

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGAPITO SOLAÑA, VALENTIN VEJIL, MAXIMO SORIASO AND TIBURCIO PRIMALEON, DEFENDANTS AND APPELLANTS.

G. R. No. 10516. February 19, 1916

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from the judgment of the Court of First Instance of Iloilo, sentencing the defendants, Agapito Solaña, Valentin Vejil, Tiburcio Primaleon, and Maximo Soriaso to suffer the penalty of death and to pay, jointly and severally the sum of P1,000 to the heirs of the deceased.

The amended complaint filed by the deputy fiscal of Iloilo alleges that:

"On or about the night of the 26th of April of the present year, 1914, in the jurisdiction of the suburb of Lucena, municipality of Santa Barbara, Province of Iloilo, Philippine Islands, the aforesaid accused, in company with other individuals unknown, armed with bolos and two revolvers, and forming a band composed of more than three malefactors, voluntarily, illegally, and criminally; and by means of violence and intimidation on the persons and force on the things, assaulted the dwelling house of J. F. Starr, situated in the barrio of Damirez, suburb of Lucena, municipality of Santa Barbara, Province of Iloilo and with intent of gain appropriated to their own use and carried away, against the will of the owner thereof, one-half bolt of khaki cloth, one-half bolt of pique, and various undershirts and hats, to the total value of P50, more or less, the property of the said J. F. Starr; that for the said purpose and on the occasion of the robbery aforementioned, the said accused killed the above-mentioned J. F. Starr and one Salvador Sorianosis; all contrary to law."

Upon being duly arraigned in open court, and being assisted by their counsel, each and all of the accused pleaded not guilty.

The trial judge in his opinion reviews the evidence at some length and sets forth a full statement of the facts proven at the trial; and an exhaustive and substantially accurate summary of all the testimony taken at the trial is to be found in the first twenty pages of the printed brief filed by the Attorney-General. But for our purposes it will be sufficient to set out here the substance of the testimony of the witnesses Beatrice Y. Sorianosis, Catalino N. (a montesco), and Claretta Sorianosis which is fully corroborated in all essential details by the large array of witnesses called for the prosecution, and is not put in doubt by the evidence submitted by the defense.

Beatrice Y. Sorianosis, being duly sworn, testified substantially as follows:

Direct examination:

"I am 30 years of age, widow of James F. Starr, deceased, and live in Santa Barbara, Province of Iloilo. On April 26, about 5.30, in the afternoon, three men came to our house. The first man was Busoy (indicating Tiburcio Primaleon). His companions I did not know. Upon entering the house, they called my husband and me. Busoy bought a small bottle of native gin and sat down on a box in front of the table to drink it. He called to his companions inviting them to drink with him, and one of them did so. In a little while I went upstairs and

told my niece, Claretta Soriano, to prepare a light, as it was getting dark. After she had prepared the light, I saw two men approaching the house in another direction. My suspicions being aroused I got a revolver and strapped it around my waist and put on another camisa over the revolver in order to hide it. I then went downstairs and told my husband to take the revolver as there were persons in the store who were strangers, and that I was suspicious of them. He refused to take the revolver saying it was too heavy and troublesome and scoffed at my suspicions. Then my father, Salvador Soriano, who was there, said that he was going home to get his bolo as all the persons there were strangers to him. He went and returned immediately. I conversed with Busoy for a few moments and then he went out and came back with a companion, then they seized my father, and dragged him outside. Maximo Soriano was one of the men who carried my father out. When this happened, I stepped back and drew my revolver, and my husband, James F. Starr, seized a box and met the robbers at the door. They seized my husband around the waist, and as they struggled, I fired at one of the robbers, who had struck my husband on the side of the head with a bolo. When I fired, the robbers stepped back. Some were outside the house with my father, one was on the steps, and two were pointing revolvers at me. I ducked under the table and they fired two shots. I could not tell whether they fired at me or not, as I was under the table. When they fired, I stepped out, and one of them threw a rock, which struck me in the jaw. When I was struck, I told my husband to kill them, and then I looked at him and saw that his eyes were turned up and blood running down his face. I looked around to see if I could escape, but could not as there were some robbers at the door. I shot at the robber on the steps and he fell off, but I don't know whether I hit him or not. When they dragged my father to the door he told me to shoot. I snapped the revolver several times but it failed to explode. Then I went upstairs and blew out the lights and looked for ammunition, but could find no more. When I came out I heard my niece, Claretta, yelling that my husband had been killed and also my father, and she had her hands joined together and was crying. Then I went downstairs and saw that my husband had been killed and that the robbers were taking the goods in the store. I then escaped from the house by way of a window and hid in some weeds. My niece Claretta and my nephew Nicolas Palmaras, a small boy, were in the house when I escaped. Nicolas left the house in the same manner as I. There were many robbers in front of the kitchen door shouting. Sotero Sobremesano was in the house at the time this occurred. My husband, James Starr, my father, Salvador Soriano, and a robber were killed. Valentin Vejil was there inside of the store with the other robbers. Agapito was also there. I don't know the particular things which he did, as I was nervous. I just know that they were there. They carried away some khaki cloth, pique, hats, and undershirts, in all about P50 worth of goods. All this took place in the municipality of Santa Barbara, Province of Iloilo. A lot of the robbers had bolos and two had revolvers. There was no other house near our house."

