

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EPIFANIO PUJINIO, ET AL., DEFENDANTS, EPIFANIO PUJINIO, DEFENDANT AND APPELLANT.

G.R. No. L-21690. April 29, 1969

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PER CURIAM:

This case is before Us for an automatic review of the sentence of death imposed by the Court of First Instance of Cebu upon Epifanio Pujinio whom it found guilty of robbery with homicide, with six aggravating circumstances and only one mitigating circumstance.

Epifanio Pujinio and Eladio Pacquiao were charged in the lower court as follows:

"The undersigned accuses Epifanio Pujinio and Eladio Pacquiao of the crime of Robbery with Homicide, committed as follows:

"That on or about the 18th day of February 1963, at about 10:00 o'clock in the evening, in the municipality of San Fernando, province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above named accused together with one Sofonias Balbuena who is still at large and who shall be prosecuted also when arrested, conspiring and confederating together and helping one another, armed with firearm and a scythe and with disguise by half covering their faces, with intent of gain and with force, violence and intimidation, did then and there willfully, unlawfully and feloniously, enter the dwelling or house of Aquilino Sebial thru the kitchen and once inside shot the latter, pointed their firearm at the occupants thereof and demanded from them money and other valuables, thereafter ransacked the house and without the consent of the owner took and carried away a transistor radio worth P180.00 and cash in the amount of P100.00 to the damage and prejudice of the owner, the family of said Aquilino Sebial in the total amount of P280.00; that on the occasion of the said robbery and in order to insure success of their purpose, the said accused in pursuance of their conspiracy, with intent to kill and with evident premeditation, treachery and taking advantage of night time, superior number, strength and the use of their firearm, did then and there willfully, unlawfully and feloniously attack and shot the said Aquilino Sebial while the latter was asleep, thereby inflicting upon him:

"At the abdomen a semicircular wound located 2-1/2 inches above umbilicus at line of abdomen. Wound surrounded by contusion with blood oozing out and measures 1 inch at its widest length and 1/2 inch.

"Right forearm-ulnar side, 3 inches below elbow joint is another semicircular wound is 1/2 inch in width.

"Right arm a clean cut wound measuring 1/2 inch in length is found at the ulnar side about 1/2 inch above elbow joint with blood oozing out which injuries resulted in the death of said Aquilino Sebial shortly thereafter.

"That in the commission of the offense the aggravating circumstances of evident pre-meditation, treachery, night time, superior number and strength, committed in the dwelling of the offended party, disguise, and in addition, recidivism with respect to Epifanio Pujinio, for having been previously convicted by final judgment to a life sentence in Crim. Case No. V-6110 for Murder on February 27, 1960, but he escaped from Davao Penal Colony while serving said penalty on Dec. 31, 1962.

"CONTRARY TO LAW.

"Cebu City, March 14, 1963.

(Sgd.) TOMAS EVANGELISTA

Actg. Asst. Provincial Fiscal"

Upon being arraigned on May 17, 1963, both defendants pleaded not guilty. However, at the hearing called on the 30th of the same month and year, their counsel de parte stated in open court that Pujinio was willing to withdraw his former plea of not guilty and thereafter to plead guilty, provided the court would allow him to prove the mitigating circumstances of extreme poverty and lack of instruction. Having been allowed to withdraw his previous plea of not guilty and thereafter arraigned anew, Pujinio pleaded guilty and was sentenced as stated above.

The other defendant, Eladio Pacquiao, after trial, was sentenced to suffer an indeterminate penalty of from four (4) years and two (2) months of prisión correccional to ten (10) years of prision mayor, to indemnify the offended party in the sum of P100.00 (the money in cash that was stolen), jointly and solidarily with his co-defendant, and to pay one-third of the costs.

Before the decision against Pujinio had become final and executory, appearance on his behalf was made by Atty. I. V. Binamira, who subsequently filed two motions for re-consideration. Both were denied by the lower court. In this instance, the brief submitted by the same counsel on behalf of Pujinio claims that the lower court erred in imposing the capital punishment upon the latter in spite of the fact that "his affidavit shows that he was not the one who fired the fatal shot that killed the victim but it was Sofonias Balbuena". This contention is exclusively based upon the sworn statement (now in the record as Ex-hibit C) made by Pujinio before Sgt. Alfoja of the Cebu P.C. Command. It appears, however, that the same was presented as part of the testimony of Sgt. Alfoja and of the Justice of the Peace of San Fernando, Cebu, against the other defendant, Eladio Pacquiao, to prove the latter's participation in the conspiracy to commit the crime of robbery with homicide. At that stage of the proceedings the case had already been submitted as far as Pujinio was concerned. Moreover, it is obvious that, with his plea of guilty, Pujinio was deemed to have admitted all the facts and circumstances alleged in the information which, as a matter of fact, was read to him twice before he entered his plea.

Pujinio's counsel further claims that although the latter entered a plea of guilty he, however, explained to the court that it was Balbuena who killed Aquilino Sebial, and that, therefore, he should be found guilty only of robbery. This contention finds support only in the sworn statement mentioned heretofore and which, as already stated, can not be considered in connection with Pujinio's case.

Moreover, even assuming that Pujinio testified to that effect, it would not justify a finding that he was guilty only of robbery, for it is settled that one who participated in the commission of the crime of robbery in connection with which homicide was also committed - as in this case - will be equally guilty as principal of the crime of robbery with homicide, unless there is clear evidence that he tried to prevent the commission of the latter offense (*People vs. Morados*, 70 Phil., 558; *People vs. Carunungan, et al.*, G. R. No. L-13283, September 30, 1960).

With respect to the propriety of the penalty imposed by the lower court, it appears that the information charged Pujinio with robbery with homicide, with the attendance of seven aggravating circumstances, namely: evident premeditation, treachery, nighttime, superior number and strength, commission of the offense in the dwelling of the victim, use of disguise, and recidivism. On the other hand, the lower court considered in his favor only the mitigating circumstance of plea of guilty, and refused to consider in his favor the mitigating circumstances of lack of instruction and extreme poverty as follows:

"But the other two mitigating circum-stances that he was claiming in his favor, namely (1) lack of instruction and (2) extreme poverty, cannot be appreciated in his favor. He admitted that he has studied up to sixth grade. That is more than suf-ficient schooling to give him a degree of instruction as to properly apprise him of what is right and wrong. And with respect to poverty, he himself said that his mother owns real properties. He could have gain-fully occupied himself by working on these properties, if he cared to. Moreover, this accused once had an employment with the Cal-tex way back in the year 1960, which he lost when he embarked on his carrier of crimina-lity by committing his first case of murder. In short, he impoverished himself and lost his gainful occupation by committing crimes. He was not driven to the commission of crimes due to want and poverty (pp. 94-95, record)."

We agree with the lower court that the two mitigating circumstances mentioned heretofore can not be considered in favor of Pujinio.

The offense having been committed with six aggravat-ing circumstances - that of nighttime being absorbed in treachery - and with only one mitigating circumstance to offset them, the penalty provided by law should be imposed in its maximum degree - Death.

WHEREFORE, the decision under review is affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Teehankee, and Barredo, JJ., concur.

Castro, J., on leave.

Capistrano, J., did not take part.

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