

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO LANSETA alias ROLANDO JAVIER Y PRIMERA alias ROLANDO C. BUNAGUA alias LANDO JAVIER, DEFENDANT-APPELLANT.

G.R. No. L-30413. January 22, 1980

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Automatic review of the Decision dated January 25, 1969 of the Manila Circuit Criminal Court in CCC-VI-81, which imposed the death penalty on herein appellant, Rolando Javier y Primera, for the crime of Robbery with Homicide, with the attendant aggravating circumstance of treachery, disregard of respect due to the deceased on account of his rank, and cruelty, offset only by the mitigating circumstance of voluntary surrender. The other accused, Romulo Malundas y Olbindo, Jose Pilapil and Eulogio Lanseta, who were all charged as accessories after the fact, were acquitted.[1]

The Amended Information filed against the accused reads in part as follows:

"AMENDED INFORMATION

The undersigned accuses Rolando Javier y Primera, alias Rolando C. Bunagua alias Lando Javier of the crime of robbery with homicide and Romulo Malundas y Olbindo, Jose Pilapil y Marino and Eulogio Lanseta y Bunagua of the crime of accessory after the fact of the crime of robbery with homicide, committed as follows:

That on or about January 11, 1969, in the City of Manila, Philippines, the said accused Rolando Javier y Primera alias Rolando C. Bunagua alias Lando did then and there willfully, unlawfully and feloniously, with intent of gain and by means of violence, take, steal and carry away from the person of Pat. Quiterio Suriila one (1) .38 caliber S & W Revolver with Serial No. 0792238 valued at P600.00, to the damage and prejudice of the said Pat. Quiterio Suriila in the aforesaid sum of P600.00, Philippine currency; that by reason and on the occasion of the robbery, the herein accused did then and there willfully, unlawfully and feloniously, with intent to kill, treacherously attack, assault and use personal violence upon the said Pat. Quiterio Suriila, a member of the Manila Police Department, duly appointed, qualified and acting as such, and while in the performance of his official duties, by then and there stabbing him-several times with a sharp bladed instrument and shooting him with the said revolver, hitting him on different parts of his body, thereby inflicting upon the said Pat. Quiterio Suriila multiple mortal wounds which were the direct and immediate cause of his death.

XXX XXX XXX"[2]

The evidence for the prosecution discloses that at about 3:00 o'clock in the early morning of January 11, 1969, appellant Rolando Javier arrived at the "karinderia" owned and operated by witness Asuncion Tura which was located at the Soriano Market, Paco, Manila, and ordered food. Asuncion's sister, Rosalia Tura, served the appellant. Aside from appellant there were many other customers eating at the "karinderia." After appellant had finished eating and while he remained seated at the "karinderia," witness Asuncion Tura noticed that a man, who turned out to be the victim, Pat. Surilla, approached the appellant and introduced himself as a detective to

appellant. Witness Asuncion Tura saw that appellant stood up when accosted by the detective after which appellant and the detective walked away from the store.[3]

When the appellant and the detective had walked about ten (10) meters away from the store, witness Asuncion Tura heard two shots and somebody shouting for help. When she turned her face towards that direction, she saw the appellant sitting astride the detective and stabbing the latter many times. The detective was then lying flat on his stomach. After appellant had delivered many stab blows, witness Asuncion Tura saw him go towards the toilet, holding a gun in his left hand and a hunting knife in his right hand. Witness Asuncion Tura did not see appellant again.[4] Said witness identified appellant in Court and declared that she had known appellant for two years because he frequented the Soriano market and was her customer. However, it was the first time she saw the victim, Pat. Surilla.[5]

