

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO PAGAL Y MARCELINO AND JOSE TORCELINO Y TORAZO, DEFENDANTS-APPELLANTS.

G.R. No. L-32040. October 25, 1977

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

In Criminal Case No. CCC-VI-5 (70) of the Circuit Criminal Court of Manila, the accused, Pedro Pagal y Marcelino and Jose Torcelino y Torazo, were charged with the crime of robbery with homicide, committed as follows:

"That on or about December 26, 1969, in the City of Manila, Philippines, the said accused, conspiring and confederating toge-ther and mutually helping each other, did then and there wilfully, unlawfully and feloniously, with intent to gain, and by means of violence, take away from the person of one Gau Guan, cash amounting to P1,281.00, Philippine currency, to the damage and pre-judice of the said Gau Guan in the said sum of P1,281.00; that on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the said amount of P1,281.00, the herein accused, in pursuance of their conspiracy, did then and there wilfully, unlawfully and feloniously, with intent to kill and taking advantage of their superior strength, treacherously at-tack, assault and use personal violence upon the said Gau Guan, by then and there stab-bing him with an icepick and clubbing him with an iron pipe on different parts of his body, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death thereafter.

"Contrary to law, and with the gene-ric aggravating circumstances of (1) night-time purposely sought to better accomplish their criminal design; (2) evident premedi-tation; (3) in disregard of the respect due the offended party; and (4) with abuse of confidence, the accused being then employees of the offended party."[1]

When the case was called for arraignment, counsel de oficio for the accused informed said court of their in-tention to enter a plea of guilty provided that they be allowed afterwards to prove the mitigating circumstances of sufficient provocation or threat on the part of the offended party immediately preceding the act, and that of having acted upon an impulse so powerful as to produce passion and obfuscation.[2] Thereafter, the trial judge propounded to them the questions and the accused gave the answers quoted hereunder:

"Court:

Your lawyer here has manifested your desire to enter a plea of guilty to the offense charged, robbery with homicide. Do you know that by agreeing to that manifestation of your lawyer, you will be admitting the commission of the crime charged?

"Accused:

We agree, your honor, to what our law-yer said, but we would like to explain something.

"Court:

Your lawyer here has stated that you will still prove mitigating circumstances. Is that what you like to explain?

"Accused:

Yes, your honor.

"Court:

If that is the case, I will give you a chance.

"Accused:

Yes, your honor.

"Court:

Do you know that by agreeing to that manifestation, you will be admitting the commission of the crime charged, robbery with homicide?

"Accused:

Yes, your honor.

"Court:

And for which this court might sentence you to death or life imprisonment?

"Accused:

Yes, your honor.

"Court:

And notwithstanding what is explained to you, you still insist in your desire to enter a plea of guilty to the offense charged?

"Accused:

Yes, your honor.

"Court:

Q Notwithstanding again the warning of the court that the maximum penalty imposable is death?

A Yes, your honor.

"Court:

Arraign the accused.

(At this stage, both accused were arraigned and both pleaded guilty to the offense charged)."[3]

Thereafter, the accused presented evidence to prove the mitigating circumstances of sufficient provocation on the part of the victim immediately preceding the act and acting upon an impulse so powerful as to produce passion and obfuscation. After the accused had rested their case, the prosecution presented the statements[4] of the accused, and other pertinent documents regarding the investigation of the case.[5]

After the trial, the court a quo rendered its decision, the dispositive portion of which reads as follows:

"WHEREFORE, both accused are hereby found guilty beyond reasonable doubt as principals of the crime of

robbery with homicide and there being proven the aggravating circumstances of nighttime, evident premeditation and disregard of respect due the offended party off-set only by the mitigating circumstance of their plea of guilty, sentences each one of them to DEATH, to jointly and severally indemnify the heirs of the deceased the following: the sum of P12,000.00 for the death of the deceased Gau Guan; P15,000.00 for moral damages; P15,000.00 for exemplary damages, all amounts to bear interest until they shall have been fully paid; the sum of P1,281.00 representing the amount taken from the victim; and to pay proportionately the costs."[6]

The case is now before this Court for mandatory review on account of the death penalty imposed upon the accused.

The appellant Pedro Pagal contends that the trial court erred in convicting him of the crime of robbery with homicide instead of declaring him liable only for his individual acts, claiming that the record is bereft of any proof or evidence that he and his co-appellant Jose Torcelino conspired to commit the crime of robbery with homicide.

The appellant's position is not well-taken. His denial of conspiracy with his co-appellant Jose Torcelino cannot be given credence in view of the clear and convincing confession of his guilt in his statement[7] signed by him before the police investigators several hours after the commission of the crime. Besides, when he pleaded guilty to the charge, he is deemed to have admitted all the material facts alleged in the information.[8] By his plea, the appellant admitted not only the commission of the crime but also the circumstances surrounding its commission, including the allegations of conspiracy. A plea of guilty when formally entered on arraignment, is sufficient to sustain a conviction even for a capital offense without the introduction of further evidence,[9] the requisite proofs having been supplied by the accused himself.[10] We find, therefore, that the trial court did not commit any error in convicting the appellant Pedro Pagal of the crime of robbery with homicide.

The appellants further assail the trial court in not appreciating in their favor the mitigating circumstances of sufficient provocation, and passion or obfuscation.

