

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMINGO ELEFAÑO, JR., ET AL., DEFENDANTS, ALFREDO ELEFAÑO
ALIAS “BOBBY”, DEFENDANT-APPELLANT.**

G.R. No. L-32573. November 25, 1983

Ponente: FERNANDO, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/cf0e37693fb7/>

FERNANDO, C.J.:

This is an appeal by Alfredo Elefaño from a conviction for the crime of murder for the death of Adolfo Brandes y Jurado. In the information filed by the Fiscal, his brother, Domingo Elefaño, Jr. was included. Both were convicted, the lower court Judge, now Associate Justice, Pacifico P. de Castro, finding both accused guilty beyond reasonable doubt of the crime of murder and sentencing each of them to life imprisonment with indemnification to the heirs of the deceased in the amount of P12,000.00 and the additional sum of P6,000.00 by way of moral damages. Only Alfredo Elefaño appealed from the above decision. A study of the evidence of record reveals that the killing could be characterized as murder but the participation of appellant Elefaño was that solely of an accomplice. The finding of guilt must be sustained but the penalty as to him must be reduced.

After setting forth the information against the brothers Elefaño, the facts were set forth thus in the appealed decision: "The evidence for the prosecution shows that about 9:00 o'clock in the evening of June 1, 1965, while the late Adolfo Brandes and some members of his family were listening to the radio, a mouth whistle was heard from outside their house at 11-A Legaspi, Project 4, Quezon City, Respon-ding to the whistle, Adolfo's younger brother, Mendel Brandes, peeped from a window and saw accused Domingo Elefaño near the fence. He went outside and meeting Domingo along the pathway, he asked the latter what he wanted. Domingo answered he wanted to talk to Adolfo. Whereupon, Mendel went back to the house and called for his brother, Adolfo, who then went to see Domingo whom he greeted cordially, asking him when he returned from the province. Domingo invited Adolfo for a walk, and acceding to the invitation, Adolfo returned to the house to dress up. He then left with Domingo, proceed-ing along Camerino Street towards Jose Rizal Street. Sensing that they were being followed by Adolfo's brother, Mendel, who became apprehensive that something amiss might take place because of a quarrel two weeks ago his brother Adolfo had with Domingo's brother, Alfredo, Domingo waited for Mendel. He requested the latter to buy for him some Philip Morris cigarettes. Mendel obliged and bought the cigarettes from a nearby store in the opposite direction to where Adolfo and Domingo were proceeding. Mendel thus had to catch up with the two whom he overtook along Antonio Luna St., giving the cigarettes to Domingo. Mendel, however, continued to follow them, staying behind about 15 meters away. The two were walking side by side, Domingo on the left, with his right hand on the shoulder of Adolfo. When they were about to turn from Jose Rizal Street to Magat Salamat Street, where the corner was well lighted, Domingo, still with his right hand on the shoulder of Adolfo, suddenly pushed the latter. Almost simultaneously, Alfredo Elefaño appeared from a corner store and immediately tapped Adolfo's shoulder and then held Adolfo's hands from behind. At that very instant, Domingo drew a knife from his waist and thrust it into Adolfo's stomach. Even as Adolfo had already been stabbed, Alfredo pushed him, causing him to fall to the ground. As the two brothers ran away, and seeing his

brother fall, Mendel ran towards Adolfo who now was writhing in pain, struggling to get home. With the help of one Bino and Alano, Mendel brought his brother in a taxi to the Quirino Memorial Hospital. It was not then about 10:20 that Adolfo was admitted into the emergency room. He was still conscious, able to talk and answer questions. At the emergency room, Adolfo told his mother, who was called for by Mendel, that the person who stabbed him was Domingo with the help of his brother Bobby, the other accused. Before the victim was operated on at about 11:30 that same evening, Pat. Cesar Bermejo of the Quezon City Police took his ante mortem statement (Exh. F) at the emergency room wherein he named as his assailants the herein two accused (Exh. F-1). After the operation Adolfo's condition worsened, and about 8:30 in the morning of the next day, he gradually lost consciousness until he finally died in the early hours on June 3, 1965."^[1]

