

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DOMICIANO BERAME ALIAS DOMING, DEFENDANT-APPELLANT.***G.R. No. L-27606. July 30, 1976*

Ponente: FERNANDO, J.

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Evidence both direct and circumstantial resulted in the conviction for the crime of murder of Domiciano Berame, now appellant, for the killing of the deceased Quirico Maningo, apparently arising from the intense partisanship generated by local politics.[1] In the original information for murder filed, a certain Anastacio Montinola was likewise included, but he died soon thereafter. Appellant Berame was positively identified by a son of the deceased, who was just a meter away at the sala of their rented house at the time of the fatal incident. In the judgment now on appeal, the trial court likewise took into consideration the flight of the appellant, his surrender coming only after a month, the statement at the hospital made by the wounded co-accused Montinola that along with him, appellant participated in the act of shooting, and the fact that a rubber shoe, found in a swampy area where assailants hid for a while, did fit the right foot of appellant. As against such proof considered conclusive by the trial court, the defense of alibi was unavailing. A careful study of the record persuades us of the correctness of such a conclusion. We affirm.

According to the testimonial evidence: It was about 6:30 in the evening of April 13, 1966, that an assailant suddenly shot Quirico Maningo, then seated on a chair facing the main door of the sala of his rented house in Rizal Street, Suba District, Danao City.[2] His adopted son, Danilo Maningo, was seated one meter away from his right side.[2] Several successive shots were fired at Quirico Maningo.[4] He saw his father, Quirico Maningo, slump to the floor, wounded, with blood on his neck and breast.[5] He looked towards the main door where the shots came from and saw the accused holding a .38 caliber revolver.[6] He was easily identifiable, as there was a "big light" at the main door of the house.[7] Appellant was standing on a bright spot as he fired his gun several times at Quirico Maningo.[8] When the firing ceased, the witness ran towards the main door of the house and saw two persons, one of them being the accused Berame scampering away.[9] Quirico Maningo, the victim, was rushed to the Danao City General Hospital, but he was dead on arrival.[10] The appealed decision did likewise note that later that same evening, the PC Provincial Commander of the Philippine Constabulary with a Sergeant Armando Alfoja started the investigation of the killing of Quirico Maningo. In a swampy area at the back of the hospital near the cemetery of Danao City, where it was suspected one of the alleged assailants was hiding, they saw footprints and recovered a rubber shoe. Appellant was required at the trial to put it on. It turned out that it corresponded exactly with his right foot.[11] Moreover, appellant took flight after the killing and hid himself. He did not surrender until almost a month later, on May 8, 1966.[12] There was in addition the statement from one of those accused in the original information, Anastacio Montinola. As one of the suspects, he was pursued by the police authorities. When cornered, instead of surrendering, he decided to shoot it out. He was hit, it turned out, mortally. He admitted then and there that he was one of the killers of Quirico Maningo, and his companions were a certain Doming and one Erning. He made the admission anew at the Southern Islands Hospital when he was further questioned.[13]

The appealed decision, both thorough and comprehensive, discussed in detail the evidence for both the prosecution and the accused. The defense of alibi was carefully considered. It was not, as found by the trial court, sufficiently persuasive. It is easily understandable why. Appellant was positively identified. What is more, there were compelling tell-tale circumstances. If anything can be said to detract from the high quality of the appealed decision, it was the assertion of the possibility "that a person could be at Danao City at about 6 to 6:30 in the evening and be in Cebu City at 7 to 8 same evening." [14] That was by way of disposing of the claim of appellant that since he was in Cebu City at about that time, and Danao City is about thirty-two kilometers away from Cebu City, he could not have been responsible for the killing. Certainly, such an offhand, perhaps even possibly rash, statement of the trial court, could not be a sufficient basis for his acquittal. Witnesses are not noted for exactitude and precision in mentioning the time. The hours mentioned were approximations. Moreover, as to the circumstantial evidence, only the application of the *res gestae* rule to the statement of Montinola was sought to be refuted. No attempt was made to explain the flight of appellant causing the delay in his surrender for about a month and a shoe discovered near the scene of the crime fitting his right foot. The thirteen-page appellant's brief had another glaring deficiency. There was not even a reference to the direct testimony identifying appellant as one who fired the fatal shots. That is why, as noted at the outset, there would be no justification for the reversal of the appealed decision.

