

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
BENEDICTO CORTEZ, LEOPOLDO AGUARINO, DOMINGO TOMOLOG,
SALCEDO TOMOLOG, AND VICENTICO TOMOLOG, DEFENDANTS,
LEOPOLDO AGU...**

G.R. No. L-31106. May 31, 1974

Ponente: ESGUERRA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/40abe7b22a27/>

ESGUERRA, J.:

Appeal from the decision of the Court of First Instance of Aklan, Branch II at Kalibo, in its Criminal Case No. 2007, finding Benedicto Cortez, Leopoldo Aguarino and Vicentico Tomolog guilty of the crime of murder, the dispositive portion of which reads as follows:

"WHEREFORE, the Court finds the accused Benedicto Cortez, Leopoldo Aguarino and Vicentico Tomolog guilty of the crime of murder and each of them is hereby sentenced to suffer the penalty of reclusion perpetua, to pay jointly and severally the heirs of the deceased Ludovico Tapic the amount of P12,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. The said three accused being detention prisoners, they shall be credited with one half of the preventive imprisonment undergone by them.

"The Court finds the accused Domingo Tomolog and Salcedo Tomolog not guilty of the crime charged because of insufficient evidence and hereby acquits them with costs de oficio. The said two accused being detention prisoners, their immediate release is hereby ordered."

In the information filed with the lower court, five persons, namely, Benedicto Cortez, Leopoldo Aguarino, Vicentico and Salcedo (brothers) and Domingo (father), all surnamed Tomolog, were originally charged with the murder of Ludovico Tapic. The information recites:

"That on or about August 21, 1964, in the Municipality of Makato, Province of Aklan, Philippines, and within the jurisdiction of this Honorable Court, the above mentioned accused, namely: Benedicto Cortez, Leopoldo Aguarino, Domingo Tomolog, Salcedo Tomolog, and Vicentico Tomolog, conspiring, confederating and helping one another armed with knife and bolos and with treachery, evident premeditation and in consideration of a price or monetary reward, with intent to kill, did then and there willfully, intentionally, feloniously, unlawfully and criminally assault, attack one Ludovico Tapic who suffered the following injuries:

- Stab wound, 7 cm. in length x 2 cm. in width right hypochondrium, 7.5 cm. below the right nipple, penetrating the liver;
- Hemorrhage, intra-abdominal severe, secondary to stab wound; as per medical certificate of Dr. Luvisminda Kapunan attached hereto and made integral part hereof, which injuries caused the death of said Ludovico Tapic.

Contrary to law."

Leopoldo Aguarino and Vicentico Tomolog interposed the present appeal, but during the pendency thereof

Leopoldo Aguarino died on May 23, 1970, and this Court dismissed his appeal. Benedicto Cortez the self-confessed knife-wielder, did not appeal and he commenced serving his sentence. Hence this appeal concerns only Vicentico Tomolog.

The prosecution, relying principally on the testimonies of Angelina Tapic, Dr. Luvismina Kapunan, Ricardo Puod, Municipal Judge Rustico Quimpo, Acting Chief of Police Nicanor Tabuena and Lea Pastrana Masinda established the following:

Angelina Tapic, wife of the deceased victim, Ludovico Tapic, testified that on August 21, 1964, at almost noon time, she was in their house at barrio Agbalogo, Makato, Aklan when the accused, Benedicto Cortez, arrived together with her husband. They took their lunch and afterwards, while sitting on a bench, Regalado Tranco passed by. Her husband Ludovico requested Regalado to tap the coconut tree for tuba for them to drink, a request acceded to by the latter. Since it took some time for Regalado to come back with the tuba, Ludovico and Benedicto trailed Regalado. Later, Angelina also followed as she wanted to drink tuba too. When she arrived at the house of Regalado she saw Benedicto and her husband proceed to the top of the hill. She followed them as Rodrigo Puod, a neighbor, wanted Ludovico to go with him to the swamps. On reaching the hilltop she prodded Ludovico to go home but the latter answered: "Yes, but you wait", and she heard him ask Benedicto to come back on Tuesday for a drinking spree with some "pulutan". Benedicto said "yes" and asked Ludovico: "Manong Luding, if you will be given P200.00 will you kill a man?" Ludovico answered: "I will kill a man if I am aggrieved." When she heard this, she took hold of her husband's arm and urged that they go home. But Benedicto Cortez immediately stood up and as they were side by side Cortez kicked her. Since she was standing on a steeper place, she slipped down and immediately after she fell, Benedicto stabbed her husband below the right nipple. Then she heard her husband say: "Bening, you have betrayed me". She stood up and ran towards her husband. While she was going towards him, she saw three persons namely, Vicentico Tomolog, Salcedo Tomolog and Domingo Tomolog running towards barrio Agbalogo while Benedicto headed towards barrio Castillo. She shouted for help and Rodrigo Puod was the first to arrive (t.s.n. September 9, 1965, pp. 10-19).

