

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JAVIER GONZAGA AND ESTELITO ARIAS,
DEFENDANTS-APPELLANTS.**

G.R. No. L-34418. May 26, 1977

Ponente: FERNANDO, J.

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FERNANDO, J.:

It was, to say the least, a rather unnerving experience to which Roberta Verra, the common-law wife of the victim, Bienvenido Cordova, was subjected on the evening of May 22, 1970 in Barrio Mimamara, Mahaplag, Leyte. With the other members of the family having retired for the night, she was still up as there was a sick child under her care. First, she noticed a bolo being thrust through the floor made of bamboo slits. She peeped through an opening near the kitchen and she saw appellant Estelito Arias under the banguera holding a firearm, aiming it in the direction of the kitchen door. Immediately thereafter, there was a loud explosion caused by a shot being fired. Then she saw her husband prostrate. He was bathed in his own blood and was groaning in pain. His death, as testified to by the Municipal Health Officer of the town who conducted an autopsy three days thereafter, must have been instantaneous, with four bullet wounds entering the left lung and heart and other bullets piercing the left arm. Appellant Estelito Arias, along with Javier Gonzaga and Marianito Pasaylo-on, were prosecuted for murder. Only the first two were convicted in view of the insufficiency of evidence against Pasaylo-on. Both of them appealed with appellant Gonzaga having died in the meanwhile.[1] The remaining appellant is Estelito Arias. In the lower court, as with us, his plea for acquittal is based on an alibi. He was elsewhere when the fatal occurrence took place. The trial judge was not convinced. Neither are we. There was positive-identification from Roberta Verra. It was bolstered by the circumstance testified to by another witness, who saw him, along with the other accused, coming from the direction of the fatal occurrence that same night. He had a gun with him. Deference to the well-settled doctrine as to the inherent weakness of such a defense when proof of such a character is available calls for the affirmance of the conviction. Appellant's guilt had been proved beyond reasonable doubt.

It was shown by the evidence for the prosecution that on the night of May 22, 1970, while the members of her family had already retired, Roberta Verra was still up and awake because she was attending to her sick child. It was then that she saw somebody from underneath the house thrust a bolo through the floor which was made of bamboo slits.[2] She stood up and peeped through an opening near the kitchen. There, she saw Estelito Arias under the banguera, holding a firearm and aiming it towards the door of the kitchen.[3] Immediately thereafter a shot was fired; her ears were deafened by the loud blast of the gun report.[4] She then heard her husband groaning and saw him bathed in his own blood.[5] Although she was terribly frightened, she rushed to her husband.[6] She likewise saw Javier Gonzaga and Marianito Pasaylo-on near the ladder of their kitchen, the former with a short firearm.[7] Then she noticed the accused running towards the direction of Barrio Balinsasayao.[8] It was not difficult for her to identify the accused as she had known appellant Arias[9] for ten years and had recognized appellant Gonzaga who was a former landlord.[10] The moon was out, and there was a light coming from the

lamp of the altar of the Blessed Virgin. Furthermore, the premises of the house was clear of vegetation as the lot was tilled and was newly planted with corn.¹² She also testified that Javier Gonzaga instituted a case for assault against her husband, resulting in his imprisonment in Abuyog, Leyte in 1970.¹³ He was released that same year.¹⁴ When her husband was shot, they were no longer tenants of Javier Gonzaga, as they were ejected from the land by him in 1969, and her common-law husband intended to file a case against Javier Gonzaga in the Court of Agrarian Relations.¹⁵ She further testified that accused-appellant Estelito Arias was a tenant of Javier Gonzaga and even had a house within the coconut plantation.¹⁶ There were no personal differences between her and the appellant but it was only her common-law husband who was nurturing one against him.¹⁷ Another witness, Manuel Verra, residing in Barrio Canmarating, Abuyog, Leyte, testified that on May 22, 1970, at about 6:00 o'clock in the evening, after fishing in the Layug river, he went to the house of his tenant Ponciano Cerbo, where the corn harvested was stored.¹⁸ It was not till after midnight that he arrived there.¹⁹ On the way to Cerbo's house, he met the three accused, namely, Javier Gonzaga, Estelito Arias and Marianito Pasaylo-on, all of whom were known to him and thus immediately recognizable.²⁰ They were armed, Gonzaga with a short firearm, Arias with a long one, and Pasaylo-on with a bolo tucked in his waist.²¹ There was no difficulty knowing who they were because it was a moonlit night, the sky was clear, and the area where they met without any vegetation except corn newly planted, just four (4) inches tall.²² While they were armed, he was not afraid, because they just crossed ways and they were walking rather briskly.²³

The lower court relying on such evidence found the two accused appellants Estelito Arias and the now-deceased Javier Gonzaga guilty of the crime of murder beyond reasonable doubt. The defense of alibi interposed by them was rejected. Estelito Arias as the sole appellant did continue to press such a claim. Deference to a long list of our decisions especially so where the culpability of an accused is shown not only by identification but by other circumstantial evidence demonstrates the futility of such effort. *People v. Berame*,²⁴ decided less than a year ago, is the latest case in point.

