

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DATU GALANTU MEDTED ET AL., DEFENDANTS. DATU GALANTU
MEDTED, KANAKAN MEDTED, AND MAUTI DUMAURONG,
APPELLANTS.**

G.R. No. 46108. September 22, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

At about 7 o'clock in the night of September 25, 1937, Moro Manankian, married to Sumeringan, received a spear wound in his breast above his right nipple, piercing his right lung and producing a hemorrhage which caused his death a few moments later. This took place in his own house situated in the place called Makamalig in the barrio of Marang, district of Parang, Province of Cotabato. The crime was attributed to the accused Datu Galantu Medted, Kanakan Medted, Mauti Dumaorong, and Makagaan, all Moros, against whom a complaint was first presented in the justice of the peace court of the municipal district of Parang, followed later by an information filed in the Court of First Instance of Cotabato. After due trial in the latter court, the three appellants—the accused Makagaan having been released from the charge upon motion of the fiscal, for lack of evidence—were convicted of the crime of murder and sentenced to suffer the penalty of reclusion perpetua and to pay jointly and severally to the heirs of the deceased an indemnity of P1,000 plus the costs. They appealed from said sentence and in this instance they now argue that the court erred: (1) In not sustaining the defense of double jeopardy in their favor, and (2) in finding them guilty of the crime with which they had been charged, notwithstanding the fact that the same had not been established beyond reasonable doubt.

It appears from the evidence presented during the trial that while the deceased Manankian was cooking coconut oil on the stove inside the kitchen of their house, on the occasion in question, he unexpectedly received a spear wound in his breast, as a consequence of which he was unable to utter any word except to tell his wife Sumeringan that he had been speared. His wife, upon peeping through the uncovered opening between the floor of their living room and that of their kitchen, in order to find out who could have been the aggressors of her husband, saw the appellants by the light of a lamp which was in the kitchen and by that of the flames of the fire in the stove beside which her said husband stood cooking the coconut oil. It likewise appears from the evidence that the appellants and their respective families were not in good terms with the deceased and his wife ever since said deceased, about four years before, charged the father of the first two appellants and grandfather of the last one, with having stolen two carabaos belonging to him and his wife. The person whom the deceased had charged with theft of large cattle was named Sulay. The case had been submitted to a Constabulary officer and later to the chieftains of the place where the parties resided. During the sort of trial held before said chieftains, Sulay was required to swear before the Koran to affirm thereby the truth of his allegation that he had not stolen the animals belonging to the deceased. Upon swearing, he invoked death to come upon him if he was not telling the truth. It happened that Sulay died some years later and the deceased and his faction believed that it was due to his having sworn falsely in connection with the question between him and the deceased, relative to the two carabaos

belonging to said deceased. Thereafter the resentment of the appellants, who are sons and grandson of Sulay, against the deceased and his family, became more accentuated and aggravated. The lower court declared that the motive of the crime was the grave resentment then existing between the deceased and the appellants.

The testimony of the widow of the deceased to the effect that she recognized the accused-appellants as the perpetrators of the aggression committed against her husband, is corroborated by that of the witness Mama, who testified that at the cries of said widow, he saw and recognized the three appellants as they fled from said place, each of them carrying spears and creeses.

While it is true that Sumeringan told Bansil, Sangad and Mamarinta, who were the first to go to hey house after the crime, that she had not been able to recognize the perpetrators thereof, stating the same thing to Lieutenant Cabrera of the Army, who went to the scene of the crime on the following day for the purpose of conducting the necessary investigation, however, the reason given by said witness for having behaved in that manner is not only satisfactory but convincing as well. The widow being a native of the Province of Lanao, she was a stranger in Makamalig and had no relatives therein who could protect her. Bansil, Sangad and Mamarinta were all very near relatives of the appellants, some by reason of blood ties and others by reason of marriage. Although she knew who the authors of her husband's death were, she kept silent for fear of being harmed. She likewise kept silent when Lieutenant Cabrera went to said place to conduct an investigation, because the relatives of the appellants were then present and could hear her. On that same occasion, however, amidst sobs and tears, she told Lieutenant Cabrera in a low voice, outside the hearing of others, that she would go to see him at his headquarters in order to make a true revelation and to give him the names of the perpetrators of the crime. She did so, as she had promised, soon after her husband's body had been buried.

The appellants base their defense of double jeopardy on the fact that the first complaint filed against them in the justice of the peace court was dismissed upon petition of the fiscal himself, for lack of evidence, as soon as it had been received in the Court of First Instance, and on the fact that, notwithstanding said dismissal, the fiscal again charged them with the same acts and offense in another case. This defense is unfounded. The result of a preliminary investigation can neither constitute nor give rise to the defense of double jeopardy in any case, because such preliminary investigation is not and does not in itself constitute a trial or even any part thereof. The only purpose of a preliminary investigation is to determine, before the presentation of evidence by the prosecution and by the defense, if the latter party should wish to present any, whether or not there are reasonable grounds for proceeding formally and resolutely against the accused (*People vs. Peji Bautista*, G. R. (No. 45739, April 25, 1939; *U. S. vs. Yu Tuico*, 34 Phil, 209). In order that the defense of jeopardy may lie, there must be a former judgment, either of acquittal or of conviction, rendered by a court competent to render the same, not only by reason of the offense committed, which must be the same or at least comprised within it, but also by reason of the place where it was committed. Under the established facts it cannot be stated that the same circumstances exist in the case under consideration. Consequently, the defense of double jeopardy is untenable.

The lower court held as proven the existence of the qualifying circumstance of treachery, the aggravating circumstances of nighttime and of dwelling, and the mitigating circumstance of lack of instruction of the appellants, in the commission of the crime. However, it gave no importance to the aggravating circumstance of nighttime because it correctly declared the same to be absorbed in the qualifying circumstance of treachery (*People vs. Piring*, 63 Phil., 546). There is no doubt about the existence of treachery as a qualifying circumstance because the appellants committed the aggression by taking the deceased by surprise without any risk whatsoever to themselves, the deceased not having been, as he was not, warned in order to defend himself or even to avoid said aggression. The act, or rather the aggression, was treacherous and was the result of a conspiracy among the appellants.

For all the foregoing, the appealed judgment being in accordance with law, it is hereby affirmed in toto, with the costs to the appellants, who must, however, be credited with one-half of the preventive imprisonment which they have been suffering to date. So ordered.

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

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