

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AURELIO MOJICA, DEFENDANT-APPELLANT.***G.R. No. L-30742. April 30, 1976*

Ponente: FERNANDO, Acting C.J.

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FERNANDO, Acting C.J.:

There is no dispute as to the accused Aurelio Mojica, now appellant, having inflicted the stab wound which caused the death of Diosdado Tormon. He was prosecuted for murder, found guilty and sentenced to reclusion perpetua, with the heirs of the deceased being entitled to indemnification in the amount of P12,000.00. His plea of self-defense was rejected. Now on appeal, he would press it anew. It elicits from us the same response in view of its lack of credibility. As if anticipating its inherent weakness, he would rely on the constitutional presumption of innocence.[1] Here, he is not on solid ground either. The lower court did appraise conscientiously the competent evidence of record. It did establish his guilt beyond reasonable doubt. Appellant would also have us take into consideration his having acted upon an impulse so powerful as to have produced passion and obfuscation, arising from his having been grossly humiliated by the deceased in an incident that took place a month previous to the fatal incident. As will be subsequently disclosed, the interval of time that had elapsed between such an occurrence and the killing precludes us from lending approval to his contention. The penalty of reclusion perpetua was thus correctly imposed.

It was shown by the evidence for the prosecution that on December 2, 1968, while Diosdado Tormon was inside a vehicle, at the front seat of a public vehicle, the appellant, who was then carrying weaving materials of a lady passenger, threw them on the ground, approached the deceased, and stabbed him in the stomach with a butcher's knife.[2] The victim uttered a cry of pain, "Araguy." [3] Appellant ran away, leaving the butcher's knife stuck into the stomach of the deceased.[4] The driver shouted to a policeman directing traffic nearby that somebody was stabbed.[5] The policeman, who turned out to be Pat. Yance of the Maasin Police Force, responded upon hearing the shout.[6] He intercepted the fleeing accused, held him tight as he was struggling to get away, took from him the scabbard of the butcher's knife, brought the accused, who had already ceased struggling, to the municipal building, and turned him over to the Chief of Police.[7] The deceased was taken to the Iloilo Mission Hospital.[8] The butcher's knife was still stuck in his stomach, so Dr. Salvador G. Aguirre, who attended to him, pulled it out, and saw that seven and three-fourths (7-3/4) inches of its blade had penetrated into the body of the deceased.[9] He died the next morning in the said hospital.[10] Dr. Aguirre issued a medical certificate on his finding, viz.: "Iloilo Medical Center, Inc., Palmares Bldg., Bonifacio Drive, Iloilo City, Dec. 7, 1968 [To whom it may concern]: This is to certify that Mr. Diosdado Tormon was admitted in my service in the Iloilo Mission Hospital on December 2, 1968, because of a stab wound in the abdomen. Exploratory laparotomy was done. He expired on December 3, 1968. Findings on Exploration: 1. The abdomen is filled with about 2-3 liters of blood. 2. Thru and thru perforation in the jejunum 4 in number. 3. The omentum cut into half. 4. The transverse colon has 4 lacerations at one point and at another point the colon is cut into half. There is a small wound in the left lateral pentoneum level of splenic flexure. Salvador G. Aguirre, M.D." [11] Dr. Aguirre also issued the death certificate of the deceased in which he stated that the deceased died as a result of the stab wound inflicted on him.[12] There

was a previous incident that caused the bad blood between the accused and the deceased. On the evening of November 16, 1968, a fight ensued between them.[13] The deceased, who was taller and bigger than the accused, slapped the accused and ordered him to kneel down.[14] However, before the accused could kneel down, Justino Rosano, a barrio councilman, intervened, separated the protagonists, and ordered the deceased to go home.[15] The deceased went home but the accused stayed awhile. Upon leaving the place, he was heard to remark that for what was done to him, he would not let a month to pass before he would retaliate.[16] So it did come to pass.

The lower court relied on such evidence rejecting the claim of the accused, now appellant, that he should be exculpated as he acted in self defense. To repeat, there is a reiteration in the brief filed by his counsel of such a plea. As noted at the outset, we cannot, after a careful study of the evidence, consider such a defense meritorious. Also, the other errors assigned were not substantiated. As was made clear earlier, an affirmance is called for.

