

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIRGILIO BATULAN AND RODULFO BATULAN, ACCUSED. VIRGILIO BATULAN, ACCUSED-APPELLANT.*G.R. Nos. 100453-54. February 01, 1996*

Ponente: REGALADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-100453-54/>**REGALADO, J.:**

The records of the case at bar affirm that in the evening of January 10, 1990 in Taboc, Danao City, Nicolas Gonzales, Sr. and his two sons, Conrado and Adolfo, were socializing with their friends, Emerito Torralba and Virgilio Durano, in front of the store of Conrado. It was the wedding anniversary of Nicolas Gonzales, Sr. and his wife, Socorro, as well as the birthday of their grandson, Jeffry. As is customary in a barrio when men get together to celebrate an occasion, the group had a drinking session while seated on a bench in front of that store which was located beside the barangay road.[1]

At around 1:00 o'clock of the ensuing morning, gunshots came from the side of the house of one Daday Gorre, which was in the opposite direction of the store where the group was still drinking, which volley initially hit Adolfo and knocked him down. Nicolas Gonzales, Sr. immediately dropped to the ground to help his fallen son, at the same time glancing towards the source of the shots, and he saw accused Virgilio Batulan pointing a rifle at them, with accused Rodulfo Batulan standing beside him. Almost immediately thereafter, a rapid series of shots were again fired, this time hitting Nicolas and Conrado almost simultaneously. Nicolas sustained wounds on his left chest and right arm while Conrado was hit on the head, causing both of them to slump to the ground and lose consciousness.[2]

Camilo Ypil, the father-in-law of Nicolas and whose house was just a short distance away from the store of Conrado, rose from his prayers and peeped through the window jalousies of his house upon hearing the gunfire. Since the area was well illuminated, he clearly discerned Virgilio and Rodulfo Batulan holding firearms and assuming a firing stance with said weapons near the house of Daday Gorre.[3]

Socorro Gonzales, the wife of Nicolas, rushed out towards the store of Conrado and stopped briefly near the house of Camilo to look in that direction. When the firing stopped, she ran to the prostrate and lifeless body of Conrado and took him into her arms. She then went to the side of her other son, Adolfo, who was moaning in pain and then to her husband, Nicolas, who was mumbling incoherently. Socorro asked Nicolas who shot them and the latter responded that it was "Virgilio" and "Rudy."

Socorro and her other son, Emmanuel, then loaded Nicolas and Adolfo on a tricycle and rushed them to the Danao General Hospital. The victims were later transferred to the Cebu Doctors Hospital in Cebu City. Adolfo died along the way, while Nicolas survived.[4]

As a consequence of said gory events, Virgilio Batulan and Rodulfo Batulan were charged in two separate informations with the crimes of double murder and of frustrated murder, docketed as Criminal Cases Nos. DNO-706 and DNO-722, respectively, before the Regional Trial Court, Branch 25, of Danao City in Cebu. The

second amended information filed in Criminal Case No. DNO-706 alleges:

"That on or about January 11, 1990 at 1:00 o'clock in the morning more or less, in Taboc, Danao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and mutually helping one another, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously suddenly and unexpectedly shoot Conrado Y. Gonzales and Adolfo Gonzales with the use of armalite rifle (M-16) thereby inflicting (on) the former gunshot wound, head; and the latter gunshot wounds on the arm and the side of his body, which caused their death minutes later.

CONTRARY TO LAW, accused Rodolfo Batulan with the following criminal records:

1. Convicted before the Regional Trial Court, this City for the crime of Homicide on November 29, 1968 in Criminal Case No. SF-205;
2. Also convicted before the Municipal Trial Court, this City, in Crim. Case No. 2022 for the crime of Slight Physical Injuries on August 15, 1971 ."[5]

The information which initiated Criminal Case No. DNO-722 indicts both accused as follows:

"That on or about January 11, 1990 at 1:00 o'clock in the morning more or less, in Taboc, Danao City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused armed with M-16 Armalite rifle and revolver respectively, conspiring and confederating together and mutually helping one another, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously suddenly and unexpectedly shoot Nicolas Gonzales, Sr. with the use of said firearms thereby inflicting upon him - multiple gunshot wounds, left supraclavicular area and right arm; avulsion of right brachial artery; possible left brachial plexus injury -thereby performing all the acts of execution which would have produced the crime of murder as a consequence thereof, but nevertheless did not produce it by reason of causes independent of their will, that is, by the timely and skillful medical assistance rendered to Nicolas Gonzales, Sr. which prevented his death.

