

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
BIENVENIDO CANO, ET AL., DEFENDANTS. PEDRO POBLAR,
DEFENDANT AND APPELLANT.**

G.R. No. L-12270. April 29, 1960

Ponente: PARAS, C.J.

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PARAS, C.J.:

After 8:00 o'clock in the evening of May 28, 1956, when Silvino Esplago and his wife Eleuteria Mosqueso were already sleeping in their house located at sitio Patag, barrio Anislag, Calbayog City, someone outside called out, "Good Evening; allow us to buy kerosene". Silvino got up and asked his son Salvador to see who he was, whereupon Salvador, apparently recognizing the voice remarked, "Maybe it was Pedring," referring to appellant Pedro Poblal. Followed by Salvador who was holding a small kerosene lamp Silvino opened the door, immediately after which a man blew off the light from the lamp and gave Silvino a thrust. As the latter fell, Salvador jumped out and, together with his older sister Teofila, ran towards the mountain for refuge during the night. The assault was followed by a gun report which hit Eleuteria and her child, Corazon, who was lying nearby. Then a person approached Eleuteria and with a gun demanded for her money, while another companion opened her trunk and carried away a big coconut shell containing coins and an empty powder container with paper bills, all amounting to more than one thousand pesos which were not recovered.

Silvino Esplago was brought to the puericulture center in Oquendo district of Calbayog City where he died hours later. Eleuteria Mosqueso was found with a "bullet wound, left arm through and through," and Corazon with a "bullet wound, left arm complicated with comminuted fracture of the humerus".

After a careful perusal of the evidence on record, we agree with the trial court that the following circumstances undoubtedly prove appellant's guilty participation in the robbery:

- The evidence for the prosecution that he was among, the malefactors that called at the house of the Esplago spouses, assaulted its inmates and committed robbery therein, is not refuted.
- Exhibits "6" and "6—A" contain his voluntary statements. His allegations that he did not make the same, that they were just presented to him for signature, that they were not read to him, and that he did not know what was written thereon, are empty excuses obviously thought of after he had realized the seriousness of his offense and the penalty it carried. That Exhibits "6" and "6—A" are in order is self-evident. The first was sworn to before the City Attorney on June 25, 1956; and he was again made to swear it on June 28, 1956, before the Municipal Judge who even went to the trouble of taking his additional statement (the second) on the same day. Both exhibits contain a confession of his participation in the crime.
- His re-enactment of the crime, as testified to by Captain Daguman and Patrolman Tarrayo, was not denied by the appellant when he took the witness stand and testified in his own behalf. There being no evidence tending to show that he was compelled to accomplish that formality it may be considered as voluntary confession.

We believe, however, that the crime committed is robbery with homicide and physical injuries, and not robbery with homicide and double frustrated homicide as found by the trial court, for the reason that, as to said physical injuries, the evidence does not show intent to kill.

In imposing the death penalty, the trial court found one aggravating circumstance but failed to consider the mitigating circumstance of voluntary surrender. The penalty that should have been imposed is, therefore, reclusion perpetua.

Wherefore, the decision of the lower court is affirmed with the sole modification that the appellant, Pedro Poblal, is sentenced to reclusion perpetua. So ordered.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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