

THE PEOPLE OF THE PHILIPPINES PLAINTIFF AND APPELLEE, VS. AKAI, ANOL AND HADJIROL, DEFENDANTS AND APPELLANTS.

G.R. No. L-1513. June 24, 1949

Ponente: MORAN, C.J.

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MORAN, C.J.:

Appellants Akai, Anol, and Hadjirol were found guilty by the Court of First Instance of Sulu of the crime of robbery with double homicide, physical injuries and arson, and each was sentenced to reclusion perpetua with the accessories of the law, to pay the heirs of the deceased Moro Asani an indemnity of P2,000, and the heirs of Mora Basan the same amount, and to pay the costs. The facts proven beyond reasonable doubt are as follows:

On the 12th day of May, 1946, at about 9 o'clock in the evening, the three appellants, with six unidentified companions, opened fire at the house where Asaali Asani, his wife Mora Basan, his daughter Musah, his father Moro Asani, and other members of his family, Napsa and Mokahil, were then living, at Sipanding, Siasi District, Province of Sulu. The result of the shooting was that all the occupants of the house were hit and wounded except Musah, a girl 12 years of age. All of them, except Moro Asani and Mora Basan who were left inside the house, were able to jump from one of the windows and hide among nearby cassava plants about five meters away.

Six of the malefactors, among them, appellant Hadjirol, went up the house, while appellants Akai and Anol with one of their unidentified companions remained on guard downstairs. All of them were armed with different weapons consisting of bolos, spears and firearms. Akai and Anol had a revolver and carbine, respectively.

Because there was a lighted lamp inside the house and the moon was bright and because of the glare of the fire when the house was burned, the wounded persons who were hiding among the cassava plants were able to recognize the appellants, particularly, Akai and Anol, who had been firing their guns and who afterwards remained on guard with their firearms held in readiness.

The assailants who went up the house, took away two gold rings with pearls valued at P105; two earrings worth P120, and two gold rings worth P60. Aside from this jewelry they also took two cows worth P200, and the house which later they burned was valued at P150. After the house was burned, the three appellants together with the six unidentified companions left the place. The bodies of Moro Asani and Mora Basan were found almost completely charred among the ashes of the house.

Three days thereafter, Asaali Asani met Lt. Paraji Usman while the latter was leading a patrol. He reported the case to him and the lieutenant after examining the place and victims of the crime, took Asaali to Siasi. On the way Asaali told the lieutenant that it was not safe for him to disclose at that time the names of the male-factors, but that he would do so upon reaching Siasi. When they were already in Siasi, Asaali told Lt. Usman that three of the assailants were appellants Akai, Anol and Hadjirol who, for that reason, were immediately placed under arrest. The criminal complaint, however, could not be filed immediately against them because then there was no justice of the peace in Siasi as sea transportation between Siasi and Jolo was very scarce. The complaint was filed immediately upon the arrival of the regular justice of the peace of Siasi.

All these facts were testified to by Asaali Asani, Napsa Asani, Mokahil and Lt. Usman.

The defense tried to prove that on the evening of May 12, 1946, upon hearing gunshots and cries of help from the girl Musah, the two appellants Akai and Hadjirol accompanied by Jama and Kuling went to the place of the crime for the purpose of helping the victims. On their way they saw Concejal Joe Moro who instructed them to proceed. Panas whom they met later followed them to the place of the crime. Once in that place, while the house was still burning, they took from the ashes the cadavers of Moro Asaani and Mora Basan. Soon thereafter, Concejal Joe Moro arrived at the place and Asaali Asani told him that he had not been able to recognize the malefactors and that nothing belonging to him had been stolen. Concejal Joe Moro treated the wounds of the victims and the next day he, with Panas, Jama, Kuling, Akal and Hadjirol, prepared food for the visitors and gave their assistance in carrying the cadavers to the cemetery. After the interment and during the prayers held for the dead victims, Asaali Asani told Concejal Joe Moro again that he did not recognize the assailants but was suspecting Alamia, Asanang, Kahal and Jamja.

The other appellant Anol was at the time of the crime, according to him, at the Barrio of Latung about two hours' walk from Sipanding, and therefore he could have taken no part in the commission of the crime.

Concejal Joe Moro, the most important witness for the defense, is the father-in-law of appellant Hadjirol and uncle of appellants Akai and Anol. His having come to help the victims and to treat their wounds has been denied by the victims themselves, who said that the day following the commission of the crime Concejal Joe Moro refused to treat or even look at their wounds because of their refusal to pay the P40 which he was demanding from them. Asaali Asani also denied having made any statement to Concejal Joe Moro to the effect that he had not been able to identify the robbers and that he was suspecting persons other than appellants. The supposed cries of help allegedly coming from Musah was denied by her and the other victims, and it is indeed very unlikely that a girl of 12 years would have the courage under the circumstances to make such cries not being then sure whether the criminals were already far away. And it is also very unlikely that Jama, Kuling and Panas accompanied by appellants Akai and Hadjirol, all of whom were apparently unarmed, would have had the courage to come and help the victims in the face of malefactors who had been firing shots. As a matter of fact, the surviving victims testified in a positive way that on that evening nobody came to help them and that the first assistance they received came on the following day. And on that day, neither the appellants nor their supposed companions gave them any help in attending visitors or in the burial of the dead victims, and with respect to Concejal Joe Moro after his claim for fees was rejected he never appeared again before the victims.

It is important to note that three days after the commission of the crime, according to the unimpeachable testimony of Lt. Paraji Usman, Asaali Asani confided to him that three of the robbers were the herein appellants. In the beginning Asaali, afraid of the assailant's revenge, would not dare say anything about their identity, but upon reaching the town of Siasi he made the disclosure above mentioned. And this disclosure not only is sufficient rebuttal of all the contrary statements attributed to him by Concejal Joe Moro but it is also a strong corroboration to the eye-witnesses who testified for the prosecution.

Several attempts have been made by the defense to impeach the motives of some of the witnesses for the prosecution, but none of them has been successful, as clearly shown in the briefs. The most important question in this case is one of credibility of opposing witnesses and in this respect we reiterate what we have said in *People vs. De Otero*, 51 Phil., 201, 209, to the effect that "After everything is said and done, we come back, as we invariably do in cases of this nature, to a recognition of the rule that the Supreme Court will not interfere with the judgment of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the record some fact or circumstance of weight and influence, which has been overlooked or the significance of which has been misinterpreted."

The felony committed is robbery with homicide, physical injuries and arson, and the corresponding penalty is reclusion perpetua to death. The aggravating circumstance of band is offset by the mitigating circumstance of lack of instruction, but there are still the aggravating circumstances of nocturnity and dwelling making imperative the imposition of death penalty. However, there being no sufficient votes for the imposition of capital punishment, the penalty imposed by the lower court may be affirmed.

With the only addition that appellants are also sentenced to indemnify Asaali Asani in the amount of P635, the judgment appealed from is affirmed with costs against the appellants.

Ozaeta, Paras, Perfecto, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

MORAN, C. J.:

Mr. Justice Pablo voted for this decision.

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