

## REYNALDO ABAYA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE COURT OF APPEALS, RESPONDENTS.

*G.R. No. 96389. December 11, 1992*

Ponente: GUTIERREZ, JR., J.

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### GUTIERREZ, JR., J.:

Petitioner Reynaldo Abaya, together with Rolando Acedo and Francisco de la Cruz, was originally charged with the crime of robbery with homicide and physical injuries[1] before the Regional Trial Court of Malolos, Bulacan, Branch 10.

Rolando Acedo remained at large while Francisco dela Cruz died during trial, hence trial proceeded only against the petitioner.

The prosecution's evidence is narrated by the trial court in its decision:

"The evidence for the prosecution is anchored principally on the testimony of a lone eyewitness, Alexis Bensorto y Coloyan, which is summarized as follows:

"Before 10:00 in the night of September 3, 1984, Bensorto and six (6) others were drinking gin in the house rented by the victim, Luis Bartolome, which is located at Sampaguita St., Masagana Homes Subdivision, Tabang, Guiguinto, Bulacan. Between 10:00 to 11:00 p.m. of the same night, Bensorto was asked by the victim to buy softdrinks and was given P50.00. He was not able, however, to buy softdrinks because he was accosted and blocked at the junction of Gumamela St., which is not far from Sampaguita St., and also robbed of his money by Rolando Acedo, who together with Reynaldo Abaya, who were both drunk then, helped each other in mauling him with the use of their hands and fists, after knowing that he resided in the house of Luis Bartolome (TSN, pp. 4-10, January 16, 1985).

"Bensorto was able to escape and reported the incident to Luis Batolome who told him to dress up so that they can report the incident to the police. (TSN, p. 12, Ibid).

"Bensorto and Bartorome boarded the Isuzu pick-up and on their way to the police headquarters stopped by the house of Rolando Acedo, at Gumamela St., to take along Eufrocinio Acedo, the formers nephew (TSN, p. 15, Ibid). When Bensorto called out 'Bongbong' (a.k.a. Eufrocinio Acedo), Rolando Acedo went out of his house pointing a revolver at them, followed by Francisco dela Cruz (TSN, pp. 15-16, ibid). Bensorto was able to see Rolando Acedo with a firearm followed by Francisco dela Cruz as the place was bright due to the light coming from the Meralco lamp post (TSN, p. 19, Ibid) and also from the house of Rolando Acedo (TSN, p. 5, February 20, 1985). Bensorto was hit by Acedo on the breast three times with the latter's gun and was also struck ('kinulata') by Francisco dela Cruz with a long firearm several times in almost all parts of his body (TSN, pp. 20-23, January 16, 1985). It was at this time that Bensorto saw Reynaldo Abaya coming out of the post of the gate of Acedo's house, pointing a .45 caliber gun at Luis Bartolome who was standing at the side of the Isuzu pick-up near the driver's seat (TSN, p. 29, Ibid); Luis Bartolome who saw Bensorto suffering, shouted, 'why are you doing that to him?' and 'why don't we go to the police precinct?' (TSN, p. 30, Ibid). At this point, dela Cruz gave the order to Reynaldo Abaya to shoot Bartolome and Abaya shot Bartolome (TSN, p. 31, Ibid).

"The victim was wearing maong short pants, sweat shirt and jewelries at the time he was shot by Abaya (TSN, p. 4, Jan, 24, 1985). The latter frisked the victim who fell after being hit. Abaya took two wads of 100 peso bills from the pocket of the short pants of the victim and also the latter's bracelet (TSN, p. 5, Ibid). Said money was given by the father of Luis Bartolome for the payroll of the security guards assigned at Bataan and Isabela (TSN, pp. 5-6, Ibid).

