

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALFREDO P. BAJUYO AND CRISANTO PALASOL, DEFENDANTS.
CRISANTO PALASOL, DEFENDANT-APPELLANT.**

G.R. No. 48556. April 14, 1944

Ponente: OZAETA, J.

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OZAETA, J.:

On the evening of April 25, 1941, in the barrio of Mulugan, Cagayan, Oriental Misamis, the life of a thirty-four-year-old married man named Apolinar Galagnara was snuffed out of existence for no apparent motive whatsoever. He was shot with a pistol at close range while standing face to face with his friend Alfredo Bajuyo, with his hands on the latter's shoulders and while the latter had his arms crossed on his breast. The bullet hit the abdomen three inches above the umbilicus, perforating the stomach and the duodenal portion of the small intestine, and was lodged on the floor of the abdomen near the base of the diaphragm, from which it was extracted during the autopsy.

After he was shot the unfortunate victim crumpled to the ground in a sitting position and cried for help. At that time there were several persons around him, who had gathered there by the roadside near the store of one Martina Namukot, playing baccarat. Among those present were Jose Galagnara and Ignacio Galagnara. Ignacio asked the wounded man who had shot him and was told by the latter that it was Alfredo Bajuyo. Jose Galagnara immediately corrected him, saying that it was Crisanto Palasol who had fired the shot. Immediately after the shooting Crisanto Palasol, followed by Alfredo Bajuyo, ran away from the scene of the crime.

The two last-named persons were accused of the murder of Apolinar Galagnara. The trial court found that it was Crisanto Palasol who fired the fatal shot, and that there was no proof of conspiracy between him and his coaccused Alfredo Bajuyo. Bajuyo was consequently acquitted and Palasol convicted and sentenced to life imprisonment and to indemnify the heirs of the deceased in the sum of P2,000.

Counsel de oficio for the appellant makes no assignment of errors and does not assail the findings of fact of the trial court. He merely points to the ante-mortem statement of the deceased that Alfredo Bajuyo had shot him as a possible basis for the appellant's acquittal, without expressly asking that he be so acquitted.

Two apparently unbiased witnesses—Jose Gaiagnara and Ramona Jamblan—testified to having seen the appellant Crisanto Palasol approach Alfredo Bajuyo from behind while he was standing face to face with Apolinar Galagnara. and shoot the latter at close range by placing his hand close to the right side of Alfredo Bajuyo just below the elbow and firing the shot at the victim's abdomen. The testimony of these eyewitnesses was corroborated by that of Numeriano Mercado and by the position of the wound found on the body of the deceased. Numeriano Mercado, cousin-in-law of Crisanto Palasol, whose house was in front of the latter's and not far from the scene of the crime, testified that on the night in question, shortly after he heard the shot, Crisanto Palasol and Alfredo Bajuyo passed by his yard and he heard the latter say to the former: "Compadre, my name is being mentioned," and Palasol answered: "Never mind; do not tell the truth because nothing will happen to us no matter

what they will do"; that after that he saw Crisanto Palasol going up his house and he (witness), without addressing anybody, asked: "What happened ?" and Crisanto Palasol answered: "I do not know"; that he proceeded to the scene of the crime, and upon arriving there he heard one Simeon Penales ask the wounded man "Who shot you ?" and Apolinar Galagnara answered: "I do not know; I was facing Alfredo Bajuyo when the shot was fired"; that Simeon then asked him: "Did you have any quarrel with Alfredo Bajuyo?" to which Apolinar Galagnara answered: "No, we have not had any quarrel." Numeriano Mercado further testified that he knew Crisanto Palasol had two revolvers, "one of which is a knife-revolver and the other one just looked like a police positive but it is made in Cebu." When asked how he happened to know those two revolvers, he answered: "He used to show his revolvers or exhibit them, and at one time he had a fight with someone and his wife shouted to me, 'Help, because Crisanto Palasol wants to get his revolver.' So I went down my house and I saw him bringing a revolver and I told him not to use it because he has children and to use only his bare arms because his opponent did not have any firearm." That incident, he said, happened not long before the shooting in question.

