

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. RAFAEL BUMANGLAG ET AL., DEFENDANTS. GREGORIO BUNDOC, APPELLANT.*G.R. No. 5318. December 23, 1909*

Ponente: TORRES, J.

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On the night of January 2, 1909, Rafael Bumanglag, an inhabitant of the pueblo of San Nicolas, Province of Ilocos Norte, missed 4 baares or 40 bundles of palay which were kept in his granary, situated in the place called "Payas," barrio No. 16 of the said pueblo, and on proceeding to search for them on the following morning, he found them in an inclosed field which was planted with sugar cane, at a distance of about 100 meters from his granary; there-upon, for the purpose of ascertaining who had done it, he left the palay there, and that night, accompanied by Gregorio Bundoc, Antonio Ribao, and Saturnino Tumamao, he waited near the said field for the person who might return to get the palay. A man, who turned out to be Guillermo Ribis, made his appearance and approaching the palay, attempted to carry it away with him, but at that instant Bumanglag, Bundoc, and Ribao assaulted the presumed thief with sticks and cutting and stabbing weapons; as a result of the struggle which ensued the person attacked fell down and died instantly, Bumanglag and his companions believing that Guillermo Ribis was the author of several robberies and thefts that had occurred in the place.

In view of the foregoing, the provincial fiscal filed a complaint on January 15, 1909, charging Rafael Bumanglag, Gregorio Bundoc, and Antonio Ribao with the crime of homicide, and the trial judge, on February 5 of the present year, rendered judgment in the case, sentencing the three accused persons to the penalty of fourteen years eight months and one day of reclusion temporal, with the accessories, and to the payment of an indemnity of P1,000 to the heirs of the deceased, and the costs in equal parts, from which decision only Gregorio Bundoc appealed.

From the facts above mentioned, fully proven in this case, the commission of the crime of homicide, defined and punished by article 404 of the Penal Code, is inferred, inasmuch as Guillermo Ribis was violently deprived of his life in consequence of serious wounds and bruises, some of them of a mortal nature, as appears from a certificate issued by a physician who examined the body of the deceased, and who ratified said certificate at the trial under oath.

The accused Bundoc, the only appellant, pleaded not guilty, but, in the absence of justification, and his exculpatory allegation being unreasonable, it is not proper to hold that he assaulted and killed the deceased, with the help of his codefendants, in order to defend himself from an attack made by the former with a bolo.

Both Gregorio Bundoc and his codefendants Bumanglag and Ribao declared that, during the fight with the deceased Ribis, they only beat the latter with sticks, because he unsheathed the bolo he carried; but from the examination made of the body it appeared that several serious wounds had been inflicted with cutting and stabbing weapons, besides some bruises, and according to the declaration of the health officer Felipe Barba, which declaration was confirmed by the municipal president of Laoag, the bolo worn by the deceased was in its

sheath and hanging from his waist; therefore it can not be concluded that the deceased even intended to assault his murderers with his bolo either before he was attacked by them or during the fight, because, had Ribis made use of the bolo he carried sheathed, the bolo would have been found unsheathed at the place where the fight occurred, and it is not reasonable to believe that, before falling to the ground in a dying condition he succeeded in sheathing his bolo, in which condition it was found on his body.

It is therefore indisputable that, without any prior illegal aggression and the other requisites which would fully or partially exempt the accused from criminal responsibility, the appellant and his two companions assaulted Guillermo Ribis with sticks and cutting and stabbing arms, inflicting upon him serious and mortal wounds, and therefore, the said accused is guilty of the crime of homicide as co-principal by direct participation, fully convicted, together with his codefendants who are already serving their sentence.

In the commission of the crime we should take into account the mitigating' circumstance No. 7 of article 9 of the Penal Code, because the defendant acted with loss of reason and self-control on seeing that Guillermo Ribis was taking material possession of the palay seized and hidden by him on the previous night, thus committing one of the numerous unlawful acts perpetrated at that place, to the damage and prejudice of those who, by their labor endeavor to provide themselves with the necessary elements for their subsistence and that of their families. The special circumstance established by article 11 of the same code should be also considered in favor of the accused, in view of the erroneous and quite general belief that it is legal to punish, even to excess the thief who, in defiance of law and justice, while refusing to work, devotes himself to depriving his neighbors of the fruits of their arduous labors; these two circumstances are considered in the present case as especially admissible, without any aggravating circumstance, and they determine, according to article 81, rule 5, of the Penal Code, the imposition of the penalty immediately inferior to that prescribed by the law, and in its minimum degree, and therefore-

By virtue of the foregoing considerations, we are of the opinion that, the judgment appealed from being reversed with respect to Gregorio Bundoc only, the latter should be, and is hereby, sentenced to the penalty of six years and one day of prision mayor, to the accessories of article 01 of the code, to indemnify the heirs of the deceased jointly or severally with his codefendants, in the sum of P1,000, and to pay one-third the costs of both instances. So ordered.