Contrary to law, accused Rodolfo Batulan with the following criminal records:

1. Convicted before the Regional Trial Court, this city; for the crime of Homicide on November 29, 1988 in Crim. Case No. SF-205;*
2. Also convicted before the Municipal Trial Court, said City, in Crim. Case No. 2022 for the crime of Slight Physical Injuries on August 15, 1971 ."[6]

Only Virgilio Batulan was arrested and tried in court, while Rodolfo Batulan has remained at large. When arraigned, Virgilio Batulan pleaded not guilty to the offenses charged. The two criminal cases against said accused were then tried jointly.

On April 29, 1991, the trial court rendered its judgment finding herein accused-appellant Virgilio Batulan guilty of the crimes in both indictments, and disposing as follows:

"WHEREFORE, in view of all the foregoing, the Court finds the accused Virgilio Batulan GUILTY beyond reasonable doubt of the crimes of double murder and frustrated murder and he is hereby sentenced to suffer the penalties of imprisonment of cadena perpetua for the killings of Conrado Gonzales and Adolfo Gonzales and to pay the heirs of both victims, through their respective widows, the sum of P50,000.00 each as indemnity for the death and another sum of P20,000.00 each as moral damages and, in the case of frustrated murder, to suffer the indeterminate penalty of imprisonment of, after applying the Indeterminate Sentence Law, EIGHT (8) YEARS and TWENTY-ONE (21) DAYS of prison correccional maximum, as minimum, to TEN (10) YEARS of prison mayor, as maximum, to pay Nicolas Gonzales, Sr. the sum of P54,872.21 as actual damages

and the sum of P20,000.00 as moral damages and, in both cases, to pay the sum of P 10,000.00 as attorney's fee to the private prosecutor and the costs.

As the other accused Rodolfo Batulan is still at large and, in order that these cases shall not remain as pending in the records of this Court, let these cases be archived and to be revived as soon as said accused shall be arrested. Issue again alias warrant of arrest for accused Rodolfo Batulan to be returned only after said accused shall be arrested.

Transmit the complete records of these cases to the Honorable Supreme Court for automatic review."[7]

Appellant now comes before this Court seeking the reversal of the aforequoted judgment, contending that the court a quo erred:

- "1. In finding that the prosecution witnesses positively identified the accused as the perpetrators of the crime they were charged with;
2. In finding that the prosecution witnesses had amply proven that accused-appellant Virgilio Batulan had motive to kill victims Conrado Gonzales and Adolfo Gonzales and wound victim Nicolas Gonzales, Sr.;
3. In convicting the accused-appellant Virgilio Batulan under the two informations."[8]

Appellant contended in his first assignment of error that it was impossible for prosecution witness Nicolas Gonzales, Sr. to see who shot them since the gunshot he suffered rendered him unconscious. Appellant further argues that said witness executed two affidavits, in the first of which he claimed that he suddenly heard a burst of gunfire, and the next thing he knew he was hit and rendered unconscious. It was supposedly only in the second affidavit that the witness alleged that it was Virgilio and Rodolfo Batulan who shot him and his sons. Appellant further theorized that the position of the three victims during the incident was such that it would be impossible for them to see the assailants, who were shooting from behind and on the left side of the victims.

In determining the veracity of the aforestated contestations of appellant, it would be helpful and desirable to consider the testimony of the medico-legal examiner, Dr. Tomas Refe of the National Bureau of Investigation (NBI) office in Cebu City. However, the records submitted to this Court do not include the corresponding medico-legal report of Dr. Refe and the transcript of stenographic notes taken in court on March 15, 1990 containing his testimony therein. Nonetheless, upon being made aware of this impasse as explained in the resolution of the Court,[9] the prosecution and the defense agreed to dispense with the reconstitution of Dr. Refe's testimony and the adoption in lieu thereof of the summary of his testimony and the findings based thereon made by and reflected in the decision of the trial court,[10] the same being uncontested.

