

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO BARDON, JAIME SIARUT, JORGE DELOS SANTOS, REMEGIO TABANAG, RICARDO REGIDOR, ERNESTO ZAPANTA AND ALFREDO INDONA, ACCUSE...

G.R. No. 60764. September 19, 1988

Ponente: PARAS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-60764/>

PARAS, J.:

In a second amended Information dated March 11, 1981, appellant Roberto Bardon, together with Ernesto Zapanta and Alfredo Indona, was charged with the crime of Murder before the then Criminal Circuit Court, 14th Judicial District, Cebu — Bohol, Cebu City. The said information reads as follows:

"That on or about the 6th day of August, 1980, at about 12:30 a.m. in the city of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping one another, armed with an ax, knife and stone, with deliberate intent to kill and with treachery and evident premeditation did then and there, suddenly and unexpectedly attack, assault and hack, stab one Francisco Roque with the said ax and knife and by hitting him with a stone, thereby causing upon the latter the following physical injuries:

"HEMORRHAGE, MASSIVE, SECONDARY TO MULTIPLE STAB WOUNDS, BODY, ANTERIOR ASPECT"

and as a consequence of which said Francisco Roque died instantaneously.

"CONTRARY TO LAW."

(pp. 1-2, Brief for the Appellee, pp. 258-250, *ibid*)

Only appellant Roberto Bardon was apprehended to face trial. The other two (2) accused have remained at large.

After due trial, the court a quo rendered the following judgment:

"WHEREFORE, the Court finds the accused Roberto Bardon guilty beyond reasonable doubt of the crime of MURDER described in the aforequoted information. Appreciating in favor of the accused the mitigating circumstances of sufficient provocation on the part of the offended party and passion and obfuscation, the said circumstances having been offset by the aggravating circumstances of nighttime, abuse of superiority and use of a motor vehicle, the accused Roberto Bardon should be, as he is hereby sentenced to the penalty of RECLUSION PERPETUA, with the accessory penalties of the law; to indemnify the heirs of the deceased Francisco Roque in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency; and to pay proportionate costs.

SO ORDERED."

(p. 2, Brief for the Appellee, p. 259, *ibid*)

From the aforesaid judgment of conviction, appellant interposed the present appeal assigning the following errors —

I

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF KILLING FRANCISCO ROQUE.

II

ASSUMING ARGUMENTO THAT IT WAS ACCUSED-APPELLANT WHO KILLED FRANCISCO ROQUE, THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF MURDER QUALIFIED BY TREACHERY, INSTEAD OF SIMPLE HOMICIDE.

III

UPON THE SAME ASSUMPTION, THE TRIAL COURT ERRED IN CONSIDERING NIGHT-TIME, ABUSE OF SUPERIOR STRENGTH AND THE USE OF A MOTOR VEHICLE AS AGGRAVATING CIRCUMSTANCES.

IV

UPON THE SAME ASSUMPTION, THE TRIAL COURT ERRED IN SENTENCING THE ACCUSED-APPELLANT TO THE PENALTY OF RECLUSION PERPETUA INSTEAD OF PRISION MAYOR IN ITS PROPER PERIOD. (p. 105, *ibid*)

The evidence for the prosecution is summarized in the trial court's decision, as follows —

"At around midnight of August 6, 1980, Francisco Roque, nicknamed Frankie, and his ten-year old son, Riel Roque, went to the store of Flavio Cartin which was near the Caltex gasoline station at C. Padilla Street, Cebu City. Francisco Roque had asked Flavio Cartin's wife, Menang to sell him some pieces of mosquito repellant, commonly known as "Katol", on credit. Menang having turned down his request, Francisco Roque, obviously having taken a drink too many, tore at mosquito repellant and cigarettes on display like a mad dog, because of shame and humiliation. Menang's reaction was to call for his son-in-law, Roberto Bardon, the latter having been working overtime trying to fix the engine of the passenger jeepney, a Ford Fiera, of Jesus Go, the Mobil Station proprietor. Roberto Bardon, a lumbering hulk of a man, a heavy-weight so to speak, went to the store and saw to it that Francisco Roque would do no further mischief. Indeed, Francisco Roque, seeing in the midst of his inebriation what seemed to him to be the so-called incredible hulk, retreated from Roberto Bardon. Before he ran away, however, he shouted and gave the owner of the store the impression that he would go back (and creates further trouble).

