

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEANDRO PAJARES Y FLORENTINO, ACCUSED-APPELLANT.

G.R. No. 96444. June 23, 1992

Ponente: PARAS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-96444/>

PARAS, J.:

This is an appeal from the decision* of the Regional Trial Court, NCJR, Branch VIII, Manila dated October 25, 1990 in Criminal Case No. 85-40579 entitled “People of the Philippines v. Leandro Pajares y Florentino” convicting herein appellant Pajares of the crime of Murder.

Herein appellant was charged with the aforementioned crime in an Information which reads as follows:

“That on or about the 11th day of October, 1985, at night time, purposely sought to insure and better accomplish his criminal design, in the City of Manila, Philippines, the said accused, conspiring and confederating together with five (5) others whose true names, real identities, and present whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill, evident premeditation, and treachery, attack, assault, and use personal violence upon one DIOSDADO VIOJAN Y SABAYAN, by then and there mauling him and hitting him with a baseball bat at the back of the head, a vital part of the body, thereby inflicting upon the said DIOSDADO VIOJAN Y SABAYAN a club wound on the head which was the direct and immediate cause of his death.

Contrary to law.” (Original Records of Criminal Case No. 85-40579, p. 1)

He was likewise charged with the crime of Frustrated Homicide in an Information which reads as follows:

“That on or about the 11th day of October, 1985, at night time, purposely sought to insure and better accomplish his criminal design, in the City of Manila, Philippines, the said accused, conspiring and confederating together with five (5) others whose true names, real identities, and present whereabouts are still unknown, and helping one another, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon one RENATO PEREZ Y RUIDERA, by mauling and hitting him with a baseball bat at the back, a vital part of the body, thereby inflicting upon him a club wound at the back which is necessarily mortal and fatal, thus performing all the acts of execution which would have produced the crime of homicide, as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, because of the timely and able medical attendance rendered upon the said RENATO PEREZ Y RUIDERA which prevented his death.

Contrary to law.” (Original Records of Criminal Case No. 85-40580, p. 1)

Appellant Pajares pleaded not guilty to both charges (Original Records of Criminal Case No. 85--40579, p. 5; Original Records of Criminal Case No. 85--40580, p. 8). Upon the petition of herein appellant that the two (2) cases be consolidated, a joint trial ensued.

The prosecution presented Renato R. Perez, Cpl. Benigno Dong, Salud Manguba, Pat. Conrado Bustillos, Dr. Norman Torres, Dr. Prospero Cabanayan, Rosita Viojan and Arlene Viojan as witnesses while only appellant

Leandro Pajares took the witness stand for the defense.

Renato R. Perez, a resident of 1386-K Burgos St., Paco, Manila, is the same Renato Perez who is the victim in Criminal Case No. 85-40580 for Frustrated Homicide. He testified that at about 11:30 p.m. on October 11, 1985, he and the deceased Diosdado Viojan were on their way to a store located at Gomez St., Paco, Manila to buy something. They were walking abreast with each other, the deceased was at his right side and was a bit ahead of him, when appellant Pajares suddenly appeared from behind and hit Viojan with a baseball bat at the back of his head. The latter ran a short distance and fell down near the store of one Alex Blas. When Perez tried to help Viojan, he, too, was attacked by Pajares with the baseball bat hitting him at the back below the left shoulder. He then grappled with the appellant for the possession of the baseball bat but the latter's companions, namely: Rudy Dokling, Popoy, Inggo and Lauro Duado mauled him until he lost consciousness. He was brought to the Philippine General Hospital by Eugene Panibit and Joselito Perez where he was treated for the injuries he sustained (TSN, Hearing of January 7, 1986, pp. 4-23). He identified in court the baseball bat used by Pajares (TSN, Hearing of September 16, 1986, p. 36).