The pertinent portion of the decision of the court below states:

"He (Dr. Refe) found out during his examination on the body of deceased Conrado Gonzales, as appearing in his report, that Conrado Gonzales sustained two (2) gunshot wounds, with involvement of the head with skull fractures. The point of entry is situated at the back portion or occipital region of the head. There was a point of exit but the exit is probably through the lacerated wound at the temporal region, head, right side because of the extensive fracture of the skull. The point of exit cannot be localized on one bullet because of the extensive damage of the skull. From the point of entry, it would appear that the bullet entered from the left side and possibly the person who was hit was standing or bending and to the left was the assailant. There is also a gunshot wound no. 2. As appearing in his report the gunshot wound of entrance is measured .5 x .1 cm., with this measurement it is compatible with a .22 caliber firearm. Wound no. 1 is a fatal injury because it damaged the brain substance, which instantaneously made the victim unconscious. Gunshot wound no. 2 is not a fatal injury being only very superficial and only fragment imbedded just underneath the skin of the victim was recovered. The metallic fragment which Dr. Refe recovered was submitted to their ballistic section for

examination. His conclusion of a .22 bullet hitting the victim was based on the point of entry which has also no tattoo or a sign of gunpowder burns which means the shooting was made beyond 24 inches for small caliber firearm.

"Likewise Dr. Refe noted two gunshot wounds in the body of Adolfo Gonzales. Gunshot wound no. 1 is situated at the right arm, middle third at the posterior medial aspect but it did not go through the body. There was a point of exit noted in the right arm producing three lacerated wounds converging at a point in the back lateral side of the arm. Gunshot wound no. 2 is situated at the left side of the hip region 25 cms. from the anterior median line and 93 cms. from the left hip. These two injuries were all caused by a miss(i)le or a bullet. Considering the location of the gunshot wound of entrance and considering that the body is, in anatomical position, that is, standing erect and the arm hanging at the side with the palm directed forward, with this position the gunshot wound can be sustained following the direction of the trajectory from the entrance to the exit and which case, the firearm was shot at the back or coming from the back of the victim on the left side. With respect to wound no. 2, the firearm could have been situated on the left side and following the general trajectory of the bullet, the gunman is coming from the left side of the victim. Considering the involvement of the fatal organs and the destructiveness of the injuries noted and the production of hemorrhage, both wounds may cause shock as the cause of death of the victim secondary to gunshot wound. x x x."[11]

As was validated by the statements of Dr. Refe in his necropsy report, all the gunshot wounds found on the bodies of the deceased victims, Conrado and Adolfo Gonzales, came from the left side slightly at the back of said victims.

The testimony of Nicolas Gonzales, Sr. is corroborative of this physical aspect:

"Q

That is a long story, so I want now at this instance when he recognized (sic)?

A

When Adolfo was hit, I was able to take a glance and I saw Virgilio and Rodulfo.

Q

And that glance was towards what direction?

A

Towards the direction of the front.

Q

What was the particular object that you saw at that glance?

A

I saw Virgilio pointing at us.

Q

Pointing what?

A

A long firearm but I can not exactly tell what kind of firearm was that, what caliber, I don't know.

Q

And where was Rodulfo at that time?

A

Together with Virgilio.

Q

Where was he, on the left side or right side of Virgilio?

A

Rodulfo was on the left side of Virgilio.

Q

In relation to the house of Daday, where were these two?

A

The two were on the side of the house of Daday Gorre.[12]

An examination of the pictures submitted in evidence and the testimony of the witnesses reveal that the store of Conrado is located at the side of the barangay road while the house of Daday Gorre is on the other side of the same barangay road, parallel to the store of Conrado.

Appellant asserts that it was impossible for Nicolas Gonzales, Sr. to see who fired at them since the assailants were at the back. He points out that this victim, when asked regarding the viewpoint to which he glanced after the initial shots, stated that it was towards the direction of the front.[13] Also, according to appellant, the victim stated in his first affidavit taken on January 14, 1990 that he was rendered unconscious after that shot. For clarity, we quote the relevant portion of said affidavit:

"Q

After this what happen(ed) next?

A

On or about 1:00 o'clock in the morning of January 11, 1990 while we were having a drinking spree together with my two sons Conrado Gonzales, Adolfo Gonzales, some friends of ours namely: Emelito Torralba, and Virgilio Durano at the store of Conrado Gonzales, we suddenly heard a burst of gunfire. The next I knew I was hit and was rendered unconscious." [14]

However, after a careful analysis of the testimony of Nicolas Gonzales, Sr., and a thorough examination of the exhibits and illustrations submitted by both parties, the Court finds that the suppositions and conclusions of appellant are untenably strained and far from the truth.

