

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PERCIVAL “PERCY” GOMEZ, ACCUSED-APPELLANT.

Ponente: LAMPAS PERALTA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/10f4d3015a95/>

LAMPAS PERALTA, J.:

Before the Court is an appeal from the Decision dated October 18, 2012[2] in Criminal Case No.08-263842 of Branch 48, Regional Trial Court, Manila finding accused-appellant Percival “Percy” Gomez guilty beyond reasonable doubt of the crime of homicide.

THE ANTECEDENTS

On December 24, 2007, around 11:20 P.M., the victim, sixteen (16)-year old, Rafael Joseph Nino Esguerra @ Kulet, together with King Andrew Zamora, Mark Joseph Cajandoc @ Rambo, and four (4) other boys were walking along Revellen Street,[3] Sta. Ana, Manila after hearing mass at the Sta. Ana Church, Sta. Ana, Manila. The group bought cigarettes from a bakery at Tejeron Street, corner Garido Street. Thereafter, King Andrew Zamora and another boy went ahead to a basketball court on Garido Street.[4] While waiting for the others, King Andrew Zamora saw accused-appellant, who was then a barangay official, standing along Sampaguita Street. When their companions arrived, the group continued to walk home, turning right to Liwayway Street. Suddenly, a motorcycle driven by accused-appellant came speeding behind them. Accused-appellant alighted from the motorcycle, pulled a gun and fired a shot at the group. The group scampered straight to Liwayway Street. King Andrew Zamora hid behind a vehicle. Accused-appellant shouted “Kulet,” then another shot was heard. King Andrew Zamora peeped and saw accused-appellant holding a gun. Mark Joseph Cajandoc saw that it was accused-appellant who shot the victim which caused the latter to fall on the ground. The victim died that night due to gunshot wound on the head.[5] In an autopsy report conducted by Dr. Romeo T. Salen, it was indicated that the cause of his death was gunshot wound on the head.[6]

The salient factual details are synthesized in the People’s brief as follows:

At 11:20 in the evening of December 24, 2007, the victim Rafael Joseph Nino Esguerra @ Kulet (the “victim”) was walking along Revellen Street together with King Andrew Zamora (“King Andrew”), Melchor Camacho (“Melchor”), John Paul Sison (“John Paul”), Mark Cencia (“Mark”), Mark Joseph Cajandoc @ Rambo (“Mark Joseph”) and Edwin Zamora (“Edwin”). They were on their way home after hearing mass at the Sta. Ana Church.

They decided to stop and buy cigarettes from a bakery at Tejeron corner Garrido Street. After this, Andrew and John Paul went to the basketball court in Garrid Street, leaving the others at the bakery. While waiting, King Andrew saw the appellant, Percival Gomez, standing along Sampaguita Street.

They continued walking home when their companions arrived, turning right from Garrido to Liwayway Street. Suddenly, a speeding red Honda Wave motorcycle, driven by the appellant, came from behind them. Appellant was wearing a white sando, brown shorts, and eyeglasses.

Appellant alighted from the motorcycle and upon approaching them, pulled a gun, pointed it at them, and fired a shot. The group ran straight along Liwayway Street and King Andrew hid behind a vehicle and heard the appellant shout “Kulet” before hearing another shot being fired. King Andrew peeped and it was appellant whom he saw as the only person holding a gun.

Appellant then approached the group and when he was near, King Andrew ran away and heard Mark Joseph shout that he was hit. King Andrew told Mark Joseph to keep running until both of them ended up in King Andrew's home on Revellen Street where King Andrew's aunt accompanied them to the hospital. King Andrew later found out from his girlfriend that the victim Rafael Joseph Esguerra @ Kulet died that night due to a gunshot wound to the head.

x x x In turn, Mark Joseph testified that on the same night, he was on his way home together with victim Rafael Joseph Esguerra @ Kulet, Andrew, Onyok, Embok, and Dixon but he was not able to go home as there was a “barilan”. He also testified that he was behind the victim when the latter was shot by the appellant and that after this, the victim fell to the ground. He narrated that the appellant called the victim “Kulet” and the victim paused to look behind when the appellant aimed the gun at him. He claimed he saw the victim running but that he was hit which caused him to fall to the ground. Mark Joseph also testified that he heard three shots and was also hit by a bullet at the back of his right leg.

