

THIRD DIVISION

[G.R. No. 175887, November 24, 2010]

**HEIRS OF THE LATE NESTOR TRIA, PETITIONERS, VS. ATTY.
EPIFANIA OBIAS, RESPONDENT.**

DECISION

VILLARAMA, JR., J.:

Before this Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse and set aside the Decision^[1] dated August 14, 2006 and Resolution^[2] dated December 11, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 86210. The CA denied the petition for *mandamus*/certiorari filed by the petitioners which assailed the Order^[3] dated March 24, 2004 of the Office of the President (OP) dismissing the murder charge against the respondent.

The factual antecedents are as follows:

On May 22, 1998, at around 10:00 o'clock in the morning at the Pili Airport in Camarines Sur, Engr. Nestor Tria, Regional Director of the Department of Public Works and Highways (DPWH), Region V and concurrently Officer-In-Charge of the 2nd Engineering District of Camarines Sur, was shot by a gunman while waiting to board his flight to Manila. He was brought to a hospital but died the following day from the lone gunshot wound on his nape. Subsequently, the incident was investigated by the National Bureau of Investigation (NBI).

On July 31, 1998, NBI Regional Director Alejandro R. Tenerife, Chairman of Task Force Tria, recommended to the Provincial Prosecutor of Camarines Sur the indictment of Roberto "Obet" Aclan y Gulpo, Juanito "Totoy" Ona y Masalonga and Atty. Epifania "Fanny" Gonzales-Obias, for the murder of Engr. Tria.

On the basis of statements given by twenty-six (26) individuals, autopsy and ballistic examination reports, and relevant documents gathered,^[4] the NBI submitted its findings, as follows:

Our investigation disclosed that about two weeks before the incident ACLAN and ONA had been conducting an almost daily stakeout at the DPWH 2nd Engineering District of Camarines Sur in Sta. Elena, Iriga City where Regional Director TRIA was holding office from time to time as District Engineer in concurrent capacity. Alternately ACLAN and ONA would ask the security guard on duty if Director TRIA had already arrived and the usual days and time of his coming to the office. At noontime or early afternoon, after waiting vainly for TRIA's arrival, the duo would leave, riding tandem on a red motorcycle. During their surveillance it

was ONA who frequently sat on the couch at the lobby of the Engineering Building while ACLAN was waiting near their motorcycle at the parking space. At times ONA would approach ACLAN to whisper a message and the latter would relay the message to someone else through a hand-held radio. There were also some instances when ACLAN would wait at the lobby while ONA was staying near the parked motorcycle. At one instance an employee had noticed a gun tucked on the waistline of ACLAN.

Around 8:00 o'clock in the morning of May 22, 1998, ACLAN and ONA were spotted in their usual places at the 2nd Engineering District in Iriga City. ONA was wearing a loose, yellow long sleeved shirt, maong pants and a pair of sneakers; ACLAN was in a white and gray striped shirt and a pair of maong pants. Shortly before 9:00 a.m. on that day, THEO RUBEN CANEBA, a DPWH employee and newly elected Municipal Councilor of Buhi, Camarines Sur, arrived. He was warmly greeted and congratulated by his former co-employees outside the engineering building. It was at this point when CANEBA noticed a man about 5'4" in height, sturdy, with semi-curly hair, wearing a white and gray-striped shirt with maong pants and about 40 years old. The man (later identified through his photograph as ROBERTO ACLAN) was looking intensely at him and was shifting position from left to right to get a better view of him. Obviously, ACLAN was trying to figure out whether CANEBA was Director TRIA. After about 20 minutes, Administrative Officer JOSE PECUNDO announced to those who had some documents for signature of Director TRIA to proceed to Pili Airport where TRIA would sign them before leaving for Manila. Upon hearing this, ACLAN and ONA left hurriedly on board a red motorcycle. No sooner had ACLAN and ONA left that CANEBA cautioned the guards to be extra alert because he had some sense of foreboding about that man (referring to ACLAN).

Shortly after 10:00 a.m. on that day, Director TRIA arrived at the Airport. After signing some documents at the parking lot he proceeded towards the pre-departure area on the second floor of the airport building. ONA, who was waiting on the stairway, immediately followed TRIA as the latter was going up the stairs. As TRIA was approaching the pre-departure area he was met by Atty. [E]PIFANIA OBIAS who shook his hands and started conversing with him. It was at this juncture that a gunshot rang out and TRIA dropped like a log on the floor, bleeding profusely from a gunshot wound at the back of his head. As a commotion ensued, ONA was seen running down the stairway while tucking a gun on his waistline. Even before ONA could come out of the doorway, ACLAN was already outside the building, pointing a handgun at everybody - obviously to discourage any attempt of pursuit - while swiftly stepping backward to where their motorcycle was parked. He then fired shots at an army man who tried to chase ONA. The army man, who was then unarmed, sought cover behind a parked van. ACLAN and ONA then boarded a red motorcycle and sped away. Director TRIA died from a lone gunshot wound on his nape at the Mother Seton Hospital in Naga City the following day.

