

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ALBERTO DOMINGO Y NATO ALIAS “BOY ARRANQUE”;
ERNESTO MANGSAL Y JIMENEZ ALIAS “ERNING
MATON”; EDUARDO VITUG Y PUNILAS ALIAS...**

G.R. Nos. L-30464-5. November 13, 1975

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Before Us is the MOTION FOR NEW TRIAL filed on August 18, 1975 by accused FRANCISCO AGNER y REDRINDO alias "FRANCING", as one of the principals in the crime of ROBBERY WITH HOMICIDE.

For the crime of robbery with homicide committed at Magdalena Street, Manila on February 24, 1969, Francisco Agner and Alberto Domingo y Nato, Ernesto Mangsal and Eduardo Vitug were charged with the said crime in separate informations, filed in the Circuit Criminal Court of Manila. Accused Agner pleaded guilty to the charge when arraigned on March 8, 1969 while accused Alberto Domingo y Nato, Ernesto Mangsal y Jimenez and Eduardo Vitug y Punilas, who were earlier arraigned, pleaded not guilty. On March 14, 1969, however, accused Domingo withdrew his plea of not guilty and substituted it with a plea of guilty when re-arraigned. In a decision dated March 18, 1969, the trial Judge sentenced to DEATH the accused Agner and Domingo as principals for the said crime, to jointly and severally indemnify the heirs of the deceased Virginia Quintos y Sipin in the sum of P20,000.00 by way of moral damages, to return to the said heirs the articles stolen from the deceased or to pay them jointly and severally their value in the total amount of P851.00. Accused Mangsal and Vitug were likewise convicted but only as accessories.

The imposition of the maximum penalty of DEATH on both accused Agner and Domingo resulted from the numerical superiority of the aggravating circumstances of recidivism, abuse of superior strength and use of motor vehicles over the mitigating circumstances of plea of guilty and voluntary surrender, considered and appreciated by the trial court.

Because of the nature of the penalty imposed upon the two accused, the records of the cases were jointly transmitted to US for review. The cases were submitted for decision on August 5, 1970 in Our resolution of even date (p. 191, rec.). However, in his motion for New Trial filed on August 18, 1975, appellant Francisco Agner alias "Francing" prays for a new trial complaining that his plea of guilty was improvidently entered by him and accepted by the trial court without observing the required standard of care.

In his comment, the Solicitor General, after re-stating the proceedings, from arraignment up to the rendition by the trial court of the judgment of conviction, observed and stated that said proceedings" . . . may well show that appellant Agner is not entirely unaware of the plea of guilty that he entered . . ." but that ". . . [W]hat impinges . . . on the validity of his plea of guilty is the patent failure of the trial court to exercise . . . 'solicitous care before sentencing the accused on a plea of guilty . . .', " citing Our resolution on a similar motion previously filed by Alberto Domingo, Agner's co-accused in *People vs. Domingo, et al.* (Jan. 31, 1974, 55 SCRA A 237).

WE find appellant Agner's motion well taken.

Apropos to recall here is the related case of Agner's co-principal, Alberto Domingo y Nato alias "Boy, Arranque", who was earlier granted by this Court a new trial on January 31, 1974 upon his motion filed on October 24, 1973, after Our finding from the record of his case (CCC-VI-129) that his plea of guilty, which as earlier pointed out was entered by him after he withdrew his initial plea of not guilty, was improvidently made and accepted by the trial court in disregard of Our injunction on the standard of care to be observed by trial judges in accepting a plea of guilty in cases involving capital offenses (*People vs. Domingo*, supra). The separate record of Domingo's case reveals that while there was an attempt on the part of the trial judge, who is the same judge who sentenced accused Agner, to meet the required standard of care as shown by the recorded dialogue between the judge and accused Domingo, WE, however, ruled that the said dialogue was ". . . too scanty to satisfy the constitutional requirement that the accused be adequately apprised of the nature of the charge against him, the averments in the information and the implications of his confession of guilt . . ."

The situation of herein appellant Francisco Agner y Redrindo alias "Francing" is worse.

The record of the case against said accused Agner simply shows that when arraigned on March 8, 1969, accused Agner, assisted by his counsel de officio, entered a plea of guilty. And immediately thereafter, the trial court issued an order that reads as follows:

"When called for arraignment, accused assisted by his counsel de officio, Atty. Amado dela Merced, manifested his desire to enter a plea of guilty to the offense charged and invoked the mitigating circumstances of his plea of guilty and voluntary surrender and that during the trial of the case with respect to the other co-accused which was previously set for March 12, 1969 at 8:30 a.m., he will prove another mitigating circumstance – lack of intent to commit so grave a wrong as that committed. Fiscal Lino R. Barbosa, on the other hand, representing the prosecution, reserves his right to prove also his aggravating circumstances.

