

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
AGUSTIN MANGULABNAN ALIAS GUINITA, DIONISIO SARMIENTO,
ARCADIO BALMEO, PATRICK) GONZALES, FLORENTINO FLORES
CRISPIN ES...**

G.R. No. L-8919. September 28, 1956

Ponente: FELIX, J.

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FELIX, J.:

At about 11:00 o'clock in the evening of November 5, 1953, the reports of gunfire awakened the spouses Vicente Pacson and Cipriana Tadeo, the 4 minor children and Cipriana's mother, Monica del Mundo, in their house at barrio Tikiw, San Antonio, Nueva Ecija. Whereupon, Vicente Pacson crossed the room and shouted to one Tata Pismo that persons were going up their house and then hid himself inside the ceiling.

In the meantime, someone broke the wall of the kitchen at the back of the house, and a few moments later a person suddenly entered the dining room and shouted that the door leading to the living room be opened. As no one of the house members obeyed, the intruder removed 3 board pieces in the wall and through the opening thus made he entered the living room. The intruder who was armed with a hunting knife was recognized by Cipriana Tadeo to be Agustin Mangulabnan, who was previously known to her. Agustin removed the iron bar from the door leading to the balcony and after opening said door, 2 persons whose identity has not been ascertained entered. Agustin then approached Cipriana Tadeo and snatched from her neck one necklace valued at P50 and also took from her person P50 in the paper bills and P20 in silver coins. Meanwhile, one of the two unidentified marauders searched the person of Monica del Mundo and took from her P200 in cash and in gold necklace valued at P200. But not contented with the loot, the same individual asked from Monica del Mundo to give her diamond ring which the latter could not produce, and for this reason, he struck her twice on the face with the butt of his gun. One of the small children of Vicente Pacson who was terrified called to his mother and that unidentified person, irked by the boy's impudence, made a move to strike him, but Monica del Mundo warded off the blow with her right arm. At this juncture, the second unidentified individual put his companion aside and climbing on the table, fired his gun at the ceiling. Afterwards, appellant and his two unidentified companions left the place.

After they were gone, Cipriana Tadeo called to her husband Vicente Pacson, and receiving no answer she climbed the ceiling and she found him lying face downward already dead. According to Dr. Vicente P. Llado, who performed the autopsy, Vicente Pacson sustained the injuries described in his autopsy reports, which reads as follows:

November 6, 1953

To Whom It May Concern:

Post-mortem findings on cadaver Vicente Pacson, age—37 years, married, of barrio Tikiw, San Antonio, Nueva Ecija.

Time taken: 8:20 a.m.

- Entrance—fracture of the frontal region of head due to gun shot wound.

Exit—wound at left side of the head, about the upper portion of the left ear.

- Entrance—gunshot wound, left lateral side of the left middle arm.

Exit—gunshot wound inner side of left arm.

- Entrance—gunshot wound, left lateral of the left forearm. Exit—gunshot wound, left inner side of the left forearm.

- Entrance gunshot wound around 2 inches more or less above the middle of the right clavicle.

Exit—gunshot wound at the back in the region of the spinal cord between the two scapula.

Cause of death—severe hemorrhage due to gunshot wound of the frontal region of the forehead.

(Exhibit C)

The incident was reported to the police authorities that same evening and in the ensuing investigation Cipriana Tadeo informed the Chief of Police that Agustin Mangulabnan was one of the malefactors who entered their house. When the latter was investigated, he readily and voluntarily subscribed before the Justice of the Peace of San Antonio, Nueva Ecija, an affidavit admitting his participation in the robbery and killing of Vicente Pacson (Exhibit A and B). Much later, however, he subscribed to another affidavit before the Clerk of Court wherein he exculpated from any participation Crispin Estrella, one of those he implicated in his previous affidavit, though admitting the truth of the other allegations contained therein (Exhibit D).

