

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. UNUH BAKANG AND INDANAN TARANG, DEFENDANTS-APPELLANTS.***G.R. No. L-20908. January 31, 1969*

Ponente: CAPISTRANO, J.

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Appeal by defendants, Indanan Tarang ang Unuh Ba-kang, from the sentence of reclusion perpetua passed upon each of them by the Court of First Instance of Basilan City for "double murder, with multiple frustrated murder."

Nine defendants were charged, as principals, with robbery in band in Criminal Case No. 910, and with "double murder, with multiple frustrated murder," in Criminal Case No. 911. Only two defendants, Inda-nan Tarang and Unuh Bakang, stood full trial. The other seven defendants did not, for the following reasons: Malonzo and Awaron Nalun died before the trial; Abirin and John Doe had not been arrested; Endo Sahim pleaded guilty; Elias Taupan was discharged from the informa-tion to be utilized as a State witness; Baeng Tungol died during the trial.

After trial, Indanan Tarang and Unuh Bakang were acquitted in Criminal Case No. 910 of robbery in band. In Criminal Case No. 911 said defendants were found guil-ty of "double murder, with multiple frustrated murder" and sentenced to reclusion perpetua, with the accessory penalties of the law.

Late in the evening of June 10, 1959, nine Muslim ban-dits carrying bladed weapons and firearms met in the house of one Miutong located at Candiis, Lamitan, Basilan City. They took an early supper and conversed until late in the evening, when they left and boarded two vintas in the di-rection of Pe-ek, same district and city. At about 10:00 o'clock of the same evening, the bandits arrived at Pe-ek and went direct to the house of Paleng Toto which they en-tered unannounced. Once inside the house, they fired two shots into the air, waking up the inmates of the house. One of the bandits lighted a native lamp. They then hog-tied the inmates of the house, ransacked their pockets for va-luables, and hacked them with bladed weapons on vital parts of their bodies. The bandits then left the house. Shortly after, two of the victims, Paleng Toto and Mahajiril Toto, were found dead, while three other victims, Kapek, Sabu Pa-leng and Enjeng, were found to be still alive although gravely wounded. These victims were taken to a hospital at Isabela, Basilan City, where due to timely medical care for about three weeks, they were saved from death. The medical certificates, Exhibits "A" and "C", described the wounds inflicted upon Paleng Toto and Mahajiril Toto, respective-ly, and the causes of their deaths were as follows: re Paleng Toto, "1. Wound, incised, 2-1/2 in. long, superficial, back, left side, upper portion. 2. Wound, incised, 4 in. long and 2 in. deep, neck, left side. 3. Wound, incised, 10 in. long, penetrating the abdominal cavity, abdomen, hypochondriac region, right side, portion of large intes-tines protruding. 4. Wound, incised, 2-1/2 in. long and 1/2 in. deep, wrist, right. The cause of death of the above named deceased Moro Paleng Toto was Acute Anemia, Secondary hemorrhage, Multiple wounds;" re Mahajiril Toto, "Wound, incised, 10 in. long, penetrating the thoracic ca-vity, shoulder and back, left side. (From clavicle, left side to scapula, right side). The cause of death of the above named deceased Imam Mahajiril Toto was Acute Anemia, Secondary hemorrhage, wound penetrating the thoracic cavity, shoulder and back, left side." The wounds inflicted upon the other three victims are described in medical

certificates Exhibits "H", "I" and "J", as follows: Exhibit "H", re Kapek, "Hacking wound, occipito-parietal, left head. Hacking wound, parietal, left head. Hacking wound, arm, right. Healing time, barring complications, 2 weeks;" Exhibit "I", re Sabu Paleng, "Hacking wound, dorsum, right hand. Hacking wound, shoulder, right. Healing time, barring complications, 2 weeks;" and Exhibit "J", re Moro Enjeng, "Hacking wounds, back. Hacking wound, right arm. Hacking wound, knee, right. Healing time, barring complications, 2 weeks." The bandits duly identified were Baeng Tungol, Unuh Bakang, Malonzo, Indanan Tarang, Awaron Nalun, Elias Taupan, Endo Sahim and Abirin. The ninth bandit was not identified and was referred to as John Doe.

