

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENEDICTO DAPITAN Y MARTIN, @ “BENNY” AND FRED
DE GUZMAN, ACCUSED. BENEDICTO DAPITAN Y MARTIN @
“BENNY”, ACCUSED-APPELLANT.**

G.R. No. 90625. May 23, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is an appeal from the Decision of the Regional Trial Court of Rizal (Branch 75, San Mateo) 4th Judicial Region, finding the accused-appellant guilty of the crime of Robbery with Homicide and sentencing him to:

"... suffer the penalty of RECLUSION PERPETUA, and to pay the heirs of the victim Rolando Amil in the amount of Thirty Thousand (P30,000.00) Pesos, without subsidiary imprisonment in case of insolvency." [1]

Only the accused-appellant was tried. His co-accused, Fred de Guzman, remained at large and the court ordered the archival of the case as against him, to be revived upon his arrest.

The information filed with the court a quo on 7 August 1986 against accused-appellant and his co-accused reads in part as follows:

"That on or about the 16th day of May, 1986, in Barangay San Rafael, Municipality of Rodriguez (formerly Montalban), Province of Rizal, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and mutually helping and aiding one another, with intent to gain, armed with deadly weapon and by means of force and violence, then and there willfully, unlawfully and feloniously took, robbed/stole and carried (sic) away two (2) pieces of men's watches worth One Thousand One Hundred Eighty Eight Pesos (P1,188.00), one (1) pair of long pants worth Two Hundred Fifty Pesos (P250.00) and cash money in the amount of Seventy Five Pesos (P75.00) belonging to Orendia E. Amil, without the knowledge and consent of said owner and to her damage and prejudice in the total amount of One Thousand Five Hundred Thirteen Pesos (P1,513.00), Philippine Currency; that on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the above-mentioned articles, the herein accused in pursuance of their conspiracy, did then and there willfully, unlawfully and feloniously, with evident premeditation and taking advantage of their superior strength and with intent to kill, treacherously attack, assault and employ personal violence upon the person of Rolando Amil (an eight year old child) by stabbing him on the neck and hitting him several times on the head with a piece of wood, to prevent him from making an outcry, thereby inflicting upon him physical injuries which directly caused his death." [2]

When arraigned on 25 November 1986 with the assistance of counsel de oficio, Atty. Magsanoc, accused entered a plea of not guilty. [3]

At the scheduled hearing on 10 February 1987, new counsel de oficio for the accused, Atty. Gabriel Alberto of the Citizens Legal Assistance Office (CLAO) of San Mateo, Rizal, manifested that the accused had expressed to him the desire to enter a plea of guilty to a lesser offense. The court forthwith issued an order reading as follows:

"Atty. Alberto of CLAO and de oficio counsel for the accused manifested that the accused has manifested his desire to make a plea of guilty to a lesser offense but the circumstances are yet to be made in details. It appears that there are two mitigating circumstances that maybe applied. The Prosecuting Fiscal made no objection but also manifested that he has to look into the penalty applicable. The counsel for the accused and the Prosecuting Fiscal jointly moved that the hearing of this case be reset to another date.

WHEREFORE, reset the hearing of this case for March 9, 1987 at 9:30 A.M. . . "[4]

The scheduled hearing of 9 March 1987 was cancelled and reset to April 13, 1987 in view of the required vacation leave of absence of the judge.

On 13 April 1987, upon motion of the prosecution and the defense in view of the projected settlement of the civil liability of this case, the hearing was reset to 19 May 1987.[5] On that date, however, counsel de oficio for the accused did not appear, hence "a report on the projected settlement of the civil aspect of the case cannot be made" and the hearing was reset again to 15 June 1987,[6] which schedule was later on cancelled due to the compulsory retirement of the presiding judge (Judge Conrado Beltran) which took effect on 7 June 1987.[7]

In the meantime, Judge Francisco C. Rodriguez, Jr. presided over the trial court.[8]

The initial reception of evidence took place on 24 August 1987 with the accused-appellant represented by Atty. Benjamin Pozon, also of the CLAO.

On various dates thereafter, hearings were had until the parties completed the presentation of their evidence. Witnesses Orenia Amil and Cpl. Rodolfo Rivera for the prosecution testified during the incumbency of Judge Rodriguez. The rest testified before Judge Edilberto H. Noblejas who succeeded Judge Rodriguez.

