

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ANTONIO DANQUE Y DANDO, APPELLANT.

G.R. No. 107978. November 19, 1993

Ponente: PUNO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-107978/>

PUNO, J.:

In an Information dated October 17, 1989, filed with the Regional Trial Court, Branch XXVII of Catbalogan, Samar,[1] accused-appellant, Antonio Danque y Dando and a John Doe were charged with Murder, committed as follows:

“That on or about the 12th day of August, 1989, along Maharlika Highway, at Barangay New Mahayag, Municipality of Catbalogan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another with John Doe, who is still at large and whose identity is still unknown, with deliberate intent to kill, with treachery and evident premeditation and abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, hold, stab and hack one Vivencio Lucaban with a bolo with which the said accused had conveniently provided themselves for the purpose, thereby inflicting upon said Vivencio Lucaban ‘stab and hacking wounds’ in the different parts of his body, which wounds strictly caused his death.

“CONTRARY TO LAW.” (Rollo, p. 16)

The facts and circumstances surrounding the commission of the crime are as follows:

On August 12, 1989, at around 5:30 in the afternoon, Lydia Lucaban was in the house of Vicente Mabingay at Barangay San Vicente, Maharlika Highway, Catbalogan, Samar. She was waiting for her husband, Vivencio Lucaban, who went to the adjacent barangay of New Mahayag to buy some fish. After a long wait, she decided to follow him. Walking on her way to Barangay New Mahayag, she suddenly saw, from a distance of about 100 meters, an unidentified person holding the hands of her husband Vivencio. She also saw another person, whom she recognized as the accused-appellant Antonio Danque y Dando, deliver a hacking blow on her defenseless husband. Her husband then fell on the ground.[2] After witnessing the incident, she hid in the bushes where she lost consciousness.[3] When she regained consciousness, she hurriedly went home. Her brother-in-law and a policeman fetched her and accompanied her to the Samar Provincial Hospital where her husband’s lifeless body was subsequently brought.[4]

Previous to the hacking incident, Lydia Lucaban had known the accused-appellant for more than a year. Lydia and her husband were living with her aunt, Mrs. Marcing Longara, at the latter’s house while accused-appellant’s house was adjacent to theirs.[5]

Lydia testified that the accused-appellant had a long-standing grudge against her husband. Accused-appellant resented it when her aunt, Mrs. Longara, turned over her land to Vivencio. In one instance, the accused-appellant even prevented them from harvesting coconuts on said land. The accused-appellant drew a bolo and faced her husband who was then carrying a scythe. She tried to pacify Vivencio who instead ran towards their house and got

a lead pipe. Frightened, the accused-appellant scampered away.[6]

Another eyewitness to the incident is Monico Bola. He testified that on the said date and time, he was gathering firewood in the coconut plantation owned by Floro Yboa. The plantation, situated along Maharlika Highway, is just across the road from the scene of the crime. While tying the firewood, he heard a voice crying for help, shouting that he was about to be killed. He looked across the street and saw a person, whose identity is unknown to him, holding both hands of Vivencio Lucaban. He also saw the accused-appellant hack Vivencio three (3) times. Vivencio fell on the ground after receiving the hacking blows. He did not answer the victim's call for help for he was afraid. Neither did he go near the scene of the crime. He just picked up the firewood and went home.[7]

Bola further confirmed that prior to the hacking incident, accused-appellant had an altercation with Vivencio. At one time, while Bola and the accused-appellant were on their way to Barangay New Mahayag, the latter boasted that although smaller in built, he could easily beat Vivencio and he would not give any second thought on killing anyone.[8]

For his part, the accused-appellant offered the defense of alibi. He testified that from June 15, 1989 to August 12, 1989, he was in Biliran, Leyte, gathering shells known as "sarad." He was then accompanied by Paquito Senogat (owner of the motorboat they were using) and a certain Jimmy (who operated the boat).[9] His alibi was corroborated by Paquito Senogat.[10]

Accused-appellant denied knowing Lydia Lucaban. Thus, he claimed, he could not have harbored any ill-feelings towards her. He averred that he voluntarily vacated the land of Mrs. Longara because he had become sickly.[11]

After trial on the merits, the trial court convicted the accused-appellant. The dispositive portion of the Decision of conviction reads:

"WHEREFORE, finding the accused Antonio Danque, guilty beyond reasonable doubt of the crime of Murder, for the treacherous and premeditated killing of Vivencio Lucaban, but taking into consideration the provisions of the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of imprisonment of from twelve (12) years and one (1) day of reclusion temporal as minimum, to seventeen (17) years, four (4) months and one (1) day also of reclusion temporal as maximum; to indemnify the heirs of the deceased in the integrated amount of P50,000.00, but without subsidiary imprisonment in case of insolvency, and to pay the costs of the case." (Rollo, at pp. 23-24)

In view of the penalty imposed upon him by the trial court, accused Danque appealed his conviction to the Court of Appeals. In a decision dated November 27, 1992,[12] the Court of Appeals affirmed the factual findings of the trial court but ruled that the imposable penalty is reclusion perpetua, there being no mitigating or aggravating circumstance. Hence, the appellate court refrained from promulgating its Decision and certified the case to this Court for review.

In his brief, accused-appellant impugns the credibility of the prosecution witnesses. It is insisted that it was unnatural for Lydia Lucaban to ignore her husband's cry for help upon seeing him under attack by the accused-appellant. Likewise, accused-appellant denigrates the testimony of Bola for his failure to report the hacking incident to the police authorities.

These issues have been sufficiently addressed by the Court of Appeals, thus:

"Witness Lydia Lucaban explained that she did not shout for help nor run to the rescue of her husband because she was afraid that she might also be killed. The fact cannot be discounted that people react differently to similar situations (People v. Gutierrez, Jr., 158 SCRA 614). There is no standard form of behaviour when one

is confronted by a shocking incident (People v. Radomes, 141 SCRA 546).

“With regard to witness Monico Bola, it bears stressing that the initial reluctance of a witness to testify in a case and his unwillingness to be involved or dragged in an investigation are a common occurrence in this country and such reluctance therefore does not affect his credibility (People v. Aliocod, 167 SCRA 665).”

We add that survival was and still remains the first law of man. Lydia Lucaban has reason to fear for her safety. She belongs to the weaker sex and any effort on her part to help Vivencio would amount to nothing but raw and reckless courage.

Indeed, the trial court cannot be faulted for electing to accord credence to the testimony of the prosecution witnesses and to disbelieve that of the accused-appellant. Inconsistencies and contradictions characterized the short testimony of the accused-appellant and his corroborating witness, Paquito Senogat. During the trial, accused-appellant denied having known Lydia Lucaban and he claimed that the first time he met her was during his arraignment. This was ostensibly to blunt the testimony that he harbored ill-feelings towards her.[13] In the same breath, however, he admitted he was a tenant-farmer in the land of Mrs. Longara, in whose house Vivencio and Lydia were residing. As neighbors, and considering that Lydia was the niece of his landlady, accused-appellant’s pretense that Lydia was a stranger to him prior to the trial of the case is unworthy of belief. Moreover, going over the entire testimony of the accused-appellant, it will be gleaned that the latter was not even sure whether he arrived at Catbalogan, Samar on August 12 or 13, 1989.

The testimony of accused-appellant’s corroborating witness, Paquito Senogat, is similarly pockmarked with incredulities. His brief testimony did not strengthen the veracity of appellant’s alibi. Senogat declared that the accused-appellant was with him and his nephew, Kiko Senogat, on that fateful day of August 12, 1989. In his testimony however, accused-appellant himself made no mention of the fact that a certain Kiko Senogat was with them. Instead, accused-appellant testified that on August 12, 1989, he was out in the sea with Paquito Senogat and a certain Jimmy. This variance in their testimonies relate to a material detail and weakens considerably the credence of Senogat.

In checkered contrast, the records show that the testimony of Monico Bola deserves full faith and credit. Accused-appellant himself admitted he knew Bola since they worked together in the farm of Mrs. Longara. Accused-appellant failed to show any motive why Bola would lie and maliciously impute on him the commission of such a heinous crime. As the trial court correctly observed, it would have been easy for Bola to refuse to testify on what he witnessed that day, but he did not. He chose to testify and put himself in physical danger or threat in doing so. Neither was there any attempt to show that Bola testified due to a promise of reward or consideration.

The time-tested jurisprudence is that the findings and conclusions of the trial court on the credibility of witnesses enjoy a badge of respect for the reason that trial courts have the advantage of observing the demeanor of witnesses as they testify. In the case at bar, accused-appellant has not shown any compelling reason why this rule of logic and experience should not be observed.

