

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BONIFACIO ENCISO ALIAS “BONING”, ACCUSED-APPELLANT.*G.R. No. 105361. June 25, 1993*

Ponente: DAVIDE, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-105361/>**DAVIDE, JR., J.:**

For the fatal shooting of Rodolfo Jeminez on 25 June 1987 in Magdugo, Toledo City, accused was charged with the crime of murder before Branch 20 of the Regional Trial Court (RTC) of Cebu at Toledo City in an Information filed on 23 July 1987.[1] The case was docketed as Criminal Case No. TCS-794. A warrant for the arrest of the accused was issued on 23 July 1987 but was returned unserved with the notation that the accused "was no longer living in the above stated address." [2] Alias warrants were then issued on 14 August 1987, 13 October 1987, 23 November 1987 and 7 December 1987.[3] Still, the accused could not be arrested. The trial court then issued on 28 January 1988 an order archiving the case and directing the issuance of another alias warrant of arrest.[4] Finally, the accused was apprehended on 19 May 1988[5] and the court thus ordered the case removed from the archives and set for arraignment on 12 July 1988.[6]

At his arraignment, the accused entered a plea of not guilty.[7] On 8 August 1988, or three (3) days before the scheduled pre-trial, he filed a Motion to Dismiss[8] alleging therein that: (a) one Cesario Benoya, Jr. had executed an affidavit before the clerk of court of the Municipal Trial Court in Cities (MTCC) of Toledo City on 21 June 1988 wherein Benoya expressly admitted to having shot twice the victim, Rodolfo Jeminez, in the morning of 25 June 1987 at Magdugo, Toledo City, and wherein Benoya absolved the accused from any liability for the death of the said victim; and (b) on 12 July 1988, said Cesario Benoya executed an Affidavit of Confession in the presence of his counsel, Atty. Jose B. Echavez, before MTCC Judge Pablito Ruelan of Toledo City, wherein he confessed to having shot to death Rodolfo Jeminez.

To "prevent [a] miscarriage of justice," the trial court issued on 11 August 1988 an order deferring action on the motion to dismiss and directing the Fiscal of Toledo City to conduct a reinvestigation of the case.[9] In compliance therewith, 1st Assistant City Fiscal Jacinto P. Cavada conducted a reinvestigation, and on 15 November 1988, he submitted his Report and Recommendation[10] wherein he stated his findings, among which are that Benoya is a jailmate of the accused, and that the parents of the accused had talked to Benoya, who later admitted to P/Cpl. Marcelino Cabiles and Pfc. Juanito Maraviles of the Toledo City INP Station that the accused's parents had convinced him to own to the killing of Jeminez by offering him P10,000, of which P3,000 was paid in advance with the balance to be given upon the termination of the case. The latter finding was established by the joint affidavit of jail inmates Preabras Lebumfacil and Roberto Sanchez, and that of Cpl. Cabiles and Pfc. Maraviles together with their testimonies. Fiscal Cavada also disclosed that Benoya has a pending case for theft in the City Court of Toledo City and that earlier he had been convicted for theft by the RTC of Toledo City on 27 November 1986 and the MTCC of Toledo City on 22 January 1986. Fiscal Cavada then concluded that the purported affidavit of confession of Benoya must be rejected for being perjurious.

Acting on the said report, the trial court, in its Order of 24 November 1988, denied the motion to dismiss because

it was "convinced that the alleged confession of Cesario Benoya, Jr. was obtained for monetary considerations." [11]

On 20 December 1989, the accused filed a motion to dismiss on the ground that the information is fatally defective. [12] This was opposed by the prosecution which also moved that it be allowed to amend the information by adding the phrase "resulting in his death." [13]

In its Order of 26 January 1990, the trial court denied the motion to dismiss while granting the motion to amend the information. [14]

On 2 February 1990, the Acting City Fiscal of Toledo City filed the Amended Information, the accusatory portion of which reads as follows:

"That on or about the 25th day of June, 1987, at around 11:00 o'clock in the morning, more or less, at Barangay Magdugo, Toledo City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with evident premeditation and treachery, in that suddenly and unexpectedly without giving the victim a chance to defend himself, did then and there, willfully, unlawfully and feloniously, with the use of a paltik revolver shot one, RODULFO JEMINEZ, causing internal hemorrhage secondary to gunshot wound resulting in his death.

