

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MACARIO SERA JOSEP, DEFENDANT AND APPELLANT.

G.R. No. 28985. October 18, 1928

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The information which originated this criminal proceeding is as follows:

"That on or about the 21st and 22nd days of November, 1927, in the City of Manila, Philippine Islands, the said accused entered the store of Reyes Brothers Optical Company, located at No. 524 Rizal Avenue of said city, an inhabited place, by taking advantage of his friendship had with one Zacarias Lapuz y Nerit who was then an employee and living as watchman in said store, and by falsely pretending that he could not find a place where to lodge on the night of November 21, 1927; that once inside the store, with intent of gain and by means of violence used upon the person of said Zacarias Lapuz y Nerit, that is, by striking him on the head with the handle of an iron grinder and stabbing him with a knife or sharp pointed instrument in different vital parts of the body of said Zacarias Lapuz y Nerit who was then sleeping at the time, wilfully, unlawfully, and feloniously stole, seized, and carried away with him the following personal properties belonging to the Reyes Brothers Optical Company, to wit:

Twenty-five complete 'Windsor Zyloptip Temples' with assorted lenses, at P20 each

P500.00

Twenty complete gold-filled spectacles, assorted lenses and temples, frames are of different sizes, at P20 each

P400.00

One complete trial case containing 48 assorted lenses of different grades with trial frames (grades from 12 to 800), valued

P200.00

Twenty-five complete 'Windsor Zyloptip Temples' assorted colored lenses, frames are of different sizes at P20 each

P500.00

Ten complete 'Fits U' gold-filled frames assorted lenses, at P10 each

200.00

(must be P100.00)

One leather traveling handbag (medicine handbag), Riu Hermanos make, very new, tan color, valued 28.00

in the total sum of one thousand eight hundred twenty-eight pesos (P1,828) to the damage and prejudice of the owners thereof in the said sum, equivalent to and of the value of 9,140 pesetas, Philippine currency; that as a consequence of the violence used by the said accused upon the said Zacarias Lapuz y Nerit, the latter received three lacerated wounds; two at the scalp and one at the region of the right ear; multiple stab wounds penetrating the face, scalp, abdomen and scrotum; fractures of the skull and of the bone of the right middle finger, causing concussion of the brain and profuse hemorrhages all of which produced the instantaneous death of said Zacarias Lapuz y Nerit.

"That in the commission of the above-described crime, the following aggravating circumstances were present, to wit: treachery (alevosia), as the victim was attacked while he was asleep, nighttime was specially sought for by the said accused; abuse of confidence, as the accused took advantage of the confidence reposed in him by the victim; and that the offender had been previously convicted once for the crime of estafa.

"Contrary to law." [Parenthesis ours (must be P100.00).]

The facts alleged in this information have been fully proven. The defendant admits them by pleading guilty, substantially admitted them orally to detective Eugenio Dizon, and again admitted them spontaneously and in detail in the document Exhibit K, written and signed by himself on the afternoon of November 23, 1927, and in the statement, Exhibit L, made and signed by him on the night of the same date.

In addition to such confession and admissions made by the accused, facts were proven at the trial which corroborate his statements in every respect, leaving no room for doubt that he committed the criminal act described in the information.

Considering the crime of robbery with homicide, penalized by article 503, paragraph 1, of the Penal Code, was proven and finding the defendant criminally liable therefor, and that the aggravating circumstances of treachery, nocturnity and abuse of confidence were present, not mitigated by any extenuating circumstance, the Court of First Instance of Manila that tried the case, sentenced the accused to the death penalty, ordering, in view of the penalty imposed, that the case be brought up to this court for review.

Counsel for the defense does not deny either the existence of the crime or the guilt of the defendant, but raises several questions relative to nocturnity as an aggravating circumstance, and to the lack of instruction and education of the accused, his state of mind in committing the crime, and the fact that at that time he was only 19 years 6 months of age, as extenuating circumstances.

With respect to nocturnity, we accept as correct the observations made by the Attorney-General in his brief. It matters not that in the instant case treachery undoubtedly exists and was taken into consideration as an aggravating circumstance. This does not prevent nocturnity also from being taken into account so long as it clearly may be inferred from the proceedings that the accused took advantage of the nighttime to commit the crime more easily, and for the time, with greater impunity. Treachery is a circumstance distinct from nocturnity. One may exist without the other.

It is true that, that when nocturnity, rather than being an isolated circumstance, is, as stated in a decision on a writ of error of December 29, 1884 "a particular manner or form of assuring its execution, in this case constituting an incident absolutely inseparable from treachery," it should not be considered separate from the latter, as it was not done in the case of *United States vs. Salgado* (11 Phil., 56); nevertheless, when, as in the case at bar, it is not

inherent or inseparable there can be no sufficient reason for not considering, both circumstances, that is, treachery and nocturnity present, separately and independently of each other.

Therefore, there were present in the commission of the crime in question the aggravating circumstances of treachery, nocturnity, abuse of confidence, as well as the recidivism alleged and proven. With respect to the last named circumstance, the doctrine cited by the defense in the first instance, taken from Viada (vol. 1, 4th edition, p. 311), is not applicable. That doctrine refers to a murder and the former crime was one against property and not directly against persons, while in the case now before us the crime is robbery with homicide (against property and against persons) and the former crime was estafa, also against property, both included in the same title of the Code.

