

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ALBERTO MACASO, DEFENDANT AND APPELLANT.***G.R. No. L-30489. June 30, 1975*

Ponente: MARTIN, J.

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Comes to Us for mandatory review the condemnatory judgment of the Court of First Instance of Basilan in Criminal Case No. 1529, entitled "People of the Philippines vs. Alberto Macaso", finding the accused ALBERTO MACASO, guilty beyond reasonable doubt of the crime of MURDER defined and penalized in Article 248, in relation to paragraphs 13 and 16 of Article 14, of the Revised Penal Code, and sentencing him to suffer the supreme penalty of DEATH, with all the accessories of the law, to indemnify the heirs of the deceased Nicolas B. Suaso in the amount of P12,000.00 and to pay the costs.

The deceased, Nicolas Suaso, was formerly a detective corporal of the Secret Service Division of the Basilan City Police Department. On April 10, 1964, he had altercation with the Chief of the Secret Service Division as a result of which he was charged with grave slander. Upon a plea of guilty, he was meted out the punishment for simple slander. This constrained him to resign from the service. For his livelihood, he decided to drive an AC jeep owned by his mother. The accused Alberto Macaso, on the other hand, was on the day of the fatal incident a member of the Basilan City Police Department having been appointed thereto as a Patrolman on March 26, 1963.[1]

It appears that Suaso and Macaso had their first verbal encounter sometime in September, 1964 about parking rules and regulations near the Isabela parking area.[2] Their next confrontation took place in the morning of October 19, 1964 at the wharf, which Macaso also used to cover as part of his traffice duties whenever the launch coming from Zamboanga City arrives. At about 10:30 in the morning of the same day when Macaso went to the wharf, he saw the jeep of Suaso parked in a prohibited area. He called his attention to the apparent violation of traffic rules. Suaso resented Macaso's behavior; thus, an altercation between the two ensued. Macaso reported the incident to Inspector Fortuno Ramos, the Chief of the Traffic Division.[3] The latter went to the wharf and told Suaso to move his jeep out of the restricted area. Before moving out his jeep, Suaso told Inspector Ramos, "If you will be the one who will order me, I will obey, if Pat. Macaso will order me to get out I won't obey because I have no respect for this "salamagan".[4] Again, in the afternoon of that same day, while Macaso was on duty as a traffic policeman at the intersection of Magallanes and Magno Streets, he saw Suaso with his jeep overloaded. Promptly, Macaso beckoned Suaso to stop, but Suaso simply ignored him and proceeded to his destination. Macaso did not waste any time to report the matter to Inspector Ramos.[5] A few minutes later, both Inspector Ramos and Macaso went to the Aguada bridge and waited for the jeep of Suaso to pass. When the jeep arrived, Inspector Ramos ordered Suaso to stop and told him that he (Ramos) would like to talk to him (Suaso). Suaso begged permission to take his passengers to the parking area so they would not be late. Inspector Ramos then boarded the jeep of Suaso on its way to the parking lot in front of the City Bakery where the passengers alighted. Inspector Ramos then asked Suaso why he did not stop when Macaso motioned him to do so. Suaso reasoned out that he did not hear the whistle of Macaso. Inspector Ramos then asked Suaso to go with him to the police station,

but Suaso refused, claiming that he has not committed any traffic violation, and announced that he will fight the case in court if Macaso believed he was at fault. Suaso told Inspector Ramos that he has high respect for him and all his officers except Macaso who was allegedly ignorant of traffic rules and regulations.[6] By then Macaso arrived and told Inspector Ramos: "Sir, I will take his license". This drew an angry retort from Suaso who asked Macaso why he wanted his license. Macaso charged Suaso with having overloaded his jeep and for defying his signal to stop. Suaso then shouted at Macaso: "Prove it! Prove it!" At this juncture, Inspector Ramos cautioned Macaso to move back and the latter did, while Suaso returned to his jeep and sat behind the steering wheel. Suaso then told Macaso: "The trouble with you is that you are stupid". Thereafter Macaso asked Inspector Ramos: "What now, sir?" Upon hearing this, Suaso angrily told Macaso: "What do you want?" and immediately got off his jeep to confront Macaso.[7] It was at this instant when Macaso fired at Suaso hitting him on several parts of his body. The medical report (Exhibit "A") indicates that Suaso suffered the following wounds:

- (1) a wound which entered on the left mid-infraclavicular area and came out on the left mid-line scapular area;
- (2) a wound which entered on the left anterior lumbar area and came out on the left posterior lumbar area;
- (3) a wound which entered on the right posterior lumbar area and came out on the right anterior hypochondrium; and
- (4) a wound on the right shoulder.

