

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
GASPAR ASILUM, ET AL., DEFENDANTS; GASPAR ASILUM AND
DONATO LLORCA, DEFENDANT’S AND APPELLANTS.**

G.R. No. L-19380. June 30, 1965

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal, taken by Gaspar Asilum and Donato Llorca from a decision of the Court of First Instance of Masbate finding Llorca guilty of robbery with homicide and Asilum of simple robbery and sentencing the former to life imprisonment and the latter to an indeterminate penalty ranging from six (6) years and one (1) day of prison mayor to twelve (12) years and one (1) day of reclusion temporal, and both, to indemnify the heirs of the deceased Emilio Dionson, in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs. Said court, likewise, acquitted appellants' co-defendant, Jose Papilonia, upon the ground of insufficiency of the evidence, with one-third of the costs de oficio.

While Emilio Dionson, his wife, Gregoria Logro, and their daughters, Leoncia and Remedios, were asleep in their house in the sitio of Canbantog, barrio of Marcella, municipality of Uson, province of Masbate, in the evening of November 15, 1957, at about midnight, Gregoria was awakened by the sound of a voice. When Gregoria got up, she saw inside their house two (2) men, one, appellant Asilum with a bolo in his waist, and another, later identified as appellant Llorca with a gun in his right hand and a flashlight in the left. Llorca asked Dionson whether he was Emilio Dionson. As the latter answered in the affirmative, Llorca inquired: "What did you say yesterday?", to which Dionson replied, "Nothing". At this juncture, Gregoria approached their lamp, which was dimly lighted, and brightened it. Then, Llorca bade Dionson not to move and fired his (Llorca's) gun, hitting Dionson in the right thigh. Tucking the gun in his waist, Llorca then took the bolo which Asilum handed him and brandishing it before Dionson, demanded to know where he kept his money. Instead of replying, Dionson bade Gregoria to turn over their money, whereupon Gregoria unfastened her money belt containing P1,500 and handed it to Llorca. Llorca and Asilum then left the house together.

Immediately, thereafter, Gregoria lighted another lamp; which she brought down with her for the purpose of seeking the help of neighbors, in order to take her wounded husband to Masbate, Masbate. As Gregoria reached their yard, she noticed that a third man was with Llorca and Asilum. That very evening, Dionson was brought, in a hammock, to the house of one Feliciano Merioles, along the provincial road, from whence he was taken the next morning to the clinic of Dr. Efren Valencia, at Masbate, Masbate. There he eventually died on January 5, 1958, in consequence of the resulting hemorrhage. Soon, thereafter, the corresponding information for robbery with homicide was filed with the Court of First Instance of Masbate, against Llorca, Asilum and one Jose Papiloma. After due trial, said court rendered the decision appealed from.

It is not disputed that, in the evening of November 15, 1957, thieves had entered said house of Emilio Dionson and stolen therefrom P1,500, and that one of the malefactors then fired his gun at Dionson, thereby inflicting upon

him a bullet wound in the right thigh, in consequence of which he died on January 5, 1958. The only issue in this case is the identity of the two (2) men who entered said house and performed the aforementioned acts, for the witnesses for the prosecution identified appellants as the culprits, whereas appellants have set up their respective alibis.

Llorca maintains that from November 11 to November 16, 1957, he was in the barrio of Torogon, municipality of Manreal, Masbate, constructing the house of his brother Saturnino, which he finished late in the afternoon of November 15; and that, it being too late for him to hike to his house in the barrio of Hagnaan, about three (3) kilometers away, he was prevailed upon to spend the night in Saturnino's house, which he left, therefore, after breakfast, the next morning.

Appellant Asilum would, in turn, have us believe that in the evening of November 15, 1957, he was with his wife and her sister, Epifania Dabac, in his house at sitio Cabantog, barrio of Marcella, municipality of Uson, Masbate; that after taking their dinner, the three (3) of them began shelling corn until nearly midnight, and then went to bed; that when he woke up at 6:00 o'clock the next morning, he resumed the shelling of corn for a while; that, soon thereafter, he took his carabao out for grazing purposes; and, sometime later, he returned to his house and resumed the shelling of corn until noon.

Upon the other hand, appellants were positively identified as the persons who entered the house of Emilio Dionson and performed the acts narrated above, not only by his wife, Gregoria Logro, but, also, by their daughters, Leoncia and Remedios Dionson, who were in said house at the time of the occurrence. Moreover, Llorca's alibi is refuted by the testimony of Clemente Nava and Eduardo So, both of Lagundi, municipality of Batuan, Masbate, which adjoins the sitio of Canbantog, where the crime was committed. Indeed, Nava testified that, early in the morning of November 16, 1957, immediately following the evening of the occurrence, Llorca passed by his house in Lagundi to get some cigarettes, and that, after conversing with him for about an hour, or at about 6:00 a.m., Llorca left the place together with his co-defendant Jose Papilonia. This testimony of Nava dovetails with that of So, a jeepney conductor, who declared that that same morning, at about 6:00 a.m., Llorca and Papilonia hired said jeepney in Lagundi, for P25.00, to take them to San Jacinto, Masbate; and that, as they proceeded to their destination, said defendants asked him not to pass by the municipal building.

Thus, there can be no doubt as regards the presence of Llorca in Canbantog, Uson, at the time of the occurrence. Neither can there be any doubt that Asilum was then, likewise, present in that locality, for Gregoria Logro and her aforementioned daughters knew him well, he being their neighbor, as well as "compadre". It is clear, therefore, that the lower court has not erred in believing the testimony of the witnesses for the prosecution and in giving no credence to that of the defense witnesses.

The lower court found Asilum guilty of simple robbery, not robbery with homicide, upon the ground that "there is no evidence that Gaspar Asilum knew and/or conspired with Donato Llorca that the latter would shoot Emilio Dionson". This view is untenable, for the fact that Llorca and Asilum were armed with a gun and a bolo, respectively, shows that they entered the house of the Dionsons ready to kill, if necessary, in order to accomplish their purpose. Indeed, the behavior of Asilum when Llorca fired at Emilio Dionson did not indicate that the first was in the least surprised at the act of Llorca or disapproved the same. On the contrary, immediately, thereafter, Asilum handed his bolo to Llorca, who used it to successfully compel Emilio Dionson to reveal the whereabouts of his money. In other words, Asilum fully cooperated with Llorca, thus revealing a complete community of purpose and action between them.

The crime perpetrated by both appellants is, therefore, that of robbery with homicide, which was committed with the aggravating circumstances of dwelling and nighttime. Considering, however, that Llorca had fired at the right

thigh of Dionson, thus suggesting that he probably did not intend to kill him—although this does not relieve him (Llorca) from the corresponding responsibility for his (Dionson's) death—the interest of justice would be served if, instead of imposing the maximum penalty for robbery with homicide, which is death, appellants were both sentenced to life imprisonment, which is both the medium and the minimum of the penalty prescribed by law for said offense (see Article 294 [1], in relation to Article 63, Revised Penal Code; *People vs. Laureano*, 71 Phil. 530; *People vs. Francisco*, 78 Phil. 694; *People vs. Belarmino*, 91 Phil. 118).

WHEREFORE, modified as to the penalty for appellant Gaspar Asilum, which is increased to life imprisonment, the decision appealed from is hereby affirmed in all other respects, with costs against appellants herein. It is so ordered.

Bengzon, C.J., Bautista Angelo, Reyes, J.B.L., Paredes, Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

Judgment affirmed with modification.

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