

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ABELARDO PENILLOS Y LUCINDO @ GUILLERMO “BILLY” PENILLOS, MARIANO MARAÑO Y MENDEZ, JOSE NUYDA Y MARMEDA AND ROMEO NUYDA Y PEDROSA, ACCUS...

G.R. No. 65673. January 30, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is an appeal from the decision[1] of Branch 7 of the Regional Trial Court (RTC) of Legazpi City in Criminal Case No. 2144 entitled "People of the Philippines vs. Abelardo Penillos, et al.", promulgated on 28 September 1983, convicting the accused-appellant of the crime of Robbery with Homicide and Attempted Homicide pursuant to Article 294 of the Revised Penal Code and sentencing him to suffer the penalty of "reclusion perpetua or life imprisonment."

The information prepared by the then assistant city fiscal charges the above-named accused with the crime of "Robbery with Homicide and Attempted Homicide" committed as follows:

x x x

"That on or about the 31st day of July, 1981, in the City of Legazpi, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another for a common purpose, with intent of gain (sic) and by means of violence against or intimidation, did then and there wilfully, unlawfully and feloniously enter the house of the spouses APRONIANO LLADONES and EPIFANIA LOPEZ LLADONES and once inside, forcibly take the amount of P1,000.00 from the said spouses and by reason of or on occasion of the robbery and with intent to kill, attacked, assaulted, hogtied and stabbed APRONIANO LLADONES inflicting injuries upon the latter which directly caused his untimely death; while EPIFANIA LOPEZ LLADONES was hacked on her shoulder, thus accused commenced the commission of the crime directly by overt acts but did not perform all the acts of execution which could produce the crime of Homicide upon said EPIFANIA LOPEZ LLADONES by reason of causes other than their spontaneous desistance."[2]

x x x

Only accused-appellant Abelardo Penillos was apprehended. The others remain at large.[3]

Accused-appellant entered a plea of not guilty upon arraignment and was given a separate trial.

The court a quo summarized the evidence for the prosecution, upon which it based its conviction of appellant, as follows:

x x x

"Four defendants are charged with the offense of 'Robbery with Homicide and Attempted Homicide.' Among them, only one was apprehended and a separate trial was held. On June 18, 1982, defendant Abelardo Penillos

pleaded 'Not Guilty.'

The following facts are not disputed. On July 31, 1981, in the early hours of the evening or thereabouts (sic), at Sitio Naontogan, Bariis, Legazpi (sic) City, Aproniano Lladones and spouse Epifania Lopez were awakened as four (4) persons suddenly entered their house. The intruders demanded money from the couple and when Aproniano Lladones refused to accede he was carried outside his dwelling by the four persons. He was later on found hogtied and lifeless suffering (sic) from multiple stab wounds. His wife, Epifania Lladones Lopez was also hacked with a bolo by one of the entrants (sic) as she tried to follow to find out where her husband was being taken. The following morning Abelardo Penillos was apprehended and after giving an extra-judicial confession, the present complaint was filed against him and his co-conspirators, Mariano Maraño, Romeo Nuyda and Jose Nuyda. The last three defendants remained at large hence Abelardo Penillos was afforded a separate trial.

Testifying for the prosecution, Epifania Lopez Lladones narrated that on the night in question while she and her husband were asleep inside their house they were awakened by the entry of four persons who demanded money from them; that one of the intruders even sat on the belly of her husband who was caught still lying down and at that moment she was able to recognize one of them as Abelardo Penillos because of the illumination coming from a kerosene lamp in the kitchen adjoining the sala; that Abelardo Penillos was one of the four persons who brought her husband outside the house and as she tried to follow she was hacked by one of them whose identity she cannot tell; that she suffered a hack wound and later on she came to know that her husband, hogtied, was found dead from stab wounds; that she crawled in the dark to the house of her neighbor Celerino Nudo who reported the incident to the barangay captain who in turn lost no time in notifying the police authorities; that recollecting the robbery she discovered the loss of P1,000.00 kept in a bamboo basket and during the time she was confined at the hospital she recognized Abelardo Penillos as one of the perpetrators when brought to her for confrontation.