Dr. Ramon Salen, who conducted the autopsy on the victim, testified that based on his findings, the cause of the victim's death was a gunshot wound to the head. The point of entry was at the back and the point of the exit was at the right eyebrow. He said that since there were no powder burns on the victim, it was probable that the barrel of the gun was two feet or more from the point of entry.[7]

Accused-appellant was charged with homicide in an information which reads:

The undersigned accused PERCIVAL “PERCY” GOMEZ Y SELLADO of the crime of HOMICIDE committed as follows:

That on or about December 24, 2007, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the person of one RAFAEL JOSEPH NINO ESGUERRA @ Kulet, by then and there shooting the latter with a gun hitting his head, thereby inflicting upon the said RAFAEL JOSEPH NINO ESGUERRA @ Kulet gunshot wound, which was the direct and immediate cause of his death thereafter.

Contrary to law.[8]

On arraignment, accused-appellant pleaded “not guilty”.[9] During the pre-trial conference, the parties stipulated that “accused Percival ‘Percy’ Gomez y Sellado is the person charged in the above case for the felony of Homicide.”[10]

During trial, the prosecution presented King Andrew Zamora and Mark Joseph Cajandoc, Carmen Esguerra (victim's mother), Dr. Romeo T. Salen and Nandy Vitalicio (public affairs Director of the Manila Broadcasting Company), as witnesses. The defense presented accused-appellant as its sole witness.

In a Decision dated October 18, 2012, the trial court convicted accused-appellant of homicide and sentenced him as follows:

WHEREFORE, the Court finds the accused Percival “Percy” Gomez guilty beyond reasonable doubt for the felony of Homicide and in conformity with law he's sentenced to suffer prison term of 8 years and 1 day as minimum to 10 years as maximum to prison mayor.

The accused is ordered to pay the heirs of the victim the following amounts viz:

1. P50,000.00 as moral damages;
2. P40,000.00 as exemplary damages; and
3. Costs.

SO ORDERED.[11]

Hence, accused-appellant filed the present appeal which is premised on the following assignment of errors:

The Regional Trial Court of Manila, Branch 48 committed serious errors which need reversal and setting aside of its judgment in the appealed case, as follows:

1. In failing to consider that there was no real positive identification of the gun wielder whose gunshot caused the death of the victim but a dovetailed story to create an impression of positive identification viewed from the conflicting testimonies of the prosecution witnesses;
2. In failing to find that the prosecution's evidence was weak and was not able to satisfy the rule that the prosecution must rely on the strength of its own evidence, and apply the rule that in order to convict the accused, the same must be based beyond reasonable doubt, for a slightest doubt should result in the acquittal of an accused. In this particular case, the doubtful scenario made to appear by the prosecution's witnesses which failed to overcome the presumption of innocence of the accused were not properly considered and if considered would probably change the result from conviction to acquittal.[12]

Both the Office of the Solicitor General (OSG) and the private prosecutor filed their separate appellee's briefs,[13] praying for affirmance of the trial court's Decision dated October 18, 2012.

THE ISSUE

Whether the trial court erred in convicting accused-appellant of homicide.

THE COURT'S RULING

Accused-appellant argues that the trial court erred in convicting him of the crime of homicide, as he posits that prosecution witnesses King Andrew Zamora and Mark Joseph Cajandoc merely claimed that they saw accused-appellant holding a gun but did not actually see the alleged shooting of the victim by accused-appellant.[14] Also, accused-appellant claims that there were discrepancies in the testimonies of prosecution witnesses as to certain details of the incident, and their testimonies did not also jibe with their statements in their affidavits.[15]

The arguments deserve scant consideration.

Basic are the elements of homicide which are: (1) a person was killed; (2) the accused killed him without any justifying circumstance; (3) the accused had the intention to kill, which is presumed; and, (4) the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.[16]

The following testimony of King Andrew Zamora is replete with essential details, particularly the manner by which accused-appellant perpetrated the crime. Thus:

Direct examination of King Andrew Zamora:

Q Mr. Witness, on December 24, 2007, at around 11:20 in the evening, where were you?

A I was walking on my way home coming from Sta. Ana, sir.

Q When you say “naglalakad” can you tell us what Street exactly where you were walking?

A Revellen Street, sir.

Q And this Revellen Street, can you tell us what City is this?

A Sta. Ana, Manila, sir.

xxx xxx xxx

Q Now, you said that you were walking along Revellen Street, can you tell the court who were with you if any?

A Kulet, Melchor Camacho, John Paul Sison, Mark Cencia, Rambo and Edwin Zamora.

