

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MATARAM, DEFENDANT AND APPELLANT.

G.R. No. 29486. February 09, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The information by which this action was instituted is as follows:

"That on or about the 27th of November, 1927 in the sitio of Baroon, municipality of Iligan, Province of Lanao, Philippine Islands, and within the jurisdiction of this court, the aforesaid accused, together with Moros Maito A. Mama, Pedro and Agpa, still at large, conspiring and acting together, in a band of more than three persons all armed with daggers and lances, did, willfully, unlawfully, and feloniously, with intent to gain, and through force and violence, open Mr. Hansen's store, and rifle it of all money and effects therein contained; and by treachery, evident premeditation, abuse of superior strength, nocturnity and dwelling, assaulted Mr. Hansen and his wife with the weapons they carried, inflicting several fatal wounds on their bodies, as a result of which the said spouses died instantly. Contrary to law."

The information was read to the defendant assisted by his counsel, and the accused pleaded not guilty. And after the hearing at which several witnesses testified for the prosecution and the defendant himself for the defense, the Court of First Instance of Lanao found the defendant guilty of the crime charged as one of the principals thereof, with the circumstance of treachery qualifying the crime as murder, and with the aggravating circumstances of evident premeditation, band, abuse of superior strength, and uninhabited place, and imposing the death penalty on him plus an indemnity to the heirs of the deceased Hansen and those of his deceased wife, and the payment of the costs.

In view of the penalty imposed the case was brought to this court for review, and counsel for the defense now contends that the trial court committed the following alleged errors: (1) In making pronouncement as to facts neither alleged in the information nor proved at the hearing; (2) in giving credit to witness Mosiur Omama, who contradicted himself and failed to explain or clarify the doubts that arose from his own contradictions; and (3) in imposing the death penalty based solely upon presumptions and not upon real proven facts.

It is true that the fact set forth in the decision to the effect that while the accused was detained in the municipal jail of Iligan he tried to kill the guard, striking him with a stick, does not appear from the evidence adduced in the case; but we do not think such an error on the part of the trial court is a ground for reversing the definite conclusions in the case inasmuch as it does not affect the result according to the evidence.

Mosiur Omama, a witness for the prosecution, testified that while he was in a small canoe going towards Ilaya and near the deceased Hansen's house, the accused Mataram and Maito Amama, Apog and Pedro came along; that when those four saw him, Mataram said to Maito Amama: "Let us go after that man or catch him, so that he may not turn informer or give us away;" that thereupon they pursued him and he hid himself behind certain mounds, and thus they left him and did not see him; that from where he lay hidden he saw them go to the American's store

(doubtless referring to the deceased) and saw them attack the American cutting and stabbing him; that he then heard the woman cry out "agtiy" and at the same time, the noise of a box being smashed and after this, witness retired.

The witness added that he was near them when they were slashing Hansen; that defendant Mataram carried some empty sacks and his "malong"; that the American Hansen's house was situated on the side of the river; that the occurrence he related took place in the American's store at sunset; that besides those four people Hansen and his wife were in the store; that the store was already lighted; that previous to that incident he already knew those four, because they used to pass by there selling mats and other things; that the two people who were in the store expired and he saw their dead bodies; that he touched the American Hansen on the body, though he did not know in what part because the deceased's coat was drenched in blood.

On cross-examination said witness testified that he first knew the defendant Mataram when the latter sold sleeping mats and later on when he slept in the house, or on the ground floor of the house of Salongan, and then on the day of the incident; that from where he was looking on at the affair, to the house of the deceased Hansen was a distance of about 50 or 60 brazas; that he was at the river-side of the coconut grove of Macarampat, and Hansen's house was on the other side of the river; that Mataram told Maito Amama that they should pursue the witness; they did not do so for long, and the witness hid himself; that when he met the four they had evil intentions because they carried weapons, lances and daggers; that when he met them the sun was setting but it still shone; that at that moment he was some seven brazas away from them; that the defendant Mataram carried some empty sacks and also a lance on his back covered by sacks.

