

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIANO TIMPLE, BERNARDO GUDOY Y SUMALBAG, ALFREDO UBIANO Y PAYON, RUDY MAIQUEZ Y MANGLANLAN, RANDO EDUARDO SAGUN Y GRANDE, RO...

G.R. Nos. 100391-92. September 26, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

Mariano Timple appeals from the decision of the Regional Trial Court, Branch 32 of Guimba, Nueva Ecija which found him and Bernardo Gudoy, Randy Eduardo Sagun and Rudy Maiquez guilty beyond reasonable doubt of two (2) crimes of robbery with multiple homicide.

In Criminal Case No. 505-G, accused Mariano Timple, Bernardo S. Gudoy, Alfredo P. Ubiano, Rudy M. Maiquez, Randy Eduardo G. Sagun, Rogelio Aguyaoy, Cipriano Padua, Danilo Lapitan, and Rodolfo Padua were charged with robbery with multiple homicide in an information which read as follows:

"That on the night of February 8, 1989, in Culong, Municipality of Guimba, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all armed with long assorted firearms/Armalite Rifles M16 and M14, Carbines, M2 and Cal. 30, and .22 cal rifle and bladed weapons, conspiring, confederating together, and helping one another and taking advantage of the darkness of the night, and with intent of gain by means of superior force and violence upon the persons of ERNESTO SEMACIO and ZENAIDA SEMACIO and the members of their family in their dwelling house and after hog-tying their said victims with the use of electric wires, did then and there willfully, unlawfully and feloniously take, steal and carry away personal belongings, jewelries and appliances, such as one portable Sanyo 12" black and white TV, car stereo, other assorted items and cash, all in the aggregate amount of more than FIVE THOUSAND PESOS (P5,000.00) to the damage and prejudice of ZENAIDA SEMACIO and her children in the same amount; that by reason or on occasion of said robbery and for the purpose of enabling them (accused) to take, steal and carry away the said personal belongings/personal properties in pursuance of their conspiracy, and for the purpose of insuring the success of their criminal act or to suppress evidence thereof, the accused, conspiring, confederating, and helping one another, did then and there, willfully, unlawfully, and feloniously attack, assault, stab, and shoot ERNESTO SEMACIO, LORETO RAMOS, VIRGILIO FLORA, and ANGELO BESAMES, thereby inflicting on all of them fatal stab and gunshot wounds, which caused their instantaneous death, likewise, by reason or on occasion of the robbery, accused Mariano Timple and Alfredo Ubiano took turns in having sexual intercourse of Mrs. ZENAIDA SEMACIO by means of force and intimidation against her will.

That due to the robbery and death of ERNESTO SEMACIO, his heirs sustained actual, moral, and consequential damages in the total sum of P100,000.00, for the rape of ZENAIDA SEMACIO she herself sustained actual, moral, and consequential damages in the sum of P50,000.00 and for the death of LORETO RAMOS, VIRGILIO FLORA, and ANGELO BASAMES, their respective heirs sustained actual, moral, and consequential damages in the sum of P80,000.00 each victim."[1]

In Criminal Case No. 506-G, the same accused were also charged with another robbery with multiple homicide committed on the same night and in the same municipality:

