

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CONSTANTE ANIES Y FABRO, DEFENDANT-APPELLANT.

G.R. No. L-30882. October 29, 1982

Ponente: MAKASIAR, Actg. C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/04bd2ed8e065/>

MAKASIAR, Actg. C.J.:

Automatic review of the death sentence with accessory penalties imposed on August 4, 1969 upon accused-appellant Constante Anies by the Circuit Criminal Court, Seventh Judicial District, Pasig, Rizal, in Criminal Case No. CCC-VII-153-Quezon City (9467) for the murder of Jaime Cruz.

The information for murder, filed on April 26, 1969 (p. 3, rec.), alleges:

"That on or about the 25th day of April, 1969, in Quezon City, Philippines, the above-named accused, without any justifiable cause, qualified by evident premeditation and treachery, with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, assault, and employ personal violence upon one JAIME CRUZ y PAULINO by then and there shooting him on the different parts of his body with a gun, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said JAIME CRUZ in such amount as may be awarded to them under the provisions of the Civil Code.

"Contrary to law."

On May 20, 1969, accused was arraigned and pleaded not guilty to the offense charged (p. 5, Folder of Exhibits, Crim. Case No. CCC-VII-153-QC [9467]).

After due trial, the lower court found accused Constante Anies guilty beyond reasonable doubt of the crime of murder qualified by treachery, and aggravated by evident premeditation. Consequently, the trial court sentenced him to death and to indemnify the heirs of the deceased, Jaime Cruz, in the amount of P12,000.00 and to pay the costs. Accused-appellant claims that:

"1. The trial court erred when it failed to take into account the lameness of accused's leg in determining the reasonableness of the means employed by him in defending himself against aggression by the deceased;

"2. The trial court erred when it ruled that the accused killed the deceased Jaime Cruz y Paulino with evident premeditation;

"3. The trial court erred when it ruled that the killing was committed with treachery;

"4. The trial court erred when it concluded from the accused's possession of the licensed firearm of his landlord that said accused was possessed of 'criminal instinct' notwithstanding the fact that said accused was not lawfully charged with illegal possession of firearm."

It is not disputed that Jaime Cruz was shot to death at about 12:15 in the early morning of April 25, 1969 by herein accused-appellant. The nature and character of the wounds sustained by the deceased are stated in the necropsy report of Dr. Alberto M. Reyes, who per-formed the autopsy that same day, April 25, 1969, thus:

"Pallor, conjunctivae, nailbeds and integument.

"Gunshot wounds: I. Entrance, buccal region, right 6.5 cm. below and 5.6 cm. anterior to the external auditory meatus, right, oval in shape, edges inverted, 0.9 x 1.0 cm. in size including a contusion collar widest (0.1 cm) at its supero-anterior border, directed backward, downward and slightly laterally, involving skin and underlying soft tissues, fracturing the jaw, right, coursing subcutaneously for a short distance, and making an exit at the neck, right side, lateral aspect, 9.5 cm. below and 3.4 cm. posterior to the external auditory meatus, right, roughly oval in shape, edges everted, 1.0 x 1.4 cm. in size.

"II. Entrance, malar region, right side, 6.0 cm. from the posterior median line, 146.0 cm. above the heel, right oval in shape, edges inverted, 1.0 x 1.4 cm. in size including a contusion collar widest (0.3 cm.) at its supero-medial border, directed backward, downward and laterally, involving skin and underlying soft tissues, with the slug lodged and recovered subcutaneously at the suprascapular region, right, 142.0 cm. above the right heel, 9.0 cm. from the posterior median line.

"III. Entrance, infraclavicular region, right, 140.0 cm. above the right heel, 3.8 cm. from the anterior median line, oval in shape, edges inverted, 0.9 x 1.0 cm. in size including a contusion collar widest (0.1 cm.) at its supero-medial border, directed backward, downward and slightly laterally, involving skin and soft tissues, penetrating the right chest between the lower border of the clavicle and the upper border of the 1st rib along the parasternal line, perforating the upper lobe of the right lung, making an exit at the interscapular region, right side, 157.0 cm. above the right heel, 6.5 cm. from the posterior median line, slit-like in shape, edges everted, 0.7 x 1.1 cm. in size.

"IV. Entrance, sternal region, left, 139.0 cm. above the left heel, 1.5 cm. from the anterior median line, oval in shape, edges everted, 0.9 x 1.1 cm. in size, including a contusion collar widest (6.2 cm.) at its supero-medial border, directed backward, downward and laterally, involving skin and soft tissues, perforating the sternum, left side, level of 1st rib, and the lung, left, upper lobe, penetrating the 7th interspace and grazing the lower border of the 7th rib along the mid-scapular line, making an exit at the infrascapular region, left, 131.0 cm. above the left heel, 6.6 cm. from the posterior median line, slit-like in shape edges everted, 0.8 x 1.1 cm. in size.

