

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. SILVERIO LUNA, DEFENDANT.

G.R. NO. L-28812. July 31, 1974

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PER CURIAM:

This is a review of the decision of the Court of First Instance of Quezon, Lucena City Branch, in Criminal Case No. 15279, finding Silverio Luna guilty of robbery in band with homicide, sentencing him to death and ordering him to indemnify the heirs of Alfredo Adal in the sum of P6,070 with costs de oficio (Sec. 9, Rule 122, Rules of Court.)

The same court in a related case, Criminal Case No. 15278, convicted Luna of robbery in band with frustrated homicide, sentenced him to an indeterminate penalty of sixteen (16) years, five (5) months and eleven (11) days to seventeen (17) years and four (4) months of reclusion temporal and ordered him to indemnify Eduardo Adal in the sum of P1,176. He did not appeal from that decision.

The facts supporting the judgment of conviction are as follows:

At about eight o'clock in the evening of October 15, 1960, Eduardo Adal, a sixty-four-year-old fisherman, together with his common-law wife Maria Granada, their son Manuel Adal and their grandson Bernardo Magtanggol, were taking supper at their house in Barrio Ilayang Pulo, an island near Pagbilao, Quezon Province.

Two masked men, one short, the other tall, with buri hats, entered the house. They shoved away the plates. The short man pointed a balisong knife at the ribs of Eduardo Adal and poked a gun at his temple. He said: "Don't move, you greedy ones". The other masked man pointed a gun at his wife and son. The inmates of the house were all hogtied and directed to lie down on the floor, face up.

The short man asked for money. Maria Granada answered that she could not give any money because her hands were tied. So, her hands were untied. She gave P200 in paper bills to the short man. He asked for some more money. When Maria Granada said that she had no more money, the short man slapped and kicked her. At that juncture, the mask fell from his face. He turned out to be Silverio Luna. Maria produced coins amounting also to P200 and pieces of jewelry and gave them to Luna. He removed Maria's eyeglasses and trampled upon them.

The articles taken by Luna and his companion were the following: cash, a .22 caliber rifle and bullets, an Avegon radio, clothes, and a flashlight with a total value of P1,182.

After taking those articles, Luna told Eduardo Adal to get ready because he would be taken along with them. Adal pleaded that he should not be taken. He promised the malefactors that if they wanted anything more, he would give them the proceeds of the sale of his copra without anybody knowing about that fact. But Luna allegedly said: "Had you given the coconut plantation to Pablo, I will not kill you, you old man."

Luna was referring to Pablo Adal, the son of Eduardo by his first wife. Pablo's wife is the sister of Luna's mother. Eduardo was taken along by Luna and his companion. When they reached the stairs of the house, Eduardo saw Pablo Adal and his son Virgilio. Luna asked Pablo for instructions. Pablo directed Luna to take Eduardo to

Alfredo Adal who was in another house. Alfredo was the eldest son of Eduardo by his common-law wife, Maria Granada.

On reaching Alfredo's house, Eduardo called Alfredo as ordered by Luna. He shouted: "Fredo, Fredo, somebody needs you." When Alfredo did not answer, Silverio fired two shots at the door. Alfredo opened the door. He was hogtied by Luna. Alfredo and Eduardo were commanded to lie on the floor face down. Luna asked for money from Alfredo. When the latter replied that he had no money, Luna boxed him and said: "You have just finished making copra."

Alfredo then directed his wife, Milagros Batocabe (Mely), to get the money from the ceiling. She got a wallet from the ceiling and gave fifty pesos to Luna who exclaimed: "Is that all?". He grabbed the wallet from Mely and extracted therefrom the remainder of twenty pesos. He opened the aparador but found nothing therein to his liking. He ordered Eduardo and Alfredo to rise, kicked them and told them to follow him. The two knelt before Luna. Alfredo offered to sell his cow and give the proceeds of the sale to Luna. The latter turned a deaf ear to their supplication. He allegedly said: "If you gave the plantation to Pablo, you old man, you will not be doomed to die."

