

2 Phil. 610

[G.R. No. 1163. October 27, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. BARTOLOME
MAGTIBAY ET AL., DEFENDANTS AND APPELLANTS.**

D E C I S I O N

TORRES, J.:

On November 24, 1902, the provincial fiscal of Batangas filed an information charging partolome Magtibay, Gregorio Bauan, and Juan de Dios with the crime of homicide. It was alleged that on the night in question the first two named, municipal policemen of the capital of the province, armed with loaded guns, left their barracks at the instigation of the third defendant, a corporal of police, and upon meeting an American named Sebastian Armitage on the road from the capital to the barrio of Santa Clara, discharged their guns at him, inflicting four gunshot wounds which caused his instantaneous death. The information also stated that while the body of Armitage was at the police barracks, the defendant Juan de Dios kicked it and addressed it with insulting and abusive language.

An amended information was filed and allowed, and the trial proceeded. From the evidence taken it appears that, at about 10 o'clock on the night of November 3, the municipal policemen Crisanto Amposta and Simeon Dalauin left their barracks for the purpose of doing patrol duty in the town. They had reached a place near the house of Felix Aguirre, which stands on a street running toward the beach, when they were startled by hearing the report of a gun, quickly followed by another. The two took to flight and while running heard another shot. They did not, however, discover who fired the shots. About half an hour later, while on their way to the cockpit, they heard the sound of several more shots coming from the direction of the beach.

On the same night of November 3, shortly after 10 o'clock, the defendants Bartolome Magtibay and Gregorio Bauan, municipal policemen, also left the barracks for the purpose of doing patrol duty in the barrio of Sambat. While on the road they heard several shots and

accordingly proceeded to the market place, where some of the watchmen informed the defendants that these shots had apparently been fired in the western part of the barrio of Santa Clara, toward the beach, and that the policemen Amposta and Dalauin had gone that way some time before. Upon receiving this information, Magtibay and Bauan started toward the place indicated in search of their comrades. Before arriving at the bridge on the road leading to the beach the two defendants according to the statement made by them, were hailed by some one who asked them if they were policemen. Upon Magtibay's replying in the affirmative, they were fired upon, the flash of the revolver appearing at a distance of some 10 *brazas*. Bauan answered the shot by discharging his shotgun, his example being followed immediately by Magtibay. The stranger, who, it subsequently transpired, was an American named Armitage, fired his revolver again and Bauan returned the shot with another from his gun. The two policemen then returned to the town to report the occurrence. The body of the deceased, with the revolver containing five empty shells, in his right hand, was subsequently found at the place mentioned, by the police officers who went there.

The result of the autopsy held upon the body of the deceased showed that four wounds had been inflicted upon him—three in the vicinity of the right nipple and one under the armpit, which fractured a rib and pierced the spleen, lungs, and important arteries. The scar of an old wound was also found on the left hand. The wounds first referred to were gunshot wounds and, owing to the hemorrhage induced thereby, were the cause of the death of the deceased.

The facts stated, fully established by expert testimony, constitute the crime of homicide, covered by article 404 of the Penal Code, as the death of the deceased Sebastian Armitage was caused by the four gunshot wounds in the breast, and none of the qualifying circumstances of the crime of murder having been present in the commission of the offense.

The defendants Bartolome Magtibay and Gregorio Bauan admit having on the night in question discharged the guns with which, as municipal policemen of the town of Batangas, they were provided at a man who turned out to be the deceased Armitage, and who in turn fired his revolver at the defendants. It follows, therefore, that they are, by their own confession, the principals by direct participation in the homicide upon which this prosecution is based.

The defendants Magtibay and Bauan pleaded not guilty and stated, in justification, that they discharged their guns at the deceased in self-defense and for the purpose of repelling the

attack made upon them, at a distance of some 10 *brazas*, with a revolver. In their testimony they stated that the encounter occurred at the place where the deceased was killed and where his body was subsequently found.

For the purpose of determining whether in the commission of the crime in question the exempting circumstance of self-defense exists, it is necessary to determine, from the evidence adduced, by whom the assault was commenced—whether by the deceased, Armitage, or by the defendants: As there were no eyewitnesses to the occurrence, and as the only surviving participants in the affray are the two who killed the deceased, in addition to weighing the admissions and exculpatory statements made by them, it is necessary for us to examine also the circumstantial evidence presented at the trial.

The witnesses William Kelly, Jasper D. Curtis, J. J. Hugges, and Fred. Crosgrone testified that on the night referred to they heard three reports from a shotgun, followed immediately by three revolver shots, and that a few minutes afterwards they heard another report from a shotgun; and two of them testified that immediately thereafter they heard someone shouting, apparently calling for help.

