aracan. In spite of the behavior of the witnesses, the sum of this testimony does not favor the accused, but, on the contrary, supports the evidence presented in the proceedings had before the court of the justice of the peace.

The plea that the accused had already been placed in jeopardy when charged with and prosecuted for a misdemeanor before the justice of the peace of San Carlos and sentenced to pay a fine is not in accordance with the law, for the reason that the act he was charged with committing constituted a crime, and the said justice of the peace by whom he was improperly tried was incompetent and had no jurisdiction in the case. (U. S. vs. Ballentine, 4 Phil. Rep., 672; Supreme Court of the United States in the matter of Grafton, 11 Phil. Rep., 776.)

The Court of First Instance, when dismissing by its ruling of the 26th of September, 1906, the plea of jeopardy, rightly stated, among other reasons, that "If it were lawful for a justice of the peace court to try cases of homicide, abuses and arbitrary conduct would then be matters of everday occurance, and in many cases crime would go unpunished, since I consider that in towns where the defendant is an influential resident, collusion would be very possible.

Apart from the impropriety of the ple of jeopardy, there appears the fact that, in alleging it, the representative of

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the defendant practically acknowledged and admitted the facts attributed to him and set out in the complaint as constituting the crime of homicide, the same that was charged by Maria Condeno, the victim's mother-in-law, before the justice of the peace who illegally qualified them as a misdemeanor. The defense has not even tried to show that the alleged facts were false noe has he endeavored to disprove them but, on the contrary, pleaded guilty to the charge of maltreatment.

Notwithstanding the rage and excessive cruelty with which, judging from its fatal consequences, the maltreatment was carried out, it is yet possible to admit that the culprit did not intend to commit an evil so serious as the death of the person (circumstances 3, art.9, Penal Code), but the fact that the injured man failed to work one day in the hacienda because he had been confessed in anticipation of his marriage can not be considered as a cause determining loss of reason and self-control, the seventh circumstance on the said article, on the past of the accused whereby the penalty imposed by the law should be applied in its minimum degree.

For the reasons above set forth, in which the errors assigned to the trial court have been refuted, it is our opinion that the judgment appealed from should be reversed, and that Gabriel Dias should be sentenced, as we do hereby sentence him to the penalty of fourteen years of reclusion temporal, with the accessory penalties of article 59 of the Penal Code, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs of both instances, and it is so ordered.

Arellano, C.J., Mapa, Johnson, Moreland, and Elliott, JJ., concur.

DISSENTING

CARSON, J.,

I dissent.

In my opinion there is no competent evidence in the record upon which the findings of fact by the trial court should be sustained.

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