

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CONSTANCIO GUEVARRA, ET AL., DEFENDANTS, CONSTANCIO
GUEVARRA, DEFENDANT-APPELLANT.**

G.R. No. L-24371. April 16, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

Constancio Guevarra and Felipe Cornelio were charged with murder in the Court of First Instance of Oriental Mindoro, in an information filed by the provincial fiscal, alleging that on or about November 12, 1959, at about 8:00 o'clock in the evening, and within the jurisdiction of the court, the said accused, both policemen of the municipality of Naujan, Oriental Mindoro, aiding one another, with treachery and evident premeditation, and taking advantage of their superior strength and official positions, and in the darkness of the night, wilfully and feloniously shot Agapito Salazar, who was mistaken by the said accused to be Andres Papasin, inflicting upon the said Agapito Salazar, a gunshot wound at the center of the neck, 1-1/2 inches above the superior border of the sternum, as a consequence of which the said Agapito Salazar died instantaneously.

After trial, the court found Constancio Guevarra guilty of the crime of murder qualified by treachery without any modifying circumstance, and sentencing him to suffer reclusion perpetua, to indemnify the heirs of Agapito Salazar in the sum of six thousand pesos (P6,000.00), with the accessories provided by law, without subsidiary imprisonment in case of insolvency, and to be credited with one-half (1/2) of the preventive imprisonment, if any, and to pay the proportionate costs the accused Felipe Cornelio was acquitted on reasonable doubt.

Constancio Guevarra appealed from the decision.

The facts of the case, as disclosed from the evidence, are as follows:

Late in the afternoon of November 12, 1959, appellant Constancio Guevarra, together with Felipe Cornelio, Estelito Frayre, Gregorio Mercado and Jugo Fajardo, all policemen of the municipality of Naujan, Oriental Mindoro, went to the house of Mayor Amando Melgar in barrio San Jose No. 2, Naujan, Oriental Mindoro, to inquire from Mayor Melgar what benefits would be accruing to them for the services they have rendered as policemen, inasmuch as they were contemplating of tendering their resignation in view of the defeat of Mayor Melgar in the election of that year. Guevarra was in civilian clothes carrying about his person his service pistol. Afterwards, said policeman went to a store in front of the house of Mayor Melgar owned by Sgt. Garchico, where they drank wine. Yolando Sarabia, a friend of the policemen joined them. They commented about the rumor coming from the barrio of Inarawan, Naujan, where Andres Papasin, a defeated candidate for councilor in the last election, a Liberal, had said that Mayor Melgar, a Nacionalista, lost in the elections because of the abuses of the police force of Naujan. They discussed about what as best to take under the circumstances. In the course of the conversation, Cornelio remarked that if there was some truth to the rumor, something would happen. Apparently, the group entertained a general feeling of resentment against Andres Papasin. Cornelio and Frayre volunteered to go and ask Papasin about the rumor. They left the store and proceeded to the house of Papasin

which was about 400 meters away. On the way, Sarabia who followed them, tried to dissuade them from seeing Papasin, but they proceeded nevertheless. Upon arrival in the house, Papasin invited Cornelio and Frayre, and the latter told the former that they would like to talk about something. Sara-bia did not go up but stayed by the gate of the fence. He was later joined by appellant Guevarra, and the two waited at the gate.

After a while, Papasin went down and proceeded to the store of Minerva Montejo, opposite the road. Cornelio and Frayre followed him. Appellant Guevarra and Sarabia also followed but they stayed only by the door of the store. Inside the store were Gregorio Mercado and Jugo Fajardo. Papasin ordered drinks. Shortly thereafter, a heated discussion between Cor-nelio and Papasin ensued, in the course of which Cornelio bluntly told Papasin about the rumor attributed to him. Papasin denied the charge; he asked Cornelio who gave him the information, and the latter said he would call the person. Apparently, Cornelio was sa-tisfied with the explanation of Papasin. Frayre, how-ever, was not satisfied, and in an ugly mood said: "Tirahin na iyan." Upon hearing those words, appel-lant Guevarra pulled out his .45 caliber gun and was about to fire at Papasin when Amado Garing, who was standing beside appellant Guevarra, grabbed the gun and foiled his attempt against Papasin. Soon Papa-sin's wife arrived and she led her husband out of the store and together they returned to their house.

