

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ALBINO MAGTIBAY, DEFENDANT AND APPELLANT.*G.R. No. 5925. December 08, 1910*

Ponente: TRENT, J.

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The defendant, Albino Magtibay, and the two deceased, Nicomedes Pasia and his son Candido Pasia, were residents of the town of Ibaan, Province of Batangas. The first two were peddlers and traveled over different parts of their own province and into the Province of La Laguna selling their merchandise. The defendant had been absent from his town for a long time prior to the death of Nicomedes Pasia and his son. About the first of May, 1908, Pasia and his son, Candido, left their town going in the direction of Cabinti, Province of La Laguna, carrying with them cloth of the value of more than P600. On the 11th of July, 1908, the bodies of these two persons, Pasia and his son, were found in a small forest within the jurisdiction of their town of Ibaan. On examination of these bodies it was found that Nicomedes Pasia had a wound which almost separated his head into two parts; another wound in his side, and one in the abdomen which partly disemboweled him. On the body of the little boy, Candido, was found a wound which almost separated his head from his body, and another which partly disemboweled him. The two bodies were about two brazas apart. The bodies were searched and no money or other valuables found on them. Nicomedes Pasia was a man, the head of a family, and his son, Candido, was only about twelve years of age.

This defendant was arrested in Infanta in one of the last months of the year 1909 and taken to the Province of Tayabas, where the provincial fiscal subsequently thereto, and on the 6th of January, 1910, filed a complaint against him, charging him with the crime of robbery with homicide, alleging that the accused and one Filomeno Torres accompanied the two deceased from the town of Pagsanjan, Province of La Laguna, and on arriving in the barrio of Santo Nino, municipality of Ibaan, Province of Batangas, on a Friday about the middle of July, 1908, and in an uninhabited place, did maliciously, criminally, and with the object of robbing Nicomedes Pasia, murder the said Pasia and his son, taking from Nicomedes Pasia the sum of P500, all contrary to article 503 of the Penal Code.

The trial court after hearing¹ the evidence adduced and the arguments of counsel, sentenced this defendant, on the 5th of February, 1910, to be hanged by the neck until dead, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs. The case is now before us en consulta.

At the time this defendant was tried, Filomeno Torres had not been captured.

The first witness for the prosecution, Santos Pasia, a brother of the deceased Nicomedes Pasia, testified that on a Wednesday in the month of July, 1908, he was with the deceased in Santa Cruz, Province of La Laguna, where they spent that night together in a certain house there; that on that night the defendant and Filomeno Torres came to this house and saw the deceased Nicomedes Pasia count his money, which amounted to P540.50; that when the defendant and Torres arrived at the house where they were staying that night, and after they saw the deceased

Nicomedes count the money, the defendant, Albino Magtibay, stated to Nicomedes Pasia that as he had been absent from his town for a long time he was going to accompany the deceased and his son to their town; that very early on the following morning the two deceased, accompanied by this defendant and Filomeno Torres, embarked on a steamer which sailed for Calamba.

The witness Pioquinto Torano testified that about dusk on a Thursday, while he was on his way from Ibaan to Lipa, he met the two deceased in company with the defendant and Torres, going toward Ibaan; that he knew all of these parties and that they were carrying small bundles.

Mariano Magabo, another witness for the prosecution, testified that about daybreak on a Friday morning he met the two deceased in the barrio of Adia, municipality of Lipa, in company with this defendant and Torres, and that on the following day he was informed of the death of these two deceased.

Antonio Mapalat testified that on a Friday in the month of July, 1908, shortly after sunrise, he met the two deceased, in company with the defendant and Filomeno Torres, in a small forest, within the jurisdiction of the town of Ibaan, the deceased Nicomedes Pasia, the defendant, and Torres each carrying small bundles; that a few moments after passing these parties he heard the little boy cry out: "Why are you killing my father?" That on hearing this cry he turned back, looked over the small hill, and saw Nicomedes on the ground covered with blood and this defendant pursuing the little boy, and that on account of fear he continued his march to Lipa.

Ambrosio Calalog testified that about 10 o'clock on the morning of a Friday in July, 1908, he saw the defendant and Filomeno Torres in a small forest; that at that time he noticed blood on the clothes of Filomeno Torres; and that these two men were traveling very fast in the direction of the barrio of Putol of that town.

