

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MABINI GARACHICO AND ROGELIO DE LA CRUZ,
DEFENDANTS-APPELLANTS.**

G.R. No. L-30849. March 29, 1982

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an automatic review of the decision of the Court of First Instance of Oriental Mindoro, Pinamalayan, in Criminal Case No. R-559, dated July 28, 1969, the dispositive part of which reads:

"WHEREFORE, both accused, Mabini Garachico and Rogelio de la Cruz, are hereby found guilty of the crime of robbery with homicide, and are sentenced to suffer the capital punishment of death and to pay indemnity, jointly and solidarily, to the heirs of both spouses, Raymundo Moral and Concordia Mariveles, the sum of TWELVE THOUSAND PESOS (P12,000.00) and costs."[1]

Both accused, Rogelio de la Cruz and Mabini Garachico, were charged with the crime of robbery with homicide in an information which reads:

"That on or about the 29th day of January, 1969, at 6:00 o'clock in the evening, more or less, in barrio Budburan, Municipality of Mansalay, province of Oriental Mindoro, Phi-lippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, and armed with deadly weapons, to wit: two (2) boloes, did then and there wilfully, unlawfully and feloniously, and with a decided purpose to rob, kill, attack, assault and wound therewith one Raymundo Moral inflicting upon the latter mortal wounds in different parts of the body which caused his instantaneous death, and immediately thereafter the said accused entered the house of said Raymundo Moral and thereat wilfully, unlawfully and feloniously and with intent of gain and against the will of the owners thereof took and carried away the following personal properties: One (1) transistorized radio, two (2) lockers contain-ing assorted clothes, and five (5) heads of carabaos belonging to the deceased spouses Raymundo Moral and Concordia Mariveles with a total value of TWO THOUSAND (P2,000.00) PESOS, to the damage and prejudice of said owners in the aforesaid amount; that on the occasion of said robbery and for the purpose of enabling them to take, steal and carry away the properties above-mentioned, the here-in accused, in pursuance of their criminal conspiracy, did then and there wilfully, unlawfully and feloniously, with evident, premeditation, and taking advantage of their superior strength and number, with utter disregard of the respect due the offended parties on account of old age and weaker sex, and in the very dwelling of the deceased spouses, treacherously attack, assault and use personal violence upon an old woman, Con-cordia Mariveles, by deliberately tying and knotting a piece of rope around her neck and mercilessly strangled her to death.

"That in the commission of the heinous crime aforementioned, the following aggravating circumstances are present, to wit: treachery, taking advantage of superior strength, nocturnity, dwelling, evident pre-meditation, utter disregard of the respect due the offended parties on account of age and sex, and that the wrong done in the commission of the crime was deliberately augmented by causing other wrong not necessary for its commission."[2]

The counsel de officio of the two defendants assign the following errors:

"I

"THE TRIAL COURT ERRED IN HOLDING THAT APPELLANTS' AFFIDAVITS, EXHIBITS "G" AND "H" WERE VOLUNTARILY GIVEN UNDER NO THREAT OR INTIMIDATING WHATSOEVER.

"II

"THE TRIAL COURT ERRED IN HOLDING THAT THERE WAS EVIDENT PREMEDITATION ON THE PART OF APPELLANTS IN CONNECTION WITH THE DEATH OF RAYMUNDO MORAL AND HIS WIFE, CONCORDIA MARIVELES.

"III

"THE TRIAL COURT ERRED IN HOLDING THAT THERE WAS INTENT OF GAIN ON THE PART OF APPELLANTS AND THEREFORE FOUND THEM GUILTY OF ROBBERY IN CONNECTION WITH THE CARABAOS AND OTHER BELONGINGS OF SPOUSES RAYMUNDO MORAL AND CONCORDIA MARIVELES.

"IV

"THE TRIAL COURT ERRED IN HOLDING THAT TREACHERY TAKING ADVANTAGE OF SUPERIOR STRENGTH, NOCTURNITY AND/OR DWELLING, WERE PRESENT IN THE COMMISSION OF THE CRIME.

