

**THE PEOPLE OF THE PHILIPPINES PLAINTIFF (APPELLEE), VS.
POLICARPIO HALASAN, ET AL., DEFENDANTS, POLICARPIO
HALASAN, DEFENDANT (APPELLANT).**

G.R. No. L-21495. July 21, 1967

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

This is an automatic review, pursuant to Section 9, Rule 122 of the revised Rules of Court, of a decision of the Court of First Instance of Zamboanga del Sur, in its Criminal Case No. 1316, the dispositive portion of which reads -?

"WHEREFORE, the Court finds accused POLI-CARPIO HALASAN, guilty beyond reasonable doubt, as principal, of the special complex crime of rob-bery in band with homicide and frustrated homicide, as defined and penalized under Art. 294, par. 1, in relation to Art. 296 of the Revised Penal Code, and there being no aggravating nor mitigating circumstances, hereby imposes upon the accused to suffer the maximum penalty of DEATH; to indemnify the heirs of the deceased Leoncio Balaobao in the amount of P6,000.00; to pay to the offended party, Maximino Maghuyop, the sum of P1,289.75, the value of the articles and money robbed; and to pay the costs."

The records disclose that: In an information dated March 4, 1959, the Provincial Fiscal of Zamboanga del Sur charged in said court one Policarpio Halasan together with thirteen (13) others of the crime of robbery in band with homicide and frustrated homicide, the pertinent part of which information reads -

"That on or about January 16, 1959, at early dawn, in Barrio Calian, Municipality of Margosatubig, Province of Zamboanga del Sur, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with guns, bladed weapons and clubs, conspiring, confederating and mutually helping one another, with intent to gain and with the use of force, threats, violence and intimidation, went to the store which is used as residence of Maximino Maghuyop, by then and there willfully, un-lawfully and feloniously detached and removed forcibly the wooden board of the kitchen walling and at the same time fired their guns toward the kitchen door hit-ting and killing instantaneously one Leoncio Balaobao and wounding the store owner, Maximino Maghuyop, thereupon having successfully gained entrance into the store by shouting at the inmates inside to open the front door under threats and intimidation, hogtied all the occupants, and the said accused demanded cash from the owner Maximino Maghuyop and wife Angela C. Maghuyop handed to them in the amount of One Thousand Two Hundred (P1,200.00) Pesos, also together with the cash amount mentioned herein various merchandise and cigarettes all valued at Eighty Nine and 75/100 (P89.75) Pesos were taken and carried away by the accused to the damage and prejudice of the owner in the total amount of One Thousand Two Hundred Eighty Nine and 75/100 Pesos (P1,289.75), Philippine Currency."

Of the fourteen (14) accused charged in said information, only four (4), namely, Policarpio Halasan, Emilio Popera, Alfredo Tala-sing, and Teotimo Montalla were apprehended, while the others remained at large and/or unidentified.

Upon being arraigned, the four (4) above-named accused, assisted by the same lawyer, Ernesto O. Organo, who acted as counsel de oficio for Halasan and as counsel de parte for the others, pleaded not guilty.

Subsequently, the court a quo, upon the Provincial Fiscal's motion, ordered the discharge of accused Teotimo Montalla from the information to be utilized as state witness.

The prosecution then proceeded with the presentation of its evidence. It finished with the direct examination of state witness Montalla who narrated in detail how appellant Policarpio Hala-san ("Carping") invited and later intimidated the witness into joining an armed band of more than four men who attacked and broke into the house of Maximino Maghuyop, wounded the latter and killed Leoncio Balaobao and robbed the family, as described in the information. The defense began cross-examining Montalla, but before the cross-examination could be terminated, defense counsel Organo manifested to the court a quo that accused Hala-san had signified his willingness to change his former plea and that he (counsel) would discontinue and waive further cross-examination of said witness. He moved, therefore, that Halasan be allowed to withdraw his former plea of not guilty and to substitute therefor a plea of guilty. The Provincial Fiscal did not interpose any objection to Attorney Organo's motion.

Thereupon, the court a quo apprised accused Halasan of the consequences of his change of plea, the seriousness or gravity of the offense charged against him and the possibility of a heavy penalty which might be imposed upon him. Despite this warning, said accused declared in open court that he was willing to enter a plea of guilty because he really committed the crime so that there was no use of setting up a defense; that he considered himself a habitual delinquent because he had killed and wounded persons in Tudela, Misamis Occidental, killed three (3) persons in Zamboanga del Sur and other persons in some other places which crimes were still unsolved; that in the morning of the trial (August 24, 1960), he stabbed a co-prisoner in the Provincial jail and his victim was hovering between life and death; and that he wanted a death penalty to be meted against himself in order that he may be able to prepare in the atonement of his sins.

