

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
BALBAL SIGAYAN, ET AL., DEFENDANTS, BALBAL SIGAYAN,
DEFENDANT AND APPELLANT.**

G.R. Nos. L-18523-26. April 30, 1966

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PER CURIAM:

Balbal Sigayan was accused in the Court of First Instance of Lanao, together with Datu Ibra Tamano of the crime of robbery with homicide (in Grim. Case No. 1690) for the taking away on January 8, 1955 of cash and properties belonging to the spouses Aacleto and Laureana Madrina, in the total amount of P3,050.00, on the occasion of which robbery Anacleto Madrina, Juana Madrina de Paculba and Elena Madrina were shot and killed; with Demasen-dil Timba, alias Dimasimpon, and Desoma Timba alias Disomangcop, of the crime of robbery with homicide (Crim. Case No. 1797) for the same act against the aforesaid persons; with Demasendil Timba alias Dimasimpon and Desoma Timba alias Disomangcop, for the crime of murder for the death of Leodegario Mendez, on the same date and occasion (Crim. Case No. 1841); and with Demasendil Timba, alias Dimasimpon, and Desoma Timba, alias Disomangcop, for the death of Laureano Alongay (Crim. Case No. 1843). Upon motion of the City Attorney of Iligan, which was approved by the court, the complaint against Datu Ibra Taraano in Criminal Case No. 1690 was dismissed. Demasendil Timba was released from the informations in Criminal Cases Nos. 1797, 1841 and 1843, also upon motions of the City Attorney, and he was utilized as State witness, while the cases against Desoma Timba were dismissed for insufficiency of evidence.

After due trial, the court rendered a single decision in the aforementioned four cases, finding Balbal Sigayan who remained as the sole accused therein, guilty of robbery with homicide in Criminal Cases Nos. 1690 and 1797, aggravated by the circumstances of dwelling, band, evident premeditation, and treachery, and sentenced to suffer the penalty of death and indemnify the heirs of each of the victims Anacleto, Juana and Elena Madrina in the sum of P6,000.00. In Criminal Case No. 1841, the accused was convicted of murder, with the aggravating circumstances of dwelling, band and evident premeditation, without any mitigating circumstance, and sentenced to reclusion perpetua and to indemnify the heirs of Leodegario Mendez in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, and proportionate cost. In Criminal Case No. 1843, the accused was also found guilty of murder with the aggravating circumstances of dwelling, band, and evident premeditation and without any mitigating circumstance, and was sentenced to reclusion perpetua, and to indemnify the heirs of Laureano Alongay in the sum of P6,000.00 without subsidiary imprisonment, and costs. The accused did not interpose any appeal from this decision. However, as the supreme penalty of death has been imposed (in Crim. Cases 1690 and 1797), the decision is now under automatic review of this Court with respect to said cases, pursuant to Section 9 of Rule 118 of the old Rules of Court (Sec. 9 of Rule 122, of the new.)

The facts of these cases, as established by the prosecution and found by the trial court, briefly stated, are as follows:

At about 8 o'clock in the evening of January 8, 1955, a band of armed men led by Makasiro Tamiara and among whom were Balbal Sigayan, Demasindel Timba and Desoma Timba (the last two having been forced to

accompany the group), came to the two neighboring houses of Anacleto Madrina and Leodegario Mendez, at sitio Kalubihon, Dalipuga, Iligan City, fired shots and riddled them with bullets from different directions through the floors and surrounding walls, as a result of which shooting Anacleto Madrina and his 2 daughters Juana and Elena, were hit and died, while Julian Paculba, Juana's husband, and their 2 young children were wounded. The house was thereafter robbed and looted with P2,500.00 in cash and a pistol and shotgun worth P550.00 or a total of P3,050.00 belonging to the family. As a consequence of the shooting of the other house, Leodegario Mendez was hit and died inside said house, while about 20 paces therefrom, Laureano Alongay fell dead also with gunshot wounds.

It appears that prior to this incident, Demasindel Timba, having received information that his father was sick, left with his cousin Desoma Timba, for Kabasaran. On the way, they passed the house of one Amai Lalong at Misumbar, Baloi, where they met the group headed by Makasiro Tamiara. With this group was Balbal Sigayan, a first cousin of Demasindel's mother. Coerced at gunpoint by Makasiro, the cousins Timba were taken along to carry, at the start, pot and rice, and later the loot of the group. Before reaching Kalubihon, the group stopped at two stores one owned by a Chinese and the other by a Filipino from which they forcibly took textiles and other goods.[1] In Kalubihon, Makasiro ordered the 2 Timba cousins, carriers of the "loot", to stay on a mound or hillock among banana plants, guarded by one of the gang, while the rest, with Makasiro and Balbal Sigayan, proceeded to the 2 houses of Anacleto Madrina and Leodegario Mendez, riddled the same with bullets, which resulted in the death of Anacleto, Juana and Elena Madrina, and Leodegario Mendez and Laureano Alongay in the other house, and then robbed the house of Madrina of cash and firearms.

After this robbery and killings, the band left and proceeded to Kiasar where the two Timba cousins-carriers were relieved of their load. Makasiro and company left them and went their way. Said group was finally ambushed by the City Police Force of Dansalan under Capt. Tulfo in which encounter eleven of them were killed including Makasiro Tamiara. Balbal Sigayan was captured still carrying with him a bundle which contained part of the goods and textiles taken from their pillagings in Lugait, Dalipuga, and Kalubihon.

