

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DARWIN VELOSO Y MILITANTE ALIAS “CARLITO VILLAREAL”; ACCUSED-APPELLANT.

G.R. No. L-32900. February 25, 1982

Ponente: PER CURIAM: Before Us on automatic review is the decision of the Court of First Instance of Camarines Sur imposing the capital penalty of death on accused Darwin Veloso y Militante, alias Carlito Villareal, for the crime of robbery with homicide and double serious physical injuries. Accused contends that (1) the trial court had no jurisdiction to try the case for want of preliminary investigation, (2) the extrajudicial confession he executed was obtained through force and intimidation and, therefore, inadmissible in evidence, and (3) in the absence of adequate proof that it was he who killed the deceased Hermenegildo Odiamar, he should be held guilty of the offense of robbery only, and not of the complex crime of robbery with homicide and double serious physical injuries. We affirm. The pertinent facts are as follows: At about 7:30 in the evening of May 21, 1970, while Felimon Odiamar was leisurely reading the newspapers in the living room of his residence at Bo. Pacol, Naga City[1] , he heard the piercing sounds of shattering glass, followed by several bursts of gun fire, coming from the main door of the receiving room.[2] Felimon immediately ran upstairs to get his .22 cal. rifle and .45 cal. pistol, while his wife, Sotera, and children, Shirley and Hermenegildo (Hermie), who had just finished their evening meal, helped each other lock the door between the living and dining rooms. This done, Shirley rushed to the kitchen to close the backdoor. There she saw their housemaid, Merly, pushing the door through which the armed men were trying to force their way in. She helped Merly push the door, but upon being overpowered, the two girls ran. Thence, accused Veloso and a companion, both masked, entered the house. Veloso was armed with a .45 cal. pistol while his companion had a revolver.[3] Veloso told Shirley and the maid, "Hold-up ito, taas ang kamay!" [This is a hold-up, hands up!], and ordered them to lie flat on the floor. When Hermie rushed to his sister's side, he too was told to lie flat on the floor.[4] The versions given by the parties as to what transpired next are at variance. The prosecution's evidence shows that Hermie, upon seeing his mother at the foot of the stairs bleeding, rose and knelt; then, putting his hands up, begged the intruders to spare the life of his mother. Notwithstanding this plea, Veloso shot him on the chest with his .45 cal. pistol.[5] As Hermie lay dead, Veloso directed his companion to divest the deceased of his wrist watch.[6] At this time, Veloso's mask had fallen off. Felimon, who was then at the third rung or mid-portion of the stairs, was also fired upon. An exchange of fire ensued between the robbers and Felimon, until the latter's .22 cal. rifle jammed. Felimon was about to fire his .45 cal. pistol when Shirley, at the point of the gun trained on her by Veloso, shouted, "Pa, surrender na, Pa, surrender na, tagagadanan ako, gagadanan kita gabas!" [Pa, surrender, Pa, surrender; they will kill me; they will kill all of us!]. Felimon desisted from firing and gave up his arms to the intruders.[7] The accused, testifying on his own behalf, gave a different version. He claimed that he pulled Hermie, who was lying flat on the floor, by his back shirt collar and, using him as human shield, directed him to ask his father, Felimon, to give up; that before Hermie could do so, his father fired his .45 cal. pistol, and the bullet intended for him (accused) found its mark on Hermie's chest; and that he took hold of Shirley and ordered her to ask her father to surrender. It should be stated, however, that after the accused had been arrested he executed an affidavit, Exhibit "O", wherein he admitted having accidentally shot Hermie during the perpetration of the robbery. Meanwhile, four [4] other masked men joined Veloso and his companion. They ordered the Odiamars and the maid to go to a room upstairs where they were told to lie flat on the floor, face down.[8] Shortly after, three of the Odiamar's tenants, Luis, Benedicto and Perfecto, all surnamed Balleber, who had arrived in the house, were also ordered to go to a room upstairs by one of the masked men, and there they were likewise made to lie flat on the floor.[9] One of the robbers ransacked the place, while another demanded money from Felimon, who handed over his wallet containing the amount of P108.00. When asked to produce more, Felimon pointed to his portfolio in the other room. The robbers also

