

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PONCIANO SALAZAR AND VENANCIO VILLANUEVA, DEFENDANTS AND APPELLANTS.

G.R. No. 5439. February 23, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

The defendants were accused of murder. The information alleges that on or about the 17th day of September, 1908, in the barrio of Rabago in the pueblo of Rosales, Province of Pangasinan, the defendants with treachery and premeditation killed Felix Mendoza by shooting him with revolvers and with a Remington rifle, inflicting upon him six wounds, from which he died immediately. The defendants were convicted of homicide by the Court of First Instance of the Province of Pangasinan and sentenced each to fourteen years eight months and one day of reclusion temporal, accessories, indemnification, and costs. From this judgment and sentence the defendants appealed.

The prosecution presented four witnesses, the first and most important of whom was Veronica Valenzuela. Upon the trial she testified that she was a concubine of the deceased, living with him and his wife, Praxedes Doliente, in the pueblo of Rosales; that on the 17th day of September, 1908, there were present in that house Felix Mendoza, the witness, and one Pascual Ismael; that very early in the morning of said day four individuals, namely, Ponciano Salazar, Venancio Villanueva, Antonino Evaristo, and Eugenio Seriosa, came to the house; that Villanueva, Evaristo, and Seriosa were armed with revolvers and Salazar was armed with a Remington rifle; that said four, on arriving at the house, arrested Felix Mendoza; that they bound him to Pascual Ismael; that, after having bound them, the four individuals discharged several shots at the house, then entered the same and searched it carefully; that, after completing their search, they destroyed the house; that they then left the house, taking with them the witness, Mendoza, and Ismael, conducting them to the house of Toribio Ramos, where they ate their breakfast; that during the breakfast Mendoza was tied to a table leg; that in the afternoon they left the house and soon thereafter released Ismael; that they proceeded in the direction of Rabago and arrived there late in the afternoon; that there they ate their supper; that they then proceeded to a point just outside of the pueblo of Rosales and stopped again; that they were so near some of the inhabited houses of the pueblo that the people occupying the houses could hear the ordinary conversation of the defendants and their companions; that, after it became dark, they built a large bonfire in the road, from the light of which everything for some distance around became plainly visible; that, after having made the fire, Salazar said to Mendoza, "Commend your soul to God, because now we are going to kill you;" that thereupon Mendoza got down upon his knees in the middle of the road and in the light of the bonfire and Salazar shot him in the back with the Remington rifle; that Mendoza, on receiving the shot, said "Pardon me and have pity on my family;" that his captors paid no attention to his words, but, on the contrary, both of the defendants, together with Evaristo and Seriosa, shot him repeatedly in the back with their revolvers; that they shot him at a distance of from 6 to 8 meters; that while they were shooting him, they began to cry "guerilla, guerilla;" that after they had shot him, Salazar went to where witness was kneeling and said to her, "Go over

yonder where he is arid beg his pardon;" that she thereupon approached Mendoza, who was still able to speak and who said to her "my poor family" and immediately expired; that thereupon the defendants went to the justice of the peace to give an account of what had happened, agreeing that they would say to the justice that they had been attacked by malefactors, and that deceased, in attempting to escape in the confusion, was killed; that the killing of Mendoza occurred between 7 and 8 o'clock of the night; that, while the night was dark, she was able to see perfectly all that transpired, not only because it occurred in the middle of the street and her view was therefore unobstructed, but also by reason of the bonfire which they had made; that when Mendoza was shot his elbows were bound together and there was a rope around his neck.

Said Veronica Valenzuela is the only witness for the prosecution who claims to have seen the event. The witness Ismael corroborated, to some extent, the testimony of the witness Valenzuela up to the time when he was set at liberty, but fails wholly to corroborate her in the most important portion of her testimony. He does not testify that the deceased was bound elbow to elbow as stated by her. Neither does the witness Praxedes Doliente, wife of the deceased. Upon that point Veronica is wholly without corroboration.

