

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEODULFO GATCHO, ACCUSED-APPELLANT.

G.R. No. L-27251. February 26, 1981

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PER CURIAM:

This is an automatic review of the judgment of the Court of First Instance of Cagayan in Criminal Case No. 2797 entitled "People of the Philippines vs. Teodulfo Gatcho and Gorgonio Vidad", the dispositive part of which reads:

"WHEREFORE, The Court, finding the accused Teodulfo Gatcho guilty beyond reasonable doubt of the crime of robbery with homicide and triple frustrated homicide, penalized under Art. 294, Paragraph 1, of the Revised Penal Code, with the aggravating circumstances, namely, with cruelty, abuse of superior strength, nocturnity, and dwelling, and without any mitigating circumstances to offset any of them, hereby sentences said accused Teodulfo Gatcho, to the extreme penalty of death, with the accessories of the law; and finding the accused Gorgonio Vidad, as his co-principal in the commission of the crime of robbery with homicide and triple frustrated homicide, but without the aggravating circumstances attributed to Teodulfo Gatcho, hereby sentences said accused Gorgonio Vidad to reclusion perpetua, also with the accessories of the law. Both are to indemnify jointly and severally the heirs of Crisanto Cristobal, Jr. in the amount of P6,000.00, Philippine Currency, without subsidiary imprisonment in case of insolvency. The two accused proportionately should pay the costs of these proceedings.

"SO ORDERED.

"Tuguegarao, Cagayan, December 1, 1966." [1]

However, on November 23, 1977, Gorgonio Vidad filed a motion to withdraw his appeal.[2] The motion was granted in a resolution of this Court en banc, dated November 29, 1977.[3] An entry of judgment was made as to Gorgonio Vidad.[4]

The facts found by the trial court are:

"Around ten to eleven o'clock in the evening of January 29, 1965, Crisanto Cristobal, Sr. and his wife, Felisa Gazmen, were lying down on their bamboo bed in the bedroom of their house in the Barrio of Catugay, Municipality of Baggao, together with their children Rodolfo, Mariano, Antonio, Rosemarie, and Crisanto, Jr. (pp. 27-28, t.s.n., Dichoso; p. 9, t.s.n., Madeja). They had a lighted improvised lamp at the head of their bamboo bed on the floor, for the spouses had a six-month old child then, Crisanto, Jr. (p. 55, t.s.n., Dichoso; pp. 1-2, 4-5, t.s.n., Dec. 20, 1965; p. 26, t.s.n., Madeja). The husband, Crisanto, Sr. was already asleep for he was suddenly awakened by his wife, Felisa Gazmen, telling him that there were persons inside their house (p.

38, t.s.n., Dichoso; p. 8, t.s.n., Dec. 20, 1965; p. 31, t.s.n., Madeja). Crisanto Cristobal, Sr. was lying on the left edge of the 'papag' or the bamboo bed and was nearest to the door of the bedroom where their bamboo bed was located. All of them were lying on the bamboo in this order: Crisanto Cristobal, Sr., nearest to the door of the bedroom; next the wife, Felisa Gazmen; then Antonio, the eldest; next Rodolfo; next Mariano; next Rosemarie; then last, Crisanto, Jr. Rosemarie and Crisanto, Jr. were sleeping on the right edge of the bamboo bed or 'papag' near the wall to the right (p. 55, t.s.n., Dichoso; pp. 3, 8-10, t.s.n., Dec. 20, 1965). As Crisanto, Sr. was awakened by his wife, he first sat on the edge of the 'papag' and discerned thru a cloth curtain persons near the door. (p. 28, t.s.n., Madeja) He asked who were those persons and in answer, one of them immediately turned aside the cloth curtain and began hacking him. (pp. 39, 57-58, t.s.n., Dichoso). Crisanto, Sr. was first hacked on the right forearm, (pp. 39, 46, t.s.n., Dichoso). It was a stout, half-naked fellow who hacked him; that fellow was duly identified during the hearing who gave his name as Teodulfo Gatcho (pp. 39, 46, t.s.n., Dichoso; p. 27, t.s.n., Madeja). Then the companion of the stout and half-naked man attacked him also hitting Crisanto, Sr. on his right thumb and index finger (p. 39-40, 46, t.s.n., Dichoso). He was then hit on the head and he fell almost unconscious on the floor. He recognized the companion who hit him on the right thumb and index finger to be Gorgonio Vidad (p. 39, t.s.n., Dichoso; p. 27, t.s.n., Madeja). He also was identified by Crisanto, Sr. during the trial. (p. 39, t.s.n., Dichoso). Crisanto, Sr. stood up and saw his bolo on top of a small table inside the room; so he grabbed it and began hacking also the stout, half-naked man. (p. 40, t.s.n., Dichoso; pp. 10-12, t.s.n., Dec. 20, 1965; pp. 3-4, t.s.n., Barias). Crisanto, Sr., while even lying down, was continually being hacked by both the two accused. (p. 8, t.s.n., Dec. 20, 1965).

