

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

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

Ponente: YNARES-SANTIAGO, J.

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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 3[rd] 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 Llamedos, 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

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 volunteered the information that she and the accused-appellant were together at the time the crime was committed. It appears that her story was concocted as a mere afterthought to help the accused-appellant evade liability in this instance. In fact, this is not the first time that she testified as a corroborating witness for the accused-appellant.

The records show that in another double murder case where the accused-appellant was a co-defendant, she supported his alibi that on the night of the fatal shooting, the accused-appellant was at her house indulging in a drinking spree with her husband, a neighbor and a friend. She further testified that the accused-appellant went to sleep thereafter and never left her house that fateful night. She also stated that she only learned the following morning that the accused-appellant was one of the suspects from radio news reports. She likewise did not bother to inform the police authorities of the accused-appellant's whereabouts to prove his innocence.[15]

We note that while she carried her married name, Letecia Luga, in the double murder case, she used her maiden name Letecia Amancia, in the instant case. It is obviously a ploy to mislead the trial court into concluding that different persons are testifying for the accused-appellant, when in fact she seems to be the favorite corroborating witness of the accused-appellant. Her testimonies in the two separate cases are too alike and too scripted to be credible. It cannot pass the strictest scrutiny for it is patently bereft of veracity and necessarily suspect, and thus cannot prevail over the testimonies of the more credible witnesses for the prosecution.[16]

It is a cardinal rule that the defense of alibi cannot overcome the positive identification of the accused by an eyewitness.[17] Eyewitness Estefa Obsiquias, the stepmother of the victim, positively and categorically identified the accused-appellant in no uncertain terms. She was present when the accused-appellant barged into their home brandishing his gun; she cowered in fear when the accused-appellant aimed his gun at her; she watched helplessly

as the victim pleaded that his life be spared; and she witnessed in shock as the accused-appellant mercilessly gunned down the victim at close range.

Her testimony left no room for doubt as to the identity of the perpetrator and how he committed his dastardly deed. She was forthright and candid in answering the questions propounded to her, to wit:

Q.

Do you recall whether Mario Abendan said something prior to the aiming of firearm or after the aiming of the firearm?

A.

Yes, sir.

Q.

What did Mario Abendan say if any?

A.

Mario Abendan said, "Where is Aga Gabato?"

Q.

Who is this Aga Gabato?

A.

Aga Gabato is the son of Victorio Gabato whom he shot first.

Q.

Are you referring to Alberto Gabato?

A.

Yes, sir.

Q.

What was the reply of Rizalde, Lourdes and Sally?

A.

They did not answer because they were shocked.

Q.

After that, what happened next?

A.

Then he approached me pointing his gun.

FISCAL ALBURO:

Q.

What was your reaction when Mario Abendan pointed a firearm at you?

A.

I did not do anything. I just bowed my head.

Q.

Then what happened next?

A.

Then he left me and went upstairs.

Q.

What was the purpose why he went upstairs?

ATTY. MOISES:

Objection, Your Honor, incompetent.

FISCAL ALBURO:

Well, if she knows.

COURT to witness:

Q.

Do you know why he went upstairs?

A.

He was looking for Gabato.

Q.

Then, what happened next?

A.

Then he went back downstairs.

Q.

What happened when he went back downstairs?

A.

Rizalde Obsiquias told him “Boss, we are not involved. Gabato is not around.”

Q.

Then, what happened?

A.

Then Mario Abendan said, “Ahh, you are a cousin of Gabato.”

Q.

After that, what happened?

A.

He shot Rizalde Obsiquias.

Q.

Do you recall whether Rizalde Obsiquias was hit?

A.

Yes, sir.

FISCAL ALBURO:

Q.

What particular part of his body?

A.

Here. (Witness pointing to her left jaw).

Q.

What was the position of Rizalde Obsiquias then at the time he was shot by Mario Abendan?

A.

He was sitting on the chair or sofa.

Q.

After Mario Abendan shot Rizalde Obsiquias, what happened next?

A.

He again fired a shot before he went out.

Q.

How many times?

A.

Three (3) times.

Q.

Do you recall if Rizalde Obsiquias was hit?

A.

Yes, sir.

Q.

In what part of his body?

A.

Here. (Witness pointing to her right forehead and exited to the left neck).

Q.

After Mario Abendan shot Rizalde Obsiquias, where did he go?

A.

He went out from the house.

Q.

What happened to Rizalde Obsiquias?

A.

He died.[18]

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Q.

Do you recall what kind of gun was used by Mario Abendan in shooting Rizalde Obsiquias?

A.

I did not know but it was a short firearm.