Luna and companion took Eduardo and Alfredo to the trail leading to the wharf at Sitio Anday. At the cross-roads, they met Pablo Adal and his son Virgilio. Luna instructed Eduardo and Alfredo to lie on the ground face down. Luna conferred with Pablo and Virgilio and delivered to them a pandan bag containing the radio and clothes taken from the house of Eduardo Adal. Pablo ordered Luna to use the motorboat of Venancio de Leon and to throw Eduardo and Alfredo into the sea. De Leon and Alfredo had married sisters.

Luna, Eduardo and Alfredo proceeded to the house of Venancio de Leon. Alfredo, as directed by Luna, called De Leon (his Kuya Vena). When De Leon emerged from his house, Luna pointed a gun at him and curtly told him to come along. De Leon requested that he be allowed to get his hat but Luna demurred. Eduardo and Alfredo were taken to the wharf where De Leon's motorboat was moored.

Eduardo asked Luna that his hands be untied so that he could get into the boat. Luna denied the request. He held Eduardo by the nape and legs and threw him into the boat. Alfredo was lifted and pushed into the boat. The other masked man ordered De Leon to take the boat to the middle of the sea.

After the boat had been maneuvered far out at Anday sea, about two kilometers from the shore, Luna asked Alfredo to stand on the prow of the boat so that he could be shot. Eduardo and Alfredo knelt before Luna and pleaded that their lives be spared but Luna was adamant. He said: "If you only gave the coconut plantation to Pablo, you would not be doomed to die" or "That cannot be. Both of you are greedy and you will be killed".

Luna tried to shoot Alfredo with the rifle but he did not know how to operate it. He and his companion, whose name is Pedro, then seized Alfredo and tried to throw him overboard but the latter with his hands tied behind his back held tightly the side of the boat. In anger and frustration, Luna stabbed Alfredo and then threw him overboard. Eduardo Adal was also jettisoned into the sea by the two malefactors. They pointed their gun at De Leon and warned him not to report the incident or he would be killed. The motorboat headed for the shore.

Father and son tried to swim. Eduardo endeavored to untie his hands. He lay on the water face up. Alfredo piteously asked his father: "Please save me because I will die". The father answered helplessly: "How could I since I am also tied and may die?" By a miraculous twist of fate, Eduardo was able to loosen his bonds. He looked for his son but the latter had disappeared. When Alfredo did not surface anymore, Eduardo figured out the shortest distance to the shore. He headed for Sitio Balete. He followed the direction of the wind. Providence favored him. He reached the shore safely.

He rested for a while. After he had regained his strength, he proceeded to the house of the *teniente del barrio*, Perfecto Edrad. He reported that he had been robbed and thrown into the sea. He requested that he be taken to the poblacion of Pagbilao.

At the municipal building, Eduardo Adal learned that his wife had already reported the robbery to the authorities. After the robbers, taking with them Eduardo, had left the house, Maria Granada jumped through the window and proceeded to the house of the *barrio lieutenant*. As the rural functionary was out, she and Milagros Batocabe took a motorboat and went to the poblacion of Pagbilao. They apprised the authorities of the robbery and the kidnapping of Eduardo Adal and Alfredo Adal (Exh. 1-A). The Chief of Police went to Ilayang Pulo. Eduardo Adal reported the crimes to the policeman on duty (Exh. 1-B). He told Eduardo to wait because he was occupied with other matters. Eduardo informed the policeman that the culprits were Luna, Pablo Adal and Virgilio Adal.

Fortunately, Lieutenant Colonel Dominador Dawa of the Constabulary happened to be in the municipal building. Eduardo Adal related to him the incident. Dawa instructed him to wait so that he could be brought to the Constabulary Camp at Lucena City. His statement was taken at the camp. Other Constabularymen were ordered to look for the body of Alfredo Adal.

