

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MACABANGON MANGCOL, AND MASO PANGANDOG, DEFENDANTS AND APPELLANTS.

G.R. No. L-2544. June 30, 1950

Ponente: TUASON, J.

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TUASON, J.:

Macabangon Mangcol and Maso were prosecuted in the Court of First Instance of Lanao, charged with the murder of Datos Ramber and Maniri alleged to have been committed on or about June 7, 1946, at sitio Talub, municipal district of Masiu, province of Lanao, in company and in conspiracy with Kobla and Domato who had not been arrested at the time of appellants' trial. Having been found guilty, the defendants were sentenced to reclusion temporal, jointly and severally to pay the heirs of each deceased P2,000.00 as indemnity, and costs.

Three witnesses were introduced by the government. Two of them claim to have been eye-witnesses to the crime, and the other, a deputy governor at large, claims to have investigated the crime the day following its commission.

The deputy governor, Tago Manalokon, testified in substance that on the 8th of June, 1946, having been informed of the murders, he went to Talub and saw Ramber's and Maniri's cadavers in Ramber's house. He described the abounds of the victims and exhibited in court a jacket with bullet holes which he said Ramber was wearing and which he ordered taken off and washed. He further said that three times he sent for the four men who, according to his information, were the killers, but these, he said, appeared only after the last summon and, in answer to his query why they had not come sooner, stated that they had work to do. He declared that Macabangon, Maso and Domato refused to be sworn on the Koran but admitted to him that they had slain the deceased.

Pandara Pancoga, public school teacher, and Bilial Baurak testified in substance that they saw Makabangon, Maso, Domato and Cobla kill Ramer and Maniri in Talub on June 7, 1946. They stated that the accused and their two companions hid behind a bush and attacked the two deceased as these walked by. According to them, Macabangon, Domato and Cobla shot Ramber and Maniri with firearms while Maso hacked them after they fell with a campillan.

The defendants and three witnesses undertook to prove that others killed Maniri and Ramber in Bacong during the Japanese occupation, about five years before the trial. The gist of the defendants' witnesses' testimony is that one Lumangkulob killed one Arindig in Bacong, on the opposite side of the lake from Talub, after a quarrel over corn⁵ that after Arindig was killed, Mosur Kauring, one of the defense witnesses, notified Gindolongan, Lumangkulob's cousin, of the killing; that Gindolongan, fearing reprisal, started to flee to Dimapatoy but stopped in Bacong because there was no baroto; that Gindolongan was followed by Ramber and Hakapunong, Arindig's brother; that having overtaken Gindolongan, Ramber told his companion to fire at Gindolongan, which Makapunong did; that having a rifle, Gindolongan also fired at Ramber; that Maniri was present at the shooting and was hit by a stray bullet. When the shooting ceased, Gindolongan, Maniri and Ramber were dead. The witnesses said the duel took place five years ago, one "Friday followed by Saturday."

The two accused gave testimony to corroborate their witnesses but denied they were at or near the scene of the crimes.

Maso Pangandog declared that he was not present at the killing and only knew by hearsay that Maniri and Ramber had been shot. He said this occurred about five years ago, according to the way the years are computed in Maranao; that, besides, he heard from his priest that five years had transpired since Ramber and Maniri were shot.

Macabangon Mangcol testified that he was at the market in Dansalan when Maniri and Ramber were killed and so he did not see the killing. He said he heard of the killing one Friday, about five years ago, and added that he knew the deceased only by name.

Counsel for appellants has exerted commendable zeal, industry and thoroughness in the presentation of his clients' case before this Court. He has dissected in great detail the evidence for the prosecution and pointed to its flaws which he thinks are clear manifestation of perjury.

We, too, have thoroughly reviewed the record and checked up on the alleged contradictions. We are of the opinion that, read as a whole, the evidence fully sustains the lower court's findings. The faults to which the appellants call our attention are not of sufficient weight to destroy the conviction engendered by other and more reliable test of a witness' veracity. The alleged discrepancies have been explained satisfactorily or are unimportant, susceptible of other interpretations not incompatible with good faith and truthfulness of the witnesses. Deficiencies of translation and transcription and the lack of thoroughness in the examination of the witnesses have to be taken into account.

The conflicting theories of the parties as to the date of the crimes and the identity of the murderers can not, under the circumstances, be due to mistakes. The barrio mentioned by the defense witnesses as the place of the killing and the barrio mentioned by the witnesses for the government are far apart, separated by a lake and known by different names, and the alleged assailants named by each side are well known to the witnesses. One of the two sets of witnesses must have lied deliberately.

As to which side is to be believed, the decision is not difficult. While the flaws in the prosecution witnesses' testimony are, as above shown, unsubstantial, there is one question to which no satisfactory answer can be found. The question is, why should the relatives of the deceased go after the appellants instead of the real murderers? Other than to avenge the death of their kinsfolks, the complaining witnesses had no cause to wish the defendants harm, and mistaken identity is out of the question. If the killing had occurred, as the accused would have the court believe, in broad daylight and in the presence of bystanders, some of them *datus*, the decedent's relatives could not by any possibility have been misinformed as to who attacked their kin. Moreover, assuming that they, for some reason or other, wanted to implicate the defendants, it is hard to understand why they would allow the culprits to go scotfree.

Motives on the part of the three government witnesses to prevaricate are also absent. The single evidence introduced to discredit their testimony is defendant's statements that the said witnesses had demanded of the accused P200 which the latter had refused to give. The alleged extortion was denied and is not, in our opinion, worthy of serious attention.

Double jeopardy, at least as regards Maso, is pleaded in this instance. The basis of this assignment of error is the statement of the Provincial Fiscal at the trial to the effect that sometime in 1947, case No. 277 for murder against the appellants was dismissed as to Maso, on the motion of said Provincial Fiscal and for the reason that the witnesses presented by the offended parties was believed insufficient to convict beyond reasonable doubt.

There is nothing in the record to show that the dismissal was made after the defendants had been arraigned. This,

in the first place. In the second place, the appellants did not interpose this defense in the court below. By Rule 113, Sections 1 and 10, of the Rules of Court, and on the authority of *U.S. vs. Perez*, (1 Phil. 203), and *Quintos vs. Director of Prisons*, (55 Phil. 304-306), the defense of double jeopardy must be interposed in the court of first instance and can not be raised for the first time on appeal. This plea must therefore be ruled out.

The appellants are guilty of two separate crimes of murder qualified by treachery without the presence of any modifying circumstances, and two separate penalties of reclusion perpetua^[1] should be imposed on each appellant, it being understood that the combined imprisonment shall not exceed forty years. The indemnity for each set of heirs should also be raised to P6,000, as recommended by the Solicitor General.

With the modifications above indicated, the Judgment appealed from will be affirmed, with costs.

Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

[1] Per Resolution in the minutes of August 14, 1950.

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