

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO ALAY-AY, ALIAS “COT,” ACCUSED- APPELLANT.

G.R. No. 94310. June 30, 1993

Ponente: NOCON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-94310/>

NOCON, J.:

Evidence having been shown by the prosecution in the court below that accused-appellant was the culprit who hit the victim, Felomena Franche, repeatedly on the head with a 2” x 2” piece of wood and stole her Sanyo transistor radio, the trial court convicted him of Robbery with Homicide and sentenced him to life imprisonment and to indemnify the heirs of the victim in the amount of Thirty Thousand (P30,000.00) Pesos.[1]

The accused-appellant, however, denied the accusation and claimed that he was sleeping soundly at the time the crime was allegedly committed and asks us to acquit him. This Court, however, upon a review of the evidence, finds accused-appellant’s protestation of innocence not credible and convicts him of two specific offenses, that of homicide and theft, instead of robbery with homicide.

The information for robbery with homicide against Virgilio Alay-ay, alias “Cot” reads:

“That on or about the 22nd day of March, 1985, at around 5:30 o’clock in the morning, more or less, corner Capaya and Duhat Sts., Homesite Subdivision, Barangay Dau, Municipality of Mabalacat, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused VIRGILIO ALAY-AY alias “COT”, with intent to gain, by means of violence against and without the knowledge and consent of the store’s owner Felomena Franche, and once inside the store, did then and there willfully, unlawfully and feloniously take, steal and carry away with the following, to wit:

One (1) transistor radio, valued at P100.00

One (1) one hundred peso bill 100.00

P200.00

in the total amount of TWO HUNDRED (P200.00) PESOS, to the damage and prejudice of the said owner in the total amount of P200.00, Philippine Currency, and on the occasion thereof, said accused, with intent to kill, with treachery and evident premeditation and taking advantage of his superior strength, did then and there willfully, unlawfully and feloniously assault, attack and hit said Felomena Franche with a 2”x 1” and 1/2”x 26” piece of wood on the different parts of her body, thereby resulting in her death shortly thereafter.

“All Contrary to Law.”[2]

The Solicitor General summarized the antecedent facts of the case as follows:

“Between 5:30 and 6:00 in the morning of March 22, 1985, Felomena Franche was tending her store at Dau Homesite, Dau, Mabalacat, Pampanga. Her daughter, Mila Pineda, lived in a house some 20 meters from the store, with the door of the store facing the house. Saldy Guela, Mila’s nephew and grandson of Felomena, was staying in the same house. Suddenly, Saldy heard a woman shouting, ‘Mila, Mila, somebody is hitting your

mother's head.' Upon hearing this, Saldy stood up and looked out the window. He saw a man inside the store hitting the head of his grandmother, Felomena Franche, with a two-foot long piece of wood. When the man was about to get out of the store, Saldy saw his face and recognized him as 'COT', who frequently drank liquor at the store. He went downstairs but upon reaching the ground, 'COT' was already scaling the wall. Thus, Saldy proceeded to the store where he carried his grandmother (tsn., Jan. 18, 1989, pp. 4-7).

"On her part, Mila Pineda was awakened by a noise to the effect that there was a robbery committed at the store which her mother, Felomena Franche, was tending. When she peeped through the window, she saw many people in front of the store. A woman then approached her, saying, 'Go down. Your mother was hit.' Thus, Mila proceeded to the store to look for her mother. There, she saw that her mother was 'nangingisay' or trembling all over (tsn., Nov. 20, 1986, pp. 4-5).

"It turned out that the one who shouted, Mila, Mila, your mother is being beaten' or words to that effect, was Dolores C. Lising. Dolores went to the store of Felomena Franche that morning to buy sugar. There, she heard somebody pounding, as if 'somebody was pounding a rat,' and an old woman moaning. When she came near, she saw a man beating the old woman with a piece of wood. Knowing that the old woman was the mother of Mila Pineda, she ran towards the latter's house which was located near the store and shouted to her (tsn., Oct. 6, 1987, pp. 5-10).

"About 6:00 that same morning, Natividad dela Cruz, who was on her way to the store of Felomena Franche, saw appellant Virgilio Alay-ay, alias 'Cot', whom she had known since 1972, jump over the fence of said store. Appellant was carrying a Sanyo transistor radio which Natividad recognized as the property of Felomena, because she always saw Felomena use it whenever she Natividad) went to the store (tsn., Feb. 16, 1988, pp. 3-9).

"Meanwhile, Mila Pineda, Saldy Guela and a neighbor, Jimmy, succeeded in reviving the unconscious Felomena. Afterwards, Mila and another neighbor brought Felomena to the Pampanga Polymedic Hospital. On the way to the hospital, Mila asked her mother 'Who hit you?' and she answered, 'It was Cot' (tsn., pp. 16, 19-20).