As to the seeming discrepancy between the questioned affidavit of eyewitness Nicolas Gonzales, Sr. and his testimony in court, the Court reiterates that time and again it has ruled that ex-parte affidavits are generally incomplete, hence inconsistency between the declaration of the affiants in their sworn statements and those in court do not necessarily discredit them and the infirmity of affidavits as evidence is much a matter of judicial experience.[15]

Victim Nicolas Gonzales, Sr. was so seriously wounded and traumatized that he could not have been expected to give an accurate and flawless statement to the police officers at the time he was investigated. This is inevitably and especially so since the investigation was conducted on January 14, 1990 which was barely four days after the

shooting which claimed the lives of two sons of the witness and gravely wounded him on the chest and arm. It was but natural that the victim was still dazed or in a state of shock and confusion and to expect him to give a complete and detailed account of what happened is to call for an abnormal reaction.

We likewise find the allegation of appellant that it was impossible for this victim to see the assailants who were at the back, while the victim glanced toward the front, to be a tenuous and nitpicking proposition.

The victims, at the time of the incident, were positioned in such a way that they were all lined up on one side of the store, seated on a bench with their backs leaning against that side of the store. On the outermost or end portion of the bench beside the barangay road was eyewitness Nicolas Gonzales, Sr., in the middle was Adolfo, and at the innermost end was Conrado.

Nicolas Gonzales, Sr. clarified that at the time the first shots were fired, the first to be hit was Adolfo and, thereafter, said eyewitness, and then Conrado. The assailants were on the other side of the road, at the side of the house of Daday Gorre which was parallel to the store of Conrado. Accordingly, when the victim said that he glanced toward the direction in front of them, he was not mistaken, since the house of Daday Gorre was parallel to the store, that is, it was right in front of the store of Conrado at the other side of the barangay road. Nicolas Gonzales, Sr. actually glanced toward the direction where the assailants were positioned for the assault near the house of Daday Gorre.

The allegations of appellant that the medico-legal report of Dr. Refe is contrary to the statements of Nicolas Gonzales, Sr. is both devoid of any basis and utterly meritless. As can be inferred from the testimony of Dr. Refe, the wounds of the victims were all along their left sides and slightly at the back. This is compatible with the location of the accused which was at the left side of the house of Daday Gorre when viewed from the front thereof. It was parallel to the store of Conrado at the other side of the barangay road, and the victims were seated on the bench with their left sides in the direction of the accused.

Another point which appellant claims should have led the court below to a different conclusion is the fact that it is not in accord with human experience that the perpetrators of a crime will open themselves to identification by not attempting to conceal their identities. This pretension should be rejected as a fallacy of undue generalization. Killings can happen in broad daylight and the criminals will simply walk away casually as if nothing had happened. Also, the criminal mind is generally an irrational mind, hence the actions of the malefactors are often abnormal, erratic and unpredictable.

Appellant expectedly interposed the alibi that on the night in question he was on duty as a security guard at the house of Congressman Durano at Guinsay, Danao City, and that his tour of duty was from 12:00 midnight up to 8:00 o'clock the following morning.[16] The alibi was sought to be corroborated by a defense witness, one Jovencio Lato who was a co-security guard of appellant, who testified that appellant reported for work at around 12:05 A.M. of January 11, 1990 and was stationed at Post No. 2 at the house of Congressman Durano.[17]

Appellant presented a xerox copy of a logbook which shows that he reported for work at around 12:05 A.M. on January 11, 1990. He further alleged that, shortly thereafter, he was visited by the Station Commander and a certain Titi Mercado at around 2:00 o'clock of that same morning. However, his hypothesis falls far short of the intended objective since it does not account for the time span from 12:05 to 2:00 A.M., during which period appellant could very well be anywhere else, that is, he could be inside the residence of Congressman Durano as he claims, but he could also be outside the premises thereof. This is even on the supposition that appellant and his corroborating witness were telling the truth that the former went on guard duty, an alibi which essentially was susceptible of easy contrivance and appears to have been so resorted to by the defense in this case.

