

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN GONZALES ESCOTE, JR. @ JUN MANTIKA OF STA. LUCIA, ANGAT, BULACAN AND VICTOR ACUYAN Y OCHOVILLOS @ VIC ARROYO OF STO. NIÑO...*G.R. No. 140756. April 04, 2003*

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-140756/>**CALLEJO, SR., J.:**

Robbery with homicide is classified as a crime against property. Nevertheless, treachery is a generic aggravating circumstance in said crime if the victim of homicide is killed treacherously. The Supreme Court of Spain so ruled. So does the Court rule in this case, as it had done for decades.

Before the Court on automatic review is the Decision[1] of Branch 11 of the Regional Trial Court of Bulacan in Criminal Case No. 443-M-97 convicting accused-appellants Juan Gonzales Escote, Jr. and Victor Acuyan of the complex crime of robbery with homicide, meting on each of them the supreme penalty of death, and ordering them to pay the heirs of the victim, SPO1 Jose C. Manio, Jr., the total amount of P300,000.00 by way of actual and moral damages and to pay to Five Star Bus, Inc., the amount of P6,000.00 by way of actual damages.

The Facts

The antecedent facts as established by the prosecution are as follows:

On September 28, 1996 at past midnight, Rodolfo Cacatian, the regular driver of Five Star Passenger Bus bearing Plate No. ABS-793, drove the bus from its terminal at Pasay City to its destination in Bolinao, Pangasinan. Also on board was Romulo Digap, the regular conductor of the bus, as well as some passengers. At Camachile, Balintawak, six passengers boarded the bus, including Victor Acuyan and Juan Gonzales Escote, Jr. who were wearing maong pants, rubber shoes, hats and jackets.[2] Juan seated himself on the third seat near the aisle, in the middle row of the passengers' seats, while Victor stood by the door in the mid-portion of the bus beside Romulo. Another passenger, SPO1 Jose C. Manio, Jr., a resident of Angeles City, was seated at the rear portion of the bus on his way home to Angeles City. Tucked on his waist was his service gun bearing Serial Number 769806. Every now and then, Rodolfo looked at the side view mirror as well as the rear view and center mirrors installed atop the driver's seat to monitor any incoming and overtaking vehicles and to observe the passengers of the bus.

The lights of the bus were on even as some of the passengers slept. When the bus was travelling along the highway in Plaridel, Bulacan, Juan and Victor suddenly stood up, whipped out their handguns and announced a holdup. Petrified, Rodolfo glanced at the center mirror towards the passengers' seat and saw Juan and Victor armed with handguns. Juan fired his gun upward to awaken and scare off the passengers. Victor followed suit and fired his gun upward. Juan and Victor then accosted the passengers and divested them of their money and valuables. Juan divested Romulo of the fares he had collected from the passengers. The felons then went to the place Manio, Jr. was seated and demanded that he show them his identification card and wallet. Manio, Jr.

brought out his identification card bearing No. 00898.[3] Juan and Victor took the identification card of the police officer as well as his service gun and told him: “Pasensya ka na Pare, papatayin ka namin, baril mo rin and papatay sa iyo.” The police officer pleaded for mercy: “Pare maawa ka sa akin. May pamilya ako.” However, Victor and Juan ignored the plea of the police officer and shot him on the mouth, right ear, chest and right side of his body. Manio, Jr. sustained six entrance wounds. He fell to the floor of the bus. Victor and Juan then moved towards the driver Rodolfo, seated themselves beside him and ordered the latter to maintain the speed of the bus. Rodolfo heard one of the felons saying: “Ganyan lang ang pumatay ng tao. Parang pumapatay ng manok.” The other said: “Ayos na naman tayo pare. Malaki-laki ito.” Victor and Juan further told Rodolfo that after they (Victor and Juan) shall have alighted from the bus, he (Rodolfo) should continue driving the bus and not report the incident along the way. The robbers assured Rodolfo that if the latter will follow their instructions, he will not be harmed. Victor and Juan ordered Rodolfo to stop the bus along the overpass in Mexico, Pampanga where they alighted from the bus. The robbery was over in 25 minutes.

When the bus reached Dau, Mabalacat, Pampanga, Rodolfo and Romulo forthwith reported the incident to the police authorities. The cadaver of SPO1 Manio, Jr. was brought to the funeral parlor where Dr. Alejandro D. Tolentino, the Municipal Health Officer of Mabalacat, Pampanga, performed an autopsy on the cadaver of the police officer. The doctor prepared and signed an autopsy report detailing the wounds sustained by the police officer and the cause of his death:

“Body still flaccid (not in rigor mortis) bathed with his own blood. There were 6 entrance wounds and 6 exit wounds. All the entrance were located on his right side. An entrance (0.5 cm x 0.5 cm.) located in front of the right ear exited at the left side just below the ear lobe. Another entrance through the mouth exited at the back of the head fracturing the occiput with an opening of (1.5 cm x 2 cm). Blood CSF and brain tissues came out. Another fatal bullet entered at the upper right cornea of the sternum, entered the chest cavity pierced the heart and left lung and exited at the left axillary line. Severe hemorrhage in the chest cavity came from the heart and left lung. The other 3 bullets entered the right side and exited on the same side. One entrance at the top of the right shoulder exited at the medial side of the right arm. The other entered above the right breast and exited at the right lateral abdominal wall travelling below muscles and subcutaneous tissues without entering the cavities. Lastly another bullet entered above the right iliac crest travelled superficially and exited above the right inguinal line.

Cause of Death:

Shock, massive internal and external hemorrhage, complete brain destruction and injury to the heart and left lung caused by multiple gunshot wounds.”[4]

Rodolfo and Romulo proceeded to the police station of Plaridel, Bulacan where they reported the robbery and gave their respective sworn statements.[5] SPO1 Manio, Jr. was survived by his wife Rosario Manio and their four young children. Rosario spent P20,000.00 for the coffin and P10,000.00 for the burial lot of the slain police officer.[6] Manio, Jr. was 38 years old when he died and had a gross salary of P8,085.00 a month.[7]

Barely a month thereafter, or on October 25, 1996, at about midnight, SPO3 Romeo Meneses, the team leader of Alert Team No. 1 of Tarlac Police Station, and PO3 Florante S. Ferrer were at the police checkpoint along the national highway in Tarlac, Tarlac. At the time, the Bambang-Concepcion bridge was closed to traffic and the police officers were tasked to divert traffic to the Sta. Rosa road. Momentarily, a white colored taxi cab without any plate number on its front fender came to view. Meneses stopped the cab and asked the driver, who turned out to be the accused Juan Gonzales Escote, Jr., for his identification card. Juan told Meneses that he was a policeman and handed over to Meneses the identification card of SPO1 Manio, Jr. and the money which Juan and Victor took from Manio, Jr. during the heist on September 28, 1996.[8] Meneses became suspicious when he noted that

the identification card had already expired on March 16, 1995. He asked Juan if the latter had a new pay slip. Juan could not produce any. He finally confessed to Meneses that he was not a policeman. Meneses brought Juan to the police station. When police officers frisked Juan for any deadly weapon, they found five live bullets of a 9 millimeter firearm in his pocket. The police officers confiscated the ammunition. In the course of the investigation, Juan admitted to the police investigators that he and Victor, alias Victor Arroyo, staged the robbery on board Five Star Bus and are responsible for the death of SPO1 Manio, Jr. in Plaridel, Bulacan. Meneses and Ferrer executed their joint affiavit of arrest of Juan.[9] Juan was subsequently turned over to the Plaridel Police Station where Romulo identified him through the latter's picture as one of those who robbed the passengers of the Five Star Bus with Plate No. ABS-793 and killed SPO1 Manio, Jr. on September 28, 1996. In the course of their investigation, the Plaridel Police Station Investigators learned that Victor was a native of Laoang, Northern Samar.[10] On April 4, 1997, an Information charging Juan Gonzales Escote, Jr. and Victor Acuyan with robbery with homicide was filed with the Regional Trial Court of Bulacan. The Information reads:

That on or about the 28[th] day of September 1996, in the municipality of Plaridel, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping each other, armed with firearms, did then and there wilfully, unlawfully and feloniously, with intent of (sic) gain and by means of force, violence and intimidation, take, rob and carry away with one (1) necklace and cash in [the] undetermine[d] amount of one SPO1 Jose C. Manio, Jr., to the damage and prejudice of the said owner in the said undetermine[d] amount; that simultaneously or on the occasion (sic) of said robbery, said accused by means of violence and intimidation and in furtherance of their conspiracy attack, assault and shoot with the service firearm of the said SPO1 Jose C. Manio, Jr., thereby inflicting serious physical injuries which resulted (sic) the death of the said SPO1 Jose C. Manio, Jr.

