

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PONCIANO AGCAOILI, ACCUSED-APPELLANT.*G.R. No. 92143. February 26, 1992*

Ponente: REGALADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-92143/>**REGALADO, J.:**

Accused-appellant seeks the reversal of the decision in Criminal Case No. 972-17 of the Regional Trial Court, Branch IV, in Batac, Ilocos Norte, finding him guilty beyond reasonable doubt of the crime of murder and sentencing him to serve the penalty of life imprisonment and to indemnify the heirs of the victim in the amount of P30,000.00.[1]

In an information filed on August 20, 1981, appellant Ponciano Agcaoili was charged with murder for having killed a certain Rodrigo Sado with treachery and evident premeditation, attended by the aggravating circumstance of nighttime.[2] Upon arraignment, appellant pleaded not guilty to the offense charged. Trial on the merits ensued, after which the court below rendered the assailed judgment.

The alleged killing took place on the night of December 15, 1977 at Paoay, Ilocos Norte. The moon was then shining brightly. Rodrigo Sado and a certain Florentino Gamul were walking together, with the latter about two (2) meters ahead of the former, on their way to a house where they would attend evening prayers. Gamul passed by appellant Agcaoili who was then standing at the left side of the path they were following. Thereafter, he heard a gunshot and, when he looked back, he saw his companion slumped on the ground. He immediately ran away for fear of his own life but, while on his way, he heard two (2) more shots from behind.[3]

Upon reaching the place where the evening prayers were to be held, he asked the people who were already there to go to the place where Sado was shot and to check if he was still alive. He was later informed that Sado was already dead.[4]

Meanwhile, the police authorities received the information in their headquarters at Paoay, Ilocos Norte, that one Rodrigo Sado was shot and killed in Barangay No. 6 of the said place. Pfc. Padayao, together with then Lt. Florentino Dumlao, Pat. Antonio Arcayna and Pat. Jose Eclipse, went to the scene of the crime and examined the body of the victim. The cadaver was also autopsied and was found to have sustained several gunshot wounds.[5]

After being informed that the victim was with Florentino Gamul when the killing occurred, the police officers investigated him and learned that Sado was shot by one Ponciano Agcaoili. The officers then secured a search warrant and searched the house of said Agcaoili. In the course of the search, they were able to recover eight (8) live .45 caliber bullets and one (1) complete adjustable cleaning rod with cloth used in cleaning a gun. These items were turned over to Camp Juan in Laoag City. Appellant Agcaoili was apprehended later on that day, December 16, 1977, and was committed in the same camp.[6]

In his testimony, appellant denied the accusation against him. He averred that at around the same time when the killing occurred, he was sleeping in their house located at Madanay, Ilocos Norte. He was awakened only the

following day when he was apprehended by two (2) police officers. He was brought to the municipal building and was detained inside the stockade.[7]

In this appeal, appellant assails the decision of the trial court (1) holding him guilty because of the irregularity of the waiver made by him while he was under custodial investigation; (2) finding that the evidence of the prosecution reveals that he was the one who shot Rodrigo Sado; and (3) finding him guilty beyond reasonable doubt.[8] Aside from these arguments, he further contends that, assuming he killed Sado, he cannot be found guilty of murder for failure of the prosecution to prove the attendance of treachery and evident premeditation in the commission of the crime.

The first submission of appellant does not deserve any consideration. It is true that the present Constitution mandates that any person under custodial investigation shall have the right to remain silent and to have a counsel. Any waiver shall be made in writing and with the assistance of a counsel.[9] Appellant, however, loses sight of the fact that his sworn statement was not presented in evidence against him by the prosecution. Even the defense counsel admitted this fact, as shown in the following testimony:

"Atty. Baldres-

x x x

q At this investigation, was your statement taken by Pat. Ventura?

a Yes, sir.

q Was your statement reduced into writing?

a Yes, sir.

q At the time of the investigation and at the time when your statement was taken, were you assisted by a counsel?

a No, sir.

q Did Pat. Ventura tell you that you would be assisted by a counsel?

Court-

Was the statement marked as exhibit?

Fiscal-

It is not marked as exhibit, your Honor. So may I know what is the purpose? We did not use that as evidence, your Honor.

Atty. Baldres-

I withdraw my question."[10]

With regard to the second and the third contentions of the appellant, the same are apparently premised on the failure of the prosecution to prove the motive of Agcaoili and to present the weapon used in the alleged killing. We are not, however, persuaded by appellant's invocation of and reliance thereon.

