

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CONSORCIO PELAGO Y BEKILLA, DEFENDANT-APPELLANT.***G.R. No. L-24884. August 31, 1968*

Ponente: FERNANDO, J.

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The deceased, Braulio Torres, met his death from "cardiac trouble and hemorrhage secondary to the stab wound in the abdomen"[1] inflicted by the accused, now appellant, Consorcio Pelago. He tried, found guilty beyond reasonable doubt of the crime of murder and sentenced to reclusion perpetua. The case is now before us on appeal.

The prosecution presented only one eyewitness, Alfredo Metillo. He testified that in the afternoon of December 20, 1964, he went to the cockpit of Calabayan, Ozamiz City.[2] He was present when the accused killed Braulio Torres.[3] The deceased asked him whether he could spend the night in his house as it was already evening and he could not go back to his residence located at Trigos.[4] The witness answered that the deceased should wait for him while he looked for his wife, the sister of Braulio Torres,[5] Then came the continuation of his testimony: "While I was looking around the accused suddenly stabbed Braulio Torres, while [he] was with his arms crossed in front of Braulio Torres received two wounds, on the left arm and on the abdomen." [6] The above testimony was interpreted by the court thus: "The accused had stabbed Torres while Torres was with his arms crossed in front of him, Braulio Torres received the in-juries on his left arm which penetrated to the abdomen." [7]

When asked what he did after such a stabbing incident, the witness, Metillo, replied: "After that I caught Braulio Torres with my hand and then pressed my hand against the wound of Braulio and that time there as a truck, so I let him board it. I brought him to the hospital through that truck." [8] In the meanwhile, according to him, "Consortio Pelago already ran away." [9] He was able to bring the deceased to the hospital owned by a certain Dr. Medina. [10] Braulio Torres died about 7 o'clock the same evening. [11]

On cross-examination, it was shown that the wife of the witness is a sister of the deceased. [12] He likewise admitted that while he and the appellant and the deceased were facing each other, they were conversing. [13] It was during that time that he looked at the crowd to search for his wife, the sister of the deceased. [14] When the court asked him as to what they were talking about, he answered: "Ordinary conversation." [15] When pressed further as to whether there was any altercation, he simply said, "No." [16]

As to how far he was when the stabbing took place: "I was just *** I mean, we were in the form of a triangle at a distance of one meter and a half. I was looking around and I saw Pelago stabbed." [17] He clarified further: "About one meter and we were in the form of a triangle because Pelago was in front of me while Torres was on my right side." [18] The lower court asked how he could know the position of the deceased at the time he was stabbed by appellant; he replied: "I know, sir, because I [was] really there and we were facing each other. Maybe he crossed his arms because maybe he was feeling cold because it was late in the afternoon." [19] When his attention was once again directed to, the conversation between the deceased and appellant, the witness admitted he "did not

know what they were talking about." [20] He added: "It was just an ordinary conversation. There were no bad words uttered." [21] He answered in the negative the question of the court as to whether they were shouting at each other during such conversation. [22] He reiterated there was no altercation. [23]

The defense, on its part, relied on its witness, a certain Honorato Capa. He testified that he knew appellant as well as the deceased and the witness, Metillo, and that in the afternoon of December 20, 1964 he saw the three of them conversing in the market place in Calabayan, Ozamiz City. After which, Metillo left the group, and they separated. Then the deceased went to him while he "was drinking tuba inside a small store and asked [a] glass of tuba, and after drinking the tuba, he went out and asked for a cigarette from Consorcio Pelago." [24] He testified further that appellant answered that he had no cigarettes. [25] When the deceased asked appellant for tuba, the latter replied that he had no money for tuba. [26] He continued: "After that Braulio Torres encircled his arms around the neck of Pelago and said, 'What are we going to drink, blood?' And at this instance Torres pulled out his dagger." [27] It was then that "Consorcio Pelago also pulled out his hunting [knife] and stabbed." [28]