"That on the night of February 8, 1989, in Culong, Municipality of Guimba, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all armed with long assorted firearms/Armalite Rifles M16 and M14, Carbines, M2 and Cal. 30, and .22 cal. rifle and bladed weapons, conspiring, confederating together, and helping one another and taking advantage of the darkness of the night, and with intent of gain by means of superior force and violence upon the spouses ALBERTO PANIO and ADORACION PANIO and members of their household, and upon spouses DIOSDADO SAMOY and ELVIRA SAMOY, in their dwelling house and after hogtying all of their said victims, with electric wires, did then and there, willfully, unlawfully, and feloniously take, steal and carry away personal belongings/personal properties, jewelries, cash, and home appliances such as one Sony radio cassette recorder, and other assorted items/properties, including one Squibman .22 cal. rifle with serial no. 38352, in the total amount of twenty thousand pesos (P20,000.00) more or less, to the damage and prejudice of the heirs of Alberto Panio and Adoracion Panio in the sum of P15,000 and Elvira Samoy in the sum of P5,000.00; that by reason or on occasion of said robbery and for the purpose of enabling them (accused) to take, steal and carry away the said personal belongings/personal properties in pursuance of their conspiracy, and for the purpose of insuring the success of their criminal act or to suppress evidence thereof, the accused, conspiring, confederating, and helping one another, did then and there, willfully, unlawfully, and feloniously attack, assault, stab, and shoot ALBERTO PANIO, ADORACION PANIO, ELVIN PANIO, DIOSDADO SAMOY, ARNEL SEMACIO, ERNESTO PANIO, MIGUEL BADUA, and EDUARDO PANTALEON, thereby inflicting on all of them fatal stab and gunshot wounds, which caused their instantaneous death, likewise, by reason or on occasion of the robbery, accused Mariano Timple had carnal intercourse of Mrs. ELVIRA SAMOY by means of force and intimidation against her will.[2]

The accused pleaded not guilty in both cases.

Because the two (2) cases were related, a joint trial was ordered by the trial court.[3] After trial, the court rendered judgment finding appellant Timple along with three (3) other accused guilty beyond reasonable doubt of the two (2) crimes of robbery with multiple homicide and rape. The dispositive portion of the decision reads as follows:

"WHEREFORE, in view of the above findings based on the evidence adduced, this Court finds the accused Mariano timple, Bernardo Gudoy, Randy Eduardo Sagun, and Rudy Maiquez GUILTY beyond reasonable doubt on both Criminal Cases 505-G and 506-G for having committed the crime of Robbery with Homicide and Rape as defined and penalized in Article 294, paragraph 1 of the Revised Penal Code. There being no mitigating circumstance to offset the aggravating circumstances of Treachery which absorbs the other aggravating circumstances of use of superior strength and nighttime and rapes which are to be treated likewise as aggravating circumstance in these cases, the same accused MARIANO TIMPLE, BERNARDO GUDOY, RANDY EDUARDO SAGUN, and RUDY MAIQUEZ are hereby sentenced to suffer the penalty of imprisonment of reclusion perpetua on each case; to jointly and severally indemnify the heirs of the twelve (12) murder victims the sum of SIXTY THOUSAND PESOS (P60,000.00) per victim; to pay the value of the unrecovered stolen properties; and to pay the costs of the suit, without subsidiary imprisonment in case of insolvency.

Accused CIPRIANO PADUA, RODOLFO PADUA, ROGELIO AGUYAOY, DANILO LAPITAN, for lack of sufficient evidence to establish their guilt beyond reasonable doubt, are found not guilty and are therefore, acquitted. Their immediate release from custody is hereby ordered unless they are to be detained in connection with other cause that will warrant their further detention.

In the meantime, the proceedings against accused EDGARDO ALCANTARA [are] hereby ordered held in abeyance pending his apprehension. Let, therefore, an alias warrant of arrest be issued against the same accused. Let the whole records of this case be forwarded to the Honorable Supreme Court for the automatic

review of the cases.

SO ORDERED."[4]

The factual findings of the trial court may be outlined as follows.[5]

At around 7 o'clock in the evening of 8 February 1989, Zenaida Semacio was at their house at Barangay Culong, Guimba, Nueva Ecija with her children Arnel, Arnold, Edgar, Erwin, and Ernaida. Ernesto Semacio, her husband, who had gone to the poblacion together with Angelo Besames, Loreto Ramos and Robert Flora, was not in the house at that time.

Armed persons who identified themselves as soldiers went to their house. They immediately ordered the children to lie face down on the ground. Zenaida, who was then in the kitchen, came out of the house to meet them, but she was likewise ordered to do the same by Mariano Timple and Rudy Maiquez.

