

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENEDICTO BALILI, LEONARDO AMOGUIS ALIAS BIG BOY, JOHN
DOES, AND RICHARD DOES, DEFENDANTS, BENEDICTO BALILI,
DEFENDANT-APP...**

G.R. No. L-14044. August 05, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The Court of First Instance of Surigao found Benedicto Balili guilty of robbery with homicide, attended by two aggravating and two mitigating circumstances, and sentenced him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim Federico So in the sum of P6,000.00, and to pay half of the costs. The other accused Leonardo Amoguis was acquitted.

The following facts found by the lower court are not disputed:

"That on September 9, 1956, and for sometime previous to that date, the spouses Federico So, nicknamed "Diko" or "Dikoy," were living in their store located at the Serra Street, in the sitio of Bungtud, municipality of Tandag, of this province of Surigao; that during that time, September 9, 1956, on the occasion of the celebration of the town fiesta, there was a carnival being held in the town plaza; that in that evening of September 9, 1956, said Juliana Respacia, together with her children, went to the carnival ground to attend the coronation of the carnival queen while her husband remained at home; that at about ten o'clock in that same evening said Juliana Respacia returned home with her children and her husband opened the door for them to get in, after which he closed said door and went to sleep on his bed situated at the back part of the store on the ground floor, while she and her said children went up to sleep on their beds situated at the upper floor of the building; that before she went to bed she placed the carnival season's ticket inside a drawer where money in the sum of P1,000.00 was kept; that all their doors and windows were closed and locked, the former by means of cross bars inside and the latter by means of nails; that said Juliana Respacia slept at about eleven o' clock that evening; that about three o' clock the next morning she was awakened by a shout for help from her husband telling that he was wounded; that she immediately stood up, took a flashlight and went down to where her said husband was, followed by her children and their woman-storekeeper; that she found her husband Federico So lying on the floor face down and as she held him on her arms and asked him what happened he could not answer anymore; that she saw blood on his abdomen and he had a wound on the breast near the left nipple and another wound on the arm; that she saw the club Exhibit B under the body of her said husband; that after some moment her husband died and she cried and shouted for help and people in the neighborhood came to see what happened; that it was found that the doors of the store, as well as the door leading to the kitchen in the upper floor, were opened; that the robbers entered the house by climbing a calamungay tree near the window and once inside they went down to the store on the ground floor; that after the incident was reported to the police, Patricio Malubay, who was then the chief of police of the town, together with sergeant Emilio Espinosa arrived and the premises were investigated and policemen were sent out to search for the marauders; that the drawer in the store was opened and the cash money amounting to P1,000.00 was gone; that an examination of the dead body of the deceased Federico So was made by the municipal health officer Dr. Pedro Serra who was called at

about six o' clock that morning of September 10, 1956; then when said doctor arrived he found the body already lying on his bed face up in rigor mortis and that he must have died four hours before he examined it; that he did not perform autopsy on the body for lack of facilities; that he found that the deceased had five groups of wounds which he described in the medical certificate Exhibit A he issued as follows: wounds at the right forearm, one and a half inches long; wounds at the index and middle fingers of the right hand; wound at the index finger of the left hand; and wound one-half inch long, on the left breast, two inches from the tip of the zypoid process, penetrating and perforating the heart; that this last is fatal and the victim might have died about four hours before the body was examined; that as usual police investigations and inquiries followed to identify the author or authors of the tragedy."

There was no eyewitness to the commission of the crime. Appellant was prosecuted on the basis of his confessions, verbal and written, and on evidence of his presence in the vicinity of the crime during or immediately after the commission.

Martiniano Ajos, a rural policeman, testified that at about 2:00 o'clock in the morning of September 10, 1956, while he was on his way home from the carnival where he had been on guard duty, he passed through the street in front of the victim's house. Because the night was dark, he had a flashlight with him. At the street corner, as he was about to make a left turn, he happened to focus the light on the face of a man lurking near the front door of the victim's store. The man, whom Ajos recognized to be Balili, ran away. Ahead of him, also running, were two other men, but Ajos failed to recognize them. Hearing the commotion inside the house of the victim, Ajos went in to investigate and found Juliana Respacia wailing over the dead body of her husband.

At once Ajos thought of Balili's suspicious actions outside the house. But he did not tell the widow about them since he had not seen appellant commit the crime. He kept his suspicions to himself until he learned, on November 25, 1956, that Balili had already confessed. It was then that he informed the widow about Balili's presence at the scene of the occurrence and signed an affidavit to that effect the next day.

Appellant assails the credibility of Ajos and points out that he did not even know who the policeman was who had relieved him as carnival guard or what were the streets where he passed in going home from the carnival that night. Little importance can be attached to such lack of knowledge in so far as his credibility is concerned. The one who relieved Ajos did not have to report to him, but rather to the officer-in-charge of the carnival guards. There was no particular reason why he should note or remember the names of streets which he took that night.

Asuncion Buenaflor, former chief of police of Tandag, testified that in the morning of September 13, 1956, while he was on his way to market, Balili asked him to come inside his house and there solicited his assistance. Asked to explain the unusual request, Balili said, "I do not know why I go (sic) with the robbery case (sic) in the house of Chinaman Dikoy," adding that his companions were "three moros and one 'mestizo' and Big Boy. [1] After advising Balili to consult a lawyer, Buenaflor left.