"V. Entrance, infraclavicular region, left, 142.5 cm. above the left heel, 12.5 cm. from the anterior median line, oval in shape, edges inverted, 0.9 x 1.0 cm. in size including a contusion collar widest (0.1 cm.) at its supero-medial border, directed backward, downward and laterally, involving skin and underlying soft tissues, making an exit at the suprascapular region, left, 140.0 cm. above the left heel, 14.5 cm. from the posterior median line, slit-like in shape, edges everted, 0.7 x 1.0 cm. in size.

"VI. Entrance, epigastric region, right side, 120.0 cm. above the right heel, 6.3 cm. from the anterior median line, oval in shape, edges inverted, 0.9 x 1.1 cm. in size, including a contusion collar widest (0.2 cm.) at its supero-medial border, directed backward, downward and slightly laterally involving skin and underlying soft tissues, penetrating the 6th interspace left along the parasternal line, perforating the liver, right lobe and the kidney, right, making an exit at the infrascapular region, right, 115.0 cm. above the right heel, 6.8 cm. from the posterior median line, roughly oval in shape, edges everted, 1.0 x 1.4 cm. in size:

"Hemothorax, right, about 1,200 cc., and left, about 280 cc..

"Hemoperitoneum, about 460 cc..

"Heart, empty.

"Brain and other visceral organs, pale.

"Stomach, half full of brownish liquid.

- - - -

"Cause of Death: Multiple gunshot wounds of the body" (pp. 68-69, Folder of Exhibits).

The facts disclosed by the prosecution's evidence are more or less as follows: On April 24, 1969 at around 9:00 o'clock in the evening, Jaime Cruz, wearing a white polo shirt, arrived at the Daling's Restaurant at 837-D Epifanio delos Santos Avenue, Quezon City. He sat before one of the tables and called a waitress, Belen Gacias, to whom he gave his order for a bottle of beer. While drinking, a man named Paquing Magsino of Motorpool, Quezon City entered the restaurant. Jaime Cruz greeted Paquing Magsino and the latter joined him in his table. Jaime Cruz ordered another bottle of beer from the waitress, Belen Gacias for Paquing Magsino. Thus, the two drank together (Exh. "C", Statement of Belen Gacias, p. 65, Folder of Exhibits).

After about an hour, a group of six (6) persons including the accused-appellant Constante Anies arrived and occupied a table next to that of Paquing Magsino and Jaime Cruz. The group ordered six (6) bottles of beer and "pulutan." When their order came, they drank and ate together (Exh. "C").

At about 12:10 in the early morning of April 25, 1969, the group of six (6) persons paid their bill and prepared to leave. As they were about to leave, accused-appellant Constante Anies approached Jaime Cruz, face to face, pulled a gun from his waist and fired five (5) successive shots at Jaime Cruz. At that precise moment, Jaime Cruz was seated and in the process of lighting a cigarette and facing the counter. Paquing Magsino was then in the comfort room (Exh. "C"). There was no previous exchange of words before the shooting incident (t.s.n., June 9, 1969, p. 19). Accused-appellant Constante Anies shot Jaime Cruz from a distance of about one and one half meters only (p. 18, t.s.n., June 9, 1969; Exh. "E" - Chemistry Report No. C-69-503, p. 76, Folder of Exhibits).

Upon being shot, the victim Jaime Cruz fell, face down. Accused-appellant ran away in a limping manner but was chased and arrested by Sgt. Domingo (or Dominador) Castro, the owner of Daling's Restaurant. In the ensuing commotion, the companions of accused-appellant also ran away and disappeared (Exh. "C"; p. 22, t.s.n., June 9, 1969).

As a result of the multiple gunshot wounds he sustained, Jaime Cruz died almost instantly (p. 11, t.s.n., June 10, 1969).

Meanwhile, at about 12:15 A.M. of April 25, 1969, or a few minutes after the shooting incident, a report was received by the Desk Officer of the Detective Bureau regarding a shooting incident at Daling's Restaurant located at 837-D Epifanio delos Santos Avenue near Timog Avenue, Quezon City. Sgt. Pablo Pascual, a detective of the Quezon City Police Department, prepared to leave in order to investigate and conduct an ocular inspection of the scene of the crime. However, before he could proceed to the scene of the crime, Sgt. Dominador Castro arrived together with accused-appellant Constante Anies. Sgt. Castro informed them that he arrested Constante Anies about 100 meters away from the crime scene. Sgt. Castro turned over to them a nickel-plated .38 caliber automatic pistol with Serial No. 4-9946, the gun allegedly used by accused-appellant Constante Anies in shooting Jaime Cruz.

Sgt. Pascual went to the scene of the crime and found the prostrate body of Jaime Cruz. He prepared a sketch of the crime scene and searched the body of the victim but was not able to find any weapon. At the scene of the crime, he found two members of the Quezon City Mobile Patrol Bureau, some bystanders and waitresses around the body of the victim. Searching for evidence inside the restaurant, he was able to recover one (1) slug while the members of the Mobile Patrol Bureau were able to recover one (1) empty shell of .38 caliber pistol. They also found five (5) empty cartridges at the scene of the crime marked as Exhibits "G-2", "G-3", "G-4", "G-5" and "G-6", which, together with the slug, the empty shell and the nickel-plated .38 caliber pistol, were submitted to

the NBI for examination (pp. 4-9, 16, 22 & 23, t.s.n., June 9 & 10, 1969).

