

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MOROS MASDAL HAIRAL AND SALIM TAJIRIL, DEFENDANTS-APPELLANTS.

G.R. No. L-7010. May 31, 1955

Ponente: REYES, A., J.

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This is an appeal from a judgment of the Court of First Instance of Zamboanga convicting the appellants of double murder and sentencing them to two life imprisonments.

It appears from the record that the victims of the crime were two Moro peddlers from Zamboanga City, named Jaila and Maadil, who, on June 13, 1952, went by boat to Sangbay Grande Island, within the jurisdiction of Basilan City, to collect debts due them from the two defendants, who lived there. With them was one Hairan Tumaguidguid, who, from Zamboanga also went to the said island to collect a debt from one Abuab. Passing the night of the day of their arrival in the house of Hairan's father, Panglima Tumaguidguid, the two peddlers went out the next day, and on meeting the defendants required them to pay. But their attempt to collect resulted in a brawl in the course of which defendant Masdal grabbed Maadil and wrestled his wrist watch. The brawl was, however, stopped by Maharaja Alpa or Arpa, the village headman, who advised the peddlers to go home, promising to return to them their watch himself in the afternoon.

When the afternoon came, the peddlers went to the house of Moro Alamanza whither they had been invited to play the gabang, a moro musical instrument, and also to show their wares to the wife of Alamanza, a prospective buyer. But while they were in that house, the defendants, one of them (Masdal) armed with a Thompson submachinegun and a kris, and the other (Salim) with a garand rifle and a barong, came before sunset and inquired of Alamanza, who was at the door, whether the two Joloanos, referring to the peddlers, were still there, at the same time telling Alamanza to send them down because they wanted to kill them. Alamanza asked why they wanted to kill the Joloanos when the trouble between them had already been fixed by the headman. But at that instant Jaila peeped at the door, and on seeing him, defendant Masdal shot him with his submachinegun. Jaila fell. At about the same time the other defendant, Salim, went to the batalan (back porch) and from there shot the other peddler, Maadil.

The shooting was witnessed not only by Alamanza but also by his wife, who was then in the kitchen preparing food for the two peddlers.

Alamanza and his wife fled while defendants were still firing into the house. But coming back later after leaving

his wife in the house of a relative, Alamanza found the two peddlers lying on the ground dead, and at the place at the time were Maharaja Arpa, the defendants and the father of one of them. Going up the house, he found bullet holes on the walls and on their trunk and its contents.

The bodies of the peddlers were buried near the seashore by order of Arpa, who with the two defendants thereafter took Alamanza and his wife Hatija on a vinta to Zamboanga to report the killing to the authorities. But while on the way they were told to corroborate only what Arpa was going to report, with warning that they would be killed if they did not follow instructions. And due to these threats, Alamanza and his wife signed affidavits before the deputy clerk of court in Zamboanga, corroborating what Arpa and the two defendants reported, which was to the effect that defendants killed the two peddlers in response to Hatija's call for help.

But Arpa's and defendants' attempt to conceal the crime was thwarted by Hairan Tumaguidguid, the woman who went with the peddlers to Sangbay Grande Island. Leaving the island by boat she went to Maluso district, where the seat of government was, and reported what had actually happened. She informed the acting chief of police there that the peddlers Maadil and Jaila had gone with her to Sangbay Grande Island from Zamboanga City for the purpose of collecting what the defendants owed them; that when the peddlers demanded payment from defendants the latter, who did not have money, got mad; that defendants Masdal, in the height of his temper, grabbed Maadil and took his wrist watch; that though the trouble was fixed by Maharaja Arpa, defendants shot and killed the peddlers in the afternoon of the same day in the house of Alamanza.

Alamanza and his wife were called to Isabela, the seat of the government of the City of Basilan, for questioning, and they there signed sworn statements before the municipal judge, revealing what really had happened and explaining that what they had stated in their previous affidavits before the acting clerk of court was not true and that they made such statements under threat of being killed.

About two months after the killing, the bodies of the peddlers were dug out of their common grave near the seashore. But the medical officer who examined the cadavers found them to have decomposed to such an extent that it was no longer possible to determine the injuries that produce death. However, considering defendants' affidavit (Exhs. "4" and "5") that defendant Salim struck one of the peddlers on the neck, severing the head from the body, it is significant that the officer found "no fractures nor injuries on the skeletal remains."

