

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
AGUSTIN PIAMONTE, ET AL., DEFENDANTS; GUILLERMO
MASCARINAS ALIAS ELMO AND VICENTE JASME, JR., ALIAS
DODONG, DEFENDANTS...**

G.R. No. L-5775. January 28, 1954

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Agustin Piamonte, Guillermo Mascarinas, and Vicente Jasme, Jr. were charged with robbery with homicide in the Court of First Instance of Leyte, and, after due trial, were found guilty and sentenced each to suffer reclusion perpetua, with the accessory penalties of the law, to indemnify jointly and severally the heirs of the deceased in the sum of P320, the amount stolen, plus the sum of P6,000, without subsidiary imprisonment in case of insolvency due to the nature of the penalty imposed, and to pay the costs. From this judgment, Guillermo Mascarinas and Vicente Jasme, Jr. have appealed.

Early in the morning of October 28, 1951, a robbery was committed in the house of Magno Israel in barrio Gabas, municipality of Baybay, Leyte. In the course of the robbery Israel was seriously wounded and was brought to the Western Leyte Hospital in Baybay for treatment. Upon being informed of the incident, the Chief of Police of Baybay sent a policeman to the hospital to find out what had happened. Policeman Macario Dawal found the wounded groaning because of the serious wounds he had received. Nevertheless, the policeman was able to get some statements from him as to the robbery which the policeman wrote on a typewriter upon his return to office. In the next morning, the Chief of Police and the Justice of the Peace went to the hospital to verify the correctness of the statements attributed to the victim and when they arrived they found him restless, his face was pale, he was breathing hard, and his whole body was bandaged. His legs and hands were tied to his bed. The attending nurse informed the two officials that the medicine being administered to the patient was only to prolong his life. The Justice of the Peace read the written statements to the patient and after being sure that he understood them he was asked to ratify them. The patient did so under oath. In his affidavit, the patient, among other things, stated that of the persons who went to his house in the morning in question he was only able to identify Guillermo Mascarinas who was long known to him. The robbers took away his cash amounting to P320. He was not able to identify those who actually wounded him.

The revelation of Magno Israel gave rise to the arrest of Mascarinas who, upon being investigated, made a written confession (Exhibit F). He stated that early in the morning of October 28, 1951, he was invited by Agustin Piamonte and Vicente Jasme, Jr. to go to the house of Magno Israel to rob him. Since they were his friends he agreed. When they arrived at the house Piamonte went upstairs followed closely by Jasme, Jr. while he remained downstairs to guard the place. While he was thus guarding he noticed that Israel offered resistance and so his two companions assaulted him. When he heard the screams of Israel he was frightened and ran away and since then he never met again his companions.

The revelation of Mascarinas also gave rise to the arrest of Piamonte and Jasme, Jr. Upon being arrested, Piamonte was investigated and made also a written confession. He stated that in the afternoon of October 27, 1951, Mascarinas revealed to him his plan to rob the house of Magno Israel. While he and Jasme, Jr. were attending a dance at the Baybay National Agricultural School they met Mascarinas who told them that after the dance they would go home together and would proceed to the house they planned to rob. To this effect, Mascarinas borrowed the clothes of Jasme, Jr. so that he may not be recognized by Israel who knew him personally. When they arrived at the house of Israel, he and Mascarinas went upstairs and when he focused his flashlight on a trunk Mascarinas proceeded to ransack it. Israel was awakened by their presence and Mascarinas stabbed him several times. At this juncture, he (Piamonte) became afraid and ran downstairs followed by Mascarinas. This time, Jasme, Jr., who was left downstairs, had already gone ahead on the road. On their way home and upon reaching a bridge, Mascarinas took off the clothes which he borrowed from Jasme, Jr. and returned them to him. Mascarinas used a hunting knife in stabbing his victim. He did not know how much money was taken by Mascarinas because the latter did not tell him about it.

Vicente Jasme, Jr. was also arrested but refused to give any statement to the police. The evidence further shows that Magno Israel was operated on the very day he was brought to the hospital to save his life. The operation did him well but he had a stormy post-operative period. Sometime in December 19, 1951, he contracted a sickness known as mucuous colitis which developed because of his weak condition. He died on December 28.

Mascarinas, testifying in his defense, declared that after attending the dance held at the Baybay National Agricultural School he, Piamonte and Jasme, Jr. went to the house of Magno Israel not to rob the latter but merely to escort Jasme, Jr. who was the nephew of Israel. When they arrived Jasme, Jr. went up and then he left the premises. While he was gone for sometime he heard someone shouting for help but he thought that it was Jasme, Jr. who was being maltreated by his uncle for coming late. Later Piamonte joined him and both returned to their respective homes. As regards his confessions, Mascarinas claimed that he signed it because policeman Aurelio Altivo compelled him to do so as otherwise he would send him to the constabulary headquarters at Ormoc City.

