

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GLICERIO SONGCUAN AND BASILIO SONGCUAN, DEFENDANTS. BASILIO SONGCUAN, DEFENDANT-APPELLANT.*G.R. No. 73070, August 11, 1989*

Ponente: FERNAN, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-73070/>**FERNAN, C.J.:**

This is an automatic review of the decision of the Regional Trial Court, Branch XLIV at Dagupan City, convicting Basilio Songcuan of the crime of robbery with homicide under Article 294(1) of the Revised Penal Code, imposing on him the death penalty and ordering him to indemnify the heirs of the victims Aniceto Y. Erfe and Violanta Almonte-Erfe in the amount of P60,000, to pay actual and moral damages in the total amount of P100,000, and to return the stolen properties consisting of pieces of jewelry or their value of P140,000 and cash amounting to P3,000 (Criminal Case No. D-6482).

The death penalty having been reduced to reclusion perpetua by virtue of Article III, Section 19(1) of the 1987 Constitution thereby abrogating automatic review of decisions imposing the death penalty, the Court, through the Clerk of Court, required appellant to personally manifest whether he desires to continue with this appeal.[1] In reply thereto, appellant, assisted by counsel, filed a manifestation and motion signifying his intention to pursue the instant appeal.[2] Hence, the Court calendared this case for deliberation.

At around 4:30 o'clock in the morning of November 19, 1978, the spouses Aniceto Y. Erfe and Violanta Almonte-Erfe were found dead by their neighbors on the first floor dining area of their house in San Vicente, San Jacinto, Pangasinan. The autopsies conducted on their bodies by the municipal health officer Dr. Numeriano Presto placed the time of their demise at around four o'clock that morning. The pajama-clad Aniceto Y. Erfe, 68, died of acute blood loss caused by multiple stab wounds. He sustained a lacerated wound on the head at the temporal region and a small lacerated wound on the right eyebrow; on the chest a stab wound penetrating the lobe of the left lung, a superficial incised wound and another stab wound on the right lumbar penetrating the right kidney and the vena cava; and on his lower left abdomen an incised wound with the small intestine eviscerating therefrom.[3]

Violanta Almonte-Erfe, 69, also died of acute blood loss due to multiple stab wounds. She suffered a contusion with a lacerated wound on the mastoid region of the head, two small lacerated wounds on the right forearm, five incised and stab wounds on the chest, and a stab wound on the upper abdomen which penetrated and lacerated the liver.[4]

Emiliano P. Oller, the Chief of Police of San Jacinto, and Patrolman Cayetano Maro, arrived at the scene of the crime as soon as it was reported to them. Oller was, however, prevented from conducting an investigation at that time by one Atty. Nicanor Bautista who wanted the incident to be investigated by agents of the National Bureau of Investigation (NBI).[5]

As it was a Sunday, they could not find an NBI agent on duty but the police were able to locate a butcher's knife,

a pair of rubber slippers and a weighing scale with one end wrapped in a piece of cloth. These pieces of evidence were later taken by an investigator of the 152nd Philippine Constabulary Company stationed at Lingayen.[6] Two days later, an NBI representative lifted some fingerprints from the blood stains at the scene of the crime and examined an electric bulb which also had blood stains.[7] The result of the fingerprint examinations was never known. When the NBI official who conducted the same was subpoenaed to testify in court upon Basilio Songcuan's insistence that the fingerprints were not his, she said that the letter--request only called for the determination of the presence of human blood on the articles forwarded.[8]

George Erfe, the son of the victims who was summoned by relatives from his home in Marikina, Metro Manila, arrived at his parents' home at around two o'clock in the afternoon of the same day. He found his parents lying in state. Upstairs in the master's bedroom, he found the cabinets open and documents scattered. The title of their land was missing and there was no money in the cabinet. A jewelry box was empty. The day before, when George came to visit his parents, his mother had shown him two pairs of earrings worth P40,000. Said jewelry, together with ten or more other pieces worth more than P100,000 which his mother had for sale, were nowhere to be found.[9]

Six days after the killing of the Erfe spouses or on November 25, 1978, Gemma Jimenez y Erfe, the 13-year-old helper of the Erfes and allegedly their grandchild, gave a statement to the police of San Jacinto. The statement was sworn to before the Chief of Police.[10]

In her statement, Gemma narrated that in the early morning of November 19, 1978, she was awakened by the moaning of a man on the ground floor of the Erfes' home. She rose from her bed and went downstairs. She was at the door near the refrigerator when she met a man who said, "ha". As she screamed in fright, the man struck her head with "an instrument wrapped with (sic) a white cloth" but she parried the blow with her left hand. She ran to the room near the toilet and dove to where the Erfe spouses were lying down.