After Papasin had left, Frayre broke the bottles on the table. Then, Cornelio, Mercado, Frayre and Sarabia went back to the store in front of the house of Mayor Melgar. In the store of Montejo, appellant Guevarra was heard to have said that he was going home to the poblacion and took the road that passes by the house of Papasin. Sarabia followed him. Mer-cado also followed and joined appellant Guevarra in going back to the poblacion where they were still assigned for duty. Appellant Guevarra stopped under a tamarind tree opposite house of Papasin, which was about 20 meters to the house of Papasin, and waited there.

In the meantime, friends of Papasin arrived in a jeep driven by Antonio Valencia. Amado Garing told Valencia to advise Papasin not to go down the house. Later, Agapito Salazar, a cousin of Papasin, arrived and also told Papasin not to go out of the house. Valencia stood near his jeep which was parked in front of the house of Papasin.

Shortly thereafter, Agapito Salazar went down the house, crossed the road and proceeded to the co-conut groove to take the shortcut path to his house. That road taken by Salazar, however, leads towards the very place where appellant Guevarra was at the time waiting under the tamarind tree. And when Sala-zar was about 15 meters away from appellant Guevarra, the latter fired his gun. After firing, appellant Guevarra emerged from under the tamarind tree, moved to an atis tree nearer to Salazar, and from there, at a distance of 6 to 8 meters, successively fired two more shots. Salazar fell. Upon seeing his victim fall, appellant Guevarra ran away, but in his hurry, he bumped his head against a guyabano tree. He fell to the ground, and as soon as he had recovered, he pursued his way passing at the back of the house of the barrio lieutenant until he reached the house of Mayor Melgar which he entered through the back door.

Mayor Melgar, witness for the defense, dec-lared that:

"A.- When Constancio Guevarra arrived in my house, I was still in the porch and when I returned, one of my visitors, I could not remember the name, told me that Constancio Guevarra was inside my store room, so I went there and I saw Constan-cio Guevarra lying on my cot. x x x x I saw the gun of Constancio Guevarra on the cot x x x which was a .45 caliber. x x x and I delivered the gun to Capt. Nevero;"

appellant Gueverra is his god-son in marriage.

"Q.- And when you found him wounded on the forehead lying on your cot, he told you: 'Ninong, bahala na kayo sa aking asawa at anak?'

A.- I cannot remember if he said that, but I saw him and I asked him why he was wounded and he told me that while he was running, he happened to collide with some pointed ob-jects."

x x x

"A.- He told me that while he was going to San Jose No. 1, x x x he heard a shot from the house of Mr. Andres Papasin and then what he did was to fire a shot pointing to the sky."

As appellant Guevarra was bleeding, Mayor Melgar told Sarabia to accompany Guevarra to the poblacion for treatment of his head wound. Appellant Guevarra and Sarabia rode in a jeep and went to the clinic of Dr. Ferriols in the poblacion.

Policeman Gregorio Mercado, who also followed appellant Guevarra when the latter left the store, reached the place where appellant Guevarra was under the tamarind tree, and it was at that precise moment when Guevarra fired a shot. The next day, Mercado learned that the man who was shot was Agapito Salazar.

Antonio Valencia saw appellant Guevarra fire the shots at someone in the coconut grove where a moment before Salazar had gone.

Sarabia notified the PC soldiers and accompa-nied them to the place of the incident and there they found Salazar dead.

Staff Sgt. Carlos Angcao conducted an investi-gation, and he summoned for the doctor and the Just-ice of the Peace.

Dr. Edith Panganiban performed the autopsy that same night. She certified that the cause of death was the acute circulatory and respiratory failure due to non-penetrating gunshot wound at the neck. The slug which was extracted from the neck of Agapito Salazar could have been fired from a .45 caliber pistol.

