

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CASTANITO GANO Y SAGUYONG A.K.A JERRY PEREZ, ALLAN PEREZ, ALLAN SAGUYONG AND JERRY GANO, ACCUSED-APPELLANT.

G.R. No. 134373. February 28, 2001

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

With blood and gore akin to the butchery of swine in slaughterhouses Castanito Gano mercilessly hacked his three (3) victims and robbed them of their few earthly possessions. But, as may be gleaned from the theories of the parties, the core issue now before us is whether the three (3) killings should be appreciated as separate aggravating circumstances to warrant the imposition of the penalty of death.

This is an automatic review of the Decision of the Regional Trial Court of San Mateo, Rizal, convicting CASTANITO GANO Y SAGUYONG of the crime of robbery with homicide and sentencing him to suffer the supreme penalty of DEATH. He was also ordered to indemnify the heirs of each of the three (3) victims the amount of P50,000.00 or a total of P150,000.00, and to pay the costs.

Upon arraignment, the accused Castanito Gano made a qualified admission by admitting the killing of the three (3) victims but denying the charge of robbery. Considering that what is charged is a complex crime with a single penalty imposed under Art. 294 of The Revised Penal Code, the accused with the assistance of his counsel entered a plea of not guilty.

On 27 December 1994 ALBERTO MARBELLA bade farewell to his wife Conchita and daughter Angelica who were staying with his parents-in-law in Guinayang, San Mateo, Rizal, before boarding a bus for Polangui, Albay. Three (3) days later, or on 30 December 1994, he learned from his sister Araceli Marbella through a long distance telephone call that his wife and parents-in-law Ponciano Salen and Anicia Salen were brutally murdered. When he learned about the distressing news, he wasted no time in returning to Manila on 1 January 1995. Accompanied by his sister Araceli, Alberto immediately went to the San Mateo Police Station where a certain Major Santos told him that the cadaver of the victims had already been brought to Camp Crame for autopsy. Upon advice of Major Santos, he and Araceli went to the Santiago Funeral Parlor which was in charge of the funeral arrangements but were informed that the victims' bodies would be lying in state at the residence of the Salens, his parents-in-law, in Guinayang, San Mateo, Rizal.

From the police investigator and kibitzers Alberto learned that Castanito Gano a.k.a. Allan Perez, a former employee of Alberto's father-in-law in the latter's bakery, was tagged as the culprit in the "massacre" of his family. He also discovered upon inspection of his household, particularly the drawers where their valuables were kept, that several items were missing, particularly, (a) about P30,000.00 in different denominations representing their revolving capital in their sari-sari store; (b) two (2) pieces of gold bracelets valued at about P2,000.00 owned by his wife Conchita and daughter Angelica; and, (c) two (2) wristwatches also owned by Conchita. According to Alberto, Angelica told him she saw the accused grab the money from her mother. Alberto identified the articles

recovered from the accused Castanito Gano upon the latter's apprehension by the authorities. They included (a) a Mickey Mouse watch marked Exh. "A;" (b) a Citizen gold watch marked Exh. "B;" (c) Conchita's leather wallet marked Exh. "C;" and, (d) an envelop containing peso bills amounting to P1,590.00, marked Exh. "D."

Senior Inspector Ernesto Garcia testified that at around 7:00 o'clock in the morning of 31 December 1994 his office received a report of a "massacre" at the Salen residence in Gen. Luna St., Guinayang, San Mateo, Rizal. Forthwith, he together with two (2) other police officers proceeded to the crime scene. There they found on the ground floor the prostrate body of Ponciano Salen. Before he could make any further investigation, Garcia was informed by a relative of the victim of the identity of the suspect. This prompted him and his companions to proceed to the domestic airport for the possible arrest of the accused.