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

MORELAND, J., with whom CARSON, J., concurs, dissenting:

The defendants in this case were convicted of the crime of homicide in causing the death of Guillermo Ravis, and sentenced to fourteen years eight months and one day of reclusion temporal, accessories, indemnification, and costs.

Gregorio Bundoc is the only one who appealed.

On the night of the 21st of February, 1909, Rafael Bumanglag, a resident of the pueblo of San Nicolas, Province of Ilocos Norte, found missing from his granary, situated at a place called Payas, barrio No. 16 of said pueblo, 4 baares and 40 manojos of palay, and the inclosure within which the palay was situated torn down and partly destroyed. The following morning he discovered a portion of the missing palay in a field of sugar cane about 100 meters from the granary from which it was taken. For the purpose of discovering who was the author of the crime and of bringing him to justice, he secured the assistance of Gregorio Bundoc, Antonio Rivao, and Saturnino Tumamao, the first being his cousin and the others his neighbors and friends, to watch with him the succeeding night in the vicinity of the palay, acting upon the expectation that the robber would return to secure it. Some time

after dark of the night succeeding the robbery, Bumanglag, and the other persons mentioned, gathered together in said field of sugar cane, near to the palay in question, placing themselves so as to surround it in a measure, and awaited the appearance of the malefactor. At about 10 o'clock there came into the field the deceased, Guillermo Ravis, who approached the palay, picked it up, and started to carry it away. At this moment Bumanglag presented himself in front of Ravis, stopping his further progress, whereupon Ravis attacked him viciously with a bolo and they engaged in a hand-to-hand struggle. Bumanglag, upon finding that he was likely to be killed by the robber because of his great strength and the fact that he was armed with a bolo, called for assistance, whereupon his three companions rushed forward and, seeing the extremity in which Bumanglag was, joined in the struggle for the purpose of his protection. Within a few minutes Ravis fell to the earth mortally injured and soon expired.

The only proofs in the trial relating to the death are the statements and testimony of the defendants themselves. Immediately after the death of Ravis, they, acting voluntarily, went to the nearest justice of the peace and stated what had occurred. Each one signed a statement of the facts constituting the occurrence as he understood them. Later each one of defendants testified on the trial.

Bundoc, in the written statement made by him before the justice of the peace, said that at about 10 o'clock of the night in question he saw Ravis enter the field, going toward the place where the palay was located, and a little while afterwards Bumanglag called him and his companions to come to his assistance because a man was attacking him, and that thereupon he, Bundoc, and his companions, "went to the assistance of Bumanglag, who was fighting with Ravis, and, in view of the fact that it appeared that Bumanglag was not able to resist his adversary because he had a bolo and Bumanglag had only a bamboo stick," he and his companions took part in the fight solely to protect his cousin and that, during the struggle that followed, the decedent was killed. He said further that he recognized the deceased, Ravis, as a resident of San Nicolas, and that he was a person of bad character and was known as the author of various robberies and burglaries which had occurred in that vicinity.

The statements of the other defendants are substantially the same as that of Bundoc.

Upon the trial Bumanglag testified, relative to the acts of defendants from which the death of Ravis resulted, that Ravis came into the field, arranged the palay in handy form, picked it up, and started to go away with it; that thereupon Bumanglag told him to halt; that Ravis instantly dropped his bundle to the ground and immediately attacked Bumanglag with a bolo, striking at him several times but failing to hit him on account of stalks of sugar cane which Bumanglag interposed between himself and his assailant; that, while Ravis was trying to kill him with his bolo, he called to his companions for help, at the same time trying to defend himself with blows of his bamboo stick; that his companions soon arrived, and, between the three, they struck him several blows, from which he died immediately; that they carried no weapons except bamboo sticks, while the deceased was armed with a large bolo.

The statement of Bumanglag made upon the trial is somewhat different from his statement made before the justice of the peace but is more in accord with the statements of the other defendants in the case, both before the justice of the peace and upon the trial of the case. Bundoc testified that Bumanglag called for help because he was being attacked by the robber, who was armed with a bolo, and that he was likely to be killed at any instant, and that he and his companions, desiring to defend Bumanglag from his imminent peril, ran forward to his assistance, and that during the fight which occurred, the deceased was killed.

These are the only proofs before us relative to the manner in which Ravis met his death. The court below, however, refused to believe the story of defendants because of certain alleged contradictory circumstances which appear in the proofs. These circumstances, as presented by the court below and here argued by the fiscal, are that (1) while the defendants claim, in their statements and testimony that the deceased attacked Bumanglag with his bolo, nevertheless, when the body of the decedent was the next day taken possession of by the justice of the

peace, the bolo was still in its sheath; and (2) that while the defendants stated and testified that they were not armed with any kind of weapons except bamboo sticks or clubs, still the testimony of Barba, the sanitary inspector of that district, shows that some of the wounds upon the body of the deceased were made with sharp instruments. Upon these two circumstances, impugning, as it is alleged they do, the evidence of the defendants in their own behalf, the court below found the defendants guilty of homicide.

