

PEOPLE OF THE PHILIP-PINES, PLAINTIFF-APPELLEE, VS. ALEXIO LUPANGO, ALIAS “ALEX”; DEFENDANT-APPELLANT.

G.R. No. L-32633. November 12, 1981

Ponente: CONCEPCION, Jr., J.

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CONCEPCION, Jr., J.:

About midnight of January 26, 1970, fire destroyed the house of Teresa Vda. de Iglesia located at Antonio Regidor Street, Lucban, Quezon, together with its owner, the old widow.

An investigation by the authorities resulted in the filing of a criminal complaint,[1] against accused Alexio Lupango, for the crime of robbery with homicide.[2] At the second stage of the preliminary investigation in the Municipal Court, accused Alexio Lupango y Ibona admitted his guilt and culpability for the crime charged against him.[3] The Municipal Judge Ruperto Abcede of Lucban, Quezon forwarded the Criminal Case No. 757 to the Circuit Criminal Court of Quezon, upon finding of a prima facie case against accused Lupango.[4]

The corresponding information against the accused was filed with the Circuit Criminal Court of Quezon, Lucena City, to wit:

"The undersigned, Provincial Fiscal accuses Alexio Lupango, alias "Alex" of the crime of robbery with homicide, defined and punished under Article 294, paragraph 1 of the Revised Penal Code, as amended by Republic Act 18, committed as follows:

"That on or about the 26th day of January, 1970, at 12:00 o'clock midnight, more or less, in the Poblacion of the Municipality of Lucban, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Alexio Lupango, alias "Alex", with intent to gain and to rob, and taking advantage of the night to better accomplish his purpose, did then and there wilfully, unlawfully, and feloniously enter the house of one Teresa Vda. de Iglesia, through an opening not intended for entrance or egress, and once inside, by means of violence against and intimidation upon persons and force upon things, took, stole and carried away the following personal properties belonging to said Teresa Vda. de Iglesia, to wit:

(a) Cash money

P 10,000.00

(b) Jewels

5,000.00

(c) One (1) gold "lanseforang"

ring with diamond stone

2,000.00

(d) One (1) gold round ring

with diamond stone

1,000.00

(e) One (1) pair earring with

diamond

500.00

(f) One (1) pocket watch

200.00

(g) One (1) lady wrist watch

100.00

(h) One (1) table clock

16.00

(i) One (1) blanket

60.00

(f) One (1) hammer

5.50

Total

P18,881.50

with a total value of Eighteen Thousand Eight Hundred Eighty One Pesos and Fifty Centavos, more or less to the damage and prejudice of the said amount of P18,881.50, more or less, Philippine currency.

"That on the occasion of the said robbery, the above named accused, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and strike the said Teresa Vda. de Iglesia with a blunt instrument, thereby inflicting upon the latter mortal wounds on her head and on the different parts of her body, which caused the instantaneous death of the said Teresa Vda. de Iglesia.

"That the accused, after killing the victim, burned the house of the latter in order to conceal the effects of the crime of robbery.

"Contrary to law."[5]

Upon arraignment on May 7, 1970, the accused Lupango plead-ed not guilty.[6] After trial on the merits, the trial court[7] rendered its decision, convicting the accused on September 17, 1970, with the following dispositive portion:

"In View of All the Foregoing, the Court finds the accused Alexio Lupango y Ibona guilty beyond reasonable doubt of the crime of robbery with homicide defined and punished under Article 294, par. 1 of the Revised Penal Code, with the aggravating circumstances of nighttime purposely sought to facilitate the commission of the offense and obvious ungratefulness of the accused to the deceased, without any mitigating circumstance to

off-set any of them. In obedience to the mandate of the law the Court hereby sentences the said accused to suffer the extreme penalty of Death, to indemnify the heirs of the deceased Teresa Vda. de Iglesia in the sum of P12,000, without subsidiary imprisonment in case of in-solvency both with the accessories of the law, and to pay the costs.

"Atty. Lualhati Martinez, counsel de oficio is awarded a professional fee of P500 subject to availability of funds and auditing requirements.

