

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICENTE MONTERO Y BRAGAS, DEFENDANT-APPELLANT.***G.R. No. L-33155. April 22, 1977*

Ponente: FERNANDO, J.

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It was an unfortunate turn of events that led to appellant Vicente Montero y Bragas taking a hand in a street brawl where a neighbor, Rufo Naboja by name, was involved with two brothers, Salvador Balacano and Avelino Balacano, the former of whom died, with the latter having survived and having lived to testify as the sole eyewitness against him. Prosecuted for frustrated homicide with Avelino as the offended party, and for murder in the case of Salvador as the victim, Montero was acquitted of the former charge and convicted of the latter offense, being sentenced to reclusion perpetua with indemnification to the heirs of the deceased in the sum of P12,000.00. Hence, this appeal. The main basis for seeking a reversal by appellant is the failure of the prosecution to overcome the constitutional presumption of innocence.[1] A careful study of the evidence discloses that a more careful and intensive scrutiny thereof would sustain the stand of appellant. While there were five witnesses for the prosecution, the sole testimony directly pointing to him as the one who fired the fatal shot came from one of the offended parties, Avelino Balacano, but contradictions of a serious character minimized the worth of his assertions on the stand. It is true a sister, Editha Balacano, testified, but she came to the scene of the affray after her brother Salvador was shot. Moreover, she was quite certain that he held in his hand a long gun, presumably the one used, but the declaration of an objective and neutral witness was that the slug recovered from the body of the deceased did not come from the rifle of the accused, but possibly from a firearm, like a local sumpak. Moreover, there was no proof of any motive that could have led appellant to perpetrate the act. Reference then to the authoritative principle that only by proof beyond reasonable doubt could the constitutional presumption of innocence be overcome, affords more than ample warrant for the appealed judgment being overturned. We reverse.

According to the appealed decision: "The only issue is who inflicted the injuries on the victim." [2] This was the answer: "The testimony of Avelino Balacano strongly yields the conclusion that accused was the one who shot the deceased Salvador Balacano. Avelino Balacano testified in a spontaneous, candid, frank and straightforward manner that while he and his brother Salvador were walking along the railroad track and upon reaching the house of the accused, they were immediately followed by the accused and his companions. Accused was armed with a short gun while his companions were with lead pipes. Thereafter, he was immediately stabbed by the son of the accused, Henry, and for which he shouted to his brother. This caused his brother to look back and at that precise moment, he was shot on the forehead causing him to fall. Thereupon, the companions of the accused immediately stabbed and hit him with lead pipes. The testimony of Avelino Balacano was corroborated by her sister Edita who likewise declared that when she was informed by Avelino that their brother Salvador was shot, she immediately went to the railroad track and there found her brother Salvador sprawled and [beside] him was Vicente Montero holding a gun together with his companions like Carding, Henry Montero, Eden Negro and Rufo. Henry was with a bladed instrument and the other companions were with lead pipes. When she shouted for help, they all ran

away."[3] That was all. The lower court concluded that appellant, who was the only one prosecuted, was the guilty party. As pointed out at the outset, had there been a more thorough appraisal of the evidence submitted, without the grave contradictions having been ignored, and with the other circumstances casting doubt on the guilt of the accused considered as well as the lack of motive evaluated, the judgment could have been different.

The rest of the opinion will be devoted to a discussion of the above propositions.

1. It is undoubted that the only person who could testify as an eyewitness to the alleged guilt of appellant was Avelino Balacano. After alleging that he was stabbed, it was to be expected that he would run away from the scene of the occurrence, after warning his brother Salvador that he should do the same. That was what happened. He was hardly in a position then to be quite precise as to what transpired next. What is not open to question was that Salvador was shot. He did categorically declare on the stand that it was appellant who did it. Under the circumstances, such affirmation coming from a single witness should have been the subject of a thorough and dispassionate appraisal. This Court, in a number of cases, had precisely based its judgment of acquittal on the insufficiency for conviction based on a testimony of a single individual. So it was held in *People v. Ricarte*,^[4] where this Court, through Justice Perfecto, noted the lack of persuasiveness of such evidence when it betrayed "contradiction" and "an attitude apparently inconsistent with the truth."^[5] The testimony that led to the conviction came from the lone eyewitness, Avelino Balacano, as noted, brother of the deceased. On direct testimony, he was quite positive that appellant, armed with a short-gun,^[6] shot the deceased.^[7] On cross-examination, he admitted that he testified differently when there was a police investigation of the incident. To quote his exact words: "Hindi ko nakita kung anong baril ang ginamit niya sa kapatid ko."^[8] Nor did he inform the police, again as shown in cross-examination, that the one who stabbed him was a son of the accused.^[9] Then came *People v. Cauilan*,^[10] where this Court, with Chief Justice Moran as ponente, spoke of the worthless character of the testimony of a single witness as "self-contradictory" and "inconsistent with previous statements" made by him.^[11] It was the same Justice Perfecto whose opinion in *People v. Valencia*^[12] rightfully disregarded the lone, unreliable and uncorroborated testimony of a single witness.^[13]

