

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. MAXIMO AQUINDE, JAIME FAJARDO AND MARIO GANSENIA, ACCUSED.
MAXIMO AQUINDE AND MARIO GANSENIA, APPELLANTS.**

G.R. No. 133733. August 29, 2003

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-133733/>

CALLEJO, SR., J.:

This is an automatic review of the Decision[1] of the Regional Trial Court, Urdaneta City, Pangasinan, Branch 46, in Criminal Case No. U-9340, convicting the appellants of murder, sentencing them to death by lethal injection, and directing them to pay, jointly and solidarily, the heirs of the victim Ricardo Rosario, Jr., P50,000 as civil indemnity; P86,000 as actual damages; and P20,000 as exemplary damages.

On September 4, 1997, an Information charging accused Jaime Fajardo and the appellants with murder was filed with the RTC of Urdaneta, Pangasinan, docketed as Criminal Case No. U-9340. The accusatory portion of the Information reads:

That on or about February 23, 1997, inside the Public Market at Poblacion, [M]unicipality of Binalonan, [P]rovince of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, armed with unlicensed guns with intent to kill, treachery and taking advantage of superior strength, conspiring, together, did, then and there wilfully, unlawfully and feloniously shoot Ricardo Rosario alias "KUYEP," inflicting upon him the following injuries:

-

Two (2) bullet wounds on right lateral side of neck below right ear - 1-1/2 inches apart (point of entrance)

-

One (1) bullet wound near left eye lateral side 2 inches in length (exit)

-

One (1) bullet wound just below left ear - 1 inch in length (exit)

-

One (1) bullet wound at mediolateral right side of back near the angle of scapula (POE)

-

One (1) bullet wound grazed the right lung.

-

One (1) bullet hole on middle portion of left lung and passing to post. left arm near the left shoulder.

which caused the instant death of said Ricardo Rosario, Jr. alias "KUYEP," to the damage and prejudice of his heirs.

CONTRARY to Art. 248, Revised Penal Code as amended by R.A. 7659.[2]

Another Information was filed with the same court, charging appellant Mario Gansenia with the violation of Presidential Decree No. 1866, as amended by Republic Act No. 8294, docketed as Criminal Case No. U-9342, committed as follows:

That on or about February 23, 1997, inside the public market at Poblacion, [M]unicipality of Binalonan, [P]rovince of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession, control and custody one (1) cal. .45 high power firearm and ammunitions without first securing the necessary permit/license to possess the same, which firearm was used in shooting to death Ricardo Rosario alias "Kuyep."

CONTRARY to P.D. 1866 as amended by R.A. 8294.[3]

On October 1, 1997, appellant Aquinde, assisted by counsel, was arraigned in Criminal Case No. U-9340 and entered a plea of not guilty. At the time of Aquinde's arraignment, Mario Gansenia and Jaime Fajardo were at large. On December 16, 1997, appellant Gansenia was arrested, and on January 8, 1998, he was arraigned, assisted by counsel, and pleaded not guilty to both Informations. Accused Jaime Fajardo remains at large.

The two cases were consolidated and tried jointly.

The Evidence of the Prosecution[4]

Mario Rosario was a mechanic who resided at No. 12 Arellano Street, Poblacion, Binalonan, Pangasinan. At about 8:00 a.m. of February 23, 1997, he left his house and proceeded to the public market, about four hundred meters away, to buy smoked fish for breakfast.[5] The marketplace was teeming with people. Mario proceeded to the smoked fish section, at the edge of the concrete table, second row, to buy tinapa.[6] When he looked at the tuyo section in front of him, he saw his elder brother Ricardo Rosario, Jr. standing beside a concrete table between the second and last alley at the dried fish section about ten meters away.[7] Mario was stunned when he saw accused Gansenia, who was a foot away behind his brother[8] suddenly shoot the latter once with a pistol.[9] Ricardo, Jr. fell to the ground on his left side.[10] Appellant Aquinde, who was about two feet away from Ricardo, Jr. moved closer to the latter. He stooped a little and shot the victim twice on the right side of the neck.[11] Accused Fajardo stood nearby, his right hand holding a handgun raised upward.[12] Gansenia, Aquinde and Fajardo then casually walked away from the scene as people scampered for safety.[13] Mario rushed to his brother and frantically shouted for help, but nobody came to aid the fallen victim. Mario could not carry his brother as the latter was much bigger in built. He ran to their house and reported the incident to his other brother Rene. The latter rushed to the public market while Mario remained in their house and took care of his mother who was ill. Fearing for his life and that of his family, Mario did not reveal to the barangay and police authorities that he witnessed the killing, and that Aquinde, Gansenia, and accused Fajardo were the perpetrators of the crime.

