

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO R. JAKOSALEM, ACCUSED-APPELLANT.

G.R. No. 130506. February 28, 2002

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-130506/>

YNARES-SANTIAGO, J.:

This is a petition for review of the decision of the Regional Trial Court of Malaybalay, Bukidnon, Branch 8, dated January 20, 1997, convicting accused-appellant Rolando Jakosalem of the crime of Murder, sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the heirs of the victim P50,000.00 as indemnity and to pay the costs.[1]

On June 19, 1995, an information was filed against Rolando Jakosalem for the crime of Murder allegedly committed as follows:

That on or about the 10[th] day of December 1988, in the afternoon, at Poblacion, Municipality of Maramag, Province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of superior strength, with intent to kill, by means of treachery, with the use of firearm, did then and there wilfully, unlawfully and criminally attack, assault and shoot ARTHUR TIBAYAN, inflict upon the latter mortal injuries which caused the instantaneous death of ARTHUR TIBAYAN, to the damage and prejudice of the legal heirs of ARTHUR TIBAYAN in such amount as may be allowed by law.

Contrary to and in violation of Article 248 of the Revised Penal Code.[2]

Accused entered a plea of not guilty at his arraignment[3] on July 28, 1995. After trial, the lower court rendered judgment on January 20, 1997 as follows:

WHEREFORE, the court finds the accused GUILTY beyond reasonable doubt as principal of the crime of murder as defined and penalized under Article 248 of the Revised Penal Code, as amended. He is therefore sentenced to imprisonment of reclusion perpetua, to indemnify the heirs of his victim Arthur Tibayan the sum of FIFTY THOUSAND (P50,000.00) PESOS and to pay the costs.

The bail bond for his provisional liberty is hereby cancelled and he is ordered immediately confined in the Provincial Detention and Rehabilitation Center of Bukidnon.

SO ORDERED.[4]

On December 10, 1988, at about 5:00 p.m., Noe Tuban was walking home from the post office of Maramag, Bukidnon when he saw a boy being beaten up by two policemen, whom he identified as accused and Nelson Cayetona.[5] Accused blindfolded the boy with a handkerchief and shot him on the chest. As the boy was about to fall down, Nelson Cayetona also shot him.[6] Then, accused told the onlookers that he will shoot them.[7] Noe Tuban ran away and went home. He told his mother what had happened. Noe's mother just told him not to go out anymore.[8]

The body of the victim, who turned out to be seventeen year-old Arthur Tibayan, was brought to the National

Bureau of Investigation regional office in Cagayan de Oro City. Dr. Tammy Uy, the NBI Medico-Legal Officer who performed the autopsy, found three gunshot wounds of entrance, two gunshot wounds of exits, and one graze gunshot wound.[9]

On the other hand, the forensic chemist, Bernabe Arenza, reported that based on his examination of the clothes worn by the victim at the time he was shot, the approximate distance of the gunman to the victim was between twenty to one hundred centimeters.[10]

Meanwhile, the investigation conducted by the Maramag Police disclosed that Arthur Tibayan was shot by accused, a member of the force, because he allegedly stole a bicycle.[11]

According to Leonarda Tibayan, the victim's mother, her family spent about P150,000.00 for the burial of her son. However, she failed to present the necessary receipts to substantiate the claim.[12]

The trial court gave more weight to the testimonies of the prosecution witnesses, particularly that of the sole eyewitness, Noe Tuban, whose testimony was found to be credible and straightforward. He testified as follows:

x x x x x x x x

A-

I came out from the office because it was closed, and when I came out I saw a boy being boxed by a policeman.

Q-

How many policemen who boxed that boy?

A-

Two (2).

Q-

Did you recognize these two policemen who boxed this Boy?

A-

Yes Sir, Jakosalem and Cayetona.

x x x x x x x x

Q-

Now, you said these policemen Cayetona and Jakosalem boxed a Boy, was the Boy hit when they boxed him?

A-

Yes Sir.

Q-

What part of the body of the Boy was hit?

A-

On this spot. (Witness pointing to his breast).

Q-

Do you know how many times did these two policemen Cayetona and Jakosalem box this Boy?

A-

Each of them boxed the Boy.

Q-

And do you know the name of this Boy?

A-

No Sir.

x x x x x x x x

Q-

Now, after these two policemen Jakosalem and Cayetona boxed the Boy, what happened next?

A-

They blindfolded the Boy and shot him.

Q-

Now, who blindfolded the Boy?

A-

Jakosalem.

Q-

Is he the same Jakosalem you just identified awhile ago?

A-

Yes Sir.

Q-

And what was that instrument used by Jakosalem in blindfolding the Boy?

A-

Handkerchief.

Q-

Now, when Jakosalem blindfolded the Boy, where was Cayetona?

A-

He was on the side.

x x x x x x x x

Q-

After Jakosalem blindfolded the Boy, what happened next?