Celerino Nudo also testifying recalls that in the evening of July 31, 1981 Epifania Lopez then seriously injured from a hack wound arrived at his house to seek his help regarding an incident in their house; that she mentioned a certain Billy Penillos as one of the men who forcibly entered their dwelling while they were asleep; that he at once reported the matter to the barangay captain and rushed Epifania Lladones to the hospital."[4]

x x x

Upon the other hand, appellant relied on alibi as his defense, which is summarized by the trial court as follows:

"x x x Penillos testified that on July 31, 1981, he was in the house of his grandmother at Barangay Esperanza, Putiao, Sorsogon, in the morning until six o'clock in the evening; that he left Barangay Esperanza thereafter riding on a carabao sledge loaded with coconuts and arrived at Barangay Imalnod, Legaspi City, a distance of about 4 kilometers at past eight o'clock in the evening; that he proceeded to the house of his father-in-law where he spent the night because he was already tired; that he was able to surmise the time of his arrival because he overheard from the radio that the drama serial Zimatar had just been concluded."[5]

After trial, the lower court rendered the challenged decision, the dispositive portion of which reads:

x x x

"All the foregoing and EVIDENCE considered, and finding the guilt of the defendant beyond reasonable doubt, Abelardo 'Billy' Penillos @ Guillermo Penillos is sentenced to suffer the penalty of Reclusion Perpetua or life imprisonment and to indemnify the heirs of Aproniano Lladones in the amount of P20,000; further, defendant to pay Epifania Lopez Lladones the amount of P1,000.00, cash stolen, in both instances without subsidiary imprisonment in case of insolvency.

Credit the defendant the full time of any preventive imprisonment in the service of his sentence in accordance

with law.”[6]

x x x

Appellant immediately filed a Notice of Appeal[7] wherein he manifested that he is appealing the decision to the Intermediate Appellate Court. In view of the penalty imposed, the appeal should have been made to this Court. The records of the case were erroneously transmitted to the then Intermediate Appellate Court (now Court of Appeals) which properly forwarded the same to this Court on 24 November 1983.[8] On 20 December 1983, We required the appellant to file his Brief,[9] which he complied with on 16 July 1984[10] after being granted several extensions. The appellee, on the other hand, submitted its Brief on 15 November 1984.[11]

Appellant submits the following assignment of errors:

"I

THAT THE COURT A QUO ERRED IN GIVING CREDENCE TO THE IDENTIFICATION OF APPELLANT BY THE COMPLAINANT.

II

THAT THE COURT A QUO ERRED IN GIVING THE STATEMENT OF APPELLANT GREAT WEIGHT WHEN SAID STATEMENT WAS TAKEN IN DEROGATION OF APPELLANT'S CONSTITUTIONAL RIGHTS AND IN CONTRAVENTION OF PROCEDURE ESTABLISHED BY JURISPRUDENCE.”

In support of the first assigned error, appellant insists that Epifania Lladones could not have made a proper identification of the offenders because: (1) The only illumination at the scene of the incident was a gas lamp which was placed in the kitchen. There were partitions between both the kitchen and the sala and the sala and the bedroom where she and her deceased husband were sleeping. There could not have been enough light for her to properly recognize the accused. (2) Having just been roused from sleep by one of the perpetrators who sat on the deceased's belly, she was most probably "in a state of shock or terror" and thus positive identification of the accused is highly improbable. Besides, she testified that the very reason for her rushing to the kitchen upon waking up was to get the gas lamp in order to see who her husband's attacker was. (3) Even when Epifania was overtaken by the accused and pinned under a table, visibility was still not sufficient as both were still some distance from the kitchen, the only source of illumination. (4) Finally, her claim that she had known the accused prior to the incident should have compelled the latter to have at least worn a mask so he would not be recognized.

