

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO ATENCIO, SILVESTRE COLISAO, AND DOMINGO ATENCIO, DEFENDANTS.

G.R. No. L-22518. January 17, 1968

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/3cd337ccede6/>

PER CURIAM:

Automatic review of the decision of the Court of First Instance of Samar (in Crim. Case No. 733), finding accused Ricardo Atencio, Domingo Atencio and Silvestre Colisao guilty of the crime of robbery with triple homicide, and sentencing all of them to suffer the supreme penalty of death, to pay the value of the stolen articles, and to indemnify the heirs of the victims, Gerardo Rapsing, Sebastian Rapsing and Daniel Rosita.

On December 29, 1961, Ricardo Atencio, Domingo Atencio and Silvestre Colisao, together with Bonifacio Gremio alias Boning, were charged in the Court of First Instance of Samar with the crime of "Robbery in Band with Triple Homicide", allegedly committed as follows:

"That on or about the 7th day of December, 1961, in the evening, in Sitio Pocdol, Bo. Dancalan, Bobon, Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with deadly weapons, conspiring, confederating together and mutually helping one another, with intent to gain and by means of violence against and intimidation of persons and force upon things, did, then and there wil-fully, unlawfully and feloniously enter the house of one Gerardo Rapsing, and once inside, by means of force, opened the wardrobe and trunk and took, stole, and carry away with them the following to wit:

1

ring (chinese gold) valued at -----

P 45.00

1

Ring (pure gold) valued at-----

35.00

3

Pairs of earring valued at -----

25.00

1

pair of earring (pearl) valued at -----

10.00

1

pair of earring (pure gold) valued at -----

10.00

1

necklace (chinese gold) valued at -----

50.00

Savings box (piggy bank) containing coins valued at -----

40.00

Cash money (bill) valued at -----

20.00

2

kettles valued at -----

5.90

1

flatiron valued at -----

6.50

1

dozen table knife valued at -----

13.00

1

dozen silverware (fork and spoon) valued at -----

16.00

1

dozen plates valued at -----

14.00

4

bolos valued at -----

19.00

1

umbrella valued at -----

6.00

6

pieces of skirts (saya) valued at -----

20.40

3

pants (maong, grey and west point khaki) -----

18.00

4

pieces of blanket valued at -----

41.00

TOTAL AMOUNT -----

P 394.80

and in pursuance of their conspiracy, with evident premeditation and treachery, and with the decided purpose to kill, did, then and there wilfully, unlawfully and feloniously attack, assault, stab and wound Gerardo Rapsing, one Sebastian, a house boy and Daniel Rosita also a house helper, while the above- mentioned victims were asleep, hitting and mortally wounding each of the three aforementioned victims at various parts of their bodies, which mortal wounds caused the instantaneous death of Gerardo Rapsing, Sebastian and Daniel Rosita respectively.

"Contrary to law, with the aggravating circumstances that the crime was committed in the dwelling of the victims and nighttime."

On November 29, 1962, and upon motion of the Assistant Provincial Fiscal, the Court ordered accused Bonifacio Gremio, alias Boning, discharged from the information to be utilized as the lone witness. On the same day, the three remaining accused were arraigned and entered pleas of not guilty.

As established by the evidence for the prosecution, the facts of the case are as follows:

At about 5 o'clock in the afternoon of December 7, 1961, Ricardo Atencio, in the company of Domingo Atencio and Silvestre Colisao, went to the house of Bonifacio Gremio in Barrio Dancalan, municipality of Bobon, Samar province, inviting the latter to have "good time" with them that evening. Bonifacio accepted the in-vitation. The three (Ricardo, Domingo and Silvestre) returned to the house of Bonifacio at about 7 o'clock in the evening to pick him up. When Bonifacio asked Ricardo where they were going, the latter answered that they would talk about it on the way. The group took a trail toward Barrio Dancalan; Bonifacio walking ahead, followed by Ricardo who had a bolo in his hand, while Domingo and Silvestre were following Ricardo, with their respective sheathed bolos at their waists. When they reached the vicinity of the house of Gerardo Rapsing, Ricardo informed Bonifacio that they were going to rob Rapsing, because the latter had money. Bonifacio objected to the plan, reasoning that Rapsing is a relative of his father. But Ricardo warned him that he better go with the group, and if he (Bonifacio) would inform on them, he would be in a bad fix. - Bonifacio had to go with the trio.