"At the Pampanga Polymedic Hospital, Dr. Carmelo Mendiola attended to Felomena Franche. At past 8:00 that same morning, the case was referred to Dr. Eduardo Buencamino, who found Felomena unconscious, in shock, with multiple injuries on the face and head and blood coming out from her nose and mouth. He ordered resuscitative measures which, however, proved unsuccessful. At 10:10 that morning, Felomena Franche was declared dead. In his medical certificate (Exh. B), Dr. Buencamino found at least two fractures on the head of Felomena which could have been caused by her being beaten by someone with a piece of wood. The doctor ruled out the probability of Felomena's having fallen down by herself and her head hitting the cement floor, because the injuries sustained were caused by multiple hitting (tsn., Sept. 10, 1987, pp. 9-19, 35-37; Exh. A).[3]

Virgilio Alay-Ay was found guilty and sentenced to life imprisonment. The dispositive portion of the decision reads:

"WHEREFORE, judgment is rendered convicting the accused of Robbery with Homicide as defined and punished under Article 294 (1) of the Revised Penal Code as amended, and this Court sentences the accused VIRGILIO ALAY-AY alias "Cot":

- (a) to suffer LIFE IMPRISONMENT and to suffer its accessory penalties;
- (b) to indemnify the heirs of the victim Felomena Franche, in the amount of THIRTY THOUSAND PESOS;
- (c) to pay the heirs of the victim Felomena Franche the further sum of THIRTY THOUSAND PESOS as adequate compensation for actual damages (except attorney's fees and expenses for litigation), another sum of FIVE

THOUSAND PESOS as moral damages;

(d) to pay the costs of suit.

“Being a detention prisoner, the accused is entitled to the benefits of Article 29 of the Revised Penal Code as amended.

“SO ORDERED.”[4]

Accused-appellant assails the credibilities of the prosecution witnesses who testified against him. He contends that:

“x x x Saldy Guela was a surprise witness for the prosecution. His name does not appear in the Police Report (Information Report) neither x x x (was) his name ever mentioned by the witnesses for the prosecution. x x x Guela did not even report the incident in question to the police nor did he ever execute a statement regarding his testimony in Court. The incident happened sometime on March 22, 1985, and (he) testified only on January 19, 1989 x x x (or after) a period of about four years x x x. He was a close relative of the victim (she) being his grandmother x x x.

x x x Natividad dela Cruz x x x testified that she saw a person jump over the fence of Felomena Franche, x x x (that this person’s) name is Virgilio Alay-ay; that she saw him bringing a radio; that after seeing the accused jump over the fence and run away towards Duhat St., said witness went home; that witness did not reach the store because she proceeded home; and that she came to know later that Felomena Franche died.

“x x x the defense will submit that such testimony is highly improbable x x x (because the witness did not) report the matter to the owner of the property or to the x x x authorities x x x (but rather) went home and x x x proceeded to continue her regular chores of collecting.

“x x x (the) witness Mila Pineda gave her conflicting testimony when she testified that while on their way to the hospital, she allegedly asked her mother who hit her and her mother allegedly answered that it was “Cot.” However, during cross examination x x x (half a year later), the same witness x x x (testified that when she asked her mother if “Cot” was the one who hit her, her mother just nodded).

“x x x witness Dolores Hipolito Lising testified that while buying sugar at the store of the victim on March 22, 1985 at or about 5:30 o’clock in the morning she heard a pounding sound and heard somebody yelling. That while she was near the store x x x (saw) someone hitting the old woman x x x (but) but she failed to recognize him as he ran away x x x[5]

Refuting said arguments point by point, the Solicitor General argues as follows:

“1. As to Saldy Guela -- It is not true that Saldy Guela’s name was not mentioned by any witness for the prosecution. Mila Pineda, the first one to testify for the prosecution, declared that her nephew, Saldy Guela, and a neighbor, Jimmy, were with her when she was trying to revive her mother, who was then unconscious (tsn., November 20, 1986, p. 16). Also, the fact that Saldy Guela testified only on January 19, 1985, (should be January 18, 1989) i.e., four (4) years after the incident on March 22, 1985, is immaterial. The trial commenced on November 20, 1986 with the presentation of Mila Pineda as first prosecution witness. Since the prosecution had seven (7) witnesses, with Saldy Guela as the last, and considering postponements of the hearing, there is nothing irregular about the date when Saldy testified. As to Saldy’s relationship to the victim, the same does not affect his credibility. Mere relationship is not sufficient to discard the testimony of credible witnesses, especially where there is no showing that these witnesses have testified merely by reason of relationship or alleged interest in the case, other than a desire to see that justice is done (People vs. Pajenado, 69 SCRA 172). Testimony of a witness who, although related to the victim, is without ulterior motive in testifying against the accused, is given credence (People vs. Moises, 66 SCRA 151).

