

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PAT. FLORESTAN NITCHA Y DULAY, DEFENDANT-APPELLANT.*G.R. No. 113517. January 19, 1995*

Ponente: MELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-113517/>**MELO, J.:**

Before the Court is the appeal interposed by accused-appellant from the decision rendered on September 22, 1994 by the Honorable Pedro C. Cacho, Presiding Judge of Branch 52 of the Regional Trial Court of the First Judicial Region, stationed in Tayug, Pangasinan, which pronounced accused-appellant's culpability for the murder of May Villa Rica Sibayan. In addition to the principal penalty of reclusion perpetua, accused-appellant was required to pay to the heirs of the victim P50,000.00 as indemnity, P25,000.00 as moral damages, P20,000.00 in the form of exemplary damages, and P43,000.00 for actual expenses (p. 494, Record; p. 132, Rollo).

The factual background of the imputed felony, as formulated by the Office of the Solicitor General, is supported by the record, and is accordingly adopted, thusly:

On October 7, 1990, at around 7 o'clock in the evening, Jojo Belmonte went out of his house located at Purok IV, Barangay Alac, San Quintin, Pangasinan to buy some cigarettes in a nearby store. (p. 6, TSN, December 10, 1991) Before Jojo Belmonte could buy the cigarettes, Doro Nitcha arrived, uttered the words "You are one of them" ('Maysa ca met') in the vernacular, then started mauling him. (p. 7, TSN, December 10, 1991) Unable to endure the pain, Jojo fought back. (Ibid.) A few minutes had gone into the fight when May Villarica (a.k.a. Lydia) Joselito, Agustin and Marcelina (Nenet), all surnamed Sibayan, arrived. (p. 8, TSN, December 10, 1991; p. 6, TSN, September 9, 1992) May and Joselito tried to pacify the two protagonists, however, their efforts proved futile as Doro Nitcha refused to be pacified. (Ibid.) The fighting stopped upon the arrival of Doro's sister Victoria Corpuz (Baby) who, upon seeing the commotion, dragged Doro away from the fight and brought him home. (p. 7, TSN, March 30, 1993; pp. 6-7, TSN, March 1, 1993) Likewise, Marcelina (Nenet), Agustin, May and Joselito proceeded towards their house located in front of the store where the incident occurred. (p. 8, TSN, March 1, 1993) Not long thereafter and while the Sibayans were still on their way, appellant Florestan Nitcha, brother of Doro, arrived at the sari-sari store brandishing a gun and shouting in Tagalog, "Walanghiya kayo, putangina ninyo, papatayin ko kayong lahat!" (p. 7, TSN, February 2, 1993) After uttering those words, appellant fired his gun in the direction of the Sibayans, the bullet hitting May at the back of her head and exiting through the middle of her forehead. (p. 11, TSN, December 10, 1991; p. 8, TSN, September 9, 1992; p. 7, TSN, February 2, 1993; p. 8, TSN, March 1, 1993; pp. 6-7, TSN, March 8, 1993) Appellant then aimed his gun at Joselito but missed. (p. 12, TSN, December 10, 1991) May was brought to the Eastern Pangasinan District Hospital in Tayug, Pangasinan where she was given first aid treatment. (p. 10, TSN, February 2, 1993) Upon the advice of a doctor, the victim was brought to a hospital in Dagupan City. (Ibid.) May, however, expired on the way thereto. (Ibid.) Shortly after the shooting incident, appellant went back to his mother's house before proceeding to the police station of San Quintin, Pangasinan where he surrendered himself together with his service firearm. (p. 4, TSN, April 29, 1993; p. 4, TSN, June 14, 1993; p. 7, TSN, June 14, 1993)

(pp. 2-4, Brief for the Plaintiff-Appellee)

Premised on the foregoing backdrop, an indictment for murder was filed against herein accused-appellant (p. 18, Rollo) who, after trial, was found guilty beyond reasonable doubt on account of the positive identification made by the People's witnesses, the defense of accused-appellant anchored on denial being found unavailing.

Jose Belmonte, Agustin Sibayan, and Joselito Sibayan collectively pointed an accusing finger at accused-appellant whom they witnessed firing his .38 caliber firearm towards the direction of May Villa Rica Sibayan who was then negotiating an earthen dike about three to four meters from the position of accused-appellant. In parrying the inculpatory thrusts of the prosecution, accused-appellant ventured to develop the theory that it was not he but one of the companions of Jojo Belmonte who pulled and fired the gun. According to accused-appellant, the bullet missed the head of his brother who was then astride Jojo Belmonte while the latter and accused-appellant's brother was engaged in a scuffle, and that unfortunately, the bullet hit the head of May Villa Rica Sibayan.

