

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. LEO T. VILLANUEVA, RESPONDENT.

G.R. No. 77396. July 20, 1992

Ponente: BIDIN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-77396/>

BIDIN, J.:

This is an appeal from the decision of the Regional Trial Court, Virac, Catanduanes, Branch 43* convicting the accused-appellant Leo T. Villanueva of the crime of Homicide with the use of unlicensed firearm, defined and penalized under Presidential Decree No. 1866, Section 1, paragraph 2 thereof, the decretal portion of which reads:

"WHEREFORE, the Court finds the accused Leo Villanueva guilty of the offense in violation of Sec. 1 of Presidential Decree No. 1866 as charged in the information, and the Court hereby imposes the penalty of DEATH. The accused is further ordered to pay the heirs of Deogracias Tubianosa, Jr., as indemnity, the following:

- 1). For the sole fact of death of the victim Deogracias Tubianosa, Jr., the amount of THIRTY THOUSAND (P30,000.00) PESOS;
- 2). For actual compensatory damages in the amount of TEN THOUSAND SIX HUNDRED (P10,600.00) PESOS;
- 3). For moral damages in the amount of TWENTY FIVE THOUSAND (P25,000.00) PESOS;
- 4). For exemplary damages in the amount of TWENTY FIVE THOUSAND (P25, 000.00) PESOS; and
- 5). To pay the costs.

"Lastly, in view of the decision of the Court, finding the accused Leo Villanueva guilty as charged and the imposition of the death penalty, his bail bond is considered cancelled and his immediate confinement in the penitentiary is ordered, pending automatic review by the Supreme Court.

"SO ORDERED."

Accused-appellant was indicted with the crime of Homicide with the use of unlicensed firearm in violation of Section 1, paragraph 2 of Presidential Decree No. 1866 allegedly committed as follows:

"That on or about the 11th day of November 1985, at more or less 4:30 o'clock in the after-noon at barangay San Pedro, Municipality of Viga, Province, of Catanduanes, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed and in possession of an unlicensed revolver, without authority to possess the same and without obtaining the proper permit or license thereof, did then and there, willfully, unlawfully and feloniously and with intent to kill pointed and fired said gun against Deogracias Tubianosa, Jr. hitting said victim on the head, which caused his instantaneous death, to the damage and prejudice of the heirs of said victim.

"CONTRARY TO LAW."

Upon arraignment, the accused pleaded not guilty.

At the trial, the prosecution presented the following witnesses: Roberto Olarte, Dr. Loreto Rojas, Jaime Torrocha, Purita Padilla, Priscilla Echegaray Tubianosa, Pat. Wilfredo Vitalicio and Pat. Cecilia de Leon whose testimonies are substantially as follows:

Roberto Olarte declared that sometime on November 11, 1985 at about 4:00 o'clock in the afternoon, he was walking at San Pedro Street, Viga, Catanduanes when he met the victim Deogracias Tubianosa, Jr., the latter asked him to accompany him to the house of Amelia Tulalian to visit a girl named Analiza Tapar; that said Analiza was not there so they proceeded to the residence of Mamerto Rojas where a drinking party was going on; on the way, the victim conveyed his apprehension of the persons with whom he was drinking, specially Horacio Aquino, Jr., Leo Villanueva, and Santiago Valderrama, Jr., because said Horacio Aquino, Jr. was asking for the victim's chicken and to insure his return to the place, his watch was left with Aquino; the victim asked him to join them in the drinking spree but he declined; he then stayed inside the store which adjoins the residence of Rojas; after the lapse of twenty (20) minutes, he endeavored to peep through a window near the garage; he saw five (5) persons drinking, among them were: the victim, Tubianosa, Jr., Horacio Aquino, Jr., Santiago Valderrama, Jr., Leo Villanueva, and another person whom he did not readily recognize as said person's back was towards him; that he continued to wait for Tubianosa, Jr. in the nipa hut shed inside the compound which was six (6) meters away from the place where the group was drinking; that after fifteen (15) minutes of waiting, he heard a heated discussion in the place where the group was. He peeped again through the window and observed that the group with whom Tubianosa, Jr. was drinking appeared angry as they were shouting at the latter; Aquino, Jr. shouted saying: "ITAO MO NGANI YO MANOK." (Give the chicken); Valderrama, Jr. followed up by uttering: "ITAO MO YO MANOK O MAI." (Are you going to give the chicken or not); accused Leo Villanueva also uttered: "PARA MANOK MAI MO IKATAO HA." (It is only a chicken you can not give ha?) and at the same time pointed a gun at Tubianosa, Jr., when he saw the accused poking a gun at the victim, he immediately left the place and sought help from the victim's brother Jesus Tubianosa whose house is situated twenty (20) meters from the said place; that upon arrival thereat, he heard a gunshot; that as the victim's brother was not at home, he decided to go home (TSN, pp. 21-40, February 19, 1986).

