



Cicero Pro Milone

Asconius: Commentary on Cicero's *Pro Milone*

Summarised and translated by R A West

This is a shortened version of Asconius' commentary on the *Pro Milone*, intended to present the essential story of the trial of Milo. Attempts to refer to the original Latin text may not always be successful; I have omitted large sections and also made small adjustments, especially where I am "joining" parts that may originally be from different sentences in different sections; sometimes I have interpolated additional details, lifting them from elsewhere in Asconius. *But it is all Asconius*, and in my view essentially faithful to his full account, which I have shortened and explained simply to make it more readable and intelligible.

The dates are those favoured by Clark. I have tried to be more consistent and in one case more accurate about names (Sextus Clodius should be Sextus Cloelius) than Asconius' copyists.

RAW

ASCONIUS: Commentary on Cicero's *PRO MILONE*

Background

Titus Annius Milo, Publius Plautius Hypsaeus, and Quintus Metellus Scipio campaigned for the consulship not only using blatant bribery on a lavish scale, but also surrounding themselves with armed gangs of supporters. There was deep loathing between Milo and Clodius, because Milo was a close supporter of Cicero and had worked hard for his recall when he had been tribune, and Clodius, when Cicero was restored, continued his bitter hostility towards him, and he was therefore giving strong support to Hypsaeus and Scipio against Milo. In fact there had frequently been violent clashes in Rome between Milo and Clodius and their respective gangs. Furthermore Clodius was a candidate for the praetorship, and he knew it would be ineffective if Milo were consul.

When the elections to the consulship could not be completed, purely because of these ruinous conflicts between the candidates, it came round to January and there were no consuls or praetors, and the elections kept being postponed in the same way as before. Milo wanted them to be held as soon as possible, as he could count on being supported by the conservatives, because Clodius was causing such trouble, and also by the people, because of his huge bribes and his colossal outlay in providing them with some entertainment in the theatre and a gladiatorial display (Cicero tells us he spent three separate inheritances on these); but his rivals wanted further postponement, and accordingly when it was proposed that the senate should be asked to convene the patrician sub-committee to appoint an *interrex*, this was prevented by Pompey (whose wife was Metellus Scipio's daughter) and Titus Munatius Plancus, a tribune, even though the appointment of an *interrex* was standard practice.

Asconius' account of the incident

On Jan. 18th, Milo began a journey to Lanuvium, the town from which he originally came and where he was the chief magistrate, so that he could install a priest the following day. At about the ninth hour he came face to face with Clodius, who, on his way back from Aricia (where he had given a speech to the senior officials there), had come a little way further on from Bovillae, near the place where there is a shrine to the *Bona Dea*. Clodius was riding, and was followed by approximately thirty slaves who did not carry very much with them but were wearing swords



– as was perfectly normal at that time for anyone travelling. Milo was travelling in a carriage with his wife Fausta.

A large body of slaves walked behind them, including, be it noted, some gladiators, two of whom, Eudamus and Birria, had quite a reputation. They were proceeding quite slowly at the very back of the group and started needling Clodius' slaves; he, aware of the fracas, turned round and glared at them to stop, whereupon Birria drove his javelin clean through Clodius' shoulder. When a proper fight then started, more of Milo's company ran to the spot. The wounded Clodius was carried to the nearest inn, which was in the area of Bovillae. When Milo was told that Clodius had been wounded, he realised that the whole incident would be a serious embarrassment to him if Clodius managed to survive; and as well as this, he stood to derive enormous satisfaction if he had him killed, even taking into account the punishment he might have to face; so he gave orders to his slaves to get Clodius out of that inn, with Marcus Saufeius in command. And so it was that Clodius was dragged out of hiding and, with repeated blows, was stabbed to death.

Rome

Because his slaves were all either killed or severely wounded, or had gone into hiding, his body was just left at the roadside; but a senator, Sextus Tediis, who happened to be returning to Rome from the countryside, put it on his own covered carriage and gave instructions for it to be taken to the city.

Clodius' corpse reached its destination just before night actually fell, and a very large body of the poorest inhabitants of the city and of his slaves placed it in the entrance-hall to his house with a great show of mourning, and mounted a guard over it. Clodius' wife Fulvia added to the unpopularity of what had occurred by an orgy of grief in which she publicly displayed Clodius' wounds.