"Let a copy of this decision be furnished the Provincial Fiscal of Quezon who is hereby urged to conduct an investigation of the case to determine the possible participation of Domingo Vasquez and Jesus Vasquez in the commission of the crime and to take such legal action as may be warranted under the premises.

"The Clerk of Court is hereby ordered to immediately remand the complete records of this case to the Honorable Supreme Court for automatic review pursuant to Rule 122, Section 9, of the Rules of Court, in the manner and within the period therein prescribed.

"So Ordered." [8]

The evidence of the prosecution discloses that the victim, Teresa Vda. de Iglesia, was burned in a fire that razed her house located at Antonio Regidor Street, Lucban, Quezon, about midnight of January 26, 1970. [9] About three hours later, in the early morning of January 27, 1970, policeman Macario Permalino of the Lucban Police Force, who previously received instruction to look for the accused as the missing helper in the burned house of the victim Teresa Vda. de Iglesia, apprehended the accused Lupango while the latter was at Quezon Avenue, Lucban, waiting for a ride to Manila. The accused at the time he was arrested had with him a buri bag [10] which contained the following articles:

- "(1) One table clock, with trade mark "Atomic"; (Exhibit "D-1")
- (2) One lady's gold wrist watch; (Exhibit "D-2")
- (3) One pocket watch, old model, without glass; (Exhibit "D-3")
- (4) One hammer; (Exhibit "D-4")
- (5) Three (3) screw drivers, big and 2 small; (Exhibit "D-5")
- (6) One 3 cornered file with handle and wooden scabard; (Exhibit "D-6")
- (7) Assorted nails; (Exhibit "D-7")
- (8) Sixteen (16) pieces of electrical accessories, radio tubes, fluorescent lamp starters, wires and socket; (Exhibit "D-8")
- (9) One big red printed towel; (Exhibit "D-9")
- (10) One sheet, Ilocano weave, with lettering "mother" at the middle; (Exhibit "D-10")
- (11) One rust stained white bush coat; (Exhibit "D-12")
- (12) One key; (Exhibit "D-11")
- (13) One key chain with seven (7) keys and a holder in the form of a miniature hat; (Exhibit "D-13")
- (14) One eyelash adjuster or tweezer; (Exhibit "D-14")
- (15) One empty plastic bag; (Exhibit "D-15")" [11]

Accused Lupango signed the lists of the above things re-covered from him. [12]

When policeman Permalino asked the accused Lupango who owned those things he was carrying, the latter said they be-longed to him.[13]

The charred body of the victim Mrs. Teresa Vda. de Iglesia was recovered from the burned house and autopsied by Dra. Reynalda Nantes Azarcon, Health Officer of Lucban, Quezon, in the presence of Dr. Ricardo Ibarrola, N.B.I. Medico Legal Officer, who happened to be there. Dr. Leandro Abustan, Officer-in-Charge, Quezon Province, and Dr. Robert Valero, resident physician of the Quezon Memorial Hospital.[14]

The Autopsy Report[15] on the body of the victim con-tained:

"General Appearance:

"Charred body, composed mostly of soft tissues, visceral organs and some of skeletal parts. Face unrecognizable. Calvarium was missing, exposing the meninges and brain. The remaining visceral organs were liver and uterus. Length of the recovered remains is 39 inches.

"Findings:

"(1) Fracture of the anterior cranial fossa right side.

"(2) Fracture of the zygomatic bone, left.

"(3) Hematomas:

(a) Subcutaneous hematoma of the maxillary region, left

(b) Subdural hematoma at the cerebral hemisphere, right and left cerebellar, both massive and generalized.

