

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO LUCERO, ACCUSED-APPELLANT.

G.R. No. L-28811. March 31, 1980

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7f2edbe39941/>

PER CURIAM:

This case is before Us for automatic review. The accused-appellant Pedro Lucero stands charged with the crime of robbery with homicide under Article 294 of the Revised Penal Code, as amended by Republic Act No. 18, committed as alleged in the amended information as follows:

"That on or about January 30, 1960, in the Municipality of Babak, Province of Davao, Philippines, and within the juris-diction of this Court, the above-mentioned accused, conspiring and confederating together with John Doe and Richard Doe who are still at large, and helping one another, armed with a firearm, thru force and violence, did then and there enter the house owned and inhabited by Juan Bastasa and his family, and once inside, with intent of gain, did then and there wilfully, unlawfully, and feloniously take, steal and carry away the following articles belonging to the said Juan Bastasa and his family, to wit:

Cash money -----

P 2.25

One women's gold ring -----

10.00

One birthstone ring -----

6.00

A pair of gold earring -----

6.00

One gold locket -----

1.00

One 22 caliber rifle -----

250.00

P275.25

to the damage and prejudice of said Juan Bas-tasa and his family in the sum of P275.25; and on the occasion of the said robbery and by reason thereof, the above-mentioned accused, with intent to kill, did then and there wilfully, unlawfully and criminally shoot Juan Bastasa with a .45 caliber firearm thereby inflicting upon him gunshot wounds which caused his death.

That the foregoing offense was at-tended by the aggravating circumstances of (1) superior strength, (2) dwelling, and (3) quasi-recidivism within the purview of Art. 160 of the Revised Penal Code, the accused as then serving his term of impri-sonment at the Davao Penal Colony for the crime of murder by virtue of a final judg-ment rendered by the Court of First Instance of Rizal, Quezon City Branch.

Contrary to law."

After trial, said accused was sentenced by the trial court to the supreme penalty of DEATH and ordered to indemnify the heirs of the deceased Juan Bastasa in the sum of P4,000.00 plus P275.25 repre-senting the value of stolen properties without sub-sidiary imprisonment in case of insolvency.

The perpetration of the crime alleged in the above information was witnessed and testified to by Otilia Bastasa, a 12-year old daughter of the victim, as follows:

At around 5:30 p.m. on January 30, 1960, at Cogon, Babak, Davao, while she was at home with her mother and four younger brothers, her father and elder brother having left the house, three persons arrived and asked for some tuba which they were selling. Having acceded to their request, the three men started to drink and engaged her in conversation for about twenty minutes.[1]

An hour later, her father arrived and proceeded direct to the balcony of their house. While he was going up, two of the men followed him while the third stayed downstairs. Then one of the men ordered him to sit on a bench, poked his gun at him and demanded some money. Pale and trembling, her father handed to him a ten-centavo paper bill. But the man was not satisfied as he asked for more.[2]

Her father then stood up and proceeded to the sala, the door to which had been kicked open by the other man, the accused in this case. Upon nearing the door to the sala, the man with the gun pushed her father against the wall and upon entering the sala, said man shot her father to death.[3]

She then rushed to the bedroom where her mother was and informed her of what had just happened. While doing so, the two men entered the room and demanded some money from her mother. Realizing the danger, she slipped out of the bedroom, passed through the kitchen and attempted to go down the stairs but she was met by the third man downstairs who threatened her with a hunting knife and told her to go back.[4]

Taking another route of escape, Otilia slid down the post where the water tank is located and ran to the houses of their neighbors. At the third house, she saw her elder brother, an uncle and a cousin, and told them what happened. Thereafter, accompanied by these rela-tives, she reported the matter to the Chief of Police of Babak, Davao, who immediately conducted an investigation.[5] The next day, she returned to their house and saw her dead father was ready for burial.

