

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PANGLIMA MAHLON, MORO SAON, AND MORO MUNTASAL, DEFENDANTS AND APPELLANTS.

G. R. No. L-5198. April 17, 1953

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance of Zamboanga finding Panglima Mahlon, Moro Saon, and Moro Muntasal guilty of homicide, with the aggravating circumstance of abuse of superior strength, and sentencing each of them to suffer imprisonment for not less than ten (10) years of prision mayor nor more than seventeen (17) years, four (4) months, and one (1) day of reclusion temporal, to indemnify the heirs of the deceased in the sum of P2,000, and to pay the costs. The case was appealed to the Court of Appeals, but as that court found that the crime committed is murder, qualified by alevosia, and the penalty which should be imposed is reclusion perpetua, it certified the case to this Court as provided by law.

It is not disputed that in the afternoon of December 24, 1948, at about 4:00 o'clock, Moro Lumundut was shot to death on the bed of the Tubigduyan Creek, Cabcaban, District of Maluso, City of Basilan. That afternoon he had gone to the Cabcaban river to fetch his vinta and bring it to the Tubigduyan Creek. As Lumundut did not return, his wife Mora Salasina ordered a Moro by the name of Adjalul to look for him. When Adjalul came back, he reported to her that Lumundut was already dead. Salasina proceeded to inform the authorities, who went to the place where the deceased was. They arrived there early on December 25 at 5:00 o'clock in the morning and found the body on the bed of the creek. The sanitary inspector examined the dead body and found one wound, gunshot, at the back of the shoulder, right, 2 gunshot wounds at the back, right, and 2 gunshot wounds on the thigh, right (Exhibit A). The authorities also found that a package hanging from his neck containing P397 was intact, but that a Japanese rifle that he was carrying that afternoon was gone.

A sketch of the place where the body of the deceased was found, Exhibit C, prepared by the assistant chief of police of Maluso, shows that it was on the Tubigduyan river, a branch of Cabcaban river. A copra kiln is northeast of the scene of the killing. North of the kiln is the house of one Moro Sabtal, while Panglima Mahlon's house is northeast from that of Moro Sabtal.

Moro Sabdani testified that that afternoon (of December 24), while he was drying copra in the lain, five persons passed by. They were Moros Sabtal, Mañon, Saon, Muntasal, and Panglima Mahlon. Sabtal was carrying a carbine, Mañon a pistol, Mahlon a pira, and Saon and Muntasal barongs. Not long after they had passed by, he heard shots, and as he proceeded to the place from whence the reports came, he suddenly met the five who had passed in front of the copra kiln not long before. As he met them, Sabtal levelled his rifle at him and ordered him to stop and join them. Sabdani did as he was ordered to do. At that time, Mahlon was already carrying a rifle, which he learned later belonged to Lumundut. All the six then went to the house of Panglima Mahlon. There Sabtal ordered Saon and Mañon to go to Bubuan Island to fetch Marajuki, Sabtal's brother. When Marajuki

arrived, Sabtal asked him to join him in the forest. Marajuki protested on the ground that he did not commit any offense, but he had to join them just the same, although reluctantly. Sabdani also tried to excuse himself from joining them, saying that he had a family to support, but he also had to join. When they were already in the forest, Sabtal took the rifle which he had previously given Sabdani (the one taken from Lumundut) and gave it to Moro Mañon. He had Sabdani and Marajuki guarded. The following day, in the afternoon, however, on the excuse of answering a call of nature, Sabdani and Marajuki went to a place where they could not be seen, and from there they escaped to Canas where they reported the above incidents to the manager of a plantation by the name of Asagra. Thereafter Sabdani made an affidavit, Exhibit 1, and so did Marajuki. As a result the three appellants were apprehended and prosecuted for murder, but Sabtal and Mañon, who returned to the forest, are still at large.

Mora Salasina, wife of the deceased Lumundut, testified that after receiving her appointment as substitute barrio lieutenant (Exhibit E, dated November 3, 1948), she happened to hear Mahlon make this remark; "Why is it that Salasina, a woman only, was appointed barrio lieutenant in his place? But that is all right. Let us see. We will see. It will not take long." The incident of the shooting took place ten days after this. So when Salasina reported that her husband was killed, she advised the police to look for Sabtal, who was Mahlon's neighbor and friend.

The deputy mayor of Maluso also testified that rivalry existed between Mora Salasina, wife of Lumundut, on one side, and Panglima Mahlon, on the other. Salasina owned a market in Cabcaban, and Mahlon a market also in Libog. That of Salasina is patronized by many people, while only a few go to Mahlon's. Salasina's market is on the bank of a river near Sabtal's house.

