

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BATUNDO MINURAY AND BALICUAT GUBAT, DEFENDANTS AND APPELLANTS.

G.R. No. 14794. March 30, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Batundo Minuray, Balicuat Gubat and Cuanas Casium were charged with double murder before the Court of First Instance of Davao for the killing of Latimbang Mandaya and Velarde Ata. After trial, Minuray and Gubat were found guilty as charged and, appreciating in their favor the mitigating circumstance of lack of instruction and the fact that they belong to a non-Christian tribe, they were sentenced to suffer a double penalty of from 10 years and 1 day of prison mayor to 17 years 4 months and 1 day of reclusion temporal, to indemnify jointly and severally the heirs of the victims in the amount of P3,000.00, and to pay two-thirds of the costs. The charge was dismissed as to Casium for lack of sufficient evidence. Taken on appeal to the Court of Appeals, the case was certified to us on the ground that, considering the facts and circumstances surrounding the crime, the imposable penalty would be at least life imprisonment.

The version of the case as reflected in the evidence for the prosecution is as follows, Batimdo Minuray and Balicuat Gubat, who were brothers, were laborers of their co-accused Cuanas Casium in his abaca plantation in Kapalong, Davao. During their stay in Casium's house, the latter lost money in the amount of P150.00 and the suspicion as to who stole it fell on his father-in-law Latimbang. Casium told his two laborers that if they would kill Latimbang he would give each of them P100.00. Having agreed to the proposal, in the evening of February 4, 1951, the two brothers, armed with a bolo and a spear, went to the house of Latimbang in Mangulibas, Kapalong, Davao, and after Minuray slowly opened the door of the house, he struck Latimbang at the thigh with his spear which went through and again at the right hypochondrium. Gubat in turn struck Velarde Ata at the right thigh with his bolo and then hit him on the left lumbar region.

At that time, Latimbang was sleeping with his wife on the second floor while Velarde Ata was on the first floor. Because of the attack, Latimbang's wife woke up and seized with fear the couple left their dwelling to flee and on the way she discovered that he was critically wounded. The two then decided to go to the nearby house of one Botogon. During the attack the two brothers made use of a flashlight which they borrowed from Cuanas Casium to identify their victims. They later returned to the house of Casium to demand from him the amount he had promised but Casium failed to pay them what he had promised even their daily wages. After a week of frustration, they left Casium and went to their home at Bubunao, Kapalong, Davao.

The next morning the authorities were notified of the incident. Cpl. Marcelino Denupol of the Philippine constabulary went to the scene of the crime. On the first floor he found the lifeless body of Velarde Ata under the mosquito net with two serious wounds. In the house of Botogon he found Latimbang in a critical condition also with two serious wounds. The corporal ordered that Latimbang be taken to the town of Maniki for treatment but

nevertheless he died at 5:00 o'clock in the afternoon of February 5, 1951. The corporal sent for the father of Velarde, Aylabon Mamburao Ata. The latter arrived and after identifying his son, he was buried in Mangulibas. Corporal Denupol asked the wife of Latimbang who were the killers and she answered that she was not able to identify them because it was nighttime and dark but she believed that they were "Mangangayos" because the weapons used were spears. "Mangangayos" means a native of the place.

Aylabon was informed by his elder brother sometime in November, 1953 that Batundo Minuray and Balicuat Gubat were the ones who killed his son and Latimbang. The same information was given to him almost at the same time by Lagare, his brother-in-law. Thereupon, Aylabon proceeded to see Balicuat Gubat to ask him about the truth of the rumors and then and there Gubat confessed to him in the house of his elder brother in the presence of Lagare that he, Balicuat and Minuray killed his son. Thereafter, Gubat proposed that if Aylabon will not bring the case to court and will agree to settle the matter extra-judicially, he will give Aylabon 5 hogs and 10 sacks of palay, Aylabon asked Gubat why he and his companion killed Velarde and Latimbang and he answered that it was by order of Cuanas. In the afternoon Batundo Minuray arrived and also confessed to Aylabon that he and Gubat killed the victims.

