

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NARCISO G. FUERTES, ACCUSED-APPELLANT.

G.R. No. 104067. January 17, 1994

Ponente: REGALADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-104067/>

REGALADO, J.:

Accused-appellant Narciso G. Fuertes, supposedly in conspiracy with Peter Doe, John Doe and Richard Doe, was indicted for the murder of one Pablo B. Babula on August 9, 1990 in Pasay City, Metro Manila, the victim having been allegedly shot in the head by appellant.[1]

Of the four accused, only appellant stood trial on a plea of not guilty, the other three accused having remained unidentified and at large. Judgment was thereafter rendered by the trial court[2] on August 21, 1991, imposing the penalty of reclusion perpetua and ordering appellant to indemnify the heirs of the victim in the total amount of P250,000.00 by way of compensatory and moral damages, with costs.

From the evidence adduced by the prosecution, it appears that on August 9, 1990, while private contractor Manuel Lagrosa was waiting for his two co-workers at the corner of Singco de Junio Street, Pasay City, herein appellant approached him and they had a conversation regarding the fighting cocks which were then tied in that place.[3] Later, Pablo B. Babula came out from his house and walked towards them, tapped Fuertes on the hand and asked him when he arrived. They conversed in the Visayan dialect as they walked towards Libertad Street where the latter's car was parked, with Lagrosa glancing at them now and then.

As they reached a nearby store, appellant stayed behind the victim.[4] In front of the store was Francisco Macalalad, a bootblack, who was then waiting for customers.[5] Seconds later, both Lagrosa and Macalalad heard a gunshot. When they looked in the direction where the sound of the shot came from, Lagrosa, who was then 20 to 25 meters away from the store saw Babula falling to the ground with his face slumped forward. Macalalad, who was more or less three meters away, saw Babula lying prostrate on the ground, while appellant and an unidentified person were standing near the victim. Both men had drawn guns pointed toward the latter. Thereafter, appellant took one step nearer to Babula with his gun pointed toward him. Appellant then tucked his gun in his waist and entered an alley going to F.B. Harrison Street, followed by the unidentified person. Macalalad sought cover behind a fence, while Lagrosa immediately went to Mrs. Evangelista, his landlady, whom he requested to inform the family of the victim about the incident.[6]

According to Autopsy Report No. N-90-2405 of the National Bureau of Investigation,[7] the victim died due to a gunshot wound on the head. The entrance wound was located on the occipital region, along midline, directed forward, upward and to the right, with the exit wound on the middle of the forehead. The entrance wound had inverted edges, with a contusion collar widest at its lower border.

One of the prosecution witnesses, Calixto Brazil, an employee of International Container Terminal Services, Inc., testified that he knew appellant since they worked in the same company before the services of the latter were terminated for conducting an illegal strike. Babula was then the chief steward of the company and, likewise, the

president of its labor union which recommended appellant's dismissal.[8]

Appellant denied any participation in the killing of the victim and interposed the defense of alibi, declaring that on August 8, 1990, the day before the killing, he had a drinking spree with his family and some friends because it was the birthday of his mother, and he was able to go to bed only at around two o'clock in the morning of the following day. He was awakened only at around 8:00 A.M. of August 9, 1990 and he immediately prepared himself for work.

Tess Ishmael, a co-worker and close friend of appellant, was one of the guests who slept in the house of Fuertes that night. She testified that she went with appellant to their office in the service jeep of the company at around 8:00 to 8:30 A.M. the following day, picking up some of their co-employees on the way. They then proceeded to a church on 11th Avenue in Kalookan City and, from there, they went to Dasmariñas, Cavite where they were scheduled to gather some herbal plants.[9]

On September 7, 1990, NBI agents went to the Fuertes residence and appellant, although present therein, did not identify himself as the person the agents were looking for. Instead, allegedly fearing for his life, he went into hiding for two months.[10] On November 7, 1990, his father, Eduardo Fuertes, called a certain Atty. Oscar Embedo, an NBI agent, and told him that his son was willing to surrender. Atty. Embedo, with two others, went to their house and requested appellant to go with them to the NBI office. Appellant, together with his father, brother and cousin, went to the NBI office, claiming that he could not go on hiding because he is not guilty of anything. He admitted that he knew the victim who was the president of the labor union of the company where he once worked, and that he was dismissed at the instance of the latter.[11]

Before us, appellant questions the decision of the court a quo, insisting that it erred in giving credence to the testimonies of the prosecution witnesses, hence his guilt had not been proven beyond reasonable doubt. However, a meticulous study and judicious evaluation of the evidence on record, pro and contra, convinces the Court that the guilt of appellant for the offense charged has been established beyond reasonable doubt.