Sgt. Pablo Pascual returned to the office of the Detective Bureau at around 1:10 that early morning of April 25, 1969 and investigated waitress Belen Gacias, who executed a written statement consisting of two pages marked Exhibit "C".

Likewise, at around 5:45 that same morning of April 25, 1969, Sgt. Pablo Pascual took the statement of accused-appellant Constante Anies (Exh. "A" - Statement of Constante Anies, pp. 61-62, Folder of Exhibits). The statement was taken in the presence of Atty. Maximo Savellano and other police officers who were going in and out of the investigation room as the accused-appellant was giving his statement. As a matter of fact, Atty. Maximo Savellano signed as one of the witnesses of accused's statement on each and every page thereof (Exh. "A"; pp. 13--15, t.s.n., June 9, 1969).

At the time Sgt. Pascual investigated accused-appellant Constante Anies, the latter was not drunk. Accused-appellant stated that he had drunk only a bottle of beer (p. 14, t.s.n., June 9, 1969) and that he and the victim Jaime Cruz did not know each other, neither did they have any quarrel before the shooting incident (p. 14, t.s.n., June 9, 1969; p. 15, t.s.n., July 9, 1969).

Thus, in the aforementioned written statement (Exh. "A") that accused-appellant executed, he admitted the killing of the victim Jaime Cruz. He further declared that on the evening of April 24, 1969 and shortly before midnight, he and his five (5) friends went to Daling's Restaurant to drink beer; that they occupied one (1) of the tables which was next to a table occupied by four (4) men who were also drinking beer; that past 12:00 o'clock midnight and while they were drinking, he heard someone from the table next to them whispering the threatening "Gusto ko nang tirahin ang nasa likod ko na nakaputi," apparently referring to him; that he turned his back and saw the victim Jaime Cruz looking at him in a threatening manner; that he stood up when he saw Jaime Cruz suddenly thrusting his hand inside his pocket; that for fear of being attacked (tirahin), he suddenly drew with his left hand a gun tucked in his left waist, cocked it and fired at the victim five (5) times; that thereupon, he and his five (5) companions fled but a policeman gave chase and when overtaken, he did not resist the arrest and surrendered the fatal gun; that the victim was seated facing towards him and with the victim's right hand inside the pocket; that the above-said gun (.38 caliber pistol) was owned and licensed in the name of Evangelo Savellano, his roommate.

Belen Gacias, 18 years old, single, waitress at the Daling's Restaurant, testified that at around 12:00 in the early morning of April 25, 1969, accused-appellant Constante Anies, after paying their drinks, suddenly stood up and shot the victim Jaime Cruz five (5) times at a distance of about one and one-half (1½) meters. The victim, who was sitting alone at his table, was facing the counter and in the process of lighting a cigarette when frontally shot by accused-appellant with a short, chromium-plated gun. After shooting the victim Jaime Cruz who fell down, accused-appellant Constante Anies ran in a limping manner and his five (5) companions likewise fled from the scene of the crime. However, Sgt. Domingo Castro (also referred to as Dominador Castro) also of the Quezon City Police Department and the owner of Daling's Restaurant, gave chase and succeeded in arresting the accused.

There was no exchange of words before the shooting incident either among the group of accused-appellant Constante Anies or between said group and the victim Jaime Cruz (pp. 16-30, t.s.n., June 9, 1969).

Dr. Alberto M. Reyes, Medico-Legal Officer of the National Bureau of Investigation testified that he conducted the post mortem examination on the corpse of the victim Jaime Cruz, and set forth his findings in Necropsy Report No. N-69-559 consisting of two pages, marked Exhibit "D" afore-quoted (pp. 68-69, Folder of Exhibits). He had photographs taken of the dead body under his direct supervision and control (Exhs. "D-1", "D-2", "D-3", "D-4" and "D-5", pp. 70-75, Folder of Exhibits). The post mortem examination showed that there were six (6) gunshot wounds on the body with entries marked as Exh. "D-5a", "D-2a", "D-2b", "D-2c", "D-2d", and "D-2e"

(pp. 72-73, Folder of Exhibits). He recovered a slug marked Exhibit "D-5b" (p. 70, Folder of Exhibits) from gun-shot wound No. 2 marked as Exhibit "D-5a" and the same was submitted to the National Bureau of Investigation Ballistics Division for examination. He believes that gunshot wound No. 2 marked as Exhibit "D-5a" is a re-entry wound, that is the reason why the direction of the wound is slightly bent. In other words, the same bullet which caused the wound marked Exhibit "D-2a" could have caused wound No. 2 marked Exhibit "D-5-2". Likewise, he stated that the gunshot wounds marked Exhibits "D-2c", "D-2d" and "D-2e" have the same diameter and they all correspond to a .38 caliber bullet. He also believes that any of the gunshot wounds could have caused the immediate death of the victim. Judging from the trajectory of the bullets causing the gunshot wounds, Dr. Reyes testified that the assailant was possibly in front and slightly on a higher level than the victim. It is possible that the victim was sitting down when fired upon by the assailant. The wounds on the body of the victim could have been inflicted frontally. He further opined that any of the six (6) gunshots could have caused the victim to move from his position (pp. 8-14, t.s.n., June 10, 1969).