"Cause of Death:

"Fracture of skull with massive and generalized subdural hematoma, traumatic in origin."[16]

Both Dra. Azarcon and Dr. Ricardo Ibarrola affirmed that the cause of the death of the victim Teresa Vda. de Iglesia was fracture of skull with massive and generalized hematoma, traumatic in origin which have been caused by a blow with the use of a hard blunt instrument. Both doctors also agree that the deceased was already dead before her body was burned by the fire in the house.[17]

Marcelino Iglesia, son of the victim, identified the listed articles taken from the accused Lupango when the latter was arrested 3 hours after the fire on his way to Manila. All those confiscated articles belonged to the victim and were kept in the burned house, except the assorted nails,[18] the assorted electrical accessories,[19] the key chain and holder,[20] and the eyelash adjuster.[21] The victim was living alone in the burned house at the time of the tragic incident. The accused Lupango was employed by the deceased as helper in the repair of the house since December 1969. The accused was then living in another house very near the burned house.[22]

Prosecution witness Rufino Dealino testified that he went to the vicinity of the house of the victim when it was burning on the night of January 26, 1970, and from a distance of about 9 meters he saw the accused Lupango, wearing a red T-shirt, drop to the ground from the eastern portion of the second floor of the then burning house. Lupango went to a small house near the burning building, carrying with him two bags, one made of pandan and the other of plastic.[23]

When the accused Lupango was apprehended in the early morning of January 27, 1970 and brought to the Municipal Building of Lucban for investigation, he willingly signed a written statement[24] dated January 28, 1970. The accused admitted that he was then working for the victim on various repairs of the house that was burned. He was able to stay, dine, and sleep in that house of the victim. He stayed in a small house near the

residence of the victim. On the night of January 26, 1970, the accused was awakened and he saw the house of the victim on fire. He entered the house through a hole but he could not save the victim from the fire. He admitted having taken the articles he was carrying at the time of his apprehension from the burning house because they would be burned anyway. He was on his way to Manila when he was arrested because he wanted to deliver those articles to the daughter of the victim residing in Manila.[25]

During the arraignment of the accused in the second stage of the preliminary investigation before the Municipal Judge of Lucban, Quezon, on February 9, 1970, he voluntarily admitted liability for the criminal charge against him.[26]

Municipal Judge Ruperto Abcede of Lucban, Quezon, declared that the accused Lupango voluntarily admitted that the latter committed the crime imputed to him. The accused was asked by the Municipal Judge if he wanted the service of counsel during the preliminary investigation and the accused answered in the negative.[27]

The defense is predicated on the lone testimony of the accused Alexio Lupango. He repudiated the contents of his sworn statement, Exhibit "B" and the confession of guilt he made before the Municipal Judge of Lucban during the second stage of the preliminary investigation of the case on February 9, 1970.[28] Accused Lupango disowned both acts as not voluntary on his part and induced by maltreatment and by threats allegedly done by the Chief of Police of Lucban, Quezon, and five of his policemen. He narrated that on the night of February 8, 1970, five police-men took him to the outskirts of the town of Lucban where they took turns in beating the accused in all parts of his body, except his head, with guns and clubs. Accused was threatened that if he would not admit the charge he would be killed by the policemen.[29]

Accused Lupango admitted that he worked for the victim as overseer in carpentry work from 1968 to 1970. He even took care of the victim when she was sick. He stayed in a house given to him by Mrs. Teresa Vda. de Iglesia about 12 meters from her house. Mrs. Teresa Vda. de Iglesia was then alone in her house.[30] Mrs. de Iglesia was very kind to the accused. Some of those who frequented her house included Vicente Engracia, Domingo Vasquez, and her children.[31] On January 26, 1970, Lupango stayed with Mrs. Teresa Vda. de Iglesia until after they had eaten dinner at about 6:30 p.m., when he went to his house. About midnight, he heard screams of people and when he looked out of the window of his house he saw the house of the victim on fire. He went inside the house of the victim to save her. When he could not locate her he took her blanket and watch from the cabinet in the sala. He stayed in the burning house for about 10 minutes and then he proceeded to his house. He took the personal belongings of the victim with the intention to bring them to her daughter in Manila.[32] He admitted that early the next morning he was on his way to Manila and when he was apprehended the personal belongings found with him as listed in Exhibit "C" were really in his possession. He denied that he killed and robbed the victim.[33]

