

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ODONCIO TARRAYO ALIAS ODON, ET. AL., DEFENDANTS, SALVADOR
EGANG AND FELIPE ROBLES, DEFENDANTS-APPELLANTS.**

G.R. No. L-26489. April 21, 1969

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PER CURIAM:

In an amended information filed before the Court of First Instance of Samar, Odoncio Tarrayo alias Odon, Felipe Tarrayo alias Peping, Salvador Egang and Felipe Robles were charged with the crime of "robbery with homicide with rape" (Criminal Case No. D-1316), allegedly committed as follows:

"That on or about the 28th day of May, 1966, in the nighttime, in Sitio Lamod, Bo. Dao, municipality of San Jose, province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused, all armed with small bolos locally known as 'depang' and a piece of wood used in unhusking coconuts locally known as 'palaw', conspiring, confederating together and mutually helping one another, and taking advantage of their superior strength, enter the dwelling of Feliciano Fajardo, with intent to gain and by means of violence against and intimidation of persons, with intent to kill, evident premeditation and treachery, did then and there, wilfully, unlawfully and feloniously attack, assault and beat one Olimpio Gremio with said piece of wood used in unhusking coconuts which the herein accused had conveniently provided themselves for the purpose, thereby inflicting upon said Olimpio Gremio a wound, scalp about 3 1/2 inches in length, frontal region, with basal fracture, which wound caused the instantaneous death of said Olimpio Gremio; and in pursuance of their conspiracy, the herein accused, took, stole and carried away with them money in cash amounting to FIVE PESOS and 75/100 (P5.75), Philippine currency, which were placed inside the pocket of one Olimpio Gremio and inside the piece of cloth used as belt by Cornelia Bulan, an old woman, against the will and consent of the latter, to the damage and prejudice of the owners thereof, in the amount aforesaid; and on the occasion of the said robbery, the herein accused, actuated by lust and by means of force, threats and personal violence and with lewd designs, did then and there wilfully, unlawfully and feloniously drag one Rosilla Gremio outside the house and the said accused took turns in having sexual intercourse with said Rosilla Gremio, a woman under 18 but over 12 years of age against the will and consent of said Rosilla Gremio.

"That in the commission of the offense the following aggravating circumstances were present: (1) nighttime; (2) superior strength; (3) dwelling; and (4) in an uninhabited place."

Arraignment was set for 18 July 1966, during which accused Salvador Egang and Felipe Robles,[1] through their counsel de oficio, manifested their desire to plead guilty to the charge. And as notwithstanding the explanation and warning by the judge of the implication and possible consequence thereof the said accused remained firm in their decision to enter the plea, the trial judge (Hon. Manuel Pamaran) postponed the arraignment to 21 July 1966 to give them more time to deliberate on their announced stand. On the scheduled date of arraignment, the accused pleaded guilty, their counsel de oficio invoking in their favor only the mitigating circumstances of plea of guilty and voluntary surrender. With such plea, the court, after receiving in evidence the transcript of the stenographic notes taken at the preliminary investigation by the fiscals, in the course of which the accused narrated in detail the commission of the crime and their respective participation therein (Exhibit A), and the certificates of the

examining physicians (Exhibit B and C), found both accused guilty of the crime of robbery with homicide and rape, attended by the aggravating circumstances of nighttime, superior strength, dwelling and uninhabited place, as charged in the information, with only the plea of guilty considered as mitigating circumstance. Voluntary surrender was not appreciated in their favor in view of the finding that although the accused were in police custody when the warrants for their arrest in this case were issued it was only because they were already under arrest on account of another charge. Consequently, the court sentenced Salvador Egang and Felipe Robles to the penalty of death; both of them, jointly and severally, to indemnify the heirs of Olimpio Gremio in the sum of P6,000.00; to pay the sum of P5.75 that they took from the victims, and the costs. The case is now on automatic review by this Court.

