

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO ESMIR, DEFENDANT-APPELLANT.***G.R. No. L-4608. December 29, 1952*

Ponente: BAUTISTA ANGELO, J.

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Charged with murder before the Court of First Instance of Leyte, Alejandro Esmir was found guilty and convicted to suffer reclusion perpetua, to indemnify the heirs of the deceased in the sum of Php.3,000, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The evidence shows that in the afternoon of September 10, 1950, an illegal cock fighting locally known as topada was held in sitio Maitum, barrio of Capili-an, municipality of Abuyog, province of Leyte. One of the games played that afternoon was by between a rooster owned by Tereso Costin and a rooster owned by Alejandro Esmir. Costin's rooster was held by Cirilio Ardiente while that of Esmir was held by himself. Betting was heavy on both sides. When the fight was over it resulted that the rooster of Esmir was defeated. At first Esmir was not willing to admit defeat, but because of the intervention of those present who decided that his cock really lost the fight, he was reluctantly prevailed upon to accept the verdict, though he showed signs of animosity and was visibly trembling.

In the evening of the same day, after the games were over, the people started to go home. One of them, Teodulfo Ramal, while on his way home, was met by Esmir at the bridge situated near the house of barrio lieutenant Patrocinio Baltazar. Esmir asked Teodulfo who he was and when the latter identified himself as "Poldo", Esmir allowed him to proceed, but he remained on the bridge apparently waiting for someone. Not long afterwards, Tereso Costin and his brother-in-law Leon Rufil also came because they have to pass the same bridge in going to their house. Costin was then holding his victorious rooster in his right hand and the left defeated one, which is customarily given to the victor, in the left hand. As they were about to cross the bridge, Esmir suddenly approached Costin, put his left hand around his neck, and without much ado stabbed him on the breast with a knife. Upon being thus assaulted, Costin exclaimed, "Andong why did you stab me?" to which Esmir simply replied, "so you are wounded". Leon Rufil tried to intervene to separate them but Esmir confronted him in a menacing attitude and so he ran away. Thereupon, Tereso Costin managed to go to the nearby house of barrio lieutenant still holding the two roosters in his hands and asked that he be admitted because he was wounded. After inquiring as to who was the lieutenant allowed him to come in and noticing his wound asked whom he wondered him to which Costin readily answered that it was Alejandro Esmir. After showing to the barrio lieutenant the wound he received on the abdomen, the lieutenant sent for his wife and took steps to notify his parents and other relatives. Costin told the barrio lieutenants that he could not understand why Esmir stabbed him when they never had any previous misunderstanding. Early in the morning the following day, Costin was placed in a baroto and accompanied by his relatives and barrio lieutenant was brought to poblacion of Abuyog for medical treatment, but he died on the way that same morning. An autopsy of his body was conducted by Dr. Jose Gaviola, president of the 4th Sanitary Division, who found that his death was caused by internal hemorrhage.

The evidence further shows that soon after the incident the assailant went hiding in a cogon thicket at barrio Capili-an, Abuyog, where he was apprehended on September 18, 1950, by a police patrol under the command of patrolman Rosalio Cortaga. After the arrest, the assailant admitted to patrolman Cortaga that the incident he had with the deceased at the topada was the motive of the killing. It further appears that this assailant had previously been convicted and served sentence of one (1) month and one (1) day for less serious physical injuries.

The accused denied being the killer of Tereso Costin. His evidence tends to show that on September 10, 1950, Alejandro Esmir and his wife went to sitio Maitum, place of the incident, to buy some rattan. At about 6:00 o'clock in the evening, on their way home, they met one Angel Arcon with whom they conversed for a while. While they were thus conversing, Tereso Costin arrived and held Esmir by the shoulder and asked him what did he do with the chickens he had stolen. Esmir denied the charge but Costin insisted that he did steal his chickens and that he should pay for them. As Esmir stated that he would not pay for any chicken because he had not stolen any, Costin gave him first blow which he was able to parry. Then Costin pulled a dagger and when Esmir saw it he ran away pursued by Costin. When Costin was about to overtake Esmir, the latter's wife shouted to warn him of his presence, at which juncture Esmir turned to face Costin. The latter tried to stab him and they grappled for the dagger and when Esmir saw no chance to wrest the weapon because Costin was bigger and stronger, Esmir punched him back causing him to reel and ran away. Esmir, could not tell how Tereso Costin was wounded in the abdomen.

The only question to be determined relates to the manner the fatal wound had been inflicted on the deceased which much depends on the credibility of the witness. On this point, the lower court reached the conclusion that the witnesses for the prosecution deserve more belief and credence because, in its opinion, the story related is more consonance with human experience and the ordinary course of events. To this we agree. There is no doubt that the killing was the result of a treacherous attack on the part of the accused motivated by resentment engendered by the defeat of his rooster at the topada which immediately preceded the unfortunate incident. The evidence for the prosecution is not merely circumstantial. There is one eyewitness, Leon Rufil, who actually saw the stabbing. While Rufil is a brother-in-law of the deceased, he is also a first cousin of the accused, and, therefore, he cannot be considered a partial witness. Another corroborative evidence is the statement of the patrolman Rosalio Cortaga to the effect after he arrested the accused admitted that the incident at the topada was the cause of the killing. If this is so and it appears that he got the worst in that incident because his rooster was defeated and killed, there is every reason to believe that it was he who initiated the assault because he was the aggrieved party. Indeed, what reason is there for the deceased to plan the attack when the people who were present at the topada had decided the fight in his favor? The claim that the aggression was started by the deceased because of his belief that the accused had stolen his chickens is not only devoid of merit but is decolored by the fact that neither the accused nor his witness had been able to explain how the fatal wound had been inflicted. This matter was left to a mere conjecture. It is apparent that this claim is but a mere after thought conceived at the last hour to relieve the accused from liability.

Teodulfo Ramal furnishes another clue which points to the accused as the aggressor. According to him, as he was going home from the topada that evening, he met the accused at the bridge near the house of the barrio lieutenant, and when the latter learned that he was "poldo" he allowed him to proceed but stayed behind apparently waiting for someone. Evidently this someone was the deceased for when he showed up he was immediately accosted and stabbed in the abdomen by the accused. If to this we add that, after stabbing his victim, the accused went hiding in a cogon thicket to elude arrest, our conviction that he is the aggressor becomes strengthened.

Finding no error in the decision of the lower court, the same is hereby affirmed, with costs.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Jugo, and Labrador, JJ., concur.

Feria, and Reyes, JJ., did not take part.

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