"Bensorto was then dragged ('binitbit') by Francisco dela Cruz and Acedo to the front seat of the Isuzu pick-up (TSN, p. 7, Ibid). At that time, Bensorto heard dela Cruz say to Abaya 'you shoot this one inasmuch as you have already shot the other one.' (TSN, p. 7-9, Ibid). At this point, Bensorto slipped ('usod') on the side door of the vehicle and there he saw Luis Bartolome lying prostrate (TSN, p. 10, Ibid). He cuddled ('kinalong') Luis Bartolome in his arms and when he noticed the latter already lifeless, he ran away leaving the victim at the side of the pick-up which was in front of the house of Rolando Acedo, at Gumamela St. (TSN, pp. 13-14, Ibid). Bensorto was running for more or less than a half kilometer from the place of the incident when he lost consciousness. When he regained consciousness, he walked to an outpost of a precinct pointed to him by an old man. No person was there in the precinct so he boarded a jeep and proceeded to the Office of A-1 General Protective Agency, an agency of security guards owned by the victim's father (TSN, pp. 15-16, Ibid). Bensorto, with two others, proceeded to the PC Headquarters at Malolos, Bulacan (TSN, pp. 18-19, Ibid). He was brought to the hospital for treatment and then brought back to the PC Headquarters for investigation (TSN, p. 19, Ibid). After an investigation of the incident, Bensorto, accompanied by several soldiers, pointed to the place of the incident (TSN, pp. 20-21, Ibid). Bensorto was asked who were the persons involved and pointed to the houses of Reynaldo Abaya and Rolando Acedo, which were both inspected by the soldiers but no person was found there except a laundry woman in the house of Rolando Acedo (TSN, pp. 22-24, Ibid). They were informed that both Rolando Acedo and Francisco dela Cruz left early and Rolando Acedo left with his family (TSN, p. 25 Ibid).

"As proof that the accused could not be found in their residence, Godofredo Vivas, a process server in the Office of the Fiscal at Malolos, Bulacan, was presented as witness by the prosecution. Witness testified that when he served the subpoenas (Exhibits 'B', 'B-1' and 'B-2') on the three accused at the Masagana Homes Subdivision, Guiguinto, Bulacan, he found that Rolando Acedo's house was closed with nobody inside, Francisco dela Cruz was not residing in the place, and Reynaldo Abaya was also no longer residing in the place. It was the 'latter's step-father, Geronimo Fortaleza, who received copy of the subpoena.' Vivas made a return of service accordingly (TSN, pp. 27-42, May 30, 1985). (pp. 2-4, Decision; Rollo, pp. 35-37)

The trial court also gave a summary of the defense version:

"The version of the defense, as presented by Reynaldo Picazo, Teresita Vivas, Reynaldo Abaya and Evangeline Abaya is as follows:

"Reynaldo Picazo, a resident of Old Sta. Mesa, Manila, testified he knows accused Reynaldo Abaya and he has often gone to the latter's house at Gumamela St., Tabang, Guiguinto, Bulacan, even before September 3, 1984. At about 9:00 in the evening of the same date (September 3, 1984) he went to the house of Reynaldo Abaya who was not then at home. After waiting for about an hour, Abaya's wife told him to go to the place of their compadre named 'Rollie', saw there (sic) at the 'dead end' of Gumamela St. On his way to the place indicated by Mrs. Abaya and after passing the gate of the Abayas, witness noticed two persons about three (3) arms length ahead of him at the right side of the road whom he did not recognize as it was dark. The place of Rollie is about 200 to 400 ordinary steps from the house of the Abayas, as he passed there before. Half way to the house of Rollie, he saw an Isuzu pick-up in front of house with three to four men standing on the left side of the pick-up and two on the right side. The place was lighted because of the light coming from the lamp post and the houses in the vicinity. He was not able to reach the house of Rollie as he heard a shot fired from a gun of one of the two men walking ahead of him. A man wearing a shirt with long sleeves talking to Abaya was shot. He was able to recognize Abaya when the latter turned his face towards witness ('napalington, si Boy Abaya'). The one who fired the gun was left handed after the shot was fired, the two men ran towards a vacant

lot while Abaya ran towards his home. He did not notice Abaya holding anything. Picazo panicked ('nasiraan nq loob') and followed Abaya inside his house, the latter admonishing him to return some other so as not to get involved in the problem. After that incident on September 3, 1984, Picazo saw accused only in December 1985. He agreed to be a witness when asked by Abaya. He talked to Abaya's counsel, Atty. Crescini, only on June 17, 1986 (TSN, pp. 3-19, June 18, 1986).

"Witness Picazo declared on cross-examination that he did not even ask Abaya with whom the latter was talking after the explosion. Neither he ask Abaya what the three persons on the other side of the vehicle were doing. He did not also ask Abaya the name of the person who fell after the explosion and up to the time he was testifying he did not know the person's name. Witness further declared that Abaya did not render assistance to the victim. When Picazo asked Abaya in December 1985 what the incident was all about, Abaya answered that they were attacked or 'nilusob' and that he was trying to settle something with that person (TSN, pp. 2-13, July 23, 1986).

