

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROGELIO CAGOD AND BUENAVENTURA ALICANDO,  
ACCUSED-APPELLANTS.**

*G.R. No. L-36016. January 18, 1978*

Ponente: AQUINO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d85a06cbcf8d/>

---

**AQUINO, J.:**

Rogelio Cagod and Buenaventura Alicando appealed from the decision of the Court of First Instance of Misamis Occidental, Ozamiz City Branch II, finding them guilty of murder, sentencing each of them to reclusion perpetua and ordering them to pay solidarily to the heirs of Eliezer Castro an indemnity of P12,000 (Criminal Case No. OZ-282).

According to the evidence for the prosecution, at about four o'clock in the afternoon of New Year's day, January 1, 1972, Eliezer Castro, sixteen years old, single and the son of Acting Chief of Police Victor Castro, was walking near the bridge in Barrio Taguima, Tudela, Misamis Occidental. Walking on his side was Edgar Ramil, 16. Behind Ramil and Castro was Ricardo Sambo, 21, with some young ladies. Payok Fuentes was following Sambo. The group was going to the house of Fuentes where a party was going to be held.

When the group reached the crossing or junction of the highway and the barrio road, Rogelio Cagod, twenty years old, single, a resident of Barrio Silongon, materialized and, without any warning, struck Castro with a piece of wood about one and a half feet long and as big as a man's forearm. Castro, who was unarmed, reeled from the blow.

Then, Cagod drew his dagger or hunting knife (Exh. A) and stabbed Castro in the left forearm near the elbow. Buenaventura Alicando, 33, Cagod's brother-in-law, was behind Cagod. Castro was able to get away from Cagod but he was chased and overtaken by Alicando who stabbed him in the left shoulder with a bolo about a foot long. That wound penetrated the armpit. The two assailants fled. Sambo and his companions carried Castro to the bridge where he breathed his last.

The stabbing was perpetrated near the house of Basio Codilla about ten fathoms (full stretch of the arms) away from the store of Budiongan where Alicando came from (Exh. B).

Patrolman Venancio Lagumbay, 29, who was patrolling the highway, encountered the persons who were carrying Castro to the bridge. Sambo told Lagumbay that Cagod and Alicando had assaulted Castro. The policeman pursued Cagod and Alicando, who were fleeing from the scene of the assault, and shouted that they should stop. The two suspects stopped. Cagod admitted to Patrolman Lagumbay that he had wounded Castro.

Cagod unsheathed his dagger (Exh. A) and gave it to Alicando. The latter threw the dagger away in the direction of Lagumbay and ran away. Lagumbay arrested Cagod and took him to the municipal building. Alicando was arrested in the evening of that day but later released. He was investigated on the following day, January 2. He was re-arrested on January 3.

According to the autopsy report, Castro sustained (1) a stab wound one inch wide, two and a half inches long and six inches deep which penetrated the upper left portion of his left lung at the external surface of the left deltoid region and (2) a deep, incised stab wound three and a half inches long located at the internal and lower portion of the left forearm near the elbow. That wound penetrated the skin, muscles and blood vessels. Blood clotted around the body of the victim. Frothy and bloody mucous emanated from his nose and mouth. There were two ecchymotic spots on the back of the victim, opposite the lumbar region. Those spots could have been caused by a club or piece of wood.

Death was due to shock and hemorrhage caused by the stab wounds which had injured the lungs and blood vessels (Exh. C).

Two days after the killing, or on January 3, 1972, Cagod signed an extrajudicial confession which was sworn to before the municipal judge. In that confession, he admitted that he killed Castro with a dagger (Exh. B). The voluntariness of that confession was not assailed by Cagod. In fact, the defense presented it as Exhibit 1.

On that same date, January 3, 1972, the statements of Sambo and Ramil were also taken and sworn to before the municipal judge. The statements of Alicando and Lagumbay were taken on January 2 and 5, 1972, respectively. The statements of Ramil and Alicando were offered in evidence as Exhibits 1 (there are two Exh. 1) and 2. However, since those statements, which are in the Visayan dialect, were not translated into English, Spanish or the national language, they are not admissible as evidence (Sec. 34, Rule 132, Rules of Court).

On January 3, 1972 a police sergeant filed in the municipal court against Cagod and Alicando a complaint for murder qualified by treachery and premeditation. The two accused waived the second stage of the preliminary investigation on January 4, 1972.

The case was elevated to the Court of First Instance where the fiscal filed against the two accused an information for murder qualified by abuse of superiority and evident premeditation.

