

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DICTO ARPA AND MAALUM ARPA, DEFENDANTS-APPELLANTS.

G.R. No. L-26789. April 25, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Automatic review by this Court of the death penalty imposed by the trial court on the accused for the crime of Robbery with Triple Homicide.

In the information filed before the Court of First Instance of Davao, the accused, Dicto Arpa and Maalum Arpa, was charged with the crime of Robbery with Triple Homicide (Criminal Case No. 9694); alleged to have been committed as follows:

"That on or about February 20, 1966, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, having boarded a motor banca named "MAMI I", owned by Epimaco Mola, together with other passengers bound for Talicud Island, Davao, and once the motor banca was in the middle of the sea and when it developed engine trouble, the accused, conspiring together and helping one another, with intent to steal the motor banca and by means of intimidation, the accused Dicto Arpa firing his .22 cal. revolver to scare the passengers of the banca, and fired at one of the passengers, hitting the said passenger at the right shoulder, wilfully, unlawfully and feloniously took and carried away the said motor banca "MAMI I", belonging to the said Epimaco Mola, valued at P2,100.00, to the damage and prejudice of the above-named owner in the aforementioned amount of P2,100.00, and as a result of the jumping into the sea of all the passengers of the motor banca, Alfonso Villegas, Bernardo Villegas and Lourdes Villegas, all passengers of the motor banca were drowned and died."

On the scheduled date of arraignment on March 7, 1966, the accused, through their counsel de oficio, Atty. Bernardino Bolcan, Jr., manifested their desire to plead guilty only as to the fact of "the killing of one of the persons mentioned in the information,"[1] denying the killing of the two other persons. The fiscal, however, manifested that the State could not agree to the accused's offer to plead guilty to only one homicide, since "the two other persons were lost on the same occasion, . . . because of the incident. They jumped overboard after the firing at one of the victims, . . ."[2] The trial judge, Hon. Manses G. Reyes, accordingly did not accept the plea and reset the arraignment for the next day, informing the accused that as the prosecution was not agreeable to their qualified plea, they would have to enter into trial.

When the case was called on the following day, the information was read to the accused in the dialect they understood, and both accused pleaded guilty, their counsel de oficio invoking, in their favor two mitigating circumstances of plea of guilty and lack of intent to commit so grave a wrong. The fiscal objected to the appreciation of the latter circumstance, remonstrating that "there could be no lack of intent when they immediately fired at one of the victims point blank with a pistol, that is fatal."[3]

The case was submitted and the trial court rendered there-after on March 11, 1966, its decision, crediting the accused with the mitigating circumstance of their voluntary plea of guilty, but rejecting the claimed mitigating

circumstance of lack of intent to commit so grave a wrong, in view of "the nature and gravity of the offense committed." The trial court further found two aggravating circumstances against the accused, as follows:

"A perusal of the information reveals the following allegations in the information:

"X X X X and once the motor banca was in the middle of the sea and when it developed engine trouble. x x"

These allegations to the mind of the Court constitute two aggravating circumstances. The first underlined portion constitutes the aggravating circumstance that the crime was committed in an uninhabited place. (People vs. Rubia, 52 Phil. 172). And the second constitutes the aggravating circumstance that the crime is committed on the occasion of conflagration, shipwreck, earthquake, epidemic or other calamity or misfortune.

The Court believes that the development of engine trouble in the middle of the sea is a misfortune which tends to create confusions and apprehensions of the passengers and, thereby, to commit a crime at such a time the accused manifested greater perversity and instead of rendering help increased their affliction by taking advantage of the said misfortune.

As it is, therefore, the accused in the commission of this crime has one mitigating circumstance in their favor and two aggravating circumstances against them, and off-setting one another there is still remaining one aggravating circumstance against the accused."[4]

Consequently, the trial court sentenced each of the accused to the penalty of death and ordered both of them, jointly and severally, to indemnify the heirs of the deceased Alfonso Villegas, Bernardo Villegas and Lourdes Villegas in the amount of P6,000.00 for each of them, without subsidiary imprisonment in case of insolvency by reason of the penalty imposed, and to indemnify Epimaco Mola in the sum of P2,100.00, and to pay the costs proportionately.

For purposes of this review, Atty. Antonio L. Africa was appointed counsel de oficio for the accused, upon the latter's request for such counsel. Said Counsel urges the reversal of the death sentence, and the Solicitor-General recommends the affirmation thereof. Counsel for the accused in a well-prepared brief, assigns the following errors: -

"I. THE LOWER COURT ERRED IN HOLDING THAT THE CRIME COMMITTED IS ROBBERY WITH TRIPLE HOMICIDE.

"II. THE LOWER COURT ERRED IN HOLDING THAT THE CRIME COMMITTED WAS ATTENDED BY THE AGGRAVATING CIRCUMSTANCES OF UNINHABITED PLACE AND ON THE OCCASION OF A MISFORTUNE.

"III. THE LOWER COURT ERRED IN NOT CONSIDERING THE MITIGATING CIRCUMSTANCE OF LACK OF INTENT TO COMMIT SO GRAVE A WRONG AS THAT COMMITTED.

"IV. THE LOWER COURT ERRED IN IMPOSING UPON THE ACCUSED THE SUPREME PENALTY OF DEATH."

The accused, having voluntarily pleaded guilty to the information come under the firmly settled doctrine of being deemed to have admitted all the material facts alleged in the information, including the aggravating circumstances therein alleged.[5]

The first error assigned that "if the original criminal design does not clearly comprehend homicide, (in view of the allegations in the information that the accused's intent was to steal the motor banca and that accused Dicto Arpa fired his 22 cal. revolver to scare the passengers of the banca), but homicide follows the robbery as an incident of the latter, the criminal acts should be viewed as constitutive of two offenses, and not as a single special offense (of

robbery with homicide)"[6] is without merit. Article 294, para-graph 1 of the Revised Penal Code which defines the special, single and indivisible crime of robbery with homicide with the use of violence against, or intimidation of any person, imposes one distinct penalty of reclusion perpetua to death "when by reason or on occasion of the robbery, the crime of homicide shall have been committed." In the case of *People vs. Mangulabnan et al.*,[7] this Court painted out that the "English version of the Code is a poor translation of the prevailing Spanish text of said paragraph, which reads as follows:

"1.º Con la pena de reclusion perpetua a muerte, cuando con motivo o' con ocasion del robo resultare homicidio."

"We see, therefore, that in order to determine the existence of the crime of robbery with homicide it is enough that a homicide would result by reason or on the occasion of the robbery (Decision of the Supreme Court of Spain of November 26, 1892, and January 7, 1878, quoted in 2 Hidalgo's Penal Code, p. 267 and 259-260, respectively). This High Tribunal speaking of the accessory character of the circumstances leading to the homicide, has also held that it is immaterial that the death would supervene by mere accident (Decision of September 9, 1886; October 22, 1907; April 30, 1910 and July 14, 1917), provided that the homicide be produced by reason on occasion of the robbery, inasmuch as it is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime, that has to be taken into consideration (Decision of January 12, 1889 -- see Cuello Calon's *Codigo Penal*, p. 501-504)."

In that case, one of the two unidentified co-participants of the appellant Mangulabnan climbed up a table and fired at the ceiling, which was conceded to be "an unpremeditated act that surged on the spur Of the moment and possibly without any idea that Vicente Pacson was hiding therein" that resulted in the killing of said Vicente Pacson, but said appellant having been shown to have participated in the criminal design to commit the robbery with his co-defendants was held guilty of the crime of robbery with homicide. Here, upon the accused carrying out their criminal design to steal the motor banca, one of them, Dicto Arpa, started firing his revolver to scare the passengers and fired directly at one of the passengers, hitting him at the right shoulder, and as a result, the three passengers jumped into the sea and met their death by drowning. Even if we were to concede appellants' contention that their original criminal design did not clearly comprehend homicide, and that homicide followed the robbery "as an incident of the latter", still the deaths clearly resulted by reason of or on the occasion of the robbery and the trial court therefore correctly found them guilty of the crime of robbery with triple homicide.