She was lying on the cement floor with her face down when the man hit her head once more with the "instrument". The man then stepped on her feet and pulled her dress but she pretended to be dead. She heard a loud noise coming from the second floor. Then she felt someone passing by near her feet in the direction of the bathroom from where she heard the noise created by the water pail.

Later, Gemma heard Teresita Corpuz calling her name and that of Nana Bebing (Mrs. Erfe). When the house became very quiet, she slowly got up, took the keys and opened the door to the stove and the one leading to the piggery. Outside the house, she saw Loreto Datuin smoking a cigarette near the artesian well. She said to him, "Galicdia cuya" (I am angry, brother) to which Loreto retorted, "Natakewan cayo" (you were robbed). Loreto then peeped through the door and shook his head. He left Gemma as several persons arrived. One of them, Luis Malocong, who came to see "Laki and Bae" (the Erfes), saw her with her head wrapped in a towel. When "Mama Luis" saw blood oozing from her head, he took her to the Pangasinan Provincial Hospital where she stayed until November 24, 1978.

Gemma swore that she saw only one man inside the house and described him as someone with a "papaya-like face", with big eyes and a mustache, small but muscular, and who was wearing a light blue t-shirt and black long pants. She stated that the room where she met the intruder was lighted by an electric bulb. She had no knowledge of anyone who harbored ill-feelings against the Erfes who were engaged in the buy-and-sell of dry goods and jewelry and who also had a piggery.

Apparently, the police failed to apprehend a suspect who fitted the description given by Gemma. Five years and four months later, or on March 16, 1984, George Erfe learned from his mother-in-law that his parents' killers had been identified. In a statement he executed on March 18, 1984 before the San Jacinto Police, George named the

brothers Licerio and Basilio Songcuan as the perpetrators of the crime.[11] His witnesses, Jose Malocong y Quikito, 57, and Pablo Ramos y Albay, 62, also executed statements implicating the Songcuan brothers in the killing of the Erfes.[12]

On the strength of said statements, the Chief of Police lodged a complaint for robbery with double murder and frustrated murder against the Songcuan brothers before the 4th Municipal Circuit Trial Court of San Fabian-San Jacinto. Accordingly, said court conducted a preliminary investigation on March 20, 1984 in the course of which Gemma Jimenez was made to swear once more to the veracity of her statement dated November 25, 1978 before the police.[13] Finding the accused probably guilty of the crime charged, the court ordered their arrest. On the same day, Basilio Songcuan was arrested in his house in San Vicente, San Jacinto. No bail was granted for his provisional liberty.

In an information dated May 2, 1984 filed by the Provincial Fiscal before the Regional Trial Court at Lingayen, Licerio and Basilio Songcuan were charged with robbery with double homicide. On October 9, 1984, said information was amended so as to include the less serious physical injuries sustained by Gemma Jimenez. The amended information alleges:

"That on or about Nov. 19, 1978, in the morning, at barangay San Vicente, municipality of San Jacinto, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating and mutually helping one another, with intent to gain and by means of violence against and intimidation of persons, did then and there wilfully, unlawfully and feloniously take, steal and carry away jewelries and cash money belonging to Spouses Aniceto Erfe and Violanta Almonte-Erfe, and on the possession thereof, with intent to kill, attack, assault and stab the said spouses with blunt and pointed instruments thus inflicting upon them injuries that caused their immediate death and then hit Gemma Jimenez a household helper, with the blunt instrument causing her less serious physical injuries.

"Contrary to Article 294, par. 1, Revised Penal Code."[14]

The court never acquired jurisdiction over Licerio Songcuan. On the other hand, Basilio Songcuan pleaded not guilty on arraignment.

There was no eyewitness to the killing of the hapless victims. The prosecution tried to establish the guilt of the accused by circumstantial evidence as testified to by its principal witnesses, Pablo Ramos and Jose Malocong.