In answer to some questions put by the court the witness testified that there was a store on the ground floor of the deceased's house; that that store had cloth and various articles for sale; that when the defendant and his companions went to the store they found it open, and before they went in the American was in there, and his wife was in the room also on the ground floor of the house; that the deceased and his wife were in the store downstairs; that he only saw the defendant and his companions slashing away, and the witness left while they were within the store.

Another witness, Manandu, testified as follows: That at the time of the death of Hansen and his wife, the witness was in his house at Baroon; that he did not know whether there was a distance of some 300 brazas between his said house and that of the American Hansen; that at about that time, i. e., when the American Hansen died the witness left his house at sunset; that on that afternoon of the Sunday on which said American died, the witness was away from his house, and in the woods; later he went home and visited some nephews; that while he was in his house and after resting he went down towards the ford of the River Agos and went across to the other side in a banca; that there, near the river he saw the defendant Mataram, Maito Amama, Pedro and Apog, and later as night came on, the witness retired to his home, and that on the following morning he learned of the incident.

Upon being examined by the trial court said witness testified that he saw the defendant and his companions near the river, Maito Amama standing near the shore preparing to respond to a call of nature, and Mataram and Pedro were seated; that the witness was at that time more than 3 brazas away from them; that at that time he knew the defendant Mataram only by face, but not by name; that he knew Maito Amama better; that the first three he saw Mataram was in Baroon; that the place where he saw the four was far from the house of the American Hansen; that when the witness saw the defendant and his companions it was between 2 and 4 o'clock in the afternoon of Sunday; that they carried some bundles and he did not know whether there were any weapons inside; that there were two large bundles and another one tied to the belt; that in that bundle, lances without a handle might have been concealed; that that bundle had a covering of coarse wool; that each bundle was rather bulky and he could not tell if it had the same diameter as a man.

Luis Villanueva, Constabulary lieutenant, also a witness for the prosecution, testified that having received a telephone call from the councilor of Baroon, he went to the place of the incident with some soldiers and observed that the two deceased had been attacked at the moment of kindling the lights; that on the table there were a piece of candy, bread, some sugar and a centavo; that from the nature of the injuries he believed the deceased had been attacked by Moros; that the wounds showed that they were caused by daggers and lances.

The remainder of the direct testimony of this witness is literally as follows:

"There was no clue as to who the wrongdoers were except the foot-prints, so I began to examine the strange individuals of that place, one by one, but none of the criminals were there; when I examined Mosiur Omama, he testified that he had been there for one week, and when I questioned him as to the cause of his being there, he answered me that it was only to help Hansen carry the goods which he had to buy in Iligan, to his store, and I found that this man was there without Hansen's knowledge; and when I went on to inquire as to the reason why he went there without Hansen's knowledge he replied that he used to go there every month to help Hansen. I then asked him if there were other strangers with him, but he did not say so until five days afterwards, saying that there were four men, or it was only four or five days since he said that there were four strangers in that place, and that he brought those four men because he had a disagreement with Hansen, and he testified also that he brought those four men to the house of Salongan. Later on, he confessed that he was an eyewitness of the crime in question, and that the assault took place in the afternoon just before nightfall, while he pushed his banea towards the river at a distance of about three or four meters from Hansen's house, and he saw those four men assault Hansen and that Mataram ran after him and therefore he left the place and hid himself."

Upon being questioned by the court this witness, Lieutenant Villanueva, testified that he could not say exactly whether the wrongdoers had carried away or stolen some goods from the store, but that there was quite a lot of goods in the store strewn around; that Mataram, in one of his investigations, told him that among the four individuals who arrived at his house in Tamparan, 2:00 and two flashlights were distributed; that Mataram told him that he had not been there; that Maito Amama, Apog and Pedro were not yet arrested.

This is the evidence adduced by the prosecution which we have reproduced almost entirely in order the better to discuss the questions of facts raised by the defense in this instance.

The testimony of the witness Mosiur Omama is- in question, whose credibility, according to the defense, Lieutenant Villanueva himself impeached, said testimony having inspired but scant confidence in the trial court. It is noted that, after a long examination of the testimony of this witness Omama at the trial of the case, as well as what he testified to Lieutenant Villanueva, the lack of credibility that might be imputed to said witness is not due exactly to his having gone beyond the bounds of the truth charging innocent persons with the commission of the crime, but perhaps because he has not told the whole truth, everything he saw and possibly did. This is why the lower court, influenced by the atmosphere created by the trial, stated in its decision that this witness Mosiur Omama must be no stranger to the crime in question and was probably a companion of those who committed it.

