

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FACUNDO BARDELAS, DEFENDANT AND APPELLANT.*G.R. No. 5291. March 22, 1910*

Ponente: ARELLANO, C.J.

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On the night of June 2, 1908, in a barrio of the municipality of San Pablo, La Laguna, Facundo Bardelas wounded Simeon Belen with a cutting weapon, as a result of which the latter died a few hours after he was taken to a house near the place of the occurrence. On expert examination it was found that Simeon Belen had a stab wound on the inner front part of the left arm above the elbow, running downward and backward; the said wound was 13 centimeters long and 5 centimeters deep, the humeral artery, the superficial and internal veins, and the median nerve of the region being severed. The physician who made the examination certified and declared at the trial that, in his opinion, the true cause of the death of the deceased Simeon Belen was the hemorrhage caused by the said wounds and the severing of the veins and artery.

Apolonio Manalo, a boy 16 years of age, cousin of the deceased, declared, as the first witness for the prosecution and as the only one who witnessed the affair, that on the evening of the said day, the 2d of June, 1908, at about 6 o'clock, he and his cousin Simeon Belen went to a barrio to inspect a zacate field belonging to Belen; that they remained for about two hours in the house belonging to an aunt of theirs and situated in that barrio, there being no one else in the house at that time; that they afterwards returned to the town; that Simeon Belen was armed with a bolo; that when they were returning, at about 10 o'clock p. m., and near the house of one Marcelino Biglete, "I—the witness says—felt the desire to urinate, but, before finishing, I saw the two men (Facundo Bardelas and his cousin Belen) quarreling, and when I was about 10 brazas from them, my cousin's opponent ran away, and my cousin was crying and calling upon me to revenge him; then I followed after Facundo Bardelas, and when I was some distance away my cousin again called out and told me to take him to his house;" that when he went again to his cousin, the latter was standing and wounded, but he then no longer felt able to reach his home and preferred to be taken to a nearby house, which belonged to Gelasio Bagsic; that he took him to the said house, the wounded man leaning upon him, and after he had called the inmates of the house they entered it; that immediately thereafter he left his cousin under the care of Bagsic and his wife, and then proceeded to the town to inform the wounded man's mother of what had happened; that he returned to Bagsic's house with a policeman; that before the quarrel, as he was urinating, he did not notice whether anyone had passed along the road where they were walking; that when he approached his cousin he had seen no one else, and that he does not know whether anyone could have seen the quarrel, which took place in front of the house of Marcelino Biglete; that, when they went to see the zacate field, Belen carried his bolo sheathed at his waist, but in the moment of the quarrel, when the witness approached, he saw that the former had the bolo in his hand, but he could not see whether or not it was stained with blood because, as stated, he immediately went in pursuit of the other man, and he only saw the bloody bolo when he was conducting his cousin to the house of Bagsic.

"Q. And who was carrying the bolo, you or Simeon, when you went to Gelasio's house?—A. Simeon.

"Q. And where was Simeon's bolo when you left him at Gelasio's house?—A. I left it there.

"Q. What was the size of the bolo?—A. The edge was 40 centimeters long.

"Q. What kind of handle did the bolo have?—A. It was made of wood.

"Q. What part of the bolo was stained with blood when you saw it?—A. The whole length of the bolo."

Albina Balverde, the wife of Gelasio Bagsic, testified that Simeon Belen was taken to her house, and that he died after informing her husband that Facundo Bardelas was the one who wounded him; that she saw a bolo stained with blood in the place where the corpse was, which bolo was unsheathed and lying on the floor where the deceased left it, at the right side of the body.

Teodoro Abenoja, the policeman who accompanied Apolonio Manalo when he went back to the house of Gelasio Bagsic, testified that, on arriving at the place where the quarrel had occurred, Apolonio pointed it out to him saying: "The two men quarreled here," and in view of which he examined the spot carefully and found a hat there.

The last witness for the prosecution, Francisco Olove, declared that on the night of the occurrence, when he was returning from the distillery in which he worked, accompanied by Roman Amatorio, walking toward his house, situated in the vicinity of the houses of Marcelino Biglete and Gelasio Bagsic heretofore mentioned, he met Facundo Bardelas in the road opposite the house of Marcelino Biglete, and he then met Simeon Belen and another person who was standing close to a fence, facing the same; that Bardelas was standing with his right hand on his waist or in his pocket; that he called the latter by his name and received an answer and then continued on his way.

