

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MATIAS ALUPAY, DEFENDANT AND APPELLANT.

G.R. No. L-2407. March 04, 1950

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PER CURIAM:

This is an appeal from a judgment of the Court of First Instance of Ilocos Norte which found Matias Alupay guilty of murder, under Article 248 of the Revised Penal Code, and sentenced him to reclusion perpetua, to indemnify the heirs of the deceased, Timoteo Balbag and Maria Felicitas Agarpao, in the sum of P4,000 to the accessories of the law, and to pay the costs.

It appears from the evidence that in the latter part of November of the year 1944 when, following the landing of the U.S. forces in Leyte, the tide of the Japanese control over these Islands was ebbing, a supposed guerrilla unit, locally known as "Pilpilme," was operating in the mountains of Vintar and Bangui, province of Ilocos Norte.

Matias Alupay, also known as "Apo Matias," was the local chief of the "Pilpilme," whose reputation for being responsible for the killing of people at the behest of its leaders had so impressed the barrio folks that Matias Alupay's commands were the law among the men under him.

About sunset, one day in November, 1944, Alupay, accompanied by three men, called at the houses of Pacifico Ravina and Ricardo Aldos, respectively, in barrio No. 6, Alao-ao, municipality of Vintar, Ilocos Norte, and under threat of death compelled them to join his organization as soldiers. In Paddaggan, Alupay instructed Pacifico Ravina and Ricardo Aldos to fetch from their house Timoteo Balbag and his wife Maria Felicitas Agarpao, on the pretext that the two victims shall accompany the group in going to Gabayu. Reluctantly the old spouses obeyed, joined the party and went on the winding mountain trail to Cabayu.

In the meantime Alupay had separated from the group to rejoin it later, accompanied by Rufo Balbag, son of the old man Timoteo. Upon reaching the sitio of Mabilag-Apinas, on the boundary line between Vintar and Bangui, Alupay, who was giving orders, commanded every one to halt. It was already midnight, and all the members of the party sat down, except Timoteo Balbag and Maria Felicitas Agarpao, who remained standing.

This appellant, who was carrying a long bolo, locally known as calasiao, stepping backward and uttering a cry of triumph and revenge, said to the old spouses "Now you have to die because you are proud and you prohibit us to use water of the ditch in our place." Then, suddenly, he hit Timoteo Balbag with his bolo at the right parietal region. Timoteo fell to the ground face downward, and appellant, as if to satisfy himself that his victim will not rise again, with that bolo gave him another blow, this time on the back of the neck, below the occipital region. Then, he turned his attention to the old woman, by hacking her on the right side of the neck below the occipital region, and when as a consequence of that blow she fell sidewise, appellant gave another mortal thrust on her breast. After the killing of those victims, he ordered that the two corpses be removed and thrown into a ravine. This done, appellant warned everybody around him to keep mum about what they had just seen; he likewise commanded Rufo Balbag to return to Paddaggan, while the accused and the rest of his group proceeded to Cabayu arriving there at dawn., and on the following day returned to Paddaggan.

It would seem strange, almost unbelievable, that those persons who had witnessed the horrible killing of the old couple, and subsequently took the stand at the trial of this accused, should have kept this matter to themselves and refrained from imparting their knowledge of this gruesome affair to some reliable citizen or responsible official for appropriate action. But We take cognizance of the existence, during those days of the last war, of conditions so abnormal that the functions of government were, if any, under the control of the enemy occupant or someone who had the backing of force. And it is for this reason that, unless he was looking for trouble or was willing to endanger his personal safety, and perhaps his life, that discreet people refrained from airing their just grievances, particularly against those who had the upperhand in the community. Thus, these eye-witnesses, who kept fresh in their minds the threats and warnings of the accused, dared not report to the proper officials, during those troublous days, the commission of the murders now under consideration; and it was only after liberation, when conditions of peace and order had improved, that, after the lapse of more than one year from the approximate day of their perpetration, Rufo Balbag, son of Timoteo Balbag, and Pacifico Ravina reported the killings to Esteban Garvida, chief of police of Bangui, Ilocos Norte.

On December 10, 1945, Alfonso Alcoba with Rufo Balbag and Juan Balbag, secured the written permission of the medical officer in charge of the sanitary division of Bangui, Ilocos Norte, to bring to town the remains of Timoteo Balbag and Maria Felicitas Agarpao from the ravine at Mabilag-Apinas, where they were dumped on orders of the accused in the latter part of November. Rufo Balbag found the bones of the old couple together with parts of the hat or salakot, Exhibit "G," which was identified as the one woven by Juan Balbag and which his father Timoteo wore on that fateful night; a piece of leather, Exhibit "H," which was the holder of the container of a pipe and tobacco, which the deceased was using, was also found.

On the witness stand, Dr. Castillo of the sanitary division of the municipalities of Bangui, Burgos and Pasuquin, Ilocos Norte, identified the bones and referring particularly to the skulls Exhibits Band C, D to D-21 and two sets of bones, Exhibits E and F, respectively, said that they all belonged to human beings, that Exhibit Bis the skull of a female person, while Exhibit C is that of a male individual. Examining the skull Exhibit C, he found an opening at the right side, on the parietal region, close to the right ear. He said that the fissure shows a traumatic wound caused by the use of a sharp-edged thin-bladed knife, for instance, a thin-bladed bolo.