Appellant also takes exception to the procedure undertaken by the police authorities on the day after the incident when he was brought to the hospital to be identified by Epifania Lladones. He laments that:

"The evidence for the prosecution also pointed out that on the following morning of the incident (August 1, 1981), Abelardo was made to face Epifania while the latter was still confined at the Albay Provincial Hospital for medical treatment of the hack wound she sustained and that Epifania pointed to Abelardo as one of the perpetrators of the offense charged. The defense submits that this particular procedure undertaken by the police in showing the victim, Epifania, a single person and asking her whether or not that man is one of those who perpetrated the offense, is most unfair and violative of the constitutional rights of the accused. The proper procedure should have been an identification in a line-up, whereby the suspect is made to line up with other persons who are not suspects at all, and then the victim is asked to point to whoever he or she recognizes as the perpetrator of the offense.”[12]

Anent the second assigned error, appellant claims that his constitutional rights to remain silent, to be entitled to counsel and to be informed of such rights "had no longer any meaning or purpose." This is because before giving his confession to the police investigator, he was interviewed by other policemen. The prosecution failed to show

that in the said interview, the accused was apprised of his constitutional rights. He further avers that he initially disclaimed any responsibility for the crime but when manhandled, boxed and struck with a piece of wood on the head, he was forced to confess. Thus, the confession he prepared on 1 August 1981 (Exh. "B") is a mere formality in spite of his having been informed by the police investigator during the formal investigation of his constitutional rights.

And even conceding the absence of coercion during the initial interview, the signed confession would still be inadmissible as it does not appear that a valid waiver of the right to counsel was made by the accused.

In the People's Brief, the Solicitor General asserts the view that the principal issue to be resolved is whether or not the appellant was sufficiently identified as one of the culprits responsible for the offense.

Appellee avers, and We agree, that Epifania was able to sufficiently identify Abelardo Penillos as the person who sat on her husband's belly and demanded money from her. She testified that she was able to recognize Penillos when the latter pinned her down under the table; such identification was aided by her having known Penillos long before the incident, when the latter would go to the Lladones' house.[13] She was even able to declare that Penillos was wearing short pants at the time of the commission of the crime.[14]

Furthermore, the illumination provided by the kerosene lamp was enough for Epifania to have recognized Penillos. This Court has held in the past that illumination produced by kerosene (gasera) lamps is sufficient for the identification of persons.[15] Where conditions of visibility are favorable, the ability of a witness to identify the malefactor should be upheld.[16]

The frenetic efforts of the appellant's counsel to cast doubt on the positive identification by Epifania, characterized by attempts to mislead the latter, proved to be a bad gamble for it only provided the prosecution a rare opportunity to elicit the details for the positive identification, to wit:

"Q How were you able to say that it was Billy Penillos who sat on the stomach of your husband and pointed the knife when you said there were two persons present inside your bedroom?

A I recognized him; he was then wearing short-pant while his other companions was (sic) wearing long pants.

Q And according to you after you ran away to get the lamp in the kitchen -- before you reached the kitchen, Billy Penillos twisted your arm and pinned you under a table. Is that correct?

FISCAL:

No. It is misleading, Your Honor please, because she was already in the kitchen. Before she could get hold of the lamp, that was the time when Abelardo Penillos twisted her right arm, she was already in the kitchen.

COURT:

Witness may answer. She is under cross-examination.

A He placed me under the table.

BENDAÑA:

Q And it was under the table that you recognized the face of Billy Penillos?

A While inside, I already recognized him inside. Before I have (sic) already recognized him.

Q Did you not testify a while ago that you ran towards the kitchen to get a lamp, so that, you can recognize the persons inside the room?

A Yes, sir.

Q And do you want to impress the (sic) Court that before you could get the lamp from the kitchen, you were already able to recognize Billy Penillos?

A Yes, sir.

Q And you were able to recognize Billy Penillos although at that time you were running towards the kitchen and Billy Penillos was behind inasmuch as he was sitting on the stomach of your husband?

A Yes. I already recognized him.