Jaime Torrocha, testified that around 4:30 in the afternoon of November 11, 1985, he was looking for Santiago Valderrama, Jr. as the latter's visitor from Virac has just arrived. He found Valderrama at the house of Mamerto Rojas, drinking in the company of Tubianosa, Jr., Leo Villanueva, Beniano Ogena, and Horacio Aquino, Jr.. Valderrama asked him to wait awhile as the former would ask permission from the group; that Aquino, Jr. gave him a drink. While drinking, Benigno Ogena left the place followed by Valderrama, Jr., he then took Valderrama, Jr.'s seat; that while he was in the act of taking a second drink, he heard a gunshot; that suspecting he might have been hit, he felt his body with his two hands; and when he looked around, he saw the accused Leo Villanueva holding a gun and the victim Tubianosa, Jr. was slumped towards his right side, his left hand still on the armrest of the chair. He also saw blood on the right side of the victim's face; that after having witnessed the incident, he immediately left and on his way out he saw Valderrama, Jr. vomiting outside; later on, he was investigated and his statement about the incident was taken by the Philippine Constabulary (TSN, pp. 43-52, February 20, 1986).

Purita Padilla, a resident of Viga, Catanduanes, declared that at around 5:00 o'clock in the afternoon of the incident, she was also at the store of Mamerto Rojas buying dried fish; that while there, she heard a gunshot and someone said, "Nagdaan sabi si Bagwang." (Bagwang died); thereafter, she saw three (3) persons: Jimmy Torrocha, Santiago Valderrama, Jr., and Leo Villanueva coming out of the bodega of Mamerto Rojas; that the three (3) people mentioned were immediately followed by Pat. Cleto Turreda of the Viga INP; that a vehicle of the police arrived and two policemen proceeded inside the house of Rojas; that subsequently, they carried the

body which she recognized as that of Deogracias Tubianosa, Jr., the one she referred to earlier as "BAGWANG" (TSN, pp. 52-55, February 20, 1986).

Station Commander Domingo Olfindo of the Viga INP affirmed that as a consequence of this incident and on the basis of the verbal report of Geronima Rojas, occupant of the place where the incident occurred, he also went to the place of the incident; that he found the victim Deogracias Tubianosa, Jr. still seated on the chair in the sala, with his head inclined to the right, with blood on the forehead; that he ordered the victim to be brought with dispatch to the hospital but said victim was pronounced dead by the doctor on duty upon arrival; that he further ordered Pfc. Alejandro Torio to take the statements of the persons who were with the victim, particularly: Jaime Torrocha, Leo Villanueva, Santiago Valderrama, Jr., and Horacio Aquino, Jr. but the persons mentioned refused to give any statements; that on November 12, 1985, he reported the matter to the Provincial Fiscal and requested assistance for the conduct of an autopsy on the victim's body; that in coordination with Sgt. Cecilio de Leon, further investigation of the case was made; Police Wilfredo Vitalicio with some companions were dispatched to Bagamanoc to apprehend Leo Villanueva as information reached the police authorities that said accused is about to escape; that sometime on November 13, 1985, Pat. Vitalicio together with Danny Turreda upon reaching Bugao were informed by Roberto Evangelista that Leo Villanueva was there that day; and that Leo Villanueva was found in Tabugoc and turned over to Sgt. Asetre of the Philippine Constabulary (TSN, pp. 63-71, May 15, 1986).

