

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LEONILO GARCIA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 9109. December 17, 1913

Ponente: TRENT, J.

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TRENT, J.:

The eight defendants in this case were convicted of the crime of asesinato [murder] and sentenced to life imprisonment, together with the accessory penalties and payment of the costs of the cause, and to indemnify the heirs of the deceased in the sum of P1,000. All of the defendants have appealed. The six defendants surnamed Garcia are the sons of Rodorico Garcia. Masecampo is his son-in-law and Arpon is his nephew.

The question raised by the second assignment of error will be considered first. It is to the effect that the crime did not occur on land belonging to the deceased.

On July 19, 1901, judgment in a civil case was rendered by the Court of First Instance of Cebu ejecting Rodorico Garcia and several other parties defendant from a tract of land in the municipality of Tabogan, barrio of Managase, decreeing that title to the same belonged to the plaintiff, one Manalili. The deceased Neis had a contract with the said Manalili whereby he managed the cultivation of this land for a share of the products. The case was appealed to this Supreme Court which affirmed the judgment of the lower court on March 5, 1905,[1] just two days after the demise of Pascual Neis. During the time the case was on appeal the defendants were restrained by injunction from entering upon the land, the terms of which they did not strictly observe. The controversy over the possession of the land during this period engendered bitter hostility between the parties. These facts are demonstrated by the record in the civil case which was introduced in evidence. It is now urged, however, that the land on which Neis met his death is not that from which the defendants had been ousted by the judgment and injunction of the Court of First Instance. When the record in the above-mentioned civil case was introduced in evidence, the following colloquy took place:

"COUNSEL FOR THE PROSECUTION. We present as evidence the record in the contempt case of Marcelina Abendan vs. Hipolito Povadora, for failing to comply with the injunction. We also present the record in Marcelina Abendan vs. Hipolito Povadora, in which an injunction was issued by the clerk of the court, and the judgment of the Supreme Court.

"THE COURT. The court is of the opinion that the whole record is admissible to show the existence of questions between the deceased and the father of the present defendants.

"COUNSEL FOR THE DEFENSE. The defense records the basis for its objection to the presentation of these exhibits, and said objection is that it has not been here demonstrated by competent proof that the land where the crime occurred, which was the cause of the death of Pascual Neis, is the land to which these exhibits refer.

"THE COURT. It is not important that it is the land; these exhibits are admitted to show that a dispute existed."

The only satisfactory evidence in the record that it was the same land appears in the testimony of Catalino

Montellano, witness for the defense and chief clerk in the municipal treasurer's office, at Tabogan, who stated that on February 27 preceding the crime, while the deceased was in the treasurer's office for the purpose of paying his taxes, witness overheard a conversation, the substance of which follows:

"A. The deceased was talking with Capt. Pedro Hortelano and Juan Urot, and the deceased showed these two gentlemen a document, which, according to him, was an injunction. Capt. Pedro Hortelano read this document after which he was asked by Pascual Neis to advise the sons of Garcia not to further molest the laborers of the deceased, who were on the land in question.

"Q. What else did Pascual Neis say?—A. He added that on the following Monday the sons of Captain Diloy (the elder Garcia) would again go to the land in question to disturb his laborers; then he would use the revolver he had in his belt. A man called Urot, who was standing near the deceased, warned him not to carry out such an intention."

As opposed to this it must be considered that the complaint specifies the sitio of Ilijan as the scene of the crime which is not only not shown to be included within the land in dispute in the above-mentioned civil case, but is not even shown to be within the barrio of Managase, where the disputed land is located. Furthermore, the elder Garcia admittedly owned another parcel of land in the vicinity, his title to which was not involved in the civil case above referred to; and at the trial in this criminal case the said Garcia categorically denied that the land in dispute in that case was the scene of the crime. As a result it has not been satisfactorily shown that the place where Neis was killed was within the land from which the defendants had been ousted by order of the court. We are of the opinion, however, that other facts in this case render it unnecessary to establish this fact beyond question of a doubt.

