

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RUFINEO DEJARESCO Y LEVIT, RUDY BULAHAN Y BUNDALIAN AND
EDUARDO BULAHAN Y BUNDALIAN, DEFENDANTS-APPELLANTS.**

G.R. No. L-32701. June 19, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Automatic review of the decision rendered by the then Court of First Instance of Laguna and San Pablo City, Branch III, in Criminal Case No. SP-1500, "finding all three accused Rufineo Dejaresco y Levit, Rudy Bulahan y Bundalian and Eduardo Bulahan y Bundalian guilty beyond reasonable doubt as principals of the crime of robbery with homicide, with its commission having been attended by the aggravating circumstances of treachery and dwelling without any mitigating circumstance to offset them, the court accordingly sentences each one of them to suffer the penalty of death, each to indemnify the heirs of Modesto, jointly and severally in the sum of P20,000.00, each to pay also the same heirs the sum of P90.00 taken by them from the victim and to pay the costs pro rata."

The records of the case were received by Our Clerk of Court on August 14, 1970. Defendant-appellant Eduardo Bulahan died on March 19, 1976. Defendants-appellants Rufineo Dejaresco y Levit and Rudy Bulahan y Bundalian escaped from prison on June 5, 1971. Thus, the case against Eduardo Bulahan was dismissed, his criminal liability having been extinguished (Article 89, Revised Penal Code). The appeal subsists with respect to Rufineo Dejaresco and Rudy Bulahan. Their escape does not relieve the court of the burden of automatically reviewing the case, in the same manner that a withdrawal of appeal by a death convict would not remove the case from the jurisdiction of the Court (People vs. Cornelio, 39 SCRA 435).

The information for robbery with homicide charged the accused as follows:

"That on or about January 22, 1969, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, conspiring, confederating, confabulating and mutually helping one another, armed with deadly weapons, to wit: long and short firearms, with intent of gain and against the consent of the owners, by means of violence and intimidation against person, did then and there wilfully, unlawfully and feloniously and forcibly enter the house of the spouses Modesto Icaro and Cesaria Cacao and take from the said spouses, cash amounting to P90.00; that on the occasion of said robbery and in pursuance of their conspiracy, the accused with intent to kill and without any justifiable motive, wilfully, unlawfully and feloniously attack, assault and shoot Modesto Icaro with the firearms with which they were conveniently provided with, inflicting upon the said Modesto Icaro mortal wounds which caused his immediate death." (pp. 19-20, appellants' brief).

After trial, the lower court rendered its decision, finding the following facts to have been proven from the evidence of record:

"Modesto Icaro was a poor hardworking farmer who lived with his family on the mountain of Sitio Lapi, Bo. San Cristobal, San Pablo City. Their nearest neighbor was half kilometer away and their house was seven (7)

kilometers from the barrio road. It was isolated and desolate the place where they had come to live. The man had six (6) children, the eldest was nine (9) years old and the youngest was 7 months. He tilled small patches of earth on the mountainside and planted them with bananas and camotes to feed his wife and children. From his toils the good wife was able to save for five (5) months the measly sum of P90.00 which she kept in their aparador. Then tragedy struck the family. On January 22, 1969 at about 9:00 o'clock in the night, while Icaro and his family were asleep, three (3) men all armed, one with a carbine, the second with a shotgun, and the third with a .45 caliber pistol came to rob them. Two of the men went up the house while the third stayed on the ground. The two who entered the house trained their flashlights on the sleeping family and woke them up with their guns. The intruders were wearing masks on their faces and Icaro asked them who they were. The men said they were agents of the law and demanded of Icaro to produce the money he was keeping in the house. Icaro said if they were agents of the law why were they hiding their faces. In answer, the man at the balcony fired shots in the air. Icaro's wife told her husband to get the money so the men would not harm them. Icaro stood up to get the money in their aparador. While Icaro was opening the aparador the man at the balcony fired at him. Icaro was not able to get the money, and as he was going out of the door, the man at the balcony pushed him downstairs. Icaro tumbled down and while he was lying on the ground the three men went over him and fired their guns on his already wounded body. Icaro died on the spot. After the shooting, the man who was posted at the balcony went back to the house, poked his gun at Icaro's wife and asked for the money. She got from the wardrobe the P90.00 which she had saved for five (5) months and gave it to the man. The man then went down the house and looked for empty shells on the ground with a flashlight. His companions joined him in the search. After picking the empty shells, the three left the place. After they were gone, Icaro's widow sent one of her children away to fetch her mother.

