

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO SALILING, CONCORDIO JUMADIAO, SERGIO DIANO AND
RAYMUNDO VILLANUEVA, DEFENDANTS-APPELLANTS.**

G.R. No. L-27974. February 27, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Antonio Saliling, Concordio Jumadiao, Sergio Diano and Raymundo Villanueva appealed from the decision of the Court of First Instance of Samar, Catarman Branch IV, convicting them of robbery with homicide, sentencing Saliling to reclusion perpetua and the other three to death and ordering them to indemnify "jointly" the heirs of Rodrigo Argenio in the sum of six thousand pesos (Criminal Case No. C-1264).

Saliling withdrew his appeal. The withdrawal was allowed in this Court's resolution of February 3, 1969. On the other hand, Diano escaped from the New Bilibid Prison on December 24, 1968. The Solicitor General asked that the review of Diana's appeal be held in abeyance until he is apprehended (141, Rollo; See sec. 9, Rule 122 and sec. 8, Rule 124, Rules of Court).

The facts disclosed in the prosecution's evidence are as follows:

On January 8, 1966 at about three o'clock in the morning, Rodrigo Argenio, his wife and three children aged ten, seven and six years, were asleep in their house at Barrio Liberty (Baño), Catarman, Samar. His wife, Amada de Pablo, was awakened when she heard a voice from the yard, calling "Mang Digoy" three times. She woke up her husband. Argenio, addressing the person outside the house, asked, "Who are you?". Someone answered, "I am Cording, Mang Digoy". It was a moonlit night. There was a full moon in the western sky. (See Calendar, Exh. C-2).

Argenio, followed by his wife, opened the window. They saw and recognized Antonio Saliling, Concordio Jumadiao, Sergio Diano and Raymundo Villanueva. Amada de Pablo had known them for three years or since she and her husband became tenants of the coconut land owned by Alejandro Valle and located in Barrio Liberty.

Jumadiao told Argenio that he wanted to buy a chicken and that he desired to go up the house for some purpose. Believing that Jumadiao and his companions had no evil motive, Argenio unbolted the door. Jumadiao opened the shutter. The four intruders rushed inside the small house which was two fathoms long and one fathom wide and whose floor was barely one meter above the ground. Because of the children, the house was lighted all night by a table lamp (kingki).

Once inside the house, Saliling without any preliminaries stabbed Argenio in the abdomen with a long bolo (depang). Argenio instinctively placed his hand on the wounded part of his abdomen. While in that position, Diano stabbed him in the chest. Argenio fell on the floor. His wife, who was behind him when he was assaulted, cradled him in her arms. The children cried. The table lamp remained lighted.

Villanueva seized the buri bag (bayong) and took therefrom a wallet containing sixty pesos or three twenty-peso

bills. The money had come from the sale of copra. Saliling and Villanueva were aware that Argenio had sold copra on January 5 (Exh. B). The copra was produced from the coconuts gathered from the land of Alejandro Valle, the landlord of Argenio. Jumadiao and Villanueva were not armed.

After the money was taken, the malefactors left the house. As Diano (who also allegedly occupied a portion of Valle's coconut land) was going down, he ominously remarked: "As long as you will be staying in the land of Dandoy, I will kill all of you". He was referring to Valle's land.

Amada de Pablo dispatched her son, Carlito, to the house of Primitivo Galvez, the brother-in-law of Argenio, to apprise him of the incident. Galvez fetched Antonio Cahusay, the barrio captain. Cahusay accompanied by Crisostomo Barandino, Felix Sayde and Laurente Openiano, repaired to Argenio's house.

Cahusay ordered Barandino, his first rural police sergeant, to investigate the wounded man. Barandino wrote with a ball pen on a piece of ruled pad paper the statement in the dialect of Argenio, which the latter thumbmarked and which, as translated, reads: "I, Rodrigo Argenio, at 3:15 I was stabbed by Antonio Saliling, they were four of them, namely: Raymundo Villanueva, Concordia Jumadiao and Sergio Diano inside my house." (Exh. D-1).

