

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE PAJANUSTAN, ACCUSED WHOSE DEATH SENTENCE IS UNDER REVIEW.

G.R. No. L-38162. May 17, 1980

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PER CURIAM:

This is a case of robbery with homicide. In the evening of December 1, 1970 the spouses Jesusimo Aco, 70, and Simeona, 63, and their grandsons, Rodolfo Lucapa, 14 and Jose Ultra (Lucapa), 9, were murdered while asleep in their house located at Sitio Caba-locawe-an, Barrio Quezon, Las Navas, Northern Samar.

On that occasion, the malefactors committed robbery by taking coins amounting to two hundred fifty pesos, a necklace worth one hundred twenty pesos, a ring worth one hundred fifty pesos, a gold button worth fifty pesos, two new pants worth fifty pesos, two polo shirts worth forty pesos and two other shirts valued at sixty pesos or objects with a total value of seven hundred twenty pesos.

Jesusimo Aco had four wounds, one of which was a stab wound in the abdomen which perforated his small intestine, and two stab wounds in the neck which cut his trachea and innominate vein.

Simeona Subia had twenty-three stab and incised wounds, some of which perforated her lungs and heart and cut her carotid artery.

Rodolfo Lucapa had seventeen wounds some of which injured his lungs, kidney and small intestines, while the boy, Jose Ultra, had nine stab wounds some of which injured his carotid artery.

There is no controversy as to the fact that Vicente Pajanustan (Pajanostan), 45, a farmer residing at Sitio Pag-dadalitan, Barrio San Miguel of Las Navas, and his two companions were fed and lodged in the house of the victims on that tragic night of December 1, 1970.

The chief of police filed in the municipal court a complaint for robbery with homicide against Vicente Pajanustan and two unidentified persons. Pajanustan went into hiding. He was arrested at Jipapad, Eastern Samar on July 31, 1971.

When arraigned at the second stage of the preliminary investigation, he pleaded guilty (pp. 55-56, Record). In the course of his interrogation by the municipal judge, Pajanustan declared that his two companions named Nori Magtolis and Quirico Pajares killed the Aco spouses and their grandsons; that he did not actively participate in their liquidation and that he left the house when Magtolis and Pajares started the murder. He allegedly did not report the incident to the authorities because he feared that he would be killed by Pajares and Magtolis and "by the government".

Pajanustan also admitted during the interrogation that he was accused of frustrated murder in the municipal court of Catubig, Northern Samar for having assaulted Remegio Panco on April 23, 1969. At that time Pajanustan was a tenant of Eufracia Ultra and Jack Quito. The principal prosecution witness in that case was Francisco Aco, the

brother of Jesusimo Aco (Exh. 3, pp. 50-52, Record).

The fiscal filed a second amended information dated December 8, 1971 charging Vicente Pajanustan and his first cousin, Domingo Pajanustan, with robbery with multiple homicide. The two accused pleaded not guilty.

At the trial, Vicente repeated what he stated before the municipal judge that Magtolis and Pajares were the culprits. Vicente said that he tried to dissuade Magtolis from stabbing Jesusimo Aco but Magtolis, with a bolo, menacingly approached him and, because of that aggressive attitude, Vicente jumped out of the house and ran away.

The trial court acquitted Domingo. It convicted Vicente of robbery with homicide, aggravated by treachery, and abuse of confidence (absorbing dwelling), sentenced him to death and ordered him to pay twelve thousand pesos to each set of heirs of the four victims or a total indemnity of forty-eight thousand pesos. No indemnity for the objects taken from the house of the victims was imposed by the trial court. The case was elevated to this Court for review of the death penalty.

The judicial admission of Vicente Pajanustan that he was in the house of the victims at the time the robbery with homicide was committed had simplified this case. The only issue is whether credence may be given to his pretension that he did not take part in the commission of that special complex crime. Does the circumstantial evidence herein prove beyond reasonable doubt that he was a co-conspirator and co-principal?

Prosecution witness Julio Nungay, 50, a farmer residing at Sitio Cabalocawe-an, testified that his house was about one hundred fifty meters away from the house of Jesusimo Aco. Nungay was acquainted with Vicente Pajanustan because the latter used to be a tenant of Catalina Tingzon in Cabalocawe-an.

In the afternoon of December 1, 1970, Nungay went to Cagmanaba Creek and placed there his hooks and lines with baits in order to catch fish. At about midnight, he went to the creek to verify whether his hooks had ensnared some fish. He carried a torch and a bolo.

While he was checking his hooks, he heard the splash-ing sound of the water in the creek and when he directed his torch towards the place where the sound had emanated, he saw Vicente Pajanustan and his two companions on the trail along which the house of Jesusimo Aco was located and which led to Sitio Bay-ang. Pajanustan, who was about two meters away from Nungay, asked the latter about the trail to Sitio Bay-ang.

Nungay chided Pajanustan for asking him about something which Pajanustan already knew. Nungay, on noticing the bloodstain on the shirt of Pajanustan, queried him about it. Pajanustan answered that it was a mere stain. The three men were armed with bolos. The tall companion of Pajanustan carried a bag.

The trial court acted correctly in giving credence to Nungay's testimony which belied Pajanustan's alibi that he had left his two companions in the house of Jesusimo Aco and that he (Pajanustan) had no complicity in the robbery with homicide.

The fact that Pajanustan inquired from Nungay about the trail leading to Sitio Bay-ang, when Pajanustan who had stayed for sometime in the vicinity was familiar with that trail, implied that he was nervous and confused when he encountered Nungay so much so that he forgot the location of the trail to Sitio Bay-ang. The nervousness and confusion were a consequence of his having just taken part in the consummation of a horrible crime.

The telltale bloodstain on Pajanustan's chest, noted by Nungay, his failure to report the incident to the authorities, his flight from the scene of the crime and his having remained in hiding for eight months, together with his criminal record (he was even charged by his own relative with having stolen the latter's pigs and chickens) are additional circumstances which point to the inescapable conclusion that he took part in the perpetration of the

horrendous massacre motivated by robbery.

Counsel de oficio contends that the circumstances proven by the prosecution do not establish with certitude Vicente Pajanustan's guilt.

Since there was no eyewitness as to Pajanustan's participation in the robo con homicidio, his conviction must perforce be predicated on circumstantial evidence.

That kind of evidence is sufficient for conviction if (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven and (c) the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt (Sec. 5, Rule 133, Rules of Court).

We hold that the concatenation of inculpatory facts and circumstances already mentioned leave no room for reasonable doubt as to the guilt of Vicente Pajanustan.

The trial court did not err in imposing the death penalty in view of the attendance of the aggravating circumstances of treachery and abuse of confidence (Arts. 64[3] and 294[1], Revised Penal Code).

WHEREFORE, the lower court's judgment is affirmed with the modification that the accused is further ordered to indemnify the heirs of the Aco spouses in the sum of seven hundred twenty pesos, representing the value of the objects taken from their house. Costs de oficio.

SO ORDERED.

Barredo, Acting C.J., Makasiar, Antonio, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., and Teehankee, J., are abroad.

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