

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO CONTEGA Y FLORENDO, ACCUSED-APPELLANT.

G.R. No. 133579. May 31, 2000

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-133579/>

BELLOSILLO, J.:

ROGELIO CONTEGA Y FLORENDO was charged before the Regional Trial Court of Iloilo City with robbery with homicide committed on 27 April 1994 against one Isauro Barba after the accused in conspiracy with another unlawfully took away from his victim P1,500.00 and on the same occasion inflicted upon him serious physical injuries which caused his death.[1]

On 12 December 1997 the trial court found Rogelio Contega guilty as charged and sentenced him to reclusion perpetua with the accessory penalties provided by law. In addition, it ordered him to pay the heirs of Isauro Barba civil indemnity of P50,000.00, unearned income of P132,000.00, actual and compensatory damages of P30,000.00, and to pay the costs.[2]

Isauro, Alberto and Alex, all surnamed Barba, owned the Los Pescadores Restaurant located at the second floor of a two (2)-storey building in A. Reyes Avenue, Estancia, Iloilo. Isauro occupied the mezzanine floor. At around 9:00 in the evening of 27 April 1994 Jose Navarro, a waiter at the restaurant, noticed that Isauro Barba did not show up for his dinner. It was his routine to be there at about 7:00 in the evening. Finding his absence a little strange, Jose went to Isauro's room which was lighted but did not find him there so Jose returned to the restaurant, took a flashlight and went to the bodega at the ground floor managed by Isauro. The bodega was dark. Before he could reach the switches near the door his flashlight illumined the figure of Isauro lying face down on the cement floor. He immediately turned on the lights, shook Isauro's shoulders and asked him what happened. Isauro could only mutter that he was "bumped" by two (2) men.

At that juncture, Jose noted that Isauro's neck was covered with blood which dripped to the floor. He asked Isauro who his assailant was, and Isauro answered, it was "Rogelio," former pakyaw (piece-meal worker) in the bodega/restaurant. Then Jose recalled a certain Rogelio Contega who was fired a month before on suspicion of having stolen rice from the warehouse.

Forthwith, Jose went back to the restaurant and informed Chief Cook Rolly, Assistant Cook Jose Patwigas and Secretary Melody Duran of the misfortune of Isauro. Jose requested Melody to make the necessary phone calls, i.e., to the Barba family, to the police and to the doctor. Together with the Chief and Assistant Cooks, Jose went down to the bodega. They tried to bring Isauro to the main gate of the bodega but they could not find the keys to the gate which Isauro always brought with him. Aside from the keys, they noticed that Isauro's wallet was also missing.

In the meantime, at around 10:30 in the evening, PO3 Armando Robles received a telephone call concerning the incident at the Los Pescadores Restaurant. Accompanied by SPO3 Leopoldo Soldevilla, PO3 Robles hurried to the site. Informed that Isauro was in the warehouse, they proceeded there and met Jose, the Chief Cook, the

Assistant Cook and the Secretary. They were all on their way up carrying the body of Isauro. PO3 Robles observed that Isauro's physical condition was critical so they brought him inside the eatery and placed him on top of a table.

A certain Dr. Arellano rushed to the restaurant. He cleaned Isauro's neck that was full of blood, examined the gushing wounds thereof and gave him emergency medical treatment. PO3 Robles asked Isauro about the identity of his assailant and he simply replied it was "Rogelio," a former piece-meal worker in the place. Thereafter, Isauro was brought to the Jesus Colmenares District Hospital in Iloilo where he died at about 2:35 in the afternoon of 28 April 1994.[3] Eventually his keys were found but not his wallet.

The post-mortem examination of the body of Isauro however was conducted by Dr. Ricardo Jaboneta of the National Bureau of Investigation. His autopsy yielded the following findings:

x x x x Abrasions, linear, 5.3 cms. Oriented medially downwards, subcostal arch, left side along parasternal line.

