

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIX LAVARIAS ALIAS FELING TAWEL, DEFENDANT-APPELLANT.***G.R. No. L-24339. June 29, 1968*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/743addca8eea/>**FERNANDO, J.:**

This is an appeal from a lower court decision finding accused, appellant Felix Lavarias, guilty of the crime of robbery with homicide and serious physical injuries and imposing on him the penalty of reclusion perpetua, to indemnify the heirs of the deceased, Presentacion de Vera Malong in the sum of P6,000.00 and to indemnify the offended party, in the case of serious physical injuries, Levilina Malong, in the sum of P1,000.00, to indemnify further Bartolome Malong in the sum of P250.00 and to pay one-fifth of the costs.[1]

According to the decision: "There is no question that the late Presentacion de Vera Malong was shot by the robbers who went to steal the two carabaos and one cow of the said Bartolome Malong on the early morning of May 1, 1963 and that on the occasion of the robbery the small daughter of Bartolome Malong by the name of Levi Malong was also seriously injured \* \* \*." [2] It is likewise stated therein that the lower court "is convinced that on the early morning of May 1, 1963, a group of people went inside the premises of Bartolome Malong at barrio Pangascasan, Bugallon, Pangasinan, and took away from the corral of the said Bartolome Malong three (3) heads of cattle namely: two (2) carabaos, one male and one female and one (1) cow; that on the occasion of the stealing of the carabaos, two of the malefactors fired shots, namely: Arcadio de Guzman and Felix Lavarias alias 'Feling Tawel' causing the death of Presentacion de Vera Malong and serious physical injuries of Levi Malong, a three (3) years old girl, daughter of Bartolome Malong." [3]

Recognition of the fact is made in the decision that the husband, Bartolome Malong, one of the two alleged eye-witnesses, "refused to point Feling Lavarias alias 'Tawel' as one of those who stole and robbed and killed his wife and injured his daughter, \* \* \*." Thus, he was "considered a hostile witness and instead of believing in his testimony given in court, this court believes in his affidavit, exhibit 'A', wherein he pointed clearly that the accused Felix Lavarias alias 'Feling Tawel' was one of those whom he was able to recognize as having stolen the animals and fired shots at them causing the death of his wife and injury to his daughter." [4] As to the testimony of the other alleged eye-witness, the decision states that "while Alejandro Capua also followed Bartolome Malong in refusing to live up to their previous affidavits and that Alejandro Capua refused to include Felix Lavarias alias 'Feling Tawel', as one of those he identified, this court also considers Alejandro Capua as a hostile witness and instead of giving credence to what he testified in open court, believes in his statement given on June 1, 1963, whereby he also pointed as one of those whom he recognized the accused Felix Lavarias alias 'Feling Tawel', exhibit 'C'." [5]

It is thus undeniable that there was such a failure on the part of both alleged eye-witnesses to identify appellant Lavarias as one of those responsible for the robbery. Thus when the husband, Bartolome Malong, was asked whether he knew who shot his wife, this was his answer: "I was not able to identify them, sir, because it was nighttime. I was then inside the house, and the malefactors were downstairs." [6] Subsequently, when the question

was repeated, he again answered in the negative: "I did not recognize him, sir, because I was inside the house." [7] On cross-examination, when queried as to whether De Guzman was the only one he recognized that night, he replied: "Yes, sir." [8] He likewise explained why he was not able to recognize the others "because the night was dark." [9] When asked why he included in his affidavit the name of appellant Lavarias as one of those identified by him, he repeated: "I did not recognize him that night, sir, because it was dark. Besides that, I was attending to my wife who was shot and to my daughter who was injured, sir." [10]

It is equally undeniable that the other alleged eye-witness, Alejandro Capua, likewise failed to identify on the witness stand appellant Lavarias as one of the malefactors. When asked whether he could tell the court what was declared by him before a constabulary sergeant investigating the robbery, he answered in this wise: "I did not relate anything to Sgt. Castulo. He asked me only whom I recognized and I said, I did not recognize anybody, sir." [11] He continued by saying that he heard two shots that evening, but he did not know who fired them, because "I did not see, sir." [12] He knew as a fact that some of the animals of Bartolome Malong were taken that night of May 1, 1963 but when asked who took it, he replied: "That is what I do not know, sir." [13] When pressed as to his lack of knowledge being either due to his not recognizing or his not seeing the actual taking, he clarified: "I did not see, sir." [14] He denied being maltreated at the PC headquarters, but alleged that he was boxed at barrio Pangascasan, where his house was located and that it was not true what was mentioned in the affidavit, signed by him, as to his having recognized the persons therein named. He reiterated when he was specifically asked why he told the constabulary sergeant that he recognized some persons who went to rob the house of Bartolome Malong: "I did not tell him that I saw or recognized any person, sir." [15]