The court a quo was understandably far from convinced by accused-appellant's thesis by reason of the categorical statements of the People's witnesses (pp. 130-132, Rollo).

The prospect of spending practically the rest of his life behind bars as a form of retribution naturally became the source of mental concern for accused-appellant who continues to maintain in the appeal at bench that he is not in any way responsible for the death of the victim. To buttress the plea for reversal of the assailed discourse, accused-appellant's counsel enumerated twelve (12) errors supposedly overlooked by the magistrate below (pp. 87-88, Rollo) which all revolve on the principal query of whether accused-appellant's profession of innocence is tenable.

With reference to the first, fifth, eighth, and penultimate points of discussion aired by accused-appellant, efforts were exerted to denigrate the credibility of the prosecution witnesses first by questioning the integrity of Jojo Belmonte through capitalizing on Belmonte's inability to convey the number of seconds in a minute, thereby suggesting that Belmonte's testimony can not be accepted as an accurate recollection of the crime (p. 90, Rollo). The basic faux pas from the witness can hardly diminish his veracity of the entire narration of how the felony was perpetrated for the simple, nay, obvious reason that an omission of this character is insignificant to merit rejection of the whole testimony, unflawed as it has remained. Besides, it is difficult to subscribe to the theory put forward by accused-appellant anent the imaginary companion of Jose Belmonte who allegedly pulled and fired the gun in the light of the statements of three witnesses of the People who declared in no uncertain terms that it was accused-appellant who fired the gun.

Jose Belmonte testified, thus:

PROSECUTOR BINCE:

Q.:

What happened when Florestan Nitcha arrived, if any?

A.:

He said "Asan ba sila? (Where are they?)

Q.:

Is that the only statement he uttered?

A.:

There was, Sir.

Q.:

Please tell this Court the complete statement he stated?

A.:

"Where are they? Come out, I'll kill you!"

xxx xxx xxx xxx

Q.:

What was the appearance of Florestan Nitcha when he uttered that statement?

A.:

He was standing, sir.

Q.:

What else?

A.:

He shot Lydia Sibayan.

Q.:

What did he use in shooting Lydia Sibayan?

A.:

A short firearm, sir.

Q.:

How far was Lydia to Florestan when Florestan shot Lydia Sibayan?

A.:

More or less, four (4) meters, sir.

Q.:

Where was Lydia Sibayan facing when he was shot by Florestan Nitcha?

A.:

Her back was facing Florestan Nitcha, sir.

Q.:

You claimed that the four (4) persons, namely: Lydia, Boy, Agustin, and Nenet were in the process of going home. Will you please tell us how the four (4) went home?

A.:

They were following one after the other, sir.

xxx xxx xxx

Q.:

And the 4th?

A.:

Lydia Sibayan, sir.

Q.:

Will you please explain to this Court why they were following each other when they went home?

A.:

Because it is an earth dike (tambao), sir.

Q.:

How far were you to Florestan when you saw him fired his gun to Lydia Sibayan?

A.:

More or less, three (3) meters, sir.

Q.:

How many times did Florestan Nitcha shoot Lydia Sibayan?

A.:

Two (2) times, sir.

Q.:

The first firing, what happened to Lydia Sibayan?

A.:

She was hit and fell down, sir.

Q.:

How about the second firing, what happened to that second firing?

A.:

The second shot hit the wall (pader).

Q.:

What kind of wall was that?

A.:

Cement, sir. The wallings of the house of Agustin Sibayan, sir.

Q.:

You claimed that Lydia was hit by the first gun fire. What part of his body was hit, if you know?

A.:

The head, sir.

Q.:

What portion of her head?

A.:

Here, sir. (Witness pointing and touching the back portion of his head.)" (tsn. pp. 10-13, Dec. 10, 1991)
(Emphasis Supplied)

(pp. 54-56, Rollo.)

Corroborating Jose Belmonte's open-court statements was Agustin Sibayan who narrated in part:

PROSECUTOR BINCE:

xxx xxx xxx

Q.:

What happened next, if any, when you heard the accused Pat. Nitcha shouting 'Putangina nila, nasaan sila'?

A.:

It is because my son was the last one my daughter-in-law requested my son to go ahead and she was left behind that is why when Nitcha fired his gun she was the one who was hit, sir.

Q.:

May Villarica Sibayan was the one who was hit?

A.:

Yes, sir.

xxx xxx xxx

Q.:

Do you know the position of your daughter-in-law in relation to Nitcha when the latter shot your daughter-in-law?

A.:

Her back was turned against Florestan Nitcha, sir.

