

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MORO DISIMBAN, DEFENDANT AND APPELLANT.***G. R. No. L-1746. January 31, 1951*

Ponente: PADILLA, J.

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At about midnight of 29 June 1946, Putao Alangadi woke up and heard several persons talking near his house located in the municipal district of Molondo, province of Lanao. Adjoining the house there was a corral, made of a mound and bamboo twigs on top, where he kept one male and two female carabaos belonging to him/and ten other carabaos belonging to Saadja. Putao got up, lit a lamp, peeped out of the window with the lighted lamp and saw Disimban, Talinding and Macalaba, each armed with carbine, Datong and Malamama, with Garand rifle and revolver, respectively. Chagrined at having been discovered they fired at the house. Putao lay down. After a while another volley was fired. It was then that Amina, Putao's mother, cried that she was hit. Amina died. Bullet wounds were found on her neck and head. Saadja, Bagobae and Macausob, the other inmates of the house, also cried. Then Disimban told his companions to run away because somebody was killed. After the firing had ceased, Sumang Panda, another son of Amina, who lived near his mother's house on the opposite bank of a shallow river, rushed to his mother's house. On the way, he saw Disimban, known to him since boyhood, and his four companions, all armed, one or them carrying a shovel in addition. Picarat Saro, Angres, Ambula and several other persons also came to the house. Sumang found his mother dead. Ten arms' length from the corral, a male carabao belonging to Putao worth P250 was found, and on one side of the corral a pit dug in the ground and mound about a meter in width and 28 inches in depth was also found through which the carabao taken from the corral was made to pass. The following day, Putao reported the incident to Pendato Macala, the chief of police at large.

An information for robbery with homicide was filed against Disimban, his other companions being still at large. He was tried, found guilty and sentenced to suffer life imprisonment (reclusion perpetua), to indemnify the heirs of the deceased in the sum of P2,000 and to pay the costs. The defendant has appealed.

There is no dispute that Amina died as a result of the bullet wounds inflicted upon her by malefactors who fired volleys at her house. Neither is there a dispute that a male carabao was taken out of the corral where it was kept through an opening dug by the malefactors in the mound and ground of the corral.

The appellant's defense is alibi. He and his witnesses claim that on the night the volleys were fired at the house of the deceased and for three months before said night, the appellant was stricken with malaria and suffering from fever and chills. Bao Sultan and Macaapon Mortala, witnesses for the appellant, testify that Putao Alangadi, Liwalog and his wife Bagobae, a daughter-in-law of the deceased, were not in the house at Molondo on the night of the occurrence, for, according to them, the first was in Ragain; where he resided after his marriage to a girl from that place, and the last two were in Dansalan; that at noon of the following day the three arrived in the house of the deceased at Molondo; that when the house of Amina was fired at it was raining and the night was dark; that the following morning they both went to the house of Amina and there found Macabato, her son-in-law, the only male person, who told them that there were persons who attempted to steal their carabaos from the corral, that

upon seeing them he went down and fired at them with his rifle, that the thieves returned the fire, that he retraced his steps, and that upon returning to the house he found. Amina, his mother-in-law, dead. But the testimony of Bao Sultan cannot be believed, because after saying that when he went to the house of Amina, there he saw Macabato, the only male person, in the same breath he states that Sumang, son of Amina, was also there. According to Bao Sultan, he was & special agent of the Department of the Interior charged with the duty of confiscating firearms, yet he failed to confiscate the Mauser rifle of Macabato with which he fired at the thieves and to report the possession of the gun by Macabato to his superiors. The different excuses or reasons for not confiscating the rifle of Macabato are an indication that he was not telling the truth. On cross examination, he admitted that he was not a special agent at the time of the incident, because he was appointed on 22 January 1947 only, long after the death of Amina.

Macaapon Mortala, who, according to him, was a councilor of Pindulunan, Molondo, appointed by the provincial governor, did not inform his superior, after the arrest of Disimban that the latter was innocent.

Kakim Patarahdang, a Mohammedan priest, claims to have treated Disimban by chanting, known in the locality as "tawal," and by making him eat or take grass leaves or herbs of bitter taste. He testifies that after the death of Amina he treated Disimban once more but in a subsequent part of his testimony he swears that the last time he treated Disimban was the day when Amina died. He does not remember any other day except that Friday when he treated Disimban and Amina died. Of course, such testimony cannot be relied upon.

Balbal Kadayon, a temporary councilor appointed by the Secretary of the Interior, says that the reason why Sumang and Putao imputed the crime to Disimban was the latter's refusal to testify in their favor. But he contradicts the appellant when he testifies that Sumang and Putao requested him to ask the appellant to testify in their favor, because the appellant and his mother, Pualas Balong, say that Sumang and Putao, personally asked him to testify. The same witness also testifies that on Sunday following the death of Amina, or three days after the incident, he reported it to the governor and the names of the authors of the crime. But he became suspicious of Talinding and Macalaba, only one week after the death of Amina, because when he went to Magguing they attempted to shoot him.

The testimony of Putao Alangadi who saw the malefactors train their guns and fire at the house of Amina and that of Sumang Panda who saw them fleeing from the scene of the crime are worthy of credence. Picarat Saro, a public school teacher vacationing in Molondo, who heard the report of guns and after the fire had ceased went to the house of Amina to verify what happened and there found Amina dead, testifies that he found Putao Alangadi and Sumang Panda in the house of their deceased mother at one o'clock in the morning of the following day—30 June 1946. The testimony of this disinterested witness belies that of the witnesses for the defense, to the effect that Putao Alangadi was in Ramain and not in the house of his mother on the night of the incident. On 4 July 1946, Putao and Sumang reported the death of their mother to Pendato Makala, the chief of police at large, and both told him that the authors of their mother's death were the appellant, Datong, Talinding, Malamama and Macalaba (pp. 38-39, t. s. n., session of 8 July 1947).

The appellant's mother claims that her son was 15 years old only. But this is belied by the testimony of Picarat Saro who says that he was the chairman of the Board of Election Inspectors of the precinct where the appellant cast his ballot in the elections held on 23 April 1946 and swore that he was of age. The trial court found him to be over 18 years of age at the time of the commission of the crime.

The penalty to be imposed upon the appellant, being a Mohammedan inhabitant of Mindanao, irrespective of the attending circumstances, lies in the discretion of the trial court, pursuant to section 106 of the Administrative Code of Mindanao and Sulu (People vs. Yakans Pawin, 47 Off. Gaz., 4116.)[1]

The judgment of the lower court, being supported by the evidence and in accordance with law, is affirmed, with costs against the appellant.

Moran, C. J., Paras, Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes and Jugo, JJ., concur.

[1]85 Phil., p. 528.

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