

## THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SANDAL, ARIMAO, LONSING, MAMA, AND PAMPANG, DEFENDANTS AND APPELLANTS.

*G.R. Nos. 32394, 32395. September 05, 1930*

Ponente: AVANCEÑA, C.J.

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### AVANCEÑA, C.J.:

The Moros Sandal, Arimao, Lonsing, Mama, and Pampang appeal from the judgment of the Court of First Instance of Lanao convicting them of murder committed on the 18th of February, 1929, upon the person of Eleno Lamorena, and sentencing each of them to twenty years of cadena temporal, with the accessories of law, to indemnify the heirs of the deceased jointly and severally in the amount of P1,000, and to pay their proportional part of the costs.

On the date mentioned, in Abaga, District of Monungan, Province of Lanao, Inambar, a Moro woman, heard the appellant Sandal call the deceased, and later saw them engaged in conversation. While the two were talking, appellant Pampang went up to them and with a hammer struck the deceased on the back of the neck, felling him to the ground. Sandal and the, rest of the appellants, Lonsing, Arimao, and Mama, then closed in on the fallen man beating him to death.

Moro Dimaponong testified that early in the morning of that day, he saw Eleno, the deceased, in Tomas Permites' warehouse, while the appellants were nearby constructing a house. When witness returned to the warehouse, he saw neither the deceased nor the defendants where he had seen them before. On that night as he was going home, witness saw appellants near a sawmill, carrying the corpse of Eleno, which they threw into the river. During the inquiry made by the Constabulary lieutenant into Eleno's disappearance, Dimaponong testified to this effect, and the corpse was found in that part of the river indicated by him.

Doctor Pablo Hamoy in the morpost-tem examination found the following lesions: The right side of the neck and the right shoulder were bruised; the neck was fractured and the right shoulder dislocated; the right eye was bruised; marked cyanosis and acute hemorrhage of both eyes which were somewhat sunken; marked cyanosis of the lips with the incisors jutting forward and loose cyanosis and hemorrhage of the gums, and hemorrhage of the nose; cyanosis of the whole face, a wound in the left arm and forearm, and a contusion on the breast and abdomen.

The following facts of record explain the motive of the assault: When Tomas Permites went to Manila to look after certain matters he left Eleno in charge of his interests in Monungan. While Permites was in Manila, the appellants caused some injuries to his carabaos, as a result of which Eleno had a dispute with them. Eleno sent word of what had happened to Permites in Manila, and when the latter returned to Monungan, he verified the facts and filed a complaint against the appellants. Eleno was to be the principal witness, and the defendants knew it.

The appellants denied the facts set forth and attempted to prove an alibi.

Upon consideration of the evidence for both sides, we agree with the conclusion of the trial court that the appellants killed Eleno in the manner described above. The court below did not err in weighing the evidence.

Another assignment of error alleged by the appellants in this instance deals with the trial court's refusal to admit a certain witness presented by the defense. The court took this stand for the reason that this witness had been present during the hearing notwithstanding the court's order that all witnesses leave the court room. Under such circumstances it lies within the court's discretion to admit or reject the testimony of the witness. And although we are of opinion that the court below should have admitted the testimony of this witness, especially when he stated that he did not hear what the other witnesses testified, yet there is nothing to show that this error has affected the appellants' defense. There is nothing to show what this witness would have testified if admitted, and so it cannot be held that his failure to testify has materially affected the appellants' defense.

The appellants also assign as an error the fact that the trial court failed to require the fiscal to exhibit the testimony given by the witnesses during the preliminary investigation conducted by the justice of the peace. But the only effect of this failure was to entitle the defense to adduce secondary evidence touching the testimony of said witnesses, for the purpose of attacking their veracity, should they have been presented as witnesses during the trial.

Neither did the trial court commit an error in refusing the defense an extension of time to present Doctor Feliciano, for this is a matter wholly within the court's discretion, the abuse whereof has not been shown, especially in view of the fact that it was not informed of the nature of this witness's testimony.

Wherefore, the judgment appealed from is affirmed, with costs against the appellants. So ordered.

Street, Villamor, Ostrand, Romualdez and Villa-Real, JJ., concur.

Johns, J., dissents.

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