1. As is usually the case in criminal offenses, there was a direct conflict in the evidence submitted by the prosecution and the defense. What is undeniable is that there was testimony coming from a competent and credible eyewitness to the offense, Danilo Maningo, the son of the deceased. He heard the shots being fired and saw who perpetrated the deed. He was only a meter away, right at the scene of the crime. He had direct and immediate knowledge. He identified the accused. It was not difficult for him to do so as there was a "big light" at the door of the house. He was subjected to an intensive cross-examination. He stood his ground. He did not budge. His version of the incident, as a matter of fact, was reinforced. There was, in addition, testimony from one Carmencita Trinidad, who, coming from the church, heard the shots after which she saw two persons running away from the house of the deceased, one of whom was slightly taller than she, an assertion verified when it was shown that appellant's height as compared to her was precisely that. At about the same time, a certain Jorge Durano, whose house was located at the back of the hospital near the seashore and cemetery of Danao City, testified that he saw a person walking fast going towards a barrio in the north near the swampy area, his attention being called to such individual wearing rubber shoes. As against that, there was the testimony from appellant who, as noted in the decision, claimed "that at the time of the incident, at about 6:30 in the evening of April 13, 1966, he was in Cebu City in the house of Atty. Gabriel, a neighbor, conversing with the latter and that was the gist of the testimonies of two other witnesses, Nene Aranas and Libbi Cudilla, also his neighbors." [15] This is a case, therefore, where the trial court, after hearing and observing the witnesses testify, and weighing what was said by them, did choose to believe the prosecution rather than the defense. For such a finding to be overturned, there must be a showing that it did overlook a material fact or circumstance or did misinterpret its significance. [16] What was said in *People v. Tila-on* [17] comes to mind: "Finally, the rule is now firmly established to the point of becoming elementary in this jurisdiction and elsewhere that where there is an irreconcilable conflict in the testimony of witnesses, the appellate court will not disturb the findings of the trial court when the evidence of the successful party, considered by itself, is adequate to sustain the judgment appealed from." [18]

2. The appealed decision, moreover, finds impressive support from circumstances that point unerringly to appellant's guilt. They simply cannot be explained away. That could be the reason why his counsel did not even bother to do so. As noted in the decision, a rubber shoe left in a swampy area by someone leaving in a hurry the scene of the crime was just the right size. It did fit appellant's right foot. That was demonstrative evidence of the most persuasive kind. So it has been held time and time again. First there was *United States v. Tan Teng*, [19]

decided in 1912. Of more recent vintage is *People v. Otadora*,^[20] promulgated in 1950. The appealed decision was likewise based on the fact of appellant having been in hiding for sometime with the evident purpose of evading arrest. He did not surrender until after the lapse of a month. That again was a circumstance that could not be ignored. There is relevance to this excerpt from the opinion of Justice Malcolm in *United States v. Sarikala*:^[21] "Third, Sarikala left the scene of the murder immediately thereafter. Flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. 'The wicked flee, even when no man pursueth; but the righteous are as bold as a lion.'"^[22]

