

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FAUSTO DAMASO, VICTORIANO EUGENIO, ALIAS TURING,
ESTANISLAO GREGORIO ALIAS ISLAO, LORENZO ALVIAR ALIAS
ORING AND BONIFACIO...**

G.R. No. L-30116. November 20, 1978

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PER CURIAM:

The penalty of death imposed on Fausto Damaso, Victoriano Eugenio, Lorenzo Alviar and Bonifacio Espejo by the Court of First Instance of Tarlac in its Criminal Case No. 2253 for "robbery with double homicide" is now before this Court on automatic review together with a related case No. 2293 "for illegal possession of firearm and ammunition" involving only the accused, Lorenzo Alviar.

The Information in Criminal Case No. 2253 charged the accused therein of "robbery with double homicide" alleged to have been committed as follows:

"That on or about the 21st day of November, 1959, at nighttime, in the Municipality of Victoria, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, four of whom are armed with a scythe and firearms, namely: Fausto Damaso with a rifle, springfield Cal. 30, Victoriano Eugenio with a paltik Cal. 12 ga., Estanislao Gregorio with a scythe, and Lorenzo Alviar with a paltik Cal. 22, confederating, conspiring, helping and aiding one another, by means of force, violence, threats and intimidation upon the persons of Donata Rebolledo, Victoriano de la Cruz and Susana Sabado, did then and there, willfully, unlawfully and feloniously, with intent to gain, take, steal and carry away with them the following:

PROPERTY OF DONATA REBOLLEDO:

One jacket valued at ----- P25.00

One necklace valued at ----- 50.00

One earring valued at ----- 25.00

One ring valued at ----- 15.00

One hat valued at ----- 5.00

Three scythes valued at ----- 3.60

A document valued at ----- 2.30

Total -----

P125.90

PROPERTY OF VICTORIANO DE LA CRUZ

Cash money in the amount of - - - P 15.00

PROPERTY OF SUSANA SABADO:

Cash money in the amount of - - - 15.00

Ten bottles of liquor Bicolana; Six bottles of Caña Rum; One dozen Ligo Sardines; One dozen Eatwell Sardines; Six packages of Golden Star cigarettes; three packages of cigarettes (Inyog); and four packages of cigarettes (La Ventaja) with a total valued of - - - - - P 21.02

Total - - - - -

P 36.02

Grand Total- - - - -

P176.92

to the damage and prejudice of the said owners in the respective amounts of P25.00, P15.00 and P36.02, Philippine currency; that the said accused, on the occasion of the commission of the crime above-mentioned, held and brought Catalina Sabado and Susana Sabado, daughters of the said Donata Rebolledo, to a sugarcane field which is a secluded and uninhabited place, at Barrio Bangar, Victoria, Tarlac, and once there and after tying together the respective forearms of the said Catalina Sabado and Susana Sabado, in pursuance of their concerted conspiracy, by means of force and grave abuse of superior strength, the said accused did then and there, willfully, unlawfully and feloniously, stab the said Catalina Sabado and Susana Sabado on different parts of their body and cut their necks with a sharp pointed instrument (scythe), as a result of which the latter died instantly.

"That in the commission of the crime abovementioned, there concurred the aggravating circumstances of (1) abuse of superior strength, (2) nighttime, (3) uninhabited place, (4) by a band, (5) treachery, and (6) disregard of sex." (pp. 116-117, rollo)

In Criminal Case No. 2293 Lorenzo Alviar was also charged of illegal possession of firearm and ammunition, viz:

"That on or about November 24, 1959, in the Municipality of Victoria, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, without authority of law, did then and there, willfully, unlawfully and feloniously have in his possession and under his control a firearm, to wit: a paltik revolver caliber 22 with eight (8) rounds of ammunition, without first obtaining the corresponding license or permit to keep and possess the same." (pp. 117-118, *ibid.*)