Sometime in the same month of November, 1953, Minuray gave to Aylabon a bolo, a scabbard, three chickens and one sack of palay on condition that he refrained from bringing the case to court. Aylabon accepted these things in the presence of his elder brother and Lagare. However, on December 13, 1953, Aylabon went to see Sgt. Bonifacio Botogon in the latter's house to inform him that the killers of Velarde and Latimbang were the two brothers. Sgt. Botogon sent Lagare, a PC contact man, to fetch the two from Gupitan. They arrived in the afternoon of December 15, 1953 and upon being investigated they confessed to be the killers. The following morning Sgt. Botogon brought the two brothers to the Justice of the Peace of Monkayo in order that he may get their written statements. Accordingly, Justice of the Peace Francisco Probianos questioned the two brothers who informed him that they were making a confession to the effect that they were the ones responsible for the death of Velarde and Latimbang. Probianos then took down in writing their statements under oath which were thumbmarked by them in his presence. Exhibit B is the affidavit subscribed by Batundo Minuray while Exhibit C is the affidavit subscribed by Balicuat Gubat.

The version of the defense, on the other hand, is as follows: Batundo Minuray and Balicuat Gubat for sometime after the commission of the crime were residing in the barrio of Gupitan, Kapalong, Davao engaged in the construction of a house belonging to one Donoan. One day in the month of November, 1953, the two met Aylabon Mamburao while riding on a raft. Armed with a shotgun, Aylabon ordered them to anchor the raft and to stand by the bank of the river. Then, at the point of his gun, he took the bolo that Minuray was carrying and told them to confess that they were the ones who killed Velarde and Latimbang. They refused. All of a sudden the shotgun exploded wounding Gubat on the left leg. Afterwards, Aylabon left carrying with him three chickens and a sack of rice belonging to the brothers.

Subsequently, the two brothers received a letter from Sgt. Botogon requiring them to report to Camp Vista. They arrived there in the afternoon of December 16, 1953. Upon their arrival, they found there Aylabon and when they were asked as to whether they killed Velarde and Latimbang, before they could give their answer, Aylabon intercepted and answered for them the question in the affirmative. On the following day, the two were taken by Sgt. Botogon and a corporal to the office of the Justice of the Peace of Monkayo for investigation who thereupon took down their written statements and made them affix thereon their thumbmarks. The justice of the peace explained to them in the presence of the mayor that he could assign to them a counsel de oficio to assist them in the investigation but, according to said justice of the peace, the two declined. The statements were couched in the English language not known to them. They stated that they did not know their contents and if they placed their

thumbmarks thereon they were only forced to do so. They even intimated that on that occasion they were boxed by the mayor of the place. At the trial of the case, the two repudiated the alleged confessions.

The thing that strikes us in this case is that no one has been able to identify who the killers of the victims were despite the fact that the assailants had allegedly made use of a flashlight to find their way in the house and identify their victims, the only evidence on which the conviction of appellants is predicated being merely the supposed admissions or confessions made by them before some of the witnesses for the prosecution. If the alleged admissions or confessions are discarded, there will be nothing on which to predicate their conviction, not even a circumstantial evidence to corroborate them. It is because of this peculiar circumstance that we entertain serious doubt as to their guilt for which reason we are inclined to acquit them on reasonable doubt.

