

THE PEOPLE OF THE PHILIP-PINES, PLAINTIFF-APPELLEE, VS. SALIP MANLA, ET AL., DEFENDANTS, SAJILI DIARUL, MACABANG (OR IMAM KAMANG) GUSTAHAM, ADJAN GUSTAHAM, ABDU GUSTAHAM, SOLAIM...

G.R. No. L-21688. November 28, 1969

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PER CURIAM:

This case is before us on automatic review of the decision of the Court of First Instance of Zam-boanga del Sur in its Criminal Case No. 1577 convict-ing Sajili Diarul, Macabang Gustaham, Adjan Gustaham, Abdu Gustaham, Solaiman Monajin, and Abdurasid Akong of the crime of robbery in band with homicide and sentencing each of them to suffer the penalty of death, to indemnify jointly and severally the heirs of the deceased in the sum of P6,000.00, to pay jointly and severally the offended party the sum of P3,000.00 repre-senting the money and the value of the articles taken, and each to pay his proportionate share of the costs. The six persons thus convicted were among the eleven (11) defendants charged below, including one referred to only as "John Doe", who together with Salip Mania and Balawie Moro had not been apprehended at the time the information was filed. Two (2) others, namely, Abdulhasa Abdula and Absan Abdula, who were tried joint-ly with the six (6) convicted defendants, were acquitted by the trial court on the ground of reasonable doubt.

The findings of the trial court with reference to the commission of the felonious acts and the circum-s-tances surrounding them, except the sufficiency of the evidence relating to the accused's identities as the perpetrators thereof, are not disputed, to the extent that the defendants have adopted and reproduced said findings in their brief as their own statement of facts. However, they assail the conclusion reached by the trial court that the evidence has established beyond reasonable doubt their identities as the perpetrators of the offense charged.

The scene of the crime was a two-storey house located in barrio Calais of the island-municipality of Olutanga, Zamboanga del Sur, used both as residence and as a general store of the Macion family. Because water from the nearby Calais river covers the base of the house during high tide, the ground floor was actually constructed above ground level. The structural construc-tion of said house is aptly described by the trial court in this wise:

"x x x It is so constructed on the marshes, such that the water from the Calais River reaches underneath the house at high tide. The premises could be reached from the sea through the Calais River by boat. The upper floor of the house is the living quarters of Cecilio Macion and his family. The first floor is a store x x x with the main entrance at the front x x x. At the rear of the store is the kitchen, x x x. The floor-ing of the kitchen is constructed a little bit lower than the flooring of the store, such that there is an open space in between where the store and the kitchen adjoin. The second floor is accessible by a stairway located near the kitchen, about seven meters to the main door of the store. The whole store on the first floor could be seen from the second floor through a 1 foot by 6 inches opening on the floor, which was built for precautionary measure. Further to the rear adjoining the kitchen is an extension of the flooring, which is a sort of a landing place or wharf x x x where one coming to the place from the sea through the Calais River by boat can land or anchor. From the kitchen one can get into the store through a door, x x x, or from the kitchen to the wharf through a backdoor, x x x. At the side of the house or store is an alley, x x x, where customers of the store coming from the wharf

may pass through an exit, x x x to the alley, then to the front of the store where there is the main entrance, x x x."

In the late afternoon of February 8, 1960, while Diego Mahinay, cook of the Macion household, was preparing supper, he saw through the kitchen window overlooking the Calais River the approach of two (2) vintas, which eventually docked alongside the Macions' privately-constructed wharf. Thinking that the new arrivals were fishermen and realizing that he had no sufficient viands for that evening, Diego Mahinay stepped out of the kitchen through the rear door of the Macion residence and proceeded to meet the men in the vintas. In one vinta were Abdurasid Akong, Abdu Gustaham and four (4) others whom he did not know by name but recognized by their faces. In the other vinta were Sajili Diarul, Solaiman Monajin, Macabang Gustaham, Adjan Gustaham and another companion whom he likewise did not know by name. Upon being informed by the new arrivals that they had no fish to sell, Diego Mahinay returned to the kitchen. Hardly had he entered when Abdurasid Akong and Solaiman Monajin suddenly barged inside through the backdoor and hastily proceeded into the store by way of the connecting door from the kitchen. At the same time their other companions slipped through the alley beside the store and entered by way of the main door in front. Completely taken by surprise and unable to understand why Abdurasid Akong and Solaiman Monajin should enter the store through the kitchen instead of the usual passage by the side alley, Diego Mahinay followed behind them. When he reached the door connecting the kitchen to the store he saw Abdurasid Akong fire his carbine at the storekeeper, Raymundo Yuayan. The result was fatal. The rest of Abdurasid's companions then began breaking the store's shelves and looting the contents there-of. Diego Mahinay doubled back to seek a hiding place. He squeezed himself into the small space separating the floor of the store from that of the kitchen, and remained there until after the looters had left the premises.