Contrary to law.[11]

On the strength of a warrant of arrest, the police officers arrested Victor in Laoang, Northern Samar and had him incarcerated in the Bulacan Provincial Jail. Assisted by Atty. Ramiro Osorio, their counsel de parte, Juan and Victor were duly arraigned and entered their plea of not guilty to the charge. Trial thereafter ensued. After the prosecution had rested its case on August 26, 1998, Juan escaped from the provincial jail.[12] The trial court issued a bench warrant on September 22, 1998 for the arrest of said accused-appellant.[13] In the meantime, Victor adduced his evidence.

Victor denied the charge and interposed the defense of alibi. He testified that in 1996, he worked as a tire man in the vulcanizing shop located in Banga I, Plaridel, Bulacan owned by Tony Boy Negro. On one occasion, Ilarde Victorino, a customer of Tony Boy Negro, ordered Victor to sell a tire. Victor sold the tire but did not turn over the proceeds of the sale to Ilarde. The latter hated Victor for his misdeed. The shop was later demolished and after two months of employment, Victor returned to Barangay Muwal-Buwal, Laoang, Northern Samar. On September 26, 1996, at 9:30 p.m., Victor was at the town fiesta in Laoang. Victor and his friends, Joseph Iringco and Rickey Lorcio were having a drinking spree in the house of Barangay Captain Ike Baluya. At 11:30 p.m., the three left the house of the barangay captain and attended the public dance at the town auditorium. Victor and his friends left the auditorium at 5:30 a.m. of September 27, 1996. Victor likewise testified that he never met Juan until his arrest and detention at the Bulacan Provincial Jail. One of the inmates in said provincial jail was Ilarde Victorino. Victor learned that Ilarde implicated him for the robbery of the Five Star Bus and the killing of SPO1 Manio, Jr. to hit back at him for his failure to turn over to Ilarde the proceeds of the sale of the latter's tire.

On January 14, 1999, Juan was rearrested in Daet, Camarines Norte.[14] However, he no longer adduced any evidence in his behalf.

The Verdict of the Trial Court

On March 11, 1999, the trial court rendered its Decision judgment finding Juan and Victor guilty beyond reasonable doubt of the crime charged, meted on each of them the penalty of death and ordered them to pay P300,000.00 as actual and moral damages to the heirs of the victim and to pay the Five Star Bus Company the amount of P6,000.00 as actual damages. The decretal portion of the decision reads:

WHEREFORE, this Court finds both accused, Juan Gonzales Escote, Jr. and Victor Acuyan GUILTY beyond reasonable doubt of Robbery with Homicide as penalized under Art. 294 of the Revised Penal Code as amended and hereby sentences both to suffer the supreme penalty of Death and to indemnify the heirs of the late SPO1 Jose C. Manio, Jr., the amount of P300,000.00 as actual and moral damages and to pay the Five Star Bus P6,000.00 as actual damage.

SO ORDERED.[15]

Assignment of Errors

Juan and Victor assail the Decision of the trial court and contend that:

I

THE TRIAL COURT ERRED IN HOLDING THAT RODOLFO CACATIAN AND ROMULO DIGAP, DRIVER AND CONDUCTOR OF THE FIVE STAR BUS, RESPECTIVELY, WERE ABLE TO POSITIVELY IDENTIFY THE TWO (2) MEN WHO HELD-UP THEIR BUS AND KILLED ONE PASSENGER THEREOF AT AROUND 3:00 O'CLOCK IN THE EARLY MORNING OF SEPTEMBER 28, 1996.

II

THE TRIAL COURT ERRED IN FINDING THE TWO (2) ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE.[16]

The Court's Verdict

Anent the first assignment of error, Juan and Victor contend that the trial court committed a reversible error in relying on the testimony of Rodolfo, the bus conductor, for convicting them of the crime charged. They aver that although their counsel was able to initially cross-examine Rodolfo, the former failed to continue with and terminate his cross-examination of the said witness through no fault of his as the witness failed to appear in subsequent proceedings. They assert that even if the testimonies of Rodolfo and Romulo were to be considered, the two witnesses were so petrified during the robbery that they were not able to look at the felons and hence could not positively identify accused-appellants as the perpetrators of the crime. They argue that the police investigators never conducted a police line-up for the identification of the authors of the crime.

The contentions of Juan and Victor are not meritorious. There is no factual and legal basis for their claim that they were illegally deprived of their constitutional and statutory right to fully cross-examine Rodolfo. The Court agrees that the right to cross-examine is a constitutional right anchored on due process.[17] It is a statutory right found in Section 1(f), Rule 115 of the Revised Rules of Criminal Procedure which provides that the accused has the right to confront and cross-examine the witnesses against him at the trial. However, the right has always been understood as requiring not necessarily an actual cross-examination but merely an opportunity to exercise the right to cross-examine if desired.[18] What is proscribed by statutory norm and jurisprudential precept is the absence of the opportunity to cross-examine.[19] The right is a personal one and may be waived expressly or impliedly. There is an implied waiver when the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone.[20] If by his actuations, the accused lost his opportunity to cross-examine wholly or in part the witnesses against him, his right to cross-examine is impliedly waived.[21] The testimony given on direct examination of the witness will be

received or allowed to remain in the record.[22]

In this case, the original records show that after several resettings, the initial trial for the presentation by the prosecution of its evidence-in-chief was set on November 18, 1997 and December 5, 1997, both at 9:00 a.m.[23] Rodolfo testified on direct examination on November 18, 1997. The counsel of Juan and Victor forthwith commenced his cross-examination of the witness but because of the manifestation of said counsel that he cannot finish his cross-examination, the court ordered the continuation thereof to December 5, 1997.[24] On December 5, 1997, Rodolfo did not appear before the court for the continuation of his cross-examination but Rosemarie Manio, the widow of the victim did. The prosecution presented her as witness. Her testimony was terminated. The court ordered the continuation of the trial for the cross-examination of Rodolfo on January 20, 1998 at 8:30 a.m.[25] During the trial on January 20, 1998, Rodolfo was present but accused-appellants' counsel was absent. The court issued an order declaring that for failure of said counsel to appear before the court for his cross-examination of Rodolfo, Victor and Juan waived their right to continue with the cross-examination of said witness.[26] During the trial set for February 3, 1998, the counsel of Juan and Victor appeared but did not move for a reconsideration of the court's order dated January 20, 1998 and for the recall of Rodolfo Cacatian for further cross-examination. It behooved counsel for Juan and Victor to file said motion and pray that the trial court order the recall of Rodolfo on the witness stand. Juan and Victor cannot just fold their arms and supinely wait for the prosecution or for the trial court to initiate the recall of said witness. Indeed, the Court held in *Fulgado vs. Court of Appeals, et al*:

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The task of recalling a witness for cross examination is, in law, imposed on the party who wishes to exercise said right. This is so because the right, being personal and waivable, the intention to utilize it must be expressed. Silence or failure to assert it on time amounts to a renunciation thereof. Thus, it should be the counsel for the opposing party who should move to cross-examine plaintiff's witnesses. It is absurd for the plaintiff himself to ask the court to schedule the cross-examination of his own witnesses because it is not his obligation to ensure that his deponents are cross-examined. Having presented his witnesses, the burden shifts to his opponent who must now make the appropriate move. Indeed, the rule of placing the burden of the case on plaintiff's shoulders can be construed to extremes as what happened in the instant proceedings. [27]

The trial was reset to March 31, April 17 and 24, 1998, all at 8:30 a.m. because of the non-availability of the other witnesses of the prosecution.[28] On March 31, 1998, the prosecution presented Dr. Alejandro Tolentino, PO2 Rene de la Cruz and Romulo Digap. During the trial on April 17, 1998, the counsel of Juan and Victor failed to appear. The trial was reset to June 3, 19 and 26, 1998.[29] The trial scheduled on June 3, 1998 was cancelled due to the absence of the counsel of Juan and Victor. The court issued an order appointing Atty. Roberto Ramirez as counsel for accused-appellants.[30]

During the trial on August 26, 1998, Atty. Ramirez appeared in behalf of Juan and Victor. The prosecution rested its case after the presentation of SPO2 Romeo Meneses and formally offered its documentary evidence. The next trial was set on September 23, 1998 at 8:30 a.m.[31] On November 11, 1998, Juan and Victor commenced the presentation of their evidence with the testimony of Victor.[32] They rested their case on January 27, 1999 without any evidence adduced by Juan.