Serapio Pansoy, another witness for the prosecution, testified that about 12 o'clock on a Friday, the 10th of July, 1908, while he was in a restaurant in the town of Rosario he met the defendant and Filomeno Torres, who were quite well known to him and who had just arrived at that place in a calesa; that they asked him what he was doing there and he replied that he was on his way to San Pablo. They then said to him: "Don't say anything to anyone in our barrio that you saw us here."

Two policemen of the town of Ibaan testified that they had been looking for the defendant for a long time in order to arrest him on this charge. One of these policemen testified that the order of arrest was issued on the very day the bodies of the deceased were found in that barrio, but they did not state on what information the order of arrest was issued. It is evident, however, that some information was had at that time which was sufficient to order the arrest of this defendant.

The accused, testifying in his own behalf, stated that in the month of July, 1908, he was living in Infanta, in the town of Binangonan; that he had been absent from his town for more than three years when he was arrested in Binangonan, in one of the last months of the year 1908, having spent these three years in the said town of Binangonan. On being asked the ages of his children he stated that his youngest child was twenty-two months old when this trial took place. He was then asked to explain how it was possible for him to be the father of this child when he had been absent and had not seen his wife for more than three years. He failed to answer this question. The defendant also testified that when he left his home he carried with him about P1,000 worth of cloth to sell, he being a peddler; that he sold this cloth and lost the greater part of the money gambling, and for this reason he was ashamed to return to his home. He further testified that while in Binangonan he worked part of the time for the president there at a salary of P30 a month. This president, Pablo Astillo, having been called as a witness for the defense, testified that it was a fact that the defendant did work for him in April and May of 1909 and also in September and October of the same year at P15 a month; and that when the defendant came to work for him he gave his name as Segundo Maghinay.

Faustino Ravino and Eduardo Clado, two other witnesses for the defense, were called and testified that they were peddlers and from the same town of Ibaan; that they were in Binangonan about the time the two deceased were killed and, according to the testimony of these two witnesses, it would have been impossible for the accused to have been in Ibaan at the time of the murder. But on a close examination of this testimony it is very clear that they were not testifying the truth. They knew no days whatever except the ones they must give so as to have the defendant in Infanta at the time of the murder. They were unable to tell how they traveled from Ibaan and Lipa to Calamba and then to Infanta. They differed very much as to the places they stopped and as to the towns in which they peddled. They said that they went in a carromata on a road that was shown to be utterly impassable for a vehicle on account of its running through the mountains and being nothing more than a trail. They made different statements about the town of Mauban, a place where they said they stayed one or two days peddling. One of them said that this town was about a mile from the beach and the other said it was less than half a mile. The town, as a matter of fact, is right on the beach.

During the pendency of this case in the Supreme Court a motion was filed, on the 25th of August, 1910, asking for the reopening of the case for the presentation of newly discovered evidence. The newly discovered evidence which forms the basis of this motion consists of a certified copy of the testimony of Ambrosio Galalog and Santos Pasia given before the justice of the peace of the town of Ibaan on the 14th of July, 1908. It appears that shortly after the bodies of the two deceased persons were found the justice of the peace of that town held an investigation to ascertain, if possible, the authors of that crime, and during this investigation these two witnesses appeared and testified before him. In this preliminary investigation, according to the certified copies of the testimony, Pasia testified that he in company with the two deceased left their town on the 7th of May, 1908, for the Province of La Laguna for the purpose of selling cloth; that when they arrived in Pagsanjan of that province and after staying there a week they separated, the two deceased going to the town of Cabinti; that about the end of May he returned to Ibaan without waiting for the two deceased; that he had no notice of anyone accompanying them to Ibaan; and that he knew nothing about the killing of the two deceased. This testimony of Santos Pasia contradicts on some important and material points the testimony given by him during the trial. In the investigation he stated that he returned to his town the last of May, while on the trial in the court below he stated that he returned toward the latter part of July. He further stated during the trial that he saw the two deceased in Santa Cruz on a Wednesday night when the defendant and Filomeno Torres came to the house where they were staying and that the following morning the two deceased, together with the defendant and Torres, left Santa Cruz for Calamba on the same steamer. But even admitting that he testified as stated in this certificate his testimony during the trial would not be destroyed for the reason that such testimony is so thoroughly corroborated. When he gave this declaration before the justice of the peace the defendant and his companion had not been arrested, and it is not difficult to understand why a witness under these circumstances would hesitate to implicate these men in so serious a crime.

