

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DALMACIO MAALIHAN Y CANTOS, ALFREDO PIANO Y PILAPIL AND ALFREDO SABAYBAY, DEFENDANTS-APPELLANTS.

G.R. Nos. L-34106-08. July 25, 1984

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This is a mandatory review of the decision in three separate cases jointly tried by the then Court of First Instance of Camarines Sur, sentencing Dalmacio Maalihan y Cantos, Alfredo Piano y Pilapil and Alfredo Sabaybay to three (3) death penalties each for the murder of Luis Arejola (Criminal Case No. 6320), Roman Mora (Criminal Case No. 6425), and Narciso Buendia (Criminal Case No. 6426).

Another accused, Rufino Marasigan, died during the trial and, on motion of the prosecution, the charges against him were dismissed.[1] Alfredo Maalihan who was at large, was not included in the informations.

The following are the facts disclosed by the records.

At about 6:30 in the morning of September 25, 1958, Luis Arejola went to Bo. Cadian, Pili, Camarines Sur, to personally supervise the harvesting of his land, the ownership of which was being disputed by the Pili Agricultural School and one Maximo Palma. Because of the rumor that the tenants therein, Alfredo Sabaybay, the Longas and the Marasigans, would not deliver his share as owner, Arejola thought it wise to personally supervise the harvesting of said land to enable him to get his share in the produce.

On his way to Cadian, Arejola passed by the house of one Roman Mora in Carunuyan, San Jose, Pili, Camarines Sur, to ask the latter to accompany him to the said land.

In the afternoon of the same day, the lifeless bodies of Luis Arejola, Roman Mora and a certain Narciso Buendia were found in sitio Caboclodan, San Jose, Pili, all victims of multiple gunshot wounds. The autopsy performed by Dr. Theo J. Santy, Municipal Health Officer of Pili, showed that the victims died of acute internal hemorrhage, secondary to multiple gunshot wounds.[2]

Investigation of the shooting incident was immediately undertaken by elements of the Philippine Constabulary. Valeriano Longa, reportedly the last person contacted by Arejola, was questioned. Longa pointed to Victorio Canabe as the person who could furnish information as to the identity of the male-factors. Canabe was investigated and in a sworn statement[3] given by him during the investigation, he stated that four (4) days before the incident under inquiry, or in the afternoon of September 21, 1958, he and Alfredo Sabaybay met in Naga City and in that meeting the latter informed him that in a few days three men would be coming to his (Canabe's) house, as they in fact came to his house in the morning of September 25. They asked him to notify Alfredo Sabaybay of their arrival, which he did. Upon returning to his house, Canabe prepared lunch for the three men in accordance with the instructions given by Sabaybay. After lunch, when the three men took off their shirts, he saw that each had a gun tucked in his waist. After the arrival of Sabaybay that afternoon, the latter and the three men left the

house.

At the trial, Canabe identified Dalmacio Maalihan and Alfredo Piano as two of the three men who went to his house on September 25.

The PC officers also investigated Alfredo Sabaybay. He gave a sworn statement,[4] admitting his meeting with the three men in Canabe's house. He further stated that from Canabe's residence he and the three men proceeded to the vicinity of the house of Valeriano Longa, where they saw Luis Arejola. Sabaybay identified Luis Arejola to his three companions by pointing to him, in accordance with the instructions given to him by Rufino Marasigan when they met in Naga City on September 21. In that meeting, Marasigan informed Sabaybay of the plan to kill Arejola.

With the description of the killers given by Canabe and Sabaybay, the PC officers arrested Dalmacio Maalihan. In the ensuing investigation Maalihan executed an affidavit,[5] acknowledging his participation in the killings and naming Alberto Maalihan and Alfredo Piano as his companions. Alfredo Piano was likewise apprehended and following said arrest, he too gave a sworn statement.[6]

It appears from their affidavits that after Sabaybay had pointed out Luis Arejola to them, they, Dalmacio Maalihan, Alfredo Maalihan and Alfredo Piano trailed Arejola, Mora and Buendia up to sitio Caboclodan. When Arejola looked back, they simultaneously fired at the victims until they ran out of ammunition. This portion of their extrajudicial confessions was later enacted at the place of the crime by Dalmacio Maalihan and Alfredo Piano under the direction of Maalihan himself.