In the decision of the court a quo, there was a narration of the defense submitted by both Domingo Elefaño, Jr. and Alfredo Elefaño. There is no need, however, for the purpose of this appeal, to pass on the merits of the claim of self-defense of the former as he did not join in the appeal. What follows is that portion of the decision dealing with the arrest of Domingo as well as his admission of his responsibility for the killing in a signed statement,^[2] given of his own free will, and his defense of alibi: "On June 3, 1965, when the case of the death of Adolfo Brandes was transferred to the Detective Bureau for investigation, Pat. Dalanon and Pat. Garcia started to question possible witnesses as to the slaying and the whereabouts of the suspects, the herein accused who, they were informed were in hiding. About August, 1965, Pat. Dalanon came to know that Domingo was in Tacloban, Leyte, for which reason, he went to Leyte and armed with a warrant of arrest issued by this Court and with the help of the agents of the NBI in Leyte, he arrested said accused in the house of his uncle, one Mr. Asardon. After his arrest, said accused was brought to the Tacloban Police Department where he was investigated. There he admitted that he was the actual assailant of Adolfo Brandes. He then gave a statement to that effect (Exh. A), which he voluntarily signed after reading it. For accused Alfredo Elefaño, the defense is alibi. The evidence presented in his behalf shows that in the morning of June 1, 1965, said accused attended a baptismal party where he took much of intoxicating drinks. When he went home from the party at about 6:00 in the evening, he found his brother Domingo and friends drinking in their garden. He again took about two bottles of beer although he was already feeling dizzy. He then told his wife to prepare supper after taking which he retired to bed about 8:00. He fell asleep almost immediately to awaken only the next morning."^[3] The main reliance of the brief for appellant is the failure of the prosecution to overcome the constitutional presumption of innocence.^[4] More specifically, it was contended that the defense of alibi was credible and that, on the other hand, the version of the witnesses of the prosecution was not. Hence the claim that the lower court failed to heed the constitutional mandate as to the standard that must be satisfied, namely, proof beyond reasonable doubt before such constitutional presumption can be overcome.

To reiterate what was earlier stated, a careful study of the records of the case makes clear that the judgment as to the criminal responsibility of appellant cannot be considered as erroneous, except that it should be in the concept of an accomplice, thus calling for the reduction of the penalty imposed.

1. Reliance on the presumption of innocence calls to mind *People v. Dramayo*.^[5] As was therein pointed out: "Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies."^[6] It is specifically required that "the requisite quantum of proof necessary for conviction be in existence."^[7] It is thus indispensable that guilt be established beyond reasonable doubt. Such a doctrine traces its lineage to the 1903 decision of *United States v. Reyes*.^[8] *Dramayo*, since then, has been cited with approval, in at least eleven cases by 1977, as noted in *People v. Montero*.^[9] Subsequently, it was again relied upon in four other cases: *People v. Quiazon*;^[10] *People v. Nazareno*;^[11] *People v. Cuison*;^[12] and *People v. Gabilan*.^[13]

2. To bolster the contention that the constitutional presumption of innocence had not been overcome, the third, fourth, and fifth assignment of errors were devoted to an analysis of the testimony of the prosecution witnesses. Appellant was quite vehement in his attack on the finding of facts that there was a positive identification of appellant as a participant in the crime. That was testified to by Mendel Brandes and Arnulfo Nacional. It was attempted in the third and fourth assigned errors to impugn their testimony. In the fifth assigned error, the lower court was taken to task for allegedly "not considering the weight and real significance of the first information of Mendel Brandes to his mother about the alleged stabbing of Adolfo Brandes in the final determination of the case against herein appellant." [14] Such an approach is hardly persuasive. In a number of decisions, this Court has reiterated the doctrine that as the trial judge had the opportunity to observe the witnesses testify concerning the events that did take place, the conclusion arrived at is entitled to full respect, unless, of course, it could be demonstrated that he failed to appreciate the significance of a relevant fact or circumstance or, what is worse, that it was ignored. So it has been since the opinion of Justice Moreland in *United States v. Pico*, [15] a 1910 decision. Since then, this Court has been committed to such a view. [16] Nor is such well-settled doctrine the only obstacle to the plea of appellant to be exculpated from the offense. The appraisal of the facts in the appealed decision is impressed with persuasiveness. It can stand the test of rigorous scrutiny - this notwithstanding the highly-commendable effort of appellant's counsel [17] to show that a contrary finding could have been reached. The third, fourth, and fifth assignment of errors are thus unavailing.