When apprised of the shooting, SPO1 Angelito Domingo, SPO2 Eduardo Castillo and SPO2 Jose Andrada of the Binalonan Police Station rushed to the public market to conduct an on-the-spot investigation. No one could tell them who the assailants were. Pictures were taken of the victim lying on his side with a bundle of dried fish beside his abdomen.[14]

That same morning, SPO2 Sergio Hidalgo, a jailer at the police station, went out to buy softdrinks. On his way, he met one Mrs. Abellera at a stall beside the public market. Mrs. Abellera handed to him a bag, which contained a slug and an empty shell.[15] Hidalgo gave the empty shell and slug to SPO1 Domingo.

The killing was entered in the police blotter of the Binalonan Police Station, which stated that the assailants were unidentified.[16]

SPO1 Cipriano Culiao, the intelligence officer of the Binalonan Police Station, was assigned to conduct a follow-up investigation of the killing. SPO1 Domingo turned over to him the empty shell and slug earlier handed over by SPO2 Hidalgo. SPO1 Culiao placed the empty shell and slug in a stapled paper bag, which he marked with an "X." He placed the bag in his locker.[17]

The Criminal Investigation Group (CIG) of the PNP had apparently used Ricardo Rosario, Jr. as an "asset." He gave the CIG informations about the dealings of the Sampayan and Siguig families which, thereafter, resulted in the filing of a criminal complaint against them for illegal possession of firearms.[18]

On February 23, 1997, Municipal Health Officer Dr. Esperanza V. Mendaros of Binalonan, performed an autopsy on the cadaver of the victim and submitted an autopsy report which contain the following findings:

...

Pertinent Findings:

- Two (2) bullet wounds on right lateral side of neck below right ear - 1-1/2 inches apart (point of entrance).
- One (1) bullet wound near left eye lateral side 2 inches in length (exit).
- One (1) bullet wound just below left ear - 1 inch in length (exit).
- One (1) bullet wound at mediolateral right side of back near the angle of scapula (POE).
- One (1) bullet wound grazed the right lung.
- One (1) bullet hole on middle portion of left lung and passing to post. left arm near the left shoulder.

Cause of death:

Severe hemorrhage due to bullet wounds.[19]

On February 24, 1997, the CIG Field Office Chief of the PNP, Urdaneta City, ordered SPO2 Emmanuel Tomelden to conduct an investigation of the shooting. SPO2 Tomelden proceeded to Binalonan along with SPO3 Onofre M. Madrid to conduct an on-the-spot investigation. The police officers interviewed the vendors in the market where the shooting took place, as well as the victim's family, including Mario. But because they feared for their lives, they refused to talk and to give their respective statements.

Mario testified that he could not fathom why Gansenia, Fajardo and Aquinde would kill his brother. He personally knew the three since 1980 when he was still a high school student. They were all natives of Binalonan, Pangasinan. Gansenia used to work for his other brother Rene as a conductor in the latter's passenger jeepney. Mario also saw Aquinde frequently at the billiard hall in the poblacion of Binalonan.[20]

Since 1990, Aquinde had been employed by the Municipality of Binalonan as a security guard and was issued by Municipal Treasurer Marilyn O. Valenzuela, and duly approved by Municipal Mayor Ramon Guico, Jr. a caliber .45 pistol bearing Serial No. 2096415.[21]

On June 2, 1997, Fajardo and Aquinde were in Laoac, Pangasinan. Aquinde was carrying his .45 caliber pistol bearing Serial No. 2096415 with live ammunitions.[22] Fajardo likewise carried a .45 caliber pistol bearing Serial No. 1452660. Acting on reports that Fajardo and Aquinde were acting suspiciously, the police authorities of Laoac accosted the two, confiscated their guns and live ammunitions, and took them into custody. On the same

day, Chief of Police Zosimo Fernandez reported the arrest of Aquinde and Fajardo and the confiscation of guns and ammunitions to the Pangasinan Provincial Police Director in Lingayen, Pangasinan.[23]

On June 10, 1997, Chief Investigator Jaime M. Fernandez of the PNP Provincial Command in Lingayen, ordered the Chief of Police of Binalonan to turn over the slug and empty shell which was in the custody of SPO1 Cipriano Culiao.[24] The Chief of Police complied with the directive.

