

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FELIX SEMAÑADA, ALIAS SEMANADA, ALIAS COMMANDER DANTE, DEFENDANT AND APPELLANT.*G. R. No. L-11361. May 26, 1958*

Ponente: FELIX, J.

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Sometime in 1950 Felix Semanada, alias Semanada, alias Commander Dante, a young boy of 17 years of age, joined the Hukbalahap organization, which was composed of 4 units, namely, the organization, the contacting, the liquidation and the courier groups, and Semanada was assigned to form part of the latter group, whose duty was to deliver letters and messages. Apparently, Felix Semanada was unhappy and discontented and oftenly scolded by his parents, so he easily yielded to the propaganda of the Hukbalahap organization, for he did not have the opportunity to obtain any academic schooling except up to Grade II.

On or about 6 o'clock in the evening of June 12, 1952, Felix Semañada, then 19 years of age, and in company of 2 Huks, i.e., Commanders Wennie and Heling-, all armed, arrived at the house of the spouses Serapio Villate and Nieves Magtibay, situated at barrio Sastre, Gumaca, Quezon, where they had a store. The couple were taking their supper when Felix Semanada ordered Serapio Villate to go down and, apparently because the latter resisted the order, he was brought down to a distance of about an arm's length from his house. Once there he was seized and hogtied by Commanders Wennie and Heling with a string used for fishing. As his companions held the victim Semañada stabbed Villate several times with a sharp pointed bolo measuring about a palm's length (dangkal). The torture lasted for about 30 minutes causing the victim to cry in agony "aroy, aroy". His wife, Nieves Magtibay, who hails from the same barrio of Semañada, actually saw the stabbing from the opening of an upstairs window and she ran to her husband's aid but she was not able to help him because of the 2 Huks that were unknown to her, one of whom blocked her way while the other hit her with the butt of his gun on the upper lip, as a result of which her upper lip was cut and she lost 3 front teeth.

After the killing of Serapio Villate, Felix Semañada and his companions went up the victim's house. There Semanada pushed Nieves Magtibay to a corner, threatened to kill her and demanded from her the shotgun of the deceased. The three also ransacked the couple's wardrobe, after which they left with the shotgun valued at P250.00 and other merchandise and money of a total value of P900. The widow also left the place to report the incident to her brother-in-law Daniel Villate, who in turn reported the matter to the Philippine Constabulary, and that same evening the authorities found the deceased Serapio Villate lying dead, face downward and hogtied,

A post-mortem examination of the cadaver disclosed that a total of 51 wounds were inflicted on the thorax and abdomen of the deceased, 50 of which were superficial and only one fatal, for it penetrated the abdomen, with a depth of 5 inches, one inch long and one centimeter wide (Exhibit A).

The widow, however, kept silent as to the identity of Felix Semañada as one of the malefactors until he surrendered to the authorities in Nagcarlang, Laguna, on December 5, 1955. Upon learning that said Huk was

already in the custody of the law, she revealed to the authorities that the person who stabbed her husband to death in the evening of June 12, 1952, was Felix Semañada and explained that the reason for her long silence was her fear that while Semañada were at large living in the mountains, she might be liquidated if he would learn that a charge for murder was filed against him by the widow of the deceased.

Due to this revelation and after the corresponding investigation a complaint for "robbery in band with murder" was filed in the Justice of the Peace Court of Gumaca, Quezon, against Felix Semañada, alias Semanada, alias Commander Dante et al., without naming the said 2 other commanders who were still at large unidentified. After proper proceedings the Justice of the Peace Court, convinced that the accused was guilty beyond reasonable doubt of the offense imputed to him, remanded the case to the Court of First Instance of Quezon where the Provincial Fiscal filed the corresponding information this time against Felix Semañada, alias Semanada, alias Commander Dante alone, charging him with the crime of robbery with homicide, defined and punished by Article 294 in connection with Article 299 of the Revised Penal Code, as amended by Republic Act 18.