The fact that this witness stated in the direct examination that, besides some empty sacks, the defendant carried his "malong," and that upon being cross-examined he said that in addition to the empty sacks he carried a lance, does not necessarily imply contradiction. It does not appear of record that a "malong" is something incompatibly different from a lance; it might be the name for lance in the dialect of that locality, and it must be presumed to be so, considering the testimony of this witness, while the contrary does not appear. The rest of the congruences mentioned in the brief of the defence do not, in our opinion, discredit this witness's testimony, considering the amount of education that might be expected from persons of his station.

As to this witness not having declared everything all at once to Lieutenant Villanueva, this, as we have already

pointed out, does not necessarily mean that he did not tell the truth, the impression left by his testimony, viewed in the light of the other evidence of the case, including the defendant's statements, is that witness Omama, if he told the truth in his testimony did not tell all he knows about the, incident.

With respect to the presence of the defendant and his companions on the afternoon in question in the surroundings of the house of the two deceased, said witness Omama's testimony is amply corroborated by that of the witness Mamandu, whose veracity there is not sufficient reason to doubt.

Considering the importance of the case, we deem it necessary to quote the defendant's testimony in full, it being the only proof he presented, which is as follows according to the transcript of the stenographic notes:

"Moro Mataram, after being duly sworn, stated that he was 26 years of age, married, a farmer, residing in the municipal district of Tamparan, Province of Lanao, and through an interpreter testified as follows:

"DIRECT EXAMINATION BY THE DEFENSE

"Mr. OBACH:

"Q

On or about November 27, 1927, did you at any time leave your place at Tigtagos?

A

Yes, sir.

"Q

Where did you go?

A

I came here to Dansalan.

"Q

With whom did you come to Dansalan ?

A

I came with Maito Amama, Apog, and Pedro. They said to me that we should all go down to the beach.

I asked, what for? where were we going? They said to me: 'Accompany us to Tacob, Iligan;' and we boarded a truck and on reaching Overton we went in the opposite direction from Iligan, and upon reaching the Agos River we took a small banca, and after arriving at the other side of the river near the American's house, and in front of said house, they said to me: 'Wait for us here' (where there was a stone), and when I went up to where the stone was, I asked them: 'What are you going to do there?' They answered that they were going to buy rice to cook at Salongan's house. Some time later, and while I was resting upon the stone where they left me, I heard the American shouting: 'Moros!' and I saw that they had been slashing the American, among them Pedro, Apog, and Maito Amama. After killing the American, Apog said to Pedro: 'Tell Mataram to come into this store, and if he will not, kill him and leave him dead on the beach;' when I heard that they wanted to kill me I ran away and did not stop until I reached the Agos River. On reaching the river I could not swim because it was night and I was

afraid, and could not cross the river because I could not swim and I had to wait for them and before long they came. As soon as they came up they turned their two flashlights on me and said: 'Let us swim across the river leaving this Mataram behind.' Then I said to them, 'Why will you leave me behind for I do not know how to swim?'; they answered: 'It is well that you die for you did not help us.' I replied that I did not attack because I know the law of the government. Then Apog and Maito Amama swam across the river to get the banca and we all went into it. On reaching the other side of the stream, I asked them: 'What have you taken?' They said to me, 'Coward, you ought to be stabbed now and get killed'; after this we all ran and on Monday we arrived here at the Dansalan market, and my companions bought maruya and we ate in the banca, for I was compelled to follow them because they were going to kill me, so where they went I had to follow, and being in the banca, I saw the goods carried from the store which were: two flashlights; seven sets of gold buttons; a gold watch; and, they each had fifty pesos in cash, and thus we continued our return voyage and when we came to Bitingas I asked them for a part and they answered: 'You ask us now, you coward! and you who did not help us/ On the afternoon of our arrival at Bitingas they went home with a Koran and made me swear on it that I would never reveal the incident to anyone, and I, in fear, had to swear. It now turns out that they were being called and sought by the governor but they did not present themselves and I, upon being summoned, immediately presented myself, and now they are outlaws.

