

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ULPIANO YARCIA AND MACARIO OLIVO, ACCUSED-APPELLANTS.

G.R. No. L-31179. October 26, 1983

Ponente: ABAD SANTOS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0eb409aa9025/>

ABAD SANTOS, J.:

In Criminal Case No. 206-G of the defunct Court of First Instance of Nueva Ecija, ULPIANO YARCIA, MACARIO OLIVO and SERVILLANO APOLINADA were accused of murder said to have been committed as follows:

"That on or about the 22nd day of January, 1965, in the municipality of Talugtog, province of Nueva Ecija, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually aiding one another, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously hit one Leonardo Bercasio with a piece of wood on the head causing him to fall and while lying on the ground shoot him, thereby inflicting upon the said Leonardo Bercasio mortal wounds which caused his instantaneous death." (Expediente, p. 43.)

After the accused had been tried on pleas of not guilty, the trial court rendered the following judgment:

"WHEREFORE, finding the accused Macario Olivo and Ulpiano Yarcia guilty beyond reasonable doubt of the crime of murder as charged in the information, the Court sentences each of them to LIFE IMPRISONMENT or RECLUSION PERPETUA, to suffer the accessories provided for by law, to indemnify the heirs of Leonardo Bercasio in the sum of P12,000, and to pay one-third (1/3) of the costs. The Court acquits Servillano Apolinada on reasonable doubt with proportionate costs de oficio." (Expediente, p. 352.)

The court a quo rationalized its judgment in the following words:

"In this case, there is no evidence of cons-piracy entered into by the three to do away with Leonardo Bercasio. In the absence of conspiracy, each of the accused must be responsible for the particular acts done by each of them. In this case, Macario Olivo and Ulpiano Yarcia are responsible for the death of Leonardo Bercasio because Olivo shot the latter with a short firearm while Ulpiano Yarcia hit Bercasio on the head, and Servillano Apolinada did nothing but just held the legs of Leonardo Bercasio while this was lying on the ground and this act of Servillano Apolinada, in the opinion of the Court, does not constitute an overt act as to make him equally responsible, for the death of Leonardo Bercasio. The Court is convinced that Ulpiano Yarcia and Macario Olivo are guilty of the crime of murder as charged in the information while Servillano Apolinada is innocent thereof." (Expediente, pp. 351-352.)

Yarcia and Olivo appealed their conviction which they claim is contrary to law and the evidence. They were released on bail before their conviction; they were released on bail by this Court during the pendency of their appeal.

The People's version of the facts is as follows:

"At about 2:00 p.m. of January 22, 1965, Ernesto Tabago was in barrio Saguing, Municipality of Talugtog,

Nueva Ecija, on his way to deliver provisions to his mother (pp. 4-5, t.s.n., Dec. 20, 1966). He saw Leonardo Bercasio, a farmer, who had a hut in the barrio, pasturing his carabao (pp. 5--6, t.s.n., Dec. 20, 1966). After delivering food to his mother, at about 5:30 p.m., Tabago was on his way back to the poblacion when in the same barrio he saw at a distance of 25 meters on a pathway Leonardo Bercasio being attacked by Ulpiano Yarcia and Macario Olivo, appellants herein (pp. 6-10, 12--14, 18-19, t.s.n., Dec. 20, 1966). With the latter two, Tabago was familiar with being residents of Talugtug, the same place where he (Tabago) lived (pp. 3-4, t.s.n., Dec. 20, 1966). Appellant Yarcia, standing at the back of Leonardo Bercasio struck the latter with a piece of wood on the head (p. 7, t.s.n., Dec. 20, 1966). Bercasio thereupon fell down to the ground, and thus fallen, appellant Olivo with a 'short firearm' fired at Bercasio, the bullet hitting him on the head (p. 14, t.s.n., Dec. 20, 1966). Noticing the presence of Tabago at the scene, appellant Olivo approached Tabago and warned him not to inform Bercasio's relatives or the police authorities of what he had seen otherwise he (Olivo) would kill him (p. 14, t.s.n., Dec. 20, 1966). Afraid of the threat, Tabago remained silent, not until September 1965, bothered by his conscience, when he went to report to the police of Talugtug of the killing incident of January 22, 1965 and identified the culprits to be appellants Olivo and Yarcia (pp. 15-16, 20-22, t.s.n., Dec. 20, 1966).

"On January 23, 1965, Jesus Bercasio came to know of the death of his father, Leonardo Bercasio (p. 2, t.s.n., Oct. 18, 1967). He and a younger brother, Alfredo Bercasio, went to their hut in barrio Saguing and found their father (Leonardo) lying dead on the floor, with a bullet wound on the head (pp. 2-3, t.s.n., Oct. 18, 1967). When Alfredo Bercasio first saw their father, he thought that the latter was sleeping and removed the firearm placed on his father's chest with his arm across it (p. 3, t.s.n., Oct. 18, 1967; p. 2, t.s.n., Jan. 17, 1968). The said firearm belonged to the deceased Leonardo Bercasio (p. 3, t.s.n., Oct. 18, 1967).