Having informed the police that some of the male-factors were wearing uniforms of inmates at the Davao Penal Colony (DAPECOL), on February 1, 1960, she was shown nine or ten pictures of prisoners. After exa-mining each of them, she recognized the picture with the name "Pedro Lucero" as one of the perpetrators of the crime.[6]

In order that said identification may be confirmed, she was brought together with her cousins to the Davao Penal Colony on February 6, 1960 by the Chief of Police, a councilor and two policemen. There, she was asked if she could identify any one of the three malefactors from a line-up of about twenty prisoners. After looking at them one by one, she singled out Pedro Lucero as one of those who participated in the robbery in their house and the killing of her father.[7]

Palermo C. Cahilog, 50 years old, Chief of Police, and a resident of Babak, Davao del Norte corroborated the foregoing testimony in that at about 9:00 o'clock in the evening of January 30, 1960, Otilia Bastasa, accompanied by three other persons, reported a case of robbery and killing. Immediately thereafter, he proceeded to Cogon, Babak with three policemen, passing by the neighbors of the Bastasa family, the nearest of which is about 300 meters away. At the house of the Bastasa family, he found the lifeless body of Juan Bastasa sprawling on the sala. And from their scattered personal belongings, he discovered shells of a .45 caliber firearm.[8]

The following day, he investigated the mother and daughter and gathered information leading to the identification and arrest of the perpetrators of the crime. He was told that two of the malefactors were wearing uniforms of inmates of the Davao Penal Colony. Since he had also been informed by an employee of the DAPECOL that three prisoners escaped from the colony, he theorized that the crime could have been committed by the said escaped convicts. Thus, he brought with him about eight or ten pictures of inmates on February 1, 1960 to Otilia and her mother and asked them to look at the pictures. Both of them pointed to the picture of Pedro Lucero as one of the offenders; he then brought Otilia to the DAPECOL on February 6, 1960 to personally identify Pedro Lucero from a line-up of about twenty prisoners and she positively pointed to the accused Pedro Lucero as one of the perpetrators.[9]

Mrs. Restituta Bastasa, 45 years old, the widow of the victim, Juan Bastasa, likewise corroborated the testimony of Otilia and declared that at about 5:30 p.m. on January 30, 1960, three persons came to their house and asked for tuba. She recognized one of them as the same person who came to their house to drink tuba the previous day. While these persons idly drank and conversed, she proceeded to her bedroom to lie down as she was feeling sick and tired. Moments later, her daughter Otilia, came rushing in and told her that her father had just been shot. She immediately stood up but before she could do anything else, she saw two of the men at the door and they demanded money from her. One of them brandished a gun and a hunting knife while the other, identified later as Pedro Lucero, proceeded to search their trunk and other personal effects. Pedro Lucero succeeded in getting cash money in the amount of P2.25, a birthstone ring valued at P6.00, a pair of earrings worth P6.00, her wedding ring costing P10.00, one gold locket valued at P1.00 and her husband's .22 caliber rifle which costs P250.00. Immediately thereafter, she saw the accused go down and heard him call for the man with the gun and hunting knife. Then, together with the man left downstairs, they all departed.[10]

Upon recovering from the shock, she proceeded to their neighbor's houses where she found Otilia in one of them. She then told her daughter to go to the police and report the matter.[11]

On February 1, 1960, the Chief of Police, a councilor and their companions arrived at their house, bringing along some pictures which they showed to them. She and her daughter Otilia pointed to the picture of the accused Pedro Lucero as one of the felons.[12]

In addition to the foregoing testimonies, Teodora C. Baring, 42 years old, records custodian of the DAPECOL, was presented. She testified by virtue of a subpoena duces tecum issued upon the request of the prosecution for the production of the official records of Pedro Lucero. She pointed to the portions in said records showing that Pedro Lucero was convicted of the crime of murder by the Court of First Instance of Rizal, at Quezon City, and sentenced to 17 years, 4 months and 1 day to 20 years of imprisonment that commenced on October 17, 1958 and

that said prisoner escaped on January 20, 1960 but was recaptured on February 4, 1960.[13]

Dr. Godofredo Adamos, 51 years old, Municipal Health Officer of Samal, Davao, was also called to testify at the hearings conducted before the case was ordered archived due to the second escape of accused-appellant. Dr. Adamos testified that he conducted an autopsy of the body of the victim, Juan Bastasa, at Cogon, Babak on January 31, 1960 and that he issued a certificate of death showing that the cause of death of the victim was as follows:

"Wound, Gunshot, Chest: Circular wound, less than 1/2 cm. in diameter over the right shoulder (entrance) and circular wound at the left axillary line over 1/2 cm. in diameter (outlet) about 2 inches below center of armpit. Circular wd. less than 1/2 cm. upper outer of left arm (thru and thru) coming out a circular wound on the medial side of the left arm, middle portion. Body in a state of rigor mortis with both forearm flexed at the level of the head. Cause of death: Internal hemorrhage." [14]

The sole issue presented for resolution by accused-appellant in this appeal is whether or not there is positive identification of his person as one of the perpetrators of the crime.