Q.

Will you please demonstrate how long or short was it?

A.

Like this. (Witness indicating a length of 11 inches).

Q.

How far was Mario Abendan to Rizalde Obsiquias when he fired shots at Rizalde?

A.

Very near, less than an armlength.[19]

On cross-examination, the eyewitness did not waver in her declaration of the accused-appellant as the perpetrator. Even the judge's probing questions did not faze her:

COURT:

Q.

When the actual shooting happened, did you see the accused shooting the victim?

A.

Yes, sir.

Q.

How far were you from the victim to where you were?

A.

Less than an armlength.

Q.

What part of the house did the shooting happen?

A.

In the sala or receiving room.

Q.

Why were you able to identify that the one who shot was the accused Mario Abendan?

A.

Because we are neighbors.

Q.

How long did you know Mario Abendan?

A.

Quite a long time.

Q.

What kind of weapon was used?

A.

Short firearm and I do not know what kind of firearm but it was short.[20]

Estefa Obsiquias' identification of the accused-appellant as the assailant was corroborated by her daughter, Lourdes Labajo, who testified as follows:

FISCAL N. ALBURO:

While you and your companions were at the sala having a sing-along in the early morning of November 3, 1994, can you recall if there was any unusual incident that happened?

WITNESS L. LABAJO:

Yes, Sir.

FISCAL N. ALBURO:

What was that unusual incident about?

WITNESS L. LABAJO:

Our door suddenly banged opened and Mario Abendan suddenly entered our sala.

FISCAL N. ALBURO:

What particular door of your house?

WITNESS L. LABAJO:

The second door of our house.

FISCAL N. ALBURO:

Now, to whom did Mario Abendan point his gun?

ATTY. YAP:

No basis, Your Honor, there was no testimony. The testimony was that, he just entered the house.

COURT:

Reform the question.

FISCAL N. ALBURO:

When the accused entered the house, what did he do?

WITNESS L. LABAJO:

He pointed his gun to us.

FISCAL N. ALBURO:

What did the accused (sic) in pointing at you?

WITNESS L. LABAJO:

A short firearm.

FISCAL N. ALBURO:

Please describe the short firearm.

WITNESS L. LABAJO:

Just like this. (Witness indicating the length of about 7 inches).

FISCAL N. ALBURO:

What was the purpose of Mario Abendan in pointing at you?

WITNESS L. LABAJO:

(NO ANSWER).

ATTY. M. YAP:

The witness is incompetent, Your Honor, she could not read the mind of the accused.

COURT:

Sustain.

FISCAL N. ALBURO:

Can you recall what the accused said to you?

ATTY. M. YAP:

Objection, Your Honor, that's leading, Your Honor.

COURT:

No, he was asking, what he said, if any?

WITNESS L. LABAJO:

He was looking for Alberto Gabato?

FISCAL N. ALBURO:

Then, what happened next?

WITNESS L. LABAJO:

He went upstairs of our house.

FISCAL N. ALBURO:

How about you, what did you do?

WITNESS L. LABAJO:

My cousin and I ran away.

FISCAL N. ALBURO:

How about Rizalde Obsiquias?

WITNESS L. LABAJO:

Rizalde Obsiquias was left in the sala.

FISCAL N. ALBURO:

You said, you and Sally ran away, where did you go?

WITNESS L. LABAJO:

We went towards our cousin.

FISCAL N. ALBURO:

What is the name of your cousin?

WITNESS L. LABAJO:

Julia Padegos.

FISCAL N. ALBURO:

How far is the house of Julia Padegos to the house of Obsiquias family?

WITNESS L. LABAJO:

About 3 arms length.

FISCAL N. ALBURO:

Upon arrival at the house of Julia Padegos, what did you noticed, if any?

WITNESS L. LABAJO:

I heard a burst of gunfire.

FISCAL N. ALBURO:

How many burst of gunfire did you hear?

WITNESS L. LABAJO:

Three times (3x).

FISCAL N. ALBURO:

Now, after hearing the burst of gunfire, what did you do?

WITNESS L. LABAJO:

I only cried.

FISCAL N. ALBURO:

Then, what happened next?

WITNESS L. LABAJO:

When Mario Abendan went out from our house, my mother called me up to return to our house.

FISCAL N. ALBURO:

What did you see at your house?

WITNESS L. LABAJO:

And I saw that Rizalde was already dead.

FISCAL N. ALBURO:

And do you recall if your mother say something to you?

WITNESS L. LABAJO:

Yes, sir.

FISCAL N. ALBURO:

What did your mother say to you?

WITNESS L. LABAJO:

That he was killed by Mario Abendan.

