

THIRD DIVISION

[G.R. No. 134129, May 10, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RAMON SALIPDAN AND RAFAEL MAGLENTE, ACCUSED-
APPELLANTS.**

D E C I S I O N

VITUG, J.:

Although their motive might never be fully known, the assailants who took the life of Antonio Abergas must have undeniably harbored ferocious wrath for the victim. When relatives and friends came to take the body of the deceased, they found that he had been dragged from where he was killed, his bullet-riddled corpse propped atop a large "suyod" (rake) in a macabre position. A large hack wound at the neck almost severed the head from the torso.

According to Leticia Depillo, an eyewitness, it was about nine o'clock in the morning of 09 November 1994 when the dreadful incident took place. She was in the house of her brother Antonio Abergas at Sitio Malbog, barangay Nagbalaye, Sta. Catalina, Negros Oriental. Antonio and his wife, Maria Abergas, had earlier requested the witness to baby-sit their three-year old son while the couple were busy with the farm work. Maria was gathering the family's share of the corn harvest from a hut approximately 300 meters away from the house, and Antonio was attending to his newly planted peanuts. Antonio's peanut patch was located approximately 20 meters away from the house in full view from its balcony. While Antonio was watering his crops, Leticia, holding the baby, was standing at the balcony. From this vantage point, Leticia saw accused-appellants Ramon Salipdan and Rafael Maglente, both of whom she described as being virtually "inseparable" companions, walking one after the other towards her brother. When the two men came to about two meters from Antonio, Salipdan pulled out a caliber .38 pistol from his waist and forthwith shot the unsuspecting victim at the back. Just as the first shot was fired, Antonio slumped to the ground. Salipdan fired two more shots at the fallen victim. Maglente stood behind Salipdan while the latter was firing his gun. Salipdan and Maglente then proceeded to carry their victim towards a big rake, some fifteen meters away. While Maglente held the hands and the head of the victim, Salipdan took the bolo from the victim's waist and struck it at the victim's neck. Appalled at the gruesome sight, Leticia Depillo shouted; "What have you done to *Tito* Antonio?" By the time the neighbors responded to her cries, Salipdan and Maglente had already fled the scene.

When the widow of the victim, Maria Abergas, reached home, she saw Depillo, who was by then beside her fallen brother, jumping wildly and shouting that Ramon Salipdan and Rafael Maglente had shot Antonio. Beside her sister-in-law were neighbors Yolito Porio and a certain Epifania.

Antonio Abergas left behind a pregnant wife and three children aged 12, 7 and 4 years.

The autopsy showed that the victim had sustained three gunshot wounds - the first at the back, the second below the distal mammary portion of the clavicle along the lateral line, anterior right, and the third below the mammary gland along the mammary line at the level of the sixth rib. The presence of powder burns revealed all three to be bullet entrance wounds. Subsequent exhumation disclosed that the bullet trajectory had fractured the fourth, fifth, and sixth ribs. A hack wound at the neck extended from the left lateral to the right side of the neck, cutting the esophagus, the trachea, and the blood vessels. Recovered from the chest cavity was a lead bullet with markings "AA" on its base.

According to SPO1 Wenefredo Nalam Jumandron and SPO2 Antero Bigay of the Sta. Catalina Police Station, Ramon Salipdan, accompanied by a certain Jose Lacpao, surrendered immediately after the incident. On the same occasion, Salipdan also relinquished to police custody the two weapons - a homemade pistolized shotgun and a long bolo. Salipdan claimed that he had come into possession of the gun while trying to wrest it from the victim in self-defense.

On 27 March 1995, an information was filed against Ramon Salipdan and Rafael Maglente charging them with the killing of Antonio Abergas; it read:

"That on November 9, 1994, at about 9:00 o'clock in the morning, at Sitio Malbog, Barangay Nagbalaye, Sta. Catalina, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, conspiring and confederating with each other, with intent to kill and with treachery, did then and there willfully, unlawfully, and feloniously ATTACK and ASSAULT one Antonio Abergas with a handgun and a bladed weapon, with which accused Ramon Salipdan and Rafael Maglente were respectively armed and provided, thus inflicting upon said Antonio Abergas various injuries and thereby causing his immediate death, to the damage and prejudice of his heirs."^[1]

At the trial, following the arraignment, the account given to the court *a quo* by the lone eyewitness, Leticia Depillo, was clear and unwavering -

"Q Now, at this point in time kindly tell this Court if you know of any untoward incident that occurred?