"Teresita Vivas, another defense witness and a resident of Masagana Homes, Phase III, Tabang, Guiguinto, Bulacan, declared that she knows the accused Reynaldo Abaya since 1984, and Acedo since 1983, both of whom are residing at Gumamela St., in Masagana subdivision. On September 3, 1984, between 9:00 and 10:00 in the evening, witness was in her house located at Rosal St., conversing with the laborers of her sister. As the laborers were drinking and they were short of "pulutan" the sister of witness asked the latter to buy "pulutan" which she was not able to buy as the store in the corner of Dalia and Gumamela Sts. was already closed. Witness intended to go to a second store also located at Gumamela St. but before she can reach it she heard a shot. Witness saw two persons walking on her right walking ahead of her whom she was not able to recognize and she saw also another one walking on her left. Witness also saw two persons near a vehicle. The first two persons were going to the place where the vehicle was and were already near the vehicle when witness heard the shot and they both ran towards the vacant lot. One of the two persons standing near the vehicle ran towards witness when she heard the shot and she recognized him to be Reynaldo Abaya (TSN, pp. 2-9, August 27, 1986). Witness did not inquire from Abaya or from anybody what the incident was all about neither did she report this incident immediately to the barangay or municipal officials. She only learned the name of the person who was shot from Atty. Crescini (TSN, pp. 7-34, Sept. 26, 1986).

"The accused Reynaldo Abaya testified that he is "an advertising businessman" and a resident of Masagana Homes, Phase III, Guiguinto, Bulacan. His business in 1984 was buying and selling second hand cars. His place of business was in 4872 Old Sta. Mesa, Manila. He knows a certain person by the name of Reynaldo Picazo and their acquaintanceship dates back to 1980-1981. The latter had gone to his residence twice or three times, on birthdays and when Picazo wants to offer a vehicle for sale.

"In the evening of September 3, 1984, he was invited by Rolando Acedo his "kumpare" to see his "inaanak". He went to Acedo's house around 9:00 or past 9:00. When he was leaving Acedo's place at 10:00 or past 10:00, Acedo saw a man who was just wearing maong pants, was barefooted, and moving suspiciously. Acedo accosted the man, who turned out to be Bensorto, but who was not known to them at that particular time. When asked who he was, Bensorto answered Acedo, "Putang-ina mo, you have no business even if from where I was" (sic). Abaya was 1 1/2 meters away from Bensorto. He noticed the latter was drunk as he smelled liquor every time he answered. Acedo boxed Bensorto on the chest and kept on boxing him until Bensorto fell in the canal ("putikan"). Bensorto did not fight back and when Abaya was able to pacify Acedo. Bensorto ran away. Acedo went back to his house with Abaya, to change his clothes which became dirty when Bensorto clang to him. Abaya declared he did not know Luis Bartolome before September 3, 1984 (TSN, pp. 2-12, October 27, 1966).

"Abaya further declared that Eufrocinio Acedo arrived and told Acedo, 'Tiong', why did you do that to my friend". Rolando Acedo replied that he does not like the "undressed attire" ("nakahubad") of Bensorto. Acedo's nephew warned his "Tiong", "you must be prepared, they will return." Suddenly, an Isuzu pick-up parked in front of the gate of Rolando Acedo. Abaya was able to identify the vehicle in the picture (Exhibit "5", for the

defense). As the vehicle stopped in front of the gate of Rolando Acedo, somebody moved the gate ("niyuyugyog") and cursed Acedo. Abaya went out to pacify Bensorto who was banging the gates. Bensorto told Abaya angrily not to interfere after the latter told "Pare ayusin na natin ito sa magandang paraan." Abaya felt afraid, then he heard a whistle from Luis Bartolome who was beckoning him. While he was approaching Luis Bartolome, the latter angrily said, "Why did your friend do that to my boy?"; "didn't you know who I am?". While Abaya was approaching and explaining to Luis Bartolome what really happened, he noticed that the latter was holding a kitchen knife ("kutsilyo") in his hand pointing downwards. Bartolome was wearing short pants, long sleeved white shirt and a hat with no jewelries in his person, except a watch. While Abaya was talking to Luis Bartolome, with his attention focused on the knife as he may be stabbed, somebody suddenly cursed, "Putang-ina mo" and simultaneously there was a shot, both coming from Abaya's back. When Abaya looked at the place where the curse and shot came from, he saw two persons running fast towards the vacant lot in his left side. Upon seeing Bartolome prostrate on the ground, Abaya ran home because he was afraid he might get involved in the shooting incident. On his way home, he passed by somebody who turned out to be Rey Picazo. Abaya told his wife about the incident but he did not report it to the police. Abaya went the next day to Plaridel to see his "kumpadre" regarding a transaction. His wife was also there at around 10:00 to 10:30 a.m. Abaya and his wife decided that he should go to his uncle in Manila. Abaya finally voluntarily surrendered in November 1984 to the CIS where he was detained. He was finally granted bail in December 1985. Abaya denied having shot the victim and inflicting physical injuries on Bensorto. He likewise denied having taken P50.00 from the latter and divesting Luis Bartolome of his jewelries and cash. Abaya also denied owning a firearm or any airgun or any other weapon (TSN, pp. 2- 24, November 26, 1986).

