

**PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS.
ROMUALDO CAPILLAS, ANTONIO CAPILLAS AND JULIANITO
CAPILLAS, DEFENDANTS/APPELLANTS.**

G.R. No. L-27177. October 23, 1981

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an automatic review[1] of the decision of the Court of First Instance of Samar, Branch IV, promulgated on September 26, 1966 in Criminal Case No. C-1120, entitled "People of the Philippines, plaintiff versus Romualdo Capillas, Antonio Capillas, Julianito Capillas, Felicisimo Genotiva, Thelmo Genotiva and Merlito Pariol, accused", the dispositive part of which reads:

"WHEREFORE, accused Romualdo Capillas, Antonio Capillas and Julianito Capillas are hereby found guilty beyond reasonable doubt for the crime of robbery with homicide and physical injuries and sentences them as follows:

"(a) with respect to accused Antonio Capillas and Julianito Capillas there being proven the aggravating circumstance of dwelling, taking advantage of superior strength, breaking a door as a means to the commission of the crime and nocturnity without any mitigating circumstance to offset the same, sentences them to DEATH;

"(b) as to accused Romualdo Capillas there being proven the aggravating circumstances of (1) by a band, (2) dwelling, (3) in an uninhabited place, (4) disrespect due the victim Consorcía Melendres, being a woman, and (5) nighttime as stated in the information which are considered to have been proven and admitted as a result of his pleas of guilty and with only the mitigating circumstance of plea of guilty to offset the same, sentences him also to DEATH;

"(c) all said accused to jointly and severally indemnify Pablo Amante and the heirs of Consorcía Melendres the sum of P6,000.00 and the amount of P1,000.00 representing the money and goods taken from the victim herein, and to pay the costs.

"SO ORDERED.

"Done at Allen, Samar, on the 26th day of September, 1966.

(SGD) MANUEL R. PAMARAN

Judge"[2]

On November 9, 1964, Assistant Provincial Fiscal Nicolas Galing filed in the Court of First Instance of Samar an information for robbery in band with homicide and physical injuries which reads:

"INFORMATION

"The undersigned, Acting 3rd Assistant Provincial Fiscal of Samar, accuses Romualdo Capillas, Antonio

Capillas, Julianito Capil-las, Felicisimo Genotiva, Thelmo Genotiva and Merlito Pariol, of the crime of Robbery in Band with Homicide and Physical Injuries, com-mitted as follows:

"that on or about the 25th day of Octo-ber 1964, in the evening, in Sitio Lagbañgan, San Antonio, Samar, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, Romualdo Capillas, Antonio Capillas and Julianito Capillas, cons-piring, confederating together and mutually helping one another with Felicisimo Genotiva, Thelmo Genotiva and Merlito Pariol who are still at large, all armed with pistols and pointed bolos, with intent of gain and by means of violence against and intimidation of persons and force upon things did, then and there, willfully, unlawfully and feloniously and forcibly enter the house of Pablo Amante and Consorcia Melendres, husband and wife respectively, by passing thru the door which was then securely closed, and once thus inside the house, by means of force, took, stole and carried away with them a trunk containing the follow-ing, to wit:

Cash money in the amount of. . . .P 600.00

Coins placed in a toy bank. 300.00

Clothes worth. 100.00

document of the land worth and

assessed at. 50.00

TOTAL AMOUNT. P1050.00

said amount and articles of value all be-longing to Pablo Amante and Consorcia Me-lendres, to the damage and prejudice of said owners in the aforestated amount; that on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the abovementioned amount and ar-ticles of value, herein accused, in the pur-suance of their conspiracy, with evident pre-meditation and treachery and taking advantage of their superior strength and number with the decided purpose to kill, did, then and there, wilfully, unlawfully and feloniously attack, assault and stab one Pablo Amante with a pointed bolo, thereby inflicting upon said Pablo Amante incised wounds which required medical attendance for a period of more than 5 days and then and there treacherously attack, assault, shot and fire at Consorcia Melendres, a woman who was then in the family way for two months, and as a result of which said Consorcia Melendres, died shortly thereafter.

