

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LOMINOG MACATANAW, ACCUSED AND APPELLANT.***G.R. No. L-37883. February 25, 1975*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7da04adf1c41/>**ANTONIO, J.:**

Appellant Lominog Macatanaw has appealed to this Court from the judgment of the Court of First Instance of Lanao del Sur in Criminal Case No. III-44, finding him guilty as co-principal of the crime of Murder with Physical Injuries (Articles 248 and 263, in relation to Article 48 of the Revised Penal Code), and sentenced to suffer the penalty of reclusion perpetua.

There is no question that on the night of April 20, 1971, someone fired at the house of Macaaguir Tiboron at Barrio Banga, Wao, Lanao del Sur. As a result of the firing, the six-year old son of Tiboron named Oracmo, who was then lying on the floor and sleeping with his mother, was hit by a bullet on the forehead and his skull was shattered (Exhibit "A") causing his death sometime later, and that Antangan Tiboron, mother of the deceased Oracmo, was also hit by a bullet which penetrated the side of the neck and came out through its frontal side near the Adam's apple, causing upon her serious physical injuries.

According to Macaaguir Tiboron, 45 years, farmer and resident of Saguwaran, Lanao del Sur, while he was sleeping inside his house, together with his wife Antangan, daughter Sakina, son Imra, and a small child, Oracmo, he was awakened by a burst of gunfire. He noticed that his son, Oracmo, was bleeding on the head and his wife was suffering an injury on the neck, which injury was caused by the bullets from the gun. He brought his son Oracmo and his wife to the private hospital of Dr. Gannaban at Wao for treatment, but his son died before reaching the hospital. His wife was treated at said hospital and later on transferred to the Sacred Heart Hospital in Iligan City for further treatment. As a result of this incident, the Philippine Constabulary conducted an investigation. He claimed that a week later, the appellant Lominog Macatanaw was apprehended as a suspect in a case of theft of cattle and that in said case he admitted the crime of theft. It was also in connection with the investigation of that case that said appellant allegedly admitted that he was with a group of men composed of Abogado Macatanaw and his cousin, Gandawali Mangorangca, Tominaman Mangorangca and Omar Wali, one of whom fired at his house that evening. Appellant allegedly admitted that it was Gandawali who fired at his house because when they were trying to take his carabaos, someone in his house focused the beam of a flashlight towards the direction where the men were. It was at that juncture when Gandawali fired at the house, while his companions were lying down on the field. He claimed that it was his son who directed the flashlight at the persons opening the corral, and it was at that time when one of the men fired at him.

On cross-examination, he admitted that he did not know the identity of the person who fired at his house. He claimed that after they fired at his house, they took two (2) of his carabaos. At the constabulary barracks, he reported the death of his son, the wounding of his wife and the loss of his two carabaos.

Piang Paiso, 48 years, legal officer of the Mindanao State University, declared that during the month of June, 1971, he was the municipal judge of Wao, Lanao del Sur and he remembered having administered the oath to appellant in connection with a case of Murder with Physical Injuries filed with his court. He stated that he took

down the statement of the appellant contained in Exhibit "C", while Exhibit "B" was prepared by the constabulary, but all of said documents were subscribed and sworn to before him by appellant. He also declared that he translated the contents of the documents to the appellant in Maranao because he speaks the dialect fluently.

Sakina Macaaguir, 22 years of age, single, mat weaver and resident of Saguiaran, Lanao del Sur testified that she was present when her younger brother, Oracmo, was shot while he was sleeping more than a year ago, and then after the firing, his father brought Oracmo to Wao, where he was buried the following day. She stated that on that occasion she heard four (4) shots, but she does not know who fired them. Her mother, who was also hit by the bullet on the neck, was not able to talk anymore, although she was treated for three (3) months at the Sacred Heart Hospital. According to her, she was awakened by the gun report and she directed her flashlight at their carabaos which were resting below their window, but after focusing the flashlight at the direction, she noticed that two of their carabaos were already missing, leaving only four (4) carabaos in their yard. She asserted that her act of focusing the flashlight and the shooting from below was almost simultaneous.

On cross-examination, she also declared that at the time of the firing, she was sitting down while his mother, brother and father were sleeping.