Pablo Ramos, a laborer, married to Francisca, a sister of the Songcuan brothers, testified that his house was around twenty-five meters from the house of Basilio and that south of his house and about forty meters away was the house of the Erfes. He was at home at about 4:00 o'clock in the morning of November 19, 1978 when he heard someone shouting, "Robbers, robbers". The shouts came from the south where the house of the Erfes was located. Upon hearing those shouts, he took his 4-battery flashlight and went downstairs. It was dark outside. He focused his flashlight towards the concrete fence of the Erfes which was around fifteen meters from where he was standing. There he saw Basilio Songcuan as he jumped over the fence and proceeded northwards towards his (Basilio's) house. Licerio followed Basilio from the house of the Erfes. When they reached Basilio's house, the lights went off.

Ramos then approached the concrete fence from where Basilio jumped and he saw bloodstains atop the 4-foot-tall fence and on the papaya plant which was leaning on said fence. Together with Jose Malocong, he jumped over the fence to verify what was happening inside the Erfes' premises. They peeped through the open window of the Erfes' kitchen and there they saw the Erfes lying dead in a pool of blood. They also noticed bloodstains on the window sill.

After several persons had arrived, he and Malocong entered the house through the open door leading to the sala.

They went upstairs and found an open aparador, an open small jewelry box and pieces of paper scattered around.[15]

Soon thereafter, Ramos and Jose Malocong left the Erfes' house. When Ramos arrived home, he allegedly found therein Licerio and Basilio Songcuan. Basilio told him, "Brother-in-law, I noticed that you know what happened. Do not tell what happened to anybody else and do not reveal what you saw, or else something will happen to you." As Ramos did not say anything, Basilio once again said, "I repeat, brother-in-law, I noticed that you know what happened. Do not tell to anybody else what you saw and do not reveal to anybody what happened or else something will happen to you," Then, Licerio and Basilio left.[16]

According to Ramos, Aniceto Erfe and the Songcuans were "not in good terms" as in fact they wanted to kill each other because of a boundary dispute. Ramos added that he did not see Basilio during the 10-day wake for the deceased Erfe spouses, nor at the funeral.

On cross examination, Ramos admitted that he did not actually see the two accused kill or murder the deceased Erfe spouses;[17] that Basilio Songcuan who has a house in their barrio, never left the place and stayed there prior to his apprehension,[18] and that the boundary dispute between the deceased and the accused alluded to as the probable motive for the killing happened many years ago but he could not remember the number of years.[19] It was, however, established by admissions of the private prosecutor and by documentary evidence that the dispute reached the court as Civil Case No. D-1872 entitled "Aniceto Erfe, et al. v. Licerio Songcuan" and was resolved by a compromise agreement identified as Exhibit "6".[20] It was likewise admitted that the dispute was between Erfe and Licerio, not Basilio Songcuan.[21]

Ramos insisted that it was a dark and moonless night, so that he had to use his flashlight and it was then that he saw the two accused jump over the concrete wall and run away from the house of the murdered couple.[22]

He reiterated that when he saw the accused jump from the fence, they were naked from waist up and were wearing short pants, both of black color but when he saw them in his house, he could not remember exactly the color of their shorts and could only remember that Licerio was wearing black short pants.[23]

On cross-examination relative to his motive in testifying against the accused, Ramos claimed that there had never been a quarrel between him and his brothers-in-law, the accused. He admitted, however, that he had been an overseer of the land of Licerio for many years until he was replaced by Basilio Songcuan; that he has a son Mildred S. Ramos and a step-son Romulo S. Gutierrez. But he denied knowledge that his sons were caught by Basilio stoning the mango trees and were charged with trespass to dwelling, grave threats and moral (oral) defamation before the Lupon Tagapayapa of San Vicente, San Jacinto, Pangasinan on February 8, 10, 11, 1984 despite the certification of a Lupon Secretary as to the existence of said case, not to mention his undisputed presence in the Barangay office at that time.[24] Finally, he could vividly remember that the murder took place on Sunday, November 19, 1978, but he could not remember the date he gave up his position as overseer of the Songcuan lot on September 8, 1982 when he admittedly signed the document after it was explained to him by the Barangay Chairman nor the much later date of March 19, 1984 when he executed an affidavit before Judge Garcia implicating the accused in this murder case.

Jose Malocong, 58, a laborer married to a cousin of the Songcuan brothers, corroborated Pablo Ramos' story as follows; that in the early dawn of November 19, 1978, while he was cooking breakfast, he heard a woman moaning, "ay, ay" from the direction of the house of the Erfes. He went down his house and as he was approaching the concrete fence of the Erfes, he saw Basilio jump over the fence which was almost an arm's length from him; that it was quite dark but there was light coming from his kitchen which was then illuminated by an electric bulb; that he saw that Basilio was wearing black short pants with his upper torso naked; and that the

concrete fence as well as the papaya plant near it had bloodstains; that when Ramos arrived, he and Ramos peeped into the house of the Erfes; jumped over the fence and from the open window, saw the Erfe spouses sprawled in their own blood in the dining area of their house; that it was also through that open window that Licerio Songcuan got out of the Erfes' house. Continuing further, he confirmed Ramos' version of the incident that they went to the road and when other people had arrived, they went inside the Erfes' house and found therein that the aparador and the jewelry box were opened and pieces of paper were in disarray.

