

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABDULA BERNARDO, BANGON TANOG, DATU MOHAMAD, OGKA MORO, AND SEVERAL JOHN DOES, ACCUSED. BANGON TANOG, ACCUSED-APPELLANT.

G.R. No. L-28632. July 20, 1983

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

In Criminal Case No. 2254 of the Court of First Instance of Zamboanga del Sur, Abdula Bernardo, Bangon Tanog, Datu Mohamad, Ogka Moro, and several John Does were charged with the crime of Robbery in Band with Double Homicide and Frustrated Homicide committed, as follows:

"That on October 29, 1962, at about 4:00 P.M., more or less, in Sitio Tangalan, Barrio of Cawayan, Municipality of Alicia, Province of Zamboanga del Sur, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, together with the other John Does who are still at large more than four of whom had firearms of different calibers and bladed weapons, conspiring, confederating and assisting one another, and with intent to gain by the use of force upon things and violence and intimidation against persons, did then and there willfully, unlawfully, feloniously and criminally assault and raid the said sitio of Tangalan with the use of their firearms and bladed weapons, killing Marcelo Tan alias Marcelo Kee and Pedro Fernandez and wounding Tomas Calamba as a result thereof, and thereafter, took and carried away cash in the amount of Nine Hundred Fifty (P950.00) Pesos, one rifle caliber 22 Squibman Serial No. 37564 worth Three Hundred Fifty (P350.00) Pesos, two men watches worth Seventy Four (P74.00) Pesos, one gold bracelet worth Fifty (P50.00) Pesos and various goods worth Two Hundred (P200.00) Pesos, belonging to said Ignacia Soria and thereafter, entered the house of Cirilo Payapaya and took one transistor radio (Sony) Serial No. 56552 worth Two Hundred (P200.00) Pesos and at the same time entered the house of Norma de Dumapat taking from her the amount of Three Hundred (P300.00) Pesos in cash, which make the total amount of Two Thousand One Hundred Twenty Four (P2,124.00) Pesos; to the damage and prejudice of the owners thereof."

Trial was held jointly and judgment was rendered on the case on March 11, 1967, whereby the said accused were sentenced, under the charge aforesaid, to suffer the death penalty and to pay jointly and severally the amount of P6,000.00 to the heirs of Marcelo Tan and another P6,000.00 to the heirs of Pedro Fernandez. When the aforesaid judgment was promulgated, however, only two accused, namely: Bangon Tanog and Datu Mohamad, were present since the accused Abdula Bernardo had died while in confinement, and the other accused Ogka Buhisan alias Ogka Moro jumped bail and has remained at large up to the present.[1] Subsequently, thereafter, the accused Datu Mohamad also died at the New Bilibid Prison Hospital on October 13, 1979,[2] and the Court dismissed his appeal insofar as his criminal liability is concerned.[3]

The inculpatory facts of the case are as follows:

"The evidence for the prosecution has satisfactorily established that at about 4:00 o'clock on the afternoon of October 29, 1962, a band of muslims, more than ten (10) in number, each one of whom was armed with either

a carbine, a pistol, a shotgun, or a bladed weapon, arrived in four vintas at Sitio Tangalan, Barrio Cawayan, Municipality of Alicia, Zamboanga del Sur, and swooped down upon the hapless inhabitants of the locality. Once ashore, these marauders from the sea went on a rampage sending the unwary victims, men and women alike, scampering for safety, and seeking refuge in every nook and cranny. Some of the marauders entered the house of Ignacia Soria and, at gunpoint appropriated from her P950.00 cash, one Squibman Rifle worth P350.00 and several unsewed clothings worth P200.00. Immediately thereafter, the same group entered the store of Wee Kee and shot and killed Marcelo Tan (Exhibits 'A' and 'A-1') and Pedro Fernandez (Exhibits 'B' and 'B-1'), and also shot and wounded Tomas Calamba (Exhibit 'C'). A part of the group of marauders armed with carbines also went up the house of Norma Dumapat and at gun point also extorted from her P300.00.

"During the brief moment that the marauders were in Tangalan, looting, plundering, pillaging, and killing, the panic-stricken inhabitants could only cringe with fear and abject surrender. When they finally went away, they left in their wake a pall of gloom and the gory cadavers of Marcelo Tan and Pedro Fernandez.

"Four of the marauders, namely, Abdula Bernardo, Tangon Tanog, Datu Mohamad, and Ogka Moro alias Ogka Buhisan, were definitely identified by some residents of the sitio who had known them long before the commission of the offense."

Able counsel appointed for the accused contends that the trial court erred in finding the accused Bangon Tanog and Datu Mohamad guilty beyond reasonable doubt of the crime for which they are charged.

The Court finds the appeal well taken. To begin with, there is no evidence whatsoever that would show that the accused Datu Mohamad had participated in the commission of the crime complained of. The only evidence that would incriminate him is contained in the affidavit of Marcela de Bungcaras wherein she stated that the said Datu Mohamad was one of the malefactors who went to their house and demanded money from her.[4] However, Marcela de Bungcaras never testified as a witness. Since the findings of facts and the judgment must rest only and strictly on the evidence tendered, the accused Datu Mohamad should be absolved from liability, both criminal and civil.