The death of Suaso was due to internal hemorrhage caused by multiple gunshot wounds.

In exculpation, accused-appellant Macaso submits that when he told Inspector Ramos at the parking area in front of the City Bakery that he would get the license of the deceased, the deceased allegedly got angry and asked him why he wanted to take his license. He then charged the deceased with having overloaded his jeep with passengers and disregarding his signal to stop. The deceased then allegedly shouted at him to prove the charge. The deceased even called him "stupid". As the deceased refused to surrender his license, he (accused-appellant) asked Inspector Ramos what to do. Upon hearing this, the deceased allegedly challenged him, jumped off his jeep, and held the front of his shirt and grabbed his pistol with his left hand. Accused-appellant then pressed the holster of the pistol and brushed aside the hand of the deceased. The deceased lost his grip on the pistol but was able to pull its lineyard causing the pistol to be ejected from its holster. Accused-appellant held on to his pistol, but the deceased allegedly continued to wrestle and grapple with him for the possession thereof. In the course of their struggle, the pistol went off with several shots hitting the deceased.

After trial, the lower court rendered its verdict for the People and convicted Macaso of the crime of murder after finding that the killing of the deceased was attended by treachery and evident premeditation.

In his brief, accused-appellant Macaso assigns the following errors allegedly committed by the trial court:

1. The trial court erred in finding the existence of the aggravating circumstance of treachery or alevosia.
2. The trial court likewise erred in finding the existence of the aggravating circumstance of evident premeditation.
3. The trial court erred in not finding that the accused-appellant acted in legitimate self-defense.
4. The trial court erred in rejecting the theory of the defense on the basis of inconsistencies and contradictions and in accepting the prosecution's version.
5. Assuming arguendo, that the accused did not act in legitimate self-defense, the trial court erred in sentencing the accused-appellant to suffer the supreme penalty of death.

The main thrust of accused-appellant's appeal is that he killed the deceased in legitimate self-defense. To claim self-defense, the accused must prove three concurring circumstances, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to repel the aggression and (c) lack of sufficient provocation on the part of the accused.[8]

Was there unlawful aggression on the part of the deceased? A review of the evidence fails to lend credence to the accused-appellant's claim that the deceased was the unlawful aggressor. He was not even armed at the time, while the man he was up against was a policeman who was in possession of his service pistol. Furthermore, another police officer who was likewise armed was present. Under these circumstances, it is very unlikely that the deceased would attack the accused-appellant. Evidence, to be worthy of credit must not only proceed from a credible source, but must in addition, be credible itself. And by this is meant that it should be natural, reasonable and probable as to make it easy to believe.[9] A plea of self-defense must be proved by clear and convincing evidence.[10] The evidence adduced by the accused-appellant is far from being "clear and convincing" and cannot stand logical analysis. Based on the standard of common experience, it is unnatural.[11] True, the deceased acted rather belligerently, arrogantly, and menacingly at the accused-appellant, but such behavior did not give rise to a situation that actually posed a real threat to the life or safety of accused-appellant. The peril to the latter's life was not imminent and actual. To constitute unlawful aggression, it is necessary that an attack or material aggression, an offensive act positively determining the intent of the aggressor to cause an injury shall have been made. A mere threatening or intimidating attitude is not sufficient to justify the commission of an act which is punishable per se, and to allow a claim of exemption from liability on the ground that it was committed in self-defense.[12] For unlawful aggression to be present in self-defense, there must be real danger to life or personal safety.[13] In the present case, the Court failed to see any. The deceased's actuation against the accused-appellant before the incident did not amount to an unlawful aggression that would justify the latter to shoot the former. True it is that the deceased had shown gross disrespect to and utter disregard of the accused-appellant's authority. He even boldly announced before Inspector Ramos and of the people around that he had no respect for accused-appellant whom he branded as ignorant of traffic rules and regulations. He defied the authority of accused-appellant by refusing to surrender his license. He even had the temerity to call accused-appellant "stupid". Finally, in what appeared to be a challenge, the deceased dared the accused-appellant by asking him: "What do you want?", at the same time jumping from his jeep and rushing towards the latter. Unmistakably, the challenging attitude, demeanor and insolence of the deceased was enough to provoke the accused-appellant to anger to the extent of using his pistol against him. But, since the deceased's act and behavior before the shooting did not amount to unlawful aggression, accused-appellant could not claim self-defense, not even an incomplete one.