The defense of the accused is to the effect that it was Sabtal, Sabdani, and Mañon who killed the deceased, and that they were not present at the killing. Mora Ranian, a witness presented by the defense, testified that she was only a few meters away from Lumundut when he was shot, and that she saw Sabtal and Sabdani fire the shots at Lumundut. On cross-examination, she said that as Sabtal fired at Lumundut, the latter faced Sabtal, and that the latter was not at Lumundut's back as he fired. She also said that notwithstanding the fact that she saw the crime committed and knew that the police authorities came to investigate it, she did not present herself to testify and tell what she supposedly saw. The testimony of this witness must be rejected as it is inconsistent with the fact that the wounds found in the person of the deceased were inflicted from behind. This witness also could not face the judge as she testified. The sketch of the place also shows that her house is not near the scene of the killing as she pretends. Her conduct at the trial and her failure to disclose her knowledge to the authorities which investigated the crime show that she did not actually see the crime committed.

Eduardo de Asis, upon whose land the house of Mahlon is built, pretends that on the afternoon of the 24th of December at 4:30, he met Lumundut at the junction of a trail in Cabcaban; that Lumundut was carrying at that time a Japanese rifle; that both of them passed at a copra kiln belonging to Sabtal, and that there they saw Sabtal, Sabdani, and Mañon; that Lumundut saw that Sabtal had a rifle, so Lumundut warned him that it was against the law for him to carry a rifle because he had no license; that thereupon Sabtal answered that he would rather lose his rifle than his wife, and that Mañon, upon hearing Lumundut's remarks, leaped down from the kiln and proposed to Sabtal to box him (Lumundut); that after this incident Lumundut proceeded to the place where his vinta was, while he (Asis) himself proceeded on his way because he was afraid; that as he reached the last monument of his land, he heard shots, and as he went on he met Mahlon; that Mahlon asked him what could have been the cause of the shots; that he joined Mahlon on his way to his (Mahlon's) house, where he stayed until 9:30 in the evening; that he slept there until he was awakened by men calling at the house looking for Mahlon; that the men were Mañon, who carried a carbine, and Sabdani, who carried a revolver; that Mañon told Mahlon that Sabtal called for him (Mahlon); that Mahlon said he was tired, but that he would send his son Saon there, as he did actually send Saon that very evening; that he saw the rifle of Lumundut in the hands of Mañon and was frightened, so he had to

go home that very evening.

A study of the above testimony, together with some facts disclosed by Asis on cross-examination, discloses certain interesting points. He said that he left Abong- Abong at 12:00 noon, and that it takes 2½ hours to walk from that place to his house at Mangal. Yet he says he met Lumundul on the way at 4:30 p.m., as Lumundut was going to his vinta. The time that he met Lumundul must, therefore, have been around 2:00 to 2:30 in the afternoon, not 4:30. His whereabouts between 2:30 and 4:30 is not disclosed by him. Then he says that after hearing the shots, he met Mahlon coming from the forest, but Mahlon denied having said so. Saon, one of the appellants, said that it was already late in the afternoon when they met. The incidents above-mentioned, as well as those that happened in Mahlon's house while he was there, are not inconsistent with the testimony of Sabdani that Mahlon and his co-accused were with Sabtal just before the shots were fired. De Asis may have seen an incident between Sabtal and Lumundut early that afternoon. Admitting this to be true, we say that Sabtal must have thereafter sought the advice and help of Mahlon, and that this and his son and brother accompanied Sabtal and Mañ to the place where Lumundut was. After the shooting, Sabtal and Mañon and the others must have gone to the forest, and soon thereafter De Asis must have met Mahlon near the latter's house, and as the house is near the forest, De Asis must have believed then that Mahlon had come therefrom. The incident, between Sabtal and Lumundut as testified to by De Asis, therefore, does not necessarily prove that Mahlon could not have taken part in the killing of Lumundut; it is still consistent with Sabdani's testimony that he saw them together just before and after the killing.

Other witnesses for the defense testified that Mahlon and Saon were in the forest that day splitting palma brava. This fact does not preclude them from having been invited by Sabtal to go to the place where Lumundut was fetching his vinta in the afternoon.

