

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JACKARIYA LUNGBOS ALIAS "NASSER"; ROMEO
NARIDO Y REMIGIO AND TWO OTHER JOHN DOES,
DEFENDANTS-APPELLANTS.**

G.R. No. 57293. June 21, 1988

Ponente: GRIÑO-AQUINO. J.

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GRIÑO-AQUINO. J.

In Criminal Case No. 4556 (317-111-80) of the Court of First Instance (now Regional Trial Court) of Zamboanga City, Jackariya Lungbos alias "Nasser" and three John Does were charged with robbery in band with homicide for the fatal shooting of Julian Legarde. One of the John Does was later ascertained to be Romeo Narido y Remigio, hence the following amended information was filed:

"That on or about the 12[th] day of July, 1980, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, said accused Jackariya Lungbos alias 'Nasser.' Romeo Narido y Remigio and their two companions identified therein as John Does, armed with .45 caliber pistols, thus forming themselves a band, conspiring and confederating together, mutually aiding and assisting one another, taking advantage of their superior strength and of the night to better accomplish their purpose, by means of force and intimidation of persons and with intent of gain did then and there, wilfully, unlawfully and feloniously take, steal, and carry away from the ANGELS' GARDEN owned by one ANDRES ENRIQUEZ y FERNANDEZ cash money in the amount of EIGHT HUNDRED PESOS (P800.00), a wallet containing also cash money in the amount of P40.00 and wrist watch worth P500.00 belonging to JULIAN LEGARDE, all of which were taken without the knowledge and against the will of the owners thereof; that on the occasion of the commission of the robbery above-mentioned, the above-mentioned accused by virtue of their conspiracy and in order to enable them to take, steal and carry away the articles above-described, with treachery and evident premeditation and with intent to kill did then and there wilfully, unlawfully and feloniously assault, attack and shoot with the said weapons that they were then armed with at the person of said JULIAN LEGARDE, thereby inflicting upon the latter's person mortal gunshot wound which directly caused his death.

"CONTRARY TO LAW."

Upon arraignment on October 2, 1980, Lungbos and Narido pleaded not guilty. The two John Does remained at large.

Trial commenced on December 18, 1980, with the presentation of two prosecution witnesses Shirley Dayanan and Elizabeth Mahinay. Meanwhile, Narido escaped from the Zamboanga City Jail in April 1981. He was recaptured a month later. When presented in court during the May 27, 1981 hearing, Narido, through counsel de oficio, asked that he be re-arraigned as he was changing his plea of "not guilty" to "guilty."

At his re-arraignment, the amended information was translated in chavacano, the dialect which he speaks and understands. Thereafter, he voluntarily and spontaneously pleaded guilty. As the information charged a capital

offense, the trial judge himself as well as the defense counsel explained to him the meaning and effect of his plea of guilty. Notwithstanding said explanation, Narido openly admitted to the court that he committed the crime charged and that he was truly repentant for it.

The court a quo rendered a partial decision on May 28, 1981 finding him guilty beyond reasonable doubt of the crime of robbery in band with homicide and sentenced him to suffer the penalty of death. The dispositive portion of the judgment reads:

"WHEREFORE, premises considered, after finding the accused Romeo Narido y Remegio GUILTY beyond reasonable doubt of the crime charged in the Amended Information, this Court hereby sentences him to suffer the maximum penalty of DEATH with the recommendation to His Excellency, President Ferdinand E. Marcos, through the Honorable Supreme Court to grant appropriate commutation of his death sentence to life imprisonment considering the reasons heretofore stated; that, if commutation is granted in the premises, for him to indemnify the heirs of the deceased Julian Legarde the sum of P12,000 as damages, and the sum of P500.00 for the value of the wrist watch taken from and belonging to the deceased, to pay Andres Enriquez y Fernandez the sum of P840.00 representing the unrecovered stolen cash money from him; and to pay the costs, without subsidiary imprisonment in case of insolvency.

"Pursuant to Section 7 (last paragraph) in relation to Section 9, Rule 122 of the Revised Rules of Court, let the records of the above-entitled case, as far as the accused Romeo Narido y Remegio is concerned, be forwarded to the Honorable Supreme Court for automatic review and judgment as law and justice shall dictate, within the reglementary period provided therein. The immediate transcription of the stenographic notes pertinent to the case of the herein accused Romeo Narido y Remigio, without unnecessary delay, is hereby ordered for transmittal to the Honorable Supreme Court.