A-

He shot the boy. (Witness pointing to accused Jakosalem).

Q-

Who shot the Boy?

A-

The first one who shot the Boy was Jakosalem.

Q-

After Jakosalem shot the Boy, what happened next?

A-

When the Boy was about to fall down, he was shot by Cayetona.

Q-

When Jakosalem shot the Boy, was the Boy hit?

A-

Yes Sir.

Q-

Where?

A-

(Witness pointing to his breast about two [2] inches from the center).

Q-

How did you know that the Boy was hit right in that point you just pointed?

A-

Because there was blood.

x x x x x x x x

Q-

After Cayetona and Jakosalem shot the Boy, what happened next?

A-

We were threatened by them that they will shoot us.

Q-

Who threatened you?

A-

Jakosalem.[13]

Upon receipt of the decision, accused filed a motion for reconsideration, but the same was denied by the trial court on March 12, 1997. Hence, this appeal based on the following assigned errors:

I

THAT THE HONORABLE COURT A QUO ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE SOLE EYEWITNESS, NOE TUBAN.

II

THAT THE HONORABLE COURT A QUO ERRED IN TAKING INTO CONSIDERATION THE ORDER IN PRELIMINARY INVESTIGATION.

III

THAT THE HONORABLE COURT A QUO ERRED IN ITS APPRECIATION OF THE ORDER IN THE PRELIMINARY INVESTIGATION.

IV

THAT THE HONORABLE COURT A QUO ERRED IN HOLDING THE DEFENSE WITNESSES LACKED CREDIBILITY.[14]

Accused-appellant alleges that there are inconsistencies between the testimony of Noe Tuban and the physical evidence, particularly the autopsy report and forensic chemist's findings. He claims that the autopsy report prima facie places the scene of the crime at Lumbi, Musuan, Maramag, Bukidnon, and not Poblacion, Maramag, Bukidnon as testified by Tuban. The direction of the gunshot was, according to the forensic evidence, from the victim's back and not from the front, as testified also by eyewitness Tuban. Accused-appellant further claims that the eyewitness account that the victim was in long pants did not jibe with the photograph of the victim wearing short pants at the time of the shooting.[15]

After a thorough review of evidence on record, we are convinced that accused-appellant is guilty beyond reasonable doubt of the crime charged. Hence, we find no cogent reason to reverse the findings of the trial court.

Clearly, the focal point of accused-appellant's arguments is the issue of the credibility of the sole eyewitness. However, the inconsistencies pointed out by accused-appellant are minor and do not detract from the fact that Noe Tuban positively identified accused-appellant as the one who shot the victim. It must be remembered that minor inconsistencies enhance the credibility of the witnesses, for they remove any suspicion that their testimonies were contrived or rehearsed.[16]

To buttress his defense, accused-appellant presented several witnesses who testified that they neither heard nor saw any shooting incident or burst of gunfire in the early evening of December 10, 1988 at the place where the victim was killed.

As between the positive declaration of the prosecution witness and the negative statements of the accused-appellant or his witnesses, the former deserves more credence.[17] The rule is that affirmative testimony is far stronger than a negative one, especially when it comes from the mouth of a credible witness,[18] such as the prosecution's eyewitness, Noe Tuban, who testified in a categorical, straightforward and spontaneous manner. Indeed, the spontaneity of the testimony of Tuban cannot simply be discredited by the testimonies of the defense witnesses claiming that there was no unusual incident that took place in the early evening of December 10, 1988. Moreover, accused-appellant failed to show any improper motive for Noe Tuban to falsely testify against him.

The second and third assignments of error being interrelated will be discussed jointly. Accused-appellant claims that the court a quo erred in taking into consideration the order of preliminary investigation and in appreciating the same. He maintains that he should have been exonerated of the crime charged like his co-accused Nelson Cayetona during the preliminary investigation considering that the evidence against him and Cayetona are the same. Appellant also claims that this was clearly an error of the trial court since the records of the preliminary investigation was not introduced in evidence by the prosecution.

Appellant's contention is misplaced.

The records of the preliminary investigation do not form part of the records in the trial court.[19] Hence, the prosecution is not mandated to offer in evidence the said record of preliminary investigation since it is separate from the records of the case and may or may not be considered by the court.

As correctly pointed out by the prosecution in its brief, accused-appellant's argument is based on a wrong understanding of the concept of preliminary investigation. A preliminary investigation is not a trial or any part thereof and has no purpose except that of determining whether or not the defendant should be released or held for trial before a competent court.[20] It is not a part of the judicial proceedings for the determination of accused-appellant's guilt. The two are independent of each other. Once the information against the accused is

filed in court, the investigating officer loses control over the case and the adjudication of the case is shifted to the trial judge.

More importantly, the evidence evaluated during the preliminary investigation consisted merely of the affidavits of the complainant and counter-affidavits of the respondents. At that time, the eyewitness has not yet appeared to testify. It was only after the information against accused-appellant was filed in court that the testimony of the sole eyewitness was presented.