The lower court found the defendants, Indanan Tarang and Unuh Bakang, guilty as principals. The finding is correct, it being clear from the evidence that there was conspiracy or previous concert of criminal design.

The trial court held that there was treachery because the victims were hog-tied and defenseless when some of the bandits hacked them with bladed weapons on vital parts of their bodies. The trial court was correct in so holding.

However, the lower court erred in finding the defendants, Indanan Tarang and Unuh Bakang, guilty of "double murder, with multiple frustrated murder," that is, of complex crimes. The crimes were not complex because there were different acts of hacking performed by different bandits. For this reason Article 48 of the Revised Penal Code on complex crimes is not applicable. (People vs. Pantoja, G.R. No. L-18793, October 11, 1968.) There were, therefore, two distinct murders and three distinct frustrated murders and the two defendants are criminally liable for each and every one of them.

The lower court was correct in finding that the aggravating circumstance of by a band was offset by the mitigating circumstance of illiterate non-Christians. (Sec. 106, Administrative Code of the Department of Mindanao and Sulu.)

The civil indemnity for the deaths of Paleng Toto and Mahajiril Toto should be raised from P6,000 to P12,000 for each of them. (People vs. Pantoja, supra.)

The civil indemnity of P500 granted by the lower court to each of the three victims of frustrated murder cannot be increased in the absence of evidence to justify an increase.

The only witness presented for the defense was Endo Sahim, the defendant who previously pleaded guilty to the information. With respect to his testimony, the trial court, Judge Geronimo R. Marave, presiding, made the following findings:

"To overcome the evidence for the prosecution, the defense introduced the lone testimony of Endo Sahim who claims that he, Malonzo and Awaron were the only ones who committed the crime. This testimony was not at all corroborated, not even by the accused Indanan Tarang or Unuh Bakang themselves. When Endo Sahim was arraigned by the reading of the above quoted informations and translated in the dialect known to him, he admitted that he, together with his co-accused, Baeng Tungol, Unuh Bakang, Indanan Tarang, Elias Taupan, conspiring and confederating together, aiding and assisting with their co-accused Moro Abirin, and one John Doe who is still at large, Malonzo and Awaron Nalun who are already dead, committed the crime. In short, when he was arraigned and apprised that Indanan Tarang and Unuh Bakang were among his companions in the commission of the crime, he was not heard to have stated that Indanan Tarang and Unuh Bakang were not with him.

"From the evidence therefore, the guilt of the accused Indanan Tarang, and Unuh Bakang of the crime charged in the information was proved beyond reasonable doubt."

We agree with the above quoted findings of the trial court.

**PREMISES CONSIDERED**, the appealed judgment is modified by: 1. sentencing each appellant to the penalty

of reclusion perpetua with the accessory penalties of the law for the murder of Paleng Toto; 2. sentencing each appellant to the penalty of reclusion perpetua with the accessory penalties of the law for the murder of Mahajiril Toto; 3. ordering the appellants to pay in solidum the sum of P12,000 to the heirs of Paleng Toto and the sum of P12,000 to the heirs of Mahajiril Toto; 4. sentencing each appellant to an indeterminate penalty of from 6 years of prision correccional as the minimum, to 13 years of reclusion temporal as the maximum, for the frustrated murder of Kapek; 5. sentencing each appellant to an indeterminate penalty of from 6 years of prision correccional as the minimum, to 13 years of reclusion temporal as the maximum, for the frustrated murder of Sabu Paleng; 6. sentencing each appellant to an indeterminate penalty of from 6 years of prision correccional as the minimum, to 13 years of reclusion temporal as the maximum, for the frustrated murder of Enjeng; and 7. ordering the appellants to pay in solidum civil indemnity in the sums of P500 to Kapek, P500 to Sabu Paleng and P500 to Enjeng.

The sentences of reclusion perpetua and the indeterminate penalties shall be served successively.

Costs against appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

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