The children were taken outside and hogtied with electric wire. The group then asked them for guns and for the money and jewelry of their mother. Arnel Semacio told them that they had no guns; at this statement, one of the men hit him with a rifle butt. Some of the men then began to ransack the house.

Meanwhile, Mariano Timple brought Zenaida to the kitchen, ordered her to lie down on top of the dining table, and there raped her. Following the lead of Timple, Maiquez pulled Zenaida towards the comfort room, ordered her to remove her pants, and sexually abused her in a standing position while brandishing a gun at her. After Rudy Maiquez, Alfredo Ubiano tried to take his turn with Zenaida. He took her near the pumping well and started touching her breasts through the neckline of her blouse. He brought her inside the house, tied her hands and feet on a bamboo bench, and continued to molest her sexually. Ubiano, however, did not have sexual intercourse with her. After Ubiano went away, accused Sagun mischievously inserted his finger into her vagina and then rubbed that finger on her nose.

Ernesto Semacio, apparently unaware of what was taking place in his house, arrived home in his jeep together with Loreto Ramos, Virgilio Flora, and Angelo Besames. When he got down from his jeep, he was surprised by Timple and company. Ernesto asked them what they wanted from him; in response, he was struck with rifle butts. The armed men took Ernesto and his three (3) companions away from the house and shot them to death.

Meanwhile, Arnold Semacio succeeded in freeing himself by untying the wire around his hands and feet. He stood up and untied his brothers Edgar and Erwin. He noticed his brother Arnel signalling them to go ahead and run away. They did run away, together with Zenaida and Ernaida Semacio and reached the neighboring barangay. The next morning, the dead bodies of Ernesto Semacio, Angelo Besames, Loreto Ramos, and Roberto Flora, were found scattered around the premises of the Semacio house. Assorted personal belongings, clothes, cash, jewelry, and appliances such as a TV set and a car stereo had been taken and were missing from the household of the Semacios.

After the slaughter in the premises of the Semacios, between 8 and 9 o'clock in the same evening of 8 February 1989, the group of Timple proceeded to the household of Elvira Samoy where they once more introduced themselves as military men. They called for the father of Elvira who was then living in a house adjacent to hers, only four (4) meters away. Her father met the armed men. They asked him how many male persons were living therein and in the house of Elvira, and he informed them that there were only four (4) males in his house and only one, his son-in-law, in Elvira's house. The armed men ordered the males out of the two (2) houses and told them that they were only pursuing and searching for a man who had gone in the direction of their place. Elvira tried to follow the others, but she was prevented by Eduardo Sagun and an unidentified man. The two (2) then asked her to go upstairs.

She went upstairs as ordered and the two (2) followed her. After asking for firearms and not getting any, the two (2) men began to ransack the house. They took the bag of her husband and stuffed it with men's clothing taken from the family aparador. Jewelry and a wallet were likewise taken. The following items were taken from the household of Elvira Samoy:

(estimated value)

one (1) piece ring with stone

P 800.00

one (1) piece necklace

600.00

one (1) piece bracelet

250.00

one (1) piece wallet

100.00

cash

100.00

one (1) piece travelling bag

120.00

one (1) piece jacket

200.00

long pants

1,000.00

two (2) pieces polo shirts

300.00

assorted T-shirts

1,000.00

one (1) piece wedding ring

400.00

one (1) pair earring

180.00

one (1) piece flashlight

50.00

one (1) piece cassette

2,500.00[6]

While Sagun and his companion were ransacking the house, Timple and Gudoy went inside and ordered Elvira downstairs. Pointing their firearms at her, Timple and Gudoy ordered Elvira to undress and to lie down on the bamboo sofa, and the two (2) took turns in raping her. While she was being sexually violated by Gudoy, she heard her mother from the other house pleading for mercy. This was followed by a gunshot and a shout from her younger brother uttering the word "Inang".

After ravishing Elvira Samoy, Gudoy went out of the house. Not long after that, Elvira heard several shots followed by the sound of scampering feet at the back of their house. A man whom Elvira Samoy identified as Alfredo Ubiano went back and stared at her, but left without assaulting her. She went to the house of her parents and there found her mother and several other persons shot to death.

