

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MORO MAMACOL, DEFENDANT AND APPELLANT.***G.R. No. L-3048. December 28, 1950*

Ponente: REYES, J.

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Around midnight of October 16, 1946, Roman Dagodob, a Moro, was shot to death in his house in Ramitan, Malabang, Province of Lanao, by some one who was outside. As the alleged author of the crime, the defendant Mamacol, also a Moro, was prosecuted for murder and having been found guilty and sentenced to life imprisonment, he appealed to this Court.

Only two witnesses testified for the prosecution: Apontok Mamangcas (widow of the deceased) and Lieut. Payocan Moro, who investigated the crime.

Apontok's testimony is as follows: On the day the crime was committed, the deceased had gone out in the morning to collect a debt from defendant. Coming home at about noon, he informed her that he was not able to collect the debt because defendant did not only refuse to pay but he also took offense. Later in the day defendant came to their place and bought some cigarettes, but the deceased was then away. At sunset defendant came back, armed with a carbine. As they were then eating, they invited him to join them. But he refused and appeared to be in bad humor. At around midnight the deceased got up from bed to answer a call of nature, after which he asked for his betel-nut box and then squatted on the floor, facing an opening five-inch square on the wall or siding of the house. At this juncture she heard the report of a gun and saw the deceased slump forward on his face. Getting up, she peeped through the opening from which she supposed the shot had come and there in the moonlight saw defendant carrying a carbine. She called for help and her companions in the house were aroused. Awakened by the shot, her step-daughter, Mistar, also peeped through the opening and saw defendant preparing to escape.

Lieutenant Payocan on his part testified as follows: He was a junior officer attached to the MPC stationed at Malabang. The morning after the crime, he was informed by Moro Dante that Dagodob had been killed. Repairing to the house of the latter, he there found his cadaver with two wounds on the breast and on the back. He also inspected the opening on the siding of the house through which the deceased was supposed to have been shot. Questioning Apontok and Mistar, he was informed by them that defendant was the author of the crime, whereupon he went to the house of the defendant and there found him lying on the floor but awake. Asked whether it was true that he was the one who killed Dagodob, defendant answered in the negative. But when in his presence Apontok and Mistar gave the information that he was the killer, he made no protest. Defendant denied that he had a carbine, and a search of his house yielded no firearm. Taken to headquarters defendant was turned over to a subordinate for investigation, with instructions for the latter to take the affidavits of the deceased's widow and daughter. Thereafter, the lieutenant went to the justice of the peace and filed a complaint against the defendant.

Though listed as one of the witnesses in the information, Mistar was not put on the stand, the prosecution

explaining that she was seriously ill and could not come to court.

Testifying in his own defense, defendant denied having been the author of Dagodob's death. He denied being indebted to the deceased or having had any trouble with him or his family. He also denied having come to the house of the deceased at any hour of the day of the crime and said that during the whole night of that day he was in the house of his family and one Datu Umpar, who passed the night there because of an appointment he had with Deputy Governor Macarao Balindong. He admitted having been questioned by Lieutenant Payocan, but said that the lieutenant later took him to headquarters and turned him over to Captain Arumpac, who investigated him together with Apontok and Mistar. He claimed that in that investigation both Apontok and Mistar stated that they had not seen the author of the crime because "it was nighttime," whereupon Captain Arumpac told Datu Umpar and Macarao Balindog, who were then present, that they could take the defendant home because he did not turn out to be the person they had suspected. However, according to the defendant, about three weeks later he was sent for and investigated again by Captain Arumpac, and this time the captain decided to hold him at the behest of Moro Dante, who had a grudge against him and had for that reason induced Apontok and Mistar to testify against him.

Defendant's alibi is corroborated by Datu Umpar, as is also his testimony that in the investigation conducted by Captain Arumpac both Apontok and Mistar declared that they had not seen the killer because it was nighttime. That testimony is furthermore confirmed by Deputy Governor Macarao Balindong, who is a relative of the deceased and a brother of Moro Dante, and the declaration attributed to Apontok and Mistar has not been disclaimed.

After going over the evidence we agree with the defense that defendant's guilt has not been established beyond reasonable doubt. The testimony of the widow is not convincing. She stated on the witness stand that she was able to see the killer of her husband because upon hearing the shot she peeped through the opening on the wall from which, according to her, the shot had come. But this information does not appear to have been imparted by her to Lieutenant Payocan when she was investigated by him, for his testimony is silent on that point. It is true that she, as well as Mistar, made a similar statement in their affidavits. But these are dated October 29, 1946, about 12 days after the investigation made by Lieutenant Payocan and the first one conducted by Captain Arumpac to whom, according to the uncontradicted testimony for the defense, she admitted not having seen the killer because "it was night time." Granting that she had really peeped through the hole from which the shot or shots had come, she must have done so after she had aroused the household and when the coast was already clear.

The judgment appealed from is, therefore, reversed and the appellant acquitted, with costs de oficio.

Moran, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, and Jugo, JJ., concur.

MORAN, C. J.:

I certify that Mr. Justice Paras and Mr. Justice Feria voted to reverse the judgment appealed from.

Judgment reversed and appellant acquitted.

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