

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJAMIN RETANIA Y RODELAS, ACCUSED-APPELLANT.

G.R. No. L-34841. January 22, 1980

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PER CURIAM:

This case is before Us for automatic review of the death sentence imposed by the Court of First Instance of Occidental Mindoro, Eighth Judicial District, Branch II, by virtue of an Information filed by the Assistant Provincial Fiscal accusing BENJAMIN RETANIA y RODELAS of robbery with homicide alleged to have been committed as follows:

"That on or about the 21st day of January 1972, in Barrio San Pedro, Municipality of Rizal, Province of Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, said accused with the use of violence upon Jerry Casidsid, an 11-year old helper in the house of Benjamin Tordesillas, situated in said barrio and municipality, to wit: by then and there hitting him with a water pipe and a pike ("piko") on the face and different parts of the body, thereby inflicting upon the said Jerry Casidsid injuries which had been the cause of his untimely death, and thereafter, with intent to gain and without the consent of the owner thereof, did then and there willfully, unlawfully, and feloniously take, steal and carry away therefrom the following personal property belonging to Benjamin Tordesillas, to wit:

One (1) transistor radio, with plastic case, colored white, with trade mark Nanaola, Model 6 NH - 140 with a value of P65.00, to the damage and prejudice of said Benjamin Tordesillas in the amount of P65.00, Philippine Currency.

"That the accused is a quasi-recidivist, he having previously been convicted by final judgment by court of competent jurisdiction and at the time of the commission of the crime is serving his sentence.

"That as a consequence of the unlawful acts of the accused, the legal heirs of said Jerry Casidsid suffered actual damages in the amount of not less than P12,000.00, as well as compensatory and moral damages for which they should be indemnified in such amount that this Honorable Court may deem reasonable.

"CONTRARY TO LAW, with the aggravating circumstances, to wit: the crime having been committed in the dwelling of the offended party without the latter, having given any provocation, cruelty; abuse of superior strength; and quasi-recidivism." [1]

Upon arraignment on February 7, 1972, and with the assistance of a counsel de oficio appointed by the Court a quo and of the accused's own choice, the latter pleaded GUILTY to the Information. [2]

The next day or on February 8, 1972, the lower Court rendered its decision, the dispositive portion of which reads:

"WHEREFORE, the Court hereby sentences the accused Benjamin Retania y Rodelas to the supreme penalty of DEATH, to indemnify the heirs of the deceased Jerry Casidsid in the sum of P12,000.00. The Transistor Radio, Nanaola, Model 6 NH-140, is hereby ordered returned to the owner thereof, Benjamin Tordesillas.

"Let the record of this case be transmitted immediately to the Honorable Supreme Court within twenty (20) days, but not earlier than fifteen (15) days, after the rendition or promulgation of the sentence pursuant to the

provisions of Sec. 9, Rule 122 of the Rules of Court as amended.

"Atty. Alfonso Adora, who was appointed counsel de oficio, is entitled to collect the amount of P200.00 for payment of his professional services.

"IT IS SO ORDERED.

"San Jose, Occidental Mindoro, February 8, 1972."[3]

On May 20, 1972, before filing the Appellant's Brief, the accused's new counsel de oficio appointed by this Court, Atty. Teresita Cruz Sison, submitted an Omnibus Motion[4] making the following manifestations:

"1.

That she interviewed the accused-appellant at the National Penitentiary at Muntinlupa, Rizal last May 12, 1972;

2.

That at the interview, the accused-appellant exhibited certain clinical manifestations of mental disorder particularly lack of emotional response commensurate to the thought content of his narration and flat facial expression which could strongly indicate mental retardation or simple schizophrenia which condition can essentially alter the outcome of the case and/or its penalty;

3.

That it is the belief of the undersigned counsel de oficio that the interests of justice and humanity would be better served by submitting said accused-appellant to mental examination for the purpose of determining whether or not he can be held criminally liable for the offense charged;

4.

That meanwhile, the period for filing of the brief of the accused-appellant will expire on May 27, 1972,"

and praying that this Court: (a) issue an order to the authorities of the National Penitentiary directing that appellant be submitted to mental examination by a competent state psychiatrist; and (b) suspend the period for filing appellant's brief until the submission of a report of said examination by the state psychiatrist. Upon its being required to comment on the Omnibus Motion, the Office of the Solicitor General as counsel for the Government presented[5] a certification signed by Dr. Ester B. Cordero, Incharge of the Neuro-Psychiatric Ward of the New Bilibid Prison Hospital, to the effect that Prisoner No. 75038-P BENJAMIN RETANIA was examined and was found to be mentally normal, and that no psychoses was elicited.[6] In view thereof, counsel de oficio for accused Retania was required to file the appellant's brief.