Accused-appellant does not question the imposition of the death penalty, conceding, as he does, that it is proper under the facts and circumstances duly proved. He admits his prison records - that he was convicted for the crime of murder by the Court of First Instance of Rizal, at Quezon City. He likewise admits his escapes and recaptures - that he escaped in the morning of January 20, 1960, only to be recaptured on February 4, 1960 and that he escaped once again on June 25, 1960 and was recaptured this time only on April 27, 1966. He also admits that he is being tried for evasion of service of sentence. But he denies his participation in the crime presently charged against him. He said that he has not reached Cogon, Babak and that at the time of the commission of the offense on January 30, 1960, he was still in the jungles of Panabo.

With respect to the alleged positive identification of his person, he claims that on February 6, 1960, he and other prisoners at the DAPECOL were made to line up by two's by the prison custodian when the group of Otilia arrived. Otilia was then asked to look at them one by one and when she was in front of him, he heard somebody say: "That is Pedro Lucero." When he looked up to see who spoke, he saw that it was a prison guard who said those words. Whereupon, Otilia pointed to him. Inasmuch as he was not asked to comment thereon, he did not say anything.

Finally, in answer to questions propounded by the trial court, accused-appellant said that he does not know Otilia nor her mother and that he does not know of any reason why he is being implicated by them.

It is basic and elemental that an accused person is entitled to the presumption of innocence.[15] And if ever he is found guilty, his guilt must be shown beyond reasonable doubt,[16] a conviction based upon and engendered by that degree of proof which after an investigation of the whole record, produces moral certainty in an unprejudiced mind of appellant's culpability.[17] It has also been held that the identity of the offender, like the crime itself, must be proven beyond reasonable doubt.[18]

The positive identification made by the witness, Otilia Bastasa, fulfills this test of moral certainty. She unequivocally pointed to Pedro Lucero as one of the malefactors. She saw him when he came to their house in the afternoon of January 30, 1960, in the company of two others. She saw him as they demanded and took money from her father and moments later, one of them shot her father dead. When she was shown pictures of inmates at the DAPECOL by the Chief of Police of Babak, Davao on February 1, 1960, she pointed to the picture of the accused Pedro Lucero as one of the three men who robbed them and killed her father; then, when she was brought to the penal colony on February 6, 1960 to personally look for him in a line-up of about twenty prisoners, she pointed to the same accused Pedro Lucero as one of the 3 culprits; and finally, when she was in court during the

hearing, she identified the accused Pedro Lucero. In all these instances, she did so with certitude and without hesitancy. Considering that the accused-appellant and his companions had stayed in their house for about one hour on the day of the robbery and killing, drinking tuba and conversing with her prior to the commission of the actual robbery and killing, the identity of the accused must have been indelibly impressed in the mind of Otilia that she could and did identify the accused positively, readily and without hesitation.

Moreover, this direct testimony of Otilia as an eyewitness was duly corroborated by her mother who likewise saw the accused-appellant. Such witnesses had no court experience and no evil motive, remote or proximate, to distort the truth;^[19] or personal grudge to implicate or impute to him such heinous acts.^[20]

In the face of these direct evidence, the defense of alibi of accused-appellant cannot be believed. It has oftentimes been said that alibi is one of the weakest defenses that can be resorted to by an accused^[21] especially if there is direct testimony of an eyewitness duly corroborated by that of another,^[22] not only because it is inherently weak and unreliable but also because of the ease of manufacturing evidence of alibi and the difficulty of checking or rebutting it.^[23] It becomes more so if we consider that the accused-appellant did not even present facts and circumstances that tend to show that he was not in the scene of the crime at the time it was committed. He vaguely said that he was still in the jungles of Panabo. If oral proof is sought to establish alibi, it must not be loose, vague and doubtful but firm, consistent and trustworthy to the extent that when hurled against the evidence for the prosecution, the impact must perforce overwhelm the latter.^[24] It must not be general, improbable and incoherent.^[25]

Accused-appellant harps on the alleged aid extended to Otilia by a prison guard in identifying him. No importance can be attached to the statement: "That is Pedro Lucero," for a person asked to identify would not be concerned with names but with faces. More importantly, the veracity of said allegation is put to doubt by Otilia's denial. On rebuttal, Otilia vehemently denied that somebody uttered the alleged words, which places the assertion of the accused very much in doubt. She said that as soon as she saw him at the penal colony line-up, she knew he was the one.^[26] Considering further the formality whereby the identification of accused-appellant was conducted, it is, indeed, improbable that anybody much less a prison guard would give the name of the suspected person before the latter is pointed to and identified by an eyewitness.