On cross examination, he averred that he has known appellant Pajares for less than a year and that although they both live in Zone 89, he and the deceased belonged to a group which is an adversary of the group of the accused (Ibid., pp. 39-41).

Cpl. Benigno Dong, of the Zamora Police Department Station No. 6, WPD, testified that he was on duty on October 12, 1985 when one Napoleon Gabawa sought their assistance regarding a killing incident that happened in Gomez Street, Paco, Manila. They went to the house of appellant Leandro Pajares at 1453 Gomez St., Paco, Manila and invited the latter and his brother to the station for questioning regarding the aforementioned incident. Pajares verbally admitted his participation in the incident (TSN, Hearing of March 11, 1986, p. 26). The incident was registered in the Police Blotter Entry (Exhibits "A" to "A-3", Original Records of Criminal Case No. 85-40579, pp. 30-33).

On cross examination, he admitted that he placed appellant Pajares under arrest after he verbally admitted that he was responsible for the death of Diosdado Viojan, but the booking sheet and arrest report has not been accomplished yet (TSN, Hearing of March 11, 1986, p. 27).

Salud Manguba, Forensic Chemist of the National Bureau of Investigation, testified that she examined a baseball bat for the presence of blood upon the written request of Pat. Conrado Bustillos (Exhibit "C-1", Original Records of Criminal Case No. 85-40579, p. 69). In connection with the study she made, she submitted Biology Report No. B-85-1342 (Exhibit "C", Original Records of Criminal Case No. 85-40579, p. 68) that shows the absence of blood on the baseball bat (TSN, Hearing of June 23, 1986, pp. 30-32).

Pat. Conrado G. Bustillos, testified that relative to a telephone call he received from the Philippine General Hospital on October 12, 1985, he went to the morgue of the said hospital to investigate a dead on arrival case of one Diosdado Viojan. A close examination of the body of the latter showed that he suffered a fracture at the back of the skull. Thereafter, he proceeded to the scene of the crime to make an ocular inspection where he was informed that there was another victim by the name of Renato Perez. Pat. Bustillos further testified that Renato Perez was investigated at the Homicide Section and that the latter executed a sworn statement (Exhibit "F", Original Records of Criminal Case No. 85-40579, p. 208) in relation to the incident. In the same manner, Roberto Pajares, brother of herein appellant was also investigated and who also executed a sworn statement (Exhibit "G", Ibid., p. 219). The alleged murder weapon, a baseball bat, was turned over to him by Cpl. Ben Macalindog (TSN, November 18, 1986, p. 46).

Dr. Norman Torres, a resident physician at the Philippine General Hospital, testified that on October 12, 1985, a

certain Diosdado Viojan was brought to the emergency room of the Philippine General Hospital for head injury, left occipital region. The victim was in critical condition necessitating immediate surgery. He did not personally attend the operation but learned that the victim died while undergoing the surgery. Witness further averred that the injury could have been caused by a blunt instrument like a baseball bat (TSN, Hearing of December 2, 1986, p. 46).

Dr. Prospero Cabanayan, Legal Officer of the National Bureau of Investigation, testified that he conducted an autopsy on the body of Diosdado Viojan and in connection therewith submitted Autopsy Report No. N--85-2161 (Exhibit "L", Original Records on Criminal Case No. 85-40579, p. 224) indicating that the cause of death was "Hemorrhage, meningeal, severe, traumatic". He further testified that a single forceful blow against the head using a blunt instrument like a baseball bat could have caused the injury (TSN, Hearing of June 15, 1987, pp. 58-60).

Rosita S. Viojan, mother of the deceased Diosdado Viojan, testified that when her son died, she hired the services of Tres Amigos Funeral Parlor for P12,000.00 as evidenced by Official Receipt No. 10511 (Exhibits "P" and "Q", Original Records of Criminal Case No. 85--40579, pp. 228-229) (TSN, Hearing of February 23, 1988, p. 66).

