

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NERIO SUELA Y HEMBRA, EDGAR SUELA Y HEMBRA AND EDGARDO BATOCAN, APPELLANTS.

G.R. Nos. 133570-71. January 15, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In this Decision, the Court visits and applies existing jurisprudence on the right to competent and independent counsel of persons under custodial investigation. It also reiterates the long-standing judicial policy that procedural laws which are favorable to the accused shall be given retroactive effect. Inasmuch as the aggravating circumstance of disguise was not alleged in the Information, it cannot now be appreciated to increase the penalty to death, notwithstanding the fact that the new rule requiring such allegation was promulgated only after the crime was committed and after the trial court had already rendered its Decision.

The Case

For automatic review by this Court is the Decision[1] dated January 26, 1998 of the Regional Trial Court of Quezon City, (Branch 95), finding appellants guilty beyond reasonable doubt of robbery with homicide and simple robbery. The decretal portion of the Decision reads as follows:

“WHEREFORE, judgment is hereby rendered in the following:

“1. In Crim. Cases Nos. Q-96-64616 and Q-96-65071, the Court finds the accused Nerio Suela y Hembra and Edgar Suela y Hembra and Edgardo Batocan GUILTY beyond reasonable doubt of the crime of Robbery with Homicide defined in and penalized by paragraph I, Article 294 of the Revised Penal Code, as amended by R.A. 7659, and, there being one aggravating circumstance of disguise (par. 14, Art. 14, Revised Penal Code) and no mitigating circumstance to offset the same, each of them is hereby sentenced to suffer the penalty of DEATH and are ordered to indemnify the heirs of the late Geronimo Gabilo y Hostallero the amount of P50,000.00, as death indemnity; P20,000.00 as exemplary damages; P125,250.00, as actual and compensatory damages; and P2,8[8] 0,000.00, as loss of earnings based on the formula $(2/3 \times (80-44))$ or 24 years life expectancy by P120,000.00 reasonable average net annual earnings.

“The three accused are further ordered to return to Director Nilo Rosas the three (3) cameras worth P25,000.00; assorted jewelry worth P120,000.00 and cash money in the amount of P500,000.00. If the three (3) cameras and the assorted jewelry can no longer be returned, the three (3) accused are hereby ordered to instead pay the value thereof in the total amount of P145,000.00;

“2. In Crim. Case No. Q-96-64618, the Court finds the accused Edgar Suela y Hembra GUILTY beyond reasonable doubt of the crime of Simple Robbery defined in and penalized by paragraph 5, Article 294, of the Revised Penal Code and is hereby sentenced to suffer the indeterminate penalty of from six (6) months and one (1) day of prision correccional minimum, as the minimum penalty to four (4) years, two (2) months and one (1) day of prision correccional maximum, as the maximum penalty; and,

“3. In Crim. Cases Nos. Q-96-64617 and Q-96-65072, the Court finds the accused Nerio Suela y Hembra,

Edgar Suela y Hembra and Edgardo Batocan NOT GUILTY of the Crime of Carnapping as defined in and penalized by Rep. Act. 6539, as amended by Rep. Act 7659, and hereby ACQUITS them for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt.

“The Sony TV set (Exh. ‘E’) and the Citizen gold wrist watch (Exh. ‘T-1’) are hereby ordered returned to Director Nilo Rosas upon the final disposition of the cases.

“The motorcycle (Exh. ‘FF’) under the name of the accused Edgardo Batocan shall be kept by the Court until the final disposition of the cases.

“All the three (3) accused are ordered to pay the costs.