In her Brief for the accused-appellant, Atty. Sison interposes the following assignment of errors:

- That the proceedings held before the lower Court denied the accused due process of law;
- That the lower Court erred in convicting the accused of the crime of robbery with homicide; and
- That the penalty meted out to the accused was excessive and erroneous.[7]

In raising the issue of due process, counsel for appellant lashed and denounced the "miserable" five-minute consultation between the accused and his counsel de oficio in the Court below during which they were supposed have conferred before arraignment and after which the accused pleaded guilty to the crime charged in the Information, as borne out by the record of the proceedings in the Court a quo, to wit:

"COURT

You ask the accused if he has a lawyer.

DEPUTY CLERK OF COURT

(Asking the accused)

He has no money to pay the services of counsel de parte, Your Honor, and he is asking the Honorable Court that a counsel de oficio be appointed.

COURT

You tell him that we have lawyers present in the courtroom. Let him select.

DEPUTY CLERK OF COURT

(Informing the accused of the lawyers in court) He is asking for Atty. Adora, Your Honor.

COURT

Alright, Atty. Alfonso Adora is appointed counsel de oficio for the accused to undertake the defense.

ATTY. ADORA

May I be given five (5) minutes to confer with the accused, Your Honor.

COURT

Alright, five minutes, you confer with the accused. (Atty. Adora conferring with the accused)

ATTY. ADORA

We are ready for the arraignment, Your Honor.

COURT

Alright, arraign the accused, Escribano. (Mr. Norella, Interpreter, reading the information in Tagalog dialect)

DEPUTY CLERK OF COURT

After the reading of the information, the accused pleaded guilty, Your Honor." (t.s.n., February 7, 1972, pp. 2-3.)

It is contended that the events that transpired before the plea, as shown above, were in direct contravention of Rule 16, section 5, of the Rules of Court, to wit:

"Sec. 5. Time for counsel de oficio to prepare for arraignment or trial.-Whenever an attorney de oficio is employed or assigned by the court to defend the accused either at the arraignment or at the trial, he shall be given a reasonable time to consult with the accused and prepare his defense before proceeding further in the case, which shall not be less than two (2) hours in case of arraignment and two (2) days in case of trial, but the court may, for good cause shown, shorten or extend the time." (Underscoring supplied.)

and, therefore, tantamount to denying the accused his day in court.

The contention of the accused-appellant that he has been denied his day in court is untenable. Section 5, Rule 16 of the Rules of Court above-quoted gives the court discretion, for good cause shown, to shorten or extend the time given the attorney de oficio employed or assigned by the court to defend the accused either in the arraignment or at the trial. As pointed out by the Solicitor General under the said provision, the restriction is on the court not to shorten the period of consultation requested by counsel de oficio to less than two hours in case of arraignment and two days in case of trial. The provision does not prohibit the counsel de oficio from requesting for a shorter period for consultation with the accused and what may be a reasonable time to be given counsel to confer with the accused in preparation for arraignment may be left largely to the determination of counsel. Thus in the instant case, counsel de oficio appointed by the court in the person of Atty. Alfonso Adora, a former provincial fiscal, and a practising attorney in the province, requested the court and was granted five minutes to confer with the accused before arraignment.

The records also disclose that the accused entered into his plea of guilty with a full understanding of the consequences of his plea after he was thoroughly apprised of the nature of the information filed against him. The transcript of the proceedings taken on Feb. 7, 1972 following that previously quoted above is the best and most eloquent proof that the accused was given his day in court, thus:

"COURT

Ask him if he understands the information as read to him several times because he might be penalized with the extreme penalty of death for the offense with which he is charged. Ask him what language he understands.

DEPUTY CLERK OF COURT

He, understands Tagalog, Your Honor. He is a Tagalog.

COURT

Ask him again. Read again the information clearly.

(Mr. Norella, Interpreter, repeating the reading of the information in Tagalog)

DEPUTY CLERK OF COURT

He is very persistent. He knows the consequences, Your Honor.

COURT

Q - Do you understand the contents of the information? Nobody threatened you?

A - None, Your Honor.

Q - Do you affirm your plea of guilty?

A - Yes, Your Honor.

