

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LAOTO, LABI, GUMAGADONG, MANINTONG NO. 1, MANINTONG NO. 2, UDTI AND GUTI, DEFENDANTS AND APPELLANTS.

G.R. No. 29530, December 08, 1928

Ponente: VILLA-REAL J.

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VILLA-REAL J.:

Moros Loato, Labi, Gumagadong, Manintong No. 1, Manintong No. 2, Udti and Guti appeal to this court from the judgment of the Court of First Instance of Lanao finding them guilty in accordance with the fiscal's information, of the murder of Otto Seifert, and taking into account the aggravating circumstances of abuse of superior strength, uninhabited place and evident premeditation, sentencing each of them to life imprisonment, to indemnify the deceased's heirs in the sum of P1,000 jointly and severally, with the accessories of the law, and to pay one-eighth of the costs.

In support of their appeal, appellants assign the following alleged errors as committed by the trial court in its judgment, to wit:

"1. The trial court erred in holding that the herein accused and appellants were members of the gang that murdered Otto Seifert, and that the crime committed by them was done with the knowledge and consent of Sultan Laoto, simply because said authors of the crime lived within his sultanry.

"2. The trial court erred in not holding that the real and only perpetrators of the crime against Otto Seifert, and the only ones liable for said criminal act were Karadang (alias Marcos), Andi, Dumaut, Solugan, Makarampat, and B. F. Mabasa, and in not acquitting the herein accused-appellants their guilt not having been proven beyond a reasonable doubt."

The following facts were proved at the trial beyond a reasonable doubt:

Otto Seifert (alias Kid) purchased of Doctor Feliciano a parcel of land situated in the barrio of Lala, district of Kolambugan, Province of Lanao. With the intention of devoting himself to agriculture, Otto Seifert built a house in said barrio, bringing his family with him. The land was under the jurisdiction of the Sultan of Kapatagan, who is the appellant Moro Laoto, who pretended to be the owner of said land. Besides this dispute over the title, some of the hens and chickens of the accused Laoto had been killed by the deceased's dog. Later on Otto Seifert had a discussion with a certain B. F. Mabasa as to the use of a river. He also had some words with Moro Karadang (alias Marcos) who pretended that Seifert had ordered him from his land after he had broken it and planted it with rice without paying him for his labor. In view of these difficulties the deceased interviewed Commandant Johnson of the Constabulary who advised him to be congenial with the natives if he wished to continue living there.

On the morning of June 13, 1926, the deceased invited his servant, the Moro Aman, to help him plant coconuts. Having planted some seeds they went up the house to eat. After eating they resumed the planting until they finished it. Then, having nothing more to do Seifert invited Aman to go with him to the launch to see if anything was wrong, because he intended to go to Kolambugan to meet Commandant Johnson. Seifert went ahead and

Aman remained behind to respond to a call of nature. A short time after, Aman heard two shots from the direction of the launch. He then cried out, "What is that?," and all the answer he got was moaning. "Ay, Ay," followed by four shots. At the same time he saw some Moros running towards the river, hiding themselves behind tree trunks. At the side of a tree, he saw two paliuntods (imitation shotguns). After a moment's reflection he deemed it unwise to go to the launch for fear of being killed also, for he believed that Seifert was already dead. He went back to his master's house where he met the latter's wife in tears, who asked him about her husband. In answer he asked for the shotgun saying that there were enemies. With gun in hand and provided with ammunition, he left the house; but after having gone about 4 brazas from the stairway, the deceased's wife cried out to him, "Come back, Aman, they are coming." At that moment the Moros entered the wire fence and upon coming to within 30 brazas of the house they spread out firing on Aman and crying that he was nobody to resist them, and asking him how many bullets of his paliuntod he could eat. In view of this attack Aman also fired on the assailants saying, "Let us commend ourselves to God for I have nothing against you to see who survives." Fortunately, they did not succeed in hurting him, but he killed one of them instead, and the rest ran away. The dead man was found to be the Moro Andi, who carried around his waist the sheath, Exhibit B, of the revolver which Seifert had on going out of the house. Moro Andi was a younger brother of the accused Laoto. During the skirmish, Aman recognized the accused Udti, Gumagadong, another younger brother of Laoto, and Karadang (alias Marcos). Seifert's wife, named Maxima, also recognized Moro Manintong No. 2, and Labi from her house. After the shooting, two paliuntods were found near the place where Moro Andi fell dead. Moros Karadang (alias Marcos) and Udti each carried a paliuntod; Moro Gumagadong had a gun. After retiring the Moros directed their steps to the lands of the Sultan of Kapatagan, carrying kampilan, paliuntods and a revolver. When the authorities began to investigate the appellant Laoto with his men went to the mountains to hide. A year later said accused asked his brother-in-law, Moro Dimarousing, who was then the municipal president of Kapatagan, what would happen to them if they gave themselves up. Sometime later they gave themselves up to the Constabulary bringing with them eight, paliuntods, one remington shotgun, and the revolver Exhibit A.

