

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO DEL MUNDO, DEFENDANT-APPELLANT.***G.R. No. L-55178. January 30, 1982*

Ponente: DE CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9652c1e569ce/>**DE CASTRO, J.:**

Automatic review of the death sentence imposed by the Circuit Criminal Court, Seventh Judicial District, on Mario del Mundo, for the death of Fabian Galvan y Basister.

Mario del Mundo, was one of five persons accused of murder in the Circuit Criminal Court, Seventh Judicial District, in Pasig, Rizal for the killing of Fabian Galvan.[1] However, only Alberto Opida and Virgilio Marcelo were the first to stand trial, the other accused, including Mario del Mundo having remained at large at the time. Both were convicted and sentenced to death in a decision promulgated on March 4, 1977.[2]

On April 24, 1975, an order for the arrest of Mario del Mundo was issued,[3] and soon after his apprehension, he was brought to court for trial, his arraignment taking place on June 1, 1978.[4] After the prosecution had rested its case, appellant filed a motion to dismiss, renouncing the right to present evidence in his defense. He contended that he had not been identified as one of the persons who took actual part in the killing, nor was conspiracy proven against him. His guilt was, therefore, not proved beyond reasonable doubt.

The Court a quo, after the submission of Memorandum in support of the Motion to Dismiss, with the prosecution filing no written objection to the Motion, rendered its judgment convicting appellant and sentencing him to the death penalty, to indemnify the heirs of the victim in the amount of P10,000.00; to pay moral damages in the amount of P5,000.00, and another P5,000.00 as exemplary damages; and to pay the costs.

Hence, this automatic review of the decision promulgated on March 6, 1979.

Appellant filed his brief, through his counsel de oficio, Atty. Domingo de Lara, on August 12, 1981,[5] to which, instead of filing the appellee's brief, the Solicitor General filed a "Manifestation and Motion in Lieu of Appellee's Brief" dated December 8, 1981.[6] In his aforesaid motion, the Solicitor General, joining the appellant, prayed that the decision of the lower court finding appellant guilty of murder, be reversed, and in lieu thereof, a judgment of acquittal be rendered.

Going over the motion of the Solicitor General in which he analyzed the evidence with painstaking care and scrutiny, We find the prayer of his motion fully justified. We quote the relevant portions of the motion, which We find duly supported by the evidence of record, to serve as basis for Our judgment in this automatic review of the death sentence imposed on the appellant:

xxx xxx xxx xxx

"3. Apart from Dr. Nieto Salvador, Medico-Legal Officer of the National Bureau of Investigation, who autopsied the victim and testified that the victim died due to a stab wound in the abdomen (tsn, pp. 2, 4-5, Sept. 25, 1978; Exh. "B", p. 132, rec.), the prosecution presented two (2) witnesses, namely: Rodolfo Diolino and

Amado Flores.

"4. Witness Rodolfo Diolino, nephew of the victim, testified, inter alia, that on July 31, 1976 at about 11:00 o'clock in the evening, he was requested by the victim to accompany him to buy some cigarettes in a store which was about 200 meters away from their house; that on their way home from the store, they met the group of Mario del Mundo, 'Boy Ulo', 'Jr. Galapong', 'Lito Bungal' and 'Baluga'; that he and the victim were stoned by Mario del Mundo and his companions; that one of the stones hit him so he ran away; leaving the victim behind; that when he reached their house, he reported the stoning incident to the wife of the victim; that after fifteen (15) minutes, and before the victim's wife could proceed to the scene of the stoning incident, Aling Flor, who was their neighbor, arrived and informed them that the victim was already dead; that the victim was found dead at a spot about six (6) meters distant from the place of the stoning incident; that in the same evening, he gave a written statement to the police investigator (tsn, pp. 3-9, November 6, 1978). Said written statement was not presented in evidence.