Q - Are you threatened by the Fiscal?

A - No, Your Honor.

Q - Are you threatened by the PC?

A - No, Your Honor.

Q - Any aggravating circumstances?

DEPUTY CLERK OF COURT

There are, Your Honor, as stated in the information. (reading the information)

ATTY. ADORA

That is the recital of the offense.

COURT

In the information, are these allegations of aggravating circumstances?

FISCAL OLFATO

There are aggravating circumstances,

COURT

Are these aggravating circumstances?

FISCAL OLFATO

In the body of the information, Your Honor.

COURT

What are the allegations there?

FISCAL OLFATO

They are stated in the last part of the information, Your Honor.

COURT

Put the accused on the witness stand to clarify certain points.

DEPUTY CLERK OF COURT TAKING OATH OF THE WITNESS

Q - Do you swear to tell the truth and nothing but the whole truth only?

A - (Witness) Yes, sir.

BENJAMIN RETANIA - 24 years old, single, tricycle driver, colonist and a resident of Lipa City, Batangas.

ATTY. ADORA

With the indulgence of the Honorable Court. May we know the reason of presenting this witness?

COURT

The Court wants to satisfy itself whether the plea of guilty was voluntary or not.

Q - In the information read to you by the Clerk of Court for the crime of Robbery with Homicide, you pleaded guilty, is that correct?

A - Yes, Your Honor.

Q - When the information was read to you, did you understand every detail in the information?

A - Yes, Your Honor.

Q - What dialect do you speak?

A - Tagalog, Your Honor.

Q - So that when the information was read to you in Tagalog, you understood everything of what is alleged in the information?

A - Yes, Your Honor.

Q - Do you insist before this Court that you are entering into a plea of guilty to the information that was read to you?

A - Yes, Your Honor.

Q - You were not forced by anybody to enter into a plea of guilty?

A - No, Your Honor.

Q - Were you not paid by anybody to enter into a plea of guilty?

A - No, Your Honor.

Q - And you know for a fact that after you pleaded guilty to the information the court may impose the extreme penalty of death on you?

A - Yes, Your Honor.

Q - Are you going to accept the penalty of death willingly?

A - Yes, Your Honor.

Q - You understand very well all you are saying before this Court?

A - Yes, Your Honor.

COURT

Alright the Court is satisfied of the voluntariness of the plea of guilty.

FISCAL OLFATO

May it please, the Honorable Court.

COURT

What do you say?

FISCAL OLFATO

Just a few questions, Your Honor.

COURT

Go ahead.

FISCAL OLFATO

Q - Do you remember having made a written confession of the accusation made against you?

A - Yes, sir.

Q - Do you remember having signed the name?

A - Yes, sir.

Q - Do you know this signature appearing on page 8 at the bottom thereof?

A - Yes, sir.

Q - Whose signature is that?

A - That is mine, sir.

Q - Do you remember also having sworn this statement before Fiscal Virola?

A - Yes, sir.

Q - Do you remember having seen the signature of Fiscal Virola when you also subscribed and sworn to about this?

A - Yes, sir. (Witness pointing to the signature of Fiscal Virola)

FISCAL OLFATO

That will be all, Your Honor.

COURT

Any further question?

ATTY. ADORA

No questions, your Honor.

COURT

Dismiss the witness.

FISCAL OLFATO

Considering, Your Honor, that this is a case which carried the penalty of death, this representation is submitting his further evidence for the prosecution and this signed confession of the accused consisting of three pages, pages 6, 7 and 8 of the record, plus the other record, the original record of the case.

COURT

Alright as part of the record. Decision reserved. Next case." (Rollo, pp. 81-87)

From the above record, it will be noted that the information was read to the accused twice in Tagalog, a dialect known to him, he being a Tagalog. He was made to affirm his plea of guilty before the Judge and he likewise affirmed that he was not threatened by the Fiscal, neither by the PC.

The court further required the accused to take the witness stand in order to satisfy itself whether the plea of guilty was voluntary or not. And the accused himself testified that it was correct that he had pleaded guilty to the information against him for robbery with homicide; that he understood every detail in the information read to him; that he speaks the Tagalog dialect; that when the information was read to him in Tagalog, he understood everything alleged in the information.

For the fourth time, the accused declared that he was entering a plea of guilty to the information that was read to him; that he was not forced by anybody to enter into his plea of guilty; that he was not paid by anybody to do so; that he knew as a fact that after pleading guilty, the court may impose the extreme penalty of death on him; that he accepts the penalty of death willingly and that he understood very well all that he was saying to the court.

