

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SLLVERIO MORADOS ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 46973. November 19, 1940*

Ponente: LAUREL, J.

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This is an appeal from a judgment of the Court of First Instance of Cavite, sentencing the defendants-appellants, Silverio Morados, Felipe Moral, and Benjamin Mendoza, to suffer the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of Lucio Enriquez in the sum of P2,000 and F100 each to Rufino Aro and Ceferino Ricasata, as indemnity for the time in which the latter two were not able to engage in their customary work, and to pay three-fourths of the costs.

On the night of March 15, 1939, while Ceferino Ricasata, Rufino Aro and Lucio Enriquez were sleeping in the tetter's hut in the sitio of Pasong Tabla, barrio of Bagbag, municipality of Rosario, Province of Cavite, a place where they had been threshing palay, several malefactors suddenly assaulted them. Ricasata who was awakened by the blows being inflicted upon his companions, tried to flee from the hut, but his dash for salvage was frustrated when hardly had he gone out the hut one of the ruffians shot him hitting him in the right thigh as a result of which he fell at a certain distance from the hut. His companions were beaten to unconsciousness.

The following is a reproduction of the medico-legal report regarding the injuries sustained by the victims:

"Lucio Enriquez suffered the multiple injuries stated in the medico-legal necropsy report, Exhibit A, and died the following day of 'meningeal hemorrhage secondary to fracture of the skull as a result of external violence' (see Exhibit E, p. 67, rec). Said injuries were caused by a solid blunt instrument, according to the opinion of Dr. Rosalino Reyes, who performed the autopsy (p. 3, t. s. n., first set).

"Ceferino Ricasata sustained the following: 'wound, gunshot, multiple, thigh, right and glands penis; foreign body, lead shot, thigh and penis, secondary' (see Exhibit F, p. 68 rec). He stayed for about one month in the hospital (p. 13, t. s. n. second set).

"Likewise Rufino Aro suffered multiple injuries, to wit: 'wound, lacerated, eyebrow, left, lips, upper and lower; fracture, multiple, jaw, lower; contusion, severe with hematoma, molar, left; X-ray-fractures lower jaw (see Exhibit G, p. 69, rec). He stayed in the hospital for about one month (p. 6, t. s. n., second set)."

The evidence shows that through an agreement made between them, Felipe Moral who had a paltik (a homemade gun) and a flashlight, together with Silverio Morados, were to go to the hut to watch the inmates, while Benjamin Mendoza—who had also a paltik—and Florentino de los Reyes were to take away the carabaos (pp. 2-8, 12, 22-24, t. s. n., first set). They all did their part of this agreement: Morados and Moral effected their entrance into the hut, inflicting injuries upon Aro and killing Enriquez. While De los Reyes and Mendoza were untying the carabaos, the former heard the scream: "Naku agawin ang buhay ko!" (Oh! save my life!), which was interrupted by a pistol shot. Fearing that the shot might summon help, the malefactors escape without taking the carabaos, although one of them had already been untied. The motive for the killing was robbery of the four carabaos which were tied near

the hut, three of which belonged to the deceased (Lucio Enriquez), and the fourth, to one Turi. Because the principal witness for the prosecution, Floretino de los Reyes, was one of the authors of the daring assault, we have not neglected to scrutinize his testimony. We find his version, however, corroborated by Catalino Amis who was the driver of the carreta hired by the herein accused that brought them to the barrio of Zambal (Noveleta, Cavite) where they alighted and proceeded to the place of the occurrence. It also appears that the herein appellants confessed their participation in the commission of the offense to Major Gaspar Baylon, provincial commander of Cavite, and Lieutenant Alcantara. Furthermore, Mendoza took Moral's flashlight, Exhibit C, from his (Mendoza's) house and stated that it was the one used in the commission of the crime (p. 35, t. s. n., first set). Counsel for the defense challenges the version given by De los Reyes, but we are of the opinion that the trial court did not err in giving due weight to his testimony.

The respective defense interposed by the accused converge into one of alibi, but "oral evidence of alibi is so easily manufactured and usually so unreliable that it can rarely be given credence." (People vs. Badilla et al., 48 Phil., 718).

Article 297 of the Revised Penal Code provides that "When by reason or on occasion of an attempted or frustrated robbery a homicide is committed the person guilty of such offenses shall be punished by reclusion temporal in its maximum period to reclusion perpetua, unless the homicide committed shall deserve a higher penalty under the provisions of this Code."

It is argued that Benjamin Mendoza did not enter the hut and did not take part in the assault, and he should only have been found guilty of attempted theft of large cattle. This contention is without merit. In U. S. vs. Landasan et al. (35 Phil., 359, 369), we observed that "neither the divisibility of this crime (robbery with homicide) into two crimes, nor the divisibility of the liability of the criminals who took part is allowable." And in U. S. vs. Macalalad, 9 Phil., 1, and People vs. Bautista, 49 Phil., 389, 396, we held that "whenever a homicide has been committed as a consequence or on the occasion of a robbery, all those who took part as principals in the commission of the robbery will also be held guilty as principals in the complex crime of robbery with homicide, although they did not actually take part in the homicide, unless it clearly appeared that they endeavored to prevent the homicide." It has not been shown that Mendoza endeavored to prevent the homicide.

The Solicitor-General recommends the imposition of death penalty in view of the fact that the filing of Lucio Enriquez was qualified by treachery and attended by the aggravating circumstances of nocturnity and dwelling. For lack of unanimity, however, the judgment appealed from is affirmed in all respects, with costs. So ordered.

Avanceña, C.J., Imperial, Diaz, and Horrilleno, JJ., concur.

Judgment affirmed.

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