"5. Amado Flores, a cigarette vendor, testified, among other things, that on July 31, 1976, at about 8:00 o'clock in the evening, while he was near the church in Novaliches, Quezon City, waiting for his wife who worked in a restaurant, he saw the victim Fabian Galvan and Rodolfo Diolino engage Mario del Mundo, 'Lito Bungal', 'Baluga' and 'Boy Ulo' in a stone-throwing fight; that he was about five (5) meters away from the protagonists; that when Rodolfo Diolino was hit with a stone he ran away, leaving the victim behind; that the group of Mario del Mundo overtook the victim near the gate of the Villaverde housing subdivision in Novaliches and further threw stones at him and hit him with bottles on the face and head; that when the victim fell to the ground, Mario del Mundo stabbed him in the abdomen; that he was about twenty (20) meters away from the place where the victim was stabbed by Mario del Mundo; that he has known Mario del Mundo who stabbed the victim since 1973; that the accused Mario del Mundo is not the same Mario del Mundo who stabbed the victim in the evening of July 31, 1976 (tsn, pp. 17-23, November 6, 1978).

"6. The prosecution marked and offered in evidence the following documentary exhibits: A, A-1, A-2, A-3, and A-4, pictures depicting the victim and showing the locations of the stab wound and the bruises inflicted on him (pp. 131-a to 131-d, rec., Vol. II); B and B-1, the Necropsy Report prepared by Dr. Nieto Salvador (p. 132, rec., Vol. II); C, the decision rendered by the lower court against Alberto Opida y Quiambao and Virgilio Marcelo y Soriano (pp. 9-19, rec., Vol. I); and D, a handwritten letter purportedly signed by Adelina Galvan, wife of the victim (p. 134, rec., Vol. II). Exhibits A to C were admitted without objection by accused-appellant. Exhibit D was admitted over the objection of accused-appellant. The authenticity of exhibit D was not proved. The alleged author did not testify in court. The truth of its contents was not verified.

"7. After the prosecution rested its case, accused-appellant waived his right to present evidence in his defense, and subsequently filed his "Memorandum for Dismissal" (pp. 192-197, rec., Vol. II), stating therein that the prosecution failed to establish his identity as the perpetrator of the crime charged; and, that his guilt was not proved beyond reasonable doubt. No written refutation thereto was submitted by the prosecution. Said "Memorandum for Dismissal" which could be treated as a demurrer to evidence was not resolved by the lower court.

"8. A perusal of the decision of the lower court finding accused-appellant Mario del Mundo guilty beyond reasonable doubt of the crime of murder will reveal the following:

'a) A recital of the testimony of Police Investigator David Noora which in the main shows that he investigated Alberto Opida y Quiambao and Virgilio Marcelo relative to the killing of Fabian Galvan (p. 209, rec.);

'b) A restatement of the testimony of Virgilio Marcelo which in substance indicates that he was with the group of Mario del Mundo when the victim was stoned by them (pp. 209-210, rec.);

'c) Factual findings of the lower court that accused-appellant was pointed to by Opida as the one who stabbed the victim; that witness Amado Flores positively identified accused-appellant as the one who stabbed the

victim; that accused-appellant was 'at war' with the victim; that accused-appellant conspired with the others in the commission of the crime charged; that accused-appellant had been in hiding and evaded arrest for more than two (2) years;

'd) The lower court's findings that accused-appellant interposed the defense of denial and alibi; that accused-appellant's version of the incident has not been corroborated by other pieces of evidence; that accused-appellant's testimony suffers from glaring inconsistencies; that the testimony of accused-appellant in open court is inconsistent in material details with the extra-judicial statements of Alberto Opida and Virgilio Marcelo.

"9. During the trial of accused-appellant before the lower court, Police Investigator David Noora and Virgilio Marcelo were not presented as witnesses either for the prosecution or for the defense. Actually, these two (2) witnesses testified for the prosecution in the trial of Alberto Opida and Virgilio Marcelo before the lower court (tsn, pp. 2-35, Sept. 8, 1976 and tsn, 2-17, September 22, 1976, respectively), long before the arrest of accused-appellant in 1978. Neither does the records show that the testimonies of Noora and Marcelo were reintroduced or adopted by the prosecution against accused-appellant. Undoubtedly, the adverse testimonies of Noora and Marcelo cannot be validly used against accused-appellant without violating the Constitution, and the Rules of Court (Sec. 19, Art. IV, Constitution, Sec. 1[f], Rule 115, Rules of Court).