Dr. Luis Larion of the Medical Examiner's Office, Manila Police Department, who conducted a post mortem examination on January 11", 1969,[6] declared that out of the 27 wounds he found on the body of the victim, the fatal wounds were wounds Nos. 1, 2, 3, 5, 6, and 7, as shown in his Medical Report,[7] the deepest among which measured about 10 cms. deep and could have been caused by a sharp-edged pointed instrument of approximately the same length; that wound No. 26 was a gunshot wound "thru and thru upper inner, left thigh x x x and exited at x x x inner lower left thigh"; and that the cause of death as shown by Exhibit "O" was "profuse hemorrhage and shock due to multiple (23) stab wounds and a gunshot wound, penetrating chest, abdomen and neck and piercing right lung, diaphragm, trachea, liver, ascending colon, right kidney, right common carotid artery and left subclavian artery.[8]

Patrolman Ramon P. Padre of the Homicide Division, Manila Police Department, who was assigned to investigate the case, identified in Court among others, the Statement, Exhibit "B", given by appellant during the investigation conducted by said witness on January 12, 1969,[9] and which he claimed appellant signed voluntarily. In that Statement, appellant narrated:

"T: Bakit mo sinaksak si Pat. Surilla?

S: Hindi ko alam na pulis iyon. Bigla pong tawag sa akin na isa ka pa. Nakakuha po ako ng kutsilyo at siya ay aking sinaksak. Bumunot po siya ng baril at kami ay nag-agawan sa baril. Pumutok po iyong baril at ako ay tinamaan sa hita. Nagpambuno po kami. Napailatim po siya at siya ay aking pinagsasaksak. Tapps po ay kinuha ko ang kanyang baril at ako ay umalis. Tumulong po sa akin sina Jose, Juanito, Boy Lungkot, Entoy at si Willy at si Romuio. Dinala po ako sa stasyon ng Paco. Jniwan nila ako duon. Nakainot inot na po ako hanggang makakuha ako ng taksi at ako nagpahatid sa Makati sa amin. Pagdaiing ko sa amin ay nakatulong na ako hanggang sa ako ay isurender ng aking tataytatayan."[10]

Patrolman Jacinto Ty of the Manila Police Department, assigned to the Manila City Jail, also testified that upon interviewing accused, Eulogio Lanseta, at about 5:30 o'clock in the afternoon of January 16, 1969, the latter told him that he (Eulogio Lanseta) was willing to tell the Patrolman where the firearm of the deceased Patrolman Surilla was hidden by appellant Rolando Javier; that he asked permission from the Chief Security Officer to take out of the City Jail Eulogio Lanseta and proceed to Makati to recover the said firearm; that he recovered the firearm, Exhibit "H", under a pigpen in an alley at No. 5371 Curie St., Makati, Rizal which was pointed to him by Eulogio Lanseta. and which according to Eulogio Lanseta is ten (10) houses away from their (Lanseta's) residence; that Eulogio told him that it was appellant Rolando Javier who informed him (Eulogio) that the firearm could be found in that place.[11]

It is a fact that appellant was surrendered to the NBI by his father and his brother Eulogio Lanseta, also his co-accused herein, in the early evening of January 11, 1969.

Appellant, for his part, admitted that he is the accused in this case and that although his real name is Rolando Lanseta he gave the name Rolando Javier y Primera to the police to avoid discovery by his family.[12]

Appellant's own version of the incident follows: at about 3:00 o'clock in the morning, he was at the Soriano Market in order to buy fruits which he was going to sell in their place at Makati, Rizal.[13] The deceased, who was not in uniform and who did not introduce himself to appellant as a detective, placed his left arm on appellant's shoulders while appellant was already standing and asked appellant if he was the escapee that Mr. Reyes was telling him {the deceased) about. (Mr. Reyes was a collector in the Soriano Market whose son was previously involved in a quarrel with appellant and was killed by appellant in self-defense. Appellant claims that he was acquitted of the charge in that case but he did not know whether Mr. Reyes knew on that date, January 11, 1969, that he [appellant] was already acquitted). Appellant answered "no." The deceased then squeezed appellant's neck and searched his body but the deceased found no weapon nor any firearm.[14] Then the deceased pointed his gun at appellant and when the latter parried the gun, it fired and hit the latter's left thigh. Appellant heard only one gunshot, which was the one that hit him. Appellant pushed away the deceased and extricated himself. He was able to walk a few steps and then he fell. While he was crawling away from the Soriano Market a certain Juanito (whose full name he did not know) helped him. Appellant did not notice if somebody chased him because he did not look back. Appellant denied that he sat astride the deceased while the latter was lying on his stomach. He also denied that he stabbed the deceased several times. Appellant further repudiated his extra-judicial statement (Exhibit "B".) stating that he only gave it so that the policemen would stop maltreating him.[15]