Q Now, this person you mentioned Kulet do you know his real name?

A Yes, sir.

Q And what is his real name?

A Rafael Joseph Nino Esguerra, sir.

xxx xxx xxx

Q So, you were walking along Revellen Street, what happened next while you were walking?

A We among ourselves agreed to buy something from the bakery.

Q And, then what did you do, did you actually buy something from the bakery?

A Yes, sir.

Q And where is this bakery located?

A Garido, sir.

Q When you say Garido, what do you mean is that a name of a Street?

A Yes, sir.

Q So, you went to a bakery in Garido Street, what happened after you went to a bakery?

A We bought cigarette.

Q And then after you bought cigarette, what did you do?

A John Paul Sison and I went ahead and crossed ahead.

Q And what about the other, what did they do?

A They were left behind at the bakery.

Q So, you and John Paul Sison went ahead, up to where you go ahead?

A Up to the court of Garido.

Q And when you reach the court of Garido, what did you do?

A We stood there to wait for our companions.

Q And while there at the court of Garido what did you observe?

A We saw along the area of Sampaguita there were persons standing.

Q And were you able to identify these persons?

A Yes, sir.

Q Who were these persons standing along Sampaguita?

A Chairman Percival Gomez, sir.

Q Now, while you were waiting along the court of Garido, what happened after that?

A When our friends arrived, we continued walking.

Q When they arrived you continued walking, what happened next?

A Suddenly a speeding motor cycle came behind us.

Q And did you see who was on the motor cycle?

A Yes, sir.

Q And can you tell this court, who was on the motor cycle?

A Percival Gomez, sir.

Q And can you describe to this Honorable court, how did he look?

A He was in white sando, brown shorts and wearing eyeglasses.

xxx xxx xxx

Q So, you saw Percival Gomez speeding on his motor cycle, what did you do next?

A He parked his motor cycle on the side and immediately alighted from his motor cycle.

Q And after he alighted from his motor cycle, what did he do?

A He pulled a gun and poked it at us.

Q And after he poked the gun at you, what did he do?

A He fired the gun.

Q After he fired the shot at you, what did you do?

A I ran, sir.

Q And do you remember what your other companions did after Percy Gomez fired his gun?

A Yes, sir.

Q What did they do?

A They also ran, sir.

Q And you ran towards what direction?

A Straight to Liwayway, sir.

Q And what about the others?

A Same thing, sir.

Q So, you decided to run and while you were running what happened after that?

A I hid behind a vehicle.

Q And why you hide behind a vehicle?

A Because after firing a first shot he again fired second shot.

Q You mentioned “napaputok uli siya” who are you referring?

A Percival Gomez, sir.

Q And how did you know that it was Percival Gomez who fired his next shoot?

A Because I was hiding behind the vehicle and I peeped and I saw him and he was the only one carrying a gun.

Q How long did you stay behind the vehicle?

A Around two (2) minutes, sir.

Q After two (2) minutes, what did you do?

A Again I ran because he was coming approaching “kasi palapit na po siya.”

Q Then when you say “siya” who are you referring to?

A Percival Gomez, sir.

Q And you earlier mentioned “palapit na siya” how far was Percival Gomez from you at that point?

A Around two (2) blocks away, sir.

Q Two (2) blocks, can you tell us how many meters by your estimate?

A I can not estimate that two (2) blocks away, sir.

Q So, he was approaching, so you ran?

A Yes, sir.

Q What about the other members of the group, what happened to them?

A Also they ran.

Q And then while running, what happened after that?

A Rambo shouted I was hit.

Q And then when Rambo shouted I was hit, what did you do?

A Just run, I told him.

Q Up to where did you run?

A To Revellen, sir.

Q And when you reach Revellen, who else was with you?

A Just the two (2) of us of (sic) Rambo, the other I do not know where the others are, sir.

Q And then, at Revellen, what did yo do together with Rambo?

A We went straight home, sir.

Q Now, after the incident do you know what happened to the other members of the group?

A Yes, sir.

xxx xxx xxx

WITNESS:

My girlfriend told me that Kulet already died.

ATTY. PULIDO:

Q Now, earlier you said that Rambo who was with you shouted that he was hit, is that correct?

A Yes, sir.

Q Was he in fact hit?

A Yes, sir.

Q And what did you do in relation to this Rambo being hit?

A When we were in front of our house my Tita was there and he was able to come with us to go to the hospital.

