

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO BADILLA Y ONES ALIAS DODONG, ACCUSED-APPELLANT.

G.R. No. 69317. May 21, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Bohol, Branch 3, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered finding accused Danilo Badilla y Oñes alias Dodong guilty beyond reasonable doubt of the crime of Robbery with Homicide allegedly committed in the manner and under the circumstances described in the aforequoted information and as penalized under the provisions of Article 294 of the Revised Penal Code and taking into account three aggravating circumstances alleged in the aforequoted information which is offset by one mitigating circumstance, the Court hereby sentences accused Danilo Badilla y Oñes alias Dodong the penalty of DEATH and to indemnify the heirs of Nestora Horohoro the sum of P12,000.00 without subsidiary imprisonment in case of insolvency therefor pursuant to and in accordance with the provisions of Art. 39 of the Revised Penal Code as amended by RA 5465 and to pay the costs of the proceedings.

The weapons used in the commission of the crime namely one stainless knife with white handle and two pieces of broken pestle are ordered confiscated in favor of the government, and the one rota air electric fan marked Exhibit B and the radio cassette (Exh. A) Dynamic Sound, are ordered returned to the heirs of Nestora Horohoro." (Original Record, pp. 55-56)

The prosecution evidence upon which the trial court based its finding of guilt beyond reasonable doubt is summarized as follows:

"The first witness of the prosecution was Ruth Torre Franca, 10 years old, single, Grade V, student of Cogon Elementary School, Tagbilaran City, who testified that on July 18, 1984, in the morning she was at home in their house at Calceta Street, Tagbilaran City together with her aunt Nestora Horohoro. The owner of the house where they live is Praxedes Quidang who at that time was in Manila. That she knows accused Danilo Badilla (witness pointing to the accused in the courtroom). In the whole morning of July 18, 1984 she was in school from 7:00 o'clock in the morning to past 11:00 o'clock. In the afternoon she went back to school but at about 2:00 in the afternoon of the aforementioned date somebody went to school to her classroom and informed her of the incident that happened to her aunt Nestora Horohoro. Before that incident when she returned home at 11:00 o'clock Nestora Horohoro and Danilo Badilla were with them. They ate lunch together in the said house. After lunch she left for school and at about 2:00 in the same afternoon somebody informed her that her aunt Nestora Horohoro died. She went home due to said information. When she arrived home she noticed that the radio cassette and rota air Electric fan were already gone. These two aforementioned things were placed near the TV set and that Nestora Horohoro was already dead lying face down bathed in her own blood at the porch where she was sweeping when she (Ruth Torre Franca) left for school after lunch. Nestora Horohoro was already dead when she arrived. The radio cassette was shown to her in the trial by the prosecuting fiscal and was identified by her to be the same radio cassette near the TV set in the sala of Praxedes Quidang where she

lives and said radio cassette was marked Exhibit "A". The rota air electric fan presented by the prosecution was also identified by her to be the same rota air electric fan that was placed near the TV set of the house of Praxedes Quidang and the prosecution marked said rota air electric fan as Exhibit "B". On cross-examination she declared that before the death of Nestora Horohoro on July 18, 1984, he (sic) saw Danilo Badilla the accused visit the house of Praxedes Quidang three times. However, she did not know the reason why Danilo Badilla visited Nestora Horohoro because at that time she did not know yet that the accused is a relative of Nestora Horohoro.

