

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BLAS ABLAO, ET AL., DEFENDANTS. BLAS ABLAO, FELIX ARCILLA AND MODESTO MANGUBAT, DEFENDANTS AND APPELLANTS.

G.R. No. L-13900. October 31, 1960

Ponente: BENGZON, J.

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BENGZON, J.:

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Review of a judgment imposing the death penalty upon Bias Ablao, Felix Arcilla and Modesto Mangubat.

These three together with David Cotaucó, Jr., were charged with murder and double frustrated murder committed, according to the information, as follows:

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The crime was committed with the aggravating circumstances of superior strength and nighttime."

David Cotaucó, Jr., died December 26, 1957.

Upon arraignment in the Camarines Norte court of first instance, Bias Ablao, 55, and Felix Arcilla, 56, after expressly waiving their right to counsel, pleaded guilty.

Modesto Mangubat denied all responsibility; and was accordingly given a trial during which his co-accused Arcilla and Ablao and other witnesses testified for the prosecution. He claimed he had nothing to do with the crime. Nevertheless, the judge found him guilty, and in one decision, sentenced the said three defendants to suffer the extreme penalty, and to indemnify the heirs of the deceased in the sum of three thousand pesos. They were also required to pay P600.00 to Maria Vargas, in addition to the costs.

The record shows that early in the morning of December 23, 1957, the three prisoners were drinking wine in the store of one Manuel Dinka, in the municipality of Mercedes, province of Camarines Norte. There they agreed and planned to raid the house and store of Leoncio Egos, which was located about 300 meters away, near the seashore. Accordingly, they proceeded to the place, and there Modesto and Bias entered the kitchen door. Arcilla stood guard at that entrance, armed with a piece of wood. Upon discovering Leoncio Egos asleep, Modesto Mangubat stabbed him several times with a knife (balisong). A son of Leoncio, Dominador, eleven years old, was awakened and shouted. Whereupon, Bias Ablao struck him with a hammer even as Mangubat stabbed him several times too. That was not all; Mangubat went to another bed and stabbed Leoncio's wife, Maria Vargas, who was also hit by Ablao. Result: Leoncio Egos died soon after; his wife and son sustained several wounds, which would have produced death had it not been for the timely medical services they received from Drs. Ramos and Gaerlan at the provincial hospital. Several canned goods disappeared from the store together with Maria Vargas' money amounting to P600.00, Modesto took from her "aparador."

Apprehended after four days at the indication of the injured boy, these prisoners were investigated, and then

brought to the justice of the peace and the Clerk of Court before whom they voluntarily signed statements revealing their complicity in the bloody depredation. (Exhs. A, B, B-I and II)

Whereupon, this prosecution started on January 7, 1958, before the justice of the peace court, with a complaint subscribed by Capt. Jose N. Bolinao of the Philippine Constabulary. In his order forwarding the case to the court of first instance, the justice of the peace stated that these three defendants pleaded guilty to the charge of robbery with murder and double frustrated murder.

In the face of above facts, the court rendered judgment as herein stated. The record was forwarded for revision pursuant to Rule 118, sec. 9.

The attorney appointed by this Court to represent the interests of the three defendants, has filed a brief practically admitting the main facts found by the trial court as herein set forth, but ascribing errors in the appreciation of the circumstances affecting the criminal liability of the accused.

There is no doubt about the guilt of Bias Ablao and Felix Arcilla. On January 17, 1958, when they were arraigned, they pleaded guilty to the charge. At the beginning of the trial of Mangubat on January 29, same year, the court explained to them the probable consequences of their plea; nevertheless, they reiterated in open court, their admission of guilt previously made. Moreover, declaring for the prosecution, they described with reluctance their respective acts of commission and/or co-operation, although Bias claimed he was "ordered" by Mangubat to hit the boy and his mother, whereas Arcilla claimed he was threatened with a balisong by Mangubat to join the nocturnal expedition. Needless to say, the "order" was no excuse. And as to the alleged threat, Arcilla could have left after Mangubat and Bias had entered the house; instead he stood guard at the door, wielding a club obviously to prevent others from helping the victims or to inform his companions of the arrival of any outside help.

Mangubat asserted he and Cotaucio, Jr., had joined his two co-defendants that night, at the latter's invitation, and in the belief they were going to have a drink; and that he merely stayed outside the house of Egos, with David Cotaucio, Jr. His story, however, flatly contradicts the version given by his two co-defendants, who should be presumed to have told the truth, because they could have expected no possible gain, since they had repeatedly admitted their guilt. Besides, he was positively identified by Leoncio Egos as the assailant of his unfortunate father, and of himself.

The crime was robbery with homicide.[1]

We agree to the contention of the counsel de oficio that there was no evident premeditation, nor unlawful entry. In fact, the Solicitor General's brief admits error in the matter. We also think nocturnity should not be another aggravating circumstance, not for the reason indicated by counsel de oficio, but for the reason that it is imbibed in the circumstance of treachery which necessarily must be taken into account because two armed men attacked a sleeping person, and a boy. Against the accused must also be considered the circumstance of dwelling, and disregard of the sex of one of the offended parties.

On the other hand, the accused Ablao and Arcilla are entitled to the mitigation of plea of guilt. And all the three accused have in their favor the circumstance of intoxication, inasmuch as the evidence shows they had been drinking wine in the store of Dinka, immediately before committing the crime.

There is thus a majority of aggravating circumstances. However, due to lack of sufficient votes, the death penalty may not be imposed. Instead, the prisoners will be Confined for life. Thus modified, the judgment of the court below is affirmed, with costs. So ordered.

Paras, C.J., Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Gutierrez David, and Paredes, JJ., concur.

Judgment modified.

[1] Art. 294, Revised Penal Code; *People vs. Manuel*, 44 Phil., 333; *People vs. Mantawar*, 80 Phil., 817.

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