

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS.
SIMPLICIO S. GERVACIO, ET AL., DEFENDANTS. SIMPLICIO S.
GERVACIO AND ATANACIO MOCORRO Y PENAFLOR,
DEFENDANTS-REVIEWEES.**

G.R. No. L-21965. August 30, 1968

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PER CURIAM:

This is an automatic review of Criminal Case No. Q-5468 of the Court of First Instance of Rizal, Quezon City Branch.

In the afternoon of September 2, 1963, four dead persons—all with gaping wounds in their heads and in advanced state of decomposition—were discovered inside a neatly closed house on Palale Street, Quezon City. It was a ghastly sight; three of the cadavers—later identified to be those of Dr. Vicente K. Obando, his wife, Esperanza Umali Obando, and the doctor's mother-in-law, Mrs. Candida Umali—were found lying side by side inside the bathroom near the master's clinic, while the other—subsequently ascertained to be that of Maria Magpantay, an old maid in the household—was seen inside the toilet near the garage of the said residence.

Subsequent post mortem examinations of the cadavers revealed that Mrs. Candida Umali sustained three gaping wounds in her head, with an equal number of fractures in the skull. In the head of Dr. Vicente K. Obando were found six (6) gaping wounds, with three (3) fractures and other depressions in the skull. Mrs. Esperanza Umali Obando was found to have sustained fourteen (14) gaping wounds in her head with a number of fractures and depressions in the cranium fossa, parietal and temporal bones. There was only one gaping wound in the head of the old maid, Maria Magpantay, but it created a skull window measuring 4.8 x 3.3 cms. in the parieto-occipital region of the head. The examining physician reported that the causes of deaths were "fractures of the skull, traumatic".

The initial investigations conducted by the police inside the premises yielded no encouraging results. The perpetrators of the heinous crime seemed smart and elusive, as shown by the circumstances that all the windows and doors of the house appeared to have been neatly closed by them before they left; the lights in the sala were on, making it appear that the house was still inhabited, and which prevented the discovery of the crime until the neighborhood was discomforted by the stench emitted by the decomposed bodies of the victims; they left no lethal weapon inside the house; and the police failed to lift a single finger print from the articles found in the house, although by all signs, they appeared to have been touched or ransacked by the culprits. But the agents of the law were smarter, and they eventually proved themselves equal to the challenge.

Aside from a sledge hammer, the Quezon City Police found in the adjoining lot the following day, information was also gathered that aside from the victims, two other persons were residing in the same house with the Obandos—a houseboy named Simplicio Gervacio, and a little girl, Luzviminda Simon Obando, who had been reared by the Obando spouses as foster parents. Luckily, it later developed that the life of the little girl had been spared by the perpetrators of the crime, and her rescue by the long arm of the law from the hands of her "captors"

on the far away Island of Biliran in the province of Leyte, soon unraveled the mystery that threatened to bury this atrocious and horrible crime into oblivion. The harrowing experience she afterwards narrated led to the subsequent arrest of Atanacio Mocorro and the surrender of Simplicio Gervacio, who both readily admitted and re-enacted their respective participation in the killing of the members of the Obando household in Quezon City. The same also led to the arrest later of Simplicio Gervacio's sweetheart, Anita Achuela, in Cubao, Quezon City. Accordingly, they were thereafter charged with the crime of Robbery with Quadruple Homicide before the Court of First Instance of Rizal—the house boy Simplicio Gervacio and his relative and companion, Atanacio Mocorro, as principals, with Anita Achuela, as accessory after the fact—under an information alleging, as follows:

"That on or about the 30th day of August, 1963, in Quezon City and within the jurisdiction of this Honorable Court, the above-named accused Simplicio S. Gervacio and Atanacio Mocorro y Peflaflor, with intent of gain and by means of violence against person, conspiring together, confederating with and helping each other, did then and there, wilfully, unlawfully and feloniously take, steal and carry away the following:

Two (2) rings, one valued at P500.00; One (1) Llamas pistol, Cal. 380 worth P700.00; One (1) men's wrist watch, Bulova valued P150.00; Cash money of undetermined amount; and Some pieces of jewelries of undetermined value,

all belonging to Dr. and Mrs. Vicente K. Obando, and by reason and on the occasion of the robbery, the above-named accused, pursuant to their conspiracy, by means of treachery and with evident premeditation, did, then and there, wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the persons of Dr. Vicente K. Obando, Mrs. Esperanza Umali de Obando, Mrs. Candida Vda. de Umali and Maria Magpantay with the use of a hammer, and, as a consequence thereof, the said four-named victims sustained mortal wounds which caused their death, to the damage and prejudice of the heirs of the said deceased.

