

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOAQUIN CATANGAY, DEFENDANT AND APPELLANT.

G.R. No. 9206. November 25, 1914

Ponente: ARAULLO, J.

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ARAULLO, J.:

On March 6, 1913, the following complaint was filed against the defendant in the Court of First Instance of the Province of Tayabas by the fiscal of that province:

"The undersigned charges Joaquin Catangay with the crime of homicide through reckless negligence, committed as follows:

"On or about December 4, 1912, in the pueblo of Candelaria, Province of Tayabas, Philippine Islands, the said Joaquin Catangay did, without any precaution whatever, fire from his shotgun a charge that lodged in the left parietal region of Mauricio Ramos, thereby instantly killing him; an act committed in violation of law."

After due trial the said Court of First Instance, on June 21, 1913, rendered judgment whereby the defendant, who was found guilty of the crime charged in the complaint, was sentenced to the penalty of four months and one day of *arresto mayor*, to the accessory penalties of the law, to pay an indemnity of P1,000 to the heirs of the deceased or to suffer, in case of insolvency, forty days of subsidiary imprisonment, and to pay the costs of the case; and, finally, it was therein ordered that the shotgun mentioned in the complaint should be confiscated and disposed of in accordance with law.

The trial court, setting forth in the said judgment the facts which he held to have been proven and the grounds upon which he rendered his decision in the manner afore-mentioned, said:

"From the evidence introduced at the trial, it has been fully proven that on the night of the crime the deceased, Mauricio Ramos, taking his shotgun with him, went to hunt deer in the barrio of Quinatijan, municipality of Candelaria, Tayabas, first passing by the house of Santiago Abandia, whom he took along with him and in his company also passed by the house of the defendant, Joaquin Catangay, whom they both invited to bring his shotgun and go with them for a hunt; that while the three men were passing along in the middle of a field of *talahib* (high grass), the deceased in front carrying a lighted lantern fastened to his forehead, behind him the defendant, and lastly Santiago Abandia, the first two men saw a deer and alighted from their respective horses, for they were all mounted; that thereupon Santiago Abandia stopped his horse and also dismounted in orders that the deer might not become aware of the presence of the hunters by the noise; that a few moments afterwards, two shots were heard in quick succession and then the light the deceased carried went out; that Santiago Abandia, upon noticing that the said light was extinguished, approached the deceased; and he found the defendant alongside of him, raising him up, saying: 'What can have happened to my godfather?'; that, as the deceased could not get up, Santiago Abandia asked the defendant for matches and lit a little stick, by which light witness saw the wound in the back of the head of the deceased, who was already dead; and that the said wound consisted of a fracture of the left parietal region, the brain being exposed. It has also been proved that there had been no previous trouble between the defendant and the deceased, but that on the contrary they had always been on intimate terms of friendship.

"The defendant, testifying in his own defense, stated that upon seeing that the deer, which the deceased had also noticed, might escape, he made haste to approach the latter, who had his back toward him and was on his left, and that, in taking hurried steps for that purpose, the defendant stumbled against an embankment or pilwipil that lay between him and the deceased; that thereupon he fell on one knee, an accident which caused the shotgun, which he had already loaded, cocked, and aimed at the deer, the half of whose body was now lost from sight, to be discharged, this one charge striking the deceased in the head.

"The crime charged in the present case should be qualified as one of homicide occasioned by reckless negligence—a crime provided for and punished by article 568, in connection with article 404, of the Penal Code—for the reason that there was no malice or criminal intention on the part of the defendant in the discharge of his shotgun which resulted in wounding and causing the instantaneous death of the deceased, Mauricio Ramos; but there was, however, reckless negligence on the part of defendant, for, as the deceased, whom he was approaching, was almost directly in front of him, he should have taken the precaution—an elemental one in handling firearms so likely to be discharged by the slightest accident—not to have carried his shotgun cocked and aimed, as he did on the occasion in question."

The defendant having appealed from the said judgment, his counsel accepts the finding therein made of the proved facts, but contends that the court erred in holding that such facts constitute reckless negligence and, therefore, in applying article 568 of the Penal Code.

According to the trial judge, the reckless negligence on the part of the defendant consists in that the latter did not take the necessary precaution, which the court considered elemental on that occasion in view of the circumstances, not to carry his shotgun cocked and aimed; but the court also took into account the fact that, as testified by the defendant, the discharge of his firearm (the shot from which wounded and killed the deceased) was caused by his stumbling against an embankment or pilapil that lay between him and the victim, causing him to fall to one of his knees.

The accidental cause, then, of the discharge of the arm was not due to the fact of the defendant's having it cocked and aimed, but to the accident of his stumbling against an embankment in the way. The occurrence was entirely accidental and involuntary. Consequently, the crime charged in this prosecution lacks the necessary element to allow of its being considered as reckless negligence under article 568 of the Penal Code, as would have been the case if though through no malice on the part of the defendant, the damage had been produced, nevertheless, by some voluntary act of his (U. S. vs. Barnes, 12 Phil. Rep., 93; and decision of the supreme court of Spain, of June 28, 1881.)

