

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIEGO OPERO Y COSIPAG, ET AL., ACCUSED, DIEGO OPERO Y COSIPAG, DEFENDANT-APPELLANT.*G.R. No. L-48796. June 11, 1981*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/20161dbe2ebf/>**PER CURIAM:**

Automatic review of the death sentence imposed on Diego Opero for robbery with homicide with which he was charged in the Circuit Criminal Court of Manila, together with Reynaldo Lacsinto and Milagros Villegas, who, however, did not appeal their conviction with much lesser penalty, the last-named, as a mere accessory after the fact. Another accused, Asteria Avila was acquitted.

In his brief, appellant raised only the question of the propriety of the imposition of the death penalty on him, with the following assignments of error:

"1. THE LOWER COURT ERRED IN NOT CONSIDERING ARTICLE 4, PARAGRAPH 1 OF THE REVISED PENAL CODE IN DETERMINING THE CRIMINAL LIABILITY OF THE ACCUSED.

"2. THE TRIAL COURT ERRED IN NOT CONSIDERING ARTICLE 49, PARAGRAPH 1 OF THE REVISED PENAL CODE IN IMPOSING THE PENALTY ON THE ACCUSED."

For the facts of the case, the narration of which in both the People's brief and that of appellant does not vary as to the essential ones, We could very well quote from the Appellee's brief, being the more comprehensive and complete, the following:

"At about 4:00 o'clock in the morning of April 27, 1978, Salvador Oliver, a GSIS security guard assigned to the House International Hotel at Ongpin Street, Binondo, Manila, was informed by Demetrio Barcing, another security guard, that the latter picked up a little girl about three years old loitering at the second floor of the building. Rafael Ordoña, a janitor of the House International Hotel, told Oliver that the little girl is residing at Room 314 of the hotel. Oliver called up Room 314 by tele-phone and when nobody answered, he and Barcing brought the little girl to said Room 314 (pp. 6, 7, & 8, t.s.n., June 15, 1978). Upon reaching Room 314, Oliver knocked at the door, and when nobody answered, he pushed the door open but he smelled foul odor emanating from the room. Oliver covered his nose with a handkerchief and together with Barcing and the little girl, they entered the room where they saw prostrate on a bed a dead person with the face down and both feet tied. Oliver called up the homicide division of the Manila Police. Patrolman Fajardo who was assigned to investigate the report of Oliver, together with some funeral parlor men arrived at the scene, and they saw a small baby crying and trying to get out of a crib near the bed of the dead person. (pp. 9, 10 & 11, t.s.n., Id).

"The dead body at Room 314 of the House International Hotel was that of Liew Soon Ping, Room 314 had been ransacked and personal belongings thrown all around. The hands and feet of the dead person were tied and the body was bloated. A towel was tied around the mouth of the victim. Photographs of the dead person and the condition of the room were taken under Patrolman Fajardo's supervision (pp. 19, 20, 21, 22, 23 & 24, t.s.n., June 15, 1978).

"Patrolman Fajardo came to know that the occupants of Room 314 were Dr. Hong, his wife Liew Soon Ping

who is the victim in this case, their three children and two maids, namely, Mila and Ester (pp. 26 & 27, t.s.n., Id). After conducting a preliminary inquiry around the vicinity of the incident, Patrolman Fajardo made an advance report (Exh. "O"; pp. 32, 33 & 34, rec.) naming therein three suspects, namely, Diego Opero, Milagros Villegas, Asteria Avila and a fourth unidentified suspect. The names of these suspects were furnished by neighbors of the victim to Patrolman Fajardo (pp. 28 & 29, t.s.n., Id.).

"After establishing the identity of the suspects, a follow up team of Manila Policemen composed of Patrolmen Luis Lim and Servande Malabute was formed to further investigate the case. A separate police team composed of Sgt. Yanguiling and several policemen were sent to Leyte and Samar to track down the suspects (pp. 30 & 31, t.s.n., Id.).

"Dr. Hong, the victim's husband who was in Cebu when the incident in his residence was committed was contacted by the police and informed about the death of his wife. Dr. Hong came back immediately from Cebu and reported to the police. He (Dr. Hong) made an inventory of the personal effects found missing in his residence, valued at P30,221.00 (pp. 31, 32 & 33, t.s.n., Id; Exhs. 'R' and 'R-1').