Facundo Bardelas testified that on the night of the 2d of June, 1908, he left his house after supper to visit a friend of his, one Felicidad Fule, in the barrio of San Rafael. "When I was at a certain distance from the house of Marcelino Biglete—he says—I saw two men standing in front of the house of Gregorio Fule; on passing in front of the house of Marcelino, Apolonio and Simeon came toward me, and Simeon seized me by the front of my shirt and asked me where I was going; I replied that I was going to visit an acquaintance of mine, Felicidad Fule; then Simeon told me: 'Why do you go there?,' to which I replied asking why I should not go, she being an unmarried woman; then he caught me by the neck and, squeezing it, he said to his companion: pegale un tajo, pegale! (strike him, strike him), then with my left hand I endeavored to remove his hand from my neck, and I then heard Apolonio Manalo tell Simeon Belen to strike me; with my left hand I beat the left hand of Simeon Belen, with which he was grasping my neck, in order to make him let go, whereupon, Simeon Belen stabbed at me; I was able to prevent the blow with my left hand and at the same time I also struck him and ran away." Upon being questioned with what weapon he struck the blow, he said that it was a penknife, which, having been exhibited, is described in the following terms: "A penknife of those usually called a fan knife, sharp pointed, with a metal handle, the blade being 8 centimeters long and the handle 10 centimeters" "When he was asked what happened when he ran away, he said that Apolonio Manalo ran after him, without succeeding in catching him, and that he did not stop running until he reached his house, and that when he arrived there he noticed that he had an injury in the upper part of his left hand and another on his neck, in consequence of "the squeezing that Simeon Belen gave me;" these injuries were examined by the president of the local board of health.

It is shown by the record that, on the 4th of June, 1908, the same physician who had examined the corpse of Simeon Belen on the previous day, examined Bardelas and certified that he had a sharp cut on the back of his left hand, penetrating the skin, 2 1/2 centimeters in length; and a scratch on the skin about the middle of the left side of the neck, 2 centimeters long, running horizontally to the base of the neck; both injuries were slight; that the first would heal in five days with medical assistance, and the second without any assistance. In the record of the proceedings, on July 30, which was the date of the trial, the following appears:

"The accused exhibits before the court the scar he has at the place described in the medical certificate (Exhibit No. 1), that is, in the middle of the back of the left hand, 3 centimeters in length, which scar is vertical to the bones of the hand. And he exhibited another small scar, 1 centimeters long, of an irregular form, also vertical with relation to the axis, of the neck and on the left side."

The assistant counsel for the prosecution asked the court to appoint two expert physicians to determine clearly: (1) the position in which the accused was when he received that wound, and with respect to the scar, when and from what direction he received the blow; (2) whether a violent blow given with a bolo would have resulted in the simple cutting of the skin without severing any artery or vein.

The two physicians who testified, Dr. Gertrudo de los Reyes and Dr. Donato Montinola, stated that it is likely that the said injury was caused by the blow which the deceased attempted to give the accused, but the physician first named thinks that, judging from the injured tissues, the bolo did not fall vertically upon the back of the hand, but rather obliquely so that the man was able to stop the bolo with the back of his hand and was wounded superficially, or, as the other physician says, the direction was oblique and the injury received by the accused might have been the effect of the blow struck by the deceased.

It has not been shown that the said injury was not the effect of the unlawful aggression attributed to the deceased, which aggression was corroborated by the attitude in which he was found by the witness for the prosecution who accompanied him, who states that, when he approached, he saw him with the bolo unsheathed and that he kept it in his hand until he arrived at the house to which he was taken.

The three circumstances constituting lawful self-defense, and exemption from criminal responsibility, having been duly proven, the judgment appealed from can not be sustained.

The said judgment is hereby reversed and Facundo Bardelas is acquitted with the costs of both instances de oficio. So ordered.

Torres, Mapa, Johnson. Carson, and Moreland, JJ., concur.

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