

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. HUSSIN TALOK, KADIL JAMAS AND ALIAN JAKARIA, DEFENDANTS AND APPELLANTS.

G.R. No. 45611. June 21, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

The appellants were charged in an information filed in the lower court with the crime of murder committed on the person of Asaraji Jumdam, with the aggravating circumstances of evident premeditation, treachery and nocturnity. They were found guilty of said crime and sentenced to suffer the penalty of reclusion perpetua with the accessories of the law, and to pay, jointly and severally, the sum of P1,000 as indemnity to the heirs of the deceased. From the judgment of conviction they appealed to this court, assigning the following errors alleged to have been committed by the lower court:

"I. The lower court erred in giving credence to the testimony of Usman Balahim, the sole witness for the prosecution, who alleges that he was present during the commission of the crime.

"II. The lower court erred in finding as an established fact that the motive for the commission of the crime was to prevent Asaraji Jumdam from testifying against Hussin Talok in criminal case No. 5087.

"III. The lower court erred in considering as proved the following facts:

"A. That the pit in which the belt, Exhibit A, and the piece of rope, Exhibit B, were found was the same pit in which the body of Asaraji Jumdam was interred.

"B. That the belt, Exhibit A, belonged to Asaraji Jumdam and that he wore it on the night of the crime

"C. That the rope, Exhibit B, was used to hold the hands and feet of Asaraji Jumdam on the night of the crime.

"D. The existence of the corpus delicti."

A close examination of the record and of the evidence will reveal the following facts:

Months before September, 1936, a murder case by reason of the death of a Moro named Hussin Jalalain had been pending against the appellant Hussin Talok. The principal witness for the prosecution in said case was the deceased Asaraji Jumdam referred to in the information; but he never came to testify in that case because he failed to show up when needed for that purpose and nothing had been heard about him until the middle of October, of the same year. One, Pusong, who had been engaged in looking for him, on being informed by another Moro named Usman that Asaraji had been killed, lost no time in reporting the matter to Jama, uncle of Asaraji, who had entrusted him with the search for the deceased. Jama immediately communicated the information to the authorities, whereupon Lieutenant Deang of the Army, proceeded promptly to look for Usman, who, when found, was submitted to a questioning from which it was made clear that Asaraji had been killed two months before by the three appellants in the place known as Bandang, in the municipal district of Talipao, Province of Sulu. On

finding some evidence which corroborated Usman's statement, Lieutenant Deang hastened to look for the three appellants whom he thereafter placed under arrest. With the exception of Hussin Talok, the appellants admitted their participation in the murder of Asaraji before trial. Alian Jakaria stated that he and his coappellant Kadil Jamas had been invited by the other appellant Hussin Talok to help him in carrying out his plan to kill Asaraji; that Kadil Jamas was the first to wound Asaraji by spearing him in the side of the body; that when Asaraji turned back as if to escape, Hussin Talok speared him through the abdomen; that when Asaraji fell, Hussin Talok repeatedly slashed him with the barong with which he was armed; that when Asaraji was already dead, they tied his neck and feet to a bamboo pole with a rope and carried the body to a nearby pit where they dumped it and covered it with soil and rocks. Kadil Jamas, in turn, stated that when Asaraji arrived at the place where Hussin Talok told them to lay in wait, which was about twenty brazas or more from the house where Hussin Talok then lived, they suddenly set upon him; that Alian Jakaria wounded him on one side and he (Kadil Jamas) on the other with their spears; that Hussin Talok also speared him in the abdomen and slashed him on the back with his barong on seeing him fall, putting him away thereby; and that the three immediately thereafter tied their victim's neck and feet with rope to a bamboo pole the better to carry him to the pit mentioned by Alian Jakaria.

Hussin Talok testified at the trial that he was only 17 years of age, while Kadil Jamas and Alian Jakaria said that they were only 16 and 22 years, respectively. All three appellants flatly denied the particular acts and facts attributed to them by the prosecution witnesses.