Thereafter, the court announced that it was satisfied that the plea of guilt of the accused was voluntary.

The next phase of the proceedings where the Fiscal proceeded to question the accused also showed the voluntariness of the accused in admitting previously his guilt when he executed his written confession before Fiscal Virola, which confession the accused identified as well as his signature thereon at the bottom thereof on page 8 and the signature of Fiscal Virola.

As manifested by the Fiscal, he submitted to the court as further evidence for the prosecution the signed confession of the accused consisting of three pages, which is reproduced hereunder:

"SINUMPAAN SALAYSAY NI BENJAMIN RETANIA Y RODELAS NGAYONG IKA 30 NG ENERO 1972 DITO SA HIMPILAN NG KONSTABULARYA SA SAN JOSE, OCC. MDO.

- TANONG - Kusang loob mo bang magbibigay ka ng salaysay sa inbestigasyon na ito na wala kang sasabihin kundi ang katotohanan lamang?

SAGOT - Opo

.

- T - Ano ang tunay mong pangalan at mga bagay na maaaring pakakilalanan saiyo?

S - BENJAMIN RETANIA Y RODELAS, 24 taon gulang, binata, tubo sa Lodal, Lipa City at takas na bilanggo sa Sablayan Penal Colony and Farm.

- T - Sinabi mo ikaw ay takas na bilanggo, bakit ka naririto sa Himpilan ng Konstabularya sa San Jose, Occidental Mindoro?

S - Nahuli po ako ng mga alagad ng batas.

- T - Kailan ka nahuli?

S - Noon pong Biernes ng umaga ika 28 ng Enero 1972.

- T - Saan lugar ka nahuli?

S - Dito po sa San Jose, Occidental Mindoro.

- T - Paano kang nahuli?

S - Itinuro po ako ng isang tao na aking tinirahan nagngangalan Pedro na ang kanyang apilyedo ay hindi ko alam.

- T - Saan na lugar ang bahay ng tao natinirahan mo?

S - Sa Bayan po ng Rizal, Occidental Mindoro sa may tapat ng munisipyo.

- T - Bakit ka nakarating dito sa Bayan ng San Jose?

S - Pinalayas po ako ng tinirahan ko sa Bayan ng Rizal, Occ. Mdo.

- T - Bakit ka pinalayas ng taong tinirahan mo?

S - Dahil po sa kinukuha ko ang aking sueldo na pinagtrabahuhan ko sa kaniyang baklad.

- T - Ilan araw kang tumira sa Bayan ng Rizal?

S - Mahigit pong dalawang (2) buan.

- T - Alam ba ng tinirahan mong tao na ikaw ay takas na bilanggo?

S - Opo.

- T - Paano niyang nalaman?

S - Dahil nakasuot po ako ng uniforme ng bilanggo at sinabi ko sa kaniya at sa kaniyang anak na si Enrique na ako ay takas sa bilangguan sa Sablayan Penal Colony.

- T - Kailan ka tumira sa bahay ng taong nabanggit mo?

S - Noon pong buan ng Nobyembre 14, 1971.

- T - Kailan ka naman tumakas sa Sablayan Penal Colony?

S - Noong ika 13 ng Nobyembre 1971.

- T - Ano ang numero mo sa bilangguan?

S - P-75038.

- T - Maituturo mo ba sa amin iyong taong nagngangalan Pedro at ang kaniyang anak na si Enrique na sinasabi mong tinirahan mo sa bayan ng Rizal?

S - Opo.

- T - Kailan ka umalis sa taong tinirahan mo sa bayan ng Rizal?

S - Noong Disyembre 31, 1971.

- T - Saan ka naman tumuloy noon umalis ka sa Rizal, Occ. Mdo.?

S - Sa Baryo San Agustin, San Jose, Occidental Mindoro.

- T - Kanino ka tumuloy sa Baryo San Agustin?

S - Kay Pedro delos Santos na kasama ko sa trabaho sa pagbabaklad sa Rizal.

- T - Buhat ng umalis ka sa Bayan ng Rizal, Occidental Mindoro, ikaw ba nagkaroon ng pagkakataon na makabalik muli sa Bayan ng Rizal?

S - Opo.

- T - Kailan ka bumalik sa Rizal, Occidental Mindoro?

S - Noon pong ika 20 ng Enero 1972.

- T - Anong sadya mo at bumalik sa Bayan ng Rizal?

