

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MIGUEL GAMAO, ET AL., MIGUEL GAMAO AND KINOK PENDATUN,
DEFENDANTS-APPELLANTS.**

G.R. No. L-19347. February 27, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from the decision of the Court at First Instance of Davao finding the defendants Miguel Gamao and Kinok Pendatun guilty of the crime of robbery with double homicide, sentencing them to suffer the penalty of reclusion perpetua with the accessory penalties provided for by law and to indemnify, jointly and severally, the heirs of the deceased spouses Federico Planas and Saturnina Singong de Planas in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs.

The evidence for the prosecution discloses that on the early evening of January 3, 1957, accused Miguel Gamao and Kinok Pendatun, together with their other identified companions who are still at large, broke into the house of the spouses Federico Planas and Saturnina Singong de Planas at sitio Maybo, barrio Tacul, Bansalan, Davao. Appellants were armed with bladed weapons - a "kabasi" and a "barong", respectively. The others were equally armed with native bolos. Entering by way of the main and kitchen stairs, the intruders immediately started hacking the couple who were eating their supper at the time. Federico Planas sustained, among others, "twelve (12) incised clean cut wounds at the back"; his wife was found with "four (4) fatal big wounds at the back almost a foot long and one foot deep which penetrated her intestines; one shoulder puncture, 1 1/2 inches wide and 8 inches long." After allegedly taking a trunk belonging to the victims (which was later found in the bushes nearby), the malefactors returned to the house of Kinok Pendatun.

One Anselmo Mendoza dropped by the spouses' house on the morning of January 3, 1957+ to fulfill an appointment. Finding the couple already dead, he reported the matter to the barrio captain of Tacul, who in turn informed Lieutenant Januario Maturan of the police force of Bansalan, Davao. Maturan, together with three (3) of his policemen and one PC trooper, immediately proceeded to the scene of the crime to make the proper investigation, arriving at Tacul on the morning of January 5. The bodies of the victims were already in the early stages of decomposition. Evidently they were killed while eating, as shown by the fact that there were still unfinished portions of food on their plates when the policemen came.

The information filed by the Provincial Fiscal of Davao against appellants (the others had not been apprehended) reads as follows:

"The undersigned accuses Miguel Gamao and Kinok Pendatun Bila-an of the crime of Robbery in Band with Double Homicide, under Art. 294 in relation to Art. 296 of the Re-vised Penal Code as amended by Republic Act No. 18, committed as follows:

"That on or about January 3, 1957, in the Municipality of Bansalan, Province of Davao, Philippines, and within the jurisdiction of this Court, the above-mentioned accused, cons-piring and confederating together

with Calim Siya Bila-an, Iranon Siya Bila-an, Cutaysaban Bila-an and Ponso Bila-an, who are still at large, and helping each other, armed with sharp cutting instruments and in a band, with the use of violence upon persons, and with intent to gain, did then and there willfully, unlawfully and feloniously take, steal and carry away the following articles belonging to Federico Planas alias Pedring and Saturnine Singong de Planas, to wit:

One family trunk (contents undetermined)

One folded Maong cloth

Two men's belt

Two women's patadiong

Three women's underwear (camison)

One rolled bundle of women's clothes

Two maong pants

Six cans salmon

Three kilos sugar

One kilo salt

Two pieces working bolo

valued at 200.00 to their damage and preju-dice in the aforesaid sum; and by reason and on occasion thereof, the said accused, conspi-ring and confederating together and helping each other, with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and hack Federico Planas alias Pedring and his wife Saturnina Singong de Planas with sharp cutting instruments, thereby inflicting upon them mortal wounds which caused their death.

"That the commission of the foregoing of-fense was attended by the aggravating circumstances of (1) dwelling and (2) nighttime, the accused having purposely sought it to facilitate its commission.

x x x"

After the filing of the information, another one of the malefactors, Ponso Bila-an, was apprehended but was not charged as co-defendant, and was instead utilized by the prosecution as a state witness.

The identification of the herein appellants as mem-bers of the group which perpetrated the crime is conclusive. It was furnished by Punso Bila-an, an eye-witness to the occurrence. In substance his version is as follows: that some five (5) days before January 3, 1957, Miguel Gamao and Kinok Pendatun, together with Ponso Bila-an and the other malefactors, met in Kinok Pendatun is house in the presence of the latter's wife and daughter; that in that meeting Gamao broached the plan to kill the couple because according to him, he had not been able to get a certain parcel of land from them; that the other co-accused gave their assent to the plan; that on the night of January 3, 1957, under the pretext of going fishing, Kinok Pendatun prevailed Ponso to join the group, which he reluctant did; that upon reaching the Blocon river at a point nearest the victims' house, Gamao, Pendatun and their two other companions excused themselves by saying that they were going to ask for some tobacco from Pedring (Federico Planas), whose house was just nearby; that Ponso Bila-an stayed behind, but had a clear full view of the house all the time; that he did not follow the rest of the accused to the house because he was afraid that, they would really carry out their earlier plan to kill the spouses; that he saw the accused strike the victim almost simultaneously; and that when he saw Kinok Pendatun just the hacking orgy, he left the place immediately.

Ponso Bila-an, it should be noted, is a son-in-law of appellant Kinok Pendatun, with whom he had had misunderstanding. As stated by the trial court, he would not have testified as he did unless his testimony was the truth for no motive has been shown for him to bear false witness against his own kin.

Quite revealing is the affidavit (Exh. "C") executed by Kinok Pendatun, wherein he denied having delivered any blow at all against the victims, but pointed to Miguel Gamao as among the active participants. In the same affidavit he traced the movements of his companions prior to, during and after the attack, indicating that the plan to kill the couple was hatched a full five (5) days in advance. Thus:

"Q Prior to the killing of Pedring, was there any previous meeting held planning how the killing will be made?

