

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MOROS UDAY ET AL., DEFENDANTS.***G.R. No. L-1979. February 16, 1950*

Ponente: TORRES, J.

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During an attack suddenly launched by a group of Moro bandits armed with krises, bolos and revolvers at dawn of November 10, 1942, against a detachment of guerrillas stationed in the school building in the barrio of Dinas, Pagadian, province of Zamboanga, and which lasted until about 10 o'clock in the morning of said day, some members of the band, at about 6 o'clock of that morning, left the attacking group and proceeded to the house of Rufino Hicten, about one hundred meters from the school building. When the occupants of the house, Rufino Hicten, his wife Maxima Ongue, and their two children, Dionisio and Necesia, saw the onrushing Moros, they tried to escape, but unfortunately, only Dionisio, a young man, succeeded in his attempt. Dionisio rushed to the nearby bushes and from his hiding place he saw how Moros Usman, Cahal and Casam took turns in inflicting mortal wounds upon his father, and thereafter, they with their arms hacked his mother, and as the result of this sudden attack his parents lost their lives. From his hiding place, which was only about fifteen meters distant from his house, Dionisio also saw that Moro Uday was the one who was giving orders to his companions. He witnessed the ransacking of his home by three other Moro companions who stole therefrom personal belongings and cash of the total value of P1,000, and, before leaving the premises, set fire to the house and forcibly carried away with them his eleven year old sister Necesia.

When the Moros had left, Dionisio emerged from his hiding place and found the dead bodies of his parents. He notified the neighboring guerrillas accordingly and asked for help. His parents were then buried. The next morning Dionisio reported the matter to the commander of the guerrilla detachment and told him that he had recognized Uday, Canal and Casam among those who had perpetrated the crime under consideration.

The corresponding information was filed and after proper proceedings, the Court of First Instance of Zamboanga proceeded with the trial of only Moros Uday, Cahal and Casam, inasmuch as the other accused, Moros Calamansing and Usman, died before the trial, and Moros Caring, Nandong and Ugalingan were still at large. In view of the evidence taken, the court found Uday, Casam and Cahal guilty of robbery in band with double homicide, instead of brigandage with double murder as charged in the original information, and considering the attendance of the aggravating circumstances of having committed the crime by a band and the abuse of superior strength, and considering further that the accused committed arson and kidnapped Necesia Hicten, the lower court, although it said that the extreme penalty of death as provided by law should be imposed, sentenced Uday, Casam and Cahal, each to suffer the penalty of reclusion perpetua, with the corresponding accessories, to indemnify the heirs of Rufino Hicten and Maxima Ongue in the sum of P4,000, to pay said heirs the amount of P1,000, the value of the personal belongings robbed by them and their share of the costs.

Only Moro Casam has appealed, and in this instance his counsel assails the correctness of the judgment of the trial court on the ground of the insufficiency of the evidence of the prosecution.

From Our perusal of the record, We entertain not the least doubt about the guilt of this appellant. The defense, concentrating its attention on the testimony of Dionisio Hicten tried to show that he could not have witnessed the tragedy during that morning of November 10, 1942 when said witness saw how his father and mother were slain by the attacking Moros. It has been shown that when the Hicten family sensing the approach of the Moros tried to escape by hurriedly leaving their house, Dionisio, being at that time a young man of about 18 years, was able to leave his house ahead of his parents and sister. The latter were going down the stairway when they were met and attacked by the incoming Moros, who set upon and hacked the spouses without giving them any opportunity to save their lives. From his position of vantage, hidden in the bush only about fifteen meters away from his house, he saw the part taken in the attack by appellant and each accused. It was 6 o'clock in the morning when Dionisio witnessed how Usman, Cahal and Casam, appellant herein, took turns in mortally wounding his father and then turned their attention to his mother who met a similar fate. He also testified that after ransacking their premises and carrying away from it their personal belongings and money in cash they set fire to the house and carried away with them his sister Necesia.

This testimony of Dionisio Hicten is strongly corroborated by that of Eleno Fabriga who was stopping at the house of Raymundo Ramonal situated near the house of Hicten. Fabriga stated that upon noticing the coming of the Moros, he left the house and hid himself in the nearby bushes and, while there, he witnessed the onslaught by the Moros on the Hicten family, the ransacking of the house and the burning of the same. A persistent questioning of this witness by counsel for the defense, far from weakening his testimony, established the fact that not only Dionisio Hicten but Eleno Fabriga had seen the furious attack of the Moros and the individual participation of each accused, including this appellant, in the killing, ransacking and burning of the house of Rufino Hicten.