The witness Dizon, the fourth and last witness of the prosecution, testified that he, at the time of the commission of the alleged crimes, was the sanitary inspector of that district; that he was not a physician or surgeon; that he examined the body of Felix Mendoza two or three days after his death; that he found six gunshot wounds in the body, five of which were mortal; that two of the wounds were made by a Remington rifle and the other four by revolvers; that he knew said two wounds were caused by a Remington rifle because those wounds were much larger in size than the other four wounds; that some of the wounds were inflicted from the rear; that the reason why he knew that such wounds were inflicted from the rear was that the wounds in front were larger than those in the back, he alleging that the bullet in its exit makes a larger aperture than at its entrance; that he had no knowledge whatever of his own upon that subject and had never tried, or seen tried, any experiments from the results of which he could draw such an inference; that some of said wounds must have been made while deceased was on his knees because the track of the bullets took a downward slant, their exit being lower upon the body than their entrance.

These are the only witnesses produced by the prosecution.

The defendants testified in their own behalf. The facts, as they and the three witnesses, Evaristo, Seriosa, and Severo, who were of the party having deceased in custody, relate them, are as follows:

Some time prior to the event from which this action springs it was known to the Constabulary officers of that locality that the deceased was in possession of prohibited arms and that he was a desperate character and was strongly suspected of complicity in various robberies and other crimes. For the purpose of obtaining such arms the captain of the Constabulary of that district ordered the defendant Villanueva, who was a member of the Constabulary, to arrest the deceased and search his premises. In order to carry out this order the defendant Villanueva took with him the defendant Salazar, a municipal policeman of Rosales, Pangasinan, Eugenio Seriosa, another member of the Constabulary, and Antonio Evaristo, a member of the secret police of Rosales. These four were later joined by Eulalio Severo, a rural policeman. They went to the house of the deceased, arrested him upon a warrant previously procured for the purpose, searched the premises and discovered a Remington rifle and a quantity of cartridges belonging to the same. Thereupon they started to take him before the justice of the peace who had issued the warrant. Between 7 and 8 o'clock of the night in question they arrived at a place near the pueblo of Rosales and within earshot of many of the houses belonging to that pueblo. On arriving at said place they were beset by a band of persons unknown, and were ordered to halt and to disclose who they were. On answering that they were municipal policemen and members of the Constabulary they heard the words from the band of unknown, "avance en guerrilla," followed instantly by the discharge of several shots from firearms.

Thereupon they in turn discharged several shots at the unknown persons. At that moment, and during the confusion ensuing, the deceased, Mendoza, leaped forward and grasped the revolver which the defendant Salazar had in his hand and sought to wrest it from him. Salazar, seeing that the deceased would succeed in his design, called upon the defendant Villanueva to aid him. Villanueva, on reaching the side of Salazar, observed that Mendoza had hold of the revolver and was endeavoring with all his might to secure complete possession of it. Villanueva thereupon sought to aid his companion and both he and Salazar attempted to break the hold which the deceased had upon it. Finding that they could not do so, the defendant Villanueva said to the deceased "let loose of the revolver for your own safety." Mendoza did not reply, but redoubled his efforts to obtain possession of it. Villanueva, seeing that it was likely that the deceased, on account of his unusual physical strength, would succeed in obtaining possession of the revolver unless heroic measures were immediately adopted, in order to prevent that result, discharged his revolver at the deceased. Instead of letting go of the revolver and ceasing his efforts to obtain possession of it, the deceased continued to hold fast to it and attacked the two more savagely than before. Thereupon Villanueva again fired his revolver at the deceased. It seems that at this point the deceased let go the revolver but did not cease his attack on them, but rather continued to attack them both, advancing against them fiercely. They both then fired at him for the purpose of repelling his assault and continued to discharge their revolvers at him until he fell to the ground. The defense further says that the deceased did not cease to attack them until he had been shot several times; that they did not shoot him after he ceased to attack them; that they shot him because he, being much larger and stronger than they, was likely to obtain possession of the revolver, in which event they knew he would do all he could to kill them both; that no shots whatever were fired from the Remington rifle; that said Remington rifle was not in possession of Salazar, as alleged by Veronica, at any time, but was at all times in the possession of Seriosa, who, with Evaristo and the witness Veronica and the rural policeman, Severo, was far behind Salazar and Villanueva at the time that the deceased was shot; that the night was dark and that it was impossible for Seriosa or his companions in the rear of Veronica, who was with them, to see what was transpiring; that the defendants at no time bound the deceased elbow to elbow; that he had a rope around his right arm only, the other end being held by Salazar so that the deceased could not escape in the darkness; that they made no bonfire prior to the death of Mendoza; that a bonfire was made prior to the arrival of the justice of the peace by those who were guarding the corpse.

