

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. IGNACIO CALINAWAN, DEFENDANT AND APPELLANT.

G.R. No. L-432. May 23, 1949

Ponente: PARAS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/f4b00d8a6569/>

PARAS, J.:

This is an appeal from a judgment of the People's Court finding the defendant, Ignacio Calinawan, guilty of the complex crime of treason with murder, and sentencing him to the death penalty, to pay a fine of P20,000 and an indemnity to the heirs of Romualdo Nacario in the sum of P2,000 plus the costs.

The information charges four counts. We are in full agreement with the opinion of the Solicitor General that, under the evidence on record, the lower court erred in convicting the appellant of treason. The only point that consequently arises is whether, as contended by the Solicitor General, said appellant may be convicted of murder. This view is predicated on the facts, duly borne out by the evidence, that in the morning of September 26, 1944, the appellant and an unknown companion, both armed with rifles, were riding on their respective bicycles in barrio Pakigne, municipality of Minglanilla, Province of Cebu. Upon seeing the appellant on said occasion, Romualdo Nacario started to run, whereupon the appellant whistled at him. As Romualdo Nacario ignored the call and continued to run, the appellant got off from his bicycle and, from a distance of some fifty meters, fired a shot at Romualdo who was fatally hit.

In classifying the offense as murder, the Solicitor General argues that the attack was sudden and unexpected, and made while the deceased, Romualdo Nacario, was running away with his back towards the appellant, and that Romualdo did not have any opportunity of defending himself or of avoiding the attack, which was perpetrated without any risk to the appellant arising from any defense which the deceased might have offered.

We believe that the appellant must be held liable for the killing of Romualdo Nacario, but that the offense should be classified only as homicide. There is absolutely no indication in the record that the appellant was purposely in search for Romualdo, and the bare facts proven at the trial are not inconsistent with the inference that the meeting was casual. Much less can the proof warrant the theory that the appellant had a previous determination to kill Romualdo, and the bare facts proven at the trial are likewise not inconsistent with the conclusion that the appellant fired at his victim impulsively. And considering in this connection, that the shot was fired at a distance of fifty meters and while Romualdo was running, appellant's situation may fairly come under the doctrine mentioned in *People vs. Canete*, 44 Phil., 478, 481, that the method of assault adopted by the aggressor was not "deliberately chosen with a special view to the accomplishment of the act without risk to the assailant from any defense that the party assailed may make," said case making special reference to an instance "where the slayer acted instantaneously upon the advantage which resulted from the accidental fall of the person slain."

From the scanty facts revealed in the record, we cannot suppose that appellant knew beforehand that Romualdo was unarmed or that the latter "would not stop, face and attack the appellant, so as to be able to hold that the appellant perpetrated the fatal act without risk to himself, especially if we bear in mind that Romualdo must have

known that his attempt to flee would naturally provoke the appellant. Upon the whole, we are not prepared to rule that the qualifying circumstance of treachery was present.

There is another reason why we are averse to the theory that treachery may be taken into account. It is note-worthy that count No. 2 of the information alleges that the appellant "wilfully, unlawfully and treasonably while on patrol with another undercover, against guerrillas, shot to death one Romualdo Nacario a guerrilla suspect." A qualifying circumstance must be pleaded (*U. S. vs. Campo*, 23 Phil., 368) ; and it is plain that there is nothing in the allegations in count No. 2 suggestive of the presence of treachery. The word "treasonably," without more, may of course be loosely synonymous with "treacherously." The information, however, in its entirety charges the appellant with treason, from which it becomes clear that "treasonably" was used to denote the commission of an act in a manner penalized by article 114 of the "Revised Penal Code, and not merely of an act penalized as murder, specially when reference is made to count No. 1 in which the word "treasonably" was also used in accusing the appellant of having joined and served the enemy as guide, informer and spy and of having accompanied the enemy in his retreat upon the invasion of the Americans. That such was the sense intended by the prosecutor is further made manifest by the fact that he used the specific term 'treachery,' as a concurring circumstance, in the last paragraph of the information, thereby indicating his desire to differentiate "treasonably" from "treacherously." This allegation of treachery, made under count No. 4, cannot refer to the distinct count No. 2.

We are, therefore, of the opinion that the appellant can and must be found guilty only of homicide without any attending circumstances, for which he is hereby sentenced to an indeterminate penalty of from 8 years and 1 day prision mayor, to 14 years, 8 months and 1 day, reclusion temporal, and to indemnify the heirs of Romualdo Nacario in the sum of P2,000, plus the costs. So ordered.

Moran, C. J., Ozaeta, Feria, Pablo, Perfecto, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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.