The two cases were jointly heard by the trial court, In a joint decision rendered on December 10, 1968, by then Presiding Judge, Hon. Arturo B. Santos, all the accused were found guilty as charged. In Criminal Case No. 2253 (robbery with double homicide) the accused Fausto Damaso, Lorenzo Alviar, Bonifacio Espejo and Victoriano

Eugenio were each sentenced to suffer the "penalty of death, to indemnify the legal heirs of the victims, Catalina Sabado and Susana Sabado, jointly and severally in the amount of P12,000.00 for each of the victims, plus the sum of P15.00 which was the money taken by the accused, and to pay the costs, share and share alike." One of the accused, Estanislao Gregorio, was no longer included in the sentence because he died on April 6, 1967 while the cases were still undergoing trial.

In Criminal Case No. 2293, accused Lorenzo Alviar was sentenced "to three years imprisonment and to pay the costs." [1]

The evidence of the prosecution as found by the trial court establish the following incidents: [2]

Donata Rebolledo and her son-in-law, Victoriano de la Cruz were residents of Barrio Bangar, municipality of Victoria, province of Tarlac. At about 9 o'clock in the evening of November 21, 1959, Donata and Victoriano heard the barking of dogs outside their house. Shortly, two men armed with guns, entered, pointed their weapons at them, tied up the hands of Victoriano, covered him with a blanket and asked Donata for the whereabouts of her daughter Catalina Sabado. Stricken by fear, Donata kept silent and blocked the door leading to her daughter's room but was promptly pushed aside. Donata was then ordered to open an "aparador" from which the two men took valuables like jewelry, clothing, documents, and cutting instruments. All the while, Donata and Victoriano could hear the movements and voices of some three to four other persons beneath the house. The two men brought Catalina Sabado down from the house and then asked where they could find Susana Sabado, Donata's other daughter who was then in her store located about five meters away in the same house. Thereafter, Donata heard the men opening the door to Susana's store. After several minutes, feeling that the intruders had left, Donata untied the hands of Victoriano and asked him to go to the store to see if her daughters were there. When the two women could not be found, Donata sent Victoriano to the barrio lieutenant to report the incident. Accordingly, Victoriano went to the barrio lieutenant and the two later went to town to inform the police of the occurrence.

On the same night, Chief of Police Pedro Valdez, with the aid of several policemen and a handful of civilians went out in search for the Sabado sisters. It was only the following morning when the two women were found already dead with wounds in several parts of their bodies. They were found in a sugar plantation belonging to one Ignacio Fabros, located about one hundred meters from Donata Rebolledo's house.

Dr. Carlos Briones, Municipal Health Officer of Victoria performed the autopsy on the two bodies and reported that the deaths were caused by profuse hemorrhage due to a fatal, big, wide, gaping and deep lacerated wound just above the Adam's apple. He also testified in court that the death weapon must have been a sharp instrument with a pointed tip, like a scythe.

A few days after the incident, Donata Rebolledo singled out the accused Fausto Damaso from a police line-up as one of the men who went up to her house on that evening. She and Victoriano had recognized Damaso because of the light coming from a kerosene lamp placed on a small table near the "aparador." Damaso, however, initially denied ever having been to Donata's house that night. Later, the PC rounded up four other suspects in the persons of co-accused Gregorio, Eugenio, Alviar and Espejo.

As further evidence, the prosecution presented separate extra-judicial statements, sworn to before Municipal Judge Conrado de Gracia of Paniqui, Tarlac, wherein all the five accused admitted having participated in the crime.

In his sworn statement marked as Exhibit "J", Fausto Damaso stated that he was with his co-accused Gregorio, Eugenio, Alviar and Espejo on the night the Sabado sisters were killed; that he never went into the house of Donata Rebolledo as Eugenio and Gregorio were the ones who did; that it was Gregorio and Eugenio who

actually did the killing while he, Alviar and Espejo merely stood by; that the victims were stabbed and their throats cut with a reaping knife (pangapas or lait); that the killing was motivated by the failure of the older woman (Catalina) to pay for a carabao bought from Gregorio; and that on that evening, Gregorio, Eugenio, Alviar and Espejo were carrying caliber .45 pistols while he was unarmed.