"That in the commission of the offense, the following aggravating circumstances were present:

"1. by a band; 2. dwelling; 3. in an uninhabited place; 4. disrespect, due the victim, Consorcia Melendres, being a woman; and 5. nighttime.

"Contrary to law.

"Catarman, Samar, November 9, 1964.

(SGD) NICOLAS GALING

Actg. 3rd Asst. Prov'l Fiscal[3]

Upon arraignment on October 19, 1965, Romualdo Capillas pleaded guilty to the crime charged in the information. Antonio Capillas and Julianito Capillas pleaded not guilty.[4]

The evidence adduced by the prosecution is summa-rized by the appellee as follows:[5]

"At about 7:00 p.m., on October 5, 1964, Pablo Amante, his wife, Consorcia Melendres, and their two children, one aged 5 years and the other, 3 years, were in the living room of their house situated atop a hill in Lagba-ngan, Samar (pp. 3, 4, 23, t.s.n., Cardenas). Amante's wife was resting with their 3 year old child, on a

hammock tied in their living room, while Amante was teaching his 5 year old child to count (pp. 5, 6, t.s.n., Cardenas). As it was already dark, he tied their door with a rope (pp. 6, 7, t.s.n., Cardenas).

"While in this condition, their door was forcibly broken down together with the shutters frame, and the rope used for tying (pp. 7, 29, t.s.n., Cardenas), prompting Pablo Amante to stand up and get himself ready for any needed move (p. 31, t.s.n., Cardenas). Through the broken door entered Romualdo, Antonio, and Julianito, all surnamed Capillas, whom Amante has known for 27 years together with fourth masked man he could not recognize (pp. 7, 8, 27, 29, t.s.n., Cardenas). Upon entry, the group demanded money from Amante and Romualdo told him to surrender (pp. 31, 32, t.s.n., Cardenas). Then Antonio, who was armed with a short bolo locally known as 'Flamingo', wrestled with him, but Amante was able to take possession of the bolo (p. 9, t.s.n., Cardenas). While Amante and Antonio were fighting for the possession of the bolo, Romualdo who was armed with a revolver, shot Amante's wife three times while the latter was still in the hammock (pp. 9, 16, 33, 39, t.s.n., Cardenas). Seeing what Romualdo had done and having gained possession of the 'Flamingo' Amante used the same to stab Romualdo (pp. 9, 34, t.s.n., Cardenas).

"Wounded, Romualdo scampered away while his companions Julianito, who had with him a flashlight which he threw away during the melee, and the masked person carried away with them the family's trunk containing money and clothings (pp. 10, 41, 43, 36, t.s.n., Cardenas). Amante then immediately went to the succor of his wife, and picked up the flashlight which Juanito had thrown away, he beamed the same in the direction of the fleeing group such that he saw Felicisimo Genotiva, Thelmo Genotiva and Merlito Pariol on the ground just outside their (Amante's) house (pp. 10, 11, 42, t.s.n., Cardenas).

"Inside the trunk taken by the group were P100.00 in clothing, a piggy bank containing P300.00 and paper bills in the amount of P600.00 (p. 12, t.s.n., Cardenas).

"After the group had escaped, Amante with the aid of his father, Abdon Manakod as well as Sinro David, immediately brought his wife to the clinic for treatment (pp. 14, 19, 36, t.s.n., Cardenas).

"At the health center of San Antonio where she was brought, Consorcia Melendres, told her husband that she felt she was going to die (p. 20, t.s.n., Cardenas), mentioning Antonio and Romualdo as her assailants (p. 20, t.s.n., *ibid*). The Chief of Police of the town Victoriano Pernito, being then also present propounded questions to the victim which the latter answered. After all the questions and answers to which the Chief of Police reduced to writing, the latter asked the victim if she was willing to affix her thumbmark on the declaration, and the victim say yes (pp. 58, 59, t.s.n., Cardenas; see Exhs. G and G-1, pp. 6, 90, rec.; p. 10, t.s.n., Abata). A few minutes after affixing her thumbmark on the instrument the victim expired (p. 61, t.s.n., Cardenas; p. 10, t.s.n., Abata).