The next witness of the prosecution was Erica Requina, 45 years old, married, beautician, resident of Calceta St., Tagbilaran City, who declared that she knows accused Danilo Badilla (witness pointing to accused in the courtroom). She knew Nestora Horohoro being a niece of Praxedes Quidang who lives in the house of the latter. The house of Praxedes Quidang is located at Calceta St., City of Tagbilaran which is adjacent to her (Erica) house. Her house and the house of Praxedes Quidang are separated by a fence. On July 18, 1984 at past 1:00 o'clock in the afternoon she was at home with her husband. When she was about to go out from her house, she heard a sound of the gate in the house of Praxedes Quidang. She went out and verified what was it and there she saw Danilo Badilla going out of the gate bringing a radio cassette and rota air electric fan. This Danilo Badilla is the accused in this Case which she identified during the trial to be the same Danilo Badilla whom she saw bringing the radio cassette and rota air electric fan. After seeing the accused bringing rota air electric fan and radio cassette, she went to the gate of the house of Praxedes Quidang and called for Nestora Horohoro but nobody answered. So she went inside the gate to verify whether Nestora Horohoro was washing clothes but instead she saw Nestora Horohoro lying dead bathed in her own blood. In view of the situation that she saw, she awoke her husband and told her husband to call for the police. At first she wanted to call the police at Socias residence nearby but the telephone was busy so she rode a pedicab towards the Tagbilaran City police station and reported the matter to the police. When she reached the police station, the police already knew about the incident because somebody had already reported the matter, therefore she went back home riding in the police jeep with Pat. Balatero. She declared that she saw the rota air electric fan and radio cassette brought by accused Badilla because she visits the house of Praxedes Quidang almost everyday as they are neighbors. She identified the radio cassette and rota air electric fan in the trial to be the same rota air electric fan and radio cassette placed in the house of Praxedes Quidang which were brought by the accused.

The next witness of the prosecution, was Joseph Lim, 33 years old, married, businessman and resident of CPG Avenue, Tagbilaran City who declared that he knows accused Danilo Badilla (witness pointing to accused in the courtroom). That as businessman he is engaged in the sale of hardware and groceries and his place of business establishment is at the old post office building, CPG Avenue, Tagbilaran City. The name of his store is Tagbilaran Champion Enterprise. At about 8:00 o'clock in the morning of July 18, 1984 he was at his store. While in his store a certain person approached him and offered to sell a radio cassette and a rota air electric fan. He told the person to bring the said items because he would see if he would like it. That person wanted to sell the two aforementioned items promised to come back at about 2:00 P.M. and after that the person went away. After the person left he called the radio station DYRD and inquired the radio station if somebody has lost a radio cassette and rota air electric fan because he usually hears from said radio station about some person who lost things like radio cassette. But the radio station DYRD advised him to call a police station at Tagbilaran City and so he called for the police. The police with whom he conversed on the telephone told him that the police would go to his store. At about 9:00 in the morning of that day there were policemen who arrived at his store. The policemen stayed nearby his store until past 1:00 o'clock in the afternoon of said day. At past 1:00 in the afternoon of the same date the person who introduced to him that he would sell radio cassette and electric fan arrived in his store. While the said person was in his store the two policemen were also inside his store. Right there he asked the person about the price of the two items and the answer of said person it was P3,000.00. This person who was selling the two items was called by the policemen and was asked about the last price of said items, and the person answered it is P3,000.00. After that he (accused) was asked by the police who were then in plain clothes as to where he got the radio cassette and rota air and the answer of that person it was given to him by his brother. Then the police told the person that he would be investigated and

this person was later on known to be Danilo Badilla who was identified by him (Joseph Lim) in the trial of the case to be the same person who went to his store to sell radio cassette and rota air. He identified the radio cassette to be colored black, Sanyo Dynamic Sound which he identified in the trial and marked Exhibit A and likewise she (sic) identified the rota air to be light brown in color. Later on he learned from the police station that somebody died. He did not know how the accused Danilo Badilla got those radio cassette and rota air.

On cross-examination Joseph Lim declared that when Danilo Badilla went to his store at 1:00 in the afternoon of July 18, 1984 bringing the radio cassette and rota air electric fan he noticed that there was a small wound on his index finger. He forget whether it was long (sic) or right index finger.