S - Naghahanap po ako ng aking makakain.

- T - Nakakuha ka ba naman ng iyong pagkain?

S - Opo.

- T - Saan ka nakakuha ng iyong pagkain doon?

S - Sa tindahan po sa baryo San Pedro, Rizal, Occidental Mdo.

- T - Saan ka pumunta at tumuloy noong nakabili ka na ng iyong pagkain sa tindahan sa baryo San Pedro.

S - Sa isang kubong sira sa baryo San Pedro.

- T - Pagkatapos saan ka pumunta?

S - Pumunta po ako ng kanabukasan ng tanghali bandang mga ika alas 12:00 Enero 21 1972 sa isang bahay din sa San Pedro.

- T - Anong ginawa mo roon sa bahay na pinuntahan mo?

S - Ako ay pumasok sa nasabing bahay at kinuha ko ang radyo.

- T - May tao ba naman sa bahay na iyong pinasok?

S - Wala po, subalit ng aking paglabas nakita po ako ng bata at siya ay sumigaw at sa kanyang pagsigaw siya ay aking nasunggaban. Matapos ko pong masungaban ipinasok ko po siya sa loob ng bahay at siya po ay napalo ko ng tubo at natumba. Ng siya ay natumba ay aking hinampas ng piko at namatay ang nasabing bata. Pagkatapos ako po ay umalis at dinala ko ang radyo nasa kanilang bahay.

- T - Ilan beses mong pinalo?

S - Limang beses po.

- T - May nakakita ba saiyo bukod sa nasabing bata na pinatay mo?

S - Wala po.

- T - Anong klaseng radyo ang kinuha mo doon sa bahay na pinasok mo sa baryo San Pedro?

S - Isa pong transistor na radyo nanagagalan "NANAOLA" na puti ang kaha.

- T - Ipakita ko saiyo ang radyo nanasa ibabao ng misa na kasalikuyan na tumutunog, ano ang masasabi mo sa radyong iyan na ipinakita ko sa iyo? (Investigator showing to the affiant a transistor radyo, NANAOLA with plastic case for identification).

S - Iyan na nga po ang radyo na aking kinuha doon sa bahay sa baryo San Pedro, Rizal Occidental Mindoro, matapos kong mapatay ang bata.

- T - Saan mo dinala ang radyo?

S - Dinala ko po dito sa bayan ng San Jose, Occidental Mindoro.

- T - Nasaan ang radyo na kinuha mo?

S - Naipagbili ko po.

- T - Magkano ang pagkabinta mo ng radyo?

S - Dalawang put pitong (P27.00) piso po.

- T - Kilala mo ba naman ang taon nabinintahan mo ng radyo?

S - Hindi po.

- T - Bakit narito ngayon sa aming opisina ang radyong iyon na bininta mo?

S - Noon pong ako ay mahuli ng mga alagad ng batas ay itinuro ko sa kanila ang lugar ng tao na pinagbintahan ko ng nasabing radyo.

- T - Ano naman ang dahilan at pinatay mo ang bata?

S - Natakot po akong mahuli dahil sa ako ay takas na bilanggo, kaya ng sumigaw ang nasabing bata ng saklolo ay pinatay ko na siya.

- T - Kilala mo ba naman ang bata na pinatay mo?

S - Hindi po.

- T - Gaano ang edad ng bata na pinatay mo?

S - Sa aking karkulo po ay mga labing limang taon gulang po.

- T - Nasaan ang tubo at piko na ginamit mo sa pagpatay ng bata?

S - Inilagay ko po sa kahon nasa tabi ng bangkay at iyong piko ay inilagay ko rin sa kinamatayan ng bata.

- T - Saan galing ang bata ng makita ka niya doon sa bahay?

S - Galing po sa isang kamalig sa tabi ng bahay na kinamatayan ng bata.

- T - Pansamantala wala na akong itatanong saiyo, mayroon ka pa bang nais sabihin o bawasin sa iyong salaysay?

S - Mayroon po, kung maari po lamang ay nais kong makaharap si Pedro at ang kaniyang anak, dahil sila ang nagalaga sa akin noong akoy dumating sa bayan ng Rizal buhat sa Sablayan Penal Colony.

- T - Ano pa?

S - Nais ko rin pong makaharap si Enrique na anak ni Pedro.

- T - Bakit nais mong makaharap ang mga taong ito?

S - Dahil po sa pagkabugbug nila sa akin at hinde pagbayad ng aking pinagtrabahuhan sa kanila.