Eulogio Lanseta, brother of appellant and one of the accused admitted having been confined in the city jail but denied having accompanied the police officers to No. 5371 Curie Street, Palanan, Makati, for the purpose of recovering the victim's firearm. His version was that on January 15, 1969, he was taken out of the city jail and brought to Curie Street and when they arrived there two policemen who went ahead of them came out and said "This is the gun," but that the gun was not shown to him.[16]

On January 25, 1969, the trial Court rendered judgment with the following dispositive portion:

"WHEREFORE, judgment is hereby rendered as follows:

(a) Finding accused Rolando Javier .y Primera alias Rolando C. Bunagua alias Lando Javier guilty beyond reasonable doubt as principal of the crime of robbery with homicide and there being proven the aggravating circumstances of treachery, disregard of the respect due to the deceased on account of his rank and cruelty offset only by the mitigating circumstance of voluntary surrender, sentences him to DEATH, to indemnify the heirs of the deceased Pat. Quiterio Surilla, the sum of P12,000.00 and to pay the costs. It -appearing that the gun stolen (Exhibit H) was recovered, let the same be returned to the Manila Police Department who issued the same to the deceased;

xxx xxx xxx

SO ORDERED."[17]

Appellant's assigned errors revolve around the identity of the appellant as the assailant, the credibility of prosecution witness Asuncion Tura, and the attendance of the circumstances of treachery and disregard of the respect due the offended party on account of his rank.

The entire case being open for review in appeals in criminal cases,[18] it is at once apparent from the evidence, although not assigned as an error, that appellant cannot be found guilty of the complex offense of Robbery with Homicide, the element of robbery not having been conclusively proved.

"It is well-settled that in order to sustain a conviction for the crime of robbery with homicide, it is necessary that

the robbery itself be proven as conclusively as any other essential element of a crime. In order for the crime of robbery with homicide to exist, it is necessary that it be clearly established that a robbery has actually taken place, and that, as a consequence or on the occasion of such robbery, a homicide is committed x x x." [19]

True, witness Asuncion Tura testified that appellant carried away the gun of the deceased. However, the circumstances surrounding the incident and other evidence fail to show that appellant took it with intent of gain. His original criminal design did not comprehend robbery. The alleged robbery merely followed the killing of the victim as an afterthought or as a mere incident thereof. The homicide was not committed by reason of or on occasion of the robbery.

When the case does not show conclusively that the homicide was committed for the purpose of robbing the victim, a mere presumption of such fact is not sufficient to sustain a conviction for robo con homicidio.[20] When a person is charged with robbery, the intent to rob must be proven.[21]

"x x x Upon this question the Supreme Court of Spain has pointed out what appears to us to be a sound distinction, which is. that where the original criminal design comprehends robbery in a dwelling, and the homicide is perpetrated with a view to the consummation of said offense, the crime committed is the complex offense even though the homicide precedes the robbery by an appreciable interval of time. On the other hand, if the original criminal design does not clearly appear to have comprehended robbery, but robbery follows the homicide as an afterthought or as minor incident of the homicide, the criminal acts should be viewed as constitutive of two offenses and not as a single complex offense (Viada, 5 Supp., 383, citing decision of June 27, 1905). x x x It is the intention of the actor which supplies the connection between the homicide and the robbery necessary to constitute the complex offense; and if that intention comprehends the robbery, it is immaterial that the homicide may immediately precede instead of follow the robbery in point of time." [22]

Robbery not having been convincingly and conclusively proven, neither can appellant be found guilty thereof as a second offense.

