

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUIS FORMENTERA, ET AL., DEFENDANTS, WILFREDO NERI, JR., ALIAS “NONOY” AND RENATO EGNIA DE LA TORRE, DEFENDANTS-APPELLANTS.

G.R. No. L-30892. June 29, 1984

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This is an automatic review of the capital penalty of death imposed by the defunct Court of First Instance of Cebu on Wilfredo Neri, Jr., alias "Nonoy", and Renato Egnia de la Torre for the crime of robbery in band with homicide and double frustrated homicide, attended by several aggravating circumstances.

In his appeal, Wilfredo Neri, Jr., whose conviction was predicated mainly on a plea of guilty, contends that the lower court erred in imposing the penalty of death without assuring itself that he, accused-appellant, understood clearly and fully the allegations in the information as well as the consequences of his plea, and in not requiring the prosecution to present evidence in support of the material averments of the information, more especially the attending aggravating circumstances alleged therein, for the purpose of imposing the proper penalty.

Accused Renato Egnia de la Torre, on the other hand, seeks acquittal on the basis of the errors allegedly committed by the trial court in (1) finding his extrajudicial statement to have been voluntarily given, and (2) in finding the existence of conspiracy.

The following are the pertinent facts:

On January 22, 1969, an information for the crime of robbery in band with homicide and double frustrated homicide committed in the house of one Valeriano Otadoy in Canugbong, Poro, Cebu, was filed before the Court of First Instance of Cebu against Luis Formentera, Rosila Capuyan, Candido Argallon, Pedro Rica, Angel Nudalo, Ricardo Campos alias Eduardo Casas Tamos, Maximo Campos, Wilfredo Neri, Jr. alias Nonoy and Renato Egnia de la Torre. At the arraignment only five (5) of the accused were present, namely: Eduardo Campos, alias Eduardo Casas Tamos, and Wilfredo Neri, Jr., who both pleaded guilty, and Renato Egnia de la Torre, Pedro Rica and Angel Nudalo, who entered pleas of not guilty. Not present during the arraignment were Luis Formentera, Candido Argallon and Maximo Campos, who were then still at large, and Rosila Capuyan who was not notified of the scheduled arraignment.

Thereafter, the trial court issued an order setting the case for trial of the accused who pleaded not guilty and for arraignment of accused Rosila Capuyan. The court likewise ordered the reopening of the case at said scheduled trial with respect to the accused who had pleaded guilty, in order to satisfy itself that they fully and clearly understood the seriousness of the offense charged as well as to determine the attendant aggravating and mitigating circumstances for the purpose of imposing the proper penalty.

On June 26, 1969, the following proceedings were taken before the trial court:

"COURT:

Q: Where are the two accused who pleaded guilty last time? Where is Ricardo Campos alias Eduardo Casas Tampos? Are you the same Ricardo Campos alias Eduardo Casas Tampos who was convicted by this Court on November 4, 1968 for Robbery in Band with Frustrated Homicide and Robbery in Band with Physical Injuries?

A: Yes, sir.

COURT:

(To Wilfredo Neri, Jr., alias Nonoy)

Q: Are you the same Wilfredo Neri, Jr. alias Nonoy who was convicted also by this Court on November 4, 1968 for Robbery in Band with Frustrated Homicide?

A: Yes, sir.

Q: And also Robbery in Band with Physical Injuries?

A: Yes, sir.

Q: Both of you pleaded guilty to this crime of Robbery in Band with Homicide and Double Frustrated Homicide last time. In the meantime, the Court did not prepare its decision because it is its desire to find out if you really understood the gravity of the offense charged and the severity of the penalty imposable. Do you really understand the seriousness of the offense for which you are charged?

A: Yes, sir.

Q: Do you know also the severity of the penalty to be imposed for this crime charged against both of you?

WILFREDO NERI JR. ALIAS NONOY ANSWERED:

A: I know the penalty to be imposed. I do not know if Ricardo Campos alias Eduardo Casas Campos knows also.