CONTRARY TO LAW." [15]

Upon his arraignment on the amended information on November 1990, the accused entered a plea of not guilty. [16] Trial on the merits ensued with the prosecution presenting Bibiano Purisima, Dr. Rafael Trinidad and Francisco Abarquez as its witnesses. The witnesses for the defense were Roberto Refuela, Danilo Rasonabe and the accused.

On 29 November 1991, the trial court promulgated its decision [17] convicting the accused of the crime charged. The dispositive portion thereof states:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court is constrained to convict the accused Bonifacio Enciso alias Boning beyond reasonable doubt of the crime charged of Murder and hereby sentences him to a penalty of life imprisonment and to pay Fifty Thousand Pesos (P50,000.00) as pecuniary liability to the heirs of Rodolfo Jeminez, and to pay the costs.

SO ORDERED." [18]

The judgment of conviction is primarily based on the eyewitness accounts of prosecution witnesses Bibiano Purisima and Francisco Abarquez. The former declared that at 11:00 o'clock in the morning of 25 June 1987, while going home from his classes at the Magdugo Barangay High School in Magdugo, Toledo City, he was met by the accused at the gate of the said school. The accused wanted to bring him to a culvert, about one-half (½) kilometers away from the school, so as to drink water from a faucet. They rode on the accused's bicycle, with Bibiano pedaling it while the accused was at his back standing on the extended axle of the rear wheel. Bibiano went to the faucet, leaving behind the accused. Since there was no water from the faucet, Bibiano went back and rode again on the bicycle, with the accused still at his back. As they were descending down the road, the accused told Bibiano to slow down when they saw two (2) persons, one of whom was a young boy. The accused drew a firearm from his waist and shot the boy's companion. The boy uttered, "Hala mo" as the victim fell on his back. The accused then told Bibiano to go faster, but because the latter pedaled slowly, the accused took over and pedaled the bicycle himself. Bibiano rode at the back, but got off near the bridge, about 400 meters from where the victim was shot. Upon reaching home, he told his parents that the accused had shot somebody. Bibiano's father advised him not to escape but to surrender to the police authorities. He was then brought to the police

department of Toledo City where he was investigated.[19]

The boy who was with the victim at the time of the shooting was Francisco Abarquez. The victim, Rodolfo Jeminez, was his uncle. Francisco testified that while they were walking home from the Magdugo Elementary School, where he was then a Grade I pupil, at 11:00 o'clock in the morning of 25 June 1987, the accused, who was riding at the back of a bicycle, pulled out a revolver and shot his uncle.[20]

The accused interposed the defense of alibi. He claims that from 7:00 o'clock in the morning up to 12:00 o'clock noon of 25 June 1987, he was in the house of Roberto Refuela in Amislag, Toledo City, repairing radios with the latter and Danilo Rasonabe. The last two corroborated his testimony. He concedes, however, that the distance between Amislag and Magdugo may be reached in five (5) minutes by tricycle, and in twenty (20) minutes by walking.[21] He further admits that while in detention, he wrote a letter to prosecution witness Purisima requesting the latter not to attend the hearing so that his case could be disposed of immediately, promising, however, that he will help Purisima after he is freed (Exhibit "D").[22]