"On the next day, October 26, 1964, the body of Consorcia Melendres was autopsied by Dr. Vicente Gutay assisted by the Public Sanitary Inspector, who found out the cause of death was severe acute hemorrhage secondary to gunshot wounds (pp. 4, 6, t.s.n., Anguil; pp. 71, 72-75, t.s.n., Cardenas, Exhs. H and J, K; pp. 3, 91, 95, rec.). Dr. Gutay also found out that the trajectory of the bullet shows that the assailant must have been at a higher level than the victim; also, the power burns indicated that the shots were fired at a distance of more than one meter (p. 7, t.s.n., Anguilo).

"The bolo (Exh. C), the flashlight (Exh. D) empty shells recovered at scene of the crime (Exhs. A, A-1), and slugs, also recovered from the scene of the crime (Exhs. B, B-1), were all surrendered by Pablo Amante to the Chief of Police (pp. 15, 16, 17, t.s.n., Cardenas)."

The defense presented the following version of the incident:[6]

"On October 26, 1964 at around 7:00 o'clock in the evening, four men entered the house of the spouses Pablo Amante and Consorcia Melendres situated at Sitio Lagbangan, San Antonio, Samar and robbed the same. On the occasion of the robbery, Consorcia Melendres was shot to death and Pablo Amante suffered physical

injuries.

"Romualdo Capillas, Antonio Capillas and Julianito Capillas were all arrested on that same night, and together with three others namely Felicisimo Genotiva, Thelmo Genotiva and Merlito Pariol, who are still at large, were later on named in the information as the perpetrators of the crime charged which is robbery in band with homicide and physical injuries. Upon being arrested, Antonio Capillas and Julianito Capillas inquired why they were being brought to the Municipal building and they were told that they will be informed the following morning.

"Romualdo Capillas pleaded guilty, while Antonio Capillas and Julianito Capillas pleaded not guilty to the offense charged. In his testimony (t.s.n., p. 20) Romualdo Capillas confessed that at the time of the commission of the crime he was in company with Thelmo Genotiva, Felicisimo Genotiva and Merlito Pariol. Furthermore, he stated that his co-accused, Antonio Capillas and Julianito Capillas were not with him at the time of the robbery (t.s.n., pp. 27-28). According to him, the two were included in the information just because Antonio is his younger brother and Julianito is his uncle. (t.s.n., p. 28)

"The testimonies of Antonio Capillas and Julianito Capillas, corroborated by the testimony of Brigido Bobles, a witness for the defense that they were in the gambling den at Puntahan District, at the Poblacion of San Antonio from 7:00 P.M. up to 9:00 P.M. of October 25, 1964 was not believed by the Lower court."

On September 26, 1966, the accused Romualdo Capillas, Antonio Capillas, and Julianito Capillas were found guilty beyond reasonable doubt of the crime of robbery with homicide and physical injuries and not robbery in band with homicide and physical injuries as there was no evidence to show that there were more than three (3) armed malefactors who participated in the commission of the crime.[7]

In their brief, the three accused assign the following errors.[8]

"I

"THE LOWER COURT ERRED IN FINDING THE EVIDENCE ADDUCED BY THE PROSECUTION AS LOGICAL, PROBABLE AND CREDIBLE THEREBY CONVICTING APPELLANTS FOR THE CRIME OF ROBBERY WITH HOMICIDE AND PHYSICAL INJURIES.

"II

"THE LOWER COURT ERRED IN NOT GIVING CREDENCE TO THE DEFENSE OF ALIBI OF APPELLANTS ANTONIO CAPILLAS AND JULIANITO CAPILLAS.

"III

"GRANTING THAT THE DEFENDANTS-APPELLANTS ARE GUILTY OF THE CRIME OF ROBBERY WITH HOMICIDE AND PHYSICAL INJURIES, THE LOWER COURT ERRED IN IMPOSING THE DEATH PENALTY."

In support of the first error assigned the counsel for the defendants cited inconsistencies and improbabilities in Pablo Amante's testimony.[9] It is contended that the testimony of Pablo Amante that he stabbed Romualdo Capillas was improbable because the latter was armed with a revolver. This contention is devoid of merit. It is possible that Romualdo Capillas might have thought that Amante was already being taken care of by one of his companions. Hence, he did not pay attention to Amante anymore. Moreover, as pointed out by the Solicitor General,[10] he could have been shocked and distracted by the gravity of the crime he just committed - shooting a woman in cold blood, that he temporarily lost his presence of mind. Therefore, he was completely unaware of the intention of Amante to stab him and in fact, he did not realize immediately that he was already stabbed by

Amante.