Juan and Victor did not even file any motion to reopen the case before the trial court rendered its decision to allow them to cross-examine Rodolfo. They remained mute after judgment was rendered against them by the trial court. Neither did they file any petition for certiorari with the Court of Appeals for the nullification of the Order of the trial court dated January 20, 1998 declaring that they had waived their right to cross-examine Rodolfo. It was only on appeal to this Court that Juan and Victor averred for the first time that they were deprived of their right to cross-examine Rodolfo. It is now too late in the day for Juan and Victor to do so. The doctrine of estoppel states that if one maintains silence when in conscience he ought to speak, equity will debar him from speaking when in

conscience he ought to remain silent. He who remains silent when he ought to speak cannot be heard to speak when he should be silent.[33]

The contention of accused-appellants Juan and Victor that Rodolfo and Romulo failed to identify them as the perpetrators of the crime charged is disbelieved by the trial court, thus:

As can be gathered from the testimonies of the witnesses for the prosecution, on September 28, 1996, the accused boarded at around 3:00 a.m. a Five Star Bus driven by Rodolfo Cacatian, bound to Pangasinan, in Camachile, Balintawak, Quezon City. Twenty (20) minutes or so later, when the bus reached the vicinity of Nabuag, Plaridel, Bulacan, along the North Expressway, the accused with guns in hand suddenly stood up and announced a hold-up. Simultaneously with the announcement of a hold-up, Escote fired his gun upwards. Acuyan, meanwhile, took the gun of a man seated at the back. Both then went on to take the money and valuables of the passengers, including the bus conductor's collections in the amount of P6,000.00. Thereafter, the duo approached the man at the back telling him in the vernacular "Pasensiya ka na pare, papatayin ka namin. Baril mo rin ang papatay sa iyo." They pointed their guns at him and fired several shots oblivious of the plea for mercy of their victim. After the shooting, the latter collapsed on the floor. The two (2) then went back at the front portion of the bus behind the driver's seat and were overheard by the bus driver, Cacatian, talking how easy it was to kill a man. The robbery and the killing were over in 25 minutes. Upon reaching the Mexico overpass of the Expressway in Pampanga, the two (2) got off the bus. The driver drove the bus to the Mabalacat Police Station and reported the incident. During the investigation conducted by the police, it was found out that the slain passenger was a policeman, SPO1 Jose C. Manio, Jr. of the Caloocan City Police Department.

The above version came from Rodolfo Cacatian and Romulo Digap, bus driver and conductor, respectively, of the ill-fated Five Star Bus.[34]

The Court agrees with the trial court. It may be true that Romulo was frightened when Juan and Victor suddenly announced a holdup and fired their guns upward, but it does not follow that he and Rodolfo failed to have a good look at Juan and Victor during the entire time the robbery was taking place. The Court has held in a catena of cases that it is the most natural reaction of victims of violence to strive to see the appearance of the perpetrators of the crime and to observe the manner in which the crime was committed.[35] Rodolfo and Romulo had a good look at both Juan and Victor before, during and after they staged the robbery and before they alighted from the bus. The evidence on record shows that when Juan and Victor boarded the bus and while the said vehicle was on its way to its destination, Romulo stationed himself by the door of the bus located in the mid-section of the vehicle. The lights inside the bus were on. Juan seated himself in the middle row of the passengers' seat near the center aisle while Victor stood near the door of the bus about a meter or so from Romulo.[36] Romulo, Juan and Victor were near each other. Moreover, Juan divested Romulo of his collection of the fares from the passengers.[37] Romulo thus had a face-to-face encounter with Juan. After shooting SPO1 Manio, Jr. at the rear portion of the bus, Juan and Victor passed by where Romulo was standing and gave their instructions to him. Considering all the facts and circumstances, there is no iota of doubt that Romulo saw and recognized Juan and Victor before, during and after the heist.[38] Rodolfo looked many times on the rear, side and center view mirrors to observe the center and rear portions of the bus before and during the robbery. Rodolfo thus saw Juan and Victor stage the robbery and kill SPO1 Manio, Jr. with impunity:

xxx

Q

So, the announcement of hold-up was ahead of the firing of the gun?

A

Yes, sir.

Q

And before the actual firing of the gun it was even still said bad words before saying the hold-up?

A

After they fired the gun they uttered bad words, sir.

Q

Mr. Witness before the announcement of the hold-up you do not have any idea that you will encounter that nature which took place, is that correct?

A

None, sir.

Q

Within the two (2) year[s] period that you are plying the route of Manila to Bolinao that was your first experience of hold-up?

A

Yes, sir.

Q

And the speed of above 70 kilometers per hour your total attention is focus in front of the road, correct, Mr. witness?

A

Once in a while the driver look at the side mirror and the rear view mirror, sir.

Q

Before the announcement there was no reason for you to look at any at the rear mirror, correct, Mr. witness?

Court:

Every now and then they usually look at the side mirror and on the rear, that was his statement.

Atty. Osorio:

(to the witness)

Q

I am asking him if there was no reason for him....

Fiscal:

Before the announcement of hold-up, there was no mention.

Court:

Every now and then.

Atty. Osorio:

(to the witness)

Q

When you said every now and then, how often is it, Mr. witness?

A

I cannot tell how often but I used to look at the mirror once in a while, sir.

Q

How many mirror do you have, Mr. witness?

A

Four (4), sir.

Q

Where are these located?

A

Two (2) on the side mirror, center mirror and rear view mirror, sir.

Q

The two side mirror protruding outside the bus?

A

Yes, sir, they are in the side of the bus, sir.

Q

One of them is located on the left and the other on the right, correct?

A

Yes, sir.

Q

You only look at the side mirror when you are going to over take, Mr. witness?

A

No, sir.

Q

Where is this center mirror located, Mr. witness?

A

In the center, sir.

Q

What is the purpose of that?

A

So that I can see the passengers if they are already settled so that I can start the engine, sir.

Q

What about the remaining mirror?

A

Rear view mirror, sir.

Q

What is the purpose and where is it located?

A

The rear view is located just above my head just to check the passengers, sir.

Q

So that the center mirror and the rear view mirror has the same purpose?

A

They are different, sir.

Q

How do you differentiate of (sic) one from the other?

A

The center mirror is used to check the center aisle while the rear mirror is for the whole view of the passengers, sir.

Q

If you are going to look at any of your side mirrors, you will never see any passengers, correct, Mr. witness?

A

None, sir.

Q

If you will look at your center mirror you will only see the aisle and you will never see any portion of the body of your passengers?

A

Yes, sir.

Q

Seated passengers?

A

It is only focus (sic) on the middle aisle sir.

Q

If you look at your rear mirror, you will only see the top portion of the head of your passengers, correct?

A

Only the portion of their head because they have different hight (sic), sir.

Q

You will never see any head of your passengers if they were seated from the rear mirror portion, correct, Mr. witness?

A

Yes, sir.

Q

Before the announcement of hold-up, all of your passengers were actually sleeping?

A

Some of my passengers were sleeping, some were not, sir.

Q

But you will agree Mr. witness that when you said every now and then you are using your mirror? It is only a glance, correct?

A

Yes, sir.

Q

And by mere glancing, Mr. witness you were not able to identify any person on the basis of any of your mirror, correct?

A

If only a glance but when I look at him I can recognize him, sir.

Q

You agree a while ago by every now and then it is by glancing, as a driver, Mr. witness by your side mirror?

A

Not all glancing, there are times when you want to recognize a person you look at him intently, sir.

Q

The purposes of your mirror inside your Bus is mainly of the safety of your passengers on board, Mr. witness?

A

Yes, sir.

Q

And as a driver, Mr. witness, you do not used (sic) your mirror to identify the person particularly when you are crossing (sic) at a speed of 70 kilometers per hour?

A

I do that, sir.

Q

How long Mr. witness can you focus your eyes on any of these mirror before getting back your eyes into the main road?

A

Seconds only, sir.

Q

When you said seconds, for how long the most Mr. witness that you can do to fix your eyes on any of your mirrors and the return back of (sic) your eyes into the main road?

A

Two seconds, sir.

Q

At that time Mr. witness, that you were travelling at about 70 kilometers you were glancing every now and then on any of your mirrors at about two seconds, correct?

A

Yes, sir.

Q

And when you heard the announcement of hold-up your natural reaction is to look either at the center mirror or rear mirror for two seconds, correct?

A

Yes, sir.

Q

And you were instructed Mr. witness to even accelerate your speed upon the announcement of hold-up?

A

No sir, they just told me to continue my driving, sir.

Fiscal:

May I request the vernacular “alalay ka lang, steady ka lang.

Atty. Osorio:

(to the witness)

Q

Steady at what speed?

A

70 to 80, sir.

Q

What is the minimum speed, Mr. witness for Buses along North Expressway?

A

60 kilometers, sir.

Q

Are you sure of that 60 kilometers, minimum? Are you sure of that?

A

Yes, sir.

Q

That is what you know within the two (2) years that you are driving? Along the North Expressway?

A

Yes, sir.

Q

And while you were at the precise moment, Mr. witness, you were being instructed to continue driving, you were not looking to anybody except focus yours eyes in front of the road?

Fiscal:

May I request the vernacular. Nakikiramdam ako.

Atty. Osorio:
(to the witness)

Q

That's what you are doing?

A

During the time they were gathering the money from my passengers, that is the time when I look at them, sir.

Q

For two seconds, correct?

A

Yes, sir.