The judgment of conviction is anchored on the following findings and conclusions of the trial court: (a) prosecution witness Bibiano Purisima and Francisco Abarquez positively identified the accused as the one who had shot and killed the victim and "their testimony remained unshaken, unsullied and unavoidably worthy of credit and belief";[23] (b) the defense of alibi "does not hold water" because Amislag, Toledo City, where the accused claimed to be staying at the time of the commission of the crime, is near Magdugo, Toledo City, where the crime was committed. The distance between the said places could be negotiated by tricycle in five (5) minutes and the accused had a bicycle at the time he shot the victim; (c) the accused did not surrender to the authorities after the incident; on the contrary, he fled, and five (5) warrants for his arrest had to be issued; it was only on 19 May 1988 that he was finally arrested; this flight is indicative of guilt as "the wicked flee even if no one pursueth but the righteous are as bold as the lion"; (d) he "resorted to perverting and waylaying justice" by writing a letter to Bibiano Purisima (Exhibit "D") requesting the latter not to testify in the case, which act is indicative of his guilt; (e) he resorted to fabrication of evidence by obtaining from Cesar Benoya, Jr., his co-detainee, for and in consideration of P10,000.00 -- of which P3,000.00 had been paid -- the latter's affidavit of confession wherein Benoya took the rap for the accused and stated that the latter happened merely to be riding at his back seat; and (f) with such confession of Benoya, Jr., which the accused used as a basis for his motion to dismiss, he cannot now be heard to say that he was not at the scene of the crime at the time it was committed.

On 9 December 1991, the accused, hereinafter referred to as the Appellant, filed his notice of appeal wherein he manifested his intention to appeal from the judgment of the court a quo to the Court of Appeals on questions of fact and law.[24] The trial court gave due course to the appeal, and the Court of Appeals docketed the case as CA-G.R. CR No. 12594. However, in view of the penalty imposed, the Court of Appeals certified the case to this Court on 22 May 1992.[25] This Court accepted the appeal on 17 June 1992.[26]

In his Brief,[27] the appellant contends that the trial court erred:

"I

X X X IN STATING THAT THE APPELLANT WAS POSITIVELY IDENTIFIED BY THE WITNESSES
FOR THE STATE

II

X X X IN GIVING WEIGHT TO THE TESTIMONIES OF THE WITNESSES FOR THE STATE

III

X X X IN GIVING WEIGHT TO THE NOTE WRITTEN BY THE APPELLANT (EXHIBIT "D") BY RULING THAT THE SAME WAS AN ADMISSION OF GUILT

IV

X X X IN CONVICTING THE APPELLANT OF THE CRIME OF MURDER."[28]

At the heart of the first two (2) assigned errors is the issue of credibility of witnesses. More than eighty (80) years ago, this Court laid down the rule that It will not interfere with the judgment of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted.[29] This was reiterated thereafter in a plenitude of cases. The reason for this is that the trial court is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[30] Elsewise stated, the trial court has the direct opportunity to observe the witnesses on the stand and detect if they are telling the truth or lying through their teeth.[31] There are certain matters that aid the trial court in determining the credibility of witnesses which, however, are not available to the appellate court. Thus, in *United States vs. Macuti*,[32] this Court had the occasion to state:

"The emphasis, gesture and inflection of the voice are potent aids in understanding the testimony of witnesses. The trial court has the opportunity and is presumed to take advantage of these aids in weighing the testimony of the witnesses. But as they cannot be incorporated into the record, this court has no assistance in the examination of the testimony and we must therefore rely upon the good judgment of the lower court."

In the fairly recent case of *People vs. Arroyo*,[33] this Court also observed:

"Furthermore, findings of fact of trial courts are accorded great weight by an appellate tribunal for the latter can only read in cold print the testimony of witnesses which commonly is translated from the local dialect into English. In the process of converting into written form the statements of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the written translated words."[34]

We have carefully read the transcripts of the stenographic notes and evaluated the testimonies of the witnesses, and We find no cogent reason to depart from the foregoing rule. The trial court has not overlooked any fact of value or any circumstance of consequence which, if considered, would affect the result of the case. Nevertheless, We shall still take up the issues raised by the appellant.