"The diligence with which the law requires the individual at all times to govern his conduct varies with the nature of the situation in which he is placed and with the importance of the act which he is to perform." (U. S. vs. Reyes, 1 Phil. Rep., 375.)

In the case of United States vs. Barias (23 Phil. Rep., 434) this court, citing the case of Ahern vs. Oregon Telephone Co., (24 Oreg., 276, 294; 35 Pac, 549), said: "Negligence is want of the care required by the circumstances. It is a relative or comparative, not an absolute, term and its application depends upon the situation of the parties and the degree of care and vigilance which the circumstances reasonably require. Where the danger is great, a high degree of care is necessary, and the failure to observe it is a want of ordinary care under the circumstances."

In order to determine, therefore, whether there was imprudence or negligence on the part of the defendant, or whether or not he took the necessary precautions to avoid the unfortunate accident that occurred, the surrounding circumstances, the nature of the act that he was about to perform or was performing and the situation in which he found himself, must be taken into account.

In the judgment appealed from the statement is made that the defendant, according to his testimony, when he stumbled against the embankment or pilapil and fell to the ground on one knee already had his shotgun cocked and aimed at the deer, the half of whose body was then lost to sight.

It is shown by the testimony of the defendant himself that when he perceived that there was a deer in sight he was three or four meters away from the deceased and, with respect to the relative position of the latter and the defendant, at the point marked No. 3 on the rough sketch (Exhibit 1), that is, behind the deceased, who was at a point a little aside and to the right of a straight line in the direction of the deer, so that, as appears from the said sketch, the defendant, from where he was, could have discharged his gun at the animal without serious danger to the deceased, because the latter was not in the direct line of fire, but some distance away.

The defendant, explaining what occurred and what he did as soon as he became aware of the presence of the deer, testified as follows, in answer to various questions:

"Q. Tell how the accident that is the subject matter of the information filed against you before this court occurred.—A. One afternoon of the month of December, one night of the month of December, Mauricio Ramos and Santiago Abandia came to my house and told me to get ready.

I followed them and on my replying 'yes,' they added, 'quickly.' I hastened to saddle my horse and when it was saddled mounted it and we rode toward the north. When he arrived at the barrio of Quinatihan and the irrigated land there, we loaded our shotguns and headed for the north, through this irrigated land, in quest of deer, and we had not traveled long before he stopped his horse.

"Q. Who was 'he'?—A. The deceased, Mauricio Ramos. And my horse came up to his horse, behind his horse. On seeing that he was dismounting, I checked my horse, backed it up, tied it and went to the place where he was; but, on making a turn to pass around behind his horse, I saw him in the act of leaning forward, taking aim, and, owing to my haste, for I saw that the deer was about to run, I stumbled against something and slipped, which caused the shotgun I was carrying to go off.

"Q. Is this the shotgun you were carrying?—A. Yes, sir.

"Q. When you were hurrying to the place where he was, after you had tied your horse, how was your shotgun?—A. I was going toward him with the shotgun, pointed upwards and held in both hands, and was pushing the safety catch to release it, when I saw the deceased in a stooping position, almost on his knees, aiming at the deer.

"Q. So that that shotgun of yours was at safety or had the safety catch closed when you were going toward him?—A. Yes, sir.

"Q. And why did you go to him, for what purpose?—A. Because he was stooping and was aiming, and I saw the deer.

"Q. And for what purpose and why did you run toward the deceased?—A. I saw him almost kneeling down on the ground and aiming, but he had been in this position for some little time and had not fired. I saw the deer, or half of its body. It was about to escape. I, too, wanted to shoot, and went in his direction so I could shoot the deer.

"Q. What did you stumble against?—A. An embankment of earth, for it was in a high place.

"Q. Did you say that upon your stumbling against something the shotgun went off?—A. Yes sir."

The court:

"Q. When your gun was discharged was the safety catch still closed ?—A. No, sir. Just at the moment I raised the safety catch I slipped and did not know how the gun went off, for it was discharged at the moment I stumbled."

The fiscal:

"Q. How were you carrying the shotgun when, as you said, you pressed the safety catch to lock it?—A. I had my shotgun with me. The other man had his shotgun in a horizontal position, almost in aim. He had stopped to fire. I was walking pretty fast and was pushing up the safety catch when I stumbled and the barrel of the shotgun rose up at the same time that I fell.

"Q. So that you fell?—A. I did not fall to the ground, but bent toward it so much that I nearly fell down.

"Q. Did the shotgun touch the ground?—A. No, sir.

"Q. When you saw the deer you got excited, aimed at it, and fired at it, did you not?—A. No, sir. My intention was to get nearer to it or alongside the deceased to take aim afterwards and shoot from there."

The court:

"Q. When you were approaching the deceased, did you see where the deer was standing?—A. I saw only a half of the deer's body and I made haste.

"Q. Did you believe that the deer would get away from you without your firing at it?—A. I feared that, for he had been aiming some time and had not fired."

The fiscal:

"Q. Immediately after you alighted from your horse and saw the deer, did you aim at it?—A. No, sir.

"Q. At what moment did you aim at it; when you were approaching the deceased ?—A. I aimed at the deer when I saw the deceased kneeling, in a kneeling posture, and when only half of the deer's body was in sight.

