

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LUISITO SAN PEDRO, ET AL., ACCUSED, ARTEMIO BANASIHAN,
DEFENDANT-APPELLANT.**

G.R. No. L-44274. January 22, 1980

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PER CURIAM:

Automatic review of the death penalty imposed on appellant by the Court of First Instance of Laguna, for the crime of robbery with homicide, committed, according to the evidence, and as stated in the appellee's brief, which We quote, as follows:

"In the afternoon of June 2, 1970, the lifeless body of a person was found somewhere between the barrios of Masaya and Paciano Rizal, municipality of Bay, Laguna. The body was brought to the municipal building of Bay for autopsy. Dr. Fe Manansala-Pantas, in her autopsy report, Exh. B, noted that the deceased died of profuse hemorrhage due to 23 lacerated and stab wounds and multiple abrasions found on the different parts of the body of the deceased.

"The deceased was identified to be Felimon Rivera, a driver of a passenger jeep belonging to Pablito delos Reyes, a fruit vendor. Earlier in the day, Rivera was out driving the jeep. But that was to be the last time for him to drive the jeep for on that same day, he was killed, and his jeep was no longer found or recovered.

"It was not until June 11, 1971, that the police authorities found a concrete lead to the solution of the case. Rodrigo Esguerra, when apprehended and interviewed by the police, admitted his participation and named his companions. He gave a written statement, Exh. F. Soon the police began rounding up the other suspects.

"Artemio Banasihan was apprehended sometime in 1972. On March 3 of said year, he was investigated by Sgt. Juan Tolentino of the Philippine Constabulary. He gave a statement which was sworn to before the Acting Municipal Judge of Los Baños, Laguna, confessing his participation in the robbery and killing of Felimon Rivera (Exh. H). In said statement, Banasihan recounted that four days before June 2, 1970, he and his co-accused met and planned to get the jeep driven by the deceased. Carrying out their plan, he and Luisito San Pedro approached Rivera in the afternoon of June 2, 1970 and on the pretext of hiring Rivera's jeep to haul coconuts, they proceeded to Bo. Puypuy, in Bay, Laguna, where they were joined by Salvador Litan and Rodrigo Esguerra. Esguerra was then carrying a water pipe wrapped in paper. Upon reaching a river between the barrios of Mainit and Puypuy, San Pedro ordered Rivera to stop. Whereupon, at Esguerra's signal, Litan hit Rivera at the nape with the water pipe. Rivera jumped out of the jeep but was chased by San Pedro and Litan who stabbed him at the back several times with a dagger. Esguerra then drove the jeep and the group proceeded to Makati, Rizal, where they joined Nelson Piso and Antonio Borja. The jeep was brought to Cavite City where it was sold for P2,000.00. Four days later, Piso went to Los Banos and gave San Pedro, Litan and Banasihan P50.00 each, with the promise that the balance would be given later. However, the promised balance was not given them."

As synthesized above, the facts of the instant case are as also found by the trial court, which appellant, through counsel de oficio, confesses inability to dispute. Admitting thus the accuracy of the factual finding of the court a quo, appellant raises only questions of law, particularly in the appreciation of the modifying circumstances proven

by the evidence, with a view to reducing the penalty of death as imposed, to reclusion perpetua, as prayed for. This notwithstanding, We did not relieve ourselves of the duty of reviewing the evidence, for the purpose of the proceedings before Us is to discover any possible error, specially in the appreciation of the evidence, that might have been committed by the trial court that led to an improper imposition of the supreme penalty. After undertaking the task, We express complete agreement that no reversible error has been committed by the trial court as to the culpable participation of the appellant as one of the perpetrators of the capital offense charged.

Specifically, the legal questions raised affecting the degree of culpability of appellant is whether the aggravating circumstance of craft is absorbed by treachery, and whether the resulting single aggravating circumstance of treachery should be offset by the mitigating circumstance of lack of instruction, as appellant claims should be appreciated in his favor, thereby calling for the reduction of the death penalty to that of life imprisonment.

We cannot subscribe to the theory of craft being absorbed by treachery, as nighttime and abuse of superior strength may be so absorbed, as held in numerous decisions of this Court.[1] In the instant case, craft was employed not with a view to making treachery more effective as nighttime and abuse of superior strength would in the killing of the victim. It was directed actually towards facilitating the taking of the jeep in the robbery scheme as planned by the culprits. From the definition of treachery, it is manifest that the element of defense against bodily injury makes treachery proper for consideration only in crimes against person as so explicitly provided by the Revised Penal Code (Art. 14[16]).