Albino Abayle, a household helper of the Macions, substantially corroborated Diego Mahinay's version of the facts. When the two (2) vintas arrived that afternoon, Albino was resting at the wharf after the day's work. With him at the time was Ciriaco Mariño, with whom he was engaged in light talk. He noted the new arrivals with more than passing interest because of their large number and because some of them were carrying unidentified objects wrapped in sacks. He saw Abdurasid Akong and Solaiman Monajin enter the kitchen door and the others pass through the alley and enter by way of the main door in front. Shortly after the group entered the store, Albino Abayle heard shots inside. He rushed through the kitchen and into the store to investigate, and saw Raymundo Yuayan prostrate on the floor and the men he had seen arrive breaking the store's shelves and laying their hands on the merchandise displayed there. Albino ran under the store to hide, squatting in the water which had by then risen considerably due to the incoming high tide. From his hiding place he saw Diego Mahinay squeezed between the floors of the kitchen and of the store. It was only when the raiders were taking their loot to the vintas, with their firearms clearly visible, that it dawned upon him that the objects wrapped in sacks they were carrying when they arrived were actually carbines.

The occurrence from beginning to end was witnessed by Felisa Yuayan de Macion, wife of the storeowner, from the residential portion of the house. She had earlier gone upstairs to rest and through the small opening on the floor directly above the store she saw several men pointing their firearms menacingly and one of them actually shooting the storekeeper. When one of them started to go up to the second floor where she was she immediately jumped through the window into the water below, injuring her right shoulder and leg as a result, for which she was medically treated in Zamboanga City the next day.

The accused have been positively identified by the three (3) witnesses, who had no conceivable reason, as none has been suggested, to falsely incriminate them. And the former could not have possibly mistaken the latter for other persons because they were frequent visitors at the store. Abdurasid Akong, Abdu Gustaham, Macabang

Gustaham and Adjan Gustaham used to sell fish there; Sajili Darul was a former house helper of Mrs. Macion's brother-in-law and hence familiar, at least by face, to Macion household; and Solaiman Monajin was a regular customer at the store every Sunday. That particular afternoon of the crime, Diego Mahinay even talked to them and asked if they had fish to sell. There was no attempt to disguise themselves. Under those circumstances there could hardly have been a mistake on the part of the wit-nesses in identifying them.

Each defendant set up the defense of alibi. Abdurasid Akong would have us believe that at the time of the robbery he was 12 kilometers away in Polo Bohangin Mahaba, selling fish to one Abdulhari; and that he left his house in Gandaan at 3:00 p.m. and arrived at Polo Bohangin Mahaba an hour and a half later, staying there until sunset when he started paddling back home, arriving at his house at almost midnight. Yet by his own admission, during the more than six (6) years that he had been a fisherman that was the only occasion when he went to Polo Bohangin Mahaba to sell his catch. In the past he regularly catered to customers in barrio Calais, where he got better prices. There is no believable explanation as to why Abdurasid Akong should suddenly transact his business in Polo Bohangin Mahaba on the date in question in spite of the fact that it was much further away. This alibi, although confirmed by Abdulhari, cannot prevail over the positive identification made by the three disinterested eyewitnesses, who had no demonstra-ted motive to perjure themselves against him.

The Gustaham brothers, namely, Macabang, Abdu and Adjan, and co-accused Solaiman Monajin, claimed that from 7:00 a.m. up to about 6:00 p.m. of February 8, 1960, they were working in the farm of one Akimodin Buto in Tando Dial, about 3 1/2 kilometers from barrio Calais. Although their alibi appears to be substantiated by the farm owner, Akimodin Buto, the same, like that of Abdurasid Akong, can-not prevail over the direct and positive evidence of their presence at the scene of the crime. The same observation also holds true with respect to the alibi put up by Sajili Diarul, who merely explained that on hole day of February 8, 1960 he, together with his father and one Saraban, was cultivating their farm at Ganda-an, 3.2 kilo-meters away from barrio Calais.