On the same day, police intelligence and investigating officers requested the PNP Crime Laboratory in Lingayen, Pangasinan, to conduct a ballistic examination of the pistol bearing Serial No. 2096415 to determine whether the empty shells and the deformed slug[25] were fired from the said gun.[26] The letter-request was indorsed to the Crime Laboratory of the PNP Provincial Director.[27]

On June 11, 1997, Police Inspector Pascual Cosape Mangal-ip of the PNP Crime Laboratory Field Office conducted a ballistic examination of the caliber .45 pistol with Serial No. 2096415 issued to Aquinde and another caliber .45 pistol with Serial No. 1452660,[28] one empty shell and the deformed slug. He signed a report, confirming that the empty cartridge[29] was fired from the caliber .45 pistol bearing Serial No. 2096415, barrel number 7791193, which was issued to Aquinde by the Municipality of Binalonan.[30]

When he learned that Aquinde and Fajardo had been apprehended and their guns confiscated, Mario went to the PNP-CIG Provincial Field Office in Dagupan City on June 11, 1997 to give his sworn statement. Before SPO2 Emmanuel Tomelden, Mario narrated how Aquinde and Gansenia gunned down his brother Ricardo, Jr. at 8:00 a.m. on February 23, 1997 at the Binalonan public market, with Fajardo as their lookout.[31]

On July 3, 1997, SPO2 Tomelden filed a criminal complaint against Aquinde, Gansenia and Fajardo with the Office of the Provincial Prosecutor in Urdaneta City, charging all three with murder. Aquinde and Fajardo executed a joint counter-affidavit denying the charge and interposing the defense of alibi. Warrants of arrest were consequently issued against the three accused.

Catherine S. Surbita, the surviving spouse of the victim, spent P35,000 for the funeral services[32] and P50 for the burial permit.[33]

The Evidence of the Accused[34]

Aquinde testified that he was employed as a security guard of the Ultimate Agency owned by one "Gotoc," Mayor Ramon Guico's brother-in-law. The mayor verbally appointed him as a watchman in the municipal building of Binalonan. The municipal treasurer issued to him a caliber .45 pistol bearing Serial No. 2096415 covered by a PNP Memorandum Receipt duly approved by the municipal mayor.[35] Although he was employed as a security guard of the Ultimate Agency, he received his salary from the municipal government as a watchman. In the morning of February 23, 1997, he was plowing the ricefield of his uncle Ruben Aquinde located at Cabontonan, Binalonan, Pangasinan, about four kilometers from the poblacion. It was then planting season. He left the farm at 4:00 p.m. and reported for duty as a watchman at the municipal building. He said that his tour of duty usually starts at 6:00 p.m. or 6:30 p.m.[36]

Aquinde further testified that he knew the victim but not Mario Rosario. He often saw the victim with the CIG of the PNP's Criminal Investigation Service. The victim and the CIG chief confiscated firearms from the Sampayan and Siguig families in Binalonan, Pangasinan. A criminal complaint was filed against these people but the case was settled. He learned from the helper of one Dr. Dante Barrientos that Ricardo Rosario, Jr. was involved in a hold-up incident where the doctor was the victim. He knew Gansenia, who was then employed as a driver of the Dagupan Bus Company. He also knew Fajardo who was a municipal employee of Binalonan and worked as a watchman, too. Fajardo was issued a caliber .45 gun with Serial No. 1452660 which was confiscated on June 2,

1997 by the Laoac municipal police.[37]

Gansenia testified that on February 23, 1997, he was in Fairview, Quezon City, helping in the construction of the house of one Florencio Ducos.[38] His sister, who was a beautician, rented a portion of the said house. His daughter Marife, lived with his sister and was enrolled at the Commonwealth High School. Construction started on February 17, 1997 and was finished on February 28, 1997. Gansenia was likewise employed as a driver of the Dagupan Bus Company, plying the Cubao-Tuguegarao route. He went on leave for two weeks because the bus he was driving needed engine replacement. In the evening of February 16, 1997, he went to his sister's place, and it was then that Florencio asked him to help in the repair and construction of the house. He agreed and stayed in the Florencio residence to work thereat until February 28, 1997.

Benjamin Francisco testified that the Municipality of Binalonan employed him as a watchman. At about 7:30 a.m. of February 23, 1997, he boarded a tricycle and proceeded to the house of Mario Rosario to have his Yamaha motorcycle repaired. Mario agreed. The two went back to Benjamin's place and arrived there at about 8:00 a.m. Mario thenceforth repaired Benjamin's motorcycle. Between 8:00 a.m. and 9:00 a.m. while Mario was still repairing his motorcycle, Benjamin heard that Ricardo was shot in the public market, some five hundred meters away from his house.