Lupango's wife and four children used to live with him at Lucban, Quezon, in the house provided for them by the victim. About 15 days before the incident of January 26, 1970, his family went to Manila to reside at Roxas District in Quezon City, bringing with them all their belongings.[34]

The master key of the house found in the possession of the accused Lupango when he was arrested was allegedly given to him by Mrs. Teresa Vda. de Iglesia on January 22, 1970, for him to repair the door leading to the sala from downstairs.[35] Lupango knew that there were three children of the victim residing at Lucban, Quezon, but he decided to deliver the things he took from the burning house to the daughter of the victim in Manila. He did not tell the other children of the victim about those things he took although he saw them during the fire.[36] Neither did the accused tell the children of the victim that he was leaving for Manila immediately after the fire.[37]

The crucial issue to determine in this case is whether or not the accused Lupango voluntarily executed his sworn statement, Exhibit "B", and freely admitted his guilt and culpability of the crime charged against him during the

second stage of the preliminary investigation before the Municipal Judge of Lucban, Quezon on February 9, 1970, the proceedings of which were recorded in Exhibit "A".[38] The unsupported allegation of the accused that he was subjected to torture and threats by the Chief of Police of Lucban and five policemen to force him to admit and confess to the crime charged is very difficult to accept as credible. The alleged maltreatment was supposed to have been done on the night of February 8, 1970, and according to the accused it was severely done with the use of guns and clubs by five policemen. Yet, the very next day, the accused confessed to the crime before the Municipal Judge of Lucban and signed his recorded admission. The accused then did not show any physical signs of injury arising from the alleged maltreatment. During the said pre-liminary investigation, the accused did not inform the Municipal Judge of the alleged maltreatment and threat supposedly done by the policemen. Never was there any evidence presented to show physical injuries suffered by the accused arising from the supposed maltreatment. Both the Municipal Judge and the Chief of Police of Lucban testified as to the regularity of the proceedings during the preliminary investigation and that no maltreatment nor threats were imposed on the accused to compel him to admit his guilt.[39] There is no showing that both witnesses had any evil motive, bias, or reason to testify falsely against the accused. Besides, both these witnesses were in the performance of their duties on those matters that they testified to, and the presumption of regularity in the performance of their duties stands strongly in their favor, thereby enhancing their credibility as witnesses.

We find it difficult to disregard the extrajudicial confession of the accused[40] just because the accused repudiated it during the trial, upon confrontation with overwhelming evidence that said confession was voluntarily done, in the absence of sufficient convincing proof to the contrary.[41] The credibility of the accused on the alleged maltreatment and threats stands nil and this Court has no other recourse but to consider said defense as completely bereft of basis and truth.

The corpus delicti of the offense charged is sufficiently established. The medical report and the testimonies of Drs. Reynalda Azarcon and Ricardo Ibarrola more than sufficiently establish that the victim died not because of the fire but because of the fracture of her skull which could have been caused by a hard blunt instrument, and she was already dead before she was burned in the fire. The accused admitted his presence in the house of the victim during the fire and he admitted, taking personal belongings of the victim which were taken from him after his apprehension.[42] The accused had access to the house of the victim because he admitted having in his possession the master key to the house even before the incident of January 26, 1970.

The lame explanation of the accused that during the height of the fire he took personal belongings of the victim to save them from destruction and to deliver them to the daughter of the victim residing in Manila deserves insignificant consideration. If it were true that the accused entered the house of the victim during the fire to save her and he stayed within the house for only ten minutes, he would not have had sufficient time to think of saving those minor personal belongings of the victim just for the purpose of delivering them to the victim's daughter in Manila. Besides, his natural reaction would have been to give those allegedly saved personal belongings to the children of the victim residing in Lucban, or at least notify them of such fact. He admittedly had the opportunity to do so, and yet he did not. Instead, he was trying to escape to Manila with those personal belongings taken from the victim concealed with him when he was apprehended.