"That accused Anita Achuela having knowledge of the commission of the crime but without having participated therein, either as principal or as accomplice, took part subsequently to its commission by profiting herself by the effects of the crime and harboring, and assisting in the escape of the offenders.

"That in the commission of the above offense, aside from treachery and evident premeditation, the following aggravating circumstances were present:

- That the act was committed with insult or in disregard of the respect due the offended parties on account of their age and sex;
- That the act was committed with abuse of confidence and obvious ungratefulness;
- That the act was committed in the dwelling of the offended parties;
- That the crime was committed in the nighttime;
- That advantage was taken of superior strength; and
- That craft was employed.

CONTRARY TO LAW."

Upon arraignment, accused Simplicio Gervacio pleaded "guilty" to the charge. Accused Atanacio Mocorro and Anita Achuela, however, respectively entered pleas of "not guilty". Anita Achuela was later acquitted by the court a quo after trial, but accused Simplicio Gervacio and Atanacio Mocorro were found guilty as charged in the information and were both sentenced to suffer the supreme penalty of DEATH, with the accessories prescribed by law, to indemnify each of the heirs of the victims, jointly and severally, in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency. It is in view of this penalty imposed, that the whole record of the case had been transmitted to this Tribunal for review.

The only eyewitness who testified for the prosecution about the commission of the crime in question, was the nine-year old member of the Obando family, Luzviminda Simon Obando, who was spared from the "slaughter". However, the case of the People was built not only upon the testimony of this child in court, but also upon the extra-judicial confessions of the accused houseboy, Simplicio Gervacio, and his co-accused, Atanacio Mocoero, which have not been repudiated by them, wherein they voluntarily admitted their participation in the robbery-slayings in the Obando house, which substantially corroborated the testimony of the child. Said extra-judicial confessions were admitted by the trial court in evidence.

Luzviminda Simon Obando, aged 9 at the time of the incident, was then residing at No. 4, Palale Street, Quezon City, with five other members of the Obando household—Dr. Vicente K. Obando whom she called "Daddy"; Mrs. Esperanza Umali Obando whom she called "Mommy"; Mrs. Candida Vda. de Umali (Dr. Obando's mother-in-law) whom she called "Lola Canding"; an old maid, Maria Magpantay, whom she called "Lola Maria"; and the houseboy in the family, accused Simplicio Gervacio, whom Luzviminda called "Simplicio".

Shortly before noontime on August 30, 1963, after dismissal from her classes in Grade II at the Espiritu Santo Parochial School in Manila, Luzviminda walked her way to the nearby office of the Philippine Tuberculosis Society where her "Mommy" was then working. Mrs. Obando used to accompany her home to Palale Street, Quezon City, but on that day Mrs. Obando had much work to do in the office; so, she merely conducted Luzviminda until the child was on board a passenger jeepney bound for Quezon City and advised her to go home alone. Soon Luzviminda reached the house at No. 4, Palale Street, Quezon City. Upon entering the house, however, accused Simplicio Gervacio (the house boy) who was then in the sala of the house, grabbed Luzviminda by the neck, almost strangling the child, and admonished her not to shout, otherwise, she would be killed. The child was terribly scared and had to follow the biddings of Simplicio who all the while held her by her neck. Shortly, thereafter, Luzviminda noticed that her "Lola Canding" was also coming to the house; and at about the same time, she saw accused Atanacio Mocoero appear suddenly in the sala where she and Simplicio were. Upon orders of Simplicio, Atanacio Mocoero grabbed Luzviminda by her neck and dragged her into the nearby bathroom. The child tried to struggle with accused Atanacio Mocoero inside the bathroom, but the more Atanacio tightened his hold on her neck and tried to choke her; so, Luzviminda kept quiet. From there, she later heard the "fall of something" on the floor, followed by the call of Simplicio Gervacio to Atanacio Mocoero to come out of the bathroom as he (Simplicio) opened its door. Luzviminda also came out of the bathroom, only to see the lifeless body of her "Lola Canding" sprawled on the floor of the dining room, with blood coozing out of the wounds in her head. Upon the orders of Simplicio Gervacio, Atanacio Mocoero pulled the body of Mrs. Candida Umali into the bathroom and then closed the door. Mocoero then wiped the blood on the floor. Later, Simplicio ordered Atanacio to get the trunk inside Mrs. Umali's room, which they ransacked. After taking the old woman's money and her necklace, they closed and wiped the trunk all over. Then they sat on the sofa in the sala with Luzviminda whom they admonished not to leave. Simplicio and Atanacio sat there for a long time thereafter waiting for the coming of the other inmates in the house, eating eggs in the meantime. They saw to it, however, that Luzviminda remained in her seat with them in the sala.

