

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO VIOLIN, REMEGIO YAZAR, CESAR ALLEGO (AT LARGE) AND EUTQUIO CHERRIGUENE, ACCUSED. ANTONIO VIOLIN, REMEGIO YAZAR AND EU...

G.R. Nos. 114003-06. January 14, 1997

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-114003-06/>

BELLOSILLO, J.:

On 1 January 1986 Dioscoro Astorga Jr. was killed while his brother Darmo Astorga was wounded in Bgy. San Jose in the island of Daram, Samar. Thereafter, two (2) informations[1] were filed in the Regional Trial Court of Catbalogan, Samar, charging Antonio Violin, Eutiquio Cherriguene, Cesar Allego, Remegio Yazar, Cata Doe and Peter Doe with murder for the killing of Dioscoro Astorga Jr.,[2] and frustrated murder for the wounding of Darmo Astorga.[3] On 21 September 1989 Catalino Figueroa (Cata Doe) and Miguel Figueroa (Peter Doe) were separately charged with murder[4] and frustrated murder[5] in connection with the same incident.[6]

Except for Cesar Allego, all the accused pleaded not guilty to the charges. Cesar Allego to this date has remained at large.

The four (4) cases, docketed as Crim. Cases Nos. 3030, 3031, 3186 and 3187, were jointly tried.

On 22 December 1993 two (2) decisions were rendered by the trial court in the four (4) cases[7] finding Antonio Violin, Eutiquio Cherriguene and Remegio Yazar guilty of murder and frustrated murder, and acquitting Catalino Figueroa and Miguel Figueroa for insufficiency of evidence.

All three (3) accused convicted in Crim. Cases Nos. 3030 and 3031 are now before us on appeal.

These cases demand a thorough examination and analysis, having been lengthily heard in succession by five (5) judges of the Regional Trial Court.[8]

The evidence discloses that on 31 December 1985 Darmo Astorga was at the house of his sister in Bgy. Muñoz, Catbalogan, Samar, together with Dolores Bolos Astorga, Dioscoro Astorga Jr. and Benito Astorga. Dioscoro Jr. was the Commander of the Police Station of Daram. At around 6:00 o'clock in the evening, Cesar Allego, Punong Barangay of San Jose, Daram, arrived seeking the help of Dioscoro Jr. in settling a dispute he had with a certain Mrs. Agas, also a resident of Bgy. San Jose. Acceding to Allego's request on the condition that he be conducted back to Catbalogan that same night, Dioscoro Jr. left for Bgy. San Jose with his brother Darmo and Cesar Allego. But before leaving they stopped by the wharf and drank three (3) bottles of beer each. While the Astorga brothers were drinking, Allego walked to a motorboat docked nearby and conversed with Antonio Violin, Eutiquio Cherriguene and Remegio Yazar.

The Astorgas and Allegos left for Bgy. San Jose at around 9:00 o'clock that evening on board the motorboat owned by Violin who together with Cherriguene and Yazar was among the passengers of the boat. Upon reaching

Bgy. Pait, Violin disembarked but agreed to meet Cesar Allego later at a public dance in Bgy. San Jose. Dioscoro Jr., Darmo, Allego, Cherriguene and Yazar proceeded to Bgy. San Jose and arrived there at around 11:30 o'clock in the evening. Yazar and Cherriguene went with the group to the house of Allego but left immediately after the latter promised to follow them to the public dance later that evening. Allego then summoned Mrs. Agas to a meeting; unfortunately she had not yet returned from the sea where she had gone fishing. Since there was nothing else to do, Dioscoro Jr. requested Allego to take him and his brother back to Catbalogan but Allego refused purportedly due to lack of transportation. Left with no recourse Dioscoro Jr. and Darmo were constrained to spend the night in Bgy. San Jose at the house of Allego who left them to attend the public dance.

The following morning, at around four o'clock, 1 January 1986, Dioscoro Jr. and Darmo were roused from their sleep by Allego who invited them to partake of some food and liquor. At that time Violin, Cherriguene and Yazar were already drinking beer in the kitchen. After a few rounds Allego asked Violin to buy more beer. Violin left followed by Cherriguene and Yazar.

