

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO G. DE LEON @ ERNING DEMONYO, ACCUSED-APPELLANT.

G.R. No. 116232. September 26, 1996

Ponente: MELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-116232/>

MELO, J.:

Accused-appellant was charged with murder for the killing of Albert Capistrano y Araullo, and after trial was found guilty as charged by the Regional Trial Court of the National Capital Judicial Region (Branch 72, Caloocan City), and was consequently sentenced to the prison term of reclusion perpetua, aside from being ordered to indemnify the heirs of the victim the amount of P50,000.00 for loss of life and P75,000.00 for expenses incurred in connection with said death.

Accused-appellant is now before us urging reversal on the ground that the trial court erred in finding him guilty beyond reasonable doubt and in finding that treachery attended the commission of the offense.

A review of the evidence shows that the following statement of the facts of the case made by Solicitor General Raul I. Goco, Assistant Solicitor General Edgardo L. Kilayco, and Associate Solicitor Elinor O. Lagunilla is in accord with the evidence:

On March 1, 1992, at around one o'clock in the afternoon, Alvin Capistrano, then a 14-year old boy, was inside their house at No. 2 Jeffrey Street, Gabriel Subdivision, Hulong Duhat, Malabon, Metro Manila with his mother Violeta and his sister, Agnes. (p. 3, TSN, October 20, 1993)

Accused-appellant suddenly arrived, holding a gun and shouting "Nasaan ang asawa ko?" (pp. 4-6, TSN, *ibid.*, p. 12, TSN, October 27, 1993)

Accused-appellant started making trouble and throwing things around. (p. 15, TSN, October 27, 1992) Alvin fetched his father, who was then at a baptismal party nearby where he stood as one of the sponsors, in order to pacify accused-appellant. As they were turning home, they met accused-appellant, who suddenly poked a gun on Alvin's forehead then turned on his father, shooting him twice. Alvin saw his father fall down and lie prostate on the ground. Alvin ran to ask help from their neighbors. All in all, he heard six shots coming from the place where he left his father and accused-appellant. (pp. 6 to 9, TSN, October 20, 1993) Accused-appellant fled from the scene of the crime and went into hiding. (pp. 14-15, *tsn, ibid*)

The shooting incident on March 1, 1992 was not the first time that accused-appellant caused trouble to the victim's family. On several occasions in the past, he would utter invectives at the members of the victim's family and point his gun at them. (pp. 12-14, TSN, *ibid*).

Dr. Valentin Bernales, a medico-legal officer of the National Bureau of Investigation (NBI), conducted the autopsy on the body of Alberto Capistrano. He testified that the victim died due to the gunshot wounds he sustained as shown by the post-mortem examination and certificate of death he issued. (Exhibits H, H-1 and H-2) (p. 7, TSN, January 12, 1994)

(pp. 3-4, Appellee's Brief)

Accused-appellant assails the trial court's reliance on the sole testimony of Alvin Capistrano, the son of the victim, as the basis of conviction, arguing that the testimony of Alvin is inherently improbable and inconsistent with human experience.

More specifically, accused-appellant would have us reject the testimony of Alvin that he fetched his father from a baptismal party to pacify accused-appellant who was "making trouble and throwing things around." Accused-appellant maintains that considering the hostility between him and the Capistrano family, the victim should have been the last person to be called upon to pacify accused-appellant.

On the contrary, the act of Alvin in fetching his father for help is the most natural thing for a son to do in the event that his family is in trouble. Alvin was only fourteen years old when the incident happened and totally inexperienced in dealing with such matters and he would have instinctively sought the help of his father who has experience in the ways of the world. Verily, the natural reaction of a child when danger rears its head is to call on a father for help. At any rate, whatever his reasons were, Alvin actually fetched his father.