"V

"THE TRIAL COURT ERRED IN HOLDING THAT APPELLANTS FLED AND/OR RAN AWAY FROM THE CRIME.

"VI

"THE TRIAL COURT ERRED IN HOLDING THAT APPELLANTS' DEMEANOR AND MANNER OF TESTIFYING - STAMMERING AND NOT ANSWERING DESPITE SUFFICIENT TIME GIVEN, ARE ELOQUENT PROOF OF THEIR GUILT, RATHER THAN INNOCENCE.

"VII

"THE TRIAL COURT ERRED IN NOT CONSIDERING SELF-DEFENSE IN FAVOR OF APPELLANTS IN CONNECTION WITH THE DEATH OF RAYMUNDO MORAL, AND ACQUITTING THEM THEREOF.

"VIII

"THE TRIAL COURT ERRED IN NOT CONSIDERING THE MITIGATING CIRCUMSTANCES OF LACK OF INTENTION TO COMMIT SO GRAVE A WRONG AND ACTING UPON AN IMPULSE SO POWERFUL AS TO PRODUCE PASSION AND OBFUSCATION IN FAVOR OF APPELLANTS IN CONNECTION WITH THE DEATH OF CONCORDIA MARIVELES.

"IX

"THE TRIAL COURT ERRED IN CONVICTING APPELLANTS OF THE CRIME OF ROBBERY WITH HOMICIDE IN CONNECTION WITH THE DEATH OF CONCORDIA MARIVELES, INSTEAD OF THE SIMPLE CRIME OF HOMICIDE."^[3]

The accused Mabini Garachico died on March 8, 1976. Hence in a resolution dated June 18, 1976 this Court

dismissed the case in so far as the criminal liability of Mabini Garachico is concerned.

The trial court found the two accused guilty as charged in the information on the following findings:

"The prosecution, through its only eye witness to the incident (Diego Vicente) established the fact of killing of Raymundo Moral by the said two accused. State witness Vicente came upon the two accused on the precise moment when they were hacking Moral with their bolos.

"From the Affidavit of Rogelio de la Cruz dated February 1, 1969 and subscribed and sworn to before Mansalay Municipal Judge Adelita Sucgang (Exhibit "G") and also from the affidavit of Mabini Garachico dated March 18, 1969 and subscribed and sworn to before the same Judge, (Exhibit "H"), both of them stated and admitted that they together boloed victim Raymundo Moral until he died. Nowhere in said two (2) affidavits was it stated that victim Raymundo started the incident nor did Raymundo make any kind of provocation, by word of mouth or action, that led the two accused in boling him. From the affidavit of de la Cruz (Exh. "G"), it appears that accused Garachico harbored ill-feeling towards Raymundo Moral because Moral had suspected Garachico of having stolen his (Moral's) chickens about two (2) weeks before the incident in question. Likewise, from the affidavit of Garachico (Exh. "H"), it appears that victim Moral confronted both accused de la Cruz and Garachico as having stolen his chickens and it was also stated therein that Barrio Capt. Iluminado Galicia had ordered both of them to kill Moral. The two affidavits had themselves furnished the motive or some of the motives that prompted the two accused to get rid of victim Raymundo.

"In their defense in the actual trial of this case, however, both de la Cruz and Garachico sought to establish self-defense to justify their killing of victim Raymundo and to exculpate themselves of any liability therefor. In his testimony in court, accused Garachico said that after Raymundo had charged him and de la Cruz of having stolen his chickens and after exchange of words, Moral drew his bolo and struck de la Cruz; then Garachico struck Moral with his bolo; Moral in turn also struck Garachico with his (Moral's) bolo which bolo Garachico wrested from the victim and used to kill the victim. In his testimony in court, accused de la Cruz said Moral had charged him and Garachico with stealing his chickens and after which Moral attempted to slap him (de la Cruz) but desisted and Moral instead drew his bolo and boloed but did not hit him; he (de la Cruz) in turn struck back at Moral but failed to hit him; then Garachico wrested Moral's bolo and used it on Moral, hitting Moral twice, and he (de la Cruz) also boloed Moral twice and, as a result, victim Moral succumbed.