Thereafter, three separate informations for murder were filed against Dalmacio Maalihan, Alfredo Piano, Rufino Marasigan and Alfredo Sabaybay. As heretofore stated, Rufino Marasigan died during the trial.

After trial, the lower court rendered a decision, the dispositive portion of which reads as follows:

"THEREFORE, in Criminal Case No. 6320, the court finds the three accused, Dalmacio Maalihan y Cantos, Alfredo Piano y Pilapil and Alfredo Sabaybay guilty beyond reasonable doubt of the crime of Murder, for the brutal killing of the late Luis Arejola, with the attendance of five aggravating circumstances, namely: Premeditation, Treachery, committed in an uninhabited place or by a band whenever such circumstance may facilitate the commission of the crime, committed by persons to insure or afford impunity, and the crime was committed in consideration of a prize, reward or promise, and hereby sentences each of them to suffer the maximum penalty of DEATH and to indemnify, jointly and severally, the heirs of the deceased LUIS AREJOLA in the sum of P15,000.00 Philippine Currency and to pay the cost, proportionately.

In Criminal Case No. 6425, the court finds the three accused, Dalmacio Maalihan y Cantos, Alfredo Piano y Pilapil and Alfredo Sabaybay, guilty beyond reasonable doubt of the crime of MURDER, for the senseless and remorseless killing of ROMAN MORA, with the attendance of four aggravating circumstances, namely: Treachery, committed in an uninhabited place or by a band whenever such circumstance may facilitate the commission of the crime, committed by persons to insure or afford impunity, and the crime was committed in obvious consideration of a prize, reward or promise, and hereby sentences them, each to suffer the maximum penalty of DEATH and to indemnify, jointly and severally the heirs of the deceased Roman Mora in the sum of P12,000.00 Philippine Currency and to pay the cost, proportionately.

In Criminal Case No. 6426, the court finds the three accused, Dalmacio Maalihan y Cantos, Alfredo Piano y Pilapil and Alfredo Sabaybay, guilty beyond reasonable doubt of the crime of Murder, for the senseless and remorseless killing of NARCISO BUENDIA, with the attendance of four aggravating circumstances, namely: Treachery, committed in an uninhabited place or by a band whenever such circumstance may facilitate the commission of the crime, committed by persons to insure or afford impunity, and the crime was committed in obvious consideration of a prize, reward or promise, and hereby sentences them, each to suffer the maximum

penalty of DEATH and to indemnify, jointly and severally, the heirs of the late Narciso Buendia in the sum of P12,000.00 and to pay the cost, proportionately."

Appellants now seek to set aside the judgment on the ground that their confessions had been obtained through promise of immunity, apart from the use of force, threat and intimidation. They further impute error on the lower court for having peremptorily brushed aside their defense of alibi.

We find no reasonable ground to disturb the judgment of conviction. In impugning their extrajudicial confessions, Sabaybay, Maalihan and Piano testified to alleged third degree treatment from the P.C. investigators. Sabaybay declared that in the early morning of October 5, 1958, elements of the Philippine Constabulary, namely: Mota, Saldo, Turiano and Mayores came to his house and told him that the Captain wanted to question him on some matters. He was led to a PC jeep, and blindfolded. Then they brought him to a house near the river. He said that although blindfolded, he could recognize the house where he was brought by leaning on the wall and tapping the same. In that house he was stripped naked. Then PC Cpl. Saldo stabbed him with the edge of his hand on the side of the neck and on the lower nape near the mandible. He was repeatedly boxed on different parts of the body until he lost consciousness. After he was revived by the water poured on him, he was maltreated anew. He finally signed the statement, Exhibit H, because he could no longer put up with the torture.

To corroborate the alibi, his wife Isabelita Buendia testified that she brought Alfredo to a "parahilot" for treatment of his dislocated ribs.