Hussin Talok particularly denied having ever offered Asaraji the amount of P100 so that the latter would not testify as a witness for the prosecution in the murder case which was then pending against him for the death of Hussin Jalalain. He likewise denied having held the witness Usman in his house for two months after the alleged murder of Asaraji in order to be sure that he would not make any disclosure to anybody of what he had seen Hussin Talok and the other appellant do to Asaraji. He could not help admitting, however, that although Usman was not his friend, he had had no differences or enmity with him.

Kadil Jamas denied having ever voluntarily or freely admitted any participation in the killing of Asaraji and that if he had made the admissions which appear in Exhibit D, it was because he had been ill-treated by Lieutenant Deang, of the Army, and by the soldiers under his command. In said exhibit which Kadil Jamas subscribed, it appears that one night, about two months prior to October 16, 1936, while he was with Alian Jakaria in his small hut on his land in Badang, Talipao, Hussin Talok came and woke them up, inviting them to kill Asaraji Jumdam; that as Hussin Talok threatened to kill them should they refuse to assist him, they followed him and obeyed his instructions that they wait for him and Asaraji at a place he indicated; that when Asaraji arrived at the place, followed by Hussin Talok, he (Kadil Jamas) and the other appellant Alian Jakaria wounded him with their spears, one on the right side and the other on the left side; that when Asaraji tried to turn back, Hussin Talok speared him in the abdomen and, on seeing lying on the ground face downwards, finished him with two strokes on the back with his barong; that Hussin Talok then ordered them to carry the body, and with a rope which the witness fetched and a bamboo pole found nearby by Jakaria, they carried and threw it into a pit some eighty brazas from that place, and covered it with rocks; and that at noon on the following day when he (Kadil Jamas) and Hussin Talok saw that the legs of the deceased jutted out of the pit, they covered them with stones and rocks to hide them from view.

Alian Jakaria denied having ever made any admission of his participation in the murder of Asaraji imputed to him by Lieutenant Deang and the witness Usman. He stated that he subscribed Exhibit C because of the ill-treatment he received at the hands of the soldiers of said officer who kicked and beat him with the butts of their guns, and because he was compelled by said soldiers and the chief of police to insert his head into a latrine. He denied that he had ever been a follower of Dasid, uncle of the appellant Hussin Talok. He, nevertheless, said—undoubtedly,

without realizing the significance of his statement—that Dasid, sometime after the commission of the crime, gave him the bolo of Hussin Talok when he was once ordered to look for a missing cow.

In Exhibit C it appears that one night, about two months before October 16, 1936, while the declarant, who is no other than Alian Jakarta, and Kadil Jamas were sleeping, Hussin Talok came to see and tell them that they all kill Asaraji Jumdam; that he (Alian Jakaria) followed the other two; that as soon as Hussin Talok and Asaraji arrived, Kadil Jamas wounded the latter with his spear in the right side; that when Asaraji tried to run back, Hussin Talok speared him in the abdomen and, on seeing him fall, struck him twice on the back with his barong; that upon the death of Asaraji, they carried him to be thrown into a pit; that Kadil Jamas went to look for the rope with which they tied the feet and neck of the deceased, while he (Alian Jakaria) took the bamboo pole on which they carried the body to the pit where they buried it; that they covered the body with rocks and afterwards returned to the hut in which they kept watch over some palay.

If the appellants are to be believed, the conclusion that they did not commit the crime with which they are charged and that their admissions had been obtained through ill-treatment and other acts of violence, would be inescapable. There are, however, the following considerations based upon the testimony of the prosecution witnesses named Jama, Usman, Lieutenant Deang, and the chief of police, Sali Wearble:

Like Asaraji's father, Moro Jama had begun to miss him about two months before he (Jama) reported to Lieutenant Deang the information concerning the death of Asaraji which he obtained from Pusong to whom Usman had related it. The deceased Asaraji should have testified in the case pending against the appellant Hussin Talok for the murder of Hussin Jalalain, but was not able to do so as he failed to appear in court. The case resulted in the acquittal of Hussin Talok. Jama and Usman testified that Moannas, mother of the appellant Hussin Talok, and the latter himself, each on different occasions, had offered to pay Asaraji P100, if he would not testify against him in the said case for the murder of Hussin Jalalain; that Asaraji was evasive, saying that he would think the matter over, but never answered them categorically whether he would accept the P100 or not. Usman testified that at the hour when children are accustomed to go to bed (the parties agreed that this is between seven and eight o'clock at night), on the fourteenth night of the moon's appearance (which must be full moon because the new moon had taken place fourteen days before) about two months before October 15, 1936, which means September 1, of said year, while he was in the house of Taddik, father-in-law of the appellant Hussin Talok, in which the latter; his wife Moino; Sitilaba, Taddik's wife; and another woman by the name of Hayang; and Asaraji were, Hussin Talok left for a moment on the pretext of answering a call of nature; that he returned a little while after in order to take Asaraji along to whom he said that they would sleep together in the house of one Arip; that scarcely had they gone down and walked a distance of about twenty brazas, when he heard the cries of Asaraji, saying "You have deceived me; you want to kill me;" that en looking out of the window, he saw Alian Jakaria spear Asaraji in one side, Kadil Jamas wound him in the other side, and Hussin Talok receive him with a spear-thrust in the abdomen when the deceased turned half around to escape from his aggressors, and saw him further hack Asaraji several times with his barong on the back until dead; that he observed Kadil Jamas look for a rope and Alian Jakaria for a pole, and that the two tied the deceased to said pole by means of the rope in order to carry him to a nearby pit; that he saw all this under the moonlight; that on that night Asaraji had worn, together with his other garments, a colored belt which is Exhibit A. This description of the belt which Asaraji wore on the night in question, tallies exactly with that given by his uncle Jama of the clothes he had on before he left their house to which he never returned for that of Hussin Talok.

As soon as Alian Jakaria was arrested and his disclosures which appear in Exhibit C were known, the authorities and their agents, among whom were the provincial fiscal, Lieutenants Rodriguez, Garcia and Deang, municipal president Sawajan, and chief of police Sali Wearble, went to the place in which he (Jakaria) said Asaraji had been

buried by him and the other appellants. When they reached the place, he indicated the particular spot to these officials. Upon making the excavation, it was noted that the soil, though moist, was loose and soft unlike its compact surrounding, thereby giving rise to the inference "that it was removed not long before. There Exhibits A and B were found. The first was a colored belt cut into pieces. The second was a rope also cut into pieces. The belt was the very one which Asaraji wore when he was last seen in the houses of Jama and Hussin Talok and Taddik. From the analysis of the stains upon it and upon the rope, Exhibit B, performed by the corresponding department of the School of Hygiene and Public Health of the University of the Philippines, it was established that the same were human blood. The body could not be found; but the following observations made upon this fact by the trial court are sound:

"The court does not have the least doubt that the accused Hussin Talok learned from his uncle Dasid that Alian had been brought to Camp Romandier by Lieutenant Deang and that said accused thereupon transferred the body of the deceased on October 15 to some other place with the help of his relatives. He forgot, however, to take away the belt, Exhibit A, and the rope, Exhibit B." (Decision of the lower court, page 14 of the brief for the appellants.)

By reason of Usman's youth, being scarcely 17 years old, he could not have concocted such a complicated narrative as that which appears to have been made by him in Exhibit 7, and that which he made afterwards during the trial. Not even with the assistance of a good tutor could he have made it without falling, as he did not in fact fall, into any contradiction during the long direct and cross-examination to which he was subjected. We should not lose sight of the fact that, although Hussin Talok said that Usman was not his friend, the truth was otherwise because Usman used to stay in the house of Taddik, father-in-law of Hussin Talok, where the latter also lived with his family, that is to say, his wife and two children; and because when Usman committed the crime of physical injuries for which he was prosecuted, according to Exhibits 8, 9 and 10, he was accompanied by Hussin Talok.

