

[G. R. No. 19237. December 23, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
CATALINO PENGZON, DEFENDANT AND APPELLANT.**

D E C I S I O N

STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Bulacan, finding the appellant, Catalino Pengzon, guilty of the offense of murder, committed on the night of November 8, 1920, upon the person of one Federico Beltran, in the municipality of San Miguel, Province of Bulacan, and sentencing the appellant to undergo imprisonment for twenty years, *cadena temporal*, with the accessories provided by law, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs.

The offense which is the subject of prosecution in this case had its origin in a quarrel between the accused and the deceased over a game of dominos, in which they and two others participated on the date mentioned in the information. In this connection it appears that Claudio and Gabriel Sevilla are the owners of a billiard table which is maintained for the patronage of the public in a building of light materials fronting on the Consejo Street, in the barrio of San Jose, municipality of San Miguel, in the Province of Bulacan; and at the time of the occurrence which gave rise to this prosecution, said room was naturally a sort of lounging place for billiard players and other persons of the neighborhood seeking casual diversion.

On the night of the date mentioned, Federico Beltran was present at this place; and, after concluding a game of billiards in which he had been engaged, he turned to a table where a game of dominos was then being played between Nicanor Tecson and Felix Espina, and intimated a desire to join in the game of dominos. In reply one of the players suggested that he would need a partner, whereupon Beltran turned to Catalino Pengzon, the accused in

this case, and invited him to join in the game. The invitation was accepted, and the game accordingly proceeded with four around the table, Beltran and Pengzon being partners. In the course of the subsequent play Federico Beltran appears to have made one or more incorrect plays; and as a small sum of money was at stake, Catalino Pengzon became angry and threatened to withdraw from the game, saying that it would be better for one's money to be taken from him outright than for it to be lost in that way. To this ejaculation, Federico Beltran replied soothingly, to the effect that Catalino should not get mad as they would presently recover the lost money. Catalino, however, reiterated with emphasis, and with the addition of certain offensive words common in low life, that it would be better to be robbed outright. Upon this Federico Beltran, apparently himself becoming somewhat aroused, asked Catalino who it was with whom he was incensed, to which the latter replied "No one but you, who are my partner." Federico thereupon arose and reached for the accused, and the two came together in a momentary physical struggle, in the course of which Beltran, who was much the better man and possessed of some athletic skill, pinned Pengzon's arms behind his back and rendered him powerless.

At this moment Mariano David, a policeman of the barrio, appeared upon the scene. Observing this, the two combatants separated themselves from each other, and the altercation ceased. Upon inquiring into the nature of the trouble, David was told by some one that nothing was the matter and that the two were not fighting, the evident purpose of the spokesman being to make the impression on the mind of the policeman that the incident amounted to little or nothing. Nevertheless David noticed that Pengzon was in an excited state, and he accordingly required Pengzon to leave the billiard room and go home. Pengzon therefore, in company with David, withdrew from the billiard room to go to Pengzon's house.

As they passed out into the street, Pengzon noticed that he had lost some money out of his pocket in the course of the struggle; and he returned, so he says, to look around for it on the floor. The search for the money, if the incident really occurred, evidently caused only a momentary delay in his departure from the billiard room. When the two arrived in front of Pengzon's house, the policeman, Mariano David, disengaged himself and went home, and Pengzon presumably did likewise.

The policeman says that upon taking charge of Pengzon he searched him in order to ascertain whether he was carrying any side arm or cutting instrument but found him unarmed. The same witness further says that he also ascertained that Beltran was unarmed.

The incident above narrated must have occurred, so far as we are able to make out, at about 10:30 p. m.; and as soon as Pengzon had gone away under the conduct of the policeman, Beltran seated himself composedly on a bench in the billiard room and rested for a time as if nothing had happened. In the course, however, of about twenty minutes or half an hour, Isabel Sevilla, the wife of Beltran, came to call her husband to go home, as it was then getting late. Beltran, being apprised of her presence, arose and stepped out into the street, directing himself towards home and towards his wife.

At this point it should be stated that the billiard room stands at the intersection of Consejo Street, in the barrio already mentioned, and another street, which might more properly be called an alley. On the other side of this alley stands a barber shop, which was closed and therefore dark at the time of which we are now speaking. Isabel Sevilla, when her husband issued from the billiard room, was standing close to the corner of the billiard room, exactly across the alley from the barber shop, and in a good position to see what occurred immediately thereafter.

