

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TOMAS DURANTE ET AL., DEFENDANTS AND APPELLANTS.

G.R. Nos. 22209 and 22210. March 18, 1925

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

By agreement of the parties, the two above entitled cases were tried jointly, which were commenced respectively by the following informations:

"That on or about November 3, 1923, in the municipality of Libmanan, Province of Camarines Sur, Philippine Islands, the above named defendants Tomas Durante, Nicolas Felices, Emeterio de Llagas, Adeodato Felices, and Simeon Bonapos, confederating together and cooperating with one another and all being disguised and armed with revolvers and 'palmabrava' canes and taking advantage of the darkness of the night, did willfully, unlawfully, and criminally enter the dwelling of Antonio Peredo, kill the latter who is a step-father of the defendant, Tomas Durante, with cruelty and treachery and in his own house, which was a dwelling situated in an uninhabited place in the barrio of Palagnon of the aforesaid municipality of Libmanan, and thereafter the said defendants through force upon things and violence and intimidation upon persons did rob and take away the following articles: Jewels to the value of P290; money in the sum of P280 and several title deeds of land and clothings, all belonging to said Antonio Peredo and Pomposa Avila and Juana Nuños against the latter's will."

"That on or about November 3, 1923, in the municipality of Libmanan, Province of Camarines Sur, Philippine Islands, the above named defendants Tomas Durante, Nicolas Felices, Emeterio de Llagas, Adeodato Felices, and Simeon Bonapos confederating together and cooperating with one another and all being disguised and armed with revolvers and 'palmabrava' canes and taking advantage of the darkness of the night, did willfully, unlawfully, and criminally enter the house which was the dwelling of Antonio Peredo and Pomposa Avila and, knowing that there were people in said house, set fire to it inside, burning a part of the floor and several articles and utensils thereof and several clothings of said Pomposa Avila, and abandoned said house when a part thereof was already burning; which was not completely burnt on account of the fire having been extinguished by the dwellers of the house after the herein defendants had left."

After the proper proceedings and the dismissal of the informations as to Adeodato Felices at the instance of the prosecuting attorney, the Court of First Instance of Camarines Sur found Tomas Durante, Nicolas Felices, Emeterio de Llagas, and Simeon Bonapos guilty of the crime of homicide under the first information and Tomas Durante and Nicolas Felices guilty of the crime of arson under the second information; and for the first crime sentenced Tomas Durante and Nicolas Felices to twenty years reclusion temporal with the accessories of the law and Emeterio de Llagas and Simeon Bonapos to seventeen years, four months, and one day reclusion temporal with the accessory penalties, and all the four of them to indemnify the heirs of the deceased in the sum of P2,000 with proportionate costs. For the crime of arson, said court sentenced Tomas Durante and Nicolas Felices to six months arresto mayor each, with the accessory penalties and costs, acquitting Emeterio de Llagas and Simeon

Bonapos from the said crime of arson.

The convicted defendants appeal to this court from said judgment and assign the following as errors committed by the trial court:

- The overruling of the demurrer filed by the defense.
- The admission of the confessions of the defendants Bonapos and De Llagas as competent evidence against them and their codefendants.
- The finding that said confessions were voluntary when in fact they were obtained through force, intimidation, and promise of immunity.
- The holding that the alleged tortures committed on the person of Simeon Bonapos and Emeterio de Llagas are groundless.
- The admission as evidence of the military hat, Exhibit I, and the bamboo hat, Exhibit M, of the prosecution.
- The holding that there was agreement or concert between the witnesses as to the facts to which they were to testify.
- The admission of Exhibit F as evidence against the defendant Nicolas Felices.
- The giving of credit to the improbable and false testimony of the witness Tomas Sabate.
- The construction of the silence of Tomas Durante as an implied admission of his guilt upon knowing of the suspicion against him.
- The holding that the herein defendants are guilty of the crimes charged.

The demurrer to the informations was on the ground that in each of them more than one offense was charged.

As to the denomination of the first information for murder as an element of the complex crime of robbery with homicide, it is an error of pleading which does not affect the validity or sufficiency of the information.

It is argued that in this first information several offenses are charged, to wit, brigandage, trespass to dwelling, murder, and robbery in an uninhabited place and in band. After reading and considering the information, we do not find the alleged multiplicity of offenses. According to its terms the principal purpose of the criminals was to rob, and if they killed, it was on the occasion of the robbery. The other details are the circumstances which attended the commission of the crime that results from the allegations of the information, and which is but the crime of robbery with homicide.

Neither do we find in the second information the defect attributed thereto by the defense consisting in that it charges the crimes of arson and trespass to dwelling. As the prosecuting attorney says, the allegation that the defendants entered the dwelling of the deceased does not charge the crime of trespass to dwelling, but relates the manner in which the arson was committed.

With respect to the confessions made by Simeon Bonapos and Emeterio de Llagas, we find, in view of the circumstances of record, that they were voluntarily and spontaneously made, and consequently are a valid proof against those who had made them.

They are not, however, evidence against their codefendants who did in no way take part in said confessions. They are, under the circumstances of the case, mere hearsay statements inadmissible as evidence against those who did not witness said confessions, although they are incriminated therein.

"If two persons are indicted and tried jointly for murder, declarations of one made after the killing and in the absence of the other, tending to prove the guilt of both, are admissible in evidence against the one making the declarations, but not against the other." (Sparf vs. United States, 156 U. S., 51.)

