

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
DEOGRACIAS LASAFIN, DEFENDANT AND APPELLANT.***G. R. No. L-5874. February 11, 1953*

Ponente: JUGO, J.

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Deogracias Lasafin was accused before the Court of First Instance of Iloilo of the crime of murder. After trial, he was found guilty thereof, but upon motion for reconsideration, the court modified its decision, convicting him of homicide with the mitigating circumstance of surrender to the authorities, and sentenced him to suffer an indeterminate penalty of from eight years of prison mayor to seventeen years and four months of reclusion temporal, with the accessory penalties of the law, to indemnify the heirs of the deceased in the sum of four thousand pesos (P4,000), without subsidiary imprisonment in case of insolvency, and to pay the costs. From this decision, the accused appealed to this Court.

It has been established by the evidence of the prosecution that Deogracias Lasafin, a policeman of the municipality of Lambunao had been courting Aurea Carado. He had not been definitely accepted or rejected by her and he had some hopes of succeeding in his courtship. On September 11, 1949, Aurea informed him that she was going to marry Miguel Tabucan that month. Deogracias said that he would rather see Aurea and Miguel dead than married. In the afternoon of September 13, Aurea went to the house of Angelina Lavente, where Miguel was staying, to warn him of the threat made by Deogracias. She arrived at the house at about five o'clock that afternoon, but Miguel was not there. While Aurea was returning to the town, about an hour later, she saw Deogracias coming in the direction of the house of Angelina. Aurea hid in the bushes near the house.

Angelina heard the appellant say "come up". Upon looking out of the window, she saw Deogracias at a distance of about ten meters at the edge of the road, higher than the depression on each side. Miguel Tabucan was standing in the depression. Deogracias, who was on higher ground, aimed his rifle at Miguel and told him to stretch out his arms sidewise "because this is your end. I will kill you" and fired ten bullets, inflicting upon Miguel seven wounds—one on the right lower jaw, one on the left side of the neck, and the rest on the breast. Miguel fell instantly covered with blood. Deogracias approached him saying, "What? Are you still alive?" and then kicked him and struck him with the butt of the carbine which became detached from the gun. Deogracias proceeded to the house of Angelina shouting "You too are hiding Aurea" evidently referring to Aurea Carado. "Let her come down; I will kill her also." Angelina did not answer. Deogracias removed the shirt from the body of Miguel and left.

In his behalf, Deogracias tried to establish self-defense. He testified that he was returning to the town after delivering a letter to the barrio lieutenant of Badiangan when an unknown person intercepted him trying to wrest the carbine from him. They struggled for the possession of the weapon. Deogracias overpowered and kicked the unknown person. Deogracias stepped backward and the unknown person advance toward him. For this reason, Deogracias fired at him. This unknown person Deogracias found later to be Miguel Tabucan.

The trial court did not give credence to the testimony of the defendant, and we believe correctly, for, in the first place, the letter which he allegedly delivered to the barrio lieutenant, was not presented, nor was his testimony corroborated by said officer. In the second place, the unknown person, Miguel Tabucan, had absolutely no motive to intercept the accused and to grab the gun from him, which was a very dangerous act and could be committed only by a person with a strong motive to do so. On the other hand, as we have seen, the accused was bent on killing Tabucan who was his successful rival for the hand of Aurea. It is not true that he did not know Tabucan because, afterwards, when Tabucan was already prostrate, the accused mentioned his name.

The qualifying circumstance of evident premeditation existed, for on September 11 Deogracias had already threatened to kill Miguel and Aurea, and on September 13 he carried out his threat with regard to Miguel and attempted to carry it out with regard to Aurea, but the latter hid from him and he was not able to fire at her. Consequently, the accused had had three days' time to meditate upon the crime which he intended to commit, and was not prompted by the impulse of the moment.

The generic circumstance of treachery was also present, for Miguel raised his hands sidewise as ordered by the accused and notwithstanding that, the accused fired ten shots at him without any risk to appellant which might proceed from the defense of the victim. The generic circumstance of treachery is, however, offset by the mitigating circumstance of voluntary surrender to the authorities.

In view of the foregoing, the judgment appealed from is hereby modified by imposing upon the appellant the penalty of reclusion perpetua with the accessory penalties of the law, and the obligation to indemnify the heirs of the deceased in the sum of six thousand pesos (P6,000), without subsidiary imprisonment in case of insolvency, with costs. So ordered.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Bautista Angelo and Labrador, JJ., concur.

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