Q.:

How far is your daughter-in-law to Nitcha when she was shot by Nitcha?

A.:

More or less three (3) meters, sir.

Q.:

How about you how far were you to Nitcha when you saw him shooting with the use of 38 caliber your daughter-in-law?

A.:

Around 20 meters, sir.

Q.:

From your place, please point to a particular place wherein you can estimate to be a 20 meters which is your distance to that place of Nitcha?

A.:

(Witness is pointing from the witness stand up to the bamboo tree guard outside the courtroom which is 10 to 15 meters more or less)

xxx xxx xxx

Q.:

What happened to your daughter-in-law when she was hit by that firings of pistol by Pat. Nitcha?

A.:

She fell down on the canal, sir.

xxx xxx xxx

Q.:

What did Nitcha do after that first shot and you, your wife went to the rescue of your daughter-in-law?

A.:

He fired his gun once more, sir.

Q.:

To what direction did he aim the second shot?

A.:

Towards us with my son, sir.

Q.:

Were you or your son hit by the second rang of fire?

A.:

With God's grace, no, sir.

Q.:

Did you ultimately learn later on where is that slug of the second shot found its target?

A.:

It hit the wall of my house which is cemented, sir.

xxx xxx xxx

Q.:

How clear is the sky then at that time particularly the moon and the stars so that you can fully identify that it was Nitcha who shot your daughter-in-law May Villarica Sibayan?

A.:

Because of the brightness of the moon that is why we can identify a person, sir." (tsn., pp. 6-10, Sept. 9, 1992) (Emphasis Supplied)

(pp. 56-57, Rollo.)

Joselito Sibayan also affirmed the proposition that it was accused-appellant who caused the untimely demise of his wife:

PROSECUTOR BINCE:

xxx xxx xxx

Q.:

When Florestan Nitcha arrived, what happened, if any?

A.:

He told us in Tagalog "walanghiya kayo, putangina ninyo, papatayin ko kayong lahat" (God damn you vulva of your mother, I will kill all of you).

Q.:

After that, what happened next?

A.:

He shot my wife, sir.

Q.:

Where was your wife facing in relation to Florestan Nitcha when she was shot by the latter?

A.:

The back of my wife was facing Florestan Nitcha, sir.

Q.:

How about you, where were you facing at that time when you saw Florestan Nitcha shot your wife?

A.:

I was facing my wife and Florestan Nitcha, sir.

Q.:

How about your father Agustin, Jojo and Leo where were they in relation to you and your wife and Florestan

Nitcha?

A.:

They went home in the house, sir.

Q.:

Where were they when Florestan Nitcha shot your wife?

A.:

They were there they were watching, sir.

Q.:

What were they watching?

A.:

That shooting incident wherein Florestan Nitcha shot my wife, sir.

Q.:

What did the accused Florestan Nitcha used in shooting your wife, if you know?

A.:

A .38 caliber, sir." (tsn., p. 7, Feb. 2, 1993) (Emphasis Supplied)

(p. 58, Rollo.)

While it may be conceded that the last two witnesses for the prosecution are relatives of the victim, still, this factor alone will not destroy their credibility inasmuch as there is absolutely nothing in our laws that disqualifies a person from testifying in a criminal case in which the said person's relative is involved if the former was really at the scene of the crime and was a witness to the execution of the criminal act (*People vs. De La Cruz*, 207 SCRA 632 {1992}), more so, as in the case at bench, where accused-appellant himself acknowledged that he and the Sibayans had good relations:

Q.:

You claimed that you were born at Brgy. Alac, San Quintin, Pangasinan. Is that right?

WITNESS -

A.:

Yes, sir.

Q.:

And since the time of your birth up to the time you graduated from high school, you stayed there?

A.:

Yes, sir.

Q.:

Of course, being a resident of Brgy. Alac, particularly Purok "4" of San Quintin, Pangasinan, you know your

neighbor Joselito Sibayan. Am I correct?

A.:

Yes, sir.

Q.:

You also know Agustin Sibayan?

A.:

Yes, sir.

Q.:

And the rest of the family of Sibayans'?

A.:

Maybe, sir.

Q.:

Of course, because you know them, naturally they also know you. Is it not?

A.:

Yes, sir.

PROSECUTOR BINCE -

Q.:

And being a neighbor of the Sibayans' at Purok "4", Brgy. Alac, San Quintin, Pangasinan, you have a good relation to (sic) them since the age of reason up to the time during all those occasions wherein you visited Brgy. Alac, San Quintin, Pangasinan?

WITNESS –

A.:

Precisely, sir."

