

[G.R. No. 19561. January 22, 1923]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
VICENTE GUTIERREZ, DEFENDANT AND APPELLANT.**

D E C I S I O N

STATEMENT

The following information was filed against the defendant by the provincial fiscal in the Court of First Instance of the Province of Tarlac:

“That on or about the 11th day of March, 1922, in the municipality of Victoria, Province of Tarlac, Philippine Islands, the aforesaid accused voluntarily and criminally, and acting treacherously and with known premeditation, armed beforehand and concealing a loaded revolver in readiness, and with an evident intent of killing, which he had conceived and resolved before the event, did kill one Basilio Agustin upon an occasion purposely selected by the accused, namely, one when the deceased was riding a carabao pulling a cart and was driving it, and while he had his back turned towards the accused, the latter thus insuring his death without any risk to the person of the accused from the resistance that might be offered by the deceased Basilio Agustin, by firing a revolver shot to the deceased which caused him a first degree burn upon the left cheek and an open wound in the center of the said burn of about 1½ centimeters, another open wound in the middle of the forehead about 3 centimeters long by 1 centimeter wide, another circular contusion on the left temple, another bigger contusion on the anterior base of the left ear and one semicircular ecchymosis at the internal corner of the left eye; the wounds upon

the left cheek and on the forehead being of necessity mortal, as a consequence of which the said Basilio Agustin died in the act; that the accused performed the act with the aggravating circumstances of having committed the crime at nighttime, and in an uninhabited place, because he selected a place without inhabitants and the nighttime to facilitate and insure the execution of the crime which he committed at the place, time and manner aforesaid.

“Contrary to law.”

Upon which he was tried and convicted of the crime of homicide and sentenced to 14 years, 8 months and 1 day of *reclusion temporal*, to suffer the accessory penalties provided for in article 59 of the Penal Code, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs, from which he appeals, claiming; first, that “the lower court erred in holding that the accused-appellant was the ‘tall and robust man’ who shot Basilio Agustin;” second, in holding that an innocent man would not tremble in the presence of the corpse of the deceased; third, in holding that the excessive zeal of the accused in complying with the order of his principal, not to permit anyone to pass over the latter’s land or ditch was the motive which induced the defendant to kill Basilio Agustin; and, fourth, in convicting the accused of the crime.

JOHNS, J.:

The evidence for the prosecution tends to show that on a moonlight night on the 11th of March, 1922, Basilio Agustin and his wife were driving on a *carreton* over a parcel of land belonging to one Eulalio Calma on their way to the town of Paniqui, Tarlac, when they were stopped by the defendant, who asked them why they were driving on that road, and they told him that they were going through that way because they knew it was the right way. The defendant told them to turn back, and, mounting on their *carreton*, told them that he would show them the right way. The deceased mounted his carabao and turned it back, and the defendant seated himself on the front of the *carreton* beside the wife of, and behind, the deceased. After going a distance of about two hundred meters on their way back, the deceased turned his face towards the defendant and asked him whether the way which they were travelling was the right way, to which the defendant replied yes, and at once fired a shot at the left

cheek of the deceased from a revolver, and the deceased fell, the carabao ran away, and the defendant leaped from the *carreton* to the ground. That they were riding in the *carreton* for about half of an hour; that the wife of the deceased was able to recognize the defendant because it was a moonlight night; that the carabao was finally stopped by Flaviano Toquero, and the wife alighted and with Toquero went back to the place where her husband fell and found him dead; and that a complaint was at once made to the authorities. On the following morning the justice of the peace and several policemen of the municipality went to the place for the purpose of investigating the crime; that the policemen saw the defendant, who at first did not come near them, but finally did on the call of the sergeant; that when questioned about the crime he began to tremble; that the policemen took him to the place where the deceased was; that the wife of the deceased at a distance of about ten meters pointed out and recognized the defendant as the man who killed her husband; and that the defendant denied the commission of the crime, refused to look at the corpse and trembled with fear.

The trial court who heard and saw the witnesses testify found the defendant guilty. The testimony of the wife of the deceased is clear, positive and convincing, and is materially corroborated by the actions and conduct of the defendant when found by the policemen on the following morning in the vicinity of the crime. The testimony on behalf of the defendant is doubtful and evasive, and does not carry conviction. In its final analysis, the stubborn fact remains that Basilio Agustin was killed, and his wife identifies the defendant as the person who rode with them in the *carreton* and fired the fatal shot. Up to that time the parties were strangers, and there is nothing in the record to impugn her motive, and her evidence is materially corroborated by the subsequent conduct of the defendant. It is true that the motive of the defendant for killing the deceased is not apparent, and is more or less one of conjecture. Whatever the reason may have been, the deceased was killed, and the evidence shows the guilt of the defendant beyond a reasonable doubt. It is possible and even probable that it was the result of a wordy quarrel between the deceased and the defendant as to whether the road in question was a public or private road. Under all of the surrounding circumstances, we cannot agree with the Attorney-General for an increase in the penalty.

The judgment of the lower court is affirmed, with costs. So

ordered.

Araullo, C.J., Street, Malcolm, Avanceña, Villamor, Ostrand,
and *Romualdez, JJ.,* concur.

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