

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ROSALIO PANALIGAN AND PEDRO ANDULAN, DEFENDANTS AND APPELLANTS.

G. R. No. 17603. March 08, 1922

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The complaint charges the appellants with the crime of robbery with murder although it contains no allegation as to the robbery but only as to the intention to rob.

After trial they were sentenced to life imprisonment, to the accessories of the law, to return the amount of P85, which is the amount of money stolen, and to pay the costs, from which judgment they appeal alleging that the court a quo committed four errors, to wit: (a) In trying and convicting the appellant Pedro Andulan after he had been excluded from the complaint at the request of the prosecution and used as state's witness; (b) in trying him without any preliminary investigation having been conducted as to the said accused; (c) in not holding that the confession of the said accused contained in Exhibit H was unlawfully obtained; and (d) in not acquitting the accused.

The deceased Ambrosio Anchoris (alias) Arit-it, was a cart driver who oftentimes won at gambling and was in the habit of carrying his money on his person and displaying it to his friends and acquaintances', among the latter, the herein accused.

On the afternoon of February 19, 1920, these persons, the deceased and the accused, who are also cart drivers, were seen driving their respective carts, harnessed to carabaos and an ox, on a highway of the barrio of Nalatan, municipality of Balayan, Province of Batangas, in the direction of the municipality of Tuy. A little after 8 o'clock that night the two defendants with their carts repaired to a warehouse situated in the barrio of Tayongtoyong, of the said municipality of Balayan, for the purpose of loading sugar, where they slept leaving early the following morning (February 20). The municipality of Tuy is located next to Balayan.

At dawn of the following day the two carts with their drivers, one of whom was the defendant Pedro Andulan, passed in front of a sugar mill situated in the place known as Dao of the municipality of Tuy where they stopped for a while and Pedro Andulan poked his head through the door of the warehouse of the mill and called for Arit-it (nickname of the deceased). As nobody seemed to know anything of his whereabouts, Andulan exclaimed: "Ah, Arit-it is not here, inform the authorities, he must have died." Andulan and his companion, who was unidentified, then proceeded on their way.

Those within the mill found a cart and carabao near the place, which they recognized as Arit-it's for he frequently called there to load sugar. The cart was stained with blood and hair.

Between 8 and 9 o'clock in the same morning the dead body of Ambrosio Anchoris (Arit-it) was found in the barrio of Putol, municipality of Tuy, Province of Batangas with sixteen wounds, which are described in Exhibit A.

According to the sanitary inspector, who examined the corpse, death must have occurred about six hours before, that is between 2 and 3 o'clock in the morning. A complaint having been filed against the herein accused, the justice of the peace of Balayan conducted a preliminary investigation. At the investigation, the provincial fiscal prayed the justice of the peace to exclude the defendant Pedro Andulan in order to use him as a Government witness. Counsel for defendant, Rosalio Panaligan, objected to the petition on the ground that the said Andulan had already pleaded guilty. The justice of the peace refrained from passing upon this motion, holding that it was not within his jurisdiction, as it affected the merits of the case, and that it was properly a question for the Court of First Instance to determine.

In spite of this the defendant Andulan testified as a Government witness at the investigation, revealing that the authors of the crime were he and his coaccused who killed Arit-it for the purpose of taking from him, as in fact they did take, the money that he had in his possession.

Independently of the proceedings in court, Andulan subscribed and swore to Exhibit H before the provincial fiscal; in which document he repeats substantially the same facts as he testified to before the justice of the peace, only that he gives more details of the act complained of, stating some circumstances before, during and after the commission of the crime, assuring, among other things, that:

"* * * When the three of us arrived at the land of Capitan Flaviano Agoncillo, also within the municipality of Tuy, Rosalio Panaligan secretly proposed to me to kill Arit-it and take from him the money that he had with him, to which I answered in the affirmative; whereupon I struck Arit-it with a club hitting him on the head, as a result of which Arit-it immediately inclined his body and I struck him two more blows; that my companion Rosalio, who at that moment had his bolo unsheathed, struck Arit-it several blows with the bolo, though I cannot tell exactly the number of blows, but I know that they were many; that the first blow of Rosalio struck Arit-it on the left side of his neck. When Arit-it was already dead, Rosalio and I laid him on the ground, Rosalio immediately taking the money that the deceased had in his belt, after which we got on our carts and proceeded east. After going a distance of about 250 'brazas' (one 'brazas' equals 1.6718 meters) from the corpse, we stopped and it was then that Rosalio gave me the sum of P15 consisting of five-peso bills. After giving me the P15 Rosalio cautioned me not to say anything to anybody, to which I answered 'yes.' As far as I know, the money that Rosalio took from Arit-it amounted to nearly P100 more or less, because once before Arit-it had shown us the amount of his money * * *. The wound on the palm of my left hand was caused by the first blow that I struck Arit-it on the head because at the moment of striking, my hand struck against the 'talabsoc.' Since the morning of the Thursday on which the crime took place Rosalio and I already knew that Arit-it carried a lot of money because it was his custom to carry his money with him, and before Rosalio, Arit-it and myself had agreed to meet in front of the house of the baker Apolonio to load sugar, Rosalio and I had already agreed upon killing Arit-it as soon as we got to the place where we killed him."