In his first and second assigned errors, the appellant does not controvert the presence of prosecution witnesses Purisima and Abarquez at the crime scene at the time of its commission. No word suggestive of a denial of such presence confronts the eyes of the reader. In short, he admits that they were at the scene of the crime when it was committed but asserts, however, that Purisima's version of the incident is improbable because "it would be highly and physically impossible for one pedaling a bicycle [referring to Purisima] with your full attention focused to the center of the road and at the same time turning your fact (sic) back in order to see appellant pulled (sic) his gun, aiming it and firing the same at the victim."[35] He also states that Abarquez offered a different version of the incident because in his sworn statement of 2 July 1987, subscribed and sworn to before Fiscal Cavada, he declared that the appellant first alighted from the bicycle, pulled a gun from his waist and then fired at the victim.[36] According to him, this inconsistency is not just on a minor matter, but one which "punctured the credibility" of both witnesses. Finally, he maintains that there is a palpable showing of improper motive on the part of Abarquez in testifying against the appellant because the victim is the former's uncle.[37]

As to alibi, he claims that he has indisputably demonstrated that at the time of the commission of the crime, it was physically impossible for him to have been at or near the scene of the crime.

We are not persuaded.

In the first place, it is not at all impossible for Purisima, while then pedaling the bicycle with the appellant at his back, to notice and see the latter pull his firearm and fire at the victim. He could very well do this by turning his head to the side and toward the back which was, in fact, what he did. The impossibility suggested by the appellant has not been proven during the cross-examination of the witness, either by actual demonstration or by independent testimony. On the other hand, the trial court explicitly characterized the testimonies of Purisima and Abarquez as "unshaken [and] unsullied."

In the second place, the so-called sworn statement of Abarquez was neither identified nor offered in evidence by the appellant. His Brief does not contain any page reference to the record where such sworn statement can be found. Section 34, Rule 132 of the Rules of Court provides that a court shall consider no evidence which has not been formally offered. Not having been identified or offered in evidence, the appellant cannot use it to impugn the credibility of Abarquez. Besides, the witness was never confronted with such statement by the counsel for the appellant; hence, it cannot be considered against the witness for non-compliance with Section 13, Rule 132 of the Rules of Court which provides:

"SEC. 13. How witness impeached by evidence of inconsistent statements. -- Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him, with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them."

Moreover, a sworn statement or affidavit, being taken ex-parte, is almost always incomplete and often inaccurate, sometimes from partial suggestion, or for want of suggestions and inquiries.[38] Its infirmity as a species of evidence is a matter of judicial experience.[39] Affidavits taken ex-parte are generally considered to be inferior to the testimony given in open court.[40]

In the third place, the imputation of an ulterior motive upon Abarquez springs solely from his being the nephew of the victim. Relationship per se does not give rise to a presumption of ulterior motive, nor it does ipso facto impair the credibility[41] or tarnish the testimony of a witness.[42] It has been correctly observed that the natural interest of witnesses who are relatives of the victims in securing the conviction of the guilty would deter them from implicating persons other than the culprits, for, otherwise, the latter would thereby gain immunity.[43] It must be shown that the testimony is inherently improbable in itself or that there is a properly charged ulterior motive of the witness to incriminate the accused.[44] Were the rule otherwise, many criminals whose crimes were witnessed only by relatives of the victims would go scotfree. It must be stressed here that if an accused had really nothing to do with a crime, it is against the natural order of events and of human nature and against the presumption of good faith that a prosecution witness would falsely testify against him.[45]

The appellant having thus been positively identified by prosecution witnesses Purisima and Abarquez, the defense of alibi must fail. It is a fundamental juridical dictum that alibi cannot prevail over the positive identification of the accused.[46] Moreover, for alibi to prosper, it is not enough that an accused is able to show that he was somewhere else when the crime was committed, he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[47] As correctly stated by the trial court, due to the proximity of Amislag, where appellant claimed to be staying, to Magdugo, the crime scene, it was not impossible for the appellant to be at the latter place at the time the crime was committed.

