

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENIGNO ANG AND ROSAURO MAGISTRADO, ACCUSED-APPELLANTS.

G.R. No. 62833. October 08, 1985

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

For automatic review is the Decision of the then Court of First Instance of Camarines Sur, Branch III, in Criminal Case No. 2205, convicting accused Benigno Ang and Rosauro Magistrado of Robbery with Homicide, and sentencing them to the supreme penalty of Death.

The facts of the case, as summarized by the trial Court and substantially reproduced in the People's Brief, read:

x x x x x x x x

"The record and the investigation of the police show that at about 10:00 o'clock in the evening of February 10, 1982, Rosauro Magistrado met an old time friend, Benigno Ang. They strolled along Elias Angeles Street towards Panganiban Road, then to Mayon Avenue. While thus walking Benigno Ang suggested to his co-accused Rosauro to rob or steal any house. They reached the Mariano Village subdivision at the outskirts of the City of Naga. They chose a house which, at first, they did not know who the owner was. It was at the police station where they came to know the house was owned by Amado Bonavente.

"Each of the accused have an umbrella which they placed at a nearby fence.

"Benigno Ang was wearing a crepesoled shoes; Rosauro, a green beach rubber slippers which they placed near the umbrellas. With the use of a razor blade Benigno slashed the screen of the kitchen window and removed the glass jalousies. He signalled for Rosauro who immediately followed. They gained entrance through the opening which Benigno made and once inside the kitchen, Benigno switched on the lights and took a kitchen knife. He gave Rosauro a small knife and there helped themselves to a cup of coffee each.

"Benigno tried to force open a door and on the process lights went on at the adjacent room. From the door which was being opened, Amado Bonavente came out and shouted 'Maribelle' (his sister-in-law). He stabbed Amado at the different parts of the body but Amado was able to take from the accused Benigno the razor blade and with it slashed the forehead of Benigno.

"As Maria Isabel, fondly called Maribelle shouted for help, Rosauro ran after her and inflicted bodily injuries on her numbering twenty-three (23), five of which were fatal and stab wounds caused by sharp pointed instrument, directed towards the mammary area (Exhibit C), Maria Isabel or Maribelle expired at her room. So did Amado in his.

"Amado suffered forty-one injuries among which were those which involved the lungs and the thoracic cavity. Death was instantaneous and inevitable (Exhibit D).

"Convinced that their victims were dead, the accused gathered all valuables they can lay hands on and brought them away. Some of those articles itemized in the information were recovered by the police from the accused upon apprehension, except a wedding ring and tableware which found its way to the hands of Pablo Dimayuga

who pawned the ring in one of Naga City's pawnshop."

x x x x x x x x[1]

The Information charged the crime of Robbery with Homicide and alleged as aggravating circumstances nocturnity and abuse of superior strength.

Upon arraignment, both accused, duly assisted by counsel, pleaded guilty. The Court, after ascertaining that the accused had entered their pleas freely and voluntarily, without promise of leniency from anyone, and with full knowledge of the consequences of the same and of the possible death penalty to be imposed, accepted their pleas. Thereafter, upon motion of the prosecution, but with some initial doubts expressed by the defense[2], the Court allowed the prosecution to introduce evidence of the aggravating circumstances of nocturnity and abuse of superior strength alleged in the Information, and of other aggravating circumstances not so alleged.

The investigator, who took the extra-judicial confessions of the two accused, and the medico-legal officer of the NBI who performed the autopsies on the cadavers of the victims, testified and were cross-examined by both defense counsel. The prosecution also presented in evidence the extra-judicial confessions respectively given by the accused. The latter for their part, endeavored to prove the mitigating circumstance of lack of instruction.

After the hearings for the reception of evidence, and appreciating the additional aggravating circumstances of cruelty, disrespect for sex, and recidivism in respect of Benigno Ang, but rejecting the mitigating circumstance of lack of instruction, the trial Court rendered judgment, decreeing:

"WHEREFORE, upon plea of guilty by both accused, they are hereby each declared GUILTY beyond reasonable doubt of the crime of Robbery with Homicide made punishable by Article 294 of the Penal Code. The court, therefore, sentences:

"Rosauro Magistrado being a youthful offender, to the supreme penalty of death by electrocution but with the recommendation that his Excellency, the President, accords to him the mercy of commutation of penalty to cadena perpetua, if warranted.

"Benigno Ang to the supreme penalty of death by electrocution.

"Both accused to indemnify the heirs of Amado Bonavente and Maria Isabel Bonavente the sum of P12,000.00 each or P24,000.00 share and share alike and to pay the costs.

"x x x x x x x x[3]

The accused, through counsel de officio, Atty. Ofelia Calcetas-Santos, maintain that:

I

"The trial Court erred in allowing the prosecution to introduce evidence of ordinary aggravating circumstances not duly and properly alleged in the information over the vehement objection of the defense.

II

"The trial Court erred in appreciating the circumstances of nocturnity, abuse of superior strength, cruelty, recidivism, and all others not alleged in the information, even if evidence thereof could be properly adduced, and in not considering instead the same as not duly proven and/or as absorbed in the offense charge.

III

"The trial Court erred in not appreciating the mitigating circumstance of ignorance or lack of instruction in favor of the accused.

IV

"The trial Court erred in the computation or determination of the imposable penalty in the light of the circumstances duly appreciable.

V

"The trial Court erred in imposing the penalty of death."

