

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO PAYAO, EUFRACIO COREO ALIAS SOFRIANO
BARRANTES, ARTEMIO DOSAL AND EDUARDO ILAO, DEFENDANTS,
EUFRACIO COREO ALIAS...**

G.R. No. L-29364. November 21, 1975

Ponente: FERNANDO, J.

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FERNANDO, J.:

Marcelino Payao, Eufracio Coreo, Artemio Dosal and Eduardo Ilao were indicted for the crime of murder, the victim being one Filomeno Grata.[1] Marcelino Payao pleaded guilty and assumed sole and full responsibility for the offense. It did not suffice for the acquittal of Eufracio Coreo, now appellant. The fact that there was testimony from two prosecuting witnesses to the effect that he inflicted a wound in the breast of the deceased just below the left nipple which, in the opinion of the doctor who performed the autopsy, was equally of a fatal character, persuaded the trial court to hand down a judgment of conviction. The sentence imposed was reclusion perpetua. In a very able brief by counsel de oficio, Attorney Guillermo Pablo, Jr., the principal point raised in assailing such a decision is that the constitutional presumption of innocence had not been overcome.[2] As pointed out, however, in the equally well-researched brief by the then Solicitor General, now Associate Justice, Felix Q. Antonio, this is one case where the appreciation of the conflicting evidence by the trial court calls for respect; hence, if as analyzed by it, the proof did clearly show beyond reasonable doubt the guilt of appellant, then an acquittal is not appropriate. There is much to be said for such an approach. At the same time, the contention of Attorney Pablo that there was no treachery and that at the most the offense was one of homicide, commands assent. Even the brief of the Solicitor General was in agreement. Necessarily then, while appellant is not to be exculpated, he should be found guilty only of homicide. Accordingly, there should be a reduction of the penalty imposed as far as the prison term is concerned, but an increase of the pecuniary liability for the death of the deceased to P12,000.00. So we rule.

The deceased Filomeno Grata, along with seven other persons, constituted the crew of a fishing outfit, locally known as Sapyao, composed of two boats — the labasan and the pukutan.³[3] While anchored close to the wharf of Iquiran, Daram, Samar, and while Grata was at the bow of the labasan, he was approached by Payao, who aimed with his bolo and struck at his left arm near the elbow, causing it to be nearly severed.[4] There is testimony that appellant Coreo joined in the attack, using a long, rounded, sharpened instrument, wounding the deceased at the breast just below the left nipple.[5] The deceased, as a result, fell toward the hull of the boat.[6] The other two accused, Dosal and Ilao, who as previously noted were not apprehended at the time of the trial, using an oar and a bamboo pole, respectively, pushed the deceased overboard.[7] After falling into the sea, the deceased tried to swim to shore, but before reaching land, he was aided by the other members of the fishing outfit.[8] The accused Payao steered the boat ashore where he, Dosal, and Ilao alighted from the boat and fled.[9] The deceased died of external and internal hemorrhage due to the wounds he sustained in the left arm and chest.[10]

As noted at the outset, the vigorous and scholarly effort on the part of Attorney Guillermo Pablo, Jr., while reflecting credit on the industry and diligence that must be displayed by counsel de oficio, cannot suffice for the reversal of the judgment, although, as likewise set forth earlier, there must be a mitigation of his liability insofar as loss of liberty is concerned, because the offense committed is homicide and not murder.

1. On the facts as found by the lower court after a careful appraisal of the record, it cannot be said that the constitutional presumption of innocence has not been overcome.[11] There is competent and credible proof of the culpability of appellant Coreo. His guilt was shown beyond reasonable doubt. This then is a case where the well-settled principle as to the acceptance of the findings of the lower court which had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies, finds application.[12] This Court had even gone so far as to hold in *People v. Tila-on*: [13] "Finally, the rule is now firmly established to the point of becoming elementary in this jurisdiction and elsewhere that where there is an irreconcilable conflict in the testimony of witnesses, the appellate court will not disturb the findings of the trial court when the evidence of the successful party, considered by itself, is adequate to sustain the judgment appealed from." [14] It cannot be argued successfully then that what was held by the lower court concerning the extent of the participation of appellant Coreo is devoid of factual foundation or that the conclusion arrived at by it in the light of the testimony as to his inflicting the breast wound on the deceased cannot stand the test of scrutiny. There is no fact or circumstance which had been overlooked or the significance of which had been misinterpreted. Appellant had not made out a case for acquittal.

