

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PASCUAL MOLINA, DEFENDANT AND APPELLANT.

G.R. No. 6372. March 27, 1911

Ponente: MAPA, J.

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MAPA, J.:

This is an appeal from a judgment of the Court of First Instance whereby the accused, convicted of the crime of homicide perpetrated upon the person of Francisco Gaspar, was sentenced to the penalty of 12 years and 1 day of reclusion temporal, to pay an indemnity of P1,000 to the heirs of the deceased, and the costs of the trial.

No question has been raised with respect to the actual occurrence of the alleged crime. The accused expressly admits that he inflicted the wounds which very soon afterwards caused the death of the deceased. But the evidence is extremely contradictory with regard to the mode in which the act was performed. The wife and a daughter of the deceased, the only eyewitnesses presented by the prosecution, testified that on the day of the crime, the accused, accompanied by his sister, Filomena Molina, and his brother-in-law, Santiago Elseco, went to the house of the deceased; that the latter was sitting on the ground inside of the lot on which the said house was situated, with his back toward the place from whence the accused was approaching; and that on arriving near the victim, without saying a word, he assaulted him from behind with a bolo which he was carrying, causing him several wounds which resulted in his death a few moments afterwards.

The accused, in his own behalf, testified that his son, Sabino Molina, and a daughter of the deceased, named Agapita Gaspar, had been living together as husband and wife in the house of the deceased, with the consent of both families; that after a month his son had to leave the said house because of some trouble that arose between the latter and the deceased; that on the day preceding the occurrence which gave rise to the present cause, the wife of the deceased was in the defendant's house and invited him, in the name of her husband, to go with other members of his family to the house of the deceased for the purpose of settling the difficulty concerning their children; that, acceding to the invitation, he went to the house of the deceased on the day aforementioned, in company with his daughter, Filomena Molina, and his brother-in-law, Santiago Elseco, and found the deceased sitting on the ground inside his lot; and that, on coming up to him the defendant said good day to him, to which salutation the latter replied by saying "of what use are your words?" and, after uttering an injurious and insulting sentence, immediately assaulted the accused and cut him with a bolo, and that, as the defendant carried no arms whatever, he struggled hand-to-hand with him and finally succeeded in wresting from him the bolo with which he then inflicted upon the deceased the wounds from which the latter died shortly afterwards. The defendant further testified that he found himself compelled to inflict upon the deceased the said wounds, because the latter, on losing possession of the bolo, "seized the hatchet," - these are his own words - "and was going to assault me again and then I struck him and cut him on the head. And after those slashes on the head," he continued, "he assaulted me again and we struggled hand to hand." Finally the defendant, in another part of his testimony, insisted in saying that after he had wrested the bolo from the deceased, the latter still continued to struggle with him, trying to strike him with a hatchet. The testimony of the accused was corroborated in all its essential points by Santiago

Elseco and Filomena Molina, who accompanied him to the house of the deceased on the occasion of the occurrence referred to. In summing up the evidence the trial court, in the judgment appealed from, says:

"The evidence adduced by the prosecution is totally different from that presented by the defense, as regards the circumstances connected with the commission of the crime. The prosecution claims that the deceased was assaulted by the accused who approached him from behind, cautiously, without any provocation whatever (for the evidence of the prosecution did not disclose the existence of any) and, in the presence of the woman Filomena Molina and of Santiago Elseco, assaulted the deceased, with a bolo, inflicting upon him wounds from which he died. The defense adduced clearer, more reasonable and comprehensible facts. The young people, Agapita Gaspar and Sabino Molina, lived together as husband and wife, with the consent of both families, in accordance with a custom which, it appears, prevails among a certain class of people in the Province of Cagayan. Apparently it was agreed that these young people should marry later, but in the meantime the deceased had trouble with Sabino Molina and expelled him from the house. It is very natural to suppose that the deceased may have pondered over the affair after the quarrel. His daughter had lost her reputation and honor, and whatever be the motive which impelled him to send for the accused, whether to avenge himself for the dishonor of his daughter or to settle the trouble that had arisen, the court, taking into account all these circumstances, must accept as a fact proved beyond all reasonable doubt, the conclusion that the deceased, on the day of the crime, sent for the accused. Moreover, if the accused had had the intention of going to the house of the deceased for the purpose of killing him, it is very improbable that he should have taken his sister, Filomena Molina, with him. The presence of this woman, in the opinion of this court, is highly corroborative of the claim made by the defense, that the accused went to the house of the deceased on the day of the crime with the intention of attending a council between the two families, and not with the intention of causing any harm to the deceased. It was not shown what occurred between these two men or what words were exchanged that may have given rise to the fight, but the court must believe, in view of all the testimony adduced, that the accused and his companions were unarmed; that the deceased was armed with a bolo; that the latter was the aggressor, and that the accused, after having overpowered the deceased, wrested from him the bolo which he was carrying and with it struck the deceased several blows, thereby killing him almost instantly."

