

THE PEOPLE OF THE PHILIPPINEES, PLAINTIFF AND APPELLEE, VS. PABLO ESQUIVEL AND AMADO DIZON (ALIAS AMADO BASCO), DEFENDANTS AND APPELLANTS.*G.R. No. L-1701. December 22, 1948*

Ponente: TUASON, J.

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On July 28, 1946, two jeeps respectively driven by Rosalio Paje and Benigno Valenzuela and owned by Mauro Buffing were "hired" by a group of hoodlums on Azcarraga Street, Manila, purportedly to bring rice from San Miguel, Bulacan. When they reached San Miguel, the drivers, over their objection, were directed to proceed to San Isidro, Nueva Ecija. In the latter town, their hands were bound and in the latter part of the day they were marched up to a thicket and murdered, after which their bodies were thrown into the river. The next day the jeeps were sold in Cabanatuan, without the route signs and the spare tires which were left in San Isidro, and were recovered by members of the MPC detachment in that town.

Only five of the malefactors were arrested, three of whom Amado—Basco alias Amado Dizon, Ben Pascual alias Bernabe Pascual, and Pable Esquivel—were brought to trial, and two—Gorgonio Rivera and Simplicio Navarro turned state evidence. These last two were not included in the complaint or information and at the time of trial were still in the hands of the Philippine Constabulary. The rest of the culprits, although named in the complaint filed with the Justice of the peace had not been arrested on the dates the case was tried in the Court of First Instance.

The three accused who were put on trial were found guilty of robbery with double homicide and were sentenced jointly and severally to pay the owners of the jeeps P4,000, the heirs of Rosalio Paje P2,000.00 and the heirs of Benigno Valenzuela equal sum. They were also sentenced to pay the costs and the accessories of the law. From this judgment, Dizon and Esquiveli. have appealed, Ben Pascual having abided by the judgment. All of them set up alibi as a defense.

Following is a brief summary of the testimony of Simplicio Navarro, 17 years old, residing at 1324 Juan Luna, Tondo, Manilas On or about the 24th of July, about one o'clock in the afternoon, he and Mariano Jacutan (from Nueva Ecija), whom he had known before, met on Juan Luna street, and Jacutan asked him if he wanted to come along to Nueva Ecija. Having answered yes, he went to San Isidro, Nueva Ecija on the 27th. In San Isidro he saw Jacutan and was introduced by the latter to Amado Basco, one named Naong Malingit, another small fellow whose name he did not remember, Pablo Esquivel, Ben Pascual, one Turong, one Rading and the latter's father. On the same day (but apparently at another meeting) the plan was made to commit the robbery. Those who were present in that meeting were Mariano Jacutan, Amado Basco, Gorgonio Rivera, Turong, Rading and the witness. It was agreed that the witness, Gorgonio Rivera and Amado Basco would come to Manila to "hire" a jeep to fetch rice from San Miguel. The three of them came to Manila and met, on Juan Luna Street, Lolet and Carding whom they invited to join them. On Sunday morning, July 28, they went to Azcarraga Street with Lolet and Carding and

succeeded in "hiring" two jeeps as planned. In going to Nueva Ecija, the witness and Basco rode in one jeep and the rest in the other. In San Miguel, in a gas station, they found Fred who got into the jeep wherein Lolet and fiivera were riding and came along to San Isidro. In San Isidro, in front of Mariano Jacutan's house, thetyn.jeeps stopped and the passengers went upstairs to eat, as they had not taken their breakfast yet. The chauffeurs were told to follow them but they said they were going to eat In the jeeps. Nevertheless the drivers were persuaded at last to come, but they stopped at the porch. When the chauffeurs insisted on remaining on the porch, the witness heard someone say that whoever refused would "be shot. Upon this, the drivers stepped inside and sat on two chairs. Thereafter Amado Basco, who was carrying a .45 automatic, told Gorgonio Rivera to tie them and Rivera obeyed. Later, Jacutan told Turong that it would "be "better to take the chauffeurs away from the house and Turong said it was a good idea. Then Turong selected the men who were to remove the drivers, and those men were Fred, Nanong Munti, and one of Captain Baguisa's men whom he did not know. Gorgonio Rivera followed the executioners just named and the drivers at about two o'clock in the afternoon.