As the result of the investigation conducted by the authorities a complaint was filed in the Justice of the Peace Court of San Antonio, Nueva Ecija, against Agustin Mangulabnan alias Guinita, a surrendered Huk and 10 other unidentified persons. But the complaint was amended on January 13, 1954, to include Dionisio Sarmiento, together with Arcadio Balmeo, Patricio Gonzales, Florentino Flores, Crispin Estrella, Pedro Villareal, Claudio Reyes, "Peter Doe" and "John Doe", who were still at large, as defendants. After the preliminary investigation the case was forwarded to the Court of First Instance of Nueva Ecija where defendants were accused of robbery with homicide. In that Court, Agustin Mangulabnan was found guilty of the crime of robbery with homicide and sentenced to reclusion perpetua, to indemnify Monica del Mundo in the sum of P400; Cipriana Tadeo in the sum P132; P6,000 to the heirs of Vicente Pacson, and to pay the costs. Defendant Dionisio Sarmiento was acquitted while the information as against the other defendants who continued to be at large was dismissed for lack of evidence, with the proportionate part of the costs de oficio.

Agustin Mangulabnan moved for a new trial on the ground of newly discovered evidence, but the motion was denied for lack of merit. Hence his appeal which is now before Us.

The motion for a new trial was based on the affidavits of Dr. Numeriano D. Lustre, Marino Ventura, Marcosa Mudlong and Patricio Gonzales but they were not really newly discovered nor could they alter the conclusion arrived at by the trial Court. As stated by the Solicitor General, it is a settled rule in this jurisdiction that before a new trial may be granted on the ground of newly discovered evidence, it must be shown: (a) That the evidence was discovered after trial; (b) That such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence (U. S. vs. Tan Jonjua, 1 Phil. 51; U.S. vs. Palanca, 5 Phil. 269; U.S. vs.

De Leon, 1 Phil. 188; U. S. vs. Zamora, 2 Phil. 582; U. S. vs. Torrente, 2 Phil. 1); and (c) That it is material, not merely cumulative, corroborative or impeaching (U. S. vs. Luzon, 4 Phil. 343), and of such a weight that it would probably change the judgment if admitted (U. S. vs. Zamora, supra; U. S. vs. Alvarez, 3 Phil. 24; U. S. vs. Luzon, supra.; U. S. vs. Hernandez 5 Phil. 429; U. S. vs. Magtibay, 17 Phil. 417; U. S. vs. Tongco, 2 Phil. 189; People vs. Cu-Unjieng, 61 Phil. 906; and People vs. Reyes, 71 Phil. 598). The motion for new trial did not comply with these requisites and was properly denied by the trial Court.

Appellant's objection to the admissibility in evidence of post-mortem report (Exhibit C) is evidently untenable. The fact that it is a mere carbon copy is of no moment, for it has been signed by the physician who executed the same and his signature was identified by him at the witness stand. Furthermore, appellant did not offer any objection to its admission when it was presented in evidence at the hearing. His objection now comes too late (Hodges vs. Salas et al., 63 Phil. 567; U. S. vs. Ong Shiu, 28 Phil. 242).

The lower court did neither err in rejecting Exhibit 1 for the defense. This is an affidavit purportedly executed by Sgt. Adan Fernando of the Philippine Constabulary. The main portion of it (quoted in appellant's brief, page 32, and appearing on page 21 of the record), is as follows:

"The Chief of Police of San Antonio, Nueva Ecija, who first arrived at the scene of the crime, have already picked up the empty shells of Cal. 30, Carbine type and were delivered to Cpl. Lopez, one of the investigators of our unit. Information revealed that Civilian Commando of barrio Pulo, San Isidro, Nueva Ecija, has something to do with the crime committed, so I proceeded to barrio Pulo to confiscate their arms. Among those arms confiscated were those registered under Pedro Villareal and Claudio Reyes and upon examination of the Ballistic Experts in Camp Crame, it appeared positive as per Ballistic Report" (Exhibit 1). As may be seen, the latter part of the aforementioned testimony of Sgt. Adan Fernando is hearsay and, anyway, it is of no moment in the case at bar, because 2 of the 3 persons who entered the dwelling of the spouses Pacson were unidentified.