Cross-examination:

"Tiburcio came while I was outside of the house burning some refuse, and my husband was feeding the chickens. There were five altogether that came. They were all strangers to me and I had never seen them before. I do not remember what kind of clothes Valentin wore, just remember his general appearance. Valentin came a little while after the other five came, just a little bit after dark. There were seven or eight who came into the store, but they were coming in and going out all the time, and I could not keep count of them. When Valentin came in, Tiburcio was sitting at the table. Valentin tasted some salmon, but did not like it. Valentin went out and then they all came in and seized my father. I do not know whether Valentin came back again or not. Everything was all confusion when they rushed in. Before this happened, Maximo used to come to our store to buy vino. I did not give the name of the robbers to the police. I had not recovered my senses when I testified before the justice of the peace. I told the fiscal yesterday that I did not recognize Maximo, as I wanted to keep the evidence to myself as there were some people who were trying to advise me what to say. What I said was: 'Just wait until the case comes up here in court.' Maximo's wife came to my house and wanted me to help Maximo out. The first time Maximo came in the house was when my father was seized. He came in then and grabbed him. When Busoy drank the gin he said: 'Let's go.' This seemed to be the signal for the robbers to seize my father, as they seized him as soon as Busoy said that."

Catalino N. (montesco), being duly sworn, testified substantially as follows:

Direct examination:

"I do not know how old I am. I am a laborer and live in the mountains. I know Starr, the American, and his store in Damirez, as I went there in April of this year with Maximo. I was in the barrio of Layog when Vicente came to me and told me to go to Inoc's house and collect P1. When Vicente and I got to Inoc's house, we went on to Maximo's house. I went to Maximo's house with Inoc, who told me that I was to get half of a cavan of rice there and carry it for him and he would give me half a peso, and I accepted his offer. When we got to Maximo's house there were five of us—Vicente, Inoc, Inong, Busoy, and myself. Vicente and Inoc are not here. Busoy and Maximo are here (indicating Maximo Soriaso and Tiburcio Primaleon). We got to Maximo's house on Saturday night and prepared our own dinner and slept there. The next morning Maximo, Inong, Busoy, and Inoc left the house, while Vicente and I stayed there. They said they were going out for tuba and would not be back until the afternoon. Maximo then said: 'Let's go to the American's store and get native vino;' and I answered, 'If you go there, the first thing we know it will be night time.' We then left Maximo's house and went to the American's store, where we met Amoy, Pitong, Luis, and three others whom I did not know. When we got to the American's house we stopped, as some one had to urinate, and Busoy, Inoc, and myself went in the store where Inoc ordered a peseta's worth of vino. While we were drinking vino, Maximo, Inong and Vicente came in, also Luis, Pitong, and Amoy. I leaned up against the door, and while I was leaning against it Busoy went outside to urinate, and Maximo came there murmuring and said that they did not give him any of the salmon. While Inoc and Inong were standing near the table, Maximo came in and walked around where the old man was standing, and when he got immediately in front of him he grabbed him; when the American saw that the old man had been caught by the other men he picked up a box, trying to defend the old man from the hands of Inoc, and he hit Inoc with his box. When the American struck Inoc with his box, I heard a shot from the revolver and saw Inoc fall to the ground. The shot was fired by the American's wife (indicating Beatrice Sorianosis). When Inoc stabbed the American, I went to a dark place in the store. There were three of them with the old man—Maximo, Pitong, and Luis. They were beating him and as he was not dying from the blows he received, Maximo shot him with the revolver (indicating Maximo Soriaso). Inoc came outside to where I was and struck me with the flat of his bolo, and said for me to get the dead body of Amoy and carry him out, which I refused to do, upon which he called me a coward. I then tried to crawl away, and, seeing Maximo running, I caught up with him and told him not to go ahead because I did not know my way home, and I drew my bolo and said: 'if you try to leave me here I will cut you up, because I don't want to get lost here.' When we got in front of Maximo's house he went in and later left for the barrio of Layog. Later on I saw Inoc and told him if I had known what was going to happen I would not have gone there for P20. Amoy was killed by the American's wife. We met him on a road when we were going to the American's house, in company with Luis and Pitong. Busoy told me afterwards that Ando struck Amoy in the face with his bolo so that his body would not be recognized. I did not take anything from the store, but Luis took some khaki clothes with him. Busoy overtook him on the road and asked him for three cuttings of cloth (identifying two pieces of cloth, one khaki and one black) which was taken from the store. I asked Busoy for a cutting of the cloth for the purpose of presenting it, but he refused to give it to me. Inong and Maximo were armed with revolvers. The rest were armed with bolos. I had a working bolo. The others had long bolos. (Witness then identified hat that belonged to Amoy.) This hat fell off Amoy's head when he fell at the time the revolver was fired at him. I saw Inoc kill the American. He is out in the mountains now. Busoy (indicating Tiburcio Primaleon) was outside urinating at the time the fighting took place inside the store. When Amoy fell, Busoy pulled the dead body out of the store. At the time the woman shot him he was going toward the American, who struck him with the box. Inoc was struck in the back with the nails and went under the counter and stabbed the American. Vicente and Inong are both out in the mountains. Pitong is here (indicating Agapito Solana). He helped the others to strike the old man, and as they thought he was not going to die from the blows, Maximo shot him with the revolver. I do not know Valentin Vejil. He was not there that night. There were six of us when we left Maximo's house, and when we met Pitong there were six more—twelve altogether. Afterwards, one was killed, which left eleven. The six who left Maximo's house were Inong, Vicente, Inoc, Busoy, myself, and Maximo. Those with Pitong were Pitong, Amoy, Luis, and three others whom I do not know. When Maximo's party met the other six, Inoc