In his defense, Lominog Macatanaw, 16 years of age, single and detention prisoner at the provincial jail, testified in Maranao that at about 7:00 o'clock in the evening of April 20, 1971, Gandawali Mangorangca and some companions arrived at his house at Pilingtangan, Wao for the purpose of fetching his older brother, Abogado Macatanaw. When Abogado directed him to go with them, he inquired where they were going, but he told him to just go with them. As he could not go against the wishes of his older brother and not suspecting anything wrong, he acceded. He was surprised, however, to know that when they reached the park area, one of his companions stole a cow belonging to a person by the name of Batanes. It was at that juncture when he decided to go home but as they were already very far from his barrio and it was at nighttime, he was dissuaded from doing so. Upon reaching Barrio Banga, Gandawali directed Omar to get the carabaos which were tied near a house. While Omar Wali was getting the two carabaos, somebody from the direction of the house focused the beam of a flashlight at them. Gandawali said, "Lie down," and at that instance, Gandawali aimed his automatic carbine at the house and fired several times. He declared that neither he, nor the rest of his companions, such as Omar, Tominaman, and Abogado were armed. After Gandawali had finished firing, Omar pulled the two carabaos away and Gandawali said, "Let us run away." The group then went back to Pilingtangan. When they reached Barrio Pilingtangan, he escaped from the group and went home. The group proceeded to Maging, taking with them the cow and the two carabaos. He does not know what they did with the animals as he was neither given any share in the proceeds, if any, nor informed of what they did with them. At the time when Gandawali fired at the house, he was in a plowed area some twenty to thirty meters from the house and did not know that anyone in the house was hit.

On cross-examination, Lominog also declared that with regards to the stealing of the two carabaos, he had already pleaded guilty to the crime of Theft of Large Cattle. It appears from the record that upon his plea, he was found guilty in Criminal Case No. III-45 of the crime of Theft of Large Cattle, but because he was fourteen (14) years of age at that time, the Court suspended all proceedings and he was committed to the care and custody of the Department of Social Welfare pursuant to Article 80 of the Revised Penal Code (Exhibit "6").

Appellant submits in connection with his appeal the following issues:

1. Did the Court err in convicting appellant on the basis of his alleged uncorroborated extra-judicial statements, (Exhibits "B" and "C") written in English, a language which he does not understand, and although Exhibit "B" states that it was translated to appellant in Maranao by Datu Macaager Tiboron, the said Tiboron admitted that he "does not know English."

2. Did the Court err in holding that appellant was a co-conspirator of the crime of Murder with Physical Injuries although there was no clear proof of conspiracy?
3. Was the killing of Oracmo and the wounding of Antangan the result of a single act so as to constitute a complex crime of Murder with Physical Injuries within the intendment of Article 48 of the Revised Penal Code?
4. Was there double jeopardy?
5. Was the guilt of the accused proven beyond reasonable doubt?

The Solicitor General, after three (3) extensions of time within which to file appellee's brief beginning from August 28, 1974 to January 24, 1975, eventually filed a "Manifestation in Lieu of Appellee's Brief," with the recommendation that the trial court's judgment convicting the appellant of the crime of Murder with Physical Injuries be set aside, and a judgment of acquittal rendered. The basis of the Solicitor General's recommendation are herein set forth:

"Mainly, it may be said, the trial court relied on the appellant's own statement (Exhibits 'B' and 'C') for his conviction. Only two prosecution witnesses testified on the crime charged, namely, Macaaguir Tiboron, and his daughter, Sakina Macaaguir.

"Tiboron testified, in part, as follows:

'FISCAL RASUMAN:

'Q

Now, because you were present in your house at the time of the shooting and since you have your child died as a result of the shooting and your wife was also hit, do you know who is the author of the crime who shot at the house at the time?

'WITNESS:

'A

I do not know who shot us because I was sleeping and after a week this man (witness pointing to the accused) was arrested because of theft of large cattle and he confessed that he was the one who made it.

'Q

Why do you say that this man confessed?

