

[ G. R. No. L-4962. April 27, 1957 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. VICTOR BAQUERO, ET AL., DEFENDANTS. ELADIO ORIARTE, ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**MONTEMAYOR, J.:**

This is an appeal from the decision of the Court of First Instance of Cotabato, finding the defendants, Victor Baquero, Eladio Oriarte, and Carmelo Bangayceso, guilty of the crime of robbery with homicide, sentencing the first two as principals to *reclusion perpetua*, with the accessories of the law, and the third one, as accomplice, to seventeen years and four months of *reclusion temporal*, with the accessories of the law, all of them to indemnify jointly and severally the heir of the deceased in the sum of P3,000 and to pay 3/4 of the costs.

From a careful study of the record, we find the following facts to have been duly established. Chinaman Sia Mian owned two store\* in the town of Kidapawan, Cotabato, one in the *poblacion* and the other in the barrio of Singao. He divided his time between them, and when he was absent from the Singao store, he entrusted the same to another Chinaman of his confidence, named Te Kian Giap *alias* Sergio Sia Su, hereafter to be referred to as Sia Su. The store in Singao occupied the ground floor of a two-story building, the second story being used as sleeping quarters. Defendant Carmelo Bangayceso was employed in the store as a helper or servant and he used to sleep in the second floor with Sia Su.

At about eight o'clock in the evening of April 14, 1950, Maria Abenoha and her husband, Narciso Cano, *alias* Siso, whose house was about 200 meters from the store, went to the latter to buy sugar. At the time, Sia Su, in the absence of Sia Mian was keeping the store. There Maria and Siso met defendants Victor Baquero and Eladio Oriarte who were buying some dried fish. While at the store, Baquero asked Sia Su for a cigarette and he was given a stick of cigarette by the Chinaman. Thereafter, the couple and the two defendants went to the house of Maria, the two defendants to get Baquero's dog. After leaving the house of

Maria, Baquero and Oriarte met Juanito Remulta who suggested that the three go to the store of Sia Su to drink some beer. The three were carrying bolos. They found the store closed and apparently, upon the proposal of Remulta, the three decided to rob it. It was then between 10:00 and 11:00 o'clock in the evening, and to be sure that Sia Su and Carmelo were already fast asleep, they waited under a tree until about 1:00 in the morning, after which they went to the store, and to gain entrance dug a hole under one of the side walls. They stealthily went up the second floor where they found Carmelo and Sia Su fast asleep. With the aid of a flashlight carried by Baquero, the three took turns in hacking Sia Su who naturally cried out in pain and for help, his assailants continuing the attack until their victim appeared to be dead, Remulta apparently doing most of the hacking.

Carmelo rudely awakened, got up and tried to hide in a corner of the room, Baquero asked him where the money was kept and Carmelo said it was in the *aparador*. Further asked about the key to it, Carmelo answered that it was kept under the pillow of Sia Su. Baquero got the key, opened the *aparador*, and took the money kept there, according to the information, amounting to P600. Thoroughly scared and afraid for his life, Carmelo jumped through the window of the second floor and ran toward the house of assistant barrio lieutenant Agapito Remosora, about 50 meters from the store. There he told Remosora that robbers had entered the store and had attacked Sia Su. Asked to go to the poblacion, about five kilometers away, to report the matter to the authorities, Carmelo declined, possibly because of fear, and so Remosora sent two of his own men who reported the incident to the constabulary. Before the arrival of Carmelo at the house of Remosora, the latter had heard the shout or cry for help made by Sia Su. So, it was not a complete surprise for him to see Carmelo arrive and report the incident.

Maria Abenoha, still awake at the time of the robbery because she was making rice cakes (bibingca), also heard the cry or shout for help made by Sia Su, and she and her husband hurried to the house of one Florencio Ortega nearby and from there they returned to the house of Maria where they got her petromax lamp and then they all went to the house of barrio lieutenant Remosora. From there, in the company of Remosora and Carmelo they repaired to the store and called up to Sia Su, who answered, though weakly, suggesting that Carmelo enter the house by climbing up the window so as to open the store from the inside. Carmelo made the attempt but failed because the window was about 14 feet above the ground. Then Remosora discovered the hole dug by the robbers under the wall and asked Carmelo to enter the store through it, which he did. Sia Su told Carmelo to get the key to the door of the store from the pocket of his pants, and following the instructions, Carmelo found the key and opened the store and admitted his companions. They found Sia Su in a

rather critical condition because of his serious wounds, which according to the medical certificate later issued by Dr. Bienvenido Hizon, a municipal maternity and clinical physician, numbered twelve, wounds from which he died between 5:00 and 6:00 o'clock that same morning. They questioned him as to his assailants and he told them that he had been attacked by someone whose name he ignored, but that it was the same man to whom he had given a cigarette the night before at the store. At this juncture, Maria volunteered the information that it must be Victor Baquero because he was the one to whom Sia Su gave a cigarette in her presence, and Sia Su readily confirmed what she said.