The next witness for the prosecution was Teofano Ordidor, patrolman of the Tagbilaran Police Station, who declared that he had been with the Tagbilaran Police Station as patrolman for 16 years up to the present. That on July 18, 1984 in the morning while in the police station he was called by Capt. Absalon, then the station commander, to conduct surveillance at Champion Enterprises because there was a person who offered to sell a radio cassette and electric fan. In compliance with the said order of their station commander he and Pfc. Zamora went to the Champion Enterprises located at CPG North, Tagbilaran City. The owner of the said store is Joseph Lim. They asked Joseph Lim if it is true that there was a person who offered to sell a radio cassette and electric fan to him and Joseph Lim answered Yes. Joseph Lim informed them that that person who offered to sell the aforementioned items would come back to his store. When the person came back to the Champion Enterprises at about past noon time he and Pat. Zamora were already in the store, while Joseph Lim and accused Danilo Badilla (the person who offered to sell the aforementioned items) were negotiating for the price of the said items, they were listening. And they heard that Danilo Badilla would sell the item for P3,000.00 to Joseph Lim. After that he held the shoulder of Danilo Badilla and introduced themselves to be policemen because they were then in plain clothes. They invited the accused to go with them to the police station for questioning because the items he brought to Champion Enterprises were questionable. Pat. Ordidor identified the radio cassette recorder (Dynamic Sound) marked Exhibit "A": and the rota air electric fan (Super King) as Exhibit B. He was able to identify the two items because there was an initial of Pat. Eugenio Zamora in the radio cassette marked Exhibit 2 (should be A) as well as in the rota air electric fan. Thereafter, they rode on a motorcycle and brought the accused to the police station. They noticed that the right little finger of the accused was with bandage which was stained with blood. At the police station they conducted investigation on the accused. The piece of cloth (bandage) which was the cover of the little finger of the accused was removed and said piece of cloth was identified by him to be the same bandage marked Exhibit D.

The next witness of the prosecution was Dr. Marcial Escobia, Jr., 31 years old, resident physician of the Celestino Gallares Memorial Hospital, Tagbilaran City, who declared that on July 18, 1984 he examined the dead body of Nestora Horohoro. After examining said deceased body, he issued a postmortem certificate of death marked Exhibit E and the back of the said certificate is a postmortem certificate marked Exhibit E-1 which he both identified during the trial. Atty. Migriño, Jr., admits that the entry in the post mortem certificate is correct, after Dr. Escobia compared the said certificate with the records of the hospital. The post mortem certificate is signed by Dr. Jones of the Tagbilaran City Hospital because the dead body of Nestora Horohoro was brought to the City Hospital of Tagbilaran. However, they received the request from the INP Tagbilaran City to conduct autopsy on the deceased body of Nestora Horohoro and after which he issued an autopsy report marked Exhibit F but it was signed by Dr. Jones because as already said the dead body was brought to the Tagbilaran City Hospital. Dr. Escobia declared that the dead body of Nestora Horohoro showed the following:

"MULTIPLE LACERATED WOUNDS:

2 CM. LEFT FRONTAL

2.5 CM. RIGHT FRONTO TEMPORAL**INCISED WOUND – 2 CM ANGLE OF THE LEFT JAW BELOW THE LEFT EAR****STAB WOUNDS:****1 CM. LEFT CHEEK**

1 CM. MISTERNUM, 4TH INTERCOSTAL SPACE, PENETRATING THORACIC CAVITY, LACERATING RIGHT LUNG

1 CM. MIDCLAVICULAR, 2ND INTERCOSTAL SPACE PENETRATING, LACERATING LEFT LUNG

1 CM. LEFT 5TH INTERCOSTAL SPACE MIDCLAVICULAR LUNG, PENETRATING THORACIC CAVITY, LACERATING LEFT LUNG.

1 CM. LEFT 7TH INTERCOSTAL SPACE, MIDAXILLARY LINE**1 CM. RIGHT PARASTERNAL, 3RD INTERCOSTAL SPACE**

1 CM. RIGHT MIDAXILLARY LINE, 4TH INTERCOSTAL SPACE PENETRATING THORACIC CAVITY, LACERATING RIGHT LUNG.

1 CM. RIGHT POSTERIOR AXILLARY LINE, 4TH INTERCOSTAL SPACE MIDVERTEBRAL AREA

1 CM. 3RD RIGHT INTERCOSTAL SPACE PARAVERTEBRAL AREA**1 CM. 4TH LEFT INTERCOSTAL SPACE, PARAVERTEBRAL AREA****1 CM. 6TH RIGHT INTERCOSTAL SPACE, PARAVERTEBRAL AREA****1 CM. 7TH LEFT INTERCOSTAL SPACE, PARAVERTEBRAL AREA****1 CM. 8TH LEFT INTERCOSTAL SPACE, PARAVERTEBRAL AREA****1 CM. LEFT HAND****1 CM. LEFT FOREARM**

HEMOTHORAX, SECONDARY TO PENETRATING STAB WOUNDS OF THE APPROXIMATELY 60 cc EACH PLEURAL CAVITY ABRASIONS – NECK, FACE, ANTERIOR CHEST

(SGD.) MARCIAL M. ESCOBIA, JR.