As set forth in the Toxicology Report No. T-69-517 marked Exhibit "F", the victim was found to have alcohol in his blood (p. 77, Folder of Exhibits).

Erdulfo M. Grimares, a ballistic expert of the National Bureau of Investigation, testified that Sgt. Pablo Pascual of the Quezon City Police Department submitted to their office a pistol caliber .38 with Serial No. 4-9946 (Exh. "G-1"), five /5/ fired cartridge cases caliber .38 (Exhs. "G-2", "G-3", "G-4", "G-5" and "G-6"), one /1/ deformed jacketed bullet (Exh. "G-7"), and two /2/ cartridge cases (Exh. "G-8"). The specimens were duly examined and the findings are set forth in a Ballistics Report No. B-255-469 (Exh. "G").

From the laboratory examination he conducted, he found that the five /5/ cartridges (Exhs. "G-2", "G-3", "G-4", "G-5" and "G-6") and the test cartridges of the evidence firearm, showed similar individual characteristics. Likewise by making a comparison between the deformed jacketed bullet (Exh. "G-7") and the test bullet, he found that the evidence bullet had been fired from the firearm marked Exhibit "G-1", the gun used by the appellant in shooting the victim (pp. 14-21, t.s.n., June 10, 1969).

Accused-appellant Constante Anies testified that past 11:30 in the evening of April 24, 1969, accused-appellant, carrying with him a .38 caliber Browning pistol of his roommate, Evangelo Savellano, left the house to visit a cousin of his. Admittedly, the gun was taken out without the prior consent and knowledge of the owner. From his cousin's house, accused-appellant took a ride and alighted in front of Meralco because he was hungry then (p. 10, t.s.n., July 9, 1969). He entered a certain restaurant (Daling's Restaurant) and ordered bread, pansit and a bottle of beer.

While he was eating, two men came in and occupied the table next to him. He recognized the two men as "Ceto" or Aniceto Velasco (erroneously known and referred to by Appellant as Aniceto "Nolasco") and Jaime Cruz. Jaime Cruz greeted him and ordered beer (pp. 4-6, t.s.n., July 9, 1969).

A few minutes later, Jaime Cruz kicked his (appellant's) chair with the former's left foot. He turned his back and saw Jaime Cruz who was drinking beer with four (4) companions and looking at him sharply. Jaime Cruz stood up and approached the accused-appellant Constante Anies. As Jaime Cruz approached the accused-appellant, he (Jaime Cruz) uttered the words "Yayariin natin siya" and acted as if to pull something from his right pocket. Accused-appellant Constante Anies also stood up and sensing that he was in a precarious situation considering his being lame, pulled the gun inside his pocket, cocked it and fired at the victim face to face (pp. 6-8, t.s.n., July 9, 1969).

After shooting the victim, accused-appellant left the restaurant to surrender to the Police Headquarters. However, he was not able to reach the headquarters as a policeman overtook him and he surrendered voluntarily (pp. 22-23,

t.s.n., July 9, 1969).

At the Police Headquarters, he gave a statement to the police officer in connection with the shooting incident (Exh. "A", pp. 61-62, Folder of Exhibits). He called Atty. Maximo Savellano but the latter arrived only after he had given his written statement. Accused-appellant affixed his signature without reading the written statement he had given as he was requested to do so (pp. 14--17, t.s.n., July 9, 1969).

This version was supported by Aniceto Velasco (also referred to as Aniceto "Nolasco" in the record). Aniceto Velasco testified that on that fateful night of April 24, 1969, he went to Daling's Restaurant with two (2) companions. While in said restaurant, accused-appellant Constante Anies, only known to him as "Tante Pilay," invited him and his two companions to join the former's table. While they were in the restaurant, he noticed that there seemed to be a quarrel in the table next to them. He heard the victim Jaime Cruz uttering bad words (meron pong nagmumura). He said that after Jaime Cruz uttered bad words, the latter stood up with right hand inside his pocket and kicked the chair of accused-appellant Constante Anies. He further testified that accused-appellant Constante Anies stepped back and pulled a gun from his waistline and fired at Jaime Cruz (pp. 9-11, t.s.n., July 16, 1969).

As already stated, the trial court convicted the accused-appellant of murder. The trial court rejected the appellant's plea of self-defense. It did not believe the testimony of appellant and defense witness Aniceto Velasco but gave more weight to the extra-judicial declaration (Exh. "A") made by the appellant and the testimonies of the prosecution witnesses.