On the following day, October 17th, Alfredo's cadaver was found on the beach. It was brought to the municipal building where it was examined by Doctor Vicente Reyes, who was then the acting municipal health officer of Pagbilao. The hands and feet of the forty-four-year-old victim were still bound. He died of asphyxia caused by drowning or submersion (Exh. B).

Luna was not arrested. Pablo Adal had instructed him to flee and go into hiding. It was only at around three o'clock in the morning of March 27, 1963 when Luna was arrested in Barrio San Jose, Montalban, Rizal by Sebastian Jolo, an investigator of the 37th Philippine Constabulary Company stationed at Camp Wilhelm, Lucena City. On that same date, his extrajudicial confession was taken down by Jolo. Luna read the confession which is in Tagalog. He subscribed and swore to it before the municipal judge of Lucena City (Exh. A). On April 3, 1963 amended complaints for "robbery in band with frustrated parricide and frustrated murder" and "robbery in band with murder" were filed in the justice of the peace court of Pagbilao against Luna and Pedro Obciana (who was still at-large). Luna waived the second stage of the preliminary investigation. The record was elevated to the Court of First Instance where on July 10, 1963 the fiscal filed separate informations for robbery in band with homicide and robbery in band with frustrated homicide. As already stated, after trial, the lower court rendered the decision already mentioned. (Crim. Cases Nos. 15278-9).*

Jose M. Aruego, Luna's counsel de oficio, contends (1) that the accused was not positively identified as one of the malefactors and that his alibi should be sustained and, in any event, that his guilt was not proven beyond reasonable doubt; (2) that the crimes committed were the separate ones of robbery and homicide and not the complex crime of robbery in band with homicide and (3) that the death penalty should not be imposed on Luna.

1. Any doubt as to Luna's complicity in the robberies, killing and frustrated killing vanishes in the face of his confession which counsel de oficio forbore to mention in his brief. His counsel during the trial did not object to its admission in evidence.

Luna, who was thirty-four years old in 1960, single and a laborer, admitted that he robbed the house of Eduardo Adal in Sitio Anday, Barrio Ilayang Pulo, Pagbilao and took therefrom an Avegon radio, a .22 caliber rifle and P100 in cash. He described the killing of Alfredo Adal and the frustrated killing of Eduardo Adal in this manner:

"Yaon pong kanyang (Eduardo Adal's) anak na hindi po kilala ang pangalan na lalaki ay kinuha namin sa kanyang pamamahay at gaon din si Eduardo Adal at aming ipinagsama sa tabi ng dagat, at pagdating doon ay iniutos po sa amin ng aking Tiyohin na si Pablo Adal na gaposin at dalhin sa gitna ng dagat at ipinahulog po sa

amin sa dagat. Yaon pong anak ni Eduardo Adal na lalaki ay napatay at pagkatapos ay kami umuwi ng bayan.

"Si Pedro Obciana ang aking kasama na ang aming guiya papuntang bahay ni Eduardo Adal ay si Pablo Adal lamang.

"Si Pablo Adal po ang mayutossa akin na looban at patayin yaon magama na si Eduardo Adal at yaon kanyang anak na lalaki." (p. 75, Record, Exh. A-1).

Explaining the motive which impelled him to commit the crimes, Luna said in his confession: "Ang usapan po namin ay aking patayin si Eduardo Adal at ang anak na lalaki dahil sa sabi ni Tiyo Pablo ay siya api, kaya ako ay naawa sa kanya." "T- Tungkol sa anong dahilan at ipinapatay ni Pablo Adal yaon kanyang ama at kapatid? — S — Dahil daw po sa bienes na hindi siya partihaan, pagaari ni Eduardo Adal." (p. 75, Record).

