

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSALINO FLORES, ACCUSED-APPELLANT.

G.R. No. 129284. March 17, 2000

Ponente: GONZAGA-REYES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-129284/>

GONZAGA-REYES, J.:

This is an appeal from the decision[1] of September 19, 1996, of the Regional Trial Court of Malolos, Bulacan, Branch 16, in Criminal Case No. 1323-M-92 convicting accused-appellant Rosalino Flores alias "Jianggo" of the crime of murder as follows:

"WHEREFORE, premises considered, herein accused is hereby found guilty beyond reasonable doubt of the crime of murder defined under Article 248 of the Revised Penal Code, and he is therefore sentenced to suffer the penalty of RECLUSION PERPETUA.

Further, accused is ordered to pay the wife or heirs of deceased Antonio Garcia, the following:

- a) P50,000, as death indemnity;
- b) P9,000, as expenses for the wake;
- c) P13,000, as expenses for the funeral;
- d) P18,000, as lost income of Antonio Garcia for 10 years; and
- e) P60, 000, as moral damages; plus costs.

Considering that the accused is a detention prisoner, the period served by him as such shall be deducted from this sentence in his favor

SO ORDERED."[2]

The Information dated July 3, 1992 against accused-appellant reads:

"The undersigned Asst. Provincial Prosecutor accuses Risalino[3] Flores y Caperlac alias "Jianggo" of the crime of murder, penalized under the provisions of Art. 248 of the Revised Penal Code, committed as follows:

That on or about the 13th day of June, 1992, in the municipality of San Miguel, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a handgun and with intent to kill one Antonio Garcia, did then and there willfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and shoot with the said handgun he was then provided said Antonio Garcia, hitting the latter on his left side, thereby inflicting serious physical injuries which directly caused the death of said victim.

CONTRARY TO LAW."[4]

Upon arraignment, accused-appellant Rosalino Flores entered a plea of not guilty and trial thereafter ensued.

The facts as found by the trial court are as follows:

"Antonio Garcia is 39 years old, married to Teresita Maningas Garcia, tricycle driver, and residing at No.27 Bulualto, San Miguel, Bulacan. On June 13, 1992 at about 7:00 in the evening, he was celebrating his birthday and having a drinking spree with his invited guests namely: Danilo Lacanilao[5], Romeo Lacap, Gregorio Olalia, Hermogenes Gatdula and Sergio Villegas, who were all from Bulualto. They were all seated around a table at the backyard 4 arms' length away from the back door of his house. The table was about 4 to 5 meters away from the bamboo trees. Between the table and the bamboo trees was a lighted 60 to 100-watt electric bulb hanging from a wire 2 1/2 meters away from the bamboo trees. At about that time, Myla Garcia, 17 years old and 2nd year high school student daughter of Antonio Garcia was also at the backyard to throw garbage to the dump pit. On her way, she heard noise (langitngit) of the debris of the bamboo trees at the backyard (siit ng kawayan sa may likuran). When she inspected what was the noise about, she saw Rosalino Flores, herein accused standing 1 arm's length away from her and 3 arms' length away from her father and holding a short gun pointed to her father. Accused was half-naked upward and wearing black pants. She rushed to her father but before reaching him, accused had already fired the gun hitting her father who leaned on her and eventually fell to the ground at her side. She embraced her father and walked with him to the house 4 arms' length away but before reaching the house, she saw the accused still there and when she shouted "si Jianggo, si Jianggo", the accused ran away. Antonio was brought inside the house still breathing and talking and while being embraced by his wife and his head was on the lap of his daughter, he uttered the words "Hoy, may tama ako. Binaril ako ni Jianggo." His daughter, wife and Roberto Sebastian heard those words. He (Antonio Garcia) was immediately brought to San Miguel District Hospital, but he died 20 minutes before reaching the hospital. He was pronounced dead on arrival. He died of hemorrhage due to gunshot wound caused by a bullet fired from a handgun believed to be a .38 caliber. The bullet hit first the left arm of Antonio Garcia towards the left side of his stomach and landed on his left lung. A deformed slug measuring 0.2 centimeter by 2 centimeters was extracted from his left leg.