Contused abrasion; (1) 1.3 x 0.7 cms., right temple; (2) 8.5 x. 3.5 cms., right zygomatic area; (3) 1.3 x 1.0 cms., elbow, right side, medial aspect; (4) 2.0 x 1.5 cms., knee, right side.

Hematoma; (1) 9.0 x. 7.0 cms., left mandibular area; (2) 7.0 x 2.7 cms., upper eyelid, left side; (3) 5.0 x 8.0 cms., penna., left ear.

Wound, punctured; (1) 0.5 cm., forehead, left side, just above lateral end of left eyebrow, directed backwards medially downwards, penetrating subcutaneous tissues and make an approximate depth of 1.0 cm., (2) 0.3 x 0.4 cm., tempore-parietal area, left side, involving third layer of the scalp; (3) 0.2 x 0.2 cm., left pre-auricular area, left side, involving soft tissues only; (4) 0.3 x 0.2 cm., thru and thru, left penna; (5) Triangular, 0.3 x. 0.5 cm., left upper lip involving, soft tissues and make an approximate depth of 1.0 cm., (6) multiple, sixteen (16) in number, sizes vary from 0.3 x. 0.5 to 0.4 x. 0.4 cm., nape, over an area of 13.0 x 9.0 cms., the average depth is 1.0 cm., (7) Triangular in shape, 0.4 x 0.4 x 0.4 cm., subcostal arch, left side, 19.0 cm., from anterior midline, directed upwards, medially backwards, penetrating abdominal wall thru 9th intercostal space into abdominal cavity, grazing spleen; (8) Triangular in shape, 0.3 x 0.3 x 0.3 cm., back left side along posterior axillary line, 13.0 cms. From posterior midline, level of 10th rib, penetrating abdominal wall thru 20th intercostal space into abdominal cavity, perforating left kidney and left renal artery; (9) Triangular in shape, 0.4 x 0.4 x 0.4 cm. Lumber region along midline, bone depth; (10) Thru and thru, triangular in shape, 1.0 x 1.5 cms., forearm, right side, dorso-ulnar aspect, 13.0 cms. Below elbow penetrating soft tissues and make an EXIT, triangular in shape 0.3 x 0.2 cm., forearm, right-side, antero-lunar aspect, 5.0 cm., below elbow' (11) 0.3 x 0.5 cm., forearm, left side, antero-ulnar aspect, 6.5 crms., below elbow, penetrating soft tissues and make an EXIT, 0.5 cm., forearm, left side, anterior aspect, 3.0 cms., below elbow; (12) triangular in shape, 0.3 x 0.3 cm., forearm, left side, antero-ulnar aspect, 13.5 cms. Below elbow, penetrating soft tissues and make an approximate depth of 3.0 cms x x x x

CAUSE OF DEATH: Hemorrhagic shock secondary to multiple punctured wounds.[4]

According to Dr. Jaboneta, among the twelve (12) punctured wounds suffered by Isauro, wounds 7 and 8 which were caused by a triangular pointed instrument were the most fatal having penetrated the vital organs of the victim.

Meanwhile, at around 5:00 in the morning of 28 April 1994, Rogelio Contega was apprehended at his residence in Barangay Pa-on, Estancia, Iloilo, about three (3) kilometers from the Los Pescadores Restaurant.

Eduardo Barba, Isauro's nephew, stated that Isauro was receiving a salary of P3,000.00 per month. He also stated that the Barba family incurred hospitalization expenses of P10,000.00, expenses for embalming services of

P15,000.00 as borne by a receipt;[5] expenses for the wake for ten (10) days of P7,000.00; and, expenses for labor and materials for the gravestone of P5,000.00.

Rogelio's alibi was that at around 5:30 in the afternoon of 27 April 1994 he was in his house with his wife Norma, children and his wife's sister-in-law Silma Dominguez. He was melting lead to be used in catching squid. At 7:00 they had dinner; afterwards, he slept. At 5:00 the following morning, two (2) members of the Estancia police force arrived in his house and told him that the Chief of Police wanted to see him. He went with them thinking, according to him, that there was a job waiting for him. At the police station, he learned that he was a suspect in the killing of Isauro Barba. Afterwards, he was locked up in jail. His defense was corroborated by Dominguez.