"While the case was under investigation, the homicide division of the Manila Police, received a radio message (Exh. p. 'T-1', p. 40, rec.) relayed thru Col. Narciso Cabrera, Chief of the Detective Bureau of the Manila Police, that Reynaldo Lacsinto one of the suspects could be found in a school house in Moriones, Tondo, Manila. Another radio message (Exh. 'T', p. 41, rec.) was received by the police that two other suspects in the case, namely, Diego Opero and Asteria Avila were picked up by the Samar P.C. and some of the missing articles, namely, one (1) camera, flashlight, bill fold, and other personal belongings were recovered from them (pp. 35 & 36, t.s.n., Id).

"Reynaldo Lacsinto was taken to police head-quarters and after appraising him of his rights under the constitution, his statement was taken in the presence of his father (pp. 37, 38 & 39, t.s.n., Id; Exhs. 'U' & 'U-1', pp. 42, 43, 44, 45, 46, 47 & 48, rec.). In his said statement to the police, Lacsinto admitted his participation and narrated in detail the commission of the robbery in Room 314 of the House International Hotel.

"The Samar P.C. turned over three other suspects, namely Diego Opero, Milagros Villegas and Asteria Avila to Sgt. Yanguiling who brought said suspects to Manila and turned them over to the homicide division of the Manila Police, together with some of the stolen articles (pp. 31 & 32, t.s.n., June 16, 1978). Statements of these three suspects (Exhibits 'B', 'C' and 'D', respectively) taken by the Samar P.C. were also turned over by Sgt. Yanguiling to the homicide division (pp. 34 & 35, t.s.n., Id). Opero was investigated further at the Manila Police Headquarters and he gave a supplemental statement (Exh. 'FF', pp. 70-74, rec.; p. 36, t.s.n., Id) admitting that he had robbed the victim and identified some of the missing articles recovered from his possession (pp. 41 & 42, t.s.n., Id). He described in detail how he planned the robbery and named the rest of his co-accused as willing participants. He also narrated in his said supplemental statement that he and his co-accused Lacsinto subdued the victim by assaulting her, tying up her hands and feet stabbing her and stuffing her mouth with a piece of pandesal (pp. 70-74, rec.)

"In her statement to the Manila police (Exh. 'GG', pp. 74 & 75, rec.) Milagros Villegas identified the stolen clothes which were given to her by Opero. (pp. 44, 45 & 46, t.s.n., Id)

"The third suspect, Asteria Avila told the Manila police that she was not a party to the crime and upon advice of her lawyer she did not give any further statement. (p. 47, t.s.n., Id)

"A reenactment of the crime at the crime scene was held under the direction of Opero portraying - his role, with Lacsinto depicting his part, and pictures of the reenactment were taken (pp. 51, 52, 53, 54, 55, 56, 57, 58, 59 & 60, t.s.n., Id; pp. 79--99, incl., rec.).

"The body of the victim Liew Soon Ping was autopsied by Dr. Angelo Singian, then Chief of the Medico Legal Division of the Western Police District. The body was identified by the victim's husband. Dr. Singian

examined the body of the victim and issued a death certificate (Exh. 'AA'), and the necropsy report (Exh. 'BB'), with the following findings: 1) a pale yellowish band across the eyes of the victim caused by the application of a towel, or broad piece of cloth across the eyes; 2) a pale yellowish band across the mouth caused by a similar material as the one applied across the victim's eyes, which was tied across the mouth; 3) contusion and hematoma on the upper and lower lips caused by a blunt instrument; 4) abrasions on the right side of the chin; 5) broad linear mark of clothing material on the neck; 6) cord or ligature marks on the left and right arm, indicating that both arms were tied; 7) abdomen distended with gas, due to decomposition; 8) epiglottis, hematoma and contusion on the right side of the tongue; 9) contusions and hematoma on the right cheek; 10) superficial stab wound measuring 0.8 cm. on the right side of the chin caused by a sharp bladed instrument; 11) superficial stab wound on the mid-axillary line caused by a sharp bladed instrument; 12) stab wound on the left forearm; 13) cord markings on both feet.

"Internal findings reveal an impacted bolus of white bread measuring 3 x 2.5 cm in the oropharynx. The tongue has contusion on the right lateral side and an abrasion across the middle portion. The larynx and trachea are markedly congested. The cause of death was due to 'asphyxiation by suffocation' with an impacted bolus into the oropharynx and compression of the neck with a broad clothing around the neck" (pp. 6-18, incl., t.s.n., June 16, 1978; Exh. 'BB', pp. 62 & 63, rec.)."