In a subsequent statement marked as Exhibit "P", Damaso reiterated his claim that it was Gregorio who actually stabbed and cut the throats of the victims in the presence of all the accused; that Catalina was killed ahead of Susana; that Gregorio killed Susana as she was being held by Eugenio; and that while still in the house, they were able to get P15 from Susana's store. Contrary to what he confessed in his previous sworn statement, he admitted that it was he and Eugenio who went up to Donata Rebolledo's house and not Eugenio and Gregorio. He also changed his theory as to the motive for the killings, declaring this time that the two women were killed because the latter had already recognized them. He further stated that on that night, he was armed with a caliber .22 (paltik) revolver, Eugenio with a 12-gauge paltik, Gregorio with two reaping knives (lait), Lorenzo with a long firearm and Espejo with two stones.

In his sworn statement, Exhibit "O", Victoriano Eugenio likewise admitted that he was a party to the commission of the offense; that it was Gregorio who conceived of the plot to commit the crime; that it was also Gregorio who killed the two women with a reaping knife; that after Catalina was killed, he held Susana by the arms as Gregorio stabbed her and cut her throat; that Alviar, Damaso and Lorenzo were also with them that night; that he did not know what motivated Gregorio to kill the victims; that he had no previous agreement with his co-accused to kill the two women; that he and Damaso were the ones who entered Donata's house, took P15 from the "aparador," brought down Catalina and also got Susana from another portion of the house; that he was then armed with a 12-gauge paltik, Damaso with a caliber .22 paltik revolver, Alviar with a Springfield caliber .30 rifle, Gregorio with a reaping knife and Espejo with two stones; and that he was with the group that night because at about 7 o'clock in the evening, Gregorio dropped by his house and invited him to Barrio Bangar where the crime was committed.

In his separate statement (Exhibit "Q"), Estanislao Gregorio narrated that in the afternoon of November 21, 1959, his four co-accused came and informed him of a plan to rob the Sabado sisters, to which plan he agreed; that Damaso and Eugenio went up Donata Rebolledo's house, got P15 in cash and brought out Catalina and Susana by force; that he stabbed and cut the throats of the victims with all his co-accused present; that Eugenio held Catalina while Damaso held Susana as he killed them both with a reaping knife; that the two women were killed because they had recognized Eugenio and Damaso and might testify against them in court; that during the commission of the crime, his only weapon was a reaping knife while Alviar was carrying a caliber .22 paltik revolver, Damaso, a Springfield caliber .30 rifle, Eugenio, a 12-gauge single shot paltik and Espejo was unarmed.

Exhibit "N" is Bonifacio Espejo's sworn statement. Here he declared that he happened to be with the group because Damaso and Eugenio invited him to Barrio Bangar and they dropped by the houses of Alviar and Gregorio before actually proceeding to the barrio; that they had a previous agreement to commit the crime; that they planned the same in a lot owned by a certain Don Juan Garcia in Barrio Bangar; that it was Damaso and Eugenio who entered Donata Rebolledo's house while he, Alviar and Gregorio were left downstairs to keep watch; that they were able to get P15 from the house; that it was Gregorio who actually killed the two women; and that Damaso and Eugenio were armed with a 12-gauge paltik and another long arm the caliber of which he did not know; that Alviar had a caliber .22 paltik revolver, Gregorio a knife and he had two big stones.

Substantially similar were the admissions of Lorenzo Alviar in his sworn statement (Exhibit "R"). He likewise declared that he and his co-accused took P15 from the house of the victims; that it was Gregorio who stabbed and cut the throats of the victims with a reaping knife; that the killing was done in a sugarcane plantation between

10:00 and 11:00 o'clock in the evening of November 21, 1959; that Catalina was killed before Susana; that he was armed with a caliber .22 paltik revolver, Eugenio with a single shot, 12-gauge paltik, Damaso with a Springfield caliber .30 rifle and Espejo with two stones. He claimed, however, that he was only forced and intimidated by his co-accused to join the group.