[INTERPRETER ASKED RICARDO CAMPOS ALIAS EDUARDO CASAS TAMPOS WHETHER HE KNOWS THE PENALTY TO BE IMPOSED.]

A: I do not know.

COURT:

The penalty is reclusion perpetua to death. There are aggravating circumstances to be considered like in band, nighttime, dwelling, abuse of superior strength and recidivism. There is to be appreciated only one mitigating circumstance in your favor, that is, your voluntary plea of guilty. Having voluntarily pleaded guilty you have already admitted the aggravating circumstances attendant to the commission of the crime as they can be gathered from the information. The Court is asking your counsel if he can prove some more mitigating circumstances in your favor.

COURT: (To Atty. Uy)

Q: Are there some more mitigating circumstances you want to prove?

A: I think the voluntary plea of guilty of the accused is the only mitigating circumstance, Your Honor.

COURT: (To Wilfredo Neri, Jr. alias Nonoy)

Q: Do you still reiterate your voluntary plea of guilty?

A: Yes, sir.

COURT:

Both accused Wilfredo Neri Jr. alias Nonoy and Ricardo Casas Tamos alias Eduardo Casas Tamos are ordered to be brought and be present in Court on Monday, June 30, 1969 for the promulgation of the judgment. The trial of the other accused who pleaded not guilty is set on July 21, 1969, morning and afternoon sessions.

COUNSEL:

No other mitigating circumstance, Your Honor."

On June 26, 1969, the Court rendered a decision sentencing Wilfredo Neri, Jr. and Eduardo Casas Tamos to suffer the penalty of death and to indemnify in solidum the heirs of the deceased Valeriano Otadoy in the amount of P12,000.00, and the offended parties in the amount of P600.00 plus costs. In fixing the penalty, the Court took into account the aggravating circumstances of band, nighttime, abuse of superior strength, dwelling and recidivism, with the lone mitigating circumstance of plea of guilty to offset one of the aggravating circumstances.

Meanwhile, the case proceeded to trial with respect to the accused who had pleaded not guilty. Angel Nudalo died during the pendency of the case and charges against him were dismissed. Eduardo Casas also died while in confinement in the National Penitentiary.

At the trial, it was established that:

At about two o'clock in the morning of October 20, 1968, Lucia Otadoy was awakened by rapping sounds coming from their kitchen window and the window of her mother's room. She instantly raised an alarm by knocking on the wall, while her father, Valeriano Otadoy, who was also roused from his sleep, hit an iron bar. This was the signal they had agreed upon with their brothers and neighbors in the event of any untoward incident in one's house or when suspicious characters were seen in the vicinity.

Despite the alarm and their cries for help, nobody came, her brothers, who were the closest neighbors, and the others having been frightened by the pistol shots they heard.

Lucia then saw two (2) men armed with revolvers passing through the kitchen window which the latter had destroyed. She was, however, unable to recognize them as the three lamparillas in the veranda where her father slept, in the sala and in the room of her mother, respectively, did not provide sufficient illumination in the kitchen. She quickly grabbed a bolo and hacked one of the men. The intruders seized the bolo from her, and with it, hit her on the head and on the left groin, thereby rendering her unconscious.

No eyewitness account was given in court as to the ensuing events, the persons who could have provided such testimony, Lucia's mother, Petronila, and sister, Marcosa, being unable to testify. According to Dr. Edilberto Olitres, Municipal Health Officer of Poro, at the time of the trial, Petronila had become a bed patient afflicted with pulmonary tuberculosis and aretmea of the heart. This, coupled with the spinal column sprain she had sustained during the robbery, made it impossible for her to appear in court. Marcosa, on the other hand, had been suffering from psychoneurosis, which made her incompetent as a witness.

Nevertheless, through the testimony of other witnesses, it was shown that while the shooting was taking place, Serapion Otadoy, a brother of Lucia, who was residing about 150 meters away from the victims' house, sent another brother, Felix, to the police for assistance. After the shooting had subsided, Serapion rushed to his father's house, which he found ransacked. His father, mother and sister Lucia were wounded. Marcosa had, during the

robbery, jumped out of the window.