It is very clear that on February 9, 1970, Municipal Judge Ruperto Abcede of Lucban, Quezon, conducted a second stage of the preliminary investigation. The accused answered in the affirmative when asked if he wanted the preliminary investigation to be conducted. The municipal judge asked the accused if he wished to be assisted by counsel and the accused answered in the negative. In the presence of many persons in court, the municipal judge directed the clerk-stenographer to translate the complaint to the accused in Tagalog. After the accused was informed of the nature of the charge against him, he was asked if he was admitting the same and the accused

replied in the affirmative.[43]

The whole proceedings was recorded (Exhibit "A") and herein reproduced: -

"ARRAIGNMENT

"Hukom - Kayo ay si Alexio Lupango y Ebona alias Alex ang taong nasasakdal sa kayong ito?

Alexio Lupango - Opo.

"Hukom - Tumindig kayo at babasahin sa inyo ng clerk ang demanda na iniharap laban sa inyo na isasalin sa wikang Tagalog na sa pagkaalam ko ay inyong maiintindihan upang malaman ninyo ang uri ng kasalanan o krimen na ipinararatang sa inyo.

Alexio Lupangco - Opo. (Tumindig ang acusado at isinalin ng Clerk of Court ang demanda sa wikang Tagalog sa nasasakdal at nadinig ng nasasakdal ang salin ng Clerk of Court).

"Hukom - Naiintindihan ba ninyo na sa sakdal na isi-nalin sa inyo sa wikang Tagalog ng Clerk of Court na kayo ay isinasakdal sa kasalanang pagnanakaw at pagpatay sa yumaong Teresa Vda. de Iglesia?

Alexio Lupango - Opo.

"Hukom - Inaamin ba ninyo ang kasalanang ipinarara-tang sa inyo sa naulit na demanda na ang kahulugan ay, tinatanggap ba ninyo na totoo ang ipinararatang laban sa inyo na pagnana-kaw at pagpatay sa nasawing Teresa Vda. de Iglesia, at nalaan naman ninyong tanggapin ang kaparusahang itinatadhana ng batas sa gayong kasalanan?

Alexio Lupango - Opo.

"Hukom - Meron ba sa inyong namilit, o nanakot, o nang-ulok upang kayo ay magbigay ng inyong isinagot dito o nang inyong pag-amin sa kasalanang ipinararatang sa inyo?

Alexio Lupango - Kusang loob pong inaamin ang kasa-lanan ko at walang pumilit, nanakot o umulok sa akin na aminin ko ang kasalan ko.

"Hukom - Sinusumpa ba ninyo na pawang katutuhanan ang inyong mga isinagot sa lahat ng tanong ng Hukom sa actong ito?

Alexia Lupango - Opo.

"Hukom - Laan naman kayong lumagda sa paahan nito bilang patotoo sa inyong mga katugonan sa mga tanong ng Hukom?

Alexio Lupango - Opo.

(LAGDA) ALEXIO LUPANGO y IBONA

"PINANUMPAAN at NILAGDAAN sa harap ko ngayong ika--9 ng Febrero, 1970 dito sa Lucban, Quezon.

(LAGDA) RUPERTO ABCEDE

Hukom Municipal"[44]

It is likewise crystal clear, that the aforementioned admission of guilt was done voluntarily, sans any pretended and alleged maltreatment before a Municipal Judge to whom the accused never com-plained of any force nor threats employed to exact said admission.[45]

There is no doubt about the result of the autopsy report that the victim did not die from burning but from fracture

of the skull caused by a blow of a hard, blunt instrument.[46]

The victim was killed before the fire. A very strong circumstantial evidence exists by virtue of the admission of the appellant that he entered the building during the fire, that he or one of his companions hit the victim on the occasion of the robbery.

The statement Exhibit "B",[47] executed by appellant on January 28, 1970, speaks of so many details in the employer-employee relation-ship between the victim and the appellant that could not have been known to the police investigators during that time, thus enhancing the voluntariness in its execution and the veracity of its contents. Appellant stated that he and Domingo Vasquez were together on January 26, 1970, date of the crime. They were painting the roof of the house of the victim. Appellant admitted he entered the house of the victim during the fire on the excuse that he wanted to save the old woman. He admitted having taken the things he had with him when he was arrested because anyway they would be burned. Even the master key was taken by him. The hammer taken from appellant when he was arrested was the property of the victim.