"When Crisanto, Sr. felt so weak, he jumped out of the window of their house and ran towards a nearby creek. (p. 40, t.s.n., Dichoso, p. 12, t.s.n., Dec. 20, 1965). He hid himself in the creek and stayed there until the early morning of the following day. He left his wife and children inside the room. (pp. 12-13, t.s.n., Dec. 20, 1965; p. 40, t.s.n., Dichoso). He was found there in the creek by the barrio captain and his companions. The barrio captain, Anastacio Centeno, had a hammock brought and Crisanto, Sr. was brought to the clinic of Dr. Pallagao in the barrio of San Jose in the municipality of Baggao. (p. 41, t.s.n., Dichoso; pp. 8, 91-92, t.s.n., Barias). There he was rejoined by his wife Felisa Gazmen, and his children, Rodolfo, Rosemarie, and Crisanto, Jr. (pp. 41, 43, t.s.n., Dichoso; p. 23, t.s.n., Madeja). Both Rodolfo and Rosemarie were severely wounded while Crisanto, Jr. was already dead. (p. 24, t.s.n., Madeja, pp. 12-13, 17-18, 21-23, 41, 43, t.s.n., Dichoso; Exhibits 'A', 'A-1', 'B', 'B-1', pp. 14-15, records). All these children and Crisanto, Sr. were hacked inside the house. (pp. 43, 44, t.s.n., Dichoso). The wife, Felisa Gazmen recognized the half-naked man by his appearance although she did not know his name and Gorgonio Vidad (pp. 9-10, t.s.n., Madeja). She jumped out of the window of their house during the scuffle but had enough time to see the accused by the light of the lamp. (p. 11, t.s.n., Madeja)

"When Felisa Gazmen rejoined her husband at the clinic of Dr. Pallagao, she informed him that their money amounting to P750.00 were no longer found in the trunk which she found to have been forcibly opened. (pp. 44-45, t.s.n., Dichoso; pp. 22-33, t.s.n., Madeja). The children were also brought to the clinic by the barrio captain and some of the barrio folks (p. 43, t.s.n., Dichoso; pp. 23-24, t.s.n., Madeja, p. 96, t.s.n., Barias).

"According to the spouses, Crisanto, Sr. and Felisa Gazmen, they had money in the amount of P750.00 kept in their trunk and they had been saving that amount for the purchase of a house from one Santiago Pinion. They had saved P250.00 which they had been keeping without spending a single centavo of it, and they mortgaged a one-half hectare land for P500.00 with one Jose Agpalsa of Barrio Bantay Lasilat. Since the value of the house they were intending to purchase was P1,000.00, they were still short of P250.00 and that is why they had been keeping the money in their trunk. (pp. 45, 47-50, t.s.n., Dichoso; pp. 24-25, t.s.n., Madeja)

"After jumping outside of the window of the bedroom of their house, she ran to the house of the barrio captain crying for help. (pp. 11, 31, t.s.n., Madeja; pp. 83-85, t.s.n., Barias). Anastacio Centeno, the barrio captain, upon urging of Felisa Gazmen, went to the house of Crisanto Cristobal, Sr. but as he was alone and it was dark, he was scared. So, he went back to his house where he left Felisa Gazmen at the time and blew his horn to call for the barriofolks. (pp. 11-12, 34, t.s.n., Madeja; pp. 85, 115, t.s.n., Barias)