Q So, your statement a while ago that you prefer (sic) in giving to the kitchen to get a lamp was to recognize who the persons were inside your house is not correct?

A He was the very first one to get inside the house while his companions who were wearing long pants followed him. So I tried to recognize them.

Q Is there a partition between the kitchen and your room?

A Yes, sir.

Q And you said the lamp is (sic) situated inside the kitchen?

A Yes, sir, because there was (sic) a door leading to that place.

Q How far is the kitchen to your bed?

A Very near.

Q But the direct light of the lamp is (sic) being obstructed by the partition separating the bedroom and the kitchen?

A The gas lamp was situated near the door.

Q Is it the door of the room or near the door of the kitchen?

A Near the door of the sala.

Q So, you are now telling the Court that the lamp is (sic) near the sala, and not in the kitchen?

A It is (sic) inside the kitchen but near the door leading to the sala.

Q But your bedroom is inside a room which has a partition separating it from the sala. Is there a partition?

A Yes, sir.

Q So, you were not able to recognize the companions of Abelardo Penillos?

A No, sir. I was not able to recognize the companions of Abelardo Penillos because when Abelardo Penillos ran to hold my husband and then suddenly his companions entered.[17]

x x x

Q So, the only moment that you were able to recognize Billy Penillos was while you were inside the room, and while Abelardo Penillos was demanding from you some money while you were being pinned under the table?

A Yes, sir.

Q And in these two instances where (sic) according to you, you recognized the face of Abelardo Penillos, first,

when you were in the room, the room was still dark because the lamp was in the kitchen. Is that correct?

A Yes, sir.

Q And the second time that you recognized Billy Penillos was while you were being pinned under the table; and under the table it was also dark at that time. Is that correct?

A No, not dark, because the light from the kitchen was illuminating the place wherein I was being pinned under the table. It was not dark.

Q The table where you said you were pinned by Abelardo Penillos, how far was it from the kitchen?

A About two meters.

Q How big is this table?

A It is small, we use it for our eating purposes."^[18]

This Court cannot yield to the postulations of the appellant that Penillos would have worn a mask during the incident knowing as he did that Epifania was familiar with him and that the latter was impelled by evil motives in implicating him in the commission of the offense.

The first theory assumes that the wearing of masks to hide one's identity is a universal practice resorted to by criminals who are known to their prospective victims and who exercise utmost prudence and care in ensuring that no witness would be able to identify them while committing a crime. These assumptions are, of course, without any empirical basis and are, at best, speculative. On the other hand, the evil motive ascribed to Epifania by reason of an alleged prior verbal exchange between Penillos and her is a mere figment of the former's imagination. Such verbal disagreement allegedly arising from the refusal by Epifania to allow Penillos to use her yard as a pathway, even if true, is inconsequential, trivial and insufficient to move one to accuse another of committing robbery with homicide.

With his positive identification, appellant's defense of alibi must fail.

We defer to the conclusion by the court a quo that the protestations of the appellant "held in contrast with the positive identification made by Epifania Lopez on his complicity in the commission of the offense could not provide a justifiable ground to extricate him."^[19]

Appellant testified that between 6:00 p.m. and 8:00 p.m. on 31 July 1981, the day of the incident, he was travelling by carabao from Sitio Esperanza to Nauntogan, the place of the incident, a distance of about four (4) kilometers. He was allegedly accompanied by one Victor Maraño. Arriving at his destination at around 8:00 p.m., he proceeded to the house of his father-in-law, co-accused Mariano Maraño, which is about thirty (30) meters away from the residence of the victims. At the house of Mariano, appellant also encountered his other co-accused, Jose Nuyda and Romeo Nuyda. While having supper therein, appellant overheard Mariano and the Nuydas talking about something that they would divide among themselves.^[20]

Appellee easily demolishes this defense by alleging that: Penillos alleged travel from Esperanza to Nauntogan was not even corroborated by his supposed companion, Victor Maraño, who was not presented as a witness; Penillos' presence at the house of his co-accused, a mere thirty (30) meters away from the scene of the crime, militates against his defense in view of the positive identification by Epifania; and that it was not physically impossible for the appellant to have been at the place of the incident during the commission of the crime.

