

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO SEE, ACCUSED WHOSE DEATH SENTENCE IS UNDER REVIEW.

G.R. No. L-36347. December 21, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

The issue in this case of robbery with homicide and rape is whether Francisco See made an improvident plea when he changed his plea of not guilty to guilty after the prosecution had presented as evidence his extrajudicial confession (Exh. A), whose voluntariness and due execution he has not questioned, and the testimonies of Isabelo Secuya, the robbery victim; Fiscal Pedro Casia who administered the oath to accused confessant; Patrolman Amador T. Taroy who took the confession, and the health officer who examined the rape victim, Adela S. Estrella.

Two hearings were held during which the prosecution's evidence was presented. The evidence was not complete. The rape victim was scheduled to testify and the death certificate of the person killed on the occasion of the robbery and the medical certificate as to wounds which caused his death have still to be presented.

At that stage, or during the third hearing, counsel de oficio asked the lower court for leave to confer with accused See. After the conference, counsel de oficio manifested that See wanted to change his plea. So, See was re-arraigned. He entered a plea of guilty.

The evidence already presented by the prosecution (particularly the accused's confession), shows that See was a twenty-three-year-old convict at the Kapalong Sub-Penal Colony who was a "living-out" prisoner (he could leave the colony anytime without guard). He finished Grade four. He was a Catholic, a native of Casiguran, Sorsogon and a former resident of 946 Epifanio de Los Santos Avenue, Quezon City. He was serving sentence for robbery committed in 1968 in Quezon City.

He admitted that with Federico Silvestre, one Falconit and Boy Paco he committed robbery in the house of Isabelo Secuya at Pagsabangan, Tagum. On the occasion of the robbery, Roque Estrella was killed and his wife Adela was raped by the malefactors.

He said that in the afternoon of June 11, 1970, Silvestre fetched him from the penal colony so that they could look for money. They met at Barrio Carmen one Falconit, a civilian from Cotabato, and Boy Paco, an escapee from the penal colony. The four proceeded to the house of Secuya in Pagsabangan.

Falconit and Boy Paco forcibly opened the door and entered the house. They brought out of the house a man who turned out to be Roque Estrella. As Estrella resisted, See was going to shoot him with his Garand rifle but Silverio grabbed the weapon and instead shot Estrella (Exh. A).

Secuya, who executed a sworn statement as to the crime, recounted that at about one o'clock in the morning of June 12, 1970 he and his son Geronimo and son-in-law, Roque, were awakened by the barking of dogs. The three went out of the house but saw nobody. Then, he heard a gunshot. He saw two persons go near the body of Roque

who was hit by the gunshot.

One of the persons was See whom he identified in court. Secuya dived into the canal. The two malefactors found him in the canal. He surrendered. They ordered him to carry the cadaver of Roque to the house. Secuya was later hogtied upstairs. They brought his daughter, Adela, downstairs where she was raped. The malefactors took cash amounting to two hundred pesos and the wedding suit of Roque valued at P90.

The health officer testified on his medical examination of Adela S. Estrella (Exh. B). As already stated, See changed his plea and the trial court found him guilty of robbery in band with homicide and rape, sentenced him to death, and ordered him to pay an indemnity of twelve thousand pesos to the heirs of Roque Estrella and five thousand pesos to Adela S. Estrella. See did not appeal.

His counsel de oficio in this automatic review of the death penalty contends that See was convicted without due process of law because he made his plea of guilty at the time when the prosecution had not finished the presentation of its evidence and there was no showing that he understood the consequences of his plea. (People vs. Apduhan, L-19491, August 30, 1968, 24 SCRA 798; People vs. Baylosis, L-34014, September 8, 1972, 47 SCRA 5 and People vs. Flores, L-32692, July 30, 1971, 40 SCRA 230).

It should be noted that of the four malefactors only See and Silvestre were arrested. At their arraignment on June 8, 1971, Silvestre, conscientiously assisted by counsel de oficio, Jose B. Guyo, pleaded guilty. According to lawyer Guyo, what surprised him was that Silvestre insisted on pleading guilty and on being sentenced to death. Silvestre gave to him information which he could not reveal because of its confidential nature (See Guyo's manifestation of July 11, 1973, Rollo of L-33821, People vs. Silvestre).

The prosecution did not present its evidence after Silvestre's plea. Judge Alejandro E. Sebastian in a decision dated June 9, 1971 sentenced him to death. On automatic review of the death penalty, this Court set aside the judgment of conviction and remanded the case for trial on the ground that the trial court's acceptance of the plea of guilty was "inordinately hasty" (People vs. Silvestre, L-33821, June 22, 1973, 51 SCRA 286).

The instant case is obviously different from the Silvestre case. Here, the accused at first pleaded not guilty. He pleaded guilty after the prosecution had presented the major portion of its evidence which includes his extrajudicial confession.

The rule is judiciously stated by Justice Diaz as follows:

"Cuando un acusado admite libre y voluntariamente su delito con pleno conocimiento de la indole exacta del mismo, su admission, o mejor dicho, su confesion, hecha en dichas circunstancias, es suficiente para justificar la imposicion de la pena que para dicho delito hay prescrita por la ley.

"Es discrecional en los juzgados permitir la presentacion de pruebas adicionales despues que el acusado haya confesado formalmente su delito.

"Tan solo es prudente y necesario tal vez, requerir, la presentacion de otras pruebas ademas de las que el mismo acusado suministra mediante su confesion libre y voluntaria, cuando hay un asomo de duda de que al hacerla, no la hace estando bien impuesto de los verdaderos hechos, y de las consecuencias de su acto." (People vs. Palupe, 69 Phil. 703. See People vs. Duaban, L-31912, August 24, 1979, 92 SCRA 743).

We hold that there was no improvident plea nor denial of due process. Even without the plea of guilty, the prosecution's evidence, though not complete, proves beyond reasonable doubt See's guilt. His confession, which was corroborated by evidence of the corpus delicti, was executed in 1971. Its admissibility is not barred by section 20, Article IV of the 1973 Constitution.

The crime committed was robbery with homicide and rape. Band was not proven because it was not shown that the four malefactors were all armed. Plea of guilty is not mitigating. It was given after the prosecution had presented its evidence.

To be appreciated against See are the special qualifying circumstance of quasi-recidivism, treachery, which absorbs nocturnity, and dwelling. Rape has been considered aggravating in some cases. The appropriate penalty is death but as there are no sufficient votes, it is commuted to reclusion perpetua.

WHEREFORE, the trial court's decision is modified. Accused Francisco See is convicted of robbery with homicide and rape, sentenced to reclusion perpetua and ordered to pay an indemnity of fifty thousand pesos (P50,000) to the heirs of Roque Estrella, twenty thousand pesos (P20,000) to Adela Secuya Vda. de Estrella and P290 to Isabelo Secuya as the value of the loot. Costs de oficio.

SO ORDERED.

Fernando, C.J., concurs but reserves his vote on the question of the indemnity imposed.

Concepcion, Jr., Guerrero, Abad Santos, De Castro, Escolin, Relova, and Gutierrez, Jr., JJ., concur.

Melencio-Herrera, J., concur but reserves his vote as to the amount of damages for death, and the indemnity to the offended woman for the crime of rape.

Plana, J., concur but vote to award P25,000 as indemnity for death and P20,000, for rape.

Makasiar, J., reserves his vote.

Teehankee, J., no part.

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