

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SERGIO POSPOS Y REGASA, DIONISIO POSPOS ALIAS ESYONG, AND
ANTONIO POSPOS, ALIAS ONE, ACCUSED-APPELLANTS.**

G.R. No. L-40310. July 25, 1983

Ponente: CONCEPCION, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b75e6638260c/>

CONCEPCION, JR., J.:

APPEAL from the judgment of the Court of First Instance of Samar finding the appellants guilty of the crime of Murder and sentencing each of them to suffer the penalty of reclusion perpetua, with the accessory penalties prescribed by law, and ordering them to indemnify the heirs of the late Concordio Empis in the amount of P12,000.00, and to pay the costs.

It is of record that at about 4:00 o'clock in the afternoon of September 10, 1972, Guillermo Robion, a septuagenarian from barrio Piñaplata, Gandara, Samar, went to the house of Concordio Empis in barrio Rizal of the same town, to castrate a piglet belonging to Concordio. Since it was already dark when he finished his work, he was prevailed upon to spend the night in the house of Concordio. After eating their supper, Concordio asked Robion to accompany him to the house of the accused Dionisio Pospos, about 100 meters away. When they arrived at the said house, they saw Dionisio Pospos and his children named, Antonio, Sergio, and Magdalena, eating a new variety of rice, locally called gotok. They were invited to join the family and were served drinks. After sometime, Concordio explained the purpose of their visit to Dionisio Pospos, saying: "Esyong, my coming here is to have an accounting of our store in partnership." To this, Dionisio Pospos retorted: "What money are we going to account for when there is none, are you a fool?" Upon hearing this, Sergio Pospos stood up and stabbed Concordio at the chest. Concordio fell and the accused Dionisio Pospos and Antonio Pospos took turns in stabbing him with small pointed boloes. Frightened by what he had witnessed, Robion fled and ran towards the house of Concordio and informed the latter's wife what befell to her husband. Then, he went home to Piñaplata.[1]

The following morning, they found the body of Concordio Empis lying by the roadside, about 20 brazas away from the house of the accused Dionisio Pospos.[2] The authorities were notified and about noontime, policemen came and investigated the incident,[3] after which they brought the cadaver to the municipal building of Gandara, Samar, where an autopsy was performed.

Dr. Dario Legajo, who conducted the post-mortem examination, found that the deceased suffered the following lesions:

"Head - Lacerated wound at the left superior orbital region measuring 3 cm. in length.

"Neck - no pertinent findings.

"Front Chest: (1) Gaping stab wound located 2 inches above the left nipple measuring 2.5 cm. in length and 10.3 cm. in depth.

(2) 2 stab wounds above the level of the left nipple. Point of entrance of both wounds measured 1 cm. with a

depth of 14.4 cm. both hitting the heart.

(3) Stab wound located at the midsternum. Point of entrance measured 1 cm. with a depth of 14.7 cm. also hitting the heart.

"Back Chest —

(1) Stab wound below the right scapular area, with a length of 2.5 cm. and a depth of 9 cm.

(2) 2 superficial wounds at the right side of back of the chest.

"Abdomen - Gaping stab wound just below the level of the xiphiasternum with a length of 2.5 cm. and a depth of 19 cm. directed upward and to the left hitting the left lung.

"Extremities - no pertinent findings.

"Cause of death - massive, intrathoracic hemorrhage secondary to stab wound."[4]

Dr. Legajo opined that, because of the varied sizes of the entrance wounds sustained by the victim, more than one instrument was used in inflicting them.[5]

As a consequence, Sergio Pospos, Dionisio Pospos, and Antonio Pospos were charged with the killing of Concordio Empis before the Court of First Instance of Samar. After trial, the three (3) accused were found guilty as charged and sentenced as aforesaid.