Gorgonio Rivera, 22 years old, resident of Carmen, Zaragosa, Nueva Ecija, testified in substance that on July 27, 1946, he came to Manila with Amado Basco and Simplicio Navarro. In Manila, they met Carding and Lolet, and Amado Basco talked with them and said they were to "hire" a jeep. They were able to contract two jeeps and came back to San Isidro therein. In one jeep he, Carding and Lolot rode, and Amado Basco and Simplicio Navarro rode in the other. It was Sunday and they arrived in San Isidro at eleven o'clock in the morning, having left Manila at about eight o'clock. In San Isidro they stopped in front of Mariano Jacutan's house and Amado Basco told the drivers to get off and come up the house. Afterward, Lolet, Lopez and Turong drove the jeeps and kept them in a bamboo thicket. Amado Basco told him (witness) to look for a piece of rope and tie the drivers. He complied with this order and while tying the drivers Basco was aiming his .45 at them. The two drivers were later taken to the bank of the river where there were bamboo trees. Those who conducted the drivers were Amado Basco, Fred, Mariano Jacutan and Carding. Before that, coming from a hukbalahap parade, he found Pablo Esquivel saying, "If we leave those two chauffeurs alive they will denounce us," and Amado Basco commented that was true and they should be killed. The two drivers were led to the bank of the river.

Basco and Esquivel as well as Ben Pascual each signed and swore to a confession written at the MPC headquarters. Both repudiated these statements alleging they had been forced to sign them through violence. The charge of maltreatment was not denied although there was a chance for the prosecution to do so. Moreover, there is a stamp of truth in the charge of torture.

It will be seen that the evidence against Esquivel, apart from his alleged confession, consists of Simplicio Navarro's testimony that he came to know this defendant in Jacutan's house, and Gorgonio Rivera's testimony that Esquivel suggested the liquidation of the two drivers. The prosecution does not claim that Esquivel made the trip to Manila or that he accompanied the men who murdered the drivers. And Rivera's' and Navarro's testimony does not pretend to show that Esquivel took part in the devising of the scheme to entice jeeps to Nueva Ecija.

From what we can gather from the confused evidence, it does not even say that Esquivel was around at any moment from the time the jeeps arrived to the time the drivers were removed to a secluded spot. That Esquivel suggested the elimination of the drivers, as Gorgonio Rivera asserted, was contradicted by the other witness, Simplicio Navarro, who said that it was Jacutan from whom the idea came and that it was Turong, not Basco, who seconded it.

Esquivel's presence in Jacutants house when Simplicio Navarro arrived from Manila the first time is the only point on which the two witnesses agree. But that presence alone does not constitute proof that Esquivel was a party to the criminal conspiracy.

We do not say that Gorgonio Rivera committed an intentional falsehood. His testimony on the whole impresses us as true. The imputation by Rivera to Esquivel of the above-quoted utterance may have been an honest mistake. We can discern the possibility that Rivera mistook Jacutan or another for Esquivel when the speaker made a proposal to do away with the drivers.

Whatever the case, a thorough analysis of the record discloses that Esquivel's conviction rests on a slender and shaky foundation. The case for the prosecution was not presented with the care and thoroughness which the gravity of the offense demanded. The evidence was presented in a slipshod manner. No efforts seems to have been exerted to amplify and cement with positive and unequivocal assurances and details what appeared to be casual and loose references to the accused's supposed intervention in the crime.

In this connection it may not be out of place to bring to the attention of prosecuting attorneys the absolute necessity of laying before the court the pertinent facts at their disposal with methodical and meticulous attention, clarifying contradictions and filling up gaps and loopholes in their evidence, to the end that the court's mind may not be tortured by doubts, that the innocent may not suffer and the guilty not escape unpunished. Obvious to all, this is the prosecution's prime duty to the court, to the accused, and to the state.

Amado Basco's participation in the crime as revealed by Rivera's and Navarro's testimony is such as to be beyond any possibility of misapprehension. The witnesses' credibility is put in issue as a question of black and white. The trial court stated as its firm conviction that this appellant was a co-author of the heinous crime. Our review of the evidence leads us beyond doubt to the same conclusion. Over contradictions on some details, the two principal witnesses are agreed and categorical in the affirmation that Basco shared in the planning of carrying out the robbery; that he was one of the co-conspirators who came to Manila and detected the victims into Nueva Ecija, fair. riding in one of the jeeps; and that it was he who ordered that the drivers' hands be tied, and he was one of the gang who killed them. The fact that the witnesses refrained from implicating Esquivel in the same manner that they did Basco, with no discoverable interest in shielding the former and putting more blame on the latter than was his, underscores their even temper and restraint from exaggeration.

The Solicitor General recommends the maximum penalty. The writer of this opinion agrees with this recommendation, but majority of the Court voted for unqualified affirmance of the sentence imposed on Basco by the trial court. Hence, the judgment as to Basco will be and it is affirmed, with one half of the costs of appeal, except that the indemnity for each set of heirs shall be P6,000.00 instead of P2,000.00. The judgment against Esquivel is reversed with one half of the costs charged de oficio.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Bengzon, Briones, and Montemayor, JJ., concur.

Judgment affirmed on Basco, and reversed on Esquivel.

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