

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ERNESTO SARIP, ALIAS POOR, MANUEL RAOP, ALIAS ONOT,
CONDALLA SARIP AND DONATO (DUMATO) MABPAN, ACCUSED.
ERNESTO SARIP AND...**

G.R. Nos. L-31481-83. February 28, 1979

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PER CURIAM:

The Court of First Instance of Bukidnon in its decision of August 22, 1969 convicted Ernesto Sarip and Manuel Raop (Raup) of robbery with triple homicide and sentenced each of them to death and to indemnify the heirs of the deceased Ciriaco Mision, Pamposa Mision and Amparo Mision in the sum of P30,000 (Criminal Case No. 1591). They did not appeal from that decision. Their death sentences are now under mandatory review (Sec. 9, Rule 122, Rules of Court).

The lower court also convicted Raop of robbery in band and illegal possession of firearms in Criminal Cases Nos. 1609 and 1611, respectively, and sentenced him to imprisonment penalties. Raop did not appeal from the two sentences. Hence, the records of Criminal Cases Nos. 1609 and 1611 were improperly elevated to this Court which has not acquired any appellate jurisdiction over the two cases. The offenses charged in the two cases did not arise out of the same occurrence, and were not committed on the same occasion, as the robbery with triple homicide.

Ernesto Sarip pleaded guilty to the charge of robbery in band in Criminal Case No. 1609 (wherein Raop was his co-accused). That offense was committed on April 24, 1966. In the lower court's partial decision of November 11, 1968, Ernesto was sentenced to an indeterminate penalty of two years, four months and one day of prison correccional to eight years and one day of prison mayor and to indemnify Alfredo Mataya in the sum of P180. He did not appeal from that decision.

In Criminal Case No. 1591, the case now under review, five persons were involved, namely, Raop, Ernesto Sarip, Condalla Sarip, Dumato Mabpan (Madpan) and Macadatar Tayao Mabpan. Macadatar was not arrested. The four were tried and after trial, Condalla Sarip and Dumato Mabpan were acquitted in the lower court's order of July 15, 1969. The acquittal was based in part on the affidavit of Ernesto Sarip, dated August 10, 1967, wherein he swore that Dumato had no participation in the robbery and that he (Ernesto) and Raop forced Condalla "at the point of a gun" to take part in the robbery (Exh. 5).

In said Criminal Case No. 1591, Ernesto Sarip was arraigned on March 29, 1968. He was assisted by his counsel, Manuel Valdez. At first, he pleaded not guilty. A few minutes later, Ernesto told his lawyer that he wanted to plead guilty. His lawyer manifested to the court that Ernesto wanted to change his plea. The trial judge, addressing Ernesto, asked him whether it was true that he wanted to plead guilty. He replied in the affirmative. So, it was made of record that he had pleaded guilty with the assistance of his lawyer.

The trial court did not then and there pronounce the judgment of conviction on Ernesto Sarip. It heard the evidence of the prosecution and the defense. Ernesto was present through-out the trial and was identified by the

prosecution witnesses. He was represented by a counsel de oficio who cross-examined the prosecution witnesses. He did not present any evidence.

Maybe, he realized the futility of presenting any defense because the prosecution offered in evidence his confession (Exh. J) dated August 1, 1966 which was taken down by a Constabulary sergeant and was sworn to before a special deputy clerk of court who, like the sergeant, was cross-examined by Ernesto's counsel when he testified on the circumstances under which the oath was administered to Ernesto.

In that confession, Ernesto stated that Datu Damiano Madpan, the barrio captain of Malipayon (brother of Dumato Madpan), convinced him and Raop to rob and liquidate a certain family in Malipayon (referring to, but not naming, the Mision family) and that Damiano gave him two American rifles and a paltik to accomplish that diabolical mission.

Ernesto revealed in his confession that upon arriving at the place to be robbed, Makadatar Madpan and Dumato Madpan took the chickens and carabao under the house while he and Raop stood guard at the stairs and that Makadatar and Dumato assaulted the occupants of the house and Dumato took their personal belongings and the sewing machine. That version does not dovetail in all details with the story told by the prosecution witnesses. But the decisive fact is that Ernesto in his confession admitted that he participated in the robbery and that he was a co-conspirator of Raop and Makadatar.