The first circumstance we wish to mention is the fact that one of the victims, Latimbang Mamburao, did not succumb immediately after his attack for he was able to make some outcries and flee from the house assisted by his wife who was awakened by his outcries, and did not die until the following day. If it is true, as the prosecution seems to sustain, that the assailants made use of a flashlight to lighten the house and identify the victims, it would appear strange that they were not identified either by Latimbang or by his wife thereby removing any doubt as to their identity. In fact, one of the witnesses for the defense is Latintang's wife, Hitamanog Mamburao, who manifested that she was not able to identify any of the assailants because the attack took place at midnight and was dark, and she added that she believed that they were "mangangayos" because the weapons they used were spears. By this term she meant to refer to the natives of the place who used to kill persons using a spear as their weapon. The statement of this witness cannot but bear the earmark of truth for if there is anyone who should show personal interest in the detection of the culprits it is she because of her relationship to one of the victims. The two accused are not natives of the place but are from Samar and Cebu. i. The claim of Aylabon Mamburao that when he heard rumors that the authors of the dastardly act were the herein appellants which were conveyed to him by his brother-in-law Lagare, he went to the place where they were then working in Gupitan and when questioned by him about the killing they readily admitted their guilt, cannot be taken on its face value. To begin with, it is hardly believable what Aylabon claimed that in spite of their admission of guilt the brothers proposed to give him 5 hogs and 10 sacks of palay on condition that they be not reported to the authorities or taken to court, for everything seems to indicate that the two were mere laborers who could not be expected to possess so much property. Then, why would they readily admit their guilt when they knew well that Aylabon was not holding any position nor had any authority to inquire into the case? If it is true that the alleged admissions were made in the presence of Lagare, who was a PC contact man, why was he not presented as a witness to corroborate such admission? And the situation is more strange if we consider the fact that, according to Aylabon, the two gave him a bolo and a scabbard apparently as an advance compliance with the proposal to compromise the case but that when he reported the matter to the authorities he did not make any mention of the bolo or the scabbard.

On the other hand, the story given by the two brothers regarding what has actually happened when they were confronted by Aylabon Mamburao on the occasion mentioned by him strikes us to be more natural and reasonable and in keeping with truth. Thus, according to these two appellants, when Aylabon met them on that occasion, he was armed with a shotgun and when notwithstanding his threats to induce them to admit as authors of the death of his son they refused, he made use of his shotgun by aiming at them and causing it to explode hitting Gubat on the left leg. And this story appears corroborated by the big scar shown by Gubat in court as a result of the wound caused by the explosion. There is nothing in the record to dispute this piece of evidence of the defense.

The only remaining incriminating evidence against appellants are the alleged written statements made by them before the Justice of the Peace of Monkayo, Francisco Probianos, but again, there are circumstances extant in the record which make of the testimony of said justice of the peace of doubtful validity, circumstances which create

in our mind the doubt as to whether they really contain the voluntary confessions of appellants. In the first place, appellants appear to be of nil instruction for they do not know how to read and write. They do not even know how to write their names as in fact the confessions merely contained their thumbmarks. According to the justice of the peace, all the statements appearing therein came voluntarily from appellants and he merely took them down in writing and made them affix their thumbmarks on the place he has indicated. Yet, insofar as the confession of Minuray is concerned, it would appear that his thumbmark was placed not only on top of his name but also at the middle of the document. And with regard to the confession of Balicuat Gubat, we have his statement that he was forced to affix his thumbmark because he was boxed by the mayor of the place. In this connection, it is well to note that while the mayor testified that he was not present when the investigation of these two appellants was conducted by the justice of the peace, the latter belied him when in an unguarded moment he stated that he was present when the accused waived their right to a preliminary investigation. Discarding these confessions, as we must in view of the above circumstances, there would be nothing left on which we may predicate the conviction of appellants.

Apart from the above considerations, we cannot overlook the fact that the only alleged motive for the killing of the victims is the loss of P150.00 belonging to one Cuanas Casium who allegedly hired the two appellants to do the killing with the condition that he will pay each of them P100.00. Aside from the fact that Latimbang is a father-in-law of Cuanas Casium, it strikes us as unbelievable for him to offer a compensation of P200.00 for the unholy act as compared to the sum of P150.00 he actually lost. This appears to us to be a last minute concoction to advance a motive for the commission of the crime.

In view of the foregoing, we are persuaded to conclude that the guilt of appellants has not been proven beyond reasonable doubt. They are, therefore, entitled to acquittal.

Wherefore, the decision appealed from is reversed. Appellants are acquitted, with costs de oficio.

Paras, C. J., Bengzon, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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