"Abaya's wife, Evangeline Fortaleza, declared that she is the president of the Homeowners' Association at Masagana Homes. Between 8 and 9 in the evening of September 3, 1984, she was at home. At about nine in the evening of the same day, Reynaldo Picazo arrived offering to sell a vehicle. Witness asked Picazo to go to Rolando Acedo's house as her husband was there.

"Witness declared that she tried to report the incident the next day, September 4, 1984, to Atty. Hermin Arceo and Mayor Estrella of Guiguinto, but the two were both out. She did not report the matter to the police authorities as she was tired and was thinking of her small child, although she proceeded to the PC in Malolos where she told Col. Mejia, the Provincial Commander, about the incident. (TSN, pp. 3-12, December 23, 1986). (pp. 4-7, Decision, Rollo, pp. 38-41)

On February 1, 1988, the lower court rendered judgment convicting the petitioner of the crime of homicide. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds accused, Reynaldo Abaya alias 'Boy', guilty of the crime of Homicide. Considering the mitigating circumstance of voluntary surrender in his favor with no aggravating circumstance, and applying the indeterminate sentence law, said accused is sentenced to suffer indeterminate penalty of Six (6) Years and One (1) Day of Prison Mayor to Twelve (12) Years and One (1) Day of Reclusion Temporal and to indemnify the heirs of the victim in the amount of P30,000.00 (Aniceto Ibabao v. People of the Philippines and Hon. Court of Appeals, G.R. No. L-36957, September 28, 1984 and People v. Bernal, G.R. No. L-29016-18, April 5, 1984) and to pay the costs." (Rollo, p. 49)

The petitioner appealed to the Court of Appeals which affirmed the trial court's decision. His motion for reconsideration was likewise denied by the appellate court.

In this petition for review, the petitioner raises one issue: whether or not the lone testimony of Alexis Bensorto should suffice to convict the petitioner of the crime of homicide (Memorandum for the Petitioner, p. 14).

Abaya stresses that Bensorto's testimony that the former shot the victim, Luis Bartolome should not be given credence since the trial court disbelieved the latter's testimony that Abaya also robbed the victim.

We find that this matter has already been exhaustively discussed by the appellate court. Thus:

"To be sure, Bensorto did make conflicting statements as set forth in appellant's brief, though some of them are minor ones. The fact that he lied before the trial court is best exemplified by his efforts to attribute to appellant the crime of robbery which the court a quo found as without support in the evidence. Despite however, Bensorto's failed efforts at prevarication, he remained steadfast in positively pointing to the appellant who, at point-blank range, fired the fatal shot that culminated in the death of the deceased. We have gone thru the record several times and find nothing to convince Us that Bensorto lied in this regard or that anyone other than the appellant fired the fatal shot at the deceased.