The next day, November 13, 1959, Sgt. Perfecto de la Rosa of the PC brought appellant Guevarra, Cornelio, Frayre, Mercado and Fajardo to the PC head-quarters in Calapan, Mindoro. They were all ques-tioned about the incident. Appellant Guevarra gave his statement, Exhibit A, to Sgt. de la Rosa which was reduced to writing after which Guevarra was brought to the office of the clerk of court of first instance of Oriental Mindoro, where he swore to the truth of the contents of his statement before the clerk of court, Crisanto Paras, in the presence of Primitivo Alcote and Alfonso Mendoza, clerks in said office.

Appellant Guevarra admitted in his statement that he shot Agapito Salazar, mistaking him for Andres Papasin.

"T. - Ano ang masasabi mo kung may nalalaman ka tungkol sa pag-kabaryl kay Agapito Salazar na kanyang ikinamatay ng ang oras ay mga alas 8:00 ng gabi, Nobyembre 12, 1959, doon sa barrio ng San Jose 2, Naujan, Silangang Mindoro?

S. - Ako po ang nakabaryl sa kanya at pinagkamalan ko siya na si Andrito Papasin. x x x

T. - Ano namang baril ang ginamit mo sa pagbaril kay Agapito Salazar?

A. - Pistol po, na calibre .45, No. 2126835 po.

T. - May gaano ang layo sa iyo ng taong binaril mo at natumba?

S. - Mga labing-apat (14) na metro po buhat sa akin.

In this appeal, appellan Guevarra assails of the decision of the trial court under three assignment of errors: (1) "x x x by giving weight to the testimony of prosecution witnesses Yolando Sarabia, Gregorio Mercado and Antonio Valencia x x x"; (2) "x x x in holding that the extra-judicial confession, Exhibit A, of appellant Constancio

Guevarra was proven to be voluntary x x x"; and, (3) "x x x in not hold-ing that the prosecution failed to established the guilt of the appellant beyond reasonable doubt, x x x."

1.- The witnesses for the prosecution who de-clared having seen appellant Guevarra fired the shots were Yolando Sarabia, policeman Gregorio Mercado and Antonio Valencia.

Yolando Sarabia testified that while Andres Pa-pasin, appellant Guevarra, Felipe Cornelio, Gregorio Mercado and Hugo Fajardo and himself were in Montejo's store, Cornelio asked Papasin if it was true that he, Papasin, had said that the reason Mayor Melgar lost in the elections was due to abuses of the policemen of Naujan. Papasin denied the charge and asked Cornelio who informed him about it. Then, Frayre said: "Tira-hin na iyan." No harm, however, was done to Papasin. Papasin's wife arrived and they left the store and went home. The group of policemen left the store of Montejo. Appellant Guevarra also left the store, and in front of the house of Papasin, he stopped under a tamarind tree. Sarabia who was following appellant Guevarra also stopped thereat. As they talked, appel-lant Guevarra was looking towards the direction of the house of Papasin. When they saw a man coming from the house of Papasin towards them, appellant Guevarra fired at once towards the direction of the house of Papasin. The distance from the tamarind tree to the man, was about 6 meters. Then, appellant Guevarra moved to an atis tree which was nearer to the man. The distance from the atis tree to the man was about 4 meters. From the atis tree, appellant Guevarra fired two more shots directed toward the man who was already inside the coconut plantation. Upon seeing the man fell, appellant Guevarra ran away towards the direction of the house of Mayor Melgar. As he was running, he bumped his head a-against a guyabano tree and fell. Upon recovering, appellant continued to run towards the house of Mayor Melgar. Sarabia followed appellant. In the house of Mayor Melgar, he saw the four policemen, Cornelio, Mercado, Frayre and Fajardo. Gregorio Mercado, policeman, declared that at about 7:30 or 8:00 o'clock in the evening of November 12, 1959, he was with appellant Guevarra, Cornelio, Frayre and Papasin inside the store. He heard Cor-nelio said to Papasin that "if he had any gripe be-fore it was more now because he (Papasin) was tell-ing the people in Inatawan that they have done some-thing wrong and that was the reason Mayor Melgar lost." Papasin denied the charge. After a while, Papasin's wife arrived at the store. The spouses left and went home. Appellant also left telling his companions that he was going to the poblacion. Mer-cado followed appellant so that they could go toge-ther to the poblacion, and when he overtook him, it was then when the appellant fired his gun and he saw the man who was walking fell down. At that time, the witness (Mercado) did not know who was the man fired at. It was only after the investigation when he learned that the man was Agapito Salazar. After the firing, the appellant went to the house of Mayor Melgar.