“IT IS SO ORDERED.”[2]

The Information[3] against Nerio Suela and Edgar Suela in Criminal Case No. Q-96-64616 reads as follows:

“That on or about the 26[th] day of July 1995, in Quezon City, Philippines, the above-named accused, conspiring, confederating with another person whose true name, identity and whereabouts have not as yet been ascertained and mutually helping one another, by means of force upon things, did then and there wilfully, unlawfully and feloniously rob one GERONIMO GABILO Y HOSTALLERO in the following manner, to wit: on the date and place aforementioned said accused managed to enter the house of complainant located at No. 95 B-5 A. Melchor St., Xavierville Subd., Loyola Heights, this City, by barging into the door of said house and once inside took, robbed and carried away the following, to wit:

one (1) 14” Sony Trinitron

colored TV

12,000.00

three (3) cameras

25,000.00

assorted jewelries

120,000.00

cash money

500,000.00

all in the total amount of P657,000.00, Philippine Currency, and on the occasion of said Robbery, the said accused pursuant to their conspiracy, with intent to kill, attacked, assaulted and employed personal violence upon the person of said GERONIMO GABILO Y HOSTALLERO, by stabbing him, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Geronimo Gabilo y Hostallero, in the total amount aforementioned.”

The Information[4] against Edgardo Batocan in Criminal Case No. Q-96-65071 reads as follows:

“That on or about the 26[th] day of July, 1995, in Quezon City, Philippines, the above-named accused, conspiring and confederating with NERIO SUELA Y HEMBRA and EDGAR SUELA Y HEMBRA who are

being charged with the same offense at Regional Trial Court Branch 79 and docketed as Criminal Case No. Q-64616, and mutually helping one another, by means of force upon things, did then and there wilfully, unlawfully and feloniously rob one NILO ROSAS Y LANETE in the following manner, to wit: on the date and place afor[e]mentioned said accused entered the house of complainant located at 95 Melchor St. Xavierville Subd., Loyola Heights, this City, by barging into the door of said house and inside took, robbed and carried away the following, to wit:

one (1) 14” Sony Trinitron

colored TV -----

P12,000.00

three (3) cameras -----

25,000.00

assorted jewelries -----

120,000.00

cash money -----

500,000.00

all in the total amount of P657,000.00, Philippine Currency, to the damage and prejudice of Nilo Rosas y Lanete in the aforementioned amount of P657,000.00, and on the occasion of said Robbery, the said accused pursuant to their conspiracy, with intent to kill, attacked, assaulted and employed personal violence upon the person of said GERONIMO GABILO Y HOSTALLERO, by stabbing him, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said Geronimo Gabilo y Hostallero.”

The Information[5] against Edgar Suela in Criminal Case No. Q-96-64618 reads as follows:

“That on or about the 18th day of January 1996, in Quezon City, Philippines, the said accused, with intent to gain, and by means of intimidation against person, did then and there wilfully, unlawfully and feloniously rob/extort one NILO ROSAS Y LANETE in the manner as follows: on the date and place aforementioned, the said accused called up by phone the Executive Secretary of said complainant and demanded the amount of P200,000.00, Philippine Currency, in exchange for the information regarding the robbery case and slaying of Geronimo Gabilo on July 26, 1995, as in fact said accused, took, robbed and carried away the aforesaid amount of P200,000.00, Philippine Currency, to the damage and prejudice of the said offended party.”

When arraigned on September 24, 1996, appellants, with the assistance of counsel, pleaded “not guilty.”[6] In due course, they were tried and found guilty by the court a quo.

The Facts

Version of the Prosecution

The Office of the Solicitor General summarized the evidence for the prosecution in this wise:[7]

"On July 26, 1995, between 11:00 P.M. and 12:00 midnight, private complainant Director Nilo L. Rosas was at the master's bedroom located at the second floor of his townhouse residence at #95 B-5 A. Melchor Street, Xavierville Subdivision, Loyola Heights, Quezon City. He was watching television thereat, together with his adopted son, Norman Rosas, and his former co-teacher and good friend, Geronimo 'Gerry' Gabilo, who at that time was engaged in the real estate business. Suddenly, three persons sporting ski masks, bonnets and gloves, brandishing handguns and a knife, barged into the room. The tallest of the three, with a height of about five feet and five inches, reached for the light switch and turned it off. The three intruders then shouted 'dapa, dapa.' So Director Rosas, Gerry Gabilo, and Norman Rosas dropped to the floor with their faces facing the bed. Two of the malefactors turned off the television set, and tied their hands at their backs, with the use of hankies and telephone cord. The room remained illuminated by the light coming from a walk-in closet and from the lamp post outside fronting the room, and from the lights of the neighboring townhouses.