"It was around three o'clock then of the following day. As at that time the barrio folks were beforehand given a signal to wake up at three o'clock to go to the house of the barrio captain in order for them to proceed to work on the barrio road (trimo), when they heard the hornblow, they went to the house of the barrio captain. (pp. 4, 12, 57-58, t.s.n., Madeja; pp. 86, 116, t.s.n., Barias; pp. 59-61, t.s.n., Dichoso). At the house of the barrio captain, they were informed that Felisa Gazmen was in the house of the barrio captain seeking protection because persons went inside their house the night previously and robbed them and hacked them (p. 86, t.s.n., Barias; p. 62, t.s.n., Dichoso; p. 58, t.s.n., Madeja) They waited for daylight. (pp. 12, 59, t.s.n., Madeja; p. 86, t.s.n., Barias; p. 62, t.s.n., Dichoso; p. 58, t.s.n., Madeja). When it was daybreak, the barrio captain, accompanied by the barriofolks, went to the house of Crisanto Cristobal, Sr., around 500 meters away only, and there ordered the barrio folks to surround the house because according to Felisa Gazmen, a person was still left in the house. (pp. 12, 59-60, t.s.n., Madeja; pp. 62-63, t.s.n., Dichoso). They could hear sounds coming from inside the house and when they peeped they noticed that there was still a man inside. The barrio captain shouted to the man to surrender but no answer was given them. (pp. 92-93, 113, t.s.n., Barias; p. 64, t.s.n., Dichoso). So the barrio captain ordered a wall to be destroyed. (p. 113, t.s.n., Barias; p. 64, t.s.n., Dichoso, p. 61, t.s.n., Madeja) As they were doing so, a bottle was thrown at them and the barrio folks became scared and ran some distance. (p. 113, t.s.n., Barias; p. 64, t.s.n., Dichoso; p. 61, t.s.n., Madeja) At this juncture, the barrio captain sent more of his rural policemen to look for and fetch a policeman. (p. 14, t.s.n., Madeja; p. 97, t.s.n., Barias; p. 81, t.s.n., Dichoso). At that time, one patrolman was found while patrolling in the barrio of Barsat, Baggao. (p. 42, t.s.n., Barias). Immediately the policeman by the name of Serafico Caddanan went to the house of Crisanto Cristobal, Sr., (p. 42, t.s.n., Barias). Upon arrival, the policeman shouted to the man inside, because he noticed that there was a man crouching inside the house to surrender. (pp. 20, 43, 62-63, t.s.n., Madeja; p. 67, t.s.n., Dichoso). He shouted several times but there was no answer. (p. 113, t.s.n., Barias; pp. 67, 81, t.s.n., Dichoso). Then he fired his gun several times and ordered again the man to surrender. The man answered back that if the patrolman wanted him to surrender, they should go up the house and take him. (p. 43, t.s.n., Madeja). At this point, Pat. Caddauan went to the batalan, and from there he saw the appellant, Teodulfo Gatcho, half-naked inside the room holding one bolo and one locally made revolver called 'paltic', caliber 22. Caddauan told this man to drop his firearm and bolo, which he did. The bolo and its scabbard dropped by accused-appellant Teodulfo Gatcho were marked Exhs. C and C-1, while the 'paltic' was identified as Exh. H, Exh. H-1 was the shell found inside. (p. 44, t.s.n., Barias). So Pat. Caddauan again fired and told the man that if he should not surrender, he would shoot at him and the patrolman actually fired at the man. Not long after, the man inside went to the batalan, where Pat. Caddauan had stationed himself, and began to surrender. He was told to crawl with his hands over his head. And when the man reached the place where Caddauan was standing at the 'batalan', the patrolman ordered some men to tie him up. The man was found half-naked. (pp. 20, 63-64, t.s.n., Madeja; pp. 44, 93, t.s.n. Barias; pp. 67-68, t.s.n., Dichoso).

