

SECOND DIVISION

[G.R. No. 199442, April 07, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO ABAIGAR, ACCUSED-APPELLANT.**

R E S O L U T I O N

DEL CASTILLO, J.:

An Information^[1] was filed charging appellant Francisco Abaigar with the crime of murder, the accusatory portion of which reads:

That on or about the 11th day of July 2001, at about 9:00 o'clock in the evening, at Barangay Rosalim, Municipality of San Jorge, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously, without any justifiable cause, with intent to kill, and by means of treachery and evident premeditation, attack, assault and use personal violence upon the person of JOSEPH GABUYA by shooting him with the use of a homemade shotgun locally known as "Bardog", which the accused had conveniently provided himself for the purpose, hitting the victim's left side of the face and behind the head, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death.

CONTRARY TO LAW.^[2]

During his arraignment on August 4, 2004, appellant pleaded not guilty to the charge.^[3]

On December 6, 2007, the trial court rendered its Judgment^[4] finding appellant guilty as charged. The dispositive portion of the Judgment reads:

WHEREFORE, accused Francisco Abaigar is hereby found GUILTY beyond reasonable doubt of the crime of Murder and is hereby meted the penalty of Reclusion Perpetua.

Said accused shall also indemnify the heirs of deceased Joseph Gabuya death indemnity in the amount of Php75,000.00, moral damages of Php50,000.00 and exemplary damages in the amount of Php20,000.00.

In line with Sec. 5, Rule 114 of the Rules on Criminal Procedure, the Warden of the Sub-Provincial Jail, Calbayog City, is hereby directed to

immediately transmit the living body of accused Francisco Abaigar to the New Bilibid Prison, Muntinlupa City, Metro Manila, where he may remain to be detained.

In the service of his sentence he shall be credited for the period he was under preventive detention, provided he has previously expressed his written conformity to comply with the discipline, rules and regulations by the detention center otherwise he shall be entitled to only 4/5 thereof pursuant to Article 29 of the Revised Penal Code as amended.

SO ORDERED.^[5]

The trial court lent credence to the testimony of prosecution witness Relecita del Monte (Relecita) that at about 9 o'clock in the evening of July 11, 2001, at a distance of about 3½ meters, she saw appellant shoot Joseph Gabuya (Gabuya) from behind hitting the victim at the back of his head. The trial court disregarded appellant's denial and alibi. It found incredulous appellant's claim that he returned to sleep immediately after hearing bursts of gunshots near his house and his disavowal of any knowledge about the death of Gabuya whose house is just 30 arms length away from his house. His flight after the incident was considered an indication of guilt. The trial court also found that treachery attended the killing as the victim was merely in the act of opening the front door of his house without any inkling of the impending attack coming from behind.

Aggrieved, appellant appealed before the Court of Appeals. In a Decision^[6] dated June 22, 2010, the appellate court affirmed in full the Judgment of the trial court, viz:

WHEREFORE, the Judgment of the Regional Trial Court (RTC), Branch 41, of Gandara, Samar, in Criminal Case No. 02-0100 finding accused-appellant, Francisco Abaigar, guilty beyond reasonable doubt of the crime of Murder is AFFIRMED *in toto*.

SO ORDERED.^[7]

Hence, this appeal.

In a Resolution^[8] dated January 25, 2012, we required both parties to submit their Supplemental Briefs but they opted to adopt the briefs they filed before the Court of Appeals.

Appellant basically argues that the trial court and the Court of Appeals erred in lending credence to the testimony of eyewitness Relecita. Appellant claims that Relecita could have forewarned the victim of his presence if indeed Relecita saw him in the vicinity; and that it was improbable that Relecita could see him considering the poor lighting condition of the place.

We are not persuaded.