Appellant clearly relies on the discredited defense of alibi cum denial. Time and again, the Court has consistently ruled that alibi, as a defense, is weak because it can easily be manufactured and fabricated.[11] This is especially so if said defense is contradicted by an eyewitness' testimony.[12] In the case at bar, appellant was positively identified by witness Gamul as the one who shot Rodrigo Sado. There could not have been any mistake in his

identification because the light coming from the moon was bright enough to enable Gamul to recognize appellant and the place was clear of obstructions.[13]

In fact, when this witness was first investigated by the police the day after the killing, he readily and categorically declared as follows:

"13. Q Was it a bright night, when Rodrigo Sado was shot?

A Yes, sir. It was a moonlight (sic) night, and was too bright that's why I was able to recognize without any doubt that it was PONCIANO AGCAOILI who made (sic) the shooting.

x x x

17. Q From where you were when you saw Ponciano Agcaoili shot (sic) Rodrigo Sado, was there not anything that obstructed your view?

A None, sir."[14]

This is not to forget the fact that Gamul and appellant knew each other well enough to enable the former to recognize Agcaoili who was only a few meters away from him during the shooting incident. Their houses are situated near each other and they often worked together in the farm.[15]

To consider alibi, it must be shown that it was physically impossible for appellant to have been at the scene of the crime at the time it was committed.[16] Applying the rule in the case at bar, appellant failed to establish the same. It was even shown by the prosecution that the place where his house is located is just approximately eight hundred (800) meters away from the scene of the crime. Being less than a kilometer away, the situs of the offense can easily be reached in a matter of minutes from his house where he admittedly was at about that time.

As regards the issue of motive, suffice it to say that, generally, the motive of the accused in a criminal case is immaterial and, not being an essential element of a crime, it does not have to be proved.[17] However, in some instances, this Court has ruled on the significance and relevance of the motive of the accused in the commission of an offense. Thus, when there is no eyewitness and suspicion is likely to fall on a considerable number of persons;[18] when there is doubt as to whether the accused is or is not the person who committed the offense;[19] where it is necessary to determine the sanity of the accused or the voluntariness of the criminal act,[20] the specific nature of the crime committed,[21] or whether the shooting was intentional or accidental;[22] or when the accused invokes self-defense or defense of strangers,[23] motive plays an important role in the prosecution of the accused.

The facts obtaining in the case at bar, nonetheless, show that the same falls under the general rule. The motive of appellant in killing Rodrigo Sado does not, therefore, have to be proved by the People. There was an eyewitness to the killing who positively and satisfactorily identified appellant Agcaoili as the assailant.

The fact that appellant was not subjected to paraffin test is of no moment because the same is not conclusive as to his complicity in the crime committed. The same rule goes for the failure of the prosecution to present the murder weapon as evidence during the trial of the case. This Court, in the case of *People vs. Gupo, et al.*, [24] had the occasion to rule that such failure does not defeat the cause of the prosecution considering that, as in this case, the postmortem examination report[25] established that the wounds sustained by the victim were caused by gunshots, thus: "Diagnosis: Multiple gunshot wounds, secondary to profuse hemorrhages and destruction of vital organs."

The case for the prosecution was further bolstered by the fact that the police authorities were able to recover eight (8) live .45 caliber bullets and other paraphernalia for firearms from the residence of appellant when they conducted the search therein. The ownership of these recovered items was never refuted by appellant.

Accordingly, the presumption that the things which a person possesses or exercises acts of ownership over are owned by him,[26] squarely applies in the case at bar. More importantly, they are indicative of the fact that appellant must have been in possession of a firearm.

We do not agree with appellant's alternative assumption that, at most, he could be convicted only of homicide and not of murder. The proven circumstances of and the weight of evidence in this case show beyond cavil that treachery attended the killing of the victim.

With appellant pretending to be merely standing by the trail as the victim and his companion passed by at close range, with no prior belligerent move or any act committed by appellant as would give away his murderous intent, the victim was completely without any premonition of an intended assault upon his person. Then, all of a sudden, as the victim passed abreast, appellant let loose with a firearm, followed rapidly thereafter with two (2) more successive shots. Definitely, the victim was never in a position to defend himself; he was not even able to run away or take any evasive action as, instead, he was felled and died on the spot. It would be the height of naivete to assume that, considering his antecedent, coetaneous and subsequent actuations vis-a-vis the shooting of the victim, appellant did not consciously and deliberately adopt the particular means, methods or form of attack to ensure the consummation of his objective with impunity. The attack against the victim could not have been the product of a moment of impulse, since it clearly revealed a pattern of precogitation.

The parts of the victim's anatomy to which appellant directed the lethal shots[27] further ineluctably reveal and confirm his perfidious and murderous intent and conduct. The autopsy report[28] reveals the postmortem findings on the multiple gunshot wounds which resulted in profuse hemorrhages and destruction of the vital organs of the victim, viz:

"1. Gunshot wound –

Entered at an intersectional line - Anterior axilla and a horizontal line more than an inch above the umbilicus. Penetrated the whole abdomen, perforating a few loops of small intestines, the peritoneum which was bulging out, to exit at a similar point at the right side and included the right forearm at its upper third, making a thru and thru wound where it made an exit.

2. Entered at a point, 2 inches at the lateral side of right arm, above the antecubital fossa, fractured the posterior side of the elbow joint to make its exit at the elbow tip.

3. Entered at the left side of the left scapula to the left shoulder near the base of the neck, where it entered its lateral side at the level of the chin – scouring the base of the skull and brain, fractured the left frontal vault to exit outside. An H-shaped slit breakage was produced at the base of the nose.

4. Entered at the left scapula, at its inferior angle, directed upwards at the interior border of the acromial process, where it made an exit.

5. A semi-linear cut wound, 2 inches long, at the base of the neck, left side. It (is) directed somewhat upwards and corresponding muscle partially cut."

Despite the foregoing established facts, doubt was expressed during the deliberations in this case as to whether alevosia was proved by the prosecution to sustain the conviction of appellant for murder. This doubt was subsequently raised in a separate opinion and appears to have been engendered by the commentaries and the case of *People vs. Torejas, etc., et al.*[29] discussed therein.

On the rudimental doctrine that a qualifying circumstance must be proved as conclusively as the act which it qualifies, there is no quarrel. This is not to say, however, that such quantum of proof can be obtained only from an eyewitness who "actually saw how the appellant shot the deceased." Such a stricture would seriously impair, if

not render inutile, the validity and utility of circumstantial evidence as a species of proof. We do not have to cite the plethora of cases wherein this Court has considered facts drawn from circumstantial evidence as conclusive and sufficient for conviction even in capital offenses. In fact, the very commentary cited hastens to add that the need to prove the manner in which the victim was attacked is called for "(w)here no particulars are known as to the manner in which the aggression was made nor how the act which resulted in the death of the deceased began and developed." That is not the situation here.

In the preceding discussion, the attendant details immediately before, during and after the murderous assault are fully explained. The only fault attributed in the separate opinion is that at the precise moment when appellant was shot, the eyewitness had just passed by appellant and the victim was two (2) meters behind the witness when suddenly fired upon, hence, the witness could not have seen that split-second occurrence which was completely unexpected by both the eyewitness and the victim. In view of what will hereafter be contrasted with this case, we emphasize the fact that no bellicose demeanor was exhibited by appellant and no exchange of words transpired between him and the victim at any time before the first and obviously fatal shot was fired. Otherwise, such conduct or statements would have been observed or heard by the eyewitness and testified to by him.

Immediately after the shot, the witness turned around and saw the victim slumped on the ground. There was no other person at or around the scene of the crime, nor has the defense even intimated otherwise. The eyewitness then fled therefrom as two more shots rang out. Now, we believe that an eyewitness account of the appellant in the very act of shooting the victim under these circumstances is a virtual impossibility. To require such eyewitness evidence would be to completely disregard the unrefuted circumstantial evidence that can but point to only one conclusion, which is definitely not a mere assumption or conjecture.

The discussion in *Torejas* on whether treachery was present therein actually turned on the issue of credibility of the eyewitness. Also, as earlier prefaced, the facts in said case are at variance with those in the case at bar, thus:

"On what was the finding by the lower court of the qualifying circumstance of *alevosia* predicated? All that appears from the testimony of the lone eyewitness presented, a certain Federico Rivera, was that while the deceased Dasalla was lighting a cigarette at the New Life Store, he saw 'Bonifacio Torejas hit the head of Artemio Dasalla with a bottle.' The lower court was able to elicit from him that at that time he was lifting a sack of palay at the adjacent store of a certain Julio Marquez, where he was a laborer. It cannot be certain, then, that all the while he was fully aware of what transpired between the appellant Bonifacio Torejas and the deceased. While the lower court's finding that there was no unlawful aggression from the deceased, it being shown that he was unarmed, could be given credence, it does not exclude the probability that there must have been some exchange of words between the two before appellant Torejas hit the victim with a bottle. The eyewitness might have seen what was happening, but it does not follow that he was likewise in a position to hear what was uttered by either participant on such an occasion. The evidence of *alevosia* was indeed tenuous." (Emphasis ours.)