The trial court correctly rejected appellant's version. The testimonies of the appellant and his alleged companion at the time of the bloody incident cannot prevail over the unbiased and categorical extra-judicial statement of Belen Gacias, the waitress, who executed her written statement at about 1:10 in the early morning of April 25, 1969, about one hour from 12:10 that same early morning, the time of the shooting, and who undisputedly was an eyewitness to the shooting incident. She was certainly in a position to see what occurred, and no reason has been adduced to explain why she would testify falsely against the appellant. It is also difficult to believe that she could have concocted such a detailed narration of events against the appellant within a short period of time.

In the above-said extra-judicial statement executed by Belen Gacias shortly after the killing, she declared that it was appellant Constante Anies who suddenly stood up from his seat, walked towards the victim Jaime Cruz, pulled a gun from his waist and fired at the victim face to face. The victim who was sitting alone at the table was in the process of lighting his cigarette (Exh. "C", p. 65, Folder of Exhibits; underscoring supplied).

WE find the aforesaid extra-judicial statement of the waitress Belen Gacias more credible. She was unquestionably an eyewitness to the crime and was only about four (4) meters from the accused-appellant when the latter shot the victim (Exh. "C").

Likewise, during the trial, Belen Gacias positively testified that the victim was seated when fired upon by the accused-appellant.

Thus:

"Q: Do you know what Jaime Cruz was doing when Constante Anies fired the first shot?

A: He was sitting and lighting a cigarette" (p. 18, t.s.n., June 9, 1969; underscoring supplied).

The above-mentioned extra-judicial statement and testimony of Belen Gacias are strongly supported by other evidence borne out by the records. Firstly, there is the post mortem findings and the testimony of the medico-legal expert, Dr. Alberto Reyes, which show that the victim was possibly sitting down when shot as shown by the

gunshot wounds suffered by the victim which were directed backward and downward (Exh. "D" - Necropsy Report, p. 68, Folder of Exhibits; p. 9, t.s.n., June 10, 1969; underlining supplied).

In other words, the number, nature and location of the gunshot wounds sustained by the deceased belied the claim of appellant and are incompatible with his theory of self-defense.

Secondly, no less than the accused-appellant himself declared in his extra-judicial statement executed before the police officer at around 5:45 in the morning of April 25, 1969 or barely five (5) hours after the killing that the victim was seated when he fired at him.

Thus, he declared during the investigation:

"T: Ano ang ayos ng taong iyong binaril nang siya ay paputukan mo ng baril?

S: Nakaupo nang paharap sa akin na ang kamay niyang kanan ay nasa bulsa."

(Exh. "A", p. 61, Folder of Exhibits;

underscoring supplied).

Appellant attempted to neutralize the damaging effect of his own extra-judicial declaration by testifying that he affixed his signature without reading the contents thereof as he was requested to do so. WE find this claim incredible. His testimony is rebutted by the testimony of the investigator who testified that he (appellant) was even assisted by Atty. Maximo Savellano, the brother of his roommate and/or landlord Evangelo Savellano. Atty. Maximo Savellano in fact signed every page of said written statement. Moreover, appellant is not so ignorant that he did not fully realize the consequences of his act in affixing his signature without reading the contents thereof. He was a third year A.B. student of a prestigious college in Manila, San Juan de Letran College, at the time of the occurrence.

It is likewise significant to note that there are several other indications in the record which render the testimony and the theory of appellant incredible. Firstly, appellant, when queried by the trial court, intimated that he arrived in Daling's Restaurant earlier than the victim Jaime Cruz, who was with a companion (p. 4, t.s.n., July 9, 1969).

However, when asked by his counsel, appellant said that the victim was with four (4) companions and were already inside the restaurant when he arrived (pp. 11-13, t.s.n., July 9, 1969).

Thus:

"ATTY. BACLIG:

By the way, when you entered that restaurant, do you know, or do you remember if the deceased and his companions were already at the restaurant?

"A They were already there, sir.

xx xx xx

"Q How many persons were the companions of the deceased?

"A They were four, sir."

(Pp 11-12, t.s.n., July 9, 1969).

Secondly, at the time appellant gave an extrajudicial statement, he admitted having companions (Exh. "A-1", p. 61, Folder of Exhibits). However, during the trial, he testified that he was alone when he entered the restaurant

(pp. 3 & 18, t.s.n., July 9, 1969).

Thirdly, accused-appellant Constante Anies, in the above extra-judicial statement that he executed, declared that he shot the victim at a distance of about three (3) meters.

Thus:

"T: Gaano ka kalayo sa taong iyong binaril nang siya ay paputukan mo?

"S: Mga tatlong metro po siguro"

(Exh. "A", p. 62, Folder of Exhibits).

During the trial, he maintained that he shot the victim at a distance of about three (3) meters.

"COURT:

Q: How far from were you when you shot the victim?

A: More or less three (3) meters, sir" (p. 12, t.s.n., July 9, 1969).