Reviewing all the facts and circumstances in the record, we are convinced and satisfied the accused-appellant is, without doubt, guilty of the crime of robbery with homicide where the penalty that should be imposed is death in view of the attendance of the aggravating circumstances of dwelling, abuse of superior strength and quasi-recidivism.

Dwelling is properly appreciated as an aggravating circumstance in robbery with homicide.^[27] The reason is that this circumstance is certainly not inherent in the crime committed because the crime being robbery with violence or intimidation against persons, the authors thereof could have committed it without the necessity of violating or scaling the domicile of their victim.^[28]

Abuse of superior strength is likewise properly appreciated as the accused together with his two companions took advantage of their superior strength which their number and weapons afforded them. There is abuse of superior strength when two or more armed persons attack an unarmed person for the purpose of robbery,^[29] or in robbery with homicide, where three or four men attacked and killed the victim.^[30]

Finally, the special aggravating circumstance of quasi-recidivism was correctly considered against the accused-appellant as he was serving sentence for another previous offense at the time of the commission of this crime.^[31] But the indemnity required by the trial court to be paid to the heirs of the deceased Juan Bastasa in the amount of four thousand pesos (P4,000.00) should be increased to twelve thousand pesos (P12,000.00) in line

with the ruling in the case of *People vs. Pantoja*, 25 SCRA 468.

While it is opprobrious to note that accused-appellant's co-profligates in this criminal conspiracy are at large and only the accused-appellant herein who is not even the gunwielder is made to pay for it, the law must take its course against him as a co-principal, responsible for the complex crime of robbery with homi-cide. We cannot do otherwise. The law is the law and We find the imposition of the death sentence upon the said accused Pedro Lucero to be correct, in accordance with Article 294, Revised Penal Code, as amended by Republic Act No. 18.

WHEREFORE, the judgment under review is **AFFIRMED** with the sole modification that the indemnity should be raised to Twelve Thousand Pesos (P12,000.00).

SO ORDERED.

Teehankee, Acting C.J., Barredo, Makasiar, Antonio, Aquino, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., on leave.

Abad Santos, J., no part.

[1] T.S.N., pp. 36-38; 51.

[2] *Ibid.*, pp. 39-42.

[3] *Ibid.*, pp. 42-43.

[4] *Ibid.*, pp. 43-45.

[5] *Ibid.*, pp. 46-48.

[6] *Ibid.*, pp. 52-53.

[7] *Ibid.*, pp. 55-57.

[8] *Ibid.*, pp. 22-26.

[9] *Ibid.*, pp. 26-31.

[10] *Ibid.* pp. 97-106.

[11] *Ibid.*, pp. 106-107.

[12] *Ibid.*, pp. 107-109.

[13] *Ibid.*, pp. 16-20.

[14] *Ibid.*, pp. 11-20; Folder of Exhibits, Exh. B.

[15] Section 19, Article IV, New Constitution.

[16] Section 2, Rule 133, Rules of Court.

[17] *People vs. Lavarias*, 23 SCRA 1301; *People vs. Dramayo*, 42 SCRA 59.

[18] *People vs. Beltran*, 61 SCRA 246.

[19] *People vs. Neim*, 75 Phil. 668.

- [20] People vs. Timbang, 74 Phil. 295; People vs. Aranua, 98 Phil. 912.
- [21] People vs. De la Cruz, 76 Phil. 601.
- [22] U.S. vs. Hudieres, 27 Phil. 45; People vs. Cabantug, 49 Phil. 482; People vs. Medina, 59 Phil. 330.
- [23] People vs. Medina, 71 Phil. 383; People vs. Rafallo, 86 Phil. 22.
- [24] People vs. Masilungan, 104 Phil. 621.
- [25] People vs. De los Santos, 93 Phil. 83.
- [26] T.S.N., p. 133.
- [27] People vs. Saguing, 30 SCRA 834; People vs. Mongado, 28 SCRA 642; People vs. Apduhan, 24 SCRA, 798.
- [28] People vs. Valdez, 64 Phil. 860; People vs. Pinca, 114 Phil. 498.
- [29] People vs. Tampacan, 19 Phil. 185.
- [30] People vs. Mabassa, 65 Phil. 568; People vs. Cruz, Molde and Rubillos, 103 Phil. 693.
- [31] Article 160 Revised Penal Code; People vs. Layson, 30 SCRA 92.

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.