Shortly after Dioscoro Jr. stood up to urinate but was told by Allego to relieve himself outside the house because he would be using the comfort room himself. Dioscoro Jr. went out leaving Darmo alone in the kitchen. All of a sudden Darmo heard several gunshots. Alarmed, he ran towards the door but was met on the way by Dioscoro Jr. who was bleeding, staggering and about to fall. Dioscoro Jr. told him to hide or he might also be shot by the three — Violin, Cherriguene and Yazar. Darmo then crawled and hid himself under a table measuring about three (3) feet wide, seven (7) feet long and two (2) feet and four-and-a-half (4-1/2) inches tall. From this position he saw violin standing at the kitchen door, firing at Dioscoro Jr. and shouting *Tapos ka, ayos na an singkwenta mil pesos (P50,000.00) nga bayad ni Cata (You are already through, the fifty thousand pesos (P50,000.00) paid by Cata is already finished.)*[9] A stray bullet fired from the firearm of Violin grazed the right side of Darmo's head. At that instant, Yazar also fired at Dioscoro Jr. saying *Kapitan, waray na kamo kuntra hit election, waray na kuntra iton mga Figueroa.*[10] Cherriguene who positioned himself outside the kitchen window also fired at Dioscoro Jr. The three (3) assailants then looked for Darmo but could not find him. Failing thus, they left towards the direction of the coconut trees behind the house.

When Darmo came out of his hiding place and saw his brother dead he looked for the latter's firearm but could not find it. He proceeded to the kitchen where he found a bolo. Then he went out of the house searching for the three (3) malefactors. When he could not find them he went back to the house and saw Allego sprawled inside the bathroom crying. Darmo asked Allego to bring him to Catbalogan but the latter did not respond. Not long after, people milled around the crime scene. One of them, a barangay councilor, assisted Darmo and took him back to Catbalogan where the latter informed relatives about what happened to him and his brother, after which he proceeded to the hospital for treatment.

Dr. Honorata L. Gabon autopsied the cadaver of Dioscoro Astorga Jr. and ascertained the cause of death as cardiorespiratory failure secondary to severe hemorrhage resulting from his multiple gunshot wounds.[11]

Darmo asserted that the murder of his brother was politically motivated. Their father was at that time the mayor of Daram and the deceased Dioscoro Astorga Jr. was being groomed to take his place. The ex-mayor of Daram, Miguel Figueroa, was planning a political comeback while Violin, Cherriguene and Yazar, aside from being employees of the Figueras, were his avid followers. Cesar Allego was the nephew of vice-mayoralty candidate Emilio Allego who was supposed to run under the ticket of Miguel Figueroa.

In support of this theory, the prosecution offered the testimonies of Mateo Villaganes and Nestor Pahayahay to the effect that Miguel Figueroa and Catalino Figueroa had earlier approached hit men for a contract on Dioscoro Jr.'s head.[12]

The defense tells a different story, invoking alibi for all the accused-appellants. Accused Remegio Yazar, overseer of the coconut plantation and the cattle ranch of Catalino Figueroa, claims that he could not have participated in the killing of Dioscoro Jr. on 1 January 1986 as he was in Manila from 23 December 1985 to the first week of February 1986. Cherriguene, another caretaker of the ranch, avowed innocence in the killing saying that he attended a birthday celebration of his friend Francisco Decallos in the evening of 31 December 1985 and stayed there up to five o'clock the following morning, 1 January 1986. Beatriz Donaire, the 80-year old aunt of the Figueras, and Antonio Co, a guest at the birthday celebration, confirmed the narration of Cherriguene.

The accused Antonio Violin testified that on 31 December 1985 he boarded a motorboat together with Allego and the Astorga brothers en route to Bgy. San Jose. The boat was piloted by Cesar Allego. However, Violin disembarked at Bgy. Pait where he resided and spent the whole night of 31 December 1985 at his house drinking with some friends. He denied that he proceeded to Bgy. San Jose that evening, claiming that he learned of the murder of Dioscoro Astorga Jr. only at around 11:00 o'clock the following morning when Allego dropped by his house after accompanying Darma Astorga to a hospital in Catbalogan. He insisted that he was implicated in the criminal cases because his father was a diehard follower of the Figueras. He admitted however that he owned the motorboat used by the Astorgas for Bgy. San Jose and that Allego was his boat mechanic and pilot. Violin's testimony was corroborated by Diosdado Panis.