As before stated, Veronica Valenzuela is the only witness for the prosecution who claims to have witnessed the death of Mendoza, and she is, therefore, the only witness who contradicts the story of the defendants and their witnesses. After a careful examination of the evidence we do not believe her testimony should be given any weight whatever, and for the following reasons:

- She says that the deceased was bound elbow to elbow from the time he was arrested until the time of his death, and that he also had a rope around his neck which was held so tight by his captors that he was unable to stoop forward. This testimony is not corroborated by any witness. On the contrary, it is denied in every part by the defendants, by Seriosa, Severo, and Evaristo, and also by the witnesses Ramos, Nacion, Espejo, Bermejo, and Organista, who saw the party at various points of the way as they traveled from the place where the deceased was arrested to the place where he was killed. They all testified, that at no time and at no place was the deceased bound elbow to elbow, nor did he have a rope around his neck. All concur in stating that he had a rope tied around his right arm only and that the end of the rope was held by one of his captors. It appears from the testimony of the justice of the peace and those who accompanied him when he went to view the remains that the deceased had a rope around his right arm only.
- She also testifies that the party was not attacked by a band of malefactors, as described by the defendants, but that the defendants agreed among themselves that they would make it appear that they had been so attacked in order to excuse the commission of the crime. This testimony is opposed by the declarations of the defendants and

by that of Seriosa, Severo, and Evaristo, and also by the testimony of Organista, who was an inhabitant of the pueblo of Rosales and who heard the shots of the band of malefactors, followed by the shots of the Constabulary in return; also by the testimony of the witness Sevilla, who was also a resident of that pueblo and who heard not only the shots of the band of malefactors but also the words "avance en guerrilla" The witness Canonizado, the justice of the peace referred to, testified that when he arrived at the scene of the event the witness Veronica said to him that she was very glad that he had come because she had not yet lost the fear under which she had labored because of their having been attacked by the band of malefactors, and because of the shots which they had fired. He says that she further stated to him directly and positively that they had been attacked by a band of malefactors.

- She also testified that four persons, the two defendants and Seriosa and Evaristo, all shot the deceased. She says that Salazar shot him with the Remington rifle, while the other three shot him with their revolvers. The defendants and the witnesses Seriosa and Evaristo all testified that the two revolvers carried by Evaristo and Seriosa were broken and wholly useless and could not be cocked or discharged. The witness John J. Gallant, captain of Constabulary, testified that the said two revolvers were those which he served out to Seriosa and Evaristo and that they were broken and utterly useless and could not be cocked or discharged. To the same effect is the testimony of Lieutenant Branson of the Constabulary. The two revolvers were introduced in evidence and are found to be in the condition described by the defendants and their witnesses.

- She also testified that prior to the time when he was arrested she had never seen a gun or other firearm in Mendoza's house and that she did not know of his having any firearms whatever, and that the Remington rifle in question was brought to Mendoza's house by the defendants themselves. This testimony is flatly contradicted by Captain Gallant, who says that neither the Constabulary nor the police were permitted to carry Remington rifles or other rifles and that no rifles of any description were served out to them. Lieutenant Branson also testified to the same effect. All of the defendants and all of the other persons present at the death of the deceased testified that none of the party had a Remington rifle until one was found in the house of Mendoza. In further contradiction of the testimony of the witness Veronica upon this point, the justice of the peace before referred to testified that she came before him some time prior to the arrest of Mendoza and gave information that Mendoza had in his house a Remington rifle and a revolver and that she asked that they be taken away from him because she was afraid that he might do her harm with them. The witness Evaristo testified that the witness Veronica came to him as a member of the Constabulary some time prior to the death of deceased and told him that Mendoza had prohibited arms, and asked him to take measures to remove them from his house.

It is claimed, however, that the testimony of the witness Veronica is corroborated by the declaration of the witness Dizon. It will be remembered that Dizon was the sanitary inspector of the district in which the deceased was killed and that he, although not a physician or surgeon, testified as an expert witness, describing as fully as he could the wounds which were found upon the body of the deceased after his death. Such corroboration is claimed in the following particulars:

- Her testimony as to the firing of the Remington rifle by Salazar is corroborated by the witness Dizon, who testified that two of the six wounds upon the body were larger than the other four, proving, as he swore, that these two wounds were caused by bullets from the rifle, while the other four were caused by bullets from the revolvers.

- Her testimony in relation to the claim that the deceased was shot from behind is corroborated by the testimony of the witness Dizon, who testified that, in his judgment, some of the wounds were made from behind because the wounds upon the front of the body were larger than those upon the rear, proving that he had been shot from behind because, as claimed by the witness Dizon, the exit wounds made by gunshots are larger than the entrance wounds.

- Her testimony in which she asserts that the deceased was shot while on his knees is corroborated by the testimony of the witness Dizon, who said that the track of some of the wounds slanted downward in the body of the deceased, the exit wound being lower than the entrance wound.

As to the claim of the witness Dizon that two of the wounds were made by the Remington rifle, which claim is based upon the alleged fact that two of the wounds were larger than the other four, it must be noted, in the first place, that it is nowhere claimed by the prosecution, unless the testimony of this witness is such claim, that two shots were fired from the Remington rifle. In fact, the testimony of Veronica herself is to the effect that only one shot was fired with the Remington rifle. She testified to that fact positively and without equivocation. There is no other testimony in the case whatever in relation to the number of times that the Remington rifle was fired. It is evidence, therefore, that the witness Dizon or the witness Veronica was mistaken as to one of the alleged gunshot wounds at least. In the second place, it must be remembered that it is the undisputed evidence of the case that the caliber of the revolvers used on that occasion was considerably larger than the caliber of the Remington rifle. It is the uncontradicted evidence that the caliber of the Remington rifle was .443, while that of the revolvers was .45, and that the ball carried by the revolvers was considerably larger and heavier than that carried by the rifle. It is but natural to assume, therefore, in the absence of reliable evidence to the contrary, that the orifice made by the revolver ball would be appreciably larger than the orifice made by the rifle ball. That such would be the case with inanimate objects at least was conclusively demonstrated by the experiments performed during the trial of the action, in which shots were fired from the revolvers and from the rifle through paper targets and a thick board. In every case the orifice or hole made in the paper and in the board by the balls fired from the revolvers was appreciably larger than those made by the balls from the rifle. Moreover, Captain Gallant testified as an expert in the use of firearms and declared that a ball from the Remington rifle in question, discharged at short range, would not cause in the human body as large an orifice, either of entrance or of exit, as it would if discharged at long range, and that there would be, at the range at which it was claimed that the deceased was shot, an appreciable difference between the size of the wounds caused by the Remington rifle and the revolvers, those made by the revolvers being larger than those caused by the rifle. He also said that fired at such a range there would be no appreciable difference in size between the entrance and exit wounds made by the rifle bullet, unless the bullet struck a bone. It is probable, therefore, from such evidence as is at hand, that the witness Dizon was entirely wrong in his conclusion that, because two of the wounds were in his opinion larger than the others, those two must have been made by the Remington rifle. Besides, the witness Vallejo, who testified for the defense and who, as we gain from his testimony, had had as much experience with gunshot wounds as the witness Dizon, stated that he had carefully examined the gunshot wounds in the body of the deceased, and that those upon the front of deceased's body were all of equal size; that of the gunshot wounds upon the back of the deceased all were of the same size, except one, which was considerably larger than the others; that this increased size of that wound was due to the fact that the ball had passed through the shoulder blade, and, having, therefore, met with greater resistance, had made a larger hole. He testified, moreover, that, with the exception of the one wound referred to, there was no difference in the size of the wounds in the front as compared with those in the back. He further stated that, in his judgment, all of the wounds were made from the front, basing that conclusion, as he testified, upon a minute examination of the wounds.