Sebastian Jolo, the Constabulary investigator, testified that after Luna's arrest, he was brought to the municipal building and later to the stockade at Camp Wilhelm in Lucena City. He was investigated from nine o'clock in the morning up to twelve noon. The investigation was resumed at one o'clock. After his statement was typed, it was read to Luna. Then, he was brought to the office of Judge Villanueva where the statement was read by Luna before he swore to it.

Jolo advised Luna of his constitutional right against self-incrimination and of his right to have counsel during the investigation. He waived the right to be assisted by counsel. He said that, as he had voluntarily confessed, it was not necessary to have counsel. He was cooperative during the investigation. He did not evince any reluctance to answer the questions propounded to him.

At the trial Luna admitted his three signatures in the confession. However, he claimed that he signed the confession without having been given a chance to read it. He allegedly signed it around six o'clock in the evening when it was supertime. At first he refused to sign the confession. He informed the investigator that he was going to tell everything in court. When he refused to sign, he was allegedly maltreated. He was placed inside a drum which was suspended above a fire.

He admitted that when Judge Villanueva asked him if the statement was voluntary he answered in the affirmative but then he clarified that he had to answer that way because the Constabularymen threatened to maltreat him again if he refused to sign the confession before the Judge.

Luna confirmed during the trial the recitals of his confession. Thus, he admitted in his testimony that, as stated in his confession, he committed robberies in February, 1963 in the houses of a certain Penalosa, Victor Sotomayor and one Cabili. For the robbery in Penalosa's house he was convicted by Judge Maddela. An indeterminate sentence of from four to ten years was imposed on him. He disclosed that the charges against him for robbery in the houses of Cabili and Sotomayor were dismissed. He admitted that he was sent to the Davao Penal Colony after he was convicted of two robberies.

In his confession Luna stated that prior to October 15, 1960 he had been imprisoned for robbery and that at the time he made his confession he was a parolee. He testified that prior to January, 1960 he was residing in Pagbilao for about one and a half years and, before that time, he was in the Davao Penal Colony, serving sentences for two robberies. He was released from the Davao Penal Colony in 1959 (29 tsn).

Luna's admissions during the trial attest to the truth and voluntariness of his confession. Its probative value is beyond cavil. It precludes him from relying on his alibi. He claimed that since January, 1960 and for about four years he was in Sitio Bolala, Barrio Menasag, Capalonga, Camarines Sur. He had known the place during the Japanese occupation. There he met Felix Antonia. He returned to Sitio Bolala and asked Antonia if he could find work there. Antonia recommended him to a Chinaman named Cheng (Ching) who was in the logging business.

Luna worked as a logger cutting field trees. He was paid four pesos for every one thousand board feet. The distance between Lucena City and Capalonga can be covered by the bus in about five hours. Antonia was already dead in 1967.

Luna testified that he worked in the logging concession after breakfast and up to five o'clock in the afternoon. He was allegedly with Antonia on October 15, 1960. He could not remember at what time they arrived in their place of work in the morning. Maria Lazona corroborated his alibi.

He equivocally explained that Eduardo Adal implicated him in the case because his mother, Pilar Ensenares, is the sister of Maria Ensenares, the wife of Pablo Adal. On a certain occasion in 1959, he accompanied to Ilayang Pulo Trinidad Alvarez, who was a candidate for mayor. He went to the house of Pablo Adal to ask for fish. Eduardo Adal might have misunderstood his conduct. At that time there was already a dispute between Eduardo and Pablo regarding properties.

Maria Lazona, the widow of Felix Antonia, testified that Luna stayed in her house at Capalonga from January, 1960 to December, 1963. That testimony is inaccurate because it is incontrovertible that Luna in March 1963 was already in Montalban and not in Capalonga. She said that she was informed that Luna was involved in a certain killing. When she was asked by the trial judge if she was "told when that killing happened", her curious answer was: "I did not ask about the date but I know that he was in our house at that time" (8 tsn).