The remaining errors assigned concern the trial court's appreciation and finding of two aggravating circumstances as against one mitigating circumstance of a voluntary plea of guilty in the commission of the crime and the mandatory imposition, as a consequence, of the penalty of death.

We hold that the trial court correctly held that the crime committed was attended by the aggravating circumstance of uninhabited place. The accused, in having boarded at Davao City the motor banca, together, with other passengers bound for Talicud Island, Davao, and carrying out their criminal design of stealing the said motor banca, once it was in the middle of the sea and when it developed engine trouble, with one of them firing revolver shots in order to forestall any resistance, certainly cannot disclaim that they sought the isolation of the sea to attain their criminal objective without interference. As held by this Court in *People vs. Rubia*,[8] the aggravating circumstance of the crime of homicide having been committed in an uninhabited place must be considered, where the deed was committed at sea, where it was difficult for the offended party to receive any help, while the assailants could easily have escaped punishment, and the purely accidental circumstance that another banca carrying the eyewitnesses to the crime was also at sea in the vicinity at the time without the assailants' knowledge is no argument against the appreciation of said circumstance.

We hold, however, against the trial court's finding of a second aggravating circumstance in that the crime was committed "on the occasion of a conflagration, shipwreck, earthquake, epidemic, or other calamity or misfortune."^[9] In so holding, the trial Court reasoned:

"The Court believes that the development of engine trouble in the middle of the sea is a misfortune which tends to create confusions and apprehensions of the passengers and, thereby, to commit a crime at such a time the accused manifested greater perversity and instead of rendering help increased their affliction by taking advantage of the said misfortune." (Decision, p. 3).

The development of engine trouble at sea is a misfortune, but it does not come within the context of the phrase "other calamity or misfortune" as used in Article 14, paragraph 7 of the Revised Penal Code, which refer to other conditions of distress similar to those precedingly enumerated therein, namely, "conflagration, shipwreck, earthquake, epidemic", such as the chaotic conditions resulting from war or the liberation of the Philippines during the last World War. The reason for the provision of this aggravating circumstance "is found in the debased form of criminality met in one who, in the midst of a great calamity, instead of lending aid to the afflicted, adds to their suffering by taking advantage of their misfortune to despoil them."^[10] Clearly, no such condition of great calamity or misfortune existed when the motor banca developed engine trouble.

It should be added that there is nothing in the record whatever to indicate that the engine trouble developed was a serious one such as to create confusion and apprehension on the part of the passengers as perceived by the trial court, and that the same was not easily repaired; if at all, the indications are to the contrary, for as alleged in the information, the accused succeeded in stealing the motor banca at sea.

We hold also against the accused's claim of a second mitigating circumstance of lack of intent to commit so grave a wrong. The trial court correctly held that this circumstance could not, properly be appreciated in favor of the accused "viewed from the nature and gravity of the offense committed." As previously pointed out by this Court in the case of *People vs. Boyles*,^[11] the true nature of this circumstance "addresses itself to the intention of the offender at the particular moment when he executes or commits the criminal act; not to his intention during the planning stage. Therefore, when, as in the case under review the original plan was only to rob, but which plan, on account of the resistance offered by the victim, was compounded into the more serious crime of robbery with homicide, the plea of lack of intention to commit so grave a wrong cannot be rightly granted." In the present case, the accused embarked on their most reprehensible criminal design of pirating a motor banca at sea, firing a volley of shots at the passengers notwithstanding the lack of indications of any resistance, thus forcing them to jump overboard in a desperate act of self-preservation only to be swallowed by the sea. The accused cannot now disclaim their lack of criminal intent and responsibility for the direct, logical and fearsome consequences of their unlawful acts.

As thus established, therefore, the crime committed was Robbery with Triple Homicide, attended by the aggravating circumstance of the same having been committed in an uninhabited place which is offset by the accused's voluntary plea of guilty, and the proper imposable penalty is the lesser penalty of reclusion perpetua. (Article 294, paragraph 1 in relation to Article 63, Revised Penal Code). The compensatory damages awarded to the heirs of the victims should properly be increased to P12,000.00. (*People vs. Pantoja*, G. R. L-18793, Oct. 11, 1968).