The only evidence in relation to these two circumstances is that of the justice of the peace and the sanitary inspector, who assert that when they went to examine the body and take charge of it, the next day after the death, they found the bolo in its sheath. It appears, however, that no one watched the body during the interval running between the time when the death occurred and when the body was first examined, and therefore no one knows how it was handled or what was done with or to it. As to the other point, namely, that the wounds were made with sharp instruments, it may be said that the witness Barba, the sanitary inspector, who is the only one who testified in relation to that matter, stated that the only two wounds that were mortal were located, one in the right side of the head, caused by a sharp instrument, the other a contusion at the base of the neck upon the left side, not made with a sharp instrument. He does not say which one of the wounds caused the death of the decedent, neither does he state the facts upon which he bases his claim that the wounds were made with sharp instruments. He simply states his conclusions, without presenting the facts from which such conclusions naturally spring. It is well known, however, that a wound, smooth edged and clean cut, and simulating with remarkable closeness a wound made with a sharp cutting instrument, may be and frequently is produced by a wooden instrument or club, particularly where, as in this case, said instrument or club is extremely hard and has a sharp edge. The witness Barba was not a physician or surgeon and had had little experience with wounds. His judgment was scarcely better than that of the average man. In no sense was he qualified as an expert. Besides, and this is very important, the only wounds found upon the person of deceased were about the head, neck, and face. No wound was found on any other part of the person. Does this look like the use of knives or bolos by the defendants? If they had been using such weapons it is almost certain that the fatal wound would have been found in the body and not the head; or, if in the head, the wound made would have been far more extensive and ghastly than any of those found.

It appears from the undisputed testimony (if we except the two circumstances above referred to) that the decedent was a man of bad reputation; that he was a thief, a robber, and a convicted criminal, having served at least one term in prison for robbery; that he was known in all that country as a leader of criminal bands and as an all-round desperado; that he was a man of exceptionally large stature and of unusual strength; that at the time of his attack upon Rafael Bumanglag he was armed with a bolo; that on the evening before his death he had robbed the granary of Bumanglag, taking a part of the property which he had stolen away with him at the time and leaving the other portion, which he was unable to carry, in a place where it would be easily accessible when he desired later to remove it; that on the night of the event he had returned to carry away the balance of the property which he had stolen the night before; that while in the act of taking it he was surprised and confronted by the owner thereof; that he immediately assailed said owner viciously with his bolo, and so pressed him that, for the protection of his life, he called upon his friends for assistance; that his companions, on arriving, saw that he was likely to be killed at any instant and they, endeavoring to save his life, attacked the decedent.

It is not known who among the defendants killed the decedent or what blow caused his death. All that is known is that in the struggle which occurred, resulting from the efforts of three of the defendants to save the life of the fourth, the decedent met his death.

It nowhere appears, except from the fact of death itself, that the defendants sought or intended to kill the decedent. Their sole purpose appears from the evidence to have been to protect their companion from the murderous assault of decedent. Such purpose could have been accomplished as well by disabling as by killing him; and it must not

be forgotten in this connection that the effect produced by the use of their bamboo sticks was not that which is ordinarily produced. This consideration was regarded by this court as having much importance in the case of the United States vs. Sosa (4 Phil. Rep., 104). This court has, moreover, held that a piece of bamboo (una simple caña partida), exactly what was used by defendants in the case at bar, was a weapon insufficient ordinarily to put the life of a person attacked in imminent peril. (U. S. vs. De Castro, 2 Phil. Rep., 67; U. S. vs. Mack, 8 Phil. Rep., 701).

I am convinced that there is a strong doubt of the criminal responsibility of the defendants, particularly of the appellant. Article 8 of the Penal Code reads in part as follows:

"The following are not delinquent and are, therefore, exempt from criminal liability:

* * * * *

"5. He who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees and those by consanguinity within the fourth civil degree, provided the first and second circumstances mentioned in the foregoing number are attendant, and provided that in case the party attacked first gave provocation, the defender took no part therein.

"6. He who acts in defense of the person or rights of a stranger, provided the first and second circumstances mentioned in No. 4 are attendant and that the defender is not actuated by revenge, resentment, or other illegal motive."

Subdivision 4 is as follows:

"4. He who acts in defense of his person or rights, provided there are the following attendant circumstances:

"(1) Illegal aggression.

"(2) Reasonable necessity of the means employed to prevent or repel it.

"(3) Lack of sufficient provocation on the part of the person defending himself."

