

EN BANC

[G.R. No. 131813, September 29, 2000]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO
ABENDAN, ACCUSED-APPELLANT.**

DECISION

YNARES-SANTIAGO, J.:

Before us on automatic review is the Decision of the Regional Trial Court of Cebu City, Branch 7, convicting accused Mario Abendan in Criminal Case No. CBU-38277 of the crime of murder and sentencing him to suffer the ultimate penalty of death. He was also ordered to indemnify the heirs of the deceased victim in the amount of Fifty Thousand (P50,000.00) Pesos and to pay the costs.

Mario Abendan was charged with the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, in relation to Republic Act No. 7659, in an Information which reads:

That on the 3rd day of November 1994, at around 6:20 in the evening, more or less, at Barangay Candulawan, Municipality of Talisay, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, by means of treachery and evident premeditation did then and there willfully, unlawfully and feloniously shoot Rizalde Obsiquias with the use of a hand gun of unknown caliber, thereby inflicting mortal wound on the head which caused his instantaneous death immediately thereafter.^[1]

When arraigned, accused Abendan pleaded "not guilty" to the crime charged. Thereafter, trial on the merits ensued.

The prosecution presented as principal eyewitness, Estefa Obsiquias, stepmother of the victim Rizalde Obsiquias, whose testimony was corroborated by her daughter, Lourdes Labajo. Their testimonies were compendiously summarized by the trial court as follows:

On November 3, 1994 at 6:20 in the evening, while she was in the kitchen preparing to cook a vegetable dinner, accused Mario Abendan, who according to Estefa in her testimony is a known killer in their place, suddenly barged into her house and pointed his firearm at her stepson Rizalde Obsiquias, Lourdes Labajo and Rosalie Padigos, who were in the sala singing together in a sing-along and having fun. Accused was looking for Alberto "Aga" Gabato, husband of her eldest daughter Estefaniza and "the son of Victorio Gabato whom he (accused) shot first" (or killed previously).

Upon seeing her in the kitchen situated less than an arm's length away

from the sala accused approached her and aimed his firearm at her. Because of fear, she was not able to do anything but just bowed her head. Mario Abendan then left her and went upstairs to further look for Alberto Gabato. Unable to find the latter, Mario went down and confronted Rizalde Obsiquias who was just sitting on the sofa and who told accused: "**Boss, we are not involved. Gabato is not around.**" Mario Abendan then pointed his gun at Rizalde and asked him about the whereabouts of Alberto, and when Rizalde was unable to answer, the accused told him: "**Ah, you are a cousin of Gabato.**" And thereupon shot Rizalde Obsiquias three (3) times hitting the latter in the left jaw and right side of the forehead causing his instantaneous death.

After the shooting, accused left the house and Estefa Obsiquias was not able to do anything because she was shocked by what she saw. Witness further testified that her stepson Rizalde and/or any member of their family had no previous quarrel or misunderstanding with the accused. She asserted that the victim was killed simply because of his relationship to Alberto Gabato (cousin) whom accused was intent on finding and killing that day. She executed an Affidavit in connection with this case to the above effect.

The testimony of Estefa Obsiquias was substantially corroborated by her daughter, Lourdes Labajo, who testified that when accused Mario Abendan, whom she knew since she was 8 years old being their neighbor, went upstairs to look for Alberto Gabato, she immediately ran outside together with her cousin Sally Padigos to the house of her cousin Julia Padigos situated about three (3) arms length away from the Obsiquias house - leaving Rizalde Obsiquias behind. A few minutes after reaching the house of her cousin Julia Padigos, Lourdes heard a burst of gunfire.^[2]

Lourdes Labajo further testified that she heard her mother calling for her as accused Abandon was leaving their house. Once inside their house, Labajo saw the lifeless Rizalde Obsiquias. She recalled her mother saying that the victim was killed by the accused Mario Abendan. When asked if she knew of any previous misunderstanding between the victim and accused Abendan, Lourdes Labajo testified in the negative. All she knew was that accused Abendan was looking for Alberto Gabato, who was a cousin of the victim.^[3]