And in the course of the opinion just cited there is, moreover, the following doctrine:

" * * * If the evidence made a case of conspiracy to kill and murder, the rule is settled that 'after the conspiracy has come to an end, and whether by success or by failure, the admissions of one conspirator by way of narrative of past facts are not admissible in evidence against the others.' Logan vs. United States, 144 U. S., 263, 309; Brown vs. United States, 150 U. S., 93, 98; Wright, Criminal Conspiracies (Carson's ed.), 212, 213, 217; 1 Greenleaf Ev., sec. 233. The same rule is applicable where the evidence does not show that the killing was pursuant to a conspiracy; but yet was by the joint act of the defendants."

The doctrine laid down by this court in *United States vs. Burias* (13 Phil., 118), has reference to a case wherein the confession in question has been made, not only extrajudicially but also at the trial, which is not the case now before us, for the defendants making the confessions failed to confess the fact when they testified as witnesses at the hearing of these two cases. In the *Burias* case, the testimony in Question, as it was given at the trial, ceased to be defective as being hearsay, whereas the confessions now in question have such a defect which was not cured by any circumstance or consideration whatsoever.

We believe that it was no error to admit as evidence the hats Exhibits I and M. The record contains sufficient justification for admitting the same.

We find that there is not in the record sufficient ground for unequivocally holding that there was previous agreement or concert between the witnesses for the defense as to the facts to which they were to testify. The fact, however, that we do not find in the record sufficient reason for making such finding, does not necessarily mean that we must give credit to said witnesses.

It was no error to admit Exhibit F as evidence against the defendant Nicolas Felices. Said exhibit is the confession made by said defendant, which confession has all the necessary requisites for its admissibility at the trial.

As to the testimony of Tomas Sabate, we do not find in the record sufficient data for rejecting it as false or improbable.

With respect to the last two assignments of error, we find the evidence sufficient to convict the herein appellants.

Against Tomas Durante, we find as evidence of his guilt beyond a reasonable doubt, the following circumstances considered together and in connection with one another:

He is a step-son of the deceased Antonio Peredo, the latter having married Leona Reyes, mother of Tomas Durante. Separated by mutual agreement, Antonio Peredo and Leona Reyes made a partition of their conjugal property, the title deeds of the property which was allotted to Leona Reyes in said partition remaining, however, in the name of Peredo. As representative of the latter, her son, Tomas Durante, sold some of those lands which were allotted to her in the aforesaid partition, but the deceased Peredo opposed said sale, believing the same to be illegal, inasmuch as his consent as husband of the seller was necessary for the validity thereof. Peredo also opposed the sale which Tomas Durante attempted to make of a land of his mother situated in Aslum. According to the testimony of Tomas Sabate, a few months before the date of the event in question, Tomas Durante proposed to Andres Samadra that, through witchcraft, which it was said the latter could do, he kill Antonio Peredo in consideration of a reward consisting in a carabao and P100. This is denied of course by Tomas Durante and Andres Samadra. But the manner in which the latter denied the same at the trial does not, in our opinion, reveal absolute sincerity.

Tomas Durante proposed also to Tomas Sabate to help him kill Antonio Peredo. This is testified to by Tomas Sabate who also affirms that Tomas Durante came to him on another occasion for the same purpose, and that then Tomas Durante was accompanied by Emeterio de Llagas and another person who at the trial was identified as Simeon Bonapos. This last testimony is corroborated by the witness Honorata Alcana called by the court.

The witness Pomposa Avila alleges having recognized the defendant in the night in question as one of the killers of the deceased. Although the trial court found somewhat exaggerated the testimony of this witness, we find the following observations of the Attorney-General to be correct:

"While the trial court finds this testimony somewhat exaggerated, we believe, however, that if by the details already stated Pomposa Avila was not sure in the night in question of the identity of said persons, yet having seen Tomas Durante and Nicolas Felices after the event in question, and compared their heights, movements, faces, etc., with those of the other two persons who were disguised whom she suspected to be Tomas Durante and Nicolas Felices, she must already be sure of the identity of said defendants when she testified at the trial of this case."

We also find the hat Exhibit I as evidence corroborative of the criminal participation of the defendant Tomas Durante.

All of this series of details, sufficiently proven at the trial, constitutes, in our opinion, enough evidence of the participation of Tomas Durante as coprincipal in the crime in question.

As to appellants Nicolas Felices, Emeterio de Llagas, and Simeon Bonapos, the evidence of record is sufficient to show their guilt, specially if the confessions made by them before the trial are taken into account, which in our opinion are shown to have been made voluntarily. Consequently, as to these three defendants, we also do not find in the proceeding any reason whatsoever why we should alter the findings made in the judgment appealed from.

Under the facts charged and proven, we find in case No. 4776 of the trial court and No. 22209 of our General Docket, alleged and proven beyond a reasonable doubt, the crime of robbery with homicide defined in paragraph 1 of article 503 of the Penal Code, although we do not find sufficient reason for applying the maximum penalty to the defendants.

In case No. 4777 of the trial court and No. 22210 of the General Docket, we find that the crime alleged and sufficiently proven is that of arson defined and punished in article 557, paragraph 1, of the Penal Code, inasmuch as it is not alleged in the information that the house was burnt, nor was the value of the articles burnt proven.

For all of the foregoing, the judgment appealed from is modified in case R. G. No. 22209, and the appellants are sentenced to cadena perpetua, the same being affirmed in all other respects. In case R. G. No. 22210 the judgment appealed from is affirmed in its entirety.

In both cases the appellants are sentenced to pay the costs. So ordered.

Malcolm, Ostrand, and Johns, JJ., concur.

Johnson, J., dissents.

Villamor, J., concurring and dissenting: I concur in the opinion of the majority as to the result in case R. G. No. 22209; but dissent as to the imposition of the penalty in case R. G. No. 22210 for lack of proof of the value of the articles burnt.

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