The other witness in this investigation testified that he lived in the barrio of Santo Nino, municipality of Ibaan; that the bodies of the deceased were found more than three hundred brazas distant from his house; that he knew nothing of his own knowledge as to the cause of the death of these parties, while on the trial he testified that he saw the defendant and Torres on a Friday morning about 10 o'clock in the month of July and noticed blood on the clothes of Torres. There is no material contradiction in the testimony of this witness, as he did not state that he saw the defendant and his companion commit this murder but only saw them in the small forest on that morning, so his testimony, given during the trial, would not be weakened if his testimony given in the preliminary investigation were admitted to be true. He was not asked during the preliminary investigation if he had seen this defendant at any time or place on or about the 10th of July, but he was only asked if he had any personal knowledge as to who was the perpetrator of this crime. He did not have any actual personal knowledge of the crime or the cause of the death of these two deceased, but only saw the defendant and Torres in that immediate

vicinity on the same day that these parties were killed. He did not then know that the two deceased had been killed on that day. The investigation made by the justice of the peace being so superficial we believe that the testimony of this witness would not be discredited even admitting that he so testified before the justice of the peace.

The defendant and Torres were seen in company with the two deceased between Lipa and Ibaan by the witness Torano. They were also seen by the witness Magabo about daybreak on a Friday morning in the barrio of Adia in company with the two deceased. These four men were seen together on the following morning by Mapalat, and this witness on hearing the little boy cry out, "Why are you killing my father?" saw Nicomedes Pasia on the ground covered with blood and the defendant pursuing the little boy. The bodies of these two parties were found in that same locality. This testimony is direct and positive. It is also corroborated by the testimony of Calalog, who saw the defendant and Torres in that vicinity on that Friday morning. These same two men were seen by Pan soy in a restaurant on that same day. The defendant was not seen in that vicinity after that time until he was brought back to that province for trial over a year later. The police of Ibaan had been looking for him during this time.

When Nicomedes Pasia and his little son left their home they carried with them over P600 worth of cloth. When their bodies were examined nothing of value was found on them. The cloth had disappeared and also its value. The evident motive which moved this defendant and his companion to kill these people was in order to obtain possession of their valuables. This is a clear case of robbery with double homicide. In the commission of this crime there were present no extenuating circumstances. The aggravating circumstance of despoblado has been clearly established, inasmuch as it has been shown that this crime was committed in a small forest where there were no houses and no one living near. This location was purposely and deliberately selected for the commission of this crime in order to avoid detection. These facts fully comply with the provisions of the law for the establishment of this aggravating circumstance. (U. S. vs. Salgado, 11 Phil. Rep., 56). There was likewise present in the commission of this crime the aggravating circumstance of superior strength, as it has been shown that the little boy was only about twelve years of age. The defendant and his companion took advantage of the weakness and tender age of this child to dispose of him in order, no doubt, that he could not appear as a witness against them. This crime was deliberately planned by this defendant and his companion. They saw the deceased Nicomedes count his money in Santa Cruz and at that time the defendant manifested his intention of going to his home town in company with the deceased. He carried out this plan and when they were alone in a small forest he, assisted by his companion Filomeno Torres, deliberately and with known premeditation took the lives of these two people in order to appropriate this money.

It having been established beyond any question of doubt that Albino Magtibay and his companion Filomeno Torres on the morning of the 10th of July, 1908, did with deadly weapons take the lives of Nicomedes Pasia and his son Candido for the purpose of appropriating to their own use the money which Nicomedes then had, and this crime having been committed with the concurrence of the aggravating circumstances above designated, by the very force of the law the penalty, as provided in article 503, paragraph 1, of the Penal Code, must be and was very properly imposed upon this defendant in its maximum degree. The penalty of death imposed by the trial court being in accordance with the law and the merits of this case, the same is hereby affirmed, with costs against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

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