On the other hand, the prosecution imputes to the accused-appellant the aggravating circumstances of treachery and evident premeditation in killing the deceased. Treachery exists when the offender commits any of the crimes against person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[14] However, there is nothing in the record to show that accused-appellant had pondered upon the mode or method to insure the killing of the deceased or remove or diminish any risk to himself that might arise from the defense that the deceased might make. His decision to shoot the victim appeared to be sudden, brought about by the stinging provocation from the latter. When the victim abruptly jumped out of his jeep and rushed towards the accused-appellant in a daring mood and angrily asked him: "What do you want?", that was the last straw that broke his patience. The succession of events was so fast that no time was left for the accused-appellant to deliberate on his mode of attack - no time to prepare for the manner by which he could kill his victim with the full assurance that it would be impossible or hard for the victim to defend himself or retaliate. Treachery can not therefore be appreciated as it only obtains when the culprit employed means, methods or forms of execution

which tend directly and specially to insure the commission of the crime and at the same time to eliminate or diminish the risk to his person from a defense which the other party might offer.[15]

Besides, the wounds suffered by the deceased do not, by any means, indicate conclusively that he was attacked treacherously by the accused-appellant. Dr. Reynaldo de Joya, the prosecution expert witness testified that the victim sustained four (4) gunshot wounds,[16] that wounds Nos. 1 and 2 were inflicted on the front part of the victim[17] while wound No. 3 has its point of entry at the posterior lumbar area at the right.[18] As to wound No. 4, Dr. de Joya could not definitely tell where the point of entry or exit was, because it was merely a tangent wound. True, it is that the deceased suffered one wound at the back (posterior lumbar area) but there was no positive proof that the same was the first wound inflicted. When the accused-appellant fired at the deceased, the two were facing each other. If this signifies anything at all, it is that the first wounds inflicted were those on the frontal region of his body. If the third wound was located at the back, this could have been inflicted at the time when the deceased was falling with his body turning around. This is confirmed by the trajectory of the wounds of the deceased. Nevertheless, what clearly negates the claim of treachery by the prosecution is the fact that all the wounds of the victim were inflicted at close range. Had the accused-appellant wanted to attack the victim treacherously, he could have shot the deceased at a safer distance to insure himself against the risk from any possible defense the deceased might make, considering that the victim was himself an ex-policeman and of bigger and taller built. Indeed, the prosecution has failed to prove the qualifying circumstance of treachery so as to aggravate the liability or penalty incurred by accused-appellant.[19]

Much less can the Court give weight to the finding of the trial court that the crime was committed with evident premeditation. In *People vs. Palacpac*, L-27822, February 28, 1973, 49 SCRA p. 441, the Supreme Court adopting its ruling in *People vs. Torejas*, L-29935, January 31, 1972, 43 SCRA, p. 158, held:

"x x x this circumstance can be taken into account only when there had been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act. There must be 'an opportunity to coolly and serenely think and deliberate on the meaning and consequences of what they had planned to do, an interval long enough for the conscience and better judgment to overcome the evil desire and scheme.' Where 'there was no direct evidence of the planning or preparation it cannot be said to exist' since it is not enough that premeditation be suspected or surmised, but the criminal intent must be evidenced by notorious untoward acts evincing determination to commit the crime. It is not 'premeditation' merely: it is 'evident premeditation'."