What has next to be determined is the proper characterization to be given to the crime committed, that is, whether it is simple Homicide or Murder,[23] and whether appellant can be found guilty thereof notwithstanding his denials.

In an attempt at exculpation, the defense points out that there having been many people around and near the victim on that occasion, it was most probable that the 27 wounds found on the victim's body were inflicted not by appellant but by others who were around, firstly, because no knife or firearm was found on his person when he was searched; secondly, since appellant had been hit on the left thigh by the victim's revolver, he was already disabled to walk; thirdly, most of the wounds were found in front of the victim's body whereas prosecution witness Asuncion Tura declared that appellant delivered many stab blows when the victim was already prostrate on the floor, face down, while Dr. Luis Larion testified that the probable position of the assailant in relation to the victim was that assailant was in front of the victim: fourthly, while witness Asuncion Tura heard two gunshots, it is a fact, that as testified to by the ballistics expert. Washington Bacud, the revolver of the deceased contained (6) bullets, one in each of the six (6) chambers, and that only one bullet was fired.[24]

The foregoing contentions are far from convincing. Unknown to the victim, who must have been lulled into a false sense of security for having found no weapon on the person of appellant upon being searched, appellant must have picked up a knife while they were walking, which incidentally is not an uncommon object in a market place, with which he stabbed the deceased. It is conceded that the firearm which figured in the incident belonged to the deceased and that it was when the victim and appellant were grappling with each other that the gun fired and hit appellant's left thigh. That appellant was disabled after being so hit. however, is not borne out by the

evidence, for as appellant himself narrated in his extrajudicial confession, after he had stabbed the deceased, the latter pulled out his gun, and as they grappled for its possession, the gun went off, hitting appellant on his left thigh, after which appellant was able to pin down the deceased and continued stabbing the latter. Appellant has attempted to repudiate that confession but as correctly observed by the trial Court, it was filled with details which only appellant could have supplied.

In so far as the wounds found on the body of the victim are concerned. Dr. Luis Larion did declare that the probable position of the assailant in relation to the victim was that the assailant was facing the victim, a little bit more on the victim's right side. The conclusion does not necessarily follow, however, that somebody, other than appellant inflicted the frontal wounds on the argument that with the victim lying on his stomach and appellant astride the victim's back, as testified to by Asuncion Tura, appellant could not have thrust any weapon in front of the victim's body. For it is very probable that the wounds on the front part of the victim's body could have been inflicted while appellant and the victim, with appellant already in possession of a knife, and the victim, of a gun, were grappling with each other ("nagpambuno po kami"). What witness, Asuncion Tura, saw was only the latter part of the struggle when the victim was already prostrate on his stomach and appellant was finishing him off. Moreover, Dr. Larion himself did not declare that even in the position described by Asuncion Tura it was not possible to inflict the wounds suffered by the victim. The pertinent portion of his testimony is quoted hereunder:

"Q -

And when those fatal wounds were inflicted on the victim, can you tell more or less his position in relation to his assailant or assailants?

A -

The probable position of the assailant in relation to the deceased was that he was facing the front of the victim or the deceased, a little bit on the right side of the victim.

Q -

Could you tell the court if those wounds Nos. 1, 2, 3, 4, 5, 6 and 9, if the position of the victim, whether he was standing or already lying down when he sustained or suffered such wounds?

A -

Those could have been inflicted while he was standing, sir.

Court:

Q -

About lying down?

A -

It was also possible that he was also lying down, sir.

Q -

How many wounds are there on the back of the victim?

A -

Only one stab wound, wound No. 15.

Q -

If the accused or assailant is riding on the back of the deceased, how many wounds would have been inflicted by him?

A -

If he was riding on the back, he could have inflicted majority of the wounds if he was on the back.

Q -

Assuming that the deceased is lying flat on his stomach and the assailant is riding on his back, how many of the wounds that you enumerated could have been inflicted by the accused?

