

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO MARTINEZ Y SARABIA, DEFENDANT-APPELLANT.

G.R. No. L-31755. March 31, 1980

Ponente: MELENCIO-HERRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a9de6d6ec926/>

MELENCIO-HERRERA, J.:

Automatic review of the Decision of the Criminal Court of Pasig, Rizal (Metro Manila), convicting DANILO Martinez y Sa-rabia of the crime of Murder and sentencing him to death.

Between six and seven o'clock in the morning of September 15, 1969, Nestor Bogo y Jimenez, a 20-year old house painter, was stabbed while walking along Santiago Street near the corner of Decena Street in Pasay City, on his way to work. He sustained a stab wound with a depth of 19.3 cms. "at the back of the left chest, pene-trating and involving the heart." He died in the hospital. Dr. Nery Y. Ramirez, who conducted a post-mortem examination of the ca-daver of the deceased, declared that the assailant must have come from behind - "moving a little forward to the left side of the victim."

Eyewitness Rodrigo Marquez declared that while he and Nelson Montemayor were standing at the corner of Santiago and Decena Streets, Pasay City, waiting for a ride, he noticed many people running. Then he saw the accused DANILO coming from Decena Street holding a knife (Patalim) and chasing the VICTIM, followed by four companions, whom he did not recognize. Having caught up with the VICTIM, the ACCUSED stabbed the latter, after which his four companions clapped.[1]

The investigating officer, Sgt. Mariano C. Isla, testified that he came to know from some members of the "Oxo" and "Sigüe--sigüe" gangs that during initiation a new member must commit acts of violence, even against unknown individuals, in order to gain membership in the gang. After one has successfully committed his act of violence, the other witnessing members would clap their hands and run away. As correctly pointed out by the defense, how-ever, the foregoing is at best hearsay evidence. While it may point to a possible explanation, it cannot be considered against the ACCUSED. Besides, the same investigating officer testified that the ACCUSED had been a member of the "Oxo" gang, as shown by the tatoo marks at his back, for one year so that he could not have been under initiation at the time of the incident.

Prosecution witness Nelson Montemayor did not see the actual stabbing as he was three steps behind Rodrigo Marquez lighting a cigarette. He only saw the ACCUSED holding a blood-stained knife, still chasing the VICTIM who was running and whose clothes were also smeared with blood.[2] He also heard the VICTIM cry out "bakit ninyo ako sinaksak, wala naman akong kasalanan", after which persons chasing him applauded.[3] The two witnesses did not know what transpired afterwards, for, frightened at what they had seen, they fled and proceeded to their respective places of work. They just learned later that the VICTIM died as a result of the stab wound.

On January 16, 1970, an Information for Murder was filed against the ACCUSED and four Does charging them with having mutually helped one another in stabbing the VICTIM, "taking ad-vantage of their superior strength, with treachery and with deli-berate intent to kill, and armed with a deadly weapon".

The ACCUSED, 20 years of age, interposed the defense of alibi, claiming that he was vacationing at his grandmother's house in Camarines Sur at the time of the incident; that he went to the province on September 12, 1969 and stayed there continuously up to December 23, 1969 when he returned to Pasay City. His father, Juanito Martinez, corroborated his testimony declaring that, on September 12, 1969, he took his son to the Tayabas bus station where Danilo took a bus bound for Bicol and that he did not see his son again until the latter came home on December 23, 1969.[4]

The lower Court held that the aggravating circumstances of treachery and abuse of superior strength were present in the commission of the felony, convicted the ACCUSED of Murder, and

"x x x sentenced him to suffer the penalty of DEATH; to indemnify the heirs of the offended party in the amount of P12,000.00; to pay the amount of P20,000.00 as moral damages and P20,000.00 as exemplary damages; and to pay the costs."

Before this Court, counsel de officio does not deny that it was the ACCUSED who had killed the VICTIM. What he stresses is that there is no evidence which suffices to establish that the killing of the victim was attended by treachery and abuse of superiority.

The initial question to resolve is whether treachery attended the commission of the crime. If it did, then it would have been technically improper for the trial Court to have considered, in addition to that qualifying circumstance, the generic aggravating circumstance of abuse of superior strength inasmuch as the latter is absorbed in treachery.[5]

Treachery cannot be presumed. It must be proven as thoroughly as the crime itself in order to aggravate the liability or penalty incurred by the culprit.[6] There is treachery when the offender commits any of the crimes against the 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.[7]

Under the circumstances surrounding the commission of the deed herein, as narrated by the two eyewitnesses, it cannot be rightfully said that the means employed by the ACCUSED and his companions insured the execution of the criminal act without risk to themselves. The circumstance alone that the ACCUSED had pursued the VICTIM does not constitute treachery as the latter could have turned around and attacked his pursuers. Neither does the fact that the VICTIM was wounded in the back prove treachery as it does not necessarily follow that the ACCUSED did not run any risk which might have arisen from the defense which the VICTIM may have made.