As to the claim that the track of some of the wounds was downward, no evidence has been given upon that point by the defense. The only evidence in the case is that given by the witness Dizon. No satisfactory explanation has been made of that feature of the case. It does not seem that one can be made, except possibly on the theory that in the struggle which took place between the defendants and the deceased, and with the consequent turning and twisting of the bodies of the contestants, a bullet shot into the body of the deceased might possibly have taken any one of a variety of directions. Moreover, it is impossible to determine from the course of the bullet wounds, as

shown in this case, in what direction the weapons from which the bullets came were pointed. In passing through the human body a bullet meets so many things which may deflect it from its direct course that, unless the wound is carefully probed or an autopsy had, it is extremely dangerous to place too much confidence in general appearances. While Dizon claims to have probed the wound in question, this was admittedly done two or three days after death, at which time, as is well known, probing a wound is most difficult and the results correspondingly uncertain. Taken in connection with all the circumstances, the direction of the bullet wounds, although extremely important if fully and satisfactorily proved, does not carry, we think, weight sufficient to influence materially the case against the defendants, or to assist materially in rehabilitating the shattered testimony of the witness Veronica.

Upon the whole case as presented by the evidence, it is clear that the credibility of Veronica as a witness is completely destroyed and that the fair weight of the testimony is to the effect that the deceased met his death in the manner and for the reasons described by the defendants and not in the manner and for the reasons assigned by the witness Veronica. These conclusions were reached by the court below. In his decision he says;

"In the opinion of the court the defendants can not claim exemption from criminal responsibility; but the court appreciates in favor of both defendants two extenuating circumstances, that is to say, that of race and that of the fact that the fatal act was immediately preceded by provocation and threat, for the court is unable to conceive how both defendants should have attacked the deceased if the latter had not provoked them really and truly attempting to obtain possession of the revolver of one of them."

Although the court below recited during the course of his decision some of the circumstances which in his opinion, corroborated the testimony of Veronica, nevertheless, his final conclusion is based upon the fact that the death of the deceased resulted in the manner and for the reasons presented by the defendants; and while in the judgment of the court the facts and circumstances set out by the defendants were not sufficient to exempt them wholly from criminal responsibility, nevertheless, he found them to be true, and as true made them perform the office of an extenuating circumstance in order to reduce the penalty to be imposed upon the culprits. If he had found true the facts as set out by the witness Veronica, the court could not possibly have found the defendants guilty of any crime less than murder or have imposed any penalty less than death. Under her testimony the crime was qualified by premeditation and attended with the aggravating circumstances of nocturnity, alevosia, and abuse of superior force.

There is nothing which would even justify a suspicion that he was killed by some artful process of elimination, as if he were a dangerous character. The deceased in this case was killed almost within the pueblo of Rosales. At the time of his death he and his captors were so near to some of the inhabited houses of that pueblo that an ordinary conversation could be heard by the occupants of said houses. Veronica herself testified that during the loud talk which she alleged occurred between the members of the party, the occupants of some of said houses became frightened and ran away. Moreover, if the testimony of Veronica is to be believed, the defendants, with the assistance of other members of the party, prior to shooting the deceased, built a large bonfire in the middle of the road which lit up the locality with great clearness, and that it was in the middle of the highway and in the bright light of this bonfire, in full view of all members of the party and of any of the inhabitants of that portion of the pueblo who desired to turn that way, that the deceased was compelled to get down upon his knees and in that posture was shot to death. It seems incredible that men who contemplated the murder of a fellowman would be at so great pains to advertise their crime to all the world. The chief feature attendant upon the murder of a captive by his captors was the secrecy with which the murder was committed and the isolation of the locality in which it occurred.

The question that remains for consideration then is whether or not the defendants were justified in killing the

deceased under the law.

Article 8 of the Penal Code reads in part as follows: "The following are not delinquent and are, therefore, exempt from criminal liability:

* * * * *

"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.