Medico Legal Officer”

According to Dr. Escobia the lacerated wound right side of the forehead and temple of the head of the said victim may be caused by blunt object. It could have been caused by wooden pole which was shown to Dr. Escobia during the trial which was already marked Exhibit G (long broken pole) and G-1 (short broken pole). The incised wound in the body of the victim may be caused or inflicted with knife. And when shown the knife (Exh. H) Dr. Escobia said it is possible that said knife may have been the instrument used in inflicting the incised wound on said victim. The victim Nestora Horohoro sustained fifteen (15) stab wounds. The cause of

death was due to hemorrhage and collapse of the lungs because the wound penetrated the lungs of the victim. There were four wounds which penetrated the lungs of the victim.

The next witness of the prosecution Pat. Erlende Bantugan, Tagbilaran Police Station, who declared that on July 18, 1984 at about past 12:00 he was at the police station of Tagbilaran City. While in said station a certain Rica Requina requested them to go with her to the residence of Praxedes Quidang because they (sic) saw a dead person. He and Pat. Suaybaguio went with Requina to the aforementioned house at Calceta St., Tagbilaran City. When they arrived at the said house Pat. Oppus also arrived and they cordoned the area to prevent persons from getting inside. When they went inside the compound where the house is located they saw a person lying face on the ground and they also noticed a broken pestle situated near the body of the victim who was lying on the pool of blood. The broken pestle was marked Exhibit G and G-1. He could still identify the two pieces of broken pestle because he inscribed at the tip of the long broken pestle the letters EEB and another initial on the shorter broken pestle letters EEB which means Erlende E. Bantugan. Thereafter, he requested Pat. Oppus to contact the Fiscal and the doctor to conduct an inquest. Later on, Fiscal Geulen, Jr. and a photographer arrived. He requested the photographer to take pictures of the victim. When Fiscal Geulen rolled the body of the victim to face up they found a knife underneath which knife was identified by him in the trial marked Exhibit H. He could identify the said knife because he placed initial on the tip of the knife at the time of the investigation letters EEB which means Erlende E. Bantugan. After Fiscal Geulen inspected the body of the victim, the body of the said victim was brought to the funeral parlor. When they entered the door of the house there was a drop of fresh blood coming from the kitchen door to the sala and they saw a piece of cloth with blood stain near the door of the comfort room and this bloodstained cloth was marked Exhibit 1 (should be I) which he identified to be the same cloth found near the door of the comfort room. Afterwards when he went to the sala of the house he saw a portion of a piece of cloth taken from the handkerchief which portion was marked Exhibit J. After that the father of the victim in the person of Amadeo Horohoro informed them that the rota air electric fan and radio cassette, in the house were lost. The photographs taken by the Ramasola Superstudio photographer which took pictures of the victim were marked as Exhibits L, L-1, L-2 and L-3 and the pool of blood in Exhibit L is marked Exhibit L - (a). (Original Record, pp. 46-51)

The version of the defense is shown in the testimony of the accused-appellant. It is summarized as follows:

"Danilo Badilla, 21 years old single, jobless, temporarily residing at barrio Bood, Maribojoc, Bohol who declared that he is a resident of the Municipality of Calamba, Misamis Occidental but he is on vacation, that is why he stayed at barangay Bood, Maribojoc, Bohol. His parents are from Calamba, Misamis Occidental and both still alive. He arrived in barrio Bood last June 1984 and stayed in the house of his uncle. He also remembered that upon his arraignment in this case he pleaded Guilty. Before July 18, 1984 he already knew Nestora Horohoro because she was his relative being related to his mother. The surname of his mother is Oñes. Before July 18, 1984 he already saw Nestora Horohoro at her residence in the house of Quidang at Calceta Street, Tagbilaran City. He had gone to the house of Praxedes Quidang three times. When he first visited Nestora Horohoro in the residence of Quidang he wanted to borrow money from Nestora Horohoro but the latter did not lend him money. However, he stayed in the house of Quidang for four hours. When he left the house of Quidang Nestora Horohoro told him to come back. He came back for the second time to the house of Quidang just to visit but he did not borrow money anymore from Nestora Horohoro. The third time he visited Nestora Horohoro at the house of Quidang his purpose was to borrow the radio cassette recorder in the house of Quidang because he would bring it to the sea. The radio cassette exhibited by the prosecution was the same radio cassette he borrowed from Nestora Horohoro. He did not bring the radio cassette recorder after Nestora Horohoro agreed but he went first to contact one Joseph Lim at the Champion Enterprises because he had planned to pledge the radio cassette recorder to Joseph Lim for P500.00 so that the money could be used for his daily expenses. He contacted Joseph Lim at the Tagbilaran Champion Enterprises but at that time he did not know Joseph Lim yet. However, he noticed that Joseph Lim store had radio cassette for sale and he thought that Joseph Lim would be interested to buy a radio cassette recorder. After contacting Joseph Lim the latter told him to go, back to the store because he would examine first the item. Then he went back to the house

where Nestora Horohoro was residing. When he arrived at the house of Quidang where Nestora Horohoro was residing he did not get at once the radio cassette recorder. He first listened to the drama through the radio at the house of Quidang. Then he took his lunch with Nestora Horohoro at Quidang's house. After lunch Nestora Horohoro was cleaning at the back portion of their kitchen and he also helped. At that time Nestora Horohoro's companion was a small girl. Later on the small girl went to school. After that Nestora Horohoro was treaming (sic) the grasses with a bolo. While she was treaming (sic) the grasses it was already about 2:00 o'clock in the afternoon and it was almost time to go to the sea. He told Nestora Horohoro that he was leaving and that he will bring the radio cassette but Nestora Horohoro refused. He went near to Nestora Horohoro but he was pushed by Nestora. At that time Nestora Horohoro got angry and she refused to lend the radio cassette. He approached again Nestora Horohoro but she shouted. He told her not to shout for there might be neighbors who could hear them but she kept on shouting. And so he tried to cover her mouth with his hand and so it happened that his little finger was placed in the mouth of Nestora Horohoro and she bit it while he pulled his finger away. He told Nestora Horohoro not to bite his finger and he asked her to release it. And he told Nestora that he is no longer borrowing the radio cassette. He was able to pull by force his finger out from the mouth of Nestora Horohoro. When he saw that his finger was bleeding because of the bite of Nestora Horohoro's teeth, he felt obfuscated so he held his knife and stabbed Nestora Horohoro. He cannot remember how many times he stabbed Nestora Horohoro but he had no intention to kill her. Because he thought that Nestora Horohoro was already dead he decided to bring the rota air electric fan and radio cassette recorder inside the house of Praxedes Quidang where Nestora Horohoro was residing because his plan was to use the proceeds of said item for his fare. He identified the small piece of cloth marked Exhibit D for the prosecution which was bloodstained and he told the court that, that is the same cloth that he bound around his finger that was bleeding. Then he left the house of Quidang and brought the radio cassette recorder and the rota air electric fan and proceeded to the Champion Enterprises. He declared also that the broken pestle marked Exhibits G and G-1 for the prosecution was already broken when he was there and he did not use said pestle against Nestora Horohoro. At the time he stabbed Nestora Horohoro, the bolo used by Nestora Horohoro in treaming (sic) the grass was stuck in the banana plant but Nestora Horohoro did not use said bolo against him although Nestora Horohoro attempted to reach for the bolo but he tried to hold her hands. The knife marked Exhibit H of the prosecution was identified by him to be the same knife he used in stabbing Nestora Horohoro. He had that knife during that occasion because he was planning to go with his friends to the sea and eat raw fish locally called 'kinilaw'. On cross-examination, accused Danilo Badilla declared that he went to the house of Praxedes Quidang where Nestora Horohoro was residing in 1984 for the first time. At that time he did not know yet Nestora Horohoro but he introduced himself to her. He was first looking for Praxedes Quidang but she was not there so he borrowed money from Nestora Horohoro. He is acquainted with Praxedes Quidang the owner of the house where Nestora Horohoro is residing because Praxedes Quidang and Nestora Horohoro are his relatives. He further declared on cross-examination that his purpose to borrow the radio cassette recorder on July 18, 1984 was to pledge it to Joseph Lim. After lunch on July 18, 1984 Nestora Horohoro refused to lend him the said radio cassette. On further cross-examination accused answered that the knife (Exh. H) which was exhibited by the prosecution was bent because of the force he used when he stabbed Nestora Horohoro. (Original Record, pp. 51-53)