The other witness for the prosecution was Dr. Nestor Sator, the Medico-Legal Officer of the PNP Crime Laboratory for Region 7. He testified that when he examined the slain victim the day after the shooting incident, it was already in a state of post-mortem rigidity. He further testified that the victim's instantaneous death was caused by either or both of two (2) fatal gunshot wounds: one entering through the right cheek, the other at the victim's neck. Describing the relative entry and exit wounds, Dr. Sator concluded that the first shot was fired frontally by the assailant, while the second shot was fired more to the rear of the victim.^[4]

On the civil aspect of the criminal case, Vicente Obsiquias, father of the victim, testified that his son's untimely death caused him to suffer moral damages, and the funeral expenses the family incurred amounted to Fifty Thousand (P50,000.00) Pesos.^[5] He also stated for the record that the victim, Rizalde, was the seventh of

his nine children. The accused was well-known to him as they had been neighbors for seven (7) years.

The evidence for the defense of accused Abendan consisted mainly of his own testimony and that of a neighbor, Letecia Amancia. The trial court summarized the facts as follows:

x x x Accused Mario Abendan, 30 years old, a rattan worker and a resident of Candulawan, Talisay, Cebu testified that he transferred to Sitio Calachuchi, Consolacion, Cebu sometime in August 1993. On November 3, 1994 at 4:00 o'clock in the afternoon, he was in the house of his neighbor Letecia Amancia, together with his common-law wife, Rosemarie Loon, in order to watch betamax tapes. They went home at around 9:30 in the evening.

On the following day, he was awakened by the news of Letecia Amancia that Rizalde Obsiquias was shot the previous night in Candulawan, Talisay, Cebu and that he (accused) was the suspect. Although he was surprised by what he heard, it did not occur to him to surrender to the local police to clear his name for fear of his life as he was allegedly being hunted by the vigilantes or "Tadtad" but he intended to give up to the authorities in Manila. Accused maintained that the vigilantes were after him because he was a witness to the shooting of his uncle, Santos Llamados, and the latter's son, Ricardo, sometime in January 1987 by Gualberto Gabato, a vigilante who suspected the victims as members of the New People's Army (NPA). Because of the threats on his life, he fled to Manila and came back to Cebu in 1993 or five (5) years after and he was surprised to learn about various killings which happened in Talisay, Cebu, wherein he was tagged as a suspect.

In June of that same year, he wrote to President Ramos to explain his side about those killings which were attributed to him. The Office of the Presidential Consultant for Legal Affairs responded but he was not able to get hold of the latter because he no longer returned to his previous address as he was already being hunted.

He did not deny that he knows the Obsiquias but belied the testimonies of the prosecution witnesses that he was responsible for the death of Rizalde Obsiquias.^[6]

x x x

x x x

x x x

To strengthen his defense, accused presented Letecia Amancia, his neighbor in Sitio Calachuchi, Consolacion, Cebu, who testified that Mario Abendan was with her on the night of the incident in question. She likewise stated that when she informed the accused that he was named as a suspect in the death of Rizalde Obsiquias, the latter merely told her that he was already used to such news. And although she knew the police were looking for Mario Abendan, she did not bother to tell the police his whereabouts because she did not want to get involved. But she advised Abendan to go to the police to clear his name.^[7]

Upon questioning by the judge himself, Letecia Amancia averred that she was certain of the accused's innocence since they were together on the night and at the time the shooting incident occurred. And yet, she did not feel compelled to go to the police to inform them of such fact, even though she had heard from radio news reports that the accused was the person tagged as the assailant. She never even bothered to inform any person in authority that she knew of the accused's whereabouts that fateful night since she did not want to get involved. All she could get herself to do was advise the accused to go to the police. In fact, it was only three (3) years after the fatal incident that she came forward to testify on his behalf.^[8]