1. It is easily understandable why the identification of an accused as a participant in the commission of an offense by evidence that is worthy of credence and belief negates the claim of alibi. The falsity of an assertion that he was elsewhere and therefore could not have been guilty of the crime imputed to him becomes apparent. Where the proof of his presence then is clear and positive, such a defense is unavailing. In the language of Justice Laurel in *People v. Caroz*:²⁵ "Alibis cannot stand and prevail over clear and convincing affirmation of credible witnesses."²⁶ Such a doctrine is of respectable lineage. It was first announced by Justice Torres in *United States v. Roque*,²⁷ a 1908 decision, where the accused "was recognized with rare unanimity by five eyewitnesses to the sequestration as being one of the four armed individuals who in the early morning of the 23rd of June, 1904, abducted the deceased, * * *."²⁸ Since then, as pointed out by Justice Trent in *United States v. Lasada*,²⁹ promulgated two years later, alibi cannot avail as against "the positive and direct testimony"³⁰ of the witnesses for the prosecution. A host of cases indicates how authoritative is such a doctrine.³¹

2. The testimony that came from Roberta Verra, the common-law wife, was clear and positive. She was an eyewitness to the tragic occurrence. Such a dolorous event must have left an indelible impression in her mind. Appellant was seen by her, through an opening near the kitchen holding a long firearm aimed at that direction. Then came the shot fatal in its consequences. It hit her husband in vital spots. He was groaning, bathed in his own blood. Appellant with the two other accused were seen by her running away from the scene of the crime. She could not possibly have been mistaken. It was a moonlit night. There was nothing to obstruct the view, with the premises around the house devoid of vegetation. Appellant was no stranger to her. She had known him for ten years at least.³² Parenthetically, it may be noted that the inculpatory evidence coming from a bereaved widow identifying the malefactor has usually elicited acceptance from this Court. The first case of record is *United States v. Lumanlan*,³³ a 1915 decision. An excerpt from the opinion of Justice Laurel in *People v. De Guzman*³⁴ fits the

situation: "Appellants claim that their identity has not been sufficiently established, much less their participation in the crime of which they were convicted. We have carefully examined the record and are convinced that the appellants were among those who perpetrated the robbery against Valentin Dungca and Julia Lacsamana and who mercilessly raped Julia. Appellants were well known to Julia and the latter identified them. Julia, also, had sufficient time to recognize their features while they were successively abusing her. While the appellants sought the darkness of the night, detection on the part of the offended woman was facilitated by the moonlight then piercing the house."³⁵ There are several other decisions of a similar nature since then.³⁶ Nor is this all. There was a circumstantial evidence equally persuasive as to the guilt of appellant. Along with the other two accused, he was seen leaving the vicinity of the crime. Such testimony came from Manuel Verra. It was entitled to credence, and the lower court believed it. It admits of no doubt therefore that appellant was positively identified. What is more, his presence at the place where the criminal act occurred was likewise established. His defense of alibi was thus completely discredited.

3. The appealed decision is quite exhaustive. The lower court discussed in detail the evidence submitted by both the prosecution and the accused. It took pains to arrive at the truth of the matter. It did not just ignore the claim of appellant that he could not have committed the offense as he was nowhere near the scene of the crime. Rather it was guided by the authoritative doctrine, succinctly stated by Justice Laurel, thus: "The defense of alibi is always received with caution. It should be proved by probable evidence which reasonably satisfies the court of the truth of such defense. Alibis cannot stand and prevail over clear and convincing testimonies of credible witnesses".³⁷ It was on that basis that it rendered the judgment of conviction. After a thorough appraisal of the evidence, hearing and observing the witnesses and weighing what was said by them, it reached that conclusion. So do we, and not solely on the equally well-settled principle that the finding of facts by the trial judge is to remain undisturbed, absent a showing of a fact or circumstance which has been overlooked or the significance of which has been misinterpreted.³⁸

WHEREFORE, the appealed decision of September 21, 1971 is affirmed insofar as it found guilty beyond reasonable doubt of the crime of murder appellant Estelito Arias, the sentence imposed being reclusion perpetua with his civil liability in favor of the heirs of the deceased fixed at the amount of P12,000.00. The appealed decision is set aside insofar as the now-deceased Javier Gonzaga was likewise found guilty of the same offense, his death occurring during the pendency of this appeal.