In sum, the trial court correctly disbelieved the defense of alibi proffered by the accused-appellant. Alibi cannot prevail over the positive and categorical testimony of the two (2) prosecution witnesses that it was the accused-appellant who perpetrated the crime at bar.[14]

We now come to the appreciation of the qualifying circumstances alleged in the Information. Three (3) qualifying circumstances were alleged, viz: treachery, evident premeditation and abuse of superior strength. The well-entrenched rule is that a qualifying circumstance must be proven as clearly as the crime itself.[15] It cannot be deduced from debatable inferences.

In the instant case, We find that treachery qualified the killing of Vivencio to murder. There is treachery when the offender commits any of the crimes against persons, employing means, methods and forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[16]

The manner in which the victim was assaulted by the two (2) accused sufficiently established the existence of treachery. Vivencio's hands were held by appellant's co-conspirator which effectively rendered him defenseless from accused-appellant's hacking blows. It afforded the two (2) accused an opportunity to kill Vivencio without risk to their lives.

However, the qualifying circumstance of evident premeditation should not have been appreciated by the trial court against the accused-appellant. For evident premeditation to be considered, convincing proof of the following elements is necessary: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender had clung to his determination; and (3) the lapse of an interval of time between the determination to commit the crime and execution thereof, sufficient to allow the offender to reflect upon the consequences of his act.[17] As we held in the early case of *People v. Durante* (53 Phil. 363), the essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. The prosecution only proved that there was a previous altercation between the victim and the accused-appellant. This evidence may explain the reason for the murder of the victim by the accused-appellant, but without more, it could not prove evident premeditation. On the whole, the evidence lacks the specifics of time from which can be deduced the studied deliberation on the part of the accused-appellant to commit the offense at bar.

Similarly, the trial court erred in considering the qualifying circumstance of taking advantage of superior strength against the accused-appellant. This aggravating circumstance was absorbed by treachery.[18]

The crime committed in this case is Murder qualified by treachery. There being no mitigating or aggravating circumstance, the medium penalty of reclusion perpetua should be imposed on the accused-appellant.[19]

WHEREFORE, the decision appealed from is hereby MODIFIED and the accused-appellant is hereby found guilty of Murder qualified by treachery and meted the penalty of reclusion perpetua and to indemnify the heirs of the deceased Vivencio Lucaban the sum of fifty thousand pesos (P50,000.00), but without subsidiary imprisonment in case of insolvency and to pay the cost of the suit.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[1] Docketed as Criminal Case No. 3190.

[2] TSN, August 8, 1990, pp. 3-4.

[3] *id.*, pp. 7, 12 & 14.

[4] *id.*, pp. 7, 16-17.

[5] *id.*, p. 5.

[6] *id.*, pp. 9-10.

[7] *id.*, pp. 21-23.

[8] TSN, August 8, 1990, p.21.

[9] TSN, April 24, 1991, pp. 14, 22, 24.

[10] *id.*, pp. 34-37.

[11] *id.*, p. 32.

[12] Penned by Associate Justice Gloria C. Paras and concurred in by Associate Justices Ricardo C. Francisco and Regina G. Ordonez--Benitez; Rollo, pp. 79-83.

[13] TSN, April 24, 1991, pp. 14 & 32.

[14] *People v. Urquia, Jr.*, G.R. No. 94787, November 19, 1991, 203 SCRA 735; *People v. Lee*, G.R. No. 66848, December 20, 1991, 204 SCRA 900.

[15] *People v. Sarense*, G.R. No. 97433, October 20, 1992, 214 SCRA 780.

[16] Article 16, par. 16 of the Revised Penal Code; see *People v. Wenceslao*, G.R. No. 95583, August 12, 1992, 212 SCRA 560; *People v. Donato*, G.R. No. 94530, March 6, 1992, 207 SCRA 125; *People v. Castor*, G.R. No. 93664, December 11, 1992, 216 SCRA 410; *People v. Pasiliao*, G.R. Nos. 98152-53, October 26, 1992 215 SCRA 163.

[17] Article 16, par. 13 of the Revised Penal Code; see *People v. Antud*, G.R. No. 95684, October 27, 1992, 215 SCRA 190; *People v. Castor*, G.R. No. 93664, December 11, 1992, 216 SCRA 410.

[18] *People v. Bechayda*, G.R. No. 72001, August 7, 1992, 212 SCRA 336.

[19] *People v. Valiente*, G.R. No. 103269, September 2, 1992, 213 SCRA 499; *People v. de Paz*, G.R. No. 86436, August 4, 1992, 212 SCRA 56.

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.