Pressed by the court to explain her answer that it was impossible for Luna to have been involved in the killing when she did "not even know the date and the place when such thing happened", her incoherent answer was: "I cannot say that, your Honor, because I do not know what it was". Her other strange answer was: "His mother told me that he (Luna) was involved in a killing when it is impossible that he was in our place during that time" (10 tsn).

No credence can be given to Luna's alibi, not only because it cannot prevail over his confession, but also because its fabricated character is quite obvious. He repeatedly stated that he stayed in Sitio Bolala as a logger for "four years more or less". If that were true, he would be in Sitio Bolala up to 1964. But, as already noted, the truth is that he was already in Montalban on March 27, 1963 when he was arrested. His explanation as to why Eduardo Adal implicated him is flimsy and unconvincing.

It may be noted that, in a motion dated October 9, 1962 filed by the Assistant Provincial Fiscal, it was alleged that Luna was reported to be working in the Morato Sawmill at Capalonga (p. 4, Record of Crim. Case No. 15278). The implication is that he hid in Capalonga before he took refuge in Montalban.

2. Counsel Aruego's alternative contention is that no robbery with homicide was committed. He argues that Luna's primary intention was to inflict revenge on Eduardo Adal because of his refusal to give his coconut land to his son Pablo who was the mastermind. It is pointed out that Alfredo Adal, after the robbery, even offered to sell his cow and give the proceeds of the sale to Luna and his companion.

That contention cannot be sustained. Luna in his confession revealed that Pablo Adal's instruction was to rob and kill (looban at patayin) Eduardo Adal and his son Alfredo. The pandan bag containing the effects of the robberies were given by Luna to Pablo Adal and Virgilio Adal (11 tsn, May 13, 1966). It is evident that the robbery and the killing were interlinked. One crime could not be disassociated from the other.

In robbery with homicide, an intent to commit robbery must precede the taking of human life. But the fact that the intent of the criminal is tempered with a desire to revenge grievances against the murdered person does not prevent his punishment for the complex crime (U.S vs. Villorente and Bislig, 30 Phil. 59).

We agree with counsel de officio that, as to Luna, the crimes were not committed by a band because there is no proof that Pablo Adal and Virgilio Adal were armed. The evidence proves that only Luna and the tall intruder (supposed to be Obciana), the actual perpetrators of the robberies, killing and frustrated killing, were armed. At least four members of the band should be armed in order that cuadrilla may be aggravating (Arts. 14[6] and 296, Revised Penal Code).

3. The last contention of Luna's counsel is that the death penalty should not be imposed on the accused. Counsel admits that the crimes "were atrocious and the perpetrators of the same without doubt deserve the gravest penalty". Nevertheless, he argues that capital punishment should not be imposed because Luna is entitled to the mitigating circumstances of lack of instruction and because, as already adverted to, counsel opines that the special complex crime of robo con homicidio was not committed.

Lack of instruction cannot be considered mitigating. Luna is not illiterate. He finished Grade two. The lower court observed "that he usually answered in Tagalog after the question in English" was propounded. The trial court did not err in not giving him the benefit of the mitigating circumstance of lack of instruction (People vs. Gorospe, 105 Phil. 84; People vs. Sahibol Sari, 99 Phil. 1040; People vs. Ripas, 95 Phil. 63).

The trial court correctly appreciated the aggravating circumstances of nocturnity and treachery. Unquestionably, night-time facilitated the consummation of robbery with homicide. The killing of a robbery victim while bound is regarded as treacherous (People vs. Madrid, 88 Phil. 1; U.S. vs. Elicanal, 38 Phil. 209).

The lower court did not err in considering recidivism as aggravating although it was not alleged in the information. Generally, recidivism should be alleged in the information. If not alleged, it cannot be proven over the objection of the accused (U.S. vs. Tieng Pay, 42 Phil. 212; U.S. vs. De Mesa, 7 Phil. 729). However, in this case, Luna, by his own admission in his confession and on the witness stand, proved that he is a recidivist. At the time he was tried in this case, he had been previously convicted by final judgment of robbery. He had served sentence for it (Art. 14[9], Revised Penal Code).