Lastly, as to the evaluation of the defense witnesses' credibility, it has been well-settled that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter 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.[21]

Once again, the positive testimony of a single witness is entitled to more weight and credence than the testimony of several witnesses, like the defense witnesses in this case, who testified in the negative on collateral matters.[22] In the case at bar, the positive and credible testimony of the lone eyewitness, Noe Tuban, was not overcome by the negative testimonies of the defense witnesses. Hence, said negative testimonies cannot be given credence at all.

The trial court held that the killing of the victim was attended by abuse of superior strength and treachery. There is treachery when the offender commits any of the crime against persons employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[23] Treachery was resorted to by accused-appellant when he shot the victim while the latter was blindfolded and unarmed, thus rendering him helpless and without the opportunity to defend himself. The trial court, therefore, correctly appreciated the qualifying circumstance of treachery in this case.

In order that abuse of superior strength may qualify the killing to murder, it must be established that the aggressors took advantage of their combined strength in order to consummate the offense.[24] In the case at bar, there was no clear indication whether the accused-appellant together with his companion purposely used their joint efforts and weapons to consummate the crime. In any event, assuming that the qualifying circumstance of abuse of superior strength was present, this is absorbed in treachery.[25]

Accused-appellant was correctly sentenced to suffer the penalty of reclusion perpetua. At the time of commission of the crime, the penalty for murder was reclusion temporal in its maximum period to death.[26] There being neither aggravating nor mitigating circumstance, the penalty shall be imposed in its medium period, i.e., reclusion perpetua.

The prosecution prays that the civil indemnity awarded to the heirs of the victim be increased from P50,000.00 to P75,000.00. This is untenable. The amount of P75,000.00 as civil indemnity is awarded only to victims of qualified rape where the death penalty is imposed.[27] Accordingly, the trial court did not err in fixing the amount of civil indemnity at P50,000.00.

As regards the alleged burial expenses incurred by the family of the victim, we cannot award any actual damage for lack of sufficient proof thereof. In order that actual damages may be recovered, the amount of loss must not only be capable of proof but must actually be proven with reasonable degree of certainty, premised upon competent proof or best evidence obtainable of the actual amount thereof.[28] The testimony of the victim's mother as to the amount of expenses they incurred for the burial of Arthur Tibayan is not enough. There must be receipts or other documents to support their claim for actual damages.

WHEREFORE, based on the foregoing, the judgment of the Regional Trial Court of Malaybalay, Bukidnon, Branch 8, in Criminal Case No. 7476-95, finding accused-appellant Rolando R. Jakosalem guilty beyond reasonable doubt of Murder and sentencing him to suffer the penalty of reclusion perpetua, and ordering him to pay the heirs of the deceased the amount of P50,000.00 as civil indemnity, is AFFIRMED in toto.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Kapunan, JJ., concur.

[1] Penned by Judge Vivencio P. Estrada; Rollo, pp. 12-17.

[2] Rollo, p. 5.

[3] Records, p. 142.

[4] Rollo, p. 17.

[5] TSN, December 6, 1995, pp. 24-26.

[6] Ibid., pp. 29-31.

[7] Ibid., p. 35.

[8] Ibid., p. 37.

[9] TSN, December 13, 1995, p. 7; Autopsy Report, Annex “J-2”, Records, p. 6.

[10] Records, p. 2, Annex “J-3.”

[11] Ibid., pp. 21-24.

[12] Ibid., pp. 37-38.

[13] TSN, December 6, 1995, pp. 24-37.

[14] Appellant’s Brief, Rollo, pp. 29-30.

[15] Appellant’s Brief, Rollo, pp. 35-38.

[16] *People v. Realin*, 301 SCRA 495, 510 (1999); *Adzuara v. Court of Appeals*, 301 SCRA 657, 666 (1999).

[17] *People v. Regalario*, 220 SCRA 368, 384 (1993); *People v. Correa*, 285 SCRA 679, 696 (1998), citing *People v. Melgar*, 157 SCRA 718 (1988).

[18] *People v. Balmoria*, 287 SCRA 687, 709 (1998).

[19] Rule 112, Sec. 8.

[20] Francisco, *Rules on Criminal Procedure* (1994), p. 155, citing several cases.

[21] *People v. Acaja*, G.R. No. 108381, March 7, 2000, p. 6.

[22] *Naval v. Panday*, 321 SCRA 290, 299 (1999).

[23] *People v. Pamparong, Jr.*, 249 SCRA 584, 591-592 (1995).

[24] *People v. Panela*, G.R. No. 124475, November 29, 2000.

[25] *People v. Abordo*, 321 SCRA 23, 41 (1999).

[26] Revised Penal Code, Article 248.

[27] 292 SCRA 186, 200-201 (1998).

[28] *Luxuries Homes, Inc. v. Court of Appeals*, 302 SCRA 315 (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.