It may be gathered from the records, principally from the statements of the accused themselves, that at about 5 o'clock in the afternoon of 28 May 1966 Salvador Egang, his brother-in-law Felipe Robles, and the brothers Odoncio and Felipe Tarrayo met in the road in barrio Salhag, San Jose, Samar. Felipe Tarrayo, after informing the others that there was money and a girl in the house of Olimpio Gremio, proposed that they rob the said house, to which proposal the three apparently agreed. That same evening, at about 10 o'clock, the four plotters, all armed with small bolos locally called "depang", reached the house of Olimpio Gremio in sitio Lamod, barrio Dao, of the same municipality. Egang and Robles ascended the house by removing a temporary nipa wall, while the Tarrayo brothers remained in the yard standing guard. Once inside the house which was then lighted with a bottle lamp, Salvador Egang struck Olimpio Gremio, who was seated on a mat, with a "palaw".[2] Gremio fell back and expired. Thereupon, Felipe Robles took the money that the victim had in his pocket, amounting to P1.25. He also forcibly took the piece of cloth which was being used as belt by Cornelia Bulan, Olimpio's mother, from where he got the sum of P4.50. Then, Egang and Robles dragged down from the house Olimpio's 16-year old daughter, Rosilla, brought her to a coconut plantation about half a kilometer away, and there took turns in abusing her. They allowed her to return home alone afterwards. It may be mentioned that when the two malefactors went down the house taking along Rosilla Gremio with them, Odoncio and Felipe Tarrayo were nowhere to be found; both had apparently run away.

After committing the crime, Egang and Robles returned to Salhag, then proceeded to barrio Sumisip, Lavezares, Samar, where they stayed with one Esperato Borja for about two months doing "kaingin". When the warrants for their arrest in this case were issued on 16 July 1966, Egang and Robles were found in the custody of the police authorities of Bobon, Samar, in connection with a robbery committed in the house of one Emeliano Vasquez on 7 July 1966.[3]

There can be no question that with their plea of guilty the accused (who were duly advised, not only by counsel de oficio, but also by the trial judge himself, of the serious implications and probable consequences of such plea) are deemed to have admitted all the allegations of the information.[4] It may be pointed out, however, that the circumstance of uninhabited place should not have been appreciated in the case. For while there was testimony that the nearest house to the place where the homicide was committed was about 150 meters away, there was no showing that the isolation of the place was purposely sought by the accused to enable attainment of their objective without interference, or to secure themselves against recognition and punishment.[5] True it is accused Salvador Egang declared that he and Felipe Robles brought the girl to a plantation about a kilometer away to avoid discovery of the rape. But the accused are not being charged here of the specific crime of rape; they are accused of robbery with homicide. In fact, as recited in the information, the rape constituted merely an aggravating circumstance, and should properly be appreciated as such.[6]

Upon the other hand, the lower court should have considered the aggravating circumstances of evident premeditation and band which were also properly averred in the information as having attended the commission

of the crime. There is evidence on record that Egang, Robles and the two Tarrayo brothers were all armed with bolos known as "depang",^[7] and that their deliberate plan was to rob the house, and if the inmates therein would offer resistance, to kill them.^[8] Under such circumstances, evident premeditation to kill is not inherent in robbery with homicide.^[9]

As thus established, therefore, the crime committed is robbery with homicide, attended by the aggravating circumstances of nighttime, abuse of superior strength, dwelling, rape, evident premeditation and band. With only one mitigating circumstance (plea of guilty) present, the lower court was correct in imposing upon the accused the penalty therefor (Rev. Penal Code, Article 294, reclusion perpetua to death) in its maximum period.

WHEREFORE, the decision under review is affirmed; the accused Salvador Egang and Felipe Robles are imposed the death penalty, and ordered, jointly and severally, to indemnify the heirs of the deceased Olimpio Gremio in the sum of P12,000.00, to pay to the robbery victims the sum of P5.75 and the costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano, and Teehankee, JJ., concur.

Castro, J., on leave.

Barredo, J., took no part.

[1] Accused Odoncio Tarrayo and Felipe Tarrayo managed to elude arrest and have remained at large to the present.

[2] A piece of wood used in unhusking coconuts.

[3] Page 24, Court of First Instance record.

[4] U. S. vs. Barba, 29 Phil. 206; U. S. vs. Santiago, 35 Phil. 20; People vs. Balagtas, 68 Phil. 675.

[5] People vs. Deguia, 88 Phil. 520.

[6] People vs. Bacsá, 104 Phil. 136; People vs. Ganál, 85 Phil. 743.

[7] Declarations of Salvador Egang and Felipe Robles during the preliminary investigation (Exhibit A, page 27).

[8] Pages 18, 26, Exhibit A.

[9] People vs. Atencio (January 17, 1968) 22 SCRA 88, 102; People vs. Valeriano, 90 Phil. 15; People vs. Pulido, 85 Phil. 695; Decisions, Supreme Court of Spain, 1 September 1877 and 1 March 1888.

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