Pat. Wilfredo Vitalicio corroborated the testimony of Station Commander Olfindo that he was ordered to search for accused Leo Villanueva in connection with the death of Tubianosa, Jr.; that he found accused at Tabugoc and invited the latter to go with him as other teams are looking for him (TSN, pp. 80-91, June 17, 1986).

Corporal Cecilia de Leon declared that on November 12, 1985 at around 6:00 o'clock in the evening, he was assigned together with Sgt. Asetre to investigate the incident regarding the death of Tubianosa, Jr.; that among those whose statements were taken were Jaime Torrocha and Horacio Aquino, Jr.; that the latter pinpointed accused Leo Villanueva as the one who fired the gun; and that after the investigation, he filed a complaint against accused Leo Villanueva for homicide thru reckless imprudence (TSN, pp. 91-97, June 17, 1986).

Dr. Loreto Rojas, Municipal Health Officer, Ministry of Health, Bato, Catanduanes testified that at about 3:20 in the afternoon of November 12, 1985, he conducted an autopsy on the body of the victim Deogracias Tubianosa, Jr.; and that he confirms postmortem findings stated in the autopsy report (Exhibit "A", p. 93, Original Records) which states:

"Wound, gunshot, (entrance) roughly oval in shape, .5 cm. in diameter surrounded by a contuso--abraded collar 1 cm. in diameter almost evenly distributed around the gunshot wound with burn semi-circular below its lower half located at the forehead right aspect 39 inches from the sole of the right foot 4 cm. from the anterior median line, 16 cm. above the superior border of eyebrow, right directed medially, posteriorly and upwards passing through the scalp perforating the cerebral substance then making a wound (exit) with an embedded slug triangular in shape 2 cm. by 3 cm. by 3.5 cm. with comminuted skull fractures at the posterior median and superior border of the occipital bone, 9 cm. with a vertical line drawn above a horizontal line connecting superior border of ears right and left.

CAUSE OF DEATH:

Hemorrhage, cerebral, severe, secondary to gunshot wound forehead right aspect."

He identified and explained the exhibits referred to him during his testimony, particularly his findings in the autopsy report and attached diagram (Exhibit "B", p. 94, Ibid.) and the pictures taken during the conduct of the autopsy (Exhibits "C" to "C-7", pp. 95-102, Ibid.). He concluded that massive hemorrhage secondary to gunshot wound was the cause of death of the victim; the missile having traversed the cerebral substance which caused

severe hemorrhage due to the gunshot wound (TSN, pp. 3-20, February 19, 1986).

Priscilla Echegaray Tubianosa, mother of the victim stated that the victim was a commerce graduate major in accounting; that prior to his son's death, he has already obtained a passport (Exhibit "F", Original Records) preparatory to his going abroad to work; that she spent the total amount of P10,600.00 for the burial and miscellaneous expenses of the victim Deogracias Tubianosa, Jr. (TSN, pp. 72-74, May 15, 1986).

In the course of the trial, the prosecution and the defense stipulated that accused Leo Villanueva is not a holder of a licensed firearm as attested by a certification issued by the Headquarters of Catanduanes Constabulary Command, Virac, Catanduanes (Exhibit "I", p. 107, Original Records).

The defense presented as witnesses: accused Leo T. Villanueva, Melia Tulalian Molod and Geronima Rojas.