x x x x x x x x

“2. As to Natividad dela Cruz -- It may be true that after Natividad saw appellant jump over the fence of the victim’s store carrying the latter’s Sanyo radio, she did not immediately report the matter to the authorities. But such inaction is not unusual. The initial reluctance of witnesses in this country to volunteer information about a criminal case, and their unwillingness to be involved in or dragged into a criminal investigation is common and has been judicially declared not to affect credibility (People vs. Kipte, 42 SCRA 119). Besides, Natividad, not long after the incident, gave her statement before Pfc. Gabriel Balilo, relating what she saw on March 22, 1985 (Exh. E).

x x x x x x x x

“3. As to Mila Pineda

x x x x x x x x

“There may be a little inconsistency between Mila’s declaration on direct examination that when she asked her mother who hit her, the latter answered, ‘It was Cot’ (whose real name, Virgilio Alay-ay was known to Mila), and her statement on cross-examination that when she asked her mother if it was ‘Cot’ who hit her, the latter nodded her head. Nevertheless, what is important is the end result, which is that before she died, the victim identified her assailant, namely, appellant Virgilio Alay-ay, alias ‘Cot’.

“4. As to Dolores Hipolito Lising -- The fact that this witness was not able to recognize the man whom she saw beating Felomena Franche with a piece of wood does not make her less credible than the others. Witnesses have varying perceptions of the same event, depending on their location, mental and physical condition, etc. In fact, her candidness in not pretending to recognize the assailant renders her testimony believable.[6]

The appeal has no merit.

Well-settled is the rule that findings of the trial court on the issue of credibility of witnesses are entitled to great respect and are accorded the highest consideration by appellate courts.[7] Credibility “is a matter that is peculiarly within the province of the trial judge, who had first-hand opportunity to watch and observe the demeanor and behavior of witnesses both for the prosecution and the defense, at the time of their testimony.”[8]

Likewise, it is settled that it is the prosecuting fiscal’s prerogative to determine who or how many witnesses are to be presented in order to establish the quantum of proof necessary for conviction.[9] The prosecution may even call unlisted witnesses to testify.[10]

In the case at bar, Saldy Guela, an unlisted witness[11] who was mentioned by the first prosecution witness, Mila Pineda, as having helped her in trying to revive the victim,[12] positively identified accused-appellant as the perpetrator of the crime as follows:

“Q More particularly, on March 22, 1985 while you were in your home at Dau Homesite, Dau, Mabalacat, Pampanga, do you recall of any unusual incident between the hours of 5:30 and 6:00 early morning on that date?

“A There was, sir.

“Q Will you please tell the Honorable Court, what was that unusual incident all about?

“A I heard a woman shouting, ‘Mila, Mila! Somebody is hitting your mother’s head.’

“Q What did you do when you heard this shouting?

“A I stood up and saw through the window that a male was hitting the head of my grandmother, sir.

“Q Who is this grandmother you are talking about?

“A Filomena Franche, sir.

“Q Where did you see this man hitting the head of your grandmother?

“A At the store, sir.

“Q What was this man using in hitting your grandmother?

“A A two by two wood, sir.

(WITNESS DEMONSTRATING A 2 FEET LONG, 2 x 2 thick wood)

“Q How far were you when you said you stood up and peeped and saw that your grandmother was hit by this man?

“A From here up to the other side of the wall, sir.

COURT:

Can you stipulate?

COUNSELS:

More or less, 20 meters.

ATTY. ZAMAR:

“Q When you said that this man was hitting your grandmother, did you see and identify this man?

“A I saw his face when he was about to get out because he passed a light, sir.

“Q Did you identify that man whom you saw hit your grandmother?

“A I recognized his face, sir.

“Q When you recognized his face, do you know his identity--even his name only?

“A I know his name in the homesite as ‘Cot’, sir.

“Q If you see that Cot again, will you be able to identify him?

“A Yes, sir.

“Q Will you look around the courtroom and tell us if he is inside the courtroom?

“A He is there, sir.

[WITNESS POINTED TO A MAN WHEN ASKED GAVE HIS NAME AS VIRGILIO ALAY-AY]

“Q Before March 22, 1985, do you already know this person when you said that he was called in the homesite as Cot?

