

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CATALINO ENRIQUEZ AND BENIGNO ALCANTARA, DEFENDANTS
AND APPELLANTS.**

G.R. No. L-17388. October 30, 1965

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from a decision of the Court of First Instance of Zamboanga del Sur convicting defendants-appellants Catalino Enriquez and Benigno Alcantara of the crime of robbery with triple homicide with which they are charged and sentencing each to life imprisonment, to jointly pay the heirs pf the deceased Siaba alias Yu Siap in the sum of P866.00, as well as to indemnify the heirs of said deceased, and those of Flaviana Licanda and Edita Balingcasag, in the sum of P3,000.00 each, as well as to pay the costs.

Early in the evening of December 12, 1957, several persons entered the house and store of Siaba alias Yu Siap, in the barrio of Catituan, municipality of Malangas, province of Zamboanga del Sur, and inflicted upon him and his housemaids, Edita Balingcasag and Flaviana Licanda, severe injuries in different parts of the body, in consequence of which these person died due to hemorrhage, aside from stealing P500 in cash and goods worth P166.10. Soon after an investigation conducted by the Constabulary, immediately after the occurrence, a complaint for robbery with triple homicide was filed with the municipal court of Malangas against appellants Enriquez and Alcantara, who waived the preliminary investigation. Thereupon, the provincial fiscal filed the corresponding information with the court of first instance, which, after a protracted trial, rendered the aforementioned decision, from which the defendants have appealed.

The facts above mentioned are not disputed, and the issue raised in this appeal refers to the identity of the malefactors, which, in turn, hinges on the credibility of the testimonial evidence introduced by both parties. Appellants make, also, a feeble attempt to assail the sufficiency of the evidence to establish the robbery.

The prosecution relies mainly upon Ramon Mambi, alias Ambi Banin, a member of the household of Siaba, who testified that in the morning of December 12, 1957, their neighbor, defendant Enriquez went to Siaba's store to purchase some commodities on credit, which Siaba did not grant owing to an outstanding and still unpaid account of Enriquez, who, accordingly, left the store mumbling: "some of these days you will see"; that when Mambi left the store that afternoon, to get firewood at Lampanas, by order of Siaba, the latter was in said store, whereas Flaviana Licanda and Edita Balingcasag were respectively in the kitchen and ironing clothes in a room, while, Benigno Alcantara was in the storeroom; that when, late that afternoon, Mambi was approaching the store, upon his return from Pampanas, he saw Siaba fighting Enriquez, who was attacking him with a bolo; that Siaba wrestled the bolo from Enriquez and gave him with it a slash on the face; that Enriquez then ran out of the store towards his house, followed by Siaba, who chased him; that Alcantara a brother of Enriquez - in turn, emerged from the store, brandishing another bolo, in pursuit of Siaba; that Enriquez was about to reach his house when Alcantara overtook Siaba and boloed him on the back; that Siaba fell down wounded, but Alcantara kept on

hacking him with the bolor and then ran away; that as several persons - named Ising, Vicente, Urgano and Tiboy approached Siaba, soon thereafter, he asked them to bring him to Margosatubig for medical treatment; that, accordingly, said persons, including Mambi, placed Siaba in a hammock and proceeded towards the shores of Tibagon, with a view to putting him in a boat that would take him to Margosatubig; that, on the way to Tibagon, Siaba confided to one of those who were carrying him that the thief who had wounded him was in the group, which had, meanwhile, been joined by defendant Alcantara; that before reaching Tibagon, they passed by the house of one Nia Laya, where they rested for a while; that upon inquiry from Nia Laya about the identity of the malefactor referred to by Siaba, the latter replied that it was Alcantara; that as Siaba felt he could no longer bear the pain he was suffering and reach Margosatubig alive, he was, upon his request, brought back to his store; and that he died either shortly before arriving or upon his arrival thereat.

Upon the other hand, Alcantara would have us believe that, when, late in the afternoon of December 12, 1957, he left Siaba's store, he met two Muslim armed with barongs, who were about to enter said store; that he, likewise, saw, outside the same, three armed persons, one of whom had a barong; that, when he (Alcantara) was about eighty-five (85) meters from the store, he heard the voice of his sister-in-law, Mrs. Enriquez, shouting for help and stating that Siaba had been robbed and that Enriquez had been wounded; that he, likewise, shouted for help and went to his house from which he took his family to hide among the bamboo groves; that, after a while, he inquired about the details of the occurrence and was informed that his brother, Catalino Enriquez, had been wounded; that together with Felipe, Leon and Bedik, he then proceeded to Siaba's store; that on the way thereto they were joined by Ising, Vicente, Domingo, Dionisio and others whom he did not know; that as Siaba asked to be brought to Margosatubig, they placed him in hammock and proceeded to the shores of Tibagon; and that, before reaching this place and after resting in the house of Nia Laya, Siaba urged them to take him back to his store.