The evidence presented against the accused Bangon Tanog, consisting of the sole testimony of Ildefonso Berbesada, is, likewise, insufficient to prove the guilt of the said accused beyond reasonable doubt. Ildefonso Berbesada merely testified that he saw Bangon Tanog on board his vinta, sailing towards the landing of Imam Samat Medel, while he, Berbesada, was hiding at the base of a tree in a mangrove swamp. But, Berbesada did not testify, nor is there corroborative or similar testimony, that the accused Bangon Tanog anchored at the landing and joined in the rapine and pillage of the sitio. The testimony of Ildefonso Berbesada reads, as follows:

"Q

Mr. Berbesada, where were you on October 29, 1962, at about 4:00 o'clock in the afternoon?

A

I was in my house.

"Q

While you were there in your house, did you take notice of anything that transpired which has a relation to the case that is being tried today?

A

As what I have observed was that the people were in commotion.

"Q

Will you please tell the Court what this commotion was about?

A

There was a shout: 'Bandits, bandits'.

"Q

What were the people doing when you heard the shouting of 'Tulisan, tulisan' or 'Bandits, bandits'?

A

The people were running.

"Q

On hearing this and seeing people running, what did you do?

A

I jumped out of my house.

"Q

Where did you go?

A

I went to the mangrove to a certain tree.

"Q

What were you doing there?

A

I was hiding there.

"Q

While you were hiding there in that tree in the mangrove, did you notice anything that would occur to you as unusual at that particular moment?

A

Not long later, while I was hiding I saw 2 vintas of the bandits passed by.

"Q

How many vintas passed by?

A

Four vintas.

"Q

Will you please tell the Court where these vintas came from and if you knew where they were going?

A

The vintas were going to the landing of Imam Samat Medel.

"Q

What direction did they come from?

"ATTY. PIELAGO:

This witness is incompetent as to what barrio.

"COURT:

Sustained.

"ATTY. BERSALES:

"Q

What did you see in these vintas?

A

In the third vinta I saw Bangon Tanog.

"Q

If that Bangon Tanog is in Court today, can you point to him and identify him before this Court?

A

(Witness pointing to a person who identified himself as Bangon Tanog).

"Q

You said you saw Bangon Tanog in one of the vintas. How many companions did he have in that particular vinta?

A

He had 2 companions and he was steering the vinta.

"Q

How about the companions of Bangon Tanog in the particular vinta, what were they doing when you saw them?

A

They were holding with them carbines.

"Q

You said you saw 4 vintas, and Bangon Tanog was on the third vinta. Will you please tell the Court what position in relation to each other as each passed by?

A

I can demonstrate.

"Q

How?

A

The vintas were following each other.

"Q

And you remember very well, by way of affirmation, that you saw Bangon Tanog on the vinta?

A

I am sure of that.

"Q

You said that you were hiding on a tree or beside a tree in the mangrove. Please inform us as to what part of the tree were you hiding?

A

On the base of the tree.

"Q

Is this particular area where you were hiding covered by water?

A

It is covered with water.

"Q

You made mention about knowing Bangon Tanog personally. Will you please tell the Court how you knew Bangon Tanog?

A

I happen to know him because before the incident I already knew him in Sitio Tangalan.

"Q

How did you meet him?

A

I happen to know him because before the incident I was also a fish vendor and he was a fish vendor too and we are only occupying one table in selling fish, and sometimes he is ahead of me.

"Q

Where did you sell your fish, in what particular place?

A

At Alicia.

"Q

And this Tangalan is a barrio of Alicia, is that correct?

A

Yes, sir.

"Q

And Alicia is one of the municipalities of Zamboanga del Sur, is that correct?

A

Yes, sir.

"Q

You said you saw 2 carbines in the vinta that was paddled and steered by Bangon Tanog. How about in the other vintas, did you see some arms also?

A

I was not sure whether there were also weapons, but I'm sure there were weapons of the companions of Bangon Tanog.

"Q

Has Bangon Tanog his own vinta since apparently you knew him since you were fish vendors?

A

The vinta where he was riding on was his own vinta.

"Q

And you are very familiar with that particular vinta?

A

Yes, I'm familiar.

"Q

And you saw these 4 vintas after the raid in Tangalan?

"ATTY. GALICINAO:

We object. The witness is incompetent to answer.

"COURT:

Sustained.

"ATTY. BERSALES:

"Q

When did you see the vintas, before or after you heard the words, 'Bandits, bandits'?

A

After the shouts: 'Bandits, bandits' and more or less one-half hour after I saw these vintas.

"ATTY. BERSALES:

That is all for the witness."[5]

That single circumstance of having been seen sailing towards the landing or wharf of Imam Samat Medel, even if true, is not sufficient to prove conspiracy. To warrant a conviction in criminal cases upon circumstantial evidence, such evidence must be more than one, derived from facts duly proven, and the combination of all of them must be such as to produce conviction beyond reasonable doubt.[6]

WHEREFORE, the judgment appealed from should be, as it is hereby, REVERSED and SET ASIDE and another one entered acquitting the accused Bangon Tanog and Datu Mohamad. With costs de oficio.

SO ORDERED.

Fernando, C.J., Teehankee, Aquino, Guerrero, Abad Santos, Plana, Escolin, Relova and Gutierrez, Jr., JJ., concur. Makasiar, J., took no part.

De Castro, J., on sick leave.

Melencio-Herrera and Vasquez, JJ., are on official leave.

[1] Original Record, p. 318.

[2] Rollo, p. 145.

[3] Id., p. 152.

[4] Original Record, p. 5.

[5] t.s.n. of Dec. 17, 1964, pp. 35-40.

[6] Sec. 5, Rule 133, Revised Rules of Court.

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