Bonifacio was instructed by Ricardo to stay on the ground while the other three (Ricardo, Domingo and Silvestre) would go up the house of Gerardo Rapsing. Then, after they had gone around the house three times and became assured that the inmates therein were asleep, they entered through the kitchen door after removing its bamboo bolt. Thereafter, Bonifacio heard the voices of two grown-ups and a child from the house, followed by hacking or

chop-ping sounds. Afraid, he left the place and went home.

At about 7 o'clock of the following morning, Constanca Valido, wife of Gerardo Rapsing, returning from the house of a married daughter where she had slept the night before, found her husband, his nephew Sebastian and their helper Daniel Rosita, all dead in their house, and their personal belongings strewn about the floor. She ran to the house of her brother and informed the latter of her discovery; her nephew called for the doctor and the Chief of Police.

The autopsy of the bodies of the victims, conducted on the same morning by the Municipal Health Officer, revealed that the deceased sustained the following injuries:

Gerardo Rapsing, 75 years old -

"POSTMORTEM FINDINGS

"Fairly developed, fairly nourished cadaver with a height of 5 ft. 2 inches. Cadaver lying on his right side with a green woolen blanket covering his whole body. Rigor mortis present all over the body. Eyes open with dilated pupil. Blood amounting to 1,000 cc found on the mat where cadaver was lying. An examination of the cadaver an incised wound measuring 2 inches was found at the internal part of left forearm. Edge of wound are (sic) regular and well defined. Another incised wound extending from the pre-auricular part of the left ear to the left side of the mouth was found. Wound has clean cut edges and regular. A chopping wound was found extending from left post-auricular part of left ear to the left side of mouth. Such wound involves the left side of maxilla and left side of upper jaw and important branches of the carotid artery and nerves.

"Cause of death - HEMORRHAGE DUE TO MULTIPLE INCISED WOUNDS AND CHOPPING WOUND." (Exh. A).

Daniel Rosita, 45 years old -

"POSTMORTEM FINDINGS

"Fairly developed, fairly nourished cadaver with rigor mortis found all over the body - abdomen distended. Blood found scattered on the floor where he was lying. An examination of cadaver an incised wound measuring 1 inch was found at the middle part of the forehead. A chopping wound was found extending from the right upper scapular to the right arm leaving only a part of the skin of the right mid axillary region intact and that the right arm almost separates from the body. Even the bone was cut. Important vessels and structures in the arm was (sic) cut 2 chopping wounds was (sic) found also - extending from the left scapular region to the left arm cutting also the head of radial bones and other structures and important vessels were cut. It almost separate (sic) from the body if not for the small part of the skin at the left mid axillary region.

"Cause of death - HEMORRHAGE DUE TO MULTIPLE CHOPPING WOUNDS AT LEFT RIGHT ARMS." (Exh. B)

Sebastian Rapsing, 15 years old -

"Fairly developed, fairly nourished cadaver with rigor mortis found all over the body. Blood scattered around the body and on the floor where he was lying. On close examination of the cadaver a chopping wound was found at the back of the neck leaving only the larynx and skin at the front of neck intact. Important vessels and parts of the neck was (sic) cut.

"Cause of death - HEMORRHAGE DUE TO CHOPPING WOUND AT NECK." (Exh. C)

Based on further investigation, the widow found that some personal effects, estimated to be worth P409.40, were missing.