Icaro's widow, Cesaria Cacao, stated that she saw only two persons and accused Rufineo Dejaresco and Eduardo Bulahan strongly resembled the two men who went up their house in physical appearance and bearing. Dejaresco looking very much like the one who was at the balcony and Eduardo like the other one who was in the room adjoining their 'batalan'. She had known Dejaresco for three (3) years and Eduardo Bulahan for nine (9) years before the incident. Dejaresco's wife was a sister by confirmation of her mother. She identified the long sleeved khaki shirt (Exh. "A") as the garment worn by Dejaresco and the Banlon T-shirt (Exh. "B") and denim trouser (Exh. "C") the clothings worn by Eduardo Bulahan on the night of the robbery-killing." (pp. 21-23, appellants' brief).

The body of Modesto Icaro was taken to the NBI morgue at Funeraria Popular in Manila where an autopsy was conducted by Dr. Jesus D. Crisostomo, Supervising Medico-Legal Officer of the NBI. From his necropsy report, Exhibit "I", Dr. Crisostomo gave a detailed description of multiple gunshot wounds which were the cause of the death.

Meanwhile, Rudy Bulahan, Rufineo Dejaresco and Eduardo Bulahan were brought to San Pablo Police head-quarters for questioning and to the NBI office in Manila for paraffin tests the following day. The chemistry report submitted by NBI chemist Andres Santiago shows that Rudy Bulahan's right hand was positive for nitrates; Rufineo Dejaresco was positive for nitrates on both hands; and Eduardo Bulahan's left hand was positive for nitrates.

On January 23, 1969, Rufineo Dejaresco gave a written statement (Exhibit "N") admitting his participation in the crime charged. He acknowledged that he, Rudy Bulahan and Eduardo Bulahan robbed and shot Modesto Icaro on that fateful evening of January 22, 1969 at the latter's house at Sitio Lapi, Barrio San Cristobal, San Pablo City; that they planned to rob Icaro earlier in the evening with Dejaresco posting himself in the balcony, Eduardo at the "batalan", and Rudy On the ground beneath the window; that Rudy and Eduardo Bulahan were carrying flashlights and were armed with a shotgun and a carbine, respectively; that he had with him a .45 cal. automatic pistol and it was he who got the P90.00 from Icaro's wife. In an additional statement (Exhibit "X") he admitted that on the night in question he wore a khaki long-sleeved shirt and faded pants colored lead (tingga); that

Eduardo Bulahan wore denim pants and banlon shirt colored blue, while Rudy Bulahan wore a black colored jacket and black pants.

Likewise, Rudy Bulahan gave a statement (Exhibit "O") acknowledging his participation in the shooting incident as well as the ownership of the shotgun used. Accompanied by a peace officer, they proceeded to his house and recovered the shotgun (Exhibit "P") and one live bullet.

During the trial, Icaro's widow, Cesaria Cacao, identified Rufineo as the man at the balcony wearing a long-sleeved khaki shirt on the night of the incident, and Eduardo Bulahan as the one wearing denim trousers and a Banlon T-shirt.

The trial court rejected the defense of denial and alibi on the strength of the identification by Cesaria Cacao, the victim's wife, of Rufineo Dejaresco and Eduardo Bulahan. It is true that the two were wearing masks to hide their identities. The doubt, if any, is dissipated when she identified the long-sleeved khaki shirt (Exhibit "A") worn by Dejaresco. The police recovered the khaki shirt from the house of Dejaresco and the T-shirt and denim pants from that of Rudy Bulahan. Besides, in their extra-judicial confessions Dejaresco and Rudy Bulahan categorically admitted participation in the shooting of Modesto Icaro on the night in question.