"The principle of *falsus in uno, falsus in omnibus* has long been discarded by the Supreme Court as an absolute, and inflexible rule. The recognized and more practical rule is the testimony of a witness may be disbelieved in part and believed in part. The fact that a witness may have at one instance on a certain point does not make his entire testimony totally incredible and therefore inadmissible, in the light of sufficient evidence to establish the commission of the crime, the eyewitnessing of the criminal act committed in his presence and the spontaneous identification of the criminal (*People v. Espinosa*, 141 SCRA 110). As pointed out in said case:

'It is 'perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. And it has been aptly said that even when witnesses are found to have deliberately falsified in some material particulars, it is not required that the whole of their uncorroborated testimony be rejected. (*People v. Mozar*, 130 SCRA 579, citing *People v. Malillos*, 24 SCRA 133). (p. 121, *supra*)

"The rule was reiterated in *People v. Pacada, Jr.*, 142 SCRA 427:

'While it may be that the lower court disbelieved Alfonsa Patnon's identification of accused Cesario Maur, who was acquitted, it does not follow that the Court should have discredited her entire testimony under the principle of '*falsus in uno falsus in omnibus*.' Suffice it to state that the rule is not an absolute one, and it is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. The rule is not mandatory but permissive and the Courts may or may not draw the inference, depending on the circumstances, such as, the corroborative evidence, the 'probabilities and improbabilities of the case, the general character of the witness his manner and demeanor on the stand, his intelligence and means of knowledge, and his willingness to speak the truth.' (p. 434, *Supra*)

"Only recently, the Supreme Court in *People v. Gohol*, 170 SCRA 585, held:

'The fact that the trial court did not give credence to the testimony of Siervo, implicating Loreto Gohol in the killing of Eriberto Gohol, is not sufficient justification for rejecting the entire testimony of Siervo. The prevailing rule is that even where a witness is found to have deliberately falsified the truth in some particulars, it is not required that the whole of his testimony be rejected, but such portions thereof deemed worthy of belief may be credited. The testimony of a witness may be believed in part and disbelieved in part.' (p. 593, *Supra*).

The positive testimony of Bensorto spontaneously and unhesitatingly identifying the appellant as the person who fired the fatal shot at the deceased is sufficient to sustain the judgment of conviction given the conditions of visibility, the presence of the witness and the appellant at the place and time of and the insufficiency of appellant's evidence to support his claim that persons other than the appellant had committed the killing which he tried to corroborate with the testimonies of persons whose congruence on minute details open themselves to the suspicion that they are rehearsed witnesses." (*Rollo*, pp. 135-137).

The petitioner avers that Bensorto's identification of Abaya as the triggerman is in itself suspect, considering that in his first statement before the Philippine Constabulary, he claimed that he could not determine the caliber of the gun used by the petitioner whereas in his second statement, he specifically identified the weapon as a .45 firearm

(Memorandum for the Petitioner, p. 16). We find that such inconsistency is too minor to cast doubt on the witness' testimony that Abaya shot the victim. This discrepancy does not undermine Bensorto's positive identification of the petitioner as the assailant.

Moreover, contrary to the petitioner's contention, it is not altogether impossible for Bensorto to witness the shooting of Bartolome even if he was at the same time being mauled by the other accused, Acedo and dela Cruz, since the place where the shooting took place was well-lighted.

The petitioner's defense is much too weak and incredible as pitted against Bensorto's positive identification of the petitioner as the culprit. We quote with approval the lengthy disquisition by the trial court respecting infirmities in the defense version:

"1) The averments of the three defense witnesses dovetail in all material aspects creating suspicion of coaching and rehearsal. The court noted that both Picazo and Teresita Vivas testified that at about past ten, when they were walking on the street, they noticed 2 persons about 3 arms length away from them on the right side of the road whom they did not recognize as it was dark. They saw a vehicle in front of Rollie's house with 6-7 persons beside it. The two persons walking ahead of them went to the place where the vehicle was and they heard an explosion. The said two persons were seen running towards a vacant lot. One of the two persons standing near the vehicle ran towards them when they heard the shot and they recognized him to be Abaya. Both did not inquire from Abaya what the incident was all about.

"Both Picazo and Abaya testified that accused Abaya was obliquely facing Bartolome. With these statements the Court can only surmise that their declarations the relative positions of the accused and the victim were coached and rehearsed to make it appear that somebody behind Abaya could have gunned down the victim.

"The foregoing testimonies of the defense witnesses show that they are 'completely congruent with one another rendering them suspect considering that different persons obtain different impressions.' (PP. v. Gutierrez, 112 SCRA 409).

"2) Abaya testified that when he ran away from the scene of the crime, he ran towards the direction taken by the two persons he saw running after he heard the shot. The Fiscal was correct in doubting Abaya's statement, for the latter took a more perilous route in leaving the scene of the crime, considering that he took the same direction taken by the killers. His normal reaction would have been to join his companions who were at the scene of the crime or run towards the opposite direction.

