

3 Phil. 6

[ G.R. No. 1271. December 04, 1903 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. TELESFORO DASAL ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**TORRES, J.:**

On September 11, 1902, an information was filed in the Court of First Instance by the assistant prosecuting attorney of the city of Manila, charging the thirty-five persons mentioned in the record with the crime of murder. The information alleged that on or about the 13th day of August, 1902, while the defendants were on board the *Dos Hermanos*, an American steamer duly registered in the Philippine Islands, said steamer being at that time within the navigable waters of this Archipelago and at a distance of less than 1 mile from the beach of the town of Virac, Catanduanes Islands, Albay, they willfully, feloniously, treacherously, and with deliberate premeditation, assaulted, killed, and murdered one Antonio Agudo, striking and wounding him with daggers, iron bars, and other deadly weapons; and that afterwards, to wit, on or about the 2d of September of the same year, the said steamer *Dos Hermanos* entered the port of Manila.

The information above mentioned refers to a crime committed on board a merchant steamer, registered as a coasting vessel in these Islands and at anchor in a port of one of the islands, therefore, under the provisions of section 1 of Act No. 400, passed by the Civil Commission on May 16, 1902, by which the organic law of the courts, Act No. 136, passed June 11, 1901, was modified and extended. The steamer *Dos Hermanos* having, after the commission of the crime, put into this city, it is incontrovertible that the Court of First Instance thereof has sole jurisdiction, to the exclusion of all other courts of the Archipelago, for the trial of the case.

The information having been admitted and the defendants arraigned, the plea of not guilty was entered. Before the trial commenced Isidro del Valle and Tiburcio Soriano died; and

with respect to the defendants Damaso Sopgang and Carlos Septimo the case was dismissed, the prosecuting attorney having entered a *nolle prosequi*.

From the evidence introduced at the trial, and especially from the testimony of Miguel Morales, captain of the steamer *Don Hcrmanos*, together with that of First Mate Juan Zabala, Second Engineer Fabian Rendon, and the other witnesses examined, the following facts were established :

Shortly after 8 o'clock on the evening of August 13, 1902, the steamer *Dos Hcrmanos*, a vessel bearing license No. 72, dated January 11, 1900, authorizing her employment in the coastwise trade, was lying at anchor in the harbor of Virac, Catanduanes Islands, at a distance of some 40 yards from the beach, with the bow toward the shore and the stern seaward. The bow anchor was dropped and the stern made fast to the beach with a cable. Supper was just over, and Captain Morales, Zabala, the first mate, and five passengers, three of whom were men and two women, together with Don Joaquin Romero, a guest on the vessel, were sitting around the big table on the poop deck engaged in conversation. The first and second engineers were amidships on the port side, engaged in conversation just outside the officers' staterooms. Suddenly the sound of the voices of many men rushing from the bow of the ship was heard. Upon this Captain Morales and the mate, Zabala, jumped up and went down toward the place where the tumult was in progress. Just at this moment the first engineer's voice was heard shouting, "Quartermaster," and at the same moment they saw the second engineer, Rendon, coming toward them on the run, pursued by the quartermaster, Pantaleon Cajilig, and several members of the crew, armed with knives, daggers, and iron bars. One of them attacked Rendon and wounded him in the back with a dagger or a knife, while the quartermaster, in turn, attacked Captain Morales, inflicting upon him a stab in the groin. Morales tried to get into the pantry. Some ten or fourteen men endeavored to prevent him and one of them, in the course of the struggle, cut him on the head with a knife. In the meantime First Mate Zabala, believing that the noise was due to a fight forward, went down the other side toward the scene of the disturbance. Upon seeing a number of the crew, armed and evidently in mutiny, approaching him, he retreated. He was, however, overtaken and Calker Elpidio Andrade attacked him with a knife. In the struggle another member of the crew approached him and endeavored to throw him into the sea, and immediately after another seaman, Rufino de Jesus, struck him on the head with an iron bar. Zabala, however, finally succeeded in shaking off his assailants and made his escape into the pantry, where the captain and the second engineer, Rendon, had taken refuge. They closed the door and five of the mutineers, who unsuccessfully endeavored to force an entrance, locked it with a