Accused Leo T. Villanueva declared that on November 11, 1985, he was preparing to go to Tabugoc, Pandan, Catanduanes in connection with his business of buying and selling carabaos and pigs but because he was invited by the victim Deogracias Tubianosa, Jr. to drink gin at the house of Mamerto Rojas, he was unable to proceed to his destination; that he and Tubianosa, Jr. drank gin from 8:00 o'clock in the morning up to 4:00 o'clock in the afternoon of the same day; that they were joined later by Horacio Aquino, Jr., Santiago Valderrama, Jr., Beniano Ogena and Jimmy Torrocha; that the group consumed five (5) cuatro cantos of Ginebra San Miguel; that they did not take their lunch as they had venison as "pulutan"; that while drinking, Tubianosa kept on harping on his string of bad luck, such as: having failed in the CPA examination, having been rejected by the girl he was courting, Analiza Tapar and not being able to go abroad; that at around 4:00 o'clock in the afternoon, a sudden explosion was heard by the group; that thereafter, he heard something fall on his right side which turned out to be a gun; that he saw Tubianosa, Jr. slumped with his back leaning on the backrest of the chair; that he picked up the gun and put it on the table where they were drinking; that he observed that Tubianosa, Jr. was bleeding from the side of his forehead; that he left the place without doing anything together with Horacio Aquino, Jr. and proceeded to his residence. During the time the incident was investigated, he refused to give any statement; and thereafter he was sent home. On November 13, 1985, Pfc. Wilfredo Vitalico, Bgy. Captain Romeo Pascua and Danilo Torredo went to see him at Tabugoc while intending to pursue his aborted trip to buy pigs and carabaos. Subsequently, he was turned over to the Philippine Constabulary. He stayed in the camp from November 13, 1985 up to the last week of January 1986 for security reasons. He denied having poked a gun at the victim Tubianosa, Jr. as claimed by Olarte nor was there a heated discussion about a chicken. He explained that his failure to give any statement to the police investigator about the gun explosion was by reason of fear and that he did not surrender the gun because after placing the same on the table, he left the place. He added that the victim himself, Tubianosa Jr. could have caused the gun to explode but not Horacio Aquino, nor Jimmy Torrocha (TSN, pp. 130-168, August 25, 1986).

Amelia Tulalian Molod, landlady of Analiza Tapar, was presented to discredit the testimony of Olarte. She stated that the victim Tubianosa Jr. used to go to their house in 1985 because he was courting Analiza; that the last time that Tubianosa Jr. went to her residence was on November 8, 1985; and that she did not see the victim and Roberto Olarte go to their house on November 11, 1985 (TSN, pp. 101-110, August 6, 1986).

Geronima Rojas, likewise refuted Olarte's testimony, and declared that she was the one tending the store on November 11, 1985; that prior to the moment she heard the gunshot, she did not see Olarte in her store (TSN, pp. 110-126, August 6, 1986).

On rebuttal the prosecution presented Priscilla Tubianosa and Linda Alindogan.

When recalled to the witness stand, Priscilla Tubianosa affirmed that the victim Tubianosa Jr. graduated at the Catanduanes State Colleges with a degree in Commerce, major in Accounting in March 1984; that her son took

the CPA Board Examination in October 1984 in Manila the result of which was released in January 1985; that although her son failed in said board examination, he was not troubled as he can take another examination; and that Tubianosa Jr. was able to get the requisite passport for working abroad; that prior to his death, Tubianosa Jr. has not shown any unusual behavior which would induce him to commit suicide (TSN, pp. 176-180, September 9, 1986).

Linda Alindogan, public school teacher and a resident of San Isidro, Viga, Catanduanes rebutting the testimony of defense witness Geronima Rojas to the effect that the latter attended to only two customers prior to hearing the gunshot, declared that after being dismissed from her work as classroom teacher at San Isidro, at around 4:30 o'clock in the afternoon of November 11, 1985, she and her husband proceeded to the store of Geronima Rojas for the purpose of exchanging her treasury warrant, pay her indebtedness and buy some goods thereat; and that she stayed in the store for about five (5) minutes and while there, she saw several people inside and outside the store (TSN, pp. 172-176, September 9, 1986).