Antonio Valencia declared that at about 8:00 o'clock in the evening of November 12, 1959, he was in San Jose No. 2, Naujan, Oriental Mindoro; he saw appellant at the foot of the atis tree from which place he fired his gun towards the direction where the sun sets; Salazar passed by going towards the plantation; he saw appellant when he hurriedly left the atis tree, but he stumbled; the distance between appellant and the place where the man fell was bet-ween 5 to 7 meters; the place where appellant fired the shot was a higher elevation, and at that time he (witness) was about 15 meters away from the appel-lant.

(a) The credibility of Yolando Sarabia is assailed in this wise: Sarabia had declared that when Salazar was shot by the appellant, Salazar was about 5 meters from the atis tree where Guevarra was standing, and, since according to Sgt. Angcao, on that particular night, a person at a distance of 5 meters could be recognized, ergo, "the testimony of Constancio Guevarra that he could not possibly mistook Salazar, when he knows for a long time, for Papasin, stands credited. Conversely, the testimony of Yolando Sarabia that at the aforementioned distance, accused Guevarra shot and killed Salazar, is inherently improbable that it could not be given credit." (p. 17, brief.)

The argument implies that appellant Guevarra did not shoot the victim, for, at a distance of 5 meters, said appellant could not have failed to re-cognize Salazar, and as the latter was a friend, he had no reason or cause to

shoot him. As a corollary thereto, appellant argues "that the aforementioned bullet came not from the gun of Guevarra but from somebody else."

It will be noted that the argument is anchor-red on an inference drawn upon an assumed fact, that at that particular time and place, the appel-lant had recognized Salazar, and he will not shoot him because he was a friend. The inference, however, is rebutted by the testimony of no less than three eyewitnesses, one of them a fellow policeman, and they declared that they saw the appellant fire the shots, and they were positive thereof because the spark of the gunburst came from the place where the appellant was hidden, and after the firing, the appel-lant had emerged from the place.

(b) Likewise, the credibility of Gregorio Mer-cado is attacked in this respect: Mercado had de-clared that "he was only about 5 meters away from Guevarra when Guevarra fired his second shot direct-ed towards a man about 15 meters away and saw the man fell." Yet, "he did not know the direction where the man was walking," and counsel argues, "It is apparent from the foregoing testimony of this witness a showing of mark self-contradiction that are not badges of truth or sincerity for if he could not pos-sibly determine even the direction where the man was walking at that aforementioned distance, it logically follows that he could not see a man fell down at that distance, much less, determine that the bullet that hit that man came from the gun of Constancio Guevarra, taking into consideration that it was about 7:30 to 8:00 o'clock at night." (p. 20, brief.)

The argument is misleading. Counsel failed to take into account the witness' other answers on direct and cross-examination which have shown that when Guevarra fired the second volley of shots, the witness was only 5 meters away from him, and after the firing, Guevarra emerged from the place where he was hiding, and he was seen by the witness coming out from that place. To quote his testimony:

"Q.- And do you know whether Andres Papasin, together with his wife, really went to his house that night?

A.- They went there, but I do not know if they proceeded to their house.

Q.- What else transpired?

A.- When they were already far, Constancio Guevarra followed.

Q.- What else transpired?

A.- I saw that Constancio Guevarra was following them.

Q.- What else transpired?

A.- I followed with the intention of fetching him (Guevarra) so that we could go home to the poblacion.

Q.- When you saw Constancio Guevarra over there, did you see him doing anything?

A.- When I arrived there it was the time when he fired.

Q.- And then what did you do?

A.- I saw that the man who was walk-ing fell down.