On 5 May 1989, the trial court promulgated its Decision[9] the dispositive portion of which reads:

"WHEREFORE, premises considered, after appraising the evidence presented by the prosecution and the evidence of the defense, the Court finds the accused BENEDICTO DAPITAN y MARTIN GUILTY BEYOND REASONABLE DOUBT of the crime of ROBBERY WITH HOMICIDE, punishable under Article 294, par. 1 of the Revised Penal Code and sentences him to suffer the penalty of RECLUSION PERPETUA, and to pay the heirs of the victim Rolando Amil in the amount of Thirty Thousand (P30,000.00) Pesos, without subsidiary imprisonment in case of insolvency.

With respect to the case against FRED DE GUZMAN, the records of the case insofar as he is concerned is hereby ordered ARCHIVED to be revived upon his arrest when he may be heard to answer for the offense charged."

On 11 May 1989, accused-appellant filed his Notice of Appeal, manifesting therein that he was appealing the decision to this Court.[10] However, in the Order of 11 May 1989, Judge Cipriano de Roma erroneously directed the transmittal of the records of the case to the Court of Appeals.[11] The Court of Appeals transmitted to this Court on 4 March 1989 the records which were erroneously transmitted to it.[12]

In this appeal accused-appellant assigns only one error:

THE TRIAL COURT ERRED IN NOT APPLYING THE INDETERMINATE SENTENCE LAW THAT FAVORS THE ACCUSED APPELLANT.[13]

He is thus deemed to be in complete agreement with the findings and conclusion of facts by the trial court which We quote:

"The evidence adduced by the prosecution more than prove with moral certainty the guilt of the accused Benedicto Dapitan for the crime of ROBBERY WITH HOMICIDE. While there may be no direct evidence

linking the accused to said crime, the witnesses who testified more than fully satisfy the requirements for conviction on the basis of circumstantial evidence, because it affords enough basis for a reasonable inference of the existence of the fact thereby sought to be proved, that the accused performed the criminal act.

Orencia Amil, principal witness for the prosecution testified that at around 8:30 in the morning of May 16, 1986, she left for her farm which was about 50 meters away, leaving behind in her house his adopted son Rolando (the victim) very much alive, (TSN, page 5, hearing of August 24, 1987) who refused to go with her because he chose to play in the house instead; and that because she heard the barking of her dog which aroused her suspicion, she immediately returned and saw the accused Benedicto Dapitan and his co-accused Fred de Guzman passing through her fence (TSN, pp. 5-6, hearing of August 24, 1987); and that when she entered her house calling her child's name, and seeing the backdoor open, she entered and saw Rolando's body sprawled on the floor and his brain "scattered". Near his body was a piece of wood, also bloodied. Thinking her son to be still alive she took her in her arms, placed him on the table and that was the time she realized he was dead. (TSN, pages 6-7, hearing of Aug. 24, 1987).

She likewise testified that she lost two watches worth P1,180; pants at P250.00 and cash amounting to P75.00; and after her son's burial she further found that her child's toy worth P500.00, a flashlight and a bolo worth P45.00 and P120.00, respectively, were missing. (TSN, pages 8-9, hearing of August 24, 1987).

Orencia Amil's testimony is likewise corroborated on its material points by the testimony of Cello Nilo, another prosecution witness. He testified that between the hours of 8:00 to 9:00 in the morning of May 16, 1986, he saw two persons entering the house of Mrs. Orencia Amil, one of whom he identified as Benedicto Dapitan, (TSN, pages 4-5, hearing of October 26, 1987). He positively identified Benedicto Dapitan who was in Court (TSN, pages 5-6, hearing of October 26, 1987). He likewise testified that when the two suspects entered the house of Mrs. Amil, he heard the voice of a child. In the statement he gave the police investigators (Exhibit B) which he confirmed when he testified, pertinent portions of which are herein quoted, he said:

.....

T.

Noong May 16, 1986, sa pagitan ng ika 8:00 ng umaga, natatandaan mo ba noon kung saan ka naroroon?

S.

Ako po ay galing sa aming bahay at ako po ay patungo sa bundok para magtanim po ng punong saging.

.....

T.

Noong ikaw ay papadaan sa malapit sa bahay ni Orencia Amil, wala ka bang napansin na tao na nagtungo doon sa kanilang bahay?

S.

Mayroon po.

T.

Nakilala mo ba naman kung sinong tao ang iyong nakita na dumaan doon sa bahay nina Mrs. Orenacia Amil?

S.

