

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINGO KAMANTIGUE, DEFENDANT-APPELLANT.***G.R. No. L-4272. February 25, 1952*

Ponente: JUGO, J.

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Domingo Kamantigue was accused of murder before the Court of First Instance of Cavite and after trial was found guilty and sentenced to suffer the penalty of cadena perpetua to indemnify the heirs of the deceased Alfredo Sayoc in the sum of P4,000.00, and to pay the costs. He appealed.

It has been established by the evidence for the prosecution that on October 10, 1944, Domingo Kamantigue met the brothers Pelagio and Alfredo Sayoc in a gambling house in the barrio Calzadang Bago, Imus, Cavite, where the appellant told Alfredo that it would be advisable that Alfredo should not ask for the return of his rifle which Kamantigue had borrowed from him, for the reason that Alfredo had not been trained in using it. Alfredo resented the remark. A dispute ensued between them, in which rather strong language was used Kamantigue advanced toward Alfredo in a threatening attitude and was about to strike the latter. Upon seeing this, Pelagio Sayoc, brother of Alfredo, struck Kamantigue, who fell. The bystanders intervened separating the combatants and thus the fight ended. However, Kamantigue, nursing his resentment, told the brothers that they would pay for the offense.

In the morning of October 25, 1944, while Kamantigue, who was a guerrilla officer, was holding an investigation of Ignacio Gumarang, accused of stealing camotes, in Kamantigue's house in a field in barrio Calzadang Bago, and while the soldier Guillermo Garceta was downstairs and Artemio Gutierrez was upstairs, Alfredo arrived and at the foot of the stairs, called Kamantigue. The latter, suspending the investigation, went to the door at the upper part of the stairs and asked Alfredo what he wanted. Alfredo demanded the return of his rifle. Kamantigue answered that he could not give it because it was not in his possession. Alfredo did not believe the excuse and insisted on recovering the gun. There was an altercation between them. Kamantigue, highly incensed, stepped over to one of the windows fronting the stairs, drew his revolver and fired at Alfredo who was standing at the foot of the stairs. As Alfredo started to run away, Kamantigue rushed downstairs and pursued him. Alfredo who had no gun, in order to evade and hide from his pursuer, ran around the house and upon reaching the stairs darted up, undoubtedly so as not to be seen by Kamantigue. But Kamantigue, not finding Alfredo on the ground, went up the house, entered it, and there cornered Alfredo. The latter threw himself on the floor, raised his hands, and begged the defendant not to shoot him anymore as he was already wounded. Kamantigue, however, saying that he was going to finish Alfredo, fired two shots at him. As Alfredo slumped, Kamantigue fired a third shot. Then he dragged the corpse out of the house, leaving it at a certain distance from it.

Alfredo's body was recovered the next day at a carabao mudhole about fifteen meters from the appellant's house. Alfredo's corpse showed five wounds, three of which were necessarily fatal.

The above facts are gathered from the testimony of Ignacio Gumarang, Mariano Garceta, and Artemio Gutierrez,

who were eyewitnesses to the occurrence. The first two were guerilla soldiers under the command of Kamantigue and no motive to testify falsely can be attributed to them.

The version given by the defendant and his witnesses may be summarized as follows:

Alfredo, while standing at the foot of the stairs of Kamantigue's house, fired at the latter who was at the upper part of the stairs. Kamantigue forthwith leaped through one of the windows fronting the stairs and fled for safety. As Alfredo pursued him, Kamantigue hid behind a mango tree. When Alfredo again fired at him, he shot back at Alfredo hitting him in the abdomen. Alfredo fell. Kamantigue advanced to within two or three meters toward him, telling him to lay down his gun, but, instead of doing so, Alfredo aimed it at Kamantigue. Seeing this, Kamantigue fired again at Alfredo, killing him.

This version of the defense is hard to believe, for if Alfredo fired at Kamantigue from the foot of the stairs there was no reason why Kamantigue should have jumped from the window which was fronting the stairs, thus exposing himself to the direct fire of Alfredo. It would have been natural for him to have escaped through the back door of the house. While Kamantigue was escaping from Alfredo the latter could have fired again at him, because if it was the intention of Alfredo to kill Kamantigue, he could have pursued and fired at him without giving him a chance to hide behind a mango tree. Kamantigue did not receive any wound or scratch, which would rather be strange if he had been fired at and pursued.

The only corroborating testimony to the appellant's version is that of Monica Diana, his wife. Not much weight can be given to her testimony.

Jacinto Ilas, who was said to be the commanding guerrilla officer of the defendant, testified that he had investigated the witnesses for the prosecution and that their testimony before him was different from that which they gave in court. The said witnesses, however, denied having been investigated by Ilas. No weight can be given to this part of the testimony of Ilas. With regard to his statement that the event happened as narrated by the defense, it is of no value, considering that any knowledge Ilas had regarding the matter was hearsay.

The commission of the crime was attended with the qualifying circumstance of treachery, for the reason that when the appellant cornered the deceased in the house, and the latter, lying on the floor, raised his hands begging not to be shot, saying that he was already wounded, Kamantigue shot him three times.

The defendant claimed in the trial court and now claims in this Court the benefits of the guerrilla amnesty proclamation. The trial court correctly denied this plea. The act of Kamantigue had nothing to do with the furtherance of the resistance movement.

In view of the foregoing, the judgment appealed from is affirmed in all its parts, except that instead of *cadena perpetua*, it should be *reclusion perpetua*. With costs against the appellant.

IT IS SO ORDERED.

Paras, Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Bautista Angelo, JJ., concur.

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