"The dead body of Leonardo Bercasio was autopsied by Dr. Nicetas Cuyco, Municipal Health Office of Guimba, Nueva Ecija (p. 2, t.s.n., Jan. 31, 1967). From the head of the victim, the doctor extracted a .22 caliber slug (p. 9, t.s.n., Jan. 31, 1967). The necropsy report, Exhibit A, which the doctor prepared, reads as follows:

'AUTOPSY REPORT

"This is to certify that I have made an autopsy on the body of the deceased LEONARDO BERCACIO, middle age, Pilipino, male of Talugtug, Nueva Ecija at 8 o'clock A.M. yesterday, Sunday, January 24, 1965 in the presence of the Chief of Police of said town and one Patrolman with the following findings;

January 23, 1965 - Ocular inspection at around 7 o'clock P.M.

1. Body was pale and rigid. He died about Ten (10) to Twelve (12) hours ago.
2. Gunshot wound, temporal region, right with marked powder burns around the wound.
3. Contusion with marked hematoma, right temporal region.
4. Contusion with hematoma, right shoulder.
5. Contusion, neck, nape.
6. Contusion, back, upper middle portion.

January 24, 1965 - Upon opening the head

1. Fracture of the skull, temporal bone extending to the middle fissure from the right.
2. Gunshot, thru and thru the skull passing thru the cerebrum and exit at the occipital region, slug imbedded in the scalp at the occipital region (Entrance hole about .22 of an inch upon measurement).

The deceased died of MASSIVE HEMORRHAGE, secondary to GUNSHOT WOUND, temporal region, right and FRACTURE OF THE SKULL, temporal bone, right.

NICETAS D. CUYCO, MD.

Municipal Health Officer (pp. 3-4, t.s.n., Jan. 31, 1967).'

"The doctor opined that when he first examined the body at about 7:00 p.m. of January 23, 1965, it was already in rigor mortis. He concluded that the victim must have been dead already for some 10 to 12 hours (pp. 4-5, 10, t.s.n., Jan. 31, 1967).

"Jesus Bercasio was investigated by the police, and in his investigation he informed the latter that the persons who had threatened and with whom his father had quarrelled were Ulpiano Yarcia and Mauro Olivo (p. 4, t.s.n., Oct. 18, 1967). At one time in 1964, according to Ernesto Bercasio, their carabao was missing, and his father found appellant Yarcia riding on it (p. 6, t.s.n., Oct. 18, 1967). Yarcia running away left the carabao behind, but not without issuing the warning to his father 'you shall have a day' (p. 6, t.s.n., Oct. 18, 1967). Ernesto Bercasio also said that his father quarreled with appellant Olivo because Olivo's carabao destroyed their plants (p. 6, t.s.n., Oct. 18, 1967). When his father asked Olivo to take care of his carabao, the latter got angry (p. 6, t.s.n., Oct. 18, 1967). One week before the death of his father, Olivo and Yarcia passed by their house and said that if Leonardo Bercasio would not leave the land he was tilling Leonardo would not be in the farm next year. (p. 7, t.s.n., Oct. 18, 1967)." (Brief, pp. 2-5.)

Both appellants interposed the defense of alibi during their trial. Yarcia said that he was not in Barrio Saguing in the afternoon of January 22, 1965, but in the house of former Captain Victor Baniaga. Olivo also claimed that he was not in Barrio Saguing that afternoon of January 22, 1965. Like Yarcia he said he was in the house of Captain Victor Baniaga of District I. But the trial court rejected their alibi. It said that the distance between District I and Saguing is only four kilometers so that "they could still leave the house and proceed to Saguing in a very short time." The trial court also said: "Moreover, this claim of alibi is hardly believable for it is inconceivable that these three accused would stay in the house of Victor Bañaga three days and three nights continuously without doing anything but gambling and gambling. Even inveterate gamblers would not last that long for three successive and continuous days and nights, that is, from January 21, 22 and 23, 1965, without leaving for a moment the game, and it has not been established that the house of Victor Bañaga is a gambling casino." (Expediente, pp. 346-347.)

In their appeal, Yarcia and Olivo have abandoned the defense of alibi. Instead they claim that the trial court committed the following errors:

"I. The learned trial court erred in giving credence to the testimony of the alleged lone eye-witness for the prosecution in spite of the date of death as stated in the autopsy report which is Exhibit A of the prosecution and corroborated by Exhibit 5-A stating, among other things, that the deceased died on January 23, 1965.

