

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBEN LOGALADA BOQUILA, ACCUSED-APPELLANT.

G.R. No. 136145. March 08, 2002

Ponente: PUNO, J.

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PUNO, J.:

On October 8, 1996, around 3:30 in the morning at Don Gervacio Quijada St., Guadalupe, Cebu City, Cresencio Demol, a taxi driver was shot inside his taxicab. Allegedly, Demol's wristwatch was also stolen. Three days later, Ruben Logalada Boquila, a security guard, went to the police and confessed to the commission of the offense. Boquila was charged before the Regional Trial Court of Cebu City with the crime of robbery with homicide in an information that reads as follows:

“That on or about the 8[th] of October, 1996 at about 3:30 in the morning, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a cal. 38 revolver, with deliberate intent, with intent to kill and by means of violence and intimidation upon person, did then and there attack, assault and use personal violence upon one CRESENCIO DEMOL, by shooting him causing upon said Cresencio Demol, the following injuries, to wit:
‘SHOCK, SECONDARY TO GUNSHOT WOUND (L) THORACO-ABDOMINAL AREA, ANTERIOR ASPECT.’

and as a consequence of which said Cresencio Demol died instantaneously and with intent of gain, without the knowledge and consent of said Cresencio Demol, did then and there take, steal and carry away one Seiko 5 black dial men's watch valued at P500.00 while the latter was driving his taxi cab along Upper Don Gervacio Quijada St., Brgy. Guadalupe, Cebu City, to the damage and prejudice of Shirley Demol, the wife of the victim, in the amount aforestated.

CONTRARY TO LAW.”[1]

When Boquila was arraigned on October 29, 1996, he pleaded not guilty to the charge.[2] Trial ensued. On January 30, 1997, before the prosecution could complete the presentation of its evidence, Boquila was re-arraigned and changed his plea. The trial court thereafter ordered the prosecution to continue the presentation of its evidence to prove its case and to determine the culpability of the accused.[3]

On February 11, 1997, the trial court rendered a decision finding Boquila guilty beyond reasonable doubt of the crime of robbery with homicide. The trial court based its judgment on Boquila's extrajudicial confession made before SPO2 Mario Monilar of the Cebu City Police Department on October 11, 1996. Considering that the commission of the crime was attended by the aggravating circumstance of nighttime, and there being no mitigating circumstance, the trial court imposed upon Boquila the supreme penalty of death. It also ordered him to indemnify the heirs of the victim in the sum of P50,000.00 and to restitute to them the sum of P500.00 representing the value of the watch allegedly robbed from the victim. The dispositive portion of the decision reads:

“WHEREFORE, in view of all the foregoing, accused RUBEN LOGALADA BOQUILA is found GUILTY beyond reasonable doubt of the crime of Robbery with Homicide and he is hereby sentenced to suffer the penalty of DEATH to be carried out in the manner prescribed by law. The accused is further directed to pay to the heirs of the victim the sum of P50,000.00 and to restitute to the heirs the sum of P500.00 representing the value of the Seiko 5 black dial men's watch being (sic) robbed and to pay the costs.”

The case was elevated to this Court on automatic review.

We modify the decision of the trial court.

The evidence for the prosecution shows that on October 8, 1996, around 3:30 in the morning, Sechem Dagangan, a resident of Sambag II, Guadalupe, Cebu City, heard two successive gunfire and some people crying. The sound came from a taxicab outside his residence. He learned from his neighbor that the driver of the taxicab was robbed. He tried to rouse his neighbors to help the driver, but they were overcome by fear as none of them was armed. Dagangan later saw Boquila, who was also his neighbor, come out of the taxicab and walk toward the house of the latter's sister.[4]

Upon receipt of a dead person alarm, members of the Homicide Section of the Cebu City Police Department, SPO1 Solomon Gandiongco, SPO2 Edilberto Castaneda and PO3 Alex Dacua, immediately proceeded to the crime scene to conduct an investigation. They found the victim's lifeless body inside a CTC taxicab bearing plate number GVJ 566. He had a gunshot wound on the chest. They also recovered a .38 caliber Armscor revolver with serial number 50440,[5] four (4) empty shells[6] and one live bullet, and a plastic nameplate with the name RT Para-asi, SG.[7] They found out after a follow-up investigation that the revolver belonged to Samantha Security Agency. The nameplate, on the other hand, was owned by Raynel T. Para-asi, a security guard of Samantha Security Agency. Boquila, who was also connected with the same agency, carried the nameplate in his pocket at the time of the commission of the offense. The police submitted the firearm, as well as the empty shells and the bullet to the National Bureau of Investigation[8] for ballistic examination.[9]

Dr. Jesus P. Cerna, Police Medico-Legal Officer, autopsied the victim's cadaver on October 8, 1996 at 10:00 in the morning. The Necropsy Report[10] shows that the victim's cause of death was shock secondary to two gunshot wounds on the left thoraco-abdominal area.[11] Dr. Cerna recovered a bullet slug apparently from a .38 caliber revolver from the victim's cadaver. He indorsed said slug to the Homicide Section of the Cebu City Police Department which submitted the same to the NBI for ballistic examination.[12]

The ballistic examination[13] revealed that the live bullets found inside the .38 caliber revolver with serial number 50440 and the bullet extracted from the body of the victim match, meaning that the fatal bullet was fired from the same gun found at the scene of the crime.[14]

Three days after the incident, on October 11, 1996, Boquila went to the Cebu City Police Department and owned to the commission of the offense. He made an extrajudicial confession with the assistance of his lawyer, Atty. Charter Antonio L. Tayurang, and in the presence of his sisters, Anecita Boquila and Remedios Azucena, and his brother, Justiniano Boquila.[15] We quote his confession:

“x x x x x x x x

Question # 1. Will you please state your name and other personal circumstances to (sic) include you[r] educational attainment?

