

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. PEDRO DIMDIMAN, DEFENDANT.

G. R. No. L-12622. October 28, 1959

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PER CURIAM:

The record of this case has been forwarded to this Court as prescribed by the Rules so that we may review the sentence of death passed upon the accused Pedro Dimdiman by the Court of First Instance of Bukidnon.

It appears from the record that the above-named accused was charged in the court below with the crime of robbery with multiple homicide, committed, according to the amended information, as follows:

"That on or about October 31, 1956, in sitio Nabilingan, barrio of Langawon, municipal district of Baungon, Province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to rob and in order to carry out the said purpose by means of violence and intimidation against persons with the use of a Japanese saber with which he was conveniently provided, did then and there wilfully, unlawfully and feloniously, assault, attack and kill the following persons, to wit:

- Menonio Gaylon (Gaaynon), male, single, 7 years old; clean cut, lacerated wound, about 6 inches long 3 inches deep on the left side of the neck, proximal third, diagonal in direction.

- Maria Abogan, female, married, 48 years old; clean cut lacerated wound at the distal end of the neck (base of the neck), horizontal in direction, completely severing off the head. Clean cut lacerated wound at the proximal end of the left index finger, 2 inches long x 1½ inch deep.

- Lestina Gaaynon, female, married, 20 years old and mother of demised infant, 6 days old by the name of Ernita Sucatan; multiple clean cut lacerated wounds as follows ;

- Wound, 8 inches long x 3 inches deep, left side of the neck, proximal end below the left ear, diagonal in direction.

- Wound, left hand cut off at the left wrist.

- Wound, right thumb severed, leaving only a small skin attached, vertical in direction 5 inches long.

- Wound, left acromion (left tipper arm), 4 inches long x 1 inch deep, in horizontal in direction.

- Infant girl, Ernita Sucatan, 6 days old, child of Lestina Gaaynon; soft, depressed occiput indicating skull fracture at the back of the head. That this child was dropped to the floor by her mother, Lestina Gaaynon, when she was assaulted and slashed by the accused with saber.

- Inay Tomok, female, over 60 years old, widow; wound, neck cut at the middle, third, almost horizontal in direction, severed hand, leaving a small portion of the skin attached; and that immediately thereafter, the said accused, did then and there wilfully, criminally and feloniously, take, rob and carry away from their respective receptacles inside the house the cash amounts of P700.00, Philippine currency, belonging to Juan Gaaynon, and P15.75, Philippine currency, belonging to Runno Sucatan, both of which sums were not recovered."

the information further alleging—

"That in the commission of the crime, the following aggravating circumstances were present, i. e.

- Disregard of the respect due the offended parties on account of their ages and sexes, namely, Inay Tomok, female of 60 years old; Maria Sinonhay (Abogan), female, 40 years old; and Lestina Gaaynon, female and 20 years old; Menonio Gaylon, boy of 7 years old, and Ernita Sucatan, an infant of 6 days old.
- Treachery attended the killing; and
- Deceased were killed inside their dwelling except Inay Tomok."

Upon arraignment, the accused entered a plea of "guilty", but later withdrew it and substituted therefor a plea of "not guilty." When the case came up for trial about a month and a half later, the accused once more withdrew his plea of "not guilty" and, upon the information being read to him again, entered that of "guilty".

After satisfying itself that the accused, who was then assisted by counsel, was aware of the consequences of his plea, the learned trial judge nevertheless required the introduction of evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime. This is in accordance with the well-settled practice in this jurisdiction which contemplates the taking of additional evidence in cases wherein pleas of "guilty" are entered to informations charging grave crimes, and more especially crimes for which the prescribed penalty is death.

The uncontradicted evidence for the prosecution, both testimonial and documentary, shows that at about noon on October 31, 1956 in barrio Langawon of the municipality of Baungon, Bukidnon, the accused brutally killed with a Japanese saber the deceased Inay Tomok while she was washing clothes at a spring not far from the house where she lived. Thereafter, he went up the house and there with equal brutality and using the same Japanese saber took the lives of three other inmates, namely, Menonio Gaaynon, 7 years of age, Maria Abogan, 48, and Lestina Gaaynon, 20-year old mother, whose 6-day old child also died from a fractured skull when it fell to the floor from her mother's arms during the attack. In his sworn statement, Exh. C,—as well as during the re-enactment of the crime before a justice of the peace—the accused, recalling how he committed the crime, declared:

"I hacked all of them on their necks. The first one I hacked was a woman at the creek washing clothes. I hacked with the saber at her right (left) neck. After hitting her we faced each other. After hitting her, I went up a house which is about fifteen meters away. Before I went up I washed the saber with water in order to remove the blood and then placed it back in the scabbard. When I was already in the house, I saw an old woman grinding and a male child about 7 years old. I said good day and went up the house. Then I went behind the old woman and hacked her at the neck which was then cut. After the neck of the old woman was cut, the boy stood up and I hacked him from behind at the left side of his face. Thereafter that woman who was in the room with her child stood up and I approached her and met her at the door. I then slashed her with the saber but she parried herself with her hands and retreated towards the room. When she was already in the room I slashed her with the saber and then she fell to the floor on top of the child. Because she was still moving and I believed that she was still alive, I struck her again with the saber on her neck."

