

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO NISMAL Y EUPALAO, DEFENDANT-APPELLANT.

G.R. No. 51257. June 25, 1982

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Automatic review of the judgment of conviction and imposition of the death penalty on accused Romeo Nismal y Eupalao by the Circuit Criminal Court, Seventh Judicial District for the crime of robbery with homicide.

To be noted at the outset is that accused, when arraigned, with the assistance of two counsel de oficio Attorneys Luisito C. Sardillo and Jose Galvan, entered a plea of guilty to the following information:

"That on or about the 15th day of December 1975, in Quezon City, Philippines, the above-named accused, being then security guard assigned with the Republic Bank, UP Compound, Diliman, this City, at night time purposely sought to facilitate the commission of the crime, did, then and there, by means of violence and intimidation against person of one JOSE TEEHANKEE, JR., Manager-Cashier of the said Republic Bank, wilfully, unlawfully and feloniously, with intent of gain, take, rob and carry away the amount of P65,000.00 in paper bills, belonging to the Republic Bank and the said accused to further facilitate the commission of the crime and in disregard of the respect due the offended party on account of his rank and age with intent to kill qualified by treachery and evident premeditation, attack, assault and employ personal violence upon the person of said JOSE TEEHANKEE, JR., by then and there stabbing the latter several times on the different parts of his body, thereby inflicting upon him serious and mortal stab wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said TEEHANKEE, JR., in such amount as maybe awarded under the provisions of existing laws.

"Contrary to law." (Page 10, Record.)

Again worthy of immediate consideration is that after the prosecution presented no less than ten witnesses, the accused opted not to present evidence, much less to testify on his own behalf, if only to explain the apparent discrepancies between his written confession, Exhibit C, and his admission made to the NBI polygraph examiner, Exhibit D.

In his brief, counsel for accused faults the trial court with having based its finding of guilt on what he claims to have been made an improvident plea of guilty of the accused and secondly, with not having him found guilty of two separate crimes of theft and homicide, instead of the complex offense of robbery with homicide under Article 294 (1) of the Revised Penal Code.

The claim of improvident plea has absolutely no basis.

As a rule, this Court has set aside convictions based on pleas of guilty in capital offenses because of improvidence of the plea only when such plea is the sole basis of the judgment of the condemnatory judgment. When, as in this case, the trial court in obedience to this Court's injunction in *Apduhan*[1] and similar cases, receives evidence to determine precisely whether or not the accused has erred in admitting guilt, the manner in which the plea of guilty is made loses legal significance, for the simple reason that the conviction is, as in this case, predicated not on the plea but on the evidence proving the commission by the accused of the offense charged. In the instant case, ten witnesses testified for the prosecution, all of them cross-examined by the defense counsel. More than that, the

accused submitted the case without presenting any evidence. He did not dare to testify to deny the inculpatory testimonies and documents and real evidence presented against him. Verily, under these circumstances, to insist on the invalidity of the plea of the accused can serve no more effect than to deprive the accused of the credit of the mitigating circumstance that such plea connotes.

II

Anent the argument of the accused that he should have been convicted of two crimes, homicide and theft instead of robbery with homicide, it is readily implicit that he admits not only that he did brutally kill the victim, Mr. Jose Teehankee, Jr., but that he took away money belonging to the Republic Bank. And now he insists that he did not rob and kill but killed and stole.

In this connection, it must be borne in mind that the only evidence on which accused bases his theory of two separate offenses is nothing more than the self-extenuating circumstance he inserted in his confession that after Mr. Teehankee had opened the vault, he took hold of a big bundle of money and threw it at the accused, and it was because he felt insulted by such act of Mr. Teehankee that he stabbed him several times with a kitchen knife he kept hidden in his uniform, he smashed Mr. Teehankee's head with an adding machine and pounded him with an electric fan; and after perpetrating such inhuman acts, he left but not without taking away with him money of the bank, placing them in a box. One has to be very naive to believe such a version. As very well discussed in the People's brief:

"Appellant's claim is devoid of merit.

"In the first place, the incidents and circumstances that surrounded and unfolded before the discovery of the crime demonstrate unerringly and inexorably that appellant remained inside the bank that late afternoon of December 15, 1975 no longer as a security guard to secure the building and properties of said bank but precisely to rob the bank of its cash deposits and proceeds which he had planned days before.

"Consider that at that late afternoon, appellant was armed with a kitchen knife about 4-1/2 inches long, concealed in his jacket which was hang on a panel behind one of the doors inside the bank. It was rather unusual for a security guard to be armed with an additional dangerous knife, besides his service firearm, since the bank is located inside the UP Compound, populated by students, faculty members and the latter's families. The UP Compound is well secured by the UP Security Force. As a matter of fact, the bank is closed at 5:00 o'clock in the afternoon of each working day, because there are guards from the UP Security Force inside the UP Compound that secure the place during the night (pp. 25-26, *tsn*, Sept. 22, 1977). As a security guard, the accused had the place already cased, knowing that the manager-cashier of the bank often left the bank when everyone else had already gone home after closing time in the afternoon of each working day. The conclusion is, therefore, inescapable that when he brought the kitchen knife to the bank on that day, he had already planned to rob the bank and kill its manager-cashier on the same occasion.

"Other pieces of evidence point to the same conclusion. There was that telephone call of Miss Chee Teehankee to her father wherein she noticed that, from his unusual voice, something wrong and dreadful was about to happen to her father inside the bank that evening. Also, in his written confession, appellant made some declarations which revealed the state of fear on the part of the victim, Mr. Teehankee, and the aggressive and felonious actuations on his (appellant's) part, just before he proceeded to stab his victim to death. Earlier, we have discussed the nature and number of the stab wounds and blunt injuries sustained by the victim, and the disarray of the equipment and other things inside the bank, which led the police investigators to believe that the place was ransacked, showing that the victim put up a desperate struggle to save his life. And there is also the neat arrangement and sequence of the bundles of money later recovered by the police investigators from the house of the appellant's sister.

"Indeed, appellant's written confession (Exhibit 'C') and his admission to the NBI polygraph examiner as narrated by the latter in his polygraph report (Exhibit 'M') and in his testimony in court (pp. 54-55, tsn, Sept. 22, 1977), and, as corroborated in the main by the reports and the testimonies of the other police investigators and prosecutions witnesses, clearly and convincingly demonstrate that appellant, with evident premeditation and through treachery, stabbed to death the bank's manager-cashier and thereafter divested or robbed the bank of its cash deposits and proceeds, as graphically presented in this brief. Such version as to what actually happened inside the bank is the only natural and logical conclusion as firmly and clearly supported by the factual circumstances, which are evident from the credible evidence on record, and which are in accordance with common experience, human nature and the natural sequence of things.

"But, in confessing to the commission of the crime, appellant still had to make false allegations of circumstances and reasons which had no other purpose but to lessen the degree of his culpability and the extent of his liability for his felonious deed. Among them was his declaration that he was there inside the bank that late afternoon of December 15, 1975 to ask from Mr. Teehankee, the bank's manager-cashier, for a loan of only P50.00, informing the latter that he needed the money very badly because his wife was then sick. From the interviews conducted by the police investigators upon his wife, it was shown that his wife was not heard to complain of any sickness or ailment. It was rather unnatural for Mr. Teehankee, whom Mr. Pablo Roman, chairman of the board of directors of the Republic Bank, had known as a good man that nobody would harm him (p. 15, tsn, Sept. 22, 1977), to have uttered insulting words at his security guard and/or to react violently, as what appellant claimed, to his request for a loan of only P50.00. Appellant need not wait until late in the afternoon to approach Mr. Teehankee for such a small request or favor. And Mr. Teehankee could have just as well gotten a P50.00 bill from his own wallet and given it willingly to their security guard even as a Christmas gift in advance, it being the eve of the Advent of the Christmas Season and the reason given being that appellant's wife was then sick. It is against human behaviour and common sense, as portrayed by appellant, that Mr. Teehankee should react by getting from the bank's safe 'nakabalunbon na pera' amounting to P65,000.00 and throw them angrily at the appellant.

"If it is true that Mr. Teehankee reacted thus violently, several wrappers of the bundles of money would have been torn apart. But only one wrapper of the P50.00 denominations was found inside the tangerine-colored maleta, where appellant kept his loot. And no other wrapper of the paper bills were found on the floor of the bank by police investigators. It should also be observed that the paper bills were neatly arranged and in correct sequence of 100 bills for each bundle of the same denomination when recovered by the police investigators from the house of appellant's sister. This circumstance clearly indicates that the paper bills were neatly stacked inside the safe of the bank in their respective bundles which were taken by appellant from the safe, not from the floor of the bank as claimed by him, after he had feloniously stabbed Mr. Teehankee to death despite the desperate struggle put up by the latter.

"Furthermore, appellant made contradictory declarations in his extrajudicial confession (Exhibit 'C') and in his admission to the NBI polygraph examiner (Exhibit 'D'). In the former, appellant claimed that the bundles of money were thrown at him by the manager-cashier of the bank which resulted allegedly in their being scattered on the floor of the vault room, but, in the latter admission, he did not mention that the bundles of money were thrown at him by Mr. Teehankee. In his written confession, appellant claimed that the immediate cause that led him to stab the manager-cashier was when the latter threw the bundles of money at him, but, in the latter admission, the proximate cause was when the manager-cashier, after withdrawing money from the safe, threatened and warned him, saying: 'Magtago ka na kung saan mo gusto at huwag ka ng magpakita pa sa akin bukas at malalagot ka.' In his written confession, appellant claimed that he left the maleta, containing the loot, at the house of his cousin, Wily Santos, but, in his latter admission, and as later confirmed by police investigators when they recovered the loot, appellant left the maleta, full of money with his sister's house at Caloocan City. There are still other inconsistencies between his written confession and his admission to the NBI polygraph examiner.

"Considering, however, that at first appellant persisted in disclaiming any knowledge of the crime and even dared the police investigators to put him under lie detector test, as well as the fact that considerable time had lapsed for him to conjure false reasons before he broke down and admitted committing the crime before the NBI polygraph examiner, appellant then succeeded to include false allegations of circumstances and reasons in his admission to the NBI polygraph examiner. With more reason, when he finally gave his written confession to the QCPD police investigators at about 8:30 o'clock of December 16, 1975 appellant had more time to conjure additional false situations and circumstances which found their way to his written confession, if only to lessen his liability for the heinous crime he had committed." (Pp. 28-35, Brief for the Plaintiff-Appellee.)

We fully agree with the foregoing arguments and the disquisition of the Solicitor General, the same being fully supported by the evidence We have examined and studied.

Accordingly, We hold that the accused is guilty beyond reasonable doubt of robbery with homicide as alleged in the information. Being the security guard of the bank, Mr. Teehankee was his superior. Indeed, it was his duty precisely to defend Mr. Teehankee from any aggressor. But in disregard of the respect he owed Mr. Teehankee, on account of his superior rank to him, he assaulted him. Such disregard of respect is an aggravating circumstance.

Mr. Teehankee reposed confidence in him; he abused it. He attacked the 60-year old Mr. Teehankee with obvious ungratefulness. That is another aggravating circumstance.

We also find that accused very well planned to await until nighttime, past 5:30 o'clock in December when the nights are long, which he knew was the time when Mr. Teehankee would be alone. If such circumstances may not strictly be considered as constitutive of nocturnidad, to facilitate the commission of the crimes he was bent on committing, the evidence We have reviewed sufficiently establish evident premeditation, one more aggravating circumstance.

Against the foregoing aggravating circumstances, the only mitigating circumstance that can be set off is his plea of guilty. In consequence it is inevitable that he must suffer the capital punishment of death, as held by the trial court.

WHEREFORE, the judgment of the trial court is hereby affirmed in toto, with costs against accused Nismal.

Fernando, C.J., Barredo, Makasiar, Aquino, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Teehankee, J., took no part.

Concepcion Jr., J., is on leave.

[1] People vs. Apduhan, 24 SCRA 798.

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