During the course of her testimony, Priscilla Tubianosa was asked by the Court whether an attempt or proposal to settle the case was ever made by the accused or his relatives. The prosecution, realizing the significance of the fact sought to be elicited, moved for reopening of the case after it was submitted for decision for the reception of additional evidence which the trial court granted (CFI Decision p. 16).

Jesus Tubianosa, brother of the victim Deogracias Tubianosa, Jr., as additional prosecution witness testified that two or three days after the incident occurred, Atty. Romulo Atencia who is the brother-in-law of the accused asked him (Jesus Tubianosa) what the Villanuevas (family of the accused) can do to help the Tubianosas (victim's family), saying that "the thing that happened between Tubianosa Jr. and the accused was an accident." (TSN, 184-195, November 10, 1986).

Based on the circumstantial evidence proffered by the prosecution, the trial court found accused-appellant Leo T. Villanueva guilty beyond reasonable doubt of the crime of Homicide with the use of unlicensed firearm, in violation of Section 1, par. 2, Presidential Decree No. 1866 and sentenced him to death.

This case was elevated to this Court on automatic review.

In his brief, accused-appellant assigns the following errors:

I

THE LOWER COURT ERRED IN ACCEPTING THE BIASED, INCREDIBLE AND COMPLETELY UNTRUSTWORTHY TESTIMONY OF PROSECUTION WITNESS ROBERTO OLARTE.

II

THE LOWER COURT ERRED IN APPRECIATING HEARSAY EVIDENCE AGAINST THE ACCUSED-APPELLANT.

III

THE LOWER COURT ERRED IN HOLDING THAT "FROM THE ACCUSED LIPS HAS BEEN ELICITED THE FACT THAT AT THE TIME WHEN THE EXPLOSION WAS HEARD, HE WAS THE ONE HOLDING THE GUN" WHEN NO SUCH EVIDENCE EVER APPEARS ON RECORD.

IV

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT ON ALLEGED "CIRCUMSTANTIAL EVIDENCE" WHICH CANNOT LOGICALLY OR LEGALLY PRODUCE ANY INFERENCE OF GUILT, MUCH LESS GUILT BEYOND REASONABLE DOUBT.

V

THE LOWER COURT ERRED IN COMPLETELY DISREGARDING THE TESTIMONY OF THE ACCUSED-APPELLANT AND THE OTHER DEFENSE WITNESSES.

VI

THE LOWER COURT ERRED IN HOLDING THAT AN UN-LICENSED FIREARM WAS USED.

VII

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH HIS GUILT BEYOND REASON-ABLE DOUBT.

The principal thrust of accused-appellant's appeal revolves on the credibility of witnesses.

The appeal is lacking in merit and must inevitably fail.

It is a fundamental legal aphorism that the conclusions of the trial judge, regarding the credibility of witnesses, command great respect and consideration, especially when they are supported by the evidence on record and will not ordinarily be disturbed or interfered with (*People vs. Aboga*, 147 SCRA 404, [1987]; *People vs. Pilapil*, 147 SCRA 528 [1987]; *People vs. Dava*, 149 SCRA 582 [1987]; *People vs. Picardal*, 151 SCRA 170 [1987]; *People vs. Alcantara*, 151 SCRA 326 [1987]; *People vs. Ornoza*, 151 SCRA 495; *People vs. Cruz, Sr.*, 151 SCRA 609; *People vs. Legaspi*, 151 SCRA 670; *People vs. Dimacali*, 153 SCRA 454 [1987]; *People vs. Nulla*, 153 SCRA 471; *People vs. Francia*, 154 SCRA 495 [1987]). The only exception to the rule is when the trial court plainly overlooked certain facts and circumstances of weight and influence which, if considered, will materially alter the result of the case (*People vs. Ramos*, 153 SCRA 276 [1987]). The present case does not appear to be an exception to the rule.