and Maximo spoke to each other. I think they must have agreed to meet in that place because it is strange that they met there and they all said: 'Let's go to the American's and get some vino.' Maximo is the one who said that. The first to enter the store were Busoy, Inoc, and myself, and Inoc bought a peseta's worth of wine. The next who entered were Vicente, Inong, then Amoy. Pitong and Luis came from where the salmon was over to where the wine was. Then Maximo came in and after he came in Busoy went out. Then Maximo said he was going to get some salmon, and went over to where old man Salvador was standing at the foot of the stairs and grabbed him. Pitong and Luis then grabbed him. They carried him out and beat him. Busoy was pulling him out at the time they were beating the old man. There were three or four men in the store when we got there. As soon as the trouble started, they ran away and took no part in the fight. While I was in jail, Maximo spoke to me and said: 'If they call you to speak, don't say anything against me. When you get out of this I will give you P50.' I told him: 'Even if you will give me P1,000, I am not going to lie.' None of the others talked to me."

Cross-examination:

"The first time I knew Maximo was at the time of this occurrence. I knew him as Idong at that time, but as Maximo when we were in jail. The house of Busoy is alongside the house of Inoc. When I testified before the justice of the peace I stated that Maximo did not have a revolver, because Maximo himself told me not to divulge anything about the revolver. I stated that Maximo helped Pitong and Luis to get the old man. The wounds which I showed you on my back were caused by Lucendo, who was a soldier, because I would not tell the truth. The lights in the house were bright at the time this happened. I am positive that Maximo was the first one that got hold of the old man. There were twelve of us altogether, six in our crowd and six in the crowd of Pitong. When Maximo came to the store, some of my companions were drunk—they were vomiting. When we arrived at the American's store, the sun had gone down. Pitong was outside, and so was Luis, but when Maximo grabbed the old man they went in and helped him. Maximo said: 'Kill him, because he knows me.' When I left I went along with Maximo, Inoc, Inong, and Vicente. If Maximo had not grabbed the old man, the American would not have been killed, as most of them were preparing to leave, because I heard Busoy say to his companions that as soon as they got through drinking they were going to leave. All that I have testified to here is true. I did not tell the whole truth before, because I was afraid of the others who were not caught"

Clareta Sorianosis, being duly sworn, testified substantially as follows:

Direct examination:

"I do not know my age, (estimated about 14 or 15), live in the barrio of Damirez, municipality of Santa Barbara. I knew the deceased, James F. Starr. He was killed when the place was attacked, which was on Sunday. I do not remember the date. Salvador Sorianosis was also killed at that time. I saw Valentin and Busoy there that night."

Cross-examination:

"I saw Valentin standing alongside the door. I did not know his name, but I knew his face and so testified in the justice of the peace court Valentin and Busoy are the only ones I can identify. Busoy was sitting alongside the table with his arms on it when I carried the plates downstairs."

The four defendants, Agapito Solaña, Valentin Vejil, Tiburcio Primaleon, and Maximo Soriaso, were found guilty as charged in the complaint, with the aggravating circumstances of nocturnity, the commission of the crime in the dwelling of the deceased James F. Starr, the use of arms prohibited by the regulations, and the fact that the defendants formed an armed band; and each and all of them were sentenced to suffer the penalty of death, and to pay to the heirs of the deceased, jointly and severally, P1,000, and to pay the costs of the trial.