Only Mariano Timple filed a notice of appeal.[7] In his appeal brief, Timple claimed that the following errors were committed by the trial court:

I

The trial court erred in not finding that the prosecution failed to prove beyond reasonable doubt the identity of the accused-appellant Mariano Timple as allegedly one of the perpetrators of the crimes charged in the informations.

II

The trial court erred in convicting the accused-appellant Mariano Timple of the crimes charged in the informations.

After a careful examination of the records, we find that the guilt of the accused-appellant Mariano Timple had been proved beyond reasonable doubt.

The identification of Mariano Timple as one of the marauders is beyond cavil. Zenaida Semacio testified that when she went out of her house to check out the group of men ordering her children to lie on the ground, she immediately recognized Mariano Timple and Romeo Maiquez, as the two (2) were only one (1) meter away from a kerosene lamp.[8] Furthermore, the image of Timple became etched in her memory, perhaps indelibly, when he ordered her to remove her pants, lie on the table, and to guide his penis into her vagina. This is an occurrence so traumatic and humiliating that it is not surprising its most minute details should remain embedded in the memory of Zenaida.

Arnold Semacio was likewise able to recognize Timple. After Arnold and his brothers were ordered to lie face down on the ground, Arnold was able to raise his head at the instant when one of the armed men bent down to tie his shoelace. At that moment, the face of the man was only half a meter away from the lamp on a table, and that man himself was only around two (2) meters away from Arnold. Arnold recognized him as appellant Mariano Timple.[9]

Elvira Samoy also testified that she saw Timple with the group of armed men in her house on 8 February 1989. She recognized Timple as the man who ordered her downstairs while some members of the group were ransacking the house. More tellingly, she remembered him as one of those who had sexually abused her on that night. Because of the unspeakable coercion and indignity he had subjected her to, Elvira Samoy would certainly remember Timple.

In his appeal, Mariano Timple did not directly question the testimony of the prosecution witnesses identifying him

as one of the participants in the terrible slaughter of twelve (12) persons on the night of 8 February 1989. Instead, he argued mainly that the police line-up conducted on 10 February 1989 when he was first identified was fraudulent. He presented his own version of what happened at the police line-up, contending that in the initial line-up, Arnold Semacio, Zenaida Semacio and Elvira Samoy entered the room in the police station where he and four (4) of his relatives were waiting at the time. For thirty to thirty-five minutes, the three (3) were unable to identify him. This inability prompted Capt. de los Santos to order Timple to put on and later take off a bonnet and then coached the witnesses to point to him. Only then were the witnesses able to pinpoint him. Timple testified in the following manner:

"ATTY. WYCOCO:

Q. While you were standing and the five of your companions fronting four to five meters, tell the court if anyone of your companions was ever pinpointed to as ordered by Capt. delos Santos?

MARIANO TIMPLE:

A. For a period of about thirty to thirty-five minutes that we were there, not one of them was able to pinpoint me.

Q. After thirty five minutes had lapsed and not one of your companions was pinpointed, what happened next?

A. Captain delos Santos went out and when he returned, he let me wear a bonnet and I saw him whispering something to the complainant- - 'Ituro mo na.' It was only a whisper and it was not in a loud voice.

Q. After you have heard the whisper of Captain delos Santos saying in the vernacular 'ituro mo na,' what did Captain delos Santos do if any?

A. Captain delos Santos removed the bonnet from me and thereafter the complainant pointed at me and said, 'yan na nga ho.'"[10] (Emphases supplied)

The story presented by the appellant seeks to contradict the version of the prosecution, which insisted that the police line-up conducted on 10 February 1989 was free from any irregularity and had been preceded by a thorough investigation. The evidence of the prosecution on the important matter of identification of appellant Timple is summarized in the following paragraphs.