Accused-appellant's conviction of the crime charged is based on circumstantial evidence, there being no eyewitness to the shooting presented by the prosecution. The two vital prosecution witnesses Roberto Olarte and Jimmy Torrocha did not categorically pinpoint accused Leo Villanueva as the one who fired the gun and inflicted the fatal wound that caused the victim's death.

The requisites for conviction based on circumstantial evidence are: (1) there is more than one circumstance; (2) the facts from which the inference are derived must be proven; and (3) the combination of all the circumstances is such as to produce a conviction of guilt beyond reasonable doubt (*People vs. Pimentel*, 147 SCRA 25 [1987]). The circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the author of the crime (*People vs. Magallanes*, 147 SCRA 92 [1987]) and that circumstantial evidence must fairly exclude every reasonable hypothesis of innocence to warrant conviction (*Dorado vs. Court of Appeals*, 153 SCRA 420 [1987]).

As found by the trial court, the facts established by the evidence are as follows:

"x x x (T)he cause of death of victim Tubianosa, Jr., is Hemorrhage, cerebral, severe, secondary to gunshot wound forehead, right aspect, a fact testified to by Dr. Loreto T. Rojas, Municipal Health Officer of Bato, who

conducted the necropsy, duly supported by the autopsy report (Exh. "E"); that prior to the fact that a gunshot was heard, a group of men which include the victim Deogracias Tubianosa, Jr., the accused Leo Villanueva, Horacio Aquino, Jr., Santiago Valderrama, Jr., and Beniano Ogena were engaged in a drinking spree starting at 8:00 o'clock in the morning to 4:00 o'clock in the afternoon; that immediately prior to the gun explosion being heard by witness Olarte, he saw Leo Villanueva poking a gun at the victim Tubianosa, Jr. with Horacio Aquino, Jr., Santiago Valderrama, Jr., and the accused Leo Villanueva himself shouting at the victim uttering as follows: 'ITAO MO NGANI YO MANOK.' (Give the chicken.) -- by Aquino, Jr.: 'ITAO MO YO MANOK O MAI.' (Are you going to give the chicken or not) -- by Valderrama, Jr.: 'PARA MANOK MAI MO IKATAO HA.' (It is only chicken, you cannot give ha.) -- by Leo Villanueva; that immediately after the gunshot was heard, Jaime Torrocha, one of the three persons who were beside the place where the incident in question happened, (aside from the victim) saw Leo Villanueva holding the gun; that immediately after the gunshot was heard, victim Tubianosa, Jr. was seen also by Torrocha slumped on the chair, with blood on the right side of his face; that the gun held by accused Leo Villanueva was never found; that Leo Villanueva, when requested by Station Commander Domingo Olfindo to give his statement about the incident refused; that Leo Villanueva left Viga and was pursued by the police authorities and found in Tabugoc, Pandan; that upon return of the police authorities in Bagamanoc with Leo Villanueva, the latter was turned over to Sgt. Asetre of the PC, stationed in Virac on November 13, 1985; that thereafter, Leo Villanueva allowed himself to be confined allegedly for security reasons at the PC Headquarters in Virac up to the last week of January, 1986." (Rollo, pp. 32-33).

The facts established by the direct and positive testimonies of prosecution witnesses and other evidence show that the requirements for circumstantial evidence to sustain a conviction are present in this case. More than that, the series of events constitute an unbroken chain leading to one fair and reasonable conclusion pointing to the accused Leo Villanueva as the perpetrator of the crime charged.

