

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ESPARE, BABANY AND ASU (MOROS), DEFENDANTS AND APPELLANTS.

G.R. No. 39989. January 24, 1935

Ponente: VICKERS, J.

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VICKERS, J.:

The appellants were tried in the Court of First Instance of Davao on a plea of not guilty to an information for triple murder alleging:

"Que en o hacia el 3 de marzo de 1933, en Sirawan, Municipio y Provincia de Davao, Islas Filipinas, y dentro de la jurisdicción de este juzgado, los referidos acusados, aprovechando la obscuridad de la noche, conspirando juntos, obrando de común acuerdo y ayudándose mutuamente, con abuso de superioridad y con bolos que entonces consigo llevaban, agredieron a Hosei Higa, Matsuo Higa y Kentaro Higa causándoles varias heridas en sus respectivos cuerpos; y que a consecuencia de dichas heridas, los citados Hosei Higa, Matsuo Higa y Kentaro Higa murieron en el acto."

The trial judge found the appellants guilty of the crime of triple homicide, and sentenced each of them to suffer fourteen years, eight months, and one day of reclusion temporal, to indemnify the heirs of the deceased in the sum of one thousand pesos, and to pay the costs.

The attorney de oficio for the appellants alleges that the lower court erred as follows:

"1.º Al estimar que las pruebas de la acusación justifican la delincuencia de los enjuiciados, basándose principalmente en las declaraciones de los testigos Kay, Jutuko Uehara y el Sargento Gonzalez, y en los bolos de los procesados, supuestamente manchados de sangre, exhibitos B, C y D de la acusación.

"2.º Al concluir que la defensa de los acusados carece de fundamento ni es suficiente para inspirar duda racional, cuando menos."

"3.º Al declarar a los acusados culpables fuera de toda duda racional del delito de triple homicidio, y al condenar a los mismos."

The information, which does not appear to have been based on a careful investigation of the facts, was presented by a deputy fiscal, and at the trial of the case, after the first witness had testified, the direction of the prosecution was turned over to a private prosecutor. The evidence for the government, although poorly presented, is in our opinion sufficient to sustain the conviction of the defendants.

It appears from the evidence that Hosei Higa, a Japanese, lived with his wife, Matsuo Higa, and his son, Kentaro Higa, eight years old, and two younger children in the barrio of Sirawan in the municipality of Davao. Early on the morning of March 3, 1934, Oshi Seniabukuro went to the house of Hosei Higa, while looking for his carabao. He found the dead bodies of Higa and his wife, and son, Kentaro, lying on the floor in the sala. The two younger children, four and six years old, apparently unharmed, were sitting in the sala. These children returned to Japan

before the trial. The record does not show what effort, if any, was made to find out whether they knew anything about the murder of their parents and brother. Semabukuro testified that he knew the three accused, and that they did not live far from his house.

Jutuku Uehara, for whom the accused were working lived about one thousand meters from the house of Higa. On the morning of March 3d, the defendant Espare told Uehara that Higa had died, and when Uehara asked him whom he referred to, he replied "Higa, and his wife, Matsuo, whose son is named Kentaro." When the private prosecutor tried to elicit from the witness what else Espare had said, the trial judge erroneously sustained the objections of the defense and ordered the answer of the witness stricken out on the ground that it was hearsay, ignoring the fact that these statements made by Espare were the admissions of one of the accused. Uehara further testified that Espare formerly worked for the deceased Higa.

The authorities were notified, and on March 4th Dr. Alfonso Saberano, president of the first sanitary division of Davao, Lieut. Lamberto B. Canos, and some constabulary soldiers went to Sirawan to make an investigation. Dr. Saberano stated that the three bodies were found lying near one another in the sola; that there was no indication of any struggle, because no blood was scattered on the floor. Numerous mortal wounds had been inflicted on each of the deceased with some cutting instrument.

Sergeant Simeon Gonzalez testified that Lieut. Cafios ordered him and Sergeants Becera and Iballo to arrest the defendants herein. When the three sergeants reached the house of Espare, they asked him for his bolo, and he gave them a little bolo; they then asked him if he did not have another bolo, to which he replied that he did not; but when the petate on which Espare slept was unrolled Sergeant Becera found a bolo stained with blood. The blood on the bolo was dry. The witness could not say whether it was human blood or that of some animal. When the soldiers found the blood-stained bolo, Espare began to tremble, and when they asked him why he was trembling, he said "nada". He admitted that the bolo belonged to him. The soldiers went to look for the other defendants. They first found and investigated Babany. They received from him practically the same answers they had received from Espare, and found rolled up in his petate a blood-stained bolo. The soldiers then investigated Asu. They asked him if he had a bolo, and he said he did not have any other bolo than the one that was hanging in his house, but the soldiers found another one behind a post in the place where Asu slept. He denied at first that it was his, but finally admitted that he used it in his work. It had the same kind of stains as the bolos of Espare and Babany.