After the victim in said case had been initially assaulted with the bottle and, therefore, duly warned and aware of the felonious intent of the accused, he ran away but was pursued by the accused who, with his bolo, stabbed the victim to death. That is why, on the foregoing sequence of facts, the Court held that "considering the last words of the conversation between the accused and the deceased, (it) is not sufficient to hold, with reasonable certainty that the latter was completely unaware of the attack that might have come from the defendant." Invoking a series of doctrines, the Court reiterated that "(o)nly then, if the victim were caught 'completely unaware and deprived of any chance to ward off the assault,' would it be proper to consider the existence of *alevosia*." This last stated rule applies to the present case in light of the facts thereof as earlier presented.

On the sufficiency of circumstantial evidence to prove treachery, we have, on a similar set of facts and

figuratively closer to home, the case of *People vs. Jose Madriaga IV, et al.*[30] where the Court, through the present Second Division, affirmed the conviction of appellant therein for murder qualified by treachery. In said case, the victim, Atty. Antonio G. Tabora, was inside a cockpit in Rosario, La Union at around 7:00 o'clock in the evening, after the cockfights were over, when gunshots were suddenly heard and the victim fell wounded. He later expired in the hospital from severe intracranial hemorrhage, secondary to a gunshot wound. Nobody even saw who fired the shot and other successive shots, nor was the direction from which they came ever established with certitude. Hence, as in the present case, nobody "actually saw how the appellant shot the deceased," much less was there proof of the "manner in which the victim was attacked." Additionally, the firearm used therein was likewise neither recovered nor identified.

Worse, and this time differing from the case under consideration, in *Madriaga* there was the need to establish the identity of the killer or killers since there was no evidence that the appellant therein was inside or in the vicinity of the cockpit when the shots were fired. Here, there is the identification of the assailant by the witness who was only two (2) meters away from both the appellant and the victim when the latter was shot. In fact, the only putative doubt is on the mode or manner by which the victim was shot by appellant.

In convicting *Madriaga* for the treacherous killing, although we had perforce to also enumerate other circumstances to establish his identity as the killer, not the presence of treachery, we held that "(o)ur review and ratiocination based on the entire records and proven facts of this case yield the inescapable conclusion that the prosecution's evidence, albeit circumstantial, is of a sufficient quantum to establish the guilt of the accused. The catena of circumstances proven by uncontradicted evidence x x x cannot but convince Us that, in justice to the victim, a conviction should be decreed." We feel that the same evidentiary appreciation should equally apply to the present case and dissipate any doubt on the conclusions reached therein.

We agree, however, that the prosecution failed to prove evident premeditation. There was insufficient evidence to establish the time when appellant determined to commit the crime, or any act manifestly indicating that he clung to his determination, and that sufficient time intervened between the determination and the execution to enable him to reflect upon the consequences of his act. [31]

For that matter, neither can we appreciate nocturnity, not only because there is no evidence that appellant purposely sought the same or benefited therefrom[32] in the absence of the darkness which is the essence and rationale of this aggravating circumstance, but because, if at all, it is deemed absorbed in treachery. The net result is that appellant is guilty of murder, qualified by treachery and without any other modifying circumstance.

WHEREFORE, with the MODIFICATIONS, which we hereby direct, that the penalty imposed on accused-appellant should be reclusion perpetua and not "life imprisonment" which an incorrect designation of the penalty, and the increase of the death indemnity to P50,000.00 in accordance with present case law, the judgment of the court a quo is hereby AFFIRMED in all other respects.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras and Nocon, JJ., concur.
Padilla, J., separate opinion.

[1] Original Record, 122.

[2] *Ibid.*, 1.

[3] TSN, July 11, 1988, 3-7.