In that same affidavit, the accused admitted to have taken and carried away some cash consisting of 20-, 10-, 5-, 2~, and 1-peso bills and some coins.

Testifying in his own behalf, the accused tried to establish the mitigating circumstances of voluntary surrender and lack of instruction. He declared that he had not received any schooling and that he was on his way to surrender to the police of Malaybalay when he was apprehended by the barrio lieutenant of Kawayan of the municipality of Impasug-ong. The mitigating circumstance of voluntary surrender was, however, rejected by the trial court for lack of factual basis while lack of instruction was disregarded in view of the nature of the offense

committed.

From the evidence thus adduced, read together with the plea of "guilty" entered on the arraignment, the trial court on July 8, 1957 pronounced judgment, declaring the accused guilty beyond reasonable doubt of the crime charged. Discounting the aggravating circumstance of disregard of the respect due the offended parties on account of their ages and sexes alleged in the information, there being no evidence sufficient to show such circumstance, but finding that the aggravating circumstances of treachery and dwelling attended the commission of the gruesome crime, with only the mitigating circumstance of plea of guilty to mitigate the offense, the court sentenced the accused to suffer the penalty of death, to indemnify the heirs of each of the deceased in the amount of P6,000, and Juan Gaaynon in the sum of P700 for the money stolen from him, and to pay the costs.

The attorney de officio contends that the trial court erred in not appreciating voluntary surrender as a mitigating Circumstance and recommends that the penalty of death imposed should be commuted to the lesser penalty of reclusion perpetua. It is argued that the accused had intended to surrender at Malaybalay and that intention coupled with the fact that he did not resist arrest or tried to escape should have been considered as tantamount to voluntary surrender.

After going over the record of the case, we agree with the trial court that the mitigating circumstance of voluntary surrender cannot be appreciated in favor of the accused. The circumstance that the accused did not resist arrest or struggle to free himself after he was taken to custody by the authorities cannot amount to voluntary surrender. (People vs. Siojo, 61 Phil., 307; People vs. Yuman, 61 Phil., 786.) And while it is claimed that the accused intended to surrender, the fact remains that he was arrested. Moreover, the claim was not believed by the trial court and is belied by the evidence adduced at the trial. Thus, the accused himself testified that after committing the crime charged, he rode in a gravel truck which brought him to Mabuaya. From there he hailed a passenger "jeepney" bound for Cagayan de Oro City. Inside the "jeepney" was a policeman in uniform but instead of offering to surrender himself, he got off and continued his trip in another "jeepney". Upon arrival at Cagayan de Oro City, he did not report his crime or submit himself either to the police authorities or to the provincial commander of the Philippine Constabulary. What he did was to proceed to the house of his cousin at Gusa, where he stayed for several days. During his stay in that house, he did not go out. Neither did he tell his cousin, or anyone else, about the crime he committed. Leaving the house after several days, he took a ride in a Republic Transportation bus, but at a certain place past the town of Impasug-ong, he got off when he saw a jeep with Constabulary soldiers. He then proceeded to barrio Kawayan, which is about 8 kilometers from the national highway. There he met the barrio lieutenant who became suspicious of his actuations. The evidence further shows that on being asked, he informed the barrio lieutenant that he came from Impasug-ong, where he resided, and that he was looking for a cow. But the barrio lieutenant, convinced that Tie was lying, arrested and, in the following morning, brought him in the company of three others to the Constabulary barracks in Malaybalay.

It will thus be seen that the accused acted more like a fugitive from justice, which he was, than one with the intent to submit himself to the authorities. He had, in fact, several opportunities to surrender himself, but he did not, and instead went into hiding in his cousin's house. Accosted by the barrio lieutenant, who arrested him, after avoiding once again the Constabulary to whom he could have surrendered, he lied and pretended to be merely looking for a lost cow. And while he claimed that he wanted to surrender only to the police in Malaybalay, he admitted, however, that he did not know any policeman there; neither did he know the mayor or anybody else in the town. In the circumstances, we hold that the trial court committed no error in not appreciating voluntary surrender to mitigate criminal liability.

The sentence imposed below being in accordance with law, the same is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Endencia, Barrera, and Gutierrez David, JJ., concur.

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