Serapion brought his wounded relatives to the clinic of Dr. Olitres, who immediately undertook an examination of the victims.

In the medical certificate issued by Dr. Olitres, Exhibit B, the injuries sustained by Valeriano Otadoy were listed as follows:

- "1. A gunshot wound $\frac{1}{4}$ inch in diameter at the right iliac 2 inches from the anterior border directed medially into the abdominal cavity, with an exit at the left side of the abdomen just below the last rib $\frac{3}{4}$ of an inch in diameter with the omentum out;
2. A gunshot wound $\frac{1}{4}$ in diameter at the middle of the anterior part of the left tibia directed posteriorly and downward with the bullet felt under the skin posteriorly and a little externally;
3. An incised wound at the left thumb dorsally and a little externally $1 \times \frac{1}{8} \times \frac{1}{6}$ inch;
4. An incised wound at the dorsal portion of left hand below the ringfinger $1\frac{1}{4} \times \frac{1}{16} \times \frac{1}{8}$ inch;
5. Lacerated wound at the right parietal region $1\frac{1}{4} \times \frac{1}{2} \times \frac{1}{8}$."

The medical certificate, Exhibit C, showed the injuries suffered by Lucia Otadoy as follows:

- "1. A gunshot wound $\frac{1}{4}$ inch in diameter with entrance at the anterior upper part of the right leg 2 inches below the knee joint and a little medially and an exit at the postero-medial side of the leg $\frac{2}{3}$ inch in diameter - bridge of 5 inches;
2. Gunshot wound $\frac{1}{4}$ inch in diameter at the lateral side of the middle of the left thigh directed upward and a little medially with an exit at a region 1 inch above and 2 inches to the left of the sym-phises pubis $\frac{2}{3}$ inch long and $\frac{1}{2}$ inch wide;
3. A lacerated wound at the left parieto-occipital region 1 inch long, $\frac{1}{8}$ inch wide and $\frac{3}{4}$ inch deep."

From the medical certificate, Exhibit D, issued to Petronila Otadoy, it appeared that she suffered the following wounds, to wit:

- "1. Swelling with pain and tenderness at the left side of the lumbar region of the back;
2. Dislocation of swelling at the left shoulder with pain and tenderness;
3. Contusion with swelling at the right eye and its surroundings."

Because of the seriousness of the injuries and the lack of facilities, Dr. Olitres advised Serapion to bring the victims to Cebu City. The doctor made a referral to the chief of the Cebu General Hospital.[1] At said hospital, Valeriano Otadoy underwent an operation, but died the follow-ing day, October 21, 1968. Lucia Otadoy was con-fined in the hospital from October 20 to November 18, 1968. After her discharge from the hospital, she stayed in a house in Cebu City to recuperate, finally returning home to Poro in December of 1968. At the trial, the Court observed that as a result of the injuries sustained during the robbery, her locomotion was impaired. She walked with a limp and had difficulty raising her left arm.

But that would be putting the cart before the horse, for a few hours after the robbery, members of the police force went to the Otadoy residence in response to Felix's call. Investi-gation revealed that the robbers had taken nine (9) coconut shells filled with old coins in the approximate amount of P600.00. This money was part of Valeriano's earnings as a tuba gatherer and a poultry and swine raiser.

During the investigation, Marcosa told the policemen that she recognized the voice of Luis Formentera, a distant cousin and former neighbor, instructing the other robbers, "If they will not give the money, kill them."