This was correctly brushed aside by the trial court as it contradicts the findings set forth in the Chemistry Report (Exh. "E", p. 76, Folder of Exhibits). The above-said Chemistry Report shows that the possible gunshot range is within a distance of only thirty-six (36) inches or about one and one-half (1½) meters only as confirmed by eyewitness Belen Gacias.

Moreover, accused-appellant testified that Aniceto (Nolasco) Velasco was a companion of the victim Jaime Cruz at the time of the incident.

Thus, appellant declared at the trial:

"Q: Do you know the companions of Jaime Cruz?

A: Yes, sir.

Q: What is his name, if you know?

A: Ceto, sir.

Q: What is his full name, if you know?

A: Aniceto Nolasco, sir.

Q: Where is this Aniceto Nolasco living, if you know?

A: He is living at Kundiman St., Sampaloc, Manila, sir" (pp. 4-5, t.s.n., July 9, 1969; underlining supplied).

The above-mentioned testimony is directly in conflict with the testimony of Aniceto Velasco, who testified that he (Aniceto Velasco) was with the accused appellant at the time of the shooting incident.

"Q: Who invited you when you arrived at that restaurant, the accused Anies, the deceased, Jaime Cruz, or his group?

A: Constante Anies called us to join their table, sir.

Q: And, did your group join the accused, Anies, in their table?

A: Yes, sir.

(Pp. 16-17, t.s.n., July 16, 1969; underscoring supplied).

As correctly pointed out by the Solicitor General, the sole issue in question is the claim of the accused-appellant that he acted in self-defense.

The trial court rejected appellant's plea of self-defense, and instead accorded credence to the testimonies of the prosecution witnesses particularly Belen Gacias, the eyewitness as well as the extrajudicial declaration of appellant (Exh. "A").

As correctly observed by the trial court, the number, nature and location of the gunshot wounds sustained by the deceased corroborate the testimonies of the prosecution witnesses and are incompatible with the theory of the appellant. This observation is fully supported by well-established jurisprudence on the matter. In a long catena of authorities, this Court constantly ruled that the number, nature and location of the wounds on the body of the deceased as shown by the autopsy report may expose the inherent weakness of the claim of self-defense. This has been consistently held by this Court over a span of 60 years (People vs. Ardisa, L-29351, Jan. 23, 1974, 55 SCRA 245, 254; People vs. Panganiban, Feb. 27, 1968, 22 SCRA 817, 823-24; People vs. Mendoza, Jan. 30, 1965, 13 SCRA 11).

This Court is constrained to pronounce the time-honored ruling recently reiterated in the case of People vs. Pay-an (L-39089-90, July 31, 1978, 84 SCRA 353, 362), thus:

"Self-defense, like alibi, is a defense which can easily be concocted. It is well-settled in this jurisdiction that once an accused had admitted that he inflicted the fatal injuries on the deceased, it was incumbent upon him, in order to avoid criminal liability, to prove the justifying circumstance claimed by him with clear, satisfactory and convincing evidence. He cannot rely on the weakness of the prosecution but on the strength of his own evidence, 'for even if the evidence of the prosecution were weak it could not be disbelieved after the accused himself had admitted the killing.'"

Verily, appellant's plea of self-defense cannot prevail over the clear and convincing testimony of the prosecution witnesses (People vs. Cagod, L-36016, Jan. 18, 1978, 81 SCRA 110, 115).

Appellant claims that the trial court erred when it failed to take into account his being lame in determining the reasonableness of the means employed by him in defending himself against aggression by the deceased.

Suffice it to emphasize that a determination of the second requisite of self-defense -- reasonable necessity of the means employed to prevent or repel the attack, is only indispensable if the element of unlawful aggression is present. Thus, "unlawful aggression is the main and most essential element to support the theory of self-defense and the complete or incomplete exemption from criminal liability; without such primal requisite it is not possible to maintain that a person acted in self-defense within the terms under which unlawful aggression is subordinate to the other two conditions named in Article 8, No. 4 (now Article 11, par. 1) of the Penal Code (U.S. vs. Carrero, No. 3956, Jan. 10, 1908, 9 Phil. 544, 546)."

The alleged aggression on the part of the deceased was not established. Hence, "there is no occasion to speak here of the 'reasonable necessity of the means employed' or of 'sufficient provocation' on the part of one invoking legitimate self-defense; because both circumstances presuppose unlawful aggression which was not present in the instant case" (People vs. Yuman, No. 43469, Aug. 21, 1935, 61 Phil. 786, 788).

If there was any aggression at all, the same could not have come from the deceased who was alone sitting at his table as his lone companion was in the comfort room at the time of the occurrence.

WE fully agree with the observation of the trial court that it is highly inconceivable for the deceased, who had at that time a lone companion to dare perform any act that would provoke a fight with appellant's group of six (6) persons. It would be sheer foolhardiness, if not totally a suicidal act, inasmuch as the deceased was completely unarmed at the time of the occurrence. In the language of the trial court, it certainly would require a lot of guts on the part of the deceased.