Atty. EPIFANIA OBIAS, on the other hand, admitted that she was with ROBERTO "OBET" ACLAN in the early morning of May 22, 1998; that at

about 7:00 a.m. on that day she went to the residence of Director TRIA at Liboton, Naga City, had a brief talk with the latter and left immediately. She also volunteered the information that ROBERTO ACLAN was not the gunman who had fired the fatal shot at Director TRIA. She was also the last person seen talking with Director TRIA when the latter was gunned down. A practicing lawyer, Atty. OBIAS also engages herself in real estate business on the side. In 1997 she had brokered a sale of real estate between and among spouses PRUDENCIO and LORETA JEREMIAS, as Vendors, and Spouses NESTOR and PURA TRIA, as Vendees, over a .9165 hectare of land in Balatas, Naga City. It was Atty. OBIAS who received, for and in behalf of the vendors, the full payment of P2.8 Million of the sale from the TRIAs with the agreement that Atty. OBIAS would take care of all legal processes and documentations until the Deed of Absolute Sale is delivered to the TRIA family. After the death of TRIA, the surviving spouse and heirs made several attempts to contact Atty. OBIAS to demand immediate delivery of the deed of sale, but the latter deliberately avoided the TRIA family and, despite verbal and written demands, she failed and refused, as she still fails and refuses, to fulfill her legal obligation to the TRIA family. At one instance, a representative of the TRIA family had chanced upon Atty. OBIAS at her residence and demanded of her to deliver the deed of sale to the TRIA family immediately. But Atty. OBIAS replied that Director TRIA had already disposed of the property before his death, a claim that can no longer be disputed by Director TRIA as his lips had already been sealed forever, except for the fact that neither the surviving spouse nor anyone of the heirs had given any consent to the purported subsequent sale.

During the lifetime of Director TRIA, Atty. OBIAS was one of the frequent visitors of the TRIA family and had been known to the family members as a friend and a close associate of Director TRIA. Yet, she never attended the wake of Director TRIA nor made any gesture of sympathy or condolence to the TRIA family up to the present time. [5]

During the preliminary investigation conducted by the Office of the Provincial Prosecutor, respondent filed her Counter-Affidavit denying that she was in anyway involved with the killing of Engr. Tria. Respondent admitted that Engr. Tria was a longtime friend and that she went to his residence at about 7:30 o'clock in the morning of May 22, 1998. Since Engr. Tria had many visitors at that time, they just agreed to see each other at the airport later. Respondent denied having admitted to NBI Supervising Agent (SA) Atty. Manuel Eduarte that she was with Aclan then, and neither did she volunteer the information that Aclan was not the triggerman. Respondent submitted the sworn statement of Edgar Awa, one of those witnesses interviewed by the NBI, who declared that Aclan and Ona were at the Iriga City DPWH Office in the morning of May 22, 1998 at 8:00 o'clock in the morning. Such is also corroborated by the sworn statement of another NBI witness, Theo Ruben Caneba, who declared that when he arrived at the DPWH Iriga office at about 8:30 o'clock in the morning of May 22, 1998, he noticed the presence of Aclan who was supposedly eyeing him intensely, and that after it was announced that those who have some transactions with Engr. Tria should just proceed to the airport, Caneba saw Aclan with a companion later identified as Ona, immediately left the compound in a motorcycle. [6]

Respondent likewise denied that she met Engr. Tria as the latter was approaching the pre-departure area of the airport and that she supposedly shook his hands. The truth is that when she and Engr. Tria met at the airport, the latter took her by the arm and led her to a place where they talked. Respondent asserted that from the totality of evidence gathered by the NBI, it has not established *prima facie* the existence of conspiracy as to implicate her in the death of Engr. Tria.^[7]

On July 2, 1999, the Office of the Provincial Prosecutor of Camarines Sur issued a resolution^[8] directing the filing of an information for murder against Aclan and Ona but dismissing the case for insufficiency of evidence as against herein respondent, Atty. Epifania Obias.

Petitioners appealed to the Department of Justice (DOJ) assailing the Provincial Prosecutor's order to dismiss the charge against respondent.^[9] On January 25, 2000, then Justice Secretary Serafin Cuevas issued a Resolution^[10] modifying the July 2, 1999 resolution of the Provincial Prosecutor and directing the latter to include respondent in the information for murder filed against Aclan and Ona.