Again, the appellants' contention is devoid of merit. Firstly, since the alleged provocation which caused the obfuscation of the appellants arose from the same incident, that is, the alleged maltreatment and/or ill-treatment of the appellants by the deceased, these two mitigating circumstances cannot be considered as two distinct and separate circumstances but should be treated as one.[11] Secondly, the circumstance of passion and obfuscation cannot be mitigating in a crime which - as in the case at bar -- is planned and calmly meditated before its execution. Thus, in *People vs. Daos*,[12] a case of robbery with homicide, this Court rejected the claim of the appellants therein that passion and obfuscation should have been estimated in their favor, because the death of the victim therein took place on the occasion of a robbery, which, before its execution, had been planned and calmly meditated by the appellants. Thirdly, the maltreatment that appellants claim the victim to have committed against them occurred much earlier than the date of the commission of the crime. Provocation in order to be a mitigating circumstance must be sufficient and immediately preceding the act. We hold that the trial court did not commit any error in not appreciating the said mitigating circumstances in favor of the appellants.

Finally, the appellants claim that the trial court erred in considering the aggravating circumstances of nighttime, evident premeditation, and disregard of the respect due the offended party on account of his rank and age.

Although the trial court correctly considered the aggravating circumstance of nocturnity because the same was purposely and deliberately sought by the appellants to facilitate the commission of the crime, nevertheless, We disagree with its conclusion that evident premeditation and disregard of the respect due the offended party were present in the commission of the crime.

Evident premeditation is inherent in the crime of robbery.[13] However, in the crime of robbery with homicide, if

there is evident premeditation to kill besides stealing, it is considered as an aggravating circumstance.[14] In other words, evident premeditation will only be aggravating in a complex crime of robbery with homicide if it is proved that the plan is not only to rob, but also to kill.[15] In the case at bar, a perusal of the written statements[16] of the appellants before the police investigators show that their original plan was only to rob, and that, they killed the deceased only when the latter refused to open the "kaha de yero", and fought with them. The trial court, therefore, erred in taking into consideration the aggravating circumstance of evident premeditation.

The aggravating circumstance that the crime was committed with insult or in disregard of the respect due the offended party on account of his rank, age or sex may be taken into account only in crimes against persons or honor, when in the commission of the crime there is some insult or disrespect shown to rank, age, or sex.[17] It is not proper to consider this aggravating circumstance in crimes against property.[18] Robbery with homicide is primarily a crime against property and not against persons. Homicide is a mere incident of the robbery, the latter being the main purpose and object of the criminal.[19] The trial court erred in taking into account this aggravating circumstance.

It results that in the commission of the crime, there is only one generic aggravating circumstance, i.e., night-time or nocturnity.

Robbery with homicide is punished by reclusion perpetua to death.[20] Since the aggravating circumstance of nighttime is offset by the mitigating circumstance of plea of guilty, the lesser penalty, which is reclusion perpetua, should be imposed upon the appellants.[21]

ACCORDINGLY, the judgment of the trial court is modified, and the appellants Pedro Pagal y Marcelino and Jose Torcelino y Torazo are hereby sentenced to suffer each the penalty of reclusion perpetua. In all other respects, the judgment of the trial court is affirmed. With costs against the appellants.

SO ORDERED.

Castro, C.J., Fernando, Aquino, Martin, Santos, Fernandez, and Guerrero, JJ., concur.

Barredo, J., he concur, while he is not fully satisfied that appellants were entirely aware of the meaning of their plea of guilty and find that the rebuttal evidence of the prosecution proved than guilt, which evidence the appellants did not dispute.

Muñoz Palma, J., see concurring opinion.

Teehankee, and Makasiar, JJ., concurs in the result.

Antonio, J., no part.

[1] p. 2, Record.

[2] p. 3, t.s.n., January 8, 1970.

[3] pp. 3-4, t.s.n., January 8, 1970.

[4] Exhibits "A" & "B", pp. 4, 7, Record.

[5] Exhibits "C", "D", "E", "F" and "F-1", pp. 9, 10, 11, 14, 15, Record.

[6] pp. 26-27, Record.

[7] Exhibit "B", supra.

[8] People vs. Roldan, L-22030, May 29, 1968, 23 SCRA 907; People vs. Arpa, L-26789, April 25, 1969, 29

SCRA 1037.

[9] *People vs. Perete*, 1 SCRA 1290.

[10] *People vs. Santos and Vicente*, 103 Phil. 40.

[11] *People vs. Reyes*, L-33154, February 27, 1976, 69 SCRA 474.

[12] 60 Phil. 143.

[13] *U.S. vs. Blanco*, 10 Phil. 298; *People vs. Daos*, 60 Phil. 143; *People vs. Pulido*, 85 Phil. 695; *People vs. Valeriano*, 90 Phil. 15.

[14] *People vs. Nabual*, L-27758, July 14, 1969, 28 SCRA 747.

[15] *People vs. Atencio*, L-22513, Jan. 17, 1968, 22 SCRA 88.

[16] Exhibits "A" and "B", pp. 4, 7, Record.

[17] *Albert*, Revised Penal Code, 1946 Ed., p. 109; *Reyes*, Revised Penal Code, 1974 Ed., Vol. I, p. 297.

[18] *Aquino*, Revised Penal Code, 1976 Ed., Vol. I, p. 286, citing *U.S. vs. Samonte*, 8 Phil. 286.

[19] *Ibid*, Vol. III, 1976 Ed., p. 1434, citing *U.S. vs. Ipil*, 27 Phil. 530, 535.

[20] Article 294, par. 1, Revised Penal Code.

[21] Article 63, (4) and (2), Revised Penal Code.

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CONCURRING OPINION

MUÑOZ PALMA, J.:

I concur. I would state however that the rulings in *People vs. Parete* and *People vs. Santos*, et al., cited in page 7 of the Opinion must be taken in conjunction with recent jurisprudence that extra solicitous care is required in the admission of a plea of guilty and that the taking of testimony and other evidence notwithstanding a plea of guilty is the prudent and proper course to follow by trial judges. (*People vs. Villa-fuerte*, March 28, 1974, citing numerous cases; *People vs. Hondolero*, August 25, 1976) These safeguards appear to have been taken in the instant case.

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