"Before the policeman, Pat. Caddauan arrived, while the barrio captain and his men were surrounding the house, the man inside was seen opening the shutter of the window on the eastern part of the house, and there showing only his hands, dropped one of the children of the spouses Crisanto Cristobal, Sr. and Felisa Gazmen. This child who was dropped was still alive and she was Rosemarie, about five years old. (p. 14, 67-68, t.s.n., Madeja; pp. 95-96, t.s.n., Barias). The child when dropped was called by her mother, and she ran towards the direction where the mother was. (pp. 14, 67-68, t.s.n., Madeja; pp. 47, 95, t.s.n., Barias). Then the same man

inside dropped another child on the same spot and through the same window. The child was already dead and was Crisanto Cristobal, Jr. (pp. 15, 68-69, t.s.n., Madeja; pp. 47, 95, t.s.n., Barias). He bore one wound on one side of the head, which cut through the cranium and reaching into the brain, and another wound on the buttock, which can be seen from the pictures marked as Exhs. "F, F-11, F-2". (Exh. "B-1", p. 15, rec.; pp. 22-23, t.s.n., Dichoso; p. 47, t.s.n., Barias).

"The man who threw the two children to the ground was this same half-naked man identified as Teodulfo Gatcho, the accused-appellant. He was the one captured and bound upon order of Pat. Serafico Caddauan. (p. 64, t.s.n., Madeja)

"It was almost about this same time before the dropping of the children when the barrio captain, Anastacio Centeno, who began calling for Crisanto Cristobal, Sr., that they heard the voice of Crisanto Cristobal, Sr. from the creek nearby. (p. 91, t.s.n., Barias; p. 64, t.s.n., Dichoso). They ran towards the place and they saw Crisanto Cristobal, Sr., crawling and covered with blood all over his body. He was weak. (p. 65, t.s.n., Dichoso; pp. 108-110, t.s.n., Barias; pp. 67-70, t.s.n., Madeja).

"After the man had been captured, Pat. Serafico Caddauan, went inside the house together with the barrio-folks and found the things inside the house all scattered throughout. One trunk was forcibly opened and everything inside the trunk were scattered on the floor. (p. 57, t.s.n., Barias). There were bloodstains, so Pat. Caddauan started to draw on the spot a sketch of the scene. He drew two sketches which were identified before the Court as Exh. G and Exh. G-1. (pp. 45-47, t.s.n., Barias).

"Accused-appellant Teodulfo Gatcho, after capture, was brought to the municipal building of Baggao. He was thereafter detained. (p. 69, t.s.n., Dichoso; pp. 41, 52, t.s.n., Madeja).

"Crisanto Cristobal, Sr. received several wounds, namely: (1) one incised wound along lateral aspect of right forearm, 6" long and 2" deep; (2) one incised wound, posterior aspect, distal 3rd left arm, 2" long and 2 cm deep; (3) one incised wound, fronto-parietal region, left, 1" long, 1 cm. deep; (4) one incised wound, metatarsophalangeal jt., 1" long, 1 cm. deep; (5) one incised wound, tip of left index finger almost removing the tip of finger at the insertion of the fingernail; and (6) one incised wound over right patella, 1 cm. long cutting skin and subcutaneous tissue. (Exhibit A) (pp. 3-12, 45-46, t.s.n., Dichoso)

"On the person of Rodolfo Cristobal, who was then two years old, the following wounds were found, to wit: (1) one incised wound, nape of neck, 3' inches long, 2 cm. deep; (2) one incised wound posterior aspect of left forearm 1.5" deep; (3) one incised wound middle aspect of left thumb and last digit, 1 cm. deep inch; and (4) one incised wound antero-lateral aspect, proximal 3rd, left thigh, about 1" above knee joint, 2" long, 1" deep (Exhs. A and A-1, respectively). (pp. 12-16, t.s.n., Dichoso)

"On the person of Rosemarie Cristobal, five years old, female, the following wounds were found, to wit: (1) one incised wound, right fronto-temporal region about 5" long, 1 cm. deep, penetrating the whole thickness of the skull; (2) one incised wound, medio-lateral aspect of right forearm about 1 cm. wide and 1.5 cm. deep; (3)

one incised wound, antero-lateral aspect of left knee, 3 cm. wide and 1 5 cm. deep; (4) one incised wound antero-lateral aspect of middle portion of left leg, 3 cm. long and 1.5 cm. deep; and one incised wound, dorsal aspect of left foot, 3" long, 1 cm. deep, from middle portion of feet to tip of big toe. (Exh. B). (pp. 17-21, t.s.n., Dichoso; p. 14, t.s.n., Madeja)

"On the person of Crisanto Cristobal, Jr. who was only six months old, the following wounds were found after the post-mortem examination: (1) one incised wound, occipito-temporal region, 4" long severing the skull and brain substance; and (2) one incised wound across buttocks, 4" long across tip of spinal column (Exh. B-1). (pp. 21-23, t.s.n., Dichoso; pp. 47, 58, t.s.n., Barias).