"This Court finds the version of the two (2) accused surrounding the killing of victim Raymundo as sham and fabricated. Not an iota of doubt can exist in the mind about the fact that the accused had perpetrated a cold-blooded and unmitigated murder of the person of Raymundo. That there was no justification for said murder, much less was there a valid self-defense in this case, can be gathered and concluded from the following facts and circumstances, to wit: 1) The affidavits of the two (2) accused, Exh. "G" and "H" which were voluntarily given under no threat or intimidation whatsoever as testified to by Judge Sucgang before whom they were executed and sworn to, made absolutely no mention of aggression or provocation by victim Raymundo before the incident of killing happened; 2) The two accused, as testified by them, took the lifeless body of Raymundo and hid it behind a clump of bushy bamboos some distance away; 3) The two accused, as also testified by them, washed their respective bolos; and accused Garachico threw the bolo of Moral into a cogonal area according to his own testimony; 4) The two accused did not surrender to the authorities after the killing; instead, accused de la Cruz was apprehended by police authorities in an area by a river while Garachico, who was with de la Cruz then ran away and successfully took flight but was later apprehended by Mansalay Police Chief Quejada, some two (2) months after in barrio Mapaya, San Jose, Occ. Mindoro; and 5) The demeanor and manner of testifying of the two accused--stammering, not answering even after giving them sufficient time, etc. --belie their pretensions of innocence and the more show their guilt.

"Not satisfied with killing Raymundo, the two accused proceeded to his house where they found his wife alone, and killed her. According to their testimony, the accused came to ask her for forgiveness for the killing of her husband but she scolded them and threatened to report them to the authorities. For these acts of the wife

of Raymundo, they killed her. Accused Garachico said that it was his co-accused de la Cruz who had tied a rope around the neck of Raymundo's wife strangling her to death; on the other hand, de la Cruz said it was Garachico who had done the tying of the rope. Even assuming that Raymundo's wife scolded the two accused and threatened to report them to the authorities, these words, certainly, could not justify them to take the life of the helpless and defenseless woman in her own dwelling home.

"Although denied by the accused in their testimony at the trial that they had taken the carabaos of Raymundo after killing him, they, however, admitted in their affidavits (Exhs. "G" and "H") that they took the carabaos of Raymundo after he was killed. This fact is corroborated by the finding and recovery of said animals by the police authorities of Mansalaya at a bushy place some 50 meters away from the house of de la Cruz.

"Both the accused also admitted, in their affidavits as well as in their testimony during the trial, having taken trunks of clothes and other things mentioned in the information filed against them. In his testimony, however, de la Cruz said they took the things from the house of the spouses-victims after the wife was killed, allegedly to prevent the things from being stolen by other persons. This reason or pretense is incredible; it is inconceivable that a criminal, after killing a person, would seek to protect the property of the victim who can no longer make use of material things on earth.

"As proven by the prosecution, all the carabaos and the things stolen were recovered by the aforesaid police authorities.

"The facts of this case as unveiled during the trial and by the affidavits of the two accused, have presented gruesome and senseless killings which could only be perpetrated by bestial individuals as the accused revealed themselves to be. Accordingly, the full weight of law and justice should find application in the case. This court finds the two accused guilty of the crime of Robbery with Homicide as charged in the Information filed against them, with the aggravating circumstances of treachery, taking advantage of superior strength, nocturnity, dwelling and evident premeditation, without any mitigating circumstance in their favor." [4]

Under the first error assigned, the two accused claim that their written statements (Exhibits "G" and "H") which they gave to the police authorities after their apprehension were not voluntary and were secured through threats and intimidation. The contention of the accused is untenable.