At about 5:00 o'clock, Capt. Lugtu of the Constabulary detachment stationed in the *poblacion* arrived with some of his soldiers. After questioning Sia Su, and after being assured that the latter felt that he would probably die because of the gravity of his wounds, and after insisting that his assailant was Baquero, Capt. Lugtu prepared a statement, Exhibit C, which reads as follows:

“DYING DECLARATION

15 April ‘50

I, Sergio Sia Su, knowing that I will die with these wounds inflicted on me will tell the following:

That I know the fellow who attacked me and lie is the very fellow whom I gave a cigarette last night at about 8:00 o'clock. I think his name is Victor,”

It was thumbmarked by Sia Su and witnessed by Agapito Kemosora and Florencia Ortega, and at the bottom signed by Capt. Lugtu himself. About half an hour after making the statement, Sia Su died. Early that same morning, the soldiers arrested Baquero and Oriarte who were found in a hut on the land being worked by Baquero. On being questioned, the two admitted participation in the robbery and implicated Remulta as the mastermind. The Constabulary lost no time in arresting Remulta. The three, Baquero, Remulta and Oriarte, made statements, Exhibits D, E, and F, respectively, admitting having entered the store through the hole that they dug under the wall, hacking Sia Su and later taking the money from the *aparador* at the indication of Carmelo, and later escaping, although they said that at first, they intended merely to rob but not to kill Sia Su. In his statement, Baquero said that the money he took from the *aparador* amounted to P480.00, and that when he was arrested by the Constabulary, on the way to the barracks, he threw the money into the

bushes on the roadside. Later, accompanied by him and at his indication, the soldier found the money and exhibited it in court. Carmelo also made two statements, Exhibits G and G1, but in the same he never admitted any conspiracy or understanding with the three aforementioned defendants. The only admission made by him is that threatened by the three robbers, he indicated where the money was kept and even the place where the key to the same could be found, namely, under the pillow of Sia Su.

The four were charged with robbery with homicide in the Court of First Instance of Cotabato. Before trial, at the request of Remulta, assisted by counsel, he withdrew his former plea of not guilty and upon re-arraignment, he pleaded guilty to the charge and in a separate decision was sentenced to *reclusion perpetua*, with the accessories of the law, to indemnify the heirs of Sia Su in the sum of P3,000 and to pay i of the costs.

Pending the appeal of Oriarte, Carmelo and Baquero, the latter by motion dated July 29, 1954, prepared in the State Penitentiary where he was confined, withdrew his appeal, which was granted. So, only the appeal of Oriarte and Carmelo remains for determination.

We agree with the Solicitor General that the evidence is insufficient to convict Carmelo even as an accomplice. There is every reason to believe that he had no part whatsoever in the robbery and the killing of Sia Su. This is shown by the fact that before the robbers left the store with their loot, he fled the house by jumping through the window and reported the matter to the barrio lieutenant. He knew nothing about the hole dug by the robbers under the wall, and so when he returned to the store accompanied by the barrio lieutenant, Maria Abenoha and her companions, he tried to enter the house by climbing up the window of the second floor, though in vain. The only evidence regarding his connection with the commission of the crime was that when questioned by the robbers, he reluctantly indicated the place where Sia Su kept the money of the store and also indicated the place where the key to the *aparador* was kept. All this he did, evidently because of fear.

As regards Oriarte, we have his written statement sworn to before the Justice of the Peace, admitting his participation in the commission of the robbery with homicide. In it, he not only agreed with his two companions to rob the store, which they did, but he took part in inflicting wounds on Sia Su. He also admitted the ownership of one of the bolos used in attacking Sia Su, and the pants stained with blood which he wore on the night of the commission of the crime.

At the trial, he repudiated his statement, claiming that he had been maltreated by the

Constabulary and that consequently, said statement was not made voluntarily. This same claim was also made by his co-defendants Baquero and Remulta, and they were rejected by the trial court, in our opinion, correctly. The Justice of the Peace, before whom the statement was sworn to, in order to avoid any pressure on the part of the Constabulary soldiers, including Capt. Lugtu, took the precaution of sending said soldiers and officer away from his office, and after their departure, he explained to the defendant, including Oriarte, the contents of their statement. He even asked them if they had been maltreated and they all answered in the negative.

We find that the evidence does not establish the guilt of Carmelo, even as an accomplice. Consequently, he should be acquitted, as he is hereby acquitted, with costs de officio. We find the guilt of Oriarte established beyond reasonable doubt. Because of the presence of the aggravating circumstances of dwelling, treachery, abuse of superior force and/or nighttime, the extreme penalty of death could be imposed upon him. However, for lack of sufficient votes to impose this penalty, we affirm the decision of the trial court, imposing the penalty of *reclusion perpetua*. As to the amount of the indemnity, following the recommendation of the Solicitor General, the amount awarded by the trial court is hereby increased to P6.000. With this modification, the decision appealed from, including the return of the P480.00 to the heirs of the owner thereof, is hereby affirmed, with costs.

*Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.*