It will be noted that security guard Jovencio Lato testified only on the fact that appellant supposedly reported for work at 12:05 A.M. and that when the former went off duty at around 8:00 o'clock of that morning, appellant was still at his post. Lato also testified that the house of Congressman Durano was but a short distance from the house of Camilo Ypil, where the store of Conrado was located, such that it can easily be negotiated in only 2 to 3 minutes by bicycle or similar conveyance. He further admitted that in attending to his rounds, he would necessarily lose sight of the post of appellant. Consequently, it was altogether possible that appellant could have left his post between 12:05 and 2:00 o'clock A.M. to go to the store of Conrado, shoot the victims and return to his post unnoticed before 2:00 A.M.[18]

Time and again, this Court has patiently reiterated the requirements for alibi to prosper, that is, that the accused was not at the locus delicti at the time the offense was committed, and that it was physically impossible for him to be at the scene of the crime at the time of its commission.[19] On this score, appellant has clearly tergiversated as his own witnesses could not prove with certainty that it was impossible for him to be at the scene of the crimes charged here at the time of their commission, much less could they categorically state that he was at his guard post during the length of time involved.

The second assignment of error cannot be vouchsafed any consideration. The positive identification of appellant by victim Nicolas Gonzales, Sr. and witness Camilo Ypil adequately suffice as factual and legal bases for conviction. Proof of the existence of a motive is consequently unnecessary. In fact, the lower court did not likewise consider the matter of motive when it ruled in favor of the prosecution, since it relied, and correctly at that, on the positive identification of appellant as its basis for his conviction.[20] These considerations also dispose of appellant's third assigned error.

WHEREFORE, on the foregoing premises, the appealed judgment of the court a quo convicting accused-appellant Virgilio Batulan in Criminal Case No. DNO-706 is hereby AFFIRMED, with the modification that the penalties imposed therein should be denominated as reclusion perpetua instead of cadena perpetua.

The impugned judgment of conviction in Criminal Case No. DNO-722 is likewise AFFIRMED, but the indeterminate sentence imposed by the trial court as the penalty therein is MODIFIED, and accused-appellant Virgilio Batulan is hereby sentenced to serve the penalty of eight (8) years of prision mayor in its minimum period, as the minimum, to fourteen (14) years and eight (8) months of reclusion temporal in its minimum period, as the maximum, with costs in both cases against accused-appellant.

In all other respects, the challenged judgments in Criminal Cases Nos. DNO-706 and DNO-722 are AFFIRMED.

SO ORDERED.

Romero, Puno and Mendoza, JJ., concur.

[1] TSN, June 8, 1990,6-7; July 16, 1990,2-6.

[2] Ibid., July 16, 1990,6-11.

[3] Ibid., October 17, 1992, 12-17.

[4] Ibid., November 9, 1992, 14 1-142.

[5] Original Record, Criminal Case No. DNO-706, 34.

* The discrepancy in the dates of conviction stated here and in the preceding information can be disregarded as said allegations, intended to constitute recidivism, have not been considered as such aggravating circumstance in this appeal.

- [6] Ibid., Criminal Case No. DNO-722, 1.
- [7] Ibid., Criminal Case No. DNO-706, 165-166.
- [8] Brief for Accused-Appellant, 1; Rollo, 142.
- [9] Rollo, 89.
- [10] Ibid., 100, 103.
- [11] Original Record, Criminal Case No. DNO-706, 153-154.
- [12] TSN, July 16, 1990, 10.
- [13] Ibid., Id.
- [14] Exhibit "1", Folder of Exhibits, Criminal Cases Nos. 706 and 722.
- [15] People vs. Alacar, G.R. Nos. 64725-26, July 20, 1992, 211 SCRA 580.
- [16] TSN, January 23, 1991, 7.
- [17] Ibid.. January 18, 1991, 16.
- [18] Ibid., Id., 13, 16.
- [19] People vs. Kipte, et al., L-26662, October 30, 1971, 42 SCRA 198; People vs. Macayan, et al., G.R. Nos. 61572-73, December 21, 1983, 126 SCRA 322; People vs. Saguban, G.R. No. 96287, April 25, 1994, 231 SCRA 744; People vs. Cabresos, G.R. No. 109776, May 26, 1995, 244 SCRA 362.
- [20] People vs. Canceran, G.R. No. 104866, January 31, 1994, 229 SCRA 581; People vs. Campa, et al., G.R. No. 105391, February 28, 1994, 230 SCRA 431.

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.