asked for the key to the aparador, from where they took a tear gas gun, 3 necklaces, 4 wrist watches, 3 pairs of earrings and a collection of old coins, consisting of 36 one-peso coins and 100 pieces of P0.50-centavo coins.[10] After having taken the things they wanted, the robbers demanded from Mrs. Odiamar the key to the jeep parked at the drive-way leading to the garage. They boarded the Odiamar's jeep and sped away.[11] The spouses Odiamar and the body of their son Hermenegildo were brought to the Camarines Sur Pro-vincial Hospital in Naga City. Filemon Odiamar was found to have suffered a punctured gunshot wound, 1/4 inch in diameter at the right supra-scapular region,[12] while Mrs. Sotera Odiamar sustained a circular wound and contusion about 1/4 inch on the chin, with swelling at the floor of the mouth, swelling at the tongue and upper third of neck, anterior aspect.[13] According to Dr. Theo Jayme Santy, who conducted an autopsy on the deceased Hermenegildo, the cause of the victim's death was "shock, irreversible, acute internal and external hemorrhage, secondary to gunshot wound which destroyed the liver, and the 4th lumbar vertebra." [14] Immediately after the incident, the PC and the Naga City police conducted their separate investigations. On May 28, 1970, PC Sgts. Cervantes, Fruto and Dellosa were dispatched to verify a report that the suspect Darwin Veloso and his companions had left certain articles belonging to the Odiamar family with one Mercedes Zuñiga, a resident of Bo. Maycatmon, Milaor, Camarines Sur. They recovered from Mercedes Zuñiga a diamond ring [15] and a silver ring with rhinestones [16], and from her sister-in-law, Mrs. Nebria, a necklace [17], a pair of Bantex shoes [18] and a reversible jacket. [19] Mrs. Nebria pointed to a culvert near the railroad station where they found Odiamar's .22 cal. rifle [20] with a magazine [21] and 6 live ammunitions. [22] When interrogated by the PC officers, Simeon Nebria, brother of Mercedes Zuñiga, stated that the .22 cal. rifle was left by Darwin Veloso; that the necklace was given by Veloso as a gift to his wife; that Veloso pledged the diamond ring, Exhibit "J", to his sister Mercedes Zuñiga for the sum of P10.00; and that the latter's husband, Armando Zuñiga, was the one who buried the .22 cal. rifle in the culvert. [23] Elements of the Naga City police force, acting on the information given by Simeon Nebria, proceeded to Makati, Rizal, where they, with the help of the Makati police, found Veloso in a house at Biak-na-Bato St., Makati, Rizal, in the afternoon of June 2, 1970. Having caught him in the possession of a .45 cal. pistol [24], the law officers placed him under arrest. Veloso claimed that at the police station he was subjected to corporal punishment by the Makati police. [25] On June 3, 1970, Veloso was brought to Naga City. At the office of the City Mayor, he gave a written statement in the form of questions and answers [26], wherein he admitted that he was one of those who robbed the Odiamars and that in the course of the robbery he accidentally shot Hermenegildo Odiamar. Said statement was subscribed and sworn to before City Judge Pedro Templo of Naga City. On June 16, 1970, Darwin Veloso and five others, who were still at large, were charged with the crime of robbery in band with homicide and double serious physical injuries. After due trial, the court a quo handed down the aforesaid verdict of conviction. The accused assails the jurisdiction of the trial court for want of preliminary investigation. We find neither factual nor legal bases for this thesis. The record shows that on July 5, 1970, Judge Templo conducted a preliminary examination [27], and on the basis of the sworn statements of Filemon Odiamar and his witnesses, the corresponding information was filed on June 17, 1970 in the City Court of Naga City. On June 22, 1970, Judge Templo set the case for preliminary investigation to afford the accused the occasion to confront the witnesses against him and to present his own evidence. But instead of availing himself of this opportunity, the accused filed a manifestation stating that he "waives his right to present evidence at the second stage of the preliminary investigation." Hence, the case was forwarded to the Court of First Instance of Camarines Sur for further proceedings. [28] It further appears that accused entered his non-guilty plea without raising the question of lack of preliminary investigation. [29] The aforesaid actuations on the part of the accused constitute waiver of his right to preliminary investigation. It is well settled that the right to preliminary investigation is not a fundamental right and that the same may be waived expressly or by silence. [30] And it has been held that such waiver carried with it the waiver of any procedural error or irregularity that may have attended the preliminary investigation. [31] Equally untenable is the claim that the accused's extrajudicial confession [32] is inadmissible for having been obtained through force and intimidation. Even granting that the accused was manhandled by the Makati police officers upon his arrest in Makati on June 2, 1970, as claimed by him, there is nothing in the record to show that he was subjected to violence and intimidation after he was brought to Naga City where his confession was given. In fact, the accused admitted in open court that he was never harmed while in the custody of the Naga City police. [33] Moreover, Judge Templo of the City Court of Naga, whose credibility is not assailed, testified that the accused not only