Furthermore, Carmen Alcanse, wife of Rufineo. Dejaresco, candidly admitted that the Bulahan brothers, Eduardo and Rudy, fetched her husband from their house in the afternoon of January 22, 1969 to accompany them to the house of Modesto Icaro regarding the coffee which the Bulahans wanted allegedly to buy from the victim. When Dejaresco took the witness stand, he reiterated what he stated in his extra-judicial confession that the two Bulahan brothers were his companions that night.

There can be no question on the admissibility of the extra-judicial confessions of Dejaresco and Rudy Bulahan who did not complain that the police investigators extracted said statements from them by physical force, violence or intimidation. The rituals observed in the signing by said defendants and the treatment accorded them by the police investors strongly attest to the voluntariness and regularity of their execution. They do not bar, as Justice Tuason pointed out in *People vs. Carillo*, 77 Phil. 572, 576, the conviction of an accused "on a voluntary extrajudicial statement x x x". At the time, the 1973 Constitution was not yet in effect, particularly the provisions of Article IV, Section 20, on the right to remain silent and to counsel.

The defense only assails the findings of the lower court in considering dwelling as an aggravating circumstance because the same is not alleged in the information, and the disregarding of illiteracy or lack of sufficient instruction as a mitigating circumstance in the imposition of the penalty. There is no merit in the contention. As correctly pointed out by the trial court, "the rule is already forged in our jurisprudence that dwelling is aggravating in robbery with violence or intimidation of persons. *U.S. v. Leyva* 8 Phil. 671; *People vs. Sebastian*, 85 Phil. 602; *People vs. Napili*, 85 Phil. 521. The rationale behind this pronouncement is that this class of robbery could be committed without the necessity of transgressing the sanctity of the home. *People v. Apduhan, Jr.* 24 SCRA 815. Although the information in this case does not allege dwelling as an aggravating circumstance the same was nonetheless duly proven, and such omission is no impediment to considering it as a generic aggravating circumstance for the purpose of determining the proper penalty to impose on herein accused. *Martinez vs. Godinez*, L-12268, November 28, 1959." Besides, it does not violate defendants' constitutional right to be informed of the nature and cause of accusation against them because dwelling is not an element of the crime charged. "Although a complaint or information contains no allegation that generic aggravating circumstances of any kind were present in the commission of a crime, said circumstance may be proven at the trial and, if proven, must be taken into consideration in the imposition of the corresponding penalty:" (*People vs. Collado*, 60 Phil. 610).

Equally unmeritorious is the contention that the trial court erred in not considering illiteracy as an alternative mitigating circumstance. Suffice it to say that "no one, however, unschooled he may be, is so ignorant as not to know that theft or robbery; or assault upon the person of another, is inherently wrong and a violation of the law." (People vs. Enot, 6 SCRA 325). The mitigating circumstance of lack of instruction is not applicable to crimes of theft or robbery, much less to the crime of homicide. (U.S. vs. Pascual, 9 Phil. 49; People vs. Melendres, 59 Phil. 154; People vs. De la Cruz, 77 Phil. 444; People vs. Mendova, L-7030, January 31, 1957). Thus, in the absence of any mitigating circumstance, the court is called upon to affirm the supreme penalty of death. However, for lack of necessary votes, We impose the penalty of reclusion perpetua.

WHEREFORE, the appealed decision is AFFIRMED with the modification that appellants Rufineo Dejaresco y Levit and Rudy Bulahan y Bundalian are each to suffer the penalty of reclusion perpetua, each to indemnify the heirs of Modesto Icaro, jointly and severally, in the sum of P30,000.00, each to pay said heirs, jointly and severally, the sum of P90.00 taken by then from the victim, and to pay the costs pro rata.

SO ORDERED.

Fernando, C.J., Teehankee, Concepcion, Jr., Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., and De la Fuente, JJ., concur.

Makasiar and Aquino, JJ., vote for the death penalty.

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