The statements of both accused were taken on separate occasions. Rogelio de la Cruz executed his affidavit (Exh. "G") admitting his participation in the robbery and killing of the spouses, Raymundo Moral and Concordia Mariveles, upon his apprehension shortly after the commission of the offense, while the other accused, Mabini Garachico, gave his written statement (Exh. "H"), where he likewise admitted and narrated his participation in the killing and robbery of the spouses after his apprehension more than a month after the commission of the offense.

De la Cruz and Garachico, with their affidavits, were brought to the municipal judge of Mansalaya, Judge Adelita Sucgang. Although the statement of de la Cruz was written in Tagalog, the same was translated to him in Visayan by Judge Sucgang who was herself a Visayan. De la Cruz was asked whether the statement was true or not. And he answered that the same is correct. Again, de la Cruz was asked by Judge Sucgang whether he was willing to sign his name. He answered that he was willing, but since he does not know how to write, he affixed his thumbmark to his written statement which was witnessed by the clerk of Judge Sucgang and by a person who was then present in the office of the judge. De la Cruz was also asked by the municipal judge whether he was threatened, intimidated or was promised some reward in making the statement and he answered that he was not. After the judge was satisfied with the answers of de la Cruz, she administered the oath to him. [5] The same procedure was adopted by the municipal judge with respect to Garachico in connection with his affidavit. [6]

The municipal judge also told both affiants that they can change their affidavits if what is contained therein is not true, but both accused answered the judge that what they stated in their affidavits were true. [7]

The municipal judge, satisfied that both affiants gave their statements voluntarily, administered the oaths to each separately.

The allegation of the accused de la Cruz that the extrajudicial statement is inadmissible in evidence because he was maltreated when he executed the same is devoid of merit. In the case of *People v. Ty Sui Wong*,^[8] this Court ruled that failure to file charges against the alleged tormentors of the accused shows that the claim of maltreatment was a mere afterthought. In the case at bar, no such charge was filed against the policeman who allegedly maltreated the accused de la Cruz. Hence the conclusion is that he was not really maltreated.

The presumption of law favors the spontaneity and voluntariness of a statement given by the accused in a criminal case and the burden is upon him to destroy that presumption.^[9] In the instant case, both accused failed to destroy said presumption. Hence, the lower court did not err in giving full weight to exhibits "G" and "H".

The trial court appreciated the aggravating circumstance of evident premeditation on the basis of the affidavit of the accused de la Cruz stating that the accused Garachico harbored ill-feeling towards Raymundo Moral because the latter had suspected Garachico of having stolen his chickens about two weeks before the incident; and that the Barrio Captain Iluminado Galicia had ordered both of them to kill Moral.

The lower court committed an error. The extrajudicial statements of the accused merely furnished the motive that prompted the two accused to kill Moral. The motive of the killing does not indicate the insistence of a criminal design.^[10] Although in the affidavit of the accused, there is a statement that at 5:00 o'clock in the afternoon of January 29, 1969, they waited for Moral at Budburan river because they knew that he was going to have his carabaos drink and that they agreed to take revenge on Moral and to kill him the moment they see him, there is an entire absence of evidence showing that they meditated and reflected on their intention between the time it was conceived and the time the crime was actually perpetrated. The statement of the accused was nothing but an expression of his own determination to commit the crime, which is entirely distinct from the premeditation which the law requires to be well defined and established to aggravate the criminal responsibility.^[11]

To authorize the finding of evident premeditation, it must appear not only that the accused had made a decision to commit the crime prior to the moment of its execution but that this decision was the result of meditation, calculation or reflection or persistent attempt.^[12] In the case at bar, the lapse of thirty minutes between the determination and the execution of the crime is not sufficient time for the accused to reflect upon the consequences of their act, There being no evidence to prove that accused meditated and reflected on their purpose, the killing of both Raymundo Moral and Concordia Mariveles was not attended by the aggravating circumstance of evident premeditation.

