

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MIMBAL KALI, DEFENDANT AND APPELLANT.*G.R. No. L-1775. December 22, 1948*

Ponente: TUASON, J.

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TUASON, J.:

During the absence of her husband in his home province, Nicanora Carpio Sevillano, a settler in the Kironadal Valley, Cotabato, and her children were brutally attacked with spears and sharpened bamboos and robbed in their frail house early on the night of July 8, 1946.

Roberto Sevillano, 15, and Kahirup Sevillano, 13, two of Nicanora's children, said that at about seven o'clock p.m., when they or some of them were eating supper, the nipa siding of their house was pushed and the points of spears were driven in through it. Their elder brother was hit in the side just below the armpit and another brother, 5 years old, in the abdomen, from the effects of which both died then and there. The witnesses, their mother, a sister and one Salvador Malones were wounded too but not fatally and succeeded in saving themselves by slipping out of the dwelling. The assailants after the assault carried away cash, clothes, dishes, glassware and other articles they did not remember.

Six non-Christians called Bilaans were afterward arrested. After insistently denying participation in the murders and robbery, in what seems to have been a protracted questioning during which they were maltreated, they confessed, and two of them, Cabo and Kalaan, implicated Mimbal Kali, the present appellant. Prosecuted, the six Bilaans pleaded guilty and sentenced to life imprisonment.

The main evidence against Kali consists of the testimonies of Cabo, Kalaan and Roberto Sevillano. Cabo and Kalaan testified that about three days before the commission of the crime, they and their former co-accused met Kali in the market; that Kali told them to kill Nicanora Carpio Sevillano because he was angry with her on account of his detention on her complaint in Buayan where he was made to eat pork; that Kali promised to give them P10 and ten sacks of palay and also to bail them out in case they were caught; that at night, on July 8, they gathered at a point twenty meters from Nicanora Sevillano's house and hid in a bush; that Mimbal Kali was carrying a panabas (bolo) and the rest spears. He also testified that Kali was a Moro datu and they used to work for him.

Roberto Sevillano testified that after he jumped out from the house he was pursued by Kali with a bolo.

The testimonies of these witnesses contain serious contradictions and manifestly false assertions which constitute a grave challenge to their veracity. By the vehement testimony of the court interpreter, who was obviously disinterested and unbiased, Cabo and Kalaan several times changed their statements on previous questionings; and by Cabo's admission, he implicated Kali only when he and his then co-prisoners were manhandled.

To begin with, Roberto admitted in the investigation of the crime shortly after its commission, that he did not recognize the man who ran after him. At best, this witness was speaking under the influence of auto-suggestion

when he named the appellant as the man who looked for him while he was behind a bush hiding.

As to Cabo, the following excerpts, taken at random from his testimony, will serve to emphasize his unreliability and the fact that his implicating the present accused was not spontaneous. He said:

"After having complied with the order, Mimbal Kali ransacked the house and got everything in the house. I was given only ragged pants and Mimbal Kali got all the new ones.

"Clothings were taken by Mimbal Kali and the glasswares. The pants were taken by Unak, and I, the ragged ones."

On cross-examination, he said:

"The floor of the house of Nicanora Sevillano is very low, he (Kali) pulled the box and he did not go up any more.

" While we were attacking, Mimbal ICali was dragging the box."

Regarding his previous criminal record, he said:

"Q.

Is that the only sentence you have received up to the present time?

-

A.

Yes, sir, only that case.

"Q.

You understand Tagalog, is it not?

-

A.

Yes, sir.

"Q.

Where did you learn Tagalog?

-

A.

I do not like to tell a lie. I was in jail before.

"Q.

You were in jail for what?

-

A.

I killed a person who took away my wife."

On his previous statements, he testified:

"Q.

What did you tell Robleza?

-

A.

When Lieutenant Robleza was investigating us, we were telling a lie.

"Q.

What lie did you tell before Lieutenant Robleza?

-

A.

Kungan did not plead guilty in the presence of Lieutenant Robleza.

"Q.

Did you tell any other lie?

-

A.

I confessed the truth to Lieutenant Robleza⁵ it was only Kungan who told a lie.

"Q.

You have always been stating that it was only Nicanora that you would kill, why did you kill the other members of the family?

-

A.

The instruction was to kill Nicanora Sevillano and not her children.

"Q.

Do you mean to say that you are now changing your statement that you made a few minutes ago?

-

A.

That was really the instruction to kill Ni'canora Sevillano and her children.

Regarding his and his companion's arrest and maltreatment, he said that they were arrested by policemen in Palomoloc; that they were investigated "and at the same time they boxed us."

"Q.

When you said that Mimbal Kali was also with you, what did the MP do?

-

A.

To those who apprehended us we revealed the names of the perpetrators of the crime after they had given us blows, but when we were brought to Cotabato, we changed our testimony and did not admit and tell the persons who perpetrated the crime because Mimbal Kali warned us not to do so."

Jose Maladia, court interpreter, testified that he acted as interpreter for Macapagal of the Provincial Fiscal's office; that when they arrived from Glan, Cabo and Kalaan called for him and said, "Please come with us to the office of the Fiscal. While before the court in Glan, we told it was Mimbal Kali who ordered us to kill the Visayans only because we were tied in Glan for three days continuously and we were not fed." Maladia said that Macapagal asked Cabo what he wanted, and Cabo looked up and down and hesitated to answer; that Macapagal then called Kalaan and asked him about the story given by Cabo; that Kalaan answered that Cabo was telling many stories. Witness further said that in Glan, Cabo implicated Kali but when they reached Cotabato from Glan, he again told different stories. Maladia stated that Cabo implicated even the warden in Cotabato and "said so many things about Lieutenant Robleza and the warden."

The guilt of the appellant not having been proven beyond reasonable doubt, the appealed decision is reversed and the appellant acquitted with costs de oficio.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Bengzon, Briones, and Montemayor, JJ., concur.

Judgment reversed, appellant acquitted.

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