

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIOLETO ABIGAN AND FELICITO CAPELLAN ARAGON, (AT LARGE), ACCUSED, VIOLETO ABIGAN, ACCUSED-APPELLANT.

G.R. No. 69674. September 15, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Masbate, Branch XLVI finding appellant Violeto Abigan guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased Judy Bulan the sum of P12,000.00 and to pay the costs.

The information filed against the accused Violeto Abigan and Felicito Capellan Aragon alias "Bert Gomez" alleged:

"That on or about April 10, 1982, in the evening thereof, at Barangay Buracan, Municipality of Dimasalang, Province of Masbate, Philippines within the jurisdiction of this Court the above-named accused confederating together and helping one another with deliberate intent to kill, evident premeditation, treachery and taking advantage of the nighttime, did then and there wilfully, unlawfully and feloniously attack, assault and stab with a long pointed bolo, one Judy Bulan, hitting the latter, thereby inflicting wounds which caused his instantaneous death.

"Contrary to law."

The prosecution's evidence upon which the finding of guilt beyond reasonable doubt was based is summarized by the trial court as follows:

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"x x"x x x [T]hat at about 10:00 p.m. on April 10, 1982, Ruben Arayesa, Judy Bulan and Agapito Diola were fishing at Pinamughaan River, Barangay Buracan, Dimasalang, Masbate, using a Coleman in catching fish and said Coleman was carried by Agapito Diola. While they were fishing in the river, Judy Bulan who was unarmed at that time was stabbed by Violeto Abigan with a long bolo about two and one-half (2-1/2) feet, hitting him on his right breast. After Judy Bulan was stabbed, he shouted: 'Ouch, Manoy Pitoy, help, I was hit.' Agapito Diola saw and recognized Violeto Abigan as the assailant. He recognized the culprit because of the bright light coming from the Coleman.

"The evidence shows that one year before the incident, Agapito Diola knew already Violeto Abigan. When Violeto Abigan stabbed Judy Bulan, Agapito Diola was merely three (3) meters away from the victim; that the relative position of the victim and Violeto Abigan is that immediately before the stabbing, Violeto Abigan was sitting and covering his entire body with banana leaf about one (1) meter wide and he was one step away from Judy Bulan. When Judy Bulan caught a fish and in the act of picking it up, Violeto Abigan stabbed him on his right breast. The attack on the victim was sudden so that he was not able to defend himself. In fact, after Judy

Bulan was stabbed, he fell down.

"During the incident, Apolinario Aragon alias Berto Gomez, alias Felicito Capellan Aragon was then in the bank of the river. When Judy Bulan was stabbed, Felicito Capellan Aragon cranked his riot gun, so Agapito Diola put out the light of the Coleman and the two accused ran away. Ruben Arayesa and Agapito Diola left the cadaver of Judy Bulan in the scene of the crime and went to Buracan, Dimasalang, Masbate to inform Pat. Jose Cabintoy of the stabbing incident. They failed, however, to see him there because according to information, he was in Balantay, Dimasalang, Masbate. They went to Balantay and met Pat. Jose Cabintoy there. They informed him that Judy Bulan was stabbed by Violeto Abigan; and that during the incident, Violeto Abigan has (sic) a companion.

"Later on, Agapito Diola, Ruben Arayesa and Pat. Jose Cabintoy went back to the crime scene, passing by the house of Judy Bulan's parents at Bagacay, Buracan, Dimasalang, Masbate, to inform his father, Francisco Bulan, that his son, Judy Bulan, was stabbed by Violeto Abigan. Francisco Bulan, however, did not go with them because he is the enemy of Violeto Abigan and he feared that the accused might still be in the crime scene. When they arrived in the place of the incident, Pat. Jose Cabintoy prepared a sketch (Exh. "C") indicating the wounds sustained by Judy Bulan (Exhs. "C-1" and "C-2") and a police report (Exhs. "D" and "D-1"). Thereafter, Pat. Cabintoy ordered the cadaver of the victim to be brought to his residence.

"The prosecution evidence also shows that the house of Violeto Abigan is only around 300 to 500 meters away from the place where Judy Bulan was stabbed; and that Violeto Abigan purposely sought nighttime to commit the crime. As to the motive for killing of Judy Bulan, it has been established that before the incident, Francisco Bulan complained to the PC headquarters against Violeto Abigan and Felicito Capellan Aragon for slaughtering his carabao.

"Dr. Ernesto Tamayo, Municipal Health Officer of Dimasalang, Masbate, conducted a post-mortem examination on the body of Judy Bulan. The findings thereon are reflected in the medical certificate (Exhs. "A", "A-1") issued by him, as follows:

"(a) stab wound, about 1 inch in diameter, located half an inch lateral to the left nipple, directed upwards and medially, and

"(b) stab wound, about an inch in diameter, located below the right angle of the scapula, back.

"The cause of death was shock secondary to hemorrhage, the heart being involved.

"According to Dr. Tamayo, wounds No. 1 and 2 could be both caused by a sharp pointed instrument like a bolo."

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The lower court rendered its decision against Violeto Abigan only, as Felicito Capellan Aragon remains at large.