3. An even more conclusive proof why this appeal cannot be attended with success is the existence of an ante mortem statement. [18] As early as 1906, this Court, speaking through Justice Torres, in *United States v. Montes*, [19] held: "Hearsay testimony is not as a rule admissible, but in a prosecution for the crime of murder or homicide the statement of the deceased as to the cause of his death or any circumstance connected therewith should be taken into consideration if, in the judgment of the court, the deceased when making such statement was in imminent danger of death and without hope of living. Such was the critical condition of the deceased, Pascual de la Cruz, in this case when he made the said statement to his wife. He died almost immediately and it is not probable that while in such a critical condition he would have made a false statement or accused the defendant falsely." [20] Moreover, for "a dying declaration [to] be admissible, it is not necessary to prove that the declarant should state that he has given up the hope of life. It is enough, if from the circumstances it can be inferred with certainty that such must have been his state of mind." So it was expressly set forth in *People v. Chan Lin Wat*. [21] It suffices, moreover, if judging from the nature and extent of the injury inflicted, the seriousness of his condition is so apparent to the victim that it may safely be inferred that such declaration was made under the consciousness of impending death. [22] This is merely to affirm anew what was so felicitously set forth by Justice Street in *United States v. Virrey*, [23] a 1918 decision: "The admissibility of the declaration, as is thus apparent, depends on the state of the declarant's mind at the time of making the declaration; and the mere fact that death does not immediately follow will not render the declaration inadmissible, provided death does ensue as a result of the injuries which are the subject of the declaration." [24] Here the deceased died two days after the stabbing incident, although he lost consciousness the next morning. The liberality of this Court in attaching the highest probative value to declarations made at a time when the realization that one is about to meet his Maker is made evident in a host of decisions. [25] It is equally obvious that the first two assigned errors are devoid of merit.

4. The defense is that of alibi. Appellant "testified that he was at home at 75 Magat Salamat, Project 4, Quezon City during the night of June 1, 1965. He went to bed early before 8:00 in the evening with his wife and slept together until the next morning. He did not go out of the house that night of June 1, 1965. He explained his going to bed early that night by declaring that during the day he attended a party of a friend and he returned home at about 6:00 in the afternoon, a little bit drunk and dizzy. And on arriving home, he found his brother Domingo and his friends drinking. He joined the group and drank with them. After a while he asked his wife to prepare supper

and the two of them to eat together. It did not take long when he and his wife went to bed." [26] There was also the testimony of his wife [27] and his mother [28] to corroborate his claim that he had no participation in the crime. Appellant's brief then made this observation: "The lower court did not give credi-bility to the testimony of appellant's witnesses simply because they are relatives by blood relation who will go to any extent just to save a loved one. But we respectfully ask: Who else but the immediate relatives who stay with appellant in their house could have testified to his being in the home that night of June 1, 1965?" [29] This excerpt from *People v. Imbo*, [30] appears to be made to order: "Even discounting the bias of such witnesses, it cannot be said that the defense was entitled to belief. For such an allegation to commend acceptance the standard of full, clear, and satisfactory evidence must be met. There must be a showing that the accused was at such a distance away that it would not be possible for him to have been at the scene of the crime. Moreover, appellant was positively identified as the perpetrator of the crime. What other conclusion can there be then than that the defense put up by appellant must be rejected?" [31] The answer is quite obvious for there is positive identification from two witnesses, Mendel Brandes and Arnulfo Nacional. Once again, this observation from *People v. Cudalina*, [32] cited in *Imbo*, appears to be apropos: "It suffices to state that this Court when confronted with the defense of alibi * * * has invariably found it unconvincing and unsatisfactory." [33] The defense of alibi, therefore, must fail. That is to dispose of the remaining alleged errors imputed to the lower court.

