

100 Phil. 811

[G.R. No. L-7030. January 31, 1957]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. HILARIO MENDOVA, ALFREDO MENDOVA AND BAUTISTA RAGANDAN, DEFENDANTS AND APPELLANTS.

D E C I S I O N

PER CURIAM:

Review of a judgment of the Samar Court of First Instance imposing death.

After a regular joint trial, the above defendants Hilario Mendova, 37, Alfredo Mendova, 28, and Bautista Ragandan, 43 were convicted of “robbery with double murder” for having robbed the house of Matias Cabantac and killed his two daughters Remedios and Clarita.

They were duly represented by two attorneys.

Principal witnesses for the prosecution were: the girls’ father; Fortunato Tabucao who had seen the robbers entering the house; and Jaime Manheron, who had watched the assassination. Bernabe Nuñez, sanitary inspector identified the death certificates, and the anatomical chart Exhibit C describing the wounds on the dead bodies. Paulino Encallado drew a sketch of the scene of the crime.

All agreed that the violent deaths occurred in Sitio Pangdan, Barrio San Agustin, Municipality of Basey, Samar, on January 31, 1953.

“At seven o’clock that morning” said Matias Cabantac, 40, “I departed from my house in Pangdan, to go to the mountains of Luzong to arrange for the bringing of some logs. My wife accompanied me; we left our two daughters, Clarita,” ^[1] fourteen, and Remedios, seven. At three in the afternoon we returned and to my surprise, I found my trunk forcibly opened in the sala, clothes, papers and money missing^[2]; even my daughters were not there. I repaired to the house of my neighbor Miguel Alambra and then looked around. After two hours’

search I found the body of Clarita, stabbed and wounded, in the ditch bordering the farm of Jaime Manheron. About three brazas farther, Remedios lay dead with several stab wounds. Wherefore I sent somebody to notify the authorities.

“The next day, Sanitary Inspector Nuñez, Police Sergeant Encallado and Policeman Catalo came to investigate. I did not know then who the culprits were, although I suspected Hilario Mendova and Bautista Ragandan. However, on February 25, 1953, Jaime Manheron told me he knew the assassins, and was willing to reveal their names to the police. Immediately I brought him to the office of the Chief of Police and there he indicated these three defendants, who, I am sure, had motives to do us harm.

“Hilario Mendova had helped me take care of my coconut plantation and lived in my house; but several days before the incident I dismissed and sent him away, because on several occasions he had gathered and sold coconuts in my absence and pocketed the money. My two daughters reported his pilfering to me.

“Alfredo Mendova owed me thirty gantas of palay. I demanded payment several times. This offended him so much that once he threatened to kill me.

“Bautista Ragandan took part in the killing because he entertained a grudge against me, not only by reason of the civil case between us concerning land (Exhibit A), but by reason of my having complained against him for malicious mischief, for which he got three months in jail (Exhibit H). In this connection I may add that Hilario Mendova was also jailed in Muntinlupa, for having raped his younger sister”

Fortunato Tabuaco, 25, farmer and merchant of Old San Agustin, Basey, Samar, declared that in the morning of January 31, 1953 he walked to visit Hilario Centina of sitio Pangdan one kilometer from his residence; that about eight o'clock he passed by the yard of Matias Cabantac and saw these three accused about to go up his (Cabantac's) house, one of them having already stepped on the second rung of the stairs; that the trio carried bolos hanging from their waists; that he recognized them, the house being only about twenty-five brazas from him and he knew them personally; that that evening he was informed of the death of Matias' daughters; that he helped to notify the authorities of the crime, but at that time he did not disclose what he had seen, because he was afraid of the accused.

Jaime Manheron 21, farmer of the same barrio went early that morning to the store of Fortunato Tabucao, to say he was unable to gather the latter's coconuts (as previously agreed), because he had to drive away some carabaos reportedly roaming in his rice farm at Pangdan. Tabucao told him to do the gathering another day. He returned home, and after

eating he proceeded to his rice field arriving there at about nine o'clock. Following the footprints of carabaos, he suddenly heard the shouts of two children behind a small hill at the edge of his farm. He cautiously climbed the hill and peeping thru some bushes, sighted Hilario Mendova dragging Clarita even as Alfredo Mendova and Bautista Ragandan were holding Remedios. He heard Clarita say "I am going to report to Mama and Papa that you robbed in the house". Whereupon, as he watched, Hilario struck Clarita with a bolo, in the head and the mouth. Next Alfredo Mendova slashed Remedios on the neck and on the head above the ears. Both girls fell down and then Bautista Ragandan took his turn in stabbing them without mercy. Shocked at the horrible scene, he quietly left the place, fearing he might be spotted and then liquidated, by the murderers—specially because he remembered Hilario Mendova was the "hatchet man" (executioner) of the brigands of Leyte. For that reason he hadn't the courage to come forward and tip Matias and the police until after the culprits had been arrested or were about to be taken.