Cahusay and Carlito Argenio testified that they heard Rodrigo Argenio saying that he was stabbed by Saliling and Diano and that there were four malefactors. When Argenio was asked whether he was expected to live he answered: "I think I will not live with my wounds because I am already in a serious condition." (22 tsn, August 5, 1966).

Argenio was brought on that same morning to the hospital in the poblacion where later in the afternoon he died due to peritonitis and hemorrhage. The thirty-three year old victim had sustained three stab wounds which injured his liver, stomach, diaphragm and intestines.

After the killing, the victim's wife and family left Valle's land. There was a litigation over that land between Valle and Leonor Villanueva, the father (sic) of appellant Raymundo Villanueva and the father-in-law of Diano. The motive for the killing is not clearly shown in the record. The victim could have been robbed without killing him.[1]

The case was not investigated by the Catarman police. Even the weapon used by Saliling, which was surrendered to the police, was not turned over to the fiscal and was not presented in evidence. The record does not show why the chief of police did not file any complaint. The apathy or inaction of the police may perhaps be attributed to the circumstance that Saliling is the nephew of Policeman Ambrosio M. Carpio. (He is a first cousin of Saliling's mother. The police might have believed Saliling's version that he acted in self-defense. Carpio testified as a defense witness).

The declarations of Amada de Pablo and her ten-year old son, Carlito, implicating Saliling, Jumadiao, Diano and Villanueva were sworn to before the municipal judge on January 14, 1966. On the following day, January 15, an assistant provincial fiscal filed against them in the municipal court an information for robbery with homicide. They waived the second stage of the preliminary investigation. The case was elevated to the Court of First Instance where the same fiscal refiled the same information.

At the trial Amada de Pablo and her son, Carlito, testified as eyewitnesses of the killing and robbery committed in their home. The trial court took special notice of the fact that the ten-year old Carlito testified in a truthful, straight-forward and "natural" manner.

Appellant Saliling pleaded self-defense while Jumadiao disclaimed any participation in the killing although he admitted that he was the companion of Saliling when the latter allegedly defended himself against the supposed

unlawful aggression committed by Argenio.

Even if Saliling had withdrawn his appeal, it is necessary to state his version of the occurrence since it is interwoven with Jumadiao's defense.

Saliling, a twenty-five year old unmarried farmer residing at Sitio Sikal, Barrio Polangi, Catarman, evolved a complicated story regarding his alleged self defense.[2] That story is tied up with the testimonies of defense witnesses Barandino and Sayde, rural police sergeants, who intimated that Argenio was killed outside his domicile, contrary to the version of his wife, his son and the barrio captain.

The gist of Saliling's story is that he advanced one peso to Argenio for the purchase of sixty empty bottles; that Argenio delivered only thirty bottles; that at about six-thirty in the evening of January 7, 1966 when he and Jumadiao tried to get the fifty centavos from Argenio as a refund for the undelivered bottles, Argenio became infuriated and, armed with a bolo, he chased Saliling and Jumadiao and caught up with Saliling near the footbridge about forty meters away from Argenio's house, where Saliling and Argenio struggled for the possession of the bolo. Saliling allegedly wrested the bolo from Argenio and used it in stabbing the latter. Jumadiao was an eyewitness. Then Saliling walked seventeen kilometers and reached the poblacion of Catarman at around one o'clock in the morning and surrendered to his uncle, Patrolman Carpio, who actually brought him to the chief of police at eight o'clock.

The trial court rejected Saliling's plea of self-defense. It categorically found that the killing transpired inside Argenio's domicile and not near the footbridge. It did not believe the testimony of defense witnesses Barandino and Sayde that, according to Argenio's antemortem declaration, he was stabbed near the footbridge. It observed that the testimony or version was concocted so as to dovetail with the statement of those witnesses that they saw clots of blood near the footbridge.

