

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO VERANO, JR., ALIAS JUAN AND SILVESTRE VERANO, DEFENDANT-APPEILANT.

G.R. No. L-45589. July 28, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

In Criminal Case No. SM-755 of the then Court of First Instance of Bulacan, Branch V (now the Regional Trial Court), Pedro Verano, Jr. y Marasarti, alias Juan and Silvestre Verano, was accused of Robbery with Homicide said to have been committed as follows:[1]

That on or about the 22[nd] day of August, 1975, in the municipality of San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Pedro Verano, Jr. y Marasarti @ Juan and Silvestre Verano, with intent of gain, did then and there wilfully, unlawfully and feloniously, by means of force, violence and intimidation, take, rob and carry away with him the following, to wit:

One (1) transistor radio P 90.00
One (1) umbrella 50.00
One (1) pair earring with pearls 1,000.00
One (1) gold necklace 50.00
One (1) white towel 5.00
Cash money 23.00
One (1) pair of earring 100.00
One (1) gold ring 100.00
One (1) umbrella
50.00
Cash money 30.00

T O T A L

P1,498.00

belonging to Manuela J. Ponce Vda. de Trinidad and Remedios Trinidad y Ponce, respectively, to the damage and prejudice of the said owners in the said sum of P1,498.00, and that during the commission of this crime and on the

occasion thereof, the said accused with intent to kill one Remedios Trinidad y Ponce, and with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and hit with a piece of bamboo and stab with a knife he was then provided the said Remedios Trinidad y Ponce, thereby inflicting serious physical injuries at her back, which immediately and directly caused the death of the said Remedios Trinidad y Ponce.

Contrary to law.

Arraigned on February 10, 1976 with the assistance of his counsel de oficio, the accused pleaded "Not Guilty." On January 27, 1977, while the prosecution was in the course of presenting its evidence, the accused through his counsel moved to withdraw his previous plea of "Not Guilty" for a plea of "Guilty," at the same time invoking the benefit of Presidential Decree (P.D. for short) No. 603.

Thereafter he took the witness stand and testified among others, on "his voluntariness in entering the plea of guilty as well as the absence of any restraint on him during the commission of the offense charged,"[2] the fact of its commission, and that he understood the nature and gravity of the offense for which he was charged and the consequences of his plea of guilty.

Based on the oral and documentary evidence adduced, in addition to the accused's plea of guilty, the court a quo found him to be guilty beyond reasonable doubt of the offense charged in its decision[3] dated February 8, 1977, the dispositive part of which reads:

WHEREFORE, finding accused guilty beyond reasonable doubt of the crime of robbery with homicide, the Court hereby sentences the accused to LIFE IMPRISONMENT or RECLUSION PERPETUA; to suffer the accessory penalties; to indemnify the heirs of Remedios Trinidad y Ponce in the amount of P12,000.00 for the latter's death; to indemnify the heirs of said victim in the amount of P1,498.00 for the properties taken by way of damage; and to pay the costs.

Being a detention prisoner, accused is entitled to the benefits of Article 29 of the Revised Penal Code, as amended.

SO ORDERED.

In this appeal before us the accused assigned two alleged errors of the trial court, to wit:[4]

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE DEFENDANT-APPELLANT PEDRO VERANO, JR. OF THE CRIME OF ROBBERY WITH HOMICIDE ON THE STRENGTH OF HIS PLEA OF GUILTY.

II

THE COURT A QUO GRAVELY ERRED IN NOT GIVING HIM THE BENEFIT OF P.D. 603 ART. 192.

We find no merit in this appeal.

The records disclose that although the accused pleaded guilty, the trial court took pains to adhere to the often repeated admonition of this Court to trial judges to eschew accepting an accused's plea of guilty unless the accused understands fully the meaning of his plea and the import of an inevitable conviction,[5] to be extra solicitous in accepting it,[6] to assure itself that the accused understands his act, and always to satisfy itself that there is full realization of the fate that awaits the person on the dock.[7] In addition, the trial judge placed the accused on the witness stand and asked him the following questions:[8]

- 1) whether or not he was aware that he entered a plea of guilty to the charge of robbery with homicide?
- 2) whether or not he had conferred with his lawyer?
- 3) whether or not his lawyer informed him of the legal consequence of his plea of guilty?
- 4) whether or not his plea was voluntary?
- 5) whether or not he was influenced by outside factors or persons into entering his plea of guilty?