Restating the consistent ruling of this Court in many decisions, it said in a relatively recent case:

"Alibi as a defense must be received with utmost caution because of the facility with which it maybe concocted and fabricated, and in order that such defense may be successful, it must be proved by convincing evidence which reasonably satisfies the court of the truth of such defense, and unless it meets this requirement, it can-not prevail against the clear and positive identification of the accused by witnesses of the prosecution who had no motive to testify against the persons charged of a crime; although, it is also settled rule that it is not on the weakness of the defense of alibi that his conviction lies. It (still) behooves the prosecution to show his guilt beyond the shadow of a doubt." (People vs. Capito, et al., L-24466, March 19, 1968; 22 SCRA 1130)

Everything considered, there is no doubt in our mind that the positive identification of herein defendants by the three eye-witnesses has not been shaken.

The crime committed by the defendants is robbery with homicide as defined and penalized under Article 294 (1) of the Revised Penal Code.[1] In automatically imposing the death penalty, the trial court appears to be under the impression that in every case of robbery with homicide committed by a band, with the perpetrators thereof armed with unlicensed firearms, there is no alternative but to impose the death penalty. Although the dispositive portion of this decision is actually an affirmance of the decision under review, we feel that a correction of the court a quo's view is in order. It is not accurate to say, as the trial court did, that because the crime of robbery with homicide is committed by a band whose members are armed with unlicensed firearms, there is no more need to inquire into the attendant aggravating and mitigating circumstances in order to determine the penalty imposable and that the trial court has no choice but to impose the supreme penalty. This view fails to take note of the fact that Art. 295 merely provides, inter alia, that it is only when the offenses described in subdivisions 3, 4 and 5 of Art. 294 are committed by a band that the proper penalties in their maximum periods should be imposed. In

People vs. Apduhan, No. L-19491, August 30, 1968, 24 SCRA 798, this Court, speaking through Mr. Justice Castro, said: "x x x the circumstance of band is therefore qualifying only in robbery punished by subdivisions 3, 4 and 5 of Art. 294. Consequently, Art. 295 is inapplicable to robbery with homicide, rape, intentional mutilation, and lesiones graves resulting in insanity, imbecility, impotency or blindness. If the foregoing classes of robbery which are described in Art. 294(1) and (2) are perpetrated by a band, they would not be punishable under Art. 295, but then cuadrilla would be generic aggravating under Art. 14 of the Code. Hence, with the present wording of Art. 295 there is no crime as 'robbery with homicide in band.' If robbery with homicide is committed by a band, the indictable offense would still be denominated as 'robbery with homicide' under Art. 294(1), but the element of band, as stated above, would be appreciated as an ordinary aggravating circumstance."

Even with the generic aggravating circumstance of band alone, there being no mitigating circumstance to offset the same, the imposition of the death penalty is in accordance with law. But then the offense in this case was likewise attended by the circumstances of "dwelling," treachery and premeditation, this last being evident from the fact that the defendants must have planned the robbery beforehand, as indicated by their coming as an armed group and by the manner in which they entered the store.

Counsel de oficio submits that the defendants belong to the cultural minorities and that this should be considered as a mitigating circumstance in their favor. This fact cannot conceivably reduce, from the subjective point of view, the defendants' awareness of the gravity of their offense, for robbery and killing are by their very nature just as wrong to the ignorant as they are to the enlightened. In any event even if considered as mitigating, the circumstance referred to would be insufficient to offset the aggravating circumstances present.

Wherefore, with the only modification that the indemnity due to the heirs of the deceased Romeo Yuayan is increased from P6,000.00 to P12,000.00, the decision appealed from is affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Teehankee, JJ., concur.

Barredo, J., did not take part.

[1] Both the provincial fiscal and the trial court designated the offense committed as "robbery in band with homicide" as defined and penalized under Art. 294(1) in relation to Art. 296 of the Revised Penal Code. This inaccurate designation of the offense led the trial court to automatically impose the death penalty without appreciating any aggravating or mitigating circumstances which might have attended the commission of the deed, apparently relying solely upon the provisions of Arts. 295 and 296 of the Revised Penal Code to the effect that where robbery is committed by a band, the offender(s) shall be punished by the maximum period of the proper penalties and that when any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law.

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