

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DOMINGO RIVERA, ANTONIO RIVERA, AND CANUTO BATOON, DEFENDANTS AND APPELLANTS.

G.R. No. 8924. November 18, 1913

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Ilocos Sur, convicting the three defendants and appellants of the crime of homicide and sentencing them to fourteen years eight months and one day of reclusion temporal, together with the accessory penalties prescribed by law.

The information charging the commission of the crime is as follows: "That the said Domingo Rivera, Antonio Rivera, and Canuto Batoon, the defendants above named, on December 27, 1912, in the municipality of Vigan, Province of Ilocos Sur, P. I., did willfully, criminally, and unlawfully, and with abuse of superior strength, wound and beat Cayetano Peralta, inflicting upon him various injuries as the result of which the said Cayetano Peralta died on December 31 of the same year; a deed committed in violation of the law."

The evidence of record discloses that on the morning of December 27, 1912, a dispute arose between the wife of the deceased and the wife of the defendant Domingo Rivera, over some question as to the loan of a pair of scissors and the failure to return them. Heated and insulting language passed between the women from the windows of their houses, which were located quite close together. The deceased appears to have been drawn into the wordy dispute, and as a result of an offensive remark made by him to Rivera and his wife, Rivera went down from his house into the street, and standing in front of the house of the deceased with two stones in his hands, challenged him to come down and prove which was the better man. The deceased when he heard this challenge from the street became greatly enraged, picked up a large bolo, rushed out of his house and advanced on Rivera, who, being a much smaller man and seeing his adversary approaching him with a large bolo in his hand, took to flight. The deceased pursued him and inflicted upon him two wounds, one in the back and one in the side. Rivera ran into the lot of one of the neighbors and finding himself stopped by a fence, turned and endeavored to defend himself from the onslaught of the deceased with a small knife or bolo. At that moment the father of Rivera (his coaccused Antonio Rivera) and Canuto Batoon (the other coaccused) rushed to his assistance. The father with a blow of a heavy piece of cane succeeded in disarming the deceased and at the same moment Batoon leaped upon him from behind and caught him around the waist. In the melee, which only lasted a second or two, the accused Domingo Rivera inflicted three wounds upon the deceased, two in the arms and one in the abdomen. The parties were separated almost immediately and the wounded man was carried to the municipal building, where he died four days thereafter. Domingo Rivera, who inflicted the fatal wounds gave himself up to the local authorities, claiming that what he had done had been done in self-defense. The deceased, in his ante-mortem statement, charged Domingo Rivera with having inflicted the fatal blow, and Antonio Rivera and Batoon with having joined in the assault by disarming and holding him while the fight was in progress.

There is considerable conflict in the testimony of the witnesses called at the trial. The story told by the widow of the deceased, who claimed to have seen all that occurred from the window of her house, was substantially as above related, except that she asserted that when her husband went down-stairs with a bolo in his hand Domingo Rivera met him in the street and with his bolo inflicted two wounds in his arms; that her husband then took to flight and ran away from Rivera until he was stopped by the fence in the neighbor's yard, where the fatal blow was struck, all three of the accused there joining in the attack.

For an examination of all the evidence of record as well as from a consideration of the inherent improbability of this story, we are well satisfied that the widow of the deceased deliberately inverted the facts with the intention of increasing the criminal liability of the accused.

It is fully and conclusively established that when Domingo Rivera stood in the street challenging her husband to come down and prove which was the better man, he had two stones in his hands, and it may fairly be inferred from this fact that at that moment he was not armed with a bolo. The bolo with which the fatal wound was inflicted was produced at the trial in the court below and was shown to be, by comparison with the bolo used by the deceased, a relatively small weapon, referred to indifferently by the witnesses as a knife or a bolo (*cuchillo o bolo*). It does not appear clearly from the record just where or when Domingo Rivera secured this bolo, but it seems clear that it must either have been handed to him by some person after the accused had rushed upon him and put him to flight, or that he drew it from its sheath while he was endeavoring to make his escape. The deceased was shown to be a much larger and more powerful man than his adversary, and it would seem to be contrary to the inherent probabilities of the situation to hold that the smaller man, unarmed or at most armed with a very short small bolo, would succeed in putting¹ to flight his adversary, who by the widow's own statement rushed down from the house to the attack with a large and dangerous bolo in his hand. Moreover the wounds in the back of Domingo Rivera almost conclusively corroborate his story and the story of various witnesses who testified that they saw him endeavoring to make his escape from the deceased.