Acting on this information, the Poro police went to the PC detachment in San Francisco, Cebu to seek assistance in arresting Formentera. With two additional P.C. officers, they proceeded to sitio Batang, San Francisco, Cebu, Where Formentera resided. Upon reaching the vicinity of Formentera's house, one of the policemen shouted, "Luis, come out!", whereupon several men jumped out of Formentera's residence and escaped. The police, however, were able to recover from Rosila Capuyan, who was inside the house, old coins amounting to P43.10. Further search of the house yielded the following items, to wit: fake 10-peso bill,[2] fake 2-peso bill,[3] 8 bullets cal. 38 long, 2 bullets cal. 38 short, one unfinished revolver, cal. 38, one bullet cal. 22 magnum, one bullet cal. 22 ordinary, 2 pieces cal. 38 revolver drums, one chisel without handle, 4 auger bits of different sizes, 4 pieces unfinished revolver bolts, one open wrench, one screw driver with handle one revolver barrel, one piece of aluminum used in the manufacture of revolvers, 2 revolver hammers, 2 revolver spare parts, one man's wallet with picture, one man's pants gray, one handkerchief red, one locket, and one ammo box without cover.[4]

When the coins were shown to Serafin Otadoy and another sister, Romana, they identified them by their eagle design as the coins inside the coconut shells stolen by the robbers.

On October 26, 1968, Sgt. Nicolas Nunez Jr. of the Danao City Police Force received a report from one Jeremias Paquibot of a boat coming from Camotes with three persons aboard, one wearing a red shirt. Paquibot believed that these persons were the wanted men. Nuñez, Paquibot and two other policemen proceeded to Barrio Taytay. There, they found the boat abandoned; but from inquiries, they learned that the three men had headed towards the highway. At the highway, they overtook a passenger truck with a person aboard wearing red shirt. This man who had a wound on his foot and was limping, later identified himself as Wilfredo Neri, Jr. He was arrested and brought to the police station for investigation.

After the investigation, Neri accompanied the police to his house in Barrio Wakwak, Pasil, Cebu City, where he said his two companions were. On their way, they overtook a Thames jeepney. Inside was Renato de la Torre whom Neri identified as one of his companions. Thereafter, they went to Barrio Wakwak where they arrested Eduardo Casas. Found in the latter's possession was a .45 caliber pistol with two bullets, one inside the chamber and the other in the magazine.[5]

At the police headquarters in Danao City, Neri, de la Torre and Casas were interrogated, one after the other. All three gave extrajudicial statements which were sworn to before City Fiscal Januario Flores of Danao City the following day, October 27, 1968.

At the trial, however, Renato de la Torre repudiated the voluntariness of his extrajudicial statement. He testified that on October 20, 21, and 22, 1968, he was in his house in Barrio Wakwak, Pasil, Cebu City, because he had nothing to do as security guard of the Panama Arrastre, there being no boat that docked. In the morning of October 23, 1968, he went to the house of Formentera in sitio Batang, San Francisco, Cebu, about a job that the latter had earlier told him about. Formentera, however, informed him that the job would not start until 7:00 that evening, for which reason, he stayed on. At nightfall, some men with flashlights arrived in the vicinity of Formentera's house. Neri, who was with them at the time, said, "There are some people who are arriving. Maybe they are policemen." Even as he was surprised by this remark, Neri pointed a gun at him, ordered him to go down and to follow him and Casas. With Neri at his back continuously pointing a gun at him and Casas in front, they walked away from the house. When he asked Neri why he was pointing the gun at him, Neri replied, "If you do not want to die, you better come along."

The three of them walked for two nights in the same relative position until they reached a seashore. Neri and

Casas ordered him to board a banca. Although he planned to escape, he was not able to do so because Neri was always pointing a gun at him. Neri surmised that if he was let loose he would tip off the police as to their whereabouts.

They arrived in Danao City at 2:00 in the afternoon of October 26, 1968. Only then did Neri and Casas allow him to go, after warning him not to report to the authorities. He walked towards the road where he boarded a Thames jeepney going to the city. While aboard, some Danao City Policemen in a patrol car stopped the jeepney and arrested him. He was informed that Neri was inside the patrol car. They went to Barrio Wakwak where Casas was apprehended. After Casas' arrest, they were brought to the Police Headquarters in Danao City.

When the investigating police asked him who his companions were, he replied that "he did not know about that." Then he was asked his name, residence and the nature of his work. The policeman asked him again about the robbery, but he insisted that he had nothing to do with it, which made the policemen mad. They warned him not to "make any delay" if he did not want to be mauled.