We have carefully read the evidence, and we are fully convinced that Sabdani told the truth. His story is corroborated in very many incidents not only by Marajuki, Sabtal's brother, but by Mahlon himself and by Saon. Thus, the fetching of Marajuki by Mañon and Saon was not denied by Mahlon. Neither is the fact that Lumundut's rifle was in the house of Mahlon ever denied by the defense. What he said at the trial is the same as what he declared in his affidavit that he escaped from Sabtal and Mañon's surveillance in the forest. The trial judge, who saw him testify and saw the appellants deny his story, gave full credit to Sabdani's testimony in spite of the latter's denial.

It is to be noted, however, that the evidence submitted is purely circumstantial, as none was presented to the effect that appellants took direct part in, or directly aided and abetted, the commission of the crime; not only that, but according to the evidence of the prosecution itself, the appellants did not have any firearms at the time of the killing, and this was clearly caused by firearms only. In order to hold the appellants guilty, therefore, the circumstantial evidence must be deemed to have proved beyond reasonable doubt that appellants conspired with the killers (Sabtal and Mañon) to assassinate the deceased.

It has been stated that in order to sustain a conviction for conspiracy, evidence of actual cooperation, rather than mere cognizance, acquiescence or approval of an unlawful act is required. (Underhill's Criminal Evidence, sec. 773, pp. 1403-1405). On the other hand, in order that circumstantial evidence may constitute proof beyond reasonable doubt, there must be a series of circumstances satisfactorily proved, that the circumstances are consistent with each other, and that each and everyone of them is consistent with defendant's guilt and inconsistent with his innocence. (U. S. vs. Douglass, 2 Phil., 461, 474; U. S. vs. Lim Sip., et al., 10 Phil., 627; People vs. Chan Uh, 51 Phil., 523; People vs. Ludday, 61 Phil., 216.) Do the circumstances proved in this case justify the finding that the appellants conspired or actually cooperated in the assassination of the deceased? Do the circumstances proved satisfy the rule above stated?

Sufficient motive was shown for the appellants to have conspired in the commission of the offense. Rivalry in trade and resentment over the recent appointment of the wife of the deceased, or the preterition of appellant Panglima Mahlon—this was the motive of the appellants. This was enough to create a desire to eliminate the rival. Appellant Saon is Mahlon's son, still under orders of the father and sharing with the latter in the latter's hatred of the deceased. In the same situation was appellant Muntasal, Mahlon's brother. For Sabtal, there was the evidence presented by the defense itself, that on the afternoon of the incident Lumundut, upon seeing Sabtal possessing a rifle, warned him of possible prosecution for the violation of the law. There was, therefore, a common desire among the live persons seen by Sabdani going to the scene of the crime to end the life of the deceased Lumundut.

Actual cooperation with Sabtal and Mañon, the triggermen in the assassination, is the only plausible or reasonable conclusion that can be inferred from the facts that the three appellants were in company with Sabtal and Mañon as they proceeded to the place where Lumundut was, and were armed with blade instruments, as well as from the fact that they came back together from the place of the commission of the crime. The same inevitable conclusion is obtained from the possession of the victim's rifle by Mahlon as they came back. If appellants merely approved of the assassination, it would not have been necessary for them to join Sabtal and Mañon, and neither would they have carried their weapons with them. Then, again, Mahlon ordered his son to accompany Mañon to a place to fetch. Sabtal's brother—another incident indicative of the continued support given Sabtal and Mañon by Mahlon. All the acts of the appellants can point to no other conclusion—that appellants conspired to commit the crime, were present at the time of its commission, giving encouragement thereto by their armed presence. It is unreasonable to presume that appellants were present only as curious onlookers; possession of their weapons and company with the triggermen just before and after the killing—all these are inconsistent with such an assumption. On the other hand, these circumstances are not consistent with innocence. The doubt that entitles the accused to acquittal is reasonable doubt, not a whimsical or capricious doubt, based on probabilities unsupported by evidence. (U. S. vs. Brobst, 14 Phil., 310.) No reasonable doubt is engendered by the circumstances as to appellants' participation in the offense.

We are morally certain, after a consideration of the circumstances duly proven, that the appellants are guilty of the offense charged as co-principals. And it appearing that the victim was shot from behind, at a time when he could not possibly offer resistance or defense to the assault, the commission of the crime is attended by the qualifying circumstance of treachery.

Wherefore, the judgment appealed from is hereby modified, and the appellants are found guilty of murder, with the qualifying circumstance of treachery, and they are hereby sentenced to suffer the penalty of life imprisonment, to indemnify jointly and severally the heirs of the deceased in the sum of P6,000, and to pay the costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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