After staying in that house for about two minutes, Malocong said he went home. Like Ramos, he also saw Licerio and Basilio Songcuan in his house. Licerio told him, "Brother-in-law, since you know what transpired or what happened, do not talk." Basilio did not say anything. Then the Songcuan brothers left him and proceeded towards the road.[25] Jose Malocong also did not see the Songcuan brothers during the wake nor at the burial of the victims.

On cross-examination, Malocong admitted that his house was built on the lot of Licerio Songcuan but in 1982 he removed his house from that lot.[26] Counsel for the defense tried to establish that Malocong was ejected therefrom, as can be gleaned from his letter to the Barangay Captain[27] and his promise to Licerio Songcuan in the presence of said Barangay Captain to remove his house from the lot of Licerio.[28] Malocong, however, denied having knowledge of said letter or of said arrangement as he does not know how to read and write. He insisted that he removed his house at his own instance due to fear of what might happen to him because of the murder. Nonetheless, he admitted that he transferred his house to the lot of Aniceto Erfe which was only fifteen (15) meters away from its previous location.[29]

Vigorously denying the allegations of the prosecution, accused-appellant Basilio Songcuan, a widower, land caretaker and a resident of Barangay San Vicente, San Jacinto, Pangasinan, interposed alibi as his defense.

He rebutted among other things, the testimony of Ramos that he was seen in the early morning of November 19, 1978, jumping over the concrete wall of the Erfes, the truth being that he was wearing pajamas when he went to bed that night and was still wearing the same when he got up that morning. In fact, he was with Ramos that morning watching the mango tree where the criminal was supposed to have been hiding. According to him, it was not also possible for Licerio to have been seen running with him to his place because Licerio did not go to his place on that date. Likewise, it was not true that it was so dark that night that Ramos had to use a flashlight because the moon was in fact shining brightly that early morning. Neither was there a papaya tree around the residence of the Erfes because the yard within the fence was very clear.[30]

Basilio surmised that one of the main reasons why Ramos testified falsely against him was because he had replaced the latter as caretaker or overseer of the land of his brother Licerio which Ramos had been handling for about twenty-five years. Although the case was settled before the Barangay Officer of San Vicente by agreement between Ramos and Licerio that the latter will pay P500.00 to Ramos on condition that the management of the land will be restored to the owner, Ramos resented the transfer of the position of caretaker from himself to Basilio on September 1982, so much so, that Ramos and his whole family particularly his wife, the sister of Basilio refused to talk to the latter. The Ramos children also started stoning the mango trees, gathering the fruits against his wishes; going up to his house, threatening and challenging him to go out of the house. He thus went to the Barangay Captain to file a complaint for Trespass to Dwelling, Grave Threats and Oral Defamation. The case was not settled and it was certified for filing in court.[31] This portion of his testimony was corroborated by Enrique B. Nave, the Barangay Captain of San Vicente.[32]

On cross-examination, witness admitted that he wrote the Department of National Defense to investigate his case because he was arrested without a warrant. It was also shown that the warrant was not signed which proved that it

was not served on Basilio.[33] He also admitted that he sought assistance from the Malacanang Action Center.

As to his apparently inconsistent statement that the moon was shining brightly at the same time one Juanito Abul borrowed his flashlight, he explained that they were looking for the criminal who was suspected to be hiding under the mango tree and in the bushes where it was dark.[34]

Leticia de Vera, common-law wife of Basilio Songcuan, testified that she and Basilio arrived in 1977 in San Vicente and constructed a house thereat and they became the neighbors of the Erfe spouses with whom they had a close relationship, with the Erfes often asking them for vegetables.

