

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANDRES CANUMAY, ET AL., DEFENDANTS, VICTOR BATERNA, NELSON POTESTAS, JAVIER FERNANDEZ, AGAPITO BAUTISTA, ANTONIO ABATAYO, RICA...

G.R. No. L-29181. July 09, 1984

Ponente: ESCOLIN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/4eeb9a2742a9/>

ESCOLIN, J.:

Invoking the constitutional presumption of innocence which the prosecution allegedly failed to overturn, appellants Nelson Potestas, Agapito Bautista, Buenaventura Tagbacaola and Javier Fernandez seek reversal of the judgment of the then Court of First Instance of Misamis Occidental, sentencing them to suffer the penalty of reclusion perpetua for the crime of robbery with homicide and serious physical injuries.

In the evening of October 31, 1966, Gliceria Tolero Rudines, 63, and her granddaughter Gerarda Rudines, 18, were in their house at Bo. Mangga, Tangub, Misamis Occidental, preparing "bibingka" for the next day, the All Saints Day. At about 7:00 that night, bursts of gunshots rang outside the house. This was followed by shouts ordering them to open the door. When the frightened women refused, the door was forcibly opened with an axe. Four men rushed into the house, even while the firing outside continued. Gliceria ran to the room of her husband, Guillermo Rudines, but before reaching it, she suddenly slumped on the floor, as she cried out, "Mong, Mong, I am hit."

At this juncture, Guillermo Rudines, 75, went out of his room and was met by four armed men, one of them holding an axe. When the intruders demanded money from him, he took out the cash he had in his pocket and offered it to them; but they refused to accept it. Instead, they ordered the old man to lie on the floor face down and tied his hands behind his back. Then, using the axe, they broke open the trunks in the house and ransacked the same.

Soon after, one of the intruders dropped the axe on Guillermo's back, and demanded more money from him. Guillermo told them to look in the "aparador" inside his room. While he was lying on the floor, other members of the group, some armed with pistols and others with long guns, entered the house and joined their companions in ransacking the house.

The marauders left at about 11:00 that night, after taking away money and jewelry valued at about P5,000.00.

After the robbery, relatives and neighbors of the Rudineses arrived. Gliceria was brought to the poblacion for medical assistance; but on the way thereto, she expired.

The following day, Dr. Jesus Abad conducted an autopsy of the deceased. The doctor described the victim's injuries as follows:

"1. Gunshot wound

- a) Point of entrance at the back of distal third of the right leg.
- b) Point of exit at the front of the distal third of the right leg forming a cauliflower wound.
- c) The bones of the distal third of the leg were completely fractured.

Cause of death:

- 1) Gunshot wound producing shock
- 2) Hemorrhage."[1]

Dr. Abad also examined Guillermo Rudines and found the following wounds sustained by him:

- "1. Superficial lineal wound about 1 inch long located at the left scapular area.
- 2. Pain on pressure at the vertebral column at the level of the 10th thoracic vertebral.

This certifies further that if without complication, it will heal in two (2) weeks."[2]

Upon receiving report of the crime that same night, elements of the Tangub Police Force repaired to the house of the victims. When asked by Police Chief Andres Enguito as to the identity of the intruders, neither Guillermo nor Gerarda could name any of the malefactors. They stated however that they could recognize them if they saw them again.

The following day, November 1, the Chief of Police went to the house of one Victoriano Rosario, about 50 meters distant from the victim's residence. Chief Enguito surmised that Rosario, who was a known police character in the locality, might be able to furnish some information as to the identity of the malefactors.

When Rosario's wife told the police that her husband had left for Mananao, Tubod, Lanao del Norte on October 28 and would not return home until November 3, the Police Chief became suspicious - he deemed it most unusual for a head of the family to be absent from home on All Saints Day. He immediately ordered that Rosario be fetched from Mananao. When the latter was brought to the Tangub Police Station on the following day, November 2, for investigation, Rosario admitted not only his complicity in the commission of the crime, but also divulged the names of all his sixteen [16] co-conspirators, viz.: Andres Canumay, Proculo Lemon, Victor Baterna, Buenaventura Tagbacaola, Nelson Potestas, Benito Saquin, Eduardo Caba-hug, Vicente Mondares, Antonio Abatayo, Agapito Bautista, Ricardo Patihan, Faustino Handugan, Eglercio Durano, Tente Dimasakay, Javier Fernandez and Jose Duliente.

All of them, except Dimasakay, who had allegedly gone into hiding in the forest of Lanao del Norte, were taken into custody. In the ensuing investigation, Andres Canumay readily admitted his participation in the conspiracy and voluntarily executed an affidavit.[3] At first, Bautista, Lemon, Durano, Mondares, Patihan, Potestas, and Handugan denied any participation in the crime; but upon being confronted with the statements of Rosario and Canumay, they too admitted their culpability. They gave statements which were sworn to before Judge Vicente Baz, Jr. of the Municipal Court of Tangub. However, the five other accused, namely: Victor Baterna, Benito Saquin, Antonio Abatayo, Buenaventura Tagbacaola and Javier Fernandez refused to give any statement. On November 8, all the accused were brought to the scene of the incident where they conducted a reenactment of the crime.