Rodrigo Puod testified that on August 21, 1964, after noon-time he was in his house located at Agbalogo, Makato, Aklan, near Ludovico's place when he heard shouts of Angelina Tapic crying for help. He rushed to the scene and was informed by Angelina that her husband was stabbed by Benedicto Cortez. Rodrigo Puod went near Ludovico and inquired who his assailant was. The victim just nodded his head to a direction and Puod following the direction of the nod, saw Benedicto Cortez and Leopoldo Aguarino running towards barrio Castillo while the Tomologs (Vicentico, Salcedo and Domingo) were fleeing towards barrio Agbalogo. He brought the victim to the hospital but the latter expired on the way (t.s.n. September 17, 1965, pp. 30-32).

Dra. Luvismina Kapunan testified that she examined the body of Ludovico Tapic at the Aklan Provincial Hospital where she was a resident physician and thereafter issued a medico-legal report, marked as Exhibit "A", which reads:

- Stab wound, 7 cm. in length x 2 cm. in width, right hypochondrium, 7.5 cm. below the right nipple, penetrating the liver.
- Hemorrhage, intra-abdominal, severe, secondary to stab wound.

Said doctor also advanced the theory that the said wound could have been caused by a small knife locally known as the "siyaw", like Exh. "B" (t.s.n. Aug. 23, 1965, p. 6).

Rustico Quimpo, Municipal Judge of Makato, Aklan, testified that in August 1964, he was already judge of the municipality of Makato, Aklan; that he conducted the preliminary investigation in this case, during which time

Cortez executed a sworn statement wherein he stated that he killed Ludovico Tapic since "he was ordered or hired to kill for a prize or reward by Leopoldo Aguarino and Domingo Tomolog" (t.s.n. December 6, 1965, pp. 21-24 Exh. "C" and "C-1" p. 3 record).

Nicanor Tabuena, sergeant of police of Makato, testified that on August 21, 1964, accused Cortez went to his office, voluntarily surrendered and presented the knife, "Exh. B", locally known as the "siyaw" alleging that he stabbed Ludovico Tapic. When asked for the reason why he did so, he quipped that it was self-defense (t.s.n. Sept. 3, 1963 pp. 1-5). Tabuena, however, interrogated him further and he found out that the killing was for a prize or reward of P200.00, thirty pesos of which was given to the assailant in advance. Tabuena further testified that according to Cortez the reason why the reward angle was not immediately revealed to Tabuena when Cortez surrendered was because the Tomologs and Aguarino promised to visit him in jail but since they failed to appear and make good their promise, he decided to tell the truth (t.s.n. Dec. 6, 1965, pp. 28-30).

Another prosecution witness, Lea Pastrana Masinda testified that she is an agent recruiting ship passengers bound for Manila (t.s.n. Id p. 49); that she used to go places even in the mountains to recruit passengers; that most of her passengers are from Makato; that on the last Sunday of July, 1964, while she was in the cockpit waiting for passengers, she saw Leopoldo Aguarino, Vicentico and Salcedo Tomolog and another person whom she identified later in court as Benedicto Cortez, drinking tuba inside the store of Mrs. Mobo near the cockpit; that while they were in the store (she was only a meter away) she heard Leopoldo Aguarino say "Bening (addressing Benedicto) you follow what I ordered you." Vicentico Tomolog was also heard to say "Bening, the boxing will be finished and on other days to come, somebody will get killed." Salcedo Tomolog however who was seated with the group was not heard to say anything (t.s.n. Dec. 6, 1965, pp. 42-45).