"A While Antonio Abergas was watering the plants, Ramon Salipdan and Rafael Maglente were walking towards him.

"Q When you first saw Ramon Salipdan and Rafael Maglente walking towards Antonio Abergas, how far were they from Antonio Abergas?

"A More or less three fathoms away from Antonio Abergas.

"Q How far was Rafael Maglente from Ramon Salipdan when you first

saw them?

"A They were near each other. They were walking one after the other.

"Q Who was ahead of whom?

"A Ramon Salipdan.

"Q So, what happened next?

"A When he got near to Antonio, Ramon Salipdan pulled out a caliber .38 from his waist and shot Antonio.

"Q How far was Ramon Salipdan from Antonio Abergas when Salipdan shot Abergas?

"A From where I am sitting to that chair.

(witness indicating a distance of about 1 1/2 fathoms)

"COURT

The law says that you should use metric. You use meters, not fathoms.

"FISCAL ROCAMORA:

Two (2) meters, your Honor.

"Q Now, where was Antonio Abergas facing at that time that he was shot by Ramon Salipdan?

"WITNESS:

"A His back was facing our house.

"Q In relation to Ramon Salipdan, where was he facing?

"A His back was facing Ramon Salipdan when Salipdan shot Antonio.

"Q How many times did Ramon Salipdan shoot Antonio Abergas?

"A At the first shot, he was hit at the back (witness touching his right clavicular area), the second and the third shots, I do not know because he already fell down.

"Q Are you trying to impress upon this Honorable Court that Antonio Abergas was shot for the second and the third time while he was already lying down?

"A At the first shot, he was hit at the back and the third shot, he fell down already.

"Q At the time when he was first shot, was he standing up or sitting down?

"A He was sitting down.

"Q At the time that he was shot for the second time where was he facing?

"A At the second shot he turned a little bit to the right because he was already hit here (witness demonstrating by turning her body a little to the right and at the same time touching the base of her neck).

"Q In relation to Ramon Salipdan, where was Antonio Abergas facing when he was shot for the second time?

"A He was facing sideways towards Salipdan.

"Q Now, which side was near Ramon Salipdan, left or right?

"A The right.

"Q So, what was your reaction when you saw this incident?

"A I shouted.

"Q And what did Ramon Salipdan and Rafael Maglente do?

"A After the falling down, Ramon Salipdan was holding the feet while Rafael Maglente was holding the two hands and the head.

"Q And what did they do?

"A They carried him towards the big rake and placed him on top of the big rake.

"FISCAL ROCAMORA:

May we just request, your Honor, that the term, `suyod', be placed on record in quotation marks.

"Q How far was this big rake or `suyod' from the place where Antonio Abergas first fell when he was shot?

"WITNESS:

"A More or less fifteen (15) meters.

"Q And you said that they placed him on this `suyod' or large rake and what did they do after that?

"A They took the bolo from the waist of my older brother and he struck it at the neck of Antonio.

"FISCAL ROCAMORA:

May we just request that the word `wiktan' be placed on record in quotation marks, your Honor.

"Q While Ramon Salipdan was doing this, taking the bolo from the waist of your brother and striking your brother at the neck with it, what was Rafael Maglente doing?

"A The left hand of Rafael was holding the two hands of Antonio while the right hand was holding the head.

"Q Now, where was Ramon Salipdan when he struck Antonio Abergas with the bolo in relation to Antonio Abergas, his left or right?

"A The right side.

"Q So, how did he strike or hit Antonio Abergas with the bolo?

"A He took the bolo and he struck it on the neck.

(witness demonstrating, using her right arm, making a striking movement swinging it from left to right)

"Q Now, how about at the time that Ramon Salipdan shot Antonio Abergas three times, what was Rafael Maglente doing?

"A He was behind Ramon Salipdan.

"Q So, what did you do after you saw this act of Ramon Salipdan in striking your brother with the bolo?

"A I shouted and said, `What are you doing to Tito Antonio?'

"Q And what did Ramon Salipdan and Rafael Maglente do after that?

"A They ran away.

"Q And how about you, what did you do?

"A I just shouted and asked for help from my neighbors because they ran away."^[2]

On 09 May 1998, the Regional Trial Court, Branch 37, of Dumaguete City, rejected the version given by the defense and found both Ramon Salipdan and Rafael Maglente guilty beyond reasonable doubt of the crime of murder. The trial court held: