

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. UTI MARIMPOONG ET AL., DEFENDANTS. MASIÑGER AMPAL, APPELLANT.

G.R. No. 43514. September 05, 1935

Ponente: HULL, J.

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HULL, J.:

Early in the morning of the 17th of November, 1934, in the municipality of Mandulog, Province of Lanao, a Moro, Bakang Dianal was suddenly assaulted by a group of armed Moros, who inflicted upon him a number of wounds causing instant death.

Three persons were brought to trial in the Court of First Instance of Lanao charged with murder, for this crime. One pleaded guilty, one was acquitted by the trial court, and the third, Masinger Ampal, was found guilty after trial and brings this appeal alleging the following errors:

- "1. The trial court erred in admitting Exhibit B which is the supposed written confession of Masinger Ampal, the appellant herein.
- "2. The trial court erred in holding that the said written confession, Exhibit B, was the genuine representation of appellant's participation in the crime with which he is charged.
- "3. The trial court erred in convicting the appellant under the proofs."

The principal contention of counsel was that Exhibit B should not have been admitted as the appellant was in confinement and was not cautioned that his confession might be used against him. The old English rule above relied upon is not in force in this jurisdiction, and a confession may be used if voluntarily made.

It clearly appears from the evidence that the appellant stated to a lieutenant of the Constabulary and to the chief of police of Iligan, Lanao, that he was anxious to make a clean breast of his connection with the crime. The confession was made in the Visayan dialect, the first part to the lieutenant of the Constabulary and the latter portion to the chief of police, and after it was written up it was thumbprinted by the appellant before the justice of the peace.

At the trial he testified that he thumb-printed the document because he thought it would set him free, but he did not testify that any one of the three officials connected with the taking of the confession made any such promise to him.

After he executed Exhibit B he met his wife at the door and said, "Well I have done it and I want to talk to you for the last time." It is contended that he meant by this that he had finally told the truth. When he saw the brother and the widow of the deceased, he approached them and kissed their hands, which in the words of the chief of police of Iligan, according to Moro customs, "showed that he was begging their pardon."

Outside of those who participated in the crime, there were no eye-witnesses to the actual killing. The scene of the

murder was only a short distance from the home of the deceased. When set upon by his assailants, he cried for help, and his wife and a fourteen year old nephew ran to the scene and saw three persons running away, among whom they identified appellant.

The deceased was a prominent man in the municipality and had been having trouble with others over a woman and over some land. The wife of the deceased testified that about a week before, appellant told her for her husband to watch out or he would be killed, and the affidavit, Exhibit B, shows that the killing was planned for some time before it actually took place, so premeditation is dearly established. It is also established by the confession that the assailants lay hidden along the side of the path which they knew deceased would pass along early in the morning, and the deceased was suddenly attacked and killed from such ambush, so alevosia is also present.

The evidence of record proves the guilt of the accused of the crime of murder without any reasonable doubt.

Under such circumstances, the extreme penalty of the law, namely death, could be awarded. However, as the five justices of this division are not unanimous in their belief that the death penalty should be imposed in this case, there is no use in submitting the case to the court in vain with the view of awarding such a penalty.

The judgment appealed from is therefore affirmed. Costs against appellant. So ordered.

Avanceña, C.J., Abad Santos, Vickers, and Recto, JJ., concur.

Judgment affirmed.

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