

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. YAKANS ASPALIN, ET AL., DEFENDANTS. YAKAN ABANG, DEFENDANT AND APPELLANT.

G.R. No. L-14623. December 29, 1960

Ponente: DIZON, J.

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DIZON, J.:

In an amended information filed in the Court of First Instance of Basilan City by the City Fiscal, Yakans Aspalin, Arasil Jajis and Abang were charged with robbery in band with murder committed as follows:

"That on or about 29th day of April, 1958, and within the jurisdiction of this Honorable Court, viz., at the sitio of Lagasan, district of Lamitan, City of Basilan, Philippines, the above named accused, Yakans Aspalin, Arasil Jajis and Abang conspiring and confederating together, aiding and assisting one with their companion Yakan Arasan who is still at-large, and taking advantage of the night to better accomplish their purpose, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously, assault, attack and hack one Antonio Trota by means of their bladed weapons, locally known as "Barong", thereby inflicting, wound, neck, nearly severed, wound shoulder, right and wound on the' stomach, which caused the victim's instant death. That in the commission of the crime herein charged, the accused taking advantage that the victim Antonio Trota was already killed, the said accused, did then and there willfully, unlawfully, and feloniously, take, steal and carry away the following personal belonging of the same victim, to wit: One(l) Pistol "Astra" Cal. 380, Serial No. 640741 with six-(6) rounds of ammunitions worth the amount of P400.00, one (1) flashlight with three batteries, worth P6.00, one maong pants worth P7.50, one (1) wallet worth P1.00, containing cash money in the amount of P20.00 and one lighter worth P1.10, all worth the total amount of P435.60, Philippine currency."

Upon arraignment Yakan Abang pleaded guilty, while Aspalin and Arasil Jajis entered a plea of not guilty.

The circumstances under which Abang entered his plea of guilty are briefly stated in the decision of the lower court as follows:

"Upon arraignment, the accused Yakan Abang or Moro Abang, assisted by Attorney Epifanio Anoos, who appeared in representation of Attorney Laurencio Saavedra, counsel de oficio for this accused, manifested that the accused wanted to be apprised of the contents of the information filed against him; and the information was read and translated to him into the local dialect and after manifesting that he understood all the. contents of the information, he voluntarily and spontaneously entered the plea of guilty. He manifested to the Court that his other co-accused, Yakans Aspalin and Arasil Jajis, were not his companions in the commission of the crime."

As a result of Abang's plea of guilty the lower court found him—

"guilty beyond reasonable doubt of the crime of "Robbery in Band with Murder" and taking into consideration the mitigating circumstance of plea of guilty which is offset by the aggravating circumstance of the fact that the crime was committed "in band", and inasmuch as there are other aggravating circumstances namely nocturnity, alevosia and premeditation which will stand as such aggravating circumstances in this particular

crime committed, the Court, therefore, imposes upon the herein accused Yakan Abang the penalty of death. He is also sentenced to pay the sum of W35.60, Philippine currency, which is the value of things robbed from the deceased Antonio Trota; to pay the heirs of the deceased Antonio Trota an indemnity in the amount of P6,000.00, with all the accessory penalties prescribed by law; and to pay the proportionate costs."

The case is now before us pursuant to the provisions of section 9, Rule 118, Rules of Court

It appears that, among other things, the trial court said the following in its decision:

"The Court takes into consideration the mitigating circumstance of plea of guilty. This is offset by the aggravating circumstance that the crime was committed 'in band'. The aggravating circumstances of nocturnity, which the accused availed of in the commission of the crime, alevosia and premeditation still remain as aggravating circumstances. The crime was committed at a time when the deceased Antonio Trota was sleeping and did not have the slightest idea of what would happen to him on the night of the 29th of April, 1958 nor could he have an opportunity to defend himself. During the time that the Court is promulgating the sentence the accused Yakan Abang is not repentant in his commission of a very horrible crime, namely: the murder of Antonio Trota. After killing Antonio Trota, the accused Yakan Abang took from the victim one pistol "Astra" Cal. .380, Serial No. 640741 with six (6) rounds of ammunitions worth the amount of P400.00, one (1) flashlight with three (3) batteries, worth P6.00, one (1) Maong pants worth P7.50, one (1) wallet worthy P1.00, containing cash money in the amount of P20.00 and one lighter worth P1.10, all worth the total amount of P435.60 Philippine currency. This shows that the crime of robbery was committed and if we take into consideration all these facts perpetrated by the accused one will be horrified, as everybody appears to be;— that is, all those present here are horrifiea when we take into account the heinous crime perpetrated by the accused Yakan Abang. It is very strange to find that the accused is not repentant of the crime he has committed although he has entered the .plea of guilty. The Court makes it of record that the laughter of this accused at the time When this sentence is being promulgated shows that he is either mentally unbalanced, or a moral pervert—showing that he is a hardened criminal, a person without principles and a person devoid of conscience."