Roberto Sebastian resident also of Bulualto, San Miguel, Bulacan was an invited guest of Antonio Garcia to his birthday party. On his way to the party and while he was at the gate of the house of Antonio Garcia which was about 5 to 6 meters away from the place where Antonio Garcia and his guests were drinking, he heard a gun shot and thereafter a shout "Si Jianggo, si Jianggo." He saw the accused half-naked standing and holding a shot gun 1 meter away from the bamboo tree where a lighted electric bulb of 60 to 100 watt was hanging from the wire. He was 10 to 11 meters away from the accused when the latter ran away from the scene of the incident. He (Roberto Sebastian) was 1 foot away from Antonio Garcia when he heard the latter utter "Binaril ako ni Jianggo." After uttering those words Antonio Garcia expired (nalungayngay). Both Roberto Sebastian and Myla Garcia gave sworn written statements about the subject incident to the NBI District Office at Baliuag, Bulacan I day after the incident."[6]

Accused-appellant denied killing the victim and proffered an alibi that on the date and time of the alleged shooting, he was at the house of one PO3 Ernesto Martin attending the birthday party of the latter's daughter. According to him, PO3 Martin invited him in the morning of June 13, 1992 but he went to the latter's residence between 4:00 p.m. to 5:00 p.m. and stayed there until 7:00 p.m. to 8:00 p.m.[7]

In his appeal, accused-appellant contends:

- THE LOWER COURT ERRED WHEN IT HELD THAT THE PROSECUTION PROVED BEYOND REASONABLE DOUBT THAT THE APPELLANT KILLED ANTONIO GARCIA.
- THE COURT ERRED IN ADMITTING THE DYING DECLARATION OF ANTONIO GARCIA.
- THE COURT ERRED IN DISREGARDING APPELLANT'S DEFENSE OF ALIBI.[8]

The appeal is without merit.

We shall resolve the admissibility of the dying declaration of Antonio Garcia first. Accused-appellant argues that the dying declaration of the victim is inadmissible because he was an incompetent witness and it was not made with knowledge of an impending death. The elements for the admissibility of a dying declaration are: (1) the declaration must concern the crime and surrounding circumstances of the declarant's death; (2) it was made at a time when the declarant was under the consciousness of an impending death; (3) the declarant would be competent to testify; and (4) the declaration is offered in any case in which the decedent is the victim.[9]

We agree with accused-appellant that the dying declaration is inadmissible for the sole reason that the declarant was not competent to testify had he survived. Garcia was not a competent witness because he could not have seen who shot him. According to Myla's testimony, the assailant was positioned behind her father.[10] Upon being shot, Antonio Garcia stumbled and fell on his daughter. There is no showing that Garcia had the opportunity to see his assailant. Apparently, Garcia heard his daughter shout "Si Jianggo, si Jianggo" and relying thereon, uttered, "Hoy, may tama ako, binaril ako ni Jianggo," before he expired. A dying declaration of the victim identifying his assailant will not be given probative value if the victim was not in a position to identify his assailant as he was shot from behind.[11]

Notwithstanding, the prosecution established with certainty the identity and culpability of accused-appellant.

Accused-appellant's contention that there is reasonable doubt that the accused-appellant killed Antonio Garcia for the following reasons: 1) there is no direct evidence that the appellant actually shot Antonio Garcia; 2) the accused-appellant tested negative in the paraffin test; 3) the gun supposedly used to kill the victim and the slugs were never presented in evidence; and that 4) there was another person, Danilo Leonardo, who possessed a gun at the time the killing occurred, fails to convince the Court.

First, accused-appellant argues that the trial court convicted the accused-appellant on the basis of circumstantial evidence which is not sufficient to support a conviction, to wit: (1) Myla's testimony that she saw accused-appellant with a gun pointed at her father; (2) Roberto's testimony that he saw accused-appellant flee from the scene of the crime after Garcia was shot.