"Nothing else.

"COURT'S QUESTIONS

"Q Why is it that having sworn upon the Koran not to reveal the crime to anyone you have now told everything?

A Because it was a forced oath not a voluntary one.

"Q I think it was your good fortune not to have been killed by them. Is it because you are a relative of theirs?

A No, sir.

"Q At what distance did you remain on the stone, when your companions went to the store?

A Some 10 brazas

"Q Who was the bravest of your companions?

A All of them and Apog was wounded near the elbow because Mato Amama wounded him.

"Q The American had weapons in his house, a gun and a pistol, why could he not fire on you?

A Because he was measuring out rice.

"Q What blow, while the American was measuring out rice, what blow or what attack did he receive?

A Apog stabbed him.

"Q What was the result of that stab? What happened to the American?

A The American fought with them saying 'Moros' and between them they assaulted the American, each dealing a blow.

"Q How many wounds did Apog inflict on the American?

A I don't know, because I was not in the store.

"Q Who killed the woman?

A Maito Amama, by cutting her throat.

"Q Who was assaulted first the American or his "wife?

A The American.

"Q While the American was being assaulted where was the woman?

A When the American was attacked the woman ran upstairs followed by Pedro.

"Q When your companions went in or towards the store was it still open or already closed?

A Open because the American and his wife were seated on. a bench outside the store, but the latter was already lighted.

"Q Before the attack, while the American was still seated on the bench outside the store with his wife, did any words pass between your companions and the store people?

A Yes, sir; saying they wanted to buy some rice.

"Q You said that the rice they were going to buy at the American's store was to be cooked at Salongan's house; why you were going there?

A Because we were going to sleep there as it was already nighttime and we could not reach Tacob.

"Q Besides the goods and currency you have mentioned did your companions carry away anything else from the store?

A Two bolts of cloth wrapped up in eight bundles.

"Q Why did they not take away all the goods from the store?

A In order not to be discovered by the other Moros.

"Q Which was the real object: to take the goods from the store or to kill the American?

A I did not hear."

As we have seen, the defendant admits that he left his place, Tigtagos, and went to Dansalan on the day of the crime in company with Maito Amama, Apog, and Pedro, the very persons mentioned by the witnesses for the prosecution, Mosiur Omama and Menandu; he admits that together with them he went towards the house of the American; he admits that the American and his wife were attacked and killed upon that occasion; he admits that goods were carried away from the shop consisting of two flashlights, buttons and a gold watch, two bolts of cloth wrapped in eight bundles. What he does not admit is that he went into that shop and personally took an active part in the slaying and the robbery of the goods; but it happens, that notwithstanding the fact, as he says, that his companions left him near a stone in the immediate vicinity of the store in question, about 10 brazas away, the defendant knew that it was Apog who began the attack with a dagger on the American; he knew also that the woman was killed by Maito Amama who stabbed her in the neck, and that when the American was assaulted the woman ran upstairs and that she was pursued by Pedro. These facts having occurred within the house, and considering the other evidence and circumstances of the case, we deem the conclusion to be justified that the defendant was not outside the house, as he Would assure us, but was inside; the store, at least witnessing said facts narrated by him; otherwise he should not be able to relate them in such detail.

Nor do we think the defendant worthy of belief when he states that after slaying the American, Apog told Pedro to make the defendant go into the shop and if he was unwilling, to kill him; and that when he heard it he ran away to