'A

When this accused was arrested for theft of large cattle he was investigated by the chief of police and he admitted that he was with the group who fired at my house and he also mentioned his companions. (pp. 5-6, t.s.n., Sept. 4, 1972)

"Sakina, for her part, declared as follows:

'FISCAL RASUMAN:

'Q

Do you know the accused Lominog Macatanao in this case?

'A

Yes, I know.

'Q

Have you ever seen this Lominog Macatanao before this incident?

'A

I have not seen him.

'Q

Since when did you know him?

'A

When he was arrested and he admitted that they were the ones who fired at us.

'COURT:

'Q

Do you mean to say that it was only after the incident particularly at the time Lominog Macatanao was arrested that you came to know him?

'A

Yes, sir.

'Q

Before his arrest you have never seen him?

'A

Yes, sir.' (pp. 17-18, t.s.n., February 27, 1973).

"The total probative value of the foregoing testimony, relative to the offense charged, is manifestly nil. It can thus be concluded that the trial court relied completely on the appellant's above statements for his conviction. These two statements, and appellant's own testimony, comprise the main evidence then of the crime charged.

"How, then it may be asked, did appellant come into the company of the gunwielder, Gandawali Mangurangca? The following testimony appears in point, to wit:

'Q

It is alleged in the information that on the night of April 20, 1971, you were with these four persons. Will you relate to this Honorable Court why how come you were with these four persons on the night of April 20, 1971?

'A

That night about 7:00 in the evening this Gandawali Mangurangca and four persons arrived and picked up Abogado Macatanao.

'Q

Where did they arrive to pick Macatanao Abogado?

'A

In our house.

'Q

Where?

'A

At Pilingtangan.

'Q

This Pilingtangan is a municipality of Wao?

'A

Yes, sir.

'Q

When these persons arrived at about 7:00 o'clock in the evening to pick up Abogado will you tell the Honorable Court that you were able to go with them when they only picked up Abogado?

'A

When these three persons arrived to pick up Abogado I was told by Abogado to go with them. I asked Abogado where are we going, he told me just go with us.

'Q

This Abogado is your older brother?

'A

Yes, sir.

'Q

Now, at the time you started from your house with your brother and his companion, did you know where you were going?

'A

I do not know, sir.

'Q

And why did you go with them when you did not know?

'A

I was told to go with them with my brother although I inquired where are we going.

'Q

At the time you started did you know what are you going to do that night?

'A

I do not know, sir.

'Q

Now, from your house where you joined the group of your brother and his companions where did you proceed that night?

'A

At park area.

'Q

And while at the park area, what did your companions do there?

'A

They got the cow of a certain Batanes.

'Q

You mean to say that they stole that cow?

'A

Yes, sir.

'Q

So that in park area you realized that these group with whom you went out to steal some animals. Is that correct?

'A

Yes, sir.

'Q

Now, did you have any understanding with him that you will also be member of their group to steal animals?

'A

None, sir.

'Q

Then when you realized at park area that the companions of your brother were going to rustle some animals why did you not go home if you are not a part of their group?

'A

I can not go home because I am afraid on the way.

'Q

Why? This park area where they stole the cow of a certain Batanes is it far from your house where you started?

'A

Far.

'Q

At that time how old were you then?

'A

More than 14.' (pp. 14-15, t.s.n., May 8, 1973).

"It is the appellant's testimony too which appears to be the only evidence relative to the actual commission of the offense. The following portion of appellant's testimony relates to the who, what and how, of the offense, thus:

'Q

And from park area where did you proceed?

'A

At Banga.

'Q

When you arrived in Banga what happened?

'A

When we arrived at Banga Gandawali told Omar to get those two carabaos.

'Q

Where were those two carabaos you are referring to at the time Gandawali told Omar to get them?

'A

At the house.

'Q

Whose house?

'A

I do not know.

'Q

Where was that house located?

'A

Banga.

'Q

At the time Gandawali instructed Omar to get the two carabaos, where were you then?

'A

I am near Gandawali at a plowed area.

'Q

How far was that plowed area where you are staying with Gandawali from the house where there were two carabaos?

'A

Like this. (Witness pointed to an acacia tree which was estimated to be from 20 to 30 meters.

'Q

Did Omar obey the instruction of Gandawali to get the carabao?

'A

Yes, sir.