1. It is the submission of appellant that Diosdado Tormon grabbed his collar and held it so tightly that he could hardly breathe. In self-defense then, he used the butcher's knife and stabbed the deceased. If borne out by the evidence, such a contention would carry weight. As pointed out, however, in the brief of the then Solicitor General, now Associate Justice, Felix Q. Antonio: "1. There was no unlawful aggression on the part of the deceased; it was the appellant who was the aggressor. At the time appellant stabbed the deceased, the latter was simply seated on the extreme right end of the front seat of the pick-up vehicle and the motor was already being started by the driver * * *. 2. There was no reasonable necessity on the part of appellant to prevent or repel any attack as there was none. Appellant's contention that it was the act of the deceased in choking him that prompted appellant to stab him, was positively controverted by Epifanio Pueyo, the driver of the pick-up vehicle in which the deceased was riding when he testified that the deceased was suddenly stabbed while he was sitting inside the parked pick-up vehicle * * *; and that no exchange of words between the deceased and the accused preceded the stabbing * * *. Appellant's contention was also belied by Bibiana Codo, an old woman who testified that the appellant was carrying to the pick-up vehicle her weaving materials but which he dropped to the ground in order to approach the deceased who, as aforesaid, was sitting at the front seat of the pick-up vehicle, that then the appellant simply stabbed the deceased * * *. 3. Appellant cannot interpose lack of sufficient provocation on his part because he was the aggressor. Without any warning, the appellant surreptitiously and suddenly stabbed the unaware deceased, who was complacently seated on the pick-up vehicle that was about to move forward * * *. Appellant admitted that his butcher's knife * * * was hidden when he was approaching the deceased and that the deceased did not get out from his seat * * *." [17] No attempt was made to refute the same as no reply brief was filed. For the plea of self-defense to prosper, it must be shown that the above three circumstances of unlawful aggression, reasonable necessity of the means employed to prevent or repel it, and lack of sufficient provocation on the part of the person defending himself are present. The established doctrine since the first decade of this century is that the burden of proof to show the presence of such requisites is on the accused.[18] It can be met only by evidence sufficient, satisfactory and convincing in character. So it has been since *United States v. Gonzales*, [19] a 1907 decision, to *People v. Manlapaz* [20] promulgated two years ago. It is clear, therefore, why the lower court acted as it did. No error was committed in rejecting such a plea.

2. It was rather surprising, therefore, considering the evidence of record, how appellant could invoke the constitutional presumption of innocence. It does not admit of doubt, of course, as has been the norm followed by this Court pursuant to the mandate of the fundamental law that the proof offered by the prosecution is subjected to the most rigorous scrutiny, for if there be doubt as to his guilt and it is not fanciful but rational, then acquittal should be the outcome. Among the most recent cases, *People v. Dramayo* [21] is one of the most emphatic on that point. Such is not the case here. Apparently, appellant would hark on what he considered to be the failure of the prosecution to substantiate the qualifying circumstance of treachery and the aggravating circumstance of evident premeditation to lend some semblance of plausibility to his plea. He ought to have realized that even if that were

so, still appellant would be guilty, not of murder but of homicide considering that not one of the elements of self-defense was shown to be in existence. Further reflection ought to have persuaded counsel that his allegation that there was neither alevosia nor evident premeditation is inherently incredible. His client, using a butcher's knife, without any wording, suddenly approached the victim and stabbed him. Such a circumstance clearly connotes treachery. So it has been from *United States v. Parbosa*,^[22] a 1903 decision, to *People v. Payao*,^[23] decided less than six months ago. Equally so the existence of evident premeditation is undeniable. From the incident that dated back one month previously when the deceased during a fight slapped appellant and ordered him to kneel down, the humiliation inflicted on him caused him to persist in the thought that one day he would be avenged. So he made it clear on the very same evening of that encounter. Two days later, November 18, 1968, he did step on the running board of a bus, peeped, inside and inquired if the deceased were there. When he did not find him, he made the remark that if he were there, he had something for him. Again our decisions speak that under such a circumstance, the premeditation to inflict harm is quite evident. Such a doctrine was first announced in *United States v. Alvarez*,^[24] a 1903 decision, its latest manifestation being *People v. Alde*.^[25] It is clear, therefore, that reliance on the constitutional presumption of innocence is very much misplaced.

3. The last point to consider is whether the mitigating circumstance of passion or obfuscation ought to have been appreciated in favor of appellant. What was done to him on that fateful day of November 16, 1968 when he was subjected to treatment offensive to his dignity, having been slapped and asked to kneel down in the attitude of a supplicant, certainly could give rise to the feeling of passion or obfuscation. There is a host of cases from *United States v. Ferrer*,^[26] a 1901 decision, to *People v. Pareja*,^[27] decided in 1969, that so attests. Conduct of that character, in the language of *United States v. Salandanan*,^[28] would ordinarily be expected to have produced "such powerful excitement as to overcome reason and self-control."^[29] Unfortunately for appellant, however, this mitigating circumstance cannot be invoked because the killing took place one month and five days later. The language of Justice Malcolm in *United States v. Sarikala*^[30] is relevant: "As to the mitigating circumstance of passion and obfuscation we likewise cannot agree that it can be taken into consideration because more than twenty-four hours elapsed after the insults of Cotton to the accused and the criminal act."^[31] In the relatively recent case of *People v. Constantino*,^[32] such a plea was likewise rejected. There the killing took place after four days. As pointed out by Justice Romualdez in *People v. Alanguilang*:^[33] "In order that the circumstance of obfuscation can be considered, it is necessary to establish the existence of an act both unlawful and sufficient to produce such a condition of mind; and that said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity."^[34] Reference may also be made to *People v. Dagatan*,^[35] where this Court could not consider the presence of this mitigating circumstance as the act that caused the resentment "took place long before the commission of the crime."^[36] *People v. Gervacio*^[37] had another way of putting it, "a time not far removed from the commission of the crime."^[38] The lower court, therefore, did not commit any error in refusing to credit appellant with the mitigating circumstance of passion and obfuscation.

