

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MARCELINO MARIO, ALIAS “CELINO” AND DOROTEO
DULAY, ALIAS “DOROT”, DEFENDANTS AND
APPELLANTS.**

G.R. No. 13295. May 31, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

This appeal is from a conviction for murder by the Court of First Instance of Pangasinan, wherein appellants Marcelino Mario and Doroteo Dulay were each sentenced to suffer the penalty of reclusion perpetua; and jointly and severally to pay indemnity in the sum of P6,000.00 to the heirs of the victim Pablo Sagaoinit.

It was definitely established by the testimonies of the prosecution witnesses that on January 6, 1955, at barrio Tebuel, Manaoag, Pangasinan, while Consuelo Mendoza, daughter of Eligio Mendoza, barrio lieutenant of said barrio, was tending to their store, she was engaged in a lively conversation with Faustina Riola, wife of Pablo Sagaoinit. Said conversation dwelt on an incident which took place in a dance at barrio Sapang, an adjoining barrio, where one Rose disappointed appellant Doroteo Dulay, otherwise known as Pulong Mara. Pablo Sagaoinit, who also happened to be in the store, joined in the conversation, remarking, "Pilo is a little bit crazy". At this precise moment, appellant Marcelino Mario, brother-in-law of appellant Dulay, who was entering the store, overheard said remark. He thereupon confronted Pablo Sagaoinit, and pointing his right hand at Pablo's face, told him; "Remember what you have said". Appellant Mario then ran to their house and called for appellant Dulay, telling the latter what Pablo Sagaoinit had just said about him. In a short while, appellant Dulay, accompanied by his wife, Dionisia Mario, together with appellant Mario, returned to the store.

When the trio arrived at the store, appellant Dulay immediately rushed at Pablo, saying, "Why do you say that I am a little bit crazy?" The latter denied the statement, saying that it was not meant for him (Dulay). Unsatisfied with Pablo's answer, appellant Dulay challenged him to a "sports fight", and further uttered, "Even if it is a fight up to death." Noticing appellant Dulay's belligerent attitude, Eligio Mendoza tried to pacify him, but said appellant pushed him aside, as a result of which, Mendoza fell. At this juncture, Ildefonso Sagaoinit, uncle of Pablo Sagaoinit, who had just arrived at the scene, tapped appellant Dulay's left shoulder, and admonished him thus, "Better stop that Doroteo, my son." In response, appellant Dulay pushed him, causing him to fall. When Ildefonso Sagaoinit was about to get up, appellant Dulay shouted at his brother-in-law, appellant Mario, saying "What are you doing, Marcelino (Mario), come on, you hit." Upon hearing said appellant's order to attack, appellant Mario immediately stabbed the back of Ildefonso Sagaoinit with his dagger (Exh. C). Appellant Dulay, who was behind Pablo Sagaoinit, then grabbed the latter's waist and placed his hands around it, thereby pinning Pablo Sagaoinit's arms. Appellant Mario lost no time in stabbing Pablo Sagaoinit at his left breast above the nipple with the same dagger (Exh. C), inflicting on him a deep mortal wound, 3 inches deep, entering the victim's body between the second and third ribs very close to the edge of the sternum (Exh. A). Thereafter, both appellants fled from the scene of the crime. Pablo Sagaoinit died as a result of the wound inflicted on him. Ildefonso

Sagaoinit was brought to town for medical treatment.

Since appellant Marcelino Mario had withdrawn his appeal,[1] appellant Doroteo Dulay is deemed the only appellant in this case.

Appellant Dulay claims that the trial court erred in holding him a principal in the commission of the crime of murder of which he was convicted.

The claim has no merit. According to the findings of the trial court, to which we agree, appellant grabbed the waist of the deceased and placed his hands around it, thereby pinning his (the deceased's) arms. It was at this juncture when his co-accused Marcelino Mario stabbed the deceased at his left breast above the nipple with his dagger (Exh. C). Under the circumstances, it is clear that appellant is a principal to the commission of the crime of murder, as he cooperated in the execution thereof by another act, without which, it would not have been committed. (Art. 17[3], Rev. Penal Code.) There was treachery in the killing, which qualified it to murder, because by holding the deceased's waist and placing his hands around it, and pinning his arms, appellant thereby employed means to insure the execution of the crime without risk to himself arising from the defense which the deceased might make. As the lower court observed:

"To the mind of the Court, there is a clear case of treachery and there is a clear case of taking advantage of superior strength by the said accused persons. When the deceased was killed, he was in a defenseless position because his two hands were being held by Doroteo Dulay when he was stabbed at the breast by his co-accused, Marcelino Mario.' There is treachery when the offender commits any of the crime against persons, employing means, methods, or 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. The Supreme Court on this matter held that 'even though at the inception of the aggression which ended in the death of the deceased treachery is not present, however, if at the time the fatal wound is inflicted on the deceased he is defenseless, the circumstance of treachery must be taken into account.' (U. S. vs. Baluyot, 40 Phil. 385). In the present case at bar, when the deceased was stabbed, that cause his death, he was defenseless and could not avoid being hit by Marcelino Mario because his hands were being held by Doroteo Dulay (appellant herein) who was then at his back."

Granting, *arguendo*, that appellant is not a principal by cooperation, he may be considered a principal by induction (Art. 17[2], Rev. Penal Code), inasmuch as he induced his co-accused Mario to stab the deceased.

We agree with the Solicitor General that the aggravating circumstance of abuse of superior strength may not be considered in the instant case, because it is absorbed by the circumstance of treachery. Wherefore, finding no error in the decision of the trial court, the same is hereby affirmed, with costs against the appellant Doroteo Dulay. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, and Gutierrez David, JJ., concur.
Reyes, J.B.L., J., on leave, took no part.

[1] Duly approved by this Court in its resolution of Sept. 1, 1958

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