The lower court argued that if Barandino noticed spots of blood near the footbridge on his way to Argenio's house, as claimed by him, then it would not have been necessary for him to ask the dying Argenio where he was killed since it would be preposterous, if Argenio were wounded in his house, to leave it and go near the footbridge "to bleed there"! The trial court further noted that the statement attributed by Barandino to Argenio, that he (Argenio) would have shot Saliling if Saliling had stabbed him in his house, was "unnatural" since Argenio, being on the brink of death, would not have been in an angry or vindictive mood.

Hence, the trial court regarded Exhibit D as containing Argenio's dying declaration notwithstanding Barandino's denial that Exhibit D is in his own handwriting.

The alibi of appellants Diano and Raymundo Villanueva[3] is that on the night of January 7 and in the early morning of January 8, 1966 they did not leave the house of Leonor Villanueva. Diano was allegedly sick while Raymundo was the cook at the birthday party of Diano's twin children which party was held in Leonor Villanueva's house on the night of January 7.

As already stated, the trial court convicted the appellants of robbery with homicide. In this appeal they raised issues as to the credibility of the prosecution witnesses. They contend that no crime of robbery with homicide was committed.

Atty. Graciano C. Regala, appellants' counsel de oficio, conscientiously studied the record and filed a brief consisting of forty-seven mimeographed pages.

The appellants impugn the credibility of the victim's widow and ten-year old son. They argue that it was improbable that one of the accused would identify himself and resort to the ruse that he wanted to buy a chicken

just to gain entrance into Argenio's house. They point to other improbabilities in the prosecution's version of the case. They contend that the trial court erred in not giving credence to the defense witnesses whose version of the case is allegedly consistent and is supported by the evidence.

After a thorough scrutiny of the oral and documentary evidence, we arrived at the conclusion that appellants' guilt was established beyond reasonable doubt.

The appellants in concentrating on the alleged discrepancies and weaknesses in the prosecution's evidence overlooked that the record does not show any cause or reason as to why the victim's widow and son would frame up the appellants and recklessly impute to them a capital offense.

Their theory that they were prosecuted at the instance of Alejandro Valle so that the latter could acquire Leonor Villanueva's coconut land (Leonor is the father and father-in-law of appellants Villanueva and Diano, respectively) was rightly disbelieved by the trial court. Judge Eliseo de Veyra sensibly observed that appellants' incarceration would not enable Valle to possess Leonor Villanueva's land. According to appellants' evidence, the litigation between Valle and Leonor Villanueva over a parcel of coconut land was compromised. Valle agreed to pay Leonor P2,000 for the said land. The compromise was approved by Judge Olegario Lastrilla in his decision dated March 30, 1960 (Exh. 3).

The appellants point out that Argenio in his dying declaration did not mention any robbery. That omission is not unusual. It does not create any reasonable doubt as to appellants' guilt. Argenio was mortally wounded by Saliling and Diano immediately after they entered Argenio's house. Obviously, in that situation Argenio could not have perceived that Raymundo Villanueva had taken the wallet from the buri bag. But the victim's wife and son saw Villanueva taking the money. That fact was explicitly stated in their testimonies.

The contention that Exhibit D does not satisfy the requisites of a dying declaration is not well-taken. "The declaration of a dying person, made under a consciousness of an impending death, may be received in a criminal case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death" (Sec. 31, Rule 130, Rules of Court).

A dying declaration is admitted in evidence as an exception to the hearsay rule. It is regarded as trustworthy because "truth sits on the lips of a dying man". Considering that the declarant is at the threshold of death, his "mind is induced by the most powerful considerations to speak the truth; a situation so solemn and so awful is considered by the law as creating an obligation equal to that which is created by a positive oath administered in a court of justice." (5 Moran's Comments on the Rules of Court, 1970 Edition, p. 306, citing U.S. vs. Gil, 13 Phil. 530, 549, which in turn cites Lord Baron Eyre and the rule of the Roman law: "Morti proximum, sive moribundum, non praesumendum est mentiri, nec esse immemorem salutis aeternae; licet non praesumatur semper dicere verum.").

To be admissible, it is necessary (a) that a dying declaration must concern the cause and surrounding circumstances of the declarant's death; (b) that at the time it was made the declarant was under a consciousness of an impending death; (c) that he was a competent witness, and (d) that the declaration is offered in evidence in a criminal case for homicide, murder or parricide in which the declarant is the victim (People vs. Sagario, L-18659, June 29, 1965, 14 SCRA 468).