On December 13, 1961, Ricardo Atencio, who was investigated by the police authorities of Bobon as a suspect, subscribed to a statement before the Justice of the Peace, Judge Valila, confessing to the commission of the crime, together with his younger brother Domingo Atencio, Silvestre Colisao and Bonifacio Gremio (Exhs. K, K-1, K-2 and K-3), although blaming the crime on Gremio and Colisao. On December 15, 1961, it appears that he gave another statement to S/Sgt. Juanito Yrigan, investigator of the 96th PC Company, and subscribed to before acting Municipal Mayor Protacio Poso of Bobon, wherein he claimed to have committed the crime alone and explaining that he had previously blamed his companions out of personal animosity. On the same day, December 15, Ricardo Atencio reenacted the crime in the house of Gerardo Rapsing, in the presence of Sgt. Yrigan, the Chief of Police of Bobon, Police investigator Paredes and Cpl. Lariago. Pictures of this reenactment^[1] were taken by photographer Antonio Reyes. The investigators also went to the land being farmed by Ricardo Atencio and on the bambloo clump where the latter said he had left the stolen articles, the police authorities found an army belt inscribed with the name "Jesie",^[2] said to be used by the deceased Gerardo Rapsing; a fork;^[3] an empty broken, wooden piggy bank,^[4] and two 10-centavo coins.^[5] Domingo Atencio, Bonifacio Gremio and Silvestre Colisao were nevertheless arrested.^[6] When Domingo was taken in by the police, he was wearing a sky-blue T-shirt, "Highland" brand, which Constanca Valido Vda. de Rapsing identified as one of the articles taken by the robbers from their house.

The defense of Ricardo Atencio, who entered a plea of not guilty, was alibi. He took the witness stand and testified that he knows the deceased Gerardo Rapsing, Sebastian Rapsing and Daniel Rosita, having been once entrusted to take care of two carabaos belonging to the spouses Rapsing; that on December 5, 1961; with his wife and children, he left their house in sitio Burabod,^[7] because he was due to appear as accused at the hearing of Criminal Case No. 3176 of the Municipal Court of Bobon, Samar (for Threat to Kill), in the afternoon of December 7, 1961; that in the morning of December 7, he was in Catarman, Samar, conferring with his lawyer; that in the afternoon, as the scheduled trial did not take place because the judge failed to arrive, he and his family had themselves inoculated against "El Tor"; that the following morning, December 8, 1961, he and his family took the bus for the barrio of Dancalan, and it was only when he arrived thereat that he learned of the death of Gerardo Rapsing, Sebastian Rapsing and Daniel Rosita. He further testified that on December 10, 1961, he and his family returned to Bobon to attend the last day of the "novenario" for his step-father; that on December 11, he slept in the house of his mother-in-law in Agrupacion; that on December 12, he was called to the municipal building (of Bobon) where he was investigated by PC investigator, Sgt. Juanito Yrigan, in the presence of one Primitivo Rapsing, a soldier-son of the deceased Gerardo Rapsing, his answers to the questions asked being taken down by ball-pen; that he was sent home, with instruction to return; when he did so on December 12, 1961, Primitivo Rapsing read to him the supposed answers he gave during the investigation, in the presence of Sgt. Yrigan and Judge Francisco Valila; that he was not able to read the statement; that after he was asked to sign the pages of said statement, he was allowed to go home; that having heard rumor that what he signed was a confession, he went back to Judge Valila who told him that there was nothing to what he signed; that on his way home, he was arrested.

This accused disputed his extrajudicial admissions, charging that they were given involuntarily; that he signed them after he was maltreated by Primitivo Rapsing in the PC barracks on December 14, 1961; that the pictures taken by witness Antonio Reyes during the reenactment were under the direction of Sgt. Yrigan, who instructed him how to pose for them (the pictures).

The accused Domingo Atencio (who did not testify during the trial) tried to establish through Marcelino Mendador, a neighbor, that he (Domingo) was in his house from 5 o'clock in the afternoon of the 7th December until about 6 o'clock of the following morning, preparing and drying his copra.

On the other hand, accused Silvestre Colisao testified that in the afternoon of December 7, 1961, he collected unpaid accounts from certain people; that at about 5 o'clock in the afternoon, he fetched water and gathered firewood; that he went to bed at about 9 o'clock. Witness Casiano Celespara supported this testimony by declaring that he passed the night in the house of Silvestre Colisao on December 7, 1961; that he went to bed at about 9 o'clock in the evening, Silvestre and his wife were at the time in the house.

On rebuttal, the prosecution presented, among others, Judge Francisco Valila, the Justice of the Peace, who testified that the statement, Exhibits K to K-3, were read and translated in the dialect to accused Ricardo Atencio; that before Atencio signed the statement, witness Valila asked him if he (Ricardo Atencio) understood its contents, to which the latter answered in the affirmative. The defense likewise presented sur-rebuttal evidence.

On January 15, 1964, the trial Court rendered judgment against the three accused, finding them guilty as charged, of robbery with triple homicide attended by five aggravating circumstances - evident premeditation, treachery, dwelling, nocturnity, and the crime having been committed by a band - without any mitigating circumstance and, accordingly, sentenced all of them (Ricardo Atencio, Domingo Atencio and Silvestre Colisao), to death, and to pay, jointly and severally, the value of the taken goods in the sum of P409.40, to indemnify the heirs of Gerardo Rapsing in the sum of P6,000.00, the heirs of Sebastian Rapsing in the sum of P6,000.00, and the heirs of Daniel Rosita in the sum of P6,000.00, and to pay 3/4 of the costs.

The case is now on automatic review by this Court.

The counsels de officio for Ricardo Atencio, and for Domingo Atencio and Silvestre Colisao, contest the decision under consideration, alleging that the trial Court committed error (1) in finding that there was conspiracy among the three accused to commit the crime; (2) in finding accused Domingo Atencio and Silvestre Colisao guilty of robbery with triple homicide; (3) in finding that the commission of the offense was attended by five aggravating circumstances; and (4) in imposing on all of the three accused the maximum penalty of death.

The role and participation of Ricardo Atencio in the commission of this heinous crime - the slaying of three unarmed and sleeping persons, one of them a 75-year old man and another a 15-year old boy, to facilitate the taking of the victims' odd personal belongings - has been clearly established. Not only did he make two extrajudicial confessions of his guilt before the Mayor (Exhs. D to D-3), and before Fiscal Daling (Exh. N); he was positively named by witness Bonifacio Gremio as the one who disclosed the plan to rob Gerardo Rapsing on the night of December 7, 1961, and in fact he was one of the three persons who went up the house where the bloody bodies of the victims were found the following morning.

It is true that during the trial, this accused repudiated his previous extrajudicial admission, claiming that he signed the statements, Exhibits D to D-3, without knowing its contents and in order to end the maltreatment he was getting from the PC investigator and the soldier-son of the deceased Gerardo Rapsing. This allegation that the confession was extracted from him by force was not only uncorroborated, but was even denied by the Chief of Police of Bobon who witnessed the signing and the Vice-Mayor before whom the statement was subscribed, and who declared that it was read to and understood by Ricardo Atencio, and that it was signed freely and voluntarily. We also note that the statement contained details which were either admitted by the accused as true during the trial, or corroborated by other witnesses - such as the facts that Ricardo had a previous quarrel with Silvestre Colisao; that he took charge of two carabaos of the spouses Rapsing; that he knew that Gerardo Rapsing had sold copra; that Ricardo lost some money in a card game, and that the articles taken from the house of Rapsing were placed atop a "patong" or bamboo clump near Ricardo's house where they were found, indicating that the information was furnished by Ricardo Atencio himself. The trial Judge also made the observation that from the demeanor of this accused while testifying, he (the Judge) was convinced that said accused was unreliable.

Furthermore, it may be pointed out that this accused stoutly maintained during the trial that at the time when the robbery and killings were supposed to be taking place, he was in the house of his mother-in-law in another sitio. And yet, in the statement he gave to the investigator on December 13, 1961, prior to his arrest, and subscribed to before the Justice of the Peace of Bobon (Exhs. K to K-2), Atencio admitted being with the group of Domingo Atencio, Silvestre Colisao and Bonifacio Gremio that same night, committing the robbery and killing in the house of Gerardo Rapsing in sitio Pocdol. Needless to state, the Justice of the Peace of Bobon testified in court that the statement, Exhibits K to K-2, was given by Ricardo Atencio voluntarily and under no compulsion. He also admitted the homicide and robbery in his testimony before Fiscal Daling (Exh. N). There is thus no doubt in our mind that Ricardo Atencio took part in the robbery and killing of the three victims in this case, and the trial Court, therefore, correctly ruled that his guilt and culpability were established beyond reasonable doubt.

Question has been raised against the lower Court's finding that Domingo Atencio and Silvestre Colisao were co-conspirators of Ricardo Atencio, it being asserted that there was no adequate proof of the existence of the conspiracy, as provided in Section 27 of the Revised Rule 130 of the Rules of Court.