When this line of questioning was pursued, the witness being asked whether he told the investigator everything that he knew about the incident, he stood firm: "What I told him is I did not see anything because I did not go out, sir." [16] The first question asked on cross-examination was whether he gave the answer found in the affidavit that the fourth shot was by appellant Lavarias. He was consistent; he replied: "No, sir." [17] As to where he was when he heard the gunshots on the night of May 1, 1963, he indicated that he was inside his store under his house, the store being closed during the time of the shooting, its wall being made of split bamboo and cardboards. [18] The matter was clarified thus: "Do you mean to say that if you were inside, the store you cannot see what is happening outside?" [19] His answer was: "No, sir." [20] For more emphasis, it was sought to be ascertained whether he peeped. Again his reply was: "No, sir." [21] He repeated that the Answer he gave to the question, whether the first Shot was fired by one Mandapat and the fourth by appellant Lavarias, was that he did not know "because I did not see anything, sir." [22]

The decision appealed from would thus predicate a conviction on affidavits executed by two alleged eye-witnesses who thereafter repudiated the same. Independently of the motives that must have occasioned such a change of heart, the conviction of appellant cannot be sustained. The constitutional rights guaranteed the accused stands in the way of the affirmance of the appealed decision. It is elementary that in all criminal prosecutions, there is a presumption of innocence in his favor and he has the right to the confrontation of witnesses.

Certainly, the presumption of innocence here was bolstered by positive and categorical testimony that appellant could not be identified as one of the perpetrators of the offense charged. Considering, more-over, that the alleged eye-witnesses presented were the husband of the woman slain, as well as the father of the child who was hurt and the other witness was a relation by affinity, both of whom therefore could be expected to see to it that the guilty party would not go unpunished, this failure to identify the appellant goes very far indeed in calling for a reversal of the judgment. Only by proof beyond reasonable doubt, which requires moral certainty, "a certainty that convinces and satisfies the reason and conscience of those who are to act upon it," may the presumption of innocence be overcome. This has been the constant holding of this Court from *United States v. Reyes*, [23] a 1903

decision, to *People v. Jugilon*,<sup>[24]</sup> promulgated barely a month ago.

May the conviction be sustained by virtue of the affidavits previously executed by the above witnesses wherein appellant was pointed at as one of those who participated in the offense charged? The constitutional right to confrontation precludes reliance on such affidavits. Such a constitutional safeguard cannot be satisfied unless the opportunity is given the accused to test the credibility of any person who, by affidavit or deposition, would impute the commission of an offense to him. It would be to disregard one of the most valuable guarantees of a person accused if solely on the affidavits presented, his guilt could be predicated. In this particular case, this observation gains added weight in view of the repudiation of such affidavits coming from persons who ordinarily would be expected to uphold and maintain what was therein stated.

There should be a reaffirmance of the doctrine announced by this Court in a 1918 decision interpreting an analogous provision of the then Bill of Rights. In that case of *United States v. Javier*,<sup>[25]</sup> Justice Malcolm, speaking for the Court, quoted an American Supreme Court decision of Philippine origin,<sup>[26]</sup> to the effect that this right to confrontation "intends to secure the accused in the right to be tried, so far as facts provable by witnesses are concerned, by only such witnesses as meet him face to face at the trial, who give their testimony in his presence, and give to the accused an opportunity of cross-examination. It was intended to prevent the conviction of the accused upon depositions or ex parte affidavits, and particularly to preserve the right of the accused to test the recollection of the witness in the exercise of the right of cross-examination."

Such a doctrine valid then continues to be authoritative today. it cannot be too strongly emphasized that the conviction of the accused may not be made to rest on depositions or ex parte affidavits. That would be to reduce to a barren form of words this constitutional guaranty.

WHEREFORE, the sentence appealed from is reversed and appellant Felix Lavarias is acquitted. With costs de oficio.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro and Angeles, JJ., concur.

---

[1] Four other persons were likewise accused, the case against one of them, Arcadio de Guzman, being dismissed by reason of his death and another Anastacio Aquino, likewise dismissed for insufficiency of evidence after the prosecution had rested its case. In the decision, subject of the appeal, two of the other accused, Roberto Mandapat and Marcelino Mandapat were acquitted on the ground of reasonable doubt.

[2] Appendix to Brief for Defendant-Appellant, p. 5.

[3] *Ibid*, pp. 5-6.

[4] *Ibid*, p. 6.

[5] *Ibid*, p. 6.

[6] T. s. n., Sessions of August 20 and 21, 1964, p. 4.

[7] *Ibid*, p. 10.

[8] *Ibid*, p. 19.

[9] *Ibid*, p. 19.

[10] *Ibid*, p. 20.

- [11] T. s. n., Sessions of October 1 and 2, 1964, p. 7.
- [12] Ibid, p. 7.
- [13] Ibid, p. 8.
- [14] Ibid, p. 8.
- [15] Ibid, p. 9.
- [16] Ibid, p. 9.
- [17] Ibid, p. 10.
- [18] Ibid, pp. 10-11.
- [19] Ibid, p. 11.
- [20] Ibid, p. 11.
- [21] Ibid, p. 11.
- [22] Ibid, p. 12.
- [23] 3 Phil. 3, 6.
- [24] L-25668, May 2, 1968. Cf. *People v. Delimios*, 105 Phil. 845 (1959).
- [25] 37 Phil. 449, 451-452.
- [26] *Dowdell v. US*, 221 US 325 (1911).

**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.