(pp. 20-21, tsn, May 19, 1993; pp. 12-13, Brief for Plaintiff-Appellee)

Absent any indication of a sinister scheme to prevaricate, the affirmative statements uttered by the People's witnesses showing accused-appellant's culpability must be respected inasmuch as positive declarations subordinate disclaimers emanating from the defense (People vs. Espinoza, 228 SCRA 143 [1993]). Verily, proof of motive is not indispensable where the culprit has been positively identified (People vs. Salveron, 228 SCRA 92 [1993]).

What militates heavily against accused-appellant's pretense is the concocted tale to the effect that an unnamed assailant fired the gun but the bullet missed the brother of accused-appellant as he was sitting on top of the fallen Jose Belmonte (tsn, March 23, 1993, p. 22), and that instead, the bullet penetrated the back of the head of the victim in a straight trajectory while the latter was walking on the earthen dike. Indeed, it is absurd to suppose that a bullet fired by an assailant from a standing position directed downwards against the so-called intended victim, such as accused-appellant's brother on the ground, would, against the law or gravity, change course from its

groundward trajectory and instead, suddenly ascend after missing the intended victim, and hit the back of the head of the victim who was at an elevated position.

Accused-appellant argues next that procedural infirmities attended the trial below such as (a) the hearsay character of the testimony of the People's third witness which was heard in the absence of accused-appellant and his counsel; (b) the denial of due process on account of the perceived bias of the trial judge; (c) the illegality of accused-appellant's arrest and detention; and (d) the absence of preliminary investigation. However, as correctly observed by the Office of the Solicitor General, the record of the case indubitably shows that accused-appellant's counsel opted not to cross examine Agustin Sibayan (p. 323, Record) which deliberate omission obviously negates the so-called hearsay nature of said witness' testimony. Similarly wanting in substance is accused-appellant's claim relative to the alleged bias of the trial judge considering that mere apprehension that a magistrate is partial is inefficacious to sustain a charge of breaching the tenet of "cold neutrality" normally expected of a judge. And even on the assumption that accused-appellant's arrest was illegal for want of preliminary investigation, such a hypothesis was nonetheless negated by accused-appellant's act of posting a bail bond thereafter, apart from the fact that he entered a plea of not guilty which is tantamount to foregoing the right to question the assumed irregularity (*People vs. Hubilo*, 220 SCRA 389 [1993]).

Too, accused-appellant's submission that there is absence of physical evidence showing that he fired a gun simply because the paraffin test yielded negative is unacceptable, for as held by this Court in *People vs. Manalo* (219 SCRA 656 [1993]):

... even if he were subjected to a paraffin test and the same yields a negative finding, it cannot be definitely concluded that he had not fired a gun as it is possible for one to fire a gun and yet be negative for the presence of nitrates as when the hands are washed before the test (*People vs. Talingdan*, 191 SCRA 333 [1990]; *People v. Roallos*, 113 SCRA 584 [1982]). The Court has even recognized the great possibility that there will be no paraffin traces on the hand if, as in the instant case, the bullet was fired from a .45 Caliber pistol (*People vs. Rebullar*, 188 SCRA 838 [1990]).

The subsistence of a bail bond is also no legal obstacle to accused-appellant's immediate incarceration after promulgation of a decision involving a felony punishable by reclusion perpetua following the principle enunciated in *People vs. Fortes* (223 SCRA 619 [1993]) thus:

It is clear from Section 13, Article III of the 1987 Constitution and Section 3, Rule 114 of the Revised Rules of Court as amended, that:

x x x before conviction bail is either a matter of right or of discretion. It is a matter of right when the offense charged is punishable by any penalty lower than reclusion perpetua. To that extent the right is absolute.

x x x Upon the other hand, if the offense charged is punishable by reclusion perpetua bail becomes a matter of discretion. It shall be denied if the evidence of guilt is strong. The court's discretion is limited to determining whether or not evidence of guilt is strong. But once it is determined that the evidence of guilt is not strong, bail also becomes a matter of right. x x x"

The clear implication therefore, is that if an accused who is charged with a crime punishable by reclusion perpetua is convicted by the trial court and sentenced to suffer such a penalty, bail is neither a matter of right on the part of the accused nor of discretion on the part of the court. In such a situation, the court would not have only determined that the evidence of guilt is strong - which would have been sufficient to deny bail even before conviction - it would have likewise ruled that the accused's guilt has been proven beyond reasonable doubt. Bail must not then be granted to the accused during the pendency of his appeal from the judgment of conviction. Construing Section 3, Rule 114 of the 1985 Rules on Criminal Procedure, as amended, this Court, in the en banc

Resolution of 15 October 1991 in *People vs. Ricardo Cortez*, ruled that:

Pursuant to the aforecited provision, an accused who is charged with a capital offense or an offense punishable by reclusion perpetua, shall no longer be entitled to bail as a matter of right even if he appeals the case to this Court since his conviction clearly imports that the evidence of his guilt of the offense charged is strong."