FISCAL N. ALBURO:

Are you referring to Rizalde Obsiquias?

WITNESS L. LABAJO:

Yes, Sir.[21]

In the face of the prosecution witnesses' categorical and consistent positive identification of the accused-appellant, there being no showing of ill-motive on their part, the accused-appellant's defense of alibi is worthless.[22] Consequently, the trial court did not err in finding him guilty of the crime charged.

The aforequoted testimonies of the prosecution witnesses also support the court a quo's conclusion that the killing of Rizalde Obsiquias was attended by treachery. While at the outset he was not the intended victim of the accused-appellant, the fatal attack on him was so swift and unexpected, and without the slightest provocation on his part, which are the very earmarks of treachery.[23] The accused-appellant barged into the victim's home looking for someone. He had the time and opportunity to reflect on his actions upon realizing that his intended victim was not in the premises. And yet, despite the victim's pleas, he went ahead and shot the victim delivering not only one, but two fatal shots.

The records show that one shot was fired while the victim had his back turned to the accused-appellant, as testified to by the medico-legal expert:

FISCAL ALBURO:

Q.

Dr., with respect to the first gunshot wound, what is the trajectory of the bullet?

A.

In relation to gunshot wound which point of entry is located at the right cheek, the direction of the bullet was going posteriorwards going to the back and making the point of exit here from the right cheek exiting here at the back. (Witness pointing to the upper part of the back of his head).

Q.

How about the other gunshot wound?

A.

In relation to gunshot wound No. 2, the point of entry is located at the neck right side posterior lateral aspect. (Witness pointing at the back of his neck). And it is directed upwards and to the left going to the left face and the slug was recovered here. (Witness pointing to the left cheek near the ear).

FISCAL ALBURO:

Q.

With respect to the first gunshot wound, could you determine Dr., what was the position of the victim when he was shot by the assailant?

A.

With respect to the gunshot wound No. 1, the relative position of the victim is fronting the assailant. While in gunshot wound No. 2 the relative position of the assailant is probably more at the back of the victim.

Q.

Do you know, Dr., what was the distance between the deceased victim and the assailant when he shot the victim?

A.

Considering that there are tattooing at the gunshot wound or point of entry, the distance between the muzzle of the gun from the victim is within 2 feet.[24]

Even if the victim sensed that his life was in danger, that did not diminish the suddenness of the attack of the accused-appellant for treachery may still be appreciated even though the victim is forewarned of danger to his person.[25] Coupled with the victim's obvious helplessness, such that he never had the slightest opportunity to defend himself, the accused-appellant's unprovoked killing of the victim cannot but lead to the conclusion that there was treachery. There is no question that the accused-appellant's conscious intention was to kill, not merely to maim or injure, judging from the manner that he executed the act, aiming at point-blank range at the victim's head and neck. Only a killer without compunction could deliver such deadly shots at such a defenseless and innocent victim.

Under the circumstances, the two conditions before treachery may be considered a qualifying circumstance were present. First, the accused-appellant employed the means, methods or manner of execution to ensure his safety from defensive or retaliatory acts on the part of the victim. Secondly, he deliberately adopted such means, methods, or method of execution.[26] Thus, the trial court correctly qualified the killing to murder as it was committed with treachery. The treacherous manner of attack was sufficiently proven as indubitably as the crime itself.[27]

The trial court not only found the accused-appellant guilty of murder, it proceeded to describe him as "a ruthless, compulsive and wanton murderer" who should be meted the supreme penalty of death so that society may be effectively protected from other "murders that would surely be committed by him in case he manages to again roam freely in our midst." The trial court's declaration stemmed from the fact that while the instant case for murder was being tried, the accused-appellant was also convicted of two other crimes of murder and one for frustrated murder where he was sentenced to suffer two penalties of reclusion perpetua and one for prision correccional to prision mayor, convincing the court a quo that the accused-appellant "is a ruthless and hardened murderer who has no respect for human life."

The accused-appellant posits that the proper penalty that is imposable under the circumstances is reclusion perpetua, not death. The Solicitor General, while agreeing that treachery qualified the killing to murder, conceded

that the penalty of death imposed by the trial court should be reduced to reclusion perpetua considering that there is no other aggravating or mitigating circumstance.

While there could have been other attendant aggravating circumstances, such as dwelling, recidivism, and the use of an unlicensed firearm, the same were not sufficiently established to be appreciated as aggravating circumstances. There was no definite testimony or evidence to prove that the house where the victim was killed was also his dwelling. It cannot just be presumed considering that the said presumption can spell the difference between mere incarceration and death for the accused-appellant.