It is now feebly contended by Ernesto's counsel de oficio that Ernesto did not understand the full implication and import of his plea of guilty because his counsel and the trial court did not explain to him the consequences of his plea. No serious consideration can be accorded to that contention because Ernesto Sarip in pleading guilty simply ratified his extrajudicial confession which was corroborated by indubitable evidence of the corpus delicti. The due execution and voluntariness of that confession have not been assailed.

As already stated, the death sentence was imposed on Ernesto Sarip in the lower court's decision of August 22, 1969. The judgment of conviction was based on the testimonies of two eyewitnesses, Ernesto's confession and plea of guilty, the confession of Condalla Sarip and Raop's statement (Exh. G).

The prosecution's evidence shows that at about eleven o'clock in the evening of Saturday, April 30, 1966, Ernesto Sarip, Manuel Raop, Condalla Sarip (Ernesto's first cousin) and Makadatar Tayao Mabpan (Madpan) were in the vicinity of the house of the spouses Ciriaco Mision and Pamposa Mision located at Barrio Malipayon, Pangantukan, Bukidnon. Ernesto Sarip, Makadatar and Raop had firearms. They made known their presence by means of gunshots.

Ernesto Sarip and Makadatar, who was wearing a turban, went under the house and took the chickens which they gave to Raop and Condalla Sarip. The cackling of the chickens awakened Diosdado Mision, 12, son of Ciriaco, and Loreto Palanog, 26, a farm helper, who were upstairs. Through the bamboo slats of the floor, they peeped and saw what the intruders were doing under the house.

The intruders wanted to get also the carabao which was inside the corral under the house. Makadatar asked Ciriaco in a loud voice to open the corral but the latter kept silent. Makadatar, who was armed with a gun and a bolo, and Ernesto Sarip destroyed the corral, took the carabao and gave it to Raop and Condalla who brought it to the plowed field nearby.

Makadatar and Ernesto Sarip (tall and short, respectively) returned to the house and asked Ciriaco to give them rice and money but the latter replied that he did not have any. Angered by Ciriaco's refusal to comply with their demand, Makadatar and Ernesto fired several shots directed at the inmates of the house. Ciriaco, who was lying on the floor, was not hit but his wife, Pamposa, and daughter, Amparo, were wounded.

Makadatar went up the stairs, cut the string which tied the door, pushed the shutter, and, on seeing Ciriaco lying on the floor face down, hacked him to death. Ernesto Sarip, armed with a rifle, followed Makadatar and went up the house. Makadatar and Ernesto Sarip took clothes and a sewing machine. The carabao was later released by the robbers.

After the intruders had left, two inmates of the house were found dead. Ciriaco, 37, suffered an incised wound, eleven by three inches, across his back, two stab wounds also in the back and a lacerated wound on the chin. His wife, Pamsosa, 35, sustained an entrance gunshot wound in the right infra-clavicular region. The bullet penetrated her right lung and exited on her back. Amparo Mision, a daughter of the said spouses (who was older than Diosdado), sustained a mortal wound in the back and died in the hospital.

The participation of Ernesto Sarip and Raop in the robbery was confirmed by Condalla Sarip, a 22-year old farmer, who also made a confession, with exculpatory allegations, which was sworn to before the municipal judge on August 1, 1966.

Condalla declared that in the afternoon of April 30, 1966 he encountered Ernesto Sarip, Raop and Makadatar in Barrio Macatol. They were armed. They forced him to join them in robbing Mision's house in Barrio Malipayon several kilometers away. Condalla was Ernesto's friend.

The group drank the liquor called "Kulafu" before proceeding via a trail to Mision's house. Condalla said that on arriving near Mision's house, he was stationed by Ernesto Sarip near the banana plants where he (Condalla) received the chickens and carabao taken by Ernesto, Raop and Makadatar. While Raop guarded Condalla, Ernesto and Makadatar took clothes and the sewing machine from the house. Later, they released the carabao because it impeded their flight from the scene of the crime.

Diosdado Mision testified that before April 30, 1966, he saw Ernesto Sarip at Barrio Malipayon with Muslim companions. Loreto Palanog had also seen Sarip in the cockpit prior to the incident. Diosdado and Loreto knew Ernesto before the robbery was committed.

On the other hand, defendant Raop, 25, in his sworn statement taken on June 6, 1966 by a Constabulary corporal and in his testimony, admitted his participation in the robbery but he averred that he acted under duress exercised by his friend, Ernesto Sarip.