'Q

Now, while Omar Wali was getting the two carabaos what happened?

'A

Somebody in the house flashlighted.

'Q

What happened?

'A

Gandawali get instructions and Gandawali said lie down.'

'Q

Then what happened next?

'A

He fired.

'Q

He fired at what?

'A

He fired at those people in that house?

'Q

At the time you started from your house how many in the group were armed?

'A

Only Gandawali.

'Q

How about Omar, was he armed?

'A

No, sir.

'Q

How about Tominaman?

'A

No, sir.

'Q

How about Abogado?

'A

No, sir.

'Q

How about you?

'A

'No, sir.

'Q

Now, after Gandawali fired at the house because of that somebody who flashlighted from the house what happened next?

'A

Omar arrived pulling the two carabaos and then Gandawali said let us run away.'

'Q

Then where did the group proceed?

'A

At Pilingtangan.

'Q

When you arrived in Pilingtangan what did you do?

'A

I escaped from them and went up our house.

'Q

Why did you escape from them?

'A

Because I am not with the group.

'Q

Now, when you arrived in Pilingtangan you separated from their group where did they proceed?

'A

Maging.

'Q

Where is that Maging?

‘A

At Poona Bayabao.

'Q

When this group proceeded to Maging were they tagging along the cow from Batanes and the two carabaos?

‘A

Yes, sir.

'Q

When they arrived in Maging, did you know what they do with these animals?

‘A

I do not, sir.

'Q

Did they not give you a share of the proceeds of that animal if they have sold it?

‘A

No, sir.

'Q

Did you not have any understanding that you will share with them the proceeds of these animals if they were able to sell?

‘A

None, sir.

'Q

In other words, you did not have any understanding with them and that you did not have any understanding with them regarding the selling of the animals that is what you would want to convey to this Honorable Court?

‘A

No, sir.

'Q

Before you started from your house or after you already left the house with this group did they not tell you that they were going to steal some animals?

‘A

No, sir.

'Q

That house in Banga from whom this house of Gandawali got two carabaos you said that you do not know who is the owner, up to now you do not know the owner of that house?

'A

I only knew when I was in prison.

'Q

Who is the owner?

'A

Macaaguir.

'Q

Now, at that night when Gandawali fired at the house because of that somebody who flashlited from the house, did you know if somebody was hurt in that house?

'A

I do not know, sir.' (pp. 15-18, t.s.n., May 8, 1973).

"The foregoing testimony points to Gandawali Mangurangca as the sole gunwielder, and presumably, the author of the killing of 6-year old Oracmo and the serious wounding of the boy's mother. On the other hand, no proof points to the appellant as the actual perpetrator and/or coperpetrator, of the offense charged. On this basis, the appellant's conviction must, perforce, rest upon conspiracy, a conspiracy proved, as this Honorable Court has ruled time and again, as clearly, and as convincingly as the commission of the offense itself. (People vs. Portugeza, 20 SCRA 901; People vs. Tividad, 20 SCRA 549; People vs. Clemente, 21 SCRA 261; People vs. Peralta, 25 SCRA 759). And there is conspiracy 'when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. (Art. 8, Revised Penal Code).

"In People vs. Chaw Yaw Shun alias George Chua, et al., for example, this Court among other things, declared that 'conspiracy must be proved by independent evidence other than the confession.' And then, further, it was there stated that, 'for there being no independent evidence establishing an overt act of appellant Chua connected to the crime, conspiracy must necessarily be discarded.' (23 SCRA 127, pp. 144-145). Now, in the present case, there is no evidence independent of the appellant's own testimony and statements, showing the commission by appellant of any overt act leading to and/or in pursuance of any conspiracy with any other person, particularly, Gandawali Mangurangca, as to the shooting of 6-year old Oracmo and his mother. Significantly, appellant's own declarations (Exhibits 'B' and 'C') are not, on scrutiny, in the nature of a confession to the crime charged.

"The undersigned are thus constrained to agree with the appellant that the trial court's judgment of conviction finds no support in the facts and the law. The appellant's innocence, presumed no less than by the basic law of the land, has not been overcome by the evidence adduced at the trial. In People vs. Macaraeg, et al., this Court declared:

'2. Nor is the scope of the constitutional presumption of innocence a matter left unresolved. As was held in the recent case of People vs. Dramayo. 'That is a right safeguarded both appellants. Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. Appellants were not even called upon then to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently or whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the

crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty.'

