

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TEOFILO OGBAC, DEFENDANT-APPELLANT.***G. R. No. L-4059. October 23, 1951*

Ponente: BAUTISTA ANGELO, J.

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Teofilo Ogbac was charged with murder for having allegedly attacked with a balisong knife with treachery and the evident premeditation one Angel Jamilla inflicting upon him a mortal wound which caused his instant death. He was found guilty and sentenced to life imprisonment and to idemnify the heirs of the deceased in the sum of P6,000. From this sentence he appealed.

The evidence for the prosecution shows that at about 8:00 o'clock In the night of August 12, 1949, in the barrio of Maligaya, municipality of Pinamalayan, province of Mindoro, a political meeting was held at which Dr. Jose Leido, a candidate for Representative, and some of his leaders among them Teofilo Ogbac and Alfredo , Mendoza were present. While Alfredo Mendoza was speaking, he was interrupted several times by Nicolas Jamilla who asked some impertinent questions. Teofilo Ogbac irked by the attitude of Nicolas Jamilla gave the latter a fist blow in the face causing him to fall to the ground. A commotion among the persons present ensued and some began to scamper away. However, after Nicolas Jamilla was removed from the place of the meeting, order was restored and Alfredo Mendoza prepared to resume his speech, but before he was able to do so Angel Jamilla, uncle of Nicolas, approached Mendoza and proposed that the differences between Mendoza and Nicolas be settled amicably. To this Mendoza readily agreed and advised Angel Jamilla to fetch his nephew Nicolas. Angel did as suggested, but as he turned around Teofilo Ogbac, who was then standing behind, suddenly hooked Angel's neck with his left arm and stabbed him In the back with a balisong knife. Upon being hit, Angel cried: "Fred, I was stabbed by Teofilo Ogbac when I did not do anything". Angel was placed on a small table and carried to his house. Re was already dead. Sometime later, Dr. Frisco S. de Joya conducted an autopsy on the body of the deceased and found a penetrating wound at the back 1 1/2 Inch wide and 6 Inches deep, producing Internal and external hemorrhage and causing his Instant death.

The evidence for the defense practically Is In substantial accord with the foregoing facts. It differs only from the evidence for the prosecution with regard to the manner the aggression has started and the way the wound was inflicted upon the deceased. The defense attempted to show that after Nicolas Jamilla was removed from the place of the meeting after the personal encounter he had with Teofilo Ogbac, and when Alfredo Mendoza was telling the people to come back because the meeting would go on, Angel Jamilla, who was then tired and drunk, approached Alfredo Mendoza and asked him where he could find Teofilo Ogbac as he wanted to know why he boxed his nephew Nicolas Jamilla. At this Juncture, Mendoza noticed that Angel Jamilla had his right hand placed on his right hip. When Mendoza told Angel Jamilla that he should not look for Ogbac anymore because he himself saw with his own eyes that the one who started the trouble was his nephew Nicolas SMrtlla, Angel Jamilla moved away and then and there gave a thrust with a knife at Teofilo Ogbac who was coming from an opposite direction. Ogbac grabbed the wrist of the right hand of Angel Jamilla and in a flash the two grappled and

wrestled with each other. Ogbac pushed back Angel who staggered with his right hand on his right hip saying "aray, aray". Ogbac retraced one or two steps backward and sensing that Angel was hurt asked Dr. Pio Baldoz to help him. Then two blasts from a whistle were sounded and the people scampered away. In other words, the defense attempted to prove that the accused acted in self-defense.

Alfredo Mendoza and the accused testified as to the manner the latter was assaulted by the deceased and how the accused parried the blow thrust at him which culminated in the fatal wounding of the deceased. Asked by the court to demonstrate what he saw of the aggression, Mendoza made the following demonstration:

"Q. Please come down from the witness stand and show the Court how that thrust was made by the deceased Angel Jamilla to the accused?

A. This way, (Atty. Medina giving a thrust to the witness and the witness Mr. Mendoza, , grabbed the right wrist of Atty. Medina and placed his right arm around the body of Atty. Medina and the right hand of Atty. Medina was placed at his own back.)"