"Francisco Roque and Riel Roque, (then left towards their home), a shanty at the back of creek by the side of the Jai Alai de Cebu. Just as they reached the corner of Rizal Avenue and Fatima Street, the Ford Fiera of Jesus Go which Roberto Bardon was fixing caught up with them. It was the accused Roberto Bardon who was driving the vehicle and, as soon as he was able to bring the vehicle to a stop near his quarry, he stepped down together with five or six companions and he (himself was) armed with an ax, a knife and stones. The accused Roberto Bardon felled Francisco Roque with the ax, while one companion, using the knife stabbed the victim. The rest of the attackers used stones. Perhaps resigned to the fate in store for him, Francisco Roque only concerned himself with Riel's safety. Twice he shouted, "Run, Riel, run", while he struggled hopelessly against certain and inevitable annihilation. Riel Roque ran and hid behind plants and hedges at the side of the street.

"Their purpose having been accomplished, Roberto Bardon and his companion went back to the place from where they came. After they left, Riel, the young boy, went home but, afraid that the danger to his life still

subsisted, he slept at the Jai Alai de Cebu. The next day, he reported the matter to his aunt Nena." (pp. 4-5, Decision).

"Police Officers David Villanueva, Arturo Bantiros, and Roy Jumao-as, members of the 'Intelligence & Investigation' Section of the Southern Police Precinct (Station III), were, at 12:30 a.m., August 7, 1980, alerted by a report that the lifeless body of a person, obviously hacked, stabbed and mauled, may be seen at or near the corner of Rizal Avenue (South Expressway) and Fatima Street, Cebu City.

"Responding to the call, the police officers aforesaid found the deceased body of a person who was later identified by witnesses and relating to be Francisco Roque, 32 years of age, widower, a laborer, and a resident of 533 C. Padilla Street, Cebu City.

"Upon the request of Police Captain Jose Vasquez, Southern Police Station Commander, the victim's cadaver was subjected to an autopsy by Police Medical Examiner Jesus P. Cerna. The postmortem findings of this medico legal expert is quoted in full herein below:

POSTMORTEM FINDINGS

Cadaver in the state of rigor mortis, lips and fingernailbeds, markedly pale, pupils, dilated.

Abrasions, reddish brown, confluent, hand, right, posterior aspect, just at the base of the forefinger, 1.0 x 0.5 cms.; leg, middle third, anterior aspect, left, 4.0 x 1.0 cms.

Contused-abrasions, reddish blue, forehead, right, just above eyebrow, 1.5 x 1.0 cms.; face, sygomatic region, right, 3.0 x 3.0 cms.

Wound Stab:

(1) Elliptical, 1.5. cms. long, supero-medical extremity sharp, infero-lateral extremity contused, running obliquely upward and medially, edges cleancut, located at the chest, anterior aspect, right, 1.0 cm. from the anterior median line and 132.0 cms. above right heel and in level with the 2nd rib, directed backward, slightly upward and medially, involving skin and the underlying soft tissues, incising sternum, in level with the 2nd rib, penetrating right thoracic cavity, incising superior venacava, attaining an approximate depth of 5.0 cms.

(2) Elliptical, 2.5 cms. long, supero-madical extremity sharp, infero-lateral extremity contused, running obliquely upward and medially, edges region, left, 9.0 cms. from the posterior median line and 119.5 cms. above left heel, directed forward, downward and medially, involving skin and underlying soft tissues, penetrating left thoracic cavity, including lung, left inferior lobe, attaining an approximate depth of 7.0 cms.

(3) Elliptical, 6.1 cms. long, supero-lateral extremity contused, infero-medical extremity sharp, running obliquely downward and medially, edges clean-cut, located at the back, abdominal region, right, 1.0 cm. from the posterior medium line and 104.0 cms. above right heel, directed forward, downward and medially, involving side and the underlying soft tissues, penetrating right peritoneal cavity incising inferior vena-cava, attaining an approximate depth of 7.0 cms.

Heart: auricular and ventricular chambers filled with dark-red liquid blood with normal myocardium.

Liver, lungs, gastro-intestinal tract and other visceral organs, markedly pale.

Hemothorax, 1000 cc.; Hemoepitoneous, 500 cc.

Stomach, full with food particles mixed with brownish fluid material, positive for tuba odor.

CAUSE OF DEATH:

Hemorrhage, massive secondary to multiple stab wounds, body, anterior and posterior aspects.'

(pp. 1-2, *ibid*; pp. 3-6, Brief for the Appellee; pp. 260-263, *ibid*).

On the other hand, the defense gave the following version:

"The defense is one of complete denial of the charge, the accused Roberto Bardon alleging that it was his father-in-law, Flavio Cartin, who drove a motor vehicle in order to go after Francisco Roque, while he was at the Mobil Gas Station fixing the Ford Fiera of Jesus Go. He worked on the Go Ford Fiera until 3:00 o'clock dawn because Jesus Go wanted to use the jeep for passenger service at 4:00 A.M.