Q

Which of the four (4) mirrors that you are looking at within two seconds, Mr. witness you said you are nakikiramdam?

A

The rear view mirror, sir.

Q

The Bus that you were driving is not an air con bus?

A

Ordinary bus, sir.

Q

And at what time your passengers, most of your passengers were already sleep (sic), Mr. witness?

A

Most of my passengers, sir. Some of my passengers were still sleep (sic), sir.

Q

And the lights inside the Bus are off, correct Mr. witness?

A

The lights were on, sir.

Q

While the passengers were sleep (sic) the light was still on, Mr. witness, at the time of the trip.?

A

Yes, sir.

Q

Now, Mr. witness when the hold-up was announced and then when you look for two seconds in the rear mirror you were not able to see any one, you were only sensing what is happening inside your bus?

A

I saw something, sir.

Q

You saw something in front of your Bus? You can only see inside when you are going to look at the mirror?

A

Yes, sir.

Q

That is the only thing that you see every now and then, you said you were looking at the mirror?

A

Yes, sir.

Q

How many times, Mr. witness did you look Mr. witness at the rear mirror during the entire occurrence (sic) of the alleged hold-up?

A

There were many times, sir.

Q

The most that you can remember, please inform the Honorable Court? During the occurrence (sic) of the alleged hold-up, Mr. witness?

A

I cannot estimate, sir.

Q

How long did the alleged hold-up took place?

A

More or less 25 minutes, sir.[39]

When Rodolfo gave his sworn statement to the police investigators in Plaridel, Bulacan after the robbery, he described the felons. When asked by the police investigators if he could identify the robbers if he see them again, Rodolfo declared that he would be able to identify them:

8.

T:

Natatandaan mo ba kung ano ang itsura ng dalawang lalaki na nanghold-up sa minamaneho mong bus?

S:

Halos magkasing taas, 5'4" o 5'5" katam-taman ang pangangatawan, parehong nakapantalón ng maong naka-suot ng jacket na maong, parehong naka rubber shoes at pareho ring naka sumbrero.

9.

T:

Kung sakali bang makikita mo pa ang mga ito ay makikilala mo pa sila?

S:

Makikilala ko po sila.[40]

When asked to identify the robbers during the trial, Rodolfo spontaneously pointed to and identified Juan and Victor:

QFiscal:

(to the witness)

xxx

Q

Those two man (sic) who stated that it was a hold-up inside the bus and who fired the gun are they inside the Court room (sic) today?

A

Yes, ma'am.

Q

Point to us?

Interpreter:

Witness pointing to a man wearing red T-shirt and when asked his name answered Victor Acuyan and the man wearing green T-shirt and when asked his name answered Juan Gonzales.[41]

For his part, Romulo likewise spontaneously pointed to and identified Juan and Victor as the culprits when asked by the prosecutor to identify the robbers from among those in the courtroom:

xxx

Q

You said that you were robbed inside the bus, how does (sic) the robbing took place?

A

They announced a hold up ma'am, afterwards, they confiscated the money of the passengers including my collections.

Q

You said "they" who announced the hold up, whose (sic) these "they" you are referring to?

A

Those two (2), ma'am.

Interpreter:

Witness pointing to the two accused.

Public Pros.:

May we request that the accused be identified, Your Honor.

Court:

(to both accused)

What are your names?

A

Juan Escote, Your Honor. Victor Acuyan, Your Honor.

Public Pros.:

May we know from the accused if his name is Juan Escote Gonzales because he just said Juan Escote. In the Information, it is one Juan Gonzales, Jr., so, we can change, Your Honor.[42]

Moreover, when he was accosted by SPO3 Romeo Meneses on October 25, 1997 in Tarlac, Tarlac, Juan was in possession of the identification card[43] of the slain police officer. Juan failed to explain to the trial court how and under what circumstances he came into possession of said identification card. Juan must necessarily be considered the author of the robbery and the killing of SPO1 Manio, Jr. In *People v. Mantung*,[44] we held:

xxx [T]he recovery of part of the loot from Mantung or the time of his arrest gave rise to a legal presumption of his guilt. As this Court has held, '[I]n the absence of an explanation of how one has come into possession of stolen effects belonging to a person wounded and treacherously killed, he must necessarily be considered the author of the aggression and death of the said person and of the robbery committed on him.'

While police investigators did not place Juan and Victor in a police line-up for proper identification by Rodolfo and Romulo, it cannot thereby be concluded that absent such line-up, their identification by Romulo and Rodolfo as the authors of the robbery with homicide was unreliable. There is no law or police regulation requiring a police line-up for proper identification in every case. Even if there was no police line-up, there could still be proper and reliable identification as long as such identification was not suggested or instigated to the witness by the police.[45] In this case, there is no evidence that the police officers had supplied or even suggested to Rodolfo and Romulo the identities of Juan and Victor as the perpetrators of the robbery and the killing of SPO1 Manio, Jr.

The Felony Committed by Juan and Victor

The Court finds that the trial court committed no error in convicting Juan and Victor of robbery with homicide. Article 294, paragraph 1 of the Revised Penal Code, as amended by Republic Act 7659, reads:

Art. 294. - Robbery with violence against or intimidation of persons. - Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

To warrant the conviction of Juan and Victor for the said charge, the prosecution was burdened to prove the confluence of the following essential elements:

xxx (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property thus taken belongs to another; (c) the taking is characterized by intent to gain or *animus lucrandi* and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed. xxx[46]

The intent to rob must precede the taking of human life.[47] In robbery with homicide, so long as the intention of the felons was to rob, the killing may occur before, during or after the robbery. In *People v. Barut*,[48] the Court held that:

In the controlling Spanish version of article 294, it is provided that there is robbery with homicide “cuando con motivo o con ocasión del robo resultare homicidio”. “Basta que entre aquel este exista una relación meramente ocasional. No se requiere que el homicidio se cometa como medio de ejecución del robo, ni que el culpable tenga intención de matar, el delito existe según constante jurisprudencia, aun cuando no concorra animo homicida. Incluso si la muerte sobreviniere por mero accidente, siempre que el homicidio se produzca con motivo con ocasión del robo, siendo indiferente que la muerte sea anterior, coetánea o posterior a éste” (2 Cuello Calón, *Derecho Penal*, 1975 14[th] Ed. P. 872).

Even if the victim of robbery is other than the victim of the homicide committed on the occasion of or by reason of the robbery, nevertheless, there is only one single and indivisible felony of robbery with homicide. All the crimes committed on the occasion or by reason of the robbery are merged and integrated into a single and indivisible felony of robbery with homicide. This was the ruling of the Supreme Court of Spain on September 9, 1886, et sequitur cited by this Court in *People v. Mangulabnan*, et al.[49]

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 or 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 Calón’s *Código Penal*, p. 501-502).

Case law has it that whenever homicide has been committed by reason of or on the occasion of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of robbery with homicide although they did not take part in the homicide, unless it appears that they endeavored to prevent the homicide.[50]

In this case, the prosecution proved beyond reasonable doubt that Juan and Victor conspired and confabulated together in robbing the passengers of the Five Star Bus of their money and valuables and Romulo of his collections of the fares of the passengers and in killing SPO1 Manio, Jr. with impunity on the occasion of the robbery. Hence, both Juan and Victor are guilty as principals by direct participation of the felony of robbery with homicide under paragraph 1, Article 294 of the Revised Penal Code, as amended by R.A. 7659, punishable by reclusion perpetua to death.

The Proper Penalty

The trial court imposed the supreme penalty of death on Juan and Victor for robbery with homicide, defined in Article 294, paragraph 1 of the Revised Penal Code, punishable with reclusion perpetua. Under Article 63, paragraph 1 of the Revised Penal Code, the felons should be meted the supreme penalty of death when the crime is committed with an aggravating circumstance attendant in the commission of the crime absent any mitigating circumstance. The trial court did not specify in the decretal portion of its decision the aggravating circumstances attendant in the commission of the crime mandating the imposition of the death penalty. However, it is evident from the findings of facts contained in the body of the decision of the trial court that it imposed the death penalty on Juan and Victor on its finding that they shot SPO1 Manio, Jr. treacherously on the occasion of or by reason of the robbery:

xxx

The two (2) accused are incomparable in their ruthlessness and base regard for human life. After stripping the passengers of their money and valuables, including the firearm of the victim, they came to decide to execute the latter seemingly because he was a police officer. They lost no time pouncing him at the rear section of the bus, aimed their firearms at him and, in a derisive and humiliating tone, told him, before pulling the trigger, that they were rather sorry but they are going to kill him with his own gun; and thereafter, they simultaneously fired point blank at the hapless policeman who was practically on his knees begging for his life. After which, they calmly positioned themselves at the front boasting for all to hear, that killing a man is like killing a chicken (“Parang pumapatay ng manok”). Escote, in particular, is a class by himself in callousness. xxx.[51]

The Court agrees with the trial court that treachery was attendant in the commission of the crime. There is treachery when the following essential elements are present, viz: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him.[52] The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself. Treachery may also be appreciated even if the victim was warned of the danger to his life where he was defenseless and unable to flee at the time of the infliction of the coup de grace.[53] In the case at bar, the victim suffered six wounds, one on the mouth, another on the right ear, one on the shoulder, another on the right breast, one on the upper right cornea of the sternum and one above the right iliac crest. Juan and Victor were armed with handguns. They first disarmed SPO1 Manio, Jr. and then shot him even as he pleaded for dear life. When the victim was shot, he was defenseless. He was shot at close range, thus insuring his death. The victim was on his way to rejoin his family after a hard day’s work. Instead, he was mercilessly shot to death, leaving his family in grief for his untimely demise. The killing is a grim example of the utter inhumanity of man to his fellowmen.