2. This is by no means to assert that acquittal would necessarily be entailed by the inability of the prosecution to have available more than one witness. As far back as 1902, in *United States v. Cabe*,^[14] reported in the first volume of the Philippine Reports, Chief Justice Arellano spoke for this Court thus: "The fact that only one witness testified is not an obstacle to our becoming fully convinced as to the certainty of the occurrence and of the guilt of the defendants, because, in addition to the testimony of this witness, we find grave and conclusive circumstantial evidence, based upon proven facts, * * *."^[15] The Cabe decision was cited with approval in subsequent cases.^[16] So it should be, if the weakness associated by the lone testimony is remedied by circumstantial evidence "grave and conclusive" in character. In this prosecution on the contrary, the circumstantial evidence pointed the other way. The appealed decision summarized the testimony on cross-examination of Simeon Molina, the chief of the ballistics section of the Manila Police Department thus: "In said cross-examination this witness declared that he cannot say with certainty whether Exhibit G-1 is a slug. It is possible that it is a fragment of a projectile or pellet like a bullet fired from a rifle barrel. The pellet was fired from a firearm like shotguns or the local 'sumpak' which has a GI pipe used as a barrel and another pipe welded on a rear and where a firing pin device is placed. The cartridge is placed inside the GI tube and made to meet with the other tube. When the improvised firing pin hits the primer of the cartridge, it causes a discharge. The weight of Exhibit G-1 is 23-1 grains while the bullet weight used in Exhibit H-1 is 37 to 40 grains. It is possible that Exhibit G-1 might have been fired from a 'sumpak' because of the shape and weight of Exhibit G-1. It resembles the deformed birdshot, pellet 18. Exhibit H-1 appeared not to have been tampered."^[17] It is worth noting that in a recent case, *People v. Tionson*,^[18] what was testified to by the same Simeon F. Molina proved decisive. As summarized in the opinion of the then Justice, later Chief Justice, Makalintal: "The above firearms, as well as the cartridge cases and bullets

found at the scene of the crime, and the bullets extracted from the bodies of the victims, were all submitted to the Criminal Investigation Laboratory of the Manila Police Department to determine which firearms but allege certain circumstances which, they contend conducted by Simeon F. Molina, ballistics technician of said laboratory, who submitted a report (Exhibit P) and testified in court on his findings. According to Molina, except for four .30 caliber fired bullets and one .30 caliber fired carbine cartridge case, as to which no conclusions could be made because of their deformed or mutilated condition, all the bullets and cartridge cases examined by him came from the firearms marked Exhibits G-3, G-4, G-5 and G-6. None of them, he said, could have been discharged from appellant Yacat's weapon (Exhibit G-1) which, although also of caliber .30, is not of the carbine type but a Browning automatic rifle. And as far as appellant Antonio's Garand rifle (Exhibit G-2) was concerned, no bullets or empty shells from such a firearm were submitted to Molina for examination. It is significant to note further in this connection that when Exhibits G-1 and G-2 were surrendered the first had its magazine still containing 17 live ammunition, and the second had its clip with 8 rounds, likewise undischarged." [19] It went on to state that in convicting two of the appellants reliance was placed "on the testimony of Ramon Lopez and Pacifico Arceo to the effect that all the soldiers took part in the shooting, and on the statement of Detective Napoleon Albano that they made an admission to that effect when he questioned them." [20] Then the opinion made clear why the findings of the ballistics expert should prevail: "The evidence given by Lopez and Arceo implicating appellants Yacat and Antonio is, as previously observed, contradicted by the finding of the ballistics expert presented by the prosecution that not a single bullet or cartridge case found in the premises or extracted from the victims' bodies came from the firearms of said appellants. Arceo testified as to the number of soldiers who participated, but could not positively identify them individually at the trial. Considering the exciting and rather confused events of the evening, it is not improbable for him to be mistaken as to the exact number of the assailants. The testimony of Ramon Lopez concerning the part played by Yacat and Antonio is hardly any better." [21] The result was acquittal. So it should have been in this case. That would have been to accord deference to the landmark Cabe ruling of Chief Justice Arellano.