"Flavio Cartin escaped the clutches of the law, and, while his co-accused proposed that he, too, should flee because the dismissed information trill be reinstated, the accused Bardon refused to escape with them because he believed himself innocent.

"He denied that he dictated Exhibit 'C' to the police and, quite surprisingly, he renounced the affidavit, Exhibit 'B', although the same was prepared by his former lawyer, Atty. Crispin Menchavez. This very affidavit, Exhibit 'B' was meant by his lawyer to be an affidavit of retraction of his verbal confession and as a counter-affidavit for purposes of the preliminary investigation. He claims that this was forced on him by his said lawyer. The contents of Exhibit 'B' he denounced (as) untrue, notwithstanding the fact that he swore to its truthfulness before Assistant City Fiscal Catalino Paz.

"In his open court testimony, the accused did not deny that, at the time Francisco Roque created trouble in the store of his mother-in-law, he was called upon to subdue the drunken troublemaker. He now avers that, after he talked to Francisco Roque, this supposed vandal left his mother-in-law's store without issue.

"Thirty minutes afterwards, however, his mother-in-law again called for him in order to request him to follow his father-in-law, Flavio Cartin, the latter having taken off after Francisco Roque. This last command he refused to obey, because he was busy fixing the engine of the Ford Fiera. Even as of that time, the Ford Fiera was allegedly not in running condition as yet.

"On further examination, the accused, perhaps forgetting this averment gave Us to understand that, by the simple expedient of putting back the spark plugs which he removed for cleaning, the vehicle could still have run on its own power." (pp. 8-9, Decision; pp. 16-17, *ibid*)

The principal question as in most criminal cases, is, the credibility of witnesses. A review of the records of the case, however, shows that the evidence undoubtedly supports the findings and conclusions of the trial court in its judgment of conviction.

Through the testimony of witness Riel Roque, the 10-year old son of the victim, it has been established beyond reasonable doubt that appellant was the one who hacked Francisco Roque with an axe on the latter's back.

Riel Roque's testimony runs thus —

ATTY. VILLORDON (on direct examination)

Q.

Your name is Riel Roque. What is your relation to the deceased Francisco Roque?

A.

My father.

Q.

In the evening of August 6, 1980, could you recall where were you?

A.

I was with my father.

x x x

x x x

x x x

Q.

What happened when you went to the Caltex gasoline station?

A.

Papa wanted to buy on credit "katol" (insect repellent), but was not permitted to.

Q.

From whom did your father want to buy on credit a mosquito repellent?

A.

From Minang Carten.

Q.

What happened when your father was refused to buy mosquito repellent by Minang Carten?

A.

Papa got angry and he crashed the mosquito repellant and Minang Carten called for Berto. She said come because Frankie is angry because he was not permitted to buy on credit and he crashed the "katol".

Q.

Who is this Berto that you are referring to?

A.

The son-in-law of Manang Minang.

COURT (to witness)

Q.

Do you know the full name of Berto?

A.

No, sir.

Q.

If that Berto is now inside the courtroom, will you point to him?

A.

He is there. (Witness pointing to accused Roberto Bardon).

Q.

After Minang Carten called her son-in-law Berto as you said what happened next?

A.

Berto went to the store and when he saw that Papa was not bringing anything Berto retracted his path.

ATTY. VILLORDON

Q.

After that where did you and your father go?

A.

We left.

Q.

Where you and your father able to reach your house near the jai-alai building?

A.

No, sir, because while we were walking we were surprised why a truck was following us and (Berto had) an ax and his companions delivered fist blows and some companions stabbed him and my father shouted, 'Run Riel and hide in the hedges.'

x x x

x x x

x x x

COURT (to witness)

Q. Did you see what Berto did with the ax he was carrying?

A. Yes, he used it in striking my papa.

Q. Did you see whether your papa was hit with the ax?

A. It was at the back.

Q. What happened to your papa when he was hit at the back?

A. He shouted, 'Run Riel'.

(pp. 9-11, tsn, July 8, 1981; pp. 8-10, Brief for the Appellee; pp. 265-267, *ibid*).

Appellant faults the trial court for giving credence to the testimony of Riel Roque. According to appellant Riel Roque's testimony cannot be given credence because "he is not an eyewitness, his testimony refers to post-facto events and hearsay matters" (*ibid*, p. 113). Moreover, Riel Roque's testimony is full of flaws and inconsistencies. (*ibid*, p. 118) For instance, appellant contends that Riel Roque contradicted himself on the following:

(a)

When he (Riel Roque) stated that his father was stabbed first across the abdomen towards the left chest and then towards the right chest but 'in the same breath' he stated that it was appellant who struck his father first with an ax (pp. 10-12, tsn, July 8, 1981).