Iyong lang pong isang tao ang aking kilala na dumaan doon sa bahay nina Mrs. Orenacia Amil na si Benny Dapitan na ang tirahan po ay doon po rin sa Sitio Tabak, Brgy. San Rafael, R/R, pero iyon pong isa na kasama ni Benny Dapitan ay hindi ko po kilala sa kanyang tunay na pangalan.

T.

Ilang bang tao ang iyong nakita na nagpunta doon sa bahay ni Mrs. Orenacia Amil?

S.

Dalawang tao po.

T.

Mayroon ka ba gaano kalayo doon sa dalawang tao na ang isa ay si Benny Dapitan ng sila makita mo na pumunta doon sa bahay ni Mrs. Orenacia Amil?

S.

Mayroon po lamang, na mga 10 metro ang aking layo sa kanila.

T.

Matapos na makita mo si na si Benny Dapitan at iyong isa niyang kasama ay pumasok doon sa bahay, ano pa ang sunod na pangyayari?

S.

Akin pong nakita na matapos na sila ay makapasok doon sa loob ng bahay ni Mrs. Amil ay kanila pong isinara iyong pintuan noong bahay, at hindi ko po naman sila pinansin at ako po ay magpatuloy na sa aking pupuntahan.

.....

T.

Matapos na makapasok iyong sina Benny Dapitan doon sa bahay, wala ka ba naman narinig na sigaw ng isang bata?

S.

Mayroon po pero hindi ko po pinansin.

(Italics supplied).

.....

The testimonies of these two witnesses, evaluated together, on what transpired in the morning of May 16, 1986, between the hours of 8:00-9:00 a.m. attest to the existence of the following facts:

1. That the victim, Rolando Amil, was alive when her mother left her as testified to by Orendia Amil and witness Celo Nilo, who cry out when the two suspects entered the house. (Testimony of Orendia Amil)
2. That the accused Benedicto Dapitan and an unidentified companion entered the house at a time when Mrs. Amil had already left, and that the victim, at the time, was still alive. (Testimonies of Celo Nilo & Orendia Amil)
3. That when Mrs. Amil returned at quarter to nine she saw Benedicto Dapitan and Fred de Guzman leaving the premises. (Testimony of Orendia Amil)
4. And that when Mrs. Amil entered her house, the victim, Rolando Amil, was already dead. (Testimony of Orendia Amil)

As gleaned from the records, witness Orendia Amil was straightforward in her testimony. She remained steadfast even on cross-examination, and there is nothing on record concerning her testimony which would leave the court in doubt as to the truth of what she testified to. Her testimony therefore, relative to the circumstances transpiring at the time she left the house at 8:30 a.m. up to the time she returned at quarter to nine engenders belief.

Celo Nilo's testimony was likewise made in the same vein as that of Orendia Amil. This witness was not shown to have cause to perjure himself on a serious crime against the accused. As the Court observed during the trial, his testimony, based on his demeanor when he testified, is impressed with a ring of veracity.

The Court did not give credit to the testimony of Patrolman Rodolfo Rivera except on the fact that he conducted an investigation. No value whatsoever was given to the sworn statement of Benedicto Dapitan, even as to the portion in said testimony, where Benedicto Dapitan admitted being present when Fred de Guzman allegedly hit the victim on the head and that the stolen articles were in the possession of Fred de Guzman, because as wisely put by defense counsel, the sworn statement was taken in violation of the constitutional rights of the accused.

In sum, therefore, there can be no other inference from the evidence presented by the prosecution considering the short span of time the victim Rolando Amil was left alive by his mother, and her return fifteen (15) minutes later to find him dead and the testimony that the accused was seen entering and leaving the premises during this intervening period, except the inevitable conclusion that the accused is responsible for the death of Rolando Amil.

For his part, the accused Benedicto Dapitan interposes the defense of "alibi". This, he sought to establish through the testimony of witness Ismael Anacio. Pertinent portion of the witness' testimony, is herein quoted, to wit:

.....

Q.

Now, do you remember, Mr. Witness, if this Benedicto Dapitan was present in the said house on the period from May 16 to May 19, 1986?

A.

He was there, sir.

Q.

Was there any occasion when this Benedicto Dapitan left your house during that period?

A.

None, sir.

(TSN, pages 3-5, hearing of September 12, 1988).