As day broke the next morning, a bigger crowd of such people swarmed to the house. Here too two tribunes came hurrying, Titus Munatius Plancus and Quintus Pompeius Rufus; urged on by them, this mob took the corpse of Clodius, which was still in the same state as when it had been placed on its couch – naked and smeared with mud, so that the wounds could be visible – and carried it down to the forum, where it was placed on the speaker's platform. There Plancus and Pompeius spoke to the gathering, and stirred up massive hostility against Milo. After this,



the people, led by Sextus Cloelius, the dead man's secretary, took the body actually into the senate-house, and there burnt it, using the benches, platforms, desks, and official papers kept there. The senate-house was also burnt down in this fire, and much damage was done to the Porcian basilica, which stood next to it. Two private houses were also attacked by the crowd of Clodius' supporters, that of Marcus Lepidus who was *interrex*, and Milo's own house, even though he was not there; but they were driven back from here when fired on with arrows. They then seized some rods, resembling the insignia of office kept in the sacred grove of Libitina, and took them to the homes of Scipio and Hypsaeus, and after that to the estate of Pompey, demanding first his appointment as consul, and then as dictator.

The destruction of the senate-house had created significantly more unpopularity than the killing of Clodius; so Milo, whom everybody had imagined to have gone off into a self-imposed exile, now felt that this antipathy towards his opponents gave him a second chance, and returned to Rome during the night of that same day on which the senate-house was burnt. He continued his election campaign with undiminished energy, and openly gave the people 1,000 *asses* each. A few days later the tribune Marcus Caelius held a public meeting in his support, and involved himself personally in Milo's campaign among the people. The version of recent events which they both put out was that Milo had been attacked by Clodius.

In the meantime, there had been a succession of *interreges*, as this rioting which the candidates provoked, and the armed gangs of their followers, meant that it had not been possible to hold the consular elections. The senate's first response had been to pass a decree instructing the *interrex*, the tribunes, and Pompey (who was a proconsul and was just outside the city) to take appropriate steps to prevent damage to the state, and Pompey to raise troops from all over Italy. He produced a force capable of defending the city with remarkable speed.

Legal argument

A demand was then put to him that all Milo's slaves, and those of his wife Fausta as well, should be examined; this was the work of two young men, both called Appius Claudius, who were the sons of Gaius Claudius, Clodius' brother. Caelius retaliated immediately by insisting that Publius Clodius' slaves, and the slaves of those who had been with him, should also be subjected to questioning. At the hearing Milo was represented by Quintus Hortensius, Marcus Cicero, Marcus Marcellus, Marcus Calidius, Marcus Cato, and Faustus Sulla. In a brief



submission, Hortensius stated that those "slaves" who were being required to appear were in fact free men; for Milo had freed them shortly after Clodius was killed, giving as the formal justification for his action that they had defended him against the threat to his life.

Thirty days or so after the killing of Clodius, Quintus Metellus Scipio, the consular candidate, whose daughter was married to Pompey, spoke in the senate to express his regret at Clodius' death, and chose to challenge Marcus Caelius on what he had said; he suggested that Milo's chosen line of defence, that he had been the victim of an unprovoked attack, was a lie. He described how Clodius had left to address the council at Aricia taking only twenty-six slaves with him; how Milo had suddenly, more than four hours after the meeting of the senate had ended, raced off to intercept Clodius with over three hundred slaves, all of them carrying weapons, and had taken Clodius by surprise, attacking him just north of Bovillae; there Clodius had received three wounds and been carried to Bovillae; the inn where he had gone to take refuge had been turned inside out by Milo, and Clodius had been dragged out onto the Appian Way, only half-alive, and killed there.

Pompey

During this period, there was a growing feeling that Gnaeus Pompey should be appointed dictator as the only way of putting all the political problems to rest, to which the optimates reacted by deciding that it would be safer to have him made consul, but without a fellow-consul. A resolution was passed under which Pompey was appointed consul by Servius Sulpicius, the *interrex*, three days before the end of the extra month inserted before March. Three days later Pompey proposed some new laws, and two of these he enacted using a senatorial decree; one concerned acts of violence, which specifically mentioned the killing on the Appian Way, the burning of the senate-house, and the attack on the home of Marcus Lepidus, the *interrex*, and the other dealt with bribery; stricter penalties and a more rapid form of trial were introduced, each law requiring witnesses' statements to be taken first, and then the prosecutor and the defendant to complete their speeches in one and the same day, with two hours allowed for the accuser and three for the accused. An attempt was made to stop these laws going through by Marcus Caelius, but Pompey was eventually so infuriated that he remarked that he would not shrink from using armed force to defend the state's authority, if he were forced into it.