On 9 February 1989, on the morning after the commission of the crimes, Sgt. Bergado of the Philippine Constabulary ("PC") went to talk with the surviving victims. Zenaida Semacio told him that she would recognize their assailants if she saw them again. She also described their physical appearances. Samoy echoed the same sentiments. That afternoon, the investigators focused on a particular suspect.

On that same day, Sgt. Bergado went back to see the victims and showed them a photograph of their suspect. Elvira Samoy nodded her head upon looking at the photograph, but did not categorically state that the person was one of their assailants, as only the side view of the person was shown in the photograph. She had a "strong feeling," though, she said, that the person in the photograph was one of them.[11]

Zenaida Semacio was more certain, and she immediately declared that the person in the photo was one of the armed men who had gone to their house on the night of the massacre.[12] The man in the photograph was appellant Timple.

On 10 February 1989, Zenaida Semacio, Elvira Samoy, and Arnold Semacio were invited to the headquarters of the 128th PC Company in Guimba, Nueva Ecija. They were asked to peep through a small opening in a window and see if they could recognize the men in the room. Zenaida and Arnold Semacio pointed to Mariano Timple in that room as one of their assailants. Elvira Samoy too recognized Timple, and without any hesitation, immediately

pointed him out to Capt. de los Santos.

Zenaida Semacio described the police line-up in her testimony in court:

"FISCAL LACUROM:

Q. Why did you go to the PC Headquarters?

ZENAIDA SEMACIO:

A. They told us to identify the persons apprehended by them at the PC Headquarters.

Q. Who called for you?

A. Certain Soriano with his companions.

x x x x x x x x

Q. Arriving thereat, what transpired?

A. They told us to peep at the slit of the window of the camp of the 126th Company to identify those persons apprehended by them.

Q. And after peeping through the slit of the window, what did you say if any?

A. I told them I can only identify one of those persons inside.

Q. How many persons were there inside the room at that time?

A. Five, sir.

Q. To whom did you say that you identified one of those persons?

A. I told the matter to Captain de los Santos and Lt. Soriano.

Q. Who did you say as the one whom you identified?

(Witness went down to the witness stand and tapped the shoulder of Mariano Timple.)

Q. Who is this Mariano Timple in relation to that incident on the night of February 8, 1989?

A. He was one of those who raped me."[13] (Underscoring supplied)

Elvira Samoy also described the police line-up conducted on 10 February 1989 as follows:

"COURT:

Q. What happened thereat when you arrived at the 126th PC Headquarters that morning of February 10, 1989?

ELVIRA SAMOY:

A. We were brought at the back of the town and according to them they have with them some male persons and they will be shown to us if we can recognize them.

FISCAL LACUROM:

Q. Where were these five persons at that time?

A. In a room at the back of the camp.

Q. Did you do anything?

A. We were told to peep and to identify them.

Q. Where did you peep?

A. In the window.

Q. How wide was the opening of the window?

A. It is only a small opening enough to peep through.

x x x x x x x x

Q. After peeping into that room, what did you say, if any?

A. I pointed one.

Q. To whom did you make this revelation or disclosure?

A. To Lt. Soriano and Captain Santos.

x x x x x x x x

Q. Who was that person whom you identified in that room as one of those who robbed you?

A. Mariano Timple."^[14] (Underscoring supplied)

Furthermore, there is absolutely no showing that the witnesses connived falsely to denounce a person known to them to be in fact innocent. Elvira Samoy who had been uncertain regarding the person depicted in the photograph shown to her, took one look at the suspect and immediately identified him (Mariano Timple) during the line-up as one of the armed marauders to Capt. de los Santos. She did not even hear what the Semacios told Capt. de los Santos after they had taken a peep at the persons in the line-up.^[15]

In the light of the conflicting versions of the prosecution and herein appellant, the well-settled rule is that the findings of the trial court on the credibility of witnesses are to be accorded great weight and are not to be disturbed, unless the judge had clearly overlooked facts of substance and value which, if taken into account, would affect the result of the case.^[16] This Court is unable to find any compelling reason to depart from this rule and to disturb the conclusion of the trial court that the prosecution witnesses were more credible in their testimonies regarding the conduct of the line-up on 10 February 1989 than appellant Timple who offered only his bare allegations in a story which, at all events, was merely inconclusive and speculative.