On cross-examination, accused Abendan admitted that he was facing four (4) separate cases for murder in different salas of the RTC of Cebu City.^[9]

On October 14, 1997, the trial court convicted accused Abendan, finding him guilty beyond reasonable doubt of the crime of murder qualified by treachery and imposing on him the supreme penalty of death. The trial court ruled that the prosecution's credible evidence consisting of the witnesses' positive identification far outweighed the alibi of the accused. The court *a quo* further directed the accused to indemnify the heirs of victim Rizalde Obsiquias in the amount of P50,000.00 and to pay the costs.

The accused-appellant argues that his conviction was erroneous as his guilt was not proved beyond reasonable doubt, insisting that the trial court dismally failed to give any weight and credence to his truthful testimony. The cornerstone of his argument is our ruling in the case of *People v. Pidia*, wherein we held that "the constitutional presumption of innocence guaranteed to every individual is of primary importance, and courts should not precipitately conclude that a person is guilty when his alibi appears weak."^[10] He further contended that the trial court overthrew the constitutional presumption of innocence because of patent prejudice which put the fairness of the trial court's judgment in question.

In particular, the accused-appellant stressed that his defense of alibi should have been given weight and credence for he was able to establish that he was nowhere near the scene of the crime when it happened. Moreover, his alibi was corroborated by his neighbor, Letecia Amancia, whose testimony however was discredited by the trial court as a mere fabrication.

Finally, the accused-appellant assailed the trial court's conclusion that the killing was attended by treachery and premeditation, arguing that the prosecution failed to establish the presence thereof. Consequently, he should not have been convicted of the crime of murder for the circumstances that qualify the killing to murder must be proven as indubitably as the killing itself.

A thorough review of the records of this case as well as the arguments raised in this appeal led us to the inevitable conclusion that the accused-appellant is, indeed, guilty beyond reasonable doubt of the crime of murder.

Consequently, the court *a quo* did not err in convicting him and in meting out the ultimate penalty of death.

It need not be elucidated that his defense of alibi, little more than an empty denial, is inherently weak and obviously fabricated.^[11] He sought to establish his alibi by mere say-so that he was at some other place when the crime was committed; and yet he was not able to prove that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. This falls short of the cardinal rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the place and at the time that the crime took place.^[12]

On cross-examination, the accused-appellant could not deny that there was easy access to transportation plying to and from Barangay Candulawan in Talisay town, the site of the crime, and Barangay Calachuchi in Consolacion town, where the accused-appellant allegedly was watching betamax tapes. Court records on the matter state:

Q Mr. Abendan, you are a resident of Barangay Candulawan, Talisay, Cebu?

A Yes, sir.

Q Do you agree with me that Barangay Candulawan, Talisay, Cebu is near Cebu City?

A Yes, sir.

Q And in fact, will you agree with me also that the next town of Cebu City - from Cebu City is Talisay?

A Yes, sir.

Q And do you agree with me also that there are several transportations if you want to go to Talisay from Cebu City at any time of the day and night?

A Yes, sir.

Q And also you will agree with me that in going to the north next to Cebu City is Mandaue City?

A Yes, sir.

Q And next to Mandaue City is Consolacion, Cebu?

A Yes, sir.

Q And there are several transportations by and between Consolacion, Cebu to Cebu City at any time of the day and night?

A Yes, sir.^[13]

It is clear that the proximity of the two municipalities and the easy availability of transport any time of the day or night negates any protestations of the accused-appellant that he could not have perpetrated the crime because he was at some other place. Having failed to prove that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity, his defense of alibi is worthless.^[14]

Even the testimony of Letecia Amancia, his corroborating witness, is highly suspect. It is obviously fabricated by one who is not sincere and forthright. If she was certain of his innocence, it cannot be explained why it took her three (3) years before she