"II. The learned trial court erred in giving weight to the testimony of the alleged lone eye-witness in spite of the circumstances surrounding his testimony because he saw that the crime was allegedly committed in the afternoon of January 22, 1965 but divulged the same to the authorities only on September 28, 1965.

"III. That the learned trial court further erred in not acquitting the remaining defendants-appellants while it acquitted the third defendant Servillano Apolinada when the evidence against all of them is the same, by simply making the observation that there was no proof of conspiracy.

"IV. The learned trial court erred finally in convicting the defendants in spite of the inadequacies and inconsistencies of the evidence for the prosecution." (Brief, pp. 1-2.)

The main thrust of the appellants is to impugn the credibility of the lone eye-witness to the killing - Ernesto Tabago.

Item: According to Tabago, Leonardo Bercasio was killed by the appellants late in the afternoon of January 22, 1965. The appellants claim that Tabago lied because Bercasio died on January 23, 1965. The appellants support

this claim by citing Exhibit A, the necropsy report.

Exhibit A is dated January 25, 1965. It states that Dr. Cuyco saw the body of Leonardo on January 23, 1965, at around 7:00 P.M. and that death was "about Ten (10) to Twelve (12) hours ago." From this the appellants conclude that Leonardo died not on January 22 but on January 23, so Tabago lied. Not necessarily. Dr. Cuyco merely expressed an opinion; he was not actually present when Leonardo was killed. Upon the other hand Tabago was there. Between one who gives an opinion and another whose evidence is based on actual knowledge there can be no doubt that the latter is more reliable.

Item: The appellants also aver: "The testimony of Ernesto Tabago is also improbable because according to him the place where he saw the killing was plain and he could see the place where the killing took place at a distance of one-half kilometer, and that it is only about 25 meters from the pathway. It is respectfully submitted that these people are unusual murderers. They commit a murder near a pathway without cover and not only without cover but without even a lookout." (Brief, pp. 10-11.) This claim is purely conjectural. It is to be noted that the killing took place late in the afternoon, about 5:00 p.m., and in an isolated place. There was no need for either cover or a lookout. As the People's brief states:

"x x x As a matter of fact, from the place where the deceased was assaulted to his hut in the barrio was about half a kilometer (p. 20, t.s.n., Dec. 20, 1966). And yet, the deceased was found dead on the floor of his hut, and no one apparently saw anybody bring him thereto where he was left embracing a firearm to give a semblance that he committed suicide. The point here is that if the deceased could be brought to his hut without anyone noticing the persons who carried him, the scene of the killing must have been an uninhabited place, an ideal place for the appellants to perpetrate the commission of the crime confidently thinking that they could get away with it." (At p. 8.)

Item: According to Tabago, the deceased was shot with a "short arm." But the appellants claim that the deceased could have been shot with his own .22 rifle. They ask why the slug recovered from the head of the victim was not subjected to ballistic tests. This argument is also conjectural and deserves scant consideration. Tabago testified affirmatively that a short arm, not a rifle, was used. A ballistic test was unnecessary.

Item: Ernesto Tabago saw the killing on January 22, 1965, but it was only in September of the same year when he reported it to the police and identified the assailants. In the meantime, on February 5, 1965, Olivo had a brawl with Ernesto and his relatives during the town fiesta of Talugtug. This resulted in charges and counter-charges between the two factions. The appellants ask: if indeed Ernesto was afraid to report the killing because of the threat made, why was he brave enough to brawl with appellant Olivo? The answer lies in the fact that when the brawl took place Ernesto was not alone; he was with others, a circumstance which must have emboldened him. About his fear for Olivo, Ernesto said:

"ATTY. AGANON:

Q After the fight by Olivo as being asked of you by defense counsel, why did you not reveal immediately after the fight with Olivo?

A Because I was afraid, sir, because I know that they can kill people and the people of Talugtug know that they are notorious (loko)."

(TSN, Dec. 20, 1966, p. 22.)

Ernesto's fear was well-founded for Olivo, on cross-examination, admitted that he had been convicted of a crime in Isabela for which he had to serve time in Muntinlupa and in Iwahig Penal Colony.

In cases where the credibility of witnesses is the only issue on appeal, the rule is well-settled "that conclusions

and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons, because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case.” (People vs. Balili, L-38250, August 6, 1979, 92 SCRA 552.) The rule is applicable in the case at bar.

WHEREFORE, finding no error to have been committed by the court a quo its judgment is affirmed with the sole modification that the indemnity of P12,000.00 shall be paid in solidum by the appellants. Costs against the appellants.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, and Escolin, JJ., concur.
De Castro, J., on sick leave.

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.