He was asked to explain how the stabbing occurred. This was the reply: "Consorcio Pelago pulled out his dagger while he was putting or holding on the right arm of Torres, then Pelago pushed his dagger at the arm of Torres." [29] As to why he knew that the arm of the deceased was the target of the appellant, he admitted that after such incident, he had a conversation with the latter who told him that it was, his purpose to stab the arm "so that the weapon of Torres would fall down." [30] He stated that while the deceased and the appellant were about of the same height, the former was bigger. [31] The witness was asked what happened further after the dagger hit the arm of the deceased. According to him, he "heard Torres shout 'agoy' and thereafter, Torres turned around." [32] He likewise testified: "The thrust penetrated into the body. The dagger penetrated into the body of Torres because the hunting [knife] that Pelago used was 6 to 8 inches long excluding the handle." [33]

He reiterated though that while the dagger of the appellant penetrated the body of the deceased, it was the arm that was hit. He answered in the affirmative the question of the lower court as to whether the hunting knife hit the right arm of Torres "and from the right arm it penetrated to his abdomen." [34] All the while, he implied that the right arm of the deceased was still encircled around the neck of the appellant who was struggling to free himself while the stabbing occurred. It was his testimony that appellant's "struggle to free himself was simultaneous with the stabbing." [35] To the question of the lower court as to whether the stabbing took place when they were still face to face, he answered: "Yes, Your Honor." [36] To another question of the lower court as to whether appellant and the deceased were so near each other, "that their bodies were almost touching one another," came the reply: "The distance between their bodies is (as indicated by the witness) about one and a half feet." [37]

In its decision of July 7, 1965, finding the accused guilty beyond reasonable doubt of the crime of murder, the lower court characterized the version of the defense as untenable. It explained why: "If at the time Braulio Torres was stabbed, his left arm was encircled around the neck of the accused, then the injury on the left arm would not have pierced the abdomen. It would have penetrated the neck. On the other hand, the theory of the prosecution is more in harmony with the location of the injuries. Braulio Torres was standing with his arms crossed at his abdomen as if he was feeling cold. It was while in this position that Pelago stabbed him. The injury on the left arm pierced the abdomen." [38]

Another circumstance that cast doubt on such an allegation of self-defense was noted in the decision: "After the stabbing, the accused did not surrender to the authorities. On the contrary, he escaped to his house and threw away the weapon used in the commission of the crime. This is not the behaviour of one who killed another in self-defense." [39]

Appellant would assail the above appreciation of evidence on the part of the lower court, reiterating in his second

assignment of error in plea of self-defense, Such a plea is not persuasive. The analysis made by the lower court of the manner in which the stabbing took place cannot be impugned as lacking in basis or characterized by arbitrariness. It suffices to refer to a rule, now firmly established "to the point of becoming elementary in this jurisdiction * * * that where there is 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." [40]

While the decision, however, could be sustained insofar as the killing of Braulio Torres cannot be justified as an act of self-defense, its finding as to the existence of treachery raises doubt not altogether fanciful. All that was testified to at this point by the lone eyewitness, the brother-in-law of the deceased, follows: "While I was looking around, the accused suddenly stabbed Braulio Torres, while Braulio Torres was with his arms crossed in front of him." [41]

A citation from an opinion of Justice Tuason in *People v. Tumaob*, [42] is instructive: "The qualifying circumstance of treachery cannot logically be appreciated because the accused did not make any preparation to kill the deceased in such a manner as to insure the commission of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. This circumstance can only be applied, according to the tenor of article 13, sub-section 16 of the Revised Penal Code, when the culprit employs 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 own person from a defense which the other party might offer. In *United States v. Namit*, 38 Phil. 926, it was held that the circumstance that an attack was sudden and unexpected to the person assaulted did not constitute the element of treachery unnecessary to raise a homicide to murder, where it did not appear that the aggressor had consciously adopted a mode of attack intended to facilitate the perpetration of the homicide without risk to himself. In the present case, the circumstances negate the hypothesis that the defendant reflected on the means, method and form of killing the offended party."