Appellant signed a confession, Exhibit A, whereby he admitted his participation in the commission of the crime, but at the trial he contended that it was secured by means of violence and intimidation. This was promptly rebutted by the prosecution through the testimonies of the justice of the peace of Pagadian and of Captain Pablo Jose, both of whom verified the due execution and correctness of the confession appearing in said Exhibit A. According to these witnesses the document was read and translated to the appellant who was made to understand its contents, after which Casam signed it freely and voluntarily. Questioned further about the circumstances surrounding the preparation of Exhibit A, appellant admitted that he had not complained to anyone, much less to his counsel, about the alleged force and intimidation used to compel him to sign said document.

As regards his alleged alibi, this appellant tried to prove that since September, 1942, that is, about two months previous to the attack on the guerrilla garrison and the killing of the Hicten spouses, he was a member of a guerrilla unit. He could not, however, offer in evidence anything showing the issuance of some special order duly signed by competent guerrilla officer regarding his induction into the military service as such guerrilla member. The only paper that he submitted in court was a supposed pass (Exhibit 5) signed by one Major Mindalano and addressed to one Captain Kantoy, in Pagadian, Zamboanga, recommending that the bearer "be given due recognition by your command whenever they appear at your sector." While it is true that that document is dated "22 April 1945," more than two years after the concerted attack by appellant and his other companions on the guerrilla detachment and the killing of the Hicten spouses which took place on November 10, 1942, however, at the bottom of the communication which embodies the pass there are signatures or notations made by guerrilla officers regarding the fact that said document, Exhibit 5, had been presented to them by bearer in May, 1945. Without casting any doubt as to the authenticity of this pass or safe conduct, Exhibit 5 was evidently issued by Major Mindalano, Major of Infantry of the USFIP guerrilla organization, not before April 22, 1945; because, upon further examination of said Exhibit 5, We find that the same is written on the back of a mimeographed copy of a proclamation issued by General Douglas MacArthur from his headquarters, Southwest Pacific Area, on the 29th day of December, 1944, which strengthens Our conclusion that the alibi by means of which appellant Casam

expected to show his innocence in this case is absolutely groundless, not only for the reasons already given, but because of the fact that this official copy of the MacArthur proclamation could not have reached the theatre of operations in the Philippines during the last war before the 29th of December 1944.

We, therefore, logically conclude that appellant was not only a member of the group of Moros who attacked the Hicten spouses at about 6 o'clock in the morning of November 10, 1942, murdered Rufino Hicten and Maxima Ongue, robbed the premises and kidnapped Necesia Hicten, but also took an active part in the commission of those criminal acts.

In view of the above, We hold that this appellant is guilty of robbery with homicide as defined and penalized in Article 294, paragraph 1 of the Revised Penal Code with reclusion perpetua to death, regardless of the number of victims (*People vs. Manuel*, 44 Phil. 333).

In the imposition of said penalty We shall take into consideration the attendance of the circumstances that the crime has been committed in band and with treachery (*U.S. vs. Perez*, 32 Phil. 163; *People vs. Sawajan*, 53 Phil. 689); that the fatal aggression by Casam and his companions on their victims commenced when Rufino Hicten and Maxima Ongue were descending the stairway of their house which is an integral part thereof (*People vs. Alcala*, 46 Phil. 739). There being no mitigating circumstance which may neutralize the effect of those aggravating circumstances, the penalty prescribed by said provision of paragraph 1 of Article 294 should be imposed in its maximum period.

In this connection, it should be stated that appellant was found guilty by the trial court of slight illegal detention penalized in Article 268 of the Revised Penal Code with prision mayor. The Solicitor General recommends that the maximum period of the penalty of prision mayor should be applied on account of the presence of aggravating circumstances and that the corresponding indeterminate penalty, should be imposed to consist of a minimum of not less than 6 months and 1 day of prision correccional to a maximum of not more than 12 years of prision mayor.

Notwithstanding what has just been stated, We cannot disregard the fact that Moro Uday, who, according to the evidence was the leader of the group of Moros who committed the offense in question, was sentenced only to reclusion perpetua, and the judgment became final because he did not appeal therefrom. In *People vs. Sakam* (61 Phil 27) the Supreme Court, confronted with a situation similar to the one now before Us, and believing that the ends of Justice will be served by the affirmance of the judgment of the lower court, sentenced the appellant to reclusion perpetua.

We hereby, therefore, affirm in toto the judgment of the lower court which sentenced appellant to reclusion perpetua for the crime of robbery with homicide; it being understood that this culprit, who has also been found guilty of illegal detention under Article 268 of the Revised Penal Code, shall likewise serve an indeterminate penalty of not less than 6 years and 1 day to not more than 12 years of prision mayor. He shall pay the costs.

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

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