We are, however, not convinced that the qualifying circumstance of treachery was attendant in the killing. It must be recalled that Doro Nitcha, the brother of accused-appellant, was in a fight with one Jojo Belmonte and was forcibly dragged away from the fight and brought home by his sister, Victoria Corpus. Upon seeing his injured brother, accused-appellant became enraged and immediately dashed off to the scene of the fight. Per testimony of Joselito Sibayan, the husband of the victim, only 4 to 5 minutes had elapsed from the time Doro was dragged away to the time that accused-appellant arrived at the scene of the fight (pp. 6-7, t.s.n., February 2, 1993). Thus, at such a short interval, accused-appellant did not have sufficient time to consciously adopt the mode of attack. To establish treachery, the evidence must show that the accused made some preparation to kill the victim in such a manner as to insure the execution of the crime or to make it impossible or hard for the person attacked to defend himself. A killing done at the spur of the moment is not treacherous.

However, we do not agree with the trial court that the crime committed was murder. The qualifying circumstance of treachery cannot logically be appreciated because the accused did not make any preparation to kill the deceased in such a manner as to insure the commission of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. This circumstance can only be applied, according to the tenor of article 13, sub-section 16 of the Revised Penal Code, when the culprit employs means, methods or forms of execution which tend directly and specially to insure the commission of the crime and at the same time to eliminate or diminish the risk to his own person from a defense which the other party might offer. In *United States vs. Namit*, 38 Phil. 926, it was held that the circumstance that an attack was sudden and unexpected to the person assaulted did not constitute the element of *alevosia* necessary to raise a homicide to murder, where it did not appear that the aggressor had consciously adopted a mode of attack intended to facilitate the perpetration of the homicide without risk to himself. In the present case, the circumstances negative the hypothesis that the defendant reflected on the means, method and form of killing the offended party. There was absolutely nothing personal between the accused and Basas. He was, so he thought, erroneously, protecting the property which he was detailed to watch by killing the stranger. His purpose was to kill, the decision was sudden, and the position of the stranger was accidental and did not matter. In fact, in the nature of things, to give the other man an opportunity to defend himself or to return the attack would have been a contradiction.

(*People vs. Tumaob*, 83 Phil. 738; 742 [1949]);

The herein appellant has, no doubt, liquidated Maximo Cabuenos. However, we do not believe that the killing was accomplished with treachery. It does not appear that the shooting was premeditated nor that the accused had consciously chosen that method of attack directly and specially to facilitate the perpetration of the homicide without risk to himself. His decision to shoot Cabuenos seemed to be sudden, in view of the latter's fight, and the position of both the victim and the killer was entirely accidental. Therefore treachery may not be imputed to him.

(*People vs. Abalos*, 84 Phil. 771; 773 [1949]);

Article 248 of the Revised Penal Code provides that murder is committed by any person who kills another treacherously. Under Art. 14 (16) of the same Code, there is treachery "when the offender commits any of the crimes against person, employing means, methods, or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make." It was while Nestor was retreating from Ernesto when Oscar stabbed Nestor at his back. An aggression

from behind, however, does not necessarily make the act treacherous. There is no showing that the aggressors "consciously" adopted a mode of attack to directly and specially ensure the execution of the act without any risk to themselves. In fact, the stabbing was preceded by challenges to fight on Nestor by Ernesto. The first was when the two had a heated argument, and the second was less than ten minutes later, when Ernesto came back with a "batuta", which must have placed the deceased on guard; in any case, the latter cannot be said to have been totally unaware of possible danger.

(People vs. Balderama, 226 SCRA 537; 550-551 [1993])

The crime committed by accused-appellant is, therefore, homicide and not murder. The penalty for homicide, under Article 249 of the Revised Penal Code, is reclusion temporal. There being no aggravating nor mitigating circumstances, the penalty imposable is reclusion temporal in its medium period; and applying the Indeterminate Sentence Law, the penalty that should be imposed upon accused-appellant is an indeterminate sentence within the range of prision mayor, as minimum, and reclusion temporal medium, as maximum.

WHEREFORE, the decision appealed from is hereby MODIFIED, and accused-appellant is hereby found guilty of HOMICIDE and sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, as maximum.

In all other respects, the appealed decision is hereby AFFIRMED.

SO ORDERED.

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

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.