

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
SEBASTIAN LARGO, DEFENDANT AND APPELLANT.***G. R. No. 18175. July 31, 1962*

Ponente: CONCEPCION, J.

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Accused of murder in the Court of First Instance of Zamboanga City and convicted, as charged, by the same, which sentenced him to an indeterminate penalty ranging from eight (8) years and one (1) day of prison mayor to fourteen (14) years and eight (8) months of reclusion temporal, with the accessory penalties prescribed by law, to indemnify the heirs of Martin Munding in the sum of P6,000, and to pay the costs, defendant Sebastian Largo appealed to the Court of Appeals, which, being of the opinion that appellant should be sentenced to life imprisonment, forwarded the case to this Court, in pursuance of section 34 of Republic Act No. 296.

Testifying for the prosecution. Patrolman Abdulatip Abdurahim of the police department of Zamboanga City stated that, while he was on his beat, in the vicinity of the night market of said city, where "feria" games were being played, at about mid-night of December 2-3, 1957, his attention was attracted by a commotion and the scampering of people nearby. As he approached the place of the commotion, to ascertain its cause, he saw appellant Sebastian Largo holding the dagger Exhibit A in his right hand and its scabbard Exhibit B in his left; that Abdurahim inquired what the matter was, but Largo warned him not to approach; that, this notwithstanding, Abdurahim grabbed Largo's right hand and tried to wrest the weapon from him; that while they were grappling therefor, another policeman, Patrolman Leandro Barredo, came and helped Abdurahim in disarming Largo; and that the policemen then noticed that the dagger was smeared with fresh blood and that, about eight (8) meters away, the lifeless body of Martin Munding "was lying on the ground, face downward, with several wounds in the right arm and a gaping wound in the back. This testimony was corroborated by Patrolman Barredo.

According to Dr. Felipe T. Lavina, of the Zamboanga General Hospital, who made an autopsy of said body, about ten (10) hours after the occurrence, "death was due to hemorrhage in the lungs, secondary to stab wounds" sustained "from behind."

The prosecution introduced, also, the testimony of an uncle of the deceased, namely, Agustin Munding, who declared that, as Martin Munding ducked a fist blow given by appellant's brother, Federico (Pedring) Largo— with whom the deceased seemingly had a fist fight— appellant appeared suddenly from behind the latter and stabbed him.

The theory of the defense, based mainly upon appellant's testimony, is that, while he and his wife and two children were, on their way home, coming from his mother's store, near the scene of the occurrence, in the evening of December 2, 1957, someone shouted "juramentado", whereupon the people started scampering away, with the corresponding commotion; that, as he looked around for a piece of wood with which to protect his wife and children, he saw a dagger which, after putting down a child he was carrying on his shoulders, he picked up, along with its scabbard; that he then saw a man coming to him, and, not knowing that he (the man) was a

policeman, warned him not to approach; that the policeman grabbed his hand and took the dagger away from him; and that said policeman and another policeman, who came immediately, thereafter, then brought him to the police station, despite his assurances to them that he had merely picked up the weapon at the scene of the crime.

Fortunato Quinones and Alfredo Demaronsing tried to corroborate appellant's testimony, but, the same and that of his corroborating witnesses were given no credence by the lower court. In the light of the attending circumstances, we can not disturb the findings of said court with respect to the veracity of the opposing witnesses. In addition to the decided advantage of His Honor, the trial Judge, who observed their behaviour during the trial, in gauging their veracity, the refusal of appellant to surrender the lethal weapon to policeman Abdurahim, refutes the theory of the defense. Appellant's testimony to the effect that he did not know that Abdurahim was a peace officer merely makes the artificiality of the former's version more apparent, for Abdurahim was then wearing his uniform as a policeman. Moreover, Agustin Munding identified Exhibit A as the dagger he had seen appellant carry with him several times prior to the occurrence. Lastly, it is not even intimated that either Agustin Munding, or the aforementioned policemen had any possible motive to falsely incriminate appellant. On the contrary, the record shows that Agustin Munding was his friend.

It appearing that Martin Munding was stabbed from behind, while he was busy defending himself from the fist blows of Federico (Pedring) Largo, it is clear that the crime committed is murder, qualified by treachery, and that, no modifying circumstance having attended the commission of the offense, the penalty therefor should be imposed in its medium period, namely, life imprisonment.

Thus modified as to the penalty, the decision appealed from is hereby affirmed, therefore, in all other respects, with costs against the appellant. It is so ordered.

Bengzon, C.J., Padilla, Labrador, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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