That there was an unlawful aggression seems to me to be indisputable under the evidence. The great preponderance of the testimony, in fact the undisputed evidence, is to that effect. Every witness who touched the subject testified positively that the assault upon Bumanglag was made with a bolo. It is admitted that the decedent had one at the time of the assault. Nevertheless the fiscal contends that the assault was not made with a bolo and bases that contention upon the single fact, before adverted to, that, many hours after the assault, the bolo was found in its sheath on the dead man's body. The probative effect of that fact is founded purely in an inference which necessarily presupposes that the bolo had not been replaced in its sheath by anyone after the death of Ravis, his body having been left unwatched, as before stated, for a considerable period of time. It seems to me, however, that inference is met and sufficiently overcome by the manifest and perfect unreasonableness of the assumption, which must necessarily arise from that inference, that a man of the character of the decedent, having been caught red-handed in the commission of a robbery by the owner of the property against which the felony had been and was being committed, and that owner armed with a club, would attack such owner with his naked hands when he carried at his side a formidable weapon with which to defend himself in precisely such an emergency. It is wholly unreasonable, if not positively unbelievable, that the decedent, under all the circumstances of this case, did not draw his bolo. That he did unsheath it and did attack Bumanglag therewith is the sworn statement of every witness who testified on that subject. This proof, taken in connection with the unreasonableness of the claim that the decedent, caught red-handed in felony, attacked with his bare hands a man armed with a club, the man against whose property he was in the very act of perpetrating a felony, and permitted himself to be beaten to death, when he carried at his side a formidable and effective weapon of aggression as well as defense, can not be overcome by

a mere inference deduced from the circumstance that the bolo, many hours after the event, was found in its sheath. The entire evidence, fairly considered, reasonably establishes, it seems to me, not only an unlawful but a dangerous aggression. (Supreme court of Spain, 17 November, 1897; 6 July, 1898; 16 March, 1892; 11 December, 1896; 26 January, 1897; 11 December, 1896; 6 April, 1904; 27 June, 1894; 30 January, 1904; 16 February, 1905; 10 July, 1902; 27 June, 1903; 28 February, 1906; 17 March, 1888; 29 May, 1888; 13 February, 1890; 20 January, 1894; 24 October, 1895; 27 January, 1896; 11 December, 1896; 26 January, 1897; 30 September, 1897; 10 February, 1898; 6 July, 1898; 21 December, 1898; 24 January, 1899; 29 September, 1900; 12 January, 1901; 21 April, 1902; 20 December, 1902; 4 February, 1903; 11 July, 1903; 11 July, 1904; 22 March, 1905; 8 July, 1905.)

In the case of *Stoneham vs. Commonwealth* (86 Va., 523, 525, 526), where the defendant was being followed up by the deceased who was wholly unarmed and without any demonstration of violence except raising his fist, and the defendant shot and killed him, the court said:

"The accused was closely pressed by an attacking man, who was his superior in strength, and his situation was one which justified his fear of grievous bodily harm; and, if the jury had found the facts as certified by the court, they should have found the homicide to be excusable self-defense under all the circumstances of this case." (Parrishe's case, 81 Va., 1.)

Moreover, it is admitted that the defendant, Bumanglag, was upon his own land and was, therefore, defending his habitation against a violent and wrongful invasion when the assault upon him was made in the manner proved.

"A person may repel force by force in defense of his habitation or property, as well as in defense of his person, violence or surprise to commit a known felony upon either, and, if need be, may kill his adversary." (25 Am. & Eng. Ency. of L., 275.)

In the case of *United States vs. Brello* (9 Phil. Rep., 424), the court said (p. 425) :

"The evidence of the defendant and his witnesses was to the effect that at 10 o'clock at night Candelario came to the house of the defendant, knocked at the door, and insisted upon the defendant coming out, saying that if he did not he would burn the house. The defendant refused to go out and thereupon Candelario broke the door down, came in and attacked the defendant with a cane, throwing him to the ground two or three times. He defended himself as well as he could and finally seized a bolo and struck Candelario in the stomach. Immediately after the affair the defendant presented himself to the authorities of the town, stating what had happened. It does not appear that Candelario had any other weapon than a cane.

"These facts to our mind constitute a complete defense. Candelario committed a crime in entering the house as he did, the defendant was justified in protecting himself with such weapons as were at his hand, and if from that defense the death of the aggressor resulted, that result must be attributed to his own wrongful act and can not be charged to the defendant."

(The italics do not appear in the original.)

If the defendant in the above case was in danger of death or of great bodily harm, and that danger was imminent, and if the means employed by him to repel the assault were reasonably necessary to attain that result, then, how much more perfectly were these conditions present in the case at bar! If the defendant in the case cited was entitled legally to be relieved from all criminal liability, upon what subtle distinction, and, above all, upon what principles of justice, shall we found a judgment declaring guilty the appellant at bar?