"3) The fact that Abaya did not report the incident to the police renders him suspect. He was expected to report the matter as he was at the scene of the crime as well as a member of the community where the incident took place and considering further his previous statement that he wanted to peace in the vicinity as his wife is the president of the Homeowners' Association in the place. The fact that he asked his wife to report the incident immediately, which she did not (TSN, pp. 2-27, December 3, 1986) is not good reason enough to excuse him from not reporting the matter himself.

"4) The actuation of Abaya in not helping or asking his companions to render assistance to a wounded person by bringing the latter to a hospital (which should be a person's normal reaction) is something which does not work in Abaya's favor.

"5) The behavior of Abaya and Acedo in leaving their houses early the next day after the incident and Abaya's reaction in taking flight immediately from the scene of the killing, showing nervousness, panic, confusion and uneasiness, and his going to Manila soon afterwards (TSN, pp. 2-25, November 26, 1986) are eloquent manifestations of a guilty conscience and a perturbed psyche. It has been held in the case of *People v. Bermoy* (G.R Nos. L-48502-03, June 17, 1981, 105 SCRA 106, cited in UPLC, Index Digests 1981 Supreme Court Decisions, p. 256) x x x 'flight from the scene of the crime was indicative of x x x guilt.'

"6) The testimony of Abaya that he does not own a firearm or any other weapon (TSN, pp. 2-25, November 26, 1986) is hardly credible considering that he is a businessman who has so much property to protect. Besides, non-possession of a firearm is not an exculpatory factor for a killer may use somebody else's gun for the commission of a crime.

"7) The court cannot also accord credence to the testimony of Picazo that he was a witness to the incident of September 3, 1984. The reason he gave for his presence at that late hour in Guiguinto was he was selling Abaya a vehicle. The court considers it a falsity for the offer of a vehicle is a very trivial matter which could have waited another day. A cloud of doubt has already permeated Picazo's credibility when during cross examination he testified that he is an `estimator of one Ricardo Azaldo with office at 4872 Old Sta. Mesa, Manila', but he was not able to show definitely that he was so employed by Mr. Azaldo or that he is a member of the SSS.

"8) The most telling lie given by witness Picazo is his statement that he did not inquire from Abaya what happened that night of September 3, 1984. It is indeed unnatural and inconsistent with human experience not to ask a close friend what occurred after a frightening and unusual occurrence like a Picazo and Abaya were friends and they knew each other very well. Picazo had all the chances to inquire what transpired when they were on their way to Abaya's house and also when they were already in Abaya's house. It took Picazo more than a year later (sometime in December 1985) to ask Abaya about the incident.

"9) The court likewise entertains some doubt as to the veracity of the testimony of Teresita Vivas, another defense witness, who claims she was also near the scene of the crime. She averred that at around past ten in the evening of September 3, 1984, she went out of their house upon instructions of her sister, to buy 'pulutan' for the laborers of her sister. Why should her sister send her on an errand at that late hour of the night? The sister could very well have asked one of the laborers instead.

"10) Then again re Teresita Vivas' declaration that she did not ask Abaya, whom she knows very well, what the incident was all about, is beyond belief. She heard a shot, saw 6-7 men beside a vehicle, 2 on the other end and Abaya was running towards her after the explosion, asking the latter no question would not be a normal reaction, especially so of a female who is more inquisitive and nosier than a male. Even for curiosity's sake alone, Teresita should have asked Abaya what happened whether the latter be a friend or a stranger.

"11) Abaya testified that when he heard the shot which came from his back, while talking to and facing the victim, he still looked behind at the person who fired the shot, instead of ducking or falling to the ground for his own protection. It may be recalled that Abaya previously alleged that he felt afraid when he passed by Bensorto after he tried to pacify him and also when he was approaching Luis Bartolome, who beckoned him (TSN, pp. 2-25, November 26, 1986). When a shot was fired, however, Abaya has shown extraordinary valor by still looking behind to see who fired the shot. This behavior manifested by Reynaldo Abaya seemed abnormal and incongruent with human experience thus making his declarations unworthy of credence.

"Said the court in the case of *People v. Pisalvo* (G.R. NO. L-32886, Oct. 23, 1981, UPLC, 1981 Supreme Court Decisions, Index and Digests, p. 438) 'Being suddenly fired upon from a dark place, an average person would immediately duck and run for cover. x x x Aniceta's testimony x x x is so humanly unnatural and unrealistic that her credibility is heavily damaged."