After the promulgation of the decision Abang, thru counsel, filed a motion for its reconsideration on the ground that he was insane and that, as a matter of fact, His Honor, the trial judge himself, had found that he had shown signs of insanity. At the hearing held to give Abang an opportunity to substantiate his claim, Dr. Reynaldo de Joya, director of the Basilan Hospital, testified substantially to the effect that during Abang's confinement thereat, he had at times shown suicidal tendencies. This notwithstanding, the lower court denied the motion for reconsideration, in the first place, because the plea of insanity was not raised at the arraignment, and in the second place, because—

"the Court pending the hearing of this motion for reconsideration, had observed that the accused Yakan Abang as an accused in Criminal Case No. 687 of this Court for 'Double Homicide' testified in his own behalf in an orderly and sane manner, that is, he was examined and cross-examined, and he intelligently answered the questions propounded to him."

In the brief submitted on behalf of Abang by his attorney de oficio, it is contented that the trial court erred (a) in sentencing him "after entertaining the belief that appellant may be mentally unbalanced", and that, in any event, (b) said court erred in imposing the death penalty upon him.

The record does not support Abang's first contention. What His Honor, the, trial judge, said in the decision, in view of. the conduct demonstrated by Abang during the promulgation of the decision was, not that Abang was mentally unbalanced but that either he was so or was a moral pervert, a hardened criminal, a person without principles and conscience. As is manifest, His Honor's statement was in the alternative and expressed, at best, a mere surmise.

Furthermore, Abang was given full opportunity below to prove his alleged insanity at the time of the commission of the offense or at the time he was arraigned, and after considering the evidence presented for that purpose, the lower court found—and we believe correctly—that he was sane, as shown by the fact that in Criminal Case 687 of the same court, for double homicide, he testified in his own behalf in an orderly and intelligent manner. There is now nothing before us sufficient to show otherwise.

The last contention of Abang is likewise without merits.

It has been held that the term homicide used in subdivision 1, Article 294 of the Revised Penal Code, has a generic sense and includes any homicide qualified by any of the circumstances mentioned in Article 248 of the same Code. Therefore, even if the killing of the victim was treacherous, or with abuse of superior strength or was committed in band, the crime committed will not be robbery with murder but simply robbery with homicide provided, that such killing was committed by reason of, or on the occasion of a robbery, and in such case the qualifying circumstances attendant to the killing¹ would be considered only as generic aggravating circumstances.

In *People vs. Sawajan*, 53 Phil., 689-693, this Court said:

"The facts then which were proved at the trial, constitute not the crime of robbery with murder * * * but that of robbery with homicide, * * *. In the commission of the said crime, besides the aggravating circumstance of treachery aforementioned as generic, account must be taken of the other aggravating, generic circumstances of the crime having been committed: (1) by a band, for the three defendants and their companion, Julio de los Santos, ali armed with bolos and one of them also with a revolver, took part in the perpetration of the crime; (2) in the nighttime, because this time was purposely chosen and taken advantage of by the malefactors * * *; and (3) in the dwelling of the offended party * * *."

In *People vs. Manuel*, 44 Phil. 333-343, this Court likewise said:

"Although the authors of the Code have used only the word 'homicide' in subsection 1 of Article 503 and not 'homicide or murder', it is evident that the word 'homicide' is there used in a generic sense; and the complex crime therein contemplated comprehends not only robbery with homicide, in its restricted sense, but also robbery with murder. In other words, an offense is not taken out of the purview of that article merely because the homicide rises to the atrocity of murder. This proposition seems to be elemental, and is supported by the decisions of the Supreme Court of Spain.

"Again, attention may properly be here directed to the rule—also elemental in this branch of the law—that an offense of the character of that now under consideration is none the less a complex offense by reason of the fact that double homicide (or murder) is committed instead of a single homicide (or murder), the number of the victims being immaterial."

In view of the foregoing, we are therefore of the opinion, and so hold, that the trial court did not commit the errors assigned in Abang's brief, or any other. However for lack of the required number of votes for the imposition of the death penalty, the penalty imposed upon Abang is commuted to life imprisonment.

Modified as above indicated, the decision of the lower court is affirmed in all other respects.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Gutierrez David, and Paredes, JJ., concur.

Judgment affirmed with modification.

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