

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE VERDAD ALIAS ALFREDO VERDAD, DEFENDANT-APPELLANT.

G.R. No. 51797. May 16, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Mandatory review of the death penalty imposed by the Court of First instance of Nueva Ecija, Branch II, on the accused Jose Verdad alias Alfredo Verdad, for the crime of Robbery with Homicide.

The Amended Information charged the accused as follows:

"That on or about the 7th day of July, 1979 in Cabanatuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo, with intent of gain and by means of violence and intimidation of person, did then and there, willfully, unlawfully and feloniously, take, steal and carry away from the residence of Tomas Ramos the following, to wit:

1. Stereo Casette - P1,000.00
2. Cash money amounting to P30.00
3. Assorted jewelries valued at P5,000.00

belonging to Maria Rowena Ramos and Tomas Ramos and, as a further result thereof said accused by reason of or on the occasion of said robbery, with intent to kill, assaulted and used violence upon the person of the same Maria Rowena Ramos, that is by hacking her thru the use of a bolo, inflicting upon the latter serious physical injuries particularly on the head which directly caused the latter's death.

The crime was committed with the attendance of the aggravating circumstances of abuse of confidence or obvious ungratefulness, evident premeditation, taking advantage of and with use of superior strength and with the use of a motor vehicle and nighttime.

CONTRARY TO LAW."

The accused pleaded guilty upon arraignment notwithstanding clarification by the Court of the gravity of the crime and the effects of conviction. Mindful of the doctrines of this Tribunal, however, warning against the entry of improvident pleas of guilty, the Trial Court resolved to take additional evidence as to the guilt of the accused and practically conducted a full-dress trial. Before and after trial, the lower Court gave the accused the chance to withdraw his plea of guilty but the accused remained adamant.[1]

We adopt the counterstatement of facts contained in the People's Brief, which we find sufficiently substantiated by the evidence on record:

"Appellant Jose Verdad was employed as houseboy in the residence of Tomas Ramos in Cabanatuan City since February 26, 1979. Because appellant enjoyed the trust and confidence of Tomas Ramos and his family, appellant was allowed to sleep in the sala and to stay alone in the house when the whole family was away. He was also entrusted with the keys to the house.

"At 2:00 p.m. of July 6, 1979, Tomas Ramos and his wife, Zenaida, motored to Manila, leaving behind their three children, Raymond, Lourdes and Rowena, with appellant. (Rowena was a 14-year old girl, the eldest of the three). The couple returned to Cabanatuan at about 12:30 a.m. of July 7 and found their children already asleep. Half an hour later, the couple retired to their bedroom.

"At about 2:00 a.m., appellant sensing that the couple were already sound asleep, picked up an 18-inch bolo in the kitchen and knocked on the door of Rowena's room. Rowena woke up and asked for the caller's identity. After appellant had identified himself, Rowena opened the door and asked what it was that appellant wanted. Appellant told her that she was being called by her mother. Not believing him, Rowena started to close the door. However, appellant pushed his way in and started attacking Rowena. Rowena sustained three wounds on the head and one on the forearm. Appellant then entered the master's bedroom, which was unlocked, took P30.00, a college ring, and a portable stereo cassette. Appellant returned to Rowena's bedroom and took her watch and necklace. Appellant then unlocked the door of the garage, opened the gate, and pushed out the car. Afterwards, he drove off, but rammed the car against a concrete flower pot near the national highway. Appellant abandoned the car and boarded a bus bound for Manila.

"At around 6:30 a.m. of that day, Tomas Ramos found Rowena dying and the loss of his stereo cassette and jewelry. He took his daughter to the hospital and reported the incident to the police. Rowena died on July 15, 1979, but before her death, she was able to tell her mother how she was attacked by appellant.

"Appellant was apprehended in Pasay City on August 7, 1979 and was immediately taken to Cabanatuan for investigation. There he readily confessed to his guilt in an affidavit (Exh. T). He was later charged of robbery with homicide to which he pleaded guilty (tsn., pp. 6-46, Aug. 27, 1979)."[2]

In his extrajudicial confession (Exhibit "T"), the accused, 21 years of age, single, also declared that he had intended to abuse Rowena.

In its judgment, the lower Court found the accused guilty beyond reasonable doubt, held the aggravating circumstances of abuse of confidence and abuse of superior strength proven, and imposed the capital penalty, thus:

"WHEREFORE, by his plea of guilty, the Court finds the accused Jose Verdad alias Alfredo Verdad guilty beyond reasonable doubt of the crime of robbery with homicide, defined and punished under Article 294, paragraph 1, in relation to Article 63, paragraph 4, of the Revised Penal Code, with the mitigating circumstance of voluntary plea of guilty and two aggravating circumstances of abuse of confidence or obvious ungratefulness and abuse of superior strength. One of two aggravating circumstances being offset by the mitigating circumstances of voluntary plea of guilty, one more aggravating circumstance remains, which should be appreciated in determining the appropriate penalty upon the accused.