All those requisites are present in this case. The declarant's wife testified that he was conscious of his imminent death when he revealed to Barandino that Saliling was his assailant. As correctly observed by the trial court, the prosecution's evidence proves appellants' guilt even without taking into account Argenio's dying declaration.

The appellants contend that there is a discrepancy between the prosecution's evidence that the crime was

committed at around three o'clock in the morning of January 8, 1966 and the certification of Patrolman Carpio dated January 25, 1967 that Saliling "voluntarily surrendered at about 1:30 A.M. on the evening (sic) of January 8, 1966, after he stabbed to death one Rodrigo Argenio at Bo. Liberty, Catarman, Samar and he was recorded in the Police Blotter at 8:00 A.M. of same date" (Exh. 6). (The police blotter was not exhibited during the trial).

That contention is devoid of merit. It is predicated on the assumption that full faith and credit should be given to Carpio's certification and his testimony that Saliling surrendered to him at one o'clock in the morning.

Carpio, as Saliling's uncle, is a biased witness. His certification was deliberately intended to synchronize with the theory of the defense that Saliling acted in self-defense when at around seven o'clock in the evening of January 7, 1966 he was allegedly assaulted by Argenio near the footbridge.

That theory of the defense was busted when Saliling withdrew his appeal and abided by the lower court's decision sentencing him to reclusion perpetua. Indeed, an unbiased appraisal of Saliling's plea of self-defense gives one the impression of its fabricated character. It is "too good to be true", as noted by the trial court.

With the withdrawal of Saliling's appeal, the story of appellant Jumadiao, which was interwoven with Saliling's plea of self-defense must perforce be rejected.

As to the alibi offered by appellants Diano and Raymundo Villanueva, the same does not deserve credence. As rationalized by the trial court, the birthday party at the house of Leonor Villanueva, where Diano and Raymundo Villanueva were residing, broke up at eleven o'clock in the evening of January 7, 1966. The crime imputed to them was committed at three o'clock the following morning. The victim's house, where the crime was committed, is about one kilometer away from Leonor Villanueva's house in the same barrio. The said appellants could easily have gone to the scene of the crime and returned to their domicile. Diano's alleged sickness was not proven by any convincing evidence. Sickness is a subterfuge commonly availed of by accused persons relying on an alibi.

To establish an alibi, the accused must show that he was at another place for such period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission (*People vs. Resayaga*, L-23234, December 26, 1973, 54 SCRA 350).

The alibi of Diano and Villanueva does not meet that requirement. It is not a credible alibi even if we accept the version of the defense that the killing of Argenio was consummated at seven o'clock in the evening of January 7, 1966 near the footbridge about forty meters away from Argenio's house. Moreover, Diano and Raymundo Villanueva were positively identified by the victim's wife and son as having participated in the commission of the crime. An alibi cannot prevail over the indubitable identification made by prosecution eyewitnesses.

Appellants' counsel argues that no crime of robbery with homicide was established by the prosecution because the killing of Argenio was not perpetrated on the occasion or by reason of the robbery or that it was not committed "in the course or because of the robbery" as contemplated in article 294(a) of the Revised Penal Code. That contention has no merit.

Cuello Calon explains that "el homicidio ha de resultar con motivo u ocasion del robo. Rasta que entre aquel y este exista una relacion meramente ocasional. No se requiere que el homicidio se cometa como medio de ejecucion del robo, ni que el culpable tenga intencion de matar, el delito existe segun constante jurisprudencia, aun cuando no concurra animo homicida, incluso si la muerte sobreviniere por mero accidente siempre que el homicidio se produzca con motivo o con ocasion del robo, siendo indiferente que la muerte sea anterior, coetanea o posterior a este." (2 *Derecho Penal*, 12th Edition, 1967, p. 798; *U.S. vs. Landasan*, 35 Phil. 359).