Answer # 1. I am Ruben Boquila y (L)ogalada, Fil., 20 years old, single, first year college of General Radio Operator, a native of Sitio Arba, Brgy. San Roque, Talibon, Bohol but at present I am connected with Samantha Security Agency in Juana Osmena St., Cebu City and presently residing at corner Mango Avenue

and D. Jakosalem Sts., Cebu City.

Question # 2. Where were you in the dawn of October 8, 1996?

Answer # 2. That on or about 3:30 in the dawn/morning of October 8, 1996, I leave (sic) my post as security guard on duty of River Gate in General Maxilom Ave., Cebu City and boarded a PUJ to Robinson Fuente Osmena where I again boarded a PUJ to Guadalupe, Cebu City for me to ask money to (sic) my sister, Remedios Azucena who is living in Guadalajara Village, Brgy. Guadalupe and because the PUJ I was riding was up to only in the corner of Banawa and Guadalupe I boarded a Taxicab in going to the house of my sister and riding a taxicab it came to my mind that my said sister can not help me so I decided to announce to a driver that sorry, this is A HOLD UP because I need the money but then the driver quickly held and grappled the barrel of my firearm, Armscor Cal. 38 revolver with serial number 50440.

Question # 3. In what particular place when you announced that it was a HOLD UP and aimed your handgun to (sic) the driver?

Answer # 3. Near the Artesian well in Gervacio Quijada St., Brgy. Guadalupe, Cebu City.

Question # 4. What happened during the grappling of the handgun?

Answer # 4. Considering that the driver was holding the barrel of my gun I squeezed several times and in that first fire I think I was hit and in the continuing grapple, the driver was able to bite my chin and in that particular instance I continued squeezing the trigger of my firearm until finally I was able to get out from the taxicab without knowing that I left my gun due to nervousness and proceeded back to my work place in the River Gate, General Maxilom Avenue and later I came to know from the taho vendor that there was taxi driver found dead in Guadalupe, this City but prior to it I confided to my co-workers, Security Guard Ladiona and Almadin that I intend to rob a certain taxi driver on the aforementioned place, time and date.

Question # 5. What did you do next?

Answer # 5. I then went to our office in Juana Osmena St., Cebu City and reported that my firearm was snatched by somebody else and then Mr. Paquiao brought me for treatment in Southern Islands Medical Center. Thereafter, I supposed to tell the truth to the Security Agency and to the Police but in the first place I was afraid that I will be harmed but I was able to read the Sun Star Newspaper that the victim - a taxi driver had six children my conscience was bothered, so I finally decided to tell the whole truth about such incident to the Police authorities.

x x x x x x x x"[16]

From the foregoing narration of facts, we find the accused-appellant guilty only of homicide and not of the special complex crime of robbery with homicide. In prosecuting robbery with homicide cases, the government needs to prove the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is done with *animus lucrandi*; and (4) by reason of the robbery, or on the occasion thereof, homicide (used in its generic sense) is committed.[17] To sustain a conviction for this special complex crime, robbery must be proved conclusively as any other essential element of the crime. It is necessary for the prosecution to clearly establish that a robbery has actually taken place, and that, as a consequence or on the occasion of such robbery, homicide is committed. Where the evidence does not conclusively prove the robbery, the killing of the victim would be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the complex offense of robbery with homicide.[18] There is nothing in the evidence on record that would show that the victim had a wristwatch and that accused-appellant took said watch on that fateful night, as alleged in the information. Not even accused-appellant's extrajudicial confession proves the robbery. Accused-appellant merely stated in his

confession that he announced a hold-up and thereafter he and the victim grappled for the gun. As they struggled, accused-appellant squeezed the trigger, thus shooting the victim. Accused-appellant then hurriedly got off the taxicab, leaving his gun behind. There was no mention about the taking of the wristwatch. As the prosecution failed to prove the robbery, accused-appellant should only be convicted for homicide.

We further find that accused-appellant's liability is mitigated by his voluntary surrender. Three days after the death of the victim, accused-appellant read in the local newspaper that the victim had six children. This bothered his conscience, prompting him to go to the police and admit his guilt. This should be considered in favor of the accused-appellant. For the mitigating circumstance of voluntary surrender to be taken into consideration, it is necessary that the same be spontaneous and done in such manner to show 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 expense, necessarily incurred in his search and capture. This mitigating circumstance may be properly appreciated if the following requisites concur: (1) the offender was not actually arrested; (2) he surrendered himself to a person in authority; and (3) his surrender was voluntary.[19] All these requisites are present in this case.