“A Yes, sir.

“Q How long before March 22, 1985 that you know his person?

“A About three months, sir.

“Q Will you please tell us why you know the person of the accused here which you said you know him as Cot.

“A They frequently drink liquor at the store, sir.

“Q Whose store is that?

“A My Aunt’s, sir.

“Q And this is the store where you saw your grandmother being hit by a man with a 2 x 2 wood?

“A Yes, sir.

“Q When you said that you saw the accused hitting your grandmother, what did you do?

“A I went downstairs but upon reaching the ground, he was already scaling the wall, sir.

“Q What did you do when you saw the accused scaling the wall (pader)?

“A I was not able to reach him so I proceeded to the store and carried my grandmother.[13]

Another witness, Dolores Hipolito Lising, had earlier testified that she happened to see the incident in question -- a man hitting the victim with a piece of wood. She did not, however, recognize the assailant as she immediately ran away after seeing such happening before her very eyes.[14]

Another prosecution witness, Natividad de la Cruz, testified that she saw the accused-appellant carry with him the victim’s Sanyo transistor radio when he jumped over the fence of the victim’s aunt’s store (she was the caretaker) as follows:

“Q You said that you saw a person jumped over the fence of Inang, Filomena Franche, who you are referring to-- did you have the occasion to recognize that person?

“A Yes, sir.

“Q Who was this person you noticed jumped over the fence of Filomena Franche?

“A Virgilio Alay-ay, sir.

“Q And this Virgilio Alay-ay is the same person you have just pointed a while ago”

“A Yes, sir.

x x x x x x x x

“Q After having seen this accused Virgilio Alay-ay jumped over the fence, did you see him where he went?

“A He went towards Duhat Street, sir.

x x x x x x x x

“Q After jumping over the wall, was he bringing something?

A He was bringing something, sir.

“Q Did you notice what kind of something was that?

“A It was a radio, sir.

“Q Why do you say it was a radio?

“A I saw him carrying it, sir.

“Q How large was it?

“A About 12 inches in length, sir.

“Q How wide?

“A It was a Sanyo Transistor radio, sir.

“Q Why do you know it was a Sanyo?

“A Because that was the radio she used to use to hear news every morning, sir.”[15]

Against these positive testimonies identifying accused-appellant as the person who hit the victim on the head with a piece of wood and took her transistor radio when he made good his escape from the store, is accused-appellant’s flimsy alibi that he was somewhere else sleeping at his friend’s house at the time the incident happened. As correctly observed by the Solicitor General:

“Appellant insists that he has a valid defense -- that of alibi. According to him, he slept at the house of Reynaldo Salunga between 10:00 p.m. of March 21, 1985 and 6:00-6:30 a.m. of the following day, March 22, 1985, and thereafter he told Reynaldo that he was going to Bamban, Tarlac. Reynaldo’s house is located at Dau Homesite, Dau, Mabalacat, Pampanga, where the victim’s store is situated.”

x x x x x x x x

“x x x Since the scene of the crime (the victim’s store) is located in the same subdivision -- Dau Homesite, and the incident happened between 5:30 and 6:00 a.m. of March 22, 1985, it was not physically impossible for appellant to be at the crime scene at the time of its commission. In a defense of alibi, the accused must show that it was impossible for him to be at the scene of the crime (People vs. Malibay, 63 SCRA 420; People vs. Sarmiento, 64 SCRA 350). This appellant clearly failed to do.”

The Court, for its part, is not precluded from rendering a judgment of conviction based solely on the testimony of a single witness as long as such testimony is found to be credible and satisfies the Court that the accused is guilty beyond any reasonable doubt of the crime charged.[16]

The Court, however, disagrees with the decision of the trial court convicting the accused-appellant for the crime of robbery with homicide. Incidentally, the proper penalty here is reclusion perpetua and not life imprisonment.[17]

In People vs. Evardo,[18] this Court stated that:

“x x x. To sustain conviction for the special complex crime of robbery with homicide, it must be established with certitude that the killing was a mere incident to the robbery, the latter being the main purpose and objective of the criminals. It contemplates a situation where the homicide resulted by reason or on the occasion of the robbery (People vs. Robante, 178 SCRA 552 [1989]).”[19]

In the case at bar, it cannot be said with moral certainty that accused-appellant’s intention was to steal the radio and money and that the killing of the victim was a mere incident to the robbery.

There is testimony[20] by Saldy Guela that the accused-appellant had been frequently drinking at the store tended by the victim for about three (3) months prior to the killing. There is also testimony[21] by Mila Pineda that accused-appellant had always been quarreling with the victim and it could have been due in part to the fact that accused-appellant had been enamored of her.

