

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TEOFILO TALABOC, JR., DEFENDANT-APPELLANT.***G.R. No. L-25004. October 31, 1969*

Ponente: SANCHEZ, J.

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The charge is murder. The qualifying circumstance averred is treachery. The Court of First Instance of Leyte found defendant Teofilo Talaboc, Jr. guilty as charged, sentenced him to life imprisonment, to indemnify the heirs of the victim Vivencio Labarda in the sum of P6,000.00 with the accessories of the law, and to pay the costs.[1] Defendant appealed.

It was about 10:00 o'clock in the night of July 17, 1962, when appellant Teofilo Talaboc, Jr., and four other companions, namely: Francisco Quiroz, Gregorio Porcadilla, Lito Mercadal and Ruperto Sidney, were at the store of the sisters Virginia and Rosenda Batulan in barrio Linao, Ormoc City. They were drink-ing. Francisco Bugtai, a laborer of the Ormoc Sugar Central, who at times worked under the supervision of appellant Teofilo Talaboc, Jr., a capataz, passed by. Appellant called Bugtai. The latter approached appellant who asked him where he was going followed by an invitation to take beer. Bugtai refused. Instead, he told appellant, "I have here twenty centavos, you please give me another twenty centavos so that we can buy Coca-cola." Appellant who was already a little bit tipsy took this for an insult and threatened to harm Bugtai. Appellant accompanied this threat by placing his hand at his waist where a bladed six inch long weapon akin to a Japanese saber was tucked.

Vivencio Labarda, sergeant of the rural police, was then on patrol in barrio Linao. With him were Potito Sotto, Nicolas Medroso and Roberto Abaño, all also of the rural police. Upon hearing the threat aired by appellant against Bugtai, Labarda approached the two. He tried to persuade appellant into foregoing with his intention to assault Bugtai. He identified himself as a rural policeman, showed his badge to appellant, and asked appellant to turn over his weapon with a promise to return the same as soon as appellant was ready to go home. Appellant stabbed Labarda, the thrust finding its mark on the upper left clavicle. Bugtai took to his heels. Appellant with the same weapon in his hand then went after and tried to stab Roberto Abaño and Nicolas Medroso. In retaliation Abaño gave appellant a fist blow, hitting him on the left face. Potito Sotto saw Labarda run towards the street. The latter was then calling to him: "Potito, I am wounded." Potito went to his aid and later brought Labarda to the hospital with the help of Medroso and Abaño. Labarda however was already dead on arrival.

Dr. Eutiquiano Fiel performed the autopsy. He found a punctured wound on the left supraclavicular region, with an entrance of about 1 cm., directed internally downwards, pene-trating the thoracic cavity injuring the large vessels (aorta) on the anterior portion of the heart. The doctor opined that Labarda died of shock and internal hemorrhage consequent to the wound.

1. Appellant pleads self-defense. His evidence is this: While in the store heretofore mentioned, an unknown person touched his shoulder. He turned around, received a fistic blow on his mouth. He fell to the ground. The assailant ran towards the street. Lito Mercadal, one of appellant's companions, suggested that they go home.

Appellant was about to leave on his bicycle when several persons approached him, grabbed the bicycle from him. One of them gave him a fistic blow on the right cheek. He tried to run away. Instead, he received several blows on the back. He staggered to the ground face downwards. He turned around, felt that there was something hitting his buttocks and back. About 15 persons were ganging up on him. One of them was on top of him, and with the use of a sharp-bladed weapon stabbed him. He parried the blow with his two hands. He was able to twist the hand of the assailant and succeeded in getting hold of the weapon. The assailant tried to recover the weapon, whereupon he gave a thrust on the left shoulder near the base of the neck. The assailant's companions scampered away. He afterwards learned that his assailant was Vivencio Labarda.

The foregoing version deserves no credence. In an effort to dramatize his plight, defendant overshot his mark. If, as he claims, he never threatened Francisco Bugtai who was his friend, there is no reason why Bugtai should testify against him. As improbable is his version that while 15 persons were ganging up on him as he was lying on the ground face down-wards still he was able to perform the feat of wresting the weapon from one of his 15 assailants, some of whom were armed with wooden clubs. He did not even dare present as evidence the sharp-pointed and bladed weapon with which he killed his supposed assailant, Vivencio Labarda.

Long familiar is the rule that in self-defense the burden of proof rests upon the accused. His duty it is to establish self-defense by evidence clear and convincing.[2] He must rely on the strength of his own evidence. It matters not that the People's evidence is weak. For, as well expressed by this Court in the leading case of *People vs. Ansoyon*, 75 Phil. 772, 777, such evidence "could not be disbelieved after the accused himself had admitted the killing." Since the evidence in exculpation is notches below the level of that which is clear and convincing, conviction is in order.

2. But for what crime? There is the People's evidence itself. Assailant and victim were face to face. Prior to this attack Labarda first identified himself, asked appellant to desist from harming Bugtai and to turn over his weapon with the assurance that it would be returned as soon as the appellant was ready to go home. The bladed weapon was still tucked at the waist of the accused. He had to draw that weapon before he could stab the deceased. In the posture thus presented, we find ourselves unable to say that treachery attended the commission of the offense.[3] With the result that the crime is reduced to simple homicide.

For the reasons given, the judgment under review is hereby modified. We find defendant-appellant Teofilo Talaboc, Jr. guilty beyond reasonable doubt of the crime of homicide and sentence him to imprisonment for an indeterminate period ranging from 8 years and one day of prison, mayor, to 14 years, 8 months and one day of reclusion temporal, to indemnify the heirs of the deceased Vivencio Labarda in the sum of P12, 000, without subsidiary imprisonment but with the accessories of the law and to pay the costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, and Teehankee, JJ., concur.
Barredo, J., did not take part.

[1] Criminal Case 1362-0, entitled "People of the Philippines, Plaintiff, versus Teofilo Talaboc, Jr., Accused."

[2] See: *U.S. vs. Capisonda*, 1 Phil. 575, 578; *People vs. Salahuddin*, 51 Phil. 840, 842; *People vs. Gutierrez*, 53 Phil. 609, 610; *People vs. Embalido*, 58 Phil. 152, 154; *People vs. Ramos*, 59 Phil. 7, 10; *People vs. Berio*, 59 Phil. 533, 536; *People vs. Borbano*, 76 Phil. 702, 708; *People vs. Ramos*, 77 Phil. 4, 6; *People vs. Bauden*, 77 Phil. 105, 108; *People vs. Pares*, 80 Phil. 149, 152; *People vs. Tandag*, 83 Phil. 683, 685; *People vs. Vista*, 86 Phil. 140, 144; *People vs. Clemente* (1967), 21 SCRA 261, 268.

[3] U.S. vs. Highfill, 4 Phil. 384, 387; People vs. Ilano, 54 Phil. 96, 99-100; People vs. Luna, 76 Phil. 101, 104, citing U.S. vs. Idica, 3 Phil. 321 and People vs. Mercado, 51 Phil. 107; People vs. Gonzales, 76 Phil. 473, 479; People vs. Tumaob, 83 Phil. 738, 742. See also: People vs. Concha, 49 Phil. 212, 214.

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