We have ruled, time and again, that alibi is the weakest of all defenses and cannot stand against strong and positive identification. The testimonies of the accused herein and that of their witnesses aside from being self-serving fall flat in the face of the clear and categorical account given by Darma Astorga. As correctly observed by the trial court -

x x x there is no doubt in our mind that positive identification of herein defendants by a survivor of the attack has not been shaken. It is of no moment that the prosecution presented a lone witness. If Darma's uncorroborated testimony is credible and positive, it is sufficient to justify a conviction.[13]

While accused-appellants feign bafflement that Darma would crawl under the table instead of seeking cover outside the house, there is nothing strange or unnatural about this behavior. Darma's act appears to be spontaneous and instinctive in that after the gunshots he ran towards the door where he was met by his brother who was already bleeding and about to fall, and who told him to hide otherwise he might also be shot. For him to go out of the house would have been illogical and suicidal since the attackers of his brother were still outside. The only recourse available at that very moment was to seek cover inside the house, and he found one under a table.[14]

The defense speaks of the impossibility of Darma crawling and hiding under a table measuring only about three (3) feet wide, seven (7) feet long, and two feet and four inches high (2'4") considering that he stands five feet and five inches (5'5") tall. A small table such as that described by Darma could not have provided ample protection for him, for squatting underneath it would entail great difficulty. While the proposition may sound plausible we are not persuaded that it was impossible. Truly, Darma did not have the luxury of time and choice. He could not at leisure studiously reflect upon the situation and scout around for a good and comfortable hiding place. His very life was at stake. Safety was his immediate and only concern, not convenience. Moreover, it does not follow that "since Darma's head and shoulders would have touched the top of the table, his vision would be severely inhibited by the breadth and width of the table." [15] To conclude that because of his position "he could have only seen the lower parts of the attackers' bodies," and consequently, could not have seen the faces and identified the attackers [16] is specious and delusive because it erroneously assumes the validity of a false premise.

Darma identified with ease the weapons used by the three appellants considering that at the time of the incident he was a member of the Civilian Home Defense Force (CHDF) and therefore knowledgeable if not trained in the identification and use of firearms. He was able to recall what each of the assailants said during the incident

because they attacked Dioscoro Jr. alternately so that Darmo's attention was focused on each perpetrator's act and utterance. As eyewitness to the killing of his brother Dioscoro Jr., Darmo narrated the harrowing occurrence in vivid detail. Surely, this could not have been the fictive product of a highly imaginative mind.

Appellants also postulate that Darmo was drunk and therefore incapable of accurate perception. They anchor their hypothesis on the fact: that the night before the killing Darmo drank three (3) bottles of beer before he and Dioscoro Jr. left for Bgy. San Jose and, right before the shooting of 1 January 1986, Darmo drank beer again. This is pure conjecture for no evidence was shown that Darmo was intoxicated to such degree as to deprive him of his perceptive faculties. On the contrary, his detailed account of the killing shows that he was fully aware of what transpired around him.

Additionally, the defense attempts to destroy the credibility of Darmo by harping on his alleged confusion in certain aspects of his testimonies, e.g., the number of doors of Allego's house, whether it was Dioscoro Jr. who walked ahead of Allego in going to the kitchen to eat breakfast, and whether Violin, Yazar and Cherriguene were standing or sitting in the kitchen at that time. We find these matters to be minor and inconsequential as to change substantially the findings in the case at bar.

The lower court found the killing to be qualified by treachery and aggravated by craft and abuse of superior strength.[17] We disagree. For craft cannot be considered aggravating herein since the use of intellectual trickery or cunning on the part of the accused[18] was not established. There is no showing that the accused employed stealth and covert machinations to camouflage their evil intentions.