Accordingly, it now becomes the painful task of the Court to impose upon the accused Jose Verdad alias Alfredo Verdad, as it hereby imposes upon said accused, the supreme penalty of DEATH, and to sentence him to indemnify the heirs of the deceased Rowena Ramos in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, but with the accessories of the law, and to pay the costs."[3]

Before us, de-oficio counsel's only submission is that the accused cannot be convicted under the present Information, which charges him with Robbery with Homicide, but that he should be charged instead under another Information for Attempted Rape with Homicide.

There is an attempt to commit a felony when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.[4]

Applying the criterion to the case at bar, it is a fact that in his extra-judicial confession, the accused admitted that

he had intended to abuse the victim. In open Court, he had also declared that he entered Rowena's room to frighten her and take advantage of her.[5] As the crime unfolded, however, the accused did not perform any direct overt act commencing the execution of the crime of rape. We quote the accused's testimony:

"Q.

When you were already inside (the room), what did you do?

"A.

I held her mouth, I covered her mouth.

"Q.

With your hand?

"A.

Yes, sir.

"Q.

Why?

"A.

So that she could not shout.

"Q.

When you were already covering the mouth of Rowena, what happened next?

"A.

She was able to free herself from my hold.

"Q.

What did you do when Rowena was able to free herself?

"A.

When she was able to free herself, I happened to hack her."[6]

The foregoing actuations of the accused do not disclose the criminal objective originally intended. If it were the accused's intent to rape Rowena, there was no overt act showing it like kissing or embracing her or throwing himself upon her. There was no external act whatsoever in furtherance of his design. In fact, even Rowena's private nurse in the hospital, Jose Dalusong, Jr., reiterated what he had stated in his affidavit (Exhibit "S." Folder of Exhibits), and testified:

"Q.

What else did Rowena Ramos tell her mother?

"A.

She also related when she opened the door, the houseboy Jose rushed into her bedroom and hacked her head and body with a bolo.

"Q.

Were those the only narration made by Rowena Ramos to her mother? How about the mother, did not the mother ask any question to Rowena Ramos?

"A.

Mrs. Ramos also asked Rowena Ramos if she was kissed.

"Q.

What was the reply of Rowena Ramos if she did reply?

"A.

She answered in the negative side." (T.s.n., September 3, 1979, p. 5).

We find then that the Trial Court had properly characterized the offense as Robbery with Homicide. That the accused's intent was tempered with a design to abuse the victim did not affect the propriety of the charge of that indivisible felony. The fact that the accused took cash and valuables immediately after he had killed the victim clearly proves robbery. It is well settled that when there is a direct relation, an intimate connection between the robbery and the killing whether the latter be prior to, subsequent to the former, or whether both crimes be committed at the same time - it is unquestionable that they constitute the special complex crime of Robbery with Homicide.[7]

The aggravating circumstance of abuse of confidence or obvious ungratefulness[8], and abuse of superior strength[9] were properly appreciated by the Trial Court. The accused was treated like a member of the family and was completely trusted. That confidence facilitated the commission of the offense. The circumstance of abuse of superior strength is likewise present. The accused had abused that superiority which his sex and the weapon he had employed afforded him and from which the 14 year-old Rowena was unable to defend herself.[10]

With the plea of guilty offsetting only one of the aggravating circumstances, there still remains another aggravating circumstance that calls for the imposition of the penalty in its maximum period, or death[11], as found by the Trial Court. However, for lack of the necessary votes to impose this extreme penalty, the sentence is commuted to reclusion perpetua.

WHEREFORE, with the modification as to the penalty, which is hereby reduced to reclusion perpetua, the judgment under automatic review is hereby affirmed in all other respects.

Costs against the accused Jose Verdad alias Alfredo Verdad.

SO ORDERED.

Teehankee (Acting C.J.) Makasiar, Aquino, Concepcion Jr., Guerrero, De Castro, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Abad Santos, J., I vote for affirmance of the judgment of the trial court.

Fernando, C.J., on official leave.

[1] T.s.n., August 27, 1979, pp. 2-3.

[2] pp. 2-4, Appellee's Brief, p. 46, Rollo.

[3] P. 8, Decision, p. 16, Rollo.

[4] Article 6, Revised Penal Code.

[5] T.s.n., September 17, 1979, p. 12.

[6] T.s.n., *ibid.*, p. 15.

[7] *People vs. Hernandez*, 46 Phil. 48 (1924), citing Sentence of Supreme Court of Spain of May 26, 1877; *U.S. vs. Landasan*, 35 Phil. 359(1916); *U.S. vs. Antonio*, 31 Phil. 205 (1915).

[8] Article 14 (4), Revised Penal Code.

[9] Article 14 (15), *ibid.*

[10] *People vs. Guzman*, 107 Phil. 1122 (1960); *People vs. Braña*, 30 SCRA 307 (1969).

[11] Article 294 (1), Revised Penal Code.

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