key from the outside and remained on guard there. Some of them endeavored to stab the inmates of the stateroom with daggers and knives through the portholes. About the same time one of the passengers, Faustino Tremoya, was wounded on the arm, and, upon retreating, was pursued until he also took refuge in the pantry. He was unable to recognize his assailant. Chief Engineer Antonio Agudo was the officer first attacked when the mutiny broke out. He was assailed by several of the mutineers and was wounded in ten places with different weapons. The body of this officer was subsequently found in his stateroom. The steward, Vicente Amellategui, was also attacked, and, upon being struck with an iron hook, jumped overboard and disappeared. His body was never recovered. The Chinese carpenter, Tan Chuen, also disappeared and was not seen again after that night. While the attack was in progress the mutineers lowered the side awnings, which up to the time of the commencement of the mutiny had been pulled up, the lights on the steamer were extinguished, three of the boats which had been in the water were raised, the cable by which the stern of the vessel was fastened to the shore was cut, the accommodation ladder was hauled up, the anchor raised with the donkey engine, the ship's engines were started, and the steamer was put in motion, unquestionably with the intention of leaving the port of Virac for parts unknown, and thereby escaping the legal consequences of their acts. The record does not disclose the motive which led to the commission of the crime.

First Lieutenant Fletcher, of the Constabulary, who was on shore that night in the barracks near the beach, heard the shouting on board the steamer, and, believing a fight was in progress, got into a boat with two of his soldiers and headed for the steamer. This was at about 8.30 on the night in question. After covering half the distance to the steamer he found a man swimming. The latter was picked up, and, being barely able to breathe, could gasp only the word "fight." This man proved to be Damaso Sogang. In the meantime the anchor was raised and the steamer commenced to move. The boat containing the Constabulary officers ran along the port side of the ship, and Fletcher shouted to the men on board to drop the anchor, whereupon a man on the bridge threw a lump of coal at him. Fletcher replied by firing at the man, who fell from the starboard side of the bridge. Lieutenant Fletcher then commenced firing at several men who were running the donkey engine near the anchor and ran his boat around to the starboard accommodation ladder, but found this raised. However, finding a hanging stage at the stern, he managed to climb on board the ship, which was at that time in motion. When he got on deck the captain, who was near his stateroom, shouted to him to hurry. Lieutenant Fletcher ran to the engine room and fired a couple of shots into it from his revolver, ordering the men below to stop