Upon examining Seifert's body, which was found in his boat, serious wounds were found on his back caused by shots.

The accused Udti and Manintong No. 1, testifying in their own behalf, said that they knew nothing about the crime. The defendants Gumagadong, Manintong No. 2, Laoto, and Labi testified that on the morning of the incident they were in Simpac. Laoto testified, moreover, that on that morning Moro Udti informed him in Simpac that Moros Karadang, Solugan, Makarampat, Dumaot and Andi had killed Seifert; that on being thus informed he went to Dumaot's house and there saw Karadang, Solugan, Makarampat, and Dumaot armed with three paliuntods and the revolver Exhibit A; that at his request Karadang showed him the mechanism of the revolver; that he then invited them to Labi's house in Simpac but instead of following him they escaped, leaving the revolver in his possession; that when he returned to Labi's house he called together all his men and told them that he would go to see the provincial governor to give him Seifert's revolver, and to inform him that Andi, Karadang, Dumaot and Makarampat had killed Seifert; that his followers begged him not to do it because if the Constabulary saw him they might kill him, because his brother Andi was one of those who killed Seifert; that he and his people then went to the forest to hide themselves; that later they informed him that the Constabulary were on his track to kill him and so he bought firearms and distributed them among his followers.

Moro Guti, witness for the defense, testified that on the night before Seifert's death, he saw Moros Andi, Solugan, Makarampat and Dumaot in the house of the last named, who was married to a cousin of his; that he found them talking and from the conversation gathered that they intended to kill Seifert, Karadang (alias Marcos) agreeing to commit the deed; that all took an oath; that because he had witnessed the conversation, they made him swear also, and ordered him to follow them so that he might not be able to denounce them to Laoto; that Moro Karadang

ordered them to leave in the early morning so Laoto would not notice their movements; that at the middle of the road, Karadang took them to the foot of a tree from which he took out several paliuntods wrapped in palm leaves, and distributed them among his four companions retaining one himself; that they arrived at Lala at dawn and went towards the school and thence to where Seifert's launch was moored; that at about noon Seifert went to his launch and while he was in it Karadang fired his paliuntod at him but missed him; that Seifert then drew his revolver and fired at them; that Seifert and Karadang kept on firing at each other and when Seifert turned his back to Karadang the latter fired a shot that hit him; that when Karadang saw that Seifert was dead he and Andi climbed on the launch shouting; that Andi took Seifert's revolver and then they went to Simpac; that while passing by Seifert's wire fence Aman saw them and fired at them; that his companions then entered the enclosure and he ran away to tell Laoto that his aforesaid companions had killed Seifert.

