

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DEMETRIO CABALE, FLORENCIO DANIEL, BENITO TERANTE @
“BODOY”, AND BONIFACTO CUALTEROS, DEFENDANTS,
BENITO TERANTE @ “BODOY”, DE...**

G.R. Nos. 73249-50. May 08, 1990

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-73249-50/>

PADILLA, J.:

At about 8:00 o'clock in the evening of 7 June 1968, while Rufina Rosello, an octogenarian, was tending her small store located at Barrio Magaupas, Liloan, Southern Leyte, four (4) persons, later identified as the accused Demetrio Cabale, Florencio Daniel, Benito Terante @ "Bodoy", and Bonifacio Cualteros, arrived. Two (2) of them, Florencio Daniel and Benito Terante, entered the store of Rufina Rosello while Demetrio Cabale and Bonifacio Cualteros stayed outside and fired shots into the air, shouting: "Those persons who have no part get away. We are not afraid. We are the followers of Montemayor, and those who will get near will be killed." [1]

Upon entering the store, Florencio Daniel and Benito Terante demanded money from Rufina Rosello. But she refused to accede to their demand. So, they dragged the old woman outside the store and made her lie down on a bamboo bed. One of them then put his hands around her neck, strangling her, while the other held her upper legs and continued demanding money from her. But Rufina Rosello told them that she had no money. [2]

As this was going on, Ricarido Fernando, riding on a motorcycle, arrived at the scene. He was ordered to stop. When he did not stop, as he did not know the men stopping him, his motorcycle was kicked so that he fell. Then, a man whom he later identified as the accused Demetrio Cabale, ordered him not to rise but to lie flat on the ground. The man then began to search his pockets. When Ricarido Fernando placed his hand over the back pocket of his pants, the man struck his hand with a gun and then removed the money from the pocket amounting to P492.00. His wallet containing his driver's license and the certificate of registration of his motorcycle, as well as some coins, were also taken from him. He was then repeatedly kicked and "rolled" over. [3]

After strangling Rufina Rosello to death, Florencio Daniel and Benito Terante went back to the store. When they came out of it, they were carrying the "alkansiya" of Rufina Rosello. They then joined their companions and tried to drive off with the motorcycle of Ricarido Fernando, but they failed to start the motorcycle. So, Bonifacio Cualteros ordered Fernando to start the motor. After Fernando had started the motorcycle, the four (4) accused rode on the motorcycle and left the place. [4]

Ricarido Fernando was taken to the White Cross Clinic at Malitbog, Southern Leyte where his injuries were treated. He suffered injuries on the head, left hand, right knee, and chest. He was incapacitated to perform his regular work for a period of fifteen (15) days. [5]

A post mortem examination was conducted on the cadaver of Rufina Rosello and it was found that she sustained injuries on her scalp, ear, cheek and neck. The cause of death was "Asphyxia, by strangulation." [6]

Initial investigations revealed that one of the robbers was Florencio Daniel who used to be a "cargador" of the Palancas. When questioned, Florencio Daniel admitted that he participated in the commission of the robberies and pointed to Demetrio Cabale alias Demit, Bonifacio Cualteros alias Bonie, and Benito Terante alias Boday as his companions in committing said robberies.[7]

Consequently, Demetrio Cabale, Bonifacio Cualteros, Florencio Daniel, and Benito Terante alias Boday were charged in two (2) separate informations before the Court of First Instance of Maasin, Southern Leyte, with the crimes of Robbery in Band with Less Serious Physical Injuries, docketed therein as Criminal Case No. R-2894, for the crime committed against Ricarido Fernando; and Robbery in Band with Homicide, docketed therein as Criminal Case No. R-2895, for the crime committed against Rufina Rosello.