At the airport, the group coordinated with the Philippine Airlines (PAL) ticketing office to verify whether a certain passenger using the name Castanito Gano a.k.a. Allan Gano or Jerry Perez or several other known aliases of the suspect was booked on a flight for Agusan del Sur. As the process of verification was taking much of their time, they decided to leave for the North Harbor which was also a possible escape route of the accused. Along the way they would call up the PAL ticketing office every now and then for the result of the verification, while also keeping the San Mateo police updated on the progress of their pursuit operation. A lucky break came when the PAL ticketing office called them and confirmed the presence of one Jerry Perez on board the plane bound for Butuan City.

Since there was no direct flight from Manila to Butuan City, Sr. Inspector Garcia together with SPO1 Juanito Justo and SPO1 Joselito Guillermo boarded a plane for Cebu and from there took a connecting flight to Butuan City. When they alighted at the airport they were met by a certain Sgt. Matty who informed them that he and his men had already arrested the suspect. Senior Inspector Garcia and his companions then proceeded to the Western Police District of Butuan City where they found Castanito Gano being detained. SPO2 Domingo Martin Lucero, the police officer who actually arrested the accused at the airport, informed Sr. Inspector Garcia and his group about the items found in the possession of the accused, which consisted of two (2) wristwatches and some cash. At the trial Sr. Inspector Garcia disclosed that on their way back to Manila the accused confessed to him his responsibility for the triple killing and the robbery.

Marlyn Candido, live-in partner of the accused, affirmed the contents of her affidavit regarding particularly her positive identification of the bloodstained garments worn by the accused on 30 December 1994. She likewise confirmed that her live-in partner was using the aliases of Jerry Perez, Allan Perez,[1] Allan Saguyong and Jerry Gano.

Eduardo Zulueta, a relative of the victims, explained that he was with the responding policemen at the initial investigation conducted at the scene of the crime when they found the mangled bodies of the three (3) victims soaked in their own blood. The lifeless body of Ponciano Salen (Exh. "Y," "Y-1," "Z" and "Z-1") was found at the dirty kitchen while that of Anicia Salen (Exh. "W," "W-1" and "T") was inside a room on the second floor. Outside the other room in the same floor was the body of Conchita Marbella (Exh. "S," "S-1," "X" and "X-1"). Eduardo first learned about the identity of the suspect when he and the police investigators were told by Angelica, daughter of Conchita, that Castanito perpetrated the carnage. Eduardo recalled that at around 8:00 in the morning of 31 December, the day following the incident, he noticed Angelica standing alone in the terrace of their house. This made him wonder why the bakery was not yet open although it was already late in the day. He also noticed bloodstains on the dress of Angelica (Exh. "GG" and "GG-1") which she said came from the body of her mother Conchita.

SPO2 Richard Salvador testified on the recovery of the stolen items from the person of the accused. Salvador

explained that the stolen articles were recovered from the accused Castanito Gano when the latter was apprehended in Butuan City by the team of PO Martin Lucero who turned them over to SPO1 Juanito Justo. SPO2 Salvador's investigation at the scene of the crime showed that the cabinet where the asported items, specifically the wristwatches, jewelry, wallet and cash were supposedly kept, showed signs of having been forcibly opened. He learned later from the victims' relatives that the stolen goods were taken from the cabinet. According to witness Salvador, the accused Castanito Gano admitted the killings before many people, including members of the press, and other police officers when he arrived at the San Mateo Police Station.[2]

Angelica Marbella, four (4) years old, the only living witness to the killing of her mother and grandparents, categorically stated that the accused, known to her as Allan, perpetrated the gruesome killings. She likewise pointed to the accused as the one who stole the money from the drawer of her mother, her Mickey Mouse watch and other valuables. She also identified her set of bloodstained garments presented in evidence and explained that the bloodstains came from her "Mommy."

On cross-examination, Angelica reiterated her earlier testimony that the accused Allan was the author of the crime and that she was certain about it because she saw the whole incident. Although she mentioned earlier that the accused struck her relatives with a piece of wood she readily identified a bolo as the object used by the culprit in killing her mother and grandparents.