Anent the third error assigned, the trial court did not err in holding that there was intent of gain on the part of the two accused and in finding them guilty of robbery in connection with the carabaos and other belongings of the spouses Raymundo Moral and Concordia Mariveles. The records of the case show that after the apprehension of the accused de la Cruz, he was immediately questioned by Chief Quejado De la Cruz admitted to Quejado that he and his co-accused Garachico killed the spouses and that they took the five carabaos, one radio and two trunks of clothes of the spouses. When de la Cruz was asked where they kept the stolen things he pointed to the place where they kept the loot.^[13] Patrolman Tañado, who was with Chief Quejado, was sent by the latter to accompany the accused de la Cruz to the place where the stolen carabaos and articles were hidden and to recover them.^[14] Pat, Tañado recovered the two trunks and one radio from the house where both accused were living. De la Cruz also pointed to Pat. Tañado where the carabaos were tethered. Tañado found the carabaos (3 tethered, 2 loose without ropes) a short distance from the house where the trunks and radio were recovered.

Both accused declared at the trial that they saw Raymundo Moral at the Budburan River with his carabaos and it

was in the vicinity of this river where Moral was killed by both of them. The evidence on record shows that the carabaos were found tethered near the house where the two accused were living. Likewise, the other articles stolen were found in the said house. There can be no clearer proof of asportation by the two accused of the things belonging to their victims than these facts found in the records of the case.

The assertion of the accused that they took the things for safekeeping lest they be accused of stealing them, is puerile and utterly incredible. The trial court has correctly observed that "it is inconceivable that a criminal, after killing a person would seek to protect the property of his victims who can no longer make use of material things on earth."

Under the fourth assignment of error, the two accused contend that the lower court erred in holding that treachery, taking advantage of superior strength, nocturnity and/or dwelling were present in the commission of the crime.

The lower court committed no reversible error in holding that the killing of Raymundo Moral was attended by treachery. The contention of the accused that there was no treachery when they killed Moral because they were facing each other is untenable. Treachery should be taken into account even if the deceased was face to face with his assailant at the time the blow was delivered, where it appears that the attack was not preceded by a dispute and the offended party was unable to prepare himself for his defense.[15] In the case at bar, although the accused and the victim were face to face with each other, the records reveal that the attack was not preceded by a dispute. It was shown that upon seeing Moral, both accused hacked him with their bolos simultaneously thus Moral was unable to prepare for his defense. This Court has consistently ruled that if the slayer makes a sudden and unexpected attack with a deadly weapon on an unarmed and unsuspecting victim under conditions which make it impossible for the party assailed to flee or make defense before the fatal blow is delivered, the act should be qualified as alevosia.[16]

It is true that the killing of Moral was attended with abuse of superior strength because as held by this Court in several cases[17] when two persons took part in the crime armed with bolos or revolvers and made a simultaneous attack upon a defenseless person, the aggravating circumstance of abuse of superior strength should be taken into consideration. However, in the case at bar, the lower court erred in appreciating abuse of superior strength as a separate aggravating circumstance. Taking advantage of superior strength is absorbed in treachery.[18]

Nocturnity, likewise, should not have been considered by the trial court as an aggravating circumstance. Night is defined as that period from sunset to sunrise.[19] As testified to by eyewitness Diego Vicente, the sun had not yet set when the incident occurred. Therefore, it was not yet night time when the killing of Moral occurred. And even granting that it was already night time when the crime of robbery with homicide was accomplished, still, nocturnity was merely an accidental circumstance. It was not specially sought by the accused to facilitate the commission of the crime. Neither was it taken advantage of by the accused to insure its commission with impunity.[20]

The circumstances of abuse of superior strength and dwelling aggravated the killing of Concordia Mari-veles. The existence of abuse of superior strength is evident from the notorious disparity between the relative strength of the victim, an old woman, 52 years of age and the two accused who were young and strong and in the manner in which the killing was made, that of giving a karate blow on her and strangling her to death, thus showing that the accused cooperated in such a way as to secure advantage of their physical strength.

It has been consistently ruled by this Court that dwelling is not inherent in the crime of robbery with homicide.[21] Hence, dwelling must be appreciated as an aggravating circumstance.