"Es indiferente por completo que el robo preceda o subsiga a la muerte. Y aunque esta sea ejecutada por un

malhechor tan solo, todos los malhechores que participaran en el robo responden del delito en toda su complejidad" (27 Enciclopedia Juridica Española, p. 690).

As noted in *People vs. Mangulabnan*, 99 Phil. 992, the English version of article 294 (1), that there is a robbery with homicide "when by reason or on the occasion of the robbery, the crime of homicide shall have been committed", is a poor translation of the controlling Spanish version which is "cuando con motivo o con ocasion del robo resultare homicidio". For robbery with homicide to exist, "it is enough that a homicide would result by reason or on the occasion of the robbery". It is immaterial that the death supervened by mere accident as long as it was produced by reason or on the occasion of the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime, that has to be taken into consideration. (Sentencia of Spanish Supreme Court dated January 12, 1889).

In the *Mangulabnan* case, during the robbery one of the malefactors stood on a table and fired at the ceiling. That was an unpremeditated act that surged on the spur of the moment and without any idea that someone was hiding in the ceiling. It turned out that the owner of the house had hidden himself in the ceiling when he learned that the three malefactors were going to rob his house. After the robbers had left, the owner of the house was found dead in the ceiling. It was held that the crime was robbery with homicide.

In this case appellants' counsel contends that the offense was not robbery with homicide because the taking of the money was effected after the offenders had killed Argenio. Counsel relies on *People vs. Elizaga*, 86 Phil. 364 and *People vs. Glore*, 87 Phil. 739.

In the *Elizaga* case the accused, who were charged with robbery with homicide, were convicted of the separate crimes of robbery and theft because there was no clear evidence that the loss of the victim's personal property was through robbery. In the *Glore* case, the victim was first killed. After the killing, the malefactors left the victim's body and proceeded to the house of the barrio lieutenant. Then, they returned to the place where the victim lay prostrate and took his diamond ring and money. Under those facts, the malefactors were convicted of the separate crimes of murder and theft. The facts of the *Elizaga* and *Glore* cases are distinguishable from the facts of the instant case.

After the appellants had submitted their brief or on June 1, 1970, they filed a motion for new trial based on the affidavit of Amada de Pablo, the victim's widow, who retracted her testimony. The Solicitor General opposed the motion. It was denied.

On September 17, 1973 the appellants filed a second motion for new trial based on the recantation made by Carlito Argenio, the victim's son, who was already seventeen years old when he retracted his testimony. The Solicitor General opposed the motion. Action on the said motion was deferred until the case is decided on the merits.

Amada de Pablo, an illiterate thirty-eight year old woman, affixed her thumbmark to her affidavit of retraction which is in English and which was sworn to before the municipal mayor of Catarman. She alleged that she and her son were pressured by Alejandro Valle to testify against the appellants; that Valle had a grudge against Leonor Villanueva, the father of Raymundo; that Valle is now in possession of Leonor Villanueva's land in view of the incarceration of Diano and Raymundo Villanueva, and that Saliling gave a truthful version of the incident.

The retraction of Carlito Argenio (who is illiterate, never having gone to school) is also in English. It was sworn to before the Clerk of Court of the lower court. He alleged in his affidavit that Raymundo Villanueva and Diano had no complicity in the robbery with homicide and that they were implicated at the instance of Valle who wanted to own a certain piece of land.

Appellants' counsel de officio contends that the said affidavits are "newly discovered evidence".

We have already regarded as unworthy of belief the pretension of the appellants that they were prosecuted at the instance of Valle who allegedly wanted Diano to be imprisoned so that Valle could own the land of Leonor Villanueva.

The second motion for new trial, like the first motion, should be denied. Amada de Pablo and Carlito Argenio testified freely and clearly on the complicity of Diano, Jumadiao and Raymundo Villanueva. As held in *People vs. Ubiña*, 97 Phil. 515, "it would be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on change their mind for one reason or another, for such a rule would make solemn trials a mockery and place the investigation of truth at the mercy of unscrupulous witnesses."