admitted before him the truth of the statements set forth in Exhibit "O", but likewise affirmed that he was not subjected to any threat or violence before or during the taking of his statement by the Naga City police.[34] Accused further contends that his conviction of the complex crime of robbery with homicide and double serious physical injuries is unwarranted because of the absence of adequate proof that he was the one who fired upon the deceased Hermenegildo Odiamar. This contention, too, is devoid of merit. Filemon Odiamar and his daughter, Shirley, testified that it was Veloso who shot Hermie while the latter was kneeling with his hands up. The court a quo found their testimonies "clear and convincing", and this factual finding of the lower court is entitled to great respect. It is undisputed that during the commission of the robbery, Hermenegildo Odiamar was shot and killed, while the Odiamar spouses sustained serious physical injuries. Given this premise, it is unnecessary to dwell at length on the factual issue as to whether the accused inflicted the fatal wound on the deceased. The fact that the death of Hermenegildo resulted during or on the occasion of the robbery, wherein the accused admittedly participated, makes the latter guilty of the special complex crime of robbery with homicide and double serious physical injuries. Well entrenched is the rule that whenever a homicide has been committed as a consequence, or on the occasion, of a robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide, although they did not actually take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide.[35] As this Court held in *People vs. Mangulabnan*: [36] "x x x in order to determine the existence of the crime of robbery with homicide it is enough that a homicide would result by reason or on the occasion of the robbery [Decision of Supreme Court of Spain of November 26, 1892, and January 7, 1878, quoted in 2 Hidalgo's Penal Code, p. 267, and 259-260, respectively]. This High Tribunal speaking of the accessory character of the circumstances leading to the homicide, has also held that it is immaterial that the death would supervene by mere accident [Decision of September 9, 1886, October 22, 1907, April 30, 1910 and July 14, 1917], provided that the homicide be produced by reason or on the occasion of robbery, inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime, that has to be taken into consideration [Decision of January 12, 1889 - see Cuello Calon's *Codigo Penal*, p. 501-502; *Italics supplied*]." The court a quo found that the crime was attended by six [6] aggravating circumstances, to wit: band, use of motor vehicle, disguise, nighttime, dwelling and recidivism. The court's conclusion, except with respect to the circumstance of use of motor vehicle, is correct. (1) Band: Six [6] malefactors, Darwin Veloso and five [5] others, all armed, cooperated in the commission of the offense.[37] (2) Disguise: That Darwin Veloso and his five [5] companions wore masks to conceal their identity during the commission of the crime constitutes disguise. (3) Nighttime: The accused himself admitted that he and his co-conspirators waited for nighttime before committing the robbery to better accomplish their plan; and nighttime is aggravating when it is especially sought for the purpose of impunity.[38] (4) Dwelling: This circumstance was correctly considered. Entry into the dwelling of the victim is not inherent in the crime of robbery with homicide, since the authors thereof could have committed the offense without violating the domicile of their victim.[39] (5) Recidivism: The prosecution has established the allegation in the information that the accused Veloso is a recidivist. It appears that prior to the commission of the offense in question, he had been convicted by the Court of First Instance of Albay of robbery in Criminal Case No. 1872[40], and for another robbery in Criminal Case No. 4058.[41] But the lower court erred in considering the use of motor vehicle as an aggravating circumstance. The accused and his co-conspirators used the jeep of the Odiamars merely to facilitate their escape. It was not intentionally sought to ensure the success of their nefarious plan; and there is no showing that without the use of the vehicle the offense charged could not have been committed.[42] But even discounting the circumstance of use of motor vehicle, the trial court was correct in imposing the supreme penalty of death, the commission of the crime charged having been attended by five [5] generic aggravating circumstances, without any mitigating circumstance to offset the same. The accused is a hardened criminal and his consummate perversity is revealed by a catalogue of crimes committed against society. The record discloses that, apart from the offense charged herein, he had been previously convicted by final judgment of the following crimes, to wit: 1. Robbery, by the Court of First Instance of Albay in Criminal Case No. 1872;[43] 2. Another robbery, by the Court of First Instance of Albay in Criminal Case No. 4058;[44] 3. Assault upon an agent of a person in authority, by the Court of First Instance of Albay in Criminal Case No. 4056;[45] 4. Illegal possession of firearms, by the Court of First Instance of Camarines Sur in Criminal Case