Except for question no. 5 to which he answered "No," all the rest were answered in the affirmative.

In *People v. Castanio*,^[9] we held that:

The norm that should be followed where a plea of guilty is entered by the defendant, especially in cases where the capital penalty may be imposed, is that the court should be sure that the defendant fully understood the nature of the charges preferred against him and the character of the punishment provided by law before it is imposed. While there is no law requiring it, yet where the penalty may be death, it is advisable for the court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant. The latest decision on this point is in the case of *People vs. Remigio Estebia* G.R. No. L-26868, July 29, 1971, where this Court speaking through Mr. Justice Enrique M. Fernando, stated: "... inasmuch as judgments of conviction imposing the extreme penalty of death are subject to review by the Supreme Court as law and justice shall dictate, whether the defendant appeals or not, which automatic review neither the Court nor the accused could waive or evade, it would seem that the proper and prudent course to follow where the accused enters a plea of guilty to capital offenses especially where he is an ignorant person with little or no education, is to take testimony not only to satisfy the trial judge but to aid the Supreme Court in determining whether accused really and truly understood and comprehended the meaning, full significance and consequence of his plea."

In the very recent case of *People vs. Camay*,^[10] we took the occasion to outline the procedure we enjoined to be followed strictly if the accused, with the assistance of counsel, voluntarily pleads guilty to a capital offense, as follows:

- The court must conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea;
- The court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and
- The court must ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires.

Likewise, in *Camay*, we reminded: "We had several occasions to issue the caveat that even if the trial court is satisfied that the plea of guilty was entered with full knowledge of its meaning and consequences, the trial court must still require the introduction of evidence for the purpose of establishing the guilt and the degree of culpability of the defendant. This is the proper norm to be followed not only to satisfy the trial judge but also to aid the Court in determining whether or not the accused really and truly comprehended the meaning, full significance, and consequence of his plea."

Earlier, in *People vs. Onavia*,^[11] we stated that "[A]lthough it did not explain to the accused the full import of his plea of guilty, neither did it automatically accept that plea nor did it render judgment based exclusively thereon. It accepted evidence for the purpose of determining the accused's guilt and the degree of his culpability to the end that such evidence would dispel all doubt that the accused misunderstood the nature and effects of his plea of

guilty. Where the trial court received evidence on the crime, there is no improvident acceptance of a plea of guilty. The defense contention, therefore, that the plea of guilty, having been improvidently accepted, the case should be remanded to the trial court, is bereft of basis. The validity of the judgment under review is unassailable."

In an earlier case, we declared that the plea of guilty is not improvidently made by the accused provided they were apprised by the trial court of the consequences of their plea and that their counsel assisted them when they pleaded and concurred with the trial court's conduct of the trial.[12]

Considering, therefore, the circumstances obtaining in the case at bar, we affirm that there is no improvident acceptance of the plea of guilty by the trial court.

Moreover, the defense counsel, having lent his approval to the proceedings in the trial court by failing to seasonably challenge what he now alleges to be irregular and improvident, is not allowed to raise such issue before this Court, for it is a settled rule that issues not raised in the trial court cannot be raised for the first time on appeal.[13]

The issue raised in the second assignment of error has already been passed upon in *People vs. Casiguran*. [14] We explained:

Originally, the Child and Youth Welfare Code, which took effect six months after December 10, 1974 or on June 8, 1975 and which repealed article 80 of the Revised Penal Code, considered as a youthful offender a person over nine years but under twenty-one years of age at the time of the commission of the offense (Art. 189).

Presidential Decree No. 1179, which took effect on August 15, 1977, lowered the age limit to eighteen years (the same age limit provided for in article 80 of the Revised Penal Code before it was amended by Republic Act No. 47).

Article 192 of the Child and Youth Welfare Code (before it was amended) provides that "if after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him, the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such minor to the custody or care of the Department of Social Welfare, or to any training institution operated by the government, or duly licensed agencies or any other responsible person, until he shall have reached twenty-one years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare or the agency or responsible individual under whose care he has been committed."

Under Presidential Decrees Nos. 1179 and 1210, the youthful offender should apply for a suspended sentence.

The purpose of articles 189 and 192 of the Child and Youth Welfare Code is the same as that of article 80 and that is to avoid a situation where juvenile offenders would commingle with ordinary criminals in prison. So, instead of imposing a condemnatory sentence on them, they are confined in a beneficent institution for their care, correction and education (*People vs. Estefa*, 86 Phil. 104, 110).