Whatever may be said of the testimony, both on direct and cross-examination of the lone eyewitness presented by the prosecution, it does not go as far as positively asserting that the appellant did employ means, methods or forms of execution tending directly and specially to insure its success without risk to himself arising from any defense the offended party might make. Moreover, it would not be in consonance with the ordinary course of human events, the eyewitness being insistent that there was no altercation of any kind and that the three of them were engaged in an ordinary conversation to assume without more that such a sudden unprovoked attack would take place as above intimated. The doubt that arises as to the existence of treachery cannot be considered fully erased under the circumstances.

As this Court held in *People v. Calacala*, [43] speaking through Justice Makalintal, where the prosecution tried to prove treachery through the testimony of a first cousin: "Full credence cannot be given * * *. It is strange that of the many people present he alone - a close relative of the deceased - should be presented as eyewitness to the stabbing." Appellant's criminal liability therefore should be for the crime of homicide rather than of murder.

WHEREFORE, the decision appealed from is modified, so as to sentence the accused, Consorcio Pelago, to an indeterminate penalty of 8 years and 1 day of prison mayor to 14 years and 8 months of reclusion temporal with the accessory penalties provided by law and heirs of the deceased the sum of P6,000.00. With costs.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

[1] T.s.n., Section of June 21, 1965, p. 22.

[2] T.s.n., Session of June 3, 1965, p. 11.

[3] Ibid, p. 12.

[4] Ibid, p. 12.

[5] Ibid, p. 12.

[6] Ibid, p. 12-13.

[7] Ibid, p. 13.

[8] Ibid, p. 13.

[9] Ibid, p. 13.

[10] Ibid, p. 13.

[11] Ibid, p. 14.

[12] Ibid, p. 14.

[13] Ibid, p. 21.

[14] Ibid, p. 21

[15] Ibid, p. 22.

[16] Ibid, p. 22.

[17] Ibid, p. 22.

[18] Ibid, p. 22.

[19] Ibid, p. 23.

[20] Ibid, p. 23.

[21] Ibid, p. 23.

[22] Ibid, p. 23.

[23] Ibid, p. 23.

[24] Ibid, p. 36.

[25] Ibid, p. 37.

[26] Ibid, p. 37.

[27] Ibid, p. 37.

[28] Ibid, p. 37.

[29] Ibid, pp. 37-38.

[30] Ibid, p. 38.

[31] Ibid, p. 38.

[32] Ibid, p. 41.

[33] Ibid, p. 41.

[34] Ibid, p. 41.

[35] Ibid, p. 42.

[36] Ibid, p. 42.

[37] Ibid, p. 43.

[38] Decision of the lower court, p. 3.

[39] Ibid, p. 3.

[40] People v. Tila-on, G.R. No. L-12406, June 30, 1961. Cited with approval in People v. Gumahin, G.R. No. L-22357, October 31, 1967.

[41] T.s.n., Session of June 3, 1965, p. 12.

[42] 83 Phil. 738, 742 (1949). See also People v. Curambao, G.R. No. L-10557, Jan. 28, 1961; People v. Saez, G.R. No. L-15776, March 29, 1961; People v. Cadag, G.R. No. L-13830, May 31, 1961; People v. Villegas, G.R. No. L-16818, May 31, 1961; People v. Tengyao, G.R. No. L-14675, Nov. 29, 1961; People v. Lumantas, G.R. No. L-16383, May 30, 1962; People v. Balancio, G.R. No. L-17520, May 31, 1962; People v. Carlos, G.R. No. L-16306, July 31, 1962; People v. Oñas, G.R. No. L-17771, Nov. 29, 1962; People v. Tagaro, G.R. No. L-18518, Jan. 31, 1963; People v. Samson, G.R. No. L-14110, March 29, 1963; People v. Sarmiento, G.R. No. L-19146, May 31, 1963; People v. Canitan, G.R. No. L-16498, June 29, 1963; People v. Sagayno, G.R. No. L-15961-62, Oct. 31, 1963; Perez v. CA, G.R. No. L-13719, March 31, 1965; People v. Dadis, G.R. No. L-21270, Nov. 22, 1966; Ramos v. People, G.R. No. L-22348, August 23, 1967; People v. Clemente, G.R. No. L-23463, Sept. 28, 1967; People v. Belchez, G.R. No. L-21196, March 28, 1968.

[43] G.R. No. L-18348, May 31, 1965.

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