

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SAWAJAN ET AL., DEFENDANTS. SAWAJAN, HALI, BARAHAMA AND ASMANI, APPELLANTS.

G.R. No. 28243. December 12, 1927

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PER CURIAM:

The Moros Sawajan, Hali, Barahama, Asmani, Arasain and Himpun were accused of the crime of robbery in gang with murder before the Court of First Instance of Sulu.

At the beginning of the trial the court below, on motion of the fiscal, dismissed the case in regard to the defendants Arasain and Himpun, who were afterwards used as witnesses for the prosecution.

It appears from the evidence that about 4 o'clock in the afternoon of May 10, 1926, the defendants Sawajan, Hali, Barahama and Asmani borrowed a vinta from their neighbor Nudani in the sitio of Batu Ugis with the understanding that they were to use it for fishing in a place called Tamaubal. At their invitation Arasain, who was living in the house of Nudani, went with them but instead of going out fishing, the accused went to the Island of Patian. All of them were armed with bolos or barongs.

Upon their arrival at Patian, the accused went to the house of one Himpun, a resident of the place. Barahama and Arasain went into the house while the other defendants remained outside. As it was then dark, Himpun did not see the men who were outside but in course of conversation Arasain gave him their names.

Later in the evening the defendants went to Hassan's house situated about 600 meters from that of Himpun. Hassan and his family were then asleep, and as the house had no walls, Hali and Barahama were able to enter without awakening the inhabitants. They immediately attacked Hassan while he was asleep in his bed and inflicted on him a number of grave wounds from which he died the following morning. During the attack on Hassan, his family succeeded in escaping and Hali and Barahama took possession of one trunk and two boxes found in the house and handed them to the other defendants who were on guard outside and who carried the booty to the vinta. Immediately thereafter they left for Batu Ugis where they arrived at daylight the following morning. The trunk and boxes were then carried to the woods and the contents distributed among Sawajan, Hali, Barahama and Asmani. Shortly afterwards the defendants ascertained that they were suspected of having committed the crime, whereupon they fled to the hills and kept in hiding there for several months. Arasain asserts that his companions threatened to kill him and that he was compelled to go to the hills with them and that he was closely guarded by them there. He finally made his escape and informed the authorities of the circumstances of the commission of the crime.

The defendants deny that they took part in the commission of the crime and insist that they did not go to Patian on the occasion in question. Asmani and Barahama attribute their prosecution to ill will on the part of the Government's witnesses; Hali testifies that he has never been in a vinta in all his life and that even washing his feet at the seashore makes him seasick; and Sawajan claims that the only occasion on which he traveled in a boat was when he was sent to San Ramon to serve a sentence for murder. The court below did not believe these

statements and neither do we.

The court below found Sawajan, Hali, Barahama and Asmani guilty as charged in the information and imposed upon them the death penalty. The case is now before us for review in accordance with section 50 of General Order No. 58, series of 1900.

Counsel for the defendants presents the following assignments of error:

"1. The trial court erred in accepting the testimony of Nudani, Jamli Arasain, Himpun and in rejecting that of the accused-appellants.

"2. The trial court likewise erred in not taking into consideration in favor of the accused Barahama the mitigating circumstance of age.

"3. The trial court also erred in failing to take into consideration in favor of all the accused the mitigating circumstance of lack of instruction.

"4. The trial court also erred in taking into consideration against the accused Sawajan the aggravating circumstance of recidivism.

"5. The trial court erred in taking into consideration against all the accused the aggravating circumstance of cuadrilla.

"6. The trial court erred in taking into consideration the aggravating circumstances of nocturnity and cuadrilla in addition to that of treachery.

"7. The trial court erred in imposing the death penalty on each and everyone of the accused."

The first two assignments are purely questions of fact which, in our opinion, are correctly determined by the court below.

As to the third assignment we are also in full accord with the trial court. The Moro population of Sulu has been in contact with our administration of justice for over a quarter of a century and it is fair to presume that irrespective of education, they must by this time know that robbery with homicide is by us regarded as a capital offense.

Under the fourth assignment of error counsel contends that there is no sufficient proof that Sawajan is a recidivist. Counsel has probably overlooked the fact that the entire record of the case in which the former conviction of Sawajan took place was without objection admitted in evidence in the present case and forms a part of this record.

The fifth assignment of error is equally without merit. That all of the defendants were armed when they set out on their enterprise is fully established by the evidence, and the presumption is that they continued to be armed until the termination of the expedition. Proof of the existence at a particular time of a fact of continuous nature gives rise to an inference, within logical limits, that it exists at a subsequent time (16 C. J., 539).

Under the sixth assignment of error counsel argues vigorously that the aggravating circumstances of nocturnity and cuadrilla must be regarded as included in the circumstance of treachery and cannot be considered separately. In support of his contention he cites various murder cases in which this view has been adopted. But this is not a case of murder only; the offense here in question is the compound crime of robbery with homicide defined in paragraph 1 of article 503 of the Penal Code and which carries with it the penalty of cadena perpetua or death. The word "homicide" employed in said article 503 must be taken in its broadest sense and includes murder (U. S. vs. Landasan, 35 Phil., 359). The rule as to aggravating circumstances in such cases is clearly stated in the case of United States vs. Perez (32 Phil., 163), in which this court speaking through Justice Araullo said:

"The facts, then, which were proved at the trial, constitute not the crime of robbery with murder, as they were

improperly classified by the lower court and in the complaint, but that of robbery with homicide, provided for and punished by article 503, No. 1, of the Penal Code, and the defendants Severino Perez, Abdon de Leon and Faustino Mañago, as the perpetrators thereof by direct participation, are criminally liable therefor. In the commission of the said crime, besides the aggravating circumstance of treachery aforementioned as generic, account must be taken of the other aggravating, generic circumstances of the crime having been committed: (1) By a band, for the three defendants and their companion, Julio de los Santos, all armed with bolos and one of them also with a revolver, took part in the perpetration of the crime; (2) in the nighttime, because this time was purposely chosen and taken advantage of by the malefactors to execute their criminal designs; and (3) in the dwelling of the offended persons, where the crime was completely consummated with no provocation on the part of the victims; and as there is no extenuating circumstance to be considered in favor of the defendants, the greater of the two indivisible penalties provided for the crimes must be imposed, together with the accessories specified in article 53 of the Penal Code in case the said penalty be not executed by reason of the granting of pardon, and they must also be sentenced to satisfy the pecuniary liabilities arising out of the criminal liability they have incurred."

This quotation is exactly in point in the present case. From what has been said it follows that the seventh assignment of error is not well taken.

The judgment under review is therefore affirmed with the proportionate shares of the costs of this instance against the defendants and the sentences will be executed in accordance with the provisions of Act No. 3104. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

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