the engine, which order was immediately obeyed. He then ran down to the stern and fired several shots at some men he saw there, all of whom fled excepting three, who we're captured. Three or four others jumped into the water. A sailor shot and wounded one of the Constabulary men and was, in turn, fired at by Lieutenant Fletcher. During all this confusion the steamer ran aground near the mouth of the harbor, about 150 yards from the place where it had been anchored when the mutiny broke out. The first mate, Zabala, and the second engineer, Rendon, jumped overboard and swam ashore. The first engineer was found in his stateroom, dead, and covered with wounds. On the following morning, after the Constabulary had the situation under control, there were found scattered about the deck daggers, knives, hatchets, and iron bars, some of them spattered with blood, several piles of coal prepared for use as missiles, the captain's swordstick, and later, hidden in a grease box in the engine room, one of his revolvers. Vicente Gallardo, Ciriaco Silva, Gregorio Almondia, Pedro Rodriguez, Mamerto Avelilla, Rufino do Jesus, Marcelo Bertos, Pio Tionson, Felipe Almendras, Emilio Lebiga, Manuel Raon, Juan Briguela, Mariano Gunao, Antonio Villagracia, Pablo Conception, Dionisio de la Cruz, Luis Dialao, Estanislao de Castro, Damian Oseson, Macario Arevalo, Eugenio Olores, Severino Damagat, Cipriano Rizado, Luis Taunson, Exequiel Perez, and Antonio Villamor were arrested and taken ashore. Benigno Parra was apprehended on shore the next day, and several days later Telesforo Dasal, one of the men who escaped, was captured. Lieutenant Fletcher in his testimony stated that he could not remember where Victorino Villacarlos and Tranquilino Aga were apprehended; nor could he state whether the men arrested on board the ship and those who were identified by him took part in the mutiny and the assault up on the officers. He stated it was his belief that the purpose of the uprising was to steal the money on board the vessel and to carry off the vessel itself. He further testified that Pablo Conception and Benigno Parra were wounded, the former in the hand and the latter in the side, by shots fired by the Constabulary men. He stated that Telesforo Dasal was wounded in the leg by a policeman at the time of his arrest on shore, and that the quartermaster, Cajilig, who was seen with Dasal several days after the occurrence, managed to make his escape. With respect to the defendant Juan Briguela, Lieutenant Fletcher testified that after Briguela was told that unless he obeyed every order given him he would be killed he was asked why he had started the engines during the mutiny, and he thereupon replied that at about 7 o'clock on the night of the occurrence the quartermaster, revolver in hand, came to the engine room and told him he was to start the engines whenever the signal was given and that if he did not do so he would be killed. Other member of the crew who were interrogated concerning the occurrence replied evasively and said that they had not done anything. The calker, Andrade, and the seaman who attacked the mate Zabala and tried to

throw him into the sea were killed by the Constabulary in the course of the mutiny.

From the facts stated, it clearly appears that a number of men belonging to the crew of the steamer *Dos Hermanos* conspired together to overcome the rest of the crew and kill the captain and officers of the steamer, with the intention of seizing the vessel and its contents and with it leaving for parts unknown. This outbreak resulted in the death of the first engineer, Antonio Agudo, the steward, Vicente Ameliategui, and the Chinese carpenter, Tan Chuen, and in the wounding of Captain Morales, First Mate Zabala, Second Engineer Kendon, and the passenger Faustino Tremoya.

The killing of the first engineer, Antonio Agudo, must be classified as murder, he was put to death by several of the mutineers on the night of August 13, 1902, they acting with evident premeditation and after reflection concerning the perpetration of the crime, which they had conspired together to commit. This circumstance determines the nature of the crime and brings it within the provisions of article 403 of the Penal Code. The circumstance of evident premeditation is present in a marked degree, for, without careful planning beforehand, the crime above related would not have been committed.

The court below, in its judgment of February 11, 1903, condemned Itufino de Jesus, Juan Briguella, and Telesforo Dasal to the penalty of death and the other defendants to the penalty of life imprisonment at hard labor, as authors of the crime of murder.

Although we agree with the judge below as to the classification of the crime and as to the guilt of some of the defendants, we can not agree with him as to that of others. With respect to some of the accused, the record contains no evidence whatever that they took part in the crime herein prosecuted. It is unquestionable that a portion of the crew of the steamer *Dos Hermanos* participated in the mutiny and in the attack upon the captain and other officers, and more especially upon the first engineer, whose body was subsequently found wounded in ten places. The presumption that some 10 or 14 men took part in that attack is based upon the fact that in order to effect in so short a time the various acts performed, many men must have acted together, although not necessarily the 41 who composed the crew. It can not be denied that a large portion of the crew did not take any part in the mutiny and had nothing to do with the crime committed by the mutineers. Consequently it was error to hold that all of the members of the steamer's crew should be regarded as co-principals of the crime in question. The record does not disclose evidence of the guilt of all of the defendants, but only of some of them, and the degree of guilt of these varies.