(b)

When first asked what part of the body of his father was hit by the ax, Riel said he did not clearly see and that all he can say is that appellant was bringing an ax. When asked by the trial court, however, he categorically stated that appellant hit his father with an ax at the back (p. 11, *ibid*). (pp. 17-18, Brief for the Appellee; pp. 274-275, *ibid*).

Such inconsistencies are trivial and unimportant. They do not militate against the witness' credibility. The more important thing is, appellant was positively identified as the one who, together with companions, inflicted bodily injuries on the victim, causing said victim to suffer a fatal wound which caused his death. Riel could not be mistaken in his identification of the appellant because (1) they had been neighbors before (p. 14, tsn, July 8, 1981); (2) immediately before the incident, appellant had been seen by Riel in the store of Minang Carten (p. 10, *ibid*); and (3) at the scene of the incident, he saw appellant stop the Ford Fiera he was driving, alight from it and leave it "with the engine still running", (p. 20, *ibid*) indicating that the head lights of the vehicle illuminated the place of the crime. Besides, appellant failed to show any reason or improper motive on the part of Riel Roque, a 10-year old boy, to falsely testify against him.

The case of the prosecution was further strengthened by the following:

(1) The necropsy report (Exh. 'A') of Dr. Jesus Cerna, who conducted the autopsy of the cadaver of the victim, is corroborative of the testimony of Riel Roque that appellant hacked the victim with an ax, hitting the latter on his back (Wound No. 3, Exh. 'A').

(2) Cornelia Pila testified that at around 11:30 o'clock in the evening of August 6, 1980, the deceased Francisco Roque and his son, Riel, had first gone to her store. They transferred to the store of Minang Carten to buy mosquito repellant on credit. Not long after that, she heard Minang Carten calling for appellant because the

deceased was causing her trouble. Ninang Carten told appellant to hold and strike the deceased. Before appellant could strike the deceased, the latter and his son went away. Then she saw appellant, Minang Carten and her husband, have a conversation. Moments later, appellant proceeded to the Mobil station and drove the yellow Ford Fiera towards Fatima Street. (pp. 11-12, *tsn*, July 9, 1981; pp. 269-270, *ibid*).

As against the positive, clear, convincing and corroborated testimony of the prosecution witnesses, appellant offers "alibi" as a defense. He claims that at the time of the incident, he was at the Mobil Gas Station fixing the Ford Fiera of Jesus Go. He worked on the Ford Fiera until 3:00 dawn because Jesus Go wanted to use the jeep for passenger service at 4:00 A.M. (p. 8, Decision).

Appellant's defense cannot be sustained. It is settled that the defense of alibi cannot prevail over the positive identification of appellant by credible witnesses. (*People v. Dumlao*, 125 SCRA 822, *People v. Salig*, 133 SCRA 59).

The trial court, however, erred in the imposition of the correct penalty. It considered the aggravating circumstances of nighttime, abuse of superior strength and use of a motor vehicle. We have already ruled that nighttime and abuse of superior strength are inherent in treachery and cannot be appreciated separately. (*People v. Ramillano*, 133 SCRA 201, 214). The aggravating circumstance of the use of a motor vehicle was, however, correctly appreciated by the trial court. The Ford Fiera played an important role in the accomplishment of appellant's design. Not only that, appellant and his companions made good their escape by speeding away in the jeep in order to avoid discovery of their identities.

There is no dispute that the crime was attended by two (2) mitigating circumstances of sufficient provocation and passion and obfuscation.

With the abolition of the death penalty, the penalty now imposed by law for the crime of murder is reclusion temporal in its maximum period to reclusion perpetua.

With one aggravating circumstance and two mitigating circumstances the net effect is for the case to have one mitigating circumstance and the imposable penalty will be the minimum period of the penalty provided by law with the abolition of the death penalty (namely, reclusion temporal in its maximum period to reclusion perpetua).[1]

WHEREFORE, applying the Indeterminate Sentence Law,[2] the accused is hereby sentenced to suffer imprisonment from ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum, to suffer the accessory penalties, and to pay an indemnity of P30,000.00 to the heirs of the victim and costs. In all other respects the judgment appealed from is AFFIRMED.

SO ORDERED.

Melencio-Herrera (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

[1] This penalty has three periods:

- (a) Minimum — lower half of reclusion temporal maximum
- (b) Medium — upper half of reclusion temporal maximum
- (c) Maximum — reclusion perpetua

[2] Whereby, We go down one degree to get the minimum.

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.