After joint trial of the two (2) cases, the accused Demetrio Cabale, Florencio Daniel, and Benito Terante were found guilty in both cases and sentenced, in Criminal Case No. R-2895 for the crime of Robbery with Homicide, to suffer the Death penalty and to indemnify, jointly, the heirs of the deceased Rufina Rosello in the amount of P12,000.00 plus P20,000.00 by way of consequential damages, without subsidiary imprisonment in case of insolvency; and in Criminal Case No. R-2894 for the crime of Robbery with Less Serious Physical Injuries, the accused Florencio Daniel and Benito Terante were sentenced, each to suffer an indeterminate penalty of from four (4) years and one (1) day of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum, while the accused Demetrio Cabale was sentenced to imprisonment of from six (6) years and one (1) day of prision mayor, as minimum, to ten (10) years of prision mayor, as maximum, with all three (3) accused to indemnify, jointly, Ricarido Fernando in the sum of P10,704.40, without subsidiary imprisonment in case of insolvency.

The accused, Bonifacio Cualteros, upon the other hand, was acquitted of both charges on reasonable doubt, but was, nevertheless, ordered to indemnify, jointly with his co-accused, the offended parties Ricarido Fernando and heirs of Rufina Rosello in the amounts stated.

In view of the death penalty imposed upon each of the accused Demetrio Cabale, Florencio Daniel, and Benito Terante in Criminal Case No. R-2895, the records of both Criminal Cases Nos. R-2894 and R-2895 were forwarded to this Court pursuant to law for the review of the decision* rendered therein. However, upon the adoption of the 1987 Constitution under which the death penalty is no longer imposable, the accused, Florencio Daniel, when asked whether or not he would like to continue with the review of the decision as an ordinary appeal, informed the Court that he was no longer interested in pursuing an appeal and that he was willing to serve the reduced penalty of reclusion perpetua.[8] Accordingly, the judgment against him was considered final.[9]

Since the judgment against the accused Demetrio Cabale has also become final due to his escape from detention, only the appeal of the accused Benito Terante alias Boday is left for consideration. Earlier, said accused manifested his desire to continue and pursue his appeal.[10]

The accused-appellant, Benito Terante alias Boday, denied having participated in the commission of the offenses charged in the informations, and interposed the defense of alibi. According to him, he was in the copra drier, located at Barrio Suba, Sogod, Southern Leyte from 7:00 o'clock in the evening of 7 June 1968, standing watch over piles of coconuts to be made into copra, together with one Cresencio Dugos, until 10 June 1968, when a policeman and PC soldiers came and arrested him in connection with the robberies committed at Magaupas.[11]

He also claims that there was an irregularity in his arraignment since it was done after the cases had been submitted for decision, so that he was not afforded the chance to prepare properly for his defense; and that the prosecution failed to prove his guilt beyond reasonable doubt since the testimonies of the prosecution witnesses Vicente Mangaring, Rosita Makiling, and Ricarido Fernando are not credible in view of the inconsistencies and

improbabilities in such testimonies.

We find no merit in the appeal. On the procedural issue, we find that while the arraignment of the appellant was conducted after the cases had been submitted for decision, the error is non-prejudicial and has been fully cured. In the case of *People vs. Atienza*,^[12] where a similar issue was raised, the Court said:

"Counsel for the appellant attacks the procedure followed in the trial already referred where the two accused were arraigned after the prosecution had rested its case, and he claims that the trial court erred in considering such evidence, especially since the trial court itself had declared all the proceedings had before arraignment as null and void. The error, if any, is non-prejudicial. The interests of the appellant have not suffered thereby. His counsel entered into trial without any objection on the ground that his client had not yet been arraigned. Said counsel cross-examined the witnesses for the prosecution. When the fiscal offered to reproduce all his evidence by presenting again his witnesses, instead of accepting said offer, he agreed or rather did not object to having that same evidence for the government declared by the court as reproduced. We hold that this error or irregularity has not prejudiced the right or interests of the appellant, and considering that appellant's counsel had full opportunity of cross-examining all the witnesses who took the witness stand for the government and that furthermore he agreed to the reproduction, of the evidence from the prosecution, the error or defect had been substantially or fully cured."