The accused raises the following assignment of errors in his appeal, to wit:

I

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE INFORMATION FAILED TO AVER THE COMMISSION OF THE OFFENSE OF ROBBERY WITH HOMICIDE AS DEFINED IN ARTICLE 294 OF THE REVISED PENAL CODE.

II

ASSUMING ARGUENDO THAT THERE WAS ROBBERY COMMITTED, THE TRIAL COURT ERRED IN FINDING THAT THE KILLING WAS COMMITTED AS A CONSEQUENCE OF OR ON THE OCCASION OF THE ROBBERY.

III

THE TRIAL COURT ERRED IN ADMITTING IN EVIDENCE THE POST-MORTEM CERTIFICATE, EXHIBIT "E", AND THE AUTOPSY REPORT, EXHIBIT "F", WHICH WERE PREPARED AND SIGNED BY DR. ALBERT JONES, BUT WHO WAS NOT PRESENTED AS A WITNESS.

IV

THE TRIAL COURT ERRED IN FINDING THAT THE CRIME WAS COMMITTED WITH TREACHERY, OBVIOUS UNGRATEFULNESS AND DWELLING.

V

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY, WHICH HAS BEEN DECLARED UNCONSTITUTIONAL UNDER THE 1973 AND THE FREEDOM CONSTITUTIONS.

VI

THE TRIAL COURT ERRED IN NOT FINDING THAT THE OFFENSE COMMITTED IS SIMPLE HOMICIDE WITH THE MITIGATING CIRCUMSTANCES OF PLEA OF GUILTY AND LACK OF INTENTION TO COMMIT SO GRAVE A WRONG AND WITH NO OFFSETTING AGGRAVATING CIRCUMSTANCES. (Appellant's Brief, pp. 1-3)

Two trials were conducted in this case. During the initial proceedings, the accused was arraigned. He pleaded guilty to the offense charged. As a result of this plea of guilty, the accused was sentenced to death by the lower court on October 31, 1984. In an automatic review of the foregoing decision, this Court gave the accused a fuller opportunity to re-examine his plea of guilt, set aside the judgment under automatic review and ordered the case to be remanded to the trial court for further proceedings on September 11, 1985. The questioned March 3, 1986 decision of the trial court is based on the continued proceedings.

It should be stressed at the outset that the accused-appellant never withdrew his October 22, 1984 plea of GUILTY during the further proceedings. In his later testimony he admits killing the victim although he attributes it to obfuscation.

In the first assignment of error, the appellant contends that the information filed against him does not charge the crime of robbery as the phrase "with the intent to gain and by the use of force and violence" qualifies the charge of homicide, not the charge of robbery.

The information, filed against the accused alleged:

"That on or about the 18th day of July, 1984, in the City of Tagbilaran, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with the intent to gain and by the use of force and violence, did then and there willfully, unlawfully and feloniously assault, attack, and beat Nestora Horohoro with a wooden pole, and with the use of a stainless knife, a deadly weapon, stab the latter on the vital parts of her body thereby inflicting upon her various mortal wounds which directly caused the death of said Nestora Horohoro, and thereafter, the said accused did then and there willfully, unlawfully, feloniously and forcibly

take and carry away one (1) rota-air electric fan and one (1) Sanyo Dynamic radio cassette recorder, to the damage and prejudice of the heirs of the said Nestora Horohoro in an amount to be proved during the trial. (Underlining supplied)

Acts committed contrary to the provisions of Article 294 of the Revised Penal Code with the aggravating circumstances of treachery, obvious ungratefulness and dwelling." (Original Record, p. 10)

A close analysis of the above information will reveal that it has sufficiently alleged the proper offense committed which is that of Robbery with Homicide and fully apprises the accused about what he is facing.

