

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLE, VS.
MACARIO CASALME, DEFENDANT AND APPELANT.***G. R. No. L-18033. July 26, 1966*

Ponente: MAKALINTAL, J.

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Macario Casalme was charged with and convicted of murder in the Court of First Instance of Laguna (Biñan) for the fatal shooting of Domingo Veras in the early evening of December 20, 1959. The court considered the qualifying circumstance of treachery with no aggravating or mitigating circumstance in attendance and imposed the penalty of reclusion perpetua and a civil indemnity of P6,000.00. Casalme appealed and assigns four errors, which pose only two issues: (1) whether or not his identity as the killer has been established by the prosecution beyond doubt; and (2) whether the offense was murder or simple homicide.

Macario Casalme and Domingo Veras were both foremen in the Canlubang Sugar Estate. On December 19, 1959, at six in the morning, Casalme went with Marc Ian o Tuason to the house of Marcelino Meneses. Tuason was assistant overseer in the same estate, and Meneses was the Inspector. On leaving the house, the two met Domingo Veras. Veras gave Casalme a fist blow on the left cheek, whereupon the latter withdrew and ran to Meneses' house, at the same time shouting to veras, "magbabayad ka rin". Asked why he acted the way he did, Veras explained to Tuason that Casalme had called him "sipsip" and spat on his face.

At about seven in the evening of the next day, December 20, Veras was walking home on the barrio road. There were two stores near each other on the roadside, owned respectively by Exequiel de Claro and Albino Patricio, and both of which were well illuminated. Nearby also was the house of appellant's sister, Juliana Bijis. As Veras reached a spot in front of the space between the two stores, he encountered Casalme, who had just come out of his sister's premises. Casalme uttered just two words "panahon na", aimed his pistol at Veras and fired five times in quick succession. Veras could only say "huag" before the first shot and was soon prostrate on the ground with three wounds, of which the one on the left side of the head was necessarily fatal.

Appellant was positively identified by two eyewitnesses, Victor Atienza and Elpidio Marasigan. Atienza was in front of Patricio's store listening to a radio broadcast when he heard the shooting. Instinctively he looked in the direction from where it came and was able to see Casalme trigger off the last two shots with the gun in his hand. Casalme had his back turned to him, but Atienza recognized his familiar figure, having known him for many years, and had him in sight when he walked back to and re-entered the premises of his sister's house immediately after the shooting. Atienza then approached the fallen man to see who he was, and forthwith reported the occurrence to the barrio lieutenant.

Even more positive than Atienza's is the identification made by Elpidio Marasigan. He was walking only a few paces behind Veras, on his way home from a visit at his father's house, when the shooting took place. He saw appellant come out from his sister's place and meet veras; heard him say "panahon na" to his victim; and heard the latter answer "huag" just before appellant started shooting.

The fact that Marasigan did not relate the incident to the policemen of Canlubang, or to the persons who gathered at the scene after it happened, does not necessarily detract from his veracity as a witness. He did tell the Vice-Mayor, Artemio Gomez, and later on the Constabulary in Los Baños when he went there with the victim's widow. He was scared, he said, and so his reticence is quite understandable. His Honor, the trial Judge, heard and believed his testimony, and we find nothing in the record to rule otherwise.

Appellant's defense of alibi - that on December 20, 1959 he was in Bataan to visit a sister of his who was residing there, and came back only on December 23 - cannot prevail over the eye-witness evidence for the prosecution. The following observations of the trial court are to the point:

"There are a number of circumstances which militates against the version of the defense. To begin with, the accused had a motive to do bodily harm on the person of Domingo Veras as the latter, the day before the shooting, assaulted the former. The unexplained disappearance of the accused from barrio Sto. Domingo, Sta. Rosa, Laguna immediately after the shooting and his proceeding to Dinalupihan, Bataan and then to Tagaytay City, were suspicious circumstances tending to prove guilty. Work in the sugar cane plantation was suspended only on December 19 and 20, 1959 because of the rain but in the following three days, work was resumed. Considering that the month of December was part of the milling season, the accused, who had been a "capataz" of the estate for a long time, knew that suspension of the work was only temporary on account of the rain and so he should not leave the place because the work would be resumed any time the weather cleared. When he left Sta. Rosa (presumably after the shooting incident) and went to Bataan without the knowledge and permission of his immediate supervisor, it was apparently for no other purpose but to go in hiding. As a matter of fact, his Christmas bonus which had been in possession of Meneses for sometime was never claimed by the accused as he did not like to show up nor be seen in Sta. Rosa. This is confirmed by the attitude taken by the accused when informed by his brother-in-law that he was merely suspected of the killing of Domingo Veras when he went post haste into hiding for two weeks in Tagaytay City. If Macarlo Casalme had a clear conscience, he would not have been worried of any suspicion that may have been directed against him. The immediate flight of the accused and his sojourn, first in Dinalupihan, Bataan and then in Tagaytay City, are circumstances to be weighed in connection with the other proof on record, as strongly tending to show that he was the assailant and the person responsible for the death of Domingo Veras (U.S. vs. Ramos, 23 Phil. 300, 305; U.S. vs. Alegado, 25 Phil. 510, 511; U.S. vs. Virrey, 37 Phil. 618, 623)."

The commission of the offense was accompanied with treachery, as found by the trial court. Counsel contends that since the deceased had been threatened since the day before the shooting, when appellant said "magbabayad ka rin," he was not caught by surprise at all. But treachery does not connote the element of surprise alone, but exists when the offender employs means, methods, or forms which tend directly and specially to insure the execution of the offense, without risk to himself arising from the defense which the offended party might make (Art. 14, par. 16, Revised Penal Code). When appellant accosted his victim, who could have had no idea as to just how the threat to him would be carried out, and without warning shot him five times, nothing could possibly have been done by the latter in his own defense.

The Solicitor-General invites attention to the fact that appellant voluntarily surrendered, first to the Justice of the Peace of Sta. Rosa, Laguna, with whom he posted a bond, and then to the Constabulary headquarters of the province. There is indeed no record that the order of arrest issued by said magistrate was ever served upon him. The recommendation that this circumstance should be considered in mitigation is proper.

Wherefore, the judgment appealed from is modified, by reducing the penalty imposed therein to an indeterminate sentence ranging from twelve (12) years and one (1) day to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, with the corresponding accessory penalties. The judgment is affirmed with respect to the indemnity and costs.

Concepcion, C. J., Reyes, J.B.L., Barrera, Dizon, Regala, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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