3. The conclusion that the appellant ought to have been acquitted is reinforced by the doctrine announced by Justice Trent in *United States v. Sy Quingco*, [22] a 1910 decision: "While it is true that the testimony of one witness is sufficient to sustain a conviction, if such testimony establishes the guilt of the accused beyond reasonable doubt, we think that the testimony of the one witness in this case is not sufficient for this purpose. * * * The appellants have the presumption of innocence in their favor until the contrary is proven. The positive testimony of the two appellants is sufficient to raise a reasonable doubt as to their guilt. This doubt must be resolved in favor of the appellants." [23] Mention may likewise be made of *United States v. Olais*, [24] where Justice Malcolm warned against considering lone testimony being "sufficient to support a judgment of conviction [unless] it satisfies beyond reasonable doubt." [25] Certainly unless there be an unwarranted relaxation of such standard to justify a verdict against an accused, appellant should have been acquitted. The appealed decision would assume that the aggressors against the Balacano brothers were companions of appellants. There was no competent proof that such was the case. As a matter of fact, they apparently remained at large. He was the only one charged. He was also indicted for stabbing the lone eyewitness, Avelino Balacano, but he was acquitted. It did not serve the cause of clarity for the decision concerned with the prosecution of a single individual to harp repeatedly on the participants of a street brawl whose connection with the appellant was assumed rather than proved. There would likely have been no departure from the aforecited authoritative precedents, if greater attention were paid by the lower court to the testimony of appellant. He started by saying that he was peacefully at home in Gagalangin, Tondo around ten o'clock in the evening of August 9, 1970, when he heard his neighbor, Rufo Naboja, shouting for help. [26] He went down and "saw him grappling and rolling with his enemy. [He] shouted at them to stop." [27] He was armed with his rifle. [28] His interference was purely for the purpose of pacifying them, but evidently the Balacano brothers resented what he was doing, and they both rushed at him. [29]

Then he fired successive shots upwards, purely a defensive measure on his part.[30] Nor was there anything out of the ordinary for both brothers to run away.[31] Thereafter, he "heard loud gunshots and also not so loud gunshots." [32] By that time, they had gone quite far, and he himself "was by the door of [his] house. He did not notice anymore what else happened." [33] He was intensively cross-examined. He remained steadfast. Nothing to the contrary was elicited. If at all, the additional questions added to the credibility of what was testified to by him. To the question as to how he tried to stop the brawl, he answered that he said: "Itigil na iyang away na iyan." [34] He admitted that in addition to Naboa and the two Balacano brothers, there were many other persons, but he could not remember their names as his attention was focused on the two persons grappling. [35] He then reaffirmed that he saw the brothers running away from the scene of the quarrel. [36] The lower court however failed to accord any weight to his testimony as well as to that of his witness, one Leonardo de Asis, a laborer living on the same street where his house was located and likewise an eyewitness to what transpired. What cannot escape attention is that appellant's version was not at all discredited. Nor could it be said that there was any motive on his part to inflict any injury on the victim. There is thus more than ample justification to sustain the plea of appellant for a reversal of the judgment of conviction.

4. With the "grave and conclusive circumstantial evidence," to follow *United States v. Cabe*, negating appellant's guilt and the "positive testimony" to quote from *Sy Quingco* pointing to lack of culpability on his part, the constitutional presumption of innocence ought to have dictated a different result. Without proof of guilt beyond reasonable doubt, the judgment should have been one of acquittal. That is to pay heed to what was said in the leading case of *United States v. Lasada*: [37] "By reasonable doubt is not meant that which of possibility may arise, but it is that doubt engendered by an investigation of the whole proof and an inability, after such investigation, to let the mind rest easy upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict of any criminal charge but moral is required, and this certainty is required as to every proposition of proof requisite to constitute the offense." [38] Necessarily then, in the language of the recent *People v. Dramayo* [39] decision: "Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty." [40] *Dramayo* was cited with approval in subsequent cases. [41]

5. Nor is there any persuasive force to the argument that as a general rule, respect is to be accorded to the findings of fact by the trial court. This Court has never allowed such a principle to take precedence over the constitutional provision that an accused is presumed innocent. Quite apropos then is this excerpt from *People v. Macaraeg*: [42] "In essence, what is contended for by counsel is that the constitutional right to be presumed innocent is not to be nullified by the application of the well-settled doctrine that matters of credibility are for the lower court to decide in the absence of a fact or circumstance which has been overlooked or the significance of which has been misinterpreted. Such a principle may without inaccuracy be looked upon likewise as a presumption, one moreover borne out by experience. It is easy to discern that a trial judge is better situated than an appellate court in the appraisal of the testimony offered. The witnesses are there before him. He hears them testify; he observes their demeanor. He can sense the tell-tale signs of prevarication. It is not too difficult for him to distinguish between honest mistakes and deliberate fabrications. Thus a judge, especially one who has had years on the bench and with the training and habitude in the art, may be trusted to sift the false from the true. It is not likely that he can be easily taken in by the adroitness and skill of counsel or the well rehearsed performance of the individual on the stand. Nonetheless, such a doctrine certainly cannot rise above the constitutional presumption of innocence which

can only be overcome if the proof of guilt is beyond reasonable doubt. A doctrine of this Tribunal, however well-grounded in our past decisions, cannot prevail as against a mandate of the Constitution. In that sense, it is understandable why counsel for the accused would invoke such a right."^[43] It is not only understandable. He must be sustained. The appellant must be set free.

