

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. EUSEBIO MEJARES, DEFENDANT AND APPELLANT.

*G. R. No. L-3494. September 28, 1951*

Ponente: TUASON, J.

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### TUASON, J.:

Accused of robbery with homicide with seven other defendants, Eusebio Mejares was found guilty as charged and sentenced to an indeterminate penalty of 17 years, four months and one day of reclusion temporal to reclusion perpetua and to indemnify the heirs of the deceased in the sum of P2,000. Three of the other defendants were discharged after the prosecution rested and four were acquitted after trial. Jorge Sonsona, who was pointed out as the man who engineered the slaying and robbery, had not been apprehended or named in the complaint.

It appears that Patricia Sonsona was murdered in her house in barrio Ocana, municipality of Carear, province of Cebu, at about two o'clock a.m. on April 17, 1947. She lived alone in that house but on her request, Lucia Sobrevilla, 11 years of age, made her company and slept with her on that fatal night.

The authorities having been informed of the murder, the chief of police and the president of the sanitary division, among others, came at daylight and found the sala of the house strewn with household belongings, as shown in the photograph Exhibit A, and on Patricia Sonsona's body bruises, lacerated wounds, and contusions, and blood in the nostrils. The cause of death was pronounced to have been "asphyxia due to strangulation and pulmonary hemorrhage."

The evidence against the appellant consists of Lucia Sobrevilla's testimony and a confession attributed to him.

Lucia Sobrevilla testified in substance: She was awakened when some one tripped or stepped on her foot. Opening her eyes, she saw Eusebio Mejares mounted on Patricia's abdomen and Jorge Sonsona, Patricia's cousin, choking her. As Jorge Sonsona was holding Patricia by the neck, he asked the now deceased, "Where is the key" to which Patricia replied, "Are you capable of doing this to me?" In the course of the assault, Jorge Sonsona left the victim and dragged the witness to a corner where he deposited her with a warning not to say anything or she would be killed too. Once Patricia was dead, the malefactors moved to where the trunk was located, took much money from it, stuck the bank notes in their pockets, and left. After, they were gone, she slipped out of the house and informed a relative of hers of what happened.

The witness further stated that the faces of the two men were partly covered with white handkerchiefs, and that Mejares wore short pants and the same clothes he had on at the trial. She said that she was able to recognize the assailants because a light was burning in the house, their masks fell off, and the distance between them and her was only about one braza. Besides, according to her, she knew Eusebio Mejares before the slaying and robbery. She admitted on cross-examination that before the date in question there had been an altercation between Eusebio Mejares and her father in the market place.

To the question whether there were other persons besides Mejares and Jorge Sonsona, the defense counsel

objected and the objection was sustained. Similar question and objection with reference to cash which Patricia had were resolved in the same manner.

The pertinent detail of Eusebio Mejares' extrajudicial statements, which were made in the form of questions by the chief of police and answers by the declarant, and were sworn to and signed before the justice of the peace, are in effect these: Mejares met Orek (Jorge) Sonsona, Nonong Claracy, two other persons whom he could not identify, and Tenoy Gemal. Orek Sonsona levelled a revolver at him with a warning not to move. Mejares asked what it was all about and Sonsona said, "Do not say anything, go with us to Banica," and he (Mejares) did, to the house of Pati (Patricia) Sonsona. On the way to Patricia's place, at a crossing in Ocana, they sat down to rest. From the crossing, they proceeded to the boundary between Carcar and Sibonga, where they met Tatyong Fantonial, and thence to Pati Sonsona's place. They halted at Pati's well while Orek went ahead as if to survey the immediate vicinity of the house. When he came back Sonsona said, "Let us go now." Orek entered the house first and was followed by others including Mejares. Mejares was not sure whether there was light in the house. When he was in the "corridor", he heard Pati say, "Go ahead, ransack everything there, anyway I know you." Then some one ordered, "Go ahead, finish him (her), because he (she) knows us," and he heard "banging noise of the cabinet". Mejares and his companions stayed in the house about thirty minutes, but Mejares did not do anything. After the robbery they held a huddle and Jorge said that nobody was to talk. Mejares saw Jorge holding a necklace, a ring and a bracelet, and before the gang disbanded, Jorge handed him P12.