The contention is without merit. The testimony of discharged witness Bonifacio Gremio, placing Domingo Atencio and Silvestre Colisao in the company of Ricardo Atencio when the plan to rob Gerardo Rapsing was revealed to Bonifacio, indicating that they were in the plot, and were with Ricardo in entering the house, is admissible evidence against Domingo and Silvestre. In one case,^[8] where the same issue of the admissibility of the lone testimony of a co-conspirator to prove conspiracy, was assigned, this Court said:

"The appellants contend further that in order that the testimony of a conspirator may be admissible in evidence against his co-conspirator, it must appear, and be shown by evidence other than the admission itself that the conspiracy actually existed and that the person who is to be bound by the admission was a privy to the conspiracy. And as there is nothing but the lone testimony of prosecution witness Anastacio Reyes, a co-conspirator, the trial court erred in finding that the conspiracy has been established and in convicting the appellants based upon the lone testimony of their co-conspirator. The contention does not merit serious consideration, because the rule that 'The act or declaration of a relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration,' applies only to extrajudicial acts or declaration, but not to testimony given on the stand at the trial, where the defendant has the opportunity to cross-examine the declarant."

When Bonifacio Gremio, in this case, took the witness stand and testified on the participations of Domingo Atencio and Silvestre Colisao in the crime, he was not making an admission or declaration as a co-conspirator; he was an eye-witness identifying them in connection with the incident, and whose testimony could have been shaken by cross-examination or disproved by other evidence. As it happened here, Bonifacio's testimony pointing to the existence of conspiracy among Ricardo Atencio, Domingo Atencio and Silvestre Colisao, remained and withstood cross-examinations by the separate counsel for the accused.

The defense attacks the credibility of witness Gremio on the basis of its coming from a polluted source, and the improbability that this appellant should have been left behind by his companions despite having expressed unwillingness to participate in the robbery. As to the latter circumstance, it must be remembered that Gremio had been threatened to keep silent, and the effectiveness of the menace was such that he did not reveal what he knew to the prosecution until after the information was filed (see Record, p. 2; t.s.n., Abata, pp. 4, 8, 54, 57). His being a co-conspirator demands, of course, that his testimony be regarded with suspicion; yet, we can not close our eyes to the convincing detail that Gremio's version that appellants were together in committing the crime is confirmed by the admissions of Ricardo Atencio in his statement sworn to before Judge Valila (Exh. K) and in his testimony at the investigation by Fiscal Daling (Exh. N). Gremio is also corroborated by the stolen articles belonging to the deceased (particularly the belt and the violated piggy bank) found in Ricardo Atencio's farm, and the stolen

T-shirt that accused Domingo Atencio was wearing when arrested.

To bolster its case, the defense calls attention to erasures in the caption of Exhibit D, the confession of December 15 (where Ricardo asserted being the lone perpetrator), and theorizes that this was the first confession, but that the investigators forced Atencio to incriminate his companions in Exhibit K, dated December 13; to render the latter more plausible, the date of the supposed first confession (Exh. D) was altered to December 15, so as to make it appear that it was made after December 13, when Exhibit K was sworn to by said appellant before Judge Valila. This ingenious and complicated theory is discredited by the fact that examination under a magnifier reveals that the date of Exhibit D (December 15) is unaltered, although typed twice because the first "15" was only lightly imprinted.

Nor do we find the alibis of herein accused-appellants duly established. The testimony of Marcelino Mendador, a neighbor of Domingo Atencio in sitio Guba, Dancalan, Bobon, Samar, accounting for the latter's movements from 6 o'clock in the evening of December 7, 1961 until 6 o'clock of the following morning, does not appear credible. It is unlikely that a disinterested person would take note of what his neighbors are specifically doing at certain times of the night of a particular day. The fact that sitio Guba is adjacent to sitio Pocdol, in the same barrio of Dancalan, does not also obviate the possibility that in the intervening period, between 6 o'clock in the afternoon of December 7, 1961, and 6 o'clock in the morning of December 8, 1961, accused Domingo Atencio could have gone with his brother and Silvestre Colisao and Bonifacio Gremio to the house of Gerardo Rapsing.