Accused Castanito Gano, testifying as his only witness for himself, narrated that he was arrested at the Butuan airport by a team led by one SPO2 Lucero. He claimed that he was not only searched without any warrant by the arresting police officers but the search itself yielded nothing except a wad of bank notes which he claimed to be his remaining cash after buying his plane ticket. He averred that the money he had left was part of his salary and his winnings from jueteng. He recalled that at the Manila Domestic Terminal he was asked questions by several people, including members of the media, regarding the charges against him and he answered them without a lawyer assisting him.

Castanito denied having robbed the victims of their valuables and insisted that he saw the alleged stolen items for the first time only during the trial. He belied the claim by the prosecution that he forcibly opened the lockers or drawers of the victims to steal; in fact, the drawers were still intact and in good condition when he left the Salen residence. He expressed remorse for having killed the victims when he said, "I am sorry now, but at the time I did not know how I felt," and then again in response to the question on whether he was admitting the crime, he said, "Inamin ko yoon pagpatay parang hindi ko ano ang pangyayaring iyon, parang pansandalian na lang, parang wala ako sa sarili ko noon, parang sunod-sunuran na lang ako sa ginawa ko sa mga araw na iyon pero, parang hindi ko matandaan kung ano ang nangyari sa sarili ko noon nagawa ko yoon ganoon."

SPO Domingo Lucero testified on rebuttal that when they were informed by Col. Maralit as to the presence of the suspect using the name Jerry Perez on board one of the planes bound for Butuan, he dispatched a team to Bacasi Butuan airport to arrest the suspect. Coordinating with the PAL manager who forthwith confirmed their information, the arresting officers boarded the plane that had just landed and accosted a passenger who when asked identified himself as Jerry Perez. The group then invited the suspect to the office of the Airport Manager. When asked why he was being brought to the office, the suspect replied that he knew the reason for his detention and thereafter admitted that he was responsible for the death of the Salen family. When SPO Lucero asked the suspect to open his bag, he (SPO Lucero) saw among the clothes a white envelope containing cash in different denominations. His search of the person of the suspect also yielded a leather wallet with the brand name Grand Royale, and a plastic purse which contained a Citizen watch. The suspect was also found to be wearing a Mickey Mouse wristwatch. According to SPO Lucero, after he made a receipt of the recovered items, he turned them over to Police Inspector Ernesto Garcia of the San Mateo police force.

Accused Castanito Gano clarified on sur-rebuttal that contrary to the declarations of SPO Lucero, he did not voluntarily offer the contents of his bag but were in fact taken by the apprehending officers. He was not sure whether the alleged stolen items were found in his bag but one thing he was certain of, the arresting officers did not find anything when they searched his body.

Giving full credence to the testimony of minor Angelica Marbella, the trial court convicted the accused of the crime of robbery with homicide. In imposing the death penalty on the accused, the trial court appreciated the mitigating circumstance of "admitting the crime" as well as two (2) aggravating circumstances based on the number of victims killed.[3]

In this automatic review, the accused staunchly rejects his conviction for robbery with homicide and insists that the prosecution failed to prove that he committed robbery. In other words, he claims that he should only be convicted of homicide, and not robbery with homicide, the latter being a more serious offense.

The accused draws attention to his testimony where he categorically declared that the only item recovered from him by the police officers was the remainder of his salary and what he won from jueteng, and that he saw the alleged stolen valuables for the first time during the trial. Moreover, he contends that the allegation of SPO2 Lucero that he (accused) voluntarily surrendered the stolen items is contrary to normal human behavior.[4]

From the evidence, accused Castanito Gano is guilty beyond reasonable doubt as charged.

Angelica, in her innocence and guileless narration of the incident of 30 December 1994, ineluctably showed that the accused not only mercilessly slaughtered the victims but also took their personal belongings, particularly her Mickey Mouse watch for no other purpose than gain. Her testimony leaves no doubt as to this fact -

Fiscal Capellan:

Q: Madam witness, do you know the person depicted in this picture?