At about half past 4:00 o'clock in the afternoon of that same day, Dr. Vicente Obando arrived in the house. Luzviminda knew that her "Daddy" had come as soon as she heard the door bell and the barking of their dogs outside the house, for that was the time he used to be home. Simplicio Gervacio first ordered Atanacio and Luzviminda to hide inside the doctor's clinic, then opened the main door and let Dr. Obando in. The latter inquired whether Mrs. Obando was already there as he walked towards his clinic. He noted then the presence of some blood stains on the floor, and asked Simplicio Gervacio about it. Simplicio gave no answer. From the clinic where Atanacio and Luzviminda were at the time, the latter merely heard "another fall on the floor", and when Simplicio opened the door of the clinic later and called them out, Luzviminda saw Dr. Obando lying motionless

on the floor of the sala just outside, the door of the clinic, with blood streaming out of his head and mouth. Simplicio then ordered Atanacio to pull the body of Dr. Obando into the bathroom, and obeying the order, Atanacio dragged the fallen doctor by his feet and placed the cadaver beside that of Mrs. Candida Umali. Upon further orders from Simplicio, Atanacio took the wrist watch and the wallet of the doctor before closing the door of the bathroom. Once again Atanacio wiped the blood stains on the floor of the sala with newspaper and then sat on the sofa with Simplicio and Luzviminda. There, they waited for the coming of Mrs. Esperanza Umali Obando. And even while they were already seated there on the sofa in the sala, Luzviminda heard her "Daddy" groaning and moaning inside the bathroom for quite a long time until the "moans and groans" slowly died away. Meanwhile, Atanacio Mocerro had also attempted to open the steel safe inside the clinic without success.

Soon the door bell sounded and the dogs outside barked again. Luzviminda knew that Mrs. Obando had arrived. Simplicio took Luzviminda inside the clinic and ordered her to hide behind the door. Upon his return to the sala, he opened the main door and let in the doctor's wife; and as soon as Mrs. Obando entered the door, Atanacio Mocerro poked a gun at her. Then, Simplicio ordered Mrs. Obando to proceed into the clinic and open the steel safe. The victim meekly followed the orders. As she opened the steel safe, Simplicio admonished her to move cautiously because he knew that Dr. Obando's pistol was kept there. Mrs. Obando, however, assured the duo that she was willing to give them everything as long as they do not harm her. And as soon as the steel safe was opened, the same was ransacked by Simplicio who took therefrom Dr. Obando's pistol and other valuables. Then Atanacio ordered Mrs. Obando to get out of the clinic, followed later by Simplicio. Luzviminda also followed afterwards and proceeded to the sala wherefrom she saw the fallen body of her "Mommy" wriggling on the floor of the bathroom, Atanacio Mocerro still striking her with a sledge hammer. Thereafter, Luzviminda was taken by Simplicio upstairs to the room of Mrs. Obando where Simplicio found inside the aparador three brooches which he pocketed. Unable to find any money, he asked Luzviminda to look for the place where her "Mommy" kept her cash, but the child refused. So, they returned to the ground floor and proceeded to the garage, where Simplicio told the old maid, Maria Magpantay, that Mrs. Umali wanted her to take her supper already. The old maid then left her work in the garage and went to the nearby toilet. A little later, Atanacio Mocerro also joined them in the garage where he told Simplicio that the old maid was already dead. Mocerro handed the sledge hammer to Simplicio who threw it into the "forest" in the adjoining vacant lot.

