

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN FEDERIZO, DEFENDANT AND APPELLANT.

G.R. No. 6738. September 01, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of La Laguna, the Hon. Vicente Jocson presiding, convicting the accused of the crime of homicide and sentencing him to twelve years and one day of reclusion temporal, to the accessories provided by law, to indemnification in the sum of P1,000, and to pay the costs of the trial.

The real question presented for our consideration is whether or not the accused acted in self defense in causing the death of the deceased.

The learned trial court in his opinion says:

"It is a fact admitted by both parties that Leon Polio died on the 5th day of April of the present year in consequence of a wound which he had received, caused by a sharp instrument, which penetrated to the ribs, extending obliquely downward from left to right across the right portion of the chest, 9 centimeters long 3 centimeters wide and 3 centimeters deep, which wound was the result, according to the proofs, of a fight which occurred between Juan Federizo and the deceased Leon Polio. The real causes of this fight have not been clearly demonstrated, although it is indicated by the proofs of the defense that it was by reason of slanderous expressions spoken of the deceased by Juan Federizo."

Proceeding to a discussion of the evidence the court says:

"The proofs of the prosecution demonstrate conclusively that the author of Leon Polio's wound was the accused, Juan Federizo, although the accused denies this. The accused sought to establish that Leon Polio, who carried a bolo, asked satisfaction of the accused and by reason of a slight dispute which arose between them, Leon Polio struck at him six or seven times with his bolo, the accused restricting himself entirely to retreating and frustrating the blows delivered against him without having on his part struck a blow with the bolo which he also carried. A careful examination of the proofs, although apparently the accused, with more or less cleverness, sought to establish a defense of self-defense, claiming that the deceased was the aggressor, leads us to believe, nevertheless, in the first place, that the fight took place in front of a tienda at a distance from the house of Juan Federizo of about 30 meters and not 8 meters as the witnesses of the defense testified, and that the testimony of a witness near to the combatants, named Dionisio Emiliano, is true when he testified that on passing by Leon Polio and Juan Federizo they stood facing each other each one with a bolo in his hand, and that after having got past them at a distance of about three meters he heard the sound of a blow, and turning his head immediately, he saw that Leon Polio was wounded in the right breast, and thereupon ran to tell the authorities of what had occurred; that while two other witnesses appeared upon the scene shortly after the blow had been given, none of them saw Leon Polio strike or offer to strike Juan Federizo, as the witnesses of the defense allege. I am convinced that these declarations of the accused and of his witnesses are not true, for if the fight had really been such as they described, undoubtedly the witnesses who arrived on the scene, especially

Dionisio Emiliano, would have seen the delivery of such blows, and if it is true, as the witnesses of the defense assert, that the accused confined himself simply to defending himself and warding off the blows of his assailant and himself struck no blow, it is incomprehensible that Leon Polio would have been wounded."

The deceased lived eight days after receiving his injury. The wound was located on the right breast and was 9 centimeters (about-3 inches) long, 3 centimeters (about 1 inch) wide, and 3 centimeters deep, extending across the nipple downward diagonally from left to right. The wound was not necessarily fatal, it having penetrated no deeper than the ribs. It was curable with prompt and proper attention. The physician who attended the deceased testified that death was caused by pneumonia following the heavy loss of blood which the deceased sustained before being able to obtain the assistance of a physician.

We find ourselves unable to agree with the learned trial court in his appreciation of the weight and effect of the evidence presented in the case. influence which were either overlooked or not given their proper effect.

In the first place the trial court did not take into consideration that it is the undisputed evidence in the case that on the day before the fight occurred the accused, having then a debt due him from the deceased of long standing, sent word to the deceased by Tiburcio Devanadera that he must pay the debt at once, adding that it was generally understood in that community that any person who did not pay a just debt was a swindler; that this message was delivered to the deceased on the afternoon or evening of the day preceding the fight; that by reason of such message the deceased became angry and the following morning presented himself at the house of the accused, bolo in hand, and demanded satisfaction for the slander which he claimed the accused had uttered against him; that at that moment the accused was engaged in cutting banana leaves from the trees surrounding a well on his premises, and that on being called by the deceased he responded, carrying with him the bolo which he was using in his work.