Testifying at the trial, the defendants declared that in the afternoon in question, while the inhabitants of the village in Sangbay Grande Island were at the mosque praying and they themselves were in their own houses, they heard shouts for help coming from the house of Hatija, Alamanza's wife, saying that bandits were attacking her house. Coming to the rescue, defendants went to said house where, upon arrival, they saw two unknown persons jumped down, one holding a barong and the other a kris. Seeing that the two bandits were about to attack them, defendant Masdal slashed one of them with his kris while defendant Salim on his part hacked the other with his barong, as a result of which the two bandits were killed. The people who were in the mosque, who also heard shots, came to the house of Alamanza, but they arrived there after the bandits had already been killed. Among those who came to the place was Maharaja Arpa, who, after learning from defendants what had happened and finding nobody in the crowd who could identify the deceased, ordered them buried. On the following morning defendants went to Zamboanga City and reported the matter to the Philippine Constabulary and to the city mayor. They denied having threatened Alamanza and his wife.

The trial court found the facts to be substantially as above stated and convicted the defendants of double murder.

After going over the record we find no reason for disturbing the conclusions of fact made by the trial court, as the case hinges mostly on credibility, and the trial judge, who saw the witnesses testify and observed their demeanor on the witness stand was in a better position to appreciate their testimony than ourselves.

Two of the government witnesses, Alamanza and his wife, actually saw the killing and their account thereof is convincing. If in their first affidavits they have an entirely different version, it was because they were acting under threats from Maharaja Arpa and the defendants themselves. Their credibility is assailed by the defense on the theory that they must have had a grudge against defendants because some years before the father of one of the defendants had imputed the killing of one of his sons to the father of Hatija, Alamanza's wife. But it does not seem likely that for this alone, the spouses would invent lies that might send the defendants, their recent benefactors, to jail or to the electric chair.

The theory of the defense as to how the killing took place has nothing but defendants' own bias testimony to support it, unless we believe the first affidavits of Alamanza and his wife, which were repudiated by the couple themselves as being false and given under threats of death. The theory does not jibe with the fact that the deceased were by overwhelming proof shown to be no bandits at all but jewelry peddler who had gone to Sangbay Grande Island for the purpose of collecting money from the defendants. And if, as claimed by defendants the deceased were hacked to death and the head of one of them was severed from the body (as stated in their affidavit exhs. "4" and "5"), then why is it that their skeletal remains show no signs of fracture or injury? Decomposition of the flesh may have obliterated the wounds; but the condition of the skeletons is mute testimony to the fact that, as declared by the prosecution witnesses, the victims were killed with bullets, and not with bladed weapons as claimed by the defense.

It appears certain, as testified to by Hairan Tumaguidguid, that the deceased had gone to Sangbay Grande Island to collect what the defendants owed them. And it is likewise certain that the defendants and the deceased had a brawl in the morning of the day of the killing. Though temporarily pacified by the village headman, the defendants must have resented the incident. So, taking advantage of the fact that the headman and many of the village inhabitants were in the mosque praying, defendants went to the house of Alamanza and attacked the deceased. The witness Hairan Tumaguidguid is have any motive for testifying falsely against them.

We agree with the Solicitor General that the crime committed is murder, for the attack was made with firearms and the victims were unarmed and with no means of defense or escape, trapped as they were inside a house. The killing was, therefore, committed with alevosia, so that the resulting crime was murder. And while according to the evidence one defendant killed one of the deceased and the other defendant the other deceased, both must answer for both killings, since it is obvious that they were acting in concert as if by agreement. Both appeared at the scene of the killing at the same time, both were armed to the teeth, and both used their weapons at almost the same time, actuated apparently by the same motive. These facts are proof of conspiracy and make the two defendants responsible for the killing of each of the deceased. Both are, therefore, guilty of two murders.

We must, however, appreciate in favor of the appellants the mitigating circumstance of voluntary surrender, it appearing that after the killing they went to Zamboanga City to report to the authorities. The penalty for murder must therefore be imposed in its minimum degree. Applying the Indeterminate Sentence Law, the appellants are sentence each to an indeterminate penalty of from 10 years and 1 day of prison mayor as minimum to 17 years, 4 months and 1 day of reclusion temporal as maximum for each of the murder committed, with the accessory penalties of the law, to indemnify the heirs of the deceased Maadil in the sum of P6,000 and those of Jaila also in the sum of P6,000, and to pay the costs.

Modified accordingly, the judgment below is affirmed, with cost.

Pablo, Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., concur.

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