

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FELIPE KALALO ET AL., DEFENDANTS. FELIPE KALALO, MARCELO KALALO, JUAN KALALO, AND GREGORIO RAMOS, APPELLANTS.

G. R. Nos. 39303-39305. March 17, 1934

Ponente: DIAZ, J.

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DIAZ, J.:

On November 10, 1932, the herein appellants Felipe Kalalo, Marcelo Kalalo, Juan Kalalo and Gregorio Ramos, were tried in the Court of First Instance of Batangas jointly with Alejandro Garcia, Fausta Abrenica and Alipia Abrenica in criminal cases Nos. 6858, 6859 and 6860, the first two for murder, and the last for frustrated murder. Upon agreement of the parties said three cases were tried together and after the presentation of their respective evidence, the said court acquitted Alejandro Garcia, Fausta Abrenica and Alipia Abrenica, and sentenced the appellants as follows:

In case No. 6858, for the alleged murder of Marcelino Panaligan, to seventeen years, four months and one day of reclusion temporal, with the corresponding accessory penalties, and to indemnify the heirs of the said deceased Marcelino Panaligan in the sum of P1,000, with the costs.

In case No. 6859, for the alleged murder of Arcadio Holgado, to seventeen years, four months and one day of reclusion temporal, with the corresponding accessory penalties, and to indemnify the heirs of the aforesaid victim, the deceased Arcadio Holgado, in the sum of P1,000, with the costs.

In the third case, that is, No. 6860, wherein the court a quo held that the crime committed was simply that of discharge of firearms, not frustrated murder, the appellant Marcelo Kalalo was sentenced to one year, eight months and twenty-one days of prision correccional and to pay the proportionate part of the costs of the proceedings. Felipe Kalalo and Juan Kalalo, as well as their co-accused Fausta and Alipia Abrenica, Gregorio Ramos and Alejandro Garcia, were acquitted of the charges therein.

The accused in the aforesaid three cases appealed from their respective sentences assigning six alleged errors as committed by the trial court, all of which may be discussed jointly in view of the fact that they raise only one question, to wit: whether or not said sentences are in accordance with law.

A careful study and examination of the evidence presented disclose the following facts: Prior to October 1, 1932, the date of the commission of the three crimes alleged in the three informations which gave rise to the aforesaid three cases Nos. 6858, 6859 and 6860, the appellant Marcelo Kalalo or Calalo and Isabela Holgado or Olgado, the latter being the sister of the deceased Arcadio Holgado and a cousin of the other deceased Marcelino Panaligan, had a litigation over a parcel of land situated in the barrio of Calumpang of the municipality of San Luis, Province of Batangas. On September 28, 1931, and again on December 8th of the same year, Marcelo Kalalo filed a complaint against the said woman in the Court of First Instance of Batangas. By virtue of a motion filed by his

opponent Isabela Holgado, his first complaint was dismissed on December 7, 1931, and his second complaint was likewise dismissed on February 5, 1932. Marcelo Kalalo cultivated the land in question during the agricultural years 1931 and 1932, but when harvest time came Isabela Holgado reaped all that had been planted thereon.

On October 1, 1932, Isabela Holgado and her brother Arcadio Holgado, one of the deceased, decided to order the aforesaid land plowed, and employed several laborers for that purpose. These men, together with Arcadio Holgado, went to the said land early that day, but Marcelo Kalalo, who had been informed thereof, proceeded to the place accompanied by his brothers Felipe and Juan Kalalo, his brother-in-law Gregorio Ramos and by Alejandro Garcia, who were later followed by Fausta Abrenica and Alipia Abrenica, mother and aunt, respectively, of the first three.

The first five were all armed with bolos. Upon their arrival at the said land, they ordered those who were plowing it by request of Isabela and Arcadio Holgado, to stop, which they did in view of the threatening attitude of those who gave them said order.

