

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS.
DIONISIO ENTIENZA, TEODULO ABRIGANA AND AGAPITO
ENTIENZA, ACCUSED. TEODULO ABRIGANA, ACCUSED AND
APPELLANT.**

G.R. NO. L-29215. March 27, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

This is an appeal of defendant Teodulo Abrigana (Abregana) from the decision of the Court of First Instance of Cebu, finding him guilty of murder, sentencing him to reclusion perpetua and ordering him to indemnify the heirs of Julian Entoma in the sum of six thousand pesos.

Dionisio Entienza and Agapito Entienza, who, in the same case, were convicted as principal and accomplice, respectively, in the murder of Celso Entoma, did not appeal. (Criminal Case No. V-10539).

From the disjointed accounts of the witnesses and the documents in the record, the following facts may be pieced together:

There was a fiesta in Barrio Bulak, Dalaguete, Cebu, on May 15, 1965. The climax of the festivities was the celebration in the evening at the barrio's dancing place which was near the chapel. Among those who attended the affair were appellant Abrigana, alias Lolong, twenty-three years old, who supplied the radio-phonograph, and the brothers Dionisio Entienza and Agapito Entienza, twenty and twenty-two years old, respectively. Agapito was in charge of operating the phonograph. The three hailed from Barrio Cangwaling.

Julian Entoma of Barrio Panas also attended the celebration. He was accompanied by his fifteen-year old daughter, Alice; her friend Gil Zambrano, an eighteen-year old high school student; his twenty-four year old son Celso, and the latter's wife Paulina Quitara. Julian delivered a short speech on that occasion.

At about eleven o'clock in the evening, for reasons not shown in the record, a misunderstanding arose outside the dancing place between Julian Entoma and Celso Entoma, on one hand, and Abrigana and Dionisio Entienza on the other. Dionisio said that Julian Entoma beat Abrigana with a cane. Patrolman Pacifico Paz, who was assigned to maintain order in the barrio in connection with the fiesta, declared that Julian Entoma complained to him that Abrigana (Lolong) had cocked and pointed his unlicensed pistol at Julian Entoma, Celso Entoma and Francisco Tangpos. Paz went to the chapel, accosted Abrigana and wanted to demand an explanation from him, but the latter fled. Paz chased him but was unable to apprehend him.

In the meanwhile, at around eleven-thirty, Julian Entoma had decided to go home. It was a moonlit night. The bright moon bathed the countryside with its shimmering light. Julian Entoma and the members of his group were walking side by side. As they neared the chapel, which was about twenty-five brazas from the dancing place, Dionisio Entienza appeared from nowhere and suddenly and unceremoniously stabbed Celso Entoma in the back with a small bolo known as palamingko (Exh. E). Celso, who was holding hands with his wife, loosened his grip

on her hand and cried: "I am wounded, father". He placed his hand on his wound. He was pushed to the ground by Agapito Entienza. His wife raised him with both hands and cuddled him on her breast. He expired in her arms.

Before Julian Entoma could render succor to his wounded son, he (Julian) was himself stabbed from behind by Abridana. Julian shouted: "I am hit at the back". He sat beside his daughter-in-law and asked that the police be summoned. He was vomiting blood. Alice Entoma cried for help. Patrolman Paz, Francisco Tangpos, Pedro Ibanez and others rushed to the scene of the ambush. Paz conducted an investigation.

Julian Entoma was brought to the house of a man named Tiquio, where he manifested that he wanted to make a dying declaration. Patrolman Paz took Julian's antemortem statement. He wrote it with a ball pen on a piece of grade-school paper. It is in the Cebuano dialect signed by Julian Entoma and attested by Paz. The English translation reads (Exh. C, C-1):

"Q. What is your name? — A. Julian Entoma.

Q. What happened to you? — A. I was stabbed.

Q. Who stabbed you? — A. I was stabbed by Lolong Abridana and son of Poloy Entienza, two persons Potoy and Junior, one companion; there are four of them.