- T - Ano pa ang masasabi mo tungkol sa inbesti-gasyon na ito?

S - Ang masasabi ko po ay maayos naman po ang ginawa sa akin na pagimbestiga.

- T - Bakit mo sinabi na maayos ang ginawa saiyong pagimbestiga?

S - Sapangkat hindi naman ako tinakot o binugbog, kundi ang salaysay kong ito ay kusang loob ko na ibinigay at iyon ang katotohanan.

- T - Handa mo bang lagdaan ang salaysay mong ito?

S - Opo.

(SGD) BENJAMIN RETANIA

(Nagsalaysay)

SUBSCRIBED AND SWORN TO before me this 31 day of January 1972, at San Jose, Occidental Mindoro, Philippines.

(SGD) MARCIANO T. VIROLA

Asst. Provl. Fiscal

Occidental Mindoro

(SGD) SYLVIO P. CASUNCAD

Clerk of Court"

The above proceedings convince and satisfy Us that the trial court fully discharged its duty of making sure that the defendant fully understood the nature of the charges prepared against him and the character and severity of the punishment to be imposed before sentencing him. And it is to be noted that the Fiscal presented in evidence the extra-judicial confession of the accused executed 31 January 1972, a week before he was arraigned on 7 February 1972 and the sentence imposed upon him on 8 February 1972.

Appellant's claim that he was denied due process of law because "the shadow of the gallows pervaded the entire proceedings" and "the five (5) miserable minutes to confer with his client for the first and only time" was tantamount to denying the appellant his day in court, is completely belied by the records. Moreover, "day in court" according to the authorities, means the affording of an opportunity to be heard (11 Words and Phrases Judicially Defined, paragraphs 119 and 120). It is only when a party is denied of the opportunity to be heard that it can be said that he is denied his day in court. (Roco vs. Gaw Chee Kiong, O.G. Vol. 49, p. 1021; Monson vs. Del Rosario, O.G. Vol. 58, p. 1978).

Appellant's counsel de officio contends that the information should have been quashed on the ground that more than one offense is charged, citing Section 2, paragraph (e), Rule 117 of the Rules of Court. It is argued that the word "thereafter" in the information "is the crucial hub which tells where homicide ends and where "robbery" begins" and "believes the Siamese-twin inseparability of the charge of robbery with homicide; in fact, it recognizes and delineates the separate, solo existence of the two crimes." In fact, counsel goes further to claim that the information is defective because it charges two separate offenses of theft and homicide.

These contentions are without merit. We agree with the Solicitor General that "(a) closer look at the information would reveal that the word "thereafter" is used as a link that connects, in point of time, the acts of homicide and the acts of taking the radio. The word "thereafter" does not signify the distinction or separability of the homicide and the robbery but rather shows the direct relation and intimate connection between the killing and the robber regardless as to whether which took place first." In *People vs. Hernandez*, 46 Phil. 48, We held that -

"It is settled in this jurisdiction that when there is direct relation, an intimate connection between robbery and the killing--whether the latter be prior or subsequent to the former or whether both crimes be committed at the same time--it is unquestionable that they constitute the complex special crime of robbery with homicide."

We also rule that under Section 10, Rule 117 of the Rules of Court, assuming for the sake of argument that the information charges more than one offense, nevertheless, the accused who failed to move to quash the information upon that ground before pleading thereto is deemed to have waived such objection upon that ground. (Prov. Fiscal of Nueva Ecija vs. Court of First Instance of Nueva Ecija, 79 Phil. 165)

The appellant also assails the imposition of the penalty meted out to him as excessive and erroneous for the reasons that the aggravating circumstances of superior strength and dwelling of the offended party should not have been appreciated and that aside from the mitigating circumstance of the plea of guilt, other mitigating circumstances should have been considered such as no intention to commit so grave a wrong as that committed, lack of education and defective comprehension.

We reject appellant's contention. The rule is clear and explicit that the plea of guilt admits all the material averments in the information including the aggravating circumstances alleged therein. (People vs. Arpa, L-26789, April 25, 1969; People vs. Boyles, L-15308, May 29, 1964; People vs. Espejo, et al., L-27708, Dec. 19, 1970; People vs. Llagas, L-50115, May 31, 1957; People vs. Roldan, No. L-22030, May 29, 1968; People vs. Quinta, 51 Phil. 820; People vs. Ubaldo, 55 Phil. 95; People vs. Egido, 90 Phil. 762; People vs. Yamson, et al., G. R. No. L-14189, Oct. 25, 1960; People vs. Parete, G.R. No. L-15515, April 29, 1961).