Well then, at the moment when Beltran had planted himself well in the street, the figure of Catalino Pengzon darted from under the raised shutter of the window of the barber shop, where he had been in wait, and confronted Beltran with knife in hand. Without a word of warning, and before his design could be discovered, he reached forward and made an upward and backward stroke with a knife, or dagger, inflicting a mortal wound in the left side of the deceased, reaching into the lungs. Having struck this blow, the accused fled. Beltran on the other hand staggered back and was caught in the arms of Hilario Pabalan, whose attention had been attracted to the scene from the billiard table.

We may add that the street was indifferently lighted at the time, but sufficiently so to enable one whose eyes had become adjusted to the darkness to identify at the distance of a few paces any person whose figure is already known. Isabel Sevilla says that as she came up to call her husband she saw a human figure under the raised shutter of the barber shop, but she took no notice of the circumstance at the moment.

Federico Beltran lived until late in the forenoon of the next day; and before death supervened, he made a dying declaration before three witnesses, in which he stated that he was dying and that he was stabbed in the dark by Catalino Pengzon as he was leaving the billiard room. Upon being further asked why he did not evade the attack he answered: "How could I evade him? I did not see him; it was dark and he approached me suddenly."

No attempt was made in behalf of the accused either in the trial in the court below or here to refute the fact that the death of Federico Beltran was caused by the accused ; but an effort is made to show that the accused acted in self-defense. To this end reliance is placed upon the testimony of the accused himself, which proceeds along the following lines: The accused is in substantial conformity with other witnesses in respect to the altercation over the game of dominos, and he admits that David, the policeman, took him out. He denies, however, that David conducted him home, and he insists that he returned immediately into the billiard room where the quarrel was renewed by the deceased. Thereupon the accused, in response to the suggestion of friends, started to retire, but was followed by the deceased who overtook him at the door and struck the accused on the neck with his fist. The accused returned the blow, but the deceased caught the accused by the hands and held him firmly. The accused then attempted to extricate himself by biting the hands of the deceased, but the latter got behind the accused and began pressing his neck with both hands, at the same time insulting him. Upon this the accused drew from his pocket a knife, which he contrived to open, and with it he struck the blow which produced death.

It is enough to dispose of this fabrication to say that we agree entirely with words of the able and experienced trial judge who presided in the court below, in which he brands this story of the accused as a mere fable, devoid of verisimilitude, and evidently invented by the accused himself. We may add that it is evidently made up of certain elements of fact involved in the original altercation but coupled with the complete suppression of the circumstance that he had been carried away from the place altogether and had returned fully a half an hour later. Even assuming the truth of his statement as to the manner in which he was held by the deceased in the last struggle, it is impossible that he could have had the freedom of movement necessary to enable him to draw, open, and use the knife with effect.

Other witnesses were introduced by the defense, whose testimony, properly considered, in no wise bears out the pretense of the accused that he acted in self-defense; but the same is worthy of consideration as tending to show that the homicidal assault was not qualified by *alevosia*. We refer to the testimony of Hilario Pabalan and Gabriel Sevilla. The first of these witnesses, evidently unfriendly to the prosecution, says that he saw the altercation that occurred within the billiard room and that the parties afterwards renewed the fight outside, thereby intimating that they were engaged in a mutual combat in the street at the time the fatal blow was struck. But the same witness admits that he was playing billiards and had his back turned when the trouble occurred outside and did not even know at what spot the assault was made. His attention was evidently first attracted by a cry or commotion which

occurred after the deceased stepped out, and upon looking in that direction, the witness saw the deceased already staggering from the blow. Gabriel Sevilla says that when the trouble occurred outside he was sitting at a place from which he could not see into the street, for the reason that there was a bamboo screen which intercepted his view. Nevertheless, as the deceased went out of the billiard room into the street, this witness heard him exclaim: "Are you going to attack?," words which supposedly were directed to the accused.

In our opinion there is nothing in the testimony of these witnesses which tends even in the slightest degree to impair the testimony for the prosecution as to the manner in which the deadly assault was made. Nay, it is evident from the testimony of these two witnesses themselves that there was no appreciable interval of time after the deceased stepped into the street and before the assault within which a mutual combat could have originated between the two antagonists; for if the meeting in the street had been casual, as the defense supposes, the accused would not have been able to draw his knife defensively and use it with effect in the time allowed even by his own witnesses. In our opinion he was evidently standing in wait under the eaves of the barber shop, armed with a long knife which he had provided for that purpose upon going to his house; and the deadly assault was without a doubt made suddenly and in the dark.