5. There is thus no justification for reversing the appealed decision. A modification though is indicated. The brief for the People of the Philippines explains why: "Notwithstanding all the foregoing, however, we are of the belief that appellant's participation in the stabbing incident in question was merely that of an accomplice and not as a co--principal. 'An accomplice does not enter into a conspiracy with the principal by direct participation. He does not have previous agreement or understanding with the principal to commit a crime. But he participates to a certain point in the common criminal design' (*People v. Aplegido, et al.*, 76 Phil. 571). This conclusion of ours is based on his dearth of clear and positive evidence which could have established conspiracy between appellant and his brother Domingo Elefaño, Jr. (the knife-wielder) to kill the deceased Adolfo Brandes, evidence showing beyond pale of doubt that the said brothers had previously agreed or plotted to commit said crime. The version of the prosecution on the incident is concisely summarized by the lower court in its decision as follows: 'The two were walking side by side, Domingo on the left, with his right hand on the shoulder of Adolfo. When they were about to turn from Jose Rizal Street to Magat Salamat Street, where the corner was well lighted, Domingo still with his right hand on the shoulder of Adolfo, suddenly pushed the latter. Almost simultaneously, Alfredo Elefaño appeared from a corner store and immediately tapped Adolfo's shoulder and then held Adolfo's hands from behind. At that very instant, Domingo drew a knife from his waist and thrust it into Adolfo's stomach. Even as Adolfo had already been stabbed, Alfredo pushed him, causing him to fall to the ground.' (pp. 61-62, appellant's brief) True that the above shows a concert of action between appellant and the knife-wielder, his brother Domingo Elefaño, Jr., during the assault on the deceased. But the rule is now settled 'that neither joint nor simul-taneous action is per se sufficient indicium of conspiracy, unless proved to have been motivated by a common design' (*People v. Vicente, et al.*, G.R. No. L-26241, May 21, 1969, 28 SCRA 247, 257; *People v. Ibañez*, 77 Phil. 664). And independent of the simultaneousness of action between appellant and his brother Domingo, there appears to be no proof that appellant's act of holding the hands of the victim was motivated by the very same criminal design entertained by the knife-wielder Domingo." [34] This is another case then where the following excerpt from the ponencia of Justice Street, in the leading case of *People v. Tamayo*, [35] referring to Viada, finds application: "Now although, as thus demonstrated, participation on the part of an accomplice in the criminal design of the principal is essential to the same extent as such participation is necessary on the part of one charged as co-principal, nevertheless, it is evident, - and the cases above cited abundantly prove - that, as against an accomplice, a court will sometimes draw the inference of guilty participation in the criminal design from acts of concert in the consummation of the criminal act and from the form and manner in which assistance is rendered,

where it would not draw the same inference for the purpose of holding the same accused in the character of principal. This is because, in case of doubt, the courts naturally lean to the milder form of responsibility." [36] The above doctrine that the judiciary should lean towards the milder form of responsibility was followed in *People v. Tolentino* [37] and *People v. Torejas*. [38] The recommendation of the Office of the Solicitor General merits approval.

WHEREFORE, the appealed judgment is modified insofar as appellant Alfredo Elefaño is concerned. As recommended by the Solicitor General, the penalty imposed on him should be reduced to an indeterminate penalty, the minimum term of which should be 4 years, 2 months and 1 day of prision correccional to 10 years of prision mayor and the maximum should be within 12 years and 1 day to 14 years and 8 months of reclusion temporal. The civil liability imposed on him is like-wise reduced from P12,000.00 to P6,000.00 and the moral damages to be paid by him reduced to P3,000.00.