The testimony of witness Ismael Anacio, a salesman by occupation, that defendant Benedicto Dapitan, from May 16 to May 19, 1986, was in his house all the time, and that there was no occasion that he left the place during this period does not spark belief. In the first place, the witness wants the Court to believe that he was in his house during all the time so that he could during all the days alluded to, be in a position to be positive as to the whereabouts of the accused. This circumstance alone generates doubt on his testimony, because it was not explained why the witness, a salesman by occupation, would be in his house from the period beginning May 16-19, 1986 (TSN, pages 2-3, hearing of September 12, 1988).

Assuming though, for the sake of argument, that the witness actually monitored the whereabouts of the accused during all the time, his testimony sustaining Benedicto Dapitan's defense of "alibi" cannot defeat the positive identification made of Benedicto Dapitan and of his presence in Montalban on May 16, 1986, by witness Orenia Amil and Celo Nilo. Even on this score alone, without taking into consideration that Sampaloc District where he allegedly was, is geographically not so far from Montalban, from where he could have commuted through the ordinary means of transportation present in the area, his defense of "alibi" naturally falls, so that his conviction is reasonably called for."^[14]

In support of the assigned error accused-appellant argues that the imposition over him of the penalty of reclusion temporal by the trial court is "tantamount to deprivation of life or liberty without due process of law or is tantamount to a cruel, degrading or inhuman punishment prohibited by the Constitution" and he submits that "the righteous and humane punishment that should have been meted out should be indeterminate sentence" with "all mitigating circumstances as well as the legal provisions favorable to the accused-appellant . . . appreciated or . . . taken advantage for constructive and humanitarian reasons." He stresses that since mitigating circumstances are based on, among others, the lesser perversity of the offender, such should be appreciated in his favor since he had "a companion, then when he entered Mrs. Orenia Amil's house and perpetrated the offense.^[15] And it was his companion or mate by the name of Fred de Guzman who took the personal belongings of Mrs. Amil as the men's

watch worth P1,188.00. It was Fred de Guzman who is still at large who stabbed and hit the head of Rolando Amil.[16] These facts or circumstances reveal that accused-appellant had a "lesser perversity than his companion Fred de Guzman." As evidence of such lesser perversity, "he did not flee or hide himself from the authorities. . . . within two (2) days time he surrendered voluntarily to the police authorities . . ." Thus, the "mitigating circumstance of voluntary surrender must be considered" in his favor.[17]

He prays that he be sentenced to an indeterminate penalty ranging from twelve (12) years and one (1) day of reclusion temporal, as minimum, to reclusion perpetua as maximum.[18]

Meeting squarely the points raised by the accused-appellant, the People, in the Brief for Plaintiff-Appellee submitted by the Solicitor General on 9 June 1990, asserts that the same are without merit for the accused was not deprived of due process as he was, as admitted by him, afforded full opportunity to be heard; for a penalty to be cruel, degrading or inhuman, "it must take more than merely being harsh, excessive, out of proportion, or severe. . . .; it must be flagrantly and plainly oppressive, disproportionate to the nature of the offense as to shock the moral sense of the community[19] or when they involve torture or lingering death"[20] and since the penalty of reclusion perpetua imposed on him is sanctioned by law, Act No. 3815 as amended, otherwise known as the Revised Penal Code, said penalty is not cruel, degrading or inhuman. It further argues that the special complex crime of robbery with homicide defined under Article 294, par. 1, of the Revised Penal Code is punishable with reclusion perpetua to death; with the abolition of the death penalty by the 1987 Constitution, the only penalty imposable upon a person found to have committed such complex crime is the single penalty of reclusion perpetua, which is an indivisible penalty. Under Article 63 of the Revised Penal Code it should be applied regardless of the presence of any mitigating or aggravating circumstances.

As regards the Indeterminate Sentence Law, the People submits that the accused-appellant cannot avail of it since Section 2 of the law (Act No. 4103) specifically provides that it shall not apply to, among others, persons convicted of offenses punished with death penalty or life imprisonment.

We find the instant appeal to be totally bereft of merit.

There was no denial of due process.

Due process is satisfied if the following conditions are present: (1) there must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction must be lawfully acquired by it over the person of the defendant or over the property which is the subject of the proceeding; (3) the defendant must be given an opportunity to be heard; and (4) judgment must be rendered upon lawful hearing.[21]

In *People vs. Castillo, et al.*,[22] We ruled that if an accused has been heard in a court of competent jurisdiction, and proceeded against under the orderly processes of law, and only punished after inquiry and investigation, upon notice to him, with opportunity to be heard, and a judgment awarded within the authority of the constitutional law, then he has had due process.[23]

We reiterated the above doctrine in *People vs. Mui*. [24]

All the requisites or conditions of due process are present in this case. The records further disclose that accused-appellant was given the fullest and unhampered opportunity not only to reflect dispassionately on his expressed desire to plead guilty to a lesser offense which prompted the court to cancel the hearing of 10 February 1987, but also to confront the witnesses presented against him and to present his own evidence.