It is a settled rule, which appellant does not deny, that the factual findings of the trial court will generally not be disturbed by the appellate court considering that it is in a better position to rule thereon, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Appellant, however, contends that the aforementioned rule will not squarely apply to his case, considering that two judges tried, heard and received the evidence, that is, Judge Sergio I. Amonoy who heard the prosecution witnesses, and Judge Baltazar R. Dizon who heard the defense witnesses.

The fact that the judge who penned the decision did not hear the case in its entirety -- he only had the chance to hear and observe the defense witnesses -- is not a compelling reason to jettison his findings and conclusion, considering that the full record was available to him for his perusal.[12] This rule has been adhered to by this Court for quite a long time, and there is no reason to go against this principle now. It is not unusual for a judge who did not try a case to decide it on the basis of the record, for the former trial judge might have died, resigned, retired, transferred, and so forth.[13] Even if the judge who heard the evidence is not the one who rendered the judgment and that, for said reason, the latter did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the records of the case, that fact does not render the judgment erroneous.[14]

We shall take up seriatim the challenges posed by appellant to the credibility of the evidence for the prosecution.

1. Appellant assails the truthfulness of Lagrosa's claim that he has been a resident of 2310 Cinco de Junio Street, the locus criminis, for almost a year without knowing the first name of his landlady whom he only knew as Mrs.

Evangelista.

It is not unique, as belabored by appellant, that the landlady's first name was not known to her tenant considering the fact that the usual routine work of the latter does not allow enough time for him to stay at the rented room to socialize with neighbors. This was true with regard to his landlady by reason of their purely business relationship, and it is not denied that he instead always called her "Tiya" as a sign of respect.[15] Furthermore, when at the trial the defense counsel asked Lagrosa for his residence certificate to disprove his claimed residence, this was immediately produced by the witness and said certificate shows "2310 Cinco de Junio Street" as his address, with control number 9142291K. This was further supported by a certificate, as requested by the defense, issued by the Office of the City Treasurer of Pasay City to the effect that "x x x residence certificate no. 9142291K was among those recorded in the control book of the said office," hence it was legally obtained and not spurious as claimed by the defense.[16]

2. Appellant considers as unlikely the circumstance that Lagrosa, as a neighbor, did not himself inform the family of Babula of the tragic incident but that, instead, he asked Mrs. Evangelista to inform the wife and relatives of Babula.

It is not customary that a man not in any manner close to the family of the victim and who is merely their neighbor would readily relate to them such an unforeseen and tragic event. Lagrosa correctly apprehended that the news would elicit from the wife of the victim an emotional reaction which he could not handle, not being well-acquainted with her. Hence, he logically concluded that a long-time friend of the family like Mrs. Evangelista, could better take care of the situation in breaking the news to the family.

3. Appellant poses the theory that Lagrosa changed his version as to the reason for his presence at the scene of the crime, that is, from merely having a routine exercise to allegedly waiting for his two co-workers, instead of waiting at his residence which was known to the latter.

There is nothing unusual for someone to take some walking exercise and also wait for friends and/or co-workers outside of his house even if the same is known to the latter. This is especially true where they are on a particular job and they are anxious about not having had a job assignment for some time.[17]

4. Appellant calls attention to Lagrosa's admission of having an eye defect, as shown by the fact that he had a hard time reading his own executed statements before the NBI, hence the uncertainty of his identification of appellant.

This argument cannot be taken seriously, since it is common for persons in their fifties to be myopic or nearsighted, an eye defect which makes it hard for them to read written letters and drawings but does not prevent them from seeing objects and people at a distance. More importantly, when the court below asked Lagrosa whether he understood his statement executed before the NBI agents, after he manifested difficulty in reading without eyeglasses, he answered affirmatively. Actually, Lagrosa's eye defect did not render him incapable of reading his statement, albeit with some understandable difficulty.

The evidence shows that Lagrosa, in a very straightforward manner, was able to positively identify appellant. This identification is bolstered by the fact that he had chatted with appellant a few moments before the commission of the crime, which is corroborated by the testimony of witness Macalalad. While the sketch of the NBI cartographer of the face of the assailant did not match the face of appellant, this cannot be relied upon by the defense since the result of the sketch as supposedly described by Lagrosa was disowned by him as not being in accordance with the description he gave,[18] and said sketch was not shown to him thereafter for approval.[19]

5. It is appellant's contention that Macalalad was not at the scene of the crime, based on Lagrosa's testimony that he saw the former only after the police came.