Appellant admitted in Exhibit "B",[48] his sworn statement taken on January 28, 1970, two days after the incident of January 26, 1970, that he entered the house of the victim during the fire, thus:

xxx xxx xxx

"25. T - Noong bandang alas doce (12:00 p.m.) ano ang namasdan mo sa bahay ng Teresa noong Enero 26, 1970?

S - Nakita ko na nag-apoy na ang kwarto ng Teresa at kinalalagyan ng Poon.

"26. T - Nang makita mong nagaapoy ang bahay ng Teresa ano ang ginawa mo?

S - Pumunta po ako sa bahay nila (Teresa Iglesia).

"27. T - Saan ka dumaan?

S - Doon po sa kobeta ako dumaan sa pagpasok ng bahay, sa butas ng kobeta at ako ay nagtuloy sa kusina, tuloy ako sa komidor at tinawag ko ang Lola Teresa, may sumagot po na aso, pagkatapos ay malaki na ang apoy ay kinuha ko ang table clock sa salas sa mesa, yoon pocket watch at wrist watch sa kabinet sa komidor, yoon komot sa kabinet din, ang twalya ay sa bintana ng komidor nakasabit sa bandang kusina.

"28. T - Bakit mo namn kinuha ang mga iyan?

S - Kinuha ko dahil masusunog din."[49]

There is no error in the observation of the trial court that certain admissions made by the accused seriously strained "his pro-testation of innocence". Fifteen days before the fire, at about 3:00 or 4:00 a.m. the family of the accused left their house in Lucban for Manila bringing practically all their belongings. All the clothing of the accused was brought to Manila. The master key of the doors in the house of the victim was in the possession of the accused until he was apprehended. When the accused left his house immediately after the fire, to go to Manila, he never bade farewell to the six other persons who were staying with him in the same house. By letter dated February 20, 1970[50] the accused requested Marcelino Iglesia, son of victim, to visit him in the provincial jail. When Marcelino Iglesia visited him, the accused told Marcelino that during the fire, two persons, Domingo Vasquez and Jesus Vasquez, were inside the burning house. In the letter[51] written by the accused to his wife while he was in jail, he re-requested his wife to contact Domingo Vasquez to get money that could be utilized by the accused for his expenses in the trial of the case.

On the consideration of the two aggravating circumstances of nighttime and obvious ungratefulness cited against

the accused, We find no error because it was proven that the offense was committed at about midnight, the darkness of which was purposely sought to facilitate both the commission of the crime and the criminal's escape from its scene. The ungratefulness of the accused to the victim is very obvious. He admitted he was living in the house of the victim. He was employed by the victim as overseer and in charge of carpentry work. He had free access to the house of the victim who was very kind to him, his family, and who helped him solve his problems. He paid all the kindness shown him by the victim by committing the most heinous of crimes against his benefactor. No mitigating circumstances were alleged nor proven.

The voluntary confession of the accused, the existence of proven *corpus delicti*, the unsuccessfully assailed credibility of the witnesses for the prosecution, point unerringly to the very manifest guilt of the accused beyond moral certainty.

WHEREFORE, the decision of conviction of the accused dated September 17, 1970, being in accordance with law and evidence, is hereby **AFFIRMED** in toto. However, for lack of the necessary number of votes for the imposition of the death penalty, the accused is hereby sentenced to suffer the penalty of reclusion perpetua, with costs.

SO ORDERED.

Teehankee, Makasiar, Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., concur in the result.

Barredo, J., votes for reclusion perpetua only.

Aquino, J., see concurring and dissenting opinion.

[1] Criminal Case No. 757 of the Municipal Court of Lucban, Quezon.

[2] pp. 1-2, Original Record, Criminal Case CCC-30-Quezon (70), Circuit Criminal Court of Quezon, Lucena City.