While the premises upon which the assault occurred were not, strictly speaking, the habitation of the defendant, Bumanglag, still as matter of law no substantial distinction is made between habitation and premises. The Supreme Court of the United States has held directly (*Beard vs. United States*, 158 U. S., 550) that for the

purposes of self-defense there is no difference between one's habitation and his premises. In that case the court said, in part, Mr. Justice Harlan writing (p. 559):

"But the court below committed an error of a more serious character when it told the jury, as in effect it did by different forms of expression, that if the accused could have saved his own life and avoided taking the life of Will Jones by retreating from and getting out of the way of the latter as he advanced upon him, the law made it his duty to do so; and if he did not, when it was in his power to do so without putting his own life or body in imminent peril, he was guilty of manslaughter. The court seemed to think if the deceased had advanced upon the accused while the latter was in his dwelling house and under such circumstances as indicated the intention of the former to take life or inflict great bodily injury, and if, without retreating, the accused had taken the life of his assailant, having at the time reasonable grounds to believe, and in good faith believing, that his own life would be taken or great bodily harm done him unless he killed the accused, the case would have been one of justifiable homicide. To that proposition we give our entire assent. But we can not agree that the accused was under any greater obligation, when on his own premises, near his dwelling house, to retreat or run away from his assailant, than he would have been if attacked within his dwelling house. The accused being where he had a right to be, on his own premises, constituting a part of his residence and home, at the time the deceased approached him in a threatening manner, and not having by language or by conduct provoked the deceased to assault him, the question for the jury was whether, without fleeing from his adversary, he had, at the moment he struck the deceased, reasonable grounds to believe, and in good faith believed, that he could not save his life or protect himself from great bodily harm except by doing what he did, namely, strike the deceased with his gun, and thus prevent his further advance upon him. Even if the jury had been prepared to answer this question in the affirmative-and if it had been so answered the defendant should have been acquitted-they were instructed that the accused could not properly be acquitted on the ground of self-defense if they believed that, by retreating from his adversary, by 'getting out of the way,' he could have avoided taking life. We can not give our assent to this doctrine." (Erwin vs. State, 29 Ohio St., 186, 193, 199; Runyan vs. State, 57 Ind., 80, 84; Bishop's New Criminal Law, vol. 1, par. 850; 2 Wharton's Criminal Law, par. 1019, 7th ed.; Gallagher vs. State, 3 Minn., 270; Pond vs. People, 8 Mich., 150, 177; State vs. Dixon, 75 N. C., 275, 295; State vs. Sherman, 16 R. I., 631; Fields vs. State, 32 N. E. Rep., 780; Eversole vs. Commonwealth, 26 S. W. Rep., 816; Haynes vs. State, 17 Ga., 465, 483; Long vs. State, 52 Miss., 23, 35; Tweedy vs. State, 5 la., 433; Baker vs. Commonwealth, 19 S. W. Rep., 975; Tingle vs. Commonwealth, 11 S. W., 812; 3 Rice's Ev., par. 360.)

In the case of State vs. Cushing (14 Wash., 530), the court lays down the proposition that a defendant while on his own premises outside of his dwelling house, was where he had a right to be, and if the deceased advanced upon him in a threatening manner and the defendant at the time had reasonable grounds to believe, and in good faith did believe, that the deceased intended to take his life or do him great bodily harm, the defendant was not obliged to retreat nor to consider whether he could safely retreat, but was entitled to stand his ground and meet any attack made upon him in such a way and with such force as, under all the circumstances, he at the moment honestly believed and had reasonable grounds to believe was necessary to save his own life or protect himself from great bodily harm.

It is also admitted that the defendant, Bumanglag, was defending his property from one who by surprise and violence was endeavoring to commit a felony against it. Under such circumstances, if necessary to prevent the felony, he could lawfully kill the person attempting it. (See 25 Am. & Eng. Ency. of Law, 275, above quoted; U. S. vs. Wiltberger, 28 Fed. Cas., 727, 729; Commonwealth vs. Pipes, 158 Pa. St., 25, 30; Stoneham vs. Commonwealth, 86 Va., 523, 525; Ayers vs. State, 60 Miss., 709, 714; Crawford vs. State, 35 Am. St. Rep., 242, 244; People vs. Stone, 82 Cal., 36, 37, 38.)

It must not be forgotten that the undisputed evidence in the case at bar shows that Bumanglag, when attacked by deceased, although on his own premises and defending his own property, did all he could to avoid an encounter, retreating as far as safety permitted, and interposing between himself and his assailant stalks of sugar cane to

impede the blows aimed at him, at the same time warding off the bolo thrusts with his bamboo stick.

It appears, therefore, that there was not only an unlawful aggression against the defendant, Bumanglag, personally, but also that there was a wrongful invasion of his habitation and an attempt to commit a felony against his property.

