

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CARINSAN, ATAG, NAJUDAIN, JASANI, ARIP, AND LAKIBUL, DEFENDANTS AND APPELLANTS.

G.R. Nos. 42370, 42371. April 26, 1935

Ponente: DIAZ, J.

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DIAZ, J.:

These two cases, which were tried jointly in the Court of First Instance of the Province of Sulu by agreement of the prosecution and the defense and with the approval of the trial court, are now before this court upon appeal taken by Caringan, Atag, Najudain, and Jasani from the judgment rendered by said court in the first case, or No. 4641 of said court (G. R. No. 42370), whereby they were found guilty of homicide and sentenced to an indeterminate penalty of from eight years and one day of prison mayor to fourteen years, eight months and one day of reclusion temporal, and to indemnify the heirs of the deceased Paradji in the amount of P500; and also upon appeal taken by Arip, Jasani, and Lakibul from the judgment rendered in the second case, or No. 4648 of said court (G. R. No. 42371), whereby they were sentenced, for less serious physical injuries, to suffer four months and one day of arresto mayor.

The evidence shows that, by reason of a young Moro girl named Nuriyam who was betrothed by her parents to a Moro a divorced man named Hatib Arip, an encounter took place at noon on March 22, 1934, in the sitio of Pasil, municipal district of Parang, Province of Sulu, between the sympathizers of the girl's parents and those of Paradji, Moro councilor of said municipal district. The combat ended in the death, on the councilor's side, of the latter and his father Gadjali, and, of the men of Nuriyam's parents, in the death of Hatib Arip and Jamsuri. Ibnu and Sahijan, relatives of the deceased councilor, were wounded by the followers of Nuriyam's parents, and are alleged to be the offended parties in case No. 4648 (G. R. No. 42371).

The trial court, in the appealed judgments, declared that those responsible for the death of Paradji were the appellants Caringan, Atag, Najudain, and Jasani, and those for the physical injuries inflicted upon Ibnu and Sahijan were the appellants Arip, Jasani, and Lakibul.

In their brief the appellants contend that the trial court erred: (1) In giving credence to the testimony of Jumlai in reference to the cause of the attack or fight; (2) in holding that Paradji, the deceased councilor, had no motive for assaulting Gumbahali, stepfather of Nuriyam, or the latter's kinsmen; (3) in failing to take account of the fact that the evidence for the prosecution is confusing and uncertain as to who were responsible for the wounds inflicted upon the aforesaid victims in the two cases; (4) in failing to take account of the appellant's defense that they had acted in incomplete self-defense; and (5) in sentencing the appellants, charged with homicide, to the indeterminate penalty of from eight years and one day of prison mayor to fourteen years, eight months and one day of reclusion temporal, and to indemnify the heirs of the deceased Paradji in the amount of P500, and in sentencing the appellants, charged with frustrated homicide, to four months and one day of arresto mayor.

We find nothing in the record to support even one of the first four errors alleged to have been committed by the

trial court. When Nurijam, who was required by her stepfather Gumbahali and her mother Jahala to marry Hatib Arip, who was a divorced man, left her house, late in the afternoon of March 21, 1934, she went directly to councilor Paradji's house and there expressed her desire to be married at once to the man she loved, Talikan, a second cousin of the councilor's wife, saying that she could not accept the idea of marrying Hatib Arip to whom she had been promised by her parents.' Paradji, who had knowledge of said engagement, tried to dissuade her and stated that it could not be done; but, upon seeing later that she was determined not to marry anybody except Talikan, he considered it prudent and proper to advise the mother of the girl that she was in his house and that they need not search for her elsewhere. The councilor asked his kinsmen named Jumdain and Baral, to convey this information to Nurijam's parents and at the same time he requested them to pass Talikan's house and inform him of what the girl had told him, that is, that she wanted to marry Talikan. Thus knowing the whereabouts of Nurijam, her parents and relatives decided to go and get her the next day, and, for that purpose, thirty of them, men and women, amply armed with bolos, barongs, and spears gathered together, led by the appellants. When the appellants arrived at councilor Paradji's house at noon on March 22, 1934, Talikan had already been there for some time; and, upon learning of his presence, they asked him to come down in order to cut him into two pieces, and there were those whose attitude showed a desire to get into the house and look for him, as well as for Nurijam. Thereupon, Jumlai, councilor Paradji's brother, who was then present, approached them telling that they should not create any disorder or scandal, since Nurijam's case could be settled calmly. As soon as Jumlai had finished saying this, one from the defendants' group hurled a spear at him which fortunately, failed to hit him as he was able to dodge it. When Paradji, who was in the upper part of the house, came down in order to ask the appellants and their companions to desist from their attitude and lay down their weapons and to peacefully talk over the matter; but, while he was speaking, the appellant Caringan slashed him in ' the back, thus felling him. The appellants Atag, Najudain, and Jasani, in turn, successively attacked Par&dji with their respective bolos or barongs, Atag wounding him in the right arm, Najudain in the face or head, and Jasarii in the side. Paradji's wounds were so serious that he died shortly thereafter. The old man Gadjali, father of the deceased Paradji, realizing the danger his son was in, came down from the house to defend him, but Hatib Arip and Jamsuri, belonging to the appellants' group, stepped towards Gadjali for the purpose of attacking him. Gadjali came to blows with ^Hatib Arip and Jamsuri, and Jumlai, brother of Paradji, seeing his father in danger, armed himself with a barong and went to the latter's assistance killing Hatib Arip and Jamsuri. Gadjali, however, like his son Paradji died a few days thereafter as a result of his wounds. It was only after Jumlai was able to get from the belt of his dead brother (Paradji) the latter's revolver and fire at the appellants and their followers, who took to their heels in order to escape, that the fight ceased.