* * * * *

"6. He who acts in defense of the person or rights of a stranger, provided the first and second circumstances mentioned in number 4 are attendant and that the defender is not actuated by revenge, resentment, or other illegal motive.

* * * * *

"11. He who acts in the fulfillment of a duty or in the legitimate exercise of a right, trade, or office."

We having found, in conformity with the finding of the court below, that the testimony of Veronica is not entitled to credit, and that the deceased met his death in the manner described by the defendants and their witnesses, and not in the manner and for the reasons alleged by the prosecution, it fairly follows from the evidence in the case: (1) That there was an unlawful aggression committed against the defendants by the deceased; (2) that the defendants were in a position of extreme danger; (3) that the deceased was seeking to escape from a lawful arrest; and (4) that they used only such means as were reasonably necessary for their own protection and to prevent such escape. It is unquestioned that the deceased seized the revolver in the hands of the defendant Salazar and sought by every means in his power to gain possession of it. It is unquestioned also that his purpose in getting possession of the revolver was to kill the defendants, at least if such an act were necessary to succeed in his attempt. It is admitted that he was a man of unusually large stature and of extraordinary strength; that he was known to the defendants as a leader of criminal bands and as an all-round desperado. They knew also that in a hand-to-hand struggle without weapons he was more than a match for both. It is apparent that if the measures resorted to by the defendants to keep possession of the revolver had not been taken, the deceased, by reason of his great physical strength, would have gained control of the weapon. This would have put the defendants in the very gravest peril. The situation at the time really resolved itself, to all intents and purposes, into the question whether it would be the deceased or the defendants who would be killed. While there were five men in the party, in addition to the deceased, the two defendants were substantially alone at the time, it appearing from the evidence that the remaining members of the party, together with the witness Veronica, were a considerable distance to the rear and were occupied in taking care of the carabaos which had become frightened at the discharge of the firearms. Under all the circumstances of the case, it may fairly be said that before assistance could come to the defendants from the other members of the party the deceased would have accomplished his purpose.

The defendants before shooting were not obliged to wait until the deceased had obtained complete possession or control of the weapon. They were not required to do anything or refrain from doing anything which would increase their 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, the deceased was under arrest, pursuant to the due service of a lawful process charging him with the commission of a felony. He was seeking to make his escape by force and violence, undoubtedly meditating the death of the defendants in order to attain that end. The situation of the defendants was correspondingly critical. They knew the character and strength of the deceased; they knew his criminal record and propensities; they knew that if they came under his power their lives were worthless; they knew that the deceased, in attempting to obtain possession of the revolver, had their death in view; they knew also that he meant to escape. They saw clearly the absolute necessity of preventing the deceased from getting possession of the revolver. They saw plainly that he was more than a match for both and that unless they had recourse to extreme measures he would get possession of the revolver. Prompt action was essential. Under the influence of the furious attack and the excitement into which they were thrown by reason of it, they had no time to think; no time for deliberate, careful judgment or nice calculation; 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, either in calculating the imminency of the danger threatening them or in discriminating as to the means they should employ to avert it. (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 plea of self-defense and in order that it may be found that the means employed were reasonably necessary, it is not essential that there should be absolute and positive danger to the defendants. If there was a well-grounded and reasonable belief that they were in imminent danger of death or great bodily harm, an attempt to defend themselves by means which appeared 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., 150; Hurd vs. People, 25 Mich., 405; People vs. Miles, 55 Cal., 207; People vs. Herbert, 61 Cal., 544; Canipbell vs. People, 16 Ill., 17; Enlow vs. State, 154 Ind., 664; Oliver vs. State, 17 Ala., 587; Stewart vs. State, 1 Ohio St., 66, 71; 25 Am. & Eng. Ency. of L., 262, 263; United States vs. Paras, 9 Phil. Rep., 367.)

In deciding this case we must, 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 either of them was in danger or that either was likely to suffer great bodily harm, and that the means which they used to protect themselves 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; United States vs. Outerbridge, 5 Sawy, (U. S.), 620.)