A -

It could be wound Nos. 12, 13, 15 and 11, sir. Fiscal Barbosa:

Q -

How could the assailant inflict wounds Nos. 12 and 13 when they are on the neck, left side when he was riding on the back?

A -

It would be inflicted in the manner demonstrated by the witness to be coming from the left side with his arms across the left arm.

Q -

About wound No. 11, how could it be inflicted when that is on the right neck?

A -

It could be inflicted when the subject could be riding on the back." [25]

The testimony of Dr. Larion that at least four (4) wounds (nos. 11, 32, 13 and 15) could have been inflicted by appellant while the deceased was lying flat on his stomach, in fact, corroborates the statements of Asuncion Tura that she saw appellant sitting on top of the deceased and stabbing the latter, who was lying flat on his stomach, several times.

The defense assails the credibility of prosecution witness, Asuncion Tura, in that she "was moved by a sudden imagination resulting from the commotion," "and that the two gunshots that she declared she heard is belied by the five bullets still inside the chamber of the recovered firearm (Exhibit "H"). However, the account of this eyewitness, a carinderia owner, as to the number of gunshots, is a minor matter not of sufficient magnitude as to denote a deliberate intent to utter a falsehood on her part. The more important factor is that she had known appellant for quite some time before the incident, two years in fact, as he was her regular customer. She could not, therefore, have been mistaken as to his identity as the one astride the victim's back repeatedly dealing stab blows on the latter. No reason or motive has been shown as to why she would falsely implicate appellant in such a heinous crime. Testimonies of witnesses are worthy of full faith and credit in the absence of improper motives. [26] Testimonies of witnesses would be accepted where no motive was shown why those simple folk would testify the way they did and impute on the appellant the commission of such serious a crime as robbery with homicide other than the desire to bring the culprit to justice. [27] And as to the fact that both the deceased and the appellant suffered gunshot wounds in their left thighs although there was only one gunshot, considering the proximity of the two protagonists during the scuffle, it is not remote that the same bullet caused the gunshot wounds on both individuals.

Coming now to the circumstances surrounding the commission of the offense, we must rule out the circumstance of treachery, contrary to the finding of the trial Court. There is treachery when the offender employs means, methods or forms in the execution of the crime which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. [28]

In this case, while appellant suddenly and unexpectedly stabbed the deceased, treachery does not connote the element of surprise alone. The victim must have had no opportunity to defend himself or to repel the initial assault. As it is, the deceased was able to pull out his gun and was able to defend himself but was ultimately bested by appellant. The means employed by appellant in stabbing the victim, therefore, was not without risk to himself arising from the defense that the victim did make. Supportive of this conclusion is the ruling in *People vs. Diva, et al.* [29] to the effect that "where the deceased was suddenly attacked, but he was able to retreat to avoid being bit by the hacking blows and was hit only when he was already in the act of defending himself against the attack of the accused, there is no treachery." "Suddenness of attack alone does not conclusively show treachery. It is required also that the victim be completely deprived of a chance to either prepare for a fight or retreat." [30]

We likewise find as erroneous, but which the defense failed to raise, the appreciation by the trial Court of the aggravating circumstance of cruelty based upon the presence of twenty seven (27) wounds on the victim's body.

"There is cruelty when the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary moral and physical pain in the consummation of the criminal act which he intends to commit. The mere fact of inflicting various successive wounds upon a person in order to cause his death, no appreciable time intervening between the infliction of one wound and that of another to show that he had wanted to prolong the suffering of his victim, is not sufficient for taking this aggravating circumstance into consideration." [31]

"We have frequently held that the mere fact that a number of grave wounds are found upon the body of a murdered man can rarely be considered conclusive of the fact that they were inflicted with the deliberate and inhuman intention of unnecessarily increasing the sufferings of the offended party. It is, as a rule, the unnecessary mutilation of the body which constitutes the qualifying circumstance of 'ensanamiento,' and the mere fact that wounds far in excess of what would have been necessary to cause death were inflicted upon the body of the deceased does not necessarily imply that such wounds were inflicted with the intention of deliberately and inhumanly increasing the sufferings of the offended party. The object sought to be attained in such cases may well have been merely to make assurance doubly sure, and to make the recovery of the victim of the attack absolutely impossible." [32]