Carlos Septimo, Damaso Sogang, and Jorge Orlano were also members of the crew of the steamer, but nevertheless took no part in the commission of the crime. The evidence also shows that there were several others who unquestionably were not implicated in the mutiny, but who had not sufficient courage to follow Sogang's example and jump overboard. These simply concealed themselves on board the steamer and waited for the termination of the mutiny, without attempting to escape, as did the ringleaders, the quartermaster, Pantaleon Cajilig, who has not been apprehended, and the helmsman, Telesforo Dasal, who was arrested on shore several days after the occurrence.

Although Telesforo Dasal, Rufino de Jesus, Pablo Concepcion, Gregorio Almondia, Emilio Lebiga, Benigno Parra, and Pedro Rodriguez pleaded not guilty, the evidence as to the guilt of these seven defendants, the first as co-principal with the quartermaster, Cajilig, and the two men who were killed by the Constabulary, and the other defendants as accomplices, is convincing.

Carlos Septimo testified that while he was going ashore in a boat on the afternoon of the day the crime was committed, accompanied by Andrade, the quartermaster, Cajilig, and the helmsman Telesforo Dasal, he saw these three men conversing together and heard Cajilig say to the other two in Spanish, "Where shall we kill him?" although without stating who was to be killed. This conversation shows that the mutiny and the killing of the engineer Agudo and the other crimes committed had been planned beforehand by these three men, one of whom was the defendant Dasal, and that they were the ringleaders of the mutiny. While the mutiny was in progress, Dasal, armed with a knife, aided the other mutineers in the attack on the first engineer, Agudo, and also assisted the party led by the quartermaster and the calker in their attack upon the second engineer, Kendon. This is the testimony of the latter and of the witness Jorge Orlano. Furthermore, he was one of the men who pulled up the accommodation ladder, directed that one of the boats be raised, and accompanied the quartermaster to the engine room to order Juan Briguela to get up steam. Consequently, it is unquestionable that he is guilty as principal by direct participation in the murder committed.

This evidence given by the first officer, Juan Zabala, witness for the prosecution, and by the defendants Benigno Parra, Juan Briguela, Pablo Concepcion, and Emilio Lebiga has not been overcome by the assertion of the defendant Dasal, who denies that he had anything to do with the mutiny or the murder of Agudo.

The cooperation in the commission of a crime which results in fixing upon the guilty agent

the responsibility of an accomplice requires acts either prior to or simultaneous with the commission of the crime which constitute an aid and protection to the person or persons guilty of the actual commission of the crime; that is, perpetration of acts of moral or physical aid given mediately by indirect means in such a way as to make it clearly appear that the principal and the accomplices acted upon a common agreement for the purpose of effecting some criminal act, although the means employed by each may have been distinct and separate. (Penal Code, art. 14; judgments of the supreme court of Spain of April 25, 1877, January 22, 1884, April 2, 1886, and June 7, 1886.)

The case contains sufficient circumstantial evidence to warrant the conviction of the other defendants Rufino de Jesus, Benigno Parra, Pablo Concepcion, Gregorio Almondia, Pedro Rodriguez, and Emilio Lebiga as accomplices in said murder. These six defendants were seen moving about the deck of the ship during the mutiny, which they would not have done had they not been implicated in the conspiracy. Some of them, as Lebiga, Rodriguez, and Parra, were seen hauling up a boat and the accommodation ladder, thereby making it impossible for Fletcher to board the ship by means of the latter. These facts are shown by the testimony of the witness Jorge Orlano. The acts referred to were performed in obedience to orders given by the quartermaster, Cajilig. Rufino de Jesus was one of the assailants of First Mate Zabala, although the assault upon him was not the object of this prosecution. The evidence during the prosecution does not show that Rufino de Jesus took a direct part in the murder; nevertheless, the acts committed by him during the mutiny must be regarded as acts of complicity or of aid or protection to the murderers of First Engineer Agudo. It is worthy of note that both Captain Morales and First Mate Zabala testified that the mutineers were from ten to fourteen in number, and to their number must be added as presumably guilty the quartermaster, Cajilig, who was not arrested, the two men killed on board, and Isidro del Valle and Exequiel Perez, who died after the trial commenced.

