

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HILARIO ADLAON, DEFENDANT-APPELLANT.***G.R. No. L-2536. April 29, 1950*

Ponente: OZAETA, J.

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Hilario Adlaon, together with his three cousins, Bernardino, Emilio and German Macalolot, was originally accused of robbery with homicide in criminal case No. 741 of the Court of First Instance of Bohol. That case was first tried by Judge Patricio Ceniza as against the three Macalolot brothers, wherein the accused Hilario Adlaon testified as a witness for the prosecution without having been excluded from the information. Upon motion of the fiscal, however, the case against Hilario Adiaon was provisionally dismissed before he was arraigned. After the trial of the case against the three Macalolot brothers, which resulted in their acquittal, the fiscal filed another information (No. 750) for robbery with homicide against Hilario Adlaon.

This case against Hilario Adlaon was tried before Judge Jose S. Rodriguez, who found him guilty and sentenced him to reclusion perpetua, to indemnify the heirs of the deceased Domingo Rosales in the amount of P2,000, with the accessories of the law, and to pay the costs.

On the morning of May 4, 1948, Domingo Rosales was found dead in his house in the municipality of Pilar, Bohol, where he had been living alone. The justice of the peace, the chief of police and the assistant sanitary inspector immediately repaired to the scene of the crime and performed the necessary investigation. The assistant sanitary inspector found the body of Domingo Rosales with "a big and gaping wound on the right side of his head, directed obliquely downward from the right temporal region, cutting thru the right ear to about two inches behind the right ear, 7 inches long, 1-1/4 inches wide and 1 inch deep at the center," and a "contused wound on the left side of the head near the left ear." The police found the bolo, Exhibit B, which was then stained with blood, in the house of the father of the accused where the latter lived, which was about 60 meters from the house of the deceased.

Upon being investigated, the accused on May 6, 1948, made the following sworn statement before the justice of the peace:

"That on Monday evening, the 3rd of May, at about 12:00 o'clock more or less, Emilio and German all with family name Macalolot and Bernardino came and told me to go with them to the house of Igoy Rosales for the purpose of robbing him. I did not go with them because I was afraid, and they proceeded to the house of Igoy. I looked at them and at the yard of the house of Igoy I saw that the yard became bright because of their spotlights. Not long afterward they came back at my yard because they passed by my yard and I saw them that they all carried sack of rice and I counted they came back to get the rice three times from the house of Igoy to the house of Emilio Macalolot. Of the three going together only Emilio was carrying a bolo. I was afraid and frightened because we are neighbors and perhaps I would be suspected. Precisely on the following morning of Tuesday, 4th of May, it was heard that Igoy was murdered and I was more frightened and afraid because the

purpose was robbery." (Exhibit C-1)

On May 10, 1948, the appellant subscribed and swore to another affidavit (Exhibit D) before the justice of the peace, in which he said:

"On that Monday evening, dated the 3rd at midnight, Emilio, Bernardino and German Macalolot came at home. They took me to the house of Igoy. I asked them what we will do there, and they answered just come with us. I went with them. When we reached the yard Igoy Rosales peeped through the window and at once the old man was stoned and was hit on the head and then we came up the house. While we were in the house Emilio went to the sala and stabbed the old man and then Emilio and German covered the dead body with mat. After all these we carried away the rice to the house of Emilio and we piled there. We came back four times and I did not receive share of the rice because Emilio took my share because I was indebted to Eyay." (Exhibit D-1)

Justice of the Peace Ricardo Espiritu identified the affidavit Exhibit G and its translation Exhibit C-1 as having been sworn and subscribed to before him by the accused. He further testified that subsequent to the date of Exhibit C the accused approached him and said that, he would tell the truth; that he would change his first affidavit by making some corrections, and that is why Exhibit D was prepared by him as dictated by the accused to him.

On cross-examination the justice of the peace testified that the accused voluntarily requested him to prepare Exhibit D, saying that he would tell the truth; that the accused told him that he had been forced to go with the Macalolot brothers; "he also said that he was boxed by the constabulary; and that is why, according to him, he asked me to make another declaration that he would tell the truth." In this connection we find that the constabulary does not appear to have intervened in this case. Moreover, the accused made no such claim when he testified during the trial.

It is an undisputed fact that the deceased Domingo Rosales was robbed of several cavanos of palay after he was murdered on the night in question.

The prosecution proved by the testimony of Maria Lagura, a resident of Loay, Bohol, that some time before the crime in question the accused Hilario Adlaon, accompanied by Bernardino Macalolot, bought nipa shingles from her on credit, promising to pay for them in palay after the harvest time which was then approaching; that on May 2, 1948, she asked the said accused when he was going to deliver to her the palay and he answered that he would pay her later; and that on the morning of May 4, 1948, at about 6:00 o'clock, he delivered to her two cavanos and 15 gantas of palay in payment of his indebtedness.

The appellant was the only witness who testified in his own behalf. He gave his age as 18 years when he testified in this case on July 14, 1948, although when he testified in criminal case No. 741 on May 27, 1948, he gave his age as 21 years. The substance of his testimony in this case is as follows: On the night in question Emilio, German and Bernardino Macalolot called at his house and took him along with them to catch fresh water shrimps, at the same time borrowing his bolo. It was about 10:00 o'clock in the evening and he was then sleeping in his house with his father. In answer to the question as to whether they really went to fish fresh water shrimps, he replied: "Mien we arrived at the house of Domingo Rosales the three surrounded me and said, 'If you will run from us you will be the third to be killed.' " He further testified:

"I asked them, 'What are we going to do?' and then they held me. Then German Macalolot called for Domingo Rosales and hurled a stone at him. . . . After Domingo Rosales was hit he fell down and then Emilio Macalolot

held me by the hand and took me up the house. . . . When we were upstairs Emilio Macalolot struck Domingo Rosales with the bolo ... on the left side of the face on the level with the left eye. . . . After that Emilio Macalolot got a palay container and covered the deceased with that and I cried, saying 'Why did you do that?' . . . They said to me, 'If you will not help us getting the palay we will kill you.' "

He helped them carry the palay because he was scared. After hauling the palay from the house of the deceased to the house of Emilio Macalolot the three brothers did not let him go home and ordered him to sleep there and did not release him until the following morning. The following morning Bernardino Macalolot paid Maria Lagura in palay. He was not the one indebted to Maria Lagura but Bernardino Macalolot. He had money to pay for the nipa shingles he bought from Maria Lagura, but Bernardino Macalolot took the money from him.

It cannot be doubted that the appellant participated in the commission of the crime in question. The trial court did not believe the story of the appellant that he had been forced by his cousins, the Macalolot brothers, to participate in the commission of the crime. We find no reason to reverse the finding of the trial court. Appellant admitted in his sworn statement, Exhibit C, that the Macalolot brothers went to his house and invited him to rob the deceased. In his other confession, Exhibit D, he described his own participation in the commission of the crime and did not claim that any force or compulsion was exercised on him. His testimony during the trial to the effect that his cousins threatened to kill him if he should run away, deserves no credence. If the three Macalolot brothers were the initiators of the crime, there was no real necessity for them to enlist the help of the appellant, and much less to force him, in perpetrating it inasmuch as their victim was known to be alone. Even assuming that the Macalolot brothers participated, we are inclined to believe that the appellant was the initiator because it was admittedly his own bolo that was used and because he was interested in obtaining palay to pay his debt to Maria Lagura, as in fact he did pay it the very morning after the crime was committed.

The judgment is affirmed, with costs.

Moran, C.J., Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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