"Of the four wounded persons, Crisanto Cristobal, Jr. was already dead, while the wounds of the other three ranged from 15 to 25 days' healing time with medical attendance. The foregoing findings were made by Dr. Florentino L. Caculitan, Municipal Health Officer of Baggao, Cagayan. (pp. 6, 14, 18, 21, 23, 30-31, t.s.n., Dichoso). (pp. 189-196, records)"[5]

The counsel de oficio for the appellant, Teodulfo Gatcho, prays that the penalty of death be reduced to reclusion perpetua inasmuch as it was not sufficiently established that the hacking of the children Rosemary, Rodolfo and Crisanto Cristobal, Jr., was entirely done by Gatcho, there being a possibility that they could have been wounded during the fight with Crisanto Cristobal Sr.[6]

The issues raised by counsel as regards the accused, Teodulfo Gatcho are:

(1) Whether it was sufficiently established that the hacking of the children Rosemary, Rodolfo, and Crisanto, Jr., was entirely done by Teodulfo Gatcho; and

(2) Whether Teodulfo Gatcho's penalty ought to be lowered from death to reclusion perpetua.

As properly pointed out by then Solicitor General Antonio P. Barredo in the Appellee's Brief,[7] the possibility mentioned by counsel de oficio does not exist at all, for:

(1) "As noted by the trial Court (p. 227, rec.) Gatcho himself admitted that he could have been the one who wounded the children of the complainants (p. 130, t.s.n., Barias);

(2) "Complainant Crisanto Cristobal, Sr. testified that it was Gatcho and his companion, Gorgonio Vidad, who hacked their children Rodolfo, Rosemarie, and Crisanto, Jr. when he was still in the house. (pp. 43-44, t.s.n., Dichoso);

(3) "According to Dr. Florentino Caculitan, judging from the nature of the wounds sustained by said children, they must have been attacked while lying down, either on their backs, sides, or stomachs, (pp. 15, 16, 18, 19, 20, 22, t.s.n., Dichoso), showing that these children must have been hacked deliberately and intentionally while they were still sleeping or lying down on their bamboo bed;

(4) "As again aptly observed by the trial court judging by the position of the wounds sustained by the six-month-old boy, Crisanto, Jr., from which he died instantaneously,

'Gatcho driven to madness and fury by the escape of his quarry, Crisanto Cristobal, Sr., must have taken hold of the baby's two feet in one hand, the baby hanging perpendicularly head downward, and with the other hand, cleaved the back part of the head of the baby by a blow with his bolo, almost cutting the cranium and the brain into two, and by another blow on the buttock, causing a serious wound.'" (Exh. F and Exh. B-1). (p. 230, rec.)

Furthermore, the Solicitor General points to Gatcho's evident cruelty as shown by the fact that when he found himself surrounded and with no avenue of escape, he dropped the wounded children Rosemarie and Crisanto, Jr. from the window to the ground, "caring not a whit whether they were still alive or dead, as though he was merely dropping some worthless objects and not human lives." [8]

There is absolutely no doubt as to the guilt of Teodulfo Gatcho of the crime charged. He was positively identified by the complainants Crisanto Cristobal, Sr. and Felisa Gazmen as the stout, short, half-naked man who entered their house on the night in question together with co-accused Gorgonio Vidad, and once inside began hacking the inmates of the house with a bolo. (pp. 38-39, t.s.n., Dichoso; pp. 9-10, t.s.n., Madeja).