Settled is the rule that alibi cannot prevail over a positive identification made by a prosecution witness.^[21] For alibi to prosper, it is not enough to prove that the accused was somewhere when the crime was committed but that

he must also demonstrate that it was physically impossible for him to have been at the scene of the crime.[22]

Appellant also questions the manner in which he was initially identified by Epifania Lladones in the hospital while the latter was recuperating from her injury. The former contends that the procedure for conducting a police line-up should have been strictly followed. In *People vs. Espiritu*,[23] We ruled that there is no law requiring a police line-up as essential to a proper identification. Clearly then, this argument must also fail.

And now on the second assigned error. In respect to the allegation that the signed confession (Exh."B") was defective and should not have been admitted in evidence, the appellee practically concedes the irregularity when it avers thus:

x x x

"From the record, it appears that appellant's sworn statement was executed in a manner not in full accord with his right to the assistance of counsel. This may be seen in the preliminary portion of the sworn statement, in which appellant was:

'x x x reminded that under the new rules of the Constitution you have the right to remain silent and the right to have counsel of your own choice. You are also reminded that whatever you say here might be used for or against you in any court proceedings. Is this clearly understood by you?

Answer: Yes sir.

Question: After having been informed of your constitutional rights do you wish to proceed with this investigation?

Answer: Yes sir.

Question: Are you ready to give a free voluntary statement?

Answer: Yes sir. (Folder of Exhibits, p. 2).'

Neither the preliminary portion aforesaid nor the testimony of the investigating officer showed an affirmative offer to provide appellant with counsel de oficio if he could not retain counsel of his choice. Consequently, the sworn statement may very well be inadmissible and may not be utilized against appellant."[24]

Indeed it does not appear that constitutional safeguards afforded an accused under investigation for the commission of an offense were complied with. Aside from the Solicitor General's observations, it is clear that waiver of the right to counsel was not made in the presence of counsel. On cross-examination, police investigator Demosthenes Martillano testified:

x x x

"COURT:

Q Why did you not place in the investigation that the witness is waiving his right to a (sic) counsel?

A That is my error.

BENDAÑA:

Q Why? What do you mean by that answer of yours that it was your error? Will you please explain to us that answer of yours?

A All I know is that if the suspect does not need a counsel, I think, it was (sic) also suffice.

Q Tell the court whether or not during the investigation Billy Penillos did not waive his right to a (sic)

counsel?

FISCAL:

It is already stated, Your Honor please, in his statement that when the affiant chose to proceed with the investigation, to answer all questions, he in effect is waiving his right to a (sic) counsel after having been informed of all his rights.

x x x

COURT:

The witness had already admitted that he did not place specifically that portion of waiver. But it does not mean that he did not ask the suspect. It is a matter of interpretation how you are going to interpret that portion of your question. The court under that respect will sustain the objection of the Fiscal."^[25]

x x x

Even if the confession of an accused is gospel truth, if it was made without the assistance of counsel, it is inadmissible in evidence regardless of the absence of coercion or even if it had been voluntarily given.^[26] The same would necessarily apply to a waiver of the right to counsel not made in the presence of counsel.

In *Morales vs. Enrile, et al.*,^[27] this Court, applying and interpreting Section 20, Article IV of the 1973 Constitution, which provides as follows:

"SEC. 20. No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

laid down the duties of an investigator during custodial interrogation and ruled that the waiver of the right to counsel shall not be valid unless made with the assistance of counsel, thus:

"7. At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative, or anyone he chooses by the most expedient means -- by telephone if possible -- or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf. The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel. Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence."

