

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MARIANO CUSI AND ANDRES WAGAN, DEFENDANTS AND APPELLANTS.

G.R. No. 45925. June 07, 1938

Ponente: CONCEPCION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-45925/>

CONCEPCION, J.:

This is an appeal from a judgment rendered by the Court of First Instance of Batangas, sentencing the accused and appellants to suffer the penalty of reclusion perpetua, with the accessories of the law, for the crime of murder committed on the person of Gelasio Dimatatac. The accused and appellants were likewise ordered to pay, jointly and severally, the heirs of the deceased an indemnity of P1,000, and each to bear one-half of the costs.

The evidence for the prosecution shows that between six and seven in the evening of May 6, 1936, when Gelasio Dimatatac was about to sit down and dine with his family in their house in the barrio of Danglayan, municipality of Bauang, Batangas, Paulina Labingdalawa came and told him that his niece, Maria Lopez, urgently called for him. Gelasio asked why his niece was sending for him, and Paulina answered that she did not know. Thereupon, Gelasio, followed by his sons, Horacio and Crisanto, of ten and six years of age, respectively, and his wife, Marcela Magbuhat, went to the house of Maria, which was some eighty meters from their own. On arrival and when he asked her niece why she had called for him, Maria answered that her husband, Juan Wagan, was driving her out of the house, which was denied by Juan. Gelasio Dimatatac then told her to have patience as that was her luck and that they live in peace. Marcela thereafter invited her husband to return home because supper was becoming cold, to which Gelasio agreed, saying, "Yes, let us go" and led the way. After descending the stairs, a detonation was heard, produced by a shot fired from a paltic (a locally made revolver) by Andres Wagan at Gelasio Dimatatac, wounding him on the chest. Wagan shot Gelasio at a distance of eight meters through an open window, from a position outside of the store under the house. Feeling himself wounded, Gelasio covered his chest with both hands, exclaiming, "My mother, I am dying", and staggering towards the kitchen of the store, where the said accused, Wagan, who had moved to the door of the store, fired at him again from outside, followed immediately by another shot aimed at the same victim from the west side of the kitchen where Gelasio fell to the ground. The third shot was fired from the outside of the kitchen by the other accused, Mariano Cusi, who immediately ran away with Andres Wagan towards the west, passing by Maximo Mendoza and each carrying a paltic.

Gelasio Dimatatac died in the Batangas Provincial Hospital around 8:30 on that same night from the internal hemorrhage caused by the three mortal bullet wounds, according to the report of Dr. Ricardo Jara.

The accused could not be found in their houses on that night, but on the following morning they were arrested in the house of Rafael Orosa in another barrio of the town of Bauang, known as Aplaya. After their hands were examined on Ma/ 7 and 8 by Arcadio Laperal, ballistic expert of the Manila police department, nitrogen deposits were found on the back of the right hand of Andres Wagan and on that of the index finger of the right hand of

Mariano Cusi. According to the expert, the presence of this substance showed that said hands of the appellants had been in contact with gunpowder deposits as a result of the discharge of firearms.

It should be noted that Andres Wagan is the brother-in-law of his co-accused, Mariano Cusi, his sister being the wife of the latter, and Mariano had a grudge against Gelasio Dimatatac resulting from a case which the former instituted against the latter regarding a parcel of land, Mariano having told Luis Castillo, on March 20, 1936, that Grelasio had destroyed his banana and other plants on the land in litigation, and that he (Mariano Cusi) would kill Gelasio as soon as he met him.

The evidence for the prosecution terminates at this point.

The defendant Andres Wagan tried to prove that on the night in question, while he was in his house, which is about eight meters from that of his brother, Juan Wagan, he heard the latter shouting for help as he was being killed, and to aid his brother, he took a paltic and went to the latter's store. On reaching that place, he saw a man attacking his brother with a bolo and, in defense of his brother, he fired at that man; but as the man, who turned out to be Gelasio Dimatatac, faced him and was about to attack him also with his bolo, he fired at him again with his paltic.

To corroborate the theory of the defense, Juan Wagan testified that when Gelasio Dimatatac arrived at his house between six and seven in the evening of May 6, without Juan's knowing how and why he came, Dimatatac angrily asked him, "Why are you always quarreling? If that is the case, it would be better if you separate;" to which Juan replied, "Uncle, if you are meddling in this manner and you do not reconcile us, I do not need you. Please leave me." "On hearing this"—Juan continued—"Gelasio said: 'Curses, so you do not recognize me,' and immediately gave me a bolo blow." During the trial Juan pointed to his upper neck in which there is an oblique scar running to the jaw.

The accused, Mariano Cusi, in turn, attempted to establish an alibi, alleging that from two o'clock in the afternoon of May 6, he and his men went to fish in the sea within the jurisdiction of the barrio of Sta. Clara, Batangas, which is about fifteen kilometers from the scene of the crime; that having, caught plenty of fish, one, Aguilera, fired his pistol twice into the air from joy; that as Cusi asked Aguilera to let him see and hold the pistol, which Aguilera did, he also asked Aguilera's permission to fire the pistol, which was refused; that they all returned to the seashore around eight o'clock at night, dividing the fish among themselves, and, after selling his share, Cusi returned to his house in the barrio of Danglayan, which he reached at ten o'clock at night.