We do not agree. Circumstantial evidence is sufficient to convict provided the following requisites are present, namely: (1) there is more than one circumstance; (2) the facts from which the inferences are derived from are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[12] The circumstantial evidence must constitute an unbroken chain of events so as to lead to a fair and reasonable conclusion that points to the guilt of the accused.[13]

Although Myla and Roberto may not have seen the accused-appellant in the actual act of shooting the victim, the un rebutted testimony of the witnesses for the prosecution point to him as the only person who may have been responsible for the commission of the crime to the exclusion of any other person. Witness for the prosecution Myla Garcia, daughter of the victim, testified in a plain and straightforward manner that she saw accused-appellant standing 3 arms' length away from the place where her father Antonio Garcia and his companions were drinking; that she approached him at a distance of about one arm's length; that she saw him pointing a gun at her father; that as she rushed towards her father she heard a shot that hit her father who leaned and then fell on her side; that she embraced him and walked him towards their house; that before they entered the house, she saw accused-appellant still there but when she shouted, "si Jianggo, si Jianggo," he ran away.[14]

The other witness for the prosecution, Roberto Santiago, testified that as he was about to enter the gate of the victim's residence to attend the latter's birthday celebration, he heard a shot and someone shouted, "si Jianggo, si Jianggo". He passed through the front door and went out the back door to where he heard the shot. Thereafter, he saw accused-appellant holding a gun and running away from the place of the incident.[15]

At the time Myla and Roberto saw accused-appellant they were at a distance reasonable to make an accurate identification. Myla was only an arm's length away, while Roberto was 10 to 11 meters away from accused-appellant. Further, Myla and Roberto are familiar with the accused-appellant as they live in the same place and accused-appellant is Myla's uncle.

All these circumstances put together constitute an unbroken chain, consistent with each other and the theory that accused-appellant authored the crime charge. The culpability of the accused is further strengthened by that fact that he fled from the place after the commission of the crime.[16] This Court has already ruled time and again that flight of an accused from the scene of the crime removes any remaining shreds of doubt on his guilt.[17]

Second, accused-appellant argues that the lower court erred in according great weight to the testimony of Roberto Sebastian that he saw accused-appellant leaving the crime scene after Antonio Garcia was shot. Accused-appellant questions the credibility of Roberto Sebastian. According to accused-appellant, Roberto Sebastian could not have possibly seen the accused leave the premises considering that Myla testified that the assailant ran away after the shot was fired and at that point in time, Sebastian was just entering the gate of the house of the victim. True, Sebastian testified that he was at the gate when he heard a gun shot and a shout, "Si Jianggo, si Jianggo." However, he also testified that it only took him 6 to 7 seconds to get to the crime scene by passing through the front door and out the back door.[18] Verily, the fact that it only took Roberto 6 to 7 seconds to reach the back of the house from the gate enabled him to see accused-appellant still holding the gun and fleeing from the crime scene.

Moreover, credibility of witnesses is generally for the trial court to determine. The reason is that it had seen and heard the witnesses themselves and observe their demeanor and manner of testifying. Its factual findings therefore command great weight and respect. These findings can only be overturned if the trial court overlooked facts of substance and value that if considered might change the result of the case.[19] None was adduced in the instant case.

Third, accused-appellant attempts to break the chain of circumstances by pointing out that the defense presented a witness who testified that she saw a person whom she identified as Danilo Leonardo as also half-naked and carrying a gun in the vicinity of the crime scene. Defense witness Carmelita Leonardo testified against her own brother, Danilo Leonardo, that she saw the latter undressed, holding a small gun and going out of the crime scene after Antonio Garcia was shot. Danilo Leonardo took the witness stand to refute the testimony of his sister. Danilo Leonardo testified, among others, that he did not see Carmelita in the house of the victim in the evening of June 30, 1992; that Carmelita could not have been invited by Antonio Garcia to his birthday because they became adversaries when Antonio Garcia testified against Rosalino Flores, brother of Victorino Flores who happens to be the husband of Carmelita.[20] The trial court found the version of Danilo Leonardo credible and that of Carmelita's as biased for the reason that "she is the live-in-partner for 10 years of Victorino Flores, the brother of the accused, who together with the accused, threatened to kill Antonio Garcia for testifying against said accused." We find no reason to set aside the evaluation by the trial court of the contradictory testimonies of these two witnesses. As we have mentioned earlier, the evaluation of the testimonies of witnesses by the trial court is received on appeal with the highest respect because such court has the direct opportunity to observe the witnesses on the witness stand and determine whether they are telling the truth or not.[21]

In relation to the foregoing, the trial court appreciated motive as disclosed, by the evidence for the prosecution which created a more credible picture of the commission of the crime charged against accused-appellant. To complement its theory of the killing, the prosecution convincingly established that accused-appellant was driven by a personal grudge against the victim because the latter was testifying against the former in a criminal case. Verily, the prosecution introduced evidence that he had previously threatened to kill Antonio Garcia for testifying

against him. It has been held that a key element in the web of circumstantial evidence is motive.[22]