Affidavits of retraction can be easily secured from poor and ignorant witnesses usually for a monetary consideration (*People vs. Monadi*, 97 Phil. 575; *People vs. Aguipo*, 104 Phil. 1051; *People vs. Francisco*, 94 Phil. 975; *People vs. Ulita*, 108 Phil. 730, 734). Recanted testimony is exceedingly unreliable (*People vs. Pasilan*, L-18770, July 30, 1965, 14 SCRA 694. There is always the probability that it may later be repudiated (*People vs. Galamiton*, 95 Phil. 955). So courts are wary or reluctant to allow a new trial based on retracted testimony (*People vs. Castelo*, L-10774, May 30, 1964, 11 SCRA 193).

The prosecution and the trial court properly qualified the offense as the special complex crime of robo con homicidio. The killing of Argenio was perpetrated on the occasion of the robbery. Although the taking of the paltry sum of sixty pesos could have been consummated without killing Argenio and although his liquidation might possibly have been motivated by revenge on the part of Saliling and Diano (the record is not clear on that point) the crime is still robbery with homicide.

In one case it was observed that an intent to commit robbery must precede the taking of human life in robbery with homicide. But the fact that the criminal's intention is tempered with a desire also to revenge grievances against the murdered person does not prevent his punishment for robbery with homicide (*U.S. vs. Villorente and Bislig*, 30 Phil. 59).

Dwelling and abuse of superiority were alleged in the information as aggravating circumstances. The trial court correctly appreciated dwelling. It erred in not appreciating abuse of superiority. The fact that the four accused (not shown to be a cuadrilla) confronted Argenio in his home when he had just awakened from sleep and when he was not armed at all indicates that they made a show of force to overwhelm him and to forestall any resistance that he might have attempted to make. He was not able to put up even a token resistance. Verily, the appellants took advantage of their combined strength in order to consummate the crime (*People vs. Enot and Viñalon*, 116 Phil. 637; *People vs. Develos*, L-18866, January 31, 1966, 16 SCRA 46).

The prosecution and the trial court overlooked the aggravating circumstance of craft or fraud employed by the appellants. By pretending they had pacific intentions in desiring to enter Argenio's home, they allayed his suspicions. They gained entrance into the house with his consent through trickery or deceit (*People vs. Saulog*, 74 Phil. 526; *People vs. Casalme*, 101 Phil. 1249).

The lower court found that there was conspiracy among the four malefactors. The record supports that finding. The four accused were together in the yard of Argenio's house when Jumadiao called him and deceived him as to their purpose in awakening him at three o'clock in the morning. They were together when they rushed inside Argenio's house. As if implementing a previously rehearsed plan, two of them assaulted Argenio, the third took the money, and the fourth stood guard. They left the house together after they had accomplished their malevolent

mission. Not to be overlooked is the circumstance that the four appellants were linked to each other by friendship or some sort of relationship. Raymundo Villanueva and Diano are brothers-in-law, one being the son of Leonor Villanueva and the other being the latter's son-in-law. Diano's wife is the niece of Concordio Jumadiao. Saliling is the brother-in-law of Graciano Jumadiao, the brother of Concordio.

The trial court imposed reclusion perpetua on Saliling because of the mitigating circumstance of voluntary surrender which was offset by dwelling. It erroneously held that there were no other circumstances modifying his criminal liability. Had Saliling not withdrawn his appeal, he could have been sentenced to death. He was the most guilty among the four appellants.

The withdrawal of his appeal and the fact that he cannot be sentenced to death anymore has inescapably some repercussive effect on the criminal liability of Diano, Jumadiao and Villanueva.

Although appellants Jumadiao and Villanueva are co-conspirators of Saliling and Diano, they had no actual participation in the killing of Argenio. It would be incongruous to sentence them to death. The same observation applies to appellant Diano whose culpability is equal to that of Saliling's. For this reason, the requisite ten votes for the affirmance of the death penalty cannot be had in this case.