The three of them, he, Neri and Casas, were put in a cell. Neri was the first one taken out from the cell; he was brought back after about half an hour. De la Torre was not able to talk with Neri because the latter was placed in an isolation cell. Then Casas was brought out. Upon Casas' return, de la Torre asked him what he told the police, expressing concern that they (Neri and Casas) might have implicated him. Casas merely said, "I am sorry for you." Casas was then placed in the isolation cell with Neri.

De la Torre was subsequently brought to the back of the jail where he was investigated. He denied any knowledge of the incident, which drew the following remarks from the investigator, "You are delaying. You are bull-headed. You better tell the truth." When he replied, "What truth can I tell you when I do not know these things," the police investigator got mad and boxed him. He was hit in the stomach, causing him to lose consciousness.

Upon regaining consciousness and noticing that the front part of his trousers was wet, he asked the police investigator what happened. He was told that water was poured on him because they thought he was already dead.

The police investigator handed him a piece of paper, saying, "Alright, you have nothing to do with this. You sign this so that you can go home." Not knowing how to read, he inquired what the paper was all about. The policeman told him that it would certify that he "had nothing to do with this" and that "he can go home." He then signed the statement in question.

He further testified that when he was later brought before the Fiscal's Office for swearing to the truth of his statement, he was not able to tell the Fiscal that he was maltreated because "that policeman who boxed me, warned me not to tell and if I relate to the Fiscal he will do it for the second time to me."

On February 24, 1971, the Court rendered judgment declaring Renato de la Torre guilty beyond reasonable doubt of the crime of robbery with homicide and double frustrated homicide. Finding that the commission of the crime was attended by the circumstances of nighttime, band, abuse of superior strength and dwelling, without any mitigating circumstance to offset the same, the court imposed on de la Torre the supreme penalty of death. His co-accused, Pedro Rica and Rosila Capuyan were acquitted for insufficiency of evidence.

1. The conviction of Wilfredo Neri, Jr. was based solely on his plea of guilty. The essence of a plea of guilty is that the accused admits his guilt freely, voluntarily and with full knowledge and understanding of the precise nature of the crime charged in the information as well as the meaning and consequences of his plea. A plea of guilty, when formally entered on arraignment, is sufficient to sustain a conviction of any offense charged in the information without the introduction of further evidence, the defendant himself having supplied the necessary proof by his plea of guilty.[6]

Likewise, in a plea of guilty, the aggravating circumstances alleged in the information are deemed fully established for the same covers both the crime as well as its attendant circumstances.[7] Thus, it leaves the court with no alternative but to impose the penalty prescribed by law.[8]

Because of its implications, this Court has, in a long line of decisions since 1902, called attention to the precaution that have to be taken by trial courts in accepting pleas of guilty[9] , particularly in cases where grave crimes are charged and the possibility of the death penalty being imposed is not remote. This Court has stressed time and again that while a plea of guilty is sufficient to justify the imposition of the penalty provided by law, trial judges must refrain from accepting with alacrity an accused's plea of guilty.[10] They are duty bound to be extra solicitous in seeing to it that when an accused pleads guilty, he understands fully the meaning of his plea and the import of inevitable conviction.[11] It is, therefore, prudent and perhaps necessary to require the presentation of further evidence other than those which the accused himself had furnished thru his plea in order to establish his guilt and the degree of his culpability.[12]

When accused Wilfredo Neri, Jr. entered his plea of guilty, the court a quo did not immediately render judgment but instead reopened the case in order to satisfy itself that the accused fully and clearly understood the import of his plea. On June 26, 1969, it conducted the proceedings reproduced above, through which it concluded in the subsequent judgment that the accused were "hardened criminals whose natural propensity to committing robbery seems to be insatiable." [13]

A review of the proceedings taken by the trial court, however, leaves Us unconvinced that accused Wilfredo Neri, Jr. truly and fully understood the import of his plea. Notwithstanding his affirmative answer to the question, "Do you know the penalty to be imposed?", We entertain grave doubts that said response was given with full awareness of the impending death penalty. The information did not allege with clarity the aggravating circumstances attendant to the crime. In fact, the trial judge had to infer the same from the allegations contained in the information, as borne out by the trial judge's statement that "Having voluntarily pleaded guilty you have already admitted the aggravating circumstances as they can be gathered from the information."