Upon arraignment the defendant pleaded not guilty but after hearing the Court found him guilty beyond reasonable doubt of the crime of robbery with homicide, defined and punished under Article 294, paragraph 1, of the Revised Penal Code, with the attendance of 3 aggravating circumstances with none mitigating to offset the same, and sentenced him to die in the electric chair, to indemnify the heirs of the deceased Serapio Villate in the sum of P6,000.00 and to pay the further sum of P900.00, value of the cash and goods robbed from the deceased, with costs.

Defendant did not appeal from this decision but this case was nevertheless, brought to this Court under the provisions of Section 9, Rule 118 of the Rules of Court, for review and judgment as law and justice shall dictate.

In this instance counsel for the defense maintains that the lower Court erred:

- In holding that the accused-appellant Felix Semanada is guilty beyond reasonable doubt of the crime of robbery with murder, although the evidence of the prosecution is wholly insufficient as it is improbable and contrary to common experience;
- In giving weight and merit to the evidence of the prosecution to the effect that widow Nieves Magtibay kept silent as to identity of the assailant until the accused surrendered to the authorities for fear that she might be liquidated also by the accused who was living in the mountain as a Hukbalahap;
- In concluding that the wounds have been inflicted one by one, torturing the deceased for one-half hour constituting an aggravating circumstance of cruelty, although there is no evidence to support said conclusion;
- In not extending to the accused-appellant the benefit of Article 12, paragraphs 5 and 6, although the evidence shows that he acted under the influence of uncontrollable fear or compulsion of an irresistible force;
- In holding the accused-appellant liable for the acts of his companions when he had neither knowledge of the intention to kill the deceased nor had he actually participated in its commission; and
- In not holding and extending to the accused the mitigating circumstances of (1) lack of instruction; (2) for having acted under the influence of grave fear not entirely uncontrollable under paragraph 1, article 13, in connection with paragraph 6 of article 12 of the Revised Penal Code; and (3) voluntary surrender of the accused to the authorities on December 5, 1955, within paragraph 10, of article 13 of the Revised Penal Code.

The version of the defendant as to the execution of the crime at bar is as follows:

On or about June 12, 1952, at about 3 o'clock p.m., while Felix Semanada was in barrio Labnig, Gumaca, Quezon, waiting for letters to be delivered,, Commanders Wennie and Heling of the liquidation unit arrived.

The 2 commanders ordered him to accompany them to barrio Sastre, but he refused on the ground that as a courier he had his own duty to do, but the said commanders took their firearms, pointed them toward him saying that he would be killed if he refused to guide them to the house of Serapio Villate. He was told that they were just to visit Serapio Villate without showing any intention of killing that man. Had he not been forced to go to with them to barrio Sastre, he would not have gone with them. They arrived at barrio Sastre at about 6 o'clock in the evening and when they were about 20 arm-length away from the house of Serapio Villate, the 2 commanders Wennie and Heling ordered him to stay guard near the road; while thus guarding alone, he could have escaped but he did not for fear that if he did so he would be liquidated by the 2 notorious commanders and, beside that, he had no reason to escape, as he was made to believe that they were going there only for a visit. As a matter of fact, while thus guarding the road he heard neither cries nor shouts from the house of Villate. On the other hand, he could not have gone to town because he would have been arrested by the army.

On December 5, 1955, in Nagcarlang, Laguna, upon realizing the evils of communism and having grown up to understand the beauty of democracy, he surrender voluntarily to Sgt. Regalado of the 26th B.C.T. He said that he wanted to live peacefully and to start a new life.

In consonance with this version defendant disclaims any criminal liability for the death of Villate and the robbery in the latter's house. He admitted having been at the scene of the crime at the time it was being committed, but he says that it was so, because he was under the influence of a great fear. Consequently-counsel for the defense argues that in so far as the defendant is concerned, the circumstances of treachery and cruelty cannot be appreciated against him, because the killing was not executed by him, aside from the fact that the testimony of the widow Nieves Magtibay, who averred to have seen the defendant stabbing the deceased for 30 minutes deserves no credence because from the opening of the window thru which she allegedly was peeping, she was unable to see the defendant, specially if it is considered that her view was intercepted by at least 3 persons.