To the statements of the court, the Attorney-General in his brief adds that the accused presented himself to the authorities immediately after the occurrence, which, he says, is circumstantial evidence that corroborates the conclusion of the lower court that the said accused was unlawfully assaulted by the deceased.

We accept the finding of the trial court in regard to this point. We believe that the assault was really commenced by the deceased and that it was not provoked in any manner by the accused, and also that the latter was completely unarmed at the time he was assaulted. Withal, the lower court was of the opinion that there was no rational necessity for the means employed by the said accused for the purpose of repelling the attack made upon him. He says:

"The accused himself admitted that he only received a slight scratch above the eye during the struggle in which he engaged with the deceased, and admitted, moreover, that the deceased was unarmed and completely at his mercy after the accused had disarmed him. The evidence showed that the accused could have wrested the bolo from the deceased and afterwards fled, had he wished to respect the life of the deceased, and the court is of the opinion that there was no rational necessity for the accused to have slain his adversary, once that he had become master of the bolo."

The last part of this, reasoning is sufficiently answered in the Attorney-General's brief, wherein it is said, and rightly, citing the decision of the supreme court of Spain of April 21, 1880, that the fact of the assaulted party's not taking to flight is not a sufficient reason for not upholding, in a proper case, the rational necessity for the means employed to repel the assault.

Moreover, it is not exactly true that the deceased remained completely at the mercy of the accused after the latter had wrested the bolo from him, and much less did the accused admit such a thing in his testimony; far from making an admission of this kind, he expressly and insistently stated that the deceased, on losing possession of the bolo, seized, or tried to seize, a hatchet, in order therewith to continue the assault, and that it was when the accused perceived such attempt that he slashed the deceased on the head with the same bolo he had wrested from him. It was clearly shown by the testimony of the accused, corroborated by the witness Elseco, that after the commencement of the assault by the deceased, the struggle between the latter and the accused did not cease for one moment, now each combatant trying to wrest the bolo away from the other, now the deceased endeavoring to arm himself with the hatchet which undoubtedly was within his reach, until finally the deceased himself was disabled and could no longer continue to struggle in consequence of the wounds which he received during the affray. Considering the decidedly aggressive attitude of the deceased from the commencement of this struggle until its termination, it can not be said that there was a cessation of the danger for the accused, even for a single instant. If, through the various incidents of the struggle, or any favorable accident whatever, the deceased had succeeded in recovering the bolo or in possessing himself of the hatchet, as he attempted to do to the last, the result of the combat would probably have been very different; perhaps the accused, instead of being the slayer, would himself have been killed. The accused certainly was not in duty bound to expose himself to such a contingency, and while the struggle continued, and, consequently, the danger to his person or to his life subsisted he had a perfect and indisputable right to repel such danger by wounding his adversary, if necessary, as from the circumstances of the case it was, without any doubt whatever, and even to disable him completely so that he could not continue the assault. In our opinion, the means employed by the accused were rationally necessary to repel the assault, and as the latter was in all respects unlawful and was not preceded by any provocation of any kind on the part of the accused himself, we declare the said accused to be exempt from criminal liability, in accordance with the provisions of paragraph 4 of article 8 of the Penal Code.

The judgment appealed from is reversed, the defendant is acquitted and will immediately be released, with the costs of both instances de oficio. So ordered.

Arellano, C. J., Carson, Moreland, and Trent, JJ., concur.

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