"Abaya vehemently denied having shot the victim but 'x x x The defense of denial x x x could not prevail over (the) positive identification by the prosecution witness(es) as the author of the crime.' (*People v. Dava, et al.*, G.R. Nos. L-416224-25, May 15, 1984, citing *People v. Esmael*, 37 SCRA 601, etc.).

"12) A last ditch effort of accused Abaya to escape from culpability was his attempt to frame up Bensorto by claiming that Bensorto went to the Office of Atty. Crescini sometime in May, 1986, informing that he would recant the testimony he gave, incriminating Abaya, if the latter will give him P30,000.00, which he badly needs for the operation of his sister. Bensorto allegedly accepted a counter offer of P10,000.00 but he did not return

to get the money and recant his testimony. The defense never presented any written paper signed by Bensorto to that effect. Besides, if Bensorto was really in dire need of the money as alleged, he should have returned to get it." (Rollo, pp. 43-46)

True, the trial court judge who heard the case was not the judge who penned the decision. This, however, does not impair the validity of the latter's finding since we have held in the case of *People of Juanga*, (189 SCRA 226 [1990]), that:

"xxxThe fact that the Judge who decided the case was not the one who heard the witnesses testify does not weaken the finding that the evidence is conclusive of the guilt of the accused-appellant. In *People v. Abaya*, G.R. No. 80885, May 17, 1990 we stated that 'xxx the mere fact that Judge Alfredo C. Flores did not preside at the trial of this case in its entirety, having taken over only when the last defense witness was to be presented did not detract from the validity, much less the correctness of this decision. The full record was available to him. It is evident from the knowledgeable and analytical decision he has written that he thoroughly examined the testimonial and documentary evidence before him and carefully assessed the credibility of the witnesses with the seasoned perceptiveness he has developed as a trial judge."

For the same reason, the court does not subscribe to the petitioner's view that the appellate court had "nothing but the cold words of the transcript before it" and hence could not conclude that the positive identification made by Bensorto was "spontaneous, unhesitating, clean or even positive." (See Memorandum for the Petitioners, p. 18) The appellate court, in its decision, had even stressed that "we have gone through the record several times and find nothing to convince Us that Bensorto lied in this regard or that anyone other than the appellant fired the fatal shot at the deceased." (Underlining Ours, Rollo, p. 135)

The petitioner also assails the rejection by the two courts below of the testimonies of the defense witnesses on the ground that their testimonies "dovetailed in all material aspects creating the suspicion of coaching and rehearsal." He advances the propositions that there is nothing wrong with a rehearsal, and that it is undeniable that good lawyers rehearse their witnesses, not to teach them what to say, but to make sure that their testimony comes out clear, coherent and unambiguous in court. (Memorandum for the Petitioners, p. 20)

There is actually no semblance of impropriety where a lawyer informs his prospective witnesses of the questions that will be asked in court. But when the witnesses' testimonies are congruent even to the minutiae, there arises a very strong presumption that not only were these witnesses briefed beforehand about the questions to be propounded during trial but the witnesses were likewise coached to give answers that would parallel the version of the accused. In such a case, the witnesses no longer speak from memory or experience. Their testimonies become fabricated and hence forfeit their probative value.

Aside from the marked congruity in the testimonies of the defense witnesses, the two lower courts likewise detected major flaws in these testimonies, as earlier discussed.

In fine, we agree with both the trial court and the Court of Appeals that the guilt of the petitioner in committing the crime of homicide was established beyond reasonable doubt.

WHEREFORE, the petition is dismissed. The decision of the Court of Appeals dated June 29, 1990 affirming the judgment of conviction of the trial court and its 'resolution dated December 5, 1990 denying the petitioners' motion for reconsideration are hereby AFFIRMED, except that the indemnity for death of the victim is hereby increased to P50,000.00 in accordance with recent jurisprudence.

**SO ORDERED.**

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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[1] There is no such crime as robbery with homicide and physical injuries. In *People v. Mendoza*, 96 SCRA 601 (1980), the court held that the robbery with homicide absorbed the physical injuries. Also in several cases, the court has ruled that the offense is denominated as robbery with homicide regardless of the number of homicides or injuries committed. (*People v. Urquia*, 203 SCRA 735 [1991]), *People v. Nunag*, 196 SCRA 206 [1991], *People v. Pedrosa*, 115 SCRA 599 [1992]).

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