"Meanwhile, the above-entitled case against the co-accused Jackariya Lungbos alias 'Nasser' who pleaded 'NOT GUILTY' to the offense charged is hereby ordered set for trial on June 8, 1981 at 8:30 o'clock in the morning."

On July 12, 1980 at about 7:30 in the evening, Narido and Jackariya Lungbos alias "Nasser," with two unidentified companions, entered the Sweet Angel Gardens Restaurant in Sta. Cruz, Tetuan Highway, Zamboanga City. They occupied table No. 21 and ordered beer, cigarettes and some "pulutan." At about 10:00 P.M., Lungbos went out of the restaurant. After closing the door, Narido proceeded to table No. 16 and collared the customer Rolando Chiong who was seated there. When the latter attempted to stand up, Narido shot him with a pistol. His two companions proceeded to the counter and poked a gun at the cashier, Elizabeth Mahinay, and at Julian Legarde, father-in-law of the restaurant owner, who was seated behind the counter. They demanded money from Mahinay and Legarde. They divested Legarde of his wrist watch and wallet containing P40 and took the day's earnings of P800. A burst of gunshots rang from the counter, then the malefactors fled with their loot.

Chiong, Legarde and the restaurant's cook, Flaviano Gonzales, were hit. Legarde was rushed to the Doctor's Hospital where he succumbed to a gunshot wound in the abdomen. Chiong and Gonzales were brought to the Zamboanga General Hospital. They survived.

The decision of the trial court is before Us for mandatory review.

Narido alleges that the court a quo erred:

- in considering the aggravating circumstance of "robbery in band" despite the absence of proof that more than three of the accused were armed;

- in considering nocturnity as an aggravating circumstance despite lack of evidence that the accused purposely sought it to commit the crime;
- in holding that the appellant admitted the crime charged in the amended information without mental reservation, including the aggravating circumstances alleged therein; and
- in imposing the supreme penalty of death upon the appellant.

The first assignment of error is well-taken. There is a band whenever more than three malefactors acted together in the commission of the offense (Art. 14, subpar. 6, Revised Penal Code). The crime was not committed by a band because the prosecution failed to establish that all four of the malefactors were armed. Only Narido and the two John Does were armed. Nowhere in the record can we find evidence that Lungbos was also armed. Band is not aggravating when only three malefactors are armed. (People vs. Maalihan, 130 SCRA 583).

The trial court properly considered nocturnity as an aggravating circumstance, even if there was no direct evidence showing that the conspirators sought the nighttime to commit the robbery for it cannot be gainsaid that nocturnity facilitated the successful commission of the crime. The fact that they lingered in the restaurant close to three hours before carrying out their plan to rob it indicates that they waited for darkness to deepen to better pursue their evil scheme and to ensure their escape under cover of the night. Nocturnity, even though not specially sought, if it facilitated the commission of the crime and the accused took advantage thereof to commit it, may be considered as an aggravating circumstance (People vs. Galapia, 84 SCRA 530).

The trial court did not err in holding Narido bound by his judicial confession of guilt under the amended information. There is no higher evidence of guilt than the accused's own confession.

Unless nullified by evidence of duress, a voluntary plea of guilty is admissible as evidence of guilt of a high quality (People vs. Zea, 130 SCRA 77).

The records of this case show that the trial on the merits had commenced and the prosecution had already presented evidence proving the appellant's guilt when he manifested, through counsel, that he would change his plea of not guilty to a plea of guilty. He was properly re-arraigned and there were no abbreviated proceedings. Full opportunity was given to him to present his evidence. This Court ruled in People vs. Kayanan (83 SCRA 437) that a plea of guilty made after arraignment and after trial had begun does not entitle the accused to have such plea considered as a mitigating circumstance.

The last assignment of error has become moot in view of the abolition of the death penalty under the 1987 Constitution.

WHEREFORE, the judgment finding the accused Romeo Narido y Remigio guilty beyond reasonable doubt of the crime of robbery with homicide as defined and penalized under Article 294, paragraph 1 of the Revised Penal Code is affirmed, except his penalty which is reduced to reclusion perpetua with all the accessories provided by law, in consonance with Section 19 (1), Article III of the 1987 Constitution. He is further ordered:

- To indemnify the heirs of the deceased Julian Legarde in the amount of P30,000 plus the sum of P540 representing the value of the wrist watch and money that he and his companions took from the deceased, and
- To pay the restaurant-owner Andres Enriquez y Fernandez the sum of P800 that was taken from the restaurant's

receipts.

Costs de oficio.

SO ORDERED.

Narvasa (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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