

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PONCIANO ESMEDIA AND MENA ESMEDIA, DEFENDANTS AND APPELLANTS.*G.R. No. 5749. October 21, 1910*

Ponente: TRENT, J.

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This is an appeal from a sentence rendered by the Court of First Instance of the Province of Antique, condemning Ponciano Esmedia and Mena Esmedia to twelve years and one day of reclusion temporal, to jointly and severally pay to the heirs of Ciriaco Abando the sum of P1,000, to the heirs of Santiago Abando the sum of P1,000, and to pay the costs of the cause, for the crime of double homicide.

Ciriaco Abando, his wife, and their son, Santiago, lived in the jurisdiction of the municipality of Sibalom, in the barrio of Bongbongan, Province of Antique. Gregorio Esmedia, father of these two accused, son-in-law of Ciriaco Abando and brother-in-law of Santiago Abando, lived in the same barrio. These two families lived very near to each other and owned adjoining rice lands. Before this trouble occurred there had been a dispute between these two families relative to the ownership of the rice land then occupied by Ciriaco Abando. About 2 o'clock on the afternoon of the 24th of June, 1909, Ciriaco Abando instructed his son, Santiago, to go to a certain place in his rice field to let out the water in order that they could plant rice in the said field. In compliance with these instructions of his father, Santiago proceeded to the place designated, and while at work doing what he had been ordered by his father to do, Gregorio Esmedia appeared on the scene and started a quarrel with Santiago. Soon thereafter Gregorio drew a dagger and stabbed Santiago in the back. Santiago fell to the ground, but arose immediately and attacked Gregorio with his bolo, inflicting several wounds on the said Gregorio in consequence of which he fell to the ground. Before this trouble finally terminated the two accused and Ciriaco Abando appeared in that immediate vicinity.

These two accused contend that they were working in their rice field near by, and on seeing Ciriaco Abando and Santiago Abando attacking their father, Gregorio, they started to the place to render their father assistance, Ponciano starting first; that when Ponciano got near the place of the trouble he was met by Ciriaco and Santiago who attacked him with bolos and clubs and that he, Ponciano, in self-defense, knocked them both down, and after they had fallen the other accused, Mena Esmedia, arrived. Ponciano further contends that he did not use a bolo in this fight, but used a club only.

The prosecution in the court below contended that when these two accused saw the fight between their father and Santiago they rushed to the place and proceeded to kill, as they thought, Santiago, and on seeing Ciriaco approaching they met him and killed him outright.

As a result of this fight Ciriaco was left dead on the scene,. Gregorio received fatal wounds from which he died within about four hours, and Santiago also received fatal wounds from which he died five days later.

Ciriaco Abando received two wounds on the top of his head, one 8 centimeters and the other 3 centimeters in length, caused by some cutting instrument, and also sustained a fracture of the skull, apparently caused by means

of a blow. He also had a wound on the head 3 centimeters in depth; another on the neck below the left ear 3 1/2 centimeters in depth and 3 centimeters in length; the left eye was bruised and he also had a wound on the palm of the right hand 3 centimeters in length and 2 millimeters in depth.

Santiago Abando received in all seven wounds, one crosswise of the head, back of the left ear, 8 centimeters in length and 1 centimeter in depth, another on top of the head, just above the first wound, 5 centimeters in length and a half centimeter in depth, a third wound on the left part of the neck 4 centimeters in length, all of these three wounds having been caused by a cutting instrument; a fourth wound, also caused by some sharp instrument, 1 centimeter in depth and 8 centimeters in length, on the top of the head; a fifth wound, 2 1/2 centimeters in length and 5 millimeters in depth, which was in the nature of a contusion, appeared on the frontal region of the head; a sixth wound, 2 centimeters in length and 3 1/2 centimeters deep, in the back; and a seventh wound on the left hand, 4 centimeters in length, 2 1/2 centimeters wide, and 2 millimeters in depth, which had apparently been caused by some cutting instrument.

The body of Gregorio Esmedia showed four wounds; a wound or bruise on the front of the head, 5 by 6 centimeters in dimension; another wound, caused by a cutting instrument, running across the head, 6 centimeters in length; another wound, apparently caused by a blow with some blunt instrument, on the breast; and another wound 1 centimeter in depth, apparently caused by a cutting instrument, and also a bruise on the left arm.

The accused, Ponciano Esmedia, received one wound on the head, but it was not of a serious nature; the other accused, Mena Esmedia, escaped uninjured.