the river, and as he could not swim because it was night and he was afraid, he awaited his companions who arrived not long afterwards. If they meant to kill him because he would not go into the store and he was afraid and so ran away, why is it he did not obey and go into the store? If he was afraid and therefore ran away why did he wait for his companions on the bank of the river? Such points testified to by the defendant demonstrate nothing more than his own efforts to appear, not as a participant in the crime in question, but as a mere companion, which certainly is beyond understanding, because, if he was not going to take part in the crime why is it that he went with them? Why accompany them until near the place of the crime? If he did not take part in the act, if he was not one of those malefactors, why did he remain in their company despite the alleged threats of death which they repeatedly made to him? Why be with them in the banco, and there share-sweetmeats with them? Why did he dare to ask them for a part of the stolen articles? The admission made by the defendant before Lieutenant Villanueva that P200 and two flashlights were distributed among the four individuals who arrived at his house in Tamparan is corroborated by the testimony of the defendant himself given at the trial of the case to the effect that when, after the crime, they were already in the banco, his companions each had P50 in cash. And since, according to himself, his companions were Maito Amama, Apog and Pedro, that is, three persons, the defendant, according to all the evidence in the case, must have been one of those four to whom he referred in the presence of Lieutenant Villanueva, among whom the aforesaid sum of two hundred pesos was divided.

We deem the testimony of the eyewitness Masiur Omama to be true inasmuch as it is corroborated not only by the witnesses for the prosecution Manandu and Lieutenant Villanueva but also by the defendant himself.

We find it to be proven beyond a reasonable doubt that the defendant took part in the crime alleged in the information, as one of the principals thereof. And there having been conspiracy between him and his companions to commit the crime, he, the same as the others, must answer for the acts of all. (U. S. vs. Ipil, 27 Phil., 530; U. S. vs. Remigio, 37 Phil., 599; People vs. Cabrera, 43 Phil., 64.) And we hold that there was conspiracy for it is so proven by the circumstances deduced from the established facts. That the defendant went to Dansalan in company with those three, Maito Amama, Apog and Pedro, and thence to the store of the deceased; that they all concealed their real object in going to that store from the victims, pretending that they wanted to buy rice; the almost simultaneous attack on the victims; the taking of the goods from the store; that all returned in one another's company; and the division among them of the stolen money, are all circumstances, which, without leaving room for any supposition incompatible with the conspiracy, established it, indirectly, it is true, but sufficiently and beyond a reasonable doubt.

While the information enumerates as aggravating circumstances of the crime, treachery, evident premeditation, abuse of superior strength, nocturnity and dwelling, the decision of the court below takes into consideration the treachery, evident premeditation, abuse of superior strength, and, in addition, those of being, in band and of uninhabited place.

Nevertheless, the Attorney-General finds in the crime in question the aggravating circumstances of treachery, band, and dwelling, without being offset by any extenuating circumstance.

According to the evidence there was treachery, and as the crime alleged and proven is the complex crime of robbery with double homicide, the treachery is not to be considered as a qualifying, but only an aggravating circumstance. Also, according to the evidence, there was the circumstance of the crime having been committed in the dwelling of the offended parties. The evidence is not definite enough for us to consider the presence of the other aggravating circumstances found by the lower court or by the Attorney-General, and in regard to the uninhabited place, we understand that it was not so, for, at least witness Manandu's house was about 300 brazas from the place of the crime.

The majority of the members of this court are of opinion that no extenuating circumstance may be considered in favor of the defendant and that the appealed judgment, in so far as it imposes the death penalty, should be affirmed.

The writer of this opinion is convinced that the defendant was a member of the gang of malefactors who committed the crime herein involved, and that he is guilty of the crime charged; nevertheless, in view of the fact that the evidence is not clear upon the point of whether or not this defendant was one of those who, with their own hands, killed the deceased, it being justly inferrible from the record that another or others of the members of said gang of malefactors are, in a way, more guilty than the herein accused, and taking into account the latter's grade of education, the undersigned, believes that, in view of the circumstances of the case, the most adequate penalty to be imposed on the accused is that of life imprisonment.

Due to the lack of unanimity in the imposition of the death penalty it follows that, pursuant to the provisions of law, the proper penalty to be imposed on the accused is life imprisonment.

Therefore, the judgment under review is hereby, modified, the defendant being sentenced to the penalty of life imprisonment, and to pay P1,000 to the heirs of the deceased Hansen, and P1,000 to the heirs of the said Hansen's deceased wife, plus the costs of both instances. So ordered,

Avancena, C. J., Johnson, Street, Villamor, Ostrand, and Villa-Real, JJ., concur.

DISSENTING

MALCOLM, J.:

I am convinced that the evidence justifies the imposition of the capital penalty and accordingly vote to affirm the appealed judgment.

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