At the time of the arrest of Pedro Andulan, three five-peso bills were found in his house, which were presented in evidence as Exhibit F; all of these bills are of the 1910 series and are numbered A2233541, A3121300 and A3906825, some blots, which greatly resemble blood stains, appearing in the lower margin of the last mentioned bill.

The defendant Andulan repeatedly confessed his guilt. Firstly to the provincial fiscal on February 23, 1920, his declaration having been taken in writing, which is Exhibit H, part of which we have quoted. Secondly, when the complaint was read to him at the preliminary investigation before the justice of the peace. Then again when he testified as a witness in the investigation. He also made other confessions to the same effect to the Constabulary soldiers and to the provincial fiscal.

On April 12, 1920, however, the defendant Andulan retracted his confessions (Exhibit 3) stating that all that he testified to in Balayan before the provincial fiscal was false and that he made those statements out of fear of the Constabulary soldiers who had maltreated him. This has not been proven; on the contrary, it has been shown that the confessions had been made voluntarily.

When the trial of this case was commenced in the Court of First Instance, the provincial fiscal made the following statement:

"The prosecution in answer to counsel for defense, makes it of record that it is not its desire to use the defendant, Pedro Andulan, as a Government witness simply because, after all, he is guilty according to his declaration or sworn statement before the fiscal, ratified before the justice of the peace of Balayan at the preliminary investigation of this case. He also made this sworn statement before the fiscal who now represents the Government, affirming that all his previous declarations were not true and that he made them on account only of the illtreatment that he had received from the sergeant.

"For this reason the prosecution does not desire, and does not insist upon the exclusion from the complaint of the defendant Pedro Andulan and it will proceed with the case against these two accused with the evidence that it now has at its disposal."

"The COURT. It is ordered that the accused be arraigned. (The clerk of court read the complaint to the defendants.) "After being informed of the complaint they pleaded 'not guilty.'"

As will be seen, the accused Andulan was not excluded from the complaint. As we have seen, the fiscal asked for his exclusion at the preliminary investigation in the justice of the peace court, but the counsel for defense objected and the justice of the peace did not pass upon it, as it affected the merits of the case which was properly within the jurisdiction of the Court of First Instance. He was right in so holding, considering the provisions of section 34 of General Orders No. 58, which refer not to the preliminary investigation but to the trial itself with which sections 31 to 41 of said General Order deal.

The fact that this accused testified as a government witness at the preliminary investigation is not a bar to his prosecution and subsequent conviction. In the case of *United States vs. Enriquez* (40 Phil., 603), this court held that:

"Any witness who has" testified for the prosecution or for the defense may afterwards be charged in an amended complaint and be brought to trial after the cause is decided. To do this it is no obstacle that said witness has testified in the same cause for the prosecution or for the accused, taking always into consideration the fact that the testimony of an accomplice of a crime, who in turn admits and confesses his own guilt, is perfectly valid and binding against his coparticipant so long as said testimony appears substantially corroborated at the hearing by circumstantial evidence or other evidence admissible in law."

It cannot be held, therefore, as contended by the appellant, in the first assignment of error, that the court erred in trying and convicting the accused Pedro Andulan, notwithstanding that he was excluded from the information (which is not a fact) and used as a state's witness at the preliminary investigation at the request of the prosecuting attorney. This is not an obstacle to his being tried and convicted.

Neither can we maintain the second error to the effect that no preliminary investigation has been held as to this defendant. In reality there was a preliminary investigation as regards this accused. Upon examining the evidence for the prosecution we find the following at the end of Exhibit E:

"The defense waives its right to present evidence in this court, reserving it for the proper time in the Court of First Instance, and we request that the persons herein accused be immediately remanded to the Court of First Instance." (Italics ours, because Pedro Andulan is included in the phrase, "persons herein accused," as there are

only two accused in this case: Rosalio Panaligan and Pedro Andulan.)

At any rate, the defendant Andulan did not ask subsequently for a preliminary investigation so that he waived his right thereto—a waiver which is perfectly valid. (U. S. vs. Asebuque, 9 Phil., 241.)

As regards the third error which is based upon the alleged illegality of the confession of this defendant as contained in Exhibit H, we notice that the objection of counsel for the defense to this document, during the trial of the case, refers only to its being used as evidence against Rosalio Panaligan. Following is the verbatim objection found on page 104 of the transcript of the stenographic notes:

"Mr. MUÑOZ: I object to the admission in evidence of Exhibits C and D because they are incompetent; Exhibit E is impertinent because it has not been proven that this confession was made by the defendant Pedro Andulan freely and spontaneously; Exhibit F is also impertinent and as regards Exhibit H we object to its admission as against Rosalio Panaligan because it is impertinent and inadmissible in law" (Italics ours.)