Appellant claimed that he heard the threatening remarks uttered by the deceased that 'Gusto ko nang tirahin itong nasa likod ko na nakaputi' and was sure that deceased was referring to him because when he turned around, he saw the deceased looking at him sharply. As above-noted, We find it highly incredible considering the numerical superiority of the group of the appellant. At most, deceased must have accidentally hit the chair of appellant it appearing that the seating arrangement of the tables was such that the table occupied by the deceased was next to that occupied by the appellant.

Besides, even admitting that the deceased kicked appellant's chair, uttered the threatening remarks "Yayariin natin siya," stood up and acted as if to pull something from his pocket, such actions do not warrant the appellant's act of shooting the victim who was completely unarmed. Such attitude and behavior do not constitute the unlawful aggression contemplated under paragraph 1, Article 11 of the Revised Penal Code, that would justify an act of the accused to snuff out the life of the victim.

"In order to consider that an unlawful aggression was actually committed, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause an injury shall have been made; a mere threatening attitude or intimidating attitude is not sufficient to justify the commission of an act which is punishable per se, and allow a claim of exemption from liability on the ground that it was committed in self-defense" (U.S. vs. Guy-sayco, No. 4912, March 25, 1903, 13 Phil. 292, 295, 296).

Moreover, in the case of U.S. vs. Carrero, supra, it was held that "the theory that by the simple belief of a person that he would be attacked, a deadly blow may be inflicted on the ground of self-defense, even though it be with a stick, is not authorized by the law nor is it a doctrine established by the decision of courts. In the judgment of the supreme court of Spain, dated October 31, 1889, not only was the belief of the individual who was obliged to defend himself considered but also the hostile attitude and other acts which, in the opinion of the court, were considered as real and ostensible acts of aggression; and in other decisions of October 30, 1884, March 19, 1885, and November 15, 1889, a uniform doctrine was established to the effect that a threat even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient, but that it is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression."

WE are not unmindful of the decision of the Supreme Court of Spain to the effect that "the act of a person in retreating two steps and placing his hand in his pocket with a motion indicating his purpose to commit an assault with a weapon is aggressive, because the movements and motions, revealed clearly by external acts show the commencement of an unlawful aggression which the accused was justified to prevent by preparing himself to repel it" (June 26, 1891 Decision, 48 Jur. Crim. 862, cited in Guevarra, G., Commentaries on the Revised Penal Code, 5th Ed., p. 27; Reyes, L.B., The Revised Penal Code, Book I, 1977 Ed., p. 180). But this ruling merely justifies preparation for self-defense. Unless there is an overt act of aggression, beyond a mere verbal threat or intimidating posture, there is no occasion to kill in self-defense as there is no physical assault on his person.

Moreover, the above question has been fully settled in the 1908 case of U.S. vs. Carrero, supra, wherein the accused alleged having acted merely in self-defense in view of the attitude of the deceased, who, after insulting him, thrust his hand into his pocket as if for the purpose of drawing a dagger or a pocket knife and that in order to defend himself, because he believed that the deceased, owing to the latter's attitude, was about to attack him, he

struck him with the stick he had provided himself with, in consequence of which the deceased fell to the ground.

It was held in said Carrero case that there was no attack or aggression made by the deceased upon the accused to justify the violent assault by the latter with a stick, for it was not shown that the deceased carried any weapon or deadly instrument, so that there was not an actual or even imminent peril of an attack upon the accused.

The above ruling was reiterated in the case of *People vs. Calantoc* (L-27892, Jan. 31, 1974, 55 SCRA 458, 461). Thus, this Court through Justice Ramon C. Aquino succinctly declared that "the alleged act of the victim in placing his hand in his pocket, as if he was going to draw out something, cannot be characterized as unlawful aggression."

Likewise, in the later case of *People vs. Tan* (L-22697, Oct. 5, 1976, 73 SCRA 288, 292), accused, claiming that he had acted in legitimate self-defense, said that he shot the deceased because the deceased was in the poise of taking something from his pocket which the accused thought was a pistol. This Court, however, ruled that the attitude adopted by the deceased in putting his hands in his pocket is not sufficient to justify the appellant to shoot him.

Furthermore, this Court finds no cogent reason to disturb the findings and observation of the trial court that despite appellant's being lame, the latter could walk fast.

Thus:

"Q: You said that you are a lump (sic). Will you kindly show to this Honorable Court what was the cause of your being lump (sic)?

A: By accident, sir.

COURT:

Q: You mean to say, you cannot run?

A: Yes, sir.

ATTY. BACLIG:

Will you please walk and show to this Honorable Court that you are really a lump (sic)?

(Witness walking around the courtroom).

COURT:

Make it on the record that the accused, Constante Anies, is walking very fast." (P. 8, t.s.n., July 9, 1969; underlining supplied).

Likewise, the trial court made the following observation:

"ATTY. BACLIG:

If Your Honor please, the accused was lump (sic).

