

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
TEODORO ABLOG, DEFENDANT AND APPELLANT.***G. R. No. L-15310. October 31, 1962*

Ponente: MAKALINTAL, J.

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Upon information filed on July 8, 1958, the Court of First Instance of Ilocos Sur, after trial, found Santos Ablog and Teodoro Ablog guilty as principal and as accomplice, respectively, in the crime of murder, qualified by treachery. After considering the aggravating circumstance of dwelling and the mitigating circumstance of voluntary surrender the court sentenced Santos to suffer the penalty of reclusion perpetua, with the accessory penalties provided by law, to indemnify the heirs of the deceased in the sum of P4,000.00 and to pay one half of the costs; and Teodoro to suffer an indeterminate penalty ranging from 4 years, 2 months and 1 day of prison correctional to 12 years and 1 day of reclusion temporal, with the accessory penalties provided by law, to indemnify the heirs of the deceased in the sum of P2,000.00 and to pay one half of the costs, each to be subsidiarily liable for the other's quota of the indemnity. From that judgment both accused appealed, but Santos Ablog later withdrew his appeal.

At about 8:00 o'clock on the night of June 13, 1958 the Abiganias were in their house in Mindoro, Vigan, Ilocos Sur. The house, made of light materials, was still in the process of construction. There were no walls on the west and south sides and the floor, made of bamboo slats 1 to 1 1/2 centimeters apart, was about 4 feet and 10 inches from the ground. The lower part of the house had no enclosure. There was one main room with four windows, two on the northern side and two on the eastern side. Luis Abigania, his sisters Corazon and Rosita and their mother Faustina Rabe were asleep in that room, while Eugenio Abigania and his son Cornelio were still awake. Light was supplied by two small kerosene lamps. All of a sudden three shots rang out from below, at one second intervals, killing Luis Abigania even as he lay asleep.

The following morning Dr. Francisco Vilorio, health officer of Vigan, examined the victim and found three bullet wounds on his back, two of which were 1 inch apart and the third about 1 1/2 centimeters from the one nearest to it. The slugs followed an upward trajectory, passing clear through the body and coming out in front. All the wounds were fatal, but the doctor could not express an opinion on whether or not they were caused by only one firearm.

Captain Crispin B. Garcia, Chief of the Criminal Laboratory Branch, CIS, Philippine Constabulary, after making a laboratory examination of paraffin casts taken of the hands of Santos and Teodoro, found them negative for gunpowder residue. He admitted, however, that the indication was not conclusive, as the appearance of gunpowder residue may be avoided by the use of gloves while firing a gun or by the subsequent washing of hands with hot water, salt or sea water, or with vinegar.

The witnesses presented by the prosecution who identified the brothers Santos and Teodoro Ablog as the assailants were Cornelio and Eugenio Abigania, both of whom had known the accused since the latter were

children. Cornelio testified that he was weaving a fishing net when he heard a shot very close to him; that he immediately picked up his flashlight, beamed it downward under the house, and saw Santos and Teodoro with their guns trained at Luis. Santos was in a semi-squatting position, the heel of his right foot raised and the right part of his buttock resting on it. He was holding a long gun with both hands the left being about 45 degrees higher than the right. Teodoro's position, the witness said, was similar to that of Santos. Cornelio further testified that after the shooting the accused left immediately, taking a northerly course. He then went down and ran to the barrio lieutenant's house about 400 meters away, and was also fired upon but was able to reach his destination unhurt. The barrio lieutenant accompanied him to the municipal building, where he signed a sworn statement before the chief of police.

Eugenio Abigania, the father of Cornelio and of the deceased Luis, testified that he was lying on the floor after reading the "Banawag", a publication in the dialect; that he heard a gun report and asked Cornelio what was happening; that after he heard two other shots he peeped out of the window and saw Santos and Teodoro Ablog coming out from under the house, each of them holding a long gun and that sometime after Cornelio left he himself went to the municipal building and there executed an affidavit. The motive for the crime committed by the Ablog brothers, he said, was that on December 26, 1957 his other son Domingo was killed, by reason of which Santos Ablog was accused of homicide (Criminal Case No. 3142, CFI of Ilocos Sur); that three or five days before June 13, 1958 Emileno Ablog, a relative of Santos, was twice sent by the latter to his house to propose an amicable settlement of the criminal case, but that each time Luis objected, saying that a man's life could not be bought and that he wanted justice to take its course. In connection with that case it appears that on July 9, 1958, Santos withdrew his previous plea of not guilty and entered one of guilty, and was accordingly sentenced by the court.

