

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROQUE MARIQUINA ET AL., DEFENDANTS. ROQUE MARIQUINA,
dEFENDANT-APPELLANT.**

G.R. No. L-2428. June 20, 1949

Ponente: MORAN, C.J.

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MORAN, C.J.:

Quirico Tobingan and Roque Mariquina were charged with murder in the Court of First Instance of Iloilo, but the trial was held only as to the latter the former not having as yet been apprehended. Roque Mariquina was found guilty of the crime charged and sentenced to reclusion perpetua with the accessories of the law, to indemnify the heirs of Jose Española in the amount of P2,000, and to pay the costs. He appealed from this judgment.

The facts proven beyond reasonable doubt are as follows:

At about 5 o'clock in the morning of May 18, while Jose Española was milling palay under his house at barrio Sambalodan, municipality of Oton, Province of Iloilo, Roque Mariquina and Quirico Tobingan suddenly arrived and the latter immediately pointed his .45 caliber automatic pistol to Jose Española ordering him not to move. Roque Mariquina then tied Jose Española's hands at his back and started to strike him with a cane on the head and on different parts of the body. Estefania Tubungbanua, wife of Jose Española, who was upstairs with her children, saw the illtreatment through the slits in the bamboo floor, and came down with her one-year old baby in her arms to intercede for her husband, but Roque Mariquina pushed her away violently causing her to fall and threatened to kill her and her baby. Thereupon, Quirico Tobingan and Roque Mariquina proceeded to drag Jose Española towards a creek some distance away, and Estefania in turn proceeded to run to the house of Geronimo Basco, the barrio lieutenant, to ask for help. The barrio lieutenant came immediately and tried to intercede for Jose Española, but he himself was warned not to intervene if he wanted no trouble. Quirico Tobingan and Roque Mariquina took their victim to the river bank and there Quirico Tobingan shot him to death wounding him in different parts of his body, and Roque Mariquina extracted with the pointed end of his cane the victim's left eye from its socket, and stuffed the victim's mouth with mud. Jose Española died then and there of his wounds which, according to Juan Ronquillo, assistant sanitary inspector for the guerrilla government at the locality, are as follows:

"(a) One puncture wound found located at the left side near his nipple the diameter of one centimeter penetrating to the heart.

"(b) One puncture wound found located at the cheek one centimeter in diameter penetrating to the brain.

"(c) One lacerated wound found located at the forehead five centimeters long and the opening of one centimeter from up ward to down ward.

"(d) One lacerated wound located at the left side above the ear.

"(e) The left eye was taken out.

"(f) Contusions were found on both hands as a sign that both hands were tied."

But before Jose Española was killed, his father-in-law, Tomas Tubungbanua who was on the other side of the creek grazing his carabao, was advised of the punishment being inflicted upon his son-in-law, and he hurried to the creek and there he saw his son-in-law held fast by Quirico Tobingan while Roque Mariquina was beating him with a cane. Tomas Tubungbanua tried to intervene, but Roque Mariquina sternly warned him to keep away if he still wanted to live. Tomas Tubungbanua then withdrew and hid behind bamboo clumps through which he saw Quirico Tobingan shoot at the victim, and Roque Mariquina gouge out the dead man's left eye with his sharp pointed stick and stuff mud into the mouth of the dead man.

The motive of the crime seems to be a resentment. Way back in February 1944 Quirico Tobingan and Roque Mariquina, who were members of the guerrilla, commandeered a bicycle and they were about to sell it when Jose Española intervened and succeeded in taking back the bicycle and restored it to its owner.

The witnesses who testified to all these facts are Estefania Tubungbanua, wife of the deceased; Tomas Tubungbanua, father-in-law of the deceased; Geronimo Basco, barrio lieutenant; and Juan Ronquillo, assistant sanitary inspector.