"The shortest of the three malefactors, about five feet tall, poked the barrel of his gun on the chin of Director Rosas, then inside Rosas' mouth. At the same time, using his free hand, the same malefactor poked a knife on the right side of Rosas' neck. The other man, who was the second to the tallest, with a height of about five feet three inches, while holding a penlight in one hand, and a gun on the other, threateningly told Rosas, 'Nakikita mo ba iyan? Nararamdaman mo ba iyan?', to which Director Rosas replied 'Opo, opo.' The two then ordered Rosas to 'ilabas ang iyong mga pera.' All that time, while the two were with Director Rosas, the other man, the tallest of them, stood in front of the mirror by the side of the door, facing and brandishing a gun towards Norman Rosas. Director Rosas did not heed the order to bring out the money even though Gabilo advised him, saying 'Nilo ilabas mo na.' However, Gabilo stood up, and even with his hands tied at the back, went towards the second compartment of the television rack and reached for an envelope containing his money. He handed the envelope to the shortest of the three fellows, who, upon seeing the money inside the envelope, closed it. Director Rosas knew that the envelope contained P200,000.00 as Gabilo had informed him of the amount earlier that evening. Forced to reveal that his money was in the walk-in closet, the second tallest of the three malefactors poked a gun on Director Rosas' neck, forced him to get up, kicked and pushed him towards the closet. When the fellow could not open the closet, he asked Rosas for the key. When he was informed that the key was inside his wallet which was on top of the drawer beside his bed, the fellow opened the wallet and took all the money he found in it: two (2) \$100.00 bills and ten (10) P1,000.00 bills. With the key, he thereafter opened the closet. He then asked where the money was. When Director Rosas told him that it was inside his suitcase, the fellow tried opening it but failed. So he ordered Director Rosas to open it but the latter also failed as he had difficulty doing so since his hands were still tied at his back. The fellow, however, subsequently opened the suit case himself and got all the money in it amounting to P300,000.00. He also took the valuables he found inside the suit case, viz., a gold-plated Citizen wristwatch engraved at the back with 'N.L. Rosas' and some rings and bracelet valued at P20,000.00, more or less. The malefactors also took with them three (3) automatic cameras valued at P25,000.00 each, and bottles of cologne costing about P10,000.00. While leaving Director Rosas lying on the floor near the closet, the second tallest of the three, together with the shortest fellow, went to Gabilo and dragged and pushed him. They demanded that Gabilo give them his car key, which he did. They then dragged Gabilo out of the room and proceeded downstairs. The second tallest fellow went back to Director Rosas and said 'Mabait ka, mabait ka' but warned him not to follow them downstairs because 'puputok ang granada sa daanan mo.' He then placed a gag inside Director Rosas' mouth, tying it with a piece of cloth. Upon sensing that the three were already downstairs, Director Rosas tried to follow them but his adopted son, Norman Rosas, pleaded 'Daddy, daddy, huwag kang sumunod, baka patayin ka nila.' After about two (2) minutes, a long moaning sound was heard coming from downstairs, which sound resembled Gabilo's voice. After a while, he heard the engine of Gabilo's car, a Nissan Sentra car with plate no. TEB-258, running and he later found out that they had also carted away his Sony Trinitron colored television set. Sensing that the malefactors had left, he went downstairs and saw Gabilo slump[ed] on the floor in his blood. When he saw that

Gabilo was motionless, he went back to the second floor and told his son to rouse their housemaid, Pinky Ma?alac, who was asleep on the third floor of their townhouse. They then sought help from their neighbors. The first to assist them was a medical doctor who, upon examining Gabilo, informed them that the latter was already dead. At the Quezon City Medical Center where Gabilo was subsequently brought, he was pronounced dead-on-arrival.