Since no timely objection was made to the admissibility of Exhibit H on the ground that the contents thereof were not given voluntarily, but only on the ground that it could not be used as evidence against the coaccused Rosalio Panaligan, it cannot now be raised in this instance and much less considered favorably. At any rate, it does not clearly appear from the record that such confession had been made under promise of excluding him from the information. It is true that the provincial fiscal made the following statement: "You had better tell the truth so that we might be able to ask for you the minimum penalty" (folio 32, s. n.).

Upon general principles this admonition would shake the confession because it was equivalent to a promise of leniency. But it appears that before the fiscal had an interview with the accused, the latter had already made a similar confession to the Constabulary (folio 32, s. n.). Furthermore, it must not be forgotten that this defendant was to be used as a Government witness, which was not done because he later denied the facts that he had revealed in his confessions. We believe that in view of his later denial, it will be proper, in this case, to admit as evidence against him his own confessions.

"Where one of several codefendants turns state's evidence on a promise of immunity by the prosecuting attorney, but fails to keep his part of the agreement, his confession made under such promise may then be used against him on his trial." (16 C. J., 726; with the following cases cited in the footnote: Com. vs. Knapp, 10 Pick. [Mass.], 477; 20 Am. Dec. 534; State vs. Moran, 15 Ore., 262; 14 Pac. 419.)

The last assignment of error is based upon the non-acquittal of the herein defendants. This is the fundamental question in this case, and we will now proceed to solve it. Even ignoring the confession made by the accused as contained in Exhibit H, it must be remembered that he afterwards made other admissions, as appear in Exhibit E, and the voluntary and oral admission made by him to Venancio Jayco of the Constabulary (folios 62-68, s. n.).

Aside from these confessions, there are other proofs supplied by persons who testified for the Government, and they are as follows: The testimony of the said witnesses to the effect that the two defendants had been seen by Eugenia Ilustre, being accompanied by the deceased, a few hours before the event, going in the direction of the place where he was found dead the following morning, and that the defendants passed the night in the warehouse where they were seen and identified by the witness Domingo Buisa, which place they left early the following morning; the fact that a club with blood stains was found in the cart driven by the deceased and another club also stained with blood near the corpse of the deceased, as well as a bolo stuck in the ground about a meter from the dead body; the fact that the clothing that Andulan wore when the crime was committed and which was afterwards kept by him in his house was found with blood stains; and the fact that on the following morning the accused repaired to the mill where he astutely inquired about the deceased Arit-it, finally disclosing, although in a veiled manner, the fact of the latter's death when he said to Quintin Bautista "Ah, Arit-it is not here, inform the

authorities because he must have died." Upon this occasion Andulan was accompanied by another cart driver who, according to the evidence, was no other than Rosalio Panaligan himself.

The defense of the accused is an alibi that has not been sufficiently established and which does not, in any way, destroy the evidence for the prosecution.

We hold that the court a quo did not commit any of the errors assigned and we find, beyond any reasonable doubt, the guilt of the herein two accused. The facts just stated and the confessions made by Pedro Andulan stand for his conviction. Against Rosalio Panaligan there are the same facts and the confessions¹ of his coprincipal, Andulan, which, under the circumstances of this case, are competent evidence against the said Rosalio Panaligan (U. S. vs. Enriquez, 40 Phil., 603).

The crime committed by the accused, however, cannot be that of robbery with murder, because the robbery is not alleged in the information, but only the intention to rob. The crime alleged and proven is that of murder because there is present the qualifying circumstance of treachery (*alevosia*).

The circumstance of premeditation cannot be considered to aggravate the penalty because it is included in the intention to rob, which is the motive of the crime. Neither can the circumstance of the crime having "been committed in an uninhabited place be taken into account, as it does not clearly appear, and is, furthermore, doubtful inasmuch as the place where the crime was committed must not have been very far from the mill when the carabao hauling the cart of the unfortunate Arit-it was able to go there unguided.

We hold, therefore, that the two appellants are guilty of the crime of murder, without any attenuating or aggravating circumstance, and therefore liable to the medium degree of the corresponding penalty, which is *cadena perpetua*, to which penalty they are hereby sentenced with the accessories prescribed by article 54 of the Penal Code, to pay jointly and severally to the heirs of the deceased an indemnity of P1,085, and each to pay one-half of the costs of both instances, and with forfeiture of the P15 found in their possession, thus modifying the judgment appealed from in so far as it may not be in accordance with the present decision. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avanceña, Villamor, Ostrand, and Johns, JJ., concur.

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