The defendant Parra was likewise ordered by the captain, who saw him go by the front of the stateroom where he had taken refuge with the other officers, to fetch him his revolver from his stateroom. Parra, although he obtained the revolver, did not deliver it as commanded, and it was subsequently found in his possession by one of the Constabulary.

The witness Concepcion testified that he was on watch at the stern of the vessel when the mutiny broke out; that he saw the quartermaster, the calker, and the helmsman, Dasal, and one of the seamen run after the first engineer, and that thereupon the witness immediately concealed himself in one of the boats at the bow. This statement was incompatible with the

proven fact that during the mutiny Concepcion was seen walking about the deck in front of the stateroom in which the captain and officers had taken refuge.

Apart from the testimony of First Officer Zabala to the effect that he saw Gregorio Almondia with the mutineers, Captain Morales affirms that on leaving the pantry he found on the deck near the bow a black hat, which turned out to be the property of the said Almondia. The latter, also, according to the statement of Mamerto Avelilla, was the one who woke him up when the mutiny broke out, he having been asleep in the forecastle at the time.

These six men took no direct part in the murder of the first engineer, nor did they induce the commission of the crime or cooperate in its commission by acts without which the crime could not have been perpetrated. Consequently, under article 13 of the Penal Code, they can not be regarded as principals. They did indeed perform acts of aid and assistance mediately and indirectly tending to the realization of the crime and in conformity with the intention and purpose of the principals; and therefore the responsibility of these six defendants with respect to the murder is that of accomplices, under the provisions of article 14 of the Penal Code.

The details of the attack upon the first engineer, Agudo, were not determined at the trial, and the evidence does not disclose how the attack commenced or what the position of the deceased was at the time. If he was sitting with the second engineer, Rendon, by the side of the table at which they had eaten, he must have noticed the approach of the assailants, as did Rendon, who was able to seize a bar of iron to defend himself. Consequently, as it does not appear that the deceased Avas attacked treacherously and under circumstances which gave him no opportunity to make a defense, it is improper to consider the qualifying circumstance of alevosia present. The facts constituting this circumstance must be proven with the same degree of certainty as the crime itself and can not be inferred or presumed.

Mutiny on board a vessel is, of itself, a crime severely punished by special maritime laws of the former sovereignty. However, this crime, as well as other punishable acts, such as that of piracy, which the record shows to have been committed, have not been the object of the prosecution, and this decision must be limited solely to the crime of the murder of Antonio Agudo.

In the commission of this crime it is proper to consider present the aggravating



circumstances of abuse of superior power, nocturnity, and, with respect to the defendant Telesforo Dasal, abuse of confidence. As to the first of these, owing to the great number of wounds inflicted on the deceased, Agudo, it is to be presumed that he was simultaneously attacked by several persons, and that the number of his assailants prevented him from making a defense. With respect to the circumstance of nocturnity, there can be no doubt that the mutineers availed themselves of the darkness of the night, at a time when the officers and the rest of the crew were off their guard, for the purpose of committing the crime above related, and, with reference to Dasal, it is unquestionable that, as he held the position of helmsman on board the vessel, in placing himself, in company with the quartermaster, at the head of the mutineers, and thereby using the influence he possessed over the seamen and other members of the crew as a result of his position, he abused the confidence reposed in him by the captain and officers of the ship and committed an act of treachery with respect to them. On the other hand, no mitigating circumstances were present, and consequently the adequate penalty must be imposed in the maximum grade.