"According to the accused Dayug, he and his co-accused were pursuing their victims and it was during the pursuit that they wounded them. The fact that a person is being pursued by another does not save the latter from all danger that might arise from a resistance on the part of the former, because during the pursuit it might occur to the pursued to turn upon his pursuer and suddenly attack him. The wounds on the back and shoulders of the victim alone are not sufficient to legally establish the existence of the aggravating circumstance of treachery, inasmuch as it is necessary to prove that the aggressor did not run any risk which might have arisen from a defense on the part of the offended party."[8]

Moreover, it is not legally proper to qualify an act as treacherous when the details that constitute it and the circumstances that preceded and concurred in its execution do not appear.[9] In the case at bar, the two eyewitnesses merely testified as to how the ACCUSED and his companions chased the VICTIM and stabbed him at the back when they had caught up with him. Neither one of them witnessed the beginning of the aggression. Proof being insufficient as to the manner, form and circumstances under which the assault began, and since to all appearances the aggression was a continuous one until the consummation of the deed, *alevosia* cannot be

properly appreciated.

"When an altercation which ends in a homicide is begun without alevosia on the part of the slayer, and the criminal design is prosecuted to its consummation without any break in the continuity of the aggression and without the intervention of any factor which materially changes the conditions of the aggression, the offense constitutes homicide, although the final fatal blow may be delivered under conditions exhibiting some of the features of alevosia." [10]

"There is no treachery although the victim was stabbed at the back when such wound was but a part and continuation of the aggression; and the four wounds were inflicted indiscriminately, the stab at the back having been inflicted as the victim was running away." [11]

Having found that there was no treachery, which would allow the taking into account of abuse of superiority as a separate aggravating circumstance, we are neither convinced of the presence thereof. To take advantage of superior strength means to use purposely excessive force out of proportion to the means of defense available to the person attacked. [12] The participation of the ACCUSED's four companions was confined to applauding his act, without the use of force. For superior strength to aggravate a crime, it must be clearly shown that there was deliberate intent to take advantage of it. [13] The mere fact that the ACCUSED were superior in number is not sufficient to consider use of superior strength. [14]

The defense of alibi interposed by the ACCUSED is unworthy of credence considering the clear, positive and convincing testimony of two eyewitnesses as to his identity.

The crime committed is Homicide, without any modifying circumstances having attended its commission. The penalty of reclusion temporal, therefore, is imposable in its medium period.

WHEREFORE, the judgment of conviction is affirmed but the death sentence is set aside. Danilo Martinez y Sarabia is convicted of Homicide and sentenced to an indeterminate penalty of ten (10) years of prision mayor, as minimum, to fifteen (15) years of reclusion temporal, as maximum. The indemnity of P12,000.00 is affirmed but the award of moral and exemplary damages in the amount of P20,000.00, respectively, is eliminated.

Costs de oficio.

SO ORDERED.

Barredo, Makasiar, Antonio, Aquino, Concepcion, Jr., Fernandez, Guerrero, and De Castro, JJ., concur.

Fernando, C.J., on leave.

Teehankee, Acting C.J., and Abad Santos, J., took no part.

[1] T.s.n., Jan. 21, 1970, pp. 8-10.

[2] T.s.n., Jan. 22, 1970, p. 5

[3] Ibid., p. 15.

[4] T.s.n., Feb. 12, 1970, pp. 8-11.

[5] U.S. vs. Estopia, 28 Phil. 97 (1914); U.S. vs. Oro, 19 Phil. 548 (1911); U.S. vs. Vitug, 17 Phil. 1 (1910); People vs. Undong, 66 SCRA 386 (1975); People vs. Pajenado, 69 SCRA 172 (1976).

[6] People vs. Ardisa, 55 SCRA 245 (1974).

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

[8] People vs. Dayug, et al., 49 Phil. 423, 426 (1926).

[9] U.S. vs. Cueva, 23 Phil. 553, 556(1912).

[10] People vs. Cañete, 44 Phil. 478 (1923).

[11] People vs. Bello, 10 SCRA 298 (1964).

[12] People vs. Cabiling, 74 SCRA 285 (1976).

[13] People vs. Bello, supra.

[14] U.S. vs. Devela, Phil. 625 (1904); People vs. Ordales, 42 SCRA 238 (1971).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.