

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADRIANO LEVA Y CRUZ, ACCUSED WHOSE DEATH SENTENCE IS UNDER REVIEW.

G.R. No. L-34291. February 12, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This is a review en consulta of the decision of the Circuit Criminal Court of Manila, convicting Adriano Leva of robbery with homicide, sentencing him to death and ordering him to pay the heirs of Augusto Gamban an indemnity of thirty-two thousand pesos and to return the cash and ring taken from him or to pay his heirs one hundred fifty-five pesos as the value thereof (Criminal Case No. 634-71).

Augusto Gamban, 23, a resident of 1446 Perdigon Street, Paco, Manila and an employee of the Bureau of Public Works, was feloniously assaulted near his residence at around five o'clock in the afternoon of April 5, 1971. He sustained a fatal stab wound in the chest eleven centimeters deep. It penetrated his lungs and heart. There were two incised wounds on his left arm and an abrasion on his left thigh and knee. He was pronounced dead upon arrival at the hospital.

In connection with that killing, Adriano Leva was charged with robbery with homicide in the Circuit Criminal Court of Manila on June 26, 1971 (Criminal Case No. 634).

At the trial the principal evidence introduced by the prosecution was Leva's extrajudicial confession dated June 21, 1971 which was sworn to before Fiscal Ramon Mabutas. The confession was taken by Sergeant A. Extremadura while Leva was confined in the city jail of Manila for frustrated homicide allegedly committed in the evening of June 12, 1971 in front of the Esco Building on Canonigo Street, Paco.

In that confession, Leva, alias Balbas, 21, a native of Dagupan City, an alleged helper of an electrician, who reached grade four at the Lucban Elementary School in Paco, declared that his real name is Antonio Concepcion, that the name Adriano Leva is the name of his uterine brother and that he had been charged with vagrancy, concealment of a deadly weapon, frustrated homicide and holdup.

He said that while he was waiting for a bus at Oregon Street, near the Juvenile and Domestic Relations Court, his friends, Totoy Musang and Benjamin Salazar, invited him to walk in the direction of Perdigon Street. They espied a person, who turned out to be Gamban, standing at the corner of Perdigon and Union Streets.

Totoy Musang, after allegedly telling Leva and Salazar to start the holdup, approached Gamban, held him by the collar of his shirt, advised him not to run, and then stabbed him with a balisong knife when he (Gamban) refused to give his watch and ring (Question No. 9 in Exh. A, p. 12, Record). The trio ran away. Leva took a bus at the corner of Perdigon and Paz Streets and went home to Makati, Rizal.

The prosecution was not able to present any eyewitness to the holdup and killing. Leva's defense was an alibi. He testified that at the time of the alleged holdup he was in Urdaneta, Pangasinan with his common-law wife,

Adelaida Santos. They stayed there for a week. Adelaida, a seventeen-year-old vendor in the Paco market, corroborated Leva's alibi.

Leva admitted that he signed his confession but he clarified that he admitted the holdup because of the intimidation and maltreatment practised by the police. He pointed to Patrolman Rodolfo Soriano, who was in the courtroom, and another policeman not in court as his tormentors who repeatedly boxed him when he refused to sign the confession prepared by Sergeant Extremadura.

Leva admitted that he voluntarily answered the questions in his statement regarding his personal circumstances, his use of the name Leva as an alias and the criminal charges previously lodged against him. He said that he was a member of the Sigue--Sigue Sputnik gang in the national penitentiary.

Attorney Pedro Espino, an agent of the National Bureau of Investigation, who was the victim's father-in-law and with whom Gamban was residing, testified that Gamban had fifty pesos cash with him, a Bulova wrist watch valued at two hundred pesos, and a college ring valued at one hundred eighty pesos when he left their residence in the morning of April 5, 1971. When Gamban was placed on the operating table in the hospital and his possessions were removed from his person, Attorney Espino noticed that the ring and the cash were missing.

In convicting Leva of robbery with homicide, Judge Manuel R. Pamaran accorded great weight to his confession. The trial judge concluded that abuse of superiority was the only circumstance which attended the commission of the offense. Hence, the death penalty was imposed (Arts. 63[1] and 294[1], Revised Penal Code).

The accused did not appeal from that decision. The record was elevated to this Court for automatic review of the death sentence.

At this point, it is relevant to state that more than two years after that judgment of conviction was rendered Totoy Musang, whom Leva identified in his confession as the actual killer of Gamban and whose real name is Eusebio Lopez, Jr., was charged with robbery with homicide in the lower court or before Judge Pamaran also (Criminal Case No. 1696 of the Circuit Criminal Court of Manila).

At Totoy Musang's trial, Sergeant Extremadura testified on the extrajudicial confession which he had extracted from Lopez. In his confession, Lopez pointed to Leva and Salazar as the assailants of Gamban (Question No. 12, Exh. C in Criminal Case No. 1696, back of page 60).

Judge Pamaran acquitted Lopez (Totoy Musang) on the ground that his guilt was not proven beyond reasonable doubt.

In the instant case of Leva, his counsel de oficio contends in this Court that the trial court erred in regarding Leva's confession as sufficient to support the judgment of conviction. His counsel argues that the confession itself does not show that Leva committed any overt act in the commission of the robbery with homicide and that he conspired with Totoy Musang to kill Gamban.

We hold that the consummation of the robbery was not established beyond reasonable doubt. Leva's confession does not prove that any consummated robbery was committed. The only testimony on the commission of the robbery was given by Attorney Espino who did not witness the robbery. He merely stated that the ring and the cash of fifty pesos belonging to the victim were missing (the wallet containing the cash was found on the victim's person). That testimony is not sufficient to prove that robbery was committed.

On the other hand, in the information it was alleged that only the ring valued at seventy-nine pesos was taken from the victim. That was also the report of the police investigator. No cash was mentioned. (Back of Exh. C, p. 15, Record.)

What was proven by means of Leva's confession was attempted robbery with homicide aggravated by abuse of superiority. Leva was a co-conspirator and, therefore, a co-principal in the commission of that special complex crime which is punished by reclusion temporal maximum to reclusion perpetua (Art. 297, Revised Penal Code), a penalty that should be imposed in its maximum period. Hence, the correct penalty for the crime committed by Leva is reclusion perpetua.

WHEREFORE, the death sentence is set aside. The accused is convicted of attempted robbery with homicide. He is sentenced to the penalty of reclusion perpetua and to indemnify the heirs of the victim in the sum of twelve thousand pesos. Costs against the accused.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Antonio, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Abad Santos, J., I vote for the affirmance of the judgment. I find it hard to believe that after killing the victim in a hold up nothing was taken from him.

Teehankee, J., took no part.

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