A: Yes, sir.

Q: Who is he?

A: Alan, sir.

Q: Do you know Alan?

A: Yes, sir.

Q: Why do you know him? I will just withdraw that question. Is he good?

A: No, sir.

Q: Why Madam Witness?

Fiscal Capellan: At any rate, her answer was no. May we go to another point?

Q: Is he the one who killed your mother?

A: Yes, sir.

Q: How about your grandparents?

A: Yes, sir.

Q: And Madam Witness, is he also the one who took the money from the drawer of your mother?

A:

Yes, sir.

Q: And were you able to witness that?

A: Yes, sir.

Q: And what else did Alan get if any?

A: Mickey Mouse, ring, earrings, sir.

Q: Who owns the Mickey Mouse?

A: That is mine, sir.

May we make it of record that she pointed to herself when we propounded that question.

Q:

Madam Witness, I am showing to (you) a Mickey Mouse, kindly go over the same and tell this Honorable Court if this is the same Mickey Mouse that you are (sic) referring to earlier which was owned by you?

A: Yes, sir.

Q:

At this point, may we make it on record that the child instinctively got the watch from the Court personnel demonstrating that she is familiar and that she is the owner of the said watch. The said watch was earlier marked as Exhibit "A."

Q: Madam Witness, where were you when the accused killed your mother and also your grandparents?

A: I was in our house, sir.

Q: And where were you also when the accused got the items?

We will go to another point. Were you also inside the house when Alan, the accused in this case got the cash and other jewelry?

A: Yes, sir.[5]

We are of the opinion however that with the exception of the Mickey Mouse watch, the other items, i.e., cash, wallet, Citizen watch and bracelets recovered from the accused, have not been established to be the fruits of the crime since the ownership of the same or the fact that they were stolen by him has not been satisfactorily established. This notwithstanding, the charge of robbery must be sustained as the taking by the accused of Angelica's Mickey Mouse watch was sufficiently proved.

Accused Castanito Gano killed three (3) persons by reason or on the occasion of the robbery. The question that needs to be resolved is whether the multiplicity of homicides could be appreciated as an aggravating circumstance. For sometime, this ticklish issue has been the subject of conflicting views by this Court when it held in some cases that the additional rapes/homicides[6] committed on the occasion of robbery would not increase the penalty, while in other cases it ruled that the multiplicity of rapes/ homicides committed could be appreciated as an aggravating circumstance.[7] But in *People v. Regala*[8] this Court spoke with finality on the matter -

It should be noted that there is no law providing that the additional rape/s or homicide/s should be considered

as aggravating circumstance. The enumeration of aggravating circumstances under Article 14 of the Revised Penal Code is exclusive as opposed to the enumeration in Article 13 of the same Code regarding mitigating circumstances where there is specific paragraph (paragraph 10) providing for analogous circumstances.

It is true that the additional rapes (or killings in the case of multiple homicide on the occasion of the robbery) would result in an "anomalous situation" where from the standpoint of the gravity of the offense, robbery with one rape would be on the same level as robbery with multiple rapes. However, the remedy lies with the legislature. A penal law is liberally construed in favor of the offender and no person should be brought within its terms if he is not clearly made so by the statute.

This case is singular in its barbarity and nauseating in the manner with which the accused, bolo in hand, butchered his preys. Notwithstanding the viciousness with which he perpetrated the offense, we are constrained to apply the principle laid down in *People v. Regala*, and accordingly, the two (2) other killings contrary to the ruling of the trial court, should not be appreciated as aggravating circumstances.

