

G. R. Nos. L-7258 & L-7259

[G.R. Nos. L-7258 & L-7259. September 28, 1954]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAXIMO CABANG, ISABELO CABANG, BASILIO CABANG, FAUSTO CABANG, AND AVELINO CABANG, DEFENDANTS. BASILIO CABANG, DEFENDANT-APPELLANT.

D E C I S I O N

CONCEPCION, J.:

This is an appeal taken by Basilio Cabang from the decision rendered by the Court of First Instance of Misamis Occidental in criminal cases Nos. 3055 and 3056 thereof, which are interrelated. The defendants in both cases, namely, appellant Basilio Cabang, and his children, Maximo, Isabelo, Fausto and Avelino, all surnamed Cabang, are charged, in each case, with murder. The victim in the first case is Andres Robiato. In the second case, the victim is Tirso Sapar. In the two cases, Fausto and Avelino Cabang were acquitted upon the ground of reasonable doubt, whereas Basilio, Maximo and Isabelo Cabang were convicted of homicide in case No. 3055, and of murder in case No. 3056, and sentenced in the former to an indeterminate penalty ranging from 8 years of *prision mayor* to 16 years of *reclusion temporal*,

to indemnify the heirs of Andres Robiato in the sum of two thousand (P2,000.00) pesos, without subsidiary imprisonment in case of insolvency, and to pay each 1/5 of the costs, and in the second case to 19 years of *reclusion temporal*, to jointly and severally indemnify the heirs of Tirso Sapar in the sum of (P2,000.00) pesos without subsidiary imprisonment in case of insolvency and to pay each 1/5 of the costs. Only Basilio Cabang has appealed from the decisions thus rendered by the said court to the Court of Appeals. By a resolution, dated August 13, 1953, the records of both cases were, however, forwarded to this Court by the Court of Appeals, upon the ground that

the latter believes, upon a review of said records, that appellant is guilty of two crimes of murder and that he should be sentenced to, at least, life imprisonment.

It is not disputed that on April 27, 1950, at about 6:00 p.m., Andres Robiato was killed in his house in the *Barrio*

of Sibula, Municipality of Lopez-Jaena, Misamis Occidental, by Maximo and Isabelo Cabang, and that, immediately thereafter, these defendants went to the store of Tirso Sapar, at some distance away, and killed him. The witnesses for the prosecution testified, and the lower court held, that said killers were then accompanied by their father appellant Basilio Cabang and his children Fausto and Avelino Cabang did not enter the house of Andres Robiato he (Basilio) carried the scythe, Exhibit "A", until he and his four children arrived at the foot of said house; that he delivered the scythe to Isabelo and bade him to enter said house and kill Andres Robiato, but not his wife; that, thereupon, Isabelo scaled the window of said house, with his brother Maximo, who had a knife or bolo; that Basilio, Fausto and Avelino Cabang remained on guard outside, holding stones; that with the sharp pointed instruments with which they were armed, Isabelo and Maximo Cabang inflicted several wounds upon Andres Robiato who died, in consequence thereof, almost instantaneously; that before leaving the place, appellant inquired whether Andres was already dead; that as Isabelo Cabang answered in the affirmative, appellant and his children proceeded to the store of Tirso Sapar, which Isabelo and Maximo Cabang entered; that after maltreating several persons therein, Isabelo and Maximo Cabang killed Tirso Sapar, within the view of Basilio, Fausto and Avelino Cabang, who stood at the threshold of the store, watching the attack; that then Basilio entered the place to view the body of Sapar; and that he departed after assuring himself that Sapar was dead.

Appellant merely set an *alibi*. According to the defense, while appellant was near his yard, tethering several carabaos, he heard screams for help coming from the place in which the house of Andres Robiato is located, whereupon, overcome by fear, he and his children, Fausto and Avelino Cabang, hid themselves in a mangrove swamp nearby, until they felt it was safe to come out. Then, appellant claims, they

reported the matter to the chief of police.

It is obvious, however, that this alibi is far from sufficient to off-set the testimony of Epifania Robiato, Basilio Dolorican, Macaria Cabang and Lucia Ledaven who asserted positively that appellant was present at the scene of the occurrence, under the conditions already set forth. Moreover, said alibi becomes clearly untenable in the light of the affidavit (Exhibit E) made by appellant, on April 29, 1950, before the justice of the peace of Lopez-Jaena, confirming substantially said the testimony of the witness for the prosecution. Although appellant tried to repudiate said affidavit, by declaring that it was secured by Lt. Juan Cabigon of the Constabulary through duress, it appears from the testimony of said justice of the peace that appellant voluntarily and freely swore to the truth of the contents of said instrument and subscribed the same, after the peace officers who escorted appellant had cleared the court room.

Lastly, it has been satisfactory proven that appellant and his aforementioned children had the motive to commit the crimes charged. Andres Robiato and the Cabangs, particularly appellant herein, were not in friendly relations since January, 1950, owing to a dispute over a parcel of land claimed by the Cabangs and held by Andres Robiato, whom refused to vacate it. On top of this, Andres Robiato had an altercation with Isabelo Cabang several hours before the occurrence, inasmuch as Andres charged Isabelo with theft of coconuts. Again, a few days before April 27, 1950, Tirso Sapar demanded payment of a debt of Isabelo Cabang in the sum of P10.00, in such a manner, seemingly, that the sensibility of the Cabang was hurt.

It is apparent from the foregoing, that the lower court has not erred in accepting the theory of the prosecution and in rejecting appellant's alibi. We are of the opinion, however, that the crime committed against Andres Robiato was murder, not homicide as held by the lower court, it appearing from the acts of appellant and his children, that there was evident premeditation on their part. Considering that the offenses were perpetrated in the dwelling of the respective offended parties, the proper penalty is death, which, however, can not be imposed owing to the

lack of the number of votes required by law therefor. Hence, appellant should be sentenced to life imprisonment in both cases.

Thus modified as to the penalty imposed to appellant Basilio Cabang, the decisions appealed from are hereby affirmed, therefore, in all other respects, with costs against said appellant.

IT IS SO ORDERED.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes A., Jugo, Bautista Angelo, and Reyes J.B.L., JJ., concur.

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