The trial court convicted Rogelio based on Isauro's dying declaration that his assailant was "Rogelio," a former pakyaw in the bodega/restaurant, as told to Jose Navarro and PO3 Armando Robles. The trial court was not impressed with his alibi because his residence was only approximately three (3) kilometers away from the Los Pescadores Restaurant and could be negotiated by foot at a slow pace in thirty (30) minutes. In addition, it found that he had the motive because he was dismissed from employment for reportedly stealing rice from the bodega.

Accused-appellant now disputes the sufficiency of the dying declaration of Isauro on the ground that he merely mentioned the name "Rogelio" without further details on the identity of the suspect.

Accused-appellant has a point and it is valid. His conviction indeed rests on quicksand. While factual findings of the trial court are entitled to great weight and respect, this case calls for a departure from the general rule. Easily, it can be said that the trial court has overlooked certain facts of substance and value that if considered would have altered the result of the case.[6]

A dying declaration, made in extremis when the party is at the point of death and the mind is induced by the most powerful considerations to speak the truth, occasioned by a situation so solemn and awful, is considered by the law as creating an obligation equal to that which is created by a positive oath administered in a court of justice. The idea more succinctly expressed is that "truth sits on the lips of dying men." [7] As an exception to the hearsay rule, it is defined in Sec. 37, Rule 130, of the Rules of Court as one made by a dying person under the consciousness of an impending death with respect to the cause and surrounding circumstances of such death. It may be received in any case wherein his death is the subject of inquiry and requires the concurrence of the following: (a) the statement or declaration must concern the crime and the surrounding circumstances of the declarant's death; (b) at the time it was made the declarant was under a consciousness of an impending death; (c) the declarant was competent as a witness; and, (d) the declaration is offered in a criminal case for homicide, murder or parricide in which the decedent is the victim.[8]

Isauro declared that his attacker was "Rogelio," a former pakyaw (piece-meal worker) in the bodega/restaurant of Los Pescadores. On this aspect, Jose Navarro testified -

Q: After you switch(ed) all the lights and you held the shoulder of Isauro Barba, did you notice his appearance
x x x x

A: His neck was bloodied and there was also blood on the cement.

Q: And when you saw this, what did you do?

A:

When I put on the light and I saw him in this situation I asked him what happened to him and he answered me that it (sic) was bumped by two men, and when I asked him who the men are (sic), he answered me that it was

Rogelio one of his piece-meal workers (pakyaw) in a local dialect (underscoring supplied).[9]

Navarro continued his narration by stating that he did not know any other person by the name of "Rogelio" who also worked there as pakyaw except accused-appellant whom he identified in court -

Q: You said that on April 27, 1994 you were already working as a waiter at the Los Pescadores Restaurant. Since when have you been working there?

A: December of 1993.

Q: Do you know a person by the name of Rogelio who was previously working as pakyaw?

A: Yes, sir.

Q: Do you know where this Rogelio was residing?

A: At Brgy. Pa-on, Estancia, Iloilo x x x x

Q: Now, if (sic) this Rogelio whom you said was working before as a pakyaw at the Los Pescadores Restaurant, is he inside the Courtroom? Can you point him?

INTERPRETER:

Witness goes to a person inside the Courtroom and points to a person who upon being asked identified himself as Rogelio Contega x x x x[10]

Q:

Aside from Rogelio Contega who is still working as a pakyaw in the bodega, do you know if there were any other person(s) by the name of Rogelio who was also working there as pakyaw?

A: No more (underscoring supplied).[11]

Aside from having known accused-appellant as a former piece-meal worker in the bodega/restaurant, Navarro also knew why his employment was terminated, thus providing the motive for the crime -

Q: At the time you found Isauro Barba at the bodega on April 27, 1994 was this Rogelio Contega still working at the bodega?

A: No more.