As already stated, the lower court after trial convicted the two accused of murder qualified by treachery, a circumstance not alleged in the information.

In this appeal, appellants Cagod and Alicando contend that the trial court erred (1) in not finding that Cagod acted in self-defense; (2) in holding that Alicando took part in the killing of Castro; (3) in finding that the appellants acted with treachery, and (4) in giving credence to the prosecution witnesses and in not acquitting the appellants.

Former Senator Ambrosio Padilla, who was requested by the barrio council of Locso-on, Tudela to act as appellants' counsel de oficio, undertook a painstaking study of the record and made an able presentation of their case. He even filed a reply-brief, something which a court-appointed counsel usually does not bother to do.

Appellants' version is that while Cagod and Bebe Akiatan, a twenty-year old neighbor of Cagod at Barrio Silongon, Tudela, were walking on their way to that barrio, they heard a whistle. When they looked back, Castro allegedly boxed Cagod on the left cheek. Cagod ran away and was allegedly chased by Castro and Sambo. They threw stones at Cagod, hitting him on the back. Sambo caught up with Cagod and, while he was holding the hem of Cagod's shirt, Castro again boxed Cagod on the left cheek.

Cagod then drew his dagger and stabbed Castro. Sambo released his hold on Cagod's shirt and ran away with Castro. Cagod fled towards Barrio Silongon. In the course of his flight, he passed by his brother-in-law, Alicando, who was conversing with Rogito Molo under a tree in front of the stores of Budiongan and Tina Remullano. (According to Molo, Alicando passed by him, running after Cagod, 4, 5 and 7 tsn August 21, 1972).

Alicando asked Cagod what had happened. Cagod did not answer. So, Alicando followed him. They stopped only

when Patrolman Lagumbay shouted at them and asked them to stop.

The issue is one of credibility: which version should be given credence, the prosecution's theory that Cagod and Alicando stabbed Castro sans warning and sans provocation or appellants' theory that Cagod acted in self-defense, after being boxed by Castro for no reason at all, and that Alicando had no complicity in the stabbing?

We hold that Cagod's plea of self-defense and Alicando's pretension that he did not assault Castro cannot prevail over the clear and convincing testimony of the prosecution eyewitnesses, Sambo and Ramil, that the two appellants, without any perceptible motive or justification, inflicted two serious stab wounds which caused Castro's death.

That testimony was corroborated by Cagod's confession. Cagod did not clearly and categorically state in his confession that he acted in self-defense. Sambo's testimony is a confirmation of his declaration to Patrolman Lagumbay, soon after the fatal wounding of Castro, that the assailants were Cagod and Alicando (Exh. E-1). Alicando ran away so that he would not be arrested by Lagumbay.

Cagod did not explain why Castro and Sambo supposedly committed unlawful aggression against him. It is manifest from Cagod's version that his life was not endangered by the alleged assaults of Castro and Sambo who were unarmed. Cagod had two companions, Bebe Akiatan and his wife, who could have given him assistance if his life was imperilled by the fist blows allegedly given by Castro.

The following summary of the case made by the trial court is supported by the evidence:

"It appears that the accused Rogelio Cagod and Buenaventura Alicando are brothers-in-law. Both went to the festival of Tudela on the morning of January 1, 1972 armed. Cagod was armed with a dagger while Alicando was armed with a small bolo. They were both in the scene of the crime at Barrio Taguima. Prosecution witnesses actually saw the respective injuries inflicted by the two accused on the body of Eliezer Castro. Said injuries were found on said body.

"Rogelio Cagod had a misunderstanding with Eliezer Castro (on) the previous day, that is, December 31, 1971. The attack by the two on Castro was sudden and unexpected. Castro then did not have any weapon to defend himself. The crime committed was murder, qualified by treachery.

"The allegation of the defense that Cagod was boxed by Castro, which precipitated the incident, was not proved. Cagod would have submitted to a medical examination to prove his injury but he did not.

"What actually happened was that after Cagod struck Castro with a piece of wood, Cagod threw the wood away, pulled his dagger from inside his dress and stabbed him (Castro) with said dagger on his left arm.

"Severely wounded, Castro could no longer run. Alicando rushed on Castro and stabbed him with his bolo on the left side of his body, thereby causing him an injury one inch wide, two and a half inches in length and six inches deep, penetrating the left upper portion of the left lung. Several hours thereafter, Castro died."

The prosecution failed to prove the motive for the stabbing. But, on the other hand, appellant Cagod failed to prove why Castro boxed him and appellant Alicando failed to prove why the prosecution witnesses would frame

him up.