Upon the other hand, Dalmacio Maalihan declared that he was taken by PC officers to a river where he was undressed; that he was made to lie down and water was poured inside his nostrils, causing him to urinate; and that he was submerged in the water until he lost consciousness. He too signed the statement, Exhibit K, to avoid further maltreatment.

For his part, Alfredo Piano alleged that he was made to sit on a chair at the PC headquarters and forced to stare at a big electric light bulb; that he was kicked on the stomach, until he lost consciousness; that upon regaining consciousness, his head was pushed inside a toilet bowl filled with human excreta; and that his testicles were repeatedly pounded. Thus, he signed the statement, Exhibit L.

Gruesome and condemnable indeed are the details narrated by the appellants of the alleged torture they had undergone. Considered alone, they evince an appearance of truth and sincerity, but taken vis-a-vis with the other circumstances revealed by the records, We find them totally bereft of the faith and credence that the accused earnestly seek to elicit from Us.

1. We have carefully scrutinized the appellants' confessions and the diverse details contained therein could have been known only by the very persons who had taken part in the execution of the acts in question. Thus, the meeting held on September 21, 1958 before the Peñafrancia Fiesta, the persons then present, the matters taken up therein, including the plan to kill Luis Arejola, as well as the routes taken by Sabaybay when he guided the three killers to the victim, are details which could not have been concocted by the PC investigators.

2. The recitals in said extrajudicial statements are in many respects confirmatory and corroborative of each other. In his affidavit, Sabaybay not only related his meeting with the three men in the house of Canabe on September 25, 1958, he also admitted that, upon being assured by them that they had been sent by Marasigan, he guided them to the place where Luis Arejola was at that time, for identification of the latter. He also named Piano and Maalihan as two of the three gun wielders whom he accompanied to the field.

The foregoing statements interlock with the admissions of accused Maalihan and Piano in their respective affidavits, Exhibits K and L, to the effect that it was Alfredo Sabaybay who acted as their guide and pointed out to them the intended victim, Luis Arejola. Likewise, in said confessions appear the statements of Maalihan

and Piano that the shooting commenced simultaneously at the precise moment Luis Arejola looked back, and that it ended only when they ran out of ammunition.

3. Not one of the appellants had himself examined medically. Neither had they requested for such medical examination. As aptly observed by the Solicitor General -

"Appellants failed to show any injury indicative of the maltreatment allegedly suffered by them. If, as appellant Alfredo Sabaybay claimed that he was struck, boxed at the stomach at the left mandible, and his mouth bled rendering him unconscious, it is strange - and he himself admits this - that after he was discharged from the custody, he did not submit himself to any doctor for examination or treatment. (pp. 138, tsn, April 3, 1963) This fact belies such claim of maltreatment. While appellant claimed having gone instead to an "herbolario" who gave him a general body massage (p. 86, tsn., October 30, 1962) the latter was not produced to corroborate such assertion.

"Appellant Alfredo Piano likewise admitted that he did not submit to any doctor for physical examination (p. 85, tsn., February 8, 1967). Nor does the evidence for appellant Dalmacio Maalihan show that he ever sought medication by reason of his having been manhandled."

4. Each of the affiants in his extrajudicial confession tried to minimize his own participation in the offense by throwing the blame upon his co-accused.

Thus, the declaration of Alfredo Sabaybay in Exhibit "I" that he tried to dissuade the three men from executing the plan to kill Arejola, but that they did not mind him, coupled with this exculpatory statement in Exhibit "H" that he went home after he had pointed out Arejola to them and was, therefore, not present during the actual shooting, strongly indicate that he executed his extrajudicial confession of his own free accord. The same inference applies to the futile attempt of appellants Maalihan and Piano to throw the responsibility to a certain Jose Umali whom they attempted to picture as the mastermind. As this Court said in *People v. Mejares*,^[7] "those parts of the confession which would avoid or lessen the declarant's criminal liability could have come only from the mouth of one who stood to benefit from the qualifications or avoidance of the admission."

5. Piano and Maalihan willingly submitted to a reenactment of the crime. Sgt. Porfirio Turiano testified that it was done under the direction of the appellants Maalihan himself. In addition, the execution of such reenactment dovetailed with the description given thereof by said appellants in their respective confessions.