"Q. And you were going along—that is to say, you were aiming at the deer while you were walking?—A. Yes, sir. The muzzle of the gun was pointing toward the deer."

From the foregoing questions and answers, it is seen that when the defendant became aware of the presence of the deer he saw the deceased squatting down, almost kneeling on the ground and aiming at the animal; that he had been in this posture for some little time without shooting, and as the defendant could see only half of the deer's body and the animal was about to run away, the defendant tried to approach or get beside the deceased, in order to aim and shoot thence; that he did in fact go toward the deceased, holding the shotgun in both hands with the barrel pointing upwards, though in the direction of the deer, and with the safety catch closed; and that, at the moment he pushed up the safety catch to open it, he stumbled against an embankment, slipped and fell, and the gun he was holding in his hands was discharged.

Under the circumstances in which the defendant found himself, it was not necessary for him to employ extraordinary caution, because the danger in which the deceased, who was at one side though some distance ahead of him, might then have been was not great; it was enough that he should have taken the precaution that he did, and which was that which the circumstances required in attempting to approach the deceased, to point upwards the gun he was carrying and to take advantage of the occasion when the deceased was squatting and almost kneeling in this position the latter could not be in danger of being hit if the gun was fired, while, on the other hand, he would have been free from all danger, had the defendant succeeded in getting beside him, as he intended

to do, in order to shoot thence, as being a point from which he could see the whole of the deer.

Neither can it be held that there was negligence or lack of care in the fact that the defendant tried to open the safety catch of the gun while he was going toward the deceased and when he was but a short distance from him, for, in view of the nature of the act which he was about to perform, it was natural that he should have the gun prepared to fire at the game, at once, or as soon as he should have succeeded in placing himself beside his companion. So, if the gun was discharged through the defendant's having stumbled against an embankment there, the shot causing the death of his companion, and this embankment cannot be attributed to a want of caution or precaution on the part of the defendant (he did not see it, for, as he himself testified, he was going along with his eyes fixed on the deer, and it is also understood that he would not have been looking down, as he had his companion near at hand), the death of the deceased can only be attributed to an unforeseen and unfortunate accident, for which the defendant can not be held criminally liable.

The Attorney-General, however, states in his brief that the defendant's liability may reasonably be inferred from his testimony given in the criminal investigation held before the justice of the peace of Candelaria, Tayabas. That testimony, which is shown in Exhibit B presented in evidence at the trial, in the part thereof pertinent to the matter in question, reads as follows: "We were hunting on horseback and had agreed that if the man who was well ahead, that is, Mauricio, should alight from his horse, it would be a sign that he had found an animal; and it happened in fact that Mauricio did alight from his horse. Then I also dismounted and on seeing that there was a deer immediately fired at it, but, owing to the confusion existing at the time, I am unable to say positively whether or not he fired before I did, or whether I shot the deer or the deceased."

According to the justice of the peace himself, who testified at the trial, the said testimony was taken down by him in Spanish, he having translated it from Tagalog, in which language the defendant testified before him. Counsel for the defense, on the other hand, tried to prove by means of cross-questions addressed to the justice of the peace at the hearing, that the latter, in taking down the said testimony in Spanish, after translating it from Tagalog—the language used by the defendant—must have omitted therefrom that part of the statement he made at the trial, relative to the cause of the discharge of the shotgun on that occasion.

From the aforementioned testimony it merely appears indeed that an agreement had been made between the deceased, Mauricio Ramos, his other companion and the defendant, that when the man who was well ahead, that is, the deceased, should alight from his horse, it would be a sign that there was game in sight; and that the defendant, on seeing that Mauricio, the deceased, had alighted from his horse, also dismounted from his and, on seeing that in fact there was a deer, immediately fired his shotgun at it.

The lower court ascribed very little importance to this testimony, for it is not mentioned in the decision, but took due account of that given by the defendant at the trial; he found him guilty upon the ground that, as aforesaid, he did not take the proper precaution, in view of the circumstances, not to carry his shotgun at that time cocked and aimed. But even though the first testimony had been taken into account, it could not serve to prove that the defendant acted with negligence or want of diligence in firing the shot, for the simple reason that there is not a single detail in the testimony in question as to the positions of the defendant and the deceased with relation to each other, nor to that of the deceased in relation to the deer, which was in sight of the defendant. Neither can it be affirmed, upon examination of the rough sketch Exhibit 1, that the deceased was in the line of fire, for, on drawing a straight line from the deer to the defendant, as shown in the sketch, it is seen that the deceased was not on the line, but at one side of it and at such a distance away from it as to preclude the idea that he would be in such danger as to have made it necessary for the defendant to have adopted precautions other than those the actual circumstances of the case required before he fired his gun from that position.

After due consideration, then, of the said testimony, either separately or in relation with the merits of the case, and of that given by the defendant himself at the trial, also in connection with the same merits, it cannot be held that the defendant is guilty of the crime of homicide through reckless negligence, as charged in the complaint.

Therefore, reversing the judgment appealed from, we freely absolve the defendant, with the costs of both instances de oficio.

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

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