Teofilo Ogbac made on his part the following demonstration:

"Q. Can you tell this Court what really happened? — A. Yes, sir.

I pray that the witness be allowed to go down the witness stand and demonstrate the way the deceased rushed at the accused.

COURT: Petition granted.

Note: The interpreter acted in the place of the deceased.

ACCUSED: This way (witness grabbed the right hand of the deceased with the left hand of the accused and the right hand of the deceased was pushed towards the right back and then the accused placed his right hand on the back of the deceased while the deceased placed his left hand on the back of the accused."

Dr. Frisco S. de Joya, who conducted the autopsy, described the wound he found on the body of the deceased as follows:

"Una herida penetrante en la region de la espalda lado derecho al nivel del septimo y octavo espacio intercostal , tres pulgadas por fuera de la columna vertebral. La avertura de la herida es de una y media pulgada, cuya profundidad es de seis pulgadas. Se ha enteresado la plel, el musculo de lairegion, el pulmon derecho, produciendo una hemorragia interna y externa".

Considering the demonstration made by Alfredo Mendoza and the accused of the manner the latter was allegedly assaulted by the deceased and how the accused parried the blow by grabbing the wrist of the right hand of the assailant and twisting it with his left hand thereby implying that, during the grappling and wrestling that ensued, the fatal wound was caused by the very knife of the alleged aggressor, it is hard to believe that the aggression could have taken place in the manner so demonstrated as to inflict a wound in the nature and seriousness found by Dr. De Joya in his autopsy. Note the place of the penetration and direction taken by the wound. It has an opening of 1 1/2 inch and a penetration of 6 inches. The place is in the right side region of the back and was "al nivel del septimo y octavo espacio intercostal". If the thrust was made by the deceased with his right hand, it is certainly quite impossible for the accused to be able to twist the right arm with the opposing force put forth by the deceased and cause a penetrating wound so deep in the same side of the back and almost at the level of the arm without causing any dislocation or rupture in the bone of the right arm of the aggressor. This makes incredible the theory of the defense. On the other hand, the nature of the wound as found by Dr. de Joya tallies with the narration made by the witnesses for the prosecution to the effect that when Angel Jamilla turned around to look for his nephew

Nicolas, the accused suddenly sprang up and after hooking Angel's neck with his left arm stabbed him In the back with a balisong knife Inflicting the wound that caused his instant death.

At any rate, the question herein Involved is one of fact which mainly hinges on the veracity of the witnesses both of the prosecution and of the defense "wherein the appreciation of the lower court generally carries much weight in view of the opportunities for observation it has as regards the conduct and demeanor of the witnesses during the trial. And on this point, the lower court made the following comment: "The undersigned, presiding Judge of the court, had seen the two witnesses of the defense demonstrating how the fatal wound was Inflicted. He also heard the witnesses for the prosecution testifying on the same point and he is convinced that the version of the witnesses for the prosecution represents the picture of what really took place because it is more In harmony with the circumstances surrounding the case." We have found no justification to warrant Interference with these findings of the lower court.

Moreover, it appears that the accused, as observed by the lower court, is tall, well-built, with broad shoulders, an experienced fighter and proficient in boxing and judo. He is aggressive and defiant. And these personal characteristics, coupled with the antecedents of the aggression, convinced the Court that the aggression must have taken place in the manner described by the witnesses for the prosecution. To this we agree.

The offense committed is murder qualified by treachery as defined in Article 248 of the Revised Penal Code. The lower court did not consider the aggravating circumstances of nighttime and disregard of the respect due the deceased on account of his age because there is no showing that the accused took into account those circumstances in committing the crime. We find this to be correct. There is reason to believe that the aggression is but an offshoot of the tense political atmosphere then prevailing at the time. There being therefore neither mitigating nor aggravating circumstance present in the commission of the crime, the proper penalty should be imposed in the medium degree, or reclusion perpetua.

Wherefore, the judgment appealed from is affirmed, with costs against the appellant.

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

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