It appears that during the days of the Japanese occupation, the deceased Timoteo Balbag as head man of the village was in charge of the distribution of water for irrigation purposes. Appellant felt that the water was not evenly distributed by Timoteo, that he was being discriminated against, that he should have been allotted a certain amount of water for the irrigation of his land. Matias Alupay who, in the meantime towards the end of the occupation period, had risen into power, and had become the chief of the "Pilpilme" in the locality, became angry at Timoteo and his grudge against the deceased reached a point when, on that fateful night, he avenged a fancied personal wrong by liquidating not only Timoteo but the latter's wife.

The defense did not deny that Timoteo Balbag and Maria Felicitas Agarpao were treacherously killed in the manner alleged in the information and described by the eye-witnesses for the prosecution. The clear narration made by those witnesses and the retrieval and expert identification of the bones of the victims, exhibited at the trial, and other personal belongings of Timoteo, constitute an over-whelming proof that they met violent death at the hands of the accused as contended by the prosecution.

In an endeavor to shift the blame to others, the defense tried to prove that Elias Pastor and Fernando Dais, of the "Pilpilme," had admitted responsibility for the killing of the spouses. It was alleged that Ellas Pastor had reported to Lt. Escobar of the "Pilpilme" headquarters, that Timoteo Balbag and his wife were killed by them, because the deceased would not evacuate nor put out their lights when they were told to do so.

But the testimonies of Rufo Balbag, Pacifico Ravina and Ricardo Aldos of the prosecution are so convincing, the details given by them of how Matias Alupay hacked the two old victims with his long bolo, that we have not the slightest doubt that this simple country people had no base motives to falsify the truth to the extent of pinning on the appellant the commission of two capital offenses. As against the flimsy explanation allegedly given by Pastor that Timoteo Balbag and his wife were killed because they would not evacuate nor put out their lights, We have the strong and convincing motive which impelled this appellant to liquidate his victims, because he had sharply resented the attitude of Timoteo Balbag in denying him the use of irrigation water to which he—a man who became powerful in the community and had under his command the members of the "Pilpilme,"—believed himself entitled.

The presence at the scene of the crime of the prosecution witness Pacifico Ravina, had been admitted by the defense, and the only reason given why Ravina, Aldos and Balbag testified against this accused is that he had acted only as guide of the "Pilpilme". According to the evidence of the prosecution, he was not only a guide of the expedition on that fateful night, but he was the head of the same because he was giving orders to the others, and those government witnesses had seen and recognized him, and consistently pointed to him alone and to nobody else as the real and only perpetrator of the killing of Timoteo Balbag and Maria Felicitas Agarpao. It has been shown that the moon had just appeared on the horizon when the accused killed his victims. Those witnesses could not, therefore, have been mistaken about the identity of the perpetrator of the crime.

Again, the testimony of Ricardo Aldos that subsequent to the killing, Matias Alupay had given him stiff warning not to reveal to anyone that he had killed the old spouses, amounts to an admission of guilt, inasmuch as such warning was given immediately after the killing had taken place. By such warning he was trying to prevent his prosecution by sealing the mouths of the persons who had witnessed the commission of his crimes.

The efforts made by the defense to shift to others the responsibility for the killing of the spouses can deserve not the slightest consideration. To all appearances such persons are fictitious. The evidence of the defense failed to give any indication as to their identity, their residence and whereabouts; in fact, Pacifico Ravina of the prosecution, testifying in rebuttal, stated that he had never heard of such persons named Elias Pastor and Fernando Dais. In this connection, appellant has not made any effort to bring to the bar of justice those alleged killers, if he really knew their identity and whereabouts.

Finally, our attention is invited to alleged contradictions and inconsistencies discovered by the defense in the testimonies of the witnesses of the prosecution. We must not lose sight of the fact that a witness has his own way of stating the facts as they are known to him and come to his perception. Such inconsistencies and contradictions, rather than weakening the probative value of their testimonies, strengthened them, for if they should have given exactly identical statements, the defense would be justified in alleging that they have been reciting their lessons in court. (People vs. Caballero, 53 Phil. 592; People vs. Limbo, 49 Phil. 94).

Upon the above considerations, we have come to the conclusion that the guilt of this appellant as the perpetrator of the killing of Timoteo Balbag and his wife Maria Felicitas Agarpao, has been established beyond reasonable doubt, and that each killing, being qualified by the circumstance of treachery, constitutes one crime of murder defined and penalized in Article 248 of the Revised Penal Code.

We note the attendance of the aggravating circumstances of the crimes having been committed in an uninhabited place, and that the victims of the offender being then 70 and 60 years old, respectively, when they were killed by him, is also another aggravating circumstance present in the commission of these offenses. We, however, disagree with the Solicitor General in taking into consideration in favor of the accused the circumstance of lack of instruction of the defendant. He was, as head of the "Pilpilme" in his community, a powerful man whose

commands were obeyed by those under him and it cannot, therefore, be justly alleged that he was an ignorant man.

By unanimous vote of all the Justices present in the consideration of this case, it, therefore, becomes our painful duty to modify the judgment of the lower court by imposing upon appellant the penalty of death, which shall be carried out and executed in accordance with the provisions of Articles 81 and 82 of the Revised Penal Code, on a day to be fixed by the trial court, within thirty days after the return of the record of the case to the said court. With costs.

Moran, C.J., Ozaeta, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

Moran, C. J.:

Mr. Justice Paras voted for the modification of the Judgment appealed from, and the imposition of the death penalty on this appellant, but, on account of his being on leave at the time of the promulgation of this opinion, his signature does not appear herein.

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