As to Silvestre Colisao, the testimony of Casiano Celespara that he saw Silvestre in the house before he (Casiano) slept at 9 o'clock in the evening of December 7, 1961 does not invalidate the declarations of Bonifacio Gremio in court. The house of Silvestre Colisao is in sitio Bantilen, also in barrio Dancalan, and the incident in the house of Gerardo Rapsing in sitio Pocdol of the same barrio was committed at about 2 o'clock in the morning of December 8, 1961. While Casiano's testimony may contradict Bonifacio's declaration that Silvestre was with Ricardo and Domingo when the latter picked him up in their house, still, that does not destroy the prosecution's evidence that Silvestre was with the group when they reached the house of Gerardo Rapsing and that he was one of the three armed men who ascended that house. Additionally, we take note of Casiano Celespara's testimony that he learned of the death of Gerardo Rapsing, Sebastian and Daniel Rosita at about 9 o'clock in the morning of December 8, 1961, when Silvestre Colisao informed him (Casiano), that he (Silvestre) would be implicated there.⁸ It is indeed strange that Silvestre Colisao should be able to predict his involvement in the case that same morning when the bodies of the victims were found, when even the investigator, Sgt. Yrigan, testified that their primary suspect was only Ricardo Atencio and it was only after the latter had given his statement on December 13, 1961 (Exhs. K to K-2) that the names of Domingo Atencio, Silvestre Colisao and Bonifacio Gremio came into the picture.

The insinuation also that Bonifacio's testimony in court against the three accused was the reward for springing the former out of incarceration does not appear convincing. As early as December 15, 1961, Ricardo Atencio already owned sole responsibility for the crime, there was actually no need for Bonifacio Gremio to testify the way he did if his only purpose were to save himself. Neither does the contention of Silvestre Colisao that Bonifacio testified against him because his wife reprimanded Bonifacio when she caught the latter getting their cassava and that she took Bonifacio's empty trunk when he failed to pay a debt of P20.00, believable, in the absence of proof that Bonifacio Gremio is such a vindictive person who could charge another of so serious an offense as the killing of three persons, just for the aforementioned reasons.

It is clear that the conspiracy, at least, to commit the robbery, was shown. The record affords no other cogent explanation why these appellants, armed with deadly bolos, should repair to the house of the victims in the dead of the night. Accused Domingo Atencio and Silvestre Colisao, while they may not have participated in the slaying of the victims, nevertheless, are liable for the crime actually committed, for the rule is settled that when homicide

takes place as a consequence of or on the occasion of a robbery, all of those who took part in the robbery shall be guilty as principals of the complex crime of robbery with homicide, unless there is proof that they had endeavored to prevent the killing.¹⁰ When a conspiracy is established, the act of one becomes the act of all.¹¹ It could be added that when well-armed men proceed to a house with intent to rob, it is because they are bent in using their lethal weapons to eliminate any opposition that may develop.

We now come to the question of whether or not the crime was really attended by the aggravating circumstances of band, evident premeditation, nighttime, dwelling and treachery.

The contention of counsel for the accused, to which the Solicitor General agrees, that the circumstance of band cannot be appreciated in this case, must be sustained. For the circumstance of "cuadrilla" to be considered, it is necessary that there be more than three armed malefactors acting together in the commission of the offense (Art. 14, para. 6, Revised Penal Code). It appears, however, that while Ricardo Atencio, Domingo Atencio and Silvestre Colisao were equipped with bolos, Bonifacio Gremio was unarmed. They, therefore, did not constitute a band within the contemplation of the law.¹²

Similarly, the fact that the robbery was planned does not justify the appreciation of the circumstance of evident pre-meditation, it being inherent in robbery.¹³ Evident premeditation will only be aggravating in a complex crime of robbery with homicide if it is proved that the plan is not only to rob, but also to kill.¹⁴

As regard treachery, there is evidence that when the group reached the place they had planned to rob, Ricardo Atencio, Domingo Atencio and Silvestre Colisao first went around the house to listen and ascertain if the occupants therein were all asleep; that perhaps so assured, they entered the house. Thereafter, Bonifacio Gremio, who was left downstairs, heard the voices of two grown-ups and that of a child, and hacking or chopping sounds.

Capitalizing on this portion of the testimony of prosecution witness Bonifacio Gremio, the accused argue that if the victims were not asleep when they met their death, then the attack on them cannot be considered coupled with treachery.