Incidentally, we also examined the possibility of appreciating dwelling as a generic aggravating circumstance, but the attempt was again thwarted by a recent amendment to Secs. 8 and 9 of Rule 110 of the Revised Rules on Criminal Procedure, which took effect 1 December 2000 -

Sec. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Sec. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in the terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

Pursuant to the aforequoted amended provisions, the Rules now require that the information or complaint allege not only the qualifying but the aggravating circumstances as well, otherwise, the same cannot be properly appreciated. Guided by the consecrated rule that when a penal statute, substantive and remedial or procedural, is favorable to the accused, the courts shall give it a retroactive application and so we must in this case as the Information does not allege dwelling as an aggravating circumstance.

With respect to the mitigating circumstance, we note that the trial court considered the admission by the accused of the killings as a mitigating circumstance, presumably referring to voluntary confession as provided under Art. 14 of The Revised Penal Code, notwithstanding his denial of the charge of robbery. In effect, therefore, the accused was merely confessing to the crime of homicide but not to robbery with homicide, a considerably graver offense. But we note that for voluntary confession to be appreciated as an extenuating circumstance, the same must not only be made unconditionally but the accused must admit to the offense charged, i.e., robbery with homicide in the present case, and not to either robbery or homicide only. Hence, if the voluntary confession is conditional or qualified, it is not mitigating.

Any person found guilty of robbery with the use of violence against or intimidation of person shall suffer the penalty of reclusion perpetua to death when by reason or on the occasion of robbery the crime of homicide shall have been committed.[9] For reasons earlier discussed, the trial court erred in appreciating the two (2) killings as aggravating circumstances and the voluntary confession as a mitigating circumstance. There being neither aggravating nor mitigating circumstances, Art. 63 of The Revised Penal Code dictates that the lesser penalty, or only reclusion perpetua, be imposed. We affirm the award of P50,000.00 or a total of P150,000.00 for the three

(3) homicides as death indemnity. In consonance with Art. 2219, par. (1), in relation to Art. 2206, of the Civil Code, an award of P50,000.00 to the legal heirs of each of the three (3) victims for moral damages would be reasonable.[10]

WHEREFORE, the Decision of the Regional Trial Court of San Mateo, Rizal, finding accused CASTANITO GANO Y SAGUYONG, a.k.a Jerry Perez, Allan Perez, Allan Saguyong and Jerry Gano guilty of Robbery with Homicide is AFFIRMED with the MODIFICATION that the penalty therefor is lowered to reclusion perpetua, and the FURTHER MODIFICATION that the accused is ordered to pay P50,000.00 as civil indemnity and another P50,000.00 as moral damages, or P100,000.00 to the legal heirs of each of the three (3) victims Conchita Marbella, Ponciano Salen and Anicia Salen, or a total of P300,000.00.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Also spelled A-l-a-n in the TSN.

[2] TSN, 5 April 1995, p. 16.

[3] Decision penned by Judge Andres B. Reyes, RTC- Br. 75, Fourth Judicial District, San Mateo, Rizal.

[4] TSN, 7 April 1995, p. 13.

[5] TSN, 17 April 1995, pp. 3-4.

[6] People v. Armando Regala Abriol, G.R. No. 130508, 5 April 2000, citing People v. Cristobal, G.R. No. 119218, 29 April 1999, 306 SCRA 358; People v. Martinez, G.R. No. 116918, 19 June 1997, 274 SCRA 259; People v. Lutao, G.R. No. 107798, 16 November 1995, 250 SCRA 47; People v. Precioso, G.R. No. 95890, 12 May 1993, 221 SCRA 748.

[7] People v. Candelario, G.R. No. 125550, 28 July 1999, 311 SCRA 475; People v. Obtinalia, No. L-30190, 30 April 1971, 38 SCRA 651.

[8] G.R. No. 130508, 5 April 2000.

[9] Art. 294, par. (1), The Revised Penal Code.

[10] People v. Fegidero, G.R. No. 113446, 4 August 2000; People v. Renato de Guzman and Marciano Ramos, G.R. No. 118670, 22 February 2000.

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