The lower court did not give any weight or attach any importance to the alleged declarations made by the appellant Alian Jakaria before the provincial fiscal and by the appellant Kadil Jamas before Lieutenant Deang, for the reason that he entertained a doubt as to the spontaneity of said admissions or confessions. We have carefully read the declarations of the appellants and their witnesses named Moannas, Dasid, Jalaiddi, Hanno, and Taddik, who tried to discredit Usman's testimony that he had heard the offer made to Asaraji so that the latter would not be a witness against Hussin Talok, and that he (Usman) was compelled to stay in the house of Taddik for the purpose of preventing him from disclosing the truth. We do not, however, believe that they are sufficient to destroy the evidence for the prosecution for the very strong reason that Usman's testimony is further corroborated by the fact that the bloodstained belt, Exhibit A, and the rope, Exhibit B, which had been cut into pieces, were found in the pit which he stated was the place where Asaraji's body was interred, and by the unexplained disappearance of Asaraji. The circumstance that Asaraji was the principal witness in the case against the appellant Hussin Talok for the murder of Hussin Jalalain being admitted, as it had to be admitted because it was in no way disputed by the appellants, it is clear that having failed to persuade him to accept the offer of P100 in order to seal his lips, Hussin Talok decided to put him out of the way in order to be sure of his own acquittal, which he was indeed able to obtain because Asaraji's testimony could not be had. That Alian Jakaria and Kadil Jamas helped Hussin Talok in realizing the latter's desire to destroy Asaraji is likewise explained by the fact that they were the followers of Dasid, uncle of Hussin Talok. This Kadil Jamas admitted, and although Alian Jakaria did not on his part clearly admit it, it can be inferred from his testimony that he was also a follower of Dasid because, according to him, Dasid once ordered him to look for his missing cow. By their own admission, Usman had no grudge against the appellants, nor had they any against him, nor was he in way, related to Asaraji or to the latter's kin. He had, therefore, no motive for testifying¹ against them, if his declarations were indeed not in accord with truth. It may furthermore be stated that it was Alian Jakaria himself, who showed the authorities, who inspected the scene

of the crime, the pit or particular spot in which Asaraji was buried after his death.

Lieutenant Deang and Chief of Police Sali Wearble denied having mistreated the appellants Alian Jakaria and Kadil Jamas in any way. Lieutenant Deang denied having¹ exerted any pressure on the mind of Alian Jakaria by means of cajolery and promise of reward, and it is improbable that he and the chief of police or their men had done so, otherwise, some tell-tale marks of their illtreatment would have remained on the bodies of the appellants. It must be remembered that they declared having been beaten with the butts of the soldier's rifles and that the statement Exhibit C of Alian Jakaria was made before the provincial fiscal in the presence of the witnesses Villena and Ibañez. If A Han Jakaria had been illtreated, he would have complained of this fact to the said official. As he did nothing of the kind, it is not unreasonable to conclude that there was no such mistreatment, nor was there any pressure exerted by means of cajolery and promise of reward. Furthermore, the letter, Exhibit F, which Alian Jakaria sent Lieutenant Deang on October 30, 1936 destroys rather than merely weakens his testimony concerning the mistreatment to which, he said, he had been subjected. This letter is as follows:

"Sir:

"I am telling you my wife I like her go to Jolo. I have no centavos. I ask you give me centavos for Jolo for my wife. Send to me my tadjong and tothbrus and Colgate. Did you answer my little.