There is no law prohibiting the taking of testimony after a plea of guilty has been entered especially where a grave offense is charged. In fact, the taking of such testimony is the prudent and proper course to follow to substantiate the attendance of the alleged aggravating circumstances and for the purpose of establishing not only the guilt but, as well, the precise degree of culpability of an accused.[4] This is precisely what the trial Court had done for which it cannot be faulted even if in the course of receiving evidence other aggravating circumstances should surface.

Generic aggravating circumstances, even if not alleged in the Information, may be proven during the trial over the objection of the defense and may be appreciated in imposing the sentence.[5] Such evidence merely forms part of the proof of the actual commission of the offense and does not violate the constitutional right of the accused to be informed of the nature and cause of accusation against him.[6] Notably, the trial Court also received evidence as to such mitigating circumstance as could be appreciated in favor of the accused.

We find no merit in the defense contention that nocturnity and abuse of superior strength were not duly and properly alleged because the Information contains "no allegation of ultimate facts" to substantiate them. In fact, during the reception of evidence before the Court, the defense admitted that those circumstances were sufficiently alleged.[7] Besides, the evidence establishes that although nighttime was not especially sought by the offenders as they were merely strolling when they decided to rob any house, they took advantage of the darkness of the night to break open the window, enter the house, and facilitate the commission of the crime. Abuse of superior strength was likewise present since both accused were armed with deadly weapons when they attacked and killed the victims who were unarmed and thus helpless to defend themselves.[8]

The defense submission that the said circumstances should be deemed absorbed in the crime of Robbery with Homicide lacks basis. When the killing is committed by reason of, or on the occasion of a robbery, the qualifying circumstances attendant to the killing would be considered as generic aggravating circumstances.[9]

The trial Court, however, erred in finding that the additional aggravating circumstances of recidivism in respect of Benito Ang, disregard of sex of the victim Maria Isabel Bonavente, and cruelty, were present.

To find recidivism against an accused, the same must be alleged in the Information and certified copies of the sentences rendered must be adduced at the trial and admitted as evidence with knowledge of the accused.[10] However, even if it is not alleged, the same may be appreciated if proven by evidence[11], or if admitted by the accused during the trial.[12] In this case, recidivism was not alleged in the Information, much less was there any admission by the accused, nor was there sufficient proof of the same.

Absent as well is any showing that aside from the unlawful taking of the life of the deceased woman, the accused deliberately intended to offend or insult her sex or showed manifest disrespect to her womanhood.[13] Moreover, disregard of age, rank and sex is not aggravating in Robbery with Homicide, which is primarily a crime against property and not against persons.[14]

Cruelty can neither be appreciated despite the numerous wounds inflicted by the accused on their victims. For cruelty to exist, it must be shown that the accused enjoyed making the victim suffer slowly and gradually, causing unnecessary physical or moral pain in the consummation of the act.[15] Inflicting various successive wounds upon a person to cause his death without appreciable time intervening between the infliction of one wound and

that of another, as in the present case, does not constitute cruelty.[16]

Coming now to the mitigating circumstance pleaded by the accused -ignorance or lack of instruction cannot be invoked by them since they had both finished elementary grades and, therefore, were not illiterate. Although the criterion in determining lack of education is not illiteracy alone, but lack of sufficient intelligence[17], there is no showing that the accused were of such low mental capacity that they had not realized the full significance of their acts. No one, however unschooled he may be, is so ignorant as not to know that theft or robbery, or assault upon the person of another is inherently wrong and a violation of the law.[18]

Under Article 294 of the Revised Penal Code, the crime of Robbery with Homicide is punishable with reclusion perpetua to death. There being two aggravating circumstances offset by only one mitigating circumstance, the imposable penalty is Death. However, for lack of the requisite ten votes, it cannot be imposed.

WHEREFORE, the judgment of the then Court of First Instance of Camarines Sur, Branch III, in Criminal Case No. 2205, is hereby affirmed, with the modifications that each accused shall suffer the penalty of reclusion perpetua, and pay an indemnity of P30,000.00 each to the heirs of the victims Amado Bonavente and Maria Isabel Barrosa Bonavente, respectively. Each accused shall pay one-half (½) of the costs.

SO ORDERED.

Makasiar, C.J., Teehankee, Concepcion, Jr., Abad Santos, Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, Cuevas, Alampay, and Patajo, JJ., concur.

Aquino, J., no part.

[1] Pp. 7-8, Rollo

[2] T.s.n., March 18, 1982, pp. 40-43.

[3] Pp. 11-12, Rollo

[4] People vs. Villafuerte, 56 SCRA 219 [1974] and cases cited therein, p. 223.

[5] People vs. Martinez y Godinez, 106 Phil. 597 [1959]; People vs. Butler, 120 SCRA 281 [1983].

[6] People vs. Roquinio, 17 SCRA 914 [1966].

[7] T.s.n., March 18, 1982, p. 17.

[8] People vs. Braña, 30 SCRA 307 [1969]; People vs. Guzman, 107 Phil. 1122 [1960].

[9] People vs. Aspalin, 110 Phil. 454 [1960].

[10] People vs. Hermosilla, 122 SCRA 905 [1983]; People vs. Scott, 62 Phil. 553 [1935].

[11] People vs. Perez, 106 SCRA 436 [1981].

[12] People vs. Carzano, 95 SCRA 146 [1980].

[13] People vs. Puno, 105 SCRA 151 [1981].

[14] People vs. Pagal, 79 SCRA 570 [1977].

[15] People vs. Gatcho, 103 SCRA 207 [1981].

[16] People vs. Lanseta, 95 SCRA 166 [1980].

[17] People vs. Abanes, 73 SCRA 44 [1976].

[18] People vs. Enot, et al., 6 SCRA 325 [1962].

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