A I have not attended any meeting, sir, but I know that there was a plan to kill the couple.

Q Who planned the killing and how did you know the plan?

A This was what happened sir. Five days before the killing of Pedring and his wife, Calim Lasiya and Iranon Lasiya, arrived at my house at Tacul. During their first two days, the two used to go out every after breakfast and would return late in the afternoon. On the third day, just after supper, Calim started convincing me to accompany them to kill Pedring and his wife but then I re-fused because Pedring and myself do not have any misunderstanding and besides I know him to be good to me. The fourth day, Calim repeated his request to me but I also put down his plan. On the fifth day, just after supper x x x Calim again repeated his proposal to bring me to kill Pedring but still I refused. This time Calim threatened me with death if I refuse because according to him, I might report him later because I know his plan, telling me further, that they have already agreed with Miguel Gamao regarding the matter. And because of his threats, I was forced to go with them. x x x (but) I was then afraid and besides it was really against my will to kill Pedring because we are friends and he has been very good to me. x x x" (Exh. "C-1")

Kinok Pendatun now denies the veracity of his sworn statement and says that he affixed his thumbmark thereon without fully understanding its contents. He testified that he was prevailed upon to do so because he was afraid a Sgt. Reyes of the local PC command, who had earlier maltreated him inside the PC barracks where he was confined and who had even threatened him with mere harm should he fail to make the statement.

Kinok Pendatun's pretention deserves little consideration. The then acting mayor of Bansalan, Claudio Villariz, positively affirmed that he himself translated the contents of the questioned statement into the Visayan dialect in order that Kinok Pendatun would fully understand its meaning, if he had been maltreated as he alleged, Kinok Pendatun would have complained to the acting mayor. This he did not do. Besides, any maltreatment would have been done to make him admit his participation in the commission of the crime. Yet his affidavit is self-exculpatory in nature, and throws the whole blame to his companions. Of course this particular circumstance benefits him not at all, considering the other evidence against him.

With respect to Miguel Gamao his defense consists in a simple avowal of innocence, without any attempt to discredit the evidence of his participation as given by Ponso Bila-an. And no ulterior motive is ascribed to Bila-an for him to implicate Gamao unjustly. It has been held that the testimony of one witness, if credible and positive, if it satisfies the court beyond reasonable doubt, is sufficient to convict (*People vs. Argana*, L-19448, February 28, 1964).

While appellants' guilt is established beyond doubt, we do not agree that the crime is robbery with homicide. The evidence concerning the robbery is too tenuous and inconclusive. Ponso Bila-an's testimony on this point reads:

"Q You said you saw them hacking, who were hacking?

A The first one was Kalim.

Q Then?

A When my father-in-law hacked, I ran away.

Q You said that you ran, where did you proceed?

A To where I live.

Q You mean to say in the house of Kinok?

A Yes, sir.

Q Did Kinok Pendatun and his companions go back to the house of Kinok at any time after you saw the hacking of Pedring and his wife?

A The only persons whom I saw were my father-in-law, Kalim and Iranon.

Q Did they have anything with them when they came to the house of Kinok Pendatun (after the killing)?

A Yes, sir.

Q What were those things?

A Clothings, patadiong, maong pants, belt and salmon." (t.s.n., hearing of January 19, 1959, pp. 12-13)

As may be noted, Bila-an did not see the accused take anything from the victims' house for the obvious reason that he left immediately upon seeing his father-in-law striking them. Considering that the things allegedly stolen were not recovered and presented at the trial and that the contents of the trunk found somewhere in the vicinity of the victims' house were not identified, there is no separate and sufficient proof of corpus delicti to support a conviction for robbery. No robbery having been proved conviction for robber with homicide impossible (*People vs. Manobo*, L-19798, September 20, 1966)

"A complaint charging the commission of the complex crime of robbery with homicide must necessarily charge each of the component offenses with the same precision that would be necessary if the were made the subject of separate complaints. It is well recognized in this jurisdiction that where a complex crime is charge and the evidence fails to support the charge as to one of the component it offenses the defendant can be convicted of the other." (*U.S. vs. Lahoylahoy*, 38 Phil. 330, 334)

The slaying of Federico Planas and his wife Saturnina must be considered as double murder. The confirmed facts show that treachery attended the commission of the offense in that appellants, without risk to themselves arising from any defense which the victims might put up, suddenly and without warning attacked and hacked them from behind, as eloquently attested by the numerous back wounds they sustained. Furthermore, evident premeditation was also present since appellants together with the other male factors, started to plot the killing five (5) days before its actual commission.

These aggravating circumstances - treachery and evident premeditation - are alleged in the information, and either one suffices to qualify the offense to murder (see *People vs. Jaravata*, L-22029, August 15, 1967). There being no mitigating circumstance, the remaining aggravating circumstance - even without appreciating the circumstance that the killing had been perpetrated in the dwelling of the victims - would justify the supreme penalty of death, but for lack of the necessary number of votes among the members of the Court, only the penalty of reclusion perpetua is imposed.

Wherefore, the sentence appealed from is modified by finding appellants guilty of double murder (instead of robbery in band with homicide) with the qualifying and aggravating circumstances aforesaid, and is affirmed with

respect to the penalty and the civil indemnity imposed, with costs.

Reyes, J.B.L., Dizon, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

+ The date given is not accurate inasmuch as the victims were killed on the evening of January 3, 1957. Mendoza, however, categorically manifested in court that it was on a Friday morning when he discovered the bodies of the victims; and Friday was, the 4th and not the 3rd of January, 1957.

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