At the trial, the five accused set up the defense of alibi and repudiated their respective sworn statements alleging that these were obtained from them through duress, force and intimidation. Instances of the use of third degree methods like boxing, pouring of "7-up" into the nostrils, stripping of clothes, pricking of the penis, kicking and slapping of the ears were narrated by the accused on the witness stand, all of which were not believed by the trial court.

The accused-appellants are here represented by a counsel de oficio, Atty. Clemente A. Madarang, Jr., who filed an exhaustive brief for the accused.

Taken as a whole, the assigned errors boil down to the question of credibility and sufficiency of the evidence to sustain the conviction of appellants for the special complex crime of robbery with double homicide. It is argued that (a) there is no evidence of the alleged robbery; (b) that the homicide was not committed by reason or on occasion of the robbery; and (c) that the crime was not attended by the aggravating circumstances of armed band, treachery and uninhabited place.

There is no merit to appellants' submittal.

1. That robbery was committed is evident from the declaration of prosecution witness Donata Rebolledo who testified that the two men who barged into her house, one of whom she recognized as Fausto Damaso, ordered her to open her "aparador" and then they took therefrom the following items with their respective values: a jacket- P25; a necklace- P50; earrings - P25; a ring- P15; a hat- P5; scythes - P3.60; and documents worth P2.30.[3] Moreover the appellants admitted in their separate statements that they were able to get P15 from Donata's house. On this point, We agree with the Solicitor General that it matters not from what part of the house the accused got the P15. What is important is that the culprits carried away personal property belonging to another by the use of force, intimidation or violence.[4]

2. Counsel points out that because there was a motive, at least on the part of Gregorio, for the killing of the Sabado sisters, the double homicide could not have been "committed by reason or on occasion of the robbery" as the law contemplates. He calls Our attention to the sworn statement wherein Fausto Damaso declared that Gregorio killed Catalina and Susana because Catalina bought a carabao from him and did not pay for it. Harping further on this motive theory, counsel mentions such circumstances as why the accused specifically asked for Catalina and Susana upon entering Donata Rebolledo's house and why Donata and Victoriano were not killed together with the sisters if the purpose was to remove all opposition to the robbery or to eliminate witnesses thereto.

As to Damaso's declaration, it should be noted that Damaso himself, in his subsequent sworn statement, changed his motive theory and stated that the victims were killed in order to eliminate witnesses to the crime. This was corroborated by Gregorio in the latter's own written confession. Even assuming, however, that such a motive for vengeance existed on the part of Gregorio, it does not necessarily exclude the fact that he and co-accused also intended, when they went to Donata's house that night, to rob the family. In a complex crime of robbery with homicide, while an intent to commit robbery must precede the taking of human life, the fact that the intent of the culprit was tempered with a desire also to avenge grievances against the person killed does not prevent the punishment of the accused for the complex crime.[5]

3. Counsel for appellants also argues that the trial court erred in its appreciation of the aggravating circumstances of armed band, treachery and uninhabited place.

The aggravating circumstance of band exists whenever more than three armed malefactors act together in the commission of an offense.[6] Counsel concedes that at least three of the accused-appellants, namely Eugenio, Alviar, and Gregorio, were armed during the commission of the crime. He doubts, however, whether accused Damaso carried any weapon and whether the "two stones" carried by accused Espejo fall under the category of "arms." But even granting that Espejo's stones do not constitute arms, the prosecution presented the following evidence to show that Damaso was also armed and, as such, there were more than three of the accused who were armed: (1) the extrajudicial confession of Damaso himself (Exhibit "P") that he was carrying a caliber .22 paltik revolver; (2) the sworn statement of accused Eugenio (Exhibit "O") that Damaso had a caliber .22 paltik revolver; (3) the separate written confessions of Alviar, Gregorio and Espejo (Exhibits "R", "Q", and "N") that Damaso had a caliber .30 Springfield rifle; and (4) the testimonies of Donata Rebolledo and Victoriano de la Cruz that both men who entered their house (one of whom they later identified as Damaso) were carrying firearms.