The seemingly casual remark from the trial judge that the penalty to be imposed is "reclusion perpetua to death" - without specifically and categorically informing the accused that the imposable penalty is death by reason of the averment of several aggravating circumstances in the information - provides cogent reason to conclude that the accused did not fully comprehend the consequences of his plea.

Furthermore, the trial court did not require the prosecuting fiscal to present evidence to determine the exact degree of the accused's culpability. It merely relied on his plea of guilty and the manifestation of his counsel de oficio that the only mitigating circumstances was his plea of guilty. Thus, the court below took into account the aggravating circumstances of nighttime, dwelling, abuse of superior strength and recidivism, as "gathered" from the information. It did not require the fiscal to prove that the "wee" hours alleged in the information referred to nighttime, or that the same was purposely sought by the accused to better accomplish their purpose or to afford impunity. Neither was abuse of superior strength conclusively shown. Superiority in number does not necessarily mean superiority in strength. That the accused was physically stronger must be established.[14]

But while these omissions on the part of the lower court demonstrate the insufficiency of the proceedings taken before it, it would be impractical and unrealistic to have the case remanded to the trial court. A long period of time had elapsed since the trial, and witnesses may at this stage be extremely difficult, if not impossible, to procure. Considering that the defect in the proceedings a quo merely involved the determination of the attendant aggravating circumstances for the purpose of fixing the imposable penalty, We resolved to commute the penalty of death imposed on Wilfredo Neri, Jr. to reclusion perpetua.

2. With respect to accused Renato Egnia de la Torre, the trial court cast aside his plea of innocence for being self-serving, choosing to give more credence to the so-called indicia of voluntariness in the execution of his extrajudicial statement. The lower court found that de la Torre's statement corroborated the extrajudicial confessions of his co-accused Casas and Neri, Jr., and that it contained details that could only have come from the accused de la Torre. It also said that there was no showing of any motive on the part of the investigating officer to testify falsely against said accused.

We have carefully scrutinized all three extrajudicial statements as well as the records, and We are unable to agree with the trial Court in its conclusion. Said confessions dealt with the incident in a fleeting manner. General statements that an old man was killed and some persons were wounded, without any other details peculiar to the incident, appeared in a consistent and somewhat suspicious pattern. The robbery was at least six (6) days old and the death of Valeriano Otadoy and the wounding of Lucia and Petronila were already of public knowledge at the time of the investigation of the accused. The incident had been well publicized. The investigator himself admitted having heard of the robbery in question over the radio.[15] It is thus probable that the recitals contained in de la Torre's statement could have come from any source other than said accused. It must be noted furthermore that Neri and Casas were investigated ahead of him, thereby making the details of the incident easy of reproduction in the statement of de la Torre.

The so-called details contained in de la Torre's affidavit which the court a quo had found so trustworthy likewise deserve a reexamination. He allegedly said that he took the boat, Ave Maria I, in going to Formentera's place and that they, he, Neri and Casas stole a "baroto" in going to Danao City. These could hardly be considered details that could come only from the accused's peculiar knowledge of the facts. From the testimony of other witnesses, it appears that the boats plying that particular route are named Ave Maria I and Ave Maria II. It would not be difficult therefore to mention that name in the statement in order to give to it a ring of truth. The stealing of the "baroto" is likewise not unknown to the police officers, in view of the report received from Jeremias Paquibot.

The opinion of the trial judge that the investigating officer had no motive to testify falsely against the accused equally rests on shaky foundation. At the trial, only Cpl. Matias Casas, the investigating officer, was presented to testify on the voluntariness of the statement and the proceedings had before City Fiscal Flores before whom the accused swore to the truth of their respective statements. The City Fiscal himself did not take the stand. For Cpl. Matias Casas to testify otherwise than he did, would only show that he was remiss in his duties, which for Us supplies the motive that the court had overlooked.