Aside from the foregoing observation, decisional rulings argue against appellant's submission. Thus in the case of *U.S. vs. Gampona, et al.*, 36 Phil. 817 (1917) where the crime charged was murder, qualified by treachery, craft was considered separately to aggravate the killing. Note that in this cited case, the crime was killing alone, which has a weightier rationale for merging the two aggravating circumstances, than when, as in the crime of robbery with homicide, craft has a very distinct application to the crime of robbery, separate and independent of the homicide. Yet, it was held that craft and treachery were separate and distinct aggravating circumstances. The same ruling was announced in *People vs. Sakam, et al.*, 61 Phil. 27 (1934).

In *People vs. Malig*, 83 Phil. 804, (1949) craft which consisted in luring the victim to another barrio, was considered absorbed by treachery. This may be so because craft enhanced the effectiveness of the means, method or form adopted in the execution of the crime, one against persons, "which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." Even so, the Court was divided in the inclusion or absorption of craft by treachery. And again, the offense charged was one solely against persons.

With the presence of two aggravating circumstances, craft and treachery, it would make no difference even if the mitigating circumstance of lack of instruction were appreciated in appellant's favor--which is even doubtful from the fact alone, as was allegedly proven by the testimony of appellant that he cannot read and write but can only sign his name (p. 9, t.s.n., Sept. 1, 1975). This, apart from the fact that as held categorically in the case of *People vs. Enot*, 6 SCRA 325 (1962) lack of instruction is not applicable to crimes of theft and robbery, much less to the crime of homicide. The reason is that robbery and killing are, by their nature, wrongful acts, and are manifestly so to the enlightened, equally as to the ignorant (*People vs. Salip Manla, et al.*, 30 SCRA 389 [1969]).

As recently held by this Court, speaking through Justice Hermogenes Concepcion, Jr., the "criteria in determining lack of instruction is not illiteracy alone, but rather lack of sufficient intelligence." It is significant that neither to the trial court nor to the appellant's counsel has the mitigating circumstance of lack of instruction entered the mind. No attempt was made to prove it, as direct proof, not mere inference, is required, and must be invoked in the court below (*People vs. Mongado, et al.*, 28 SCRA 642, [1969]), the reason being that the trial court can best

gauge a person's level of intelligence from his manner of answering questions in court (*People vs. Manuel*, 29 SCRA 337 [1969]). If the trial court did not consider the mitigating circumstance invoked for the first time here on appeal, it must be because from appellant's testimony, and even more so from his given occupation as a merchant (t.s.n., p. 3, Sept. 1, 1975), his alleged lack of intelligence never suggested itself to the trial court or to his lawyer, as entitling him to the mitigating circumstance of lack of instruction.

WHEREFORE, there being no error committed by the trial court, its decision imposing the death penalty, together with the indemnity awarded, has to be, as it is hereby, affirmed.

SO ORDERED.

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

Aquino, J., see concurring opinion.

Fernando, C.J., no part.

[1] *People vs. Undong*, 66 SCRA 386; *People vs. Tizon*, 66 SCRA 372; *People vs. Echaluze*, 66 SCRA 221; *People vs. Berdida, et al.*, 17 SCRA 520; *People vs. Enot*, 6 SCRA 325; *People vs. Pajenado*, 69 SCRA 172; *People vs. Abletes*, 58 SCRA 241; *People vs. Layson*, 30 SCRA 92; *People vs. Lumantas*, 28 SCRA 764; *People vs. de Gracia*, 18 SCRA 197.

CONCURRING OPINION

AQUINO, J.:

I concur in the result. Although Luisito San Pedro, Artemio Banasihan, Rodrigo Esguerra, Nelson Piso and Antonio Borja were charged robbery with homicide in the lower court (Salvador Litan was not included in the charge), only Banasihan and Piso were arrested and brought to trial.

Banasihan was convicted of robbery with homicide and was sentenced to death. Piso was convicted as an accessory. His case is not under automatic review.

Esguerra was later apprehended. He pleaded guilty and was sentenced to reclusion perpetua.

I think despoblado should also be considered aggravating. The malefactors used the victim's jeep to bring him to an uninhabited place where he was killed with impunity. Hence, the death penalty was properly imposed.

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