In view of the established facts of record, the court arrived at the conclusion that the defendants committed the crime of murder, with the qualifying circumstance of treachery and the aggravating circumstance of evident premeditation, offset by the mitigating circumstance of lack of instruction.

In their brief appellants assign five errors which—they Allege—the lower court committed. In the first two errors they question the sufficiency of the evidence for the prosecution as against that for the defense; in the third and fourth, they assail the court's findings of treachery and the aggravating circumstance of evident premeditation; and in the fifth error they conclude that the accused should have been acquitted instead of convicted and sentenced.

Considering that the accused Andres Wagan shot the deceased from outside the store of his brother, Juan Wagan, at a distance of eight meters, when Dimatatac had scarcely set his foot on the ground while descending the stairs of the house shortly after an unpleasant conversation which took place therein, circumstances amply showing that the deceased unexpectedly received the first shot, the intention of the accused Andres Wagan to kill him without risk to himself, becomes evident. Said intention becomes the more evident by the fact that, although Dimatatac was already badly wounded on the chest and while he staggered towards the kitchen, still his aggressor pursued

him, moving from the outer window of the store to the door of the same (as may be seen graphically illustrated in the sketch, Exhibit D), and from there fired his paltic for the second time. All these circumstances indisputably disclose the treachery which qualifies the crime of murder (U. S. vs. Gil, 13 Phil., 530; U. S. vs. Baluyot, 40 Phil., 385).

As to Mariano Cusi, the presence of said circumstance is also clearly shown by the fact that he fired at Dimatatac through the kitchen wall from outside, where he was hidden from Dimatatac's view, and while the latter was already staggering from the bullet wounds inflicted by Andres Wagan.

The theory that Andres Wagan acted in defense of his brother, Juan, who was allegedly being attacked with a barong or bolo by Gelasio Dimatatac when he arrived to aid him, is without merit as the established facts show that Gelasio Dimatatac was not armed on that night, and the policemen, who inspected the scene of the crime found neither barong nor bolo, but only blood stains on the ground, wads, buckshots, blank cartridges, and a hole on the nipa wall of the kitchen through which a person could be seen from the outside.

The nearly one-inch scar on the left side of Andres Wagan's forehead, allegedly that of a wound caused by the point of Dimatatac's bolo when the latter attacked him, which attack would have killed him, so he says, but for the fact that only the point of the bolo, which hit the wall, reached him, is a kind of evidence that proves its own falsity, for if the bolo hit the wall, its point could not have struck Wagan. Moreover, the evidence does not disclose the part of the wall on which Dimatatac's bolo blow landed.

As to the wound on the neck of Juan Wagan, it was established by the prosecution that the same was not inflicted by Gelasio Dimatatac, as the defense of Andres Wagan alleged, but by Juan Velasquez, who testified that, on being informed by Horacio Dimatatac of the bloody incident of which his grandfather Gelasio was the victim, he ran with his bolo to the store of Juan Wagan and asked the latter what he had done with his grandfather and that as Juan answered him in a threatening manner, with a knife in hand, Juan Velasquez attacked him with his bolo, inflicting on him the wound above-mentioned, and reported the matter to the chief of police on that same night.

Moreover, Juan Wagan testified that when Dimatatac struck him with his bolo, he was seated in a lancape, and according to Dr. Jara, the position of the wound of this witness shows that the aggressor was on the same level as the person attacked so that Dimatatac could not have been the aggressor, but another person who was standing like Juan Wagan at the time he was attacked. This statement corroborates the testimony of Juan Velasquez.

We find absolutely no basis in the evidence adduced by Mariano Cusi to establish an alibi.

Why the two accused treacherously attacked the deceased has been amply demonstrated by the evidence for the prosecution which shows that Mariano Cusi hated Dimatatac because of the civil case hereinbefore mentioned and of Dimatatac's act of cutting the plants on the land in litigation, so much so that Cusi told Luis Castillo a month and a half before the crime, that he would kill his enemy as soon as he met him. The disagreeable incident transpired in the house of Juan Wagan to which Gelasio Dimatatac had been called by his niece, and on learning thereof, the accused, whose houses are not far from that of Juan Wagan, availed of the occasion to satisfy Cusi's desire for revenge.

The circumstance that it does not appear which of the wounds of the deceased had been respectively caused by each of the accused, is of no moment, inasmuch as, according to Dr. Jara, all of them produced the internal hemorrhage which resulted in the death of the deceased.

We do not find that the aggravating circumstance of evident premeditation, which the lower court took into account, has been satisfactorily established, and considering only the mitigating circumstance of lack of instruction in favor of the accused, the defendants are hereby sentenced to the penalty next lower in degree than

that prescribed for the crime of murder in article 248, No. 1, of the Revised Penal Code, or prision mayor in its maximum period to reclusion temporal in its medium period.

Wherefore, the judgment appealed from is modified and the appellants are sentenced to an indeterminate penalty of ten years and one day of prision mayor to seventeen years and four months of reclusion temporal. In all other respects, it is affirmed, with costs against the appellants. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, 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.