Soon, Simplicio and Atanacio prepared to leave the place. They closed all the windows and doors in the house. There were two lights on downstairs when they left, forcibly taking with them the nine-year old child, Luzviminda Simon Obando.

From Palale Street, Simplicio Gervacio, Atanacio Mocerro and Luzviminda walked to a house at Banaue St. where a cousin of Simplicio was then residing. Only Simplicio entered the said house; Atanacio and Luzviminda waited outside. Simplicio was carrying his clothes when he came out, and, from there they boarded a taxi and proceeded to Cubao, Quezon City, to the house of Simplicio's sweetheart, Anita Achuela. Simplicio and Luzviminda went up the house, the latter not knowing where Atanacio went as soon as they reached the place. There, Simplicio met Anita Achuela who was with her mother and sister at the time. He confided to Anita that he had killed the Obandos, and he delivered to her, thru Luzviminda, the ring of Mrs. Obando which he found among the valuables taken from the steel safe. Simplicio and Luzviminda slept there that evening.

Early the following morning, August 31, 1963, Simplicio took Luzviminda along with him to the house of his uncle in Makati, Rizal. He then revealed to his uncle that he had killed the Obandos, and the latter advised him (Simplicio) to surrender; but Simplicio did not follow the advice, saying: "he would be sent to the electric chair". They stayed in that house that day until the afternoon when Simplicio and Luzviminda, together with another cousin of the former, boarded the M/V Pres. Quirino. Luzviminda saw Atanacio Mocerro also on board the same

boat which proceeded to Tablocan City.

From Tacloban City, Simplicio and Luzviminda boarded a truck. They got all at another place where they met Atanacio Mocoerro once again. They boarded a launch altogether and proceeded to a house owned by the relatives of Simplicio Gervacio. Still later, Atanacio Mocoerro took along Luzviminda to the house of his own relative in another barrio where they were later discovered by policemen who took them back to Quezon City.

It appears, upon other evidence of record, that immediately after the discovery of Luzviminda and the arrest of Atanacio Mocoerro in a remote sitio in Barrio Sangalang, Biliran, Leyte, Mocoerro was taken to the municipal building of Biliran where he was investigated. He then related how Simplicio Gervacio killed Dr. Obando, Mrs. Obando and her mother, Mrs. Candida Umali, and how he (Mocoerro) also killed the old house maid, Maria Magpantay. He narrated to the Mayor and the Chief of Police of Biliran and the NBI operatives stationed in Leyte, the commission of the crime; that he left part of the loot in the possession of his aunt in Barrio Julita where the police later recovered from the said relative of Mocoerro, the gold necklace with a case (Exh. C) taken by him and Simplicio Gervacio from the house of the Obandos at the time of the robbery-slating in question. From there, Mocoerro was taken to Tacloban City where he and Luzviminda were picked by a member of the Detective Bureau of Quezon City and flown back to Manila. Other members of the Quezon City Police stayed behind in Leyte to look for Simplicio Gervacio; but shortly after they had left for Biliran Island to apprehend Simplicio Gervacio, news was flashed over the radio that the latter had surrendered to the Mayor of Biliran who took him to Tacloban City; so, the members of the Quezon City Police went back to the city where they found Simplicio Gervacio already in jail. They took custody of Simplicio, together with the wrist watch (Exh. D) and the pistol (Exh. E) which were delivered to them by the Mayor of Biliran. Later, Simplicio Gervacio and the members of the Quezon City police were airlifted by a PAF plane from Tacloban City to Manila. They arrived at the headquarters in Quezon City at about 7:30 in the evening of September 11, 1963—twelve days after the commission of the robbery on August 30, and nine days after the discovery of the crime on September 2. The written statement (Exh. N) of Simplicio Gervacio wherein he confessed his authorship of the crime, was taken that same evening.