No. 6679;[46] and 5. Murder for the cold-blooded killing of one Jesus Diez committed on May 20, 1970, i.e., the day before the perpetration of the Odiamar robbery; and the death sentence imposed by the Court of First Instance of Camarines Sur in that case was affirmed by this Court in a per curiam decision dated August 6, 1979.[47]

WHEREFORE, the judgment under review is hereby affirmed. SO ORDERED. Teehankee, Barredo, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, and Escolin, JJ., concur. Fernando, C.J., took no part. Makasiar, J., concurs in separate opinion of J. Ericta. Ericta, J., see separate opinion. [1] TSN, p. 13, July 6, 1970. [2] pp. 14, 47-48, Id. [3] pp. 48-50, Id. [4] pp. 16, 50, Id. [5] pp. 16-17, 51, Id. [6] p. 52, Id. [7] pp. 18-19, 79, Id. [8] pp. 52-53, Id. [9] pp. 5-7, Elope. [10] pp. 23-27, Id. [11] pp. 23-25, Id. [12] Exhibit "A". [13] Exhibit "B". [14] Exhibit "L". [15] Exhibit "J". [16] Exhibit "I". [17] Exhibit "H". [18] Exhibits "F" and "F-1". [19] Exhibit "G". [20] Exhibit "E". [21] Exhibit "E-3". [22] Exhibits "E-4" to "E-9". [23] TSN, pp. 292-295, Elope. [24] Exhibit "N". [25] TSN, p. 322, Elope. [26] Exhibit "O". [27] pp. 6-11, Original Record. [28] p. 40, Id. [29] pp. 42-44, Id. [30] People vs. Baluran, 32 SCRA 71; People vs. Mabuyo, 63 SCRA 532. [31] People vs. La Caste, 37 SCRA 767. [32] Exhibit "O". [33] pp. 275-276, Elope. [34] pp. 13, 15, July 10, 1970. [35] People vs. Bautista, 49 Phil. 389, 396; People vs. Carunungan, 109 Phil. 534. [36] 99 Phil. 992, 998-999. [37] Article 14, par. 6 of the Revised Penal Code. [38] People vs. Gatcho, 103 SCRA 207. [39] People vs. Lucero, 96 SCRA 704. [40] Exhibit "V-4." [41] Exhibit "V-2." [42] People vs. Tingson, et al., 47 SCRA 243; People vs. Jaranilla, 55 SCRA 563. [43] Exhibit "V-4". [44] Exhibit "V-2". [45] Exhibit "V-3". [46] Exhibit "U". [47] 92 SCRA 515. SEPERATE OPINION ERICTA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/63bc404cfcce/>

PER CURIAM:

Before Us on automatic review is the decision of the Court of First Instance of Camarines Sur imposing the capital penalty of death on accused Darwin Veloso y Militante, alias Carlito Villareal, for the crime of robbery with homicide and double serious physical injuries.

Accused contends that (1) the trial court had no jurisdiction to try the case for want of preliminary investigation, (2) the extrajudicial confession he executed was obtained through force and intimidation and, therefore, inadmissible in evidence, and (3) in the absence of adequate proof that it was he who killed the deceased Hermenegildo Odiamar, he should be held guilty of the offense of robbery only, and not of the complex crime of robbery with homicide and double serious physical injuries. We affirm.

