

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MOROS ASAAD ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 33673. February 24, 1931

Ponente: MALCOLM, J.

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MALCOLM, J.:

For some time prior to July, 1929, trouble had been brewing¹ between the Moro Angkaya and the Moro Japal Alli. Angkaya resented the actions of Japal Alii and considered that he had a just grievance against him. Eventually Angkaya took council with¹ a number of his relatives and retainers and the plan was concocted to secure two other Moros by the names of Sampang and Suhaili to murder Japal Alli. Sampang and Suhaili, on being informed of the part that they were to play, were not at all loath to perform it. Those participating in the conferences looking to the extermination of Japal Alli were Angkaya; his son Asaad, then a municipal councilor; his daughter Nahula, wife of Mawagi, also present; the brother of Mawaji, named Saladi, and Salim, a policeman of the councilor Asaad. It should be added that in addition to agreeing to kill Japal Alli, it was likewise the consensus of opinion of the conspirators that his wife Nurkisa must also be done away with.

Sampang and Suhaili who had been chosen to commit the bloody deed, visited at the house of Japal Alli on two occasions, apparently for the purpose of making a preliminary recognizance. On the third occasion, which was on July 11, 1929, Sampang and Suhaili again appeared and immediately set upon and killed Japal Alii. Ms wife Nurkisa, entirely unconscious of her danger, was also treacherously murdered.

The murderers first to be arrested and charged with the crimes were Sampang and Suhaili. Afterwards, the information was amended to include seven others, namely, the Moros Angkaya, Asaad, Mawagi, Salim, Sarahaji, Saladi, and the Mora Nahula. Subsequently, the case was dismissed as to Angkaya and Sarahaji, the first because of his death and the second because of lack of sufficient evidence. At the conclusion of the trial, the presiding judge handed down a decision concluding as follows:

"Wherefore, applying to the accused the benefits of section 106 of the Administrative Code of Mindanao and Sulu, quoted above, the court sentences each of them, the Moros Asaad, Mawaji, Salim, Saladi, Sampang, and Suhaili, for the death of Japal Alli, to life imprisonment; the same penalty for each of them for the death of Japal Alli's wife, the Mora Nurkisa; and these penalties shall in accordance with rule 2, article 88 of the Penal Code, not exceed 40 years. The accused Mora Nahula is condemned to 20 years of cadena temporal. Furthermore, all the accused are sentenced to pay jointly and severally an indemnity to the heirs of the deceased in the amount of P2,000 and each of them to pay one-ninth (1/9) of the costs of this trial." The guilt of certain of the accused has been overwhelmingly proven. The principal witness for the prosecution was Sahibil. His story has been sufficiently corroborated to indicate its truthfulness. The attempt to cast suspicion on two innocent Moros by the names of Guak and Tangangan was futile. The defense is unconvincing and unbelievable.

Taking up more particularly the individual criminal responsibility of each of the accused, there can exist no doubt

at all with reference to Sampang and Suhaili, the authors by direct participation in the crimes. Aside from other testimony, there is to be found in the record the evidence of two witnesses who were present when the murders were committed, namely, Daima and Tabalong. The same statement would hold good in its broadest aspect in so far as the accused Asaad is concerned. It is true that the head of the band which conspired to commit the murders was Angkaya, now deceased, but his principal lieutenant was his son Asaad, the municipal councilor. It was at the house of Asaad that meetings were held; it was Asaad who along with his father promised Sampang and Suhaili the sum of P200 for committing the crimes, and it was Asaad who insisted that the wife of Japal Alii needed also to be killed.

The only doubtful factor of the case has had to do with the guilt or innocence of the remaining four accused, Mawaji, Salim, Saladi, and Nahula. These four accused attended the conferences and entered no opposition to the nefarious scheme. After the commission of the murders, they joined with the other accused in celebrating with a fiesta. Aside from this, these four did not cooperate in the commission of the crimes. Nor is it certain that, as relatives or retainers of Angkaya, the four had any influence over Sampang and Suhaili, and that any of the four said or did anything that determined the commission of the crimes. May they be considered as authors by inducement within the meaning of article 13 of the Penal Code? May they be considered as accomplices within the meaning of article 14 of the Penal Code?

Our deliberate judgment on these questions is that the four accused may neither be considered as authors by inducement nor as accomplices. Merely assenting out of respect and fear, and merely attending a feast by way of custom does not constitute an effective inducement. What the four did amounted to joining in a conspiracy. But the Penal Code, in article 4, does not punish a conspiracy as such. As to the accused being accomplices, it has not been shown that, aside from attending the meetings of the conspirators and joining in a feast, they cooperated in the execution of the crimes by previous or simultaneous acts.

In corroboration of the foregoing, there may be cited the comment of Viada on article 13, paragraph 2, of the Penal Code, a comment which has heretofore been adopted by this court, where, among other things, it is said:

"We have heretofore said that in addition to the precepto and the pacto there are similar means by which another may be induced to commit a crime which also make the one who offers the inducement the principal in the crime by virtue of the provisions of article 13, paragraph 2. But it must be borne in mind that these acts of inducement do not consist in simple advice or counsel given before the act is committed, or in simple words uttered at the time the act was committed. Such advice and such words constitute undoubtedly an evil act, an inducement condemned by the moral law; but in order that, under the provisions of the Code, such act can be considered direct inducement, it is necessary that such advice or such words have great dominance and great influence over the person who acts; it is necessary that they be as direct, as efficacious, as powerful as physical or moral coercion or as violence itself." (2 Viada, *Codigo Penal Comentado*, p. 386, 5th Edition; *U. S. vs. Indanan* [1913], 24 Phil., 203.)

We conclude that the defendants and appellants Sampang, Suhaili, and Asaad have been proved guilty beyond a reasonable doubt of double murder. We further conclude that the defendants and appellants Mawagi, Salim, Saladi, and Nahula have not been proved guilty beyond a reasonable doubt of the crimes charged, or of any lesser crimes included in the charge, and that as a consequence they are entitled to acquittal.

Regarding the proper penalty, the trial judge found in effect the presence of the qualifying circumstance of premeditation and the aggravating circumstance of the commission of the crimes in the dwelling of the deceased, to which he added the further aggravating circumstance of treachery in the killing of the wife of Japal Alii. The trial judge then admitted candidly that, strictly speaking, there were present no mitigating circumstances. However, considering the respective attitudes of the families of Angkaya and Japal Alii, and the ignorance of the

accused, he was led to apply the provisions of section 106 of the Administrative Code of Mindanao and Sulu. We accept the legal pronouncements of the trial judge to the extent that they apply to the three defendants and appellants who are convicted.

The judgment appealed from will be affirmed in so far as it refers to the defendants and appellants Sampang, Suhaili, and Asaad, and will be reversed in so far as it refers to the defendants and appellants Mawaji, Salim, Saladi, and Nahula, each of whom will stand acquitted of the charge, with a one-ninth part of the costs of the first instance against each of the defendants and appellants Sampang, Suhaili, and Asaad, and with a one-seventh part of the costs of this instance against each of the three defendants and appellants last mentioned, with six-ninths part of the costs of the first instance de officio and four-sevenths part of the costs of this instance de officio. So ordered.

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

JOHNS, J., dissenting:

I dissent. The judgment of the lower court should be affirmed.

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