

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ENRIQUE FERNANDEZ, ET AL., DEFENDANTS, ENRIQUE FERNANDEZ,
DEFENDANT AND APPELLANT.**

G.R. No. L-32623. June 29, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This case is before Us for mandatory review, the capital penalty having been imposed by the trial court upon a plea of guilty entered by the defendant Enrique Fernandez.

The said defendant, together with three others, namely, Dario Sitoy, Clemente Reposala and Vencio Almonte, was accused of the crime of "Robbery with Frustrated Homicide and Multiple Homicide" in the Court of First Instance of Zamboanga del Sur, under the following information:

"That on or about the 4th day of January, 1970, at about 10:00 o'clock in the evening, more or less, at Barrio La Suerte, City of Pagadian, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with intent to gain conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously, by means of force and violence upon one Sebastian Espelita, Sr., take, steal and carry away cash, in the amount of THREE HUNDRED FIFTY (P350.00) PESOS, Philippine Currency to the damage and prejudice of the latter of said amount, with deliberate intent and with intent to kill, did then and there willfully, unlawfully and feloniously attack one Sebastian Espelita, Jr., with the use of their hunting knives, wounding him on the chest, as consequence thereof, performing all the acts of execution which would have produced the crime of homicide but nevertheless did not produce it by reason of causes independent of the will of the accused, that is the timely and able assistance rendered to him as per Medical Certificate hereto attached; and in the occasion thereof, further, the said accused, with deliberate intent, and with intent to kill, did then and there willfully, unlawfully and feloniously attack and assault the following: Sebastian Espelita, Sr., Dolores Espelita, George Espelita, and Alejandra Espelita, with the use of their hunting knives thereby inflicting fatal wounds on their bodies which directly caused the death of said Sebastian Espelita, Sr., Dolores Espelita, George Espelita and Alejandra Espelita.

"That Dolores Espelita died pregnant with five months baby inside her stomach.

"That the crime was committed in the darkness of the night."

* * * * *

"Upon arraignment, at which Enrique Fernandez was assisted by counsel de oficio, he pleaded guilty after the court had informed him of the seriousness of the charge and of the penalty provided therefore by law. Thereupon judgment was rendered as follows:

* * * * *

"The crime committed is Robbery with Frustrated Homicide and with Multiple Homicide penalized under Article 294, Sub-paragraph 1 of the Revised Penal Code, the imposable penalty of which is Reclusion Perpetua

to death.

"The plea of guilty as a mitigating circumstance is hereby appreciated in favor of the accused.

"WHEREFORE, the Court finds the accused Enrique Fernandez guilty beyond reasonable doubt of the crime of Robbery with Multiple Homicide and with Frustrated Homicide as penalized under Article 294, sub-par. 1 of the Revised Penal Code, and appreciating in his favor the mitigating circumstance of plea of guilty hereby sentences the said accused to the extreme penalty of death, to indemnify the respective heirs of each of the victims, namely: Sebastian Espelita, Sr., Dolores Espelita, George Espelita and Alejandra Espelita in the amount of P12,000.00; and to pay the costs."

* * * * *

"The case against the other three defendants was set for trial.

The only question raised by present counsel de oficio, Attorney Honorio Poblador, Jr., who was designated by this court for purposes of this review, is the propriety of the penalty imposed by the court a quo, considering the existence of the mitigating circumstance of the plea of guilty and the absence of a finding as to any aggravating circumstance to offset it.

We find the point to be well-taken. There is, to be sure, an allegation in the information "that the crime was committed in the darkness of the night," but this circumstance, in order to be considered as aggravating the offense, must be such that it "may facilitate the commission of the offense." Art. 14(6) Rev. Penal Code. The jurisprudence on this subject is to the effect that nocturnity must have been sought or taken advantage of to improve the chances of success in the commission of the crime or to provide impunity for the offenders.[*] Here the bare statement in the information that the crime was committed in the darkness of the night fails to satisfy this criterion.

In any event, even if this particular circumstance be considered as aggravating it would only offset the mitigating circumstance of the plea of guilty; and under Article 63(2) of the Revised Penal Code, where there is neither mitigating nor aggravating circumstance the lesser penalty should be applied if, as in this case, the law prescribes a penalty composed of two indivisible penalties, namely, reclusion perpetua to death (Art. 294, Sub-paragraph 1).

WHEREFORE, the judgment of the trial court is modified by reducing the penalty imposed upon the accused Enrique Fernandez to reclusion perpetua, with the accessories provided by law, and affirmed in all other respects.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Makasiar, and Antonio, JJ., concur.

[*] People vs. Corpuz, et al., 1 SCRA 33; People vs. Boyles, 11 SCRA 88; People vs. Condemena, et al., 23 SCRA 910; People vs. Apduhan, et al., 24 SCRA 798; People vs. Villas, 27 SCRA 947, People vs. Flores, 40 SCRA 230.

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