The wounds found on the dead bodies by the sanitary inspector corroborated the version of eyewitness Manheron. Such wounds were:

On Clarita:

1. "1. Multiple wounds on the face involving nose and mouth about 6 inches long and 1 1/2 inches deep.
2. 2. Multiple wounds located in the internal surface of the neck about 3 inches long.

* * *

5. Incised wound on the occipital region 6 inches long involving the skull.6. Incised wound on the left parietal region about 6 inches long involving the skull."

On Remedios:

1. "1. Incised wound located on the left parietal region about 10 inches long involving the brain.
2. 2. Incised wound located at the back of the neck about 4 inches long and 3 inches deep.
3. 3. Puncture wound located on the chest left mentum coming out just on the nipple."

Summing up: these accused-appellants conspiring together and moved by their common hatred of Matias Cabantas looted his belonging and then murdered his daughters to eliminate the witnesses to the robbery and to settle old scores. Defendants' counsel contend there was no evidence of conspiracy. There is no direct evidence that these accused met to plan their moves in a secret conspiracy. But there is proof that, related to one another and harboring grudges against Cabantac these accused entered the house together and simultaneously hacked his defenseless daughters. That is enough.^[3]

To counteract the above convincing proof, the defendants declared they were in different places at the time the deaths and robbery occurred. We have often said that in the face of direct evidence, *alibi* is necessarily a weak defense; more so if uncorroborated. Yet herein defendants' plight is worse: their *alibi could have been corroborated by other persons* they have mentioned, but these were not presented, obviously because such persons refused to confirm under oath what was untrue. Alfredo Mendova swore he was with his wife in cockpit. His wife did not testify. He said other persons could confirm. But no subpoenas were issued to summon the latter.

Hilario Mendova swore he was in Palo, Leyte in the house of Esion, his grandfather. Yet the latter did not testify in corroboration, although he was in Basey, on the day of the trial. Of course this accused attempted to explain such absence, alleging lack of funds. But his lawyers knew there were means to bring the old man to the trial, even at the government expense. And then, on cross-examination he admitted having gone to Palo more than one week after leaving the house of Matias Cabantac. But the crime took place about four days after he had been dismissed. The prosecution's evidence indicates that Hilario went to Palo after January 31. He returned later to Basey. If he was guilty, say his counsel, he would not have come back. The answer is, he returned because *he thought* nobody knew him to be guilty, proceedings against him had not been taken yet. And this might help explain the delay in reporting the real culprits to the authorities. They waited for him to come back and be apprehended.

Bautista Ragandan swore that he was busy the whole day of January 31 repairing his house with the help of Nicolas Cabornida. The latter testified in corroboration. But the court refused to believe Cabornida because it noted he was witness for Bautista Ragandan "in all his cases before this court and before the justice of the peace court in Basey, Samar". Beside such house being in a neighboring barrio, only two kilometers away, it was easy for Bautista to go to Pangdan and return without attracting the attention of Nicolas, who had no special reason to watch his doings every minute.

As Manheron was the leading witness of the prosecution, defendants' second move was to discredit his testimony. They couldn't show that the slaying occurred somewhere else^[4]; so they attempted to show *he* was somewhere else. He had said the slaying happened at about nine o'clock. So defense witness Ernesto Bacayo swore he had seen him having a hair-cut in Loog at about nine o'clock that morning. But the other witness Benjamin Mendova also saw Manheron in his house at Old San Agustin at that same time. It would be easy to conclude these two witnesses lied. However remembering that none had looked at his watch, that "about nine o'clock" may mean "past eight o'clock" or "before ten o'clock", that the places are not far apart, their statements could be harmonized with each other, and with Manheron's, by holding that probably Manheron had his hair-cut at past-eight, saw the crime at nine and was at home before ten o'clock. (The succession of events could be different, without affecting Manheron's account.)

Nevertheless, it would be error to believe that without Manheron the prosecution cannot stand. Fortunato Tabucao's testimony and the clues of record, would sufficiently sustain a verdict of guilt. Nothing has been adduced against the veracity of Tabucao, except his failure to promptly disclose what he knew. Yet he had reasons to be cautious: Hilario Mendova was a known killer, and was at large.