Arlene Viojan, widow of Diosdado Viojan, testified that prior to the incident her husband was working with PEMCO earning about P500.00 a week. At the time of the incident, she was three (3) months on the family way. She gave birth to a baby girl and it was her parents-in-law who paid for the expenses during her delivery. At the moment, she is living with her parents (TSN, Hearing of April 4, 1988, p. 67).

Appellant Leandro Pajares y Florentino denied the allegations of the prosecution. He asserts that he knew the deceased Diosdado Viojan by the name Dado, having met him once at the store, and Renato Perez by the name Balat. At the time of the incident, he was inside the store of Alex Blas with about eight (8) other people watching television. Hence, he did not see who hit Diosdado Viojan and Renato Perez. After the commotion, upon the advise of Alex Blas, he went home and slept. At about 3:30 in the morning of October 12, 1985, he was arrested inside their house. Without asking any question, he went with the arresting officers to the police station (TSN, Hearing of August 1, 1988, pp. 72-76).

At the police detachment, he was coerced to admit his participation in the crime since a gun was poked at him. He identified his signature at the Booking Sheet and Arrest Report (Exhibit "J", Original Records of Criminal Case No. 85-40579, p. 222) but alleged that he signed the same without being allowed to read the contents thereof without the assistance of counsel and while being held at the collar at the back of his shirt. He likewise averred that during investigation the investigating policemen molested him like "pinipitik-pitik" his ears with rubber band or chopping his neck with karate chops (Ibid., pp. 77-78). He, however, admitted that even after several days he did not complain about what were done to him (Ibid., p. 128).

On cross examination, he testified that his house is about five (5) houses away from the store of Alex Blas, the scene of the crime (TSN, Hearing of August 22, 1988, pp. 90-91). He likewise denied any knowledge about any quarrel between his brother, Roberto Pajares and the deceased Diosdado Viojan (TSN, Hearing of September 19, 1988, p. 108).

As aforementioned, the trial court rendered a decision on October 25, 1990, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered finding herein accused LEANDRO PAJARES y FLORENTINO of 1433-B, Gomez St., Paco, Manila, GUILTY beyond reasonable doubt of the charges against him, as follows:

“CRIM. CASE NO. 85-40579:

The Court finds accused GUILTY beyond reasonable doubt of the crime of Murder as defined and penalized by Art. 248, par. 1, Rev. Penal Code, and there being no modifying circumstance to consider, hereby sentences him to suffer imprisonment of RECLUSION PERPETUA with the accessory penalties of the law; to pay Arlene Viojan and her child the sum of: P30,000.00; P12,000.00 as funeral expenses; P15,000.00 as moral damages; and P10,000.00 as litigation expenses and attorney's fees; and finally the costs of the suit.

“CRIM. CASE NO. 85-40580:

The Court finds accused GUILTY beyond reasonable doubt of the crime of Slight Physical Injuries as defined in par. 1, Art. 266 and penalized by Art. 27, both of the Rev. Penal Code, hereby sentencing him to an imprisonment of ONE (1) MONTH; and to pay the costs of suit.

Done in Manila, this 25th day of October, 1990.

SO ORDERED.” (RTC Decision, Rollo, p. 38)

Hence, this appeal.

Appellant Pajares asserts that the trial court gravely erred in imposing the penalty of reclusion perpetua upon him. He avers that such a penalty is tantamount to a cruel, degrading or inhuman punishment which is prohibited by the Constitution. Appellant points out that hours before the clubbing incident, Roberto Pajares, appellant's younger brother, was mauled by the group of Diosdado Viojan as cited by the lower court referring to the entry in the Police Blotter and the sworn statement of Roberto Pajares. The mauling of the latter is a big insult and truly offending to the appellant and his family. Hence, the clubbing of Diosdado Viojan by herein appellant was a vindication of the grave offense committed against his family, a mitigating circumstance under paragraph 5 of Article 13 of the Revised Penal Code. Considering further that the appellant was just nineteen (19) years old at the time he committed the offense, the penalty imposed by the court a quo should have been seventeen (17) years, four (4) months and one (1) day (Brief for the Appellant, Rollo, pp. 52-58).