Counsel further maintains that even if convicted of the crime charged defendant is entitled to the benefits of the mitigating circumstances of (1) lack of instruction; (2) having acted under the influence of fear not entirely uncontrollable to be exempting under Article 12, paragraph 6 of the Revised Penal Code, but coming within the purview of Article 13, paragraph 1 of the same legal body; and (3) voluntary surrender to the authorities on December 5, 1955, which also may be considered as a mitigating circumstance under Article 13, paragraph 10 of the Revised Penal Code, for it constitutes a circumstance of a similar nature and analogous to the circumstance of voluntary surrender to a person in authority or agent covered by paragraph 7 of said article 13.

Upon going over the evidence on record, We find no reason for the widow Nieves Magtibay to testify falsely against the defendant herein and to impute to him the commission of so heinous offense. She knew very well the defendant and was able to identify him fully. Any way, the matter devolves into a case of credibility of witnesses and the trial judge, who had the opportunity of observing their demeanor while testifying in his presence and is in a better position than the appellate Court to gauge their credibility, has given full credence to the testimony of said widow.

As to the circumstance of lack of instruction, the Solicitor General states that the test for the mitigating circumstance is not illiteracy alone, but rather lack of sufficient intelligence (*People vs. Ripas, et al.*,[*]G. R. No. L-6246, promulgated May 28, 1954), and the record discloses that far from his claim that he suffers from lack of instruction, he possesses an intelligence worthy of a lawyer considering his ability, for one unschooled, to distinguish between implications and innuendos. At any rate, lack of instruction is not mitigating in cases of robbery (*U.S. vs. Pascual*, 9 Phil., 491; *People vs. Melendrez*, 59 Phil., 154; *People vs. De la Cruz, et al.*, 77 Phil., 44), although it might be under certain situations in cases of murder (*People vs. Taluk, et al.*, 65 Phil., 696) and homicide (*People vs. Hubero*, 61 Phil., 64).

With respect to the alleged "uncontrollable fear or compulsion of an irresistible force", which appellant says the

lower court did not consider in his favor, the Government contends that the purported uncontrollable fear was a mere fabrication and that appellant was a willing participant in the criminal design. Moreover, fear or duress in order to be a valid defense, should be based on real, imminent or reasonable fear for one's life or limb. It should not be inspired by speculative, fanciful or remote fear. A person should not commit a very serious crime on account of a flimsy fear (*People vs. Quillooy*, 88 Phil., 53), and the evidence on record does not show that defendant really acted by such uncontrollable fear of an equal or greater injury.

Anent the circumstance of voluntary surrender or of a similar or analogous circumstance We hold that defendant cannot claim it in his favor in the case at bar, because he did not surrender to the authority or its agents by reason of the commission of the crime for which he is herein prosecuted, but for being a Huk who wanted to come within the pale of the law (see *People vs. Sakam*, 61 Phil., 27, 33-34).

On the strength of the foregoing considerations We find Felix Semanada, alias Semanada, alias Commander Dante, guilty of the crime of robbery with homicide attended by the aggravating circumstance of treachery (which include nocturnity and aid of superior strength), dwelling and cruelty, by deliberately and inhumanly increasing the sufferings of the victim. He should, therefore, be sentenced to the supreme penalty of death which, however, cannot be imposed upon him for lack of the required number of votes necessary for the imposition of said penalty.

Wherefore, the decision of the lower Court rendered in this case and brought to Us in consultation is hereby affirmed, although the penalty imposed upon the defendant is lowered to life imprisonment (reclusion perpetua), in accordance with the provisions of the last paragraph of Section 9 of Republic Act No. 296, known as the Judiciary Act of 1948, with the corresponding accessories of the law and the payment of the costs. It is so ordered.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

[*]95 Phil., 63.

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