Dionisio Pilar testified that the Municipality of Binalonan hired him as a contractual employee. Part of his work was to attend to the needs of the vendors in the public market. On February 23, 1997, he arrived at the public market at around 6:30 a.m. At about 9:00 a.m., he felt thirsty and went to the artesian well at the dried fish section.[39] He washed his hands. Momentarily, he heard a gunfire. He turned his head towards the direction of the gunfire and saw a male person falling down, near the dried fish section of the public market.[40] He saw a male person with a bonnet on his head holding a gun. Afraid for his safety, Dionisio ran towards the northern direction. He had barely taken two or three steps when another shot rang out. People scampered for safety. Dionisio returned to where the victim had fallen and saw the latter, a known hold-upper, sprawled on the ground between two boxes of dried fish in the alley between two concrete tables.[41]

After due proceedings, the trial court rendered judgment in Criminal Case No. U-9340, convicting the appellants of murder, sentencing them to death by lethal injection, and acquitting appellant Mario Gansenia in Criminal Case No. U-9342 for failure of the prosecution to prove his guilt beyond reasonable doubt of the crime charged. The decretal portion of the decision reads:

WHEREFORE, JUDGMENT OF CONVICTION beyond reasonable doubt is hereby rendered in CRIM. CASE NO. U-9340, for Murder, the Court sentences Mario Gansenia and Maximo Aquinde to suffer the supreme penalty of DEATH, to be implemented in the manner prescribed by law. Ordering said accused to pay the heirs of Ricardo Rosario, Jr., the sum of P86,000.00 for actual expenses; another sum of P50,000.00 for damages; P20,000.00 for exemplary damages, jointly and solidarily.

In CRIM. CASE NO. U-9342, for Illegal Possession of Firearm and Ammunitions against Mario Gansenia, for failure of the prosecution to prove beyond reasonable doubt of the crime charged in the Information, the Court ACQUITS MARIO GANSENIA.

The two (2) .45 caliber firearms with Serial Numbers 2096415 and 1452660 are hereby forfeited in favor of the government.

The Branch Clerk of Court is hereby ordered to prepare the mittimus immediately and transmit the records to the Supreme Court of the Philippines for automatic review.

SO ORDERED.[42]

Appellant Gansenia assails the decision of the trial court contending that:

FIRST :THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE TESTIMONY OF THE LONE EYEWITNESS MARIO ROSARIO IS NOT CREDIBLE, AND THAT IT LIKEWISE GRAVELY OVERLOOKED, MISINTER-PRETED, MISUNDERSTOOD AND/OR MISAPPLIED SOME FACTS OR CIRCUMSTANCES OF WEIGHT AND SUBSTANCE, WHICH IF PROPERLY CONSIDERED, MIGHT AFFECT THE RESULT OF THE CASE.

SECOND:

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THERE IS ULTERIOR MOTIVE OR ILL MOTIVE ON THE PART OF SPO2 EMMANUEL TOMELDEN OF THE PNP-CIG, DAGUPAN CITY, IN FILING THE CASE AGAINST THE ACCUSED, AND TO COVER-UP THE KILLING OF RICARDO ROSARIO;

THIRD:

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE ACCUSED MARIO GANSENIA IS INNOCENT OF THE CRIME CHARGED OF MURDER, AS THERE WAS PHYSICAL IMPOSSIBILITY FOR THE SAID ACCUSED TO HAVE BEEN AT THE SCENE OF THE CRIME AT THE TIME IT WAS COMMITTED;

FOURTH

:THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THERE IS REASONABLE DOUBT AS TO THE TRUTH OF THE MURDER CHARGED AGAINST ACCUSED MARIO GANSENIA, AND THAT THE DOUBT SHOULD BE RESOLVED IN FAVOR OF THE SAID ACCUSED FOR HIS ULTIMATE ACQUITTAL.[43]

Appellant Aquinde, for his part, asserts in his Brief that:

I

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE VERSION OF LONE EYEWITNESS WHICH WAS TAKEN AFTER FIVE (5) MONTHS, HENCE, HIS TESTIMONY IN COURT CREATES DOUBTS AS TO HIS CREDIBILITY.

II

THE LOWER COURT ERRED IN NOT ENTERTAINING THE ACCUSED-APPELLANT AQUINDE'S DENIAL AND ALIBI.[44]

We shall delve into and resolve the appellants' respective assignments of errors simultaneously, as they are interrelated to each other.

The appellants contend that the prosecution failed to prove beyond reasonable doubt their guilt for the crime charged. The testimony of the prosecution's principal witness, Mario Rosario, is incredible. He reported having witnessed the shooting and identified the appellants as the assailants only on June 11, 1997 when he gave his sworn statement to SPO2 Emmanuel Tomelden, which was subscribed and sworn to before Assistant Prosecutor Eugenio F. Manaois in Urdaneta City only on July 1, 1997, or more than four months after the shooting. The inordinate delay in reporting the killing and identifying the assailants is thus evidence that Mario was a "planted witness."

The result of the PNP-CIG's investigation of the shooting, independent of and separate from the initial investigation conducted by the Binalonan Police Station is unreliable, in light of the Binalonan police's initial

report that the assailants could not be identified.