Under the fifth assignment of error, the two accused contend that the lower court erred in holding that they fled

and/or ran away from the scene of the crime. The accused wanted to convey the impression that they intended to surrender to the authorities after having killed and robbed the spouses. This is negated by the evidence on record. If it is really true that they had the intention to surrender to the authorities, they could have done so without the chief of police and his men surrounding them in the Budburan river while they were bathing in the river. After the killing, the two accused hid the body of Moral in the bushes quite far from the place where they killed him. The following morning after the commission of the crime, upon the information that the accused were somewhere in the vicinity of Budburan, Chief Quejado and his men scoured the area and found the two accused bathing in the river. Instead of surrendering peacefully, the accused Garachico was able to escape but the accused de la Cruz was apprehended. If de la Cruz had his way, he would have escaped but the policemen were faster. Garachico made good his escape and remained in hiding until his capture in San Jose, Occidental Mindoro, about two months after the killing and robbery of the spouses. These facts establish that the accused never had the intention to surrender to the authorities. On the contrary, they intended to flee as in fact the accused Garachico succeeded in running away from the authorities and escaped to San Jose, Occidental Mindoro, where he was apprehended.

Under the sixth assignment of error, the two accused submit that the lower court erred in holding that their demeanor and manner of testifying and in not answering despite sufficient time are proof of their guilt rather than innocence. This contention is without merit. Firstly, the guilt of the accused has been proven beyond reasonable doubt, independent of the observation of the lower court as to the demeanor and manner of testifying of the accused. And secondly, the rule is that the appellate court will not interfere with the observation of the lower court as to the manner the witnesses testified because the trial judge has the opportunity to see the witnesses, hear them testify and observe their demeanor on the witness stand.[22]

Under the seventh assignment of error, the two accused submit that the lower court erred in not considering self-defense in their favor in connection with the death of Raymundo Moral. This contention is untenable. In their extrajudicial statements, both accused admitted that they killed Moral and made absolutely no mention of aggression or provocation by the victim Raymundo Moral before the two accused killed him. The testimonies in open court of the two accused that they killed Moral in self-defense as the latter assaulted them with his bolo cannot prevail over their extrajudicial statements. Considering that said statements were given spontaneously at the time when the facts relating to the incident in question were still fresh in their memory and before they could have an opportunity to concoct or fabricate a story of the incident, the said statements certainly deserve credence.[23]

As held in the case of *People vs. Verzola*,[24] "There can be no question that once an accused has admitted the killing of a human being, the burden is on him to establish the existence of any circumstance which may justify the killing or at least extenuate the offense committed. To establish his exculpation, or the justification for the act, he must prove such affirmative allegation by clear, satisfactory and convincing evidence. He must rely on the strength of his own evidence and not on the weakness of that for the prosecution, for even if that were weak, it could not be disbelieved after the accused himself had admitted the killing." No such proof was adduced by both accused.

The conduct of de la Cruz and Garachico immediately after they committed the crime is incompatible with the reaction of one who killed another in legitimate self-defense. After the two accused killed Moral, they hid his body in bushes at a distance from where they hacked him to death;[25] they wiped their bolos after killing Moral with banana leaves to remove the blood stain;[26] they threw away the bolo of the deceased in the cogonal area;[27] and they did not voluntarily surrender but, instead, were captured, in the case of de la Cruz, a day after the killing while taking a bath in the Budburan river, while Garachico successfully escaped the police and was apprehended in San Jose, Occidental Mindoro, about two months after the killing. All these actuations show that

both accused did not act in self-defense.

It is significant to note that the nature, character, location and number of wounds sustained by the deceased belie the claim of self-defense.[28] The necropsy findings on the cadaver of Raymundo Moral reveal the following:

- "1. Clean cut wound about 8 inches long cutting the lower jaws, bony portion of the face;
2. Clean cut wound about 7 inches long and almost cutting through the neck;
3. Clean cut wound about 5 inches long on the palm of the right hand, cutting the bony portion of the big finger;
4. Clean cut wound about 3 inches long on the posterior portion of the left hand almost cutting off the first finger;
5. Clean cut wound about 2 1/2 inches long on the posterior portion of the left wrist;
6. Clean cut wound 5 inches long on the posterior portion of the left knee reaching the bone;
7. Clean cut wound about 4 1/2 inches long on the upper posterior portions of the right leg. Cause of death--shock due to the big and deep multiple wounds."[29]

The wounds inflicted upon the victim by the two accused who were not wounded at all, sufficiently disprove their allegation that they acted in self-defense.