The arguments relied upon by the appellant in his third and fourth assigned errors are without merit. His conviction for the offense charged is not based on Exhibit "D," the appellant's letter to Purisima requesting the latter not to testify against him, but rather on the testimonies of prosecution witnesses Purisima and Abarquez who "positively identified that the accused shot and killed the victim Rodolfo Jeminez on June 25, 1987 at 11:00 o'clock in the morning at Magdugo, Toledo City with a handgun." [48] The trial court merely considered Exhibit "D" as "indicative" of the appellant's guilt. [49] It also considered the unsuccessful service of several warrants for his arrest as flight, which is also indicative of guilt. The trial court was correct on these matters. If, indeed, the appellant did not commit the offense imputed to him, he would not have exerted any effort to write Exhibit "D" to the principal prosecution witness, Purisima, nor promised to help him once he is freed. If the law enforcement authorities failed to serve the warrants for his arrest, it was for no other reason than that he could not be found at his place of residence and his whereabouts had become unknown after the incident. In short, he fled from the authorities. He offered no satisfactory explanation therefor, nor did he even attempt to. As early as 1913, in *United States vs. Alegado*, [50] this Court already stated that:

"Indeed, the law is entirely well settled that the flight of the accused is competent evidence against him as having a tendency to establish his guilt."

Five (5) years later, in *United States vs. Sarikala*, [51] this Court held:

"Flight, when unexplained, is a circumstance from which an inference of guilty (sic) may be drawn. 'The wicked flee, even when no man pursueth; but the righteous are as bold as a lion.'"

In subsequent cases, this Court has declared that flight evidences guilt and a guilty conscience, that it strongly indicates a guilty mind, or betrays the existence of a guilty conscience. [52] This is not, of course, to say that non-flight is proof of innocence. There is no case law holding that non-flight is conclusive proof of innocence. [53]

We likewise agree with the observation of the trial court that the defense was guilty of fabricating evidence when it procured, for a monetary consideration, Cesario Benoya, Jr. to "confess" as the killer of Rodolfo Jeminez and thereafter to use it as a ground for a motion to dismiss the case. Benoya's first affidavit of 21 June 1988 and affidavit of confession of 12 July 1988 are obviously perjurious for he could not have killed Rodolfo Jeminez on 25 June 1987 in Magdugo, Toledo City, since by then he was already serving two (2) sentences for theft at the Toledo City jail. By resorting to such maneuvers, the defense not only exposed the hopelessness of its cause, but also demonstrated its capacity to fabricate evidence, pervert the truth and obstruct the administration of justice, acts which this Court cannot countenance. Whoever is the lawyer who advised or approved of such fabrication or, knowing the "affidavit of confession" to be perjurious and to have been obtained through bribery, nevertheless presented it in court as truthful and reliable evidence to obtain the dismissal of the case against his client, is liable for the violation of Rule 19.01 of the Code of Professional Responsibility which directs a lawyer to, inter alia, employ only fair and honest means to attain the lawful objectives of his client or of Rule 10.01 thereof, which mandates that no lawyer shall do any falsehood or consent to the doing of any in court.

No error then was committed by the trial court in finding the appellant guilty beyond reasonable doubt of the crime of murder. The penalty imposed, which was life imprisonment, should, however, be changed to reclusion perpetua. We have pronounced in many cases that life imprisonment is not the same as reclusion perpetua. [54] In *People vs. Baguio*, [55] this Court held:

"The Code does not prescribe the penalty of 'life imprisonment' for any of the felonies therein defined, that penalty being invariably imposed for serious offenses penalized not by the Revised Penal Code but by special laws. Reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon, it also carries with it accessory penalties, namely: perpetual special disqualification, etc. It

is not the same as 'life imprisonment' which, for one thing, does not carry with it any accessory penalty, and for another, does not appear to have a definite extent or duration."

In *People vs. Penillos*,^[56] We said that every judge should take note of this distinction and that no judge should mistake one for the other. We reiterate this admonition.