The pertinent facts are as follows:

At about 7:30 in the evening of May 21, 1970, while Felimon Odiamar was leisurely reading the newspapers in the living room of his residence at Bo. Pacol, Naga City[1], he heard the piercing sounds of shattering glass, followed by several bursts of gun fire, coming from the main door of the receiving room.[2] Felimon immediately ran upstairs to get his .22 cal. rifle and .45 cal. pistol, while his wife, Sotera, and children, Shirley and Hermenegildo (Hermie), who had just finished their evening meal, helped each other lock the door between the living and dining rooms. This done, Shirley rushed to the kitchen to close the backdoor. There she saw their housemaid, Merly, pushing the door through which the armed men were trying to force their way in. She helped Merly push the door, but upon being overpowered, the two girls ran. Thence, accused Veloso and a companion, both masked, entered the house. Veloso was armed with a .45 cal. pistol while his companion had a revolver.[3]

Veloso told Shirley and the maid, "Hold-up ito, taas ang kamay!" [This is a hold-up, hands up!], and ordered them to lie flat on the floor. When Hermie rushed to his sister's side, he too was told to lie flat on the floor.[4]

The versions given by the parties as to what transpired next are at variance. The prosecution's evidence shows that Hermie, upon seeing his mother at the foot of the stairs bleeding, rose and knelt; then, putting his hands up,

begged the intruders to spare the life of his mother. Notwithstanding this plea, Veloso shot him on the chest with his .45 cal. pistol.[5] As Hermie lay dead, Veloso directed his companion to divest the deceased of his wrist watch.[6] At this time, Veloso's mask had fallen off. Felimon, who was then at the third rung or mid-portion of the stairs, was also fired upon. An exchange of fire ensued between the robbers and Felimon, until the latter's .22 cal. rifle jammed. Filemon was about to fire his .45 cal. pistol when Shirley, at the point of the gun trained on her by Veloso, shouted, "Pa, surrender na, Pa, surrender na, tagagadanon ako, gagadanon kita gabas!" [Pa, surrender, Pa, surrender; they will kill me; they will kill all of us!]. Felimon desisted from firing and gave up his arms to the intruders.[7]

The accused, testifying on his own behalf, gave a different version. He claimed that he pulled Hermie, who was lying flat on the floor, by his back shirt collar and, using him as human shield, directed him to ask his father, Felimon, to give up; that before Hermie could do so, his father fired his .45 cal. pistol, and the bullet intended for him (accused) found its mark on Hermie's chest; and that he took hold of Shirley and ordered her to ask her father to surrender. It should be stated, however, that after the accused had been arrested he executed an affidavit, Exhibit "O", wherein he admitted having accidentally shot Hermie during the perpetration of the robbery.

Meanwhile, four [4] other masked men joined Veloso and his companion. They ordered the Odiamars and the maid to go to a room upstairs where they were told to lie flat on the floor, face down.[8]

Shortly after, three of the Odiamar's tenants, Luis, Benedicto and Perfecto, all surnamed Balleber, who had arrived in the house, were also ordered to go to a room upstairs by one of the masked men, and there they were likewise made to lie flat on the floor.[9]

One of the robbers ransacked the place, while another demanded money from Felimon, who handed over his wallet containing the amount of P108.00. When asked to produce more, Felimon pointed to his portfolio in the other room. The robbers also asked for the key to the aparador, from where they took a tear gas gun, 3 necklaces, 4 wrist watches, 3 pairs of earrings and a collection of old coins, consisting of 36 one-peso coins and 100 pieces of P0.50-centavo coins.[10]

After having taken the things they wanted, the robbers demanded from Mrs. Odiamar the key to the jeep parked at the drive-way leading to the garage. They boarded the Odiamar's jeep and sped away.[11]

The spouses Odiamar and the body of their son Hermenegildo were brought to the Camarines Sur Provincial Hospital in Naga City. Filemon Odiamar was found to have suffered a punctured gunshot wound, 1/4 inch in diameter at the right supra-scapular region,[12] while Mrs. Sotera Odiamar sustained a circular wound and contusion about 1/4 inch on the chin, with swelling at the floor of the mouth, swelling at the tongue and upper third of neck, anterior aspect.[13]