The direction of the wound also corroborates the testimony of the two eyewitnesses. It was found in the abdomen "two inches below the xyphoid process and three inches above the umbilicus." The necropsy report further says that "the area around the wound shows sign of burn, about the size of one centavo," Dr. Bizalino Frias, who performed the autopsy, testified, that "the relation of the bullet with the orifice of entrance is almost horizontal, although it deviated to the right of the patient about ten degrees," Commenting upon this position of the wound, the trial court said:

"Now, if Alfredo P. Bajuyo had fired the fatal shot at his friend, Apolinar Galagnara, while the latter's hands were placed on the former's shoulders when his arms were folded on his breast, with a revolver held in his right hand and pointing toward Apolinar Galagnara, the bullet would naturally hit the right breast or any right portion of the right side of the body of Apolinar Galagnara. But the wound on the body of Apolinar was found below the umbilicus and a little bit toward the left side of the abdomen of Apolinar Galagnara as shown also by the hole on the coat, Exhibit A, and that the slug or bullet which entered his abdomen was found at the base of the diaphragm and its direction, according to Dr. Frias, had deviated a little toward the right. If such was the case, as shown by the position of the wound and the direction of the slug, the Court concludes and so holds that the gun that had caused the fatal wound must have been placed from the right side of Alfredo Bajuyo just opposite the left side of Apolinar Galagnara. The Court finds more logical and credible the testimonies of Jose Galagnara and Ramona Jamblan as corroborated by the other witnesses for the prosecution. Furthermore, the bullet wound was situated three inches above the umbilicus and the slug was found at the base of the diaphragm. If Alfredo P. Bajuyo with arms folded on his breast had a firearm in his right hand pointing toward Apolinar Galagnara who was just in front of him, the bullet wound must have been located on the breast of Apolinar Galagnara, opposite the breast of Alfredo P. Bajuyo where his right hand was resting, unless the firearm was held in such a position that the point was slanting toward the ground. In the latter case, the slug must take a downward position from the orifice of entrance to the base of the diaphragm where it was later located by Dr. Frias, but this was not the case for the direction of the wound was parallel to the ground."

Aside from the ante-mortem statement of the deceased, the appellant's defense consists of a quasi-alibi. He said that at the time of the shooting he was drinking tuba in the store of Martina Namukot a few feet away from the scene of the crime. But Martina Namukot testified for the prosecution in rebuttal that she was in her store on the evening in question but that Crisanfo Palasol, whom she knew, did not go there as claimed by him. The only doubt that might arise as to appellant's guilt was due to the ante-mortem statement of the deceased regarding the identity of his assailant. But the deceased was not in as good a position to, identify his real assailant as the eyewitnesses Jose Galagnara and Ramona Jamblan. His statement or belief was based solely on the fact that it was Alfredo Bajuyo who was directly in front of him at the time he was shot in the abdomen. It has been clearly proven that the deceased was mistaken; and he practically admitted it when later on he told Simeon Penales he did

not know who had shot him but that he was facing Bajuyo when the shot was fired. While an ante-mortem statement is admissible in evidence to prove the identity of the assailant in a case like the present, it is not entitled to greater weight than the testimony of any other competent witness. It may be controverted and disproved by evidence to the contrary. After a careful review of the evidence, we find the judgment of the trial court to be fully supported thereby.

The crime committed was murder, there being present the qualifying circumstance of treachery, since the attack was so sudden and unexpected that the deceased had no opportunity to defend himself.

The sentence appealed from, being in accordance with the facts and the law, is hereby affirmed, with costs against the appellant.

Yulo, C. J., Moran, Horrilleno, and Paras, JJ., concur.

BOCOBO, J.:

I concur in the result.

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