We note that the story of Timple about the line-up is also contrived and implausible. It is not in accord with ordinary human experience for a person to spend thirty minutes in a task the impossibility of which should have become apparent after a few seconds. Indeed, it is difficult to believe that the three (3) witnesses (Elvira, Zenaida and Arnold) simply stood there in the same room looking at the five (5) suspects for thirty minutes notwithstanding their inability to identify Timple from among the latter. The observation of the Solicitor General is also in point:

"If any prior prompting was done, the identity of the culprit could have been described to the complainants in a less obvious or suspicious manner than what was allegedly done. Hence, there is no credibility to the claim that a bonnet was used to provide a cue to the complainants that appellant was the culprit."^[17]

Appellant Timple argues that the PC authorities had already harbored the notion that he was the mastermind of the Culong massacre even before he was actually arrested. In effect, appellant is arguing that there was no probable cause for his arrest, and that the fraud which allegedly attended the line-up was consistent with his contention that the PC orchestrated his false arrest and his subsequent identification by the victims.

We are unable to subscribe to this argument. When Timple was asked to go to the PC Headquarters on 10 February 1989, his invitation was not the product of mere caprice on the part of the PC authorities. The previous day, on 9 February 1989, the victims had described to the PC investigators at least some of their assailants. In the light of these descriptions, the PC investigators came to suspect the involvement of Mariano Timple. This suspicion was not without basis. As Captain Undan himself stated, Timple was implicated in a prior murder case in Naglabrahan. Moreover, Timple had been spotted in a fatigue uniform near the scene of the crime on the afternoon of 8 February 1989, or a few hours before the robberies and killings and rape.[18] It was only natural for the investigators, then, to consider Mariano Timple as a suspect, considering that his body appearance fitted one of the descriptions of the assailants given by the victims.[19] Eventually, the suspicion of the investigators would be confirmed when the victims picked out Timple from the line-up conducted on 10 February 1989.

Appellant argues further that the police line-up conducted on 10 February 1989 was null and his identification therefrom was inadmissible because he had not been assisted by counsel. He contends that the line-up was an important part of the custodial investigation.[20]

It has been held, however, that a police line-up is not part of the custodial investigation, where, as here, the suspects had not yet been held then to answer for the criminal offense with which they were later charged and convicted.[21] The Court has held that there is no real need to afford a potential suspect the services of counsel at the police line-up, for the customary practice is that it is the witness who is investigated or interrogated in the course of the line-up. It is the witness who gives a statement to the police, rather than the accused who is not questioned at all at that stage.[22] In the present case, it does not appear that the appellant was ever questioned in the course of the line-up; to the contrary, it even appears that the line-up was conducted outside the room where the appellant and four (4) others were. Accordingly, the absence of Timple's counsel during the line-up did not affect the validity of the line-up.

Appellant also objects that the prosecution had failed to adduce convincing evidence of his alleged conspiracy with accused Sagun, Gudoy, Maiquez and Ubiano.

An examination of the records clearly show that this argument too is bereft of merit. Conspiracy, like any ingredient of an offense, must be established not by mere conjecture but by evidence which satisfies the requirement of proof beyond reasonable doubt. To establish conspiracy, two or more persons must be shown to have come to an agreement concerning the commission of a felony. It is not, of course, indispensable that direct proof be adduced to establish the agreement to commit the felony; the availability of such direct proof of the agreement to commit the felony is, in the nature of things, clearly the exception rather than the rule. Conspiracy must commonly be inferred from acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime. In the great majority of cases, conspiracy is established by proof of acts done in concert, that is to say, acts which yield the reasonable inference that the doers thereof were acting with common intent or design.[23]

The acts of Timple and the other members of his band established by the prosecution clearly yield this inference. From the evidence on record, it is clear that an armed group attacked two (2) households successively in Culong, Guimba, Nueva Ecija on the night of 8 February 1989. In both instances, the group robbed, killed, and raped. Timple was present when the group committed these acts. His presence, however, was not coincidental nor innocent. The record permits no doubt that Timple acted in concert with the armed group in the commission of the two offenses.