"10. The aforementioned factual findings of the lower court are either unsupported by the evidence of record or contrary thereto. Nowhere in the evidence, oral or documentary, adduced by the prosecution is there any showing that accused-appellant was 'at war' with the victim; that accused-appellant conspired with the other accused in killing the victim; that Opida pointed to accused-appellant as the one who stabbed the victim. The extra-judicial statement of Opida implicating accused-appellant in the commission of the offense charged does not form part of the evidence presented against him. In fact, Opida testified before the lower court on October 4, 1976, which was prior to the arrest of accused-appellant in 1978. Contrary to the findings of the lower court, witness Amado Flores positively and categorically stated that accused-appellant was not the same Mario del Mundo who stabbed the victim to death. This is demonstrated by the following court proceedings:

Fiscal Angeles

Q Do you know the accused Mario Del Mundo?

A Yes, Sir.

Q If he is in court, can you point to him?

A Yes.

Fiscal Angeles

May we request that the witness point to the accused, your Honor? (Note: Witness could not point to person of the accused, Mario del Mundo).

A He is not here, sir.

xxxx xxxx xxxx

Atty. Pagcanluan

May we interrupt, Your Honor? May we make of record, Your Honor, that when the witness was requested to point to the accused, he said the accused was not here in court. In fact accused Mario del Mundo is seated on the bench within the sight of the witness, Your Honor.

xxxx xxxx xxxx

Court

Q How many Del Mundos do you know?

A Three, Your Honor.

Q Who are they?

A Mario del Mundo, Mario del Mundo; there are many Del Mundos in Novaliches.

Q The Mario del Mundo that you stated you know, is he here in court?

A None, Your Honor.

xxxx xxxx xxxx

Fiscal Angeles

Q This Mario del Mundo, whom you pointed to just now, did you have occasion to see him on July 31, 1976?

A No, sir.

Q But of the three Mario del Mundo that you mentioned a while ago, did you see any of them on July 31, 1976?

A Yes.

Q Who is that whom you saw on July 31, 1976, was it the first, second or third Mario del Mundo that you mentioned here in court?

A The third, sir.

Q That one whom you identified and pointed to in court just now?

A No, sir.

xxxx xxxx xxxx

Court

Cross examination

Atty. Solis

With the permission of the Honorable Court.

Court

Proceed.

Atty. Solis

Q You mentioned that there are three Mario del Mundo that you know in Novaliches and you pointed to Mario del Mundo present in this court room who stands accused, was he the same person whom you saw that evening on July 31, 1976 who stabbed Fabian Galvan?

A No, sir.

Atty. Solis

That is all, Your Honor, with the witness.

Court

Re-direct examination

Fiscal Angeles

No re-direct, Your Honor.

XXXX XXXX XXXX

(tsn, pp. 15-16, 17, 22, Nov. 6, 1978).'

Also contrary to the finding of the lower court, accused-appellant had not been in hiding and had avoided arrest for more than two (2) years because the record shows that the order of arrest for accused-appellant was issued only on April 24, 1978 and his arrest was effected on or before May 8, 1978 (pp. 94 and 98, rec., Vol. II).

"11. As we have earlier stated, accused-appellant waived his right to present evidence in his defense. He did not testify in court, neither did he present any witness to testify for him. The lower court, therefore, had no basis in asserting that accused-appellant interposed the defense of denial and alibi; that accused-appellant's version of the incident was not corroborated by other pieces of evidence; that accused-appellant's testimony is full of glaring inconsistencies; that accused-appellant's testimony in open court is contradictory to the extra-judicial statements of Alberto Opida and Virgilio Marcelo.

"12. With the exclusion of the oral and documentary evidence which were not validly presented and received by the lower court, and its findings of facts and determinations which are not borne out by the record, what would remain to be considered as basis for the decision would be the testimonies of Dr. Nieto Salvador, Rodolfo Diolino and Amado Flores, and exhibits A to C. As we have earlier shown, Dr. Salvador's testimony proved that the victim died of hemorrhage, acute, severe, secondary to stab wound in the abdomen. With respect to Diolino, the prosecution tried to establish the fact that accused-appellant was among the group that stoned the victim. As regards Flores, it was established that the victim was stabbed not by accused-appellant but by another Mario del Mundo. Insofar as the documentary exhibits are concerned, the prosecution established that the victim died of hemorrhage, acute, severe, secondary to stab wound in the abdomen; and that Alberto Opida and Virgilio Marcelo were tried and convicted by the lower court for the killing of Fabian Galvan.