Q: Do you know the reason why Rogelio Contega was not working there?

A: As far as I know among (sic) before the incident, this Rogelio Contega was a suspect in the stealing of rice from the bodega.

Q: Do you personally know this Rogelio Contega?

A: Yes, sir.

Q: During the time that you were there at the Los Pescadores Restaurant, how often will (sic) you see him?

A: We often see (sic) each other because he catch-up (sic) to eat his breakfast x x x x[12]

Q: As far as you know, how many months did he work as "pakyaw" worker of Isauro Barba?

Q: Since I work (sic) in the Los Pescadores, in December of 1993 up to the time when the incident happened, this Rogelio Contega was no longer working, and a month before the incident (underscoring supplied).

Q: Why did he no longer work at (sic) Isauro Barba? What happened?

A: Because according to what I heard, and what the late Isauro Barba told us, while he was still alive and in fact contained in the police blotter, this Rogelio Contega was involved in the stealing of palay x x x x (underscoring supplied).

Q: Is it possible because Rogelio Contega was involved in the stealing of palay, this prompted Isauro Barba to dismiss Rogelio Contega from his work?

A: Probably that is one of the reasons.

Q: Is it possible also that this Rogelio Contega harboured ill feeling against Isauro Barba?

A: It is possible.[13]

Isauro also gave the same name and description of his assailant to P03 Armando Robles -

A: When we asked him what happened to him and who made this thing to him, he answered, it was a certain "Rogelio."

Q: And when he mentioned that it was a certain "Rogelio," what else did you ask from him?

A: When we asked him further about this "Rogelio" and his description, he answered that this Rogelio was a former worker of the place.

Q: As a policeman, do you know if there was such a worker before at Los Pescadores warehouse named Rogelio?

A: Before I know (sic) of a certain Rogelio who works (sic) there as a "pakyaw" in the place but "Tay Isauro" is definite in his description that this "Rogelio" was once a "pakyaw" in the place and already left it (underscoring supplied) x x x x[14]

Likewise, P03 Robles identified accused-appellant in court[15] which Navarro corroborated when he confirmed that Isauro did inform P03 Robles about the identity of his assailant –

Q: Mr. Navarro, you said that while Doctor Arellano was cleaning the wound of Isauro Barba he was asked question who bumped him. Please tell us who was asking this question?

A: Robles.

Q: Is this the same Robles the policeman who arrived?

A: Yes, sir.

COURT: Was that particular question addressed to the Doctor?

A: While the Doctor was cleaning the injuries, Robles was asking question on why and who bumped him because he sustained a swelling on the right temple.

COURT: The Court was asking you to whom was the question addressed? Was the question addressed by the Police Officer to the Doctor or to the victim?

A: The victim x x x x

ATTY. SALAS: What did Isauro Barba answered (sic)?

A: His answer was, Rogelio his piece-meal worker (underscoring supplied).[16]

Judging from the nature and extent of Isauro's injuries, the seriousness of his condition was so apparent to him

that it could safely be inferred that such ante-mortem declaration was made under the consciousness of an impending death. That his demise came swiftly or only a few hours after arrival at the hospital further emphasized his realization of the hopelessness of his recovery.[17] The records do not disclose that he was incompetent as a witness. Apparently his declaration was offered to prove the crime of robbery with homicide where his death was the subject of inquiry. However, the Court finds that his dying declaration did not sufficiently identify accused-appellant as the person responsible for his imminent death.