In *People vs. John Doe alias Martin Lobiano*, L-2463, March 31, 1950 it appears that the trial court convicted Martin Lobiano and Nicanor Merabite of robbery with homicide and sentenced them to reclusion perpetua. Lobiano did not appeal. Merabite appealed. His appeal was found to be unmeritorious. Because of the presence of treachery, nocturnity and dwelling, without any mitigating circumstance the Solicitor General recommended that Merabite be sentenced to death.

However, because Lobiano, the mastermind, who pleaded guilty and was sentenced to reclusion perpetua, did not appeal, this Court refrained from imposing the death penalty on Merabite and affirmed the lower court's sentence of reclusion perpetua on him, following *People vs. Sakam*, 61 Phil. 27.

In the Sakam case, Sakam and Imam Tantali and seventeen other Moros were convicted of murder. Sakam and Tantali were sentenced to death. The other seventeen accused were sentenced to reclusion perpetua. They did not appeal.

This Court, on reviewing the death sentence meted to Sakam and Tantali, found that Sakam was the mastermind. The death penalty imposed on him by the trial court was affirmed. However, as Tantali was merely a follower of Sakam, only reclusion perpetua was imposed on him "because his responsibility is only that of the other accused upon whom the lower court imposed said lower penalty" and who did not appeal.

In the instant case, in lieu of the death sentence, the penalty of reclusion perpetua should be imposed on the appellants. The indemnity of P6,000 should be raised to P12,000. The sum of sixty pesos, the object of the robbery, should be included in the indemnity.

Although Diano is at large, this Court is not precluded from reviewing his death sentence. The review is mandatory. Its object is "simply and solely the protection of the accused" (*U.S. vs. Laguna*, 17 Phil. 532, 540). Notwithstanding Diano's escape, his counsel de oficio argued for his acquittal in the brief which he filed on January 16, 1970 for all the appellants. (See *People vs. Cornelio*, L-1289, June 10, 1971, 39 SCRA 435).

Wherefore, the lower court's judgment of conviction is affirmed with the modification that appellants Diano, Jumadiao and Villanueva are hereby sentenced to reclusion perpetua and to pay solidarily to the heirs of Rodrigo Argenio an indemnity of P12,000 plus the sum of sixty pesos which was taken during the robbery. They are liable for three-fourths of the costs. So Ordered.

Castro, C.J., Fernando, Teehankee, Barredo, Makasiar, Esguerra, Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

Antonio, J., did not take part.

[1] Amada de Pablo, in her statement before the municipal judge on January 14, 1966, declared that she had known the intruders for more than three years; that she believed that she and her husband were robbed because the four malefactors must have known that she and her husband had sold copra, since in transporting it, they had to pass by Jumadiao's house in the barrio; that the malefactors must have also known that the proceeds of the sale would be found in the buri bag since that was the only container in their house; that, actually, their share of the proceeds of the sale amounted only to one hundred eleven pesos which amount was reduced to sixty pesos after they had bought rice, petroleum, salt and other necessities; that when she tried to hold the buri bag, Saliling wounded her thumb and middle finger of her right hand so she released the bag and rendered aid to her wounded husband; that she recognized the intruders because of the lighted lamp, and that Villanueva and Diano are brothers-in-law while Saliling is the brother-in-law of Casoy Jumadiao, the brother of Concordio Jumadiao.

[2] The trial court's summary of the testimonies of Saliling and the rural police sergeants, Barandino and Sayde, is as follows:

"Defense of Antonio Saliling: This accused substantially states: That in the afternoon of January 7, 1966, he and one Mario Gallano, as partners in the business of buying and selling empty bottles, went to Bo. Liberty from Catarman, Samar, to buy empty bottles. Mario Gallano remained in the poblacion of Bo. Liberty while Antonio Saliling, in company with the other accused Concordio Jumadiao, whom he casually met on the way, went to the house of Rodrigo Argenio, reaching here at about 4:30 in the afternoon. As Rodrigo Argenio was not then in the house, Antonio Saliling and Concordio Jumadiao went farther to the house of Dominador Jumadiao for the same purpose of buying empty bottles.