There is no conflict in the evidence for the prosecution and the defense over the fact that the encounter took place at the door or entrance to the house of the deceased councilor Paradji, and that the defendants-appellants, who caused the same, were amply armed upon arriving at the place.

Jumlai, Ibnu, Sahijan, and the councilor's wife saw the four defendants, who were accused of homicide, attack and wound Paradji, while the appellants, who were charged with frustrated homicide, were in turn seen assaulting Ibnu and Sahijan by said offended parties and by the witness Jumlai.

It is true that nobody testified having seen Jasani and Lakibul wound Sahijan, but it is no less true that said appellants were in the band of their co-appellants, all armed in order to commit what, as already stated, they committed, a fact justifying the deduction that they entertained the same intentions to wound and kill.

The facts proven by the prosecution, as already set forth, necessarily overrule the appellant's defense of alibi and general denial, notwithstanding the uncorroborated testimony of each of them in support thereof.

The evidence for the prosecution is convincing that it was each and everyone of the appellants in case No. 4641

(G. R. No. 42370) who inflicted upon the deceased Paradji the wounds which produced his death, and, altho only one of them, and not all, might have inflicted the wounds, nevertheless, they must be held liable for the consequence, for the reason that it was the result of a conspiracy, and it is known that the act of a conspirator is attributable to all and each of his co-conspirators. (U. S. vs. Grant and Kennedy, 18 Phil., 122; U. & vs. Ipil, 27 Phil., 530; U. S. vs. Remigio, 37 Phil., 599; People vs. Cabrera, 43 Phil, 64; People vs. Dayug and Bannaisan, 49 Phil., 423; People vs. Chan Lin Wat, 50 Phil., 182.)

No error was committed by the trial court in holding the offense as homicide in respect to the appellants Cancan, Atag, Najudain, and Jasani, and as less serious physical injuries—and not frustrated homicide—as regards the appellants Arip, Jasani, and Lakibul. The penalty imposed in the homicide case is within the proper period, but we consider the indemnity which-the appellants in said case were sentenced to pay to the heirs of the deceased Paradji to be inadequate and not in harmony with the practice of the courts to fix the indemnity in homicide cases in the amount of P1,000, in the absence of proof that it should be assessed at a greater amount. The penalty imposed in the case for frustrated homicide which the trial court correctly qualified as less serious physical injuries, is not that authorized by law, for the reason that, no modifying circumstance having been proved, the same ought to be fixed in the medium period of arresto mayor, or from two months and one day to four months. And it is noteworthy that the trial court failed to award damages in favor of the offended parties in said case, there being evidence to the effect that Ibnu, who remained in the hospital for eighteen days and in his house for eight days because of his wounds, was incapacitated for labor for twenty-six days, and his daily earning was P1; and that the offended party Sahijan was incapacitated for labor for twenty-eight days and his annual income was ^50, being entitled, therefore, to an indemnity in the amount of P3.94.

Wherefore, the appealed judgment is modified in the sense that the indemnity fixed in case No. 4641 (G. R. No. 42370) is raised from T500 to ^1,000, and that the appellants in case No. 4648 (G. R. No. 42371) are sentenced to four months of arresto mayor and to indemnify jointly and severally the offended parties Ibnu and Sahijan in the amounts of P26 and P3.94 respectively. In all other respects said judgment is affirmed, with costs against the appellants. So ordered.

Malcolm, Abad Santos, Hull, and Vickers, JJ., concur.

Judgment modified.

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