The issues that now come to fore are (1) whether or not treachery is a generic aggravating circumstance in robbery with homicide; and if in the affirmative, (b) whether treachery may be appreciated against Juan and Victor. On the first issue, we rule in the affirmative. This Court has ruled over the years[54] that treachery is a generic aggravating circumstance in the felony of robbery with homicide, a special complex crime (un delito especial complejo) and at the same time a single and indivisible offense (uno solo indivisible).[55] However, this

Court in two cases has held that robbery with homicide is a crime against property and hence treachery which is appreciated only to crimes against persons should not be appreciated as a generic aggravating circumstance.[56] It held in another case that treachery is not appreciated in robbery with rape precisely because robbery with rape is a crime against property.[57] These rulings of the Court find support in case law that in robbery with homicide or robbery with rape, homicide or rape are merely incidents of the robbery, with robbery being the main purpose and object of the criminal.[58] Indeed, in *People vs. Cando*,[59] two distinguished members of this Court advocated a review of the doctrine that treachery is a generic aggravating circumstance in robbery with homicide. They opined that treachery is applicable only to crimes against persons. After all, in *People vs. Bariquit*,[60] this Court in a per curiam decision promulgated in year 2000 declared that treachery is applicable only to crimes against persons. However, this Court held in *People vs. Cando* that treachery is a generic aggravating circumstance in robbery with homicide, citing its prior rulings that in robbery with homicide, treachery is a generic aggravating circumstance when the victim of homicide is killed with treachery. This Court opted not to apply its ruling earlier that year in *People vs. Bariquit*.

Legal Luminaries in criminal law and eminent commentators of the Revised Penal Code are not in full accord either. Chief Justice Ramon C. Aquino (Retired) says that treachery is appreciated only in crimes against persons as defined in Title 10, Book Two of the Code.[61] Chief Justice Luis B. Reyes (Retired) also is of the opinion that treachery is applicable only to crimes against persons.[62] However, Justice Florenz D. Regalado (Retired) is of a different view.[63] He says that treachery cannot be considered in robbery but can be appreciated insofar as the killing is concerned, citing the decisions of this Court in *People vs. Balagtas*[64] for the purpose of determining the penalty to be meted on the felon when the victim of homicide is killed with treachery.

It must be recalled that by Royal Order of December 17, 1886 the 1850 Penal Code in force in Spain, as amended by the *Codigo Penal Reformado de 1870* was applied in the Philippines. The Penal Code of 1887 in the Philippines was amended by Act 3815, now known as the Revised Penal Code, which was enacted and published in Spanish. In construing the Old Penal Code and the Revised Penal Code, this Court had accorded respect and persuasive, if not conclusive effect to the decisions of the Supreme Court of Spain interpreting and construing the 1850 Penal Code of Spain, as amended by *Codigo Penal Reformado de 1870*. [65]

Article 14, paragraph 16 of the Revised Penal Code reads:

ART. 14. Aggravating circumstances. – The following are aggravating circumstances:

xxx

16. That the act be committed with treachery (*alevosia*). There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

The law was taken from Chapter IV, Article 10, paragraph 2 of the 1860 Penal Code and the *Codigo Penal Reformado de 1870* of Spain which reads:

Art. 10 ...2. Ejecutar el hecho con *alevosia*. Hay *alevosia* cuando el culpable comete cualquiera de los delitos contra las personas empleando medios, modos o formas en la ejecucion que tiendan directa y especialmente a asegurarla sin riesgo para su persona, que proceda de la defensa que pudiera hacer el ofendido. xxx

Article 14, paragraph 16 of the Revised Penal Code is a reproduction of the 1850 Penal Code of Spain and the *Codigo Penal Reformado de 1870* with a slight difference. In the latter law, the words “las personas” (the persons) are used, whereas in Article 14, paragraph 6, of the Revised Penal Code, the words “the person” are used.

Going by the letter of the law, treachery is applicable only to crimes against persons as enumerated in Title Eight, Chapters One and Two, Book II of the Revised Penal Code. However, the Supreme Court of Spain has consistently applied treachery to robbery with homicide, classified as a crime against property. Citing decisions of the Supreme Court of Spain, Cuello Calon, a noted commentator of the Spanish Penal Code says that despite the strict and express reference of the penal code to treachery being applicable to persons, treachery also applies to other crimes such as robbery with homicide:[66]

Aun cuando el Código solo se refiere a los delitos contra las personas, cabe estimarla en los que no perteneciendo a este título se determinan por muerte o lesiones, como, en el robo con homicidio, y en el homicidio del Jefe del Estado que es un delito contra la seguridad interior del Estado, y no obstante la referencia estricta del texto legal a los delitos contra las personas no es la alevosia aplicable a la mayoría de ellos, no lo es en el homicidio, pues como su concurrencia lo cualifica lo transforma en delito distinto, en asesinato, ni en el homicidio consentido (art. 409), ni en la riña tumultuaria (art. 408) ni en el infanticidio (art. 410). xxx. [67]

Viada also says that treachery is appreciated in crimes against persons (delitos contra personas) and also in robbery with homicide (robo con homicidio).[68]

“Contra las personas. - Luego la circunstancia de alevosia solo puede apreciarse en los delitos provistos desde el art. 417 al 447, y en algun otro, como el de robo con homicidio, atentado, a la vez que contra la propiedad, contra la persona.”

Thus, treachery is a generic aggravating circumstance to robbery with homicide although said crime is classified as a crime against property and a single and indivisible crime. Treachery is not a qualifying circumstance because as ruled by the Supreme Court of Spain in its decision dated September 11, 1878, the word “homicide” is used in its broadest and most generic sense.[69]

Article 62, paragraph 1 of the Revised Penal Code provides that in diminishing or increasing the penalty for a crime, aggravating circumstances shall be taken into account. However, aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing a penalty therefor shall not be taken into account for the purpose of increasing the penalty.[70] Under paragraph 2 of the law, the same rule shall apply with respect to any aggravating circumstances inherent in the crime to such a degree that it must of necessity accompany the commission thereof.

1. Aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of increasing the penalty.

xxx

2. The same rule shall apply with respect to any aggravating circumstances inherent in the crime to such a degree that it must be of necessity accompany the commission thereof.

Treachery is not an element of robbery with homicide. Neither does it constitute a crime specially punishable by law nor is it included by the law in defining the crime of robbery with homicide and prescribing the penalty therefor. Treachery is likewise not inherent in the crime of robbery with homicide. Hence, treachery should be considered as a generic aggravating circumstance in robbery with homicide for the imposition of the proper penalty for the crime.

In its Sentencia dated March 14, 1877, the Supreme Court of Spain declared that treachery is a generic aggravating circumstance not only in crimes against persons but also in robbery with homicide. The high court of Spain applied Article 79 of the Spanish Penal Code (Article 62 of the Revised Penal Code) and ruled that since

treachery is not a constitutive element of the crime of robbery with homicide nor is it inherent in said crime, without which it cannot be committed, treachery is an aggravating circumstance to said crime. The high court of Spain was not impervious of the fact that robbery with homicide is classified as a crime against property. Indeed, it specifically declared that the classification of robbery with homicide as a crime against property is irrelevant and inconsequential in the application of treachery. It further declared that it would be futile to argue that in crimes against property such as robbery with homicide, treachery would have no application. This is so, the high tribunal ruled, because when robbery is coupled with crimes committed against persons, the crime is not only an assault (ataca) on the property of the victims but also of the victims themselves (ofende):

xxx que la circunstancia agravante de alevosia ni es constitutiva del delito complejo de robo y homicidio, ni de tal modo inherente que sin ella no pueda cometerse, sin que quepa arguir que en los delitos contra la propiedad no debe aquella tener aplicacion, porque cuando estos son complejos de los que se cometen contra las personas, no solo se ataca a la propiedad, sino que se ofende a estas. xxx[71]

In fine, in the application of treachery as a generic aggravating circumstance to robbery with homicide, the law looks at the constituent crime of homicide which is a crime against persons and not at the constituent crime of robbery which is a crime against property. Treachery is applied to the constituent crime of “homicide” and not to the constituent crime of “robbery” of the special complex crime of robbery with homicide.