Raop testified that at six o'clock in the morning of April 30, 1966, his friend, Ernesto Sarip, went to his house at Barrio Kalilangan and requested him to accompany Ernesto to the house of the latter's aunt located at Barrio Lampanosan. At first Raop refused but when Sarip allegedly threatened him by pointing his rifle at Raop, Raop consented to go with him. Ernesto gave him a homemade gun called "paliuntod". They arrived at Lampanosan at four o'clock in the afternoon. Ernesto then told him that they were going to Barrio Malipayon. On the way, they met Condalla Sarip.

Ernesto asked Condalla to accompany them to Barrio Malipayon. Condalla refused but Ernesto poked his gun at him and he agreed to go along with them. At Barrio Kitalo, they met Makadatar Tayao (Mabpan) who joined them. The four of them arrived at Barrio Malipayon at about eleven o'clock in the evening.

They proceeded to Mision's house. Ernesto asked Mision to open the door of his house. Mision refused. Ernesto asked him to come down. Mision likewise refused because he was scared. Upon Ernesto's order, Makadatar took Mision's chickens and carabao under the house.

Ernesto allegedly reproached Raop for doing nothing. So, Raop got hold of the carabao, took it to the place near the banana plants, and stayed there with Condalla. Raop allegedly advised Ernesto and Makadatar not to kill any

person inside Mision's house. Ernesto did not heed Raop's advice. After Ernesto and Makadatar entered the house, Raop and Condalla, who carried the chickens, left the place. Raop let loose the carabao. In the distance, they heard gunshots being fired inside Mision's house. Later, Ernesto and Makadatar over-took Raop and Condalla. Ernesto allegedly warned Raop that he would be killed if he squealed to the authorities.

Counsel de oficio, who filed through his assistant a hardly legible typewritten brief (a practice which should not be encouraged), contends that the trial court erred in holding that Ernesto Sarip was responsible for the deaths of the three victims. That contention cannot be sustained. Ernesto was the mastermind and was a co-conspirator. Knowing that he was the one primarily liable for the robbery with triple homicide, which the trial court described as "most atrocious and cold-blooded", he interposed a plea of guilty or nolo contendere and did not bother to prove any attenuating circumstances.

With respect to Raop, it is clear that his version of the robbery with homicide does not exculpate him at all. His counsel de oficio argues that Raop acted against his will. That contention is belied by Raop's admission that he and Ernesto are close friends (89 tsn July 16, 1969; No. 4, Exh. J). The two were residents of Barrio Kalilangan. Raop did not prove that he acted under the compulsion of an irresistible force or under the impulse of an uncontrollable fear of an equal or greater injury. His pretension that he was threatened with a gun by his friend, Ernesto, is not credible because he himself (Raop) was armed with a rifle (Exh. E).

Counsel's third contention, that the crime of robbery and homicide should be treated separately and that only Makadatar Tayao (Mabpan), who is at large, should be held liable for the killings, is likewise bereft of merit.

The evidence proves that Ernesto Sarip and Makadatar fired at the inmates of the house before the clothes and the sewing machine were taken by them. Makadatar hacked Ciriaco Mision before the robbery was consummated. It is evident that the killings were perpetrated on the occasion of the robbery. Since Makadatar, Ernesto Sarip and Raop were conspirators, Raop is equally liable for the assaults committed by Makadatar and Ernesto.

We are satisfied that the guilt of Ernesto Sarip and Raop has been established beyond reasonable doubt. Abuse of superiority, dwelling and nocturnity attended the commission of the robbery with triple homicide. Even if the mitigating circumstance of plea of guilty is appreciated in Sarip's favor, the death penalty should still be imposed upon him (Arts. 63 and 294[1], Revised Penal Code).

The trial court failed to include in the indemnity the value of the stolen articles which it found to be P1,000. The indemnity for the three killings should be raised from P30,000 to P36,000.

WHEREFORE, in Criminal Case No. 1591, the death penalty imposed by the trial court on Ernesto Sarip and Manuel Raop (Raup) is affirmed and they are ordered to pay solidarily to the heirs of the Mision spouses the sum of P1,000 as the value of the articles taken during the robbery and P36,000 to the heirs of the three victims or P12,000 for each set of heirs. Costs de oficio.

SO ORDERED.

Teehankee, Barredo, Aquino, Concepcion, Jr., Santos, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur. Castro, C.J., and Makasiar, JJ., in the result.

Fernando, Abad Santos, De Castro, and Antonio, JJ., did not take part.

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