No witnesses were called for the defense outside of the defendants themselves.

Without stating where he was on the night of the robbery and killing, Mejares denied that he had a part in the crime and repudiated the above confession, saying that he did not make it. He charged that he had been maltreated by Aldawan, an MP sergeant, and claimed that he affixed his mark to Exhibit D as the result of the torture. He denied that this exhibit was read to him by the justice of the peace or any other person.

As heretofore stated, the confession was taken down by the chief of police, against whom no charge of maltreatment or intimidation has been made, and was ratified by the appellant under oath very soon after. The chief of police swore, and it is impliedly admitted, that no MP or military man was around when the appellant confessed.

The justice of the peace on his part testified that the appellant was appraised of the contents of Exhibit D, although he did not remember whether it was he or his clerk who read it to Mejares, before he swore, the latter and Mejares stamped his mark at the bottom of it.

We are satisfied that the statements in Exhibit D were the defendant's and not coerced. The fact, pointed out by counsel for the defense, that Mejares stated in Exhibit D that "Jorge Sonsona threatened to kill him at the point of a gun and forced him to join the group," is precisely one reason for concluding that the confession was not fabricated by any one who would use it as evidence for the prosecution. Those parts of the confession which would avoid or lessen the declarant's criminal liability could have come only from the mouth of one who stood to benefit from the qualifications or avoidance of the admission

It is contended that if Exhibit D is to be used as evidence, "it should be considered in toto." It is argued that "when part of writing is given in evidence by one party the whole of the same should be considered together," and counsel believes that this rule applies equally to confessions and admissions.

A confession is not like a private agreement or a pleading to be construed with literal strictness. Introduced in evidence, as in this case, to show that the accused participated in the crime or that he was not elsewhere, as he would have the court believe, a confession may be dissected and each part of it examined and given weight

separately, regard being had of defendant's interest to shield himself or lighten his responsibility. Self-serving statements may and should be ignored, unless in the light of the circumstances they appear reasonable, are corroborated, or exhibit signs of truth.

We are also satisfied that Lucia Sobrevilla was sufficiently intelligent to know the value of her oath and to be a competent witness. And as regards her ability to recognize the appellant, it suffices to note that there was a lighted lamp in the house and that she had known Mejares as well as Jorge Sonsona before. Her acquaintance with Mejares is indirectly confirmed by the fact elicited by defense counsel on cross-examination that this accused and the witness's father had a quarrel prior to the night of the robbery and slaying. Mejares' reference to the deceased by her pet name is an indication that he was not a complete stranger to the members of her household.

We have compared Sobrevilla's testimony given in court and her declaration at the inquest and have detected no discrepancy between them sufficient to warrant the theory that one or the other was perjured.

In the first assignment of error it is alleged that the appellant did not have a preliminary investigation and counsel would have the proceedings in the court below annulled.

The record in the case states that the appellant specifically waived his right to a preliminary investigation by the justice of the peace. This is not denied. If this were not enough, the record does not disclose that the appellant broached this question at any stage of the trial in the court of first instance.

In the light of these facts, the appellant is stopped to raise this objection on appeal for the first time. The right to a preliminary investigation is not a fundamental right and may be renounced expressly or by silence. This is a rule so well settled and so frequently reiterated as to make further discussion of it absolutely superfluous.

Upon all the circumstances of the case, the sentence imposed by the trial court is correct, except the reclusion temporal part of it which should be eliminated. The Indeterminate Sentence Law does not apply where life imprisonment is meted out.

With this modification, and on the understanding that the right of the deceased's heirs to bring a civil action to recover the value of the money and property stolen is reserved, the appealed decision is affirmed with costs.

Paras, C. J., Feria, Pablo, Bengson, Padilla, Reyes, and Jugo., JJ., concur.

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