In the case of *Cudiamot v. People*,[30] it was held:

"x x x As was pointed out in the appealed decision: 'The appellant's plea of self-defense must be proved by clean and sufficient evidence; and in this task, the appellant failed.' His testimony lacked corroboration. Moreover, Justice Escolin stressed that petitioner 'emerged from the encounter completely unscathed x x x.' He referred likewise to the 'number of wounds sustained by the victim.' Petitioner's claim, therefore, that he perpetrated the act to save himself lacks persuasiveness. It is not to be lost sight of that the plea of self-defense is an affirmative allegation which must be proved by the accused with sufficient evidence. It should be satisfactorily established. It is well-nigh impossible to believe that there was a peril to the life of petitioner considering that he was able to inflict eleven wounds on the deceased, without himself being injured in any way. To so assert, considering such circumstance is not merely to strain human credulity, but to shatter it." (Underscoring supplied)

Under the eighth assignment of error, the two accused contend that the trial court erred in not considering the mitigating circumstances of lack of intention to commit so grave a wrong as that committed, and passion and obfuscation in connection with the death of Concordia Mariveles. This contention is untenable. Article 13, par. 3 of the Revised Penal Code "addresses itself to the intention of the offender at the particular moment when he executes or commits the criminal act; not to his intention during the planning stage." [31] Therefore, if the original plan, as alleged by the accused, was merely to ask for forgiveness from Moral's wife but which plan, on account of the fact that Moral's wife scolded them and threatened to report them to the authorities, led to her killing, the plea of lack of intention to commit so grave a wrong cannot be appreciated as a mitigating circumstance. The records show that the accused held Moral's wife until she fell to the floor, whereupon they strangled her by means of a piece of rope tied around her neck till she died. The brute force employed by the accused completely contradicts the claim that they had no intention to kill the victim.

The facts of record show that both accused are guilty of robbery with homicide. As such, the accused cannot claim passion and obfuscation as a mitigating circumstance. In *People v. Pagal*,[32] it was held that:

"xxx the circumstance of passion and obfuscation cannot be mitigating in a crime which-as in the case at bar-is planned and calmly meditated before its execution. Thus in *People v. Daos* (60 Phil. 143), a case of robbery with homicide, this Court rejected the claim of appellants therein that passion and obfuscation should have been estimated in their favor, because the death of the victim therein took place on the occasion of robbery, which, before its execution had been planned and calmly meditated by the appellants."

Under the ninth assignment of error, the two accused submit that the lower court erred in convicting them of the crime of robbery with homicide in connection with the death of Moral's wife, instead of the crime of homicide. This contention is without merit. The two accused are guilty of robbery. And since, the killing of Moral's wife took place on the occasion of the robbery, the two accused are guilty not only of the crime of homicide but robbery with homicide.

Although two persons were killed on the occasion of the robbery, the accused are nevertheless guilty of only one crime of robbery with homicide. The juridical concept of robbery with homicide does not limit the taking of human life to one single victim. If more than one were killed by reason or [on the occasion of the robbery, this circumstance dot not] authorize punishment for separate independent offense or offenses. All the homicides or murders are merged in the composite, integrated whole that is robbery with homicide so long as all the killings were perpetrated by reason or on the occasion of the robbery.[33] In the case at bar, there is no doubt that after the killing of Moral, the purpose of the accused in going to his house was to rob the place with whatever things they could lay their hands on, but finding Moral's wife in the house whose presence constituted an obstacle to their purpose, they had to kill her.

