

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JANAHUDIN PAKAH ET AL., ACCUSED AND APPELLANT.***G.R. No. L-1263. August 27, 1948*

Ponente: PERFECTO, J.

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On March 24, 1946, Luciano Aizon was found killed in his house in the sitio of Calanasan, Curuan, City of Zamboanga, and, somewhere in the vicinity of the house, his wife Perfecta Contemplado. When the authorities came to investigate, it was found out that goods and personal belongings have disappeared and a trunk was found open, abandoned nearby the house.

At about six o'clock p.m. of said day, Agustin Bonifacio arrived in front of the house and near the stairs he saw two persons. Without suspecting anything wrong, he proceeded towards the kitchen, and upon nearing it, he heard Perfecta address Janahudin Pakah: "It is up to you, what you want to get." But upon seeing Bonifacio, Janahudin unsheathed his bolo and chased him. Bonifacio ran away and went to the police station of Curuan. There he met Fortunato Evangelista, a policeman, and with the latter and five others, he repaired to the house of Luciano, who was found by them in the kitchen dead with a severe cut on his neck. Early the following morning, the peace officers found in a banana grove in a nearby hill the dead body of Perfecta with a wound across the lower part of the body towards the neck. The peace officers found disorder inside the house. Pillow cases were scattered around, and outside the house they found an empty trunk forcibly opened. Upon data furnished by Agustin Bonifacio and Eduardo Contemplado, the following were found missing: clothes for men and women worth P300; jewelries worth P120; cash of P500; one .22 caliber shotgun valued at P110. The latter was recovered, and the total value of the things not recovered amounts to P985.

Nine persons, including appellant, were prosecuted for robbery in band with double homicide. After the evidence for the prosecution was presented, the case was dismissed as against four, and after the hearing, the remaining accused were acquitted, with the exception of appellant who was sentenced to reclusion perpetua and to indemnify the heirs of Luciano Aizon in the amount of P2,000 and the heirs of Perfecta Contemplado in the amount of P2,000 and to pay one-ninth of the costs.

The evidence on record justifies the lower court's judgment : finding appellant guilty. Even accepting his testimony to the effect that he was forced to make his confession, Exhibit D, and that the same must be disregarded, there is evidence on record to prove conclusively appellant's direct participation in the crime, although no one saw him actually killing either one of the deceased couple. His conduct at the time Agustin Bonifacio was proceeding towards the kitchen, around which Perfecta Contemplado made an unusual address to appellant who, upon seeing Agustin, chased him with his bolo, would show to any reasonable person that appellant is responsible for the crime evidence of which was found the same night by Agustin Bonifacio, Policeman Fortunato Evangelista and five others in the disorder in the house and in the dead body of Luciano Aizon.

Shotgun, Exhibit I, one of the articles missing from the house of the crime, was found in appellant's house. When he was arrested, upon investigation, he readily admitted having killed Luciano Aizon and surrendered at the same time his blood-stained bolo and its scabbard. At the arraignment before the Acting Municipal Judge of the City of Zamboanga, appellant pleaded guilty. His allegation that he did it through fear deserves no credit, as he was already under the protection of the court before which he could have complained of the danger of being maltreated or tortured if he would fail to plead guilty.

The prosecution suggests that the lower court erred in appreciating against appellant the aggravating circumstance that the crime was committed "by a band, as according to the evidence only two of the malefactors were armed. The contention is correct, as to appreciate said circumstance, Article 14 of the Revised Penal Code requires that there should be more than three armed malefactors. The prosecution proposes that the aggravating circumstance of dwelling should be considered instead. There being no evidence that the offended party has not given provocation, which is an essential element of the circumstance as provided by No. 3 of Article 14 of the Revised Penal Code, the proposal cannot be accepted.

There is no question that the mitigating circumstance of lack of instruction should be considered in favor of appellant, although it can not affect the result.

As the appellant is guilty of robbery with homicide, the lower court acted correctly in sentencing him to reclusion perpetua, the penalty provided by Article 294, No. 1, of the Revised Penal Code in relation to Article 63, No. 3, of the same Code. As suggested by the prosecution, the appellant should be also ordered to pay the heirs of the deceased espouses the sum of P985. With this modification the appealed judgment is affirmed, with costs

Paras, Actg. C.J., Feria, Pablo, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

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