

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL DAMO, DEFENDANT-APPELLANT.*G.R. No. 60370. April 17, 1984*

Ponente: RELOVA, J.

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Automatic review of a death sentence, indemnity to the heirs of Lucretia D. Calina in the amount of P12,000.00, and payment to them the sum of P408.50 corresponding to the money taken by the accused from the victim, without subsidiary imprisonment in case of insolvency and payment of the costs, imposed by the then Court of First Instance of Ilocos Norte (Laoag City) in its Criminal Case No. 1792.

The record before Us is to the effect that Arnel Damo was charged with the crime of robbery with homicide committed in the manner described in the information, as follows:

"That on or about the 27th day of November 1981, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously strangle one Lucretia D. Calina to death and dumped her body into a well, and with intent of gain did then and there wilfully, unlawfully and feloniously take and carry away her belongings consisting of two big leather baggages and seven cartons containing her belongings and personal effects, as well as cash in the amount of TEN DOLLARS (\$10.00) and FOUR HUNDRED PESOS (P400.00), to the damage and prejudice of her parents in the total amount of the aforestated case, belongings and personal effects.

"That the aggravating circumstances of nocturnity as well as having deliberately augmented the crime by causing other wrong unnecessary for its commission were present." (p. 2, Rollo)

Upon arraignment, accused, assisted by counsel de oficio, entered a plea of guilty. Notwithstanding, the trial court did not immediately impose the death sentence but proceeded to inquire the circumstances surrounding the case to satisfy itself if appellant understood the meaning and effect of the aggravating circumstances of treachery, evident premeditation and nocturnity alleged in the information.

Evidence shows that appellant, 25 years old and a tricycle driver in Laoag City, was in the bus terminal of Laoag City at about 3:30 in the morning of November 27, 1981. A short while thereafter, one of the buses of the De Leon Transportation arrived from Manila and among its passengers was Lucretia D. Calina, 54 years old, who returned to the Philippines after 22 years stay abroad. Appellant approached Lucretia and asked her where she was going. She answered that she was bound for Bangui. Since there were no buses that early morning for Bangui which is about 75 kilometers from Laoag City, appellant offered to bring her to the place for P125.00. When Lucretia agreed, appellant loaded her baggages consisting of seven (7) cartons and two (2) big suitcases in his tricycle. Instead of going to Bangui, appellant brought Lucretia to a vacant house at Barangay Naldo, Laoag City, near the Northwestern College, about four (4) kilometers away from the poblacion of Laoag. Appellant invited Lucretia inside the house to rest for a while. Lucretia hesitated but later acceded when appellant put on the lights inside the house. When they were inside the house appellant made love to his lady passenger who, at first, resisted

but later on succumbed and consented to having sexual intercourse with him. After satisfying his lust, he told her to dress up as they would proceed to Bangui. He then went outside the house and after sometime returned passing through the kitchen door. Upon seeing her still standing by the door, appellant approached her and at once strangled her to death with his bare hands.

Appellant then carried Lucretia and dumped her into a nearby well, hid the seven (7) cartons inside the house and proceeded to Barangay Barabar, San Nicolas where he hid the two (2) leather luggages. Thereafter, he returned to Laoag City at about 8:00 in the morning where at the Philippine Rabbit Bus station he took his breakfast.

On December 26, 1981, at about 3:30 in the morning, the Laoag police, acting upon a tip, arrested appellant. He admitted his guilt in an extra-judicial confession which was signed in the presence of Sgt. Alipio and sworn to before an Assistant City Fiscal.

In this appeal, the defense assailed the decision of the lower court in that it erred (1) in finding that there was evident premeditation; (2) in finding that the offense was aggravated by nocturnity; (3) in appreciating treachery as an aggravating circumstance; (4) in not offsetting the aggravating circumstance of treachery by the mitigating circumstance of plea of guilty; (5) in not appreciating the mitigating circumstance of intoxication; and, (6) in imposing the death penalty.

With respect to the first assigned error, We take note of the fact that the Solicitor General admits that in the commission of the crime the aggravating circumstance of evident premeditation was not present. "We agree, it appearing that appellant thought of killing the deceased only after succeeding in satisfying his lust upon her. In fact, the appellant was waiting for her in his tricycle for sometime, after the carnal act, but as the deceased was not yet around, he returned to the house, and meeting her at the door of the kitchen, he strangled her (pp. 13-15, tsn., February 2, 1982 hearing). Thus, there does not seem to be sufficient time for him to reflect on his evil resolution." (pp. 4-5, Appellee's brief)

We also agree with appellant that the aggravating circumstance of nocturnity is absent in the case. For, nocturnity to be appreciated as an aggravating circumstance, it must be purposely and deliberately sought by the accused to facilitate the commission of the crime. In the case at bar, the meeting of appellant and Lucretia was by chance and, therefore, it cannot be said that he purposely sought nighttime to commit the offense. Their meeting was accidental. Being a tricycle driver, he was in the bus terminal waiting for passengers when he met the victim.

Appellant's contention that there was no treachery is untenable. After satisfying his lust, no woman would have anticipated that the man who took advantage of her would thereafter suddenly kill her. Time and again, We have ruled that treachery is present in the commission of a crime when executed suddenly and unexpectedly even if made face to face (*People vs. Doria*, 55 SCRA 435). However, treachery in cases of robbery with homicide is not a qualifying circumstance but only a generic aggravating circumstance which may be offset by appellant's plea of guilty.

Finally, appellant's claim that he was drunk at the time he executed the criminal act, is untenable. He failed to establish by convincing evidence that his reason was blurred to the extent that he was deprived of that degree of control of himself. The fact that he was able to drive his tricycle to the place where he brought his victim, made love to her following which he killed and dumped her into a well and then drove his vehicle back to Laoag City, shows that he had complete control of his mental faculties.

Article 294, paragraph 1 of the Revised Penal Code, provides for reclusion perpetua to death as the penalty for the offense of robbery with homicide. Considering the presence of the aggravating circumstance of treachery which is offset by the mitigating circumstance of plea of guilty, the correct penalty in the case at bar is reclusion perpetua.

WHEREFORE, the decision under review must be, and is hereby modified in that appellant Arnel Damo is sentenced to reclusion perpetua, is ordered to pay the heirs of Lucretia D. Calina in the sum of P30,000.00 (instead of P12,000.00 as adjudged below), and the sum of P408.50, without subsidiary imprisonment in case of insolvency. With costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., and De la Fuente, JJ., concur.

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