We sustain however the finding that the attack was attended with treachery. The victim was not afforded the opportunity to defend himself while the assailants themselves ensured that the crime would be consummated with the least risk to their persons. The three (3) conspirators pounced upon their victim as soon as he stepped out of the house. The latter had no inkling at all that he would be assaulted by them considering that they were all guests of Cesar Allego. This is indicative of treachery which qualifies the crime to murder. On this score the trial court should not have factored in abuse of superior strength as an independent aggravating circumstance. When treachery qualifies the crime of murder, the generic aggravating circumstance of abuse of superior strength is necessarily included in the former. This we ruled as early as 1914.[19]

The court in the frustrated murder charge found —

The defendant Antonio Violin in firing his armalite rifle at Dioscoro Astorga Jr. also hit his younger brother Darmo on his head particularly on the right parietal region which injury would have caused his death had it not been for the timely medical assistance rendered him. The crime committed is frustrated murder because there was treachery and the defendants who conspired to kill the Figueroa[20] brothers performed all the acts of execution but did not produce the result, the death of Darmo Astorga, due to a cause entirely independent of their will.[21]

Again we cannot agree. The crime of slight physical injuries[22], not frustrated murder, was committed against Darmo Astorga. Antonio Violin fired at Dioscoro Astorga Jr. and not at Darmo. There is not the slightest indication that at that time Violin knew that Darmo was hiding under a table. Darmo himself admitted that he was injured by a stray bullet[23] which grazed the right parietal region of his head. The wound was diagnosed as superficial [24] and required treatment only for three (3) days.[25]

WHEREFORE, the decision of the court a quo dated 24 November 1993 in Crim. Case No. 3030 finding ANTONIO VIOLIN, EUTIQUIO CHERRIGUENE and REMEGIO YAZAR guilty of murder qualified by treachery and aggravated by craft and abuse of superior strength is MODIFIED. The crime committed by the accused was murder qualified by treachery. They are therefore sentenced to suffer the penalty of reclusion

perpetua and to indemnify the heirs of Dioscoro Astorga Jr. the sum of P50,000.00, and to pay the costs. The decision in Crim. Case No. 3031 for frustrated murder is likewise MODIFIED. Accused ANTONIO VIOLIN is found guilty only of the crime of slight physical injuries and is accordingly sentenced to suffer a straight prison term of ten (10) days of arresto menor, and to pay the costs.

SO ORDERED.

Padilla, (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Rollo, pp. 14-16.

[2] Docketed as Crim. Case No. 3030.

[3] Docketed as Crim. Case No. 3031.

[4] Docketed as Crim. Case No. 3186.

[5] Docketed as Crim. Case No. 3187.

[6] In Appellants' Brief, Atty. Romulo Quimbo, counsel for appellants, noted that the prosecution and the trial court erred in allowing the filing of new informations since the two (2) were already charged in Crim. Cases Nos. 3030 and 3031 under the names Cata Doe and Peter Doe. Indeed the Informations in these two (2) cases should have been merely amended.

[7] Judge Auxencio C. Dacuycuy, RTC-Br. 29, Catbalogan, Samar, penned the decision in Crim. Cases Nos. 3030 and 3186 both for murder, and another in Crim. Cases Nos. 3031 and 3186 both for frustrated murder.

[8] Judge Norma Cabigon-Perello, Judge Sibanah E. Usman, Judge Godofredo P. Quimsing, Judge Sinforiano A. Monsanto who later inhibited himself, and Judge Auxencio C. Dacuycuy.

[9] TSN, 25 April 1990, p. 19. It should read: You are finished, the P50,000.00 by 'Cata' is now satisfied.

[10] Id., p. 20. Translated thus: Kapitan, you have no more opponents for this election, the opponents of the Figueroas are no longer around.

[11] Exh. "A-1", Folder of Exhibits.

[12] TSN, 22 March 1990, p. 19.

[13] Decision, p. 6; Rollo, p. 47.

[14] Appellants' Brief, p. 26.

[15] Id, p. 28.

[16] Ibid.

[17] Decisions, Crim. Cases Nos. 3030 and 3186 (Annex "A"), and Crim. Cases Nos. 3031 and 3187 (Annex "B"), Appellants' Brief, Rollo, pp. 76-106.

[18] People v. Juliano, No. L-33053, 28 January 1980, 95 SCRA 526.

[19] United Statesv. Estopia, 28 Phil. 97 (1914).

[20] Should have been Astorga.

[21] Decision, p. 16, Annex B, Appellants' Brief.

[22] Art. 266, The Revised Penal Code.

[23] TSN, 25 April 1990, p. 24.

[24] Id., 14 March 1989, p. 17.

[25] Id., 25 April 1990, p. 25.

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.