In the two (2) households, he was armed with a rifle like the other members of the band. In the house of Zenaida, it was he who ordered that the children be hogtied. While the house was being ransacked, it was he who ordered

Zenaida to come down. His order was not meant to spare her from the distress of seeing her worldly goods taken away; he was also bent on taking something from her: her personal honor and human dignity in a few minutes of carnal pleasure.

In the house of Elvira too, he was present while the house was being stripped of various goods. As in the house of the Semacios, he did nothing to stop the commission of the robbery or the killings. While the men were taking away what they could carry from the house of the Samoys, Timple was raping Elvira Samoy. Sagun who was identified by Zenaida as the man who had ordered her to produce their gun and other valuables, followed the example of Timple and sexually abused Elvira.

The conspiracy having been shown, each of the conspirators is liable for all the acts of the others. There is thus no need for the prosecution to establish who shot any one or more of the twelve (12) victims of the band.

The trial court correctly designated the crime as robbery with homicide, with rape being considered as an aggravating circumstance.

In the two (2) instances when the assailants struck, their overriding intention was to commit robbery. After the children had been hogtied in the Semacios premises, one of the armed men demanded money and jewelry.[24] Thereafter, they started to ransack the house. When the husband of Zenaida arrived, the robbers went out and promptly killed him and his luckless companions.

In the house of the Samoys, all the male occupants were asked to come out first. Only then did the men begin to ransack the place. After ransacking the house, the male occupants were shot to death.

In both instances, the intent to gain was present and had been realized. Furthermore, the killing of four (4) persons in the Semacio household and eight (8) in the Samoy's was committed on the occasion of, or by reason of, the robbery. The killings were done to facilitate the escape of the assailants, or to eliminate opposition to their criminal objective. With the sole exception of the mother of Elvira, all the dead were males and presumably capable of giving a fight. The course of action chosen by the accused appears to reflect a strategy of moving in only after "softening" or eliminating the defenses of the target. In the house of the Semacios, the children were hogtied first; in the Samoys, the males were herded out before the malefactors actually commenced to ransack the house.

It may be observed that the trial court erred in appreciating the aggravating circumstance of treachery. While the records clearly show that the accused had killed the victims, they do not show the precise manner in which this was done. The witnesses did not actually see the accused fire their guns at the victims. Absent such kind of proof, we cannot presume that the victims had been killed treacherously. Furthermore, this aggravating circumstance is appreciated only in crimes against persons,[25] and is not to be applied in robbery with homicide which is classified as a crime against property.[26] In some cases, however, the Court has held that treachery may be appreciated as a generic aggravating circumstance in robbery with homicide, but not as a qualifying circumstance.[27]

While the number of persons killed does not alter the characterization of the offense as robbery with homicide, the multiplicity of the victims slain should have been appreciated as an aggravating circumstance. This would preclude an anomalous situation where, from the standpoint of the gravity of the offense, robbery with one killing would be treated in the same way that robbery with multiple killings would be.[28]

The trial court, however, was correct in treating the raping of Elvira Samoy and Zenaida Semacio as an aggravating circumstance.[29]

Under Article 294 (1) of the Revised Penal Code, robbery with homicide is punishable by reclusion perpetua to death. In view, however, of the first paragraph of Section 19, Article III of the 1987 Constitution which provides that:

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

only the penalty of reclusion perpetua could be imposed by the trial court. Hence, the attendant aggravating circumstances in this case had no impact upon the determination of the proper penalty by the trial court.[30]

By Republic Act No. 7659 (effective 31 December 1993),[31] Congress re-imposed the death penalty for certain heinous crimes, including robbery with homicide and robbery with rape. By the same statute, Article 294 of the Revised Penal Code was amended to read as follows:

"Any person guilty of robbery with the use of violence against or intimidation on any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

x x x x x x x x"[32]

(Underscoring supplied)

Article 294 of the Revised Penal Code, as amended by R.A. No. 7659, however, cannot be applied retroactively in this case. To do so would be to subject the appellant to the death penalty which could not have been constitutionally imposed by the court a quo under the law in effect at the time of the commission of the offenses.

