

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. OSIAS DE LA CRUZ ET AL., DEFENDANTS. MANUEL MARCOS AND CARMELO TUMAMAO, DEFENDANTS AND APPELLANTS.

G. R. No. L-3012. January 09, 1951

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

An old man named Juan Cadiz had previously mortgaged his land in Iloeos Norte to secure the payment of a loan of P1,000. About December 14, 1947, he made a trip from Nueva Vizcaya to the municipality of Bacarra, Iloeos Norte to negotiate the sale of the land which he later succeeded in selling for P2,500. Deducting the amount of the mortgage debt, he received P1,500. He stayed in the house of his nephew Mariano Macadangdang in the barrio of Pasngal, Bacarra, Ilocos Norte, carefully keeping the proceeds of the sale, preparatory to his return to Nueva Vizcaya. News of his possession of this relatively large amount apparently spread and reached the ears of some malefactors, particularly Osias de la Cruz.

On December 18, 1947, a little before midnight, a group of six men arrived in front of the house of Mariano Macadangdang where Juan Cadiz was staying. One of the group called out "apo" and then addressing the inmates of the house said that they were looking for a certain prisoner, thereby conveying the idea that they were peace officers. Mariano lighted the lamp and unbolted the door. Just then a shot was fired under the house by one of the marauders, either accidentally or to scare the inmates of the house and induce them to open the door more quickly. The shot however had a contrary effect on Mariano and upon Juan Cadiz who, instead of opening the door, pushed it closed to counteract the attempts of one or two of the night prowlers to force it open.

Determined to resist the intrusion, Mariano went to get his bolo, leaving Juan who evidently was already provided with one, to guard the door. One of the intruders, who turned out to be Osias de la Cruz, in trying to force open the door against the resistance of Juan, grasped the frame of the door and succeeded in partly forcing it open. Juan with his bolo, struck at the hand and wounded the fingers of Osias who, smarting from the painful effect of the bolo blow and incensed at the determined resistance of the inmates, twice fired his .45 caliber pistol thru the door, one of the bullets hitting Juan in the left parietal region causing a mortal wound which felled him to the floor. With resistance from within subdued the door was pushed open and one of the intruders, his face partly covered with a handkerchief, entered, evidently, to proceed with the robbery previously planned by the gang. However, on entering he was horrified to see Juan Cadiz sprawled on the floor apparently dead. He backed out and with his companions he left the house in a hurry.

Juan Cadiz was taken to the hospital where the following afternoon he died from the effects of the gunshot wound. The next morning Mariano Macadangdang noticed two bullet holes on the door of his house, which was smeared with blood. He found two empty shells under the bataan or "bansag" of the house and another empty shell under the stairs and a pellet inside the house not far from where Juan Cadiz fell after being shot.

Subsequently, Jose Baxa and Carmelo Tumamao were arrested by the municipal policemen of Bacarra and

Manuel Marcos was apprehended by the military police. While under confinement, the three made written statements (Exhibits E, G and H) admitting their participation in the attempted robbery in the house of Mariano Macadangdang, giving details of how the commission of the crime was planned that night of December 18, 1947, with Osias de la Cruz acting as the mastermind and making the proposition to rob which was agreed to by the rest of the group which turned out to be Jose Baxa, who carried a .32 caliber pistol, Exhibit B, Manuel Marcos, armed with a "paltik", Carmelo Tumamao, Serafin Florentino, and Marcelo Cadelinia.

All of the six persons were charged with murder in the Justice of the Peace Court of Bacarra. The written statements made by Baxa, Tumamao and Marcos were sworn to and signed by them before the justice of the peace of Bacarra after he had explained the contents thereof to them and they had given him the assurance that said contents were true. At the preliminary investigation these three affiants (defendants) testified. Their testimonies taken down in writing by the justice of the peace Exhibits F, J and I practically corroborate the story given by them in their affidavits.

In the Court of First Instance, at the instance of the fiscal, Serafin Florentino and Marcelo Cadelinia were excluded from the information for the purpose of utilizing them as Government witnesses altho for reasons not shown in the record only Cadelinia actually took the witness stand for the prosecution. Osias de la Cruz was then still at large, so the trial proceeded only against Baxa, Tumamao and Marcos. After trial, the three were found guilty of attempted robbery with homicide under article 297 of the Revised Penal Code, with aggravating circumstances of nocturnity and dwelling, and in a well-prepared decision by Judge Manuel P. Barcelona, were sentenced each to reclusion perpetua, to indemnify jointly and severally the heirs of Juan Cadiz in the sum of P6,000, without subsidiary imprisonment in case of insolvency and to pay the costs pro rata. To reverse this decision and to secure their acquittal, the three defendants have appealed to this Court. Pending appeal, however, by resolution of this Court dated March 14, 1950, the motion of defendant Baxa to withdraw his appeal was granted and judgment was ordered entered accordingly. The present appeal is therefore confined to Marcos and Tumamao.

