

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MIGUEL REGATO AND JOSE SALCEDA, DEFENDANTS-APPELLANTS.***G.R. No. L-36750. January 31, 1984*

Ponente: RELOVA, J.

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For automatic review is the death sentence imposed on accused-appellants Miguel Regato and Jose Salceda by the then Court of First Instance of Leyte, Branch IV, in Criminal Case No. 12, entitled "People vs. Miguel Regato, et al.," for robbery with homicide. They were also ordered to indemnify, jointly and severally, the heirs of Victor Flores the sum of P12,000.00; the further sum of P870.00; and each to pay one-third of the costs.

Prosecution evidence shows that about nine o'clock in the evening of November 22, 1969, three persons called at the house of Victor Flores at sitio Macaranas, Bo. Capirawa, Palo, Leyte asking if they could buy cigarettes. Felicisima Flores, wife of Victor, was then maintaining a small sari-sari store inside their house. Upon hearing them, she stood up and, after, lighting a small kerosene lamp, opened the door of the house and extended the lamp out to recognize the persons outside. She saw accused Miguel Regato who was then at the porch and Jose Salceda. As she kept on exposing the light at them Regato approached Felicisima and struck her hand holding the lamp, causing it to fall. Regato then pointed a gun at Felicisima who moved backwards, towards the kitchen after which she jumped out and ran to the house of Filomeno Pilmaco, a neighbor. She told Pilmaco about the three persons who went up their house and pointed a gun at her. She asked for help and she was told to simply stay in the house while he and companions would rush to the poblacion of Palo to inform the police of the incident happening at sitio Macaranas. After Pilmaco and companions had left for the poblacion, Felicisima heard a gun explosion from the direction of their house.

In the meantime, Godofredo Flores, the 12-year old son of Felicisima, who was sleeping in the sala was awakened by the voice of the robbers asking the occupants to come down Godofredo observed that his mother was not in the house but saw his father, Victor Flores, being dragged down the stairway by Rito Ramirez and Miguel Regato. He saw also appellant Jose Salceda take hold of Florencio (brother of Godofredo) who was at the stairs, being brought inside the house. Appellant Salceda then lighted the lamp which was then on the floor of the sala of the house and then he brought Florencio inside the bedroom where Godofredo was then hiding. Rito Ramirez and appellant Regato in turn, brought Victor Flores inside the sala. Thereafter, Regato hit Victor Flores with the butt of his gun and said: "Where is your money? Where is your money?" When Victor answered that they did not have any, Rito Ramirez boxed Victor at the mouth breaking one of his teeth.

The three - Ramirez, Regato and Salceda, did not notice Godofredo in his hiding place by the door of the bedroom, and the latter saw everything that transpired inside the house because of the lighted lamp on the floor about a meter away.

While Victor Flores was being maltreated by Rito Ramirez and appellant Regato to force him to reveal where their money was, appellant Salceda was busy ransacking a trunk inside the bedroom where he found a small box

containing P870.00. Salceda took the money, put out the light and went to the kitchen. Ramirez then asked Salceda whether he was able to find the money and upon being told that he did, Ramirez rebuked Victor Flores: "You old man, you are telling a lie. You said you have no money." Victor Flores retorted: "You robbers." With this remark, Rito Ramirez shot Victor Flores following which the three - Regato, Salceda and Ramirez rushed out of the house and fled.

After some minutes, Felicisima Flores went back to the house and found her husband, Victor, bleeding. Things inside the bedroom were scattered and their trunk opened. She found the money inside the trunk gone. With the help of a nephew, they brought Victor Flores to the poblacion of Palo. On the way, they were met by the police patrol which proceeded to the scene of the robbery.

The party of Victor Flores reached the municipal building of Palo, Leyte about midnight of November 22 and few minutes thereafter, he gave a written statement which is now marked as Exhibit "C".

The following morning, Victor Flores was admitted at the Leyte Provincial Hospital but due to severe hemorrhage, secondary to gunshot wound, he died the same day.

Felicisima Flores was formally investigated by the police to whom she gave her affidavit now marked as Exhibit "F". Jose Salceda, on November 26, 1969, was brought to the police department as a suspect in the case. He was identified by Felicisima Flores. Regato was likewise apprehended and a case against the three - Miguel Regato, Jose Salceda and Rito Ramirez was filed for Robbery with Homicide. The case was tried against Regato and Salceda only because Rito Ramirez has remained at large.

The defense is denial and alibi. Appellant Miguel Regato claimed that on the night of November 22, 1969 he was in Bo. Gacao, Palo, Leyte attending to novena prayers for his late father-in-law, Andres Dotado. Among those present were Teodora Espina, Alberto Maraño, Rosario Regato and Nemesio Fuentes who corroborated his testimony. Prayers started at 7:00 and ended about 8 o'clock. Supper was then served until about 9:00 after which they indulged in tuba drinking which lasted up to past 11 o'clock. After the visitors had left, he (Regato) and family went to sleep.

