

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. EDUARD ABAUAG ET AL., DEFENDANTS. EDUARD ABAUAG, CLEMENTE GUMPAD AND BAYUDANG, APPELLANTS.

G.R. Nos. 23460 and 23461. September 29, 1925

Ponente: OSTRAND, J.

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OSTRAND, J.:

Four Igorrots, Eduard Abauag, Clemente Gumpad, Bayudang and Ganungan, were accused in criminal case No. 1017 of the Court of First Instance of Bontoc of the crime of robbery in band with homicide, the information alleging:

"That on or about the night of September 23, 1923, in the municipal district of Pinukpuk, subprovince of Kalinga, Mountain Province, Philippine Islands, the said accused; conspiring together and assisting each other and forming a group of four persons, all armed with bolos, voluntarily, unlawfully and criminally, and with intent of gain, entered into the house of one Sukian (Igorrot), and by means of force in the persons of the wife and children of said Sukian, named Bangonan, Carja, Bayog and Domingo (Igorrots), gave them several blows with bolos until they were completely wounded, killing them instantly, and employing force in the things, they broke open by means of blunt instruments and a piece of wood three trunks, taking therefrom thirty pesos; 'bungols' or 'manding' (thick beads) of more than one ganta; twenty-five sheets; fifteen skirts; one tapestry; three breech-clouts; seven chemise; four handkerchiefs; one khaki coat; one pocket book; one cedula certificate of Sukian; one 'balbaleng' (necklace with silver coins of ten and twenty centavos); some 'tinali' (bracelets of beads in twisted form); other nine 'tinali' (for the neck); three 'panay' (old plates), of the property of said Sukian, the value of which amounts to P6,000, approximately, equivalent to thirty thousand pesetas. That in the commission of the crime, there were present the aggravating circumstances of nocturnity, in the house of the offended parties, premeditation, treachery, abuse of superiority and cruelty."

In criminal case No. 1018 of the same court, Eduard Abauag and Ganungan were accused of murder, it being alleged in the information that "on or about the night of September 23, 1923, in the municipal district of Pinukpuk, subprovince of Kalinga, Mountain Province, Philippine Islands, the said accused, voluntarily, unlawfully and criminally, and with malice aforethought, treachery, cruelty and in the house of the offended parties, attacked with bolos Bangayon and Denna, of seven and ten years respectively, (Igorrots), inflicting upon them several serious and mortal wounds which caused the death of said children Bangayon and Denna; the aggravating circumstance of nocturnity being present in the commission of the crime".

At the preliminary investigation of the two cases, all of the accused pleaded guilty and made written confessions, In the Court of First Instance the cases were tried together. In case No. 1017 Abauag entered a plea of not guilty but Gumpad, Bayudang and Ganungan pleaded guilty. In case No. 1018, Abauag pleaded not guilty; Ganungan declared himself guilty on condition that he be permitted to make an explanation, but in view of this condition the court ordered the entry of a plea of not guilty.

Under their plea of guilty in case No. 1017, the court sentenced Gumpad and Bayudang to death. Ganungan being

less than 18 years of age, was in the same case sentenced to suffer seventeen years, four months and one day of reclusion temporal. After the rendition of the sentence mentioned, both of the two cases were continued as to Abauag and case No. 1018 as to Ganungan. At the subsequent trial, the court, after receiving the evidence, found both Abauag and Ganungan guilty and sentenced Abauag to suffer the death penalty in each of the two cases. Ganungan was given a sentence of twelve years of presidio mayor in case No. 1018. None of the defendants appealed, but the judgments against Abauag, Gumpad and Bayudang are before this court for review in accordance with section 50 of General Order No. 58.

It appears from the evidence that the Igorrot Sukian was living in a place called Camcamalog, in the municipality of Pinukpuk, Kalinga, Mountain Province. The only other house in that vicinity was that of another Igorrot by name of Dangioan, whose wife Alibon appears to be a relation of Sukian. About September 20, 1923, the four defendants came to Sukian's house and remained there for three days. On the third day, Sukian left his home to go to Guringed, in the municipality of Tuao, Province of Cagayan, to buy some salt. Before going to Guringed, Sukian asked the defendants how long they intended to stay in Camcamalog and was told that they probably would stay there for some time, as they were expecting some laborers who were to report on the results of a locust campaign of which Abauag seems to have been in charge. Upon his return two days later, Sukian found the mutilated bodies of his wife and three children in his house, his trunks broken open, and his personal property carried away. The defendants had disappeared.

Alibon, the wife of Dangioan, testifies that she and her husband went to a place called Kalaccad, leaving their two children Denna and Bangayon in their house, and stayed away for five days; that Denna was from 8 to 10 years old and Bangayon about 6 or 7; that when she returned from Kalaccad, she found the mutilated body of Denna in the brush about 300 meters from her house. The body of Bangayon was found in the house and had been partly eaten by dogs.

As to what occurred during Sukian's absence from Camcamalog, the confessions of Abauag, made before Lieutenant Rosas of the Constabulary at the time of his arrest and subsequently before the justice of the peace of Kalinga, give perhaps the clearest description. In his confession before Rosas, Abauag stated that he had planned the crime for about a month before its commission; that three days before the crime was committed, he met his coaccused Bayudang, Gumpad and Ganungan, and that they discussed how they might best carry out his purpose; that they agreed that Abauag and Gumpad should remain in Sukian's house to kill the latter's family, while Ganungan and Abauag himself would go to the house of Dangioan to kill Denna and Bangayon, and that they would do so upon hearing outcries from Sukian's house; that in the evening of September 23, while he, Abauag and Ganungan were in the house of Dangioan, they heard a shout from Sukian's house and Ganungan thereupon killed Bangayon with a bolo; that Denna then ran away and that Abauag ran after him and overtook and killed him about 200 yards from the house; that upon Abauag's return to the house of Sukian to get his hat, he found that Sukian's child Domingo was still alive; and that he then killed Domingo; that Bayudang and Gumpad carried Sukian's trunks downstairs and broke them open; that the contents of the trunks were divided among the four defendants; that he, Abauag, buried his share of the loot in a place called Magnao. It may be noted that after receiving the confession, Lieutenant Rosas, accompanied by the accused Abauag and some Constabulary soldiers, went to Magnao and there found the goods received by Abauag in the place indicated by him.

Abauag's statement before the justice of the peace is in writing and reads as follows in translation:

"Eduard Abauag, 22 years, married according to his tribe, resident of Salegseg, municipal district of Balbalan, Mountain Province, after his fetters were taken, and being first duly sworn, declares as follows:

"I know that I am in court, free to testify without fear. I know why the court has ordered that my fetters be taken off before occupying the witness stand; so that there would be no pressure on me.

"I was charged by order of Deputy Governor Blanco, to inspect the stations (puestos) at Bagaogao, Camcamalog, Cobgob, Laya, Gal-lagdao and Calbayan; I was then a corporal in the police corps of the subprovince of Kalinga.

"On September 15, I went to Calbayan; on the 16th, to Camcamalog; the following day, in company with Bayudang, we went to Duludol and Masabsalblag to hunt grasshoppers. On the night of the 17th, Bayudang and I slept in Sukian's house; the following day we went to Magaogao and in the evening we returned to Camcamalog. On the 19th, we again stayed in Camcamalog and again on the 20th, but on this day Gumpad and Ganungan and President Gunayon and his laborers were with us. On the 21st, we continued to stay in Camcamalog together, with the said president and his laborers; on the 22d, the president and his laborers went away because it was impossible to hunt grasshoppers due to the rain, and we, Bayudang, Ganungan, Gumpad and I, were left; on the 23d, we stayed in Camcamalog and at night we four went to Sukian's house who was then absent for he had set out for Guringed at 8 o'clock in the morning of the said day; there we ordered rice to be cooked because we had none; Bangonan, the wife of Sukian, cooked the rice; while she was thus cooking, I looked for my money, consisting of P0.50, in my shirt and found that it had disappeared; I then ordered Ganungan to go and look for it in the camp; after a while Ganungan called saying to me that he could not find it; I followed him and we two tried to find it; failing to find it we returned to the house of Dangioan; I put my bolo over a box in the house; I then began to prepare cigars on the uncovered porch of the house (azotea); suddenly Ganungan heard a cry; he took my bolo and went to strike the boy who was cooking in the kitchen, who was the son of Daway, named Bangayon; I did not see the position of Bangayon when he was struck by Ganungan because I was then on the uncovered porch of the house; I went out of the house and heard the cries of the boys in the other house (Sukian's); I took my bolo from Ganungan and wiped off the blood stains; I went out of the house again and stood under the shadow of a mango tree which was in the yard of the house; while I was thus standing I again heard the cries of the boys in Sukian's house; then the thought to kill came to me, to revenge Buguioan and his wife who were killed by the Pinukpuk people; hence I pursued Denna who ran from the house and when I overtook him on the road, about 100 yards (50 yards only) from the camp I gave him a blow; I do not know what part of his body I struck because it was night and he fell to the ground; I do not know, if I gave him many blows for I did not count them; the body was still moving when I left it in the thicket, on the side of the road. I went to Sukian's house where Gumpad and Bayudang were; upon my arrival there I found Ganungan; I went up the said house to get my hat which I had left there; I saw that Sukian's wife and children were already dead because they did not move; coming downstairs I saw two trunks at the foot of the stairs which had been taken down by Gumpad and Bayudang. One of them had already been opened and they took and wrapped up its contents; once downstairs Gumpad opened the other, by means of a pestle (a piece of wood used for grinding palay). When it was opened we took possession of its contents, wrapped them up and went away; I did not see the third trunk, I saw only two. We all carried the contents of the said trunks but as for me I carried but two skirts and a small bag of beads (bunglos, a mixture of fine and coarse beads), and a sash for women. On that night I was dressed in that sweater (pointing to the one which was mixed up in bundle No. 2), khaki pants, our uniform, although the pants had not yet the black edging. We went to Masabsablang and when we reached the river, we found that it had overflowed; we did not cross it, and we followed the river on this side; we walked during the night and reached Talac at 4 o'clock in the morning, and divided the articles by moonlight; at the day break we separated, Bayudang and I went together to Cacaaligan, Gumpad and Ganungan to Duludol. Bayudang was left in Cacaaligan and I went to Liang where I passed the night in Liao's house; the next day I set out and slept in our house at Magnao; the next day I set out again and slept in Pasil and the following day I was at Lubuagan. Of the stolen articles four blankets, one sash for a man (tapis), two sashes for women, one big bracelet, two 'balbaleng' (a collar from which silver coins are hung) two shirts for women, one skirt and a small sack of beads which I did not count, belonged to me, I do not know what Bayudang received because it was night. Ganungan and I divided the beads while Bayudang and Gumpad divided the 'tinali' (fine beads for women twisted and used as a bracelet). I received two pesos; Bayudang showed us a five-peso bill and two silver pesos; said five-peso bill belonged to Gumpad and Ganungan. Those are my share (pointing to bundles Nos. 2 and 4). All the articles which belonged to me on that night, when we

divided them, are those except the two pesos which I have already spent. That bolo (pointing C) is the one which I used in killing Denna and Ganungan also killed Bangayon with it. I do not know who was the instigator of the robbery because when I arrived, the trunks had already been opened and as to the killing, it was Bayudang because he told us he intended to do it when we were in the camp, the day before the night of the crime. I only knew that Gumpad and Bayudang had killed some one in Sukian's house the night of the crime when I heard the cries of the children. While we were in Dangioan's house on the night of the crime, I did not know that Ganungan intended to kill Bangayon. It is true that I followed Sukian when he set out from Camcamalog, the day before the night of the crime but my purpose was to request him to tell the policeman at Magaogao to raise the galvanized iron where we used to kill the grasshoppers. I believe that Sukian was already on the Magaogao river when I went to follow him. When I went to follow Sukian, I met Gatan on my way who assured me that the galvanized iron had already been taken up so I did not follow Sukian any more. It is not true that I was the instigator of this crime. I have served three years in the Constabulary (2d Mountain Company) and I was made a corporal. I had been with the National Guard five months. I have already served one year in the police corps for the subprovince of Kalinga.

(Sgd.) "EDUARD ABAUAG"

Ganungan also made several confessions. Immediately after the commission of the crime, he went to the house of Nicasio Balinag, treasurer of the municipal district of Tabuk, and finding him asleep, awakened him and told him that he wanted to surrender because he feared that Sukian's relations would kill him, because he was one of several persons who had killed Sukian's family; that the motive for the killing was vengeance, because years ago some of the relations of the accused had been killed by people from Sukian's town, Pinukpuk.

Ganungan's statement before the justice of the peace at the preliminary investigation reads as follows:

"Ganungan, about 17 years, single, resident of Magao, municipal district of Tabuk, Kalinga, Mountain Province, after his fetters were taken out, and being first duly sworn to, declares as follows:

"I know why my fetters were ordered to be taken off, so that I would not be afraid to tell the truth.

"I was one of those who killed in the house of Dangioan in Camcamalog. I killed Bangayon while he was sitting near the fire on the night of the crime; I was behind him when I gave the first blow which hit his right shoulder; I did not count the number of blows which I gave; Abauag was outside then. I do not know whether or not he saw me when I killed Bangayon. After killing Bangayon I left the bolo because it belonged to Abauag and Abauag took it, cleansed it and pursued Denna; I did not follow him, instead I went to the house of Sukian where Gumpad and Bayudang were. When I arrived there the wounded were still weeping; I did not go up the house but stayed downstairs. Upon the death of the persons there Gumpad carried one trunk and asked me to help him; I received it on the stairs but I did not go up. The other trunk was carried by Bayudang and when he put it down, Abauag came and said nothing. Bayudang and I opened one of the said trunks, which was not locked; the other was opened by Gumpad by means of a pestle (a piece of wood which is used to grind rice). Abauag was present when we opened these trunks. When Abauag went up the house to take his hat which he left there, the trunks were already opened. Bayudang was the instigator of the crime. He said that he had committed many crimes but was never caught. He also said that it would be better for us to kill those persons (referring to the dead) because they had no companions; he said this while we were in the camp on the evening before the night of the crime. I agreed because I then remembered my grandfather Galawen who was sold by Sukian's father; Abauag also agreed because he had something to revenge. With Gumpad, it was the same. I used Abauag's bolo to kill Bangayon. Abauag put it above a box and I took it without his knowledge. We all carried away the articles when we left Sukian's house. We divided the said articles in Talac by moonlight. My share is in that bundle (pointing No. 3). I received six silver pesos for Gumpad and me. I have already lost the five pesos. I have finished the fourth grade in school.

(Sgd.) "GANUNGAN"

Ganungan also confessed his participation in the crime to Lieutenant Rosas and indicated the place where he had concealed his share of the property carried away from Sukian's house. The effects were found in the place indicated and were identified as property of Sukian.

Abauag testifying in his own behalf at the trial in the Court of First Instance denied that he took part in the commission of the crime and asserted that he was sick with malaria at the time and remained in a camp about one kilometer from Sukian's house; that he had never been in Sukian's house and did not know him; that Gumpad and Ganungan told him that they together with Bayudang had committed the crime; that he would then have arrested them but could not do so because he had only his policeman's club for a weapon and had no handcuffs or leg irons; that Gumpad gave him a bundle of effects taken from Sukian's house and that he was afraid to decline. He further stated that he was illtreated by the Constabulary and he was forced to make the confessions above mentioned in order to avoid further illtreatment.