The following morning, Atanacio Mocoerro whose written statement (Exh. J) had likewise been previously taken on September 9, 1963, was brought to the scene of the crime on Palale St. Quezon City, together with Simplicio Gervacio and Luzviminda. Simplicio and Atanacio then re-enacted their respective participation in the commission of the crime in the presence of the Chief of Police of Quezon City, other policemen, and several newspapermen. Various pictures taken during the re-enactment, together with pictures taken at different stages of the proceedings had during the taking of the statements of Simplicio Gervacio and Atanacio Mocoerro were later identified and marked as exhibits during the trial. And from the manner the victims were attacked with the sledge hammer, as demonstrated by Simplicio and Atanacio during the re-enactment, the doctor who conducted the necropsy examinations of the said victims, later testified that the multiple wounds and fractures in their heads which caused their deaths, could have been produced with the use of the sledge hammer (Exh. B) found by the police near the scene of the crime.

Accused Simplicio Gervacio, as earlier stated, pleaded guilty to the charge. Nevertheless, he was allowed to adduce evidence for purposes of proving any mitigating circumstances which might be considered in his favor; and pursuant thereto, he later testified.

Simplicio Gervacio declared that he had been working as a "houseboy" in the Obando home since April 29, 1962. For his work, he was supposed to receive a salary of P25.00 a month, but actually, Dr. Obando paid him only the equivalent of three (3) months pay for the whole period between April 29, 1962 to August 30, 1963, the day he committed the robbery-slating in question. They resented his demands for his salary whenever he needed money, although at the time of the trial, he did not remember anymore the last time he made those demands. Aside from

the non-payment of his wages, Dr. and Mrs. Obando used to scold him and beat him always. He also had a quarrel with the doctor's mother-in-law, Mrs. Candida Umali, because when he once tried to borrow money from her, Mrs. Umali slapped him and scolded him. Such treatments according to Simplicio, confused his mind, which confusion resulted in the killings in the Obando house on August 30, 1963.

Simplicio declared further that Atanacio Mocoerro was at the house at the time of the killings, because he happened to pass by to visit him; Atanacio was drunk at the time because he took "Sy Hoc Tong"; but they never had any plan to kill the members of the Obando family, although that was what actually happened; they did not intentionally close the doors and windows of the house after the killings, as they were already bolted the night before; and he had no time to open them anymore the following morning before the coming of Atanacio Mocoerro, because he did some gardening in the yard; neither was it their intention to leave the house lighted when they left afterwards, for the lights were already put on by Atanacio even before they prepared to leave because it was already dark at the time. He admitted tho, in answer to the questions pro founded by the court, that they closed the main door and bolted the gate before they left, to prevent their arrest and enable their escape later. From the Obando house on Palale Street, they proceeded to the house of Anita Achuela, his sweetheart since December, 1962, in Cubao, Quezon City; and he confided to her that he had killed four enemies of his in Sampaloc, Manila; however, he did not tell Anita Achuela that the persons he had killed were the members of the Obando household where he was working; at the time, he also gave Anita the ring of Mrs. Obando he had taken from the steel safe in Dr. Obando's clinic, in token of his love for her; but he told Anita then that the ring belonged to him; he passed the night in that house with Luzviminda whom he did not kill because he pitied the child; and while in that house of Anita that evening, he thought of going back to the province in his hometown of Biliran, Leyte, for the purpose of informing his parents that he had committed a crime in Quezon City; he did not see his parents right away because he stayed for sometime in the house of his relatives he passed by in going to his barrio, and helped his uncle work in the farm; but as soon as he reached home, he confided to his parents his commission of the crime, and his parents advised him to give himself up to the authorities; and when he was informed by his parents that he was already wanted by the police, he readily surrendered to the Mayor of Biliran, Leyte.

Questioned about his statement (Exh. N) taken by the Quezon City Police after his surrender, Simplicio Gervacio admitted that the answers given by him at the time were true; and that he gave the said statement voluntarily and freely. He testified further that the sledge hammer (Exh. B) recovered by the police near the scene of the crime, was the one used by him and Atanacio Mocoerro in killing the members of the Obando family.