In a carefully prepared brief counsel for appellants makes twenty assignments of errors, in most of which he challenges the accuracy of the findings of fact by the trial judge. We cannot stop to review these various assignments of error separately, and it must suffice to say that with the aid of the exhaustive brief submitted by

the Attorney-General, we have carefully examined the evidence and we are satisfied that it fully sustains all the material findings set forth in the opinion of the court below.

Counsel for appellants admits that most of his assignments of error in the findings of fact are directed to matters which in themselves are of relatively minor importance; but he insists that considered together, they are sufficient to justify an inference that the findings upon material facts by the trial judge cannot be confidently relied upon. We cannot agree with these contentions of counsel; in the first place, because a mere reading of the testimony itself leaves no room for doubt as to the substantial accuracy of all the material findings of fact by the trial judge; in the second place, because we are of opinion that even as to the findings attacked by counsel, they are in most instances sufficiently sustained by the evidence or by fair inferences to be drawn therefrom; and, in the third place, because while it is true that the evidence before us does not sustain the findings of the trial judge as to one or two very trifling matters, so that it is not improbable that his information as to these matters was gained in some way which does not appear from the record, it does not necessarily follow that he was prejudiced against the accused, or that his material findings of fact were based on anything other than the evidence in the record. When a murder such as is charged in the information is committed in one of the provinces of these Islands, it is hardly likely that the provincial judge will remain in profound ignorance of its commission until the persons charged with the crime are brought before him on trial. From his knowledge of the activities of the prosecuting officers, from the newspapers, from information acquired in the course of preliminary investigations or the like, from the mere rumor of the streets and from many other sources he may be, and in many cases will be fully apprised as to the nature of the charges against the accused who are brought before him for trial, and he may even be quite fully informed as to the nature of the evidence which the prosecution intends to submit in support of these charges. But it does not necessarily follow that he is incapable of giving the accused a fair and impartial trial. Of course it is his duty in such cases to disregard, as far as he humanly may, all such information when the accused are brought before him for trial, and to rest his findings of fact and his judgment strictly upon the evidence adduced at the trial; and no finding of fact can be sustained which is not supported by such evidence. But an inadvertent reference in his opinion to some immaterial matter not formally sustained by the evidence of record will not be treated as reversible error, unless it is of such nature as to justify an inference that the conclusions of fact or of law as found by him have been unduly affected thereby.

To our minds the evidence of record is clear, convincing and conclusive, and leaves no room for reasonable doubt that all the accused were members of a band, organized for the purpose of robbing the store of J. F. Starr; that the defendant Maximo was one of the moving spirits of the band, if not its leader, and that he fired the shot which killed the old man; that another member of the band named Inoc, who has not yet been apprehended and brought to trial, stabbed and killed Starr; that the robbery charged in the information was committed by this band; that the robbery and the two murders were so related to each other as to constitute the complex crime of robo con homicidio; that the crime was marked with aggravating circumstances in that it was committed at night, by an armed band, and in the house of the offended party; and that all of the defendants were present, aiding, abetting and participating in the commission of the crime, though it does not definitely appear that any of them except Maximo actually struck either of the victims of the assault.

Upon these findings the imposition of the death penalty by the trial judge must be affirmed, unless the ignorance and lack of instruction of these offenders be held to justify the court in reducing the prescribed penalty by one degree under the provisions of article 11 as amended by Act No. 2142.

After a careful review of the whole record, we do not think that we would be justified in giving the benefit of the provisions of this law to the convict Maximo Soriaso. He appears to have been the moving spirit in the organization of the band, and was evidently a man of superior force and intelligence to those who joined with him

in the conspiracy. With his own hand he killed one of the victims of the crime, and under all the circumstances as they appear from the record, we are of opinion that the imposition of the death penalty upon him by the trial court should be affirmed.

We agree with counsel for appellants, that giving the other defendants the benefit of the doubt, and having in mind their manifest ignorance and lack of instruction, and having in mind also the fact that they do not appear to have taken a leading part in the organization of the band or the commission of the crime and seem rather to have been the ignorant tools of the leaders of the band, the penalty as to them should be reduced to life imprisonment (cadena perpetua) under the provisions of article 11 of the Penal Code as amended. (U. S. vs. Maqui, 27 Phil. Rep., 97.)

We conclude therefore, that the judgment entered in the court below convicting and sentencing the appellants in this case, should be modified by substituting the penalty of cadena perpetua (life imprisonment) for so much thereof as imposes the penalty of death upon the convicts, Agapito Solaña, Valentin Vejil and Tiburcio Primaleon, and that thus modified, and without modification as to the death penalty imposed upon Maximo Soriaso, it should be affirmed, with the costs of this instance against the appellants. So ordered.

Arellano, C. J., Torres, Johnson, Moreland, and Trent, JJ., concur.

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