On the night of November 18, 1978, she and Basilio were in their room sleeping with their two children. At about 4:30 a.m. early dawn, she heard noises in the road. She tried to awaken Basilio who refused to wake up. She rose from her bed and looked out of the jalousie window and it was then that she saw a man jump over the fence of Aniceto Erfe from the southern direction, proceeding towards the creek. He was wearing a white T-shirt and white short pants. He was of regular built with dark skin. She then woke up Basilio and together they went to the terrace. They learned from the people that the Erfes had been killed. Jose Malocong said "Bayaw, bayaw magbantay ka dito sapagkat may tao sa puno ng manga" (Brother-in-law, brother-in-law,* you watch there, there are people at the mango tree). Then, the Barangay Tanod, Juanita Abril, arrived and borrowed a flashlight from Basilio to search for a man supposed to be hiding under the mango trees. The search lasted until 5:30 a.m. but to no avail.[35]

She corroborated accused-appellant's testimony on the possible motives of Pablo Ramos and Jose Malocong for testifying against Basilio Songcuan.

Basilio Songcuan presented testimonial evidence to the effect that it was somebody else who instigated and perpetrated the killing of the Erfes. According to one of his witnesses, Lilia Perez, one Clarita Oligan de Guzman, for whom Lilia laundered clothes, bluntly told her during an altercation that she (Clarita) had caused the murder of two rich people in the community.[36]

On November 19, 1985, the lower court rendered the decision now subject of this review. It gave full credit to the testimonies of Pablo Ramos and Jose Malocong that they saw Basilio Songcuan jumped over the concrete fence of the Erfes and ruled that said positive evidence prevail over the "bare denials" of Songcuan. It imputed to the defendant the aggravating circumstances of evident premeditation, dwelling and treachery but found no mitigating circumstances in favor of the accused. It concluded that the "two homicides were perpetrated for the purpose of removing opposition to the robbery."

We reverse. The evidence pinpointing responsibility on accused-appellant is circumstantial. Circumstantial evidence may be characterized as that evidence which proves a fact or series of facts from which the facts in issue may be established by inference.[37] To sustain a conviction, Section 5, Rule 133 of the Rules of Court requires that [1] there be more than one circumstance; [2] the facts from which the inferences are derived must be proven; and [3] the combination of all the circumstances is such that it will result in a conviction beyond reasonable doubt.[38] The requisites must be complied with if circumstantial evidence is to be the basis for proof beyond reasonable doubt.[39]

In the case at bar, the testimony of Pablo Ramos as corroborated by Jose Malocong that Basilio Songcuan was seen jumping over the fence of the Erfes after the incident in question constitutes only one circumstance as evidence of the crime. This circumstance by itself does not prove that the appellant committed the crime. His participation in the imputed robbery with homicide cannot be inferred from this lone circumstance. The same therefore does not meet the standard of proof beyond reasonable doubt.

Besides, there is ample ground for disbelieving such testimony. The witnesses stressed the fact that there was blood on the concrete wall of the fence and on the papaya tree growing nearby. But nowhere in their testimonies did they declare that there was blood on the person of Basilio or of his brother Licerio, on their clothes or even on their feet which would necessarily be visible if as insinuated, they were dripping blood all over the place. Moreover, both witnesses claimed that while responding to shouts of "robber, robber," they saw the Songcuan brothers jump over the fence.[40] If we are to believe what they claim, it makes us wonder why they never inquired from the Songcuans what had actually transpired. Also, why did Ramos and Malocong jump over the same fence in getting inside the yard of the Erfes? Wouldn't it have been more convenient and practical for them to pass through the gate which was four to five meters wide?

Indeed, there are cogent reasons for rejecting the testimonies of these two (2) principal prosecution witnesses. It took them more than five (5) years to reveal Basilio Songcuan's alleged culpability. Their claim that the Songcuan brothers went to their respective houses to warn them not to divulge what they had allegedly witnessed[41] is disputable. The records show that these two witnesses did not state this matter in their respective affidavits taken by Pat. Romulo T. Columbres on March 18, 1984, notwithstanding the importance of such assertion. Such omission leads us to conclude that the alleged warning of the Songcuan brothers was but a mere afterthought, a contrivance of said witnesses.

Aside from the fact that "a witness who keeps silent is incredible,"[42] there is evidence that although they are relatives by affinity, the relationship between the Songcuans on the one hand and Ramos and Malocong on the other hand, is not only less than cordial but marred by enmity resulting from events that transpired before the prosecution star witnesses implicated the Songcuans. By rejecting their testimonies, we are not transgressing the general rule that findings of facts of the trial court on credibility of witnesses are binding upon this Court for the reason that the testimonies of Ramos and Malocong were heard before the Regional Trial Court of Pangasinan, Branch XXXVII at Lingayen while the decision was rendered by the Regional Trial Court of Pangasinan, Branch XLIV at Dagupan.[43] Thus, with respect to said testimonies, the Dagupan court is not in a better position than this Court which has to rely on the transcript of stenographic notes. It did not have the distinct opportunity to observe and evaluate the demeanor of the two vital prosecution witnesses. The rationale of the rule is therefore in-existent in the instant case.