Article 192 should be interpreted in the same manner as article 80. Under the original provisions of article 80 (before it was amended by Republic Act No. 47 which reduced the age of eighteen years to sixteen years), it was held that if at the time the crime was committed the accused was below eighteen years but at the time of the trial or conviction he was no longer a minor, he is not entitled anymore to a suspended sentence because he is not a juvenile offender but already an adult. The reason for the suspended sentence does not apply to him (*People vs.*

Celespara, 82 Phil. 399; People vs. Nuñez, 85 Phil. 448; People vs. Estefa, supra; People vs. Lingcuan, 93 Phil. 9; People vs. Doria, L-26189 and two other cases, January 31, 1974, 55 SCRA 435, 450; People vs. Pedro, L-18997, January 31, 1966, 16 SCRA 57, 67).

Accordingly, we affirm the finding of the trial court that the accused is not entitled to a suspension of his sentence because at the time of his conviction he was already over 21 years and therefore no longer a youthful offender as defined in art. 189 of P.D. 603. He should, however, be credited with the privileged mitigating circumstance of minority under the same decree as it has been established that at the time of the commission of the offense he was still a minor. His plea of guilty would not however mitigate his culpability in view of our holding in a number of decisions that "if plea is made after arraignment and after trial has begun, the accused shall not be entitled to have such plea considered as mitigating circumstance." [15] The penalty actually imposed, not being death, he should be entitled to the benefit of the Indeterminate Sentence law. [16]

The imposable penalty for the offense as provided in Art. 248 of the Revised Penal Code is reclusion perpetua. However, with the abolition of the capital punishment in the 1987 Constitution, the penalty for the complex crime of Robbery with Homicide is now reclusion temporal in its maximum period to reclusion perpetua. The penalty is imposable in its minimum period, or from seventeen (17) years, four (4) months, and one (1) day to eighteen (18) years and eight (8) months.

Applying the Indeterminate Sentence Law, the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense is prision mayor in its maximum period to reclusion temporal in its medium period, or, from ten (10) years, and one (1) day to seventeen (17) years and four (4) months.

WHEREFORE, the appealed judgment is hereby MODIFIED in that appellant, Pedro Verano, shall suffer an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months, one (1) day of reclusion temporal, as maximum, and shall indemnify the heirs of the victim, Remedios Trinidad y Ponce, in the amount of THIRTY THOUSAND (P30,000.00) PESOS. The rest of the judgment is AFFIRMED. With costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Padilla, JJ., concur.

[1] Information, Original Record, 21-22.

[2] Order, 27 January 1977, Original Record, 105-106.

[3] Penned by the Hon. J.M. Elbinias, presiding judge, Regional Trial Court of Bulacan, Branch V, Original Record, 120-123.

[4] Accused-Appellant's Brief, Rollo, 26.

[5] People v. Samiano, G.R. No. 52832, May 14, 1985, 136 SCRA 426.

[6] People v. Gonzaga, G.R. No. L-48373, January 30, 1984, 127 SCRA 158; People v. Formentera, G.R. No. L-30892, January 29, 1984, 130 SCRA 114.

[7] People v. Duaban, G.R. No. L-31912, August 24, 1979, 92 SCRA 743.

[8] T.s.n., January 27, 1977, 5-6.

[9] G.R. No. 73314, March 20, 1986, 141 SCRA 563, citing People v. Epifanio Flores, L-32692, July 30, 1971, 40

SCRA 230.

[10] G.R. No. 51306, July 29, 1987, 152 SCRA 401.

[11] G.R. No. L-38348, January 27, 1983, 120 SCRA 232.

[12] *People v. Pajarillo*, G.R. Nos. L-32571-72, December 27, 1979, 94 SCRA 828.

[13] *People v. Yutila*, G.R. No. L-32791, January 27, 1981, 102 SCRA 264, citing *People v. Mijares*, G.R. No. L-3494, September 28, 1951, 90 Phil. 102.

[14] G.R. No. L-45387, November 7, 1979, 94 SCRA 244.

[15] *People v. Jackariya Lungbos*, G.R. No. 57293, June 21, 1988, citing *People v. Kayanan*, G.R. No. L-30355, May 31, 1978, 83 SCRA 437; *People v. Undong*, G.R. No. 32641, August 29, 1975, 66 SCRA 386.

[16] *People v. Moises*, 66 SCRA 151.

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