Third, the fact that accused-appellant tested negative in the paraffin test; that the prosecution did not present the gun used in the commission of the crime and the slug recovered from the body of the victim is of no moment. It has been held that the negative findings of the paraffin test do not conclusively show that a person did not discharge a firearm at the time the crime was committed for the absence of nitrates is possible if a person discharged a firearm with gloves on, or if he thoroughly washed his hands thereafter.[23] Since accused-appellant submitted himself for paraffin test 3 days after the shooting, it is likely that he has already washed his hands thoroughly and removed all traces of nitrates in his hand. It has also been held that the non-presentation by the prosecution of the gun used and the slug recovered from the body of the victim is not fatal to the case[24] when there is positive identification of the assailant, as in the instant case.

Finally, accused-appellant would have the Court reconsider his defense of alibi as proper. For alibi to be validly invoked, not only must he prove that he was somewhere else when the crime was committed but he must also satisfactorily establish that it was physically impossible for him to be at the crime scene at the time of commission.[25] In the instant case, the trial court disbelieved accused-appellant's alibi as follows:

"Besides, it is hard to believe that accused was attending the birthday party of the daughter of PO3 Ernesto Martin at the time of the commission of the crime. PO3 Ernesto Martin, a defense witness, testified that during the birthday celebration, accused greeted his 10-year old daughter celebrant. However, in the latter part of his testimony, he testified that his said daughter was not there on that date because she lived with her grandmother. If this is so, then it is not true that accused greeted the celebrant in that birthday party. There is doubt also on the testimony of the accused saying that he took 4 bottles and 2 glasses of beer in the birthday party and never left the place even to urinate from 5:00 p.m. to 8:00 p.m. Based on common knowledge and experience, it is highly unbelievable for a person who has taken 4 bottles and 2 glasses of beer not to urinate for 3 hours. Further, he said that at the birthday party he was seated on the bench together with Ex-Mayor Lipana, Barangay Captain Roger Torres and other guests. However, PO3 Ernesto Martin the host of the party, did not mention Ex-mayor Lipana and Barangay Captain Roger Torres as his guests. Furthermore, according to the accused he was informed immediately after the subject incident that Antonio Garcia his first cousin, was shot and he was a suspect to it. If he was not really involved in the shooting, why did he not surrender himself to the police authorities and gave statement about his innocence? He was then with PO3 Ernesto Martin, a police officer, Ernesto Catiis, Bgy. Captain of Bulualto and other guests in the birthday party who were all Barangay Captains and Municipal Officials of San Miguel, Bulacan to whom he could have coursed his surrender. Why did he still wait to be arrested by the NBI agents 3 days after the subject incident. He did not even bother to see or extend assistance to his first cousin who met a horrible fate. His inactions add doubts to his claim of non-involvement in the shooting.[26]

Aside from the foregoing assessment of the trial court that accused-appellant's alibi is not worthy of belief, we find that his alibi failed to prove that he could not have been anywhere near the locus criminis, for in his own testimony he admitted that there are two routes at a distance of 400 meters each from the house of PO3 Ernesto Martin and the place of the incident.[27] Defense witness PO3 Ernesto Martin testified that the place of the incident could be reached by foot for about 10 to 15 minutes and by vehicle for about 5 to 10 minutes.[28] Clearly, accused-appellant failed to establish that it was physically impossible for him to be at the crime scene at the time of commission. Thus, his alibi must fail.

We agree with the trial court that murder was committed in this case. However, among the qualifying circumstances enumerated in the Information, only treachery may be correctly appreciated. Abuse of superior strength is necessarily absorbed therein.[29] Evident premeditation can not be considered for lack of evidence that accused-appellant pre-conceived the crime.[30]

Treachery is appreciated when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from any defense which the offended party might make. The presence of treachery which qualified the killing to murder was correctly appreciated by the trial court because the manner by which accused-appellant commenced and consummated the shooting of the victim Antonio Garcia showed conclusively that the latter was totally unaware of the assault and not afforded an opportunity to raise any defense against the assailant. Antonio Garcia, could not have expected, while drinking with his buddies in celebration of his birthday that he will be shot from behind. There is treachery where the accused's attack was so sudden and launched from behind that the victim was caught off guard without an opportunity to defend himself.[31]