[3] p. 25, Original Record, Id.

[4] p. 31, Id.

[5] pp. 39-40, Id.

[6] pp. 55, Id.

[7] Circuit Criminal Court of Quezon City, IX, Lucena City, Judge Conrado M. Molina.

[8] pp. 145-147, Original Record, CCC-IX-30-Quezon (70)

[9] pp. 4-6, t.s.n., July 15, 1970, Exh. "H", p. 7, Id.

[10] Exhibit "B".

[11] pp. 10-16, t.s.n., June 23, 1970.

[12] Exhibit "C".

[13] p. 17, t.s.n., June 23, 1970.

[14] p. 26, t.s.n., June 24, 1970.

[15] Exhibit "I".

- [16] Exh. "I", p. 6, Original Record, CCC-IX-30-Quezon (70).
- [17] pp. 24-33, t.s.n., June 24, 1970; pp. 2-9, t.s.n., July 24, 1970.
- [18] Exhibit "D-7".
- [19] Exhibit "D-8".
- [20] Exhibit "D-13".
- [21] Exhibit "D-14".
- [22] pp. 8-23, t.s.n., June 24, 1970.
- [23] pp. 3-14, t.s.n., July 15, 1970.
- [24] Exhibit "B".
- [25] pp. 9-13, Original Record, CCC-IX-30, Quezon (70).
- [26] Exhibit "A", p. 25, Original Record, CCC-IX-30-Quezon (70).
- [27] pp. 3-9, t.s.n., June 23, 1970.
- [28] Exhibit "A".
- [29] pp. 12-15, 24-29, t.s.n., July 31, 1970.
- [30] pp. 3-4, t.s.n., July 31, 1970.
- [31] p. 4, Id.
- [32] pp. 7-9, Id.
- [33] pp. 10-12, Id.
- [34] pp. 16-17, Id.
- [35] pp. 18-19, Id.
- [36] pp. 19-20, Id.
- [37] p. 21, Id.
- [38] p. 25, Original Record, CCC-IX-30-Quezon (70).
- [39] pp. 3-9, t.s.n., June 23, 1970; pp. 2-23, t.s.n., August 25, 1970.
- [40] Exhibit "A".
- [41] People vs. Dorado, 30 SCRA 53, 57-58.
- [42] pp. 8-12, t.s.n., July 31, 1970.
- [43] p. 4, Decision, CCC-IX-30-Quezon.
- [44] p. 25, Original Record CCC IX-30-Quezon.
- [45] pp. 14-15, Decision, CCC-IX-30-Quezon.
- [46] p. 19, Decision, CCC-IX-30-Quezon

[47] p. 9, Original Record, CCC-IX-30-Quezon.

[48] p. 9, Original Record.

[49] p. 10, Original Record.

[50] Exhibit "L".

[51] Exhibit "K".

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CONCURRING AND DISSENTING OPINION

AQUINO, J.:

I concur in the opinion that the accused committed robbery and that the objects taken by him had a value of P18,881.50 as detailed in the criminal complaint and information.

I dissent from the opinion that he committed homicide on the occasion of the robbery. The complicity of the accused in the killing was not proven beyond reasonable doubt.

The accused in his extrajudicial confession admitted the robbery but not the killing and the burning of the house (No. 84, Exh. B).

The victim, Teresa Vda. de Iglesia, died of fracture of the skull with massive and generalized subdural hematoma (Exh. I). No eyewitness testified that the accused inflicted the injury which caused the victim's death. Other persons, who were not charged, were involved in the killing.

It is true that the accused pleaded guilty in the municipal court to the charge of robbery with homicide. But he was not assisted by counsel at the arraignment. In the Court of First Instance, he pleaded not guilty.

For the robbery in an inhabited house, the crime committed by the accused, aggravated by nocturnity and obvious ungratefulness, the accused should be sentenced to an indeterminate penalty of twelve years of prison mayor as minimum to twenty years of reclusion temporal as maximum in accordance with the first paragraph of article 299 of the Revised Penal Code.

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