WHEREFORE, the decision of June 9, 1969 sentencing appellant Aurelio Mojica to suffer the penalty of reclusion perpetua as well as to indemnify the heirs of the deceased Diosdado Tormon in the amount of P12,000.00, is affirmed. No costs.

Barredo, (Acting Chairman), Muñoz Palma, Aquino, and Martin, JJ., concur.

Antonio and Concepcion Jr., JJ., did not take part.

[1] According to Article IV, Section 19 of the Constitution: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, * * *."

[2] T.s.n., Session of March 20, 1969, 3-4.

[3] Ibid, 5.

[4] Ibid, 22.

[5] Ibid, 5; 21.

[6] Ibid.

[7] Ibid, 28-29.

[8] Ibid, 7.

[9] T.s.n., Session of March 21, 1969, 18.

[10] T.s.n., Session of March 20, 1969, 10.

[11] Exhibits A, A-1.

[12] T.s.n., Session of March 21, 1969, 14-16.

[13] T.s.n., Session of March 20, 1969, 44.

[14] Ibid, 13; 44.

[15] Ibid, 45.

[16] Ibid, 45-46.

[17] Brief for the Appellee, 56.

[18] Cf. *United States v. Mack*, 8 Phil. 701 (1907); *United States v. Ah Chong*, 15 Phil. 488 (1910); *United States v. Santos*, 17 Phil. 87 (1910); *People v. Babiera*, 52 Phil. 97 (1928); *People v. Gutierrez*, 53 Phil. 609 (1929); *People v. Payumo*, 54 Phil. 181 (1929); *People v. Apolinario*, 58 Phil. 586 (1933); *People v. Ramos*, 59 Phil. 7 (1933); *People v. Gimena*, 59 Phil. 509 (1934); *People v. Moldes*, 61 Phil. 1 (1934); *People v. Yuman*, 61 Phil. 786 (1935); *People v. Espenilla*, 62 Phil. 265 (1935); *People v. Ansoyon*, 75 Phil. 772 (1946); *People v. Clemente*, L-23463, Sept. 28, 1967, 21 SCRA 261; *People v. Diva*, L-22946, April 29, 1968, 23 SCRA 332; *People v. Talaboc*, L-25004, Oct. 31, 1969, 30 SCRA 87.

[19] 8 Phil. 442.

[20] L-27259, February 27, 1974, 55 SCRA 598. The opinion cited thirty eight cases from *United States v. Brello*, 9 Phil. 424 (1907) to *People v. Llamera*, L-21604, May 25, 1973, 51 SCRA 48.

[21] L-21325, October 29, 1971, 42 SCRA 59. Cf. *People v. Zamora*, L-34090, Nov. 26, 1973, 54 SCRA 47; *People v. Alvarez*, L-34644, Jan. 17, 1974, 55 SCRA 81; *People v. Reyes*, L-36874, Sept. 30, 1974, 60 SCRA 126; *People v. Roa*, L-35284, Jan. 17, 1975, 62 SCRA 51; *People v. Joven*, L-36022, May 22, 1975, 64 SCRA 126.

[22] 1 Phil. 741.

[23] L-29364, November 21, 1975, 68 SCRA 70. Cf. *People v. Pelago*, L-24884, Aug. 31, 1968, 24 SCRA 1027; *People v. Torejas*, L-29935, Jan. 31, 1972, 43 SCRA 158; *People v. Palacpac*, L-27822, Feb. 28, 1973, 49 SCRA 440.

[24] 3 Phil. 24.

[25] L-31041, May 29, 1975, 64 SCRA 224.

[26] 1 Phil. 56.

[27] L-21937, November 29, 1969, 30 SCRA 693, Cf. *United States v. Francisco*, 18 Phil. 608 (1911); *United States v. Licarte*, 23 Phil. 10 (1912); *United States v. Bayutas*, 31 Phil. 584 (1915); *United States v. Diana*, 32 Phil. 344 (1915); *United States v. Monteroso*, 33 Phil. 325 (1916); *People v. Austria*, 50 Phil. 535 (1927); *People v. Almonte*, 56 Phil. 54 (1931); *People v. Montalbo*, 56 Phil. 443 (1931); *People v. Diokno* 63 Phil. 601 (1936); *People v. Constantino*, L-23558, Aug. 10, 1967, 20 SCRA 940; *People v. Gervacio*, L-21965, Aug. 30, 1968, 24 SCRA 960.

[28] 1 Phil. 464 (1902).

[29] *Ibid*, 465.

[30] 37 Phil. 486 (1918).

[31] *Ibid*, 490.

[32] L-23558, August 10, 1967, 20 SCRA 940.

[33] 52 Phil. 663 (1929).

[34] *Ibid*, 665.

[35] 106 Phil. 88 (1959).

[36] *Ibid*, 98.

[37] L-21965, August 30, 1968, 24 SCRA 960.

[38] *Ibid*, 977.

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