Further, accused-appellant impugns the testimony of Alvin because of his failure to defend himself and his father from accused-appellant's attack. That is too much to expect from a young boy of fourteen years of age. One should not demand that a 14-year old boy should act heroically and fight a man armed with a gun. Alvin did the right thing under the circumstances - to ask help from the neighbors. Indeed, one hardly needs reminding that there is no standard form of human behavior when confronted with a strange, startling or frightening situation. Individuals react differently to startling occurrences depending upon their situation and state of mind (*People vs. Halili*, 245 SCRA 340 [1995]).

The contention of accused-appellant that the testimony of Alvin that accused-appellant poked a gun at his head is not true because Alvin did not suffer any head injury deserves scant consideration. In the first place, the gun barrel may not even have touched Alvin, or the act of poking the gun might have been done lightly and not intended to injure Alvin. In the second place, the poking of the gun at Alvin's head is irrelevant to the charge of murder. Accused-appellant is charged with murdering Albert Capistrano, not with threatening Alvin or inflicting physical injuries on him. Too, the fact that Alvin is the son of the victim does not impair his credibility or render his testimony unworthy of credence in the absence of any improper motive for so testifying (*People vs. Alban*, 245 SCRA 549 [1995]).

In any event, the questions raised by accused-appellant involve matters having to do with the credibility of witnesses, and it is a long-standing legal precept, in this regard, that the trial court's determination on the issue of the credibility of witnesses must be given great weight and respect, unless the court has plainly overlooked certain facts of substance and value, that, if considered, might affect the result of the case (*People vs. Deunida*, 231 SCRA 520 [1994]). The record does not disclose such facts of substance that the trial court has overlooked.

The Court, however, is not convinced that the qualifying circumstance of treachery attended the killing.

Treachery can not be presumed but must be proved by clear and convincing evidence as conclusively as the killing itself (*People vs. Cedenio*, 233 SCRA 356 [1994]) and for the same to be considered as a qualifying circumstance, two conditions must concur: (a) the employment of means, method or manner of execution which would ensure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, no opportunity being given the latter to defend himself or to retaliate; and (b) the means, method or manner of execution were deliberately or consciously adopted by the offender (*People vs. Mendoza*, 236 SCRA 666 [1994]). It must be recalled that accused-appellant barged into the victim's house holding a gun and shouting "Nasaan ang asawa ko?" Not finding his wife, accused-appellant started making trouble by throwing things around which prompted Alvin to fetch his father who was then at a nearby baptismal party in order to pacify accused-appellant.

On their way home, Alvin and his father met accused-appellant who suddenly poked a gun on Alvin's forehead and then turned and shot the victim twice. There is no showing that the shooting was premeditated or that accused-appellant, in shooting the victim, employed means, methods or forms to ensure its execution, without risk to himself arising from the defense which the offended victim might make. Likewise, the mere fact that the shooting was sudden, the same does not per se bespeak of the circumstance of treachery in the absence of any proof that the means, methods or forms were deliberately or consciously adopted by the offender (*People vs. Decena*, 235 67 [1994]). And to be sure, the victim was not totally unaware of danger for precisely his son called for the victim because accused-appellant was brandishing a gun and making trouble.

The crime committed by accused-appellant is, therefore, homicide only, not murder. The penalty for homicide under Article 249 of the Revised Penal Code, is reclusion temporal. There being no aggravating nor mitigating circumstances, the penalty imposable is reclusion temporal in its medium period; and applying the Indeterminate Sentence Law, the penalty that should be imposed upon accused-appellant is an indeterminate sentence within the range of prision mayor, as the minimum, and reclusion temporal in its medium period, as the maximum. (*People vs. Nitcha*, 240 SCRA 283 [1995]).

WHEREFORE, the decision appealed from is hereby MODIFIED, and accused-appellant is hereby found guilty of HOMICIDE and sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal as maximum.

In all other respects, the appealed decision is hereby AFFIRMED.

SO ORDERED.

Costs against accused-appellant.

Narvasa, C.J., (Chairman), Davide, Jr., Francisco, and Panganiban, 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.