Q.- In relation to the firing made by Constancio Guevarra, how many se-conds elapsed when you saw the man fall down?

A.- When I saw spark from the gun, the man fell down.

Q.- After the firing, what did Constan-cio Guevarra do?

A.- He left."

On cross-examination, Gregorio Mercado said:

"Q.- And that second shot which you heard, can you not calculate how far were you from Constancio Guevarra?

A.- About 5 meters, sir. x x x.

Q.- Are you sure of that?

A.- Yes, sir."

(c) Appellant also tries to discredit the testi-mony of Antonio Valencia arguing that as this witness had "testified that he was about 15 meters away from Constancio Guevarra when Guevarra fired his gun, and he only came to know that Agapito Salazar was hit by a bullet while he (witness) was already in the muni-cipal building, and the distance from the place where Salazar fell and the atis tree where Guevarra fired his gun was about 5 to 7 meters, x x x it clearly shows that the aforementioned bullet came not from the gun of Guevarra but from somebody else." (p. 22, brief.)

The argument is also misleading. The witness testified that he saw the spark of the gunburst from the tamarind tree, and after the firing, Guevarra emerged therefrom, and Valencia saw him coming out. To quote his testimony on cross-examination:

"Q.- When did you for the first time hear Constancio Gue-varra fire the first shot?

A.- I just heard a gunshot near the tamarind tree.

Q.- You do not know who fired that shot?

A.- I only learned that it was Constancio Guevarra who fired because he came out from that place of the ta-marind tree.

Q.- But you did not actually see him fire?

A.- I saw a man who fired a gun near the tamarind tree and I have seen that Constancio Guevarra came out.

Q.- That is why I am asking you definitely, you are not sure that it was Constancio Gueva-rra who fired near the tamarind tree because what you only saw was Constancio Guevarra coming out from that place.

A.- Why would I not be sure that same man who fired was the same who came out."

Appellant testified that before November 12, 1959 he did not have any misunderstanding with Andres Papasin when he was in front of the house of Papasin in the evening in question, he saw the latter in the balcony of his house holding something, which he presumed to be a gun; when he heard a gunburst coming from the house of Papasin, he believed that Papasin fired it; he did not think that the shot was intended for him; however, he became afraid, be-cause he knew that Papasin had a gun; he ran towards the tamarind tree where he hid under it; and while in a hidden position, he fired three consecutive shots into the air to identify himself as a police-man.

Mayor Amando Melgar declared that in the evening of November 12, 1959, Guevarra, Cornelio, Mercado, Frayre and Fajardo went to his house to inquire for their government benefits; Sarabia was also in his house; after one hour and a half, they all left the house; while he was talking with some of his visitors, he heard two shots in front of his house; he went out and inquired from Frayre and Cornelio, who were in front of his house, for the cause of the firing; after a while, he saw Guevarra with a wound on his fore-head; he asked Sarabia to accompany Guevarra to town to have his wound treated; he took the pistol of Gue-varra and gave it to Capt. Nevero of the PC; he con-fiscated the pistols of the other policemen; after learning that the suspects were Guevarra and

Cornelio, he suspended them.

Hugo Fajardo declared that between 7:30 to 8:00 o'clock in the evening of November 12, 1959, he was in the house of Mayor Melgar; he saw Guevarra, Cornelio and the other policemen in the house; Sarabia was in the house; he helped Guevarra to go to the poblacion; he saw Mercado in the house, but did not see him go out except when he went to the yard.

The claim of Guevarra that he did not have a misunderstanding with Papasin may be true, in the sense that they may not have had an occasion when personally they had confronted each other, but the evidence shows that on the night in question, when the group of policemen were in the store and were commenting on the rumor attributed to Papasin, and when Frayre, in an ugly mood said: "Tirahin na iyan"; Guevarra drew out his service pistol and prepared to shoot at Papasin, but he was frustrated in his attempt because Amado Garing, who was behind him, grabbed his pistol. That he entertained resentment and ill-feeling against Papasin, is further shown by the fact, as testified to by his fellow-policeman Gregorio Mercado, and corroborated by Yolando Sarabia, that when Papasin had left the store to go to his house, Guevarra followed him, and once he was in front of the house of Papasin, he stopped and hid under the tamarind tree, and waited thereat, and when he saw a man coming down the house of Papasin, and believing him to be Papasin, he shot at the man. The overt act of the appellant shows his intent to kill.