The penalty for robbery with homicide is reclusion perpetua to death.[34] The killing of Raymundo Moral was attended with the aggravating circumstance of treachery while the killing of Concordia Mariveles was attended by the aggravating circumstances of dwelling and abuse of superior strength. There being no mitigating circumstance, the trial court correctly imposed the penalty of death. However, for lack of the necessary votes, the penalty of reclusion perpetua is imposed.

Pending this automatic review, the accused Mabini Garachico died. However, only the criminal liability is extinguished. The claim of the heirs of the two deceased survives because Mabini Garachico died after final judgment was rendered by the Court of First Instance of Oriental Mindoro.[35]

WHEREFORE, the judgment under review is affirmed with the modification that the accused Rogelio de la Cruz is sentenced to reclusion perpetua, and he and the estate of the late Mabini Garachico are jointly and severally ordered to indemnify the heirs of the two deceased the total sum of P24,000.00.[36] The accused Rogelio de la Cruz shall pay one half of the costs.

SO ORDERED.

Fernando, C.J., Concepcion, Jr., Guerrero, De Castro, Plana, and Escolin, JJ., concur. Barredo, Melencio-Herrera, and ERICTA, JJ., vote for death. Makasiar and Aquino, JJ., death penalty should be imposed. Teehankee, J., took no part. Abad Santos, J., on official trip abroad.

[1] Rollo, p. 78.

[2] Rollo, pp. 65-66.

[3] Brief for Defendants, Rollo, pp. 25-26.

[4] Decision of trial court, Rollo, pp. 73-78.

- [5] T.S.N., pp. 7-8, June 19, 1969.
- [6] T.S.N., pp. 8-9, id.
- [7] T.S.N., p. 12, id.
- [8] L-32529, May 12, 1978, 83 SCRA 125.
- [9] *People v. Garcia*, 101 Phil. 615.
- [10] *People v. Alde* L-31041, May 29, 1975, 64 SCRA 224.
- [11] *People v. Carillo*, L-283, Oct. 30, 1946, 77 Phil. 572, 579.
- [12] *Ibid.*
- [13] T.S.N., p. 30, June 23, 1969.
- [14] T.S.N., p. 30 and 66, id.
- [15] *United States vs. Cornejo*, 28 Phil. 457.
- [16] *People v. Candado*, L-34089, Aug. 1, 1978, 84 SCRA 508; *People v. Alegria*, L-40392, Aug. 18, 1978, 84 SCRA 614.
- [17] *People v. Abril*, 51 Phil. 670.
- [18] *People v. Candado*, *supra*.
- [19] Article 12, Civil Code of the Philippines.
- [20] *People v. Galapia*, L-39303-05, Aug. 1, 1978, 84 SCRA 526.
- [21] *People v. Aquino*, L-27184, May 21, 1974, 57 SCRA 43.
- [22] *People vs. Mahinay*, L-31654, Nov. 22, 1977, 80 SCRA 273; *People vs. Gargoles*, L-40885, May 18, 1978, 83 SCRA 282.
- [23] *People v. Tizon*, L-29724, Aug. 29, 1975, 66 SCRA 372.
- [24] L-35022, Dec. 21, 1977, 80 SCRA 600, 607.
- [25] T.S.N., pp. 6, 7 and 25, June 24, 1969.
- [26] T.S.N., p. 45, id.
- [27] p. 44, id.
- [28] *People v. Verzola*, *supra* (608).
- [29] Exh. "A", T.S.N., p. 2, June 19, 1969.
- [30] L-47753, July 25, 1978, 84 SCRA 247, 253.
- [31] *People v. Arpa*, L-26789, April 25, 1969, 27 SCRA 1037.
- [32] L-32040, Oct. 25, 1977, 79 SCRA 570.
- [33] *People vs. Saguing*, 30 SCRA 834, 843.

[34] Art. 294, Revised Penal Code.

[35] People vs. Sendaydiego, 81 SCRA 120, 148.

[36] People v. Campomanis, L-27999-28600, November 23, 1971, 42 SCRA 222.

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