For his defense, accused Atanacio Mocoerro declared that he and Simplicio Gervacio were natives of the town of Biliran, Leyte, where he (Atanacio) studied up to Grade V. He testified that in the evening of August 29, 1963, he met Simplicio Gervacio in the house of a friend. Simplicio invited him to visit him at No. 4, Palale Street, Quezon City, and he consented. So, he went to the house on the following day, August 30, 1963, at about 8:00 o'clock in the morning. He was admitted by Simplicio at the garage where he also saw the old maid, Maria Magpantay, washing clothes. He later bought bread and a bottle of Sy Hoc Tong with his own money, at the behest of Simplicio who, on the other hand, contributed a chicken which he then started to cook. Soon after the food was prepared, they ate the bread and chicken. Atanacio took one shot (about an inch measure on the bottle) of the Sy Hoc Tong, and then placed the bottle of wine on the table. They were through eating at about 11:00 o'clock. Not long afterwards, Simplicio Gervacio opened the door of the toilet and delivered to him the child, Luzviminda Simon Obando. Simplicio was in a hurry; he told Atanacio that Luzviminda should not be permitted to shout, and pursuant to such order, Atanacio held Luzviminda by the neck and admonished her not to shout. Luzviminda tried to struggle with Atanacio and finally, the latter released her. The child opened the door of the toilet and went out, followed by Atanacio. They saw that Simplicio had already killed Mrs. Candida Umali whose body was then lying near the refrigerator. The same feat was repeated by Simplicio Gervacio when he killed Dr. Obando later in

the afternoon; the doctor was already dead when, for the second time, Simplicio called them (Atanacio and Luzviminda) out of the toilet.

Atanacio Mocorro admitted, however, his participation in the killing of the two other victims—Mrs. Esperanza Umali Obando and the maid, Maria Magpantay—as shown by the following portion of his testimony:

"Q.— How about his wife, Mrs. Obando?

A.— She was also killed by Gervacio at 7 p.m.

Q.— What was done to Mrs. Obando?

A.— She was not yet killed upon arrival, and then Simplicio Gervacio instructed me to make Mrs. Obando go to the safe and open it and after she has opened the safe, she was brought out of the room and brought to the toilet by me.

Q.— Who hit her first?

A.— Simplicio Gervacio.

Q.— How about the second time?

A.— Also by Simplicio Gervacio.

Q.— You did not participate in hitting Mrs. Obando?

A.— When Gervacio handed to me the sledge hammer, I hit her by the sledge hammer, but only slightly.

Q.— How about the maid?

A.— We first went upstairs, Simplicio Gervacio, Luzviminda and I, and went down and when we were about to leave, Gervacio instructed me to strike the maid Maria Magpantay.

Q.— Did you hit her?

A.— Not yet because I saw her only and then I went back to the house and Gervacio told me to kill Maria Magpantay. So, I killed her.

Q.— When you saw Simplicio Gervacio kill Mrs. Umali with the sledge hammer, what was in your mind?

A.— I was afraid.

Q.— Inasmuch as you were afraid, why did you not run out of the house?

A.— I was afraid that if I run out of the house, he will call the police and he will report me to the police and I will be caught.

Q.— After Dr. Obando was killed, what was in your mind then, did you not become afraid?

A.— I did not know that Dr. Obando was killed by him.

Q.— Where were you then when he killed Dr. Obando?

A.— I was inside the toilet with the child.

Q.— Did you see Dr. Obando after you went out of the toilet?

A.— Yes, sir.

Q.— How did you feel when you saw Dr. Obando dead already?

A.— I had no feeling. I just looked at the dead body.

Q.— And when Mrs. Obando was hit by Gervacio, were you present?

A.— Yes, sir.

Q.— Did you prevent him from doing so?

A.— No, sir.

Q.— How did you feel when you saw her being hit by Gervacio with the sledge hammer?

A.— I was holding then Mrs. Obando and I did not know that he would hit her and when Simplicio Gervacio hit her, I loosened my hold on her.