WHEREFORE, the appealed decision of October 15, 1970 insofar as it found appellant guilty as principal of the crime of murder and sentencing him to life imprisonment, with a liability of indemnifying the heirs of the deceased, Salvador Balacano, in the amount of P12,000.00 as well as of paying the costs, is reversed and set aside and the accused acquitted of such offense. This decision is immediately executory. His immediate release is hereby ordered.

Barredo, Aquino, Concepcion, Jr., and Martin, JJ., concur.
Antonio, J., did not take part.

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

[2] Decision, Appendix to Brief for Appellants, 25.

[3] Ibid, 25-26.

[4] 78 Phil. 112 (1947).

[5] Ibid, 115.

[6] T.s.n., Session of September 28, 1970, 7.

[7] Ibid, 8.

[8] Ibid, 16.

[9] Ibid, 19-20.

[10] 79 Phil. 272 (1947).

[11] Ibid, 274.

[12] 82 Phil. 657 (1949).

[13] Cf. *People v. Aparato*, 80 Phil. 199 (1948); *People v. Lanas*, 93 Phil. 147 (1953); *People v. Calacala*, L-18348, May 31, 1965, 14 SCRA 156; *People v. Capadocia*, L-5796, Aug. 29, 1966, 17 SCRA 981; *People v. Bayongan*, L-23658, April 26, 1968, 23 SCRA 237.

[14] 1 Phil. 265.

[15] Ibid, 266.

[16] Cf. *United States v. Colombro*, 8 Phil. 391 (1907); *United States v. Oracion and Lambino*, 18 Phil. 530 (1911); *United States v. Mondejar*, 19 Phil. 158 (1911); *People v. Sope and Cruz*, 75 Phil. 810 (1946).

[17] Decision, Appendix to Brief for Appellant, 20-21. Exhibit G-1 was the slug; Exhibit H-1 was the rifle surrendered by the accused.

[18] L-9866-7, November 28, 1964, 12 SCRA 402.

[19] Ibid, 407-408.

[20] Ibid, 408.

[21] Ibid.

[22] 16 Phil. 416.

[23] Ibid, 418-419. Cf. United States v. Ambrosio, 17 Phil. 295 (1910); United States v. Callapag, 21 Phil. 262 (1912); United States v. Baua, 27 Phil. 103 (1914); People v. Lope and Cruz, 75 Phil. 810 (1946).

[24] 36 Phil. 828 (1917).

[25] Ibid, 829.

[26] T.s.n., Session of October 2, 1970, 97-98.

[27] Ibid, 98.

[28] Ibid.

[29] Ibid, 98-99.

[30] Ibid, 99.

[31] Ibid.

[32] Ibid.

[33] Ibid.

[34] Ibid, 103.

[35] Ibid, 103-104.

[36] Ibid, 104.

[37] 18 Phil. 90 (1910).

[38] Ibid, 96-97.

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

[40] Ibid, 64.

[41] Cf. People v. Palacpac, L-27822, Feb. 28, 1973, 49 SCRA 440; People v. Zamora, L-34090, Nov. 26, 1973, 54 SCRA 47; People v. Alvarez, L-34644, Jan. 17, 1974, 55 SCRA 81; People v. Reyes, L-36874-76, Sept. 30, 1974, 60 SCRA 126; People v. Beltran, L-31860, Nov. 29, 1974, 61 SCRA 246; People v. Roa, L-35284, Jan. 17, 1975, 62 SCRA 51; People v. Padirayon, L-39207, Sept. 25, 1975, 67 SCRA 135; People v. Ordonio, L-33829, Dec. 19, 1975, 68 SCRA 397; People v. Ramirez, L-30635-6, Jan. 29, 1976, 69 SCRA 144; People v. Godoy, L-31177, July 15, 1976, 72 SCRA 69; People v. Berame, L-27606, July 30, 1976, 72 SCRA 184.

[42] L-32806, October 23, 1973, 53 SCRA 285.

[43] Ibid, 291.

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