Counsel for appellant in a well written brief pointed out supposed defects and deficiencies affecting the veracity of the prosecution's witnesses. All the points raised have been carefully examined by the court but nothing was found to show that said witnesses have perjured. It is alleged for instance, that there are discrepancies between the testimony of Tomas Tubungbanua and his previous affidavit as to certain details of the occurrence. But said discrepancies are due to imperfections of the affidavit as explained by the witness himself. Generally, an affidavit is not prepared by the affiant himself, but by another who uses his own language in writing the affiant's statements. Omissions and misunderstandings by the writer are not infrequent particularly under circumstances of hurry or impatience. For this reason, the infirmity of affidavits as a species of evidence is much a matter of judicial experience.

The defense tried to prove that Roque Mariquina had no participation in the commission of the crime. On the date of the crime, he was on leave of absence from the guerrilla unit of which he was a member, and he was then in the house of his mother near the house of Jose Española in the barrio of Sambalodan. At about 5 o'clock in the morning of that day he saw Quirico Tobingan arrive at the place where Jose Española was milling palay. Quirico Tobingan pointed his .45 caliber pistol at Jose Española ordering him not to move and immediately tied Española's hands at the back. Once Jose Española was thus tied, Quirico Tobingan started striking him with a cane. At this juncture, according to Roque Mariquina, he approached Quirico Tobingan and tried to wrest the cane from him entreating him at the same time not to punish Jose Española for they were related to each other. Quirico Tobingan advised Mariquina to go away because there were orders from headquarters to arrest and kill Jose Española who was a Japanese spy. There were then many people who gathered around the place attracted by the incident. Quirico Tobingan ordered those people to keep out if they wanted not to be shot, and after the people had left Quirico Tobingan took Jose Española to the creek and shot him there.

We cannot believe this story to be true. On the first hand, there is nothing in the evidence to show that the witnesses for the prosecution, including the barrio lieutenant, had any motive to manufacture facts against Roque Mariquina. On the other hand, it is very unlikely that Quirico Tobingan would come alone to accomplish such a heavy and risky task as the killing of a supposed spy, at day time, with cruelty, and regardless of the people who may happen to be present. If Quirico Tobingan had to accomplish his delicate purpose by all means even without the aid of any one, he would have done so in a simple manner by simply firing shots at the intended victim without the necessity of elaborating a number of unnecessary acts of cruelty and outrage which may induce part of

the people present to intervene and give protection for the victim. Jose Española was a bigger man than Quirico Tobingan, and even if the latter was armed, it is hard to believe that he alone and in the presence of many people could make Jose Española obey him without absolutely offering any resistance, particularly, at the moment when Tobingan tied his hands and had to put back his pistol at his waist to do the tying.

Appellant introduced two witnesses to corroborate his theory, namely, Guillermo Tejida and Marcelo Ferrer, but as rightly observed by the trial Judge, the testimony of these witnesses can not be accepted for a number of reasons. "In the first place, they were not from barrio Sambalodan where the crime was committed, and their presence there on that occasion seems to be altogether too conveniently coincidental. Guillermo Tejida stated that he was from barrio Napnapan, municipality of Tigbauan, and that on May 18, 1944, he was in the house of his brother-in-law in Sambalodan, having gone there to get some personal belongings which he had left at the place when he evacuated there. The other witness, Marcelo Ferrer, was from barrio Botong, municipality of Oton, and at five o'clock in the morning of May 18, 1944, merely chanced to go to barrio Sambalodan looking for hogs to buy, at the exact hour and place when the events which he testified to were unfolding. The accused Roque Mariquina himself was also in that locality by coincidence, having gone there the previous day to spend his leave of absence at his mother's house. Also coincidental was his waking up and going out of the house at five o'clock in the morning, the precise moment when, according to him, Quirico Tobingan arrived at the house of Jose Española. It is strange that nobody from the same barrio, from the same immediate vicinity, among the twenty-five or so persons who witnessed the very same events, were presented by the defense."

We agree with the Solicitor General that the crime committed is murder qualified with treachery. There is the aggravating circumstance of cruelty, and therefore the capital punishment should be imposed. However, there being no sufficient votes for that purpose, the penalty of reclusion perpetua imposed by the trial court may be affirmed.

Judgment affirmed with costs against appellant.

Ozaeta, Paras, Feria, Perfecto, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

MORAN, C. J.:

Mr. Justice Pablo voted for affirmance of the judgment appealed from.

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