

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND
APPELLEE, VS. PELAGIO TRAZO AND FELIX ESCARTIN,
DEFENDANTS. FELIX ESCARTIN, APPELLANT.**

G.R. No. 37390. June 24, 1933

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of Bohol, finding the appellant, Felix Escartin, guilty of the offense of murder and sentencing him to undergo imprisonment for twenty years, with the accessory penalties prescribed by law, and requiring him to pay one-half the costs of prosecution. The appellant was also sentenced to indemnify the heirs of the deceased in the amount of P1,000.

The appellant, Felix Escartin, appears to have entertained a rancor against his neighbor, Sergio Doroy, resident of the municipality of Talibon, Bohol, resulting from conflicting interests in a woman; while his coaccused, Pelagio Trazo, had his own reasons for dislike to the deceased. On Thursday, January 7, 1932, the witness Eracleo Pulgo, who was fishing in the Hangtud brook, in the sitio of Licoan, heard the discharge of a gun. He supposed momentarily that some hunter had killed a wild pig, and he moved in the direction of the noise. Imagine his surprise to see the appellant, Felix Escartin, and Pelagio Trazo dragging the body of a dead person over the ground. The witness was frightened and fled. Arriving at home, he did not leave the house until the forenoon of January 11, 1932. On that day he learned that Eduardo Doroy was looking for a brother, Sergio Doroy, who had disappeared. Pulgo thereupon told Eduardo what he had seen on the preceding Thursday; and the two presently succeeded in locating the place of burial of Sergio Doroy near the spot where the witness had seen the two accused persons pulling the corpse over the ground. Upon examination of the body it was found to be that of Sergio and it was discovered that it contained two bullet wounds, one on the upper external side of the left eye and the other below the left nipple.

Pelagio Trazo, coaccused of the appellant, was introduced as a witness for the prosecution and testified that he had accompanied Felix Escartin upon the occasion when Sergio Doroy was slain, but he imputed to Escartin the chief role in the killing. It is evident from this witness that the two waited upon the scene of the killing until the deceased appeared, and Felix hid himself behind certain branches to prevent the deceased from seeing him upon approach.

The proof is convincing as to the guilt of the appellant. We credit, as did the trial court, the testimony of Eracleo Pulgo, and the circumstances surrounding the killing corroborate the statement of Pelagio Trazo to the effect that the killing was effected by lying in wait.

More than one witness testified to the fact that the appellant entertained ill will against the deceased, and more than once had threatened harm to the deceased. It was further shown that the appellant possessed the gun which was used in taking Sergio's life.

Pelagio Trazo was a competent voluntary witness against the appellant, and although the court found that said

witness was an accomplice and participant in the crime, his testimony is corroborated by other evidence, and, being so corroborated, is sufficient to sustain the conviction. When two or more persons are jointly prosecuted for the same crime, but separately tried, either of such persons is competent as a witness against the other, although the case against the witness himself is still pending. (Benson vs. United States, 146 U. S., 325, 333-334.) The suggestion that Trazo was incompetent because he had not been discharged in accordance with the provisions of section 2 of Act No. 2709 is also not well founded. The purpose of the last mentioned Act was to enable the prosecution to induce one of several codefendants to testify as a witness against his coaccused, without being in a danger of incriminating himself. It does not preclude a witness from testifying against his coaccused when willing so to do without discharge.

The crime committed was that of murder in which the qualifying circumstance was alevosia in that the appellant shot the deceased from ambush, when unarmed and unsuspecting, thereby insuring the execution of the crime without risk to the appellant. There was present neither aggravating nor mitigating circumstance and the penalty imposed upon the appellant should be in its medium degree.

It being understood, therefore, that the penalty imposed upon the appellant is reclusion perpetua, the sentence, as thus modified, is affirmed, with costs against the appellant. So ordered.

Malcolm, Abad Santos, Vickers, and Imperial, JJ., concur.

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