The three defendants were then taken to the house of the deceased. They did not wish to enter the house, and had to be pushed up the steps; and when they stood before the dead bodies, the defendants began to tremble.

The three defendants are Moros. Another Moro named Kay, who was investigated by the constabulary, incriminated the defendants. Ratifying what he had told the constabulary soldiers, Kay testified at the trial that he lived with the defendants, although they were not working in the same place; that about six o'clock in the evening of March 2d Espare invited the witness to go with Espare and the other defendants that night to commit a robbery, but he declined the invitation; that the defendants left the house together; that he, the witness, went to the house of Piang to eat his supper, and then returned to sleep in the house of Espare; that the defendants came back about ten o'clock, and Espare told his coaccused not to mention the fact that they had killed anybody; that Babany and Asu then withdrew to the house of Dato Kalimbo, while Espare remained there and went to sleep.

The defendants set up in their defense an alibi. They tried to prove that on the night in question Espare was at home with his wife, Danga, and that Babany and Asu slept in the house of Kalimbo, and did not go out after half past seven that evening. Aside from the inherent weakness of this defense because of the ease with which it may be fabricated, it appears from the evidence that in the present case all the witnesses called to prove the alibi of the defendants were related to them or especially interested in their acquittal.

The defense attempted to show by one Piang that Kay was not in the house of Espare, but in the house of Piang, the night that the murder was committed; but the testimony of this witness, even if it be given credit, is insufficient to prove that Kay did not sleep in the house of Espare on the night in question. He refers to the night prior to the day when the constabulary soldiers went to Sirawan to make an investigation. He did not know of the murder of the Japanese until the soldiers arrived. There seems to be some confusion in the record as to the date of the murder. The prosecution proceeded on the theory that it was committed on the night of March 3, 1934, but Uehara testified that it was on the third of March when Espare informed him of the death of Higa, and the trial judge states in his decision that the bodies of the deceased were found on the morning of the third of March. According to the certificate of Doctor Seberano he examined the bodies of the deceased on the morning of the fourth of March. Lieut. Canos testified that he was notified of the murder on the fourth of March, and went to Sirawan on that date. The testimony of Sergeant Gonzalez was to the same effect.

The trial judge, after hearing the witnesses testify, was satisfied as to the truth of the testimony of Kay. No reason has been adduced that would justify us in holding that the trial judge erred in his appraisal of Kay's testimony.

Although Sergeants Becera and Iballo ought to have been called as witnesses to corroborate the testimony of Sergeant Gonzalez, their testimony was not indispensable. The defense lays stress on the fact that the bolos found in the possession of the defendants were used in preparing hemp stalks for stripping, but this fact affords no explanation of why the bolos were found concealed in the defendants' petates that had been rolled up, or why the defendants denied having the bolos in question.

Upon a review of the whole record, we are of the opinion that we should not be justified in rejecting the lower court's findings of fact. The appellants are guilty, however, not of a complex crime, but of three crimes, that is: two crimes of homicide for the killing of Hosei Higa and Matsuo Higa, and the crime of murder for the killing of the child, Kentaro Higa.

As the penalty imposed was within the discretion of the trial judge in accordance with section 106 of the Administrative Code for the Department of Mindanao and Sulu, regardless of the classification of the crime as homicide or murder and of the circumstances, we sentence each of the appellants to suffer the following penalties:

- (a) For the killing of Hosei Higa, an indeterminate sentence of not less than six years and one day of prison mayor and not more than fourteen years, eight months, and one day of reclusion temporal, and to indemnify the heirs of said deceased in the sum of P1,000;
- (b) For the killing of Matsuo Higa, an indeterminate sentence of not less than six years and one day of prison mayor and not more than fourteen years, eight months, and one day of reclusion temporal, and to indemnify the heirs of said deceased in the sum of P1,000;
- (c) For the killing of Kentaro Higa,, an indeterminate sentence of not less than six years and one day of prison mayor and not more than fourteen years, eight months, and one day of reclusion temporal, and to indemnify the heirs of said deceased in the sum of P1,000.

As thus modified, the decision appealed from is affirmed, with the costs against the appellants.

Avanceña, C.J., Street, Abad Santos, and Hull, JJ., concur.

Judgment modified.

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