The defendants also argue that it was improbable 1) for Amante to have wrestled away the arms carried by Julianito and Antonio that easily, 2) for the masked person to have merely witnessed the fight and not have aided his companions and 3) for Amante to have struck Julianito with a flashlight instead of stabbing him with a bolo.[11]

How Amante was able to obtain the possession of the flashlight carried by Juanito was explained during the re-direct examination[12] as follows:

"Q You said you were able to wrestle Exh. "D" the flashlight from Julianito Capillas, at what precise moment did you wrestle that flashlight from Julianito Capillas?

"A That flashlight was thrown away to the door that was destroyed by them.

"Q You mean when Julianito Capillas and the masked person were carrying away your trunk that was the time when Julianito throw away that flashlight to the broken shutters at your door?

"A Yes, sir.

"Q So you did not wrestle that flashlight from Julianito Capillas?

"A No, sir, because he was carrying it.

"Q So how were you able to possess that flashlight, by wrestling it from Julia-nito Capillas or by picking it up in your house when they left?

"A I just picked that flashlight in the house but I know that he was the one who was carrying that flashlight.

"Q So your direct testimony is not correct when you said that you wrestled that flashlight from the possession of Julia-nito Capillas?

"A I did not wrestle that flashlight from Julianito Capillas but I know that he was the one carrying that flashlight.

"Q And you never grappled with Julianito Capillas?

"A No, sir, we did not."

The failure of the masked person to come to the aid of Antonio can be explained by the fact that he, like Romualdo might have thought that Antonio was capable of resisting and fighting Amante. Moreover, it was likely that what was uppermost in the minds of the robbers, Romualdo and the masked person included, was to immediately run away and escape with their loot, rather than stay and maul Amante and thereby risk the possibility of being caught by persons who will come to the aid of the victims.

It is also contended by the defendants that the testimony of Pablo Amante that Antonio Capillas and Julianito Capillas participated in the commission of the crime is uncorroborated[13] because the testimony of Menecio Amante, a witness for the prosecution, which was intended to corroborate that of Pablo Amante was disregarded by the lower court for being unsatisfactory,[14] and that the testimony of the Chief of Police of San Antonio, Samar, Victorino Pernito to the effect that Consorcia Melendres made a dying declaration that she was shot by Romualdo Capillas[15] was impeached by the testimony of defense witness Melecio Cordova. According to Cordova, Consorcia Melendres was already dead when the dying declaration was prepared; that it was Pablo Amante who answered the questions; and that the Chief of Police held the hand of the deceased woman and had her thumb pressed on the paper.[16]

The trial court correctly observed that the credibility of Pablo Amante was augmented by the dying declaration of Consorcía Melendres, the due execution of which was clearly shown by the records of the case. Pablo Amante positively declared that there were many people who witnessed the Chief of Police, Victoriano Pernito take down the declaration of his wife who was then alive.[17] This testimony was further reinforced by the declaration of rebuttal witness, Judge Noynay, that the victim affixed her thumbmark to her dying declaration when she was still alive.[18]

The defendants are not correct in alleging that the testimony of the Chief of Police, Victoriano Pernito was impeached by the testimony of Melecio Cordova. The testimony of Victoriano Pernito that Consorcía Melendres was still alive when she affixed her thumb mark to the dying declaration was more credible than that of Cordova. It is difficult to believe that Cordova witnessed the "irregular" taking of the dying declaration without as much protesting especially because the persons implicated were related to him by marriage.[19] Moreover, it is quite surprising that despite the presence of several persons at the time the declaration was taken, not one of them protested and complained.[20]