Given these two variables, a possible scenario could have been the following:

Accused-appellant went very early to see the victim at the store that fateful day. He might have tried to physically display his affections, if one could call it that, toward the victim. She must have resisted, or worse,

laughed him off, and he must have resented it. One thing might have led to another with the end result that he hit her with a piece of wood. In his escape, he grabbed her Sanyo transistor radio, as a souvenir,[22] and the P100 peso-bill to provide for his fare to Bamban, Tarlac.

What We are pointing out is that there is a dearth of evidence to show that the accused-appellant had the intention to steal cash and other valuables in the store and that he killed the victim on occasion of the robbery. As such he cannot be convicted of the crime of robbery with homicide but of two specific crimes, that of homicide and theft.

The penalty for homicide is reclusion temporal.[23] There being no mitigating or aggravating circumstance, the minimum of his indeterminate penalty is anywhere within the range of prision mayor while the maximum is the medium period of reclusion temporal.[24] Accordingly, we fix his penalty at six years and one day of prision mayor, as minimum, to fourteen years, eight months and one day of reclusion temporal medium, as maximum.

The penalty for theft in the amount of Two Hundred Pesos is arresto mayor in its medium period to prision correccional in its minimum period. Since there are neither mitigating nor aggravating circumstances, the penalty imposable is arresto mayor in its maximum period. The Indeterminate Sentence Law does not apply as the penalty actually imposed does not exceed one (1) year.[25] Accordingly, we fix his penalty at six (6) months of arresto mayor maximum.

WHEREFORE, the appealed judgment is hereby VACATED and SET ASIDE. A new one is entered finding the accused-appellant Virgilio Alay-ay guilty of the crimes of Homicide and Theft. For the crime of Homicide, he is sentenced to Six Years and One Day of Prision Mayor, as minimum, to Fourteen Years, Eight Months and One Day of Reclusion Temporal medium, as maximum, and to indemnify the heirs of the victim in the amount of Fifty Thousand (P50,000.00) Pesos. For the crime of Theft, he is sentenced to a straight penalty of Six (6) Months of Arresto Mayor maximum, and to return the Sanyo transistor radio to the heirs of the victim, and the P100 peso-bill, or the amount of P200.00 if the Sanyo transistor radio can no longer be returned.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] Decision, "People v. Virgilio Alay-Ay," Crim. Case No. 8525, Angeles City RTC, penned June 15, 1990 by Hon. Reynaldo B. Daway, Presiding Judge.

[2] Rollo, p. 5.

[3] Appellee's Brief, pp. 5-8; Rollo, p. 69.

[4] Appellant's Brief, pp. 6-7; Rollo, pp. 23-24.

[5] Appellant's Brief, pp. 8-12; Rollo, pp. 43-47

[6] Appellee's Brief, pp. 10-18; Rollo, p. 69.

[7] People v. Narito, G.R. No. 96949, March 8, 1993.

[8] People v. Turla, 167 SCRA 278 (1985).

[9] People v. Navaja, G.R. No. 104044, March 30, 1993.

[10] People v. Mandapat, 196 SCRA 157 (1991).

[11] Listed as a witness under "And Others" in the Information filed July 8, 1986; Rollo, p. 6.

[12] TSN, November 20, 1986, p. 16.

[13] TSN, January 18, 1989, pp. 4-7.

[14] TSN, October 6, 1987, pp. 8-9.

[15] TSN, February 16, 1988, pp. 4-7.

[16] *People v. Narvaja*, G.R. No. 104044, March 30, 1993.

[17] *People vs. Garcia*, G.R. No. 94187, Nov. 4, 1992.

[18] G.R. No. 100724, Dec. 1, 1992.

[19] *Ibid.*, at p. 11.

[20] *Supra*, p. 11.

[21] TSN, November 20, 1986, pp. 58-59.

[22] “Hence, the accused did not take any interest on Mercedes’ belongings notwithstanding her pleas for the appellants to take them in exchange for her life. They persisted in satisfying their lust and even helped each other in their bestial acts. If not for the accidental touching of Mercedes’ ring, the accused’s intent to rob would have been totally forgotten as the culprits had dumped her body to hide their crime from immediate discovery. Indeed, the taking of Mercedes’ ring, watch and money turned out to be afterthought. The force employed on her having no bearing on such illegal taking, the crime committed is the separate one of theft.” (*People v. Flores*, 195 SCRA 295, 312).

[23] Article 249, Revised Penal Code.

[24] Sec. 1. Indeterminate Sentence Law.

[25] Section 2, Act 4103, as amended (Indeterminate Sentence Law).

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.