Besides, de la Torre signed the statement in question only after the investigating officer assured him that the same was a mere certification that he had nothing to do with the incident and that he could go home afterwards. The trial court characterized the remark as a promise of immunity, which, coming from one who is not authorized to grant the same, is insufficient to detract from the voluntariness of an extrajudicial confession. We, however, view the remark not as a promise of immunity, but deceit and trickery played on one, who, like the accused who barely finished grade one, would easily fall prey to.

Verily, the defense of alibi advanced by accused-appellant Renato de la Torre is generally considered a weak one. But in the absence of direct and positive identification of the accused, such defense assumes considerable weight.[16] It bears emphasis that not one of the robbers was positively identified by witnesses. De la Torre, on the other hand, testified that he was in his house not only on the day of the robbery but also during the two succeeding days. His presence in Formentera's house was explained, and reasons were given for his failure to complain to the Fiscal about his maltreatment. His testimony during the trial may not be foolproof, but as experience would show, an innocent person could do no better.

Aside from his alleged extrajudicial confession, which We have earlier ruled to have been involuntarily given,

there is not a shred of evidence directly linking accused de la Torre to the robbery in question. This fact, considered together with de la Torre's testimony, creates in Our mind serious doubts as to his complicity in the robbery.

It is a fundamental rule that in securing a conviction, the prosecution must rely on the strength of its case and not on the weakness of the defense.[17] It is needless to add that the prosecution must prove the guilt of the accused beyond reasonable doubt in order to secure a conviction. The prosecution failed in this task.

WHEREFORE, the judgment appealed from is hereby modified in the sense that the death penalty imposed on Wilfredo Neri, Jr., alias Nonoy, is hereby commuted to reclusion perpetua, and the indemnification awarded to the heirs of the deceased Valeriano Otadoy increased to Thirty Thousand Pesos (P30,000.00); while accused Renato Egnia de la Torre is acquitted of the crime of robbery with homicide and double frustrated homicide, with costs de oficio. The latter's immediate release from detention is hereby ordered, unless held for some other lawful cause. SO ORDERED.

Teehankee, Concepcion, Jr., Guerrero, Abad Santos, Plana, Relova, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

Fernando, C.J., concurs except as to appellant Wilfredo Neri, Jr. as to whom he joins J. Makasiar, on the latter's dissenting opinion.

Aquino, J., see concurrence.

Melencio-Herrera, J., on leave.

[1] Exhibit A.

[2] Exhibit G-5.

[3] Exhibit G-6.

[4] Exhibits M-1 to 21.

[5] Exhibits I, I-1 and I-2.

[6] U.S. vs. Burlado, 42 Phil. 72; U.S. vs. Dineros, 18 Phil. 566; U.S. vs. Jamad, 37 Phil. 305.

[7] People vs. Yu, L-13780, Jan. 28, 1961; People vs. Boyles, L-15308, May 29, 1964; People vs. Yamson, L-14189, October 25, 1960.

[8] People vs. Buco, L-2653, February 28, 1953.

[9] U.S. vs. Padilla, Nov. 18, 1902, cited in U.S. vs. Betiong, 2 Phil. 196.

[10] People vs. Apduhan, 24 SCRA 798. People vs. Eglatera, 34 SCRA 245.

[11] People vs. Ricalde, 49 SCRA 228.

[12] People vs. Sabalilu, 89 Phil. 283; U.S. vs. Rota, 9 Phil. 426; People vs. Palupe, 69 Phil. 703; People vs. Salacito, L-29209, Aug. 25, 1966.

[13] Judgment, Rollo, p. 13.

[14] People v. Bustos, 51 Phil. 385.

[15] TSN, January 9, 1970, p. 59.

[16] *People v. Omega*, 76 SCRA 262.

[17] *Duran v. Court of Appeals*, 71 SCRA 68.

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