"They returned to the house of Argenio at about 6:30 of the same evening. Then Antonio Saliling began to put the empty bottles piled by Rodrigo Argenio in the yard into a sack being held by Concordio Jumadiao. The bottles piled by Rodrigo Argenio were only 30 and not 60 equivalent to the P1.00 cash which was advanced to Rodrigo Argenio at Bo. Liberty in that same afternoon. Antonio Saliling therefore asked Rodrigo Argenio, who was inside his house, to return to him the overpayment of P0.50 to which request Rodrigo Argenio answered that he could not do so as he spent all the money but suggested that it be charged to him as a debt.

"Thereupon, Concordio Jumadiao sarcastically remarked that it was always the way Rodrigo Argenio behaves as it happened already to him (Concordio) when Rodrigo got money from him but did not work for him for the money as agreed by them. Hearing this remark, Rodrigo Argenio got mad, got his bolo and rushed outside and chased Antonio Saliling and Concordio Jumadiao who were running towards a footbridge. Concordio was able to go across the bridge but Antonio Saliling was overtaken at the approach of the bridge.

"Rodrigo Argenio stabbed Antonio Saliling but was not hit and so Antonio Saliling faced Rodrigo, caught his right hand holding the bolo, pulled it, placing it under his armpit, and twisted the arm and thereby wrested the bolo from Rodrigo Argenio. Then again, Rodrigo Argenio even without the bolo tried to push Antonio who then delivered a thrust with the bolo at the right side of the body of Rodrigo Argenio. Then Antonio retreated back but Rodrigo Argenio insisted to follow him, so he stabbed Rodrigo Argenio again on the breast. Concordio Jumadiao was already at the other end of the footbridge when the stabbing occurred and did not participate at all in said stabbing.

"Right in that evening he went to Catarman, Samar, to surrender with the bolo of Argenio to policeman Ambrosio Carpio at about 1:30 in the morning of January 8, 1966.

"Thru the witnesses Crisostomo Barandino and Felix Sayde the defense endeavored to prove: That Crisostomo Barandino investigated Rodrigo Argenio in the early morning of January 8, 1966 in his house, in the presence of Felix Sayde; that he propounded three questions to the deceased allegedly in this wise: (1) "Who stabbed you, Rodrigo?" answer, "Antonio Saliling accompanied by Concordio Jumadiao." (2) "Were you inside your house?" answer, "No, near the bridge, "if it happened here in the house I would have fired at him." (3) At what time did it happen?" answer, "About 7:30." This alleged investigation was reduced to writing and was handed to Amada de Pablo, the wife of Rodrigo Argenio by Barandino.

"As testified to by Felix Sayde who was present in said investigation, the questions propounded by Crisostomo Barandino and the answers of Rodrigo Argenio are as follows: "Q-Who stabbed you? A-Antonio Saliling. Q-Who were his companions? A-Concordio Jumadiao. Q-Where did you fight? A-Across the bridge." (Decision, pp. 122-124, Record).

[3] Accused Sergio Diano and Raymundo Villanueva put up alibi as their defense. Sergio Diano testified that January 7, 1966 was the birthday of his twin children (Exhs. "1", "1-A", "2", "2-A"). He celebrated this birthday with a party in the house of his father-in-law Leonor Villanueva with whom he and his family lives. The party lasted up to 11:00 o'clock in the evening.

"Sergio Diano stated that he was in bed during the party suffering from stomachache and got well only the following day. Raymundo Villanueva, an accused, was the cook in that party. These two accused testified that they never went out of the house in the evening of January 7 or in the early morning of January 8, 1966 implying that they could not, therefore, have committed the crime they are being charged. Sergio Diano alleges that it was through the instigation and coaching of one Alejandro Valle that Amada de Pablo falsely imputed to them the crime that they are now being charged. He further testified that the Civil Case in Court (Exhs. "3", "4", "4-A") between Alejandro Valle and his father-in-law Leonor Villanueva has something do to with this false imputation of the crime. According to this accused, Alejandro Valle got interested in this case against them for the reason that he wanted to own the land of his father-in-law which adjoins his land. (Exh. "5", "5-A", "5-B", "5-C")." (Decision, pp. 124-125, Record).

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