The crime of robbery with homicide does not lose its classification as a crime against property or as a special complex and single and indivisible crime simply because treachery is appreciated as a generic aggravating circumstance. Treachery merely increases the penalty for the crime conformably with Article 63 of the Revised Penal Code absent any generic mitigating circumstance.

In its Sentencia, dated July 9, 1877, the high tribunal of Spain also ruled that when the victim of robbery is killed with treachery, the said circumstance should be appreciated as a generic aggravating circumstance in robbery with homicide:

xxx que si aparece probado que el procesado y su co-reo convinieron en matar a un conocido suyo, compañero de viaje, para lo cual desviaron cautelosamente los carros que guiaban, en uno de los cuales iba el interfecto, dirigiendolos por otro camino que conducia a un aljibon, y al llegar a este, valiendose de engaño para hacer bajar a dicho interfecto, se lanzaron de improviso sobre el, tirandolo en tierra, robandole el dinero, la manta y los talegos que llevaba, y atandole al pie una piedra de mucho peso, le arrojaron con ella a dicho aljibon, dados estos hechos, no cabe duda que constituyen el delito complejo del art. 516, num. I, con la circunstancia agravante de alevosia, puesto que los medios, forma y modos empleados en la ejecucion del crimen tendieron directa y especialmente a asegurarla sin riesgo para sus autores, procedente de la defensa del ofendido.[72]

In sum then, treachery is a generic aggravating circumstance in robbery with homicide when the victim of homicide is killed by treachery.

On the second issue, we also rule in the affirmative. Article 62, paragraph 4 of the Revised Penal Code which was taken from Article 80 of the *Codigo Penal Reformado de 1870*,[73] provides that circumstances which consist in the material execution of the act, or in the means employed to accomplish it, shall serve to aggravate or mitigate the liability of those persons only who had knowledge of them at the time of the execution of the act or their cooperation therein. The circumstances attending the commission of a crime either relate to the persons participating in the crime or into its manner of execution or to the means employed. The latter has a direct bearing upon the criminal liability of all the accused who have knowledge thereof at the time of the commission of the crime or of their cooperation thereon.[74] Accordingly, the Spanish Supreme Court held in its Sentencia dated December 17, 1875 that where two or more persons perpetrate the crime of robbery with homicide, the generic aggravating circumstance of treachery shall be appreciated against all of the felons who had knowledge of the

manner of the killing of victims of homicide, with the ratiocination that:

xxx si por la Ley basta haberse ejecutado un homicidio simple con motivo ú ocasion del robo para la imposicion de la pena del art. 516, num. I, no puede sere ni aun discutible que, concurriendo la agravante de alevosia, se aumente la criminalidad de los delincuentes; siendo aplicable a todos los autores del hecho indivisible, porque no es circunstancia que afecte a la personalidad del delincuente, de las que habla el art. 80 delCodigo penal en su primera parte, sino que consiste en la ejecucion material del hecho y en los medios empleados para llevarle a cabo, cuando de ellos tuvieron conocimiento todos los participantes en el mismo por el concierto previo y con las condiciones establecidas en la segunda parte del citado articulo.[75]

Be that as it may, treachery cannot be appreciated against Juan and Victor in the case at bar because the same was not alleged in the Information as mandated by Section 8, Rule 110 of the Revised Rules on Criminal Procedures which reads:

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.

Although at the time the crime was committed, generic aggravating circumstance need not be alleged in the Information, however, the general rule had been applied retroactively because if it is more favorable to the accused.[76] Even if treachery is proven but it is not alleged in the information, treachery cannot aggravate the penalty for the crime.

There being no modifying circumstances in the commission of the felony of robbery with homicide, Juan and Victor should each be meted the penalty of reclusion perpetua conformably with Article 63 of the Revised Penal Code.

Civil Liability of Juan and Victor

The trial court awarded the total amount of P300,000.00 to the heirs of SPO1 Manio, Jr. The court did not specify whether the said amounts included civil indemnity for the death of the victim, moral damages and the lost earnings of the victim as a police officer of the PNP. The Court shall thus modify the awards granted by the trial court.

Since the penalty imposed on Juan and Victor is reclusion perpetua, the heirs of the victim are entitled to civil indemnity in the amount of P50,000.00. The heirs are also entitled to moral damages in the amount of P50,000.00, Rosemarie Manio having testified on the factual basis thereof.[77] Considering that treachery aggravated the crime, the heirs are also entitled to exemplary damages in the amount of P25,000.00. This Court held in *People vs. Catubig*[78] that the retroactive application of Section 8, Rule 110 of the Revised Rules of Criminal Procedure should not impair the right of the heirs to exemplary damages which had already accrued when the crime was committed prior to the effectivity of the said rule. Juan and Victor are also jointly and severally liable to the said heirs in the total amount of P30,000.00 as actual damages, the prosecution having adduced evidence receipts for said amounts. The heirs are not entitled to expenses allegedly incurred by them during the wake as such expenses are not supported by receipts.[79] However, in lieu thereof, the heirs are entitled to temperate damages in the amount of P20,000.00.[80] The service firearm of the victim was turned over to the Evidence Custodian of the Caloocan City Police Station per order of the trial court on October 22, 1997.[81] The prosecution failed to adduce documentary evidence to prove the claim of Five Star Bus, Inc. in the amount of P6,000.00. Hence, the award should be deleted. However, in lieu of actual damages, the bus company is entitled to temperate damages in the amount of P3,000.00.[82]

The heirs are likewise entitled to damages for the lost earnings of the victim. The evidence on record shows that SPO1 Manio, Jr. was born on August 25, 1958. He was killed on September 28, 1996 at the age of 38. He had a gross monthly salary as a member of the Philippine National Police of P8,065.00 or a gross annual salary of P96,780.00. Hence, the heirs are entitled to the amount of P1,354,920.00 by way of lost earnings of the victim computed, thus:

Age of the victim = 38 years old

Life expectancy = $\frac{2}{3} \times (80 - \text{age of the victim at the time of death})$

= $\frac{2}{3} \times (80 - 38)$

= $\frac{2}{3} \times 42$

= 28 years

Gross Annual Income = gross monthly income x 12 months

= P8,065.00 x 12

= P96,780.00

Living Expenses = 50% of Gross Annual Income

= P96,780.00 x 0.5

= P48,390.00

Lost Earning Capacity = Life expectancy x [Gross Annual Income - Living expenses]

= 28 x [P96,780.00 - P48,390.00]

= 28 x P48,390.00

= P1,354,920.00

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Bulacan is hereby AFFIRMED with MODIFICATIONS. Accused-appellants Juan Gonzales Escote, Jr. and Victor Acuyan are hereby found guilty beyond reasonable doubt of the felony of robbery with homicide defined in Article 294, paragraph 1 of the Revised Penal Code and, there being no modifying circumstances in the commission of the felony, hereby metes on each of them the penalty of RECLUSION PERPETUA. Said accused-appellants are hereby ordered to pay jointly and severally the heirs of the victim SPO1 Jose C. Manio, Jr. the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, P1,349,920.00 for lost earnings, P30,000.00 as actual damages and P25,000.00 as exemplary damages. The award of P6,000.00 to the Five Star Bus, Inc. is deleted. However, the said corporation is awarded the amount of P3,000.00 as temperate damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Mendoza, Panganiban, Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, and Azcuna, JJ., concur.

Vitug J., please see separate opinion.

Ynares-Santiago, and Sandoval-Gutierrez, JJ., join J. Vitug's separate opinion.

- [1] Penned by Judge Basilio R. Gabo, Jr.
- [2] Exhibit "A."
- [3] Exhibit "H."
- [4] Exhibit "E."
- [5] Exhibits "A" and "G."
- [6] Exhibits "C to C-4."
- [7] Exhibit "B-1."
- [8] Exhibit "H."
- [9] Exhibit "I."
- [10] Exhibit "F."
- [11] Original Records of Crim. Case No. 443-M-97, p. 2.
- [12] Ibid., p. 161.
- [13] Id., p. 163.
- [14] Id., p. 179.
- [15] Id., p. 175.
- [16] Rollo, p. 70.
- [17] Savory Luncheonette vs. Lakas ng Manggagawang Pilipino, 62 SCRA 258 (1975).
- [18] Fulgado, et al. vs. Court of Appeals, et al., 182 SCRA 81 (1990).
- [19] People vs. Suplito, 314 SCRA 493 (1999).
- [20] See note 16, supra.
- [21] People vs. Digno, Jr. 250 SCRA 237 (1995).
- [22] See note 17, supra.
- [23] Original Records, p. 70.
- [24] Ibid., p. 86.
- [25] Id., p. 89.
- [26] Id., p. 92.
- [27] See note 18, supra.
- [28] Original Records , p. 96.
- [29] Ibid., p.107.