COURT:

Make it on the record that the accused, Constante Anies, had an operation in his thigh, which have three (3) sutures surgical wound.

ATTY. BACLIG:

That's why the accused, if Your Honor please, cannot walk fast, he has injury on his thigh, he is lumped (sic).

COURT:

It does not impair his difficulty to walk.

ATTY. BACLIG:

But the accused cannot run, Your Honor.

COURT:

That is just what you say, but he can walk very fast, if he wish (sic) too."

(P. 5, t.s.n., July 16, 1969; underscoring supplied).

WE find meritorious the contention of appellant that evident premeditation was not proven.

The evidence on record fails to show any indication whatsoever that there was a pre-conceived plan by the accused-appellant Constante Anies to kill the victim Jaime Cruz, how and when the plan to kill the victim was hatched, or what time elapsed before it was carried out.

"There is no showing from what point of time appellant meditated and reflected upon his decision to kill the victim. To warrant the application of the circumstance of evident premeditation, it is necessary to establish the time when the offender decided to commit the crime; a notorious act manifestly indicating that he has clung to his determination; and a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act" (People vs. Boduso, 60 SCRA 60, 70; People vs. Lacao, 60 SCRA 89, 95; People vs. Manangan, 59 SCRA 31, 38; People vs. Hufana, 103 Phil. 304, 311; People vs. Cariño, 102 Phil. 1168; People vs. Mendova, 100 Phil. 811, 818; People vs. Diokno, et al., 63 Phil. 601, 608; U.S. vs. Bañagale, 24 Phil. 69, 73).

It is not enough to suspect that appellant took the fatal gun and went to look for the deceased, with murder in his heart.

In his third assigned error, accused-appellant assailed the trial court's finding that the killing was done with treachery.

Accused-appellant contends that the killing of the victim was not attended by the qualifying circumstance of treachery. To fortify this contention, appellant heavily relied on the fact that he shot the victim face to face and at a distance of only about one and one-half (1½) meters.

The above-said exculpatory testimony of the accused-appellant only serves to accentuate that his story is devoid of truth. It contradicts his earlier testimony that he shot the victim at a distance of about three (3) meters.

In order that treachery may be appreciated, it is necessary to prove the manner in which the victim was attacked. A careful perusal of the records would show that the qualifying circumstance of treachery (alevosia) is indeed present. In recalling the manner in which the assault was perpetrated by the appellant, witness Belen Gacias testified that appellant, after paying for their drinks, suddenly stood up, face the deceased and shot the latter; that the deceased was sitting and lighting a cigarette at the time he was shot; and that there was no exchange of words before the shooting either from the group of appellant or from the group of the deceased (pp. 18-19, t.s.n., June 9, 1969).

There can be no denial that the mode of the attack was treacherous. The records are replete with proof that the victim was unarmed and alone since his lone companion was in the comfort room at the time of the attack; that he

was completely unaware of the attack because it was made in an unexpected manner as it was suddenly made and he was seated while in the act of lighting a cigarette. The victim therefore did not have the slightest opportunity to defend himself nor had he any inkling of an impending assault. Moreover, the appellant fired five (5) shots at the victim. The above conclusion holds true notwithstanding that the attack was frontal (People vs. Doria, 55 SCRA 435, 450; citing People vs. Noble, 77 Phil. 193).

Consequently, the pretension of the accused-appellant that the trial court erred when it ruled that the killing was characterized by treachery, must necessarily fall.

As to the fourth issue raised by appellant, We find no necessity to discuss the same for it will not affect the penalty to be imposed.

The killing of Jaime Cruz by appellant Constante Anies is murder qualified by treachery, but without any mitigating or generic aggravating circumstance.

WHEREFORE, FINDING APPELLANT CONSTANCE ANIES Y FABRO GUILTY OF MURDER BEYOND REASONABLE DOUBT, WITHOUT ANY MODIFYING CIRCUMSTANCE, HE IS HEREBY SENTENCED TO RECLUSION PERPETUA WITH THE ACCESSORIES OF THE LAW. THUS MODIFIED, JUDGMENT APPEALED FROM IS HEREBY AFFIRMED IN ALL OTHER RESPECTS.

THE JUDGE OF THE CIRCUIT CRIMINAL COURT, SEVENTH JUDICIAL DISTRICT IS HEREBY DIRECTED TO INFORM THE CHIEF OF THE PHILIPPINE CONSTABULARY ABOUT THE NICKEL-PLATED .38 CALIBER AUTOMATIC PISTOL WITH SERIAL NUMBER 4-9946 LICENSED IN FAVOR OF EVANGELO SAVELLANO, WHICH WAS THE MURDER WEAPON USED BY APPELLANT HEREIN, FOR APPROPRIATE ACTION ON THE AFORESAID FIREARMS LICENSE.

LET A COPY OF THIS DECISION BE FURNISHED THE CHIEF OF THE PHILIPPINE CONSTABULARY FOR HIS INFORMATION AND GUIDANCE.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., and Teehankee, J., on official leave.

Aquino, J., in the result.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.