There is no merit to this allegation. The witness stated that he heard the voices and hacking sounds, presumably produced by the bolo used by the attacker or attackers in inflicting injuries on the victims. He did not say he heard conversations or words denoting the victims' complete or full awareness of the presence of the robbers. The sounds emitted by them could have been groans or cries of pain when they received the injuries. In fact, from the position of the body of the old man, Gerardo Rapsing, when it was found,¹⁵ i.e., lying on the mat and still covered with his blanket, it can be deduced that death came to him while he was asleep. At any rate, even assuming that the victims were suddenly roused by the movements of the intruders in the house, their immediate slaying does not make it less treacherous. An attack on a person who has just awakened from sleep is considered attended by treachery,¹⁶ because the victim, who may still be dazed and unprepared for the attack, would not be in a position to offer any risk or danger of retaliation to the attacker.

On the circumstance of nocturnity, contrary to the allegation of counsel for the accused, there is sufficient proof that the offenders purposely sought nighttime to commit the crime. Consider the facts that the trio of Ricardo, Domingo and Silvestre invited Bonifacio to join them in a "good time" that evening;¹⁷ that they revealed that the plan was to rob Gerardo Rapsing; that they tried to ascertain whether the occupants of the house were asleep, thereby indicating the desire to carry out the plot with the least detection or to insure its consummation with a minimum of resistance from the inmates of the house. This aggravating circumstance was, therefore, properly appreciated in the present case.

Similarly, there is no merit to the assertion that dwelling is inherent in the crime committed in the case at bar. The

claim is untenable for while dwelling may be appreciated as inherent in a case of simple robbery, it has been ruled that the same cannot be said when the offense is robbery with violence or intimidation against persons,¹⁸ because in the latter instance, the crime can be performed without need of violating the abode of the victim.¹⁹

WHEREFORE, after due consideration of the evidence herein presented, we declare the accused Ricardo Atencio, Domingo Atencio and Silvestre Colisao, all guilty as principals of the complex crime of robbery with triple homicide, attended by the aggravating circumstances of treachery, nighttime and dwelling, without any mitigating circumstance to offset them, for which the appropriate penalty is death. But, while the members of the Court agree that this penalty imposed upon appellant Ricardo Atencio should be affirmed, there is divergence as to its application in the case of the other appellants. For lack of necessary votes, therefore, the penalty meted out to accused Domingo Atencio and Silvestre Colisao is reduced to life imprisonment (reclusion perpetua). All three, however, shall pay jointly and severally the value of the stolen goods amounting to P409.40, and indemnify the heirs of Gerardo Rapsing in the sum of P6,000.00; the heirs of Sebastian Rapsing, in the like sum of P6,000.00; and the heirs of Daniel Rosita also in the sum of P6,000.00; besides, they shall pay 3/4 of the costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Exhibits L to L-19.

[2] Exhibit E (given to the deceased Gerardo by his son, Jesus Rapsing, t.s.n., Abata, pp. 17, 25).

[3] Exhibit F.

[4] Exhibit I.

[5] Exhibits G and G-1.

[6] On December 14, 1961 (t.s.n., Cardenas, p. 47).

[7] A sitio adjacent to sitio Pucdol where the robbery and killings took place.

[8] People vs. Serrano, G.R. No. L-7973, April 27, 1959.

9 t.s.n., p. 143, Sept. 12, 1963.

10 People vs. De la Rosa, 90 Phil. 365; People vs. Gibre, 93 Phil. 5; U.S. vs. Macalalad, 9 Phil. 1; U.S. vs. Bustos, 4 Phil. 189.

11 People vs. Yakan Labak, G.R. No. L-1189, Oct. 31, 1960.

12 U.S. vs. Melegrito, 11 Phil. 229.

13 U.S. vs. Blanco, 10 Phil. 298; People vs. Daos, 60 Phil. 143; People vs. Pulido; 85 Phil. 695; People vs. Valeriano, 90 Phil. 15.

14 People vs. Pulido, supra.

15 Exhibit L-12.

16 People vs. Avila, 92 Phil. 805.

17 p. 33, t.s.n., January 29, 1963.

18 People vs. Valdez, 64 Phil. 860; People vs. Akai, 84 Phil. 54.

19 People vs. Valdez, supra.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.