We are convinced that the facts and circumstances of this case are sufficient to induce and support a belief in the minds of the defendants that their lives were in imminent danger and that the means which they employed to avert that danger were reasonably necessary to that end. (Supreme court of Spain, 2 January, 1873; 5 April, 1873; 30 April, 1874; 31 May, 1879; 17 March, 1885; 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 defendant acted otherwise than as reasonable men would have acted in the same circumstances; 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 Ill., 270; State vs. West, 45 La. Ann., 14.)

This court has gone very far in the direction of liberality in laying down the principles governing the plea 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 defendants in the case at bar.

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

"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, 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 appellants at bar?

In the case of the United States vs. Patala (2 Phil. Rep., 752) the court says (p. 756):

"It appears from the testimony of the defendant that at the time of the occurrence he was cleaning fish on board the steamship Compania de Filipinos; 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 form 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 necessarily 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."

It will be noted that in this case substantially all danger to the defendant had passed when he secured possession of the knife. His aggressor was unarmed. Yet under the critical circumstances of a sudden assault the killing by the defendant of an unarmed man was wholly excused. Under the "critical circumstances of a sudden assault" the defendants in the case at bar killed a man, a powerful desperado, who was doing his best to procure means to kill them. Was their act more culpable than the act of the defendant in the case last cited ?

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, 9 Phil. Rep., 424; U. S. vs. Reyes, 1 Phil. Rep., 517; U. S. vs. Bailon, 9 Phil. Rep., 161.)

We believe, upon the whole case, that it may fairly be said that the defendants incurred no criminal responsibility.

The judgment of the court below is, therefore, reversed, with costs de oficio.

Mapa, Johnson, Carson, and Elliott, JJ., concur.

DISSENTING

TORRES, J.,

Assuming as proven the charges against the defendants in this case, Ponciano Salazar and Venancio Villanueva, under which they were convicted of the crime of homicide and each sentenced by the Court of First Instance of Pangasinan to fourteen years eight months and one day of reclusion temporal, to the accessories, and to pay an indemnity and costs, and even admitting, in part, the legal reason stated in the opinion of the majority of this court, the undersigned regrets that he must dissent from the conclusion which does not take into consideration the second requirement of article 8, paragraph 4, of the Penal Code.

In view of the facts considered as proven, it is admitted that there was an unlawful aggression by the deceased, Felix Mendoza, and that there was no sufficient provocation on the part of the accused and their companions; but in view of the facts which have been admitted in the decision, it is not proper nor in accordance with the law, in the opinion of the undersigned, to hold that there was a reasonable necessity for the means employed in order to prevent or repel the expected attack of the deceased.

Felix Mendoza was under the custody of at least four armed men, and upon his attempting acts of aggression against his conductors they certainly had no reason to kill him, because between the four of them, they might very well have held him and made it impossible for him to move, since the prisoner had not managed to seize the revolver which he tried to take away from one of them; therefore, there can be no question as to the fact that the accused exceeded their authority in the means employed, which can not be held to have been reasonable, to prevent the aggression attempted by the deceased.

Nor can the behavior of the accused be considered as altogether excusable, on account of the absence of one of the requirements of article 8, paragraph 4, of the Penal Code, and the exemption from liability of two of them is incomplete and rests only on the provisions of article 86 of the said code; therefore a penalty inferior by one or two degrees should be imposed on the persons liable for the crime of homicide, and, in this case, it should be that of the third degree inferior to the one fixed by article 404, to wit, that of prison correccional in its medium degree, taking into account that, even though the deceased were a well-known and ferocious bandit, the punishment of his crimes appertains to the courts alone, not to any private person whether or not he be invested with the character of an agent of the authorities.

For the reason above set forth, it is my opinion that the judgment appealed from should be reversed, and that the two persons herein accused should be sentenced, each of them, to suffer the penalty of four years of prison correccional, the accessory penalties of article 61, to jointly or severally pay an indemnity of P1,000 to the widow and heirs, with subsidiary imprisonment in case of insolvency, which should not, however, exceed one year, and each to pay one-half of the costs of both instances.

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