3. Then, too, there was a statement made by one of the original co-accused, Anastacio Montinola, on his being captured after the gunplay where he was wounded, it turned out, mortally. He admitted his participation in the killing of Maningo and pointed to appellant as one of his companions. While not amounting to a dying declaration, the lower court considered it as part of the *res gestae*, and rightly so. That was assigned as error by appellant's counsel in view of the nine hours that had elapsed from the time of the killing before its utterance. That is not enough to take it out of the operation of the principle. The teaching of a host of cases from *United States v. David*,^[23] a 1903 decision, is to the effect that it should be given credence. As was stressed by the then Chief Justice Concepcion in *People v. Ner*:^[24] "All that is required for the admissibility of a given statement as part of the *res gestae*, is that it be made under the influence of a startling event witnessed by the person who made the declaration before he had time to think and make up a story, or to concoct or contrive a falsehood, or to fabricate an account, and without any undue influence in obtaining it, aside from referring to the event in question or its immediate attending circumstances."^[25] As far back as 1942, in *People v. Nartea*,^[26] the marked trend of decisions, according to Justice Ozaeta, "is to extend, rather than narrow, the scope of the doctrine admitting declarations as part of the *res gestae*. Whether specific statements are admissible as part of the *res gestae* is a matter within the sound discretion of the trial court, the determination of which is ordinarily conclusive upon appeal, in the absence of a clear abuse of discretion."^[27] Here, again, there cannot possibly be any abuse of discretion. That much is clear.

4. The last error assigned is the alleged failure of the lower court to hold that the prosecution was unable to prove beyond reasonable doubt the guilt of appellant, and therefore he should be entitled to the constitutional presumption of innocence.^[28] It requires a certain degree of temerity to make such an assertion in the face of the competent and credible evidence of record. This is one of those cases where the culpability of appellant was shown in a manner that should remove any misgivings. The stage of moral certainty certainly was reached. The defense of alibi was indisputably devoid of merit. There was positive identification. Then there were the circumstances that indicated conclusively his participation in the criminal act. The alibi was therefore disproved by direct and circumstantial evidence.^[29] It is not inappropriate to conclude with this observation by Justice Endencia in *People v. Dagatan*,^[30] considering the distance involved between Cebu and Danao City: "In this particular case, appellants loosely told the court that at around eleven o'clock on the night of June 11, 1937, they were not in Carmen when the crime was being committed because they were in Cebu. They, however, failed to present credible and tangible evidence that it was physically impossible for them to be at Carmen at that time. On the contrary, they themselves furnished evidence that Carmen is only about 40 kilometers from Cebu City, with abundant means of transportation such as buses, jeepneys and trucks plying between the two places, which would at most take an hour to go from one place to the other, and according to Saturnino himself, it would only take him 40 minutes if he were to drive the car himself."^[31] The trial court therefore correctly decided that appellant is guilty of the crime of murder, the offense being qualified by *alevosia*, with the aggravating circumstance of dwelling being offset by the mitigating circumstance of voluntary surrender. The appropriate penalty then, as imposed in the appealed decision, is reclusion perpetua.

WHEREFORE, the decision of the lower court of March 8, 1967 finding the accused Domiciano Berame alias

Doming guilty beyond reasonable doubt of the crime of murder and imposing the penalty of reclusion perpetua is affirmed, with the only modification that the indemnity due the heirs of the deceased should be in the amount of P12,000.00 and not P6,000.00.

Barredo, Muñoz Palma, Aquino, and Martin, JJ., concur.

Antonio, J., did not take part.

Concepcion Jr., J., on leave.

[1] The appealed decision referred to the deceased as "the bitterest political enemy of Mayor Abel Borromeo of San Francisco, Cebu." Decision, Annex A to Brief for Appellant, 22.

[2] T.s.n., Session of October 5, 1966, 14-18.

[3] Ibid, 23.

[4] Ibid, 27-28.

[5] Ibid, 28-29, 33.

[6] Ibid, 31.

[7] Ibid, 70.

[8] Ibid, 90.

[9] Ibid, 29-30.

[10] Ibid, Session of July 23, 1966, 4.

[11] Decision, Annex A to Brief for Appellant, 20.

[12] Ibid, 22.

[13] Ibid,

[14] Ibid, 26.

[15] Ibid. 23.