The defense set up by both accused is alibi. Their testimonies, corroborated by their mother Marciana Retuerne, Catalino Fernando and Cristeto Azores, are as follows: On the morning of June 13, 1958 appellant was cutting grass in the premises of the Provincial Governor's residence some 500 meters from the Abigania's house, while Santos was also inside the compound working in a fishpond. After lunch and a short nap the Ablog brothers continued with their respective tasks until about 5:00 o'clock in the afternoon. At about 7:00 o'clock that evening appellant and several others had supper in one of the houses inside the compound. While they were eating Cristeto Azores arrived, later followed by Santos, who upon being invited to eat replied that he already had his supper. Santos Ablog said he was sleepy and, together with Azores, went to another house of the Governor inside the compound. Catalino Fernando and appellant went to sleep in a guardhouse. While sleeping they were awakened by three gun reports. They went out to make inquiries from one of the guards, who told them to go back to sleep because the shots were outside the compound. Because they were scared, Fernando and appellant joined Santos and Azores and after telling them what they had heard, slept in one of the rooms of the house. A little later appellant's mother, whose husband was overseer of the Governor's premises, came to check on her sons and, assured of their presence, returned to her house which was also within the compound, some 30 to 40 meters from the Governor's residence. About half an hour later a jeepload of peace officers arrived, some of whom called for the Ablog brothers and told them, after the officers had identified themselves, that they were suspects in the killing of Luis Abigania. They were not, however, arrested after they denied the charge and signed written promises that they would not leave the compound. In the meantime their parents had followed the jeep to the residence of the Governor and pleaded with the soldiers not to take their sons because they were asleep at the time of the shooting. After a while the soldiers came back and told the two brothers to go with them to the PC headquarters upon orders of the commanding officer.

The defense of alibi cannot prevail over the positive identification of the two assailants. Appellant's claim that he had to stay that night at the Governor's residence so he could open the gate when the Governor arrived is

unbelievable, considering that several guards were present inside the compound; so much so that when the officers' jeep came it was not he but a guard who allowed the vehicle to pass. Likewise difficult to believe is appellant's statement that with the presence of a number of armed guards he and his companion, Catalino Fernando, himself a provincial guard, would be so scared after hearing the shots outside the compound as to transfer to another house and sleep with Santos Ablog and Cristeto Azores. The facts that appellant, as well as his brother Santos, were found within the Governor's compound after the shooting; that they were there to spend the night although their own house was only about 40 or 50 meters away; that when their names were called by the constabulary soldiers they did not answer immediately, and did so only after the soldiers had identified themselves; that their mother, after hearing the shots, went to the place where her sons were supposed to be sleeping; and that she and her husband later on followed the constabulary soldiers inside the Governor's compound, are all indicative of a consciousness of guilt rather than of innocence.

We have scrutinized the testimonies of Cornelio and Eugenio Abigania in search for possible motive on their part to wrongly implicate appellant. We have found none. To be sure, appellant is the brother of Santos Ablog, who pleaded guilty on July 9, 1958 to the killing of Domingo Abigania. But the very fact that appellant was in no way connected with that case and that Santos Ablog had already owned his guilt therein when the instant case was being tried would, if anything, rule out such improper motive on the part of the Abiganias.

Immediately after his brother was shot Cornelio executed a sworn statement identifying Santos and appellant as the persons he saw when he peeped thru the window. On the witness stand he said that after hearing the first shot he saw them under the house when he beamed his flashlight downward, and after two other shots were fired he peeped out of the window and again saw Santos and appellant running away. Eugenio Abigania said in his sworn statement that Cornelio jumped thru the window after the shots were fired, but declared in court that Cornelio went down by the stairway. And while he said that he was lying down when he heard the shots, Cornelio was positive that his father was reading at that time. These discrepancies are pointed out by the defense in assailing the credibility of the said witnesses. They relate, however, to minor details as to which their perception and recollection might differ, especially considering the shock, excitement and haste under which they were laboring when they executed their sworn statements on the very night of the occurrence.

The presence of Santos and appellant at the scene and time of the commission of the crime is sufficiently proven. Cornelio's testimony that he saw them, each holding a gun, run away from the house immediately after the shooting, is corroborated by Eugenio. However, Cornelio's declaration that both Santos and appellant fired at the deceased stands alone and unsupported, and the possibility that he may have erred on this point is strong. While he was able to describe Santos' position in minute detail in the act of shooting, he simply said, when questioned as to appellant's position, that it was the same as that of Santos. Whether or not the three bullets were fired from one gun alone is not definitely known, but as reasoned out by the trial court, considering that the wounds were very close together and that all the three shots were fired in succession from a carbine, it is hard to believe that the shots had come from two firearms. Moreover, while Santos had a motive in killing Luis Abigania and in fact has impliedly admitted his guilt by withdrawing his appeal, the same motive cannot be fairly attributed to appellant.

On the other hand, appellant's presence at the Abiganias' premises when the crime was committed could not be for an innocent purpose, armed as he was and in the company of the assailant. These circumstances show his knowledge of the criminal intent of his brother Santos. But since no conspiracy has been shown to exist and since his acts do not clearly appear to be either directly or absolutely necessary for the commission of the offense, or that they constituted an inducement thereof, and considering the principle that when doubt exists as to whether a person acted as principal or accomplice the court should favor the milder liability, the judgment finding appellant guilty only as an accomplice should be upheld. *People vs. Ubina, et al.* 97 Phil., 515.

The proper penalty to be imposed on appellant is from six (6) years and one (1) day of prision mayor to twelve (12) years and one (1) day of reclusion temporal People vs. Escarro, 89 Phil., 520.

Wherefore, with the modification above indicated, the judgment appealed from is affirmed, with one half of the costs against appellant.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon and Regala, JJ., concur.

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