In its decision, the Dagupan court merely treated the defense's attack on the credibility of Ramos in one paragraph. It brushed aside as untenable the defense's contention that Ramos testified against Basilio due to his ouster as caretaker of Licerio's land, as Ramos was given a separation fee of P500.[44] In other words, the lower court opined that Ramos could not have been impelled to testify against Basilio by said ouster because he received a separation fee. The Court finds, however, that there are other evidence extant on the record that should have been considered by the lower court in determining the credibility of the prosecution witnesses. For one thing, subsequent events clearly show that such separation fee was not sufficient to assuage the ill-feeling engendered by such ouster and Ramos' replacement by Basilio.

Pablo Ramos, whose wife is the sister of Basilio and Licerio, and the overseer of the land owned by the latter who is a doctor and an absentee landlord, from the 1950's until 1982, denied on cross-examination that the reason for his ouster was his nonremittance of the share of the produce of the land to Licerio. There is evidence, however, that on September 8, 1982, before the Barangay Captain of San Vicente, Ramos and Licerio entered into an agreement to settle their dispute whereby Ramos gave up his job as caretaker of Licerio's land in consideration of the separation fee of P500.[45]

It is interesting to note that when he testified, Ramos was evasive and denied facts that are borne out by the records. He clearly remembered the exact date of the murder on November 19, 1978 as well as what he allegedly

witnessed on said date but he could not remember when he became the caretaker of Licerio's land and when he ceased to be such in 1982 or the date he implicated the accused with the offense in 1984.[46] He admitted, however, that Licerio named Basilio as the new overseer of his land.[47]

Also remote from Ramos' memory is the fact that a few days before he executed the sworn statement implicating Basilio, his son, Mildred S. Ramos, and step-son, Romulo S. Gutierrez, threw stones at the mango tree near Basilio's house. This incident led Basilio to file a complaint for trespassing, grave threats and moral (oral) defamation against said Ramos' sons before the Barangay Captain of San Vicente.[48] According to the Barangay Captain, Ramos and his wife were with their sons when the latter appeared before him to explain their side of the dispute.[49] The dispute, however, was not settled so that the Barangay Captain issued a certification to file an action in the proper court dated March 19, 1984[50] or a day before the arrest of Basilio.

Neither is Jose Malocong an untainted witness. Married to a cousin of the Songcuans, Malocong used to rent a portion of the lot of Licerio where he constructed a house.[51] According to Malocong, sometime in 1982, he removed his house therefrom. The record shows, however, that on June 19, 1982, in the presence of the Barangay Captain of San Vicente, Malocong and two other persons promised Licerio that he would remove his house from Licerio's land on or before December 31, 1982.[52] Malocong entered into agreements and/or arrangements and then later conveniently claimed that he did not know about them because he cannot read or write.

The punctured credibility of Ramos and Malocong is not the sole basis for the Court's view that proof of Songcuan's culpability has not been established beyond reasonable doubt. Guided by the principle that every circumstance in favor of innocence must be considered in a criminal case -- as the strongest suspicion must not be allowed to sway judgment against the accused[53] and the fact that our jurisprudence is built on the concept that it is preferable for the guilty to remain unpunished than for an innocent person to suffer a long term unjustly,[54] we have found facts and circumstances which cast doubt on Songcuan's guilt.

The prosecution's theory that Basilio killed the Erfe spouses because of the boundary dispute between them and the Songcuans is untenable. Civil Case No. 1872, which was filed in 1966 and terminated in 1974, was an action for annulment of subdivision plan and transfer certificate of title plus damages filed by the Erfes against Licerio and Epifanio Songcuan and Conrado A. de Guzman.[55] Basilio was not a party therein. Although he could have benefitted had Licerio won the case, there is no convincing evidence that the result of the case favoring the Erfes compelled Basilio to commit the heinous crime, considering its remoteness in time from the crime at bar.

It was likewise established at the trial that Basilio never left San Jacinto from the time the Erfes were killed until his arrest on March 20, 1984. His decision not to flee despite an opportunity to do so is not characteristic of a guilty person.[56] This circumstance taken with other factors militate against the prosecution's case.