It is axiomatic that the prosecution bears not only the onus to show distinctly that a crime has been committed but, just as importantly, to likewise establish beyond reasonable doubt the identity of the person or persons who should be held responsible therefor. The latter, i.e., the identification of the accused to be the perpetrator of the crime, is concededly not an easy task.[18] It has thus once been observed that -

x x x x There are few more difficult subjects with which the administration of justice has to deal. The carelessness or superficiality of observers, the rarity of powers of graphic description, and the different force with which peculiarities of form or color or expression strike different persons, make recognition or identification one of the least reliable of facts testified to even by actual witnesses who have seen the parties in question.[19]

Navarro and P03 Robles may have been in unison in their testimonies on the declaration of Isauro regarding the identity of his assailant, i.e., "Rogelio, former pakyaw worker." By themselves the declarations are not enough to identify with certainty the person responsible for the crime. "Rogelio" is a common name and the description "former pakyaw worker" provides little help. It is thus necessary to ascertain whether the "Rogelio" whom Navarro and P03 Robles knew as a former pakyaw in the bodega/restaurant was the only such worker in the place.

While Navarro testified that accused-appellant was the only former pakyaw in the bodega/restaurant he knew, the problem with his statement is that it was confined to a limited span of only four (4) months. According to him he started his employment in the restaurant in December 1993 whereas the incident took place on 27 April 1994. The records do not reveal, much less imply, that the restaurant opened only in December 1993 or thereabouts. It is thus quite possible that there could be another "Rogelio" who used to work there as a pakyaw but whom Navarro could not have known before his employment thereat. Another competent witness should have been presented by the prosecution on this significant detail.

With respect to the testimony of P03 Robles, he said that he knew of a certain "Rogelio" who worked as a pakyaw in the place. However, he failed to mention that that "Rogelio" was the only former piece-meal worker in the bodega/restaurant. At any rate, even if he did so testify, he was not equipped with the required competence to shed light on the subject.

Moreover, Navarro stated that the person he pinpointed to as the attacker of Isauro was dismissed a month before the incident. However, his statement was contradicted by P03 Robles in his affidavit[20] when he said that Isauro had told him that his assailant "was already separated for quite a long time." Certainly, "quite a long time" cannot be equated with "a month."

While we hesitate to ignore the findings of the trial court we cannot remove the nagging uncertainty about the identity of the accused Rogelio Contega y Florendo as the very same pakyaw referred to by Isauro as narrated by witness Jose Navarro. For, there could be other Rogelios or pakyaws who could have been employed earlier at Los Pescadores than accused-appellant. In other words, the prosecution has not eliminated the possibility that another piece-meal worker with the name "Rogelio" was employed by the Barbas without the prosecution witnesses knowing about it, in which case and in view of such possibility, the conclusion that accused-appellant

Rogelio Contega y Florendo was the same person referred to by the prosecution has not been established beyond reasonable doubt.

Not even the supposed motive of accused-appellant to commit the crime merits weight. Navarro's knowledge of the matter was hearsay as it was merely supplied by Isauro and other people. Moreover, the prosecution did not bother to present the police blotter Navarro referred to as containing the charge of stealing made by Isauro against accused-appellant.

But we agree with the trial court that accused-appellant's defense of alibi does not convince. He failed to show that it was physically impossible for him to have been at the crime scene at the time it happened.[21] He admitted that his residence was only three (3) kilometers away, which can be negotiated in just thirty (30) minutes by walking and perhaps a little more than ten (10) minutes by running. And there is the tricycle that is usually available as the means of transportation.[22] On these accounts, the corroboration provided by Silma Dominguez does not assume importance. Alibi is a weak defense because it is easy to fabricate and concoct between relatives, friends and even those not related to the offender.[23] Yet, while the alibi of accused-appellant may be weak, the rule that "alibi must be satisfactorily proved was never intended to change the burden of proof in criminal cases; otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong." [24] The prosecution cannot profit from the weakness of the alibi of the accused. It must rely on the strength of its own evidence and establish his guilt beyond reasonable doubt. It failed to do so in this case.[25]

As in all criminal cases, speculation and probabilities cannot take the place of proof required to establish guilt beyond reasonable doubt.[26] We conclude that the evidence presented by the prosecution did not pass the test of moral certainty to warrant the conviction of accused-appellant for the death of Isauro.