This cannot hold water since Lagrosa was referring to the time when he noticed the presence of Macalalad, that is, after the police had arrived and were asking questions. He did not thereby deny that Macalalad was at the scene before the incident. Furthermore, it is consistent with human experience for one not to particularly take note of the presence of people in the vicinity except in case of any special development or reason for doing so.

6. Appellant advances the pretension that Macalalad allegedly later went to the Pasay City Police Headquarters bringing with him a picture of one Edgardo Soriano whom he tagged as the suspect, allegedly "per TSN, November 7, 1991."

The records show, however, that this contention is without basis since the decision in this case was penned by Judge Dizon on August 21, 1991 and was promulgated on August 23, 1991. On September 3, 1991, appellant's counsel filed a motion for new trial, which was initially granted in the trial court's order of September 20, 1991,[20] but ultimately denied in its subsequent order of November 11, 1991.[21]

Appellant tries to capitalize on the fact that Lagrosa saw only one armed man, while Macalalad said there were two men with drawn guns. Lagrosa, however, testified that when he saw Babula falling to the ground, appellant was at the back of the victim, but he also saw another person, whom he could not recognize because his head was bowed, who also ran after appellant into the same alley leading to F.B. Harrison Street.[22]

The claim of inconsistencies in the testimonies as to the clothing of appellant cannot be given any weight. Macalalad said appellant was wearing a blue polo shirt and black pants, while Lagrosa said that he wore a blue T-shirt with collar and chocolate brown pants. Both agree, however, that the upper apparel of appellant was not tucked into his pants. As held by this Court, discrepancies in minor details are to be expected from an uncoached witness.[23] Such minor variations would rather show the sincerity of the witnesses and the absence of connivance between them to make their testimonies tally in every respect.[24] Furthermore, witnessing a crime is an unusual and no less frightening experience which elicits different reactions and versions from the witnesses. There is no standard form of behavior when one is confronted by a shocking incident.[25]

On the delayed testimony of Macalalad, it is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case, as in fact the natural reticence of most people to get involved is of judicial notice. They are usually afraid to reap reprisals from the accused and/or his family and relatives. Hence, the initial silence then and the reluctance of Macalalad to testify does not taint his credibility.

No evil motive has been proved against both witnesses that might prompt them to testify falsely against the appellant nor was there any reason on their part to incriminate appellant but justice.[26] The eyewitnesses had no grudge against appellant. They did not even know him before the incident. There was no reason to doubt their credibility.[27]

Appellant maintains that his guilt was not proved beyond reasonable doubt because no witness to the "actual" shooting was presented. He is mistaken. As held in *People vs. Roa*,[28] direct evidence of the actual stabbing in that case was not necessary when circumstantial evidence sufficiently established the criminal assault, as in the case at bar. Resort to circumstantial evidence is, in the very nature of things, a necessity, and to require direct testimony would in many cases result in freeing criminals and deny proper protection to society. Here, the acts of appellant shortly before and during his meeting with the victim, and his position and actuations immediately after the shot was fired, cannot but definitively establish his authorship of the crime. Considering the sudden and completely unexpected shooting of the victim, it would be the height of desperation in argument to insist that there should be an eyewitness to the precise moment the shot was fired.

Needless to state, the defense of alibi invoked by appellant is inherently sterile and effete. Such defense becomes

weaker if uncorroborated, worse still if it could have been corroborated by other impartial persons mentioned by the accused but which corroborative testimony has not been presented, as in this case. Appellant did mention in his testimony that he was with at least ten office mates in the morning of the incident,[29] but he presented none of them except for one Tess Ishmael with whom he was very close. The statements of appellant's wife and father are undeniably tainted with bias for they spring from their natural desire to exculpate him from criminal liability,[30] and are unavailing in the face of his positive identification by the prosecution witnesses.[31]

In the case at bar, the victim was suddenly and without any warning shot by appellant from behind. Appellant, therefore, employed a means of attack without risk to himself which might have arisen from any defensive or retaliatory act on the part of the victim. With a firearm as the means of execution, although appellant's work does require him to carry one, it is undeniable that the mode of attack was deliberately and consciously adopted.

All the foregoing factual findings notwithstanding, we find that we cannot validly hold appellant guilty of murder as charged, this on fundamental principles of criminal law and procedure. The information filed in this case merely alleges that the accused, "x x x without justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and shoot Pablo B. Babula on the head with a firearm which said accused were then provided with, thereby inflicting upon said Pablo B. Babula a gun shot (sic) wound which caused his death."