It is worth noting that Pompey was afraid of Milo (or at least pretended that he was); most of the time he spent not in his house, but in the estate that he owned, and in the higher part of it, and a large force of soldiers maintained a constant guard here. There had also been an occasion when a meeting of the senate was abruptly halted by Pompey with a statement that Milo was on his way, and he was afraid of what might happen. Then, at the next meeting, Publius Cornificius had said that Milo was carrying a sword inside his tunic, tied to his thigh, and had insisted that Milo should uncover his thigh; Milo had immediately lifted up his tunic – whereupon an excited Marcus Cicero had claimed that all the other accusations being levelled against Milo were equally without foundation.

Growing tension

Three tribunes, Quintus Pompeius, Gaius Sallustius, and Titus Munatius Plancus, attracted much attention by organising public meetings in which Milo was violently denounced, and Cicero's own position was also undermined as it was realised how strongly he was supporting Milo. Plancus made Pompey suspicious of Milo, by repeatedly claiming that he was plotting to have Pompey murdered. Pompey fell for this, and protested over and over again that he was going to be the next victim of an armed attack; he said this sort of thing in public too, and enlarged his personal bodyguard. Plancus also made a point of threatening to put Cicero on trial, but Cicero was unswerving in the loyal support he continued to give Milo.

The trial

Lucius Domitius Ahenobarbus was appointed as the president of the court. And it is interesting to note that the list of possible jurymen for this trial published by Pompey was one that by common consent contained more names of prominent and morally irreproachable men than had ever happened before. Under this new law, Milo was promptly summoned by the two Appii Claudii. On April 4th, he came before Domitius' court. After this, following the provisions of the law, witnesses were summoned.

On the first day Causinius Schola appeared as a prosecution witness. He said that he had been with Publius Clodius when he had been killed, and as far as he could he magnified the brutality of the incident. Marcus Marcellus started to cross-question him, but the mob of Clodius' supporters who surrounded the courtroom raised such an uproar that Marcellus was petrified and, believing that there was going to be an explosion of violence with possibly fatal results,



he had to be given protection by Domitius actually at the desk where he was sitting. Marcellus, as a result, formally asked Domitius for a bodyguard, as did Milo himself. Pompey, at that moment, was sitting near the treasury and was alarmed by all the noise; and so he promised Domitius that on the next day he would come down with an armed guard, as indeed he did. The pro-Clodius group were cowed by this, and allowed the witnesses to be heard in silence over the next two days.

They were cross-questioned by Marcus Cicero, Marcus Marcellus, and by Milo himself. Many of the inhabitants of Bovillae gave evidence about what had happened there – how the innkeeper had been killed, the inn ransacked, and Clodius' body dragged out into full view. Some young women from Alba also testified that a woman whom they had never seen before had come to them, on Milo's instructions, to fulfil a vow in return for the killing of Clodius. The last witnesses to appear were two women, Sempronia, the daughter of Tuditanus, who was Clodius' mother-in-law, and his wife Fulvia, who both considerably upset the onlookers by their evident distress. When the hearing ended, with about two hours left in the day, Titus Munatius Plancus called a meeting at which he urged the people to attend in great numbers the following day, so as not to allow Milo to escape, and to make their own verdict and their extreme dissatisfaction plain to the jurors. On the next day, which was the last of the trial (April 7th), the drinking-houses were closed all over the city; Pompey positioned armed men in the forum and around all the entrances to it; he himself sat in front of the treasury, as on the previous day, encircled by specially chosen bodyguards. There followed the drawing of lots to select a jury from those who had been attending as possible jurors since the first day; and then a hush descended on the forum, as impressive a silence as there could be in a forum anywhere. It was no more than two hours into the day, and the speakers for the prosecution (the elder Appius, Marcus Antonius, and Publius Valerius Nepos) began their case; they spoke for the stipulated two hours.