This is very important where self-defense is alleged as it shows that the deceased was the mover, the initiator of the affair in which he lost his life.

The court failed to take into consideration, in the second place, that it is the undisputed evidence of the case that the deceased was a man "fornido y valiente" and that he was irascible and of violent character; that so much was the deceased feared that the witness Jacinto Joval, who saw the fight from the window of his house, did not dare descend and intervene or even give an alarm, fearing that he would be attacked in turn by the deceased; that at the time of calling out the accused the deceased exhibited anger to such an extent that it was noticed by the witness Melecio Aquino who, by reason thereof, ceased the work in which he was then engaged to watch what was going to happen.

This is also very important in view of the theory of self-defense.

In the third place, we are of the opinion that the trial court erred in giving controlling importance to the testimony of the witness Dionisio Emiliano. This witness admittedly saw nothing of what occurred between the two, the accused and the deceased. His testimony is that he was taking a walk that morning and passed near where the accused and the decedent were standing talking to each other; that after he had got past them about 18 feet (not 3 meters as stated by the court) he heard a sound, which he calls the sound of a blow, and, on turning his head, saw that the deceased was wounded in the right breast. He claims to have seen no hostile move on the part of either, nor did he hear any loud words pass between them. This is clearly a very incomplete story of what must, from every standpoint of probability and reason, have actually occurred. Granting that this witness, in what he said, told the truth, it is evident that the deceased may have attacked the accused and several blows may have passed between them while the witness Emiliano was walking the 18 feet referred to. This interval, in which the witness' back was turned, is filled by the witnesses of the defense, two of whom testified directly and positively that they

saw the fight from beginning to end. These witnesses are disinterested, so far as can be ascertained, are unrelated to the parties, and appear to have no reason for testifying falsely. They assert that the deceased came to the house of the accused with a bolo in his hand, with every appearance of being angry, and called him out into the street; that he spoke to the accused in an excited manner for a minute and then attacked him with his bolo; striking at him several times; that the accused retreated, using his bolo in defending himself. These witnesses assert that they did not see the accused strike any blow, although it is possible that he may have struck several in such a manner that, by reason of the changing positions of the combatants, they were unable to see them. It seems to us that in view of this direct and positive testimony of these witnesses, supported as it is by the testimony of the accused himself, the declaration of Dionisio Emiliano, who admittedly knew nothing of what had occurred until it was all over, should not be given controlling weight in this case. It is true that the deceased received his wound during the fight and undoubtedly received it at the hands of the accused. That does not necessarily mean, however, that he is guilty of the crime charged.

It is worthy of note that the first person who appeared on the scene, Aniceto Devanadera, one of the witnesses for the prosecution, desiring to stop the fight, seized, not the accused, but the deceased. This might fairly be held to indicate that it was the deceased who was the aggressor rather than the accused, as it is usual in stopping a fight to seize and hold the aggressor and not the one retreating. This circumstance corroborates the testimony of the witnesses for the accused when they assert that the deceased was the aggressor in the affray.

The prosecution does not contend under the proofs that the accused set upon and killed the deceased out of hand. It concedes at the very least that there was a fight in which blows were exchanged. This is apparent in every line of the decision of the trial court as above set forth. Yet no importance is given to that fact, although it is more corroborative of that testimony of the defense which shows that the deceased was the aggressor and attacked the accused with his bolo, the latter retreating until the fight ceased by reason of his wound, than it is of the testimony of the witness Emiliano which shows no fight at all. If the decedent received his wound while he was attacking the accused with a deadly weapon, and while the latter was defending himself from said attack, the judgment of conviction can not stand. That such was the case appears so strongly from the evidence that there remains a doubt in our minds of the guilt of the accused. While, as we have before stated, the wound upon the breast of the deceased was caused by a blow from the bolo in the hands of the accused, nevertheless, along with the testimony introduced to prove that fact there goes an abundance of other testimony showing that the blow was given in self-defense. That the deceased attacked the accused without provocation is substantially undisputed; at least it is undisputed by any direct evidence, and the circumstantial evidence presented in the case to the contrary is so slight as not to warrant founding a judgment of conviction on it. We are of the opinion that the accused must be acquitted of the crime charged and it is so ordered.

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

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