

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUCIO AGUILAR, AND TOMAS MENDEZ, ALIAS BILLY BILLINGER, DEFENDANTS-APPELLANTS.

G.R. No. L-30932. January 29, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The information under which the above-named defendants were accused reads as follows:

"The undersigned Provincial Fiscal accuses Lucio Aguilar, Tomas Mendez alias Billy Bilinger, and Jesus Dugang alias Jessie of the crime of attempted robbery in band with homicide, committed as follows:

That on or about the 17th day of July, 1966, in the Municipality of Culaba, Subprovince of Biliran, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Estanislao Delda, Alfredo Veloso and Vedasto Borromeo, who are still at large, and mutually helping one another, all armed with unlicensed firearms, with deliberate intent to gain, did then and there wilfully, unlawfully and feloniously, by means of force and violence against persons, demand money from one Luis Gandalla; thus, the accused commenced the commission of robbery directly by overt acts, but did not perform all the acts of execution which would have produced the crime of robbery, by reason of some cause or accident other than their own spontaneous desistance; that by reason or on the occasion of the attempted robbery, the above-named accused, conspiring and confederating together with Estanislao Delda, Alfredo Veloso and Vedasto Borromeo, who are still at large, and mutually helping one another, all armed with unlicensed firearms, with deliberate intent to kill, did, then and there wilfully, unlawfully and feloniously attack, assault and shoot the said Luis Gandalla with the firearms which the accused have provided themselves for the purpose, there-by inflicting upon the offended party the following wounds, to wit:

"Wound, gunshot, chest, point of entrance, left parasternal line, 3rd, ICS 1/2" diameter, and point of exit, left anterior axillary line, 3rd, ICS.

Wound, gunshot, right abdomen point of entrance near navel, 1/2" in diameter, penetrating, perforating cocon (5) small intestines (3), point of exit right buttocks.

Wound gunshot right arm, point of entrance anterior portion middle 3rd., 1/2" in diameter and point to exit, posterior aspect 1-1/2" in diameter with complete fracture of the humeros.

Wound, gunshot, left fore-arm, 1/2" in diameter, point of entrance, postero-lateral aspect middle 3rd., and point of exit postero-medial aspect upper 3rd., 3/4 in diameter."

which wounds caused the instantaneous death of Luis Gandalla.

That the crime was committed with the aggravating circumstances of abuse of superior strength; that the act was committed with insult or utter disregard of the respect due the offended party on account of the age of the victim, he, being 70 years old at the time of his death; and that the crime was committed in the dwelling of the offended party and during nighttime. The accused Lucio Aguilar is a recidivist having been charged and

convicted of the crime of robbery before the Court of First Instance of Borongan, Samar, in the year 1960 and was only released from confinement on December 17, 1965. The accused Tomas Mendez is also a recidivist having been convicted by final judgment of the crime of robbery before the Court of First Instance of Cebu in the year 1963 and also sentenced to an imprisonment of one (1) year, eight (8) months and three (3) days.

Contrary to Article 297 of the Revised Penal Code."

Upon arraignment the said defendants pleaded guilty and were sentenced to the penalty of death. Their co-accused, Jesus Dugang, pleaded not guilty, and after trial was sentenced in a separate decision to a term of imprisonment.

The case of Lucio Aguilar and Tomas Mendez is before this Court for automatic review by reason of the penalty imposed. In the brief filed in their behalf by Attorney William H. Quasha, who had been appointed counsel de officio, he assigned only one error, as follows:

"The lower court erred in not taking such evidence as were available and necessary in support of the material allegations of the information, including the aggravating circumstances there-in enumerated for the purpose of establishing beyond reasonable doubt the guilt of the accused and determining the nature and extent of the penalty to be imposed upon them, considering that the accused were charged with a capital offense."

The Solicitor General, instead of filing a brief in reply, submitted manifestation and motion joining with counsel for the defendants in his prayer that the case be remanded to the court a quo for further proceedings - "specifically, to have the accused arraigned once more, with assistance of counsel, and with full information regarding the nature and gravity of the offense charged, the penalty that might be imposed upon them should they plead guilty; and of all other rights that they might be entitled to under the law."