(53 SCRA 285, at pp. 292-293).

"It is believed that the appellant's guilt has not been proved beyond reasonable doubt, the presumption of innocence extended him by our organic law not having been successfully overcome by the evidence adduced at the trial. There is no evidence that he had committed any overt act leading towards the commission of the crime charged, and there is, likewise, no evidence of conspiracy by the existence of which, Gandawali Mangurangca's act of firing his automatic carbine resulting in the death of a 6-year old boy and the serious wounding of his mother, would engulf appellant in a web of guilt, and make him answerable for each death and wounding." (Italics supplied.)

We find the recommendation of the Solicitor General meritorious. Undeniably, the judgment is flawed by certain serious errors.

It must be noted that the crime for which appellant was charged and on the basis of which he was convicted is "Murder with Physical Injuries." Although both the killing of Oracmo and the infliction of physical injuries upon Antangan occurred on the occasion when the carabaos were stolen, the Assistant Provincial Fiscal of Lanao del Sur filed two distinct and separate Informations, one for "Murder with Physical Injuries" under Articles 248 and 263 in relation to Article 48 of the Revised Penal Code (Criminal Case No. III-44), and the other for "Theft of Large Cattle" defined and penalized under Article 310 of the Revised Penal Code (Criminal Case No. III-45). Appellant pleaded guilty to the crime of theft of large cattle. In the Information for murder, it was specifically alleged:

"That on or about April 20, 1971, at night, in the barrio of Banga, Municipality of Wao, Province of Lanao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused in company with Gandawali Mangurangca, Abogado Macatanaw, Tominaman Mangurangca and Omar Wali who are still at large, conspiring and confederating together and mutually helping one another, armed with firearms and with deliberate intent to kill, with treachery, evident premeditation, superior strength and taking advantage of the darkness of the night, and while the victims were asleep, shoot and wound therewith a boy named Oracmo Macaager, inflicting upon him a gunshot wound on the forehead causing his instantaneous death and inflicting serious injury a thru and thru gunshot wound on the neck upon Mrs. Antangan Tiburon which require medical attendance for more than thirty (30) days and have incapacitated her from performing her labor for the same period of time."

It is, therefore, evident that to hold appellant liable as co-conspirator in the crime of murder, it must be shown that he had actually participated in the shooting of the victims, or in the absence of direct evidence showing a preconceived plan or agreement among the assailants of the deceased, circumstantial evidence must be proven showing clearly and convincingly the existence among them of a common criminal design. We have always stressed that: "Considering the far-reaching consequences of criminal conspiracy, the same degree of proof required for establishing the crime is required to support a finding of its presence, that is, it must be shown to exist as clearly and convincingly as the commission of the offense itself.[1] In the case at bar, it is undisputed that appellant has not participated in the shooting of the victims and there is nothing in the record any fact or circumstance which shows clearly and convincingly that such conspiracy between appellant and the other accused exists.

Having reached the foregoing conclusions, it may not be necessary to discuss the other assigned errors, such as whether or not the trial court also erred in not taking into consideration the fact that appellant was actually fourteen (14) years of age at the time of the commission of the crime and, therefore, exempted from criminal liability, if he acted without discernment (par. 3, Article 12, Revised Penal Code), or whether or not the doctrine of double jeopardy is applicable, as the constitutional protection against double jeopardy in accordance with its spirit and intent should be made to cover as nearly as possible every result which flows from a single criminal act, impelled by a single criminal intent. In other words, where there was one act, one intent, and one volition, and the defendant has been tried on a charge based on such act, intent or volition, no subsequent charge could be based thereon, although the crimes involved in the two proceedings are different.

WHEREFORE, in view of all the foregoing, appellant LOMINOG MACATANAW is hereby acquitted, with costs de officio.

Fernando, (Chairman), Barredo, Fernandez, and Aquino, JJ., concur.

[1] People vs. Tumulip, 60 SCRA, 303, 317-318.

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