According to Dr. Theo Jayme Santy, who conducted an autopsy on the deceased Hermenegildo, the cause of the victim's death was "shock, irreversible, acute internal and external hemorrhage, secondary to gunshot wound which destroyed the liver, and the 4th lumbar vertebra." [14]

Immediately after the incident, the PC and the Naga City police conducted their separate investigations. On May 28, 1970, PC Sgts. Cervantes, Fruto and Deloso were dispatched to verify a report that the suspect Darwin Veloso and his companions had left certain articles belonging to the Odiamar family with one Mercedes Zuñiga, a resident of Bo. Maycatmon, Milaor, Camarines Sur. They recovered from Mercedes Zuñiga a diamond ring[15] and a silver ring with rhinestones[16], and from her sister-in-law, Mrs. Nebria, a necklace[17], a pair of Bantex shoes[18] and a reversible jacket.[19] Mrs. Nebria pointed to a culvert near the railroad station where they found Odiamar's .22 cal. rifle[20] with a magazine[21] and 6 live ammunitions.[22]

When interrogated by the PC officers, Simeon Nebria, brother of Mercedes Zuñiga, stated that the .22 cal. rifle was left by Darwin Veloso; that the necklace was given by Veloso as a gift to his wife; that Veloso pledged the diamond ring, Exhibit "J", to his sister Mercedes Zuñiga for the sum of P10.00; and that the latter's husband, Armando Zuñiga, was the one who buried the .22 cal. rifle in the cul-vert.[23]

Elements of the Naga City police force, acting on the information given by Simeon Nebria, proceeded to Makati, Rizal, where they, with the help of the Makati police, found Veloso in a house at Biak-na--Bato St., Makati, Rizal, in the afternoon of June 2, 1970. Having caught him in the possession of a .45 cal. pistol[24], the law officers placed him under arrest. Veloso claimed that at the police station he was subjected to corporal punishment by the Makati police.[25]

On June 3, 1970, Veloso was brought to Naga City. At the office of the City Mayor, he gave a written statement in the form of questions and answers[26], wherein he admitted that he was one of those who robbed the Odiamars and that in the course of the robbery he accidentally shot Hermenegildo Odiamar. Said statement was subscribed and sworn to before City Judge Pedro Templo of Naga City.

On June 16, 1970, Darwin Veloso and five [5] others, who were still at large, were charged with the crime of robbery in band with homicide and double serious physical injuries. After due trial, the court a quo handed down the aforesaid verdict of conviction.

The accused assails the jurisdiction of the trial court for want of preliminary investigation. We find neither factual nor legal bases for this thesis.

The record shows that on July 5, 1970, Judge Templo conducted a preliminary examination[27], and on the basis of the sworn statements of Filemon Odiamar and his witnesses, the corresponding information was filed on June 17, 1970 in the City Court of Naga City. On June 22, 1970, Judge Templo set the case for preliminary investigation to afford the accused the occasion to confront the witnesses against him and to present his own evidence. But instead of availing himself of this opportunity, the accused filed a manifestation stating that he "waives his right to present evidence at the second stage of the preliminary investigation." Hence, the case was forwarded to the Court of First Instance of Camarines Sur for further proceedings.[28] It further appears that accused entered his non-guilty plea without raising the question of lack of preliminary investigation.[29]

The aforesaid actuations on the part of the accused constitute waiver of his right to preliminary investigation. It is well settled that the right to preliminary investigation is not a fundamental right and that the same may be waived expressly or by silence.[30] And it has been held that such waiver carried with it the waiver of any procedural error or irregularity that may have attended the preliminary investigation.[31]

Equally untenable is the claim that the accused's extrajudicial confession[32] is inadmissible for having been obtained through force and intimidation. Even granting that the accused was manhandled by the Makati police officers upon his arrest in Makati on June 2, 1970, as claimed by him, there is nothing in the record to show that he was subjected to violence and intimidation after he was brought to Naga City where his confession was given. In fact, the accused admitted in open court that he was never harmed while in the custody of the Naga City police.[33]

Moreover, Judge Templo of the City Court of Naga, whose credibility is not assailed, testified that the accused not only admitted before him the truth of the statements set forth in Exhibit "O", but likewise affirmed that he was not subjected to any threat or violence before or during the taking of his statement by the Naga City police.[34]

Accused further contends that his conviction of the complex crime of robbery with homicide and double serious physical injuries is unwarranted because of the absence of adequate proof that he was the one who fired upon the

deceased Hermenegildo Odiamar. This contention, too, is devoid of merit.