Neither can we uphold accused-appellant's conviction for robbery based on the finding of the trial court that "the accused by means of violence or intimidation took away the wallet of the victim containing the amount of P1,500.00 according to Jose Barba, brother of the deceased." [27] Jose Barba did not testify but merely executed an affidavit which was not even submitted in evidence. More importantly, although there was evidence that Isauro's wallet was missing, there was no proof that Isauro had his wallet with him prior to the incident.[28] In order to sustain a conviction for robbery with homicide, it is necessary that the robbery itself be established as conclusively as any other essential element of the crime.[29]

In sum, we reiterate that the dying declaration of the victim Isauro Barba failed to categorically identify accused-appellant as his assailant, and the prosecution did not conclusively establish that robbery was committed upon the person of Isauro. In the absence of other evidence showing accused-appellant's guilt for the crime charged, it is not only his right to be set free; it is even more his constitutional right to be acquitted.

WHEREFORE, the Decision appealed from finding accused-appellant Rogelio Contega y Florendo guilty as charged is REVERSED and SET ASIDE for insufficiency of evidence and on reasonable doubt; consequently, he is ACQUITTED of the crime charged and ordered immediately released from custody unless held for some other lawful cause.

The Director of Prisons is DIRECTED forthwith to implement this Decision immediately and to inform this Court within five (5) days from receipt hereof of the date accused-appellant shall have actually been released from confinement. Costs de oficio.

SO ORDERED.

Mendoza, and Buena, JJ., concur.

Quisumbing, and De Leon, Jr., JJ., on leave.

- [1] Information dated 6 June 1994; Records, p. 1.
- [2] Decision penned by Acting Presiding Judge Recaredo P. Barte, RTC-Br. 31, Iloilo City; Rollo, p. 30.
- [3] Certificate of Death; Exh. "B;" Records, p. 10.
- [4] Autopsy Report No. 94-NO-48; Exh. "D;" id., pp. 193-194.
- [5] Funeraria Crisme Receipt No. 719; Exh. "E;" Records, p. 195.
- [6] *People v. Ragay*, G.R. No. 108234, 11 August 1997, 277 SCRA 106.
- [7] *People v. Marollano*, G.R. No. 105004, 24 July 1997, 276 SCRA 84 citing *People v. Hernandez*, G.R. Nos. 67690-91, 21 January 1992, 205 SCRA 213.
- [8] *People v. Nialda*, G.R. No. 115946, 24 April 1998, 289 SCRA 521 citing *People v. Viovicente*. G.R. No. 118707, 2 February 1998, 286 SCRA 1.
- [9] TSN, 18 May 1995, pp. 11-12.
- [10] Id., pp. 16-17.
- [11] Id., p. 20.
- [12] Id., p. 19.
- [13] TSN, 3 August 1995, p. 5.
- [14] TSN, 9 November 1994, pp. 10-11.
- [15] Id., p. 20.
- [16] TSN, 18 May 1995, pp. 15-16.
- [17] *People v. Macalino*, G.R. No. 79387, 31 August 1989, 177 SCRA 185.
- [18] *People v. Niño*, G.R. No. 121629, 19 May 1998, 290 SCRA 155.
- [19] *People v. Beltran*, No. L-31860, 29 November 1974, 61 SCRA 246, citing *Estate of Bryant*, 176 Pa. 309, 318.
- [20] Records, p. 7.
- [21] *People v. Castañeda*, G.R. No. 114972, 24 January 1996, 252 SCRA 247.
- [22] TSN, 29 August 1997, p. 14.
- [23] *Naval v. Panday*, A.M. No. RTJ-95-1283, 21 July 1997, 275 SCRA 654.
- [24] *People v. Manambit*, G.R. Nos. 72744-45, 18 April 1997, 271 SCRA 344.
- [25] See Note 6.

[26] People v. Balderas, G.R. No. 106582, 31 July 1997, 276 SCRA 470.

[27] Decision, p. 10; Rollo, p. 29.

[28] People v. Cadevida, G.R. No. 94528, 1 March 1993, 219 SCRA 218.

[29] People v. Pacala, No. L-26647, 15 August 1974, 58 SCRA 370.

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.