

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICENTE FUENTESUELA, DEFENDANT-APPELLANT.***G.R. No. 48273. April 22, 1942*

Ponente: MORAN, J.

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At about 1 o'clock in the afternoon of November 21, 1940, while the deceased Jose Simon was about to board a truck on Lipa Street, Sampaloc, Manila, which was to bring the athletes of the National University to the Rizal Memorial Stadium, appellant Vicente Fuentesuela approached him surreptitiously on the left side and without warning stabbed him with a knife on the breast. To the outcry of the deceased, "Why did you do that to me? I have not done anything," appellant made no reply but continued his assault causing the deceased two mortal wounds on the chest and wrist which produced his death. The motive for the crime appears to be a dispute which appellant had with the deceased who was a special policeman in the National University when the former sought admittance to a dancing party therein and was refused except upon deposit of one peso. Since then appellant harbored a grudge against the deceased as he had disclosed one week thereafter to one Francisco Carrillo who was present at their dispute and to Deputy Police Inspector Tolentino during appellant's detention. Upon an information for murder with allegation of recidivism, appellant was found guilty of the crime charged and was sentenced to reclusion perpetua and to an indemnity of P2,000.

The present appeal merely raised the question as to whether the commission of the offense was or was not attended with the qualifying circumstance of treachery and whether the mitigating circumstance of voluntary surrender to authority should or should not be appreciated in appellant's favor. Upon the first question we have more than once held that *alevosia* is present where the attack is sudden and without warning. (U.S. vs. Babasa, 2 Phil. 102; U.S. vs. Manlalang, 6 Phil. 339; U.S. vs. De Guzman, 8 Phil. 21; U.S. vs. Barnes, 8 Phil. 59.) Appellant's attack upon the deceased is of this characters.

Upon the second question, it appears that two days after the commission of the offense, appellant, accompanied by Attorney Geronimo Paredes, voluntarily surrendered to a policeman at the sala of Judge De la Costa. This is corroborated by Deputy Police Inspector Artemio Tolentino. The Solicitor-General himself does not question the presence of this mitigating circumstance in appellant's favor.

The Solicitor-General insists here that the crime is equally attended with evident premeditation. Two circumstances are urged to support this claim: The remark of the appellant to one Francisco Carrillo whom the former met one week after his dispute with the deceased to the effect that the deceased was *chiflado* and that some day he would kill him (the deceased); and the admission of appellant to Police Inspector Tolentino that he was in bad terms with the deceased. We do not think either or both of these circumstances will suffice to constitute evident premeditation. To authorize a finding of this aggravating circumstance, it must affirmatively appear from the overt acts of the accused that he has definitely resolved to commit the offense; that he has from then coolly and dispassionately reflected both on the means of carrying his resolution into execution and into the consequences of his criminal design; and that such an appreciable length of time has elapsed as to expect an aroused conscience to

otherwise relent and desist from the accomplishment of the propose crime. Cf. U.S. vs. Gil, 13 Phil. 530; U.S. vs. Blanco, 18 Phil. 206; U.S. vs. Nalua, 23 Phil. 1; U.S. vs. Buncad, 25 Phil.530; U. S. vs. Cornejo, 28 Phil. 457; U. S. vs. Bahatan, 34 Phil. 695; People vs. Durante, 53 Phil. 363.) None of these elements can fairly be inferred from the circumstances urged by the Solicitor-General. A threat to kill, unsupported by any other evidence which would disclose the true criminal state of mind of the accused, will only be construed as a casual remark naturally emanating from a feeling of rancor and not a resolution of the character involved in evident premeditation. This is specially true in the instant case when for about a year appellant has ostensibly done nothing to carry out his threat.

On the other hand, the evidence discloses that appellant is a recidivist, he having been convicted three times of light physical injuries and once of serious physical injuries.

The crime committed is murder with the aggravating circumstance of recidivism offset by the mitigating circumstance of lack of instruction. The other mitigating circumstance of voluntary surrender to authority brings the penalty to its minimum period, or reclusion temporal in its maximum period, in accordance with Article 64, paragraphs 2 and 4, of the Revised Penal Code.

Appellant is thus sentenced to suffer an indeterminate penalty of 12 years of prision mayor to 20 years of reclusion temporal and with this modification, judgment is affirmed without costs in this instance.

Yulo, C. J., Ozaeta, Paras, and Bocobo JJ., concur.

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