Nor do we find the circumstance of "disregard of respect due the offended party on account of his rank" under Art. 14, paragraph 3 of the Revised Penal Code, present in this case. The act of appellant in attacking the victim, an agent of a person in authority, while the latter was in the performance of official duty, is actually constitutive of Direct Assault, or atentado, under Article 148 of the Revised Penal Code. That crime is characterized by the spirit of aggression directed against the authorities or their agents, [33] hence, the circumstance of "disregard of respect due the offended party on account of his rank" may be considered inherent therein. [34] Thus, in the case of *People vs. Catacutan* [35] wherein the accused who killed a corporal, an agent of the authority who was then conducting a search by virtue of a search warrant, was found by the Court to have committed the complex crime of homicide and assault upon an agent of the authority, that circumstance was not considered aggravating; nor was it taken into account in *People vs. Lojo, Jr.* [36] wherein the Court found the accused, who ran over a policeman who was signalling him to stop, guilty of two crimes, homicide and assault upon an agent of authority; nor in the case of *People vs. Hernandez* [37] wherein the Court found the accused, who killed a policeman, guilty of the complex crime of homicide accompanied by assault upon an agent of authority, nor in the case of *People vs. Bangug* [38] wherein the Court held that two crimes were committed by the accused in the killing of two constabulary soldiers, murder and assault against agents of authority. [39]

While in our opinion, Direct Assault should have been complexed with Homicide, yet, since that complex crime has not been expressly charged, there can be no conviction therefor. [40] And although the Information includes some allegations constitutive of Direct Assault, it is still deficient in that it did not allege an essential element thereof, which is that the accused had knowledge of or knew the position of authority held by the person attacked. [41] In the case of *People vs. Hernandez* [42] where the Court convicted the accused not only of Homicide but also of assault upon an agent of authority and raised the penalty to that for the more serious crime, the Court noted that the complaint therein charged all the elements constitutive of both the Homicide, which is included in the charge of Murder, and the assault, since, in addition to the facts relative to the Homicide, said complaint expressly charged that at the time the Homicide was committed the victim was "then wearing his uniform and insignia as such policeman" and was acting in compliance with a duty to protect from aggression the individuals whom he was accompanying. [43] In the present case, although the Information alleged that the accused attacked and assaulted "Patrolman Quiterio Suriila, a member of the Manila Police Department duly appointed, qualified and acting as such, and while in the performance of his official duties," the same did not allege that the accused knew or must have known that he was a policeman, although the evidence establishes that appellant had become aware of the identity of his victim because, as witness Asuncion Tura testified, the latter, who was not in uniform, introduced himself as a detective to appellant. Besides, appellant had allowed himself to be frisked and to be led away for investigation by the victim.

In sum appellant should be convicted of simple Homicide, attended by the mitigating circumstance of voluntary surrender, without any aggravating circumstance to offset the same. The penalty of reclusion temporal in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months, is impossible.

WHEREFORE, the appealed judgment is hereby modified, and appellant, Rolando Javier y Primera, alias Rolando C. Bunagua, alias Lando Javier, is hereby found guilty of Homicide and sentenced to an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY of prision mayor as minimum to TWELVE (12) YEARS and ONE (1) DAY of reclusion temporal as maximum: to indemnify the heirs of the deceased, Patrolman Quiterio Suriila, in the sum of PI 2,000.00; and to pay the costs.

SO ORDERED.

Fernando, C.J., Concepcion Jr., Santos, Fernandez, Guerrero, Abad Santos, and De Castro, JJ., concur.

Aquino, J., in the result, see opinion below.

Barredo, J., concurs and dissents in a separate opinion.

Teehankee, J., concurs with the separate opinion of Justice Makasiar.

Makasiar, J., dissents partly in a separate opinion.

Antonio, J., took no part.

[1] pp. 84-85, CCC Record.

