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[G.R. No. L-28379. August 31, 1971]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* DAVID LEAL, et al., *defendants*, DAVID LEAL, *defendant-appellant.*

SYLLABUS

1. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCE; TREACHERY; WHEN PRESENT.—** According to paragraph 16 of Article 14 of the Revised Penal Code, "(t)here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." Philippine jurisprudence would indicate that treachery is absent when means, methods or forms which tend directly and specially to insure the execution of the offense are not consciously adopted; and that treachery must be present from the commencement of an attack, so that even if before the termination of the assault, an accused person employs means, methods or forms of a treacherous character, the qualifying circumstance of *alevosia* is not necessarily present. A continuous attack cannot be broken up into two or more parts and made to constitute separate, distinct and independent attacks, so that the element of treachery may be injected therein and considered as qualifying or aggravating circumstance.

2. **ID.; ID.; ID.; CASE AT BAR.—** In the case at bar, the evidence does not indicate that the appellant employed means, methods or forms to specially insure the killing of the deceased. Treachery was not present when the chase was begun; the chase was a continuous one. The deceased had negotiated only a distance of about 40 to 50 meters in his flight when he slipped. There was no interruption in the continuity of the chase. It is, therefore, our considered view that *alevosia* was not present when the appellant inflicted the fatal wound on his victim. The crime committed by him, is therefore, only that of homicide.

APPEARANCES OF COUNSEL

Solicitor General Antonio P. Barredo , *Assistant Solicitor General Pacifico P. de Castro* and *Solicitor Federico V. Sian* for plaintiff-appellee.

Gregorio L. Aguitenia for defendant-appellant.

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DECISION

RUIZ CASTRO, *J.:*

From the decision of the Court of First Instance of Pangasinan in its Criminal Case 22762 finding David Leal guilty of the crime of murder, and sentencing him to *reclusion perpetua* and to indemnify the heirs of the deceased Godofredo Nicolas in the sum of P6,000, the present appeal was taken.

We have, with painstaking care, meticulously examined the entire record of this case. We are completely satisfied that the findings of fact made by the Court of First Instance are essentially correct

The sequence of events that led to the death of the victim Nicolas is not complicated. At about 9:30 o'clock on the night of March 23, 1966, Godofredo Nicolas and his brother Nari Nicolas were at a sari-sari store situated along the national highway in barrio Bued, in the municipality of Calasiao, Pangasinan. Jose Cajeton, Jr., who suffered a humiliating manhandling at the hands of Nari Nicolas one hour earlier, and the appellant David Leal, who was a very intimate friend of Cajeton, drove up in a jeep to the sari-sari store. They sought the two brothers and beckoned them from the store. When the Nicolas brothers reached the jeep, Cajeton, without any warning, boxed Nari, while Leal pulled out his dagger. Sensing that Leal was going to use his dagger on him, Godofredo fled. Leal gave chase. Godofredo had covered a distance of about 40 to 50 meters from the jeep when he slipped and fell to the ground, face and body up, with both hands supporting his body, his buttocks about eight inches high from the ground. Godofredo was precisely in this position when Leal caught up and lunged his one-foot long dagger into the former's left chest, causing a perforation of the heart with consequent massive bleeding, resulting in his death.

These happenings were the subject of the testimony of Nari Nicolas and Celso Zarate who, the court *a quo* observed correctly, were friends of David Leal, and therefore had no reason to prevaricate. This is, likewise, corroborated by the statements

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made by Wilfredo Flores in the reinvestigation of this case before Fiscal Ruiz. Although at the trial Flores recanted, stating that what he had said at the reinvestigation was taught to him by the father of Godofredo Nicolas, the court *a quo* discounted this recantation, on the ground that the father of Godofredo Nicolas was not present when the crime was committed, and, therefore, was not in a position to teach Flores what to say at the reinvestigation. Moreover, the testimony of Flores in the said reinvestigation was replete with details and circumstances which only an eyewitness like him could accurately and vividly narrate.

What we feel compelled to discuss at length is the contention of the defense that the offense was not accompanied by treachery. This contention, in our view, has merit. According to paragraph 16 of Article 14 of the Revised Penal Code, "(t)here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." Philippine jurisprudence would indicate that treachery is absent when means, methods or forms which tend directly and specially to insure the execution of the offense are not consciously adopted; and that treachery must be present from the commencement of an attack, so that even if before the termination of the assault, an accused person employs means, methods or forms of a treacherous character, the qualifying circumstance of *alevosia* is not necessarily present. A continuous attack cannot be broken up into two or more parts and made to constitute separate, distinct and independent attacks, so that the element of treachery may be injected therein and considered as a qualifying or aggravating circumstance.

In the case at bar, the evidence does not indicate that the appellant employed means, methods or forms to specially insure the killing of the deceased. Treachery was not present when the chase was begun; the chase was a continuous one. The deceased had negotiated only a distance of about 40 to 50 meters in his flight when he slipped. There was no interruption in the continuity of the chase.

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It is, therefore, our considered view that *alevosia* was not present when the appellant inflicted the fatal wound on his victim. The crime committed by him is, therefore, only that of homicide.

The crime of homicide is punished by Article 249 with *reclusion temporal.* Applying the Indeterminate Sentence Law, and there being no aggravating nor mitigating circumstances present, we are of the opinion that the proper penalty that should be imposed on the appellant is an indeterminate sentence of 8 years and one (1) day of *prision mayor* to 16 years of *reclusion temporal.* Following our ruling in People *vs.* Pantoja,[1] the indemnity to be paid by the appellant to the heirs of the deceased should be raised to P12,000.

ACCORDINGLY, the judgment of the court *a quo* is modified. The appellant David Leal is hereby found guilty of homicide, and sentenced to imprisonment of from 8 years and one (1) day of *prision mayor* to 16 years of *reclusion temporal,* to indemnify the heirs of the deceased Godofredo Nicolas in the sum of P12,000, and to pay the costs of this appeal.

Concepcion, C.J, Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Villamor, and *Makasiar, JJ.,* concur.

Barredo, J., did not take part.

[G.R. No. L-29068. August 31, 1971]

EAST ASIATIC COMPANY, LTD., E. JAKOBSEN, P. SORENSEN and K. R. NIELSEN, *petitioners, vs.* THE COURT OF INDUSTRIAL RELATIONS, THE EAST ASIATIC CO. EMPLOYEES UNION (PTUC) and SOLEDAD A. DIZON, *respondents.*

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[1] L-18793, October 11, 1968, 25 SCRA 473.