The appeal is devoid of merit.

In convicting herein appellant of the crime of murder, qualified by treachery, the trial court relied heavily on the testimony of prosecution witness Renato Perez which it found to be credible. According to the lower court, the latter “gave his account on what was done to them by the accused and his companions in a simple, candid, straightforward manner” (RTC Decision, Rollo, p. 36).

It is doctrinally entrenched that the evaluation of the testimony of witnesses by the trial court is received on appeal with the highest respect because it is the trial court that has the opportunity to observe them on the stand and detect if they are telling the truth or lying in their teeth (*People v. Santito, Jr.*, G.R. No. 91628, August 22, 1991 [201 SCRA 87]). The appellate court can only read in cold print the testimony of the witnesses which commonly is translated from the local dialect into English. In the process of converting into written form the statement of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the written translated words (*People v. Arroyo*, G.R. No. 99258, September 13, 1991 [201 SCRA 616]).

Appellant's sole defense is alibi. According to him, he was inside the store of Alex Blas, watching television, when the incident occurred. Alex Blas even advised him to go home so as not to be involved in the incident. However, the latter was not presented to corroborate appellant's testimony. Alibi is the weakest defense an accused can concoct. In order to prosper, it must be so convincing as to preclude any doubt that the accused could have been physically present at the place of the crime or its vicinity at the time of the commission (*People v.*

Lacao, Sr., G.R. No. 95320, September 4, 1991 [201 SCRA 317]). In the case at bar, appellant was within the vicinity of the scene of the crime at the time of its commission.

Furthermore, appellant was positively identified by Renato Perez as the perpetrator of the crime. In the face of the clear and positive testimony of the prosecution witness regarding the participation of the accused in the crime, the accused's alibi dwindles into nothingness. The positive identification of the accused by the witness as the perpetrator of the crime cannot be overcome by the mere denial of the accused. Such positive identification of the accused that he killed the victim establishes the guilt of the accused beyond moral certainty (*People v. Arroyo*, supra).

The trial court correctly ruled that the crime was attended by treachery. There is treachery, the law says, when the offender adopts means, methods or forms in the execution of the felony which ensure its commission without risk to himself arising from the defense which the offended party might make (*People v. Cuyo*, G.R. No. 76211, April 30, 1991 [196 SCRA 447]). As found by the trial court, appellant Pajares hit Diosdado Viojan with a baseball bat from behind without any warning thereby precluding any possible retaliation from the victim.

Having established the guilt of herein appellant, the next question is whether or not the mitigating circumstance of immediate vindication of a grave offense can be appreciated in his favor. While it may be true that appellant's brother Roberto Pajares was mauled by the companions of the deceased at about 11:30 a.m. of October 11, 1985 as shown in the entry in the Police Blotter (Exhibits "A" to "A-3", Original Records of Criminal Case No. 85-40579, pp. 30-33) and by appellant's brother himself (Exhibits "G", "Q" and "A" Nos. 7-9, *Ibid.*, p. 219), it must be emphasized that there is a lapse of about ten (10) hours between said incident and the killing of Diosdado Viojan. Such interval of time was more than sufficient to enable appellant to recover his serenity (*People v. Benito*, G.R. No. L-32042, December 17, 1976 [74 SCRA 271]). Hence, the mitigating circumstance of immediate vindication of a grave offense cannot be appreciated in his favor.

IN VIEW OF THE FOREGOING, the decision appealed from is AFFIRMED with modification that the indemnity is increased to P50,000.00 in accordance with the policy of this Court on the matter.

SO ORDERED.

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

Nocon, J., on leave.

* Penned by Judge Arsenio M. Gonong.

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.