The DOJ agreed with the contention of petitioners that there is interlocking circumstantial evidence sufficient to show that respondent conspired with Aclan and Ona in the killing of Engr. Tria. It cited the following circumstances: (1) Despite respondent's admission regarding her friendship and close association with Engr. Tria, her visit at his house early morning of the same day, and her presence at the airport where she met Engr. Tria and was the person last seen with him, respondent never lifted a finger to help Engr. Tria when he was gunned down and neither did she volunteer to help in the investigation of Engr. Tria's murder nor visit the grieving family to give her account of the fatal shooting of Engr. Tria, which behavior negates her claim of innocence; (2) In the sworn statement of NBI SA Manuel Eduarte, he declared that respondent admitted to him that she and Aclan were together when she went to the residence of Engr. Tria at 7:30 in the morning of May 22, 1998 and that while she later denied such admission and explained that Aclan could not have been with her as the latter was at the DPWH Regional office at about 8:00 a.m., such does not render impossible the fact of Aclan's presence at the residence of Engr. Tria considering that the time given was mere approximation by respondent not to mention the possibility that Aclan could have easily gotten to the DPWH office after coming from the house of Engr. Tria using the same motorcycle which Aclan used as get-away vehicle at the airport; (3) SA Eduarte's statement cannot be simply disregarded as he had no ill motive to impute upon respondent the said admission; and (4) The double sale of the property wherein the Tria spouses already paid P2.8 million to respondent who brokered the sale, only to sell it to another buyer for P3.3 million, without turning over to the Tria family the deed of sale and her failure to attend to the registration of the land in the name of the Tria spouses - this strongly establishes the fact that respondent had the strongest motive to have Engr. Tria murdered by Aclan and Ona who were obviously guns for hire. Also mentioned was the respondent's representation of Aclan as the latter's defense lawyer in a frustrated murder case which was dismissed. Such client-lawyer relationship could have spawned respondent's ascendancy over Aclan.^[11]

The DOJ was thus convinced that the sequence of events and respondent's conduct before, during and after the killing of Engr. Tria undeniably points to her complicity

with Aclan and Ona. Moreover, it pointed out that respondent's defense consisted merely of denial which cannot prevail over the positive allegations of witnesses showing her complicity with the gunmen in the perpetration of the crime.^[12]

Respondent along with Aclan and Ona filed a motion for reconsideration of the DOJ's January 25, 2000 resolution.^[13] On February 18, 2000, Justice Secretary Artemio G. Tuquero issued a directive to State Prosecutor Josefino A. Subia who was the Acting Provincial Prosecutor of Camarines Sur, to defer, until further orders, the filing of the information for the inclusion of respondent, in order not to render moot the resolution of the motion for reconsideration of the January 25, 2000 resolution.^[14]

On September 17, 2001, then Justice Secretary Hernando B. Perez issued a resolution denying respondent's motion for reconsideration.^[15]

In the meantime, the information charging Aclan and Ona has already been filed with the Regional Trial Court (RTC) of Pili, Camarines Sur. Upon request however, the venue was transferred to the RTC Quezon City by resolution of this Court in A.M. No. 00-3145-RTC.^[16]

Sometime in October 2001, the prosecution filed with the RTC Quezon City a Motion to Admit Amended Information to include respondent as one of the accused for the murder of Tria.^[17]

On October 8, 2001, respondent filed a Notice of Appeal with the DOJ under the provisions of Administrative Order No. 18, series of 1987.^[18] In a letter dated December 3, 2001 addressed to respondent's counsel, the DOJ denied respondent's notice of appeal on the ground that pursuant to Memorandum Circular No. 1266 dated November 4, 1983, as amended by Memorandum Circular No. 58 dated June 30, 1993, appeals to the OP where the penalty prescribed for the offense charged is "reclusion perpetua to death," shall be taken by petition for review.^[19] Respondent filed a motion for reconsideration of the denial of her notice of appeal.^[20]

It appears that on January 28, 2002, the RTC Quezon City issued an order admitting the amended information which includes respondent. The latter then filed with the RTC a Motion for Reconsideration with Prayer for the Suspension of the Issuance of a Warrant of Arrest dated February 28, 2002, a copy of which was furnished to the Legal Office of the OP on March 6, 2002.^[21]

On February 6, 2002, the DOJ denied respondent's motion for reconsideration stating that the proper procedure is the filing of an appeal or petition for review with the OP and not before the DOJ. Hence, the case was considered closed and terminated.^[22] However, the DOJ directed the Provincial Prosecutor to forward the records of the case to the OP in compliance with the Order dated October 18, 2001 of Deputy Executive Secretary Jose Tale.^[23] It turned out that respondent filed on October 1, 2001 a notice of appeal before the OP (O.P. Case No. 01-J-118).^[24]

On June 27, 2003, Senior Deputy Executive Secretary Waldo Q. Flores adopted the findings of facts and conclusions of law in the appealed Resolutions dated January 25, 2000 and September 17, 2001 of the DOJ, and affirmed the same.^[25]