In so finding that the killing of the deceased was attended by evident premeditation, the lower court took into consideration the following circumstances as indicative of the plan of accused-appellant to wage a vendetta against the deceased: (1) His conviction for homicide in Criminal Case No. 1528 for the death of one, Tong Sahain; (2) The altercation between the accused-appellant and the deceased sometime in September 1964 in the parking area near the public market; (3) The altercation between the accused and the deceased in the morning of October 19, 1964 at the wharf; and (4) The fact that the accused followed Inspector Ramos and the deceased at the parking area in front of the City Bakery. There is nothing in the evidence to show that prior to the fatal incident, accused-appellant had a prearranged plan to kill the deceased. The trial court erringly attributed the alleged determination of accused-appellant to take revenge on the deceased due to the supposed role that the latter played in Criminal Case No. 1528 which resulted in accused-appellant's conviction. We have looked into the thick foliage of the records to find any basis for the lower court's conclusion, but we failed to find any. Much less can the alleged plan of accused-appellant to kill the deceased be alluded to the heated arguments between him and the deceased at the parking area near the public market in September 1964 and in the morning of October 19, 1964 at the wharf. The altercations between the two in those two instances were nothing more than the usual verbal skirmishes between an apprehending police officer and a traffic violator on alleged infractions of parking rules and regulations. It can be seen from the records that there was a heated discussion between the two before the

fatal shooting took place; that the accused-appellant caught the deceased violating traffic rules twice on that very day the incident happened, October 19, 1964 and yet in both instances accused-appellant kept his cool and created no scene in spite of the deceased's display of defiance to his authority. What he did was to report the matter to Inspector Ramos who ordered the deceased to take out his jeep from the prohibited parking area. If the accused-appellant had in fact planned to kill the victim, he would just have kept for himself whatever grudge he had against the deceased so as not to let anyone know whatever intention he had against him. But he reported the matter to Inspector Ramos, thereby clearly implying that he gave no personal significance to his differences with the deceased but took them as the usual offshoot in the performance of his duties as a police officer. If the accused-appellant had really planned to kill the victim, he could have easily done it during any of the two above-mentioned incidents. He could have executed his plan when he saw the deceased arguing with Inspector Ramos in that fatal afternoon of October 19, 1967, even before the deceased could get down his jeep. All considered, it is evident that the alleged circumstances upon which the lower court based its findings that the accused-appellant had a premeditated plan to kill the deceased, do not warrant such conclusion. Accordingly, sans the aggravating circumstances of treachery and evident premeditation which the prosecution imputes to the killing of the deceased and with the mitigating circumstance of sufficient provocation or threat on the part of the deceased immediately preceding the act,[20] the Court finds the accused-appellant guilty beyond reasonable doubt of HOMICIDE penalized under Article 249 of the Revised Penal Code, and not of MURDER as found by the lower court.

IN VIEW OF THE FOREGOING, applying the Indeterminate Sentence Law, the accused-appellant is hereby sentenced to suffer the penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum, to FOURTEEN (14) YEARS and EIGHT (8) MONTHS of reclusion temporal as maximum. As thus modified, the judgment of the lower court is affirmed in all other respects.

SO ORDERED.

Makalintal, C.J., Castro, Fernando, Barredo, Makasiar, Antonio, Esguerra, Aquino, and Concepcion, Jr., JJ., concur.

[1] Tsn., p. 404, Faustino.

[2] Tsn., p. 79, supra.

[3] Tsn., pp. 406-408, supra.

[4] Tsn., pp. 324-325, supra.

[5] Tsn., pp. 409-412, supra.

[6] Tsn., pp. 328-333, supra.

[7] Tsn., pp. 334-336. Faustino.

[8] *People vs. Ordiales*, L-30956, November 23, 1971, 42 SCRA 238.

[9] *Tuason vs. Luzon Stevedoring, et al.*, L-13541, January 1961.

[10] *People vs. Ordiales*, supra.

[11] *People vs. Curambao, et al.*, L-10557, Jan. 1961; also *U.S. vs. Sison*, 18 Phil. 557; *Arroyo vs. Hospital de San Pablo*, 81 Phil. 333; *People vs. Fernandez*, 94 Phil. 333

[12] U.S. vs. Guy-sayco, 13 Phil. 292.

[13] People vs. Sabio, L-23734, April 27, 1967, 19 SCRA 901.

[14] Art. 14. par. 16, Revised Penal Code.

[15] People vs. Tumaob, 83 Phil. 738; also People vs. Pelayo, L-24884, Aug. 31, 1968, 24 SCRA 1027.

[16] Tsn, April 2, 1960, pp. 21-37, Exhibit A.

[17] Ibid., pp. 47-48.

[18] Ibid., p. 35.

[19] People vs. Ardisa, L-29351, January 23, 1974.

[20] ART. 13. Mitigating Circumstances. — The following are mitigating circumstances:

* * * * *

4. Sufficient provocation or threat immediately preceded the act.

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