Shortly after nine o'clock on the morning of the same day, Isabela Holgado, Maria Gutierrez and Hilarion Holgado arrived at the place with food for the laborers. Before the men resumed their work, they were given their food and not long after they had finished eating, Marcelino Panaligan, cousin of said Isabela and Arcadio, likewise arrived. Having been informed of the cause of the suspension of the work, Marcelino Panaligan ordered said Arcadio and the other laborers to again hitch their respective carabaos to continue the work already began. At this juncture, the appellant Marcelo Kalalo approached Arcadio, while the appellants Felipe Kalalo, Juan Kalalo and Gregorio Ramos, in turn, approached Marcelino Panaligan. At a remark from Fausta Abrenica, mother of the Kalalos, about as follows, "what is detaining you?" they all simultaneously struck with their bolos, the appellant Marcelo Kalalo slashing Arcadio Holgado, while the appellants Felipe Kalalo, Juan Kalalo and Gregorio Ramos slashed Marcelino Panaligan, inflicting upon them the wounds enumerated and described in the medical certificates Exhibits I and H. Arcadio Holgado and Marcelino Panaligan died instantly from the wounds received by them in the presence of Isabela Holgado and Maria Gutierrez, not to mention the accused. The plowmen hired by Arcadio and Isabela all ran away.

Arcadio Holgado's body bore the following six wounds, to wit:

- "1. A cut wound on the ulnar side of right arm near the wrist, cutting the ulnar bone completely and, the radius partially.
- "2. A cut wound on the anterior upper portion of the left arm measuring about 7 cm. long and 5 cm. wide extending to the bone and cutting the deltoid muscle across.
- "3. A penetrating wound on the left chest just below the clavicle going thru the first intercostal space measuring about 3 cm. long and 2 cm. wide.
- "4. A wound on the left side of the back about 20 cm. long following the 10th intercostal space and injuring the lung, diaphragm, stomach and large intestine.
- "5. A small superficial cut wound about 2 cm. long and 1/2 cm. wide situated on the inner side of the right scapula.
- "6. A superficial wound barely cutting the skin, about 4 cm. long in the lumbar region just to the right of the spinal column." (Exhibit I.)

Marcelino Panaligan's body, in turn, bore the following fourteen wounds, to wit:

- "1. A penetrating cut wound in the epigastric region of the abdomen measuring about 7 cm. long and 3 cm.

wide cutting the omentum and injuring the lower portion of the stomach and a portion of the transverse colon, but no actual perforation of either one of the two organs.

"2. A cut wound on the head just above the forehead about 6 cm. long and 4 cm. wide lifting a portion of scalp as a flap.

"3. A cut wound on the left side of the head measuring about 7 cm. long and 2 cm. wide.

"4. A cut wound about 12 cm, long across the face just below the eyes extending from one cheek bone to the other, perforating the left antrum and cutting the nasal bone.

"5. A cut wound on the anterior portion of the left forearm extending to the bone with a flap of skin and muscle which measures about 12 cm. long and 6 cm. wide.

"6. A cut wound across the dorsal side of the right hand about 5 cm. long and 2 cm. wide cutting the bones of the hand.

"7. A superficial wound about 6 cm. long and 4 cm. wide and 2 cm. deep situated in the left axilla.

"8. A cut wound about 6 cm. long and 2 cm. wide situated over the left scapula.

"9. A cut wound on the right shoulder about 6 cm. long passing near the inner angle of the scapula cutting the muscles of the shoulder.

"10. A cut wound about 7 cm. long and 3 cm. wide situated near and almost parallel to the inner border of the right scapula.

"11. A wound on the back of the head, oval in shape, about 10 cm. long and 5 cm. wide from which a flap of scalp was removed.

"12. A wound across the back and left side of the neck about 12 cm. long and 7 cm. deep cutting the vertebral column together with the great arteries and veins on the left side of the neck.

"13. A wound about 15 cm. long and 4 cm. wide on the left side of the back.

"14. A small wound on the left thumb from which a portion of the bone and other tissues were removed." (Exhibit H.)

The above detailed description of the wounds just enumerated discloses—and there is nothing of record to contradict it—that all of them were caused by a sharp instrument or instruments.

After Arcadio Holgado and Marcelino Panaligan had fallen to the ground dead, the appellant Marcelo Kalalo took from its holster on the belt of Panaligan's body, the revolver which the deceased carried, and fired four shots at Hilarion Holgado who was then fleeing from the scene in order to save his own life.