“Early morning, the following day, July 27, 1995, upon receiving the report from the Quezon City Medical Center regarding the stabbing incident which resulted to the death of Gerry Gabilo, Captain Alejandro Casanova, SPO3 Jesus Patriarca, and SPO2 Reynato Resurrecion, all of the Quirino District Police Station, Station 9, Anonas Road, Quezon City, proceeded to the crime scene. SPO3 Jesus Patriarca was assigned as lead investigator of the case. The autopsy conducted on Gabilo showed that he died of hemorrhage due to multiple (five) stab wounds. To shed light on the incident, several persons, including private complainant Director Rosas, his adopted son, Norman Rosas, his brother, Romulo Rosas, their housemaid, Pinky Ma?alac, William Hostillero, Ruben Pacuntad, Joven Ma?alac and Rodito Gabilo, were summoned and interviewed by the police. The same, however, did not result to any breakthrough for the case. When they were subjected to a lie detector test by the NBI, the results were negative.

“Gabilo’s Nissan Sentra vehicle was recovered by the operatives of the Western Police District as it was found abandoned at P. Florentino Street, Sta. Cruz, Manila. At the back seat floor of the car, a black bonnet was found.

“After almost five (5) months of no leads towards solving the case, on January 15, 1996, Araceli Tubaga, Director Rosas’ executive secretary at his DECS office at Misamis Street, Bago Bantay, Quezon City, received a call from a male person who requested to speak with Director Rosas. When Tubaga requested to get his message as the director could not go to the phone, he told her to relay to Rosas that he has information as to the identity and whereabouts of those responsible for the death of his friend, Gabilo. He told her that he is willing to give the information in writing in exchange for P200,000.00. He then said that he will call again for Rosas’ response to his offer. In reaction, Director Rosas, accompanied by Tubaga, went to the Quirino District Police Station to inform Capt. Casanova about the call. Capt. Casanova came up with the plan to entrap the caller. At noon the following day (January 16, 1996), the unidentified caller called again. When told that Director Rosas was accepting his offer, he instructed Tubaga to meet him the following day (January 17, 1996) at noon at the Ninoy Aquino Park, Quezon Avenue, Quezon City. He told her to bring with her the amount of P200,000.00 which should be placed in a plastic bag, and to bring flowers with her so he could easily identify her. Director Rosas informed Capt. Casanova about the conversation.

“On January 17, 1996, about 10:00 A.M. Tubaga went to the Max’s Restaurant at the Quezon City Circle and met Capt. Casanova and the other policemen, in preparation for the entrapment. Carrying with her the boodle money in a Unilane Food Mart plastic bag, she proceeded to the Ninoy Aquino Park and waited but the caller did not appear. About 5:00 P.M. that afternoon, the caller called her at the office and informed her that he will meet her the following day (January 18, 1996) at the same time and place. Thus, the following day, she waited for him at the designated spot. Shortly after, a male person approached her and asked if she was the one with whom he talked with over the phone. When she answered in the affirmative, he handed her an envelope while she handed him the plastic bag containing the boodle money. While he was untying the plastic bag to check its contents, the police officers who were posted in the vicinity pounced on him and effected his arrest. He was brought to Police Station 9. This person was later identified as appellant Edgar Suela.

“While on board the vehicle on their way to the police station, in the presence of appellant Edgar Suela, Capt. Casanova, and the other policemen, SPO3 Patriarca opened the envelope which Tubaga had earlier received from appellant Edgar Suela. It contained a handwritten note which reads:

- Nerio Suela – ang utak nang pag-paslang
- TV color and ibedensia nasa bahay niya. Ang tunay na pangalan National ngayon ay pinalitan nang

Panasonic.

- Ang knife na ginamit nasa bahay niya 8 [sic].

When he asked Edgar Suela who wrote it, he answered 'Ako po, sir.' When he further asked as to who is Nerio Suela, Edgar answered that he is his brother and is the driver of Director Rosas.

"With that information, appellant Nerio Suela was immediately arrested at Director Rosas' office. When Nerio confirmed the contents of his brother Edgar's letter, Capt. Casanova directed SPO1 Carlos Nicolas and PO2 Orlin Comia to accompany Nerio to his residence at Kaibigan Street Street, Kalayaan B, Barangay Batasan Hills, Quezon City. Thereat, they recovered the Sony Trinitron TV, and a knife with a wooden scabbard.