Filemon Odiamar and his daughter, Shirley, testified that it was Veloso who shot Hermie while the latter was kneeling with his hands up. The court a quo found their testimonies "clear and convincing", and this factual finding of the lower court is en-titled to great respect.

It is undisputed that during the commission of the robbery, Hermenegildo Odiamar was shot and killed, while the Odiamar spouses sustained serious physical injuries. Given this premise, it is unnecessary to dwell at length on the factual issue as to whether the accused inflicted the fatal wound on the deceased. The fact that the death of Hermenegildo resulted during or on the occasion of the robbery, wherein the accused admittedly participated, makes the latter guilty of the special complex crime of robbery with homicide and double serious physical injuries. Well entrenched is the rule that whenever a homicide has been committed as a consequence, or on the occasion, of a robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide, although they did not actually take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide.[35] As this Court held in *People vs. Mangulabnan*: [36]

"x x x in order to determine the existence of the crime of robbery with homicide it is enough that a homicide would result by reason or on the occasion of the robbery [Decision of Supreme Court of Spain of November 26, 1892, and January 7, 1878, quoted in 2 Hidalgo's Penal Code, p. 267, and 259-260, respectively]. This High Tribunal speaking of the accessory character of the circumstances leading to the homicide, has also held that it is immaterial that the death would supervene by mere accident [Decision of September 9, 1886, October 22, 1907, April 30, 1910 and July 14, 1917], provided that the homicide be produced by reason or on the occasion of robbery, inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime, that has to be taken into consideration [Decision of January 12, 1889 - see Cuello Calón's Codigo Penal, p. 501-502; Italics supplied]."

The court a quo found that the crime was attended by six [6] aggravating circumstances, to wit: band, use of motor vehicle, disguise, nighttime, dwelling and recidivism. The court's conclusion, except with respect to the circumstance of use of motor vehicle, is correct.

(1) Band: Six [6] malefactors, Darwin Veloso and five [5] others, all armed, cooperated in the commission of the offense.[37]

(2) Disguise: That Darwin Veloso and his five [5] companions wore masks to conceal their identity during the commission of the crime constitutes disguise.

(3) Nighttime: The accused himself admitted that he and his co-conspirators waited for nighttime before committing the robbery to better accomplish their plan; and nighttime is aggravating when it is especially sought for the purpose of impunity.[38]

(4) Dwelling: This circumstance was correctly considered. Entry into the dwelling of the victim is not inherent in the crime of robbery with homicide, since the authors thereof could have committed the offense without violating the domicile of their victim.[39]

(5) Recidivism: The prosecution has established the allegation in the information that the accused Veloso is a recidivist. It appears that prior to the commission of the offense in question, he had been convicted by the Court of First Instance of Albay of robbery in Criminal Case No. 1872[40], and for another robbery in Criminal Case No. 4058.[41]

But the lower court erred in considering the use of motor vehicle as an aggravating circumstance. The accused

and his co-conspirators used the jeep of the Odiamars merely to facilitate their escape. It was not intentionally sought to ensure the success of their nefarious plan; and there is no showing that without the use of the vehicle the offense charged could not have been committed.[42]

But even discounting the circumstance of use of motor vehicle, the trial court was correct in imposing the supreme penalty of death, the commission of the crime charged having been attended by five [5] generic aggravating circumstances, without any mitigating circumstance to offset the same.

