

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
MAMILLANO GRIAR, DEFENDANT AND APPELLANT.***G.R. No. L-2137. June 24, 1949*

Ponente: MORAN, C.J.

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From a judgment of conviction rendered by the Court of First Instance of Surigao finding him guilty of murder and sentencing him to reclusion perpetua, to indemnify the heirs of the deceased Cantidiano Soliano in the amount of P2,000, and to pay the costs, defendant-appellant Mamillano Griar appeals to this Court.

On the evening of June 28, 1947, at about seven o'clock, Cantidiano Soliano, now deceased, left his house in sitio Bayoyong, barrio Madrid, municipality of Cantillan, Province of Surigao and went to the house of Francisco Ornilla whose wife had died and for whom a requiem novena was being held. Also present at the prayers were Cipriano Soliano, father of the deceased; Gervasio Griar, father of appellant; and appellant himself. At about ten o'clock of that night, appellant left the Ornilla house, and about half an hour later, the deceased also left.

At approximately this same time, Bernardina Soliano, wife of the deceased, was in her house when she suddenly heard her husband crying for help and shouting that he had "been ambushed and stabbed by appellant Mainillano Griar. Bernardina immediately rushed down and met Emiliano Olvido, a neighbor, who told her that her husband, was lying wounded in his yard. As soon as she arrived at the Olvido yard, Bernardina came upon her husband lying on the ground wounded and bleeding. She then asked what had happened to him and he answered that he had been ambushed and stabbed by appellant Mamillano Griar. A few moments later, he died.

The widow asked a neighbor to notify Cantidiano's father and she remained with the corpse of her husband until the following morning, awaiting an investigation by the authorities. On the following morning, Florencio Urbiztondo, sanitary inspector of Cantillan, accompanied by the Chief of Police, Escolastico Escueta, and several policemen, went to the Ornilla yard to conduct the corresponding investigation. Urbiztondo found that the deceased had received three wounds from a bolo one being in the stomach which had caused some of the intestines to come out; another in the nape which had cut several veins; and a third across the back. He considered the wounds in the stomach and in the neck as fatal.

In his investigation, Chief of Police Escueta found a shoe of the deceased near the place of the ambushade and also a trail of bloodstains on the ground leading to the Olvido yard. This indicates that the deceased ran very fast after he was wounded. After his investigation, the Chief of Police went back to the municipal building where he found appellant. Upon being questioned, appellant admitted to the Chief of Police that he had stabbed the deceased because of some grudge arising from accusations by the deceased that his horse had been killed by appellant. Appellant refused, however, to sign a sworn statement. After appellant's arrest, he instructed his father to get his bolo from a certain place and turn it over to the Chief of Police. His father did so and appellant admitted that such bolo was his and was the weapon he used in stabbing the deceased.

The case of the prosecution is clear, logical and truthful. The dying declaration of the deceased that he had been

ambushed and wounded by Mamillano Griar has been proven by the testimony of Bernardina Soliano. The confession of the appellant, though not reduced to writing, was proved by the Chief of Police against whose impartiality nothing has been proven. It has also been shown that the deceased had left his house unarmed and had no weapon when he died. Cipriano Soliano testified to the fact that appellant left the Ornilla house ahead of the deceased. Moreover, the fact of the ambushade is supported by the fact that the place where it occurred was between the Ornilla house and the residence of the deceased, while appellant's house is farther away from the Ornilla house in the direction diametrically opposite to that of the house of the deceased. Also, the investigation by the Chief of Police shows that the deceased did not fight back but ran away very fast from the place of attack to the yeard of Olvido. The guilt of appellant is clear, and in fact it is partly corroborated by his admissions such as that he had stabbed the deceased, that there was some grudge between them and that the weapon surrendered to the Chief of Police was his own and was what he used in stabbing the deceased.

The defense consists in the allegation of selfdefense, which rests on the testimonies of appellant himself and a witness named Atenedoro Ambray. Ambray testified that he was present when the deceased and appellant met near the creek and that it was the deceased who suddenly attacked appellant. However, it appears that Ambray had been investigated previously by the Fiscal regarding the death of Cantidiano Soliano and he had disclaimed having any information. Then, at the trial, as defense witness, he testified to numerous details surrounding the incident. The testimony of such a witness is not worthy of credit. Appellant's own testimony that he was suddenly attacked by the deceased and that he acted in self-defense has not been proven by evidence sufficient to prove the element of justification. It is a fact that the deceased was then unarmed and this together with the location of his wounds belies the theory of self-defense.

Appellant having killed Cantidiano Soliano by ambush, and therefore, with treachery, he is guilty of murder. No aggravating circumstances have been proved. On the other hand, the voluntary surrender of appellant is a mitigating circumstance in his favor.

In view of all the foregoing, the judgment of thle lower court is hereby modified and appellant Mamillano Griar is sentenced to suffer from 12 years of prision mayor to 18 years of reclusion temporal, to indemnify the heirs of the deceased in the amount of P6,000 and to pay the costs, with all the accessories of the law.

Ozaeta, Paras, Feria, Pablo, Perfecto, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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