

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JOSE ECHALUCE, BONIFACIA ECHALUCE, AND JOSE SABAS,
DEFENDANTS, JOSE SABAS, DEFENDANT AND APPELLANT.**

G.R. No. L-29776. August 27, 1975

Ponente: MAKALINTAL, C.J.

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MAKALINTAL, C.J.:

In Criminal Case No. 1895 of the Court of First Instance of Catanduanes, Jose Echaluca, Bonifacia Echaluca and Jose Sabas were charged with the crime of parricide in an information filed against them by the Assistant Provincial Fiscal, which reads as follows:

"That on or about the 25th day of April, 1968, at around 10:00 o'clock in the evening, in the barrio of Salvacion, Municipality of Bagamanoc, Province of Catanduanes, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating and helping together for a common purpose did then and there wilfully, unlawfully and feloniously, with treachery and evident premeditation, that is, having conceived and deliberated to kill one Severiano Echaluca, with whom accused Bonifacia Echaluca was united in lawful wedlock, Jose Echaluca, being the son of the victim and Jose Sabas as stranger in the execution of the crime, cooperating as principal, armed with a piece of wood (bogos) hammered the victim with the said piece of wood several times on the head, throat, knee and other parts of the body, employing means, manner and form in the execution of the crime, which tended directly and specially to insure its commission without danger to the persons of the aforementioned accused and as a result of which attack, the said Severiano Echaluca received several mortal injuries which directly caused his death.

"That in the commission of the offense the aggravating circumstances of nighttime and dwelling were present."

Upon arraignment on August 23, 1968, the three defendants, with the assistance of counsel, entered a plea of not guilty. On the same day defendant Jose Sabas filed a motion to quash the information as against him on the ground that the facts charged with respect to him did not constitute the offense of parricide since he was not related in anyway to the victim as provided in Article 246 of the Revised Penal Code. In its order issued also on the same day the trial court denied the motion, holding that "the allegations in the information, if substantiated beyond reasonable doubt, would be sufficient to sustain a finding of x x x murder as against Jose Sabas." It also set the hearing on the merits for September 2, 3 and 4, 1968.

On August 28, 1968 defendant Jose Sabas was re-arraigned. With the assistance of counsel, he pleaded guilty to the charge.

On October 2, 1968 the trial court rendered judgment finding defendant Jose Sabas guilty of murder, with the attendant aggravating circumstances of nighttime and dwelling, of which one was offset by the mitigating circumstance of plea of guilty. Accordingly, the Court sentenced said defendant to death, but with a recommendation for executive clemency on the ground that "there is a fair chance that the accused may be rehabilitated and in time reinstated as a useful member of society."

On the other hand, Jose Echaluze, who pleaded guilty after the information was amended by striking out the aggravating circumstances of nighttime and dwelling, was sentenced to reclusion perpetua in a separate decision. As to the third defendant, Bonifacia Echaluze, the information was provisionally dismissed upon motion of the prosecution for insufficiency of evidence.

The case is now before this Court for mandatory review insofar as defendant Jose Sabas is concerned.

The appellant, through his counsel de officio Jose S. Brillantes, contends that the trial court erred in considering the aggravating circumstances of nocturnity and dwelling against him, in not appreciating the mitigating circumstance of passion in his favor, and consequently, in imposing upon him the death penalty.

As regards nighttime, the Solicitor General agrees with the appellant that said aggravating circumstance, the presence of which was admitted when the plea of guilty was entered, is nevertheless absorbed by the qualifying circumstance of treachery and therefore should have not been considered by the trial court in imposing the penalty. We find their position on the point to be correct and justified by decisions of this Court.[1]

With respect to the aggravating circumstance of dwelling, the trial court did not err in appreciating it against the appellant. Contrary to the appellant's claim, dwelling was clearly alleged in the information to which he pleaded guilty, thus: "That in the commission of the offense the aggravating circumstance of nighttime and dwelling were present." (*Italics supplied.*)

Regarding the alleged mitigating circumstance of passion or obfuscation, it is not true that the trial court admitted the presence of said circumstance in the commission of the crime when it made the observation "that the crime is one of passion." What the trial court obviously meant to convey was that the crime involved a love triangle. Moreover, passion may be considered mitigating only when it arose from legitimate feelings,[2] which is evidently not the case here.

There is no question that the crime committed is murder. Since only the aggravating circumstance of dwelling may be properly appreciated against the appellant, and the same is offset by the mitigating circumstance of plea of guilty, the penalty for the crime in its medium period, which is reclusion perpetua, should have been imposed by the trial court.

We agree with the Solicitor General that in addition to the foregoing, provision for indemnification of the heirs of the victim in the amount of P12,000.00 should have been included in the judgment. However, Jose Echaluze, who has been convicted of parricide for the murder of his father, should be excluded as beneficiary of this indemnification.

WHEREFORE, modified as to the penalty, which is reduced to reclusion perpetua, and as to the indemnification of the heirs of the victim, except Jose Echaluze, in the sum of P12,000.00, the judgment under review is hereby affirmed.

Castro, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.

Antonio, J., is on official trip abroad.

Muñoz Palma, J., did not take part.

[1] *People vs. Enot*, L-17530, October 30, 1962, 6 SCRA 325 and the cases cited; *People vs. Curiano*, L-15256-57, October 31, 1963, 9 SCRA 323; *People vs. Catalino*, L-25403, March 15, 1968, 22 SCRA 1091.

[2] *U.S. vs. Hicks*, 14 Phil. 217.

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