We may add that the only human beings who saw the tragedy besides the accused himself were the deceased and his wife Isabel Sevilla. Of the deceased we have the dying declaration, made with all solemnity and reduced at once to writing in the presence of three respectable and unimpeached witnesses. The testimony of Isabel Sevilla is clear and explicit, and devoid of material discrepancies, and she had a perfect opportunity to see how the attack was made. We note in this connection that one of the witnesses for the defense, Hilario Pabalan, corroborates Isabel Sevilla on the point that the electric light of the billiard room was shining out into the street through the open double doors of the billiard room in such manner as to make things visible outside, notwithstanding the fact that the street itself was only dimly illuminated from a single light some distance away: Isabel Sevilla therefore had no difficulty in recognizing the accused and observing the manner in which he made his attack on the deceased. This circumstance in no wise militates, however, against the truth of the statement contained in the dying declaration of the deceased to the effect that the assault was made in the dark; for of course the eyes of the deceased, upon emerging from the billiard room, were not adjusted to the darkness, and he was unable to see with the same precision as his wife.

It will not escape notice that the testimony of the policeman, Mariano David, is important, as

showing that the accused was taken home after the first altercation and that the period of about one half hour elapsed before the homicide occurred. This refutes the incredible story of the accused to the effect that the deceased followed him out of the billiard room after the first trouble and that the fatal encounter occurred immediately thereafter. Again, it is evident that the knife with which the homicide was committed was obtained by the accused upon his visit to his house, as he was unarmed at the time of the first encounter with the deceased.

These circumstances, with others that could be mentioned, absolutely impeach the version of the killing given by the accused and demonstrate the entire truthfulness of the statements made by the deceased and by Isabel Sevilla as to the manner in which the deadly assault was made: that is, suddenly, in the darkness, and without warning.

It results that the homicide was qualified by *alevosia*, and the trial judge was not in error in finding the accused guilty of murder under No. 1 of article 403 of the Penal Code. Sentences in which the supreme court of Spain has declared *alevosia* to be present in the act of homicide from the sudden and unexpected nature of the attack are too familiar and numerous to permit of extended comment, but the following citations taken from the later supplements to Viada's commentaries on the Penal Code will be found instructive. (5 Supp., p. 284, reporting decision of April 29, 1904; id., p. 285, reporting decision of June 30, 1904; id., p. 288, reporting decision of April 12, 1905; id., p. 289, reporting decision of October 12, 1906; 6 Supp., p. 265, reporting decision of July 6, 1910; 4 Supp., p. 326, reporting decision of May 3, 1901.) The doctrine deducible from these cases is that if the slayer makes a sudden and unexpected attack with a deadly weapon on an unarmed and unsuspecting victim under conditions which make it impossible for the party assailed to flee or make defense before the fatal blow is delivered, the act should be considered as qualified by *alevosia*.

In the case before us it is manifest that the comparative darkness of the street, to one emerging from a lighted room, as was the deceased, necessarily prevented him from observing the menacing attitude of the accused until the latter was actually upon him and the knife practically already in his side. Under these circumstances retreat or defense was impossible, and the obscurity of the night contributed to make the surprise more complete, as in *United States vs. Virrey* (37 Phil., 618, 628). Under such conditions the fact that the accused made the attack from the front is of no importance.

In fixing the penalty no attenuating or aggravating circumstance is to be taken into account;

for although the offense was committed in the nighttime, this circumstance supplies one of the conditions contributory to the element of *alevosia*, and it would not be proper again to use the same circumstance against the accused.

Although, as we have thus seen, the trial judge committed no error in declaring the accused guilty of murder; it is evident that his action in fixing the penalty at twenty years, *cadena temporal*, was wholly without warrant of law. Instead he should have imposed *cadena perpetua*, which is the penalty incident to murder in its medium degree.

The judgment, therefore, will be modified by substituting *cadena perpetua*, with the accessories incident thereto, for twenty years of *cadena temporal*, with the corresponding accessories; and as thus modified, said judgment will be affirmed, with costs against the appellant. So ordered.

Araullo, C. J., Johnson, Malcolm, Avanceña, Ostrand, Johns, and Romualdez, JJ., concur.

Villamor, J., reserves his vote.