- [4] Ibid., id., 8.
- [5] TSN, September 27, 1988, 1-16.
- [6] Ibid., id., 16-21; Exhibit "B", Folder of Exhibits, 8.
- [7] TSN, June 20, 1989, 9-13.
- [8] Brief for the Appellant, 5.
- [9] Art. III, Sec. 12. par. (1), 1987 Constitution.
- [10] TSN, June 26, 1989, 3.
- [11] People vs. Eswan, et al., 186 SCRA 174 (1990); People vs. Loveria, 187 SCRA 47(1990).
- [12] People vs. Francisco, et al., 182 SCRA 305 (1990).
- [13] TSN, July 12, 1988, 4-5.
- [14] Exhibit "A-2"; Folder of Exhibits, 101.
- [15] TSN, July 12, 1988, 3-4.
- [16] People vs. Cantuba, et al., 183 SCRA 289 (1990); People vs. Tamayo, 183 SCRA 375 (1990); People vs. Bicog, et al., 187 SCRA 556 (1990).
- [17] People vs. Taneo, 58 Phil. 255 (1933); People vs. Tiengco, et al., 133 SCRA 290 (1984).
- [18] People vs. Melgar, et al., 157 SCRA 718 (1988).
- [19] U.S. vs. McMann, 4 Phil. 561 (1905); People vs. Aliocod, et al., 167 SCRA 665 (1988).
- [20] People vs. Bascos, 44 Phil. 204 (1922); People vs. Taneo, supra.
- [21] People vs. Geronimo, 100 Phil. 90 (1957).
- [22] People vs. Godinez, 106 Phil. 597 (1959).
- [23] U.S. vs. Laurel, 22 Phil. 252 (1912); Borquilla vs. Court of Appeals, et al., 147 SCRA 9 (1987).
- [24] 190 SCRA 7 (1990).**
- [25] Exhibit "D," folder of Exhibits, 10.
- [26] Sec. 3(j), Rule 131, Rules of Court.
- [27] Exhibits "A," and "C," ibid., 6-7, 9.
- [28] Exhibit "D," ibid., 10.
- [29] 43 SCRA 158 (1972).**
- [30] 171 SCRA 103 (1989).**
- [31] People vs. Quintos, 186 SCRA 14 (1990); People vs. Nabayra, G.R. Nos. 96368-69, Oct. 17, 1991.
- [32] People vs. Undong, 66 SCRA 386 (1975); People vs. Coderes, et al., 104 SCRA 255 (1981); People vs. Palon, 127 SCRA 529 (1984).

250 6 pt 6 pt 0 3

SEPARATE OPINION

PADILLA, J.:

It is my view that treachery should not be appreciated in the case at bar.

In considering treachery as attendant to the killing, the majority reasons out as follows:

“We do not agree with appellant’s alternative assumption that, at most, he could be convicted only of homicide and not of murder. The proven circumstances of and the weight of evidence in this case show beyond cavil that treachery attended the killing of the victim.

“With appellant pretending to be merely standing by the trial as the victim and his companion passed by at close range, with no prior belligerent move or any act committed by appellant as would give away his murderous intent, the victim was completely without any premonition of an intended assault upon his person. Then, all of a sudden, as the victim passed abreast, appellant let loose with a firearm, followed rapidly there-after with two (2) more successive shots. Defi-nitely, the victim was never in a position to defend himself; he was not even able to run away or take any evasive action as, instead, he was felled and died on the spot. It would be the height of naivete to assume that, considering his antecedent, coetaneous and subsequent actuations vis-a-vis the shooting of the victim, appellant did not consciously and deliberately adopt the particular means, methods or form of attack to ensure the consummation of his objective with impunity. The attack against the victim could not have been the product of a moment of impulse, since it clearly revealed a pattern of precogi-tation.”

In *People vs. Torejas*, G.R. No. L-29935, 31 January 1972, 43 SCRA 158, the Court held that alevosia or treachery “is not to be presumed, but must be proved as conclusively as the act which it qualifies.” It “can not be held to be present from mere conclusions or inferences.”

In other words, in order that treachery may be appreciated, it is necessary to prove the manner in which the victim was attacked. Where no particulars are known as to the manner in which the aggression was made nor how the act which resulted in the death of the deceased began and developed, it can in no way be established from mere suppo-sitions, drawn from circumstances prior to the very moment of the aggression, that the accused perpetrated the killing with alevosia (Aquino, Revised Penal Code, 1976 ed., Vol. I, pp. 359-360).

In the present case, the evidence for the prosecution shows that Rodrigo Sado and a certain Florentino Gamul were walking together, with the latter about two (2) meters ahead of the former, on their way to a house where they would attend evening prayers; Gamul passed by appellant Agcaoili who was standing at the left side of the path they were following; thereafter, he heard a gunshot and, when he looked back, he saw his companion (Sado) slumped on the ground; he immediately ran away for fear of his own life. While on his way, he heard two (2) more shots from behind.

It is thus clear that the alleged eyewitness (Gamul) did not actually see how the appellant shot the deceased. Where the manner of the attack was not proven, the accused should be given the benefit of the doubt and the crime should be considered homicide only (Aquino, Revised Penal Code, Vol. I, 1976 ed., p. 360).

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.