Likewise, the murder weapon was never presented as evidence as it was not confiscated by the police.[28] There was, therefore, no opportunity to prove that the accused-appellant used an unlicensed firearm, as was the situation in the two other murder cases against him.

The trial court may have been swayed by the prior convictions handed down in the two other murder cases while the instant case was being tried. However, such previous convictions do not make the accused-appellant a recidivist, until and unless said convictions become final. There was no showing that the judgment of the trial court in said cases had indeed become final. Thus, there was no legal basis for the trial court's imposition of the death penalty.

Under Article 248 of the Revised Penal Code, the penalty for murder is reclusion perpetua to death. There being neither ordinary aggravating nor mitigating circumstances, the correct penalty to be imposed should be the lower of the two indivisible penalties.[29] Hence, the trial court erred in imposing the supreme penalty of death.

The trial court also erred in not awarding moral damages to the grieving heirs of the victim, whose life was mercilessly snuffed out by the accused-appellant. The mental anguish and emotional suffering visited upon the victim's family cannot be expiated by monetary awards, but it may in some small measure ease the hardship and trauma of those left especially by one who was so young and full of promise. Thus, moral damages, which covers physical suffering and mental anguish, may be awarded in crimes resulting in physical injuries or in the death of the victim, as in the instant case.[30]

WHEREFORE, the Decision of the Regional Trial Court of Cebu City, Branch 7, finding the accused-appellant guilty beyond reasonable doubt of murder, is **AFFIRMED**, with the **MODIFICATION** that the penalty is reduced from death to reclusion perpetua. The accused-appellant Mario Abendan is also ordered, in addition to indemnifying the heirs of the deceased Rizalde Obsiquias in the amount of Fifty Thousand (P50,000.00) Pesos, to pay said heirs moral damages in the sum of Fifty Thousand (P50,000.00) Pesos. Costs against accused-appellant.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and De Leon, Jr., JJ., concur.

[1] Information dated February 27, 1995, Original Records, pp. 1-2.

[2] Decision of RTC of Cebu City, Branch 7, in Criminal Case No. CBU-38277, Rollo, p. 21.

[3] TSN, September 5, 1996, pp. 8-10.

[4] TSN, July 31, 1996, pp. 8-9.

[5] Summary of Expenses, Exh. "F".

[6] Decision, Rollo, pp. 25-26.

[7] Ibid., p. 27.

[8] TSN, March 12, 1997, pp. 12-13.

[9] TSN, July 11, 1997, p. 11.

[10] 249 SCRA 687 (1995).

[11] *People v. Cabiles*, 284 SCRA 199, 216 (1998).

[12] *People v. Taneo*, 284 SCRA 251, 271 (1998); *People v. Gargar*, 300 SCRA 542, 553 (1998).

[13] TSN, July 11, 1997, pp. 9-10.

[14] *People v. Ballesteros*, 285 SCRA 438, 446 (1998); *People v. Oliano*, 287 SCRA 158, 178 (1998).

[15] Decision, Criminal Case No. CBU-33212 for Murder; No. CBU-33213 for Murder; No. CBU-34692 for Frustrated Murder, dated July 15, 1997, pp. 11-12; Records, Annex "C", pp. 92-93.

[16] *People v. Jerez*, 285 SCRA 393, 402 (1998).

[17] *People v. Aquino*, 284 SCRA 369, 375 (1998); *People v. Pili*, 289 SCRA 118, 140 (1998).

[18] TSN, March 20, 1996, pp. 7-9.

[19] Ibid., p. 11.

[20] TSN, June 5, 1996, p. 12.

[21] TSN, September 5, 1996, pp. 5-9.

[22] *People v. Tenorio*, 284 SCRA 420, 432 (1998); *People v. Reyes*, 287 SCRA 229, 243 (1998).

[23] *People v. Sumalpong*, 284 SCRA 464, 483 (1998).

[24] TSN, July 31, 1996, pp. 8-9.

[25] *People v. Timblor*, 285 SCRA 64, 77 (1998); *People v. Villonez*, 298 SCRA 566, 583 (1998).

[26] *People v. Lozada*, G.R. No. 130589, June 29, 2000, p. 27.

[27] *People v. Molina*, 292 SCRA 742, 775 (1998); *People v. Asis*, 286 SCRA 64, 74 (1998).

[28] TSN, June 5, 1996, p. 13.

[29] Revised Penal Code, Article 63 (2); *People v. Lozada*, *supra*, p. 27.

[30] *People v. Monte*, G.R. No. 125332, March 2, 2000; *People v. Bohol*, G.R. No. 130587, July 12, 2000.

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