The appellants further contend that Mario's testimony is barren of probative weight. Aside from the fact that it contained too many details which Mario could not have possibly recalled considering the suddenness of the shooting, it was also inconsistent on material and substantial aspects. According to the report of the Binalonan police investigator, the crime took place at 9:00 a.m. This belies Mario's version that the shooting occurred at 8:00 a.m.

Mario testified that his brother was shot when he was about to buy tinapa. With so many people in the public market, he could not have seen the victim's killers and how the shooting was done. He could not have seen what part of the victim's body was hit when the second assailant shot the victim because after the first gunshot, the latter fell to the ground between two wooden tables in front of the middle portion of the concrete table at the dried fish section, and was sandwiched between two boxes of tuyo.

The appellants also assert that the trial court erred when it ignored the appellants' evidence that the victim was shot by a lone gunman wearing a fatigue camouflage outfit with a bonnet on his head, and their defense of alibi.

The appellants' submissions do not hold water.

The legal aphorism is that the findings of facts of the trial court, its calibration of the testimonial evidence, its assessment of the probative weight thereof as well as its conclusions anchored on the said findings are accorded high respect if not conclusive effect by the appellate courts. The *raison d'être* for this principle is that the trial court is able to observe and monitor, at close range, the conduct, behavior and deportment of the witnesses as they testify. However, the appellate court is not bound by the said findings and conclusions if the trial court ignored or overlooked, misunderstood or misconstrued cogent facts and circumstances which, if considered, will alter the outcome of the case.[45] In this case, we find no basis to deviate from the trial court's findings and conclusions on the credibility and probative weight of Mario's testimony. The trial court found the testimony of Mario to be positive and credible, and is therefore, entitled to full probative weight:

These detailed, categorical and positive declarations of Mario Rosario, although a lone eyewitness for the prosecution, is credible and positive which is sufficient for conviction of the accused. The law does not require that the testimony of a single witness must be corroborated except where expressly mandated. The weight and sufficiency of evidence is determined not by the number of witnesses presented but by the credibility, nature, and quality of the testimony. It is settled that the testimony of a lone prosecution witness, if credible and positive, is sufficient for conviction. (Pp. vs. Ladislao Abo y de Alday, G.R. No. 107235, March 2, 1994).[46]

There is no evidence on record that Mario had any ill motive to prevaricate and falsely pinpoint the appellants as the perpetrators. Absent such ill motive, Mario's testimony must be given credence and full probative weight.[47]

We ruled in *People v. Baquiran*,[48] that the natural reaction of one who witnesses a crime is to reveal it to the authorities at the earliest opportunity unless he is the author thereof. However, this principle is not iron-clad. Failure of a witness to reveal to the authorities that he witnessed a crime and to reveal the identities of the offender for a number of days, weeks or even a number of years, is allowable if there is a valid reason for such delay.[49] In *People v. Rimorin*,[50] we held that even a ten-year delay was still acceptable, thus:

That Osoteo's fear of Rillon constrained him for ten years from revealing the crime and identifying the perpetrators to the authorities is understandable. The delay should not in any way taint his credibility. It should in fact foster credence in his revelation, considering that after ten years he did not have to come out to testify if there was no grain of truth in it.

In this case, Mario testified that he opted not to reveal to the police authorities the fact that he witnessed the

killing of his brother in broad daylight because he feared for his life and those of his family members. This can be gleaned from SPO2 Tomelden's testimony:

FISCAL MANAOIS:

Earlier you said you are from Binalonan, Pangasinan, as member of the investigating arm of the PNP over which Binalonan you have a certain kind of jurisdiction, can you tell us if you have conducted any investigation or have any knowledge of this case even prior to June 11, 1997?

A Yes, sir.

Q

When for the first time therefore did you acquire knowledge regarding this incident relative to the death of Ricardo Rosario on February 23, 1997?

A On February 25, 1997, sir, that was two days after the incident, I conducted an investigation, sir.

Q What was the result of your investigation?

A

I came to know that the victim was Ricardo Rosario and that he was shot at the public market of Binalonan on the 23[rd] of February about 8:00 o'clock in the morning, sir.

COURT:

Did you find any witness on February 25?

A They are hesitant about the incident because they are afraid of their lives.

FISCAL MANAOIS:

On that date, February 25, 1997, did you already come to know the name of the victim?

A

Yes, sir.

Q

Did it occur to your mind to visit the family of the victim in order that you can get information as to the suspects as well as witnesses?

A

I went to their place to gather information relative to this incident but they are hesitant to talk because they are afraid to be killed or to the suspects [sic], sir.

Q Who are afraid of the suspects?

A The family of the victim, sir.

Q You are referring to the victim Ricardo Rosario?