Q.— How did you feel then, were you afraid.

A.— Yes, sir.

Q.— If you were scared, why is it that you had to follow Simplicio Gervacio in using the sledge hammer on Mrs. Obando?

A.— Because Simplicio Gervacio was holding a gun and I was afraid that he might shoot her.

Q.— And why did you follow his order for you to kill the old maid who was sickly?

A.— For the same reason, he was still holding a gun.

Q.— You, therefore, did not do anything at any time to prevent the killing?

A.— I did not.

Q.— When you were told that same afternoon by Simplicio Gervacio that he was going to kill Dr. Obando and his wife, how did you feel?

A.— I was more fearful of my life and the life of the child.

Q.— Did you not convince him who has been your friend for a long time to pity them?

A.— When I said that, he had already killed Dr. Obando.

Q.— Did you not stop him to kill others?

A.— No more, I just let him do what he wanted.

Q.— And you even participated in those killings?

A.— Yes, because he might kill me if I did not do so. (TSN, Hearing of Sept. 25, 1963, pp. 15-17)

On cross-examination, Atanacio Mocoerro admitted further that even before the actual killings took place, he knew that Simplicio Gervacio would kill Dr. Obando because Simplicio told him so; that they had to close the doors from within so that nobody could enter the house without their knowledge; that he received P27.00 from Simplicio Gervacio after the commission of the crime; and that he had to surrender to the policeman who discovered him and Luzviminda in Barrio Sangalang, Biliran, Leyte, because the policeman had his gun pointed at him.

After a dispassionate evaluation of the evidence on record, we are convinced in the finding of the court below that Simplicio Gervacio and Atanacio Mocoerro are guilty beyond reasonable doubt of the crime of which they now stand convicted. Simplicio Gervacio must have realized the gravity of his acts and must have resigned himself to his fate, that was why he pleaded guilty to the charge.

As regards accused Atanacio Mocoerro, it is clear from the evidence, as shown in the portion of his testimony above-quoted, that he is raising the exempting circumstance of having acted under the impulse of an uncontrollable fear of an equal or greater injury, i.e., that he had cooperated in the commission of the robbery slaying charged in the information, in obedience to the orders of Simplicio Gervacio who was then holding a gun. Such pretense deserves scant consideration. We find nothing in the evidence to sustain it. True, there is evidence that Simplicio had a gun but there is no showing that the said gun was ever pointed by Gervacio at Mocoerro to secure the latter's cooperation in the perpetration of the crime. On the contrary, his testimony suggests that when Simplicio Gervacio handed to him the sledge hammer with which the latter struck the head of Mrs. Obando inside the bathroom, he (Atanacio) continued striking Mrs. Obando with the said sledge hammer without any suggestion from Simplicio. In fact, Simplicio testified that he did not know why Atanacio had voluntarily cooperated with him in the commission of the crime. Atanacio Mocoerro testified further that he followed the order of Simplicio for him to kill the old maid because he (Simplicio) was still holding the gun, and he (Atanacio) feared that Simplicio might kill him if he did not follow. But it is plain that the fear harbored by him then, if any, was merely imaginary; and this is not the uncontrollable fear that is contemplated in the law. Fear or duress in order to be a valid defense, should be based on real, imminent or reasonable fear for one's life or limb, which is not here present. We have to declare, therefore, that Atanacio Mocoerro was a willing participant in the criminal design.

In the decision of the trial court, five aggravating circumstances were considered against accused Simplicio Gervacio, namely: treachery, evident premeditation, that the act was committed with insult or in disregard of the respect due the offended parties on account of their age and sex, that the act was committed with abuse of confidence, and that advantage was taken of superior strength. We agree with the contention of counsel de officio, and concurred in by the Solicitor General, that the aggravating circumstances of disregard of age and sex, and