The dispute over the possession of the field in the sitio of Ilijan where Neis met his death was undoubtedly the cause of the crime. From the record before us it cannot be ascertained who had the better right to the possession of this land. But from the testimony of both the prosecution and the defense it is clear beyond question of a doubt that Neis already had his tenants at work on the land when the defendants appeared, and that he was therefore in possession of it. Under article 446 of the Civil Code, every possessor has a right to be respected in his possession. Under the same article, as well as under article 348 of the same Code, the lawful owner or possessor, when unlawfully dispossessed may be restored to his possession by the laws of procedure. Under sections 80-88 of the Code of Civil Procedure, and their amendments, an efficacious and speedy remedy is provided for the possessor who has been dispossessed of his holdings by "force, intimidation, threats, strategy, or stealth." Furthermore, the defendants had advance notice of the intention of Neis to continue in possession of this land, and instead of resorting to a lawful means of ousting him, they went to the land with the avowed intention of expelling their antagonist by force of arms. At the outset, the first of the three requisites necessary to the defense of self-defense is lacking. For, not only was there no unlawful aggression on the part of the deceased, but on the contrary, the defendants were themselves the aggressors. The law does not countenance such a resort to arms. The provisions of law above set forth afford ample legal remedy for the invasion of every legal right which the defendants may have or might have had in the land in question. These provisions of law were enacted for the express purpose of obviating a resort to private redress for wrongs, real or fancied, arising out of the possession and ownership of property. There is no place in organized society for the employment of private force in the vindication of private rights in this manner.

In the *United States vs. Ramos* (18 Phil. Rep., 518), one Punsalan and his two sons were taking fish from a fishpond which Punsalan claimed as his property. The three defendants appeared and ordered them to desist, stating that they had purchased the fishpond from another person whom they named. Punsalan and his two sons would not accede to the demands of the defendants, who thereupon suddenly and unexpectedly attacked and

killed the three Punsalans. The defendants sought to establish self-defense, which not allowed. The aggravating circumstance of alevosia was found to exist, and the three defendants were sentenced to life imprisonment.

The supreme court of Spain has, in numerous decisions, held that the occupation of a property right unaccompanied by some act indicating at least probable attack upon the person, or which creates an immediate risk of his integrity, honor, or other rights which at the moment of being attacked cannot be preserved except by force does not constitute an unlawful aggression sufficient to justify a resort to force: the decision of March 13, 1897, a case of lesiones menos graves, wherein a father discharged a shotgun at his son who was gathering beans on the former's estate; the case of May 20, 1913, wherein the owner of an estate agreed to allow an electric light company to place one electric light pole on his premises. The employees of the company placed three poles thereon and the tenant of the estate under instructions from the owner proceeded to order the employees of the company to desist from their operations, and upon their refusal, discharged a revolver at one of them, inflicting a minor wound. In the case of July 14, 1913, the manager of an irrigation syndicate refused to allow the defendant water for irrigation purposes to which he was legally entitled, as a result of which the defendant killed him. In this case the qualifying circumstance of alevosia was found present. In the case of September 29, 1905, two boys were severely chastised by the owner of an estate for trespassing thereon and eating fruit from the trees. The plea of unlawful aggression raised by counsel for the defendants cannot be allowed.

The first assignment of error raises the question of how many of the defendants are guilty as principals in the commission of the crime. It is the theory of the prosecution that all eight of the defendants were present, as well as the elder Garcia, Felix Espinosa, and Gregorio Golbin. In support of this theory the prosecution introduced Aguedo Romero who testified that he was a tenant of Garcia and lived within shouting distance of the scene of the crime. He said that the eight defendants lived in the pueblo of Tabogan and arrived at a camarin belonging to the Garcias at about 5 o'clock on Sunday afternoon. Witness lived within 50 brazas of this camarin. On Monday morning about 7 o'clock all eight of the defendants, as well as the elder Garcia, Espinosa, and Golbin passed in front of his house on their way to the land where the crime was committed. All were armed with bolos and clubs, and as they passed his house one of them invited him to go along for the purpose of "making war against Pascual Neis."

Catalino Itan testified that Neis had engaged him to work on the land in the sitio of Ilijan and that on the morning of March 3, he had just started plowing on that land and about 7 o'clock in the morning the defendants appeared and called to him to "get out." Seeing that there were many of them and that they were all armed, he immediately ran away. He retired in such haste that he recognized only Leonilo, Florentino, and Mateo Garcia.