The appellants maintained that Sergio Pospos alone is accountable for the death of Concordio Empis and assailed the trial court for accepting the uncorroborated testimony of Guillermo Robion which is full of inconsistencies and contradictions. The appellant Sergio Pospos declared that at about 6:30 o'clock in the afternoon of September 10, 1972, he went to his father's house nearby because when he passed by the house earlier that afternoon at about 5:00 o'clock, he saw Praxedes Salceda, an ambulant vendor. His father, Dionisio Pospos, and his younger brother, Antonio Pospos, who lives in his father's house, were not there. When he inquired about them, his younger sister, Magdalena, informed him that they had gone fishing in Barrio San Jose. Praxedes Salceda brought with her some crabs and a pocket-size bottle of Tanduay Rum. He asked for the rum which he drank at his father's house. After drinking, he went home and slept. At about 2:00 o'clock in the early morning, however, he was awakened by the screams of his sister, Magdalena. He jumped out of his bed and ran to his father's house. There, he saw a man on top of Magdalena who seemed to be strangling her. He picked up the pair of scissors his father had placed on the altar and with it, stabbed the man at the back. Upon being hit, the man stood up and wrapped his arms around him. But, he continued to stab the man. Finally, the man released him and ran down the house. He followed, but lost the man in the dark. He went home and then proceeded to Sulangan, Catbalogan, Samar, to see the husband of Praxedes Salceda. He "wanted him to go to the interior after his wife to my house to find out whether the one who went up to Magdalena died or not." The following day, a policeman from Gandara, Samar, came and informed him that the man who went up the house of Magdalena and whom he had stabbed, had died. He was further informed that the man was Concordio Empis. He also testified that he was a councilor of their barrio and had no quarrel with the deceased Concordio Empis. He denied that they ganged up on Concordio Empis on the night of September 10, 1972.[6]

Dionisio Pospos denied that he and the late Concordio Empis were business partners. He also denied that he and his sons, Sergio and Antonio, ganged up on the deceased Concordio Empis in the evening of September 10, 1972, claiming that he and his son, Antonio, were fishing in Barrio San Jose that night. He declared that he and his son, Antonio, left their house in Barrio Rizal at about 4:00 o'clock in the afternoon of September 10, 1972, and reached Barrio San Jose after paddling upstream for two hours. They ate their supper in their banca. At about 6:00 o'clock

in the morning of September 11, 1972, his daughter Magdalena came and told him: "Father go home because someone came up the house." So, they went home. On their way, they dropped by the house of the barrio captain of Canhumawi who advised them not to go home and to hide because the brother of the deceased Concordio Empis was there and might retaliate. So, they went to their farm and hid.[7]

The case hinges on the credibility of witnesses and, as in the rule in such cases, the trial court's opinion as to who should be believed is entitled to great weight. The trial judge who heard the witnesses testify and had occasion to observe their demeanor on the stand was of the opinion that those of the prosecution were the ones that deserve credence. We have examined the record with great care and find nothing which might justify our taking a different view.

The discrepancies in the testimony of Guillermo Robion, as well as in his affidavits, pointed out by the appellants are not of the nature that would tend to impair his credibility. They refer to minor details which are natural and to be expected from a septuagenarian recounting what he had noticed and experienced in an event full of excitement, horror, and fears. The observation of the trial judge in this respect is well taken. He said:

"It is true that in this first affidavit, Guillermo Robion stated that the incident in question happened at around two o'clock in the early morning of September 11, 1972. (Question and Answer No. 3, in Exhibits '1-H'). It is likewise true that in that affidavit, Guillermo Robion did not state what weapons were used but what he saw was that Concordio Empis, alias Cording, was ganged up. (Question and Answer No. 7 in Exhibit '1-H'). In the second affidavit of Guillermo Robion said witness, made a different affidavit and this affidavit, according to the defense, contradicts his first affidavit because in the second affidavit he stated that the incident occurred at eight o'clock in the evening of September 11, 1972 (Question and Answer No. 3, in Exhibit '1-H') and he likewise in this affidavit stated that the weapons used in the killing of Concordio Empis were pointed bolos. (Question and Answer No. 7 in Exhibit '1-H').

"The Court is not inclined to go along with the pretension of the defense that because there is variance or inconsistencies in the two affidavits of the lone prosecution witness and his testimony in Court, he is undeserving of faith and credence. Moore on Facts has said that an affidavit 'being taken ex parte is almost always incomplete and often inaccurate, sometimes from partial suggestions and inquiries, without the aid of which witness maybe unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for his accurate recollection that all belongs to the subject' (cited in *People vs. Cabiltes, et al.*, G.R. No. L-18010, September 25, 1968). A person investigated at different times cannot be expected to be identical and coinciding in every respect in both affidavit and in his testimony in court. It is sufficient that the principal points covered in both affidavits and in his testimony in Court are established although they do not dovetail in all details - which would even prove well-rehearsed and studied declarations.