The court a quo, after finding that accused Halasan understood the import of his change of plea, granted the defense's motion and ordered said accused to be arraigned anew.

Upon being re-arraigned, accused Halasan, assisted by the same counsel de oficio, pleaded guilty.

Defense attorney Organo then prayed the court a quo to exercise its sound discretion in considering the above plea of guilty as a mitigating circumstance in favor of said accused, for the purpose of determining the proper penalty to be imposed upon him. On the other hand, the Provincial Fiscal asked that the aggravating circumstance of recidivism be counted against the accused and moved that the information be amended to allege such circumstance, which the defense opposed for being improper. Said fiscal recommended that the maximum penalty of death be imposed on the said accused.

On the basis of said plea of guilty, which the court a quo did not credit as a mitigating circumstance in favor of the accused, it having been entered after the prosecution had presented its evidence and other circumstances of this case, such as the alleged "depravity" of the accused as confessed by him in open court, and considering the nature of the crime (robbery in band with homicide) charged in the information to which said accused pleaded guilty, the court a quo rendered its decision, dated August 24, 1960, quoted at the beginning of this opinion. Hence, the record of this case was elevated to this Court for automatic review.

In this Court, counsel de oficio for said accused was appointed to represent him. Said counsel alleged a lone assignment of error in his brief, claiming that by such plea of guilty, accused is entitled to the benefit of a mitigating circumstance and there being no aggravating circumstance, the proper penalty which should have been

imposed upon him should be lowered by one degree (reclusion temporal) in accordance with Article 61, paragraph 2, of the Revised Penal Code; or, in the interest of justice, that a new trial or reception of additional evidence be ordered to enable this Court to arrive at a fair and impartial decision of this case.

Upon the other hand, the Solicitor General, in representation of the People, maintains that the lower court correctly imposed the proper penalty against the accused since any person found guilty of robbery in band with homicide is punishable with a penalty of reclusion perpetua to death which should be imposed in the maximum period; and he recommends, therefore, that the decision under review should be affirmed.

We agree with the lower court as well as the Solicitor General that the plea of guilty cannot be considered as a mitigating circumstance to benefit the accused in this case, the same (plea) having been entered after the prosecution had begun presenting its evidence. (People vs. Co Chang, 60 Phil. 293; People vs. De la Cruz, 63 Phil. 874; and People vs. Lambino, 103 Phil. 504).

We likewise agree with the Solicitor General that the lower court correctly imposed the proper penalty upon the said accused, since by such plea of guilty, he is deemed to have admitted the material allegations of the information^[1] including any aggravating circumstance alleged therein (People vs. Llagas, G. R. Nos. L-5015-17, May 31, 1957, 102 Phil. 1232 [unrep.]); that "band" is considered as an aggravating circumstance (People vs. Ganal, 85 Phil. 743); and that this Court had already held that -

"As the crime committed by the defendants is robbery in band with homicide, the penalty provided for by article 294, of the Revised Penal Code, is reclusion perpetua to death, and in accordance with Republic Act 12, the penalty to be imposed upon them is the maximum penalty, that is, death, even without the concurrence of any aggravating circumstance." (People vs. Valeriano, 90 Phil. 15)

With respect to the claim of counsel de oficio for a new trial or taking of additional evidence, suffice it to cite that the award thereof rests upon the sound discretion of the court (People vs. Acosta, supra.) and no valid justification is shown to grant it.

However, for lack of the requisite number of votes to support the infliction of the supreme penalty of death, the penalty next lower in degree, that is, reclusion perpetua, should be imposed upon the appellant.

WHEREFORE, as thus modified, the decision under review is hereby affirmed in all other respects. With costs against accused Policarpio Halasan.

SO ORDERED.

Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., did not take part.

[1] People vs. Buco, G. R. Nos. L-2633, February 28, 1950; People vs. Egido, 90 Phil. 762; People vs. Sabilul, 93 Phil. 567; People vs. Acosta, 98 Phil. 642; People vs. Rapiap, 102 Phil. 863; People vs. Lambino, 103 Phil. 504; and People vs. Santos, G. R. No. L-12448, January 22, 1959.

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