Conchita Cortez, wife of knife-wielder Benedicto Cortez, when presented as witness for her husband declared that in the afternoon of August 20, 1964, Leopoldo Aguarino and the three Tomologs went to their house in barrio Castillo, Makato, Aklan, and while there she heard Aguarino say to her husband "Why is it Bening, that you do not comply with what I told you to do?; that her husband replied: "I can not do what you told me to do." To this Aguarino said: "Bening, if you will not kill Ludovico Tapic, I will kill all of your family." Thereafter, they left but came back on the following day at 5:30 in the morning. Again Aguarino told her husband: "Come, Bening, I have something for you." that Vicentico Tomolog then drew his knife, made a motion as if to stab her husband and said: "Bening, would you come or not?" Benedicto then put on his pants and went with the group (t.s.n. Feb. 14, 1969, pp. 5-10)

As earlier mentioned, only Leopoldo Aguarino and Vicentico Tomolog appealed. Aguarino having died during the pendency of this appeal, We will take up the defense of alibi interposed by Vicentico Tomolog. He testified that on August 21, 1964, he was in his house in barrio Agbalogo, Makato, Aklan, repairing its roof with his younger brother, Salcedo Tomolog. He started putting up his roof about 6:30 a.m. but he did not finish it. He did not go to any other place that day. He knew the deceased Ludovico Tapic, with whom he had no misunderstanding. He does not know Lea Pastrana Masinda and he did not go to the Makato cockpit one week before August 21, 1964. On August 21, 1964, he did not meet either Leopoldo Aguarino or Benedicto Cortez. On that date he did not go to the house of Benedicto together with the other co-accused. His house in Agbalogo is far from Cortez' house in Castillo. His father, Domingo, was in the forest on August 21, 1964. He did not offer P200.00 to Cortez as a reward to kill Ludovico. He did not threaten Cortez with a knife if Cortez would not go with him to kill Ludovico (t.s.n. Sept. 2, 1968, pp. 56-60). The size of the house he and Salcedo were repairing was three arms length square. Nobody was living there and palay is usually stored therein during the month of August. Usually, 20 cavans of palay are stored there for about three months. At the time of the incident there was no palay stored there. The house needed repair two weeks before the incident, but it was not repaired because they

were busy plowing. They had already finished the repair when the palay was harvested but they had not yet started harvesting when they repaired the house. The harvesting was not carried out because they were arrested (t.s.n. Sept. 2, 1968, pp. 56-64).

The main issue in this case for determination is Whether or not Vicentico Tomolog conspired with Benedicto Cortez in killing Ludovico Tapic. This issue in turn hinges on the evaluation of the evidence submitted by both parties and in the main depends on the credibility of the witnesses.

Defendants-appellants Leopoldo Aguarino and Vicentico Tomolog filed a joint brief. There they assigned as errors committed by the lower court, the following:

- The trial court erred in giving credence of the testimony of witnesses for the prosecution as to the alleged conspiracy between defendants-appellants Aguarino and Vicentico Tomolog and their co-accused Cortez;
- The trial court further erred in rejecting the defense of alibi of Aguarino and Vicentico Tomolog, but acquitting their co-accused Domingo and Salcedo Tomolog who have the same defense;
- The trial court finally erred in finding that the guilt of the defendants-appellants Leopoldo Aguarino and Vicentico Tomolog has been established by the evidence of the prosecution beyond reasonable doubt.

The assigned errors, being interrelated, will be jointly discussed.