6. As to the claim of Sabaybay that his extra-judicial statement was obtained through promise of immunity, the record is bereft of any showing that the PC investigators, ever promised immunity to him. And even assuming that the investigators did make such proposal, the promise of immunity by one who is not a prosecuting officer and therefore not in a position to comply with such promise, cannot be interposed as an objection to the admissibility of the confession.

7. The testimonies of several prosecution witnesses strongly belie the claim of force and intimidation. The regularity of the proceedings leading to the execution and verification of the affidavits in question was attested to by Provincial Fiscal Alfredo Reyes, Deputy Clerk of Court Justiniano Ezequiel and Judge Nicolas Papica, all of whom declared that the appellants fully understood the contents of their respective statements, at the time they swore to the truth thereof.^[8]

In fine, We view appellants' claim of torture and duress too dubious to merit credence. Thus, the alibi of appellants cannot but be a mere afterthought foisted to avoid the damaging effects of their extrajudicial confessions. Easy to concoct, their alibi cannot prevail over the positive identification of the accused by witnesses. In the case at bar, Dalmacio Maalihan and Alfredo Piano were pointed to by Victorio Canabe as among the three men who came to his house on September 25, 1958. Their co-accused Alfredo Sabaybay likewise

identified them as two of the hit men who, after he had indicated to them the victim, tracked down their prey.[9]

From the evidence on record, We are satisfied that appellants Maalihan and Piano are guilty of the crime of triple murder, qualified by treachery. They gunned down Luis Arejola, Roman Mora and Narciso Buendia in a sudden volley of gunfire trained at their back, making it impossible for the victims to defend themselves from the aggression.

However, We find the evidence too inadequate to establish that the crime was committed in consideration of prize, reward or promise. The trial court likewise erred in taking into account the aggravating circumstance of "uninhabited place." The prosecution failed to prove that the accused intentionally sought the solitude of the place where the crime was committed in order to better attain their purpose.[10] Neither can it be said that the crime was committed by a band. For the circumstance of band to be present, there must be at least four armed malefactors.[11] The execution of the crime by three armed malefactors does not constitute a band.[12]

With respect to Alfredo Sabaybay, We do not find sufficient evidence to saddle him with the criminal responsibility of a co-principal. His participation in the crime being limited merely to identifying Luis Arejola to the triggermen, We hold him liable as an accomplice, conformably to the settled rule that those whose participation in the killing was not indispensable to the consummation of the murder are liable as accomplices.[13]

WHEREFORE, all circumstances considered, the decisions appealed from are modified in the sense that appellants Dalmacio Maalihan y Cantos and Alfredo Piano y Pilapil are hereby sentenced to suffer the penalty of reclusion perpetua in each of the three crimes committed and to indemnify the heirs of the deceased Luis Arejola, Roman Mora and Narciso Buendia in the sum of P30,000.00 each.

Alfredo Sabaybay is hereby convicted as an accomplice and sentenced to an indeterminate penalty of ten (10) years, as minimum, to seventeen (17) years, as maximum, and to pay solidarily with the above-named principals an indemnity of Fifteen Thousand Pesos (P15,000.00) to the heirs of Luis Arejola, Roman Mora and Narciso Buendia.

Costs against appellants, proportionately. SO ORDERED.

Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, Melencio-Herrera, Plana, Relova, Gutierrez, Jr., De la Fuente, and Cuevas, JJ., concur.

Fernando, C.J., in the result.

Teehankee, J., no part.

[1] p. 475, Original Record

[2] Exhibits A, B and C

[3] Exhibit G

[4] Exhibit H

[5] Exhibit K

[6] Exhibit L

[7] 90 Phil. 102, 105

[8] tsn, pp. 1-2, June 27, 1961; pp. 17-20, May 9, 1961; pp. 27-28, May 9, 1961

[9] tsn, p. 17, June 20, 1960

[10] People v. Aguinaldo, 55 Phil. 610

[11] par. 3, Article 14, Revised Penal Code

[12] People v. Pelagio, 20 SCRA 153

[13] People v. Lacson, 1 SCRA 415; People v. Villegas, 2 SCRA 587.

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