There is no record of the proceedings had in the trial court, other than what is stated in the decision itself, concerning the arraignment and plea of the herein accused, no stenographic notes having been taken thereof. The decision shows, however, that when the said accused appeared for arraignment they manifested that they had no lawyer, whereupon the court appointed one to represent them de officio; that after conferring with his clients, the lawyer manifested that they were ready to be arraigned; that the information was read to them in the local dialect, and they then spontaneously pleaded guilty; and that the court thereupon proceeded to pronounce sentence, taking into consideration their plea as lone mitigating circumstance and appreciating against them all the aggravating circumstances alleged in the information, thus:

"In meting out stiff penalties to the accused, Lucio Aguilar and Tomas Mendez, alias Billy Billinger, the court takes into consideration the previous conviction of the accused; their incorrigibilities and notoriousness in that whenever they gained their freedom and liberties they have no more compunctions and second thought to commit a brutal crime; that the killing of the deceased, the late Luis Gandalla who was then 70 years old by the accused was characterized with murder in that the late Luis Gandalla was made a target practice for being shot four (4) times; the multiple aggravating circumstances, and under the principle that, 'great crime deserves greater penalty'.

Wherefore, the court finds the accused, Lucio Aguilar and Tomas Mendez, alias Billy Billinger guilty beyond reasonable doubt of the crime of attempted robbery in band with homicide with the attendant aggravating circumstances of: with insult or utter disregard of the respect due the offended party on account of the old age of the victim, he being already 70 years old at the time he was shot; that the crime was perpetrated in the dwelling of the offended party; that nighttime was sought by the accused in the commission of the crime; that the accused, Lucio Aguilar, is a recidivist, having been charged and convicted of the crime of robbery before the Court of First Instance of Borongan, Samar, in the year 1960, and was only released from confinement on Dec. 17, 1965, while the accused Tomas Mendez alias Billy Billinger is also a recidivist, having been

con-victed by final judgment of the crime of robbery before the court in Cebu City in the year 1963, and was sentenced to an imprisonment of one (1) year, eight (8) months and three (3) days; hereby sentences the accused, Lucio Aguilar and Tomas Mendez, alias Billy Billinger, to suffer the maximum penalty provided for in the Revised Penal Code which is DEATH, to indemnify the heirs of Luis Gandalla the sum of P6,000.00, jointly and severally, and to pay the costs."

In *U.S. vs. Agcaoili*, 31 Phil. 92, where the accused was convicted upon his plea of guilty without any evidence taken, we said:

"We are inclined to think that while, he undoubtedly intended on that occasion, as also when he entered his plea of guilty, to confess and admit that he took the lives of the persons mentioned in the information, he did not intend to admit that he committed the offense with the aggravating circumstances mentioned therein. x x x

While it is true that a judgment convicting and sentencing a defendant may lawfully be pronounced upon a solemn plea of 'guilty' in open Court and on arraignment entered by the accused with full knowledge of the meaning and effect of his plea, nevertheless, where the complaint charges a capital offense, the possibility of misunderstanding or mistake in so grave a matter justifies and in most instances requires the taking of such available evidence in support of the allegations of the information as the trial judge may deem necessary to remove all reasonable possibility that the accused might have entered his plea of 'guilty' improvidently, or without a clear and precise understanding of its meaning and effect."

In *People vs. Andrecito Bulalake et al.*, G.R. No. L-14190, December 28, 1959, this Court made the following observations:

"x x x while it appears that the accused, with the assistance of his counsel de oficio, pleaded guilty to the information, voluntarily and spontaneously, the records do not disclose that its contents enumerating several aggravating circumstances, were read and translated or clearly explained to him. Neither does it appear that he fully and completely understood the precise nature of the charges preferred against him and the consequences of his plea. No inquiry whatsoever was made by the trial judge in this respect notwithstanding the fact that the accused was assisted only by an attorney de oficio whose appointment by the court for this purpose might have been extended only on the date of the arraignment, x x x".

In *People vs. Apduhan*, G.R. No. L-19491, August 30, 1968, this Court, speaking through Justice Fred Ruiz Castro, cautioned trial judges "to be extra solicitous in seeing to it that when an accused pleads guilty he understands fully the meaning of his plea and the import of an inevitable conviction." A similar advertence was made through Chief Justice Roberto Concepcion, in *People vs. Solacito*, G.R. No. L-29209, August 25, 1969.

The present case comes within the purview of our consistent ruling in those cases.

Wherefore, pursuant to the prayer in the brief of defense counsel de oficio, concurred in by the Solicitor General, the judgment appealed from is set aside and the case is remanded to the Court a quo for further proceedings in conformity with the views expressed herein.

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

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