Q. In your belief will you not die of your wound? — A. I will not die, if I will be treated."

From Tiquio's house, the mortally wounded victim was brought to Barrio Cawayanan and then to the Southern Islands Hospital where he died shortly after admission at eight-quarter the following morning. He was forty-seven years old.

Doctor Fermin Ano certified that Julian Entoma sustained a stab wound in the back, penetrating the eleventh thoracic vertebra "transecting the rib", penetrating the right kidney through and through, perforating the root of the gall bladder through and through, lacerating the inferior vena cava and penetrating the root of the liver (Exh. B). Death was due to "acute, massive loss of blood".

In this appeal appellant Abridana assails the credibility of the prosecution witnesses and insists on his alibi. He characterizes their testimonies as "purely concoctions of the truth".

His version is that at about eleven o'clock on the night of the killing, he was at the door of the chapel, which was a few meters from the scene of the crime. He heard the whistle of Patrolman Paz. At the same time, Francisco Tangpos pointed to him and said: "Long (his nickname), we are looking for you".

Upon hearing that statement, he ran eastward. He had in his possession an unlicensed revolver. Paz fired his service revolver. Abridana did not stop. It was while he was being chased by Paz that Julian Entoma was stabbed in the back. He had nothing to do with the stabbing. (p. 2, appellant's brief).

Appellant Abridana admits that he was near the scene of the crime at the time that it was perpetrated. His alibi cannot be given credence. In order that an alibi may generate belief, the accused must show that he was at some other place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission (People vs. Lumantas, L-28355, July 17, 1969, 28 SCRA 746; People vs. Resayaga, L-23234, December 26, 1973).

Although, according to Abridana's version, he left the chapel at around eleven o'clock because he was being chased by Patrolman Paz, he could have easily repaired at around eleven-thirty to the scene of the stabbing which was near the chapel. As rationalized by Judge Guillermo P. Villamor, Abridana must have returned and surprised his victim near the chapel and then ran away.

On the other hand, the prosecution eyewitnesses, Gil Zambrano, Alicia Entoma and Paulina Quitara, were well-acquainted with Abrigana even before the stabbing. He was a resident of Barrio Cangwaling, which adjoins Barrio Bulak, where the crime was committed, and Barrio Panas where the victim Julian Entoma resided. He was unequivocally identified by those prosecution witnesses and by Julian Entoma himself in his dying declaration (Exh. C). He was wearing a red T-shirt with two white stripes in front and black pants at the time of the incident.

The admission of Dionisio Entienza during the trial that he killed Julian Entoma in self-defense cannot exculpate appellant Abrigana. Dionisio's belated assumption of responsibility for the death of Julian Entoma was not given credence by the trial court. It appears to be a fabrication, considering that he did not appeal from the judgment which discredited his theory of self-defense.

Moreover, in his sworn statement of May 17, 1965 or two days after the incident, he pointed to Abrigana as the assassin of Julian Entoma. Their agreement was that Dionisio would stab Celso and Abrigana would stab Julian (Nos. 17 and 28, Exh. D, D-1).

The Court is convinced that Abrigana's culpability for the death of Julian Entoma was established beyond reasonable doubt.

As rightly ruled by the trial court, the killing of Julian Entoma was attended with treachery (alevosia). Appellant Abrigana deliberately and unexpectedly stabbed Entoma in the back, thus insuring the consummation of the killing without any risk to himself. The victim was unable to make any defense. (Par. 16, Art. 14, Revised Penal Code). Nocturnity is merged with treachery. Premeditation, one of the aggravating circumstances alleged in the information, was not proven.

There being no generic mitigating and aggravating circumstances, the penalty of reclusion perpetua imposed by the trial court on appellant Abrigana is in accordance with law (Arts. 64[1] and 248, Revised Penal Code).

WHEREFORE, the judgment of the trial court is affirmed with the modification that the indemnity of six thousand pesos, payable to the heirs of Julian Entoma, should be raised to twelve thousand pesos. Costs against the appellant.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, Antonio, and Fernandez, JJ., concur.

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