

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ANSELMO BALAGTAS Y MANLAPAS ET AL., DEFENDANTS. ALFONSO
GUMARANG, DEFENDANT AND APPELLANT.**

G.R. No. 46413. October 05, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the accused Alfonso Gumarang from the judgment rendered by the Court of First Instance of Manila, finding him confessedly guilty of the complex crime of robbery with homicide, as principal by direct participation, and sentencing him, in view of the aggravating circumstances of treachery and use of a motor vehicle compensated by the mitigating circumstance of voluntary confession of guilt, to suffer the penalty of reclusion perpetua, with the accessory penalties provided for by law, to indemnify jointly with his coaccused Anselmo Balagtas y Manlapas (alias Anselmo Baltazar), and Martin Ganseco, the heirs of the deceased William Stephen Gibbons in the sum of P2,055.55 and to pay each one-third of the costs, by virtue of the information filed by the fiscal, which reads as follows:

"That on or about the 10th day of August, 1938, in the City of Manila, Philippines, the said accused Anselmo Balagtas y Manlapas (alias Anselmo Baltazar), Alfonso Gumarang y Martinez and Martin Ganseco, taking advantage of nighttime expressly sought by them to accomplish better their deed, conspiring together and helping one another, did then and there willfully, unlawfully and feloniously, by the use of force and violence upon one William Stephen Gibbons, in the following manner, to wit: suddenly hitting him in the head several times from behind with a heavy quadrangular piece of wood two feet long while he was unaware and without giving him a chance to defend himself, thus fracturing his skull and causing him other severe physical injuries which were the direct and immediate cause of his death two days later, take, steal and carry away, with intent to gain the following personal property belonging to the said William Stephen Gibbons: P0.03 in cash, a package of Piedmont cigarettes valued at P0.10, and a bundle of clothes valued at P6, to the damage and prejudice of the heirs of said William Stephen Gibbons in the total sum of P6.15, Philippine currency.

"Contrary to law,"

The only question to be decided in this appeal is whether or not the penalty of reclusion perpetua imposed upon the accused-appellant Alfonso Gumarang is in accordance with law.

When Alfonso Gumarang pleaded guilty to the crime with which he is charged in the information, he admitted all the facts alleged therein, among them that of having purposely taken advantage of nighttime to better realize their crime; that of having conspired with his coaccused and of having helped one another to assault, as they in fact assaulted, William Stephen Gibbons, suddenly hitting him in the head several times from behind with a heavy quadrangular piece of wood two feet long while he was completely unaware, causing him wounds which produced his death two days later (U. S. vs. Santiago, 35 Phil., 20; People vs. Dungka y Santa Maria, 35 Off. Gaz., 2427; People vs. De Jesus y Javier, 35 Off. Gaz., 205).

Therefore, in the commission of the complex crime of robbery with homicide alleged in the information and admitted by the accused-appellant, there were present the qualifying circumstance of evident premeditation consisting in his having conspired with his two above-named co-accused in order to assault and rob William Stephen Gibbons ; the aggravating circumstance of nighttime for having purposely sought nighttime in order to insure the commission of the crime they intended to commit and to facilitate their impunity (art. 14, subsec. 6, Revised Penal Code); that of treachery constituted by the suddenness of the aggression committed from behind (art. 14, subsec. 16, Revised Penal Code). Nighttime cannot in the present case be considered as an aggravating circumstance separate and independent of that of treachery and abuse of superior strength, because had it not been at night, the herein accused-appellant, with his coaccused, would not have been able to approach the deceased without the latter's becoming aware of his presence and guessing his intention. If they were able to catch sailor Gibbons completely unaware, it was due to the darkness of the night which covered them.

The generic aggravating circumstance of treachery being compensated by the mitigating circumstance of voluntary confession of guilt, there no longer remains any circumstance modifying criminal liability to appreciate, and therefore, the lower penalty of that of reclusion perpetua to death prescribed by article 294, subsection 1, of the Revised Penal Code, is the one that should be imposed, the penalty being composed of two indivisible ones (art. 65, subsec. 2, Revised Penal Code).

By virtue of the foregoing considerations, and not finding any error in the appealed judgment, the same is hereby affirmed in toto, with one half of the costs to the appellant. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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