It fairly appearing that there was an unlawful aggression, it is evident that the danger to Bumanglag was imminent and certain. It is difficult to conceive how, with a weapon in the hands of decedent no more deadly than a bolo, the defendant could have been in danger more imminent and certain. A notorious desperado (Hood vs. State, 27 So. Rep., 643) had been caught red-handed in a felony. He was large, powerful (Stoneham vs. Commonwealth, 86 Va., 523, 525), and vicious. It was dark. So far as he knew, he was alone with his discoverer. He carried a fighting bolo. His discoverer had only a bamboo stick. A long term in State prison stared him in the face. There was one way to avoid it and only one—to kill his discoverer. If Bumanglag escaped, his arrest and conviction would surely follow. Can any one doubt, under these circumstances, what such a man would do? Bumanglag, as he confronted and recognized the man with whom he had to deal, realized instantly the imminence and certainty of his danger; and, as the robber dropped the stolen property and made the assault, Bumanglag knew that, without assistance from some source, his death would result. His danger was fully appreciated and realized by his companions when they heard his cries for help. They knew Ravis, his criminal record, his desperate character, his unusual strength. (People vs. Webster, 139 N. Y., 73; State vs. Martin, 9 Ohio Dec, 778; State vs. Broussard, 39 La. Ann., 671; State vs. Bowles, 146 Mo., 6; State vs. Knapp, 45 N. H., 148.) They knew he was armed and their companion was not. They knew it lay with them whether Bumanglag was killed or not. From their viewpoint was not their participation in the struggle fully justified?

It has been suggested that the means used by the defendants were not reasonably necessary for the protection of their companion, and that, being so many against one, they should not have struck the decedent with their clubs, but, rather, should have seized him with their hands, disarmed him and made him prisoner. Among all the reasons assigned by the prosecution to sustain the conviction in this case this, to my mind, is the only one that in anywise appeals to reason or judgment. In fact it is the only ground presented by the Government upon which such conviction can be sustained, if it can be sustained at all. Still, giving that contention all of the weight which it justly carries, I yet am entirely lacking in confidence that it is sound under the circumstances of this case and the established law applicable thereto, and is, I believe, fully and fairly met by the substance of the following observations:

I remember, on occasion, seeing, in the public square in my native town, a large and powerful American attacked by a diminutive Italian armed with a stiletto. I remember seeing the American running backward, leaping and dodging frantically to avoid the vicious thrusts aimed by the pursuing Italian at a vital part. I remember also that at least a half dozen other Americans were at the rear of the Italian, closely following him and yelling to him at the top of their voices to desist, but not one daring to grapple with him to save the person attacked; and it was only when another American, having rushed into the yard of the hotel and secured a stick of wood, returned to the scene and gave the Italian from behind a heavy blow over the head with the club, stretching him senseless, that the assault was terminated.

The question naturally arises, Why did not some one seize the Italian? The answer is, for the simple reason that a furious and vicious man armed with a dagger and skilled in its use is an individual dangerous to the very extreme, and the man who seizes him with his naked hands runs the chances of his life. This is known to all. But, comes the reply, Why not all seize him at once and thus avoid the danger to one? The suggestion is simple but the execution is most difficult—in most cases little short of impossible. On such an occasion the time within which action must be secured is of the very shortest. Everything is excitement and confusion. Everybody yells and dreads, but nobody

thinks. If there happens to be one who does think, he has no companions in the process. There is, and in the vast majority of cases there can be, no concert of action. The aid rendered in such cases is almost invariably individual.

In the case at bar, as in the illustration, there was a fierce struggle between two men. The one was defending his own property on his own premises and performing a service to society by doing his part to render amenable to the law a desperate and reckless criminal. The other was an invader, a despoiler, wholly unrestrained by conscience or deterred by law—an inveterate enemy of society and his kind. He was armed with a dangerous weapon. He was desperate, vicious, criminal, and powerful, surprised in an act of felony. It was dark. He was attempting to take the life of his opponent. It was unknown, and unknowable, when, in that struggle, the fatal blow would be delivered. It might come at any instant. Ought it fairly to be required as a matter of law that the defendants, rushing forward to assist their companion, should, under these circumstances, attempt the seizure of this powerful and desperate man with their naked hands, in the dark, without the ability, by reason of the conditions, to see the weapon and the manner in which it was being used? Would not such a requirement put them in great danger of being themselves seriously wounded, even if it did not add to the danger of their companion? It is the unquestioned law, and it should be rigorously enforced, that life can not be taken except in necessity, but it is as unquestioned that he who is in danger of his life from an assault, as well as the one who comes to his assistance, is not required to do anything which will increase his danger or enhance the opportunity of the aggressor to accomplish his end. (U. S. vs. Mack, 8 Phil. Rep., 701; U. S. vs. Paras, 9 Phil. Rep., 367; supreme court of Spain, 25 September, 1875; U. S. vs. Herbert, 26 Fed. Cas., No. 15354a; State vs. Robertson, 50 La. Ann., 92; 25 Am. & Eng. Ency. of L., 273.) Moreover, if the life of Bumanglag was to be saved at all, the aggressor must be dealt with quickly and summarily. Events were unrolling rapidly. There was a life in danger, every instant becoming more imminent. There was no time to think; no time for deliberate, careful judgment and nice precision; no opportunity to devise means or lay plans. Under such circumstances the law does not hold men to the standards of careful thought and calm judgment. (Allen vs. U. S., 150 U. S., 551; State vs. West, 45 La. Ann., 14, 23; Brownell vs. People, 38 Mich., 732; supreme court of Spain, 7 December, 1886; Viada, Penal Code, vol. 1, 157-160.)