The trial court regarded cruelty as aggravating. It reasoned out that, to drown in the sea Alfredo Adal after he was stabbed while bound, was a merciless and unnecessary act. Cruelty has a special signification in penal law. There is cruelty (ensanamiento) when the wrong done in the commission of the crime is deliberately augmented by causing other wrongs not necessary in its commission or by deliberately and inhumanly augmenting the victim's suffering or outraging or scoffing at his person or corpse (Arts. 14[21] and 248[6], Revised Penal Code).

In order that cruelty or vindictiveness may be appreciated, the evidence should show that the sadistic culprit, for his pleasure and satisfaction, caused the victim to suffer slowly and gradually and inflicted on him unnecessary moral and physical pain. Using that criterion, it cannot be said that Luna and his companion acted with cruelty within the meaning of article 14.

The trial court erred in categorizing conspiracy as an aggravating circumstance. Price, promise or reward would be aggravating in cases of this character but that circumstance was not alleged in the information. No evidence was introduced to show that Pablo Adal made any promise or paid any price or reward to Luna for the commission of the robbery with homicide. It may be inferred from the evidence that robbery was resorted to not only to cause damage but so that Luna could compensate himself out of the spoils of the robbery. It could be that relationship by affinity was in itself a strong inducement to Luna to act as Pablo's tool in punishing Eduardo Adal and Alfredo Adal for having supposedly overreached Pablo in the partition of the inheritance. Luna said that he pitied his Uncle Pablo because he was aggrieved in the partition.

The Solicitor General observes that the use of the motorboat (regarded as a motor vehicle) and despoblado should

be considered aggravating. Those circumstances were not taken into account by the trial court. Even without taking into account those aggravating circumstances, the maximum penalty would have to be imposed on Luna since no mitigating circumstance could be appreciated in his favor. His guilt was established beyond reasonable doubt.

In imposing capital punishment on Luna, Judge Union C. Kayanan observed that Luna "testified with a flippant demeanor, time and again manifesting his disregard of the seriousness of his oath, his quibbling evasions to questions, his overbearing gesture and haughty inflection of his voice, as if bragging under false sense of security of his defense of alibi, which none but the naive can believe" (sic).

The Solicitor General recommends that the trial court's judgment imposing the death penalty on Luna should be affirmed.

The unusual perversity and moral callousness exhibited by Luna, a convict, in allowing himself to be the instrument for the satisfaction of Pablo Adal's vengeful desire to injure his father and half brother, justify the death penalty.

Robo con homicidio is punished with reclusion perpetua to death. There being three aggravating circumstances and no mitigating circumstance, the death penalty was properly imposed (Arts. 63[1] and 294[1], Revised Penal Code). The indemnity of P6,000 should be raised to P12,000.

WHEREFORE, the lower court's judgment is affirmed with the modification that the indemnity should be increased to P12,000.

SO ORDERED.

Makalintal, C.J., Zaldivar, Castro, Fernando, Teehankee, Antonio, Esguerra, Fernandez, Muñoz Palma, and Aquino, JJ., concur.

Barredo and Makasiar, JJ., took no part.

* The trial of Luna commenced on May 13, 1966 and was concluded on October 18, 1967 before Judge Union C. Kayanan. The judgment of conviction was promulgated on February 6, 1968.

The trial of Pablo Adal and Virgilio Adal was conducted by Judge Vicente Arguelles in 28 sessions from April 5, 1961 to August 30, 1963. The prosecution moved that the cases against the two defendants be transferred to Judge Kayanan. Judge A. Melencio Herrera denied the motion. She decided the case on June 20, 1968.

Criminal Cases Nos. 15316-7 against Pedro Obciana were archived because he escaped from jail on May 17, 1965.

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