- [30] Id., p. 113.
- [31] Id., p. 157.
- [32] Id., p. 172.
- [33] 31 CORPUS JURIS SECUNDUM, § 87, p. 494.
- [34] Original Records, pp. 192-193.
- [35] People vs. Ofido, 342 SCRA 155 (2000).
- [36] TSN, Cacatian, November 18, 1997, pp. 6-7.
- [37] TSN, Digap, March 31, 1998, p. 22.
- [38] Ditche vs. Court of Appeals, et al., 327 SCRA 301 (2000).
- [39] TSN, Cacatian, November 18, 1997, pp. 19-29.
- [40] Exhibit “A.”
- [41] Ibid., pp. 8-9.
- [42] TSN, March 31, 1998, pp. 19-20.
- [43] Exhibit “H.”

[44] 310 SCRA 819 (1999).

- [45] People v. Lubong, 332 SCRA 672 (2000).
- [46] People vs. Nang, 289 SCRA 16 (1998).
- [47] People vs. Ponciano, 204 SCRA 627 (1991).

[48] 89 SCRA 14 (1979).

[49] 99 PHIL. 992 (1956).

- [50] People vs. Cando, 344 SCRA 330 (2000).
- [51] Original Records, pp. 194-195.
- [52] People vs. Reyes, 287 SCRA 229 (1998).
- [53] People vs. Bustos, 171 SCRA 243 (1989).
- [54] e.g. People vs. Semañada, 103 Phil 790 (1958); People vs. Bautista, et al., 107 Phil 1091 (1960); People vs. Tiongson, et al., 6 SCRA 431 (1962); People vs. Pedro, et al., 16 SCRA 57 (1966); People vs. Sigayan, et al., 16 SCRA 839 (1966); People vs. Pujinio, et al., 27 SCRA 1185 (1969); People vs. Saquing, et al., 30 SCRA 834 (1969); People vs. Cornelio, et al., 39 SCRA 435 (1971); People vs. Repato, 91 SCRA 488 (1979); People vs. Pajanustan, 97 SCRA 699 (1980); People vs. Arcamo, et al., 105 SCRA 707 (1981); People vs. Tintero, 111 SCRA 714 (1982); People vs. Gapasin, et al., 145 SCRA 178 (1986); People vs. Badilla, 185 SCRA 554 (1990); People vs. Manansala, 211 SCRA 66 (1992); People vs. Bechayda, 212 SCRA 336 (1992); People vs. Vivas, 232 SCRA 238 (1994); People vs. Pacapac, et al., 248 SCRA 77 (1995); People vs. Mores, et al., 311 SCRA 342 (1999); People vs. Reyes, et al., 309 SCRA 622 (1999); and People vs. Abdul, et al., 310 SCRA 246 (1999).

[55] Sentencia de 17 de Diciembre de 1875 of the Supreme Court of Spain. In several cases, this Court held that robbery with homicide is a special complex crime, e.g., *People vs. Jarandilla*, 339 SCRA 381(2000); *People vs. Quibido*, 338 SCRA 607 (2000); *People vs. Aquino*, 329 SCRA 247 (2000); *People vs. Zuela, et al.*, 323 SCRA 589 (2000); *People vs. Taño*, 331 SCRA 449 (2000). In some cases, this Court has held that robbery with homicide is a single and indivisible crime, e.g., *People vs. Labita*, 99 Phil. 1068 (unreported [1956]); *People vs. Alfeche, Jr.*, 211 SCRA 770 (1992).

[56] *People vs. Timple*, 237 SCRA 52 (1994); *People vs. San Pedro*, 95 SCRA 306 (1980).

[57] *People vs. Loseo*, G.R. No. 5508-09, April 29, 1954 (unpublished). Under Republic Act 8383, rape is a crime against persons.

[58] *People vs. Navales*, 266 SCRA 569 (1997).

[59] 344 SCRA 330 (2000).

[60] 341 SCRA 600 (2000).

[61] AQUINO, THE REVISED PENAL CODE, 1987 ed., Vol. I, p. 386.

[62] REYES, THE REVISED PENAL CODE, 1993 ed., Vol. I, p. 412.

[63] REGALADO, CRIMINAL LAW CONSPECTUS, 1[st] ed., p. 95.

[64] 68 Phil. 675 (1939)..

[65] *People vs. Mangulaban*, 99 Phil. 992 (1956); *People vs. Mesias*, 65 Phil. 267 (1939); *Marasigan vs. Robles*, 55 O.G. 8297; *United States vs. Samonte*, L-3422, August 3, 1907; *United States vs. Ipil, et al.*, 27 Phil 530 (1914), concurring opinion: *United States vs. Landasan*, 35 Phil 359 (1916).

[66] CUELLO CALON DERECHO PENAL, 1960 ed., Vol. I, p. 592.

[67] Decisions dated January 19, 1905, April 18, 1908, June 28, 1922 and December 18, 1947.

[68] SALVADOR VIADA CODIGO PENAL REFORMADO DE 1870, Concordado y Comentado 5[th] ed. 1926, Tomo II, p. 252. Articles 417 to 447 refer to crimes against persons under the *Codigo Penal Reformado de 1870*. In Article 516, Title XIII, Chapter 1 of the *Codigo Penal Reformado de 1870*, robbery with homicide is a crime against property.

[69] Cited in *United States vs. Landasan*, 35 Phil 359 (1916).

[70] Article 62, paragraphs 1 and 2 were taken from Article 79 of the Penal Code of Spain, viz:

No producen el efecto de aumentar la pena las circunstancias agravantes que por si mismas constituyeren un delito especialmente penado por la Ley, o que esta haya expresado al describirlo y penarlo.

Tampoco lo producen aquellas circunstancias agravantes de tal manera inherentes al delito, que sin la concurrencia de ellas no pudiera cometerse. xxx.

[71] Vide, Note 63, p. 254.

[72] Ibid., p. 255.

[73] Las circunstancias agravantes o atenuantes que consistieren en la disposicion moral del delincuente, en sus relaciones particulares con el ofendido, o en otra causa personal, serviran para agravar o atenuar la

responsabilidad solo de aquellos autores, complices o encubridores en quienes concurrieren.

Las que consistieren en la ejecucion material del hecho o en los medios empleados para realizarlo serviran para agravar o atenuar la responsabilidad unicamente de los que tuvieren conocimiento de ellas en el momento de la accion o de su cooperacion para el delito. xxx

[74] United States vs. Ancheta, 15 Phil 43 (1910).

[75] Ibid.

[76] People vs. Onabia, 306 SCRA 23 (1999).

[77] People vs. Taño, 331 SCRA 449 (2000).

[78] 363 SCRA 621 (2000).

[79] People vs. Cordero, 263 SCRA 122 (1996).

[80] Article 2234, New Civil Code.

[81] Original Record, p. 82.

[82] See note 79.

SEPARATE OPINION

VITUG, J.:

Should an attendant aggravating circumstance of treachery, exclusive to crimes against persons, be appreciated in the special complex crime of robbery with homicide which Article 294 of the Revised Penal Code categorizes as a crime against property? I humbly submit that it should not be appreciated.

A brief background. At past midnight on 28 September 1996, a Five Star passenger bus with plate No. ABS-793, bound for Bolinao from Manila, stopped at the Balintawak junction to pick up some passengers. Six passengers, among them victor Acuyan and Juan Gonzales Escote, boarded the bus. Escote seated himself on the third seat near the aisle while Acuyan took the mid-portion of the vehicle beside the bus conductor.

Along the highway in Plaridel, Bulacan, passengers Escote and Acuyan suddenly stood up, took their positions and declared a holdup. Escote fired his gun upwards, jolting to consciousness the sleepy and dozing passengers. The duo promptly divested the passengers of their valuables. The bus conductor, Romulo Digap, was dispossessed of the fares he earlier collected from the passengers. When the two repaired to the rear end of the bus, they came upon SPO1 Jose C. Manio, a passenger on his way to Angeles City. The felons demanded that Manio show them his identification card and wallet. Manio took out his identification card and his service gun. At this point, the duo told the hapless law officer: “Pasensya ka na pare, papatayin ka namin, baril mo rin ang papatay sa iyo.” Ignoring his pleas for mercy, the robbers mercilessly and repeatedly shot Manio to death. The two then proceeded to the driver’s seat. Rodolfo Caciatan, the driver, overheard one of the felons boast: “Ganyan lang ang pumatay ng tao. Parang pumapatay ng manok.” The other said: “Ayos na naman tayo pare. Malaki-laki ito.” After warning Caciatan not to report the incident to the authorities, the two alighted at an overpass in Mexico, Pampanga. The bus driver and the bus conductor reported the incident to the police authorities in Dau, Mabalacat, Pampanga. The lifeless body of SPO1 Manio, Jr., was brought to a nearby funeral parlor where Dr. Alejandro D. Tolentino performed an autopsy.