Aquino, Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

Makasiar, J., see dissent.

[1] Decision of the lower court, Appendix to Brief for the Defendant-Appellant, 60-62.

[2] Exhibit A.

[3] Ibid.

[4] According to Section 19, Article IV of the Constitution: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, * * *."

[5] L-21325, October 29, 1971, 42 SCRA 59.

[6] Ibid, 64.

[7] Ibid.

[8] 31 Phil. 3 (1903). Cf. *United States v. Lasada*, 18 Phil. 90 (1910).

[9] L-33155, April 22, 1977, 76 SCRA 513.

[10] L-44299, August 31, 1977, 78 SCRA 513.

[11] L-45533, November 29, 1977, 80 SCRA 484.

[12] G.R. No. 51313, July 25, 1981, 106 SCRA 98.

[13] L-45245, July 2, 1982, 115 SCRA 1.

[14] Fifth Assignment of Error, Brief for the Defendant-Appellant, 21.

[15] 15 Phil. 549.

[16] Some of the recent cases follow: *People v. Angcap*, L-28748, Feb. 29, 1972, 43 SCRA 437; *People v. Caran-dang*, L-31012, Aug. 15, 1973, 52 SCRA 259; *People v. Cudalina*, L-34969, April 29, 1975, 63 SCRA 499; *People v. Ordonio*, L-33829, Dec. 19, 1975, 68 SCRA 397; *People v. Sarile*, L-37184, June 30, 1976, 71 SCRA 593; *People v. Velasco*, L-31922, Oct. 29, 1976, 73 SCRA 574; *People v. Villamala*, L-41312, July 29, 1977, 78 SCRA 145; *People v. Rapada*, L-31243, Oct. 28, 1977, 80 SCRA 63; *People v. Gorgoles*, L-40885, May 18, 1978, 83 SCRA 282; *People v. Conchada*, L-39367-69, Feb. 29, 1979, 88 SCRA 638; *People v. Tigulo*, L-34334, Nov. 7, 1979, 94 SCRA 183; *People v. Sarmiento*, L-46833, Dec. 28, 1979, 94 SCRA 944; *People v.*

Baltazar, L-30557, Mar. 28, 1980, 96 SCRA 556; *People v. Soriano*, L-46297, June 19, 1980, 98 SCRA 69.

[17] Attorney Jose G. Recaido.

[18] Exhibit F.

[19] 6 Phil. 443.

[20] *Ibid*, 446. Cf. *U.S. v. De la Cruz*, 12 Phil. 87 (1908); *U.S. v. Castellon*, 12 Phil. 160 (1908); *U.S. v. Gil*, 13 Phil. 530 (1909); *U.S. v. Javellana*, 14 Phil. 186 (1909); *U.S. v. Jakan Tucko*, 20 Phil. 235 (1911); *U.S. v. Mallari*, 29 Phil. 14 (1914); *U.S. v. Virrey*, 37 Phil. 618 (1918); *U.S. v. Singson*, 41 Phil. 53 (1920); *People v. Dizon*, 44 Phil. 267 (1922); *People v. Abellera*, 47 Phil. 731 (1925); *People v. Pereja*, 47 Phil. 525 (1925); *People v. Gallos*, 47 Phil. 994 (1925); *People v. Almendralejo*, 48 Phil. 268 (1925).

[21] 50 Phil. 182, 191 (1927).

[22] Cf. *People v. De Gracia*, L-21419, September 29, 1966, 18 SCRA 197 and *People v. Briosos*, L-28382, January 30, 1971, 37 SCRA 336.

[23] 37 Phil. 618.

[24] *Ibid*, 625.