Vicente Dilay testified that shortly after 10 on the night in question he heard five or six shots, and about a quarter or half an hour afterwards heard several other shots, the number of which he was unable to state precisely. He stated that he could not tell whether the reports he heard were gunshots or revolver shots. Petronilo Marcial said that, after he had seen the defendants Magtibay and Bauan on the night in question, he heard shots similar to the four or five which he heard before he saw the accused, but fainter. These were followed by two heavy reports, and then by two others of less volume and that finally there was another loud report.

Daniel Vanvorrhis stated that at 10.25 that night, while at the house of General Bell, he heard three shots, later followed by another, but that he could not say from what kind of weapon they had come. He testified that some fifteen minutes later he heard five more shots, apparently from a revolver, as they were discharged in rapid succession. Dr. Jose Lozada testified that about 10 o'clock on the night in question, he heard six or seven shots, and twenty minutes or half an hour later five others, but that he was unable to say from what class of weapons these shots were fired. This witness added that in his opinion it would have been impossible for the deceased to discharge his revolver after receiving the wounds which were inflicted upon him.

Jose Villanueva, the municipal president, testified that some days before the occurrence the deceased made complaint to him because the policemen were bothering his wife about cleaning up the yard of their house, and stated that he would take it upon himself to punish them. The witness advised him to present a formal complaint against the policemen if he had any difficulty with them, and, in order to avoid trouble, to refrain from making resistance to them. The witness stated that the deceased had a dispute with Corpl. Joaquin Lopez of the police on the 30th of October preceding, owing to the latter's having compelled the driver of Armitage's carronmta, which had been stopped in the middle of the street, to pull over to one side. On this occasion, the witness stated, Armitage struck the policeman, who reported the case to his superior officer. This witness further testified that an American interpreter named McCoy, who was employed by Captain Bough ton, and who had been present at this quarrel, told him that the corporal of police who had been assaulted by Armitage was in the right.

The evidence discloses beyond a doubt that the deceased was armed with a revolver on the night in question; and that when he and the policemen Bartolome' Magtibay and Gregorio Bauan met they discharged their respective weapons. As to the defendants, this fact has been admitted, and it has been shown that when Armitage's body was found he was holding in his right hand a revolyer containing five empty shells.

At about 10 o'clock at night on the 3d of November, 1902, shots were heard on two occasions within an interval of about half an hour, according to the testimony of a number of witnesses. On the first occasion, patrolmen Amposta and Dalauin were attacked. These men did not defend themselves but preferred to flee from their assailant, whom they did not recognize. On the second occasion an assault was made upon the other policemen, the defendants herein, by the deceased Armitage. After considering all the evidence in the case, we reach the conclusion that the deceased, Armitage, was the assailant, and that he was the one who fired the first shot in the encounter between himself and the defendants.

If it were true that the first three shots were discharged from a rifle or a shotgun, as some of the witnesses testified, OAving to the peculiar sound of the reports, and owing to the number of wounds in the breast, which caused the death of Armitage, it is to be believed that after receiving those wounds he would have been unable to discharge four or five shots from his revolver, and this is the opinion of the doctor who held the autopsy. Therefore, there being no evidence to the contrary, we find that Armitage was the assailant, as stated by the defendants in their testimony, which must be considered in the case as part of the evidence for and against them.

Upon this supposition, and it not appearing from the record that sufficient provocation was given by the policemen so assailed, it follows that the three essential requisites prescribed by paragraph 4, article 8, of the Penal Code, must be considered in their favor—that is, an unlawful assault, a reasonable necessity for the employment of the means used to repel or impede the attack, and lack of provocation on the part of those assaulted. It is not necessary, in order that the circumstance of unlawful assault may be considered present, that the defendants should have been wounded by the shots fired at them.

The accused gave the deceased no provocation to justify his firing at them, and they defended themselves with weapons similar to that used by the assailant, considering the distance, and we therefore concur in the opinion of the Solicitor-General that the defendants should be acquitted on the ground that the homicide was committed in self-defense.

After reaching this conclusion, it becomes unnecessary for us to pass upon the evidence concerning the holes in the hats the defendants wore on that night, or as to whether these holes were made by a bullet or by some sharp instrument, as stated by some of the witnesses who examined the hats.

The other defendant, Juan de Dios, was acquitted by the court below, and as his acquittal has become final we have nothing to do with the judgment with respect to him. The court below, however, convicted the appellants, condemning them to two years and four months of *prision correccional*, with the accessory penalties, and each of them to the payment of one-third part of the costs of the prosecution.

For the reasons stated above, we are of the opinion that the judgment appealed should be reversed and the defendants Bartolome Magtibay and Gregorio Bauan acquitted, with the costs of both instances *de officio*. So ordered.

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

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