The last issue to be resolved is the propriety of the amounts awarded by the trial court to the heirs of Antonio Garcia. We affirm the award of P50,000.00 as indemnity for the death of Antonio Garcia as this is in accord with prevailing jurisprudence.[32] Considering that the heirs of the victim asked for it and testified that they experienced moral suffering, the award of moral damages is proper but in the reduced amount of P50,000.00, as this is also in accord with prevailing jurisprudence.[33] We cannot sustain the award of P9,000.00 as expenses for the wake and the additional P13,000.00 as expenses for the funeral. The records show that the prosecution failed to substantiate the bare assertion of the widow, Teresita Maningas Garcia, with other corroborative evidence. The Court can only grant such amount for expenses if they are supported by receipts.[34] Finally, we must modify the award for loss of earning capacity. It was established that Antonio Garcia was 39 years old at the time of his death and earning P150.00 a day[35] or P4,500.00 a month as a tricycle driver. Loss of earning capacity is computed on the basis of the following formula:[36]

Net Earning Capacity (x) = life expectancy [2/3 (80 age at death)] x Gross [Annual Income (GAI) - Living expenses (50% of GAI)]

$$X = 2 (80-39)/3 \times 54,000.00 = 27,000.00$$

$$X = 27.33 \times 27,000.00$$

$$\text{Net Earning Capacity} = \text{P}737,999.99$$

WHEREFORE, the appealed decision is AFFIRMED with MODIFICATION as follows:

Accused-appellant Rosalino Flores is found GUILTY of murder for the death of Antonio Garcia. He is hereby sentenced to reclusion perpetua and is ordered to pay the heirs of Antonio Garcia P50,000.00 death indemnity, P50,000.00 moral damages and P737,999.99 for loss of earning capacity. Juris mis

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Rollo, pp. 45-76; Original Record (OR), pp. 397-429. Per Judge Andres S. Maligaya.

[2] OR, p. 429.

[3] Sic, should be Rosalino.

- [4] OR, p. 1.
- [5] Sic, should be Leonardo.
- [6] OR, pp. 422-423.
- [7] TSN dated October 12, 1994, pp. 10-11.
- [8] Rollo, p. 97; Appellant's Brief, pp. 4-5.
- [9] People vs. Narca, 275 SCRA 696 (1997).
- [10] TSN dated December 29, 1992, p. 32.
- [11] People vs. Eubra 274 SCRA 180 (1997).
- [12] Section 5, Rule 133, Rules of Court.
- [13] People vs. Cariquez and Franco, G.R. No. 129304, September 27, 1999.
- [14] TSN dated December 17, 1992, pp. 4-6.
- [15] TSN dated January 6, 1993, pp. 5-10.
- [16] People vs. Navales, 266 SCRA 569 (1997).
- [17] People vs. Cahindo, 266 SCRA 554 (1997).
- [18] TSN dated January 6, 1993, pp. 29-39.
- [19] People vs. Apelado et al., G.R. No. 114937, October 11, 1999.
- [20] TSN dated December 14, 1995, pp. 5-6, 11-13.
- [21] People vs. Alfeche, 294 SCRA 352 (1998).
- [22] People vs. Villaran, 269 SCRA 630 (1997).
- [23] People vs. Oliano, 287 SCRA 158 (1998).
- [24] People vs. Padoa, 267 SCRA 64 (1997).
- [25] People vs. Galladan, G.R. No. 126932, November 19, 1999.
- [26] Rollo, pp. 426-427.
- [27] TSN dated October 20, 1994, pp. 11-12; 23-24.
- [28] TSN dated January 27, 1994, pp. 6-10; 12.
- [29] People vs. Gaballo, G.R. No. 133993, October 13, 1999.
- [30] People vs. Apelado, et al., G.R. No. 114937, October 11, 1999.
- [31] People vs. Carpio, 282 SCRA 23 (1997).
- [32] People vs. Alagon and Rafael, G.R. No. 126536-37, February 10, 2000.
- [33] Ibid.
- [34] Ibid.

[35] TSN dated February 16, 1993, p. 17.

[36] People vs. Verde, G.R. No. 119077, February 10, 1999.

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.