We reiterated the above ruling in *People vs. Galit*,^[28] *People vs. Lumayok*,^[29] *People vs. Albofera*^[30] and *People vs. Marquez*.^[31]

In view therefore of the law and jurisprudence, the sworn statement of appellant, Exhibit "B", is hereby declared inadmissible in evidence and should have been rejected by the trial court even if it is not in fact a confession for, as correctly observed by the People, it is exculpatory in nature. Just the same, since it was taken in violation of appellant's constitutional right to counsel, its exculpatory character did not cure the fatal defect.

We wish to underscore that Section 12(1) of Article III of the present Constitution has gone further to protect,

promote and enhance the right to counsel of any person under investigation by expressly providing that such is a right "to have competent and independent counsel preferably of his own choice" and that it "cannot be waived except in writing and in the presence of counsel."

Be that as it may, We affirm the judgment of conviction by the trial court on the basis of the testimonies of the witnesses presented by the prosecution. Concluded the lower court: "The truth and as clearly borne by the evidence is: the defendant was among the perpetrators of the heinous offense. The robbery, left in its wake the death of Aproniano Lladones and the wounding of his wife Epifania Lopez Lladones." [32]

A trial court's findings of facts carry great weight for it has the privilege of examining the deportment and demeanor of witnesses and, therefore, can discern if such witnesses are telling the truth or not. [33] In the light of the evidence presented in the proceedings below, We do not see any reason to disturb the lower court's factual conclusions.

We, however, modify the designation of the offense the appellant was convicted for on the basis of the information prepared by the then assistant city fiscal. The information should have charged the appellant simply with the special complex crime of Robbery with Homicide under Article 294 of the Revised Penal Code. This Court has consistently held that this offense is denominated as such regardless of the number of the homicides or injuries committed. These other circumstances merely serve as generic aggravating circumstances which can be offset by other mitigating circumstances. [34] There is no crime of robbery with homicide and frustrated homicide [35] or robbery with homicide and attempted homicide. [36] The term "homicide" in paragraph 1, Article 294 of the Revised Penal Code is to be understood in its generic sense; it includes murder and slight physical injuries committed during the robbery which crimes are merged in the crime of robbery with homicide. [37]

The trial court, however, should have taken into consideration the aggravating circumstance of dwelling. Dwelling is aggravating in robbery with homicide because this type of robbery could be committed without the necessity of transgressing the sanctity of the home. [38] It is indisputably clear from the pleadings and the decision of the trial court that although the homicide was committed outside the house of the deceased, the principal offense of robbery was perpetrated inside; the killing thus occurred as a result of the initial evil design to steal.

The penalty for robbery with homicide and physical injuries defined under Article 294 of the Revised Penal Code is reclusion perpetua to death. Considering the presence of the aggravating circumstance of dwelling, the greater penalty, which is death, shall be applied. [39] However, in view of the abolition of the death penalty, the appellant is entitled to the reduced penalty of reclusion perpetua.

As noted from the dispositive portion of the challenged decision, the trial court imposed the penalty of "reclusion perpetua or life imprisonment." Evidently, it considered the latter as the English translation of the former, which is not the case. Both are different and distinct penalties. In the recent case of *People vs. Baguio*, [40] this Court held:

"The Code [41] does not prescribe the penalty of 'life imprisonment' for any of the felonies therein defined, that penalty being invariably imposed for serious offenses penalized not by the Revised Penal Code but by special laws. Reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon, it also carries with it accessory penalties, namely: perpetual special disqualification, etc. It is not the same as 'life imprisonment' which, for one thing, does not carry with it any accessory penalty, and for another, does not appear to have any definite extent or duration."

As early as 1948, in *People vs. Mobe*, [42] reiterated in *People vs. Pilonas* [43] and in the concurring opinion of Justice Ramon Aquino in *People vs. Sumadac*, [44] this Court already made it clear that reclusion perpetua is not the same as imprisonment for life or life imprisonment. Every judge should take note of the distinction and this

Court expects that, henceforth, no trial judge should mistake one for the other.