It is not true, as contended by appellant, that it took a long time before Buenaflor informed the authorities of what Balili had told him. Buenaflor made his affidavit only on November 26, 1956, but the fact is that on the very day Balili made the confession to him, he revealed it to the widow's uncle Vicente Respacia, who in turn lost no time in relaying the information to Emilio Espinosa, one of the police officers who were working on the case. After verifying the report from Buenaflor, Espinosa investigated Balili.

We see no reason to doubt the testimony of Ajos and Buenaflor. They had no motive to testify falsely against appellant. Buenaflor was in fact a friend of his, to whom he saw fit to unburden himself and whose advice and help he even sought.

Buenaflor's testimony was corroborated by Emilio Espinosa, who first interrogated appellant on September 13,

1956. Balili then admitted his participation, but refused to put his admission in writing. It was on November 3, 1956 that he agreed to make a written statement (Exhibit C or Exhibit 5).

Appellant now disowns said statement on the ground that he did not sign it voluntarily. To prove his point, he presented an affidavit he made on December 13, 1956 (Exh. 6), which he claims to have signed after he had been maltreated by the policemen who were investigating him. It is possible that Exhibit 6 was signed by him under duress, and for that reason was not presented by the prosecution although it contains statements more incriminating to him. Such possibility, however, does not justify a similar inference with respect to the first confession. Furthermore, Espinosa and Pastor Cabrera, municipal secretary of Tandag, both denied appellant's allegation that they, together with some other persons, had threatened appellant into signing Exhibit C. And Vicente Murillo, the Justice of the Peace before whom the affidavit was sworn to, affirmed that it was voluntary and denied that Balili protested against the portions therein that were incriminating. Appellant claims that he signed the affidavit because he was given to understand that he would only be utilized as a prosecution witness; and that not being able to read or write, it was only when the Justice of the Peace read the contents to him that he learned that he was made to appear therein as having participated in the offense. But if that was so he surely could have insisted in having the incriminating portions deleted from the affidavit without in any way jeopardizing his usefulness as a witness for the prosecution.

The fact that Exhibit C is in narrative form does not prove appellant's contention that it was a prepared statement which he was forced to sign. Its recitals are: On September 8, 1956, in answer to a question asked by one of the "Moros" boarding at his house, Balili gave the information that the only rich persons in the town of Tandag were the Chinese residents. The one who asked the question then left with two other "Moros". Later that day, appellant saw the three of them talking with "Big Boy" and a "mestizo" whose name he did not know. The next day, September 9,[2] at about 2:00 a.m. , the "Moro" who had questioned him woke him up and, threatening him with a dagger, forced him to go with them (the three "Moros") to the store of Chinaman Dikoy, where "Big Boy" and the "mestizo" were already waiting. The five men made their plans to enter the store. "Big Boy" and the "mestizo" climbed a "calamungay" tree and used a piece of wood as bridge from the tree to the ledge of a window on the second floor of the house. Then the two opened the door to the first floor in order to let in two of the "Moros". The third "Moro" remained outside, at the same time guarding Balili. Not long thereafter Balili heard a commotion inside the house. The four men came out and proceeded inside the "bodega" of Chinaman Dikoy. The one guarding Balili followed; and Balili, finding himself alone, quickly left the place. He did not know what the four men did inside the store of the victim. However, when he went home later in the morning of that day, he saw the "Moros" washing bloodstained clothes in the bathroom of his house. The one who had threatened him the night before then warned him not to tell anybody about what they had done; otherwise, he and the members of his family would be killed. From that time he never saw any one of the "Moros" again.

Appellant's declaration that he was forced by the Moros to go with them deserves no credence.[3] The phrase "pina-ague pag holga sa balisong" (by threatening to kill me with his dagger) was inserted in handwriting at the request of appellant after the affidavit was read to him, obviously as an afterthought so he could escape criminal liability. There appears to be no reason why the malefactors should force him to go with them to the victim's house, where his involuntary presence would only increase the risk of discovery; and certainly if he were as innocent as he now pretends, he would not have appeared so nervous and remorseful as he was described to be by the chief of police when he told the latter about the occurrence three days after it happened.

There is no evidence, however, that appellant had conspired with the malefactors, nor that he actually participated in the commission of the crime. He cannot, therefore, be considered as a principal. But in going with them, knowing their criminal intention, and in staying outside of the house with them while the others went inside the

store to rob and kill, appellant effectively supplied the criminals with material and moral aid, making him guilty as an accomplice. His consciousness of guilt is confirmed by his silence for several days and by his own confession made to Asuncion Buenaflor.

WHEREFORE, the decision appealed from is hereby modified by reducing the penalty imposed by the lower court upon appellant to an indeterminate sentence of from six(6) years and one(1) day of prision mayor to fourteen(14) years, eight (8) months and one(1) day of reclusion temporal. In all other respects the judgment appealed from is affirmed.

Concepcion, C.J., Reyes, JBL, Barrera, Dizon, Bengzon, JP, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

[1] Referring to Leonardo Amoguis who was acquitted by the lower court.

[2] Should be September 10, 1956.

[3] Even if the extrajudicial confession contains exculpatory statements exonerating the accused from guilt, the court need not believe the confession in its entirety. (People vs. Villanueva, L-12687, July 21, 1962.)

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