The accused is a hardened criminal and his consummate perversity is revealed by a catalogue of crimes committed against society. The record discloses that, apart from the offense charged herein, he had been previously convicted by final judgment of the following crimes, to wit:

1. Robbery, by the Court of First Instance of Albay in Criminal Case No. 1872;[43]
2. Another robbery, by the Court of First Instance of Albay in Criminal Case No. 4058;[44]
3. Assault upon an agent of a person in authority, by the Court of First Instance of Albay in Criminal Case No. 4056;[45]
4. Illegal possession of firearms, by the Court of First Instance of Camarines Sur in Criminal Case No. 6679;[46] and
5. Murder for the cold-blooded killing of one Jesus Diez committed on May 20, 1970, i.e., the day before the perpetration of the Odiamar robbery; and the death sentence imposed by the Court of First Instance of Camarines Sur in that case was affirmed by this Court in a per curiam decision dated August 6, 1979.[47]

WHEREFORE, the judgment under review is hereby affirmed.

SO ORDERED.

Teehankee, Barredo, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, and Escolin, JJ., concur.

Fernando, C.J., took no part.

Makasiar, J., concurs in separate opinion of J. Erica.

Erica, J., see separate opinion.

[1] TSN, p. 13, July 6, 1970.

[2] pp. 14, 47-48, Id.

[3] pp. 48-50, Id.

[4] pp. 16, 50, Id.

[5] pp. 16-17, 51, Id.

[6] p. 52, Id.

[7] pp. 18-19, 79, Id.

[8] pp. 52-53, Id.

[9] pp. 5-7, Elope.

- [10] pp. 23-27, Id.
- [11] pp. 23-25, Id.
- [12] Exhibit "A".
- [13] Exhibit "B".
- [14] Exhibit "L".
- [15] Exhibit "J".
- [16] Exhibit "I".
- [17] Exhibit "H".
- [18] Exhibits "F" and "F-1".
- [19] Exhibit "G".
- [20] Exhibit "E".
- [21] Exhibit "E-3".
- [22] Exhibits "E-4" to "E-9".
- [23] TSN, pp. 292-295, Elope.
- [24] Exhibit "N".
- [25] TSN, p. 322, Elope.
- [26] Exhibit "O".
- [27] pp. 6-11, Original Record.
- [28] p. 40, Id.
- [29] pp. 42-44, Id.
- [30] People vs. Baluran, 32 SCRA 71; People vs. Mabuyo, 63 SCRA 532.
- [31] People vs. La Caste, 37 SCRA 767.
- [32] Exhibit "O".
- [33] pp. 275-276, Elope.
- [34] pp. 13, 15, July 10, 1970.
- [35] People vs. Bautista, 49 Phil. 389, 396; People vs. Carunungan, 109 Phil. 534.
- [36] 99 Phil. 992, 998-999.
- [37] Article 14, par. 6 of the Revised Penal Code.
- [38] People vs. Gatcho, 103 SCRA 207.
- [39] People vs. Lucero, 96 SCRA 704.
- [40] Exhibit "V-4."

[41] Exhibit "V-2."

[42] People vs. Tingson, et al., 47 SCRA 243; People vs. Jaranilla, 55 SCRA 563.

[43] Exhibit "V-4".

[44] Exhibit "V-2".

[45] Exhibit "V-3".

[46] Exhibit "U".

[47] 92 SCRA 515.

SEPERATE OPINION

ERICTA, J.:

I do not agree with the denomination of the offense of robbery with homicide as a "complex crime", or something as a "special complex crime." For legal precision, "complex crime" should be limited to cases "(1) when a single act constitutes two or more grave or less grave offenses or (2) when an offense is a necessary means for committing the other." (Art. 48, Revised Penal Code; People vs. Pineda, 20 SCRA 748, 751.) By provision of law, or by legal fiction, robbery and homicide committed on the occasion of robbery constitute a single offense, albeit, actually, there are two separate felonies. In the language of this Court through Justice Felix, robbery with homicide is "single, special and indivisible (not complex)." (People vs. Moro Sarabi, 99 Phil. 1070, unreported; People vs. Labita, 99 Phil. 1068, unreported.) The same view applies to the other kinds of robberies enumerated in paragraphs 2, 3, 4 and 5 of Art. 294 of the Revised Penal Code.

In the instant case, neither may we consider the single offense of robbery with homicide and the single offense of robbery with physical injuries as constituting a complex crime of robbery with homicide and robbery with physical injuries because they did not result from a single act nor is one offense a necessary means to commit the other. The only crime committed is robbery with homicide, physical injuries being absorbed by the former. (People vs. Maranan, 13 SCRA 642.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.