Thereafter, an information for the crime of robbery with homicide and serious physical injuries was filed against the sixteen [16] accused, namely: Victoriano Rosario, Jose Duliente, Andres Canumay, Proculo Lemon, Victor Baterna, Buenaventura Tagbacaola, Nelson Potestas, Benito Saquin, Javier Fernandez, Eduardo Cabahug, Vicente Mondares, Antonio Abatayo, Agapito Bautista, Ricardo Patihan, Faustino Handu-gan, and Eglercio Durano.

At the trial, the court, on motion of the prosecution, ordered the discharge of the accused Victoriano Rosario and Jose Duliente to be utilized as state witnesses.

The testimony of Victoriano Rosario is summarized by the Solicitor General as follows:

"On October 17, 1966, he (Victoriano Rosario) was asked by the accused Andres Canumay whether Guillermo Rudines was a 'moneyed man', which question he answered in the affirmative; that Canumay then requested him to be their guide when they would rob Guillermo Rudines (p. 41, t.s.n., January 20, 1967); that subsequently, on October 30, 1966, he was brought by Andres Canumay to the cockpit of Tubod, Lanao del Norte, where, together with other companions, they hatched a plan to commit the robbery the following day, October 31, 1966; that present in that cockpit conference were the accused Antonio Abatayo, Vicente Mondares, Eduardo Cabahug, Eglecerio Durano, Tinte Dimasakay, Ricardo Patihan, and Andres Canumay; that he was told to inform Victor Baterna and Benito Saquin about the robbery plan and to tell them also to converge in Bo. Silanga as 5:00 o'clock in the afternoon of October 31, 1966; that accordingly, he notified both Benito Saquin and Victor Baterna (pp. 42-45, id.); that the following day, October 31, 1966, at about 4:00 o'clock in the afternoon, he left for Silanga, Misamis Occidental, together with Dado Handugan, Ven-tura Tagbacaola and Nelson Potestas, arriving thereat at around 5:00 o'clock that same evening; that the group of Benito Saquin later arrived, with the accused Agapito Bautista, Proculo Lemon and Javier Fernandez; that the last group, which came from Tubod, Lanao del Norte, and composed of Antonio Abatayo, Andres Canumay, Vicente Mondares, Eduardo Cabahug, Eglecerio Durano, Ricardo Patihan and Tinte Dimasakay, arrived at 7:00 o'clock that night; that the men were armed with two Thompsons, an axe, carbines, pistols and knives (pp. 46-52, id.); that from Silanga, the band proceeded to the residence of Guillermo Rudines in Barrio Manga, Tangub, Misamis Occidental; that as they neared the place, he and Javier Fernandez were left near the school house building because of the fear of the others that as he was known to the Rudines, the latter might recognize him (pp. 54-55, id.); that soon thereafter, Victoriano heard gunshots coming from the direction of the house of Guillermo as well as the breaking of the door of the house; that as the firing continued, he and Fernandez went near the house of Rudines and saw Victor Baterna and Tinti Dimasakay enter said house; that Benito Saquin, Victor Baterna, Andres Canumay, Antonio Abatayo, Vicente Mondares, Eglecerio Durano, Ricardo Patihan, Tinti Dimasakay and Eduardo Cabahug went up the house, while the others remained with him (Victoriano) on the ground (pp. 55--57, id.); that at about 11:00 o'clock, those who went up the house came down and all of them proceeded to the school building and partitioned the loot under a mango tree; that he (Victoriano) did not, however, receive his share, and instead, he was told to go to Tubod the following day in order to get his share, but when he did, his companions were no longer in Tubod, for which reason he never got his share of the loot (pp. 58-60, id.); that the next day, November 1, 1966, he was arrested in Barrio Mananaw, Tubod, Lanao del Norte, by a member of the police force of Tangub, Misamis Occidental, and two PC soldiers; and that he was interrogated twice and he confessed to his participation in the crime (pp. 56-58, t.s.n., Feb. 14, 1967)."

On the bases of the testimonies of said government witnesses, and of Guillermo Rudines, Gerarda Rudines, Dr. Jesus Abad, Chief of Police Andres Enguito, and Judge Vicente Baz, Jr. of the municipal court of Tangub, as well as the extrajudicial confessions of the accused, the trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, the accused, Andres Canumay, Proculo Lemon, Victor Baterna, Buenaventura Tagbacaola, Nelson Potestas, Benito Saquin, Javier Fernandez, Eduardo Cabahug, Vicente Mondares, Antonio Abatayo, Agapito Bautista, Ricardo Patihar, Faustino Handugan and Eglecerio Durano, are hereby found guilty beyond reasonable doubt of the crime charged in the information. They are hereby sentenced to suffer the penalty of RECLUSION PERPETUA, with the accessory penalties of the law; to jointly and severally indemnify Guillermo Rudines in the sum of P5,000.00 and the heirs of Glicerio Tolero in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs."