"There is no question that contradictions and inconsistencies are present in both affidavits and in the testimony of the oft-repeated prosecution witness, Guillermo Robion. But as to the fact that Sergio Pospos, Dionisio Pospos and Antonio Pospos, one after the other, stabbed Concordio Empis, resulting in the death of the latter, there is no doubt in the mind of the Court. The fact of ganging up and stabbing are facts that are established by the testimony of Guillermo Robion and likewise narrated in both affidavits he executed. For it must be understood that the principal point in the incident at bar is not the time or kinds of weapons used in the killing, but the killing is the most important point and this fact has never been overthrown and overcome by the evidence adduced by the defense. Whether the crime was committed at eight o'clock in the evening of September 11, 1972 or two o'clock in the early morning of September 11, 1972 is of no moment for Guillermo Robion has stated in those affidavits and in his testimony in Court that it was the three accused who one after the other stabbed Concordio Empis, resulting in the latter's death. As said in a case, "The fact that a witness lied in one aspect, her whole testimony should be discarded, should not merit consideration. Professor Wigmore states that this rule ceased to be the rule in England as early as the beginning of the eighteenth century. (Page 130, Vol. 25, Velayo's Digest)." Modern jurisprudence gives the Court leeway to shift the truth

from the untrue (People vs. Cabaleta, G.R. No. L-1591; People vs. Refuerzo, G.R. No. L-1593; People vs. Patino, G.R. No. 2691-R, November 19, 1948; People vs. Dasig, G.R. No. L-5275, August 25, 1953). It would also not be amiss to state that to the Court it is immaterial if a witness cannot recollect the minor details of an incident like remembering the time and the weapons used provided all the facts that merit great consideration are established by facts and circumstances that lead irresistibly to the conclusion that death was produced by an attack made by an accused. It is the common experience of Courts of Justice that trivial contradictions are to be expected both in the observation of the startling occurrence and in recalling the same during an investigation of a witness and his testimony in Court. These contradictions have always been considered by the Courts as indicative of veracity rather than prevarication. For differences in details only serve to enhance rather than destroy the credibility of a witness. The witness of the prosecution Guillermo Robion may not have been able to recall everything but definitely he testified and positively identified Sergio Pospos, Dionisio Pospos and Antonio Pospos who attacked, one after the other, the unfortunate Concordio Empis. The contradictions and inconsistencies that he made as indicated by the defense in its memorandum, are unimportant differences which are to be expected in the nature of observing abnormal situations in rapid sequence."[8]

The trial court further said:

"The Court took pains to scrutinize carefully the testimony of Guillermo Robion, being the only eyewitness of the prosecution. The Court, however, noted that during his direct testimony and in answer to the carefully prepared questions propounded to him on cross-examination, his answers revealed that what he testified to regarding the person responsible for the killing of Concordio Empis were true. The Court endeavoured to observe and detect whether the witness would waver during the time he was under cross-examination for a wavering and wobbling witness can be a lying witness. However, during the cross-examination the prosecution witness, Guillermo Robion, did not fall into serious contradictions which can be expected of a witness who perverts the truth.

"From the observation of Guillermo Robion's demeanor on the stand and analysis of his testimony, the Court is convinced that this lone witness of the prosecution should be accorded faith and credit and his testimony given belief that it deserves. In this case at bar, the Court is satisfied after a searching scrutiny of the evidence adduced by the prosecution and the defense that the three accused killed Concordio Empis in the early morning of September 11, 1972. It must be repeated at this juncture that Guillermo Robion incurred some contradictions and inconsistencies but they are trivial mistakes which can be attributed to a desire not to falsify the truth. It is a truism that the most candid witness oftentimes commits mistakes and inconsistencies in his declarations but such honest lapses do not necessarily impair his intrinsic credibility. Far from being evidence of falsehood, those mistakes and inconsistencies could be justifiably regarded as a demonstration of good faith and in the case of Guillermo Robion a confirmation of the fact that he was not a rehearsed or hired witness."[9]

The appellants' claim that Sergio Pospos alone is accountable for the death of Concordio Empis and that Dionisio Pospos and Antonio Pospos did not participate in the commission of the offense is belied by the testimony of Guillermo Robion which categorically stated that the three appellants actively participated in the killing of the said Concordio Empis. Besides, the attempt of the appellants, Dionisio Pospos and Antonio Pospos, to evade arrest and prosecution is incompatible with their protestations of innocence. The offense was committed on September 10, 1972, but Antonio Pospos was arrested only on September 15, 1973,[10] while Dionisio Pospos was apprehended on November 1, 1973,[11] despite the several warrants issued for their arrest.