It is clear from the above, that Damaso was armed during the night of the commission of the crime, and it is immaterial what kind of firearm he carried, the only important thing being that he was armed. In this case, the presence of an armed band is to be considered as a generic aggravating circumstance under Article 14(6) of the Revised Penal Code inasmuch as the crime committed was that provided for and penalized in Article 294, paragraph 1 and not under Article 295, Revised Penal Code. (see *People v. Apduhan, Jr.*, per Justice, now Chief Justice Fred Ruiz Castro, 24 SCRA 798.)

Treachery is present if the victim is killed while bound in such a manner as to be deprived of the opportunity to repel the attack or escape with any possibility of success.[7] The fact that the bodies of Catalina and Susana were found dead with their arms tied behind their backs as well as the admission of Gregorio in his confession (Exhibit "Q") that he killed the sisters while their arms were held by Eugenio and Damaso lead us to conclude that the killing of the two women was done under treacherous circumstances.

As to the circumstance of uninhabited place, counsel disclaims its existence by pointing to the proximity of the sugarcane field where the victims were killed to the national highway as well as to certain houses in the barrio. The uninhabitedness of a place is determined not by the distance of the nearest house to the scene of the crime, but whether or not in the place of commission, there was reasonable possibility of the victim receiving some help.[8] Considering that the killing was done during nighttime and the sugarcane in the field was tall enough to obstruct the view of neighbors and passersby, there was no reasonable possibility for the victims to receive any assistance. That the accused deliberately sought the solitude of the place is clearly shown by the fact that they brought the victims to the sugarcane field although they could have disposed of them right in the house of Donata Rebolledo where they were found. Thus, in *People v. Saquing*, the Court considered the crime as having been committed in an uninhabited place because the killing was done in a secluded place at the foot of a hill, forested, and uninhabited.[9]

The trial court considered separately the three circumstances of armed band, treachery and uninhabited place where under other situations one may be considered absorbed or inherent in the other. There is ample justification for this. The elements of each circumstance subsist independently and can be distinctly perceived thereby revealing a greater degree of perversity on the part of the accused.

4. In the third assignment of error, defense counsel assails the sufficiency of the evidence for the prosecution. He urges that the extrajudicial confessions, having been repudiated during the trial, are insufficient to sustain the trial court's judgment of conviction, specially so since no direct evidence was introduced of any conspiracy of the

involvement of appellants in the crime in question.

Regarding this matter, the following are strongly persuasive. First, the appellants' separate extrajudicial confessions were subscribed and sworn to before Municipal Judge Conrado de Gracia of Paniqui, Tarlac. On the witness stand, Judge de Gracia testified as to the authenticity and due execution of the statements. He declared that before the statements were sworn to before him, he had the appellants' PC escorts excluded from the room. He then took pains in translating and explaining to the appellants the contents of their written statements and got their assurance that such statements were freely and voluntarily made.[10] If it were true that appellants were forced or intimidated into making the confessions, they could have easily manifested before the judge that they did not voluntarily give the same. Certainly, they could have then been afforded the necessary protection from any untoward incident that could happen. Their failure there and then to air any injustice or misdeed committed upon them belies their stories of maltreatment. Too, there is no credible proof of the alleged maltreatment that they suffered in the hands of the police or other authorities as a result of which they executed the confessions. Considering that repudiation of confessions comes very easily, the same must be taken with a grain of salt. It occurs all too often that guilty persons, after confessing to crime, experience a change of heart and repudiate their confessions in the hope of escaping liability.