In order to make perfectly available the defense that they were rightfully defending Bumanglag, and that the means they employed were reasonably necessary, it is not essential that there should be absolute and positive danger to the person whose protection is attempted. If there is a well-grounded and reasonable belief that the person is in imminent danger of death or great bodily harm, an attempt to defend him by means which appear reasonably necessary is justifiable. The reasonable appearance is the important thing. (Shorter vs. People, 2 N. Y., 193, 197; Brown vs. Com., 86 Va., 466; Logue vs. Com., 38 Pa. St., 265; Murray vs. Com., 79 Pa. St., 311, 317; Pond vs. People, 8 Mich., 149, 150; Hurd vs. People, 25 Mich., 404, 405; People vs. Miles, 55 Cal., 207; People vs. Herbert, 61 Cal., 544; Campbell vs. People, 16 Ill., 17; Enlow vs. State, 154 Ind., 664; Hubbard vs. State, 37 Fla., 156; Alvarez vs. State, 37 Fla., 156; Oliver vs. State, 17 Ala., 587; Stewart vs. State, 1 Ohio St., 6Q, 71; 25 Am. & Eng. Ency. of Law, 262, 263; U. S. vs. Paras, 9 Phil. Rep., 367.)

In deciding this case we must, therefore, under the law, put ourselves in the position of the defendants at the time of the event. It is from their point of view that they are to be judged. If they honestly believed, and had apparently reasonable grounds for that belief, that the life of their companion was in imminent danger or that he was likely to suffer great bodily harm, and that the means which they used to protect him were reasonably necessary to that end, they can not be convicted. (Viada, Penal Code, vol. 1, 98; People vs. Bruggy, 93 Cal., 476; Harris vs. State, 96 Ala., 24; U.S. vs. Outerbridge, 5 Sawy. (U. S. Circ), 620.) I am convinced that the facts and circumstances of this case were sufficient to induce and support the belief in the minds of the defendants that their companion's life was in imminent danger and that the means which they employed were reasonably necessary to secure his protection. (Supreme court of Spain, 2 January, 1873; 5 April, 1873; 30 April, 1874; 31 May, 1879; 17 March, 1885; 26 November, 1886; 26 November, 1886; 2 March, 1888; 4 April, 1889; 5 July, 1890; 6 December, 1890;

30 December, 1890; 11 February, 1896; 9 December, 1896; 24 May, 1898; 28 May, 1898; 10 December, 1898; 15 November, 1899; 9 January, 1900; 1 June, 1901; 16 April, 1902; 3 January, 1903; 14 January, 1903; 20 March, 1903; 11 July, 1909; 26 October, 1904; 17 November, 1904; 20 October, 1904; 29 October, 1904; 8 March, 1905.) In other words, it would seem under all the circumstances, that it can not fairly be charged that the defendants, particularly the appellant, acted otherwise than as reasonable men would have acted in the same situation; and after all this is the real test. (Allen vs. U. S., 150 U. S., 551; Hickory vs. U. S., 151 U. S., 303; Christian vs. State, 96 Ala., 89; People vs. Hurley, 8 Cal., 390; Gainey vs. People, 97 111., 270; State vs. West, 45 La. Ann., 14.)

While most of the authorities above cited refer to self-defense only, the principles they enunciate are fully applicable to the case at bar, because, generally speaking, what one may do in his own defense another may do for him. (25 Am. & Eng. Ency. of Law, 274, and cases there cited.)

Under the circumstances of this case I can not feel that the fair and impartial administration of justice requires that we should refine doctrines, draw uncertain distinctions, invoke doubtful presumptions, employ fine analyses, or seize upon equivocal circumstances for the purpose of convicting the appellant of homicide, or for the purpose of establishing a doctrine which may have as a result that a criminal, invading his neighbors' premises feloniously and in the nighttime for the purpose of robbery, and surprised and taken in his wanton act, may feel that he is in any way or to any degree privileged under the law when, in attempting to make his outrage against man and society secure from detection and punishment, he seeks by every means in his power to destroy the life of his discover. Every man ought to lend his hand in assisting society to apprehend and punish offenders against its institutions and laws, and while the wanton or illegal destruction of human life, under the guise of such assistance, ought to be promptly, vigorously, and unrelentingly punished, still, where such person, acting in the honest belief that he is saving the life of one who is viciously attacked by a criminal whose recognition or apprehension is attempted, in the defense of such person, causes the death of the criminal, the court ought not to be drawn from its usual, even and steady course in order to provide a punishment. (Supreme court of Spain, 5 February, 1887; Viada, Penal Code, vol. 1,160,161.)