Beyond doubt, no one is more qualified to identify the culprit than Gemma Jimenez who encountered him inside the house of the Erfes. At the preliminary investigation, wherein she reaffirmed the truth of the contents of her sworn statement of November 25, 1978, she was accompanied by George Erfe. Asked to identify the killer, she could have easily named Basilio but she did not.[57] Ironically, it was the defense which took the trouble of having her summoned several times in various addresses. It was only after the private prosecutor had informed the court that George Erfe could not produce Gemma in court because he did not know her whereabouts[58] that the defense gave her up as their witness.

It was also the defense which summoned a representative of the NBI to determine whether fingerprints had been lifted from the Erfes' house. According to Carolyn Y. Custodio, NBI supervising biologist, the letter-request from the police at Lingayen only called for the determination of the presence of human blood in the specimen consisting of a small bolo,** an iron weighing scale and a pair of rubber slippers.[59] Recalled to the witness

stand by the defense, Chief of Police Emiliano Oller, however, testified that when some members of the NBI came from Dagupan City, they lifted some fingerprints from the scene of the crime.[60]

On the other hand, the lower court did not appreciate the testimony of the Oligan's laundrywoman, Lilia Perez. She testified that Clarita Oligan once blurted: "If I had caused the death of the two rich persons in this barangay, how much more you?"[61] Moreover, it should have considered the following circumstances tending to point to the Oligans as the probable authors of the killing of the Erfes:

"2. The Erfes had a piggery (t.s.n., p. 6, May 9, 1985). One time, Eliseo Oligan, a brother of Clarita, bought a pig from them which suddenly got sick (t.s.n., pp. 16, 17, May 27, 1985). Eliseo Oligan returned the pig and quarreled with Aniceto Erfe. Aniceto got a bolo and chased Eliseo. After a week, the Erfes were killed (t.s.n., p. 6, May 9, 1985).

"3. Prior to 1978, Eliseo Oligan was convicted of having killed a councilman of San Vicente (t.s.n., p. 7, Id.). After the incident or murder of the Erfes, he went in hiding (t.s.n., p. 10, Id.).

"4. Brgy. Councilwoman, then Captain Clarita Oligan became discredited in the community because of the Songcuan brothers. The latter were able to secure sufficient funds from Malacanang for the repair of the dike in San Vicente despite their being private citizens and do not hold any position in the government (t.s.n., pp. 28-30, Oct. 15, 1985). This drew the ire of the Brgy. Captain and strongwoman Clarita Oligan (t.s.n., p. 30, Id.).

"5. She knew of the animosity and quarrel between the former tenants of the Songcuans - Jose Malocong and Pablo Ramos - when their differences were referred to her as a Brgy. Captain (t.s.n., p. 42, May 9, 1985).

"x x x

"8. Pablo Ramos and Jose Malocong were given money by George Erfe in March, 1984 to testify against the Songcuans. Hilda Gutierrez saw George Erfe giving them money (t.s.n., pp. 4-6, May 27, 1985)."[62]

Ordinarily, a guilty person will not do anything which could lead an accusing finger to point at himself. In this case, however, Basilio dared jeopardy by writing the then Minister of National Defense seeking a reinvestigation of the charges against him. The Ministry's acting assistant secretary for legal affairs referred the matter to the Chief of the Philippine Constabulary.[63] He also sought the assistance of the Office of the President.[64] His counsel also wrote the Criminal Investigation Service which, in turn, informed him that said office could no longer attend to the case it being sub judice.[65]

Admittedly, alibi is a weak defense. However, such weakness does not relieve the prosecution of the required burden of proof.[66] It is of the essence of the accusatorial system grounded in the due process school of criminology that there be moral certainty of guilt to offset the constitutional presumption of innocence. "It follows then that to justify conviction, no doubt could reasonably be entertained as to the fact of an offense having been committed precisely by the person on trial." [67] In this case, the existence of facts and circumstances of weight and influence cast a serious doubt on the guilt of the appellant, and for which reason, he should be acquitted.[68]

WHEREFORE, the decision of the lower court is hereby reversed and set aside and appellant Basilio Songcuan is ACQUITTED of the crime charged. No costs.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

