

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MANDANGAN ET AL., DEFENDANTS.

G.R. No. 28629. September 12, 1928

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of Sulu, finding the appellant, the Moro Mandangan, guilty of the offense of robbery with homicide, with aggravating circumstances, and sentencing him to undergo the penalty of death and requiring him, jointly and severally with his three co-accused, to indemnify the heirs of the person slain in the amount of P1,000, and requiring him to pay his proportional part of the costs of prosecution.

It appears that at about midnight on July 6, 1927, five persons, namely, Hassim, Sailabi, Jahura, Abisaini and the appellant Mandangan, committed robbery in the house of the Moro Maadil, situated in the sitio of Tagbak, municipal district of Maimbung, in the Province of Jolo, upon which occasion they appropriated and carried away clothes, jewelry, and other useful articles, of a value of about P1,355.50. In connection with the commission of this offense the Moro Maadil, one of the inmates of the house, and owner of the things taken, was assaulted and slain.

Investigations which were promptly set afoot by the Constabulary authorities after this crime was discovered led to voluntary confessions from Jahura, Sailabi, and Hassim, which confessions were formally reduced to writing and afterwards exhibited in evidence against them. For purposes of effective prosecution of the case Abisaini was used as a witness for the Government, and the case against him was dropped.

Upon hearing the cause Jahura, Sailabi, and Hassim, the three who had already confessed, submitted a plea of guilty. Mandangan alone pleaded not guilty, and the case was submitted upon proof against him alone.

The only direct witness against Mandangan was Abisaini, one of the principals in the commission of the crime. His testimony was to the effect that the party of robbers consisted of the five already mentioned, of whom three, namely, Jahura, Sailabi, and Abisaini (the witness), entered the house of Maadil by forcing the door and slew Maadil, as alleged in the complaint, at the same time possessing themselves of the articles which were the subject of the robbery. The same witness says that Mandangan and Hassim remained below. While the robbery and homicide was committed in order that they might not be recognized by Maadil. Abisaini admits that Maadil was slain by himself and Jahura.

As this witness was confessedly one of the principal actors in the outrage, his statements must be received with caution; but his testimony with respect to the participation of the appellant in the offense is corroborated by the irresistible fact that when search was made in the appellant's house at the time of his arrest, various articles of the stolen property, consisting of jewelry and clothing, were found carefully secreted in and under said house. The possession of these things by the appellant is inconsistent with his innocence; and the proof in our opinion abundantly sustains the conclusion of the trial court that the appellant was one of the five who participated in the

crime. Indeed, the attorney de oficio, representing the appellant in this court, is so far impressed with the weight of the incriminatory proof, that he merely requests the court to reduce the capital penalty to cadena perpetua, thereby penalizing the appellant to the same extent only as the other three accused who have not appealed.

In the estimation of the offense there can be considered against the appellant the aggravating circumstance of nocturnity and the further circumstance that the offense was committed in the dwelling of the injured person. The further circumstance that the offense was committed by a band of more than three armed men is supported only by the testimony of Abisaini, who said that all five of the men concerned in the affair were armed. While there is a probability that this statement is true, it is not corroborated by other evidence and should not, we think, be estimated for the purpose of imposing the death penalty, there being no corroboration from other sources than Abisaini. In fixing the penalty for the appellant in this case the trial court undoubtedly gave much weight to the fact that the appellant was, according to Abisaini, the leader of the gang. If this fact were clearly shown, the court would be abundantly justified in weighing it against considerations appealing to the discretion of the court. But this fact also rests wholly upon the testimony of Abisaini; and it is a notorious fact in human nature that a culprit, confessing a crime, is likely to put the blame on others rather than himself. Even though a court may well credit the statement of such a witness that other particular persons were engaged in the crime, it is unsafe to accept, without corroborating evidence, his statements concerning the relative blame to be attached to different members of his gang. We are therefore constrained to hold, and more readily because the point is one involving a capital sentence, that the leadership of the band by Mandangan is not sufficiently proved to justify appreciating this fact against the appellant. Abisaini himself admitted that he and his companion Jahura inflicted the fatal blows on Maadil, and admits that the appellant Mandaneran did not enter the house of the deceased but remained outside with another.

The trial judge did not expressly give any of the accused the benefit of article 11 of the Penal Code, as amended, or avail himself of the provisions of law relating to crime in Mindanao and Sulu, for the purpose of mitigating the penalty prescribed by law for any of the accused in this case; but in effect he applied those provisions to Sailabi, Hassim, and Jahura in sentencing them to cadena perpetua instead of death.

Under all the circumstances we are constrained to hold that the appellant merits the same penalty as his companions, with the result that the penalty of death imposed by the trial court will be reduced to cadena perpetua, with the accessories appropriate to said penalty.

As thus modified, the judgment is affirmed. So ordered, with costs against the appellant.

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

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