"ALIAN JAKARIA"

Lieutenant Deang answered him on the following day through the letter, Exhibit G, as follows:

"ROMANDIER, Oct. 31, 1936

"DEAR ALIAN:

"Here are your tadjong, toothbrush and Colgate and one peso. If you and your wife like to go to Jolo, it is all right. If you like some work, better go to the Governor and show him this letter.

"LT. DEANG"

Alian Jakaria admitted having sent said letter, Exhibit F, which he asked a student to write for him, but whose name he would not disclose, saying that he could not remember it any more, undoubtedly, in order to avoid being belied by the testimony of said student, or that the latter should testify that Alian Jakaria had himself told him to write to Lieutenant Deang to give him what he asked for in said letter. This letter is not in any wise consistent with Alian Jakarta's charge that he had been mistreated by Lieutenant Deang and his soldiers.

In view of all the foregoing, the conclusion we have reached is that the appellants are liable for the murder of Asaraji Jumdam as principals by direct participation and that the errors alleged to have been committed by the lower court are without merit. The question now to be determined is the scale of the penalty which should be imposed upon each. The Solicitor-General maintains that the qualifying circumstance of treachery and the aggravating circumstance of evident premeditation should be considered against the appellants. This is perfectly correct and proper with regard to the appellant Hussin Talok, because the plan to kill Asaraji Jumdam in order that he might not testify against him in the criminal case for the murder of Hussin Jalalain originated from him. The motive which led to the commission of the crime is very clear as to him. Said motive did not come to his mind on the spur of the moment. He deliberated on it until its very execution, because he had failed to buy and corrupt Asaraji with the bribe of P100 end, accordingly, sought the cooperation of the other appellants. That there was treachery on the part of all three, there is not the least doubt because the aggression on Asaraji Jumdam was perpetrated from behind and without the least suspicion on his part that he was in peril.

From the evidence we do not believe that the aggravating circumstance of evident premeditation should be

considered against the appellants Alian Jakaria and Kadil Jamas because from the time Hussin Talok woke them up to tell them to help him kill Asaraji to the actual killing, only a few minutes elapsed to give them sufficient time to reflect on the act which they were about to execute and the probable consequences of the same. There was not enough time for their conscience to overcome their decision to join Hussin Talok in killing Asaraji. Therefore, the qualifying circumstance of alevosia (treachery) may be considered against all the three appellants in the murder of Asaraji Jumdam; but the aggravating circumstance of evident premeditation may be taken into account against the appellant Hussin Talok alone. It is proper, however, to consider in favor of all of them, the mitigating circumstance of lack of instruction because the evidence shows that they do not know how to read and write. This means that the mitigating circumstance of lack of instruction offsets the aggravating circumstance of evident premeditation in the case of Hussin Talok, and entitles the other two to the minimum of the penalty prescribed by law.

Although the parties have not raised the question of whether Hussin Talok and Kadil Jamas were below 17 and 16 years of age, respectively, we desire to take notice of the fact that the lower court acted rightly in giving no credit to their testimony on the point and in declaring that they were over 13 years old at the time of the commission of the crime. The reasons they gave to the court in claiming to be only of the ages above stated and no more, and the answers to the questions propounded to them are absolutely unsatisfactory for the reason that they limited themselves to saying that they knew their ages because they had been so told by their parents a long time before, without saying when and under what circumstances, it being possible that this was three, four or five years prior to the commission of the crime. On the other hand, the lower court, which observed and heard them testify, and was in a better position to determine by their appearance and other circumstances whether the appellants were really above or below eighteen years, stated that they had already passed that age.

The appealed decision is hereby modified and the three appellants declared guilty of the crime of murder. Hussin Talok is sentenced to suffer the penalty of reclusion perpetua; Kadil Jamas and Alian Jakaria are sentenced to suffer each an indeterminate penalty of ten years and one day of prision mayor to seventeen years, four months and one day of reclusion temporal. In all other respects, said decision is affirmed with costs against the appellants. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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