What happened in the house of Mariano Macadangdang that night of December 18, 1947, was clearly described and narrated by him while on the witness stand. The identity of the six persons who composed the group is revealed not only in the three affidavits already mentioned but also in the testimony of the three original appellants. While admitting their presence at or near the house of Mariano on the night of the attempted robbery and the killing of Juan Cadiz, Baxa, Marcos and Tumamao claimed that they were either forced into going there or that they did not know that the leader, Osias de la Cruz, took them there for the purpose of robbery, and that as a matter of fact when they realized his evil design and as he was going toward the house, armed with his .45 caliber pistol, they tried to dissuade and stop him but were too late and so they left the place, especially after hearing the three pistol shots already mentioned. The record, however, shows that the two appellants readily accepted the proposition of Osias de la Cruz to commit robbery in the house of Mariano Macadangdang, particularly to get the money that Juan Cadiz then had in his possession, and that the two appellants took an active part in the attempted robbery by going up the house and standing on the batalcm or bunsag while Osias was trying to force the door open. This is disclosed not only by the affidavits, Exhibits H and G, corroborated by their testimonies Exhibits I and J at the preliminary investigation, but also by the testimony during the trial of Marcelo Cadelinia who was in the group that night. Appellants, however, maintain that their affidavits were obtained thru force and intimidation and were not voluntary. To rebut this claim of appellants we quote with approval the pertinent portion of the decision of the trial court on this point, which reads thus:

"True it is, the defendants claim that their inculpatory admissions in their respective affidavits, Exhibits E, G and H, were obtained by the military police through torture, but this is not borne out by the record. It is worthy to note that they have not filed any criminal or administrative complaint against the alleged torturers. More, it

should also be recalled that according to Sgt. Vicente Joven of the municipal police force, the latter, not the military police, apprehended Jose Baxa and Carmelo Tumamao and took their affidavits, which they willingly subscribed, without having been coerced or intimidated. In any event, whatever force there may be in the contention of the defense that said affidavits were secured by improper means, is nullified by the fact that they substantially confirmed their statements therein in their respective sworn declarations, Exhibits "P", "J" and "I", taken down by the Justice of the Peace of Bacarra. It must be conceded that Carmelo Tumamao, in his sworn declaration, Exhibit "J", pretended that he did not know the criminal purpose of Osias de la Cruz when they went to the house where Juan Cadiz was living, but this is a lie. Marcelo Cadelinia, one of their companions, categorically stated that Osias de la Cruz revealed to all his companions on the night in question his purpose 'to get the money of Juan Cadiz.'"

To what the lower court stated in the foregoing quotation we might add that to further show that there was no force or intimidation used on the appellants to obtain their written statements, and that the latter were voluntary, we have the fact that before they swore to said written statements and signed the same, they were questioned by justice of the peace Acosta whom they assured that said statements were true and voluntary. In fact, one of the defendants, Jose Baxa, who had a similar statement sworn to and subscribed before justice of the peace Acosta, indicated certain corrections he wanted made in his statement which corrections were duly made by the justice of the peace. Furthermore, said affidavits are replete with details which only willing declarants can supply. (People vs. Viernes, 47 Off. Gaz., 123.)[*] But even assuming for a moment that said affidavits were not made freely or voluntarily, at the preliminary investigation which was public and where no force or intimidation could have been employed, these appellants adduced testimony practically corroborating the contents of their affidavits. No error was therefore committed by the trial court in accepting said affidavits and partly basing its decision on the same.

It is clear that inasmuch as there was agreement and conspiracy to commit robbery, particularly between Osias on one side and the two appellants on the other, all the conspirators are liable for any crime committed in the course of committing or attempting to commit the robbery. In addition to the numerous authorities available on this point, we have the case of People vs. Morados, (40 Official Gazette [9th Supp.], No. 13, p. 75) [*], the facts of which are similar to those in the present case, involving attempted robbery with homicide. In that case, the accused in carrying out the plan previously agreed upon to steal some carabaos, divided themselves into two groups, one group trying to overpower the sleeping guards and the other untying the ropes that secured the carabaos. In the scuffle a shot was fired and one of the guards was killed and the marauders fled without being able to take away with them any of the animals. After being convicted of attempted robbery with homicide, some of the accused claimed that they could be held guilty only of attempted robbery but not of homicide because they took no part in the killing of the guard but confined themselves to trying to take away the animals. This Court affirmed the sentence of conviction for the complex crime of attempted robbery with homicide.

In view of the foregoing, and finding no reversible error in the decision appealed from, the same is hereby affirmed with costs.

Moran, C. J., Paras, Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo and Bautista Angelo, JJ., concur.

[*] 84 Phil., 144.[*] 70 Phil., 558.

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