WHEREFORE, the decision of the Regional Trial Court, finding herein appellant Mariano Timple guilty of two (2) crimes of robbery with homicide, is **AFFIRMED**. Costs against appellant Timple.

SO ORDERED.

Romero, Melo, and Vitug, JJ., concur.
Bidin, J., on leave.

[1] Record of Exhibits, Crim. Case No. 505-G, p. 25.

[2] Record of Exhibits, Crim. Case No. 506-G, p. 13.

[3] Trial Court Decision, p. 2; Rollo, p. 55.

[4] Id. pp. 23-24; Rollo, pp. 76-77.

[5] Trial Court Decision, pp. 5-10; Rollo, pp. 58-63.

[6] Trial Court Decision, p. 9; Rollo, p. 62.

[7] Records, p. 270.

[8] TSN, 17 June 1989, pp. 27-28.

[9] TSN, 6 June 1989, p. 12.

- [10] TSN, 14 November 1989, pp. 4-5.
- [11] TSN, 31 May 1989, p. 29.
- [12] TSN, 14 June 1989, p. 4.
- [13] TSN, 14 June 1989, pp. 6-7.
- [14] TSN, 13 May 1989, pp. 30-32.
- [15] TSN, 31 May 1989, pp. 33-34.
- [16] *People vs. Oracay*, 224 SCRA 759 (1993).
- [17] Appellee's Brief, p. 27; Rollo, p. 199.
- [18] TSN, 29 June 1989, p. 80.
- [19] TSN, 16 August 1989, pp. 2-3.
- [20] Appellant's Brief, p. 22; Rollo, p. 121.
- [21] *People vs. Dimaano*, 209 SCRA 819 (1992).
- [22] *People vs. Santos*, 221 SCRA 715 (1993); *People vs. Loveria*, 187 SCRA 47 (1990) and *Gamboa vs. Cruz*, 162 SCRA 643 (1988).
- [23] *People vs. Orehuela*, G.R. Nos. 108780-81, 29 April 1994; *People vs. Valeriano*, 226 SCRA 694 (1993).
- [24] TSN, 21 July 1989, p. 75.
- [25] Article 14 (16), Revised Penal Code, provides that "there is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." (Underscoring supplied)
- [26] See *People vs. Eroles*, 226 SCRA 554 (1993), where the Court held that robbery with homicide is a crime against property.
- [27] *People vs. Repato*, 91 SCRA 488 (1979) *People vs. Mabilangan*, 111 SCRA 398 (1982).
- [28] *People vs. Mabilangan*, 111 SCRA 398 (1982); *People vs. Pedroso*, 115 SCRA 389 (1982).
- [29] *People v. Lascuna*, 225 SCRA 386 (1993); *People v. Plaga*, 202 SCRA 53 (1991); *People vs. Tapales*, 93 SCRA 134 (1979).
- [30] See *People vs. Yabut*, 226 SCRA 556 (1993).
- [31] *People v. Martin Simon*, G.R. No. 93028, 29 July 1994.
- [32] Before the enactment of Republic Act No. 7659, Article 294 of the Revised Penal Code read:
- "Art. 294. Robbery with violence against or intimidation of persons--Penalties. -- Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
1. The penalty of reclusion perpetua to death when, by reason or on occasion of the robbery, the crime of homicide shall have been committed.

2. The penalty of reclusion temporal in its medium period to reclusion perpetua when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 shall have been inflicted; Provided, however, that when the robbery accompanied with rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

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