In the instant cases, counsel for the appellant entered into trial without objecting that his client, the appellant herein, had not yet been arraigned. Said counsel had also the full opportunity of cross-examining the witnesses for the prosecution. Then, when the cases were being retried after the appellant had been arraigned, appellant's counsel filed a joint manifestation with the prosecution, adopting all proceedings had previous to the arraignment of the appellant.^[13] There was, therefore, no violation of the appellant's constitutional right to be informed of the nature and cause of the accusation against him.

The Court cannot also give weight to the appellant's alibi. Settled is the rule that for alibi to prosper as a defense, the accused must prove, not only that he was somewhere else when the crime was committed, but also that it was impossible for him to be at the scene of the crime at the time it was committed. In the instant cases, the appellant failed to prove his alibi that he was at the copra drier at Barrio Suba, Sogod, Southern Leyte when the robberies were committed. He claimed to be with one Cresencio Dugos at the time, but he did not present the said Cresencio Dugos to corroborate his claim. Then, the appellant also failed to prove that it was impossible for him to be at Barrio Magaupas, Liloan, Southern Leyte at the time the robberies in question were being committed. It should be noted that the robberies in question were committed at about 8:00 o'clock in the evening of 7 June 1968. Since the appellant stated that he went to Barrio Suba at about 7:00 o'clock, there was a time difference of only an hour so that it was not improbable for the appellant to be at the scene of the crimes at the time they were being committed.

Besides, the alibi of the appellant cannot prevail over the testimony of Ricarido Fernando who positively identified the appellant as one of the four (4) persons who perpetrated the robberies on the night of 7 June 1968. The moon was shining brightly and Ricarido Fernando had ample time and opportunity to observe the robbers at close range so that he could not have been mistaken in identifying them. Ricarido Fernando may not have known their names when the crimes were committed, but he saw their faces and identified them in court. It would also appear that Ricarido Fernando had no ill-motive to testify falsely against the appellant so that his testimony is entitled to full weight and credence.

The alleged inconsistencies and improbabilities in the testimonies of the witnesses for the prosecution, pointed out by the appellant, refer to insignificant details which cannot destroy the credibility of said witnesses. Besides, they have been fully explained. Moreover, the issue involves the credibility of witnesses and we find no reason to set aside the findings of fact of the trial court.

The appellant also contends that the trial court erred in appreciating the aggravating circumstance of nighttime in fixing the penalty imposed upon him in Criminal Case No. R-2894, for Robbery with Less Serious Physical Injuries, there being no proof that the appellant and his co-accused had purposely sought the cover of darkness in committing the crime. While we agree with this contention of the appellant, the penalty imposed is still correct since there was abuse of superior strength, without any mitigating circumstance to offset it.

The indemnity to be paid to the heirs of the deceased Rufina Rosello, should, however, be increased from P12,000.00 to P30,000.00 in line with prevailing jurisprudence.

WHEREFORE, with the modification that the indemnity to be paid to the heirs of the deceased Rufina Rosello is increased to P30,000.00 (from P12,000.00), the judgment appealed from is hereby **AFFIRMED**, with proportionate costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Tsn of June 17, 1970, p. 4

[2] Tsn of June 7, 1968, pp. 4, 31-35

[3] Tsn of July 27, 1978, pp. 13-21

[4] Id., pp. 22-24

[5] Tsn of August 19, 1972, pp. 5-7

[6] Tsn of January 14, 1971, pp. 77-79; Exhibit A

[7] Exhibit C

* Penned by Judge Getulio M. Francisco

[8] Rollo, p. 148

[9] Id., p. 165

[10] Id., p. 126

[11] Tsn of April 21, 1983, pp. 28-30

[12] G.R. No. L-3001, June 17, 1950, 86 Phil. 576, 579-580

[13] Original Record, p. 709

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.