The accused themselves undertook at the trial to relieve themselves of all criminal responsibility: Domingo Rivera insisting that he struck the fatal blow in self-defense at the moment when the deceased had left himself open to the attack by a slip as he approached the fenced place where he (Rivera) turned to await him; and the other two accused insisting that they did not come up to the party until a few moments after the fight took place, and that they intervened only to help to carry away the wounded man. Their account of the fight at the fence is in our opinion completely disproven by the testimony of the witnesses called for both the prosecution and the defense, and we are satisfied that in declining to tell the truth as to all that occurred, Rivera and Batoon were actuated by the fear that if they admitted that they had taken an active part in the fight they might be punished on the charge of unlawfully killing the deceased.

The trial judge accepted the story as told by the widow and, erroneously as we are convinced, convicted all three defendants of the crime of homicide. As to the accused Antonio Rivera (the father of Domingo, who inflicted the fatal wound) and Canuto Batoon, we think that they were clearly entitled to acquittal on the ground that their intervention in the affray was actuated solely by a desire to save their kinsman and friend from imminent danger of death at the hands of his much stronger and better-armed adversary. It seems quite clear that in striking the bolo from the hands of the deceased and grasping him around the waist, they did no more than the manifest necessities of the occasion demanded, and that under all the circumstances they cannot be held criminally liable for their intervention on his behalf. It is not contended that they took any part in the original dispute which resulted in the fatal affray, nor that they were actuated by revenge, resentment or any other evil motive. Article 8 of the Penal Code provides that:

"The following are exempt from criminal liability:

* * * * *

"4. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

"(1) Unlawful aggression.

"(2) Reasonable necessity for the means employed to prevent or repel it.

"(3) Lack of sufficient provocation on the part of the person defending himself.

"5. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees and those by consanguinity within the fourth civil degree, provided that the first and second circumstances prescribed in the next preceding paragraph are present, and the further circumstance, in case the provocation was given by the person attacked, that the one making defense had no part therein.

"6. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second circumstances mentioned in paragraph four are present, and the further circumstance that the person defending be not actuated by revenge, resentment, or other evil motive."

As to the accused Domingo Rivera, we are of opinion that in view of the provocation given by him to the deceased he cannot be said to have established his claim of absolute exemption from criminal liability on the ground that the killing of the deceased was done in lawful self-defense. The evidence of record leaves no room for doubt that he provoked the quarrel which resulted in the death of his adversary.

Article 86 of the Penal Code provides as follows: "A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed were not wholly excusable by reason of the lack of some of the conditions required for exemption from criminal liability in the several cases mentioned in article 8, provided that the majority thereof be present. The courts shall impose the penalty in the degree which may be deemed proper, in view of the number and weight of the conditions of exemption present or lacking."

Under all the circumstances of this case we are of opinion that the appellant Domingo Rivera, although guilty of the crime of homicide, should be given the benefit of the provisions of this article, it appearing that but for the fact that he himself provoked the fatal quarrel, he would be exempt from all criminal liability, on the ground that he struck the fatal blow, in self-defense. The penalty which should have been imposed upon him is, therefore, the penalty lower by one degree than that prescribed for the crime of homicide.

The judgment of conviction and the sentence imposed by the trial court upon all the defendants and appellants should be and is reversed. The appellants Antonio Rivera and Canuto Batoon should be and are acquitted of the crime with which they are charged, with their proportionate share of the costs in both instances de oficio, and they will be set at liberty forthwith. But the defendant Domingo Rivera is hereby declared to be guilty of the crime of homicide with which he was charged, modified nevertheless by the fact that the fatal blow would have been struck in lawful self-defense but for the fact that he himself provoked the assault of his adversary. He should therefore be, and he is hereby, sentenced to six years and one day of prision correccional, together with the accessory penalties prescribed by law, and to the payment of his proportionate share of the costs in both instances.

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

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