A

Yes, sir. We conducted investigation and gathered information about this incident but proved futile because the people around the public market are hesitant to talk about the incident.[51]

Fear for one's life is a valid explanation for a witness' failure to immediately report the crimes and the identities of the offenders to the authorities.[52]

It bears stressing that the Ultimate Agency owned by Binalonan Mayor Ramon Guico's brother-in-law employed the appellants. The appellants apparently enjoyed the Mayor's protection. When appellant Aquinde and accused Fajardo were arrested on June 11, 1997 in Laoac, Pangasinan, and their guns were confiscated by the police authorities, Mario came out into the open and sought SPO2 Tomelden to give his sworn statement.

Q

If you are afraid of them, why did you come out on June 11, 1997 when you subscribed your affidavit, according to you, you are afraid?

A

Because I learned that these people were already apprehended, sir.

Q Who are these people, who were apprehended according to you?

A Aquinde and Fajardo, sir.

Q Only the two (2) of them, how about Ganceña?

A He was at Binalonan, Pangasinan, sir.

Q Were you not afraid of him according to you he was one of the suspects?

A No more sir, because I did not go to Binalonan anymore.

Q

Your reason by not reporting the incident, because you are afraid of the suspects at the time, but at the time you reported the incident to SPO2 Tomelden, you know for a fact that Ganceña is still at-large at the time, correct?

A Yes sir, I know that Ganceña is not yet apprehended.

Q And you are not afraid of him at that time?

A Yes sir, because when the two (2) accused were apprehended, Ganceña did not roam around in Binalonan, sir.

Q

Did it not occur to you that Ganceña would do something to harm you or kill you even though you did not see him there?

A It come [sic] to my mind, sir.

Q

Why did you not report immediately the incident to the Police and then stayed with them like what you did with SPO2 Emmanuel Tomelden after the incident happened?

A I am afraid in Binalonan, sir.

Q

According to you, you stayed in the custody of SPO2 Tomelden on June 11, 1997, if you have done that you

have done it earlier after the incident. Why it took [sic] you more than four (4) months to report the incident to SPO2 Tomelden?

A

I was still afraid to tell them and to go to the Police Station at that time because the suspects were still roaming around Binalonan, sir.

Q And on June 11, 1997 when you reported the incident to SPO2 Emmanuel Tomelden, you lost suddenly your fear, is that correct, Mr. Witness?

A I previously reported to SPO2 Tomelden because the two (2) suspects were already apprehended, sir.

Q

And that time, you suddenly lost your fear to Ganceña [sic] and you are not afraid anymore to Ganceña [sic], is that what you mean, Mr. Witness?

A I am still afraid, sir.

Q Why did you report to the Police when you are afraid according to you at that time?

A Because two (2) of the suspects were already apprehended that's why I reported the matter.

Q

But you are sure that one of the suspect[s] Fajardo did not shoot your brother only Maximo Aquinde and Mario Ganceña, is that correct?

A Yes, sir.

Q

At that time when you did not do anything from February 23 after the incident up to the time you reported the incident to SPO2 Tomelden on June 11, 1997, did it not occur to your mind that your late brother needs justice and you did not do anything?

COURT: That is only four (4) months.

ATTY. LABARINTO:

Q Did you[r] conscience bother when you did not do anything?

COURT: He is not charge[d] of any offense, the principal must have conscience. The frame is wrong. Go ahead, another question.

ATTY. LABARINTO:

Q Do you know of any program of the government thru the Dept. of Justice?

WITNESS:

A Yes sir.

Q

Now, according to you, you knew that program, why did you [not] avail of that program after the incident that happened on February 23, 1997, so you could be protected?

A I was afraid because the suspects were roaming around, sir.

COURT: That is not the question?

Q Do you know the witness protection program?

WITNESS:

A I only heard that, sir.

Q The program of the DOJ will protect you.

A I do not know, sir.[53]

That Mario testified in detail on the commission of the crime and how the appellants consummated the same is not incredible.

The evidence on record shows that the crime was committed in broad daylight. People within the periphery of the scene of the shooting scampered for safety after the first gunshot. Mario was barely ten meters away, and thus, had a clear view of the situs criminis, as well as the appellants, as they shot the victim one after the other.

In *People v. Adviso*,^[54] we ruled that it is the natural reaction of relatives of victims to strive to observe the faces and appearances of the assailants, if not ascertain their identities, the manner in which the crime is committed and to approximate the assailant's next move either as an instinctive reaction or as a recourse to help fend off any further attack. A relative will naturally be interested in identifying the malefactors to secure their conviction to obtain true justice for the death of a loved one.^[55] Mario was no less than the brother of the victim. His testimony is even buttressed by the autopsy report of Dr. Esperanza Mendaros.

The fact that during the initial investigation of the crime, the police operatives of the Binalonan Police Station failed to unearth the identities of the perpetrators does not rule out the possibility that as witnesses and new leads emerge and cogent evidence are found, the identities of the offenders would finally be discovered by astute and perspicacious police investigators.