It is explicit in Rule 110, Sec. 9 of the Rules of Criminal Procedure that:

"SEC. 9. Cause of accusation. - The acts or omissions complained of as constituting the offense must be stated in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. (8)"

Although the term "with the intent to gain and by the use of force and violence" precedes the part alleging the "homicide", the information taken as a whole is sufficient to enable a person of common understanding to know that the crime charged is that of robbery with homicide as the necessary elements of the said offense are present in the above information. This notwithstanding, we take this opportunity to remind the Chief Prosecutors of provinces and cities to train their subordinates how to prepare carefully crafted and precisely professional informations in studiedly correct grammar so that, as argued by the distinguished counsel of the appellant, technical offenses are accurately presented with all distinguishing and essential elements characterized beyond question.

The appellant also states assuming *arquendo* that robbery was committed, the killing was the result of the quarrel between the victim and himself thus, the homicide was not committed as a consequence of or on occasion of the robbery.

This contention is without merit.

The appellant's reason for stabbing the victim is that "when he saw that his finger was bleeding because of the bite of Nestora Horohoro's teeth, he felt so obfuscated so he held his knife and stabbed Nestora Horohoro". This statement is purely self-serving. The more believable reason is the appellant's craving for the radio cassette recorder and the electric fan and his willingness to get them from the appellant whatever the means or cost. The testimony of Joseph Lim reveals that the appellant already had a plan to get not only the radio cassette but the rota air electric fan as well even before the killing. The testimony of the appellant, therefore, was only an attempt to cover-up his plan to get the two items as he did not even make mention of an electric fan to be borrowed from the deceased. These two items were offered by the appellant to Joseph Lim as early as 8:00 o'clock in the morning of July 18, 1984. Upon the victim's refusal to give the said items, the appellant attacked and killed the victim and thereafter took the items to sell to Joseph Lim. The policemen were already there because of the tip that someone was coming back to sell what were probably hot items.

The homicide then, was committed as a consequence of or on occasion of the robbery.

It is evident that robbery was committed. Article 293 of the Revised Penal Code states:

"Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything shall be guilty of robbery."

These elements are present in the instant case. The intention to gain can be gleaned not only from the testimony of

the businessman-buyer, Joseph Lim but also from the appellant's own testimony as he would have used the proceeds of the sale of the radio cassette and electric fan for his fare. There was also the use of force as earlier discussed.

It has been held that in robbery with homicide, the robbery itself must be proven, otherwise, the accused may be convicted only for the killing, homicide or murder as the case may be. (*People v. Repuela, et al.*, G.R. No. 85178, March 15, 1990). In the case at bar, the fact of robbery has been established.

As regards the third assignment of error, the appellant questions the admissibility in evidence of the post-mortem certificate, Exhibit "E" signed by Dr. Jones when he was not presented as a witness to identify said certificate.

Also, he states that the best evidence should have been the hospital records and not the post-mortem certificate of death as the entries in the certificate were merely copied from the hospital records.

It has been repeatedly held as a rule of evidence that objections against the admission of any evidence must be made at the proper time and that if not so made it will be understood to have been waived. The proper time to make a protest or objection is when, from the question addressed to the witness, or from the answer thereto, or from the presentation of the proof the inadmissibility of evidence is, or may be, inferred. (*People v. Mariño*, 130 SCRA 595, 600-601 [1984]; *People v. Verges*, 105 SCRA 744, 755 [1981]). In the case at bar, even if the appellant would not admit Exhibit "E" without seeing the original (TSN, January 10, 1986, p. 28), this is not the objection that is raised in the accused's appeal. Moreover, the appellant did not object to the admissibility of Exhibit "E" and "E-1". (TSN, January 17, 1986, p. 5)

Even without said rule, the witness presented by the prosecution, Dr. Escobia, had personally examined the cadaver of the deceased and is, thus deemed competent to testify on the same matters covered by the post-mortem certificate.

