

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DOMINGO MOBE (ALIAS DOMING) ET AL., DEFENDANTS. DOMINGO MOBE (ALIAS DOMING), APPELLANTS.*G.R. No. L-1292. May 24, 1948*

Ponente: TUASON, J.

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This is an appeal by Domingo Mobe from a sentence of "imprisonment for life" for murder. The appellant was also sentenced to pay the heirs of the deceased P2,000. as indemnity, jointly and severally with Leonardo Camoro, and the costs. With the appellant, Camoro was prosecuted for the same crime but was found guilty only as an accomplice and given a lesser penalty. He did not appeal.

Wenceslao Robles, a policeman, testified that on the night of June 10, at about 12 o'clock, he and Catalino Tibon, another policeman, heard reports of firearms. As it was raining hard they did not move from where they sought shelter from the rain. At about 2 o'clock, when the rain had subsided, someone told them that there was a wounded man behind the drug store of Dr. Alonso crying for help. They rushed to that place and found Emilio Deiparine dead and Juan Saldo lying on the ground and groaning in a small alley behind the said drug store. When they asked Juan Saldo, after the latter had given his name, what was the matter, Saldo said he was wounded. Saldo went on to say that he and four others had intended to rob the drug store; that when he saw the watchman (Deiparine) with a carbine he grasped him to wrest his gun; that Domingo Mobe then shot the watchman hitting him in the abdomen. (Saldo was wounded by another shot unintentionally and died three days later in a hospital.)

Simplicio Samson testified that in June 1946 he was a member of the secret service of Cebu City. At about 1:00 o'clock a. m. of June 11, while on patrol duty with four other detectives, and after investigating another shooting, he met Robles and Tibon who told him and his companions that there was a wounded man on T. Padilla street. When they reached that place, Juan Saldo was already inside the store of Dr. Alonso and the watchman lay dead behind the store. At about 2:40 or 3 o'clock, he questioned Saldo because he was willing to make an ante-mortem confession, Saldo's condition was then very serious. Saldo related that his companions were Domingo Mobe, Camoro, Tantoy and Longing. When he asked Saldo where his companions were he said they could be found in the house of Candido Caliso and Crispin, which was 700 or 800 meters away. Proceeding to the house indicated, Samson and his fellow officers saw Domingo Mobe in the act of jumping from the rear window of the house, with his feet muddy, and arrested him. Samson asked Mobe the whereabouts of his companions and Mobe pointed the place where they might find Leonardo Camoro. They caught the latter defendant at the corner of P. del Rosario and D. Pedro Cui streets spattered with mud and gasping.

When, after Domingo Mobe and Leonardo Camoro were arrested, they questioned them, the two defendants said that Domingo Mobe and Longing, (who was still at large at the time of the trial), were the ones who had killed the watchman.

Camoro made a written statement which he later subscribed and swore before the municipal judge. He declared

that he was taken along by his four companions to rob a house on T. Padilla street; that Longing, Owat and Doming carried a pistol each and Tantoy a hunting knife; that he (Camoro) was unarmed; that upon arrival at the house which they were to rob they were spied by the watchman who followed them; that they took cover and forthwith Owat (Juan Saldo) grasped Deiparine; that Longing and Mobe opened fire wounding Owat as well as the watchman; that frightened he fled to the house of Crispin where he lived.

The appellant's evidence consists of a brief testimony of his own. He said he was asleep in the house of , Crispin at the time the killing was said to have occurred, having gone to bed at about 9 o'clock. He denied he knew Leonardo Camoro before they were thrown together in the city jail. He said he did not know why he was arrested. "I was just sleeping and they just asked my name", he said. He also denied he admitted to the police that he had a gun and hid it among banana trees at Calle Jonquera, as one of the witnesses for the prosecution testified.

The parties have discussed with commendable ability and earnestness of the admissibility and competence against the appellant of Saldo's and Camoro's declarations. There is no need, however, on our part to decide the nice points of law and fact so ably argued. For outside of the controversial confessions there is enough evidence to satisfy us beyond rational doubt that the appellant was one of the authors of the crime.

It has heretofore been seen that when the police authorities closed in upon the house indicated by Saldo at the wee hours of the morning, Mobe made an attempt to flee, his feet still covered with mud. It was through his indication that Camoro, who is now serving his sentence, was apprehended at an unusual hour and where he had no legitimate business to be. The two defendants lived or had been staying in the same house. And after both were safely in the hands of the police they confessed their participation in the crime, although only Camoro's statement was reduced to writing. It has also been seen that by their admission Mobe and Longing fired the fatal shots. Mobe further admitted to the police that he had concealed his pistol or revolver, so he was accompanied by one of the detectives to the place he mentioned, although the arm was no longer there when Bacus and Mote arrived. Surely these details were no fabrication.

Charged with a capital offense, the accused made a perfunctory denial of policeman Roble's and detective Samson's testimony. His evidence on his alibi is very weak and is likewise conspicuous for its brevity. He did not present any witness, which he could have done very easily if his defense were good, to corroborate his testimony that he went to bed early and was asleep until awakened by the police. His statement that he did not know Saldo and only knew Camoro after their arrest is manifestly false and only serves to bring into relief his disregard for truth.

The crime committed was properly held by the trial court to be murder. It is qualified by treachery. Even though at the inception of the aggression the deceased carried a carbine and was at liberty to defend himself against the possible attacks by the malefactors, it is a fact that at the time the fatal wounds were inflicted he was defenseless. His freedom of movement was being restrained by one of the culprits when the appellant and one of his other companions fired at the victim. (See *U. S. vs. Baluyot*, 40 Phil., 385.) The fact that one of the accused held fast the deceased from behind and the other assaulted him while in this position constitutes a form of aggression tending to insure its execution without any risk to the aggressors arising from any defense which the deceased might make. In other words, this assault is treacherous as defined by this paragraph. (*U. S. vs. Valdez*, 40 Phil., 876.)

The trial court appreciated the aggravating circumstance of nocturnity, that of the crime having been committed by a band of more than three armed people, and that "of (accused) taking advantage in employing means to weaken the defense." But in spite of these findings and the lack of any mitigating circumstances to upset the aggravating circumstance said to have been proven, Mobe was sentenced only to "imprisonment for life". Yet the judgment is correct. We believe with the Solicitor General that the aggravating circumstance of band has not

been clearly established, as only three of the malefactors have been shown positively to have been armed. As for nocturnity, this circumstance is embraced in treachery and can not be considered separately from the latter. (U. S. vs. Salgado, 11 Phil., 56; People vs. Bumanglag, 56 Phil., 10; People vs. Madrid, G. R. No. 41976, Nov. 4, 1934.) Like nighttime, the circumstance of taking advantage of superior strength is inherent in, and comprehended by, the circumstance of treachery. When treachery is taken into account as a qualifying circumstance in murder, it is improper again to consider in addition to that circumstance the generic aggravating circumstance of abuse of superior strength, since the latter is necessarily included in the former. (U.S. vs. Estopia, 28 Phil., 97; U. S. vs. Oro, 19 Phil., 548, U. S. vs. Vitug, 17 Phil., 1.)

There being neither aggravating nor mitigating circumstances present, the judgment of the court below is correct in its result, except that the "imprisonment for life" should be changed to *reclusión perpetua*. It is best to employ the legal terminology in the imposition of a penalty for the different kinds of incarceration — *reclusión prisión*, imprisonment, etc. — have their corresponding legal accessories and effects.

With this modification, the appealed decision is affirmed with costs of the appeal against the appellant.

Parás, Feria, Perfecto, and Bengzon, JJ., concur.

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