Moreover, Sergio Pospos declared that he used a pair of scissors in stabbing the deceased. The autopsy report showed, however, that the wounds inflicted upon the deceased were caused by three (3) different kinds of weapons.[12] It was probable, therefore, for the two other appellants to have participated in the commission of the offense as testified to by the prosecution witness.

We also find no merit in the claim of Sergio Pospos that he killed the deceased Concordio Empis in defense of his

sister, Magdalena Pospos. The evidence presented by him is improbable as to be accorded full faith and credit. He declared that he was a barrio councilor at the time.[13] And yet, he admittedly did not report the incident to the authorities. Instead, he went into hiding in barrio Sulangan, Catbalogan, Samar, where he was arrested the next day. His failure to report the attempt on the life of his sister to the authorities and his hiding in a remote place is certainly incompatible with his claim that he killed the deceased in defense of his sister, Magdalena.

It results that the trial court did not err in accepting the version of the prosecution as worthy of belief and in concluding that the guilt of the appellants have been proven beyond reasonable doubt.

The trial court correctly found that the killing of Concordio Empis was characterized by alevosia because the attack was sudden and unexpected as the appellant Sergio Pospos struck him a fatal blow in the heart catching him totally unprepared to make a defense on his person.

The trial court, however, erred in finding that there was no conspiracy in the commission of the crime. The trial court said:

"... The Court is of the opinion that there was no conspiracy in the commission of the offense. This belief is bolstered by the fact that deceased, Concordio Empis, went to the house of Dionisio Pospos without the knowledge of the three accused who were in the house of the said Dionisio Pospos. The evidence of the prosecution demonstrates that it was Concordio Empis and Guillermo Robion who went to see Dionisio Pospos for the purpose of making an accounting of their partnership. It can therefore be seen that before the arrival of Concordio Empis in the house of Dionisio Pospos the three accused could not have planned the killing of the former. It was only when a discussion ensued after Concordio Empis asked for an accounting of the sari-sari store that a discussion ensued and thereafter without any notice Sergio Pospos stood up and suddenly stabbed Concordio Empis without giving the latter an opportunity to defend himself or repeal the aggression. If Dionisio Pospos and Antonio Pospos followed the attack of Sergio Pospos that could have been on the spur of the moment and therefore conspiracy could not be established. . . ."[14]

His Honor was, obviously, referring to the absence of evident premeditation in the commission of the crime since the execution of the criminal act was not preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment. Conspiracy, however, could be implied since the appellants all took part in the deed and cooperated with unity of purpose and criminal intent when they took turns in stabbing the deceased.

In the end, We are satisfied that no overriding consideration exists to justify a reversal of the judgment appealed from. Accordingly, the conviction of the appellants are affirmed.

WHEREFORE, the judgment appealed from should be, as it is hereby, **AFFIRMED**. With costs against the appellants.

SO ORDERED.

Makasiar (Chairman), Aquino, Guerrero, Abad Santos and Escolin, JJ., concur.
De Castro, J., on sick leave.

[1] t.s.n. of Jan. 9, 1974, pp. 7-13.

[2] t.s.n. of Jan. 28, 1974, pp. 21-22.

[3] Id., p. 23; t.s.n. of Nov. 13, 1973, p. 73.

- [4] Exhibit "A", Original Record, p. 195.
- [5] t.s.n. of March 21, 1973, pp. 17, 25.
- [6] t.s.n. of Nov. 5, 1974, pp. 166-177.
- [7] t.s.n. of Oct. 30, 1974, pp. 149-153.
- [8] Decision, pp. 6-9; Original Record, pp. 282-285.
- [9] Id., pp. 12-13.
- [10] Original Record, p. 104.
- [11] Id., p. 118.
- [12] Exh. "A", Original Record, p. 195; See also t.s.n. of March 21, 1973, pp. 16-17.
- [13] t.s.n. of Nov. 5, 1974, pp. 176, 195.
- [14] Decision, pp. 13-14.

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.