Finally, conformably with the stated policy of this Court, the award of civil indemnity in the amount of P20,000.00 is increased to P50,000.00.[45]

WHEREFORE, except as modified in its dispositive portion to specify that appellant Abelardo Penillo's penalty is to be reclusion perpetua, to remove the alternative reference therein to "life imprisonment" and to increase the indemnity for the death of Aproniano Lladones to be paid by him to the heirs of said deceased, the judgment of the trial court in Criminal Case No. 2144 is hereby AFFIRMED in all respects. The attempted homicide aspect of the charge is likewise deemed absorbed in one special complex crime of robbery with homicide, defined and penalized under Article 294 of the Revised Penal Code, and the civil indemnity for the death of Aproniano Lladones is hereby increased to P50,000.00.

IT IS SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Original Records, 124-129; Rollo, 8-13. The decision is dated 15 September 1983.

[2] Original Records, 1-2; Rollo, 6-7.

[3] Id., 124.

[4] Decision of trial court, 1-3; Original Records, 124-126.

[5] Rollo, 10-11.

[6] Rollo, 129.

[7] Id., 132.

[8] Id., 3.

[9] Id., 26.

[10] Id., 39.

[11] Id., 68.

[12] Rollo, 46.

[13] TSN, 6 October 1982, 8.

[14] Id., 17.

[15] People vs. Almenario, 172 SCRA 268; People vs. Reana, 120 SCRA 583.

[16] People vs. Espejo, 186 SCRA 627.

[17] TSN, 6 October 1982, 17-20.

[18] Id., 23-24.

[19] Rollo, 12.

[20] TSN, 23 June 1983, 3-6.

[21] People vs. Clores, 184 SCRA 638; People vs. Arceo, 187 SCRA 265; People vs. Esparcia, 187 SCRA 282; People vs. Ampo-an, 187 SCRA 173; People vs. Cagalingan, 188 SCRA 313; People vs. Marapao, 188 SCRA 243; People vs. Mandal, 188 SCRA 526; People vs. Tenebro, 191 SCRA 363; People vs. Tasarra, 192 SCRA 266.

[22] People vs. Arceo, supra.; People vs. Paringit, 189 SCRA 478; People vs. Gupo, 190 SCRA 7; People vs. Yeban, 190 SCRA 409; People vs. Lugto, 190 SCRA 754; People vs. Mañago, 191 SCRA 552.

[23] 191 SCRA 503.

[24] Appellee's Brief, 12-13.

[25] TSN, 17 December 1982, 21-23.

[26] People vs. Repe, 175 SCRA 422.

[27] 121 SCRA 538 (1983).

[28] 135 SCRA 465 (1985).

[29] 139 SCRA 1 (1985).

[30] 152 SCRA 123 (1987).

[31] 153 SCRA 700

[32] Rollo, 12.

[33] People vs. Rehejane, 158 SCRA 258; People vs. Salufrania, 159 SCRA 401; People vs. Capulong, 160 SCRA 533; People vs. Caboverde 160 SCRA 550; People vs. Temblor, 161 SCRA 623.

[34] People vs. Nunag, 196 SCRA 206. See also People vs. Pedroso, 115 SCRA 599; People vs. Mateo, Jr., 179 SCRA 303; People vs. Repuela, 183 SCRA 244.

[35] People vs. Ga y Esplanada, 186 SCRA 790.

[36] GREGORIO, Antonio L., Fundamentals of Criminal Law Review, 1988 ed., 523.

[37] People vs. Ga y Esplanada, supra.

[38] People vs. Gapasin, 145 SCRA 178, citing People vs. Mercado, 97 SCRA 232; People vs. Cabato, 160 SCRA 98; People vs. Dajaresco, 129 SCRA 576.

[39] Article 63(1), Revised Penal Code

[40] 196 SCRA 459 (1991).

[41] The Revised Penal Code.

[42] 81 Phil. 58.

[43] 84 SCRA 167.

[44] 113 SCRA 689

[45] People vs. Bison, 189 SCRA 643; People vs. Sazon, 189 SCRA 700; People v. Baguio, *supra*.

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