If indeed accused-appellant had been deprived of due process, he would have faulted the trial court not just for failure to apply the Indeterminate Sentence Law, but definitely for more. Yet, he found it futile to go any farther.

Neither is the penalty of reclusion perpetua cruel, degrading, and inhuman. To make that claim is to assail the constitutionality of Article 294, par. 1 of the Revised Penal Code, or of any other provisions therein and of special laws imposing the said penalty for specific crimes or offenses. The proposition cannot find any support. Article 294, par. 1 of the Revised Penal Code has survived four Constitutions of the Philippines, namely: the 1935 Constitution, the 1973 Constitution, the Freedom Constitution of 1986 and the 1987 Constitution. All of these documents mention life imprisonment or reclusion perpetua as a penalty which may be imposed in appropriate cases.[25] As a matter of fact, the same paragraph of the section of Article III (Bill of Rights) of the 1987 Constitution which prohibits the imposition of cruel, degrading and inhuman punishment expressly recognizes reclusion perpetua. Thus:

"Section 19 (1). Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides it. Any death penalty already imposed shall be reduced to reclusion perpetua.

As to the appreciation of mitigating circumstances, We also agree with the Solicitor General that since robbery with homicide under paragraph 1 of Article 294 of the Revised Penal Code is now punishable by the single and indivisible penalty of reclusion perpetua in view of the abolition of the death penalty, it follows that the rule prescribed in the first paragraph of Article 63 of the Revised Penal Code shall apply.[26] Consequently, reclusion perpetua must be imposed in this case regardless of the presence of mitigating or aggravating circumstances.

The trial court correctly imposed on the accused the penalty of reclusion perpetua.

The civil indemnity awarded by the trial court should, in line with Our decision in *People vs. Sison*, G. R. No. 86455, 14 September 1990, and *People vs. Sazon*, G. R. No. 89684, 18 September 1970, be increased from P30,000.00 to P50,000.00.

WHEREFORE, except as modified above in respect to the civil indemnity, the decision appealed from is **AFFIRMED** in toto, with costs against accused-appellant.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Decision, pp. 7-8; Original record, pp. 287-288.

[2] Original record, p. 1.

[3] *Id.*, 13.

[4] Original Record, p. 28.

[5] *Id.*, 41.

[6] *Id.*, 50.

[7] Original Record, 54.

[8] *Id.*, 55-110.

[9] Per judge Noblejas; *Id.*, 281-88.

[10] Original record, p. 290.

[11] Id., 291.

[12] Rollo, 1.

[13] Brief for Appellant, 1; Id., 32, et seq.

[14] Decision, pp. 4-7; Original record, pp. 284-287.

[15] TSN, pp. 9-14, September 7, 1987.

[16] TSN, pp. 18, 20-21, June 21, 1988.

[17] Brief for Appellant, pp. 7-8.

[18] Id., 8.

[19] People vs. Estoista, 93 Phil. 647, [1953].

[20] People vs. Preda, 133 SCRA 1; Bernas, The 1987 Phil. Constitution: A Reviewer-Primer.

[21] Banco Español de Filipino vs. Palanca, 37 Phil. 921, 934; Macabingkil vs. Yatco, et al., 21 SCRA 150, 157; Apurillo vs. Garciano, et al., 28 SCRA 1054, 1059; Shell Company of the Philippines, Ltd. vs. Enage, 49 SCRA 416; Lorenzana vs. Cayetano, 68 SCRA 485.

[22] 76 Phil. 72, 87.

[23] Citing Rogers vs. Pick, 199 U.S. 425, 435; Twining vs. New Jersey, 211 U.S. 78.

[24] 117 SCRA 696, 705.

[25] Article VIII, Section 2(4) of the 1935 Constitution; Article X, Section 5(d) of the 1973 Constitution; Article VIII, Section 5(2)(d) of the 1987 Constitution; the Freedom Constitution adopted, among others, Article X of the 1973 Constitution.

[26] The first paragraph provides: "In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed."

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