There was only one speech for the defence, delivered by Cicero. Some would have preferred the defence to have been that Clodius' death was in the interests of the republic. But Cicero did not like this idea, as it seemed to suggest that it was all right for a man to be executed without being first sentenced even though "in the interests of the state" he could perfectly well have been put on trial and found guilty by a court. Hence when the prosecution took the line that Milo had made an attack on Clodius, Cicero seized on this lie (which it certainly was; in fact



the fateful quarrel had started quite accidentally), and he argued that the truth was the complete opposite of this, and that Clodius had made the attack on Milo; this was the basis of his entire speech. However, to repeat what I just stated, there is little doubt that the confrontation that day was not deliberately planned by either of them but happened by accident, and that it resulted simply from a quarrel between the slaves that escalated and had fatal consequences. Even so, it was no secret that each had often threatened to kill the other, and Milo's entourage, much larger than Clodius', made his motives look suspicious, just as Clodius' followers had been less encumbered and had a clear advantage, if any fighting was to be done. When Cicero began speaking, he was met by booing from the other side's supporters, who could not keep quiet, not even when the sight of the troops surrounding them should have frightened them into silence; and as a result of this he spoke without his usual confidence. As a matter of fact, that speech survives, because it was copied down at the time; but he then wrote the one with which we are familiar as readers, and did so with such wonderful artistry that it could quite reasonably be mistaken for the original speech¹.

When both sides had completed their case, the prosecutor and the defendant each rejected five senatorial members of the jury, and the same number of equites and *tribuni aerarii*, leaving 51 to give their verdicts. Of the senators, 12 returned a verdict of guilty, and 6 of not guilty; 13 equites pronounced him guilty, and 4 not guilty; 13 *tribuni aerarii* gave a guilty verdict, and 3 not guilty. The jury seemed to have appreciated the fact that when Clodius was first wounded, Milo knew nothing about it, but they had been interested to learn that after being wounded, Milo had given orders for him to be killed. It was claimed that the most powerful agent in Milo's downfall had been Appius Claudius.

After the trial

On the next day, Milo was tried for corruption under the special law in the court of Manlius Torquatus, and found guilty in his absence. Appius Claudius was his official prosecutor under that law as well, and when, under the provisions of the law, they tried to give him a reward, he declined to take it. Then, a few days later, Milo was found guilty of belonging to an illegal organisation, in a court presided over by Marcus Favonius, where the prosecutor did receive

¹ This may not be the correct translation. The adjective Asconius uses is *prima*, and the phrase is taken by some to mean "a very fine/masterly speech".



the reward allowed by the law. Similarly, he was found guilty in absentia in another court (that of Lucius Fabius) on a charge of violent conduct. Within a very short period of days, Milo had set out to go and live in exile at Massilia. Because of the huge scale of his debts, his property went up for sale but fetched only the tiniest sum.

After Milo, a prosecution began under the same law of Pompey's against Marcus Saufeius, who had been in charge of the operation in which the inn at Bovillae had been captured and searched, and Clodius had been killed. He was defended by Marcus Cicero and Marcus Caelius, who managed to get him acquitted by just one vote (the figures were: senators, for condemnation 10, for acquittal 8; equites, for condemnation 9, for acquittal 8; but *tribuni aerarii*, for acquittal 10, and only 6 for condemnation). The evident hatred of these people for Clodius' memory helped Saufeius, whose case was actually weaker than Milo's, as unquestionably he had been the person responsible for the raid on the inn. A few days later Saufeius was made to appear before another court, to answer a charge of violent conduct contrary to the *lex Plautia*, with additional indictments that referred to his military takeover of publicly owned land and possession of a weapon; he had, of course, been the commander of Milo's armed gangs. Marcus Cicero spoke in his defence, along with Marcus Terentius Varro Gibba. He was acquitted, and with a larger share of the votes than at the previous trial, there being 19 for his condemnation but 32 for acquittal; but the distribution of the votes was the opposite of the previous pattern, with the equites and senators voting for his acquittal and the *tribuni aerarii* for his condemnation.

The case of Sextus Cloelius should not be forgotten; he was the man responsible for bringing Clodius' dead body into the senate-house. He was put on trial by Gaius Caesennius Philo and Marcus Alfidius, and defended by Titus Flacconius. There was a decisive guilty verdict, 46 voting this way; he mustered only five votes in all for acquittal, 2 from senatorial jurors and 3 from equites.

As well as him, considerable numbers were prosecuted and found guilty, both people who did offer a defence and others who were condemned as a result of not appearing in court after they had been summonsed; and the vast majority of these were former supporters of Clodius.