Faustino Lambajon testified that he was a muchacho of the deceased and that on the morning in question his employer told him they were going to inspect some carabaos and afterwards they would inspect the fields, Neis rode a horse and witness followed on foot. On reaching the land where Neis met his death they found all the defendants and the elder Garcia. Ceferino Garcia and the elder Garcia approached them in a friendly manner while the rest were scattered about near by. Ceferino offered to shake hands and when Neis grasped his hand Ceferino would not let go. Just then the elder Garcia cried out, "Hala!" and immediately all the accused rushed upon Neis with their bolos and clubs, and inflicted the wounds which caused his death. Witness was pursued by some of the defendants but escaped. When some distance away he heard three revolver shots, not in rapid succession, but at intervals. In his preliminary investigation this witness testified that there were more than ten persons in the party that attacked Neis but only named Domingo and Leonilo Garcia and Marcelo Masecampo, saying he did not recognize the others; while in the court below he identified all of the defendants and also included the elder Garcia. He said the reason why he did not name all of the defendants and the elder Garcia in the preliminary investigation was that he was afraid of them. The defense attempted to make capital out of this

alleged discrepancy of the testimony of this witness, but we are of the opinion that it is not under the circumstances such discrepancy as would materially affect the credibility of the witness, inasmuch as in that preliminary investigation he stated that there were more than ten persons in the attacking party and the rest of his story is practically the same as it was in the Court of First Instance. His testimony is furthermore corroborated by the other witnesses for the prosecution.

Alejo Compayan was also a tenant of the deceased who had come to that field that morning to do some plowing. He identified all the accused and stated that when he saw the accused attack Neis he hid behind his carabao and saw the whole fight. His testimony is substantially the same as that of Lambajon.

Severo Brion testified that he lived between Ilijan and the pueblo of Tabogan. He heard Domingo Garcia say, "Now there is no influential person on this mountain in whom the people can confide, because Pascual Neis is now dead." He heard Masecampo say in reply to this remark, "They are gathering around Neis now, who is already stretched out on the field."

From this testimony, it will be noted that not only the eight defendants, but Rodorico Garcia, Gregorio Golbin, and Felix Espinosa, were parties to the crime.

Domingo, Mateo, Florentino, and Leonilo Garcia admitted having killed Neis with their bolos and clubs. Their testimony is to the effect that their father informed them that Neis was going to commence working the land in dispute on Monday, and that they went up there for the purpose of preventing him from doing so. They slept in the camarín belonging to their father Sunday night, and Monday morning on going to the land in dispute found Neis' laborers working there. They ordered these laborers to leave the field. Shortly thereafter Neis arrived and asked why they had interrupted the labor of his men. Domingo Garcia replied that it was their land. Neis replied that they had no right to prevent his laborers from working the land and immediately discharged his revolver at Domingo. The four closed in on Neis and killed him. During the struggle Neis discharged his revolver at them three more times.

Gregorio Golbin testified that he slept in the camarín on that Sunday night with the four brothers and accompanied them next morning as he had a piece of land about 100 brazas away from the scene of the crime. He was working there when he heard a revolver shot. He then corroborates in its essential details the story told by Domingo and his brothers.

Felix Espinosa admits going past the house of the witness Aguedo on the morning in question, but says it was only to get some water, and that he did not go past that house in company with any of the accused. He says he stayed in his house all the morning. He also states that only the four brothers above named slept in the camarín on the night preceding the crime.

Rodorico Garcia testified that he was in his house in Tabogan Sunday night and until Monday noon, attending his wife, who was sick. Fernando Garcia, Ceferino Garcia, Rufino Arpon, and Marcelo Masecampo testified that they started together for the scene of the crime early Monday morning, with the intention of being on hand to assist the four Garcias who had slept in the camarín Sunday night. They were very near when they met Golbin returning from the scene of the crime, and he told them that something had happened. Shortly thereafter the four brothers who confessed to participating in the crime arrived and asked them to go with them to the municipal authorities, which they did.

