

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ARSENIO CATA CUTAN, DEFENDANT AND APPELLANT.***G. R. No. 45136. February 17, 1937*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-45136/>**DIAZ, J.:**

Charged with having treacherously killed Corporal Liborio Serrano of the Constabulary with a sharp-pointed instrument in the morning of February 2, 1936, while said agent of the authority was conducting a search by virtue of a judicial warrant delivered to him for compliance therewith, Arsenio Catacutan was sentenced by the Court of First Instance of Pampanga to reclusion perpetua, with the corresponding accessory penalties, and to indemnify the heirs of the deceased in the sum of P1,000. Said court held that, notwithstanding the allegations of the information and the fact proven at the trial of the case that when the crime was committed the deceased was in the performance of his official duties, the crime committed was only murder, the fiscal having stated during the trial, as set forth by the trial judge in his decision, although such fact does not appear of record, that the accused was charged only with murder.

Arsenio Catacutan appealed from the sentence imposed upon him, assigning in his brief the following alleged errors as committed by the trial court, to wit:

"I. In holding that the defendant and appellant voluntarily and intentionally attacked the deceased Liborio Serrano, when in fact the wound which caused his death was inflicted accidentally during the fight, when the appellant evaded the blow which Victor Manansala, the companion of the deceased, attempted to deal him with a dagger.

"II, In not holding that the guilt of the accused has not been established beyond a reasonable doubt, and in convicting instead of, acquitting him.

"III. In considering treachery as an aggravating circumstance in spite of the fact that it is alleged as & circumstance qualifying murder."

This court has reviewed the evidence very carefully and it is fully convinced that the facts of the case occurred as follows: Corporal Liborio Serrano, provided with the judicial warrant, Exhibit I, requiring him to search the houses of one Jacinto Bondoc and of the herein appellant for unlicensed revolvers at any time of the day or night, went to the appellant's house with Victor Manansala at 4:00 o'clock in the morning of February 2, 1936, for said purpose. Once inside the house and after making known that he was an agent of the authority by actually showing to the appellant the search warrant carried by him, Corporal Serrano proceeded to search it. While he was so engaged, the appellant's wife handed her husband a bundle saying that it contained their son's excrement. Suspecting something, Corporal Serrano snatched the bundle and, upon unwrapping it, found that it contained the revolver. Caught in his ruse, the appellant seized a kris on the wall of his house and stabbed Corporal Serrano in the abdomen with it, thereby inflicting upon him a wound which produced hemorrhage and later developed into acute anemia, causing his death on the night of said day.

Multiple wounds were found on both hands of the deceased by the physician who examined him, which fact

corroborates the testimony of Victor Manansala, who witnessed the crime, to the effect that upon feeling himself wounded, the deceased caught the kris with which the appellant had stabbed him in the abdomen by the blade in order to protect himself. The deceased also had six contused wounds on the forehead, in the parietal and occipital regions and on the left shoulder, which fact likewise corroborates Manansala's testimony that the appellant, not satisfied with having stabbed the deceased in the abdomen, dealt him several blows with a palm stick within his reach, until said deceased fell to the floor. After Corporal Serrano had fallen, the appellant went in pursuit of Victor Manansala whom he, nevertheless, was unable to overtake because the latter had gone to hide in a rice field near the scene of the crime. The appellant later returned to his house to take not only the instruments with which he had committed the crime but also the above-stated revolver. Immediately thereafter he left the place on his carabao and he did not again show up until the time he surrendered to a policeman and to the municipal president of Candaba.

The appellant attempted to defend himself at the trial by stating that the wound which brought about the death of the deceased was inflicted by Victor Manansala when, as the appellant and the deceased were engaged in a hand to hand fight for the possession of the stick with which the deceased was beating the appellant, Manansala approached them for the purpose of stabbing the appellant. Fortunately for the appellant, the blow landed fully on the abdomen of the deceased. This testimony of the accused is in no way corroborated. As a matter of fact, when he was examined by Lieutenant Botin of the Constabulary a few hours after the incident, no contusion or any trace of blows was found on his body, much less on his arm with which he claims to have parried the blow dealt him by the deceased with a stick. On the other hand, before the deceased expired he had pointed to the appellant as the person responsible for his wounds.

Victor Manansala ran to a nearby rice field when the accused pursued him, hiding therein and never leaving the place to avoid being harmed by the accused until the latter left on his carabao. Thus Manansala could see the accused return to his house after the latter had pursued him.

The appellant likewise attempted to defend himself by stating that the deceased and Victor Manansala had caught him while he was asleep and told him not to move because they were agents of the authority. Neither is this point corroborated and, although the appellant attempted to prove by the testimony of Lucas Cunanan that the cane, Exhibit F, with which he claims the deceased had attacked him, was the same cane carried by the deceased four days before it does not mean that the deceased really used it in attacking him. Had the deceased used said cane some marks of the blows would have been found on the appellant's body. However, Lieutenant Botin who had examined him a few hours after the incident positively declared that he had found no injury or trace of injury on his body.

The crime committed by the appellant, as shown by the evidence, which is the important thing, and not by what the fiscal thought and stated during the trial, which is absolutely immaterial, is the complex crime of homicide and assault upon an agent of the authority because the circumstance of treachery which might qualify the crime of homicide committed as murder, does not appear to have been satisfactorily proven. It is not shown that the assault upon the deceased was made treacherously, because the aggressor and the victim were then facing each other. Taking into account the fact that the appellant voluntarily surrendered to the authorities a few hours after he had committed the crime, the seventh mitigating circumstance must be considered in his favor; and as there is no aggravating circumstance to offset it, the penalty which must be imposed upon him is the minimum of that prescribed by law, to wit: from seventeen years, four months, and one day to eighteen years, two months and twenty days of reclusion temporal by virtue of article 64, rule 2, in connection with article 48 of the Revised Penal Code, inasmuch as the more serious of the two crimes committed by the appellant is homicide; and the maximum period of the penalty prescribed for said crime is from seventeen years, four months and one day to twenty years

of reclusion temporal (article 249 of the Revised Penal Code).

It being understood that the judgment appealed from is modified, as it is hereby modified, in the sense of sentencing the accused to,an indeterminate penalty of from fourteen years, eight months and one day to eighteen years, two months and twenty days of reclusion temporal, by virtue of Act No. 4103; it is affirmed in all other respects, with the costs against said appellant. So ordered.

Avancena, C. J., Villa-Real, Imperial, Laurels and Concepcion, JJ., concur.

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