Gumpad and Ganungan testifying for the defense corroborated Abauag's testimony in regard to his sickness and that he took no part in the crime. Ganungan further stated that he killed Bangayon and Denna, but alleged he did so in self-defense.

As already stated, Ganungan did not appeal and Gumpad and Bayudang pleaded guilty. The only question for determination is therefore Abauag's guilt and the propriety of the penalty imposed by the court below.

The evidence leaves no doubt whatever that Abauag is guilty in both cases and it seems quite clear that he was the leader of the band. His confessions corroborated by the testimony of Sukian and Alibon and by the confession of his coconspirator Ganungan seem conclusive on that point. That Gumpad and Ganungan testified in his favor in the Court of First Instance is easily explained when it is taken into consideration that Abauag as corporal of the police was their superior and must have had great influence over them; that the three of them had been together in the provincial jail for over thirteen months before the trial and had ample time and opportunity to concoct the stories told by them on the witness stand. The testimony as to the alleged illtreatment by the Constabulary is very convincingly contradicted by Lieutenant Rosas and the justice of the peace and by the fact that the confessions go into minute details which would hardly have been brought out if said confessions had been made under duress. Moreover, Abauag admits that he knew who committed the crime the morning after its commission and he was not arrested until four days later. Why did not he as a police officer report the matter to the authorities? And why did he bury his portion of the effects taken from Sukian's house alleged to have been handed him by Gumpad? His actions were entirely inconsistent with innocence, and in our opinion the court below did not err in finding him guilty beyond a reasonable doubt both in criminal case No. 1017 and in case No. 1018 of the Court of First Instance of Bontoc.

As to the penalty imposed upon the three defendants whose cases are under review, it may be observed that in case No. 1017 the following aggravating circumstances were present: The crime was committed with (1) treachery (*alevosia*); (2) evident premeditation; (3) abuse of superior strength (*U. S. vs. Lasada and Lasada*, 21 Phil., 287); (4) abuse of confidence; (5) the act was committed in the night time; and (6) in the dwelling of the offended party. To these may perhaps be added a seventh circumstance, namely, that the crime was committed with unnecessary cruelty. The same circumstances, except treachery and abuse of confidence, also existed in case No. 1018.

In view of the aggravating circumstances enumerated, the court below did not, in the opinion of the majority of this court, err in imposing the death penalty on the three defendants who were over 18 years of age. But one of our members takes the view that the tribal customs of said defendants should be taken into consideration, and that the penalty imposed by the court below should be reduced to *cadena perpetua*. As the death penalty can only be

inflicted by the unanimous vote of the court, the sentence under review must therefore be modified.

The death sentence imposed on the three defendants is therefore reversed and in the aforesaid case No. 1017, each of the defendants Eduard Abauag, Clemente Gumpad and Bayudang is hereby sentenced to suffer cadena perpetua, with the accessory penalties prescribed by section 54 of the Penal Code, to jointly and severally with his codefendants indemnify the heirs in the amount of P1,000, with an additional indemnity to Sukian of P3,000, the value of the articles robbed and not yet recovered, and to pay his proportional share of the costs.

In criminal case No. 1018, the defendant Eduard Abauag is hereby sentenced to suffer cadena perpetua, with the accessory penalties prescribed by section 54 of the Penal Code, to jointly and severally with his codefendant, Ganungan, indemnify the heirs of the deceased Bangayon and Denna in the amount of P1,000, and to pay his proportional share of the costs in said case No. 1018. The said defendant Abauag shall begin to serve this sentence immediately after the extinction of the penalty imposed upon him in case No. 1017. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Johns, and Romualdez, JJ., concur.

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