The appellant alleges that the aggravating circumstances of treachery, dwelling, and obvious ungratefulness were not supported by evidence.

Treachery is presents in this case because the appellant employed measures intended to ensure the commission of the offense without risk to him arising from the defense his victim might make. (*People v. Francisco, et al.*, G.R. No. 69580, February 15, 1990)

The numerous stab wounds, some of which were inflicted at the back of the victim, shows that the appellant's attack was sudden and brutal. The suddenness of the attack deprived the victim, who was a woman, unarmed, and alone, the opportunity to run or fight back. The appellant, a strong young man, did not even suffer any injuries except for the small wound on his finger inflicted by a bite. Obviously, apart from using her teeth, the victim could not put up any defense.

Obvious ungratefulness cannot be appreciated as there is no evidence as to what generosities and the extent thereof were received by the appellant from the victim.

Dwelling is also considered as an aggravating circumstance in this case.

The appellant cites a number of cases decided in the 1940's and 50's ruling that for the circumstance of dwelling to be established, the house in which the offense is committed must belong to the victim or at least be her permanent dwelling.

People v. Sto. Tomas, 138 SCRA 206, 219 [1985] states:

"Anent appellant's submission that the trial court erred in considering dwelling as an aggravating

circumstance, we find the same bereft of any legal support. There is no dispute that the place where the crimes herein involved were committed is the house of Consolation Grulla. It is there where she lives with her daughter, Natividad Grulla (the other victim) and where Salvacion Grulla was temporarily staying in order to escape from the brutalities of the appellant brought about by the latter's jealousy. The fact that Salvation's stay in the said place may be considered as a temporary sojourn adds no validity to appellant's stance on this point."

Dwelling, then, may mean temporary dwelling. Applying the above ruling, we agree with the trial court that dwelling is an aggravating circumstance though the victim was not the owner of the house where the crime was committed. She was living in that house with her niece. The owner was in Manila.

The appellant submits that the mitigating circumstance of lack of intention to commit so grave a wrong mentioned in the sixth assignment of error, should be considered as he had no intention to kill.

This mitigating circumstance addresses itself to the intention of the offender at the particular moment when he executes or commits the criminal act. (People v. Abueg, 145 SCRA 622, 634 [1986]).

We find that such mitigating circumstance cannot be considered in this case. The intention of the appellant was clearly manifested in his overt acts as the victim suffered at least eighteen (18) stab wounds and multiple lacerated wounds plus abrasions and other injuries.

Robbery with homicide is punishable by reclusion perpetua to death. The aggravating circumstances of treachery and dwelling are appreciated in this case with the mitigating circumstance of plea of guilty. Death, then the proper imposable penalty (Article 63 (4), Revised Penal Code). In view, however, of Article III, Section 19 (1) of the 1987 Constitution as interpreted in our ruling in People v. Munoz, et al., G.R. Nos. L-38969-70, February 9, 1989, 170 SCRA 107 [1989]; prohibiting the imposition of the death penalty, the Court has since February 2, 1987 not imposed the death penalty whenever it was called for under the Revised Penal Code but instead reduced the same to reclusion perpetua. (People v. Solis, et al., G.R. Nos. 78732-33, February 14, 1990) Thus, Danilo Badilla is sentenced to reclusion perpetua.

WHEREFORE, IN VIEW OF THE ABOVE, the judgment of the trial court is MODIFIED, and the accused-appellant DANILO BADILLA is found GUILTY beyond reasonable doubt of the special complex crime of robbery with homicide with the aggravating circumstances of treachery and dwelling and the mitigating circumstance of plea of guilty. The accused-appellant is hereby sentenced to suffer the penalty of reclusion perpetua. In addition, the INDEMNITY to the offended party is INCREASED TO THIRTY THOUSAND PESOS (P30,000.00).

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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