In his first assignment of error, appellant advances the theory that he never intended to kill the deceased, his intention being merely to rob her, for if indeed he had the intention to kill her, he could have easily done so with the knife, and therefore, his liability should be only for robbery.

Appellant's theory finds no basis in the law or in jurisprudence. It has been repeatedly held that when direct and intimate connection exists between the robbery and the killing, regardless of which of the two precedes the other, or whether they are committed at the same time, the crime committed is the special complex crime of robbery with homicide.[1] If the circumstances would indicate no intention to kill, as in the instant case where evidently, the intention is to prevent the deceased from making an outcry, and so a "pandesal" was stuffed into her mouth, the mitigating circumstance of not having intended to commit so grave a wrong may be appreciated.[2] The stuffing of the "pandesal" in the mouth would not have produced asphyxiation had it not slid into the neckline, "caused by the victim's own movements," according to Dr. Singian. The movements of the victim that caused the "pandesal" to slide into the neckline were, however, attributable to what appellant and his co-accused did to the victim, for if they did not hogtie her, she could have easily removed the "pandesal" from her mouth and avoided death by asphyxiation.

It may not avail appellant to contend that the death was by mere accident for even if it were so, which is not even beyond doubt for the sliding of the pandesal into the neckline to produce asphyxiation could reasonably have been anticipated, it is a settled doctrine that when death supervenes by reason or on the occasion of the robbery, it is immaterial that the occurrence of death was by mere accident.[3] What is important and decisive is that death results by reason or on the occasion of the robbery.[4] These Spanish doctrines were cited by this Court in *People vs. Mangulabnan, et al.*, 99 Phil. 992.

Appellant would also have Article 49, paragraph 1 of the Revised Penal Code apply to him, and faults the court a quo for having failed to do so. The provision cited reads:

"Art. 49. Penalty to be imposed upon the principals when the crime committed is different from that intended. - In cases in which the felony committed is different from that which the offender intended to commit, the following rules shall be observed:

"1. If the penalty prescribed for the felony committed be higher than that corresponding to the offense which the accused intended to commit, the penalty corresponding to the latter shall be imposed in its maximum period.

xx xx xx xx."

The foregoing provision has been applied only to cases when the crime committed befalls a different person from the one intended to be the victim. This was the explicit ruling in the case of *People vs. Albuquerque*, 59 Phil. 150-153, citing decisions of the Supreme Court of Spain.[5]

In the instant case the intended victim, not any other person, was the one killed, as a result of an intention to rob, as in fact appellant and his co-accused, did rob the deceased. As stated earlier, what may be appreciated in appellant's favor is only the mitigating circumstance of not having intended to commit so grave a wrong as that committed, under paragraph 3 of Article 13 of the Revised Penal Code, an entirely different situation from that contemplated under paragraph 1, Article 49 of the same Code, where as already explained, the different felony from that intended, befalls someone different from the intended victim, as when the person intended to be killed is a stranger to the offender, but the person actually killed is the offender's father, thereby making the intended felony which is homicide different from the crime actually committed which is parricide.

Notwithstanding the presence of the mitigating circumstance of not having intended to commit so grave a wrong as that committed, there still remains one aggravating circumstance to consider, after either one of the two aggravating circumstances present, that of superior strength and dwelling, is offset by the mitigating circumstance aforesaid. The higher of the imposable penalty for the crime committed, which is reclusion perpetua to death, should therefore be the proper penalty to be imposed on appellant. This is the penalty of death as imposed by the lower court.

WHEREFORE, the judgment appealed from being in accordance with law and the evidence, except as to the non-appreciation of the mitigating circumstance of having no intention to commit so grave a wrong as that committed, which nevertheless does not call for the modification of the penalty of death as imposed by the lower court, is hereby affirmed. Cost de officio.

SO ORDERED.

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

Melencio-Herrera, J., in the result.

Fernando, C.J., did not take part.

[1] *People vs. Hernandez*, 46 Phil. 48.

[2] *People vs. Sia Bonkia*, 60 Phil. 1; *U.S. vs. Samea*, 5 Phil. 227.

[3] *People vs. Mangulabnan*, 99 Phil. 992.

[4] *Id.*, citing Decisions of the Supreme Court of Spain, November 26, 1892 and January 12, 1899.

[5] Decision of October 20, 1897 and June 28, 1899.

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