[16] Cf. People vs. Gumahin, L-22357, Oct. 31, 1967, 21 SCRA 729; People vs. Panganiban, L-22476, Feb. 27, 1968, 22 SCRA 817; People vs. Pelago, L-24884, Aug. 31, 1968, 24 SCRA 1027; People vs. Manos, L-27791, Dec. 24, 1970, 36 SCRA 457; People v. Beraces, L-25016, March 27, 1971, 38 SCRA 127; People v. Sabandal, L-31129, Sept. 30, 1971, 41 SCRA 179; People v. Dramayo, L-21325, Oct. 29, 1971, 42 SCRA 59; People v. Angcap, L-28748, Feb. 29, 1972, 43 SCRA 437; People v. Carandang, L-31012, Aug. 15, 1973, 52 SCRA 259; People v. Macaraeg, L-32806, Oct. 23, 1973, 53 SCRA 285; People v. de la Victoria, L-30037, June 27, 1975, 64 SCRA 400; People v. Payao, L-29364, Nov. 21, 1975, 68 SCRA 70.

[17] L-12406, June 30, 1961, 2 SCRA 653.

[18] Ibid, 657.

[19] 23 Phil. 145.

[20] 86 Phil. 244. In between, the following cases may be mentioned. United States v. Ong Siu Hong, 36 Phil. 735

(1917); *United States v. Sarikala*, 37 Phil. 486 (1918); *Villaflor v. Summers*, 41 Phil. 62 (1920); *United States v. Zara*, 42 Phil. 308 (1921); *People v. Constantino*, 46 Phil. 745 (1923); *People v. Maguia de Taga*, 53 Phil. 273 (1929).

[21] 37 Phil. 486 (1918).

[22] *Ibid*, 487. *CF U.S. v. Virrey*, 37 Phil. 618 (1918); *People v. Manalo*, 46 Phil. 572 (1924); *People v. Wilson*, 52 Phil. 907 (1929); *People v. Medina*, 71 Phil. 383 (1941); *People v. Lacson*, 83 Phil. 574 (1949); *People v. Lacaya*, 86 Phil. 118 (1950); *People v. Gucor*, 86 Phil. 157 (1950); *People v. Kamad*, 100 Phil. 419 (1956); *People v. Urita*, 108 Phil. 730 (1960); *People v. Flores*, L-17077, April 29, 1968, 23 SCRA 309.

[23] 3 Phil. 128 *CF. United States v. Macuti*, 26 Phil. 170 (1913); *People v. Portento*, 48 Phil. 971 (1924); *People v. Palamos*, 49 Phil. 601 (1926); *People v. Quianzon*, 62 Phil. 162 (1935); *People v. Diokno*, 63 Phil. 601 (1936); *Sideco v. Paredes*, 74 Phil. 6 (1942); *People v. Alfaro*, 83 Phil. 85 (1949); *People v. Talledo*, 85 Phil. 533 (1950); *People v. Avila*, 92 Phil. 805 (1953); *People v. Ruzol*, 100 Phil. 537 (1956); *People v. Macabenta*, 106 Phil. 77 (1959); *People v. Alban*, 111 Phil. 533 (1961).

[24] L-25504, July 31, 1969, 28 SCRA 1151.

[25] *Ibid*, 1161-1162. This excerpt was cited with approval in *People vs. Abboc*, L-28327, September 14, 1973, 53 SCRA 54.

[26] 74 Phil. 6.

[27] *Ibid*, 10.

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

[29] *Cf. U.S. v. Roque*, 11 Phil. 422 (1908); *U.S. v. Lasada*, 18 Phil. 90 (1910); *U.S. v. Bonagale*, 24 Phil. 69 (1913); *U.S. v. Lumanlan*, 31 Phil. 486 (1915); *People v. Galang*, 73 Phil. 184 (1941); *People vs. Niem*, 75 Phil. 668 (1945); *People v. Valdez*, 83 Phil. 650 (1949); *People v. Dy Too*, 86 Phil. 146 (1950); *People v. Elizaga*, 86 Phil. 364 (1950); *People v. Mallabo*, 89 Phil. 288 (1951); *People v. Avila*, 92 Phil. 804 (1953); *People v. Samaniego*, 95 Phil. 218 (1954); *People v. Valladolid*, 106 Phil. 363 (1959).

[30] 106 Phil. 88 (1959).

[31] *Ibid*, 96.

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