There is no denial that the crime of robbery with homicide was committed as described in the information. By appellant's own admission (Exhibits A and B) and the testimony of Cipriana Tadeo, we cannot have any doubt as to appellant's participation in the execution thereof. And as pointed out by the Solicitor General, appellant and the rest of the malefactors came together to the house of the offended parties to commit the robbery perpetuated therein and together went away from the scene of the crime after its perpetration. This shows conspiracy among the offenders which rendered each of them liable for the acts of the others (People vs. Delgado, 77 Phil. 11).

Moreover, the record shows that appellant participated in the criminal design to commit the robbery with his co-defendants (People vs. Flores, et al., G. R. No. L-231, August 21, 1946), and it is a settled rule in this jurisdiction that unity of purpose and action arising from a common design makes all parties thereto jointly liable (U. S. vs. Matanug, 11 Phil. 188), each being responsible for the result, irrespective of the character of their individual participation (U. S. vs. Ramos, 2 Phil., 434).

It may be argued that the killing of Vicente Pacson undertaken by one of the 2 unidentified persons who climbed up a table and fired at the ceiling, was an unpremeditated act that surged on the spur of the moment and possibly Without any idea that Vicente Pacson was hiding therein, and that the English version of Article 294, No. 1, of the Revised Penal Code, which defines the special, single and indivisible crime of robbery with homicide only punishes any person guilty of robbery with the use of violence against or intimidation of any person, with the penalty of reclusion perpetua when by reason or on occasion of the robbery, the crime of homicide shall re see, therefore, that in order to, determine the existence of the crime of robbery with homicide it is enough that a homicide would result by reason or on the occasion of the robbery (Decision of the Supreme Court of Spain of November 26, 1892, and January 7, 1878, quoted in 2 Hidalgo's Penal Code, p. 267 and 259-260, respectively). This High Tribunal speaking of the accessory character of the circumstances leading to the homicide, has also

held that it is immaterial that the death would supervene by mere accident (Decision of September 9, 1886; October 22, 1907; April 30, 1910 and July 14, 1917), provided that the homicide be produced by reason or on occasion of the robbery, inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime, that has to be taken into consideration (Decision of January 12/1889—see Cuello Calon's *Codigo Penal*, p. 501-502).

The crime committed in the case at bar, of which appellant Agustin Mangulabnan is a co-participant, is the crime of robbery with homicide covered by Article 294, No. 1, of the Revised Penal Code and punished with reclusion perpetua to death. The commission of the offense was attended by the aggravating circumstances of nighttime, dwelling, abuse of superior strength and with the aid of armed man, and in consonance with the provisions of Article 63, No. 1 of the same legal body, appellant should be sentenced to the capital punishment, as recommended by the Solicitor General. However, as the required number of votes for the imposition of the capital penalty has not been secured in this case, the penalty have been committed, but this English version of the Code is a poor translation of the prevailing Spanish text of said paragraph, which reads as follows:

"1. Con la pena de reclusion perpetua a muerte, cuando con motivo o con ocasion del robo resultare homicidio."

We see, therefore, that in order to, determine the existence of the crime of robbery with homicide it is enough that a homicide would result by reason or on the occasion of the robbery (Decision of the Supreme Court of Spain of November 26, 1892, and January 7, 1878, quoted in 2 Hidalgo's *Penal Code*, p. 267 and 259-260, respectively). This High Tribunal speaking of the accessory character of the circumstances leading to the homicide, has also held that it is immaterial that the death would supervene by mere accident (Decision of September 9, 1886; October 22, 1907; April 30, 1910 and July 14, 1917), provided that the homicide be produced by reason or on occasion of the robbery, inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime, that has to be taken into consideration (Decision of January 12, 1889—see Cuello Calon's *Codigo Penal*, p. 501-502).

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Wherefore the decision appealed from being in accordance with law and the evidence, is hereby affirmed with costs against appellant. It is so ordered.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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