WHEREFORE, finding no reversible error therein, the challenged Decision of Branch 20 of the Regional Trial Court of Cebu at Toledo City in Criminal Case No. TCS-794 is hereby **AFFIRMED** subject to the above modification regarding the proper designation of the penalty. Costs against the accused-appellant.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Original Records (OR), 1.

[2] *Id.*, 10.

[3] *Id.*, 11-14.

[4] OR, 15.

[5] *Id.*, 18.

[6] *Id.*, 19.

[7] *Id.*, 28.

[8] *Id.*, 33-35.

[9] *Id.*, 45.

[10] OR, 48-50.

[11] *Id.*, 55.

[12] OR, 82-84.

[13] *Id.*, 86-89.

[14] *Id.*, 90-91.

[15] *Id.*, 97.

[16] TSN, 5 November 1990, 2.

[17] OR, 431-445. The decision is dated 11 November 1991.

[18] *Id.*, 445.

[19] TSN, 5 November 1990, 3-9.

[20] TSN, 29 January 1991, 2-4.

[21] TSN, 19 April 1991, 2-4.

[22] *Id.*, 11-13.

[23] Annex "A," Brief for Appellant, 15; OR, 443.

[24] OR, 448.

[25] Rollo, CA-G.R. CR No. 12594, 30.

[26] Rollo, 2.

[27] *Id.*, 20, et seq.

[28] Brief for Appellant, 3, 9.

[29] *U. S. vs. Ambrosio*, 17 Phil. 295 [1910].

[30] *People vs. Simon*, 209 SCRA 148 [1992], and a host of cases cited therein; *People vs. Pama*, G.R. Nos. 90297-98, 11 December 1992.

[31] *People vs. Santito*, 201 SCRA 87 [1991].

[32] 26 Phil. 170, 180 [1913].

[33] 201 SCRA 616, 624 [1991].

[34] Citing *People vs. Taduyo*, 154 SCRA 349 [1987].

[35] Brief for Appellant, 4.

[36] *Id.*, 6-7.

[37] *Id.*, 7-8.

[38] *People vs. Magdadaro*, 197 SCRA 151 [1991].

[39] *People vs. Patilan*, 197 SCRA 354 [1991].

[40] *People vs. Loveria*, 187 SCRA 47 [1990].

[41] *People vs. Tinampay*, 207 SCRA 425 [1992].

[42] *People vs. Uy*, 206 SCRA 270 [1992].

[43] *People vs. Alcantara* 33 SCRA 812 [1970]; *People vs. Radomes*, 141 SCRA 548 [1986]; *People vs. Aguinaldo*, 165 SCRA 682 [1988]; *People vs. Abonada*, 169 SCRA 530 [1989].

[44] *People vs. Reception*, 198 SCRA 670 [1991].

[45] *People vs. Balili*, 92 SCRA 552 [1979].

[46] *People vs. Mercado*, 97 SCRA 232 [1980]; *People vs. Clores*, 184 SCRA 638 [1990]; *People vs. Arceo*, 187 SCRA 265 [1990]; *People vs. Beringuel*, 192 SCRA 561 [1990].

[47] *People vs. Penillos*, 205 SCRA 546 [1992]; *People vs. de la Cruz*, 207 SCRA 632 [1992].

[48] OR, 443.

[49] Id., 444.

[50] 25 Phil. 510 [1913].

[51] 37 Phil. 486 [1918].

[52] See *People vs. Garcia*, 209 SCRA 164 [1992], and the cases therein cited.

[53] *People vs. Hangdaan*, 201 SCRA 568 [1991]; *People vs. Macalino*, 209 SCRA 788 [1992].

[54] *People vs. Mobe*, 81 Phil. 58 [1948]; *People vs. Abletes*, 58 SCRA 241 [1974]; *People vs. Gonzales*, 58 SCRA 265 [1974]; *People vs. Pilonas*, 84 SCRA 167 [1978].

[55] 196 SCRA 459 [1991].

[56] *Supra* at 565-566.

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