Appellants Aguarino and Vicentico Tomolog try to discredit the testimony of Lea Pastrana Masinda regarding the conspiracy. The thrust of their argument is the alleged improbability of Masinda's being in Makato, Aklan, on a particular day as the last Sunday of July, 1964, to recruit passengers for Manila when she is from barrio Nalook, Kalibo, Aklan, another municipality, 15 kms. distant from Makato. We can not see how it was improbable for Masinda to be at Makato, Aklan, on the last Sunday of July, 1964, considering said distance which can be easily negotiated by car, and her testimony during the trial that as an agent her main activity is to recruit passengers and that since all her customers are from Makato and not Kalibo (t.s.n. Sept. 9, 1965, pp. 57--58), her presence in Makato at the aforementioned time and date should not be surprising or regarded as improbable. Moreover, witness Masinda testified that she had known Leopoldo Aguarino, Vicentico Tomolog, Salcedo Tomolog for over a period of three years; that she was their gangmate but that she did not know Benedicto Cortez nor knew his name before the trial started. Considering the above circumstances, it is hard to see how she could be a biased witness in favor of the prosecution. If she were so, it should be in favor of the herein appellant s with whom she is acquainted.

Appellants likewise contend that Ludovico Tapic was never mentioned in the conversation overheard by witness Masinda as the person who was the object of the plot or target of liquidation. But subsequent events showed that Ludovico was the main target. This can be gleaned from the testimony of none other than Conchita Cortez, wife of the knife-wielder, who declared in court that the conspirators went to their house on the eve of the incident and also on the very day of the killing and ordered her husband Benedicto to kill Ludovico Tapic. Appellants claim this testimony to be highly improbable for the reason that, as stated in their brief (p. 91 Rollo), "to kill a person is a very serious matter and should be kept in tight secrecy and that Aguarino and Vicentico Tomolog could not have stated the order to kill within the hearing reach of Conchita Cortez and that the latter's testimony was a mere concoction of a desperate wife who wanted to exculpate her husband by passing the blame fur the killing committed by her husband to other people." The Solicitor General ably refuted the argument of appellants and We adopt his reasoning as follows:

"Is it really as improbable as the appellants tend to portray the situation? We believe not. It is difficult to draw a hard and fast rule as to how certain persons would act in a given situation. While some conspirators would

mask their evil intention in a cloak of secrecy, others might openly flaunt their evil plot. Moreover, the line of reasoning of appellant ignores the fact that Conchita is the wife of Benedicto and she would not, out of love and loyalty to her spouse, betray her husband who was deeply involved in the liquidation scheme."

Arguing further, the Solicitor General said:

"It should be emphasized that Conchita was a defense witness. She must have been advised by counsel for accused Benedicto Cortez that her damaging testimony against the appellants would also be equally damaging for her husband. Yet, she still had the courage to reveal the dastardly plot to kill Ludovico Tapic. We believe her conscience would not let her rest until she unburdened herself of the true details of the stabbing incident."

Conchita Cortez also testified that the reason why Aguarino and the Tomologs wanted to have Tapic killed was because they had a grudge against Tapic who had filed a complaint against them for theft of his pigs and chickens. (t.s.n. Feb. 14, 1968, p. 30).

In disputing the testimony of Angelina Tapic, widow of the victim, appellants in their brief argue: It is also incredible that Vicentico, Salcedo and Domingo Tomolog were present at the incident because it is against the normal course of things. In the first place, of what use is their presence there when they have already hired Cortez to do the killing? It is very clear, therefore, that this testimony of the witness who is of course biased because of her being the widow of the deceased is a fabrication just to link the defendants-appellants with the killing of her husband" (p. 94 Rollo). This Court finds the reasoning devoid of merit. In *People vs. Peralta*[1] this Court held:

"However, in order to hold an accused guilty as co-principal by reason of conspiracy, it must be established that he performed an overt act in furtherance of the conspiracy, either by actively participating in the actual commission of the crime, or by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy.x x x" "Unless he has done any of these, the mere presence of an accused at the discussion of a conspiracy, even approval of it without any active participation in the same, is not enough for purposes of conviction.[2]

The above quoted ruling was made the basis for the acquittal of Salcedo and Domingo Tomolog who, though they were seen at the scene of the crime and were also allegedly at the discussion of the conspiracy, nevertheless, did not take active part nor were heard to say anything.

But conspirators Aguarino and Vicentico Tomolog who took active parts (as per testimony of Lea Masinda and Conchita Cortez) in the plan to kill Ludovico were seen fleeing from the scene of the crime and were there to exert moral ascendancy over Benedicto Cortez who was at first wavering so as to encourage and move him to execute the conspiracy.