These allegations do not warrant an inference, much less a conclusion, that appellant and his alleged confederates resorted to acts of treachery or any other qualifying circumstance in the infliction of the fatal wound on the victim's head. While it is not required that the acts constituting the offense must be stated in the terms of the statute defining the offense,[32] it is necessary that the qualifying circumstances be specifically pleaded or alleged with sufficient clarity as to be readily understood and not merely deduced. Absent such an allegation, the qualifying circumstance, if proved, shall be considered only as an aggravating circumstance.[33] That is the situation in this case and that is how this matter will be resolved. The conviction of herein appellant shall be for homicide, with treachery as a generic aggravating circumstance.

Voluntary surrender cannot be considered in favor of appellant. The requisites of voluntary surrender are that the offender had not been actually arrested, that he surrendered himself to a person in authority or to the latter's agent, and that the surrender was voluntary.[34] The element of voluntariness requires that it be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses which would be necessitated for his apprehension. Neither of these reasons can apply to appellant who gave himself up only to insure his safety since, as he admitted, he could not go on hiding.[35] Also, he has never conceded his guilt up to the present. It will even be recalled that when the NBI agents came to their house looking for him, he chose not to identify himself.

WHEREFORE, the judgment of the lower court is hereby MODIFIED by finding appellant Narciso G. Fuertes guilty of the crime of homicide and imposing on him an indeterminate sentence of twelve (12) years of prison mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum. In all other respects, said judgment is hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Puno, JJ., concur.
Nocon, J., on leave.

[1] Original Record, 1.

- [2] Criminal Case No. 90-5684, Regional Trial Court, Branch 113, Pasay City; Judge Baltazar Relativo Dizon, presiding; Original Record, 252.
- [3] TSN, December 21, 1990, 6-7; January 16, 1991, 4.
- [4] Ibid., id., 10-11.
- [5] Ibid., January 16, 1991, 4.
- [6] Ibid., December 21, 1990, 12-14, 16; January 16, 1991, 4-6, 11-12, 26.
- [7] Exhibits C and D, Original Record, 57-58; TSN, December 20, 1990, 7.
- [8] TSN, January 16, 1991, 16; February 4, 1991, 6, 11, 14, 18, 20; May 21, 1991, 19, 24.
- [9] TSN, May 21, 1991, 2-4, 6; June 3, 1991, 2, 5; June 24, 1991, 2-5, 11.
- [10] Ibid., May 21, 1991, 8; June 24, 1991, 17, 21.
- [11] Ibid., May 21, 1991, 7, 9-10, 24.
- [12] People vs. De la Cruz, et al., G.R. No. 68319, March 31, 1992, 207 SCRA 632.
- [13] People vs. Escalante, et al., L-37147, August 22, 1984, 131 SCRA 237.
- [14] Co Tao vs. Court of Appeals, et al., 101 Phil. 188 (1957).
- [15] TSN, December 21, 1990, 22-23.
- [16] Exhibit M and Exhibit 1, Original Record, 79; Exhibit 4-A, *ibid.*, 188.
- [17] TSN, January 9, 1991, 14-15.
- [18] Ibid., January 3, 1991, 4; Original Record, 151.
- [19] Ibid., January 21, 1991, 18.
- [20] Original Record, 269.
- [21] Ibid., 309.
- [22] TSN, December 21, 1990, 16.
- [23] People vs. Arbois, et al., L-36936, August 5, 1985, 138 SCRA 24.
- [24] People vs. Pielago, et al., L-42256, December 19, 1985, 140 SCRA 419.
- [25] People vs. Radomes, L-68421, March 20, 1986, 141 SCRA 548.
- [26] People vs. Caraig, G.R. No. 91162, October 3, 1991, 202 SCRA 357.
- [27] People vs. Asil, L-32102, February 10, 1986, 141 SCRA 286.
- [28] G.R. No. 78052, November 8, 1988, 167 SCRA 116.
- [29] TSN, May 21, 1991, 16-17.
- [30] People vs. Somera, G.R. No. 65589, May 31, 1989, 173 SCRA 684; People vs. Romero, L-38786, December 15, 1982, 119 SCRA 234; People vs. Orongan, et al., L-32751, December 21, 1988, 168 SCRA 586.

[31] People vs. Serrano, G.R. No. 74657, February 27, 1989, 170 SCRA 663.

[32] Sec. 9, Rule 110, Rules of Court.

[33] People vs. Collado, 60 Phil. 610 (1934); People vs. Jovellano, et al., L- 32421, March 27, 1974, 56 SCRA 156.

[34] People vs. Hanasan, L-25989, September 30, 1969, 29 SCRA 534.

[35] See People vs. De la Cruz, L-30059, December 19, 1970, 36 SCRA 452; People vs. Sabater, et al., L-38169, February 23, 1978, 81 SCRA 564.

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.