[25] Cf. *People v. Salahuddin*, 51 Phil. 840 (1928); *People v. Babiera*, 52 Phil. 97 (1928); *People v. Reyes*, 52 Phil. 538 (1928); *People v. Silang Cruz*, 53 Phil. 635 (1928); *People v. Ancasan*, 53 Phil. 779 (1928); *People v. Abedosa*, 53 Phil. 788 (1928); *People v. Lara*, 54 Phil. 96 (1929); *People v. Ortiz*, 55 Phil. 993 (1931); *People v. Alviar*, 56 Phil. 98 (1931); *People v. Serrano*, 58 Phil. 669 (1933); *People v. Siojo*, 61 Phil. 305 (1935); *People v. Diokno*, 63 Phil. 601 (1936); *People v. Mabasa*, 65 Phil. 568 (1938); *People v. Makandili*, 70 Phil. 199 (1940); *Cruz v. People*, 71 Phil. 259 (1941); *People v. Tacod*, 72 Phil. 157 (1941).

[26] Brief for the Defendant-Appellant, 43-44.

[27] *Ibid*, 44-48.

[28] *Ibid*, 48-49.

[29] *Ibid*, 49.

[30] L-36759, August 31, 1982, 116 SCRA 355.

[31] *Ibid*, 360-361.

[32] L-34969, April 29, 1975, 63 SCRA 499.

[33] *Ibid*, 507. After *Cudalina*, reference may be made to *People v. Cawili*, L-30543, July 15, 1975, 65 SCRA 24; *People v. Villamala*, L-41312, July 29, 1977, 78 SCRA 145; *People v. Yutila*, L-32791, January 27, 1981, 102 SCRA 265; *People v. Arias*, L-40531, January 27, 1981, 102 SCRA 303; *People v. Terrobias*, L-48944, February 26, 1981, 103 SCRA 321; *People v. Boado*, L-44725, March 31, 1981, 103 SCRA 607.

[34] Brief for the Appellee, 12-14.

[35] 44 Phil. 38 (1922).

[36] *Ibid*, 54.

[37] L-29419, August 31, 1971, 40 SCRA 514.

[38] L-29935, January 31, 1972, 43 SCRA 158. Cf. *People v. Custodio*, L-30463, October 30, 1972, 47 SCRA 289; *People v. Nierra*, L-32624, February 12, 1980, 96 SCRA 1; *People v. Realon*, L-30832, August 29, 1980, 99 SCRA 422; *People v. Doble*, L-30028, 11 SCRA 131.

People vs Elefaño : L-32573 : November 25, 1983 : J. Makasiar : Second Division : Dissenting Opinion 175 6 pt 6 pt 0 3

DISSENTING OPINION

MAKASIAR, J.:

The conviction of appellant Alfredo Elefaño for murder as co-principal should be affirmed. He, not his brother Domingo, Jr. had the compelling motive to kill the deceased; because he and the deceased quarreled about two weeks before the actual murder. He had a grudge against the victim. It is patent that appellant Alfredo sent his brother Domingo, Jr. as a decoy, pretending to invite the victim for a talk outside his house about 9:00 o'clock that evening of the incident, but leading him from Camerino street to Jose Rizal street and finally to Magat Salamat street with his right hand all that time on the shoulder of the victim whom he suddenly pushed towards a corner store. Suddenly from behind, appellant Alfredo tapped the victim's shoulder and held his hands behind his back. Thus, with the victim helpless, Domingo took his knife from his waist and stabbed the victim in the stomach, after which appellant Alfredo pushed the fatally wounded victim who fell to the ground. Thereafter, the two brothers ran away. It was a good thing that the victim's brother, Mendel, apprehensive, followed his brother and Domingo, Jr., appellant's brother and co-accused, and saw the stabbing. He saw the participation of both Elefaño brothers in the murder of his brother Adolfo. It is therefore obvious that the murder was planned by appellant Alfredo with the cooperation of his brother, Domingo, Jr. who did not appeal from the judgment convicting him of murder.

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.