It will be noted that there is a direct conflict between the testimony for the prosecution and the testimony for the defense, as to who participated in the commission of the crime, and as to the manner of its execution. As to the whereabouts of the defendants Fernando and Ceferino Garcia, Rufino Arpon, and Marcelo Masecampo on the

night preceding the crime and shortly before it was committed, we have the testimony of the witness Aguedo, who lived very close to the camarin where he says they spent the night. They were all seen by this witness going in the direction of the field where the crime was committed at 7 o'clock on Monday morning, at which time they informed him where they were going and why and invited him to accompany them. A little later they were seen by two other witnesses, Lambajon and Compayan, attacking Neis. About 9 o'clock they were seen on their way toward Tabogan by the witness Brion, who heard them discussing the death of Neis. Ceferino Garcia testified that he and Fernando, Arpon and Masecampo did not arrive at Ilijan until about 9 o'clock. Golbin says he met these four as he was leaving the scene of the crime to go to the camarin, which was not far away. From the testimony of Golbin there is no indication that he spent two hours in traversing only a part of this short distance. There is here a direct inconsistency in the testimony for the defendants. Either the witnesses for the prosecution or the defendants and their witnesses were testifying falsely. The evidence of the prosecution, made up as it is of the testimony of four witnesses who saw these defendants from distinct points of vantage, is consistent and convincing. At the times these four witnesses claim they saw the defendants, the latter testify they were somewhere else. In other words, these four defendants have attempted to prove an alibi. Their own declarations, in the face of the direct and positive testimony of the witnesses for the prosecution, are not sufficient to establish the defense of an alibi with sufficient strength to raise a reasonable doubt as to their presence at the scene of the crime at the time it was committed. The lower court, with its superior facilities for weighing the evidence, accepted the testimony of the witnesses for the prosecution as to the presence of all the accused at the time the crime was committed, and found that an effort was being made by Domingo, Mateo, Florentino, and Leonilo Garcia to shoulder the entire responsibility for the crime in order to shield the other defendants. The findings of the lower court as to this point should not be disturbed.

There is furthermore a most palpable attempt on the part of the defendants to manufacture evidence in their own behalf.

Domingo, Mateo, Florentino, and Leonid Garcia, who claimed to be the only participants in the crime, each showed slight abrasions on their bodies, which they claimed were caused by a bullet from Neis' revolver. Aside from the testimony for the prosecution that Neis did not have an opportunity to use his revolver, two lieutenants of the Insular police force testified that these abrasions were not caused by bullets. These witnesses examined these four defendants and stated that the abrasions were mere scratches from a nail or thorn. A hole in the shirt of one of the brothers, which he claimed was caused by the bullet which produced the abrasion on his person, was found to be about two inches higher than the abrasion, and appeared to have been burned by a lighted cigarette. It must furthermore be considered as inconceivable, as stated by one of these witnesses, that Neis should have fired a shot at each of the defendants at so close range, with the same result in each case of merely grazing their bodies without inflicting any wounds, or else missing one or more of them entirely. The lower court rejected this evidence, and we fully agree with its finding in this respect.

The defendants succeeded in approaching within striking distance of the deceased by ostensibly offering to shake hands with him. Neis, by accepting the proffered hand of Ceferino in a friendly shake, showed that he was not suspecting in the least a violent and deadly attack by the defendants. The fact that he was armed with a revolver can have no bearing on the case, as he had no opportunity to use it (U. S. vs. Feria, 2 Phil. Rep., 54.) The attack having been sudden and unexpected and treacherously made constitutes the qualifying circumstance of *alevosia*.

It has not been satisfactorily shown that this crime was committed with evident premeditation. While it is true that the defendants went to the field for the purpose of ousting the deceased and his tenants, it is not at all clear that they intended in any event to commit murder. Nor can the aggravating circumstance of superior strength be considered as existing for the reason that that circumstance is embodied in the qualifying circumstance of

alevosia.

The circumstance of alevosia qualifies the crime of the defendants as that of murder. There being no aggravating or mitigating circumstances, the penalty imposed is in accordance with the law. The judgment appealed from is therefore hereby affirmed, with costs of this instance against the defendants.

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

[1] Not reported

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