Returning to Manheron, the defense suggests the probability that he was induced by Matias Gabantac, whose farm he was tilling on shares. In the first place, it is hard to believe that a tenant, merely to please his landlord, would commit perjury in a matter of life and death of three individuals in the same locality. In the second place, it is improbable that Matias would knowingly commit subornation of perjury to send to the gallows three relatives of his wife Iluminada Ragandan: Hilario is her nephew, and Bautista is her own brother^[5] quarrelsome though he may be.

Summing up, the prosecution's case is quite complete: corpus delicti; eye-witness account; sufficient circumstantial evidence; motive of the crime; alibi untrue because uncorroborated.

It may be stated in this connection that the attorneys for appellants have creditably analyzed the testimony of prosecuting witnesses, attempting to point out flaws and deficiencies. The most important have been found to be non-existent. Others are immaterial, or constitute at most, small blots in the otherwise clear picture described by the People's evidence: robbery with homicide^[6]—punished with reclusion perpetua to death under article 294 paragraph 1 of the Revised Penal Code.

The felony was aggravated by: (a) treachery and abuse of superior strength: three adult men

armed with bolos against two little girls; (counsel for appellants are right in saying the latter is included in the former); (b) dwelling, because although the murderous act took place in the open field, the victims had been dragged from their house where the criminals had robbed (U.S. vs. Lastimosa, 27 Phil., 432); (c) in the case of Bautista, relationship, being brother-in-law of Matias, offended party in the robbery, (d) *despoblado* because the nearest house to Matias' was 400 meters distant, hidden by coconut groves; and the killing occurred more than a kilometer away in the open rice fields.

Evident premeditation qualified the offense, according to the lower court because "the crime was carefully planned, the offenders having previously prepared the means they considered adequate. As there was no direct evidence of the planning or preparation, the court's conclusion may not be endorsed, since it is not enough that premeditation be suspected or surmised, but the criminal intent must be evidenced by notorious outward acts evincing determination to commit the crime^[7]. It is not "premeditation" merely; it is "evident" premeditation. Another requisite is lacking: a sufficient period of time must have elapsed between the outward act evincing intent and the actual commission of the offense.

Lack of instruction is invoked in favor of Bautista Regandan. But *People vs. Melendres*, 59 Phil., 154 holds that in crimes of robbery, lack of instruction is no mitigation. (See also *U.S. vs. Pascual*, 9 Phil., 491.) No other mitigating circumstance may be cited for appellants. Hence, as the crime was attended by three aggravations, (four in the case of Ragandan) the penalty of death becomes mandatory, and the lower court imposed it^[8]. However, His Honor recommended commutation to life imprisonment "to give the accused all the time until their natural death for repentance". Urging confirmation of the death sentence, the Solicitor General disagrees with the court's recommendation. We also disagree. Nowadays hardly a week passes without the newspapers carrying some account of a robbery, or assassination or kidnapping. It is necessary to remind the criminal element in our midst that capital punishment has not been abolished, and that in proper cases courts will, in obedience to the statute, perform their duty to impose it.

Wherefore, with the concurrence of the required number of votes, the death penalty, (with civil liabilities) is affirmed. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., Endencia and Felix, JJ., concur.

^[1] Some pages of the transcript of the stenographic notes use “Cristita.” Must have been clerical mistake, because all documents refer to her as Clarita.

^[2] P50, three khaki suits worth P110 and papers in connection with Matias’ litigation (Exh, A).

^[3] *People vs. Saulog*, 74 Phil., 526; *People vs. Carbonell*, 48 Phil., 868; *U. S. vs. Zalsos*, 40 Phil., 96.

^[4] Spilled blood and tracks must have been discovered on the scene, because nobody ever doubted the place where the slaying occurred.

^[5] This is disclosed by the records of Civil Case No. 4096 Exhibit A and the criminal case above mentioned Exhibit H.

^[6] It is robbery with homicide—not murder, (*U.S. vs. Landasan*, 35 Phil. 359) even if the dead be two or more (*Peopfe vs. Manuel, et a!.*, 44 Phil., 333; *People vs. Mones*, 58 Phil., 46). Cf *U.S. vs. Palmadres*, 7 Phil., 120; *U.S. vs. Estabillo*, 11 Phil., 150.

^[7] *U.S. vs. Rabor*, 7 Phil., 726; *U.S. vs. Manalinde*, 14 Phil., 77.