Secondly, there was the reenactment of the robbery and the killings. The movements reconstructed by the appellants conform substantially with the details set forth in their individual sworn statements. The reenactment was done in the presence of people, including a photographer who had no connection with the police or the prosecution.

Fiscal Magin Tañedo who was present during the reenactment testified that the entire proceeding was spontaneous and free from coercion. On several occasions, appellants even corrected themselves in certain details. Nobody directed the whole show except the appellants themselves.[11]

Fiscal Tañedo's testimony was corroborated by photographer Manuel Gamalinda who also declared that there was no dictation, violence, force or intimidation employed upon the appellants during the reenactment.[12] Gamalinda also testified as to the authenticity of the pictures he took during the re-enactment, which the prosecution also submitted as evidence.[13]

Again, concerning the confessions, other circumstances are equally significant. Some of the statements made, specifically the one of accused Alviar, were exculpatory in nature and would not have been included had the confessant been coerced into making his confession. Others cite plausible facts and details which only actual participants in the crime could have known.

Also, partial corroboration of appellants' statements are found in the testimonies of Donata Rebolledo and Victoriano de la Cruz, more particularly, as to the robbery. As such, the confessions, coupled by evidence of the corpus delicti, the human remains of Catalina and Susana Sabado, are sufficient bases for the trial court's declaration of guilt.

5. With regards to the defense of alibi, We find no justifiable reason for discarding the findings of the trial court on this matter. In *People v. Berdida, et al.*, this Court held that the defense of alibi is an issue of fact that hinges on credibility, which depends much on the credibility of the witnesses who seek to establish it. In this respect the relative weight which the trial judge assigns to the testimony of the witnesses must, unless patently and clearly inconsistent with the evidence on record, be accepted. The defense of alibi is worthless in the face of positive identification by prosecution witnesses, pointing to the accused as participants in the crime. (17 SCRA 520, citing *People v. Tansiangco*, L-19448, February 28, 1964; *People v. Rivala*, L-14077, March 31, 1964)

6. As to conspiracy, the trial court's inference as to the existence of the same is well-founded and is amply discussed in its decision. Said His Honor:

"From the simultaneous and cooperative acts of the accused, the Court finds and so holds that there was conspiracy among them. For conspiracy to exist, direct proof is not essential. The same may be inferred from the acts of the conspirators in the commission of the offense. It is not essential that each conspirator takes part in every act or that he should know the exact part to be performed by the others in the execution of the conspiracy. Conspiracy merely implies concert of design and does not require participation in every detail of execution. Neither is it necessary to show any previous plan or that the parties should actually come together and agree in express terms in pursuing a common design. It is sufficient if it is proved that the acts of the conspirators were in fact connected and cooperative in accomplishing the unlawful object, thereby indicating a closeness of personal association and concurrence of sentiments.

"In the case of the accused herein, they got together and planned the criminal act shortly before its execution; they proceeded together to the house of the victims and, while Damaso and Eugenio went upstairs, the other accused stayed under the house as lookouts once inside the house, the two asked and demanded for the victims, forcibly dragged them downstairs, handed them to those waiting under the house and, together as a group, they brought the victims to the sugarcane field and mercilessly stabbed them to death. Clearly, there was a concert of acts among the accused aimed at one common design, and each act was connected to and cooperative with the others."

The basic rule is that when conspiracy is established, like in the present case, the act of one conspirator is imputable to the others and the criminal liability of each participant is the same as those of the others.

7. On the matter of accused Lorenzo Alviar's conviction for illegal possession of firearms in Criminal Case No. 2293, two errors are assigned. First, that the trial court had no jurisdiction over the case because the same having been previously filed before the Justice of the Peace Court of Victoria, Tarlac, which also acquired jurisdiction over the person of the accused, the latter court acquired jurisdiction to the exclusion of all other courts.