It may be noted that even if the accused were to be granted the additional claimed mitigating circumstance of lack of intent, the said imposable penalty would still be the same.^[12] The question of the fact of death of the two other passengers, since the accused deny knowledge of the fact of their death, as their counsel in the lower court claimed that there was no showing of such fact,^[13] although both counsels in this Court as well as in the lower court do not dispute the "judicial admission by the accused appellants of the fact of killing (death) of one of the

persons named in the information"[14] would not affect the nature of the single and indivisible crime of Robbery with Homicide committed by the accused nor the proper imposable penalty as herein established, since all the homi-cides perpetrated by reason or occasion of the robbery are merged in the composite, integrated whole that constitutes the crime of robbery with homicide.[15]

Nevertheless, we feel constrained to add that in reviewing the records of the case, we were struck with the paucity of facts and evidence attending the commission of the crime other than those stated in the information and other circumstances that would aid the Court in its ordained task of passing en consulta upon the legal-ity and propriety of the death penalty imposed by the trial court, e. g. the age and education or lack thereof of the accused, and whe-ther there were other passengers who survived, aside from the three persons named in the information as having drowned, as well as what the crew did, if anything, during the commission of the crime. Were it not for the conclusion here reached of imposing .the lesser penalty of reclusion perpetua, by virtue of our disallowance of the additional aggravating circumstance of calamity or misfortune found by the trial court, we might have been constrained to remand the case for new trial to the court a quo in order to satisfy ourselves as to the degree of culpability of the accused in relation to the death penalty imposed, especially since the information did not expressly designate as such the aggravating circumstances found by the trial court and there was no discussion nor spelling out thereof whatever in the eight-page transcript of the entire proceedings. We therefore reiterate the rule of practice recommended since the early cases of U. S. vs. Talbanos[16] and U. S. vs. Rota,[17] set out in Rule 118, section 5 of the Rules of Court,[18] and thereafter suggested in number of cases, lastly, in the case of People vs. Bulalake,[19] where this Court said:

"It is of course true that the taking of such evidence is a matter left to the discretion of the trial court. Never-theless, inasmuch as judgments of conviction imposing the extreme penalty of death are subject to review by the Supreme Court as law and justice shall dictate, whether the defendant appeals or not, which automatic review neither the Court nor the accused could waive or evade it would seem that the proper and prudent course to fol-low where the accused enters a plea of 'guilty' to capi-tal offenses specially where he is an ignorant person with little or no education, is to take testimony not only to satisfy the trial judge himself but to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea."

WHEREFORE, the decision under review is modified: the accused are imposed the penalty of reclusion perpetua and ordered, jointly and severally, to indemnify the heirs of the deceased Alfonso Villegas, Bernardo Villegas and Lourdes Villegas, in the amount of P12,000.00 for each of them, and Epimaco Mola in the sum of P2,100.00, and proportionately, to pay the costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Barredo, JJ., concur. Castro and Capistrano, JJ., took no part.

[1] Transcript, p. 3

[2] Id., p. 4

[3] Id., p. 7

[4] Decision, pp. 2-3.

[5] People vs. Boyles, G. R. L-15308, May 29, 1964 and cases cited.

[6] Appellants' Brief, pp. 3-4; notes in parentheses supplied.

[7] 99 Phil. 992, 998-999.

[8] 52 Phil. 172, 175.

[9] Decision, p. 3; Art. 14, par. 7, Revised Penal Code.

[10] U.S. vs. Rodriguez, 19 Phil. 150, 157.

[11] G. R L-15308, May 29, 1964.

[12] Art. 63, Pars. 3 and 4, Rev. Penal Code.

[13] Transcript, p. 4.

[14] Brief for the Accused, p. 9.

[15] People vs. Madrid, 88 Phil. 1.

[16] 6 Phil. 541 (Oct. 29, 1906).

[17] 9- Phil. 426 (Dec. 22, 1907).

[18] SEC. 5. Plea of guilty -- Determination of punishment. -- Where the defendant pleads guilty to a complaint or information, if the court accepts the plea and has discretion as to the punishment for the offense, it may hear witnesses to determine what punishment shall be imposed.

[19] 106 Phi. 767, 770 (Dec. 29, 1959).

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