Barredo, Antonio, Aquino, and Martin, JJ., concur.
Concepcion, Jr., J., on leave.

[1] A certificate of death was submitted to this Court on July 11, 1975. When the Solicitor General was asked to comment, he submitted such a pleading stating that "in view of the confirmed death of appellant Javier Gonzaga," his office "recommends the dismissal of the criminal case against him."

[2] T.s.n., Session of April 15, 1971, 13-14.

[3] Ibid, 14-15.

[4] Ibid, 16.

[5] Ibid.

[6] Ibid, 17,56.

[7] Ibid, 18,56.

[8] Ibid, 18-19, 57.

[9] Ibid, 13.

[10] Ibid, 20.

11 Ibid, 20, 24, 57.

12 Ibid, 24-25.

13 Ibid.

14 Ibid, 20.

15 Ibid, 21-23, 31.

16 Ibid, 25-26, 45.

17 Ibid, 42.

18 T.s.n., Session of April 14, 1971, 2-3, 10-11.

19 Ibid, 16-17.

20 Ibid, 5-6.

21 Ibid, 7-8, 17-18, 24, 26.

22 Ibid, 7, 16.

23 Ibid, 7-8.

24 L-27606, July 30, 1976, 72 SCRA 184.

25 68 Phil. 521 (1939).

26 Ibid, 526.

27 11 Phil. 422.

28 Ibid, 426.

29 18 Phil. 90 (1910).

30 Ibid, 100.

31 Cf. *United States v. Ambrosio*, 17 Phil. 295 (1910); *United States v. Bañagale*, 24 Phil. 69 (1913); *United States v. Garcia*, 26 Phil. 289 (1913); *United States v. Hudieres*, 27 Phil. 45 (1914); *United States v. Oxiles*, 29 Phil. 587 (1915); *People v. Cabantug*, 49 Phil. 482 (1926); *People v. Layos*, 60 Phil. 224 (1934); *People v. Medina*, 71 Phil. 383 (1941); *People v. Timbang*, 74 Phil. 295 (1943); *People v. Japitana*, 77 Phil. 175 (1946); *People v. Dedal*, 82 Phil. 203 (1948); *People v. Castillo*, 82 Phil. 420 (1948); *People v. Canastre*, 82 Phil. 480 (1948); *People v. Meriales*, 84 Phil. 18 (1949); *People v. Faltado*, 84 Phil. 89 (1949); *People v. Bondoc*, 85 Phil. 545 (1950); *People v. Lagon Ramos*, 85 Phil. 683 (1950); *People v. Sasota*, 91 Phil. 111 (1952); *People v. Avila*, 92 Phil. 805 (1953); *People v. Venegas*, 95 Phil. 209 (1954); *People v. Sawit*, 100 Phil. 507 (1956).

32 Cf. Brief for Appellee, 28-30.

33 31 Phil. 486.

34 70 Phil. 23 (1940).

35 Ibid, 26.

36 Cf. *People v. Gallego*, 82 Phil. 335 (1948); *People v. Buransing*, 88 Phil. 363 (1951); *People v. Mallabo*, 89 Phil. 288 (1951); *People v. Abalos*, 90 Phil. 261 (1951); *People v. Dacanay*, 92 Phil. 872 (1953); *People v. Baysa*, 92 Phil. 1008 (1953); *People v. Umali*, 99 Phil. 36 (1956); *People v. Arpon*, 100 Phil. 765 (1957).

37 *People v. De Guzman*, 70 Phil. 23, 26-27 (1940). Justice Laurel cited the following: *United States v. Garcia*, 26 Phil. 289 (1913); *United States v. Oxiles*, 29 Phil. 587 (1915); *United States v. Olais*, 36 Phil. 828 (1917); *People v. Badilla*, 48 Phil. 718 (1926); *People v. Limbo*, 49 Phil. 94 (1926); *People v. Cabantug*, 49 Phil. 482 (1926); *People v. Palamos*, 49 Phil. 601 (1926); *People v. Medina*, 59 Phil. 330 (1933).

38 Cf. *People v. Berame*, L-27606, July 30, 1976, 72 SCRA 184. The opinion cited twelve recent opinions starting from *People v. Gumahin*, L-22357, Oct. 31, 1967, 21 SCRA 729 to *People v. Payao*, L-29364, Nov. 21, 1975, 68 SCRA 70.

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