This court has gone very far in the direction of liberality in laying down the principles governing the defense of self-defense and the means that may be legally employed to make that defense effective-very much further, indeed, than it is necessary to go to absolve the appellant in the case at bar. In the case of the United States vs. Patala (2 Phil. Rep., 752), the court says, page 756:

"It appears from the testimony of the defendant that at the time of the occurrence he was cleaning fish on board the steamship Compañia de Filipinas; that without any provocation on his part the deceased, who was the cook of the boat, believing that some of the fish was missing, slapped him and kicked him; that not being satisfied with this, when the defendant started to run away from him, the deceased pursued him and attacked him with a knife; that the defendant, taking advantage of some favorable chance during the struggle, succeeded in wresting the knife from the deceased and inflicted upon him a wound in the left side, from the result of which he died a few hours later.

"* * * The aggression on the part of the deceased was in every respect unjustified, and the defendant had a perfect right to repel the attack in the most adequate from within his power under the critical circumstances of a sudden assault.

"* * * He had reason to believe that he was placed in the alternative of killing or being killed when he was being attacked and pursued with a deadly weapon. This was the only weapon used during the struggle and it necessary had to be either in his possession or in the hands of the deceased. If through a fortunate accident he came into possession of the knife, he could have lost control of it through a similar accident and then found himself at the mercy of his assailant. Therefore the act of the defendant rendering his assailant powerless as

well as he could under the critical circumstances of the moment, and repelling his aggression, constitute, in our opinion, a true case of self-defense, which exempts the defendant from any criminal liability under paragraph 4 of article 8 of the Penal Code."

The same doctrine is laid down in the similar case of the *United States vs. Salandanan* (1 Phil. Rep., 478). (See also *U. S. vs. Brello*, Phil. Rep., 424; *U. S. vs. Reyes*, 1 Phil. Rep., 517; *U. S. vs. Bailon*, 9 Phil. Rep., 161.)

There is neither claim nor evidence that any of the defendants were actuated in their defense of Bumanglag by revenge, resentment, or other illegal motive, and from this point of view the case requires no discussion.

As to the question of reasonable doubt.

"In discussing the questions of burden of proof and reasonable doubt in cases involving self-defense, the courts have stated various confusing and apparently contradictory propositions, but the general rule deducible from the authorities seems to be that when the prosecution has made a prima facie case against the accused, it is for him to introduce evidence showing self-defense, if he sets up that plea; but that if, upon the whole testimony, both on the part of the State and the accused, the jury has a reasonable doubt whether he acted in self-defense or not, he is entitled to the benefit of the doubt and to an acquittal." (25 Am. & Eng. Ency. of Law, 283.)

The doctrine above stated is fully supported by the authorities.

In the case of *Lillienthal vs. United States* (97 U. S., 237, 266), the court said:

"In criminal cases the true rule is that the burden of proof never shifts; that, in all cases, before a conviction can be had, the jury must be satisfied from the evidence, beyond a reasonable doubt, of the affirmative of the issue presented in the accusation, that the defendant is guilty in the manner and form as charged in the indictment. * * * Where the matter of excuse or justification of the offense charged grows out of the original transaction, the defense is not driven to the necessity of establishing the matter in excuse or justification by a preponderance of the evidence, and much less beyond a reasonable doubt. If, upon a consideration of all the evidence, there be a reasonable doubt of the guilt of the party, the jury are to give him the benefit of such doubt."

To the same effect are *Tweedy vs. State* (5 Iowa, 433); *Wharton's Criminal Evidence*, p. 236; *Tiffany vs. Commonwealth* (121 Pa. St., 165); *People vs. Coughlin* (65 Mich., 704).

"The section casts upon the defendant the burden of proving circumstances of mitigation, or that justify or excuse the commission of the homicide. This does not mean that he must prove such circumstances by a preponderance of the evidence, but that the presumption that the killing was felonious arises from the mere proof by the prosecution of the homicide, and the burden of proving circumstances of mitigation, etc., is thereby cast upon him. He is only bound under this rule to produce such evidence as will create in the minds of the jury a reasonable doubt of his guilt of the offense charged." (*People vs. Flanagan*, 60 Cal., 3; 44 Am. Rep., 52; *People vs. Smith*, 59 Cal, 607.) "It can make no difference whether this reasonable doubt is the result of evidence on the part of the defendant tending to show circumstances of mitigation, or that justify or excuse the killing, or from other evidence coming from him or the prosecution. The well-settled rule that a defendant shall not be convicted unless the evidence proves his guilt beyond a reasonable doubt applies to the whole and every material part of the case, no matter whether it is as to the act of killing, or the reason for or manner of its commission." (*People vs. Bushton*, 80 Cal., 160, 164; *Alexander vs. People*, 96 111., 96; *People vs. Riordan*, 117 N. Y., 71.)

Reading the evidence in this case in the light of reason and of the principles enunciated by the courts, I can not but feel that, under all the circumstances, there is a strong doubt of the appellant's legal responsibility for the crime charged. In my opinion, therefore, the judgment of the court below should be reversed and the appellant acquitted.

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