"13. The rule in our jurisdiction is that, in a criminal case, the defendant is entitled to an acquittal unless his guilt is proved beyond reasonable doubt (Sec. 2, Rule 133, Rules of Court). Although it is true that proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty, moral certainty only being required, or that degree of proof which produces conviction in an unprejudiced mind, yet the evidence established in the case at bar points otherwise. And while a reviewing court would normally not disturb the findings of the trial court on the credibility of witnesses in view of the latter's advantage of observing at first hand their demeanor in giving their testimony, this Honorable Court has held that the rule of appreciation of evidence 'must bow to the superior and immutable rule that the guilt of the accused must be proved beyond reasonable doubt because the law presumes that a defendant is innocent and this presumption must prevail unless overturned by competent and credible proof' (People vs. Pagkaliwagan, 36 SCRA 113; People vs. Macaraeg, et al., 53 SCRA 285, 291-292; cf. Ramos vs. Court of Appeals, 63 SCRA 331).

"14. We submit that the testimony of Rodolfo Diolino is inadequate to overcome the legal presumption that accused-appellant is innocent of the offense charged. Diolino's identification of accused-appellant as one in the group of five (5) who stoned him and the victim is doubtful. Diolino admitted that he met accused-appellant for the first time during the stoning incident and only for a brief moment because he (Diolino) immediately ran away (tsn, pp. 5-6, Nov. 6, 1978). Diolino was uncertain if the victim was hit with stones by accused-appellant (tsn, pp. 5-6, *ibid*). Diolino is the nephew of the victim's wife so that the possibility that he was influenced by the former to implicate accused-appellant in the commission of the crime Charged cannot be discounted. Adelina Galvan, wife of the victim, although not presented as a witness, thought, as shown in her four letters to the Presiding Judge of the lower court, that accused-appellant was one in the group of five who assaulted her husband. The letters were not presented in evidence. Even Assuming *arguendo* that Diolino correctly identified accused-appellant as the one who stoned him, still this is not sufficient as basis for the conviction of accused-appellant of the crime charged because he did not see accused-appellant or anybody else hit the victim

with a stone or stab the victim. Neither is conspiracy in the commission of the offense charged apparent from the testimony of Diolino. His testimony relates only to what transpired at the time he was stoned by accused-appellant. It does not inform of the behavior and actuations of accused-appellant and his group before, during and after the stabbing incident. It cannot be gleaned therefrom that accused-appellant and his group acted in concert pursuant to the same objective.

"15. The positive and categorical declaration of Amado Flores that accused-appellant is not the same Mario del Mundo who stabbed the victim to death has definitely laid to rest and settled the question about the identity of the real culprit. Amado Flores declared that he has known the Mario del Mundo who stabbed the victim since 1973 (tsn, p. 16, Nov. 6, 1978); that he was five (5) meters away from the group of Mario del Mundo when they stoned the victim and Diolino (tsn, p. 19, *ibid.*); that he was twenty (20) meters distant from the spot where the victim was stabbed by Mario del Mundo; that the scene of the crime was well-lighted (tsn, pp. 19-21, *ibid.*). Mistake as to the identity of the real malefactor is, therefore, improbable.

"16. All the foregoing reveal the prosecution's failure to prove the guilt of the appellant beyond cavil of doubt. Many of the discussions herein have been covered by accused-appellant's brief. But even at the risk of being repetitious, we nonetheless have to mention them here because they are the principal reasons which persuade us that the guilt of accused-appellant has not been established."[7]

True enough, most of what has been said as above quoted from the Motion of the Solicitor General, are discussed in appellant's brief with equal thoroughness, reflecting the zeal and studious care counsel de oficio has exerted in performing his sworn duty to his client, for which he should be commended. That the Solicitor General whose duty it is to sustain conviction if he can feasibly do so, has virtually admitted the futility of fighting the cause of the prosecution with a view to sustaining the judgment of conviction which, as clearly demonstrated in his motion, is flawed with glaring misstatements if not downright falsehood, is the best proof that the commendation is well-deserved.