We also affirm the correctness of the decision of the trial court in considering the aggravating circumstance of superior strength which is evident from the grave disparity between the ages of the accused and the victim who were 24 and 11 years old, respectively at the time of the commission of the crime. And with respect to the aggravating circumstance of dwelling, since the information specifically alleges this aggravating circumstance and the accused pleaded guilty to the information, he in effect also admitted this aggravating circumstance.

On the accused's plea that the mitigating circumstances of lack of instruction and lack of intent to commit so grave a crime as that committed, We hold that they cannot be considered in favor of the accused. Lack of education must be proved positively and cannot be based on mere deduction or inference (People vs. Bernardo, 40 O.G., 170; People vs. Sakam, 61 Phil. 64). Moreover, mere illiteracy is not sufficient to constitute a mitigating circumstance. There must be also lack of intelligence (People vs. Gorospe, 105 Phil. 184; People vs. Ripas, 95 Phil. 63; People vs. Semañada, L-11361, May 26, 1958; People vs. Tengyao, L-14675, Nov. 29, 1961).

The allegations in the information stating that the accused hit the victim with a water pipe and a pike (piko) on the face and different parts of the body, thereby inflicting upon the said Jerry Casidsid injuries which caused his untimely death and the extra-judicial confession of the accused submitted to the court wherein he admitted having struck the victim five times, as well as the medical certificate showing the multiple wounds of the victim clearly contradicts appellant's claim that he did not intend to commit so grave a wrong as that committed by him.

As to the alleged defective comprehension of the accused since "he appeared mentally ill-equipped to cope with the most basic of learnings and situations" and that "(a)nother manifestation of mental discordance was the request of the defendant after promulgation of the decision to shake the hand of the judge whose very hand seconds before had just signed away his life and wrote finish to his brief, lack-luster career of criminality," We have only to look into the records of the case and find a medical certificate signed and issued by Dr. Ester B. Cordero, Medical Specialist I, Incharge Neuro-Psychiatric Ward, N.B.P. Hospital, certifying that Prisoner No. 75038-P, BENJAMIN RETANIA was examined by her and was found to be mentally normal at present, and no Psychoses elicited. (p. 48, Records). Under Article 13, paragraph 9, Revised Penal Code, such illness of the offender as would diminish the exercise of the will power of the offender without however depriving him of consciousness of his acts, is a mitigating circumstance which We cannot consider in favor of the accused in the light of the medical certificate cited above.

Counsel de oficio questions the voluntariness of the plea of guilt of the accused, citing "(t)he norm that should be followed where a plea of guilty is entered by the defendant, especially in cases where the capital penalty may be imposed, is that the court should be sure that the defendant fully understood the nature of the charges preferred against him and the character of the punishment provided by law before it is imposed," (People vs. Flores, 40 SCRA 230) and that "(j)udges are duty-bound to be extra solicitous in seeing to it that when the accused pleads guilty he understands fully the meaning of his plea and the import of an inevitable conviction." (People vs. Solacito, 29 SCRA 61).

The impassioned plea of counsel for the accused who is represented as "mentally impoverished" and "hardly in a capacity to comprehend much less explore the width and breadth of the allegations in the information though it was repeatedly recited to him in his own dialect" is to be commended but since the accused was assisted by counsel, a former Provincial Fiscal, at the time of the arraignment and the Presiding Judge himself took careful steps to assure himself repeatedly that the plea was free and voluntary, We can safely conclude that the accused had finally made a clean breast of his evil deeds and the small, still voice of his conscience crying out in remorse and repentance.

It is not disputed that the accused is an escaped convict from the Sablayan Penal Colony, serving sentence thereat for a crime by virtue of a final judgment of a court of competent jurisdiction and while thus being an escapee, he committed the instant case of robbery with homicide. The case, therefore, falls under Article 160 of the Revised Penal Code which provides that the penalty prescribed by law for the new offense should be imposed in its maximum period. This is the aggravating circumstance of quasi-recidivism.

Since there are three aggravating circumstances charged and proved, which are quasi-recidivism, a special aggravating circumstance which cannot be offset by any mitigating circumstance, and the two generic aggravating circumstances of abuse of superior strength and that the crime was committed in the dwelling of the offended party without the latter having given any provocation, and there being only one mitigating circumstance of the plea of guilty offsetting one of the generic aggravating circumstances, there remains quasi-recidivism and the other generic aggravating circumstance to be considered against the accused.