That the police operatives from the CIG of the Pangasinan Provincial Command conducted an investigation of the killing independent of and separate from the initial investigation of the Binalonan police is inconsequential. The appellants failed to show any law or police regulation prohibiting the PNP provincial command from conducting a parallel or separate investigation of crimes committed within its jurisdiction. Operatives of the provincial command may even take over any ongoing investigation by the local police. After all, the Binalonan Police Station was under the operational supervision and control of the PNP Police Director.

The case of the prosecution was not enfeebled by the seeming contradiction between Mario's testimony that the crime was committed at about 8:00 a.m., and the Binalonan Police Station radio report^[56] that the crime was committed at 9:00 a.m. Neither is the evidence for the prosecution weakened by the inconsistency between Mario's testimony and the account of the appellants' witness, Benjamin Francisco, that the crime was committed between 8:00 a.m. to 9:00 a.m., and that of Dionisio Pilar, that the crime was committed at about 9:10 a.m. In *People v. Alas*,^[57] we held that time is not an essential element of murder; hence, even if Mario erred in testifying that the crime was committed at about 8:00 a.m., his credibility as a witness and the probative weight of his testimony was not thereby impaired. The appellants' reliance on Dionisio Pilar's testimony, that only one male person shot the victim, is even belied by the Binalonan Police Station radio report that per its initial investigation, there were two assailants.

The appellants' assertion that the victim may have been shot by persons or at the behest of persons who may have been prejudiced by the victim as a CIG informant is speculative. Possibilities, speculations or surmises are not evidence. The appellants failed to prove their claim with sufficient competent evidence.

The trial court correctly rejected the appellants' defense of alibi. Such a defense cannot prevail over the positive and straightforward identification of the appellants as the assailants. Alibi is the weakest of all defenses because it is facile to fabricate and difficult to disprove, and is thus generally rejected.[58] The appellants were burdened to prove with clear and convincing evidence that at the time of the commission of the crime charged, they were in a place other than the situs of the crime such that it was physically impossible for them to have been at the situs criminis when the crime was committed.[59]

In this case, appellant Aquinde failed to prove the precise time when he arrived in Cabontonan, Binalonan, Pangasinan, to help his uncle Ruben Aquinde cultivate his farmland. He merely alleged that he arrived in the farm "early." Moreover, the said farmland was barely four kilometers from the public market. Considering the distance from the public market and the location of the farmland, it was not impossible for the appellant to have been at the situs criminis before he left for his uncle's farmland. Besides, the appellant did not even bother presenting Ruben Aquinde to corroborate his testimony.

Appellant Gansenia also failed to adduce any documentary evidence to prove that (a) he was employed as a driver of the Dagupan Bus Company and that the bus he was driving needed engine replacement; (b) he was on leave from the bus company for two weeks; and (c) Florencio Ducos employed him to help in the construction of his house. The appellant failed to present his daughter and his sister, and even Florencio Ducos to corroborate his testimony.

The Crime Committed by the Appellants

The trial court correctly convicted the appellants of murder under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified by treachery. The appellants shot the victim one after the other. The attack was sudden. Even as the victim fell to the ground after appellant Aquinde shot him on the head, appellant Gansenia followed suit, shooting the victim two more times. All the wounds were fatal. The victim was unarmed and had no opportunity and means to defend himself from the assault of the appellants. There is no evidence that the victim provoked the appellants prior to the assault.[60]

The appellants likewise took advantage of their numerical superiority and weaponry to consummate the crime.[61] However, the aggravating circumstance of abuse of superior strength cannot be considered against the appellants because the same is absorbed by treachery.

The Proper Penalty For The Crime

Under Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659, the imposable penalty for murder is reclusion perpetua to death. However, the trial court sentenced the appellants to death on its finding that they killed the victim with the use of an unlicensed firearm which circumstance is a special aggravating circumstance under Rep. Act No. 8294, which took effect on July 6, 1997. The trial court applied Rep. Act No. 8294 retroactively against the appellants. We do not agree. Since Rep. Act No. 8294 took effect before the crime charged was committed, it should be applied prospectively and not retroactively.[62] For if the new law were to be applied retroactively as the trial court did, the same would aggravate the criminal liability of the appellants and the imposable penalty for the crime charged. There being no modifying circumstances in the commission of murder, the appellant should be sentenced to suffer reclusion perpetua, conformably to Article 63 of the Revised Penal Code.

The Civil Liabilities of the Appellants

The trial court awarded P50,000 to the heirs of the victim Ricardo Rosario, Jr. as civil indemnity and P86,000 as actual damages. The trial court did not award moral damages. The decision of the trial court shall thus be modified.