- [1] Rollo, p. 236.
- [2] Rollo, p. 237.
- [3] Exh. B.
- [4] Exh. A.
- [5] TSN, August 7, 1985, p. 7.
- [6] Ibid.
- [7] TSN, supra, pp. 8 &10.
- [8] TSN, October 15, 1985, pp. 4-5.
- [9] TSN, April 29, 1985, pp. 10-23.
- [10] Exh. 17.
- [11] Exh. 1-motion; Record of Criminal Case No. 965, p. 6.
- [12] Exhs. 19 & 20.
- [13] Exh. 18.
- [14] Rollo, p. 160.
- [15] TSN, December 3, 1984, pp. 44-59.
- [16] TSN, supra, pp. 62-64.
- [17] TSN, January 4, 1985, p. 3.
- [18] TSN, January 30, 1985, pp. 58-59.
- [19] Ibid., p. 59.
- [20] Ibid., pp. 60-61.
- [21] Ibid.
- [22] Ibid., p. 39.
- [23] TSN, January 4, 1985, pp. 24-25.
- [24] TSN, January 3, 1985, pp. 15, 17, 18.
- [25] TSN, January 31, 1985, pp. 8-20.
- [26] TSN, January 31, 1985, pp. 54, 55.
- [27] Exh. 7.
- [28] Ibid., p. 67.
- [29] Ibid., p. 68.
- [30] TSN, August 7, 1985, pp. 20-32.
- [31] Ibid.

[32] TSN, April 10, 1985, pp. 24-47.

[33] TSN, October 15, 1985, pp. 70-71.

[34] Ibid., pp. 86-87.

* literal translation; the word "bayaw" was used here loosely to refer to a cousin-in-law

[35] TSN, May 8, 1985, pp. 3-16.

[36] TSN, August 6, 1985, p. 6.

[37] *People v. Ola*, 152 SCRA 1.

[38] *Borlongan v. C.A., et al.*, G.R. No. 84423, January 31, 1989; *People v. Pimentel*, 147 SCRA 25.

[39] *People v. Modesto*, 25 SCRA 36.

[40] TSN, p. 45, December 3, 1984.

[41] TSN, p. 16, January 30, 1985 and TSN, p. 19, January 31, 1985.

[42] *People v. Delavin*, 148 SCRA 257.

[43] 43 Judge Amanda Valera-Cabigao presided over Branch XXXVII while Judge Crispin C. Laron presided over Branch XLIV. On January 31, 1985, the former court forwarded the records of the case to the latter court it appearing that under Section 18, B.P. Blg. 129 and the interim rules and guidelines of this Court as well as Administrative Order No. 7, series of 1983, this case fell within the territorial jurisdiction of the latter court (Record of Criminal Case No. L-3017, p. 112).

[44] Decision, p. 25.

[45] Exh. 3; Exh. 3-A.

[46] TSN, January 3, 1985, pp. 21-26.

[47] TSN, *supra*, pp. 15-19; January 4, 1985, pp. 15-18.

[48] TSN, *supra*, pp. 15-19; TSN, January 4, 1985, pp. 28, 35, 37.

[49] TSN, April 30, 1985, pp. 28, 35, 37.

[50] Exh. 2.

[51] TSN, January 31, 1985, pp. 25, 49.

[52] Exhs. 7 & 7-A.

[53] *Sacay v. Sandiganbayan*, G.R. Nos. 66497-98, July 10, 1986, 142 SCRA 593, 614.

[54] *People v. Alcaraz*, G.R. No. 66509, April 25, 1985, 136 SCRA 74, 91.

[55] Exh. C.

[56] *People v. Poyos*, G.R. No. 63861, August 19, 1986, 143 SCRA 542, 551; *People v. Escalante*, L-37147, August 22, 1984, 131 SCRA 237, 256-257.

[57] TSN, May 27, 1985, pp. 7-8.

[58] TSN, September 4, 1985, p. 26.

** referred to as a butcher's knife by Captain Oller in his testimony.

[59] TSN, October 15, 1985, pp. 4-5.

[60] TSN, *supra*, p. 8.

[61] TSN, p. 19, May 8, 1985.

[62] Brief for the Defendant-Appellant, pp. 35-36.

[63] Exh. 22.

[64] October 15, 1985, pp. 77-79.

[65] Exhs. 27 & 28.

[66] *People v. Aquino*, L-36020, October 30, 1979, 93 SCRA 772, 793; *People v. Sunga*, G.R. No. 57875, July 5, 1983, 123 SCRA 327; 333.

[67] *People v. Egot*, L-42962, April 30, 1984, 129 SCRA 96, 100.

[68] *People v. Pascual*, L-27569, October 28, 1977, 80 SCRA 1.

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