The crime of robbery with homicide is punishable under Article 294, paragraph 1 of the Revised Penal Code with reclusion perpetua to death. Considering the provisions of Article 160 of the Revised Penal Code and Article 63, paragraph 2, No. 4, (Rules for the Application of Indivisible Penalties) of the same Code, the sentence of death imposed by the trial court is inevitable, which We find it proper and correct, as well as the civil indemnity of P12,000.00 to the heirs of the deceased Jerry Casidsid and the return of the property taken, the transistor radio, to the owner, Benjamin Tordesillas.

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment under review is hereby affirmed in toto.

SO ORDERED.

Teehankee, Antonio, Concepcion, Jr., Santos, Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur.

Barredo, J., concurs. Where quasi-recidivism exists, all other modifying circumstances have no bearing anymore on the penalty.

Aquino J., concurs in the result.

Fernando, C.J., concurs with the dissent of J. Makasiar. Aquino, J., in the result.

Makasiar, J. dissents in a separate opinion.

- [1] Rollo, p. 5.
- [2] t.s.n., February 7, 1972, pp. 2-3.
- [3] CFI Decision, p. 12; Rollo, p. 26.
- [4] Rollo, p. 37.
- [5] Rollo, pp. 46-48.
- [6] Rollo, p. 48.
- [7] Appellant's Brief, p. 2.

DISSENTING OPINION

MAKASIAR, J.:

It is my considered opinion that there was an improvident plea of guilty.

While the accused is a Tagalog (from Batangas) and the information was read and translated in Tagalog to him four times, the same is not a compliance with the requirement that the accused should, before pleading guilty, understand the meaning of the information. It is not enough that the information is translated into the dialect spoken by the accused. It is required that each essential allegation in the information constituting the crime, including the qualifying and modifying circumstances, should be explained to him. What acts performed by him, for example, constitute cruelty? The fact that the assailant struck the victim 5 times with a GI pipe and "piko" may mean merely that he wanted to insure that the victim was dead and does not necessarily mean cruelty. What is the meaning of abuse of superior strength - which depends on the relative height and build, not merely age, of assailant and victim?

The entire confession and his signature thereto were merely identified by the accused as his; but each of the question and his answer to the same appearing in the confession were not read to him, much less was he asked whether it was his answer to such a question.

In the case of the aggravating circumstance of abuse of superior strength, his confession states that the incident occurred about 12 noon and the victim was about 15 years old. But there is no answer in the confession with respect to the relative physical characteristics as to height, build, etc. It may turn out that appellant and the victim were of the same height and build. The confession states thus:

"x x x x x x x x.

"26. T - Pagkatapos saan ka pumunta?

S - Pumunta po ako ng kinabukasan ng tanghali bandang mga ika alas 12:00 Enero 21, 1972 sa isang bahay din sa San Pedro."

"x x x x x x x x.

"28. T - May tao ba naman sa bahay na iyong pinasok?

S - Wala po, subalit ng aking paglabas nakita po ako ng bata at siya ay sumigaw at sa kanyang pagsigaw siya ay aking nasunggaban ipinasuk ko po siya sa loob ng bahay at siya po ay napalo ko ng tubo at natumba. Ng siya ay natumba ay aking hinampas ng piko at namatay ang nasabing bata. Pagkatapos ako po ay umalis at dinala ko ang radyo nasa kanilang bahay.

“x x x x x x x x.

"38. T - Ano naman ang dahilan at pinatay mo ang bata?

S - Natakot po akong mahuli dahil sa ako ay takas na bilanggo, kaya ng sumigaw ang nasabing bata ng saklolo ay pinatay ko siya.

“x x x x x x x x.

“40. T - Gaano ang edad ng bata na pinatay mo?

S - Sa aking karkulo po ay mga labing limang taon gulang po.

“41. T - Nasaan ang tubo at piko na ginamit mo sa pagpatay ng bata?

S - Inilagay ko po sa kahon nasa tabi ng bangkay at iyong piko ay inilagay ko rin sa kinamatayan ng bata.

"42. T - Saan galing ang bata ng makita ka niya doon sa bahay?

S - Galing po sa isang kamalig sa tabi ng bahay na kinamatayan ng bata.

“x x x x x x x x.”

Hence, the case should be remanded to the trial court for appropriate proceedings.

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