The prosecution adduced documentary evidence to prove that the victim's heir Catherine Surbita spent P35,050 for the burial. Hence, the heirs of the victim are entitled to an award of actual damages only in the amount of P35,050. The award of P50,000 as civil indemnity is affirmed, conformably to current jurisprudence.[63] The heirs are entitled to moral damages in the amount of P50,000, considering the pain and anguish the victim's family suffered. The said heirs are, likewise, entitled to exemplary damages in the amount of P25,000.

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court, Urdaneta City, Pangasinan, Branch 46, in Criminal Case No. U-9340, is AFFIRMED with MODIFICATION. Appellants Maximo Aquinde and Mario Gansenia are found guilty beyond reasonable doubt of murder qualified by treachery, defined in Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659. There being no aggravating or mitigating circumstance attendant in the commission of the crime, the appellants are sentenced to suffer the penalty of reclusion perpetua. They are directed to pay, jointly and severally, the heirs of the victim Ricardo Rosario, Jr. P50,000 as civil indemnity; P50,000 as moral damages; P35,050 as actual damages; and P25,000 as exemplary damages. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Azcuna, and Tinga, JJ., concur.
Corona, and Carpio-Morales, JJ., on leave.

[1] Penned by Judge Modesto C. Juanson.

[2] Records, p. 1.

[3] Records, pp. 302-303.

[4] The prosecution presented ten witnesses, namely, Catherine Surbita, Dr. Esperanza Mendaros, SPO2 Emmanuel Tomelden, Mario Rosario, David Madrid, SPO1 Pascual Cosape Mangal-ip, SPO1 Angelito Domingo, SPO2 Sergio Hidalgo, SPO1 Cipriano Culiao and SPO2 Jaime M. Fernandez.

[5] Exhibit "F," Records, p. 7.

[6] Exhibit "I-2."

[7] Exhibit "I-1."

[8] Exhibit "I-3."

[9] Exhibit "U."

[10] Exhibit "I-3."

[11] TSN, 13 October 1997, p. 6 (Rosario).

[12] Exhibit "I-4."

[13] Exhibit "I-5."

[14] Exhibits "U" and "U-1."

[15] Exhibits "P" and "Q."

[16] Exhibit "W."

- [17] Exhibits "W" and "W-1."
- [18] RTC Decision, p. 6; Rollo, p. 49.
- [19] Exhibit "D;" Records, p. 9.
- [20] TSN, 13 October 1997, pp. 9-10.
- [21] Exhibit "K;" Records, p. 186.
- [22] Exhibit "O."
- [23] Exhibit "AA."
- [24] Exhibit "Y;" Records, p. 194.
- [25] Exhibits "P" and "Q."
- [26] Exhibit "M."
- [27] Exhibit "L."
- [28] Exhibit "T."
- [29] Exhibit "P."
- [30] Exhibit "N."
- [31] Exhibit "F."
- [32] Exhibit "B."
- [33] Exhibit "C."
- [34] The defense presented six witnesses, namely, Benjamin Francisco; SPO1 Cipriano Culiao, Dionisio Pilar, SPO2 Jose Andrada, Maximo Aquinde and Mario Gansenia.
- [35] Exhibit "K."
- [36] TSN, 4 March 1998, pp. 7-8.
- [37] TSN, 5 March 1998, p. 5.
- [38] TSN, 16 March 1998, pp. 4-5.
- [39] Exhibit "2-A."
- [40] Exhibit "2-D."
- [41] Ibid.
- [42] Records, pp. 332-333.
- [43] Rollo, pp. 106-107.
- [44] Appellants' Brief, p. 4.
- [45] *People v. Gallego*, 338 SCRA 21 (2000).
- [46] Rollo, p. 323.

[47] People v. Antonio, 303 SCRA 414 (1999).

[48] 20 SCRA 451 (1967).

[49] People v. Dacibar, 325 SCRA 725 (2000); People v. Bautista, 290 SCRA 58 (1998).

[50] 332 SCRA 178 (2000).

[51] TSN, 8 October 1997, pp. 10-11.

[52] People v. Herbieto, 269 SCRA 472 (1997).

[53] TSN, 9 February 1998, pp. 13-19.

[54] 309 SCRA 1 (1999).

[55] People v. Sotes, 260 SCRA 353 (1996).

[56] Exhibit "V."

[57] 274 SCRA 310 (1997).

[58] People v. Ramos, 309 SCRA 643 (1999).

[59] People v. Dela Cruz, 335 SCRA 620 (2000).

[60] People v. Suplito, 314 SCRA 493 (1999).

[61] People v. Aquino, 314 SCRA 543 (1999).

[62] People v. De Vera, Sr., 308 SCRA 75 (1999).

[63] Ibid.

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.