During the trial prosecution witness, Dr. Vicente Gutay, testified that the victim could not have survived for more than thirty (30) minutes because "a very important blood vessel, the internal iliac artery has been hit".[21] According to the defendants, this testimony of Dr. Gutay further strengthened the testimony of Cordova that Consorcía Melendres was already dead when the dying declaration was taken.[22] This is without merit. Dr. Gutay did not categorically state that it was impossible for the victim to have survived for more than thirty (30) minutes. Hence, it does not exclude the probability that the victim had survived for more than thirty (30) minutes. In fact, three persons, two of whom are without interest to perjure, testified that the victim was still alive when the dying declaration was thumbmarked by said victim.[23] It is also significant that the defense never presented any evidence that thirty (30) minutes had elapsed from the time the wound was inflicted up to the time that the declaration was taken. What appears on record are mere assumptions that there were delays in bringing the victim to the dispensary.[24] These assumptions do not establish the fact that thirty (30) minutes had elapsed from the time the victim was wounded up to the time she expired.

In defendants' second assignment of error, they contend that the lower court erred in not giving credence to the defense of alibi of defendants Antonio Capillas and Julianito Capillas. This contention is equally without merit. For alibi to prosper, it is not enough to prove that the defendants were somewhere else when the crime was committed but it must, likewise, be demonstrated that it was physically impossible for them to have been at the scene of the crime either before, during, or after the time they were at such other place.[25]

Both Antonio and Julianito Capillas testified that at the time the crime was committed they were at a gambling den located at Puntahan District at the poblacion of San Antonio.[26] This gambling den is about two (2) kilometers from the farm of the Amantes.[27] Hence, it was not physically impossible for Julianito and Antonio to have been at the scene of the crime at the time of its commission.

The alibi of Antonio and Julianito is further weakened by the positive identification by Pablo Amante that they were responsible for the crimes committed in his house.[28]

The trial court correctly appreciated the presence of abuse of superior strength as an aggravating circumstance. Consorcía Melendres, a pregnant woman was shot in cold blood while lying down in the hammock.[29] Clearly, there was a marked difference of physical strength between Consorcía Melendres and the offenders.[30]

Dwelling aggravated the commission of the special complex crime of robbery with homicide. Where the offense committed is robbery with violence or intimidation, dwelling is aggravating.[31] The rationale behind this ruling is that this class of robbery could be committed without the necessity of transgressing the sanctity of the

home.[32]

The trial court erred in considering as aggravating circumstances uninhabited place, nocturnity, breaking of the door, and disrespect of sex.

Uninhabited place cannot be considered against the defendants although the house nearest the dwelling of the Amantes was about two (2) kilometers away. It is not apparent from the records that the defendants select-ed the place of the commission of the crime either to better obtain their object without interference or to secure themselves against detection and punishment.[33]

Nocturnity is aggravating when it is purposely and deliberately sought by the accused to facilitate the commission of the crime[34] or to prevent their being recognized as to ensure unmolested escape.[35] In the instant case, there is no evidence that the appellant precisely sought nighttime to facilitate the commission of the crime and to hide their identities.[36] Despite the fact that the defendants were known to the victims, no attempt of disguise was made by them.

To be considered as an aggravating circumstance, breaking the door must be utilized as a means to the commission of the crime. The defendants did not break the door of the victims as a means to commit robbery with homicide. Pablo Amante testified that the appel-lants first broke the rope which was used to close the door.[37] After the rope was broken, the appellants could already have entered the house. Breaking of the shutters and the framing of the door to insure the ele-ments of surprise does not aggravate the commission of the crime. Art. 14, paragraph 19, of the Revised Penal Code is specific. To be appreciated as an aggravating circumstance, breaking the door must be utilized as a means of the commission of the crime.

Neither can the aggravating circumstance of dis-regard of sex can be considered in this case. Disregard of the respect due the offended party on account of his rank, age, or sex may be taken in account only in crimes against persons or honor, when in the commission of the crime there is some insult or disrespect shown to rank, age, or sex. It is not proper to consider this aggra-vating circumstance in crimes against property. Homi-cide is a mere incident of the robbery, the latter being the main purpose and object of the criminals.[38]

The trial court correctly found that defendants Romualdo Capillas, Antonio Capillas and Julianito Capil-las were guilty of the special complex crime of robbery with homicide under Art. 294, paragraph one (1) of the Revised Penal Code.

