

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CIRIACO PELLEJERA, DEFENDANT AND APPELLANT.

G.R. No. 5535. March 18, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

The defendant in this case was convicted of the crime of homicide in the Court of First Instance of Masbate and sentenced to six years and one day of prision mayor, to indemnify the heirs of the deceased in the sum of P500 and to pay the costs of the trial. The defendant appealed.

It appears that the accused, being a member of the municipal board of the municipality of Dimas-Alang, subprovince of Masbate, Sorsogon, on or about the 31st day of December, 1905, in the court-house of said municipality, assaulted one Pedro Abejero by kicking and striking him, thereby causing various contusions upon his body, particularly in a portion of the head just back of and below the left ear, and in the right side. By reason of these wounds the injured party was at once confined to his bed and died in consequence of such injuries on the third day after receiving them.

The proofs of the parties in this case are in complete contradiction.

Camilo Samson, a witness for the prosecution, testified that on a certain occasion he was called by the mother of the injured party above mentioned and found him in bed, unable to speak; that he noticed that the head and neck just back of and below the left ear, near the throat, appeared to be discolored to a certain extent; that the ribs upon the right side appeared to be inflamed and that when he pressed his hand over that portion the injured person appeared to suffer pain.

Francisco Avenir, another witness for the prosecution, testified that during the month of January, 1906, the said deceased was in the court-house aforesaid and that the accused asked him why he had not cleaned the street in front of the court-house; that the deceased answered that he had not yet been able to do so as he had been occupied in other duties; that thereupon the accused struck him a blow with his fist under the left ear which felled him to the floor; that thereupon the accused with the heel of his shoe kicked him in the side below the ribs; that the deceased died on the 3d day of January, about three days after he had been thus assaulted.

Juan Morada, another witness for the prosecution, swore that the deceased died on the 3d day of January, 1906; that the witness was called to see him; that when he saw him he was not able to eat and was in a condition of great agony; that he saw and observed that the skin was discolored below the left ear; that the mother of the deceased showed the witness a contusion upon the right side over the lower ribs; that the witness noticed at that time that the lower rib projected beyond the others and that it had a mark upon it about the size of a shoe heel.

The last witness for the prosecution, Julian Amante, declared that the accused beat the deceased in the court-house aforesaid; that he first struck him a blow with his fist below the ear which felled the deceased to the floor; that thereupon the accused with the heel of his shoe kicked him in the right side below the ribs; that this occurred on

Monday, the 1st day of January, 1906.

The medical expert produced by the prosecution, Dr. Julio Ruiz, a licensed physician, who was at the time the sanitary inspector of the district of Sorsogon, testified as follows:

"Q. State, from the experience you have had as a physician, what would happen to a man if he should receive from another a blow with the fist on this part of the right side of the neck, below the ear, which blow had occasioned a bruise resulting in a swelling and a discoloration of the part touched by the fist? - A. A tumefaction of the tissues and a livid color or wound from a heavy blow in this region indicate a severe contusion of the tissues and, considering the organs situated partly in this region, the pathologic phenomena that may be suffered can be very different. The tumefaction and the black color denote an extravasation of the blood on the inside. As in this region there are blood vessels and nerves and the larynx, which are very delicate organs, and this blow, as I said before, was undoubtedly the result of a quarrel and must have been a violent one; in these conditions, there is not only extravasation of the blood, but also a traumatic inflammation may be produced in a part of the larynx, and this inflammation gives rise to an oedema which hinders respiration, for it is through this orifice that the air necessarily must pass. The cerebral circulation will be retarded by the compression, and these nerves give life to the respiratory movements also; so that various phenomena can be produced in consequence of this contusion. At all events, the symptoms shown by him were those of a serious injury.

"Q. Do you believe that the individual who received that blow could swallow food? - A. It would be very difficult to swallow food, much more so while the patient was in this condition of the development of the contusion; it would be very difficult to take food, and especially liquids.

"Q. If this same individual who received the blow on the right side of the neck had fallen to the floor and received a blow with a shoe heel on this part of the last right rib, or on the right side, by a man as strong as is the accused - and if, as a result of this shoe-heel blow in the region of the lower rib, this rib was crushed inward, what might be the result or what might happen to the patient? - A. Such a blow is still more serious than the first blow received on the side of the neck. In this region is the liver. It is supposed that this blow was produced by a hard body, and from the condition in which the accused probably was and considering that the blow was the result of a quarrel, it is to be supposed that it was a very violent one. This blow could have produced a rent in the liver in the right lobule and an effusion of the bile, which would give rise to inflammations of the peritoneum, that is, to peritonitis. In the first moment of this blow the individual must have fallen into a syncope through a traumatic shock, which is always produced and always shown in those heavy contusions of the organs; and if the rib was fractured, the condition was more serious.

"Q. In your opinion, after all the contusions and blows you have just mentioned, could the man live? - A. The most prudent opinion is that the man could not have withstood the phenomena produced by both blows. They in themselves, considered separately, are sufficient causes to have produced death."

From the testimony above epitomized it appears established with sufficient conclusiveness that the death of Abejero was caused by the injuries which are alleged to have been inflicted by the accused. As to whether or not such injuries were actually sustained at the hands of the accused, we are unable to say, after a careful examination of the evidence, that the conclusions of the court below in that regard are not well founded in the proofs. The witnesses upon that point are in direct contradiction, those for the Government testifying one way and those of the defense the other. Under such circumstances the credibility of the witnesses is, of course, of the utmost importance. There being little on the face of the record from which that may be judged, we must rely upon the judgment and discretion of the trial court who saw the witnesses in the act of testifying and judged of their relative truthfulness. Having this in mind, we are satisfied that the conclusion of the court below upon the facts is fully justified by the evidence.

The objection to the conviction of the defendant which is argued at greatest length by his attorney is founded upon the fact that the trial court adjourned the trial of the cause from September, 1908, to the succeeding term of the court which was held in February, 1909. Counsel for the defendant held this adjournment to be an abuse of discretion. In making this adjournment of the trial, the court said:

"By reason of the gravity of the charges which are made against the accused, I am going to adjourn this cause until the next session of the court in spite of the opposition of the counsel for defendant. In view of the fact that Julian Amante has not appeared in court, notwithstanding that he was duly subpoenaed, and by reason of the fact that the witness Epifania Barruga is sick of fever, and by reason of the fact that the fiscal does not know what the witnesses will testify to, and also by reason of the fact that it is the first time that this cause has been brought on for trial, the cause may be adjourned for a term, especially in view of the fact that the accused is admitted to bail."

Under the circumstances of the case, we do not believe that the court below abused its discretion in ordering an adjournment of the cause.

The judgment of the court below is affirmed, with costs against the appellant.

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

DISSENTING

TORRES, J.,

The writer, with due respect to the decision of the majority, believes, however, following the opinion of the Attorney-General, that the special circumstance of article 11 of the Penal Code can not be taken into account in favor of the defendant, and that, even if it be considered as present, it is not very marked, according to article 81, paragraph 5, of the code. Hence, the presence of the mitigating circumstance No. 3 of article 9 of the same code being the only one that may be taken into account, it is my opinion that the defendant should be sentenced to twelve years and one day of reclusion temporal, with the accessory penalties of article 59 of the Penal Code, and to pay an indemnity and costs.

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