With respect to the lack of instruction and education, it should not be forgotten, in the first place, that the lower court rather than this one, is called upon in each case to determine whether or not such circumstance may be considered as modifying the defendant's guilt, for the reason that, as held in the case of *United States vs. Estorico* (35 Phil., 410), "as a general rule, the trial court can determine the application of article 11 with better results than we can. He has before him the accused; he is able to estimate his grade of intelligence, the instruction and opportunities he has had; he observes his appearance and demeanor and judges his tendencies and character."

In the second place, it is true that the data supplied by Dr. Angeles on this point are of record. Among statements made by this physician in his testimony during the trial of the case, we find the following, which, to our mind, summarize the opinion which he formed of the defendant's degree of instruction and education:

"Q. But in the present case, doctor, you recognize that we are dealing with an ignorant person?—A. In a relative sense, yes, sir. That is to say, he can write, he understands English, and can engage in business.

"Q. But in the moral sense?—A. In the moral sense, and with reference to such knowledge as I possess, it might be said that he lacks morality.

"Q. You believe that this individual's faculties to discern the difference between right and wrong are well developed?—A. Yes, sir; within his sphere of action and his sphere of knowledge as a normal person.

"Q. So, you do not find in him anything but ignorance?—A. Relative ignorance, but above all he lacks morality."

These conclusions do not warrant the application of article 11 of the Penal Code as amended by Act No. 2142, in favor of the accused. The trial court did not consider them in this sense, and we find no sufficient reason for doing so.

With regard to the accused's age at the time of committing the crime, that is, 19 years and 6 months, it is true that according to the Civil Code, he was not yet fully capacitated to exercise his civil rights, being still a minor. But it should be remembered that the degree of discernment necessary to render a person accountable for his criminal acts, is not the same as that required for the full exercise of his civil rights. And within the sphere of criminal law, there are degrees of culpability correlative to the individual's age. It is true that, just as it is obvious that the reason for such degrees of guilt by age is based on the graduation of discernment, just so is it difficult for the lawmaker to fix the limits of such degrees; however, it is not incumbent upon us to decide these legislative questions. Our function is to apply the law, the established law as it is, and the positive criminal law demands full responsibility from such as the defendant, who has already completed his eighteenth year. We have no power to take into account as an extenuating circumstance the fact that the accused was 19 years and 6 months old when the crime was committed. Neither can we consider it under the eighth circumstance of article 9 of the Penal Code, as equal, or similar in nature to the preceding ones of said article. Rather than equality or analogy in nature, there is

graduation, and graduation prescribed by the law. To consider the age of the accused as an extenuating circumstance would be equivalent to amending the age limit fixed in the second circumstance of article 9 of said Code.

Counsel for the defense also invoices the mental state of the accused on the occasion in question as an extenuating circumstance. In need of money, he appealed in vain to his relatives and friends, and believed himself abandoned, which, to use the language of counsel, "so sunk him into despair that, stifling the dictate of his conscience, it drove him to commit this most serious crime." Such despair, however, supposing it was present in the degree represented by the defense, and which does not appear from the evidence, cannot be considered such a powerful stimulus as to naturally produce passion and obfuscation. It appears that from the afternoon in which he conceived the sinister idea of killing and robbing, he had been cherishing it and concealing it from Zacarias Lapuz, his victim, whom he accompanied to the Far Eastern College at about 6 o'clock that afternoon. He waited for Lapuz until the latter left that college, accompanied him to the building where the crime was perpetrated, and thence to a restaurant where they ate, both returning later to the building where, when Lapuz had gone to sleep, the defendant wrote on a typewriter, seated himself in a swivel-chair and fell asleep until about midnight; when he awoke, he thought of what he intended to do, and later carried it out. Such composure, revealing a certain degree of calmness, is incompatible with that desperation that so powerfully perturbs the mind as to produce passion and obfuscation. Nevertheless, Associate Justices Malcolm and Villa-Real are of opinion that such mental state may be considered in favor of the accused, together with his youth and lack of moral sense, as favorable circumstances to the accused, and that, therefore, the death penalty should not be imposed upon him.

For this reason, the unanimity required by law for the imposition of the death penalty being lacking, the judgment appealed from must be, as it is hereby, modified, and the accused is sentenced to life imprisonment, with the corresponding accessories of law provided by article 54 of the Penal Code, it being understood that, under the provisions contained in the last paragraph of said article, even if the accused be pardoned of the principal penalty, he shall suffer perpetual absolute disqualification and subject to the surveillance of the authorities during his lifetime, unless these accessory penalties shall have been expressly remitted in the pardon of the principal penalty.

The judgment of the trial court is affirmed in other respects with the costs against the accused. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, and Villa-Real, JJ., concur.

DISSENTING

JOHNSON, J.:

I agree with the statement made by Mr. Justice Ostrand in his dissenting opinion, together with the further observation that the circumstance of *arrebato y obcecacion* should not have been considered as an attenuating circumstance in favor of the appellant. The facts of record, in my opinion, do not justify a consideration of those conditions as an attenuating circumstance.

I fully agree with the recommendation of the Attorney-General.

DISSENTING

OSTRAND, J.:

I think the sentence of the trial court should have been affirmed and, therefore, dissent. Judging from his acts in the commission of the crime, the defendant has reached the extreme limit of depravity and richly deserves the death penalty. I can see no valid reason for extending special mercy to an incurable degenerate who during his lifetime will never cease to be a menace to society.

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