Against the other defendants, Estanislao de Castro, Ciriaco Silva, Mamerto Avelilla, Manuel Raon, Luis Taunson, Mariano Gunao, Vicente Gallardo, Marcelo Bertos, Severino Damagat, Pio Tionson, Victorino Villacarlos, Antonio Villamor, Dionisio de la Cruz, Cipriano Rizado, Francisco Mendoza, Felipe Almendras, Macario Arevalo, Luis Dialao, Eugenio Olores, Damian Oseson, Antonio Villagrancia, and Tranquilino Aga, the record contains no evidence, not even circumstantial, that they took any part whatever in the mutiny or in the crimes committed on the night of August 13, 1902, and more especially in the murder of Antonio Agudo. Consequently they must be acquitted.

The majority of the court are of the opinion that the same is true with respect to the assistant engineer, Juan Briguela, who they think should also be acquitted of the charge. It is believed that he started the engine under compulsion, the quartermaster having, revolver in hand, ordered him to do so, and having threatened him with death if he failed to obey, and, on the other hand, there is no evidence that he took part in the murder of the first engineer.

I do not concur in the opinion of the majority in this particular. I believe that, as the exculpatory allegation of the defendant Briguela has not been proved, and in consideration of the evidence against him, it having been proved that he performed acts of aid and protection to the principals of the crime both prior to and simultaneous with its commission, he should be convicted as an accomplice.

For tire reasons stated, we are of the opinion that the judgment of the court below should be reversed. Telesforo Dasal should be convicted as coprincipal of the crime of murder and condemned to the penalty of death, to be executed in the interior of the prison and in the manner prescribed by article 101 of the Penal Code, the crime having been committed prior to the passage of Act No, 451 of the Civil Commission. In case said defendant Dasal should be pardoned, he should be condemned to the accessory penalties of absolute perpetual disqualification, and subjection to the vigilance of the authorities during his lifetime, unless these accessory penalties should be remitted in the pardon of the principal penalty. The other defendants found guilty as accomplices, Benigno Parra, Pablo Concepcion, Gregorio Ahnondia, Pedro Rodriguez, Emilio Lebiga, and Rufino de Jesus, should each be condemned to the penalty of seventeen years of *cadena temporal*, to the accessories of civil interdiction during the period of the principal penalty and to absolute perpetual disqualification and subjection to the vigilance of the authorities during their respective lives. The said defendants, including the said Dasal, are further condemned to the payment, *pro rata or in solidum*, of 1,000 Insular pesos to the heirs of the deceased, Antonio Agudo, without subsidiary imprisonment in case of insolvency, owing to the gravity of the principal penalty, and to the payment each of one thirty-fifth part of the costs of both instances. The defendants Ciriaco Silva, Mamerto Avelilla, Manuel Kaon, Luis Taunson, Mariano Gunao, Vicente Gallardo, Marcelo Bertos, Severino Damagat, Pio Tionson, Victorino Villacarlos, Antonio Villamor, Dionisio de la Cruz, Cipriano Rizado, Francisco Mendoza, Felipe Almendras, Estanislao de Castro, Macario Arevalo, Luis Dialao, Eugenio Olores, Damian Oseson, Antonio Villagrancia, Tranquilino Aga, and Juan Briguela are acquitted. The case is finally dismissed with respect to Isidro del Valle, Tiburcio Soriano, and Exequiel Perez, deceased, with the remaining costs of both instances do oficio, including the share thereof pertaining to Carlos Septimo and Damaso Sopgang, as to whom the case was dismissed during the trial. At the expiration of the usual period the cause will be remanded to the court below, accompanied by a certified copy of this decision for the execution of the judgment. So ordered.

*Arellano, C. J., Mapa and McDonough, JJ.*, concur.

*Johnson, J.*, did not sit in this case,

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CONCURRING

**WILLARD, J.,**

I concur with respect to the defendants acquitted and as to the defendant Telesforo Dasal, but do not agree with respect to the penalty imposed upon the others, because, in my opinion, the other defendants convicted in this case are not accomplices, but coprincipals.

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