Notwithstanding the denial of the defendants Udti, Gumagadong and Manintong No. 2, the evidence clearly shows that at the instigation of one B. F. Mabasa, and under the leadership of Moro Karadang (alias Marcos), they went to the house of the deceased Otto Seifert (alias Kid) in the barrio of Lala, District of Kolambugan, Province of Lanao, armed with paliuntods on the morning in question. Having found the latter in his boat the Moro Karadang (alias Marcos) fired several shots at him causing his instant death. They then proceeded to their victim's house, but thanks to the resistance put up by the latter's Moro servant Aman, who with his master's shotgun fired several shots, the assailants dispersed and fled when they saw that one of them, Moro Andi, fell dead during the skirmish. During the fight Seifert's servant recognized the defendants Udti, Gumagadong, and Karadang. Maxima, the deceased's wife, also recognized Moros Manintong No. 2 and Labi.

With regard to Moros Laoto, Manintong No. 1 and Guti, the record contains no evidence either direct or circumstantial that they took part in the commission of the crime. While it is true that Laoto was the Sultan of Kapatagan, and had influence over the accused, who were all his men, and that when he heard that the authorities were investigating Seifert's death, he bought arms and fled to the mountains with his people, yet these facts are not sufficient to establish, beyond a reasonable doubt, that he took a direct or an indirect part in the commission of the crime, especially having explained that the reason Why he bought the weapons and fled to the mountains with his people, was that as he was a brother of Moros Andi, Gumagadong and Labi, he feared they might implicate him in the commission of the crime. Considering the frequent encounters between the Moros and the Constabulary soldiers it is not unlikely that Laoto, being Sultan of Kapatagan, should fear that they might suspect him, if not of being the instigator of Otto Seifert's death, at least of having lent his support, on account of the differences which he had had with the deceased concerning his ban-yard fowl. Besides, there is the circumstance that after consulting his brother-in-law Moro Dimarousing, municipal president of Kapatagan, he gave himself up to the Constabulary and surrendered all his weapons.

Neither is there any direct or indirect proof that Manintong No. 1 took part in the murder of Seifert. The only suspicious circumstance against him is that of having followed Laoto to the mountains; but this is not sufficient proof that he took part directly or indirectly in the commission of the crime.

As to the defendant Guti, with the exception of his own testimony that he was compelled by Moro Karadang to swear and follow them in order not to be able to denounce them to Laoto and that after the skirmish he escaped leaving his companions, there is nothing in the record to show that he voluntarily took part in the commission of the crime. In the absence of evidence to the contrary his exculpatory testimony must be accepted, which relieves him of all liability.

The defendants Laoto, Guti, and Manintong No. 1 must therefore be found not guilty, it not having been proven, beyond a reasonable doubt, that they ever took part, either directly or indirectly, in the commission of the crime.

With regard to the defendants Labi, Gumagadong, Manintong No. 2 and Udti, the evidence shows beyond a reasonable doubt that they conspired with Moro Karadang to kill Otto Seifert and cooperated with him in carrying out the object of the conspiracy, and they are, therefore, equally liable for Seifert's death, even though Karadang was the only one who fired the shot that caused the death.

The acts alleged in the information and proven beyond a reasonable doubt at the trial to have been committed by the defendants, constitute the crime of murder denned and penalized by article 403 of the Penal Code, the penalty provided, by law being cadena temporal in its maximum degree to death. In imposing the penalty, the aggravating circumstances of the crime having been committed in band, there being more than four of them and all armed, and of evident premeditation, are to be considered, but not that of uninhabited place which the court below considered, for from Otto Seifert's house the location of his boat could be seen, and his voice could be heard; there being no extenuating circumstance to offset them, for which reason the penalty provided by law should be imposed in' its maximum degree, or death. But inasmuch as section 106 of the Administrative Code of the Department of Mindanao and Sulu grants the trial court the power to lower the penalties provided in the Penal Code, and it not appearing that said trial court abused such discretion, the appealed judgment should be affirmed as regards defendants Labi, Gumagadong, Manintong No. 2, and Udti.

By virtue whereof, the appealed judgment is affirmed in regard to defendants Labi, Gumagadong, Manintong No. 2 and Udti, with the proportional part of the costs against them, and it is reversed with regard to the defendants Laoto, Manintong No. 1 and Guti, who are hereby acquitted on reasonable doubt, with their proportional part of the costs de oficio. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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