Indeed Gatcho was actually found in the house of said complainants by policeman Serafico Caddauan of Baggao and the menfolk of barrio Catugay led by barrio Captain Anastacio Centeno early the next morning following the bloody robbery at the said house. Forced to surrender, Gatcho crawled out of the house half-naked (as described by the complainant witnesses) and bleeding (having been wounded by Crisanto Cristobal, Sr. when the latter tried to defend himself also with a bolo) and holding a "paltic" (a homemade gun) and the bolo which he used in attacking the house inmates, both of which weapons he dropped to the ground upon orders of policeman Caddauan (pp. 20, 43, 62-64, t.s.n., Madeja; pp. 67-68, 81, t.s.n., Dichoso; pp. 44, 93, 113, t.s.n., Barias)

The defense of Teodulfo Gatcho is that he lost his way that evening after looking for work, and seeing the light in the house of the complainant spouses, sought shelter therein and was even invited into the bedroom by Felisa Gazmen; that no sooner had he entered the room when he was hacked by the man of the house, so that after being wounded several times, he struck back with his bolo but only to defend himself; and that feeling tired, he slept in said house until he was there found the next morning by policeman Caddauan and barrio captain Anastacio Centeno and companions.

The above defense was correctly rejected by Court a quo as completely ludicrous, incredible and filled with a litany of lies. To show the complete absurdity and unreliability of Gatcho's story, the Solicitor General fully agreed with the trial court when it made the following strong remarks:

(1) "This story of the accused that he was invited to go to the bedroom by a woman during the night, is the height of incredulity. No woman of any sense, unless she were a prostitute, would invite a stranger, a man at that, to get inside her bedroom. From the appearance of Felisa Gazmen, she was not that type of a woman who would ask a total stranger to get inside her bedroom... This Court hearing that testimony of the accused Gatcho could not but feel indignant and astounded because of its inherent falsity. (pp. 222-223, rec.)

(2) "Then again, Gatcho further tried to demonstrate that he received three hacks without retaliating at all, which is contrary to human nature. His statement appeared more like a fairy tale of a sacrificial lamb, known in

legends than in real truthful happening because it was indeed inconceivable that he would not defend himself right then and there when he was hacked. (pp. 222-223, rec.)

(3) "His claim that when he entered the house, he had no weapon except only the scythe is a downright lie because Pat. Caddauan and Anastacio Centeno declared that he had one bolo and a paltic revolver, cali-ber 22, when they saw him inside the house. Even he declared on March 5, 1965 that Aldong Agudera, the other co-accused who is at-large, gave him one firearm and threatened him to go up the house of Crisanto Cristobal, Sr. (Exh. J-5). And the scythe that he was claiming to be his was found by Pat. Caddauan tucked at one of the walls of the house. That scythe was not that of the accused. As between the testimony of the accused Gatcho, which is glaringly unbelievable, and the testimony of Pat. Caddauan, who, in the observation of the Court, was impartial, surely the testimony of the patrolman corroborated by Anastacio Centeno, the barrio captain, is more worthy of credence. (pp. 222, rec.)

(4) "Likewise, the Court a quo did not believe the statement of the accused that he did not know his way around, and that is why he lost his way on January 29, 1965. Catugay was not a big city; it was a mere barrio and living in that barrio for over two months would be more than sufficient for anyone, even a child to know his way around. (p. 227, rec.)

(5) "Again, when this man was asked as a witness before this Court how long had he been staying at Catugay before January 29, 1965, he answered that he had been there for only two weeks. But in his declaration before the Municipal Judge of Baggao on March 5, 1965, he declared that he had been there residing at Catugay since November of 1964 or more than two months.

(6) "Again he declared before this Court that he was living in the house of the mother of Gorgonio Vidad; but on March 5, 1965, when he was before the Municipal Judge of Baggao he declared that he was living in the house of Jaime Hidalgo, (Exh. J-3). Another lie. (p. 226, rec.)

(7) "He testified that he lost his way so he asked for shelter in the house of Crisanto Cristobal, Sr. But in his declaration on March 5, 1965, he declared that he and Aldong Agudera planned to go to the house of Crisanto Cristobal, Sr. to rob them and that he was given his firearm (Exhs. J-4 and J-5). Another lie. (p. 226, rec.).

(8) "Again he declared that he was alone who went to the house of Crisanto Cristobal, Sr.; but in his declaration of March 5, he said that his companion was Aldong Agudera. Another lie. (. 226, rec.)

