

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMILIO AQUINO ALIAS EDU, ACCUSED-APPELLANT.

G.R. No. 59951. June 24, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

Emilio Aquino appealed from the decision of the Circuit Criminal Court at Dagupan City, convicting him of murder, sentencing him to reclusion perpetua and ordering him to indemnify the heirs of Primitivo Orines in the sum of P12,000 (Criminal Case No. 0518).

According to the evidence of the prosecution, at three o'clock or early in the morning of Good Friday, April 17, 1981, Emilio Aquino followed Primitivo Orines, his wife Erlinda Dacasin Orines, his sister-in-law Flora Dacasin and his son Alfredo, all residents of Barangay Tebag, Sta. Barbara, Pangasinan, while they were walking on the road at Barangay Jimenez, Mapandan, Pangasinan for the purpose of hearing mass in the church of Manaoag, Pangasinan on the occasion of the town fiesta.

Aquino, who was holding a long firearm, fired at Primitivo Orines who fell and died on the spot. Upon hearing the shot, Erlinda, Flora and Alfredo looked back to find out who fired the shot. They saw Aquino with his firearm. Erlinda was only two arms' length from Primitivo when he was shot. Erlinda embraced her husband. Aquino fired two more shots.

This caused Erlinda, Flora and Alfredo to hide in a nearby canal. Aquino approached the victim, divested him of his slippers, boots, belt and wallet and then fled. The shooting was perpetrated on a moonlit night and in a place which was illuminated by an electric lamp. Erlinda and Alfredo were acquainted with Aquino who was often seen in the house of Domingo Estayo at Barangay Tebag, about twenty meters away from Orines' house.

The killing was reported to the police. Aquino was arrested at around five o'clock on that same morning in his house at Barangay Lambayan. The autopsy disclosed that there was a wound of entry in the back. A slug was embedded in the thoracic cavity. There were massive hemorrhages in the lungs and heart (Exh. A).

Aquino, 43, pleaded an alibi. He declared that from ten o'clock in the evening of April 16 to five o'clock in the morning of April 17, 1981, he was in Barangay Lambayan in the house of Tomas Pontaoe who died on April 15, 1981, attending the vigil together with Barangay Captain Cenon Aquino and other barangay officials. Aquino happened to be a councilman of Barangay Lambayan, Mapandan. The house of Pontaoe was about two kilometers from Barangay Jimenez where Orines was shot. His alibi was corroborated by Cenon Aquino, Saturnino Pontaoe and Henry Soria. A paraffin test made on the accused on April 22 or five days after the killing showed negative results for nitrates (Exh. 3-A and 3-C).

The trial court rejected the alibi of the accused because he was sufficiently identified by the prosecution witnesses and because it would take less than an hour on foot or about five minutes by vehicle to negotiate the distance between Barangay Jimenez, where the crime was committed, and the house at Barangay Lambayan where the

vigil was held.

Appellant Emilio Aquino contends in this appeal that the trial court erred (1) in disregarding the contradictions in the testimonies of the prosecution witnesses, (2) in not sustaining the clear, straightforward, impartial and convincing testimonies of the defense witnesses and (3) in not acquitting him because of his innocence or at least on the ground of reasonable doubt.

Appellant raised the absence of motive. He made a minutiose scrutiny of the testimony of the victim's widow and son, eyewitnesses to the crime. He detailed the discrepancies and improbabilities thereof.

However, all his contentions are sufficiently answered in the Solicitor General's brief. Also ably refuted by the Solicitor General are the asseverations of the defense witnesses regarding Aquino's alibi and the supposed darkness of the place which rendered difficult the identification of the culprit.

It should be borne in mind that in less than two hours after the shooting, the police were at the scene of the crime, and the victim's widow, son and sister-in-law, all eyewitnesses, gave their statements and pointed to Aquino as the gunwielder to the station commander. Aquino was immediately arrested in his house notwithstanding his pretension that he had just come from a vigil for the dead.

Thus, the widow, Erlinda Dacasin, identified the accused about two hours after the shooting:

"9. Q. How did you come to know that Edu Aquino was the one who shot your husband?—A. I saw him shot my husband, sir.

"11. Q. How far were you from your husband when he was shot?—A. Two (2) full arms' length (depa), sir.

"12. Q. Were you walking side by side with your husband when he was shot?—A. My husband was walking in front of or ahead of us, sir.

"13. Q. Where did Edu Aquino, the man who shot your husband, come from if you know?—A. Edu Aquino came from the banana plants where he hid, sir, and he was following us when he shot my husband." (Exh. B.)

The widow knows Aquino very well because he used to go to their house when he was still unmarried (No. 20, Exh. B).

The police blotter reads:

"0430H—INP elements this Station led by Lt Emilio P Angeles, Stn Comdr, dispatched to Brgy Jimenez, this mply to investigate a shooting incident wherein one Primitivo Orines, a resident of Brgy Tebag, Sta Barbara this prove was gunned down while said victim was walking together with his wife, son & a sister-in-law on their way to Manaoag this prov to hear mass for the Holy Week. Suspect Edu Aquino, a resident of Brgy Lambayan, this mply and one Domingo Estayo of Brgy Tebag, Sta Barbara this prov were apprehended for custodial inves. Case under inves." (Exh. E.)

Why did Aquino kill Orines, 39? Erlinda, the widow, surmised that Domingo Estayo, the compadre of Aquino, masterminded the killing of her husband (Exh. B; 33-36 t.s.n., Oct. 6, 1981). Alfredo, the son, supposed that envy was the motive. The deceased was a cargador. He was also engaged in the buy-and-sell of large cattle. He earned around one thousand pesos a month. (82 t.s.n. Nov. 11, 1981.) As the prosecution's evidence shows, the immediate motive was robbery.

The crime actually committed is robbery with homicide since after the killing Aquino took the personal effects of Orines. As the crime charged is murder, the trial court correctly convicted Aquino of murder only.

WHEREFORE, the trial court's judgment is affirmed. Costs against the appellant.

SO ORDERED.

Makasiar, (Chairman), Concepcion Jr., Guerrero, Abad Santos, De Castro and Escolin, JJ., concur.

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