"While under detention, the Suelas expressed their desire to give an extra-judicial confession. Hence, on January 19, 1996, between 4:00 to 5:00 o'clock in the afternoon, SPO3 Patriarca, together with Capt. Casanova and another police officer, brought the Suelas to the office of the Integrated Bar of the Philippines (IBP), located at the second floor, Hall of Justice, Quezon City. When they arrived there, Atty. Confesor Sansano and Atty. Florimond Rous were manning the IBP office. When the police informed them of their purpose, Atty. Sansano separately interviewed each of the Suelas first, informed them of their constitutional rights, insured that they understood the import of their confession, physically examined them for any sign of maltreatment or force, and after satisfying himself that the suspects' intention was voluntary on their part and that it was his legal assistance that they were willing to secure, he allowed the police to take down their individual extra-judicial confessions. Atty. Sansano was present all throughout the time that the Suelas were individually propounded with questions. Thereafter, both were brought before the Assistant City Prosecutor where they affirmed their confessions under oath in the presence of Atty. Sansano who assisted them. The following morning, January 20, 1996, the Suelas were again brought before Assistant City Prosecutor Ibuyan for inquest investigation where they again affirmed under oath the contents of their extra-judicial confessions.

"In their extra-judicial confessions, the Suelas mentioned appellant Edgardo Batocan, their townmate, as a participant in the crime. Thus, his name was included in the criminal informations, and a warrant of arrest was issued against him.

"Sometime in the second week of March 1996, a team composed of SPO3 Patriarca, Capt. Nestor Abalos, and SPO2 Jesus Casica, together with the father of the Suela brothers, went to Jaro, Leyte, to serve the warrant of arrest on appellant Batocan. In coordination with Sr./Insp. Benjamin Labadia, the Chief of Police in Jaro, Leyte, the arrest of appellant Batocan was effected. He was immediately brought to Manila and was detained at the Quezon City Police Station 9. The operatives were able to recover the gold-plated Citizen watch of Rosas from Batocan's girlfriend at Barangay San Agustin, Jaro, Leyte. The brand-new Honda motorcycle registered in appellant Batocan's name was shipped from Leyte to Quezon City as Batocan had admitted that he had bought it sometime in July 1995 with his share from the loot of the robbery. While in police custody, appellant Batocan also indicated his desire to give an extra-judicial confession. Thus, on March 31, 1996, about 3:30 P.M., he was brought by SPO2 Reynato Resurreccion to the same IBP office and gave his confession in the presence and with the assistant of Atty. Flormind [sic] Rous, which statement he subscribed before an Assistant City Prosecutor and later re-affirmed before an inquest Fiscal." (Citations omitted)

Version of the Defense

On the other hand, the Public Attorney's Office (PAO) summarized appellants' version of the incident as follows:[8]

"On July 26, 1995, Edgardo Batocan was in his hometown in Jaro, Leyte where he worked as a farmer.

Sometime in March 1996, and while on board his motorcycle, he was arrested by the police. He bought the motorcycle from an uncle with the money that his sister gave him. No citizen gold wristwatch was seized from him upon his arrest.

“After his arrest he was brought to Quezon City and investigated. He had no knowledge nor any participation in the crime that occurred on July 26, 1995, at the residence of Director Nilo Rosas. He was forced and threatened by the police officers to admit and confess to the crimes. He was also forced to sign a typewritten extrajudicial confession, the contents of which he did not know as he was not allowed to read it nor was it read to him. No lawyer was present at that time and he only met Atty. Rous for the first time in court. He recalled however, that during his brief visit at the IBP-Quezon City Chapter office, in the afternoon of March 13, 1996, he saw, but did not talk to Atty. Rous, the one who limps, whom he recognized when the latter testified in Court. He was brought before the Assistant City Prosecutor for inquest but the fiscal did not explain to him the contents of his written statement. He was not adept at reading because he only reached first year high school. No copy of his supposed statement was given him. He did not complain to the fiscal nor to any government agency about the alleged coercion and threats of the police. He only told his lawyer, Atty. Tabang and his brother Jimmy Batocan about it. He is not angry at the Suelas for falsely implicating him. In jail, he confronted the brothers and was told that they were merely forced by the police officers so that they could be freed. The Suelas had many friends but they pointed to him because they thought that the police will no longer bother to pursue him because he lived in a very far place in Leyte. He knew the Suela brothers because they were his barriomates in San Agustin, Jaro, Leyte. Although he came to Manila in 1992 to work until 1994, he did not visit the Suelas or any of his friends from his barrio. He could not recall his exact Manila address.

“Nerio Suela worked as a driver of Director Nilo Rosas at DECS 1993 up to 1995. Geronimo Gabilo was formerly his co-employee thereat as the latter was the one responsible for his employment with Director Rosas. In the months of June and July 1995, he was mostly at home because he was recuperating from an operation (for appendectomy). He was on leave and reported back to work only on July 30, 1995. It was then that he learned about the untimely demise of Gerry Gabilo. The police and the NBI did not investigate him, not until after his arrest on January 18, 1996 by the Quezon City police.

“He had no knowledge nor participation in the killing of Gerry Gabilo nor in the robbery that occurred at the residence of Director Nilo Rosas on the night of July 26, 1995. After his arrest, he was brought to Danarra Hotel where he was manhandled and boxed and his head submerged in the toilet bowl. He was forced to sign a piece of paper. He also met his brother Edgar at the same hotel. He was not allowed to read the paper which he was forced to sign. He found out later on that this was the statement or his supposed extra-judicial confession. From the hotel, he was brought to his house where the police took away his television set (TV) and a knife with scabbard. Director Rosas gave him the tv set after Gabilo’s death. At that time, he did not notice why the ‘Sony’ brand name was scrapped and replaced by the name ‘National’. The next day, he was brought to the City Hall where he was given a lawyer whom he does not know and whose name he could not even recall. The lawyer showed him a paper and asked him if the signature thereon was his. The lawyer did not ask him anything more. The former did not explain to him that said paper was his alleged admission to the crimes for which he was arrested and detained. He met Atty. Sansano for the first time in the court room during the hearing of these cases and not on January 19, 1996. He could not recall if Atty. Sansano was the same one who was presented to him when he was brought to the City Hall after his arrest. After this, he was brought before the Assistant City Prosecutor.

“He sustained hematomas (pasa) from the man-handling by his police captors but he did not show them to the Assistant City Prosecutor or the lawyer at the IBP, Quezon City office nor did he file any complaint against the police. He recanted his confession in his counter-affidavit.

“He knew Edgardo Batocan well because they grew up together in the same town in Leyte. On July 26, 1995, he was at home at Batasan Hills, Quezon City, the whole time. He was playing chess with his neighbor Mang Tancio during the time of the incident.

“While inside the prison cell, he was convinced by his officemates at the DECS-NCR and by Capt. Casanova to write Director Rosas a letter on January 31, 1996. The contents of this letter was merely dictated to him by the police.

“Edgar Suela admits to having called up the office of Director Nilo Rosas and in proposing a trade off of P200,000.00 in exchange for the information he would give about the identities and whereabouts of the robbers. He learned from his brother Nerio that Director Rosas placed a reward money for whoever can provide such an information. At the agreed time and date of the ‘trade off’, the police apprehended him and changed the original note he gave with another written note the contents of which, the police forced and dictated to him. During his investigation, the police employed threats, intimidation and physical force to make him admit to the crime, and to sign a statement or confession. Together with his brother, he was brought to the office of the IBP in Quezon City, a lawyer talked to him and he identified this person in court as Atty. Sansano. At the IBP office, he was asked to sign his supposed extrajudicial confession. Later on, he executed a Counter-Affidavit wherein he assailed the voluntariness of his forced confession and recanted the contents thereof.

“He has no knowledge about the killing of Gerry Gabilo nor about the robbers who invaded Director Rosas’ house.

“On July 26, 1995, he was on his tour of duty as security guard of Hoctagon Security Agency at his assigned post at Northridge Elementary School, along Mother Ignacia Street, Timog Avenue, Quezon City. Edgardo Batocan was his acquaintance since childhood and the last time he saw the latter was in 1990 at Jaro, Leyte. He did not see Batocan in his hometown when he got married in November 1995. He did not implicate Batocan. He learned about the death of Gerry Gabilo when he came back to Manila after his wedding.

“Joselito Jacinto testified that Nerio Suela wanted him to repair the latter’s television set. The defect of said tv, pertain only to the channeling. He asked Suela for money to buy the spare parts. On August 19, 1995, he met Nerio Suela and his boss, Director Rosas at the SM parking lot. Rosas gave Nerio some money which the latter in turn gave him for the TV spare parts and repair.

“Dionesio Ador had seen Edgardo Batocan in Jaro, Leyte on July 26, 1995. The motorbike of Batocan is an old red Honda. He saw Batocan used a new motorbike in December 1995 in their barrio. He does not know the Suela brothers. Batocan had been in their barrio all his life and had not left their place.” (Citations omitted)

Ruling of the Trial Court

The court a quo ruled that appellants had been assisted by competent and independent counsel during the execution of their extrajudicial confessions. It gave credence to the testimonies of Atty. Sansano and the police officers and thus admitted in evidence the said confessions.

The letter of Nerio Suela addressed to Director Rosas asking for forgiveness, as well as the discovery of the stolen TV set and knife in the former’s house, further convinced the trial court of appellants’ guilt. Finding the presence of one aggravating circumstance (disguise) with no mitigating circumstance to offset it, the trial court sentenced them to death.

Hence, this automatic review before us.[9]

Assignment of Errors

In his Brief, Appellant Edgardo Batocan ascribes to the trial court the following alleged errors:[10]

“I.

The trial court gravely erred in considering Edgardo Batocan’s extra judicial confession as admissible

evidence against him.

“II.

The trial court erred in admitting and appreciating the wristwatch as evidence against Edgardo Batocan.

“III.

The trial court erred in convicting Appellant Batocan of robbery with homicide.”

Appellants Nerio and Edgar Suela, on the other hand, fault the trial court with the following supposed errors:[11]

“I.

The court a quo erred in considering the extrajudicial confessions of Edgar Suela and Nerio Suela as admissible against them;

“II.

The court a quo erred in considering the letter of Nerio Suela to Director Nilo Rosas as evidence against him;

“III.

The court a quo erred in convicting Edgar Suela for simple robbery under Art. 294, no. 5, of the Revised Penal Code.

“IV.

The court a quo erred in convicting Edgar Suela and Nerio Suela of robbery with homicide.”

Basically, the assigned errors boil down to four: (1) whether the extrajudicial confessions of appellants are admissible in evidence; (2) whether the wristwatch and the letter (of Nerio Suela) are admissible in evidence; (3) whether appellants can be convicted of robbery with homicide; and (4) whether Edgar Suela is guilty of robbery for demanding P200,000 as payment for information on the robbery-slay case.

The Court’s Ruling

The appeal is partly meritorious.

First Issue:

Admissibility of Extrajudicial Confessions

Section 12 of Article III of the 1987 Constitution provides:

“(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

“(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

“(3) Any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him.

“x x x x x x x x.”

In *People v. Labtan*,^[12] we explained that “[t]he right to counsel is a fundamental right and contemplates not a mere presence of the lawyer beside the accused.” Furthermore, an effective and vigilant counsel “necessarily and logically [requires] that the lawyer be present and able to advise and assist his client from the time the confessant answers the first question asked by the investigating officer until the signing of the extrajudicial confession. Moreover, the lawyer should ascertain that the confession is made voluntarily and that the person under investigation fully understands the nature and the consequence of his extrajudicial confession in relation to his constitutional rights. A contrary rule would undoubtedly be antagonistic to the constitutional rights to remain silent, to counsel and to be presumed innocent.”^[13]

True, counsel does not necessarily have to dissuade the person under investigation from confessing. But his bounden duty is to properly and fully advise his clients on the nature and consequences of an extrajudicial confession.

In *People v. Deniega*,