Less than a month later, on 25 October 1996, about midnight, SPO3 Romeo Meneses, the team leader of Alert

Team No. 1 of the Tarlac Police Station, and SPO3 Florante S. Ferrer were at a checkpoint along the Tarlac national highway. The police officers were diverting the traffic flow to the Sta. Rosa Road because of the temporary closure of the Bambang-Concepcion bridge to motorists. Meneses stopped the driver of a white-colored taxicab without any plate number. The driver turned out to be Juan Gonzales Escote, Jr. Escote introduced himself to be a police officer. When asked to present his identification card, Escote at once produced the card issued to and in the name of SPO1 Manio. Meneses became suspicious after noticing that the card had already expired. When asked to produce a new pay slip, Escote was not able to show any. Amidst intensive probing, Escote finally confessed that he was not a policeman. Meneses forthwith brought Escote to the police station where five live bullets of a 9-millimeter firearm were confiscated from him. Escote owned responsibility for the highway robbery committed aboard the Five Star passenger bus and for the death of SPO1 Manio, Jr. Escote was turned over to the custody of the Plaridel Police Station where the bus conductor, Romulo Digap, later identified Escote as having been one of the two robbers. A further investigation on the case led to the arrest of Victor Acuyan in Laoang, Northern Samar.

On 04 April 1997, an Information for robbery with homicide was filed before the Regional Trial Court of Bulacan against Juan Gonzales Escote and Victor O. Acuyan. When arraigned, Escote and Acuyan entered a plea of not guilty. The trial ensued. After the prosecution had rested its case, Escote escaped from the provincial jail. Only Acuyan was able to adduce evidence in his defense. Acuyan denied the charge and interposed the defense of alibi. At the time of the robbery, he claimed, he was in Laoang, Samar, for the town fiesta and had a drinking spree with friends, after which they attended a public dance that lasted until dawn of the next day. He denied having met Juan Escote before. On 14 January 1999, Juan Escote was re-arrested in Daet, Camarines Norte, but he chose not to adduce any evidence in his behalf.

The trial court found Juan Escote and Victor Acuyan guilty beyond reasonable doubt of the crime of robbery with homicide and meted upon each of them the penalty of death. In imposing the penalty of death upon appellants, the trial court considered treachery as an aggravating circumstance as to justify its imposition of the maximum penalty of death. The ponencia, while finding that treachery could not be appreciated for not having been aptly alleged in the information, expressed in an obiter, however, that had it been otherwise, i.e., that had treachery been properly alleged, this circumstance could have aggravated the crime.

It is on the last pronouncement that I beg to differ.

Unlike ordinary complex crimes, robbery with homicide, defined by Article 294 of the Revised Penal Code, is a special complex crime against property, explicitly carrying a corresponding penalty of reclusion perpetua to death.

In an ordinary complex crime, Article 48 of the Revised Penal Code expresses that “the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.” Article 48 means then that in the imposition of the penalty for such an ordinary complex crime, i.e., where no specific penalty is prescribed for the complex crime itself, the composite offenses and their respective penalties are individually factored, and it is possible, indeed warranted, that any aggravating circumstance, generic or qualified, even if it be peculiar to only one of the constituent crimes, can and should be logically considered in order to determine which of the composite crimes is the “most serious crime,” the penalty for which shall then “be applied in its maximum period.” The rule evidently is not in square with a special complex crime, like robbery with homicide, where the law effectively treats the offense as an individual felony in itself and then prescribes a specific penalty therefore. Article 294 is explicit, and it provides-

“Art. 294. Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

“(1) The penalty of reclusion perpetua to death, when by reason or on the occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.”

There being just an independent prescribed penalty for the offense, any circumstance that can aggravate that penalty should be germane and generic not to one but to both of the constituent offenses that comprise the elements of the crime.[1] The suggestion that treachery could be appreciated “only insofar” as the killing is concerned would unavoidably be to consider and hold robbery and homicide as being separately penalized and to thus discount its classification under Article 294 of the Code as a distinct crime itself with a distinct penalty prescribed therefor. Most importantly, such interpretation would be to treat the special complex crime of robbery with homicide no differently from ordinary complex crimes defined under Article 48, where the composite crimes are separately regarded and weighed in the ultimate imposition of the penalty. If such were intended, the law could have easily so provided, with the penalty for the higher of the two offenses to be then accordingly imposed on the malefactor. In prescribing, however, the penalty of reclusion perpetua to death, where homicide results by reason or on occasion of the robbery, the law has virtually taken into account the particularly “nefarious” nature of the crime, where human life is taken, howsoever committed, to pursue the criminal intent to gain with the use of violence against or intimidation of any person.

Distinct penalties prescribed by law in special complex crimes is in recognition of the primacy given to criminal intent over the overt acts that are done to achieve that intent. This conclusion is made implicit in various provisions of the Revised Penal Code. Thus, practically all of the justifying circumstances, as well as the exempting circumstances of accident (paragraph 4, Article 12) and lawful or insuperable cause (paragraph 7, Article 12), are based on the lack of criminal intent.[2] In felonies committed by means of *dolo*, as opposed to those committed by means of *culpa* (including offenses punished under special laws), criminal intent is primordial and overt acts are considered basically as being mere manifestations of criminal intent. Paragraph 2, Article 4, of the Revised Penal Code places emphasis on “intent” over effect, as it assigns criminal liability to one who has committed an “impossible crime,” said person having intended and pursued such intent to commit a felony although, technically, no crime has actually been committed. Article 134 of the same Code, penalizing the crime of rebellion, imposes a distinct penalty, the rebel being moved by a single intent which is to overthrow the existing government, and ignores individual acts committed in the furtherance of such intent.

If a circumstance, peculiar to only one of the composite crimes, could at all be allowed to aggravate the penalty in robbery with homicide, it should be with respect to the main offense of robbery, the intent to gain being the moving force that impels the malefactor to commit the crime. The attendant offense of homicide cannot be further modified, “homicide” this time being so understood, as it should be, in its generic sense, comprehending even murder or parricide, when committed “by reason or on the occasion of the robbery.” The generic character of “homicide” in this special complex crime, has been exemplified, for instance, in *People vs. Mangulabnan*,[3] where the court has held that, “[i]n 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 and it is immaterial that the death would supervene by mere accident provided that the homicide be produced by reason or 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.”[4]

If the term “homicide” were not to be understood in its generic sense, an aggravating circumstance, such as evident premeditation or treachery, would qualify the killing into murder. Two separate crimes of robbery and homicide inevitably would result that effectively would place the two felonies outside the coverage of Article 294. And, as to whether or not those crimes should be complexed with each other would depend on the attendance of the requisites enumerated in Article 48 for ordinary complex crimes, i.e., a) that a single act constitute two or

more grave or less grave felonies or, b) that an offense is a necessary means for committing the other.

It is on the foregoing predicate, I am convinced, that this Court in *People vs. Timple*[5] has rejected the idea of appreciating treachery as being an aggravating circumstance in the crime of robbery with homicide, an offense, I might repeat, is by law classified as a crime against property. I certainly will not view the ruling as having been made in any cavalier fashion and with little or no effort for an introspective ratiocination. *Timple* has, in fact, been stressed in *People vs. Arizobal*:[6] viz:

“But treachery was incorrectly considered by the trial court. The accused stand charged with, tried and convicted of robbery with homicide. This special complex crime is primarily classified in this jurisdiction as a crime against property, and not against persons, homicide being merely an incident of robbery with the latter being the main purpose and object of the criminals. As such, treachery cannot be validly appreciated as an aggravating circumstance under Art. 14 of The Revised Penal Code. (*People v. Bariquit*, G.R. No. 122733, 2 October 2000, 341 SCRA 600.) This is completely a reversal of the previous jurisprudence on the matter decided in a litany of cases before *People v. Bariquit*.”[7]

[1] Parenthetically, almost all of the aggravating circumstances enumerated in Article 14 of the Revised Penal Code are generic, with few exceptions as so exemplified by Mr. Justice Florenz B. Regalado in his book, “*Criminal Law Conspectus*,” (First Edition, 2000, p. 73) like cruelty and treachery being exclusive to crimes against persons, person in authority in physical injuries, unlicensed firearms in robbery in band, and abuse of authority or confidential relations by guardians or curators in seduction, rape, acts of lasciviousness, white slavery and corruption of minors. The mitigating circumstances enumerated in Article 13 of the Revised Penal Code, however, are generic to both crimes against property and persons and their applicability to even the special complex crime of robbery with homicide would be without question.

[2] Regalado, *Ibid.*, p. 14.

[3] 99 Phil 992

[4] At p. 993; see also *People vs. Ombao*, (103 SCRA 233) where an accused was held liable for the crime of robbery with homicide even though it could not be ascertained whether the shots which killed the victim were fired by the malefactors or by the pursuing constabulary troopers.

[5] 237 SCRA 52.

[6] 348 SCRA 143.

[7] At p. 153.

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