The appellant did not raise any distinct and precise assignment of errors. However, a perusal of the appellant's brief shows that the appellant assails the lower court for convicting him, alleging that his guilt was not established beyond reasonable doubt.

Abigan contends that the prosecution's eyewitness, Agapito Diola the victim's fishing companion did not see the actual stabbing nor was his testimony corroborated by the post-mortem examination report. He questions Diola's competence as an eyewitness and the credibility of his testimony.

The contention is without merit. Diola positively identified the appellant as the assailant. As the Solicitor General pointed out:

"Diola could not possibly have erred in identifying appellant Abigan as the assailant of the deceased Bulan because (a) the crime scene was well lighted by a Coleman pressurized gas lamp at the time appellant stealthily attacked and stabbed Judy Bulan; (b) appellant was barely three (3) meters away from Diola when he stabbed

Bulan; (c) immediately before the stabbing, Diola saw and recognized appellant who was then in a sitting position and covering his entire body with a large banana leaf; (d) there was no intervening obstruction along the view of Diola; and (e) the appellant was long known to Diola, both of them being residents of the same barangay (tsn, April 22, 1983; pp. 2-8, 15-16). Besides, Diola had reason to be at the scene of the crime that fatal evening of April 10, 1982; he and Arayesa were the companions of the deceased Bulan in fishing when the appellant stabbed him."

Appellant Abigan questions what he describes as the inconsistent testimony of Diola vis-a-vis the post-mortem findings.

Dr. Ernesto Tamayo testified that the victim Judy Bulan was stabbed twice. On the other hand, Diola's testimony is allegedly limited to one stabbing which caused the wound on his breast.

The discrepancy is not material.

Dr. Tamayo's post-mortem report emphasized that the deceased Judy Bulan sustained a fatal stab wound on the breast, more particularly "located half an inch lateral to the left nipple, directly upwards and medially." This wound was fatal as it pierced the heart. This was the stab wound which impressed itself in the mind of the witness and not the other wound located below the right angle of the scapula at the back.

The appellant points out other alleged conflicting testimonies to impeach the credibility of Diola. Among them -- (1) Diola testified that he saw the policeman at midnight while Patrolman Cabintoy's testimony states that Diola reported to him at 11:00 P.M.; (2) Francisco Bulan stated that Diola awakened him at 10:30 P.M., yet it is shown else where that Diola woke up the victim's father after the incident had been reported to the police; (3) Francisco Bulan testified that his son and Diola must have gone out fishing together around twenty (20) times while Diola himself placed their joint fishing trips at only eleven (11) times; & (4) Patrolman Cabintoy stated that Diola saw two assailants but recognized only one of them while Diola testified that he recognized the two accused.

These alleged discrepancies are of minor importance. What is significant is that Diola, while out fishing with the victim in shallow waters, saw the accused-appellant stabbing his companion with a long bolo.

It has been repeatedly held that inconsistencies and contradictions referring to minor details do not destroy the credibility of witnesses. On the contrary, trivial discrepancies indicate that the witnesses were not previously rehearsed. (*People v. De las Piñas*, 141 SCRA 379; *People v. Valentino*, 141 SCRA 397; and *People v. Espinosa*, 141 SCRA 110).

Appellant Abigan also tries to exculpate himself by stating that he was asleep at home at the time of the stabbing.

The lower court did not err in finding this defense of alibi devoid of merit.

It is well-settled that alibi cannot prevail over the positive testimony of prosecution witnesses and their clear identification of the accused as the perpetrator of the crime. (*People v. Garcia*, 141 SCRA 336; *People v. De las Piñas*, supra; *People v. Valentino*, supra; *People v. Cabanit*, 139 SCRA 94). This is so because alibi is a defense that is inherently weak as it can easily be fabricated or contrived (*People v. Juela*, 127 SCRA 860; *People v. Pagasa*, 127 SCRA 574).

In the case at bar, alibi does not deserve much credit as it was established by the accused himself and his wife. (See *People v. Cabanit*, supra; and *People v. Lumantas*, 28 SCRA 764).

Furthermore, to establish an alibi, the accused must show that it was impossible for him to have been at the place where the crime was committed at the time of its commission. As correctly pointed out by the lower court "his house where he claims to be sleeping during the stabbing of the victim is only around 300 to 500 meters away

from the scene of the incident." The evidence does not show that it was physically impossible for accused to be at the scene of the crime on the fatal evening. Thus, the failure to prove that he could not have been at the scene of the crime is fatal to his defense (*People v. De las Piñas*, supra).

Appellant Abigan further contends that he had no motive nor was motive established for his killing deceased Judy Bulan.

As held in the case of *People v. Cabanit*, (supra):

"Proof to establish motive for the killing of the victims in this case is of little significance because as stated in *People v. Lumantas*, 28 SCRA 764, even lack of motive for committing the crime does not preclude conviction when the crime and the participation of the accused therein are definitely shown."

Moreover, the lower court took into account the fact that, earlier, the victim's father had gone to the PC headquarters to report the slaughter of his carabao by the two accused.

WHEREFORE, with the modification that the indemnity to be paid to the heirs of the deceased Judy Bulan by herein accused-appellant is increased to P30,000.00, the judgment appealed from is affirmed in all other respects.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Paras, JJ., concur.

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