[2] p. 1, Ibid.

[3] pp. 23-25, t.s.n. of Jan. 23, 1969.

[4] pp. 25-26, Ibid,

[5] P. 27, Ibid.

[6] P. 57, CCC Record.

[7] Exhibit "O", p. 59, CCC Record.

[8] pp. 6-12. t.S.n., Jan. 24, 1969.

[9] p. 30. CCC Record.

[10] Ibid.

[11] pp. 30-33. t.S.n. of Jan. 23, 1969.

[12] p. 35, t.s.n. of Jan. 24. 1969.

[12] p. 35. l.s.n. of Jan. 24. 1969.

[13] p. 44. Ibid.

[14] pp. 37-38, Ibid.

[15] pp. 35-45, t.s.n. of Jan. 24, 1969.

[16] pp. 19-23, Ibid.

[17] pp. 84-85, CCC Record.

[18] Quemuel vs. Court of Appeals, 22 SCRA 44 (1968), citing US vs. Trono, 199 US 521; People vs. Carreon, 5 SCRA 252 (1962); Iontoc vs. People, 74 Phil. 513, 519 (1943); People vs. Fresco, 63 Phil. 526 (1936), People vs. Olfindo, et al., 47 Phil. 1 (1924); Pendteton vs. US, 40 Phil. '033 (1910) and US vs. Gimenez, 34 Phil. 74 (1916).

[19] *People vs. Pacala*, 58 SCRA 370 (1974).

[20] *U.S. vs. Baguiao*, 4 Phil. 110 (1905); *U.S. vs. Alasa-as*, 40 Phil. (1920); *People vs. Elizaga*, 86 Phil. 364 (1950).

[21] *U.S. vs. Villorente*, 30 Phil. 59. 67-68 (1915).

[22] *People vs. Manuel*, 44 Phil. 333. 341-342 (1923).

[23] *People vs. Pacala*, *supra*.

[24] p. 23. t.s.n.. January 23. 1969.

[25] pp. 9-10. t.s.n. of Jan. 24, 1969.

[26] *People vs. Mercado*, 38 SCRA 168 (1971); *People vs. Obngayan*, 55 SCRA 465 (1974); *People v. Sawah*. 5 SCRA 385 (1962); *People vs. Vaiera*, 5 SCRA 910 (1962).

[27] *People vs Yap*. 42 SCRA 567 (1971); *sec also People vs. .Ali*. 29 SCRA 756 (1969).

[28] An. 14. par. 16. Revised Penal Code.

[29] 23 SCRA 332 (1968).

[30] *Ramos vs. People*. 20 SCRA 1109. 1112-11 13 (1967); *see also Perez vs. Court of Appeals*, 13 SCRA 444. 448 (1965). *citing People vs. Namit*, 38 Phil. 926 (1918) and *People vs. Delgado, et al.* 11 Phil. 11 (1946); *People vs. Cabiling*, 74 SCRA 285. 302 (1976).

[31] *People vs. Dayug and Bannaisan*, 49 Phil. 423. 427 (1 926). *Sec also People vs. Jamauan*, 98 Phil. 1 (1955); *People vs. Curiano*. 9 SCRA 323 (1963); *People vs. Uamera*. 5 SCRA 48 (1973); *People vs. Luna*, 58 SCRA 198, 209 (1974); *People vs. Cabiling*, 62 SCRA 174. 215 (1975).

[32] *U.S. vs. Palermo*, 31 Phil. 425. 429 (1915); *See also U.S. vs. Vitug*, 17 Phil. 1 (1910); *U.S. vs. Siblag*, 37 Phil. 703 (1918); *U.S. vs. Rivera*, 41 Phil. 472 (1921); *People vs. Aguinaldo*, 55 Phil. 610 (1931); *People vs. Manzano*. 58 SCRA 250, 262 (1974).

[33] *Aquino. The Revised Penal Code*, 1976 Ed-. Vol. Two, p. 923. *citing People vs. Tabiana and Canillas*, 37 Phil. 515. 520.