THE COURT:

You stated that Kulet who is one of your companions at that time died as per information from your girlfriend, did you come to know the circumstances on how he died?

WITNESS:

Yes, your Honor.

THE COURT:

Q Tell this Court?

A He was shot on the head, your Honor.

Q Who shot him on the head?

A Percival Gomez, your Honor.

Q Why did you see Percival Gomez who actually shot Kulet on the head?

A No, your Honor. But he were the only one armed with a gun during that time.[17]

Contrary to accused-appellant's claim that there was no eyewitness to the crime, Mark Joseph Cajandoc positively testified that he saw accused-appellant shoot the victim. Apart from this, Mark Joseph Cajandoc corroborated the testimony of King Andrew Zamora on its material points. Thus:

Q Mr. Witness, on the night of December 24, 2007, at around 11:20 P.M. Where were you?

A We attended mass, sir. We were on our way home.

Q And when you say "we or kami", who were with you at that time?

A Kulet, Andrew, Onyot, Embok and Dixon.

Q This Kulet you are referring to, do you know his full name?

A Yes, sir.

Q What is his full name?

A Kulet Esguerra, sir.

xxx xxx xxx

Q Now, on you(r) way home can you tell us exactly what Street?

A Garido, sir.

Q You are along Garido Street. You said that on the night of December 24, 2007, you were with among others Kulet?

A Yes, sir.

Q And `were you able to go home?

A No, sir.

Q Why, what happened?

A Because an incident happened, shooting incident “barilan”.

Q And can you tell us who shoot who?

A Percival shot Kulet.

Q And how do you know this?

A Because I saw him holding a gun.

Q When as you said Kulet was shot by Percival Gomez where were you?

A Behind Kulet.

Q And where was Percival Gomez?

A At my back, behind me sir.

Q And when you said you saw Percival Gomez shot Kulet Esguerra, what happened?

A Bumulagta, he fell.

Q And when he fell, what did you do?

A I ran, sir.

Q Now, in this shooting incident how many shots did you hear?

A Three (3), sir.

Q And how many shots did you see?

xxx xxx xxx

A Three (3) also.[18]

Clearly, the affirmative testimonies of witnesses King Andrew Zamora and Mark Joseph Cajandoc established beyond reasonable doubt accused-appellant's authorship of the crime. Both witnesses positively identified accused-appellant as the only person holding a gun during the shooting incident. Mark Joseph Cajandoc himself also saw accused-appellant fire the gun at the victim.[19]

Accused-appellant claims that there were inconsistencies in the testimonies of prosecution witnesses as to how accused-appellant approached the victim, whether he was riding a motorcycle or was only walking just before he gunned down the victim. There is no real inconsistency, as witness King Andrew Zamora clarified during his cross-examination that:

Witness: When he approached us he was riding a motorcycle, and when he stopped the motorcycle, he went down and shot us, he ran after us jogging.[20]

Accused-appellant's contention that there were also inconsistencies between the testimonies of witnesses King Andrew Zamora and Mark Joseph Cajandoc and their statements in their affidavits as to the exact place or name of the street where the victim was gunned down, is inconsequential. The inconsistencies refer to a peripheral matter, not to the elements of the crime.

Well-settled is jurisprudence that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement before the investigators are not fatal defects to justify a reversal of judgment. Such discrepancies do not necessarily discredit the witness since ex parte affidavits are almost always incomplete. A sworn statement or an affidavit does not purport to contain a complete compendium of the details of the event narrated by the affiant. Sworn statements taken ex parte are generally considered to be inferior to the testimony given in open court. For one, the discrepancies only erase suspicion that the testimony was rehearsed or concocted. These honest inconsistencies serve to strengthen rather than destroy the witness credibility.[21]

Ineluctably, accused-appellant's alibi must fail. Too settled to require further elucidation is the doctrine that alibi cannot prevail over eyewitnesses' positive identification of the perpetrator.[22] Although accused-appellant claims that during the time that the victim was gunned down, he was attending a Christmas party in Malate, Manila,[23] it was not shown that it was physically impossible for him to be at Sta. Ana, Manila where the crime was committed. For alibi to prosper, accused-appellant must establish by clear and convincing evidence not only his presence at another place at the time of the perpetration of the crime, but also the physical impossibility of his presence at the scene of the crime.[24]

Verily, findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witness, and has the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination.[25] Absent any showing that the trial court's calibration of credibility was flawed, the appellate court is bound by its assessment.[26]

Anent the imprisonment penalty imposed by the trial court which is “8 years and 1 day as minimum to 10 years as maximum of prision mayor,” the maximum penalty of ten (10) years of prision mayor must be modified.

