

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCIANO ALMAZAN, DEFENDANT-APPELLANT.***G.R. No. L-4447. April 18, 1952*

Ponente: BAUTISTA ANGELO, J.

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Charged with murder before the Court of First Instance of Cagayan, Marciano Almazan was found guilty and sentenced to death, to indemnify the heirs of the deceased in the sum of P6,000.00, and to pay the costs.

The case is now before this Court for review in view of the nature of the penalty imposed.

In the morning of March 11, 1950, a group of students of the Aparri Vocational High School, accompanied by their teachers, went to barrio Paddaya, Aparri, Cagayan, to hold a community assembly. After staying for a while in said barrio, they were invited to attend a wedding party by Sixto Miranda, head-teacher of the barrio. The place of the gathering was a temporary shed near the house of barrio lieutenant Adolfo Palattao, brother of the bridegroom, where a dance was to be held. Shortly after their arrival, the orchestra began to play. When the first piece was being played, Marciano Almazan, a municipal policeman assigned to maintain peace and order at the wedding party, approached one of the students named Teresita Racadio whom he requested for a dance. Teresita politely declined giving as excuse that she was not acquainted with him. Almazan withdrew without making any effort to dance with another girl. Teresita danced the next piece with a classmate named Lope Miranda and the third with another classmate named Eustaquio Taloza. When the dance was over Eustaquio Taloza escorted Teresita to her seat and then joined some of his classmates who were standing near the orchestra.

Apparently resentful because of Teresita's refusal to dance with him, Almazan approached Eustaquio Taloza, grabbed him by the left arm and dragged him out of the dance hall with a .38 caliber pistol pressed against his abdomen. And without uttering a word he shot Taloza at close range to the astonishment of the guests present. The attack was so sudden that Taloza's teachers and companions were not able to intervene in his behalf. In the confusion that followed, Almazan levelled his gun at the crowd telling them not to move because he was a policeman. After the commotion was over the wounded student was brought to town for medical treatment, but notwithstanding the efforts made to save him, he died the following day. In his ante mortem declaration he pointed to Almazan as the person who shot him. The autopsy performed on his body showed that he received a gunshot wound and his death was caused by internal hemorrhage.

The foregoing is the version of the incident as given by the witnesses for the prosecution. The defense, however, gave a different version which in substance indicates that the death of the deceased was the outcome of a mere accident. Thus, the accused tried to establish that on March 11, 1950, he was ordered by his superiors to attend a wedding party at barrio Paddaya, Aparri, Cagayan, to maintain peace and order. He went to that party as instructed bringing with him a Thompson gun which he placed in a buri bag, but before going to the party he left the gun in the house of the barrio lieutenant which was five meters away from the place. While the dancing was going on, the accused noticed that the deceased was carrying something on his left hip which was bulging, and

suspecting that it might be firearm, the accused got hold of the hand of the deceased and brought him outside of the dance hall with the intention of having him investigated by the barrio lieutenant. When they are about three meters away, the deceased refused to go any further and said “vulva of your mother. You have no business with me”, and immediately thereafter, he drew a .38 caliber paltik, whereupon the two grappled for the possession of the firearm, and while so doing, it exploded, hitting the deceased in the abdomen. The wound caused his immediate death.

There are several circumstances which reject the theory that the death of the deceased is the result of an accident or of a wrestling between the deceased and the accused in an effort to wrest one from the other the possession of the fatal weapon that killed the deceased. In the first place, it is hard to believe that the deceased was then carrying on his left hip a weapon which was bulging and which attracted the curiosity of the accused, a policeman detailed at the party to maintain peace and order. On one hand, there is the testimony of teacher Inocencio Bagalan and student Teresita Racadio who emphatically affirmed in court that the deceased did not carry any firearm. These witnesses were in a position to tell the truth about the alleged firearm because they were companions of the deceased, the former being the teacher and the latter a fellow-student. Teresita Racadio danced with the deceased moments before the fatal incident and was, therefore, in a position to know or detect if the deceased was then carrying an object which was bulging in his left waist, more so when, according to the evidence, they danced very closely. On the other hand, if it is true that the firearm was bulging and was consequently visible, there was no need for the accused to drag the deceased out of the dance hall to take him to the house of the barrio lieutenant to find out if he really was carrying a firearm. It would have been easier for him to take him outside of the hall and there search him for firearm if that was his purpose. The story told by the defense as regards the alleged precaution taken by the accused leading to the detection of the firearm smacks of a concoction which engenders doubt as to its veracity.

The theory that the firearm which was allegedly found in the possession of the deceased was a .38 caliber dilapidated paltik is likewise incredible in the face of the circumstances under which the same has been allegedly possessed by the deceased. If the revolver was a paltik and was unlicensed, it would be the height of folly for the deceased to carry it visibly in his possession for that would be inviting detection and prosecution. And then we have the testimony of Inocencio Bagalan, a former officer in the Philippine Army, who stated that the alleged weapon had no refil or the bore was uneven, and if a .38 caliber bullet had been fired therefrom the barrel would have broken into pieces. But the truth is, according to witness Bagalan, that the firearm used by the accused which he saw at the distance of about three meters was not a paltik but a police service revolver calibre .38 with a round seal in silver on the handle and one manufactured in the United States.

Finally, the conduct which the accused has observed in carrying out his duty as an agent of the law in connection with the wedding party as narrated by him is so uncommon and unnatural as to deserve credence. He said that he was ordered by his superiors to go to the wedding party to maintain peace and order and so he went to the place armed with a Thompson gun hidden in a buri bag. But, instead of going to the place with the Thompson gun, as it was his duty to do, in line with his mission, according to him, he left his gun in the house of the barrio lieutenant and attended the dance without a firearm. And his conduct becomes more suspicious when he refuse to make a written statement about the occurrence upon being investigated by his superiors immediately after the tragic happening. Upon the evidence of record, we are persuaded that the happening took place as borne out by the evidence for the prosecution.

The crime committed is murder qualified by treachery. The lower court found that the accused took advantage of his position as policeman in committing the crime, but did not appreciate in his favor any mitigating circumstance. We find, however, that the accused after committing the crime presented himself to his chief,

sergeant Pedro Peneyra to whom he reported the occurrence. This fact has not been contradicted. This is a mitigating circumstance which should be appreciated in favor of the accused.

With the modification that the accused be sentenced to reclusion perpetua, with the corresponding accessory penalties, the decision appealed from is affirmed in all other respects, with costs against the accused.

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

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