[34] *People vs. Manlapat, CA*, 51 O.G., 849.

[35] 64 Phil 107 (1937).

[36] 52 Phil. 390 (1928).

[37] 43 Phil, 104 (1922).

[38] 52 Phil 87 (1928).

[39] *See Aquino, The Revised Penal Code*, 1976 Ed.. Vol. Two. p. 928. footnote 59.

[40] *U.S. vs. Sevilla*, 2 Phil. 162 (1903); *U.S. vs. Ginosolongo*, 23 Phil 171, 175 & 177 (1912); *People vs. Bangug*, 52 Phil 87 (1928); *People vs. Guillen*, 85 Phil. 307. 319 (1950); *People vs. Bondoc*, 85 Phil. 545. 551 (1950); and *People vs. Jaranilla*, 55 SCRA 563, 576 (1974).

[41] *People vs. CFI of Quezon, Br. V*, 68 SCRA 305 (1975).

[42] 43 Phil. 104 (1922).

[43] See Complaint quoted on 43 Phil. 108, footnote 1.

[*] Justice Felix Q. Antonio took no part as he was the Solicitor General at the time the People's Brief was filed.

CONCURRING

AQUINO, J.,

I concur in the result or in the conviction of the accused for homicide. The imposable penalty should be twelve years of prision mayor as minimum to fourteen years and eight months of reclusion temporal as maximum.

The accused should also be convicted of theft of the revolver which is included in the robbery charge.

CONCURRING AND DISSENTING

BARREDO, J.,

I am willing to go along with the conclusion in the well prepared main opinion of our distinguished colleague Madame Justice Melencio-Herrera that appellant is guilty of homicide, but there being uncontradicted evidence, noted also by Mr. Justice Makasiar, that the deceased introduced himself to appellant when he first approached him that he was a detective, as testified to by witness Asuncion Tura, I hold that with such proof, the disregard of respect due to the offended party on account of his rank should be considered as a generic aggravating circumstance although it was not alleged in the information; if the latter had been done, the crime would have been characterized as assault. In consequence, I share the opinion of Mr. Justice Aquino as to the penalty to be imposed upon appellant, namely, twelve years of prision mayor to fourteen years and eight months of reclusion temporal.

I also believe with Mr. Justice Aquino that appellant should have been or should be prosecuted separately for the crime of theft, not armed robbery, for having taken and hidden, which indicates, as Mr. Justice Makasiar also observes, intent of gain.

The fact that the killing of the gun was committed not in relation necessarily to the homicide does not alter its juridical character as a separate crime of theft.

DISSENTING IN PART:

MAKASIAR, J.,

Appellant should be convicted not only of homicide but also of robbery which has been amply proven beyond reasonable doubt. After overpowering the victim, the appellant stabbed him several times on both sides of his neck, while appellant was astride the victim who was lying flat on his stomach and thereafter relieved the victim of his gun (revolver), which he hid in a pig pen in an alley at 5371 Curie St., Makati, Rizal, from where it was retrieved by Patrolman Jacinto Dy of the Manila Police Department, who was led thereto by Eulogio Lanseta, appellant's brother to whom he confided its hiding place. If he had no intent to gain from it, when he divested the victim policeman of his gun, he would have not hidden it and would have surrendered the same to the NBI, to

whom he surrendered accompanied by his father and brother Eulogio in the early evening of January 11, 1969, after about 15 hours from the occurrence of the incident about 3 o'clock in the early morning of that same day.

It is patent from the evidence that shortly before the incident, the victim identified himself as a detective to the appellant. His assault on the police officer, who identified himself to appellant, aggravates the crime; although it will not complex the crime as homicide with direct assault on a person of an agent in authority, because the information does not allege that he knew that the victim was a policeman. With the voluntary surrender neutralizing the said aggravating circumstance of contempt or insult to a police officer, the penalty for homicide should be reclusion temporal in its medium period and another penalty for armed robbery as the appellant used a kitchen knife in subduing the victim.

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