

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
BANDALI TAGACAOLO, BANCIL BANDALI, AND SUGANDIL
TAGACAOLO, DEFENDANTS, BANDALI TAGACAOLO, DEFENDANT
AND APPELLANT.**

G.R. No. L-6871. April 20, 1955

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

In the morning of June 13, 1951, Hoc Hong, alias Yap Kiana, his wife, Sumanbuyan Tagacaolo, Segundo Bancil and Marcos Lampiada were found dead in the house and store of said spouses, at Sanghai, municipality of Malita, province of Davao. The deceased had multiple wounds, which are described in the medico-legal report (Exhibit A) as follows:

"1. Hoc Hong, alias Yap Kiana (Chinese).—(a) A poorly-built in structure, 48 years, male, married, merchant, born at Amoy, China, was already found in the stage of rigor mortis, soaked with great quantity of clotted blood assuming a prone position. The face appears quite indistinguishable as the region of the face was macerated due to several inflicted wounds received.

(b) Wound, incised, neck, base, slightly in the oblique direction, having sharp cleancut edges and totally cut. The organs involved and cut were the esophagus, trachea, all principal blood vessels, nerves of the neck.

(c) Wound, face, multiple, which makes the appearance of the face appears macerated, as wounds received were running in all directions. That cause of death was instantaneous due to the fatal wound of the neck, which hemorrhage was the secondary cause.

"2. Sumanbuyan Tagacaolo (Native)—(a) A well-built individual and young being 16 years, female, married and wife of Hoc Hong alias Yap Kiana, one of the deceased, and from Moti, Malita, Davao, was already in stage of rigor mortis, soaked with enormous quantity of clotted (blood) assuming a semi-recumbent position.

(b) Wound, back, lumbar region, penetrating. Internal organs were seen bulging. It measures 5 inches in length and having a clean-cut edge.

(c) Wound, fore-arm, right, totally cut.

(d) That cause of death was instantaneous which hemorrhage was the secondary cause.

"3. Marcos Lampiada (Chinese Mestizo).—(a) A well-built in structure, 15 years, male, single, and from Sanghai, Malita, Davao. That the body was already in the stage of rigor mortis, soaked with clotted blood and assuming the semi-recumbent position. (b) Wound, neck, totally cut. It involved the base of the neck, cutting all principal blood vessels and nerves, esophagus and trachea of the neck.

(c) Wound, hand, left, totally removed.

(d) Wound, incised, shoulder, left. It measures 4 inches in length and 2 inches in depth.

(e) Wound, incised, shoulder, left. It measures 2.5 inches in length and 1 inch in depth.

(f) That the cause of death was instantaneous and that hemorrhage was the secondary cause.

"4. Segundo Bancil (Native).— (a) A well-developed individual, 13 years, male, single, and from Sanghai, Malita Davao, was found in the stage of rigor mortis soaked with clotted blood in great quantity.

(b) Wound, neck, totally cut, at the base of the neck.

(c) Wound, incised, multiple (4 in number), arm, right.

(d) That cause of death was instantaneous, and that hemorrhage was the secondary cause."

The bodies of Yap Kiana and Marcos Lampiada were on their respective mats, about 3 meters away from each other, in a recumbent position, indicating that they were attacked while asleep. Sumanbuyan Tagacaolo and Segundo Bancil were about 6 meters and 3 feet, respectively, away from Yap Kiana. Moreover, the sum of P150.00 and several articles the value of which aggregate P500.00, more or less, had disappeared from the house. After due investigation by the authorities, Bandali Tagacaolo, Bancil Bandali and Sugandil Tagacaolo were accused of robbery with quadruple homicide. Upon arraignment, Bancil Bandali - hereinafter referred to, for the sake of brevity, as Bancil - pleaded guilty and was sentenced accordingly. Then, his co-defendants, Bandali Tagacaolo and Sugandil Tagacaolo, who had entered a plea of not guilty, were tried separately. In due course, the Court of First Instance of Davao thereafter rendered judgment acquitting Sugandil Tagacaolo, for insufficiency of the evidence, with one-third of the costs de oficio, and finding Bandali Tagacaolo guilty, beyond reasonable doubt, as charged, and sentencing him to life imprisonment, with the accessory penalties provided by law, and to indemnify the heirs of the deceased in the sums of P3,000 and P650, without subsidiary imprisonment in case of insolvency, as well as to pay one-third of the costs. Bandali Tagacaolo, hereinafter referred to as Bandali, has appealed from this decision, and the only question for determination before us is the sufficiency of the evidence to warrant his conviction.

