

THIRD DIVISION

[G.R. No. 119757, May 21, 1998]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANDRES CAISIP, ACCUSED-APPELLANT.**

DECISION

ROMERO, J.:

Accused-appellant Andres Caisip was charged with murder in an Information that reads:

"That on or about the 20th day of February, 1991, at Barangay Nangabulan, Talugtug, Province of Nueva Ecija, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a member of the PNP, Cuyapo, Nueva Ecija, with intent to kill, treachery and evident premeditation, taking advantage of nighttime, and while inside the dwelling place of one ROGER PICAÑA, did then and there, wilfully, unlawfully and feloniously and criminally shoot ROGER PICAÑA who was then sleeping, with the use of a long firearm, thereby hitting the latter on his head which caused his instantaneous death, to the damage and prejudice of his heirs.

CONTRARY TO LAW."^[1]

During arraignment, accused-appellant pleaded "not guilty." After trial on the merits, the lower court convicted accused-appellant of murder and sentenced him to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of the victim in the amount of P50,000.00.^[2] Cesar Picaña, a brother of the deceased, was presented by the prosecution as one of its witnesses. He testified that on the night of the incident, he was at the house of his brother, the deceased Roger Picaña, in Bgy. Nangabulan, Talugtug, Nueva Ecija. He was roused from his sleep when he heard a scratching sound at the back of the house near the kitchen. He saw accused-appellant holding a long firearm. A few moments later Genoveva Padlang Picaña, his sister-in-law and wife of the deceased, went out of the house and conversed with accused-appellant.

From his position, Cesar Picaña heard accused-appellant urging Genoveva Padlang Picaña to live with him. Genoveva's refusal so irked accused-appellant that he threatened to kill her husband to which Genoveva simply replied "*If you want, just kill him.*" Accused-appellant then calmly walked towards the sleeping Roger Picaña and shot him three times.

Cesar Picaña informed Miguel Patacsil, their grandfather, of the incident. On his part, Miguel Patacsil testified that immediately after learning of the incident, he went to the house of the deceased. He averred that the deceased's wife, Genoveva, admitted to him that it was Andres Caisip who killed her husband.

Police Officer William Esperon testified that when they conducted the investigation, they found the victim to have sustained three (3) gunshot wounds on his head. The policemen recovered empty shells of an armalite rifle near the body of the victim. Further, the wife of the deceased admitted to the witness that before the killing, she conversed for about two (2) minutes with the assailant who insisted that she live with him.

Wilfredo Picaña, another brother of the deceased, testified that on February 9, 1991 the deceased had an altercation with accused-appellant about the latter's involvement with the wife of the former. Another altercation on the same subject matter happened again on February 17, 1991. In addition, the witness testified that at one time, the wife of his deceased brother and accused-appellant maintained an illicit relationship.

SPO3 Jessie Nery Mosada served the warrant of arrest to accused-appellant on September 23, 1993 in San Carlos City, Pangasinan. At the time of his arrest, accused-appellant was living with the wife of the deceased.

The defense presented a different version. The first defense witness, SPO2 Danny Mendoza, testified that on the night of the incident accused-appellant was at Cuyapo, Nueva Ecija and not at Talugtug, Nueva Ecija. SPO4 Rogelio Bongolan and Col. Onofre Guloy corroborated the above testimony.

Accused-appellant personally asked Giger Picaña, son of the deceased to testify on his behalf. Giger Picaña basically testified that nobody recognized the assailant of his father as they were all sleeping when his father was gunned down.

Accused-appellant anchored his defense on alibi and denial. He denied having maintained any relationship with the wife of the deceased and having lived with her. Likewise, he denied having had any quarrel with the deceased. He claimed to have learned of Roger Picaña's demise three days after the killing. He alleged that when the killing happened, he was at Cuyapo Police Station as member of the alert team.

The prosecution presented Andres Pascasio as rebuttal witness. Pascasio testified that on the night of the incident, he was at his uncle's house, a mere five meters from the residence of the deceased. He was roused from his sleep because of the barking of the dogs outside their yard. When he was about to go out to investigate, he saw accused-appellant enter the house of the Picañas holding a long firearm. Subsequently, he heard three gunshots and after a while, accused-appellant was seen leaving the house. Ten minutes later, he heard a motorcycle being started.

Ernesto Cabute, another rebuttal witness for the prosecution, testified that accused-appellant actually had an altercation with the deceased. The incident happened inside his house during their town fiesta wherein the deceased approached accused-appellant and called him a "*wife grabber*." In turn, accused-appellant discharged his firearm pointing upwards. The two were later pacified by cooler heads.

After a thorough and careful examination of the records, this Court is convinced beyond reasonable doubt that accused-appellant is, indeed, guilty as charged.

Accused-appellant was positively identified as the

assailant, not only by the deceased's brother but also by rebuttal witness Andres Pascasio.

Accused-appellant's denial crumbled in view of this positive identification. This Court has held in a long line of cases that denial is a weak defense and it cannot prevail against a positive identification.

Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law.^[3] They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.^[4]

Likewise, this Court is not persuaded by accused-appellant's alibi. He claims that he was at the Cuyapo Police Station when the incident occurred. Nevertheless, he failed to satisfy the twin requirements in order for alibi to be plausible. First, accused-appellant must prove that he was nowhere in the vicinity of the crime at the time of its commission; he must prove that he was somewhere else instead. Second, he must prove that it was highly impossible for him to be present at the crime scene at the time of its occurrence.

Accused-appellant attempted to prove that he was not at Bgy. Nangabulan, Talugtug, Nueva Ecija during the killing of the deceased. This attempt however proved futile considering his positive identification as the malefactor by two of the prosecution witnesses.

Moreover, the corroborative testimony of SPO2 Danny Mendoza that accused-appellant was at the Cuyapo Police Station as a member of the alert team at the time when the killing occurred had been discredited. SPO2 Mendoza claimed that at around 7:30 on the night of the incident, accused-appellant was having a drinking spree with the Cuyapo Station Commander.^[5] This was, however, denied by Col. Onofre Guloy who testified that SPO2 Mendoza was lying as there was no drinking spree that night.^[6]

Likewise, SPO2 Mendoza, together with SPO4 Rogelio Bongolan, testified that the Talugtug Police Station Commander personally came to the Cuyapo Police Station to verify the presence of accused-appellant. Col. Guloy, however, could not recall whether the Talugtug Police Station Commander personally came to the Cuyapo Police Station.^[7]

Furthermore, Col. Guloy asserted that accused-appellant was at the Cuyapo Police Station in the evening of February 20, 1994 up to the early morning of February 21, 1994 "based on what he could remember".^[8] It would have been more expedient and credible if a log book or attendance sheet had been presented to lend credence to the above assertion. Nevertheless, he admitted that there was a possibility that accused-appellant may have left the Cuyapo Police Station without his knowledge.^[9] Taken in its entirety, the inconsistent and doubtful testimonies of the defense witnesses could hardly prove the presence of accused-appellant at the Cuyapo Police Station at the time of the killing.