The defense' version of the incident, testified to by Balbal Sigayan, is as follows:

On the night of January 8, 1955, he was awakened by knocks at the door of his house at Guimba, and when he opened the door, a neighbor, Magumpia, invited him to go to the schoolhouse. He went with Magumpia and there, he saw ten armed people who forced him, under threat of death, to go with them to hunt deer. He was asked to carry eight gantas of rice. The members of the group were Magumpia, Tubal, Macmac, Mariga, Bausi, Mama, another Mama, Bagul, Makasiro, Desoma Timba and Demasindel Timba. The latter two allegedly guided them through the forest. After several days of walking, they came to a road where they stopped and boarded a jeep going to Lugait. On the way, they stopped at a Chinese store which they looted. Makasiro, Demasindel, and Desoma even beat the Chinese storeowner. Then, they proceeded to Iligan City, and on their way, the band looted three other stores. When they reached Kalubihon, they went to a place where the houses of Anacleto Madrina and Leodegario Mendez were located. Sigayan who was left on the road under guard, thereafter heard successive shots and the gang returned and told him to hurry up to leave the place because all the occupants of the houses might have been killed. They travelled again through the forest and came out at Kiasar, where Demasindel Timba told the group that he would procure some food. In his absence, a series of shots came from constabulary soldiers, and everybody ran his way. In the course of the pursuit, Sigayan gave up the loot he was carrying and went home to Guimba where he surrendered to Dansalan Mayor Gosain Klag, to whom he revealed that he was forced by the band of robbers to go with them.

On the basis of the evidence thus presented, the lower court rendered judgment on November 12, 1960, finding Balbal Sigayan guilty as charged in all the four cases and sentenced him (in Crim. Cases Nos. 1690 and 1797) to

the supreme penalty of death as stated at the beginning of this opinion.

Reviewing the foregoing decision of the lower court, with respect to the aforementioned cases, we find that the determinative factor herein is the credibility of witnesses, the prosecution having tried to prove that it was the accused Balbal Sigayan who was armed and took active participation in the commission of the offenses charged, while the defense tried to establish that it was the accused who was forced, to accompany the band and Demasindel Timba and Desoma Timba were the ones who conspired and aided the robbers in the accomplishment of the said acts. We find, however, the testimony of state witness Demasindel Timba, substantiating the prosecution's theory, to be entitled to belief, not only because it appears to be clear, convincing, straightforward, and free from inconsistencies, but also because it is corroborated in material points by the other witnesses, including the then Acting P.C. Provincial Commander, Major Songcoya, who investigated Balbal Sigayan when the latter was captured, and the Municipal Judge before whom the written declaration of Sigayan was attested to. On the other hand, Balbal Sigayan's sole testimony in court was not supported by any other evidence. This is in addition to the fact that the trial judge, who had heard the witnesses declare in court and seen their demeanor while so testifying, gave more credence to the testimony of Demasindel Timba as an eye-witness to the robbery with homicide and murders in Kalubihon, establishing Sigayan's participation therein.

In this instance, the counsel de oficio for Sigayan alleges that the shots fired by the band were directed at and intended for the house of Anacleto Madrina, although the same bullets passing through or missing the said house must have hit the house of Leodegario Mendez. It is then argued that since the house of Mendez was not the intended target of the shots, the deaths of the two occupants thereof (Leodegario Mendez and Laureano Alongay) were accidental, and the trial court, therefore, erred in declaring Sigayan guilty of four separate and independent offenses (two of robbery and homicide, and two murders). It may here be stated that the accused did not appeal from the decision with respect to Criminal Cases Nos. 1841 and 1843. The same, consequently, has already become final as to said cases and the same are not included in this automatic review.

Counsel also tried to capitalize on the non-presentation of Desoma Timba as a prosecution witness, claiming that had he been produced, his testimony would have been favorable to Sigayan and adverse to the prosecution. Let it be noted that Desoma Timba was not discharged to be a state witness. Hence the prosecution was under no obligation to call him to the witness stand. Furthermore, the State's case was sufficiently established by the testimonies of Demasindel Timba^[2] and the other witnesses. The written declaration of Sigayan himself coincided on material points with such testimony of Demasindel. Under the circumstances, Desoma's testimony would be merely corroborative, and therefore his non-presentation as a witness does not mean suppression of testimony that is adverse to the prosecution.

The trial court is also assailed for its alleged failure to consider in Sigayan's favor the mitigating circumstance of voluntary surrender. It was found established, however, that Sigayan gave up after he was surrounded by the constabulary and police forces, when he had no alternative except to surrender. This surrender cannot be considered voluntary. It is true that he testified that after being pursued by the police authorities, he went to Guimba and surrendered before Mayor Cosain Naga. This official was not, however, presented to support his allegation and contradict the testimony of the P.C. provincial commander that he was captured by the constabulary and police team. The lower court, therefore, committed no error in disregarding this claim of voluntary surrender.

The aggravating circumstance of nighttime urged by the State, may not be considered against herein accused, because said circumstance is already absorbed by and inherent in treachery. Even so, the presence of the additional aggravating circumstances of dwelling, band and evident premeditation, without any mitigating circumstance justifies the imposition of the extreme penalty provided by law.

Wherefore, finding the trial court's decision to be in accordance with the evidence and the law on the matter, the same should be and is hereby affirmed in toto. So ordered.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., and Sanchez, JJ., concur.

[1] This robbery is not included in these cases.

[2] This is the accused who was discharged to be a state witness.

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