Upon a review of the record, we are satisfied that the issue must be answered in the affirmative. It appears that Bandali is the father of his co-defendant Bancil, who had pleaded guilty to the charge and is now serving the corresponding sentence. Both lived in the former's house in Malita, Davao, together with Juan Mamat, alias Lumomban a son-in-law of Bandali and brother-in-law of Bancil. Mamat testified that Bandali and Bancil left their common dwelling on June 12, 1951, at about 6:00 p.m.; that said defendants did not sleep in the house that evening; that they returned thereto on June 13, 1951, at about 4:00 a.m.; that Bandali then brought with him the 'patakia" (a container for chewing beetlenut and tobacco) Exhibit G, a firearm and a bolo; that Bancil was then carrying a shotgun, which, later on, turned out to have been taken from Yap Kiana, that upon inquiry by Mamat, appellant herein said that Exhibit G had come from Yap Kiana, whom they had killed that night; and that Bandali, however, warned him against reporting it to anybody.

This testimony was partly corroborated by Tumalasik Tagacaolo, who asserted positively that the "patakia", Exhibit G, is his property; that, sometime before the occurrence, he delivered it, by way of pledge, to Yap Kiana; and that it was supposed to be in the possession of Yap Kiana, at the time of his death, he (Tumalasik) having failed to redeem it. Moreover, it is not disputed that when the house of Bandali was searched by members of the police force, Exhibit G was found inside his pillow, mixed kapok.

Upon the other hand, the evidence for the defense consisted merely of the testimony of appellant to the effect that he had not committed the crime charged; that he bought Exhibit G from Tumalasik; and that the incriminating testimony of his son-in-law, Juan Mamat, was prompted by his alleged wish to appropriate a land belonging to him (appellant). Clearly, however, this testimony is insufficient to offset the evidence for the prosecution or to

impair either its credibility or its weight. To begin with, the alleged sale of Exhibit G by Tumalasik is negated by the testimony of the latter, who had no possible motive to commit perjury. Indeed, had Exhibit G been purchased by appellant, he would not have hidden it inside his pillow.

Secondly, the improper motive imputed to Mamat can not be regarded as an established fact, considering that appellant's testimony is uncorroborated and naturally biased, and that if, as the defense would have us believe, he was advised by Mamat of his intention to appropriate said land, appellant would not have allowed Mamat to continue living in his (appellant's) house.

Thirdly, the testimony of Mamat was corroborated by that of Tumalasik, by the fact that Exhibit G had been concealed by appellant inside his pillow, and by the circumstance that appellant had to resort to perjury in order to explain his possession of said object, which Yap Kiana held at the time of his death.

There can be no doubt, therefore, about appellant's guilt. Inasmuch as the offense was committed with the aggravating circumstances of treachery, night time, and dwelling of two of the victim, it becomes necessary to determine whether the penalty of reclusion perpetua to death provided by law (Art. 294, par. 1, of the Revised Penal Code) should be imposed in its maximum period. Considering, however, that appellant is an illiterate member of the non-Christian tribes and that the number of votes necessary to mete out the death sentence is lacking, the proper penalty is life imprisonment although a member of the Court believes that, in view of the conditions under which the offense was perpetrated, appellant should never be pardoned and the decision appealed from should be modified accordingly. Furthermore, the indemnity of P650 therein provided should be understood to be due to the heirs of the spouses Hoc Hong, alias Yap Kiana, and Sumanbuyan Tagacaolo, to whom the stolen property obviously belongs.

Thus modified as to the penalty, and with the aforementioned clarification as regards the indemnity, said decision is hereby affirmed, therefore, in all other respects, with costs against the defendant-appellant. So ordered.

Pablo, Acting C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador and Reyes, J. B. L., JJ., concur.

Judgment affirmed with some modification.

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