advantage taken of superior strength, should not have been considered independently of the aggravating circumstance of treachery which had already been considered (See *People vs. Limaco*, L-3090, January 9, 1951; *People vs. Mangsant*, 65 Phil. 548; *People vs. Balines, et al.*, L-9045, Sept. 28, 1956). But it is not correct to say that the three remaining aggravating circumstances should be offset by the mitigating circumstances of plea of guilty, voluntary surrender, and passion and obfuscation. There should be no disagreement that Simplicio Gervacio pleaded guilty to the charge and the same was properly considered by the trial court in his favor; but in order that the circumstance of passion and obfuscation can be considered, it is not only necessary to establish the existence of an act both unlawful and sufficient to produce such a condition of mind, but it must be also be shown that the act which produced the passion and obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity (*People vs. Alanguilang*, 52 Phil. 663; *U.S. vs. Sarikala*, 37 Phil. 486; *People vs. Pilares*, 18 Phil. 87; *U.S. vs. Taylor*, 6 Phil. 162). Here accused Simplicio Gervacio claimed that he had not been regularly paid his wages by the victims who, Simplicio claimed further used to scold him and beat him always; but he failed to prove that those acts which produced passion and obfuscation in him took place at a time not far removed from the commission of the crime which would justify an inference that after his passion had been aroused, he had no time anymore to reflect and cool off. The same is true with the mitigating circumstance of voluntary surrender which cannot be considered in his favor. For it to be appreciated, the same must be spontaneous in such manner that it shows the interest of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses necessarily incurred in his search and capture (*People vs. Sakam*, 61, Phil. 27). The circumstances surrounding the surrender of Simplicio Gervacio do not meet the standard, for the record is clear that immediately after the commission of the robbery-slayings attributed to him and Atanacio Mococho, they fled together to the province of Leyte which necessitated the authorities in Quezon City to go to the place and search for them. In fact, Simplicio Gervacio surrendered to the Mayor of Biliran twelve days after the commission of the crime, and only after Luzviminda had been discovered in a far away sitio which led to the arrest of Atanacio Mococho. And it is not far fetched to surmise that Simplicio Gervacio surrendered not because of his spontaneous desire of acknowledging his guilt or of saving the authorities the trouble and expense of his capture, but because of his belief that his escape was already impossible under the circumstances. Counsel de officio makes reference to *People vs. Yecka, et al.*, 68 Phil. 740; wherein this Court considered the mitigating circumstance of voluntary surrender in favor of the accused who, five days after the commission of the crime and two days after the issuance of the order for his arrest, presented himself in the municipal building to post the bond for his temporary release. It was held there that "the fact that the order of arrest of the appellant had already been issued is no bar to the consideration of this circumstance, because the law does not require that the surrender be prior to the order of arrest". But even putting out of consideration that differences in the factual setting of that case and the one at bar, and assuming arguendo, that Simplicio Gervacio should be credited with this mitigating circumstances still he shall have in his favor only two mitigating circumstances which are not enough to compensate the three aggravating circumstances considered against him. And the presence of one aggravating circumstance after such compensation, would still legally sustain the heavier penalty imposed on Simplicio Gervacio by the trial court, under Art. 294, par. 1 of the Revised Penal Code, in connection with Art. 63, par. 2, numbers 4 and 1 of the said Code.

With respect to accused Atanacio Mococho, the court below considered against him the aggravating circumstances of treachery, evident premeditation, disregard of age and sex, dwelling and abuse of superior strength. As previously pointed out above in the case of Simplicio Gervacio, the aggravating circumstances of disregard of age and sex, and abuse of superior strength should be deemed included in the aggravating circumstance of treachery. This would leave three (3) aggravating circumstances against him without any mitigating circumstance in his favor to offset them.

Hence, the heavier penalty for the crime of robbery with quadruple homicide of which he stands convicted was legally imposed upon him by the trial court.

We have not overlooked the fact that the accused in this case are both in their prime of youth—Simplicio Gervacio is 18, while Atanacio Mococho is 19. Both appear to have no previous criminal record also. However, they are no longer entitled to any privileged mitigating circumstance on account of their ages; and the Court has no alternative, after taking into consideration the circumstances under which they have committed the crime at bar, but to sustain the imposition of the DEATH sentence on them.

WHEREFORE, the decision of the lower court in this case is affirmed in toto, with costs de oficio.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

Judgment affirmed.

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