Under Article 249, Revised Penal Code, the penalty for the crime of homicide is reclusion temporal. No aggravating or mitigating circumstance can be appreciated. Although accused-appellant was a barangay kagawad when the crime was committed, the information did not allege that he took advantage of his official position at the time he killed the victim.[27]

In the application of the Indeterminate Sentence Law, the minimum penalty should be taken from the penalty next lower in degree in any of its period, which is prision mayor ranging from six (6) years and one (1) day to twelve (12) years. The maximum penalty should be taken from the penalty provided by law in its medium period, which is reclusion temporal in its medium period ranging from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, there being no mitigating or aggravating circumstance (Article 64, Revised Penal Code).

Thus, accused-appellant should be meted the indeterminate penalty of eight (8) years and one (1) day of prision mayor medium, as the minimum period, to seventeen (17) years and four (4) months of reclusion temporal medium, as the maximum period.

Anent the trial court's awards of moral damages in the amount of P50,000.00 and exemplary damages in the amount of P40,000.00, the same must also be modified. In line with the recent jurisprudence on homicide, civil indemnity is mandatorily granted to the heirs of the victim without need of proof other than the commission of the crime, while moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs since it is borne out by human nature and experience that a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.[28] Accused-appellant is ordered to pay the heirs of the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages and cost of suit.[29] However, there is no basis to award exemplary damages as there is absence of any aggravating circumstance.[30]

WHEREFORE, the appealed Decision dated October 18, 2012 of the trial court is affirmed, subject to the modification that accused-appellant is meted the indeterminate penalty of eight (8) years and one (1) day of prision mayor medium, as the minimum period, to seventeen (17) years and four (4) months of reclusion temporal medium, as the maximum period. Accused-appellant is ordered to pay the heirs of the victim P75,000.00 as civil indemnity, P75,000.00 as moral damages and cost of suit. The award of exemplary damages is deleted.

SO ORDERED.

Acosta, and Garcia-Fernandez, JJ., concur.

[1] Also referred to as Percival Gomez y Sellado in the Information and Appellant's Brief; p. 1 Records and p. 17, Rollo, respectively

[2] pp. 386-401, Records

[3] Spelled also as Rebellen in the Appellant's Brief, p. 58, Rollo

[4] Spelled also as Garrido in the Sinumpaang Salaysay of Ernesto Esguerra and Carmen C. Esguerra and in the Appellant's Brief, pp. 11, Records and p. 58, Rollo

[5] pp. 7-16, TSN dated December 10, 2009; pp. 5, 8, 15-16, TSN dated December 22, 2009

[6] p. 252, Exhibit “B”, Records

- [7] pp. 151-153, Rollo
- [8] p. 1, Records
- [9] p. 181, *ibid.*
- [10] p. 192, *ibid.*
- [11] p. 401, *ibid.*
- [12] pp. 30-31, Rollo
- [13] pp. 148-158 and 95-130, *ibid.*
- [14] pp. 32-46, 57, 60-61, *ibid.*
- [15] pp. 46-52, 60, 62, *ibid.*
- [16] *Villanueva vs. Caparas*, 689 SCRA 679 (2013)
- [17] pp. 7-17, TSN dated December 10, 2009
- [18] pp. 24-27, TSN dated December 10, 2009
- [19] pp. 7-17, TSN dated December 10, 2009; pp. 24-27, TSN dated December 10, 2009
- [20] p. 16, TSN dated December 22, 2009
- [21] *Mercado vs. People*, 599 SCRA 367 (2009)
- [22] *People vs. Pabillare*, 418 SCRA 104 (2003)
- [23] pp. 11-12, TSN dated December 9, 2010
- [24] *People vs. Gonzales*, 433 SCRA 102 (2003)
- [25] *People vs. Rivera*, 412 SCRA 224 (2003)
- [26] *People vs. Pardua*, 360 SCRA 41 (2001)
- [27] *People vs. Herrera*, 371 SCRA 480 (2001)
- [28] *People vs. Opuran*, 425 SCRA 654 (2004)
- [29] *People vs. Teriapil*, 644 SCRA 491 (2011)
- [30] *People vs. Baron*, 621 SCRA 649 (2010)

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.