Moreover, the widow's testimony is bolstered up by the declaration of Rodrigo Puod, a neighbor who ran to the succor of Ludovico upon hearing the cries for help of the widow. He testified that he saw the Tomologs running towards Agbalogo while Cortez and Aguarino fled towards Castillo. Puod appears to be a person who bore absolutely no grudge against any of the accused and the record does not disclose any untoward motive which could have induced him to testify falsely in a prosecution for such a heinous crime as murder.

Appellants also contest the extra-judicial statement executed by Benedicto Cortez before Judge Quimpo wherein Cortez stated that "he was ordered or hired to kill for a reward or prize by Leopoldo Aguarino and Domingo Tomolog." Appellants claim that this extra-judicial statement should only be admissible against him and not against the co-accused who had no participation in the execution of that affidavit. To this We fully agree, However, it is admissible as corroborative evidence of other facts that tend to establish the guilt of his co-defendants (*People vs. Simbajon* L-18073-75, Sept. 30, 1965, 15 SCRA 83, 87). In the case at bar, the

conspiracy has been proven by the testimonies of the prosecution witnesses, Lea Pastrana Masinda, Angelina Tapic and even defense witness Conchita Cortez, wife of accused Benedicto Cortez.

Another assigned error of the appellants is the rejection by the trial court of their defense of alibi. The rule is well-settled, to the point of being trite, that the defense of alibi, which is easy to concoct, must be received with utmost caution (*People vs. Supat*, L-24466, March 19, 1968), for it is one of the weakest defenses that can be resorted to by an accused and becomes worthless in the face of positive identification by prosecution witnesses pointing to the accused as "particeps criminis." [3] Vicentico Tomolog claims that on August 21, 1964, he was repairing the roof of his house at barrio Agbalogo, Makato, Aklan. The court a quo in rejecting his defense made the following incisive observation which We quote with approval, thus:

'x x x nobody was living in this house because only palay was used to be stored there and at the time of the incident there was no palay there. If according to him, that house was needing repair two weeks before the incident, why did he have to wait exactly on the day of the incident to repair it? The reason he stated was that they were still busy plowing. But he claims it was harvest time and some were already harvesting. It seems strange that he would be busy plowing while others were harvesting. The identity of this accused at the scene of the crime has been positively established by Angelina Tapic and Rodrigo Puod and his active participation in the conspiracy has been shown by Lea Masinda and Conchita Cortez. x x x Alibi should be rejected when the identity of the accused has been sufficiently and positively established by eye witnesses to the crime. When nothing supports it except the testimonies of relatives and friends and the defendant's own urging of the same, the said defense weighs and is worth nothing." (*People vs. Pelagio*, L-16177, May 24, 1967)

We note with interest too that the place referred to by Vicentico where he was allegedly repairing his house is situated not far from the scene of the crime. This will not preclude the possibility that he was at the latter place as he was positively identified by the prosecution witnesses. It is not enough to prove that the accused was somewhere else when the crime was committed, but he must demonstrate that it was physically impossible for him to have been at the scene of the crime at the time it was committed [*People vs. Herilla*, L-32785, May 21, 1973; cited in *People vs. Carino, et al.*, L-33608, Feb. 12, 1974).

The prosecution having successfully proved the existence of conspiracy, the rule that once it is established, the guilt of one conspirator is the guilt of all, has to be applied (*People vs. Timbang*, L-43326, August 6, 1943). Consequently, appellant Vicentico Tomolog is equally liable with Benedicto Cortez, the knife-wielder, for the death of Ludovico Tapic.

WHEREFORE, the judgment appealed from is hereby affirmed insofar as it concerns appellant Vicentico Tomolog.

Costs against appellant Vicentico Tomolog.

Makalintal, C.J., Castro, Teehankee, Makasiar, and Muñoz Palma, JJ., concur.

[1] L-19069 Oct. 29, 1968, 25 SCRA 759, 77.

[2] *People vs. Izon* L-10397, Oct. 16, 1958, 104 Phil. 690, 697.

[3] *People vs. Berdida*, L-20183, June 30, 1966, 17 SCRA 520, 528.

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.