Turning now to the merit of the appeal, We are satisfied from the evidence, that the appellant was not identified as one of the culprits, nor was conspiracy proven to hold him equally liable with those who actually laid hands on the victim and caused his death. The Solicitor General has so ably shown how the evidence utterly failed to establish these two important elements upon which appellant's guilt could be predicated, and how, in consequence, the judgment of conviction is so devoid of both legal and factual bases. To add anything more to the apt observation of the Solicitor General is hardly necessary, except perhaps to briefly narrate the incident for a more vivid picture of how the deceased met his death. For this purpose, We quote from the decision under review the following:

"From the evidence on record, it appears that at about 11:30 p.m., 31 July 1976, herein victim, in the company of Rodolfo Diolino, bought cigarettes from a store in front of the Church at the Novaliches town proper in Quezon City. On their way home, they met the group of the accused composed of Mario del Mundo together with Alberto Opida, alias Boy Ulo, Lito Maniac, Junior Biglangawa, alias Jr. Galapong and one Alias Baluga. Accused Mario del Mundo, who had an old grudge against the victim, suddenly hurled stones at herein victim and Rodolfo Diolino. The rest of the accused also picked up stones and beer bottles and hurled them at the duo. Witness Rodolfo Diolino ran towards the Villa Verde Subdivision where he was cornered by the group who took turns in mauling and hitting him with beer bottles and stones. When the victim fell on the ground, accused Mario del Mundo stabbed the victim with a kitchen knife and left the knife embedded in the victim's abdomen. After the incident, the accused scampered to different directions. The stabbing and stoning incidents were actually witnessed by Mr. Armando Flores, a neighbor of the victim, who at that time was waiting for the arrival of his wife who was working on a night shift.

"Accused Alberto Opida was sentenced by this Court and was apprehended by Barangay members who responded to the incident. He was subsequently turned over to the police officers who responded to the alarm.

"In his written statement, accused Opida admitted having joined the group in hurling stones and beer bottles at the victim and Rodolfo Diolino. Opida however pointed to Mario del Mundo as the one who stabbed the victim while Junior Biglangawa and Lito Maniac alternated in kicking and hitting with stones the victim's head. The victim died on the spot." [8]

The above is a verbatim reproduction of the statement in the trial court's decision against accused Opida and Marcelo on its finding based on the evidence presented during the separate trial held earlier of the said two accused, which seems to have unduly influenced said court in holding that the appellant herein and Mario del Mundo mentioned by witnesses in the earlier trial are one and the same person, despite the clear proof contrary thereto, as presented during the trial of appellant himself. This error of the trial court has been demonstrated to be so with convincing clarity by the Solicitor General, thus reinforcing appellant's own meticulous effort, through his able counsel, towards the same end.

So grave an error on such vital and decisive matter as the identity of appellant can have no other effect than to remove a basic support of the judgment of conviction rendered by the trial court. Even more serious is the reprehensible act of the trial court of stating in its decision facts totally unsupported by the records of the instant case, which it obviously lifted, word for word, from what was stated in the decision against Opida and Marcelo, as comparison of the two decisions will undeniably show, despite the difference of the evidentiary aspects of the two trials, particularly the fact that the defense in this case did not present evidence, renouncing its right to do so, after demurring to the evidence of the prosecution. The decision in this case was thus prepared unthinkingly, with wanton disregard of what actually transpired during the trial. For instance, the decision under review stated that Detective David Noora testified in this case, and so with Virgilio Marcelo, even reproducing their testimony in exactly the same words as they were restated in the decision against Opida and Marcelo. The minutes of the court sessions, however, do not show that Noora and Marcelo took the witness stand to testify in the trial of appellant. [9] Neither did appellant himself testify, and yet, the trial court ascribed to him the defense of alibi which he never offered. It is not strange, therefore, that the Solicitor General felt it had no choice but to ask for the reversal of the appealed decision and the acquittal of the appellant, joining the appellant's counsel in praying for said relief.

WHEREFORE, as prayed for by appellant, joined by the Solicitor General, the judgment appealed from, is hereby set aside, and another one entered acquitting the appellant of the crime charged. Accordingly, his immediate release is hereby ordered, unless he should be continued in detention for some other legal cause or causes. Cost de oficio.

Fernando, C.J., Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, Melencio-Herrera, Ericta, Plana, and Escolin, JJ., concur. Teehankee, J., no part.

---

[1] pp. 1-2, Rec., Volume 1.

[2] Appendix "A" to Appellant's Brief, p. 45, Rollo.

[3] See pp. 97, 99, Rec., Volume II.

[4] p. 104, Id.

[5] p. 45, Rollo.

[6] pp. 66-79, Rollo.

[7] pp. 67-79, Rollo.

[8] pp. 7-8, Annex "B" to Appellant's Brief, p. 45, Rollo.

[9] pp. 24-27, Rollo.

**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.