The trial court propounded to Cagod and Alicando searching questions in order to ferret out the motive for the supposed unlawful aggression committed by Cagod against Castro and for the inclusion of Alicando in the case although allegedly innocent. Cagod and Alicando did not give any illumination on the motive. That omission weakened considerably their defense.

The police, the fiscal and the private prosecutor did not take the trouble of ascertaining the motive for the stabbing. The trial court vaguely observed that Cagod had a misunderstanding with Castro on December 31, 1971, the day prior to the stabbing. There are no details in the evidence as to the nature of that misunderstanding.

All that the record shows is Cagod's admission that late in the evening of December 31 he encountered Castro in front of the Tecson bakery in the poblacion of Tudela. Cagod denied that on that occasion he quarrelled with Castro.

Cagod in his confession declared that he stabbed Castro because Castro boxed him. Cagod said (Exh. B-2):

"Q - Did you have any misunderstanding with Eliezer Castro at that time (January 1, 1972) or in previous days?

A - We have a misunderstanding at Asiong Rule when he boxed me and I ran toward Taguima. They stoned me, hitting me on the side of my body. Then he was able to overtake or catch up with me and he again boxed me, and so, I stabbed him and chased him up to the crossing of Taguima and I returned back when I noticed they were four of them.

"Q - When you returned, what happened to Eliezer at the crossing?

A - He was standing there and slowly walking."

Cagod's answer is ambiguous or unclear because the question, which he answered, mentions two periods of time: January 1, 1972 and "previous days". Cagod in his answer did not specify whether he was referring to New Year's day or to prior days. Moreover, his answer does not show that he used rational necessity in repelling the alleged aggression. Castro was unarmed.

With respect to Alicando, it should be noted that Cagod declared that Alicando was armed with a bolo which was inside a scabbard tucked to his waist. Patrolman Lagumbay in his statement declared that he could not arrest Alicando because the latter fled after throwing away the bloody dagger which Cagod had handed to him (Alicando). On that occasion, Lagumbay noticed that the scabbard on Alicando's waist was empty. Obviously, Alicando had gotten rid of his bolo. (He had allegedly reproached Cagod for running with a bloody dagger in his hand, 114 tsn).

The killing is murder because of the presence of abuse of superior strength (People vs. Zabala and Lusanta, 86 Phil. 251, 258). Although from the viewpoint of the prosecution, the killing may be regarded also as treacherous (as concluded by the trial court), treachery, which was not alleged in the information, cannot be separately appreciated as a generic aggravating circumstance. It is merged with abuse of superiority.

The Acting Solicitor General, although finding that there was abuse of superiority, recommends that the appellants should be convicted of homicide only. He assumes that evident premeditation, which was not proven, was the only qualifying circumstance alleged in the information.

That is a wrong assumption. It was alleged in the first paragraph of the information that the two accused, with evident premeditation, with intent to kill and each armed with a dagger and a bolo, did wilfully attack and stab Eliezer Castro.

Then in the second paragraph it was alleged that "in the commission of the above crime, there existed one aggravating circumstance in the sense that the accused took advantage of superiority of strength".

The manner in which abuse of superiority was alleged in the information is sufficient to qualify the killing as murder. What is essential is that it was alleged, and, having been alleged, it could be appreciated as a qualifying circumstance.

The acts of the two accused evince a concerted effort and community of design to liquidate Castro. Their relationship as brothers-in-law, their being together at the scene of the crime, their leaving it at the same time, and the circumstance, as testified to by both prosecution and defense witnesses, that Cagod handed the dagger to Alicando when the policeman asked for it, are additional indicia of conspiracy as to the killing. Moreover, the finding that there was abuse of superiority implies conspiracy.

But even if conspiracy was not proven, the fact that the two accused each inflicted a serious wound which contributed to the death of the accused makes them co-principals. "Death was the joint result of their acts. As the spark of life went out, each wound was a contributing cause" (U. S. vs. Abiog, 37 Phil. 137, 143). "Drop by drop the life current went out from both wounds" (People vs. Lewis, 124 Cal. 551; People vs. Ybañez, Jr., L-30421, March 28, 1974, 56 SCRA 210, 216).

As there are no generic aggravating nor mitigating circumstances, the trial court properly imposed the penalty in its medium period or reclusion perpetua (Arts. 64[1] and 248, Revised Penal Code).

WHEREFORE, the trial court's judgment is affirmed. Costs against the appellants.

**SO ORDERED.**

Fernando, (Chairman), Barredo, Antonio, and Concepcion, Jr., JJ., concur.

Santos, J., on leave.

**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.