There being no mitigating circumstance to offset the aggravating circumstances of abuse of superior strength and dwelling, the maximum penalty of DEATH was correctly imposed upon defendants Antonio Capillas and Julianito Capillas. Likewise, the Death penalty was properly imposed on defendant Romualdo Capillas. The mitigating circumstance of plea of guilt is offset by only one aggravating circumstance. No other mitigating circumstance offsets the other remaining aggravating circumstance.

However, due to lack of necessary votes, the penalty next lower in degree is to be imposed.

WHEREFORE, the judgment of the Court of First Instance of Samar, Branch IV, in Criminal Case No. C--1120, entitled "People of the Philippines vs. Romualdo Capillas, Antonio Capillas, and Julianito Capillas" is affirmed with the modification that the penalty is re-duced to reclusion perpetua and the indemnification is increased from P6,000.00 to P12,000.00 plus the amount of P1,000.00 representing the goods and money taken from the victims.

SO ORDERED.

Fernando, C.J., Teehankee, Concepcion, Jr., Guerrero, and De Castro, JJ., concur.

Barredo, J., votes with Justice Abad Santos.

Makasiar, J., nocturnity and uninhabited place should also support the crime and all the more justify the imposition of the death penalty.

Aquino, J., concurs but believes that nocturnity and despoblado are aggravating.

Abad Santos, J., considering that the appellants have been in death row for over 15 years, votes for reclusion perpetua.

Melencio-Herrera, J., votes for the imposition of the death penalty.

[1] Rollo, p. 70.

[2] CFI Decision, pp. 15-16; Rollo, pp. 67-68.

[3] Records, pp. 32-33.

[4] Rollo, p. 43.

[5] Brief for the Appellee, pp. 1-5; Rollo, p. 172.

[6] Brief for the Appellants, pp. 1-2; Rollo, pp. 133-134.

[7] CFI Decision, Rollo, pp. 53-68; 66.

[8] Brief for the Defendants-Appellants, pp. 1-2; Rollo, pp. 131-132.

[9] Brief for the Defendants-Appellants, pp. 2-7; Rollo, p. 133.

[10] Brief for the Plaintiff-Appellee, pp. 5-6; Rollo, p. 172.

[11] Brief for the Defendants-Appellants, pp. 3-4; Rollo, p. 133.

[12] TSN, October 19, 1965, pp. 41-43.

[13] Brief for the Defendants-Appellants, p. 4; Rollo, p. 133.

[14] Idem.

[15] TSN, October 19, 1965, p. 61.

[16] TSN, September 19, 1966, pp. 51-52.

[17] TSN, October 19, 1966, p. 20.

[18] TSN, September 22, 1966, p. 4.

[19] TSN, September 19, 1966, pp. 58-59.

[20] Idem.

[21] TSN, September 19, 1966, p. 11.

[22] Brief for the Defendants-Appellants, Rollo, p. 131.

[23] Chief of Police Victoriano Pernito and Municipal Judge Donato P. Noynay; pp. 58-62, TSN, October 19, 1965 & p. 4, TSN, September 22, 1966, respectively.

- [24] TSN, September 19, 1966, p. 12.
- [25] *People vs. Angeles*, 92 SCRA 432, 448.
- [26] TSN, September 19, 1966, pp. 33, 67.
- [27] CFI Decision, p. 7, Rollo, p. 59; TSN, p. 48, September 19, 1966.
- [28] *People vs. Lucero*, 96 SCRA 694, 703.
- [29] TSN, October 19, 1965, pp. 16, 33, 39, 41.
- [30] *People vs. Gatcho*, G.R. No. L-2725, February 26, 1981; citing *U.S. vs. Devela, et al.*, 3 Phil. pp. 625, 628-629.
- [31] *People vs. Apduhan*, 24 SCRA 800, 815.
- [32] *Ibid.*; *People vs. Mongado*, 28 SCRA 642.
- [33] *People vs. Deguia, et al.*, 88 Phil. 520, 526.
- [34] *People vs. Matbagon*, 60. Phil. 887, 893.
- [35] *U.S. vs. Billedo*, 32 Phil. 575, 579.
- [36] *People vs. Talay*, G.R. No. L-24852, EN BANC, November 28, 1980.
- [37] TSN, October 19, 1965, p. 6.
- [38] *People vs. Pagal*, 79 SCRA 571, 577.

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