(9) "The Court has noted that all the declarations of this witness are entirely untruthful and thru and thru with deliberate lies; and he himself admitted when he declared before this Court that he had told a lie because he was afraid. However, the Court cannot believe this word of the witness for how could he be afraid when he was already before the Municipal Judge of Baggao who was examining him and the incident happened on January 29, 1965 or almost two months ago or earlier than when the preliminary investigation was conducted by the Municipal Judge of Baggao." (p. 227, records)

It is clear from the records of this case that the accused Teodulfo Gatcho is guilty beyond reasonable doubt of the

crime charged. The crime committed is robbery with homicide with triple frustrated homicide. There was robbery because the malefactors took and carried away the P750.00 of the complainant spouses Crisanto Cristobal, Sr. and Felisa Gazmen. The killing of Crisanto Cristobal, Jr. was committed "by reason or on the occasion of the robbery." (Art. 294, par. 1, Revised Penal Code). There is Robbery with Homicide if the Homicide resulted by reason or on the occasion of the robbery. It is sufficient that the Homicide was produced by reason or on the occasion of the robbery, inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes, or persons intervening in the commission of the crime, that has to be taken into consideration.[9]

The robbery was also accompanied by the commission of three frustrated Homicides. The several wounds inflicted on the persons of Crisanto Cristobal Sr., Rodolfo Cristobal and Rosemarie Cristobal on the different parts of their bodies clearly show that the intent to kill them was present. The wounds were so serious that had they not been given timely and adequate medical attendance, they would have died.

Considering that the victim who died was an innocent and tender baby, barely six months old, and the wounded children were aged five (5) and twelve (12) years old, the aggravating circumstance of abuse of superior strength should be appreciated in determining the penalty because of the marked difference of physical strength between the offended parties and the offender.[10]

It is also obvious that the perpetrators waited for the night before committing the robbery to better accomplish their purpose. Nighttime is aggravating when it is especially sought for the purpose of impunity.[11]

Likewise, it is apparent that the original design of the perpetrators of the offense comprehend robbery in the dwelling of the victims. Thus, dwelling must be considered as another aggravating circumstance for in robbery with violence against or intimidation of persons, as in the case at bar, entrance into the dwelling of the offended party is not an element of the offense.[12]

However, as regards the aggravating circumstance of cruelty as found by the trial court, there is no showing that the throwing of the body of the baby outside of the window was deliberately done in order to prolong the physical suffering of the baby. Cruelty refers to physical suffering of the victim purposely intended by the offender. Hence, the wrong done must be performed while the victim is still alive. For cruelty to exist, it must be shown that the accused enjoyed and delighted in making the victim suffer slowly and gradually, causing him unnecessary physical or moral pain in the consummation of the act.[13] Moreover, cruelty cannot be inferred from the act of the throwing the body of the baby outside of the window, since as testified to by Dr. Caculitan, Municipal Health Officer of Baggao, the wounds inflicted on the baby caused his instantaneous death. Therefore, it can be concluded that the baby was no longer alive when he was thrown outside of the window.

Nevertheless, the penalty imposed by the court a quo still stands for under Article 63, second paragraph, Revised Penal Code, in all cases in which the law prescribes a penalty composed of two indivisible penalties, if there is present only one aggravating circumstance, the greater penalty shall be applied. In the case at bar, there are three aggravating circumstances, namely, (1) abuse of superior strength, (2) nighttime, and (3) dwelling, with no mitigating circumstance to offset them.

The indemnity of P6,000.00 due the heirs of the deceased should be increased to P12,000.00.

WHEREFORE, with the foregoing modification as to the amount of indemnity, the decision appealed from is hereby affirmed in all respects, with costs.

SO ORDERED.

Teehankee, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos and De Castro, JJ., concur.

Fernando, C.J. and Barredo, J., no part.

Melencio-Herrera, J., in the result.

[1] Rollo, pp. 48-49.

[2] Rollo, p. 220.

[3] Rollo, p. 221.

[4] Rollo, p. 225.

[5] Rollo, pp. 7-14; Brief for the Appellee, pp. 4-17.

[6] Rollo, p. 132.

[7] Rollo, p. 145, Brief for the Appellee, pp. 24-25.

[8] Ibid., pp. 25-26.

[9] People vs. Puesca, 87 SCRA 130, 150.

[10] U.S. vs. Devela, et al., 3 Phil. 625, 628-629.

[11] People vs. Pardo, 79 Phil. 568.

[12] People vs. Apduhan, Jr., 24 SCRA 798, 801.

[13] People vs. Ong, 62 SCRA 174, 176.

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