Appellant Jose Salceda, on the other hand, testified that in the morning of November 22, 1969 he was in Bo. Gacao, Palo to transport palay that was to be harvested from the ricefield of Solomon Castañares. Harvest was finished at 4 o'clock in the afternoon and they actually left the ricefield an hour later for the house of Castañares where he was asked to cook supper. After eating supper, the group - five of them, indulged in a tuba drinking spree until about 2 o'clock the following morning.

Both appellants denied participation in the acts charged in the information.

In this appeal, appellants contend that the trial court erred (1) when it denied Salceda's motion for new trial and did not acquit him of the crime charged; (2) in convicting Regato of robbery with homicide and not with simple robbery; (3) in not considering in their favor the mitigating circumstance of lack of intent to commit so grave a wrong as that committed; (4) in considering the aggravating circumstance of nocturnity against them; and (5) in failing to consider that the aggravating circumstance of craft is absorbed by the aggravating circumstance of nocturnity.

Basis of the motion for new trial is the affidavit of appellant Miguel Regato that his two companions in the commission of the crime were Loreto Ramirez and Ernesto Mutsamuel (not Jose Salceda). On this point, suffice it to say that this affidavit of a convicted co-accused is a forgotten evidence and not a newly discovered one. Appellants Regato and Salceda were duly represented by counsel from arraignment until the promulgation of judgment and all the while this proffered evidence (affidavit of Regato) was already in existence and available to

the defense. After their conviction by the trial court, Regato would now want to free Salceda. At any rate, the statement of Regato in the affidavit is highly unbelievable and bears no earmark of sincerity. It is belied by the positive declarations of eyewitnesses to the crime.

We find no merit in the second assigned error. Appellants, with Ramirez, arrived together at the residence of Victor Flores and pretended to buy cigarettes. When Felicisima Flores opened the door, they went inside the house and demanded of Victor Flores to bring out their money. When he refused, Ramirez and Regato maltreated him, while Salceda went inside the bedroom and ransacked the trunk where the money was kept. Ramirez then inquired whether he found the money and he answered in the affirmative.

It is true that the Shooting of Victor Flores took place after the money had been taken and it was only when Flores called them "robbers" that Ramirez shot him. As aptly stated by the lower court, "it is clear that the killing was done by reason or on the occasion of the robbery, so that the accused are guilty of the special complex crime of robbery with homicide." (p. 18, Decision of lower court)

Likewise, We find no merit in the contention that there was lack of intent to commit so grave a wrong as that committed. Intention is a mental process and is an internal state of mind. The intention must be judged by the action, conduct and external acts of the accused. What men do is the best index of their intention. In the case at bar, the aforesaid mitigating circumstance cannot be appreciated considering that the acts employed by the accused were reasonably sufficient to produce the result that they actually made - the death of the victim.

With respect to the fourth and fifth assigned errors: nighttime and craft, the evidence is clear that the crime was committed past 9:00 in the evening which "the culprits had especially sought the hiding mantle of the night in order to facilitate its commission." (Decision, lower court p. 19).

Craft involves intellectual trickery or cunning on the part of the accused. Herein appellants, in order to enter the house of Flores, shouted from the outside that they wanted to buy cigarettes, which induced the inmates to open the door for them. As held in *People vs. Napili*, 85 Phil. 521, gaining entrance by pretending to buy cigarettes or drink water constitutes craft.

By and large, the conspiracy among appellants and Ramirez in the commission of the crime is evident upon the facts as proven. Their acts, collectively and individually executed, have demonstrated the existence of a common design towards the accomplishment of unlawful purpose and objective. The shooting and death of Victor Flores bear a direct relation and intimate connection between the robbery and the killing which occurred during and on the occasion of the robbery. Whether the latter be prior or subsequent to the former, there is no doubt that the complex crime of robbery with homicide has been committed.

On the other hand, appellants' alibi must fall. In the first place, Regato's submittal that he should have been convicted of simple robbery only, instead of robbery with homicide, is an admission of his presence at the scene of the crime contrary to his testimony that he was in his house that evening of November 22, 1969 attending to novena prayers for his late father-in-law. Secondly, to establish an alibi, it is not enough to prove that appellants were at some other place when the crime was committed but must, likewise, demonstrate that it was physically impossible for them to have been at the place of commission at such time. The distance between the place of the commission of the offense to the place where appellants were supposed to be at the time is only 1½ kilometers, and these places are connected with passable roads that could have facilitated the easy negotiation by the appellants between their respective homes and the scene of the crime. Appellants' evidence on this point is not sufficient to overcome the positive identification made by the prosecution witnesses - Felicisima Flores and Godofredo Flores.

For lack of necessary votes, the death penalty cannot be imposed.

WHEREFORE, the judgment appealed from is AFFIRMED, except as to the penalty, which is hereby modified to reclusion perpetua.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, and Gutierrez, Jr., JJ., concur.

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