This is untenable. That the Justice of the Peace Court has concurrent jurisdiction with the Court of First Instance in this case is not questioned. It, however, appears from the order of the Justice of the Peace Court forwarding the records of the case to the Court of First Instance^[14] that the case was brought before the former court merely for purposes of a preliminary investigation. Where a Justice of the Peace acquires jurisdiction for the purpose of preliminary investigation and not for trial on the merits, such court does not necessarily acquire exclusive jurisdiction to try the case on the merits.^[15]

In the second assigned error, counsel attacks the flimsiness of the evidence for the prosecution. He questions the sufficiency of a document (Exhibit "B"), purportedly a receipt issued to Alviar upon the confiscation from him of the alleged firearm. It is argued that from the manner the receipt is worded as well as from the fact that it is thumbmarked by Alviar and not signed by the person confiscating, it appears to be a confession rather than a receipt.

The controversial receipt, however, is not the only evidence presented by the prosecution. Sgt. Melencio Fiesta of the Philippine Constabulary also declared on the witness stand that Alviar verbally confessed to him his (Alviar's) possession of a caliber .22 paltik revolver.^[16] He further stated that he properly translated from English to Ilocano the contents of the receipt before Alviar affixed his thumbmark on the same.^[17] Whether Exhibit "B" is taken as a receipt or as a confession, it has its own weight as an evidence against appellant Alviar.

Still on the illegal possession of firearm, the prosecution also presented as evidence Exhibit "C" properly sworn to before Judge Conrado de Gracia, wherein Alviar confessed that he did own and possess a caliber .22 paltik which he carried on the night the robbery and killings were committed. The voluntariness of this confession has not been

disproved.

8. In conclusion, the crime committed by appellants in Criminal Case No. 2253 is robbery with homicide defined in Article 294, paragraph 1, Revised Penal Code, to wit:

"Robbery with violence against or intimidation of persons - Penalties – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

"1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.

“xxx xxx xxx”

The penalty is to be imposed in its maximum period by reason of the presence of three aggravating circumstances found by the trial court, to wit: that the robbery was committed by a band,[18] with treachery,[19] and in an uninhabited place.[20]

There is likewise the additional aggravating circumstance that the robbery was committed in the dwelling of the victim, Donata Rebolledo which although not alleged in the Information is however established by the evidence.

IN VIEW OF THE FOREGOING CONSIDERATIONS, We hereby affirm in toto the decision of the trial court in the two cases.

Without pronouncement as to costs at this instance.

SO ORDERED.

Castro, C.J., Teehankee, Barredo, Makasiar, Antonio, Muñoz Palma, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

Fernando and Aquino, JJ., no part.

[1] see pp. 130-131, rollo

[2] see pp. 118-121, *ibid*.

[3] *tsn.*, October 11, 1962, p. 5

[4] Art. 293, Revised Penal Code

[5] *US v. Villorente and Bislig*, 30 Phil. 59

[6] Art. 14, par. 6, Revised Penal Code

[7] *People v. Madrid*, 88 Phil. 1; *People v. Bakang, et al.*, 26 SCRA 840; *People v. Mongado, et al.*, 28 SCRA 642; *People v. Lunar*, 45 SCRA 119

[8] *People v. Bangug, et al.*, 52 Phil. 87

[9] 30 SCRA 834

[10] *tsn.*, July 29, 1963, pp. 69-83

[11] *tsn.*, November 15, 1963, p. 72

[12] *tsn.*, April 4, 1963

[13] tsn., April 4, 1963, pp. 245-246 and 262

[14] p. 20, rollo, Criminal Case No. 2293

[15] Nenaria, et al. v. Veluz, 91 Phil. 473

[16] tsn., October 4, 1963, p. 33

[17] tsn., October 4, 1963, p. 21

[18] Article 14, par. 6, Revised Penal Code

[19] *ibid.*, par. 16, *ibid.*

[20] *ibid.* par. 6, *ibid.*

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