In imposing the maximum penalty upon accused-appellant, the trial court held that the aggravating circumstances of nighttime attended the commission of the crime. We disagree. Nighttime would be a modifying element only when (1) it was specially sought by the offender; or (2) the offender took advantage of it; or (3) it facilitated the commission of the crime by ensuring the offender's immunity from identification or capture. The mere fact that the killing was committed at night would not suffice to sustain nocturnity for, by and itself.[20] The facts do not show that accused-appellant purposely sought or took advantage of the darkness to perpetrate the crime or to conceal his identity. Witness Sechem Dagangan testified that the area where the crime was committed was illuminated by lights coming from the surrounding residence. Under these circumstances, nighttime cannot be considered as an aggravating circumstance.

Accused-appellant faults the trial court for readily accepting accused-appellant's plea of guilt. The argument is specious. Accused-appellant's conviction is not based merely on his plea of guilt. The prosecution has already commenced its presentation of evidence when accused-appellant changed his plea of not guilty to guilty. Thereafter, the trial court ordered the prosecution to continue with the presentation of its evidence.

When the accused pleads guilty to a capital offense, the trial court is required to: (1) conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea; (2) order the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires. This is in accordance with Section 3, Rule 116 of the 1985 Rules of Criminal Procedure which prevailed at the time of the commission of the offense. The Rules provided:

“SEC. 3. Plea of guilty to capital offense; reception of evidence.--When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf.”

The presentation of evidence is required even after the accused has pleaded guilty to preclude any room for reasonable doubt in the mind of the trial court, or the Supreme Court on review, as to the possibility that there might have been some misunderstanding on the part of the accused as to the nature of the charge to which he pleaded guilty, and to ascertain the circumstances attendant to the commission of the crime which justify or require the exercise of greater or lesser degree of severity in the imposition of the prescribed penalty.[21] A reading of the transcript of stenographic notes[22] shows that the trial court complied with all that is required by

the Rules. First, it asked the accused-appellant whether he understood the consequences of his plea. His counsel manifested that he has already conferred with his client. The trial court then directed the prosecution to present its evidence, which it did. After the prosecution rested its case, the defense chose not to present its own evidence. Thus, it cannot be said that the trial court rushed to convict accused-appellant after the latter has pleaded guilty. The conviction of accused-appellant is supported not simply by his plea of guilt, but more importantly by the testimonial, documentary and object evidence presented by the prosecution during the trial.

We now go to the penalty. Under Article 249 of the Revised Penal Code, the penalty for homicide is reclusion temporal. Considering the attendance of the mitigating circumstance of voluntary surrender, the penalty shall be imposed in its minimum period. Applying the Indeterminate Sentence Law, we rule that accused-appellant should be sentenced to imprisonment of twelve (12) years of prision mayor as minimum to fourteen (14) years of reclusion temporal as maximum.

IN VIEW WHEREOF, the Court finds accused-appellant GUILTY of the crime of HOMICIDE and imposes upon him an indeterminate sentence of twelve (12) years of prision mayor as minimum to fourteen (14) years of reclusion temporal as maximum. He is further ordered to pay the heirs of the victim the sum of fifty thousand pesos (P50,000.00) as indemnity. The order of the trial court for accused-appellant to restitute to the heirs the sum of five hundred pesos (P500.00) is hereby deleted.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur

[1] Original Record, pp. 1-2.

[2] Original Record, pp. 18, 20-A.

[3] TSN, January 30, 1997, pp. 2-3.

[4] Testimony of Sechem Dagangan, TSN, December 16, 1996, pp. 4-5.

[5] Exhibit "J".

[6] Exhibit "L-2", "L-3", "L-4", "L-5".

[7] Exhibit "M".

[8] Exhibit "D".

[9] Testimony of SPO1 Solomon Gandiongco, TSN, January 10, 1997; Testimony of SPO2 Mario Monilar, TSN, January 24, 1997.

[10] Exhibit "A", Original Record, p. 24-A.

[11] Testimony of Dr. Jesus P. Cerna, TSN, November 11, 1996, pp. 4-7.

[12] Id., February 7, 1997, pp. 2-4.

[13] Exhibit "F".

[14] Testimony of Bonifacio Ayag, TSN, February 4, 1997, pp. 3-9.

[15] Exhibit "G".

[16] Original Record, pp. 4-5.

[17] *People vs. Salazar*, 277 SCRA 67 (1997); *People vs. Arapok*, 347 SCRA 479 (2000).

[18] *People vs. Dizon*, 339 SCRA 740 (2000); *People vs. Vasquez*, 281 SCRA 123 (1997); *People vs. Teodoro*, 280 SCRA 384 (1997).

[19] *People vs. Vital*, 341 SCRA 375 (2000).

[20] *People vs. Moyong*, 344 SCRA 730 (2000).

[21] *People vs. Derilo*, 271 SCRA 633 (1997).

[22] TSN, January 30, 1997, pp. 2-3.

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