"WHEREFORE, the decision against the accused is hereby held in abeyance until after the accused and the prosecution shall have proven the mitigating and aggravating circumstances jointly with the trial of this against Agner's co-accused which is set for March 12, 1969 at 8:30 a.m." (Pp. 5-6, rec. of Crim. Case No. CCC-VI-132).

There is nothing more in the record of the case touching on the circumstances surrounding Agner's arraignment and his entry of a plea of guilty. There is here a patent and total absence in the record of whatever dialogue the judge or clerk of court might have had with the defendant Agner to show that the trial court did duly observe the exacting requisite standard of care in accepting accused Agner's plea of guilty, rendering impossible an intelligent exercise by US of OUR constitutional power to determine whether the accused did fully understand the nature of the charge and the meaning and consequences of his plea of guilty to the capital offense for which he was sentenced to death.

The trial judge again disregarded to the prejudice of accused Agner Our injunction emphasized in *People vs. Apduhan* (L-19491, 24 SCRA 817), promulgated on August 30, 1968 or seven [7] months, more or less, earlier at the precise time the trial court accepted on March 9, 1969 the plea of guilty of accused Agner, where WE enjoined trial judges to ". . . refrain from accepting with alacrity an accused's plea of guilty, for while justice demands a speedy administration, judges are duty bound 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."

What WE earlier said in granting Alberto Domingo's motion for new trial is therefore very pertinent here. Thus:

"We enunciated times without number in Our injunctions addressed to the trial courts that they should exercise solicitous care before sentencing the accused on a plea of guilty especially in capital offenses by first insuring

that the accused fully understands the gravity of the offense, the severity of the consequences attached thereto as well as the meaning and significance of his plea of guilty; and that the prudent and proper thing to do in capital cases is to take testimony, to assure the court that the accused has not misunderstood the nature and effect of his plea of guilty" (numerous cases cited).

"WE likewise stressed in *People vs. Simeoun*, supra, that in analogous cases, 'the trial judge should give ample opportunity to the counsel de oficio to examine not only the records of the case but also the scene of the crime as well as to confer with the accused lengthily so that he can properly, intelligently and fully represent and defend the interest of the accused' (55 SCRA 243-244).

It must also be herein stressed that ". . [T]he essence of judicial review in capital offenses is that while society allows violent retribution for heinous crimes committed against it, it always must make certain that blood of the innocent is not spilled, or that the guilty are not made to suffer more than their just measure of punishment and retribution. . ." (*People vs. Busa*, June 25, 1973, 51 SCRA 317, quoted fully in *People vs. Ybañez, et al.*, Dec. 20, 1974, 61 SCRA 474, italics supplied). To be underscored here, therefore, is the fact that in the remanded Domingo case, while accused Domingo was nevertheless convicted by the trial court of the crime charged, after appropriate proceedings consistent with Our resolution of remand, the penalty imposed was no longer Death but the lighter penalty of reclusion perpetua. Atty. Enrique Belo, the newly appointed and able counsel de oficio of accused Domingo, was able to convince the trial court through a twenty-page well-written memorandum to appreciate in favor of accused Domingo the mitigating circumstance of lack of intent to commit so grave a wrong as that committed, aside from the other two (2) mitigating circumstances already appreciated by the trial court, which resulted in the imposition of reclusion perpetua (pp. 144-149, rec. of CCC-VI-129).

Hence, OUR duty to remand the case to the trial court for a new arraignment and for further proceedings becomes inescapable.

WHEREFORE, THE MOTION IS HEREBY GRANTED, THE DECISION DATED MARCH 18, 1969 IS HEREBY VACATED INsofar AS APPELLANT FRANCISCO AGNER Y REDRINDO ALIAS "FRANCING" IS CONCERNED AND THE RECORDS OF THIS CASE ARE HEREBY REMANDED TO THE LOWER COURT FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH LAW AND WITH THE VIEWS HEREIN EXPRESSED, WITH RESPECT ONLY TO APPELLANT FRANCISCO AGNER Y REDRINDO.

Castro, (Chairman), Teehankee, Esguerra, Muñoz Palma and Martin, JJ., concur.

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