All the accused, except Eduardo Cabahug, interposed an appeal. It appears, however, that Saquin, Mondares,

Lemon, Canumay, Handugan, Baterna, Abatayo, Durano and Patiha subsequently withdrew their appeal; and since the judgment as to them had already become final, only the appeals of Nelson Potestas, Agapito Bautista, Buenaventura Tagbacaola and Javier Fernandez remain to be resolved.

We perceive no compelling reason to disturb the judgment of conviction. Appellants were positively identified by state witness Victoriano Rosario as co-conspirators in the perpetration of the offense. In accordance with the plot to rob the Rudineses hatched the previous day at the cockpit of Tubod, said appellants went to Silanga where, as previously agreed upon, they and their co-accused met. From there, they all proceeded to the house of the victims at Bo. Mangga. Appellants Nelson Potestas and Javier Fernandez were armed with pistols, while Buenaventura Tagbacaola and Agapito Bautista carried hunting knives. At the time of the robbery, the four appellants stood guard outside the house, while their co-accused entered the victim's dwelling. After the robbery, each of said appellants received his corresponding share in the loot.

The fact that appellants did not enter the victims' house did not mitigate, much less abate, their criminal responsibility. By standing guard outside the house, each of them performed an indispensable role in the attainment of their common objective. This action on their part, performed to ensure the success of their nefarious design, clearly indicated the existence of conspiracy which justified the lower court in holding each and all of them liable for the felony committed as well as the consequences thereof.

Appellants lay considerable emphasis on the inconsistencies between Rosario's testimony in open court and the statements in his affidavits. It is thus pointed out that while Rosario stated in his affidavit that he departed for Tubod at 8:00 p.m. of October 30, 1966, in open court he declared that he left his house for Tubod at 1:00 p.m. of October 30. Such discrepancy is too trivial and immaterial to dis-credit his testimony. It should be pointed out that the robbery itself was perpetrated on October 31, not on October 30. Thus, the time of the witness' departure for Tubod on October 30, referring, as it does to an immaterial matter, does not impair, much less destroy, his testimony.

It is a settled rule that a witness may be impeached only on matters which are material, competent, specific and relevant; but not on matters which are immaterial and collateral to the real issue.[4] What is important is that this witness positively affirmed at the trial those portions of his affidavit wherein he described the individual participation of all the accused in the crime in question.[5]

Appellants Potestas and Bautista would repudiate their affidavits of confession for having been allegedly extracted through force and coercion. They claimed that they signed their statements because they were maltreated and tortured by the chief of police. The records, however, reveal a number of significant circumstances strongly negating such pretension.

[1] Their confessions were admittedly signed and sworn to before Judge Vicente Baz, Jr. The latter testified that when he read the contents of the affidavit of Potestas and Bautista, they unhesitatingly affirmed the truth and correctness thereof; that he further asked them if there was any mistake therein and both responded in the negative; and that not one of the confessants complained to him of any mal-treatment or torture

[2] On November 11, all the accused were brought to Dr. Jesus Abad, municipal health officer of Tangub, for physical examination. At the trial, the doctor attested to his findings that accused "are all in good physical condition" and that "there are no signs of physical injuries inflicted on any of them." [6]

[3] As noted by the Solicitor General, "the fact that five of the accused, namely, Antonio Abatayo, Buenaventura Tagbacaola, Victor Baterna, Javier Fernandez, and Benito Saquin did not execute similar confessions disproves the alleged use of force and coercion by the chief of police in securing the confessions of the other nine accused. Why indeed should these nine accused (including Potestas and Bautista) be tortured

and maltreated, while five of their co-accused were spared from said maltreatment?"

It has been held that a confessant bears the burden of proving that the admissions in his affidavit are involuntary and untrue.[7] Appellants Potestas and Bautista have not successfully discharged such burden.

WHEREFORE, the judgment appealed from is hereby affirmed, with the modification that the amount awarded to the heirs of the deceased Gliceria Tolero Rudines is hereby increased to P30,000.00. Costs against appellants. SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and Cuevas, JJ., concur.

[1] Exh. "N", p. 227, Rec., Vol. I

[2] Exh. "O", p. 228, Rec., id.

[3] Exhibit "F"

[4] Underhills' Criminal Events, 4th Ed, pp. 848-849

[5] tsn, p. 30, 50, 53, Feb. 14, 1967

[6] Exhibit "P"

[7] People v. Manobo, 18 SCRA 30

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.