Among others, they are: (1) that prior to the incident, Roberto Olarte saw appellant poking a gun at the victim; when Olarte ran to the house of the victim's brother, which is more or less seventy (70) meters from the place where the group was, to seek help, he heard a shot (TSN, pp. 28-29, February 19, 1986) which by itself is an almost undisputable evidence that the victim's wound was caused by the same gunshot (People vs. Agbot, 106 SCRA 325 [1981]); (2) that Horacio Aquino, Jr., one of appellant's companions in the drinking session, executed a statement (Exhibits "H" and "H-1", pp. 105-106, Original Records) before Corporal Cecilio de Leon pinpointing appellant as the one who fired the gun (TSN, pp. 94-95, June 17, 1986); (3) that right after having heard the shot, Jaime Torrocha, a party to the said drinking session, saw appellant holding a gun (TSN, p. 48, February 20, 1986); (4) that the same shot was heard by Purita Padilla while buying dried fish at the store where the group was drinking and later she saw Jimmy Torrocha, Santiago Valderrama and appellant come out of the bodega and the lifeless body of the victim carried by two (2) policemen (pp. 53-54, Ibid); (5) that an autopsy on the body shows that the cause of the victim's death was hemorrhage, cerebral, severe, secondary to gunshot wound, forehead, right aspect as testified to by the municipal health officer Dr. Loreto Rojas (TSN, p. 13, February 19, 1986).

Mere denials of the accused as to his participation in the crime are only self-serving, negative evidence which cannot outweigh circumstantial evidence clearly establishing his active participation in the crime (People vs. Jara, 144 SCRA 516 [1986]).

The defense theory to the effect that the victim committed suicide is not plausible. Aside from the fact that the victim did not display unusual behavior because of his alleged string of bad luck indicative of an intention to commit suicide, it is indeed unthinkable that he would commit suicide in the presence of several people who could easily have dissuaded him from such purpose (TSN, pp. 179-180, September 9, 1986).

There is absolutely no evidence showing that the fatal weapon (gun) came into the possession of the victim to enable him to commit suicide with the gun as instrument. On the contrary, the said gun was all the time in the

possession of accused-appellant. Before the gun explosion was heard, appellant was seen by Roberto Olarte poking the said gun at the victim. After the gun exploded, the appellant was seen by Jaime Torrocha holding the gun inside the drinking room while the victim was slumped on the chair nearby with blood oozing from his forehead. Otherwise stated, nobody had the opportunity to fire the gun at the victim except the accused-appellant who was in possession of the fatal weapon at the time of the incident.

No less important is the fact that the conduct of the accused right after the shooting are inconsistent with his alleged innocence, such as: (a) he allegedly left the gun at the center table when he could have surrendered the same to the police authorities if indeed he had nothing to do with the shooting; (b) he refused to give any statement to the police; (c) he saw the victim Deogracias Tubianosa, Jr. who was his friend and neighbor, profusely bleeding in the head, but instead of helping the former by bringing him to the hospital, the accused immediately left the scene of the incident; and (d) he allowed himself to be confined at the PC Barracks from November 13, 1985 up to the last week of January 1986 with the acquiescence of his counsel for allegedly security reasons despite the fact that no charges have as yet been filed against him.

The trial court did not err in admitting the testimony of Corporal de Leon regarding the fact that a statement was made by Horacio Aquino, Jr. pinpointing accused-appellant as the one who fired the gun. The purpose of placing said statement in the record is merely to establish the fact that the statement was made and/or the tenor of such statement. As ruled by this Court in *People vs. Cusi, Jr.* (14 SCRA 944 [1965]), Corporal de Leon's testimony does not amount to hearsay evidence.

Thus, the fact that the gun used in the killing was not recovered and not presented as evidence is of no moment. The corpus delicti having been duly established by the prosecution, the burden of proof to show that the firearm used was licensed rests upon the accused. Appellant's failure to do so constrains this Court to sustain the verdict of the trial court that the crime of homicide was committed with the use of an unlicensed firearm.

WHEREFORE, the appealed judgment is hereby **AFFIRMED** with the modification that the penalty of death is commuted to reclusion perpetua (Sec. 19[1], Art. III, Constitution) and as to the indemnification for death of the victim which is hereby increased to P50,000.00. Costs against appellant.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Davide, Jr., and Romero, JJ., concur.

* Penned by Judge Jose D. Pajarillo

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.