The appellants attempted to prove that the fight, which resulted in the death of the two deceased, was provoked by Marcelino Panaligan who fired a shot at Marcelo Kalalo upon seeing the latter's determination to prevent Arcadio Holgado and his men from plowing the land in question. No such firing, however, can be taken into consideration, in the first place, because of the existence of competent evidence such as the testimony of Maria Gutierrez, who is a disinterested witness, which corroborates that of Isabela Holgado in all its details, showing that the said deceased was already lying prostrate and lifeless on the ground when the appellant Marcelo Kalalo approached him to take his revolver for the purpose of using it, as he in fact did, against Hilarion Holgado; in the second place, because the assault and aggression of the said appellant were not directed against said Marcelino Panaligan but exclusively against Arcadio Holgado, the evidence of record on this point being overwhelming, and if his claim were true, he naturally should have directed his attack at the person who openly made an attempt against his

life; in the third place, because the evidence shows without question that Panaligan was an expert shot with a revolver, and among the eight wounds that the appellant Marcelo Kalalo received (Exhibit 3), not one appears to have been caused by bullet, and similarly, none of the other appellants received any wound that might, in any way, suggest the possibility of having been caused by bullet; and finally, because the fact that he and his co-appellants, together with those who had been charged jointly with them, had gone to the place of the crime armed with bolos, determined at any cost to prevent the Holgados from plowing the land in dispute, cannot but disclose not only their determination to resort to violence or something worse, but that they did not need any provocation in order to carry out their intent.

They likewise attempted to prove that the appellant Marcelo Kalalo alone fought against the deceased Marcelino Panaligan and Arcadio Holgado and inflicted upon them the wounds which resulted in their death, said appellant testifying that, he was compelled to do so in defense of his own life because both of the deceased attacked him first, the former with a revolver, firing three shots at him, and the latter with a bolo. For the same reasons hereinbefore stated, such defense of the appellants cannot be given credit. One man alone could not have inflicted on the two deceased their multiple wounds, particularly when it is borne in mind that one of them was better armed, because he carried a revolver, and that he was furthermore an expert shot and scarcely two arm-lengths from Kalalo, according to the latter's own testimony. The two witnesses for the defense, who witnessed the crime very closely, refuted such allegation saying that Marcelo Kalalo alone fought the deceased Arcadio Holgado and that the other three appellants went after the other deceased. It is true that Arcadio Holgado also used his bolo to defend himself from Marcelo Kalalo's aggression but it is no less true that five of the principal wounds of the other deceased Marcelino Panaligan were inflicted on him from behind, inasmuch as according to Exhibit H they were all found at the back of the head, on the neck and on his back. Neither is it less true that all the wounds of the appellant Marcelo Kalalo were inflicted on him from the front, which fact shows that it was not he alone who inflicted the wounds on the two deceased because had he been alone Panaligan would not have exposed his back to be thus attacked from behind, inasmuch as he was armed with a revolver, which circumstance undoubtedly allowed him to keep at a distance from Kalalo; and in connection with the testimony of Isabela Holgado and Maria Gutierrez, said circumstance shows furthermore that the three appellants Felipe Kalalo, Juan Kalalo and Gregorio Ramos attacked said Panaligan with their respective bolos at the same time that Marcelo Kalalo attacked Arcadio Holgado, in order that all might act simultaneously in conformity with the common intent of the four and of their co-accused to eliminate through violence and at any cost, without much risk to them, all those who wanted to plow the land which was the cause of the dispute between the two parties. And it is not strange that the three appellants, who inflicted the wounds upon Marcelino Panaligan, should act as they did, because they knew that the latter carried a revolver in a holster on his belt.

Although it may seem a repetition or redundancy, it should be stated that Marcelo Kalalo's allegation that he acted in self-defense is absolutely unfounded on the ground that, were it true that the deceased Marcelino Panaligan succeeded in using his revolver, he would have wounded if not the said appellant, at least the other appellants.

The trial court has acted correctly in not giving credit to the testimony of the appellants Juan and Felipe Kalalo and Gregorio Ramos that they proceeded to the scene of the crime completely unarmed, with the exception that one of them had a brush in his hand and the other a plane, after Marcelino Panaligan and Arcadio Holgado had already expired, which is incredible and improbable under the circumstances, knowing, as in fact they then knew, that their brother Marcelo Kalalo had been attacked by armed men. This court cannot help but agree with the decision of the lower court where it states:

"It is improbable that after having been informed that their brother was engaged in a fight, they went to the scene of the crime, one merely armed with a plane and the other with a brush. It is improbable that Felipe Kalalo also went to that place simply to follow Juan Kalalo and Gregorio Ramos upon seeing them run

unarmed in that direction. These improbabilities of the defenses of the accused, in the face of the positive and clear testimony of the eyewitnesses pointing to the said accused as the aggressors of the deceased Marcelino Panaligan and Arcadio Holgado, cannot, of course, prevail against nor detract from the weight of the evidence of the prosecution, particularly taking into consideration the numerous wounds of each of the deceased and the positions thereof, which show that the said deceased were attacked by several persons and that those several persons were the defendants. Furthermore, the established fact that after the commission of the crime the said defendants had been in hiding in order to avoid arrest, is corroborative evidence of their guilt."

It certainly is a fact of record that the said three appellants Felipe Kalalo, Juan Kalalo and Gregorio Ramos were not arrested until after several days, because they had been hiding or, at least, absenting themselves from their homes.

That the four appellants should all be held liable for the death of the two deceased leaves no room for doubt. All of them, in going to the land where the killing took place, were actuated by the same motive which was to get rid of all those who might insist on plowing the land which they believed belonged to one of them, that is, to Marcelo Kalalo, a fact naturally inferable from the circumstance that all of them went there fully armed and that they simultaneously acted after they had been instigated by their mother with the words hereinbefore stated, to wit: "What is detaining you ?"

The question now to be decided is whether the appellants are guilty of murder or of simple homicide in each of cases G. R. No. 39303 and G. R. No. 39304. The Attorney-General maintains that they are guilty of murder in view of the presence of the qualifying circumstance of abuse of superior strength in the commission of the acts to which the said two cases particularly refer. The trial court was of the opinion that they are guilty of simple homicide but with the aggravating circumstance of abuse of superior strength.

It is true that under article 248 of the Revised Penal Code, which defines murder, the circumstance of "abuse of superior strength", if proven to have been present, raises homicide to the category of murder; but this court is of the opinion that said circumstance may not properly be taken into consideration in the two cases at bar, either as a qualifying or as a generic circumstance, if it is borne in mind that the deceased were also armed, one of them with a bolo, and the other with a revolver. The risk was even for the contending parties and their strength was almost balanced because there is no doubt but that, under circumstances similar to those of the present case, a revolver is as effective as, if not more so than three bolos. For this reason, this court is of the opinion that the acts established in cases Nos. 6858 and 6859 (G. R. Nos. 39303 and 39304, respectively), merely constitute two homicides, with no modifying circumstance to be taken into consideration because none has been proved.

As to case No. 6860 (G. R. No. 39305), the evidence shows that Marcelo Kalalo fired four successive shots at Hilarion Holgado while the latter was fleeing from the scene of the crime in order to be out of reach of the appellants and their companions and save his own life. The fact that the said appellant, not having contented himself with firing only once, fired said successive shots at Hilarion Holgado, added to the circumstance that immediately before doing so he and his co-appellants had already killed Arcadio Holgado and Marcelino Panaligan, cousin and brother-in-law, respectively, of the former, shows that he was then bent on killing said Hilarion Holgado. He performed everything necessary on his part to commit the crime that he determined to commit but he failed by reason of causes independent of his will, either because of his poor aim or because his intended victim succeeded in dodging the shots, none of which found its mark. The acts thus committed by the said appellant Marcelo Kalalo constitute attempted homicide with no modifying circumstance to be taken into consideration, because none has been established.

Wherefore, the three appealed sentences are hereby modified as follows:

In case No. 6858, or G. R. No. 39303, the court finds that the crime committed by the appellants is homicide and they are hereby sentenced to fourteen years, eight months and one day of reclusion temporal each, to jointly and severally indemnify the heirs of Marcelino Panaligan in the sum of P1,000 and to pay the proportionate part of the costs of the proceedings of both instances; and by virtue of the provisions of Act No. 4103, the minimum of the said penalty of reclusion temporal is hereby fixed at nine years;

In case No. 6859, or G. R. No. 39304, the court likewise finds that the crime committed by the appellants is homicide, and they are hereby sentenced to fourteen years, eight months and one day of reclusion temporal each, to jointly and severally indemnify the heirs of Arcadio Holgado in the sum of P1,000 and to pay the proportionate part of the costs of both instances; and in conformity with the provisions of Act No. 4103, the minimum of the penalty of reclusion temporal herein imposed upon them is hereby fixed at nine years;

In case No. 6860, or G. R. No. 39305, the court finds that the crime committed by the appellant Marcelo Kalalo is attempted homicide, and he is hereby sentenced to two years, four months and one day of prision correccional, it being understood that by virtue of the provisions of said Act No. 4103, the minimum of this penalty is six months, and he is furthermore sentenced to pay the costs of the appeal in this case.

In all other respects, the appealed sentences in the said three cases are hereby affirmed without prejudice to crediting the appellants therein with one-half of the time during which they have undergone preventive imprisonment, in accordance with article 29 of the Revised Penal Code. So ordered.

Street, Abad Santos, Hull, and Butte, JJ., concur.

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