2. Treachery, however, was not proven. There was no *alevosia*. There was error on the part of the lower court, therefore, as contended by counsel de oficio, to find appellant guilty of the crime of murder. The brief of the Solicitor General was in agreement with such a view thus: "With due respect to the lower court, however, we believe that the aggravating circumstance of treachery was not attendant in the commission of the offense insofar as appellant is concerned. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specifically to insure its execution without risk to himself arising from any defense which the offended party might make (Art. 248, Revised Penal Code). Treachery cannot be presumed. It must be established beyond reasonable doubt. The defense of treachery indicates that it is subjective in character. It must be deliberately sought by the offender or consciously adopted as a mode of attack." [15] Considering the peculiar facts of this case, what was said by the then Justice Villamor in *People v. Ramiscal* [16] finds relevance. To quote his words: "From this point of view the only circumstance in the record to show the qualifying circumstance of *alevosia*, which qualifies the crime of murder, is the fact that the wound was inflicted on the right underarm of the deceased. In our opinion, however, this circumstance alone, and even taken in conjunction with the testimony of Umali that he saw the accused stab the deceased while the latter was in a position of placing something within the show case, and considering the last words of the conversation between the accused and the deceased, is not sufficient to hold, with reasonable certainty, that the latter was completely unaware of the attack that might have come from the defendant. The qualifying circumstance of treachery (*alevosia*) may not be deducted from *indicia* nor from presumption. The fact that the defendant employed ways and means in the execution of the crime, tending directly and specially to insure it, must be proven with convincing evidence. As there is no certainty that in the death of the deceased there was treachery, which characterizes the crime of murder, the crime may only be punished as homicide." [17] To repeat, *alevosia* "is not to be presumed, but must be proved as conclusively as the act which it qualified." [18]

WHEREFORE, as recommended by the Solicitor General, inasmuch as treachery was not present in the killing of the deceased, appellant Eufracio Coreo is hereby sentenced to suffer the penalty of eight years and one day of *prision mayor* to fourteen years, eight months and one day of *prision correccional* and to indemnify the heirs of the deceased in the sum of P12,000.00. As thus modified, the judgment of conviction stands affirmed.

Barredo, Aquino, Concepcion Jr., and Martin, JJ., concur.

Antonio, J., took no part.

[1] Artemio Dosal and Eduardo Ilao could not be tried, as at the time of the trial, they were still at large.

[2] According to Article IV, Section 19 of the present Constitution: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, * * *." Such a provision was found in Article III, Section 1, par. 17 of the 1935 Constitution.

[3] T.s.n., 5, 23.

[4] Ibid, 5, 6, 23.

[5] Ibid, 5, 24, 25.

[6] Ibid, 6, 25.

[7] Ibid, 6, 26.

[8] Ibid, 8, 9, 26, 27.

[9] Ibid, 6, 7, 27.

[10] Ibid, 33-35, 37 and Exhibits A, A-1 and A-2.

[11] Cf. People vs. Dramayo, L-21325, Oct. 29, 1971, 42 SCRA 59; People vs. Zamora, L-34090, Nov. 26, 1973, 54 SCRA 47; People vs. Alvarez, L-34644, Jan. 17, 1974, 55 SCRA 81; People vs. Reyes, L-36874, Sept. 30, 1974, 60 SCRA 126; People vs. Roa, L-35284, Jan. 17, 1975, 62 SCRA 51; People vs. Joven, L-36022, May 22, 1975, 64 SCRA 126; People vs. Padirayon, L-39207, Sept. 25, 1975.

[12] Cf. People vs. Gumahin, L-22357, Oct. 31, 1967, 21 SCRA 729; People v. Panganiban, L-22476, Feb. 27, 1968, 22 SCRA 817; People vs. Pelago, L-24884, Aug. 31, 1968, 24 SCRA 1027; People vs. Manos, L-27791, Dec. 24, 1970, 36 SCRA 457; People vs. Beraces, L-25016, March 27, 1971, 38 SCRA 127; People vs. Sabandal, L-31129, Sept. 30, 1971, 41 SCRA 179; People vs. Dramayo L-21325, Oct. 29, 1971, 42 SCRA 59; People vs. Angcap, L-28748, Feb. 29, 1972, 43 SCRA 437; People vs. Carandang, L-31012, Aug. 15, 1973, 52 SCRA 259; People vs. Macaraeg, L-32806, Oct. 23, 1973, 53 SCRA 285; People vs. de la Victoria, L-30037, June 27, 1975.

[13] L-12406, June 30, 1961, 2 SCRA 653.

[14] Ibid, 657.

[15] Brief for the Appellee, 5.

[16] 49 Phil. 103 (1926).

[17] Ibid, 106-107.

[18] People vs. Abril, 51 Phil. 670, 675 (1928). Cf. United States vs. Namit, 38 Phil. 926 (1918); People vs. Cañete, 44 Phil. 478 (1923); People vs. Calinawan, 83 Phil. 647 (1949); People vs. Torejas, L-29935, Jan. 31, 1972, 43 SCRA 158.

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