The prosecution presented Andrea Lactoson, 60 years of age, wife of the deceased Ciriaco, and Julian Alagos, a young boy about 16 years of age, a grandson of Ciriaco. These two witnesses saw the fight and gave a detailed account of the same. While it is true that these two witnesses contradicted themselves to some extent on cross-examination, they having testified on direct examination that Ciriaco never did reach the scene of the fight but was killed by the two accused while on his way there, whereas on cross-examination they testified that Ciriaco was there when the accused arrived, yet it is clear that they intended to say that when the two accused arrived Ciriaco was in that vicinity but they did not mean to say that he was at the very side of his son.

The theory of the defense that Ponciano was attacked by Ciriaco and Santiago is untenable, as the nature and character of the wounds on the bodies of these two persons show clearly that at least some of them were inflicted by bolos, and Ponciano must have used a bolo in the fight, though he contends that he only made use of a club. The bolo wounds on the heads of Gregorio and Santiago were of such a serious nature that it would have been impossible for them to have gone any distance after having been wounded. So they could not have rushed toward Ponciano and attacked him after having received these wounds. Santiago was stabbed in the back by Gregorio, but this wound of itself was not necessarily fatal.

After a careful consideration of this entire record we are thoroughly satisfied that the following facts, aside from those we have already related, have been established:

The two accused arrived on the scene about the time the fight between Santiago and Gregorio was terminating, and on seeing their father, Gregorio, lying in the mud and water, fatally wounded and dying, and honestly believing that Santiago, who was standing at the time, would inflict other wounds upon their father, they, in his defense, immediately killed Santiago. Ciriaco was near the scene at this time and on seeing him the two accused, under this great excitement, proceeded to attack him, and as a direct result of the blows inflicted by them he fell to the ground, dying immediately. Ciriaco was an old man, about 80 years of age, and used a cane to assist him in walking about.

Under the provisions of No. 5, article 8 of the Penal Code, the two accused are exempt from criminal responsibility for having caused the death of Santiago Abando, inasmuch as it has been shown that they inflicted these wounds upon him in defense of their father who was fatally wounded at the time. They honestly believed, and had good grounds upon which to found their belief, that Santiago would continue his attack upon their father. They are, however, guilty of having caused the death of the old man, Ciriaco Abando. When they attacked and killed him the other trouble had terminated and they were not in danger of bodily harm from him.

In the commission of this crime of homicide, we must take into consideration No. 20 of article 10 of the Penal Code which provides, as an aggravating circumstance, that "when the act is committed with insult or in disregard for the respect which may be due the aggrieved party on account of his rank, age, * * *" inasmuch as the deceased, Ciriaco, was a man 80 years of age and did not arrive on the scene until after the trouble between the two accused and Santiago had terminated.

As we have said, these two accused killed this old man, Ciriaco, while laboring under great excitement and in the heat of passion, and it might be insisted that under these circumstances they should be given the benefit of No. 7 of article 9 of the Penal Code, as an extenuating circumstance. This provision should be applied to reduce the penalty in cases where the provocation which caused the heated passion was made by the injured party. In the case at bar the provocation was made by Santiago and not Ciriaco, as Ciriaco arrived after the fight had terminated and there was then no provocation running from the old man, Ciriaco, to these accused. He was entirely unarmed and made no demonstration and said no word prior to the assault upon him by the two accused. So the state of mind into which these two accused were thrown by the provocation induced by Santiago can not modify the extent of their punishment for killing the old man. In other words, before this provision can be applied as an extenuating circumstance it is necessary, as we have said, that the person injured should have executed the act producing *arrebato y obcecacion*. It can not be applied when an assault is made upon a person who had taken no part in the quarrel and had not in any manner provoked the accused. (Decision of the supreme court of Spain dated October 17, 1904, published in the Official Gazette on December 23 following; decision of the supreme court of Spain dated January 12, 1894; *White vs. State*, 44 Tex. Cr. Rep., 346; *State vs. Jackson*, 45 La. Ann., 1031; *State vs. Vinso*, 171 Mo., 576.)

In view of the fact that these two accused are ignorant the aggravating circumstance is compensated by the provisions of article 11 of the Penal Code which we applied in this case.

The sentence appealed from is, therefore, affirmed; provided, however, that these two accused, Ponciano Esmedia and Mena Esmedia, be condemned to fourteen years eight months and one day of *reclusión temporal*, and to the accessory penalties; and, provided further, that they be declared exempt from criminal responsibility for causing the death of Santiago Abando, which exemption relieves them from paying any indemnity to the heirs of the said Santiago Abando.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

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