The testimony of Mayor Melgar, instead of being an impeachment of the testimony of the eyewitness for the prosecution, has served to corroborate the evidence of the prosecution. It appears that after the firing, Guevarra went to the house of Mayor Melgar, and instead of reporting to the Mayor, and to have his injured forehead treated by a doctor, what he did was to hide in the store-room of the house of the Mayor, like any common criminal trying to escape from the clutches of the law. He did not account where he happened to suffer the fresh injury on his forehead. But the witness for the prosecution was definite and clear in their testimony that he suffered his forehead injury when he stumbled against a tree in the coconut plantation where he was waiting to ambush his enemy.

2.- Under the second assignment of error, the admission of the extra-judicial confession of appellant Guevarra, exhibit A, is attacked, appellant contending that the evidence of the prosecution failed to prove that the confession was voluntary. In this respect, the trial court said:

"The accused Constancio Guevarra admitted that he signed the said Exh. A after it was read to him by the clerk of court (Paras, p. 5, Oct. 9, 1962); that he swore to the truth of its contents (Id. p. 5); that he did not air any complaint to the clerk of court or to any other authority thereafter (Guevarra pp. 49-52); his excuses, later made on the witness-stand, as to the involuntariness of his statement of admission, cannot be believed by this court. First, he said that he was threatened with bodily harm by Sgt. De la Rosa (Guevarra, p. 45). Later, he alleged that he signed the same Exh. A on the promise of Sgt. De la Rosa to release him and exclude him from the information (Guevarra, p. 43). On further cross-examination, he admitted that he was not really threatened with maltreatment, but that he signed the document because he did not want to embarrass Sgt. De la Rosa before Andres Papasin and he wanted to extend a favor to Sgt. De la Rosa (Guevarra, p. 53). Yet, when he found out later on that he was made an accused together with Felipe Cornelio said Guevarra did not even ask Sgt. De la Rosa why the latter welshed on his promise to release him and to exclude him from the complaint (Guevarra, p. 49). Said Sgt. De la Rosa was a friend of his since childhood. They grew up together in Naujan and studied in the same school. Up to the date of trial, Guevarra and De la Rosa did not have any misunderstanding or enmity. Besides, accused Guevarra is a high school graduate (Guevarra, p. 147) and a police-man at that time. The court has observed well his appearance and his manner in the courtroom and on the witness-stand. He appears to be intelligent, physically well-built and speaks and moves with the indefinable air that exudes only from daring and brave men. Such shifting, contradictory and puerile excuses show to what extreme this accused Guevarra had gone in order to extricate himself from the situation in which he had placed

himself. The court believes that only the urgings of his conscience and the truth must have compelled him to sub-scribe to a confession of his guilt before the PC authorities and the clerk of court.

x x x x

Besides, the confession, Exh. A, has not been proven false or untrue. On the contrary, said confession agrees in essential par-ticulars with the testimony of the witnesses for the prosecution and the other facts proven in the case." [In parenthesis supplied, referring to pages of transcript of the testi-mony of witness.]

Upon the foregoing established facts, We concur in the finding of the trial court that the confession of the appellant, Exhibit A, was freely and volunta-rily made by the appellant.