The version of appellant Enriquez was: While he was in Siaba's store, on December 12, 1957, at about 6:00 p.m., two Moros came and one of them approached Siaba. The other approached Enriquez, said "so you are here", and immediately gave him a bolo slash wounding his face, chest and forearm. Thereupon, Enriquez ran to his house and bade his wife to call for help.

Moreover, according to defense witness, Albain Isnain, he formed part of a band of malefactors, headed by one Tapsirol, who robbed the store of Siaba in Catituan and killed therein three (3) persons; and that prosecution witness Ambi Banin (or Ramon Mambi) was the killer of Siaba, whereas his maids were slain by Saidul Daugdog and one Salahuddin, who were members of said band.

The lower court, however, accepted the theory of the prosecution and found the testimony of the witnesses for the defense unworthy of credence. Upon a review of the record, we are satisfied that this conclusion is well taken.

Indeed, the theory given by Albain Isnain does not dovetail with that of defendant Alcantara, who would have surely implicated Ramon Mambi, alias Ambi Banin, had he really participated in the commission of the crime charged. Besides, Hadjim Isnain, who, according to his brother, Albain Isnain, formed part of said band, has not only denied it, but, also, asserted that he (Hadjim) and his brother (Albain) had neither been involved in the perpetration of said offense nor gone to Catituan on the date of the occurrence. Similarly, Saidul Daugdog contradicted the testimony of Albain Isnain. Again, the same can hardly have any weight, considering that he has been convicted by final judgment in Criminal Case No. 1482 of the Court of First Instance of Zamboanga del Sur of the crime of robbery with double homicide. In fact, his arrest in connection with that case was due to Ramon Mambi, alias Ambi Banin, which accounts for the testimony of Albain Isnain to the effect that Siaba had been killed by said witness for the prosecution.

Furthermore, Albain Isnain asserted (positively that Siaba's store was looted and ransacked by the band of male-factors who, he claimed, had committed the crime charged, and that the contents of the place were, accordingly, left in a condition of disorder. This was conclusively disproven by the testimony of Siaba's widow, who testified that when, shortly after the occurrence, she arrived at the store, she found therein no such disorder, although she noticed that a trunk had been forced opened and that P500 in cash and some goods valued at P166.10 were missing.

Albain Isnain, likewise, testified that Siaba was slain as he jumped out of the kitchen already wounded. Yet no blood was found in that part of the premises. What is more, drops of blood were found on the ground from the counter within the store leading outside, through the front door, towards the house of Catalino Enriquez, thereby corroborating the theory of the prosecution.

Upon the other hand, the testimony of Ramon Mambi, alias Ambi Banin, is plain, simple and straight forward. Moreover, he had no possible motive to falsely incriminate appellants herein, who are his first cousins. Then too, his version was corroborated by Nia Laya who confirmed the fact that, when he inquired from Siaba, while he and his companions were resting in Nia's house, about the identity of the thief who had wounded him, Siaba confided that it was Alcantara, who dared not even look at Nia. It is urged that said statement by Siaba is not in the nature of ante mortem declaration, but this pretense is clearly untenable, not only because his condition was actually serious, but, also, because, soon thereafter, Siaba expressed the belief that he could not reach Margosatubig alive.

As regards the question whether a robbery had been committed or not, suffice it to say that the testimony of Mrs. Siaba has established the fact that a trunk had been forced open and that money and goods had been taken away, and that appellants' testimony and that of their own witness Albain Isnain conclusively prove that the purpose of the culprits was to steal and that they had actually stolen said money and goods, worth altogether, P666.10. Indeed, otherwise, the maids of Siaba would not have been killed.

Despite the multiple homicides perpetrated in this case only one penalty should be imposed upon appellants herein, namely, that prescribed for robbery with homicide, as the lower court did (People vs. Manuel, 44 Phil. 333; People vs. Gha & Milagrosa, 45 Phil. 137; People vs. San Luis, L-2365, May 29, 1950; People vs. Bayabay, L-13901, September 19, 1961; and People vs. Galbon Ijad, L-14456, October 31, 1961).

However, the restitution for the stealing should be reduced to P666.10 and the indemnity for the death of each of the victims should be increased to P6,000, which restitution and indemnity should be borne by each defendant jointly and severally.

With this modification, the decision appealed from is hereby affirmed, therefore, in all other respects, with costs against the defendants-appellants. It is so ordered.

Bengzon, C. J., Bautista Angelo, Dizon, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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