The defense of Vicente Jasme, Jr. consisted in a mere alibi. While he admitted having gone to the dance held at the Baybay National Agricultural School he declared that he did not meet there his co-accused Piamonte and Mascarinas. He claimed that he went home with a group of persons among whom one Macaragal, the drummer of the orchestra, and arrived home at 4:00 o'clock in the morning. He denied knowing Magno Israel or the place where he lived. He also said that one week before the dance, Piamonte came to his place to ask him whether he was willing to sell his pants and shirt and as he owed Piamonte P3.00 he agreed and gave the clothes to him.

There is no doubt that Mascarinas is guilty of the crime charged. His guilt is established not only by his own confession (Exhibit F) but also by the confessions of his co-accused Agustin Piamonte and Vicente Jasme, Jr. and the ante mortem declaration of the deceased, Magno Israel. In his confession, Mascarinas admitted not only the plan they had conceived to rob Magno Israel but also the part he had in the execution of said plan. This he reiterated in his testimony in court only that this time he gave the explanation that he merely accompanied Jasme, Jr. to the house of Israel who was his uncle and did nothing in connection with the robbery, but this is belied by the ante mortem declaration of the victim who pointed to him as one of those who entered his house and robbed him. There is no question that said declaration partakes of the nature of ante mortem as found by the lower court because it has been established that at the time it was taken the victim was in a very serious condition and would have succumbed if not because of the opportune medical treatment extended to him.

The claim of Mascarinas that he signed his written confession because policeman Aurelio Altivo threatened to send him to the constabulary headquarters at Ormoc City cannot be entertained, it appearing that the investigation of the accused was conducted by the Chief of Police and the only intervention of Altivo was to write his answers

on a typewriter. This claim is also belied by the Justice of the Peace before whom the confession was signed who affirmed in court that said confession was signed by him voluntarily. And his testimony was corroborated by the Chief of Police. We do not find any justifiable reason to brush aside the testimony of these officials in the absence of any showing that they had testified for improper or personal reasons.

The same thing may be said with regard to appellant Vicente Jasme, Jr. His co-accused testified that this appellant went with them to the house of Magno Israel in the evening the latter was wounded only that to avoid being implicated they stated that their purpose in going to that house was merely to escort Jasme, Jr. who was a nephew of Israel. But we now see that their real purpose was not exactly the one above pointed out but to rob Israel in pursuance of a plan they had arranged the previous night, as clearly manifested in their extrajudicial confessions. If to this we add what Flaviana Escuadra testified that in the early morning of October 28, 1951, this appellant came to her house and left a pair of trousers and shirt which, upon inspection, were found to be tainted with blood, his guilt becomes strengthened.

That there is conspiracy among the three accused is evident. They were in the dance held at the Baybay National Agricultural School in the evening preceding the commission of the crime. After the dance, or early in the following day, they went home together and proceeded to the house of Magno Israel, and shortly thereafter the latter was found seriously wounded and robbed. This much appears in the testimony of these accused. It shows that they are the ones who could have possibly committed the act, but to save their skin they laid the blame on each other as regards the injuries inflicted on the deceased. This certainly cannot be sustained on the face of their suspicious behavior. There being conspiracy in the commission of the crime the confession of one is admissible and can be considered as corroborative evidence against the other. Thus, "it has been held that when extrajudicial confessions had been made by several persons charged with conspiracy and there could have been no collusion with reference to the several confessions, the fact that the statements were in all material respects identical, was confirmatory of the testimony of an accomplice." (People vs. Badilla, et al. 48 Phil., 718.)

The remaining question to be determined is: Has the deceased died as a result of the wounds inflicted upon him by the accused? It is true that he did not die immediately after the infliction of the wounds and that he was able to survive for sometime because of the operation to which he was subjected and the medical treatment extended to him at the Western Leyte Hospital. But the fact remains that he died as a result of the mucuous colitis he contracted because of his weak condition resulting from the wounds he had received. The doctors who attended him are agreed that this weakened condition which had caused disturbance in the functions of his intestines made it possible for him to contract mucuous colitis, which shows that, while said wounds were not the immediate cause, they were however the proximate cause of death. This is enough to make the accused responsible for the crime charged.

The crime committed is robbery with homicide punishable with reclusion perpetua to death (Article 294, paragraph 1, Revised Penal Code). Considering the aggravating circumstances of nocturnity and dwelling without any mitigating circumstance to offset it, the Solicitor General recommends that the maximum penalty be imposed upon the appellants. However, some members of the Court are of the opinion that in the light of the circumstances obtaining in this case, the penalty of reclusion perpetua would be commensurate for the crime charged.

Wherefore, the decision appealed from is affirmed, with the proportionate share of the costs.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, Jugo and Labrador, JJ., concur.

Padilla, J., concurs in the result.

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