Appellant's denial at the trial that he shot Agapito Salazar on the night in question, was not be-lieved by the trial court, it being "highly incredible". The court said:

"Upon the other hand, his testi-mony that he did not shoot anyone that night; that he fired his pistol cal. 45 in the air only to identify himself as a policeman; that Papasin and he did not have any misunderstand-ing and they were in fact in good terms, the very core and substance of his whole defense - is highly incredible. Such testimony remained not only uncorroborated but as has al-ready been heretofore shown, had been contradicted by his previous sworn statement, Exhibit A, executed by him the next day after the commission of the crime when he did not have the opportunity to contrive. His claim is likewise belied by the testimony of his own friend and brother police-man who positively testified that they saw him shoot his gun at the deceased. Moreover, when he ran away to Mayor Melgar's house after supposedly firing the shots in the air, he avoided the straight and direct road to the house of the Mayor, and instead went thru a circuitous and dark route by the back-yard and coconut grooves, as a result of which he suffered a wound on the head. Only a guilty cons-cience would try to sneak away un-noticed from the scene of the crime. Guevarra believed that the shot he heard was not intended for him. If these were true and he wanted to make known his presence as an offi-cer of the law, why did he not go into the open, approached Papasin and make the formal inquiries, in-stead of running away like a fugitive from justice? As he did not report the matter to the Mayor, the theory of the prosecution that Gue-varra sought sanctuary and refuge in the house of the Mayor who was his benefactor and godfather in marriage, gains validity and credibility.

Thus, in his confession made the day after the crime, he admitted that he was in the store of Mon-tejo with his fellow-policemen, and they had agreed to ask Papasin to account for his utterances against the police force; that when his fellow-policemen left the store, he too left the place; that passing by in front of the house of Papasin, and claiming to have heard the cocking of a gun followed by a shot, he hid under a tamarind tree in front of the house of Papasin, and waited thereat, and when he saw a man cowing to-wards him, he fired at him believing him to be Papasin; that his distance to the man he shot was 14 meters; that he used his service pistol caliber .45. The fore-going salient facts in the confession of the appellant have been corroborated by the witnesses of the prose-cution, and one of them his fellow-policeman, Gregorio Mercado, who had no motive or cause to testify in the manner he did pointing an accusing finger to the appel-lant as the man whom he saw shoot the victim. More-over, the forehead injury of the appellant is an undis-puted fact. The witnesses of the prosecution said that appellant's head injury was caused when he bumped his head against a guyabano tree while running away from the place after having shot the victim. Appellant failed to account where he received his fore-head injury, and why he had to hide in the store-room of the house of Mayor Melgar like a common criminal, instead of giving an official account of his where-about to his superior officer.

To the findings made and conclusion arrived at by the trial court, We fully agree, it appearing that it is sustained by the evidence on the record, and We find no reason to depart from the settled rule that appellate courts will not interfere with the conclusion of the trial court concerning the credibility of wit-nesses for the latter is in a better position to appre-ciate the same, having seen and heard the witnesses themselves and observed their behaviour

and manner of testifying during the trial.

The crime committed by the appellant is murder qualified by treachery. When he shot the victim, appellant was then well hidden behind a tree that the victim, who was unarmed and unaware, had no way of de-fending himself. Thus, appellant employed means, me-thods or forms to insure the execution of the crime, without risk to himself.

As the appellant committed the act with intent to kill and with treachery, the purely accidental circumstance that as a result of the shots a person other than the one intended was killed, does not mo-dify the nature of the crime nor lessen his criminal responsibility, and he is responsible for the conse-quences of his acts.

"The qualifying circumstance of treachery may be properly considered, even when the victim of the attack was not the one whom the defendant intended to kill, if it appears from the evidence that neither of the two persons could in any manner put up defense against the attack or become aware of it." (People vs. Guillen, 85 Phil., 907; People vs. Tolentino, et al., 82 Phil. 808; People vs. Mamasalayan, 92 Phil. 639; People s. Gabbunton, L-2435, May 10, 1950.)

The aggravating circumstance of evident preme-ditation cannot be appreciated because the deceased was not the intended victim (People vs. Guillen, supra); neither the aggravating circumstance of night time may be appreciated for the reason that the same is already absorbed in the qualifying circumstance of treachery; nor the aggravating circumstance of superior strength for the reason that only appellant Guevarra was responsible of the crime, or that of official position for the reason that there is no proof that the appellant has used the influence, pres-tige, or ascendancy which his office gives him as the means by which he realized his purpose. (U.S. vs. Rod-riguez, 19 Phil. 156.)

WHEREFORE, the decision is affirmed in all respect, with costs against the appellant.

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ., concur.

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