

2 Phil. 706

[G.R. No. 889. November 28, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. TEODORO OLIGARES,
DEFENDANT AND APPELLANT.**

D E C I S I O N

COOPER, J.:

Teodoro Oligares was charged with the crime of homicide in the killing of Guillermo Salvador, alleged to have been committed in the following manner:

On the 11th day of October, 1901, in the barrio of Nancamaligan, town of Urdaneta, of the Province of Pangasinan, Teodoro Oligares inflicted two serious wounds with a bolo on Guillermo Salvador, from the result of which the latter died on the day following.

The defendant was found guilty by the Court of First Instance and was sentenced to fourteen years eight months and one day of *reclusion temporal*, with the accessories, and to the payment of an indemnification of 500 pesos to Sinforosa Palangco, the widow of the deceased Guillermo Salvador, and to the payment of the costs of the proceedings. From this judgment the defendant has appealed to this court.

One of the errors assigned is that it was not proven that the accused was the author of the death of the deceased, Guillermo Salvador. There were five witnesses who testified for the prosecution, and while none of them witnessed the inflicting of the wounds by the accused upon the deceased, yet we think it has been established beyond a reasonable doubt that the killing of the deceased was done by the defendant.

Luis Salvador, a witness for the prosecution, testified that he went to the place at which the deceased and the defendant were almost immediately after the occurrence; that the defendant, Teodoro Oligares, still had in his hand the bolo with which the wounds had been inflicted; that he found the deceased sitting down; that the defendant was then still in the

presence of the deceased; that the deceased stated to the witness he had called him to come there because he had had a quarrel with the defendant concerning the boundaries of their land and had been wounded by the defendant; that the witness turned to the defendant and asked him if it was true and the latter said that it was; that the deceased was wounded in the neck and on the left shoulder and that the wounds were inflicted by one stroke of a bolo; that the bolo with which the Avounds were inflicted belonged to the deceased; that the deceased did not speak again after the conversation above stated and died the next day; and that at the time the witness arrived at the place of the killing the defendant was applying some remedies made of herbs to the wounds of the deceased.

Sinforosa Palangco, the wife of the deceased, testified that, being informed of the quarrel between the deceased and the defendant, she went to the place and found there present the deceased, the defendant, and Luis Salvador; that her husband at that time was unable to speak; that the defendant was sitting at the side of Luis Salvador and had in his hand the bolo which belonged to the deceased; that the deceased was a nephew of the defendant's wife.

The defendant testified in the case and stated that on Friday, while he was at home, a boy came to say to him that the deceased, Guillermo Salvador, was wounded and wished the defendant to render him assistance; that at the time he arrived at the place where the deceased was he found him sitting down; that it was at a place within the boundaries of his (the defendant's) land; that when he reached the place where the deceased was he found the latter had been wounded and was bleeding freely; that the witness spoke to the deceased and asked him who had wounded him; that the only reply made by the deceased was that he came from the rice field ; that the witness did not ask him the second time, because the deceased requested him to go home for medicines to apply to his wounds; that he accordingly at once went off for medicines in order to save the life of the deceased, and, when he returned to apply them, Luis Salvador arrived; that up to this time the deceased was not able to speak; that Luis Salvador accused the witness of being the party who had wounded the deceased in a dispute about the boundaries between their lands; that he denies having made a statement to Luis Salvador to the effect that he (the witness) stabbed the deceased. The witness further stated that there was trouble between him and Luis Salvador on account of their land boundaries.

Alipio Benito testified that on Friday evening the defendant had sent him to repair the fence around the defendant's land; that while he was there working he saw the deceased approaching the place, and that the latter asked him to call the defendant at once to treat

his wounds; that the witness did not ask the deceased what was the matter with him, because he was told to call his master at once and immediately went off; that he did not see the wounds; that he went to the house of the defendant at about 2 o'clock and found him there asleep; and that it was about 4 o'clock when the defendant left his house and said to the witness, "Wait a minute, I am going to speak first to these two men," referring to two men who were then present; that the witness supposes the defendant did not go to render the deceased assistance immediately because he wanted to have a conversation with these two men; that it was important for him to speak to them because he wanted to send them to plant sweet potatoes. On cross-examination, this witness stated that when he saw the deceased the latter was coming over the rice field, very muddy, and was wounded and told the witness to call his master, as he had been wounded and required treatment.

Two other witnesses for the defendant Pedro Malde and Agapito Presto, testified that they were at the house of the defendant when Alipio Benito came and reported that the deceased had been wounded and wanted the defendant to come and treat his wounds. These witnesses testified that they were planting potatoes and that they continued their work and did not see the deceased.

The statement of the witness Alipio Benito seems entirely improbable. That the defendant should have delayed going to the place where the deceased was lying for two hours after having been notified of the distressed condition of the deceased, for so trivial an excuse as was given, is not probable; nor is the statement made by this witness that when he first saw the deceased the latter was coming across the rice field, muddy and wounded, probable, in view of the serious nature of the wounds which had been inflicted on the deceased.

It was a strange circumstance also that neither this witness nor the defendant, when they reached the place where the deceased was found wounded, remained long enough with the deceased to ascertain from him who had inflicted the wounds, the explanation of the witness Benito being that the reason why he did not ask the deceased what was the matter with him was because the deceased had requested him to call his master at once, and he immediately left; while the explanation of the defendant was that he asked the deceased what person had wounded him and, failing to receive a reply, did not ask the deceased a second time, because he immediately left for medicine to apply to the deceased's wounds.

The defendant's counsel further contends that, if the killing really was done by the defendant, it is probable that he and the deceased were engaged in strife, and, in a critical moment, the defendant seized the bolo of the deceased and wounded him and that the case

falls within the provisions of No. 4, article 8, of the Penal Code, which exempts from criminal liability those who act in defense of their person.

The fact that the bolo with which the deceased received his mortal injuries belonged to the deceased is a circumstance which might be considered under a different state of facts than exist in this case, but in view of the failure of the defendant to state in the admissions made by him to Luis Salvador that he had inflicted the wounds upon the deceased in a quarrel and in self-defense, and the failure of the defendant when testifying in his own behalf to justify himself as having acted in self-defense destroys the effect of the circumstance that the bolo with which the wounds were inflicted belonged to the deceased.

We think the defendant should be given the benefit of article 11, Penal Code, as a mitigating circumstance. This will reduce the term of imprisonment to twelve years and one day of *reclusion temporal*, and, proceeding to correct the judgment of the Court of First Instance in this particular, we now adjudge the defendant, Teodoro Oligares, guilty of the offense of homicide as charged in the complaint and sentence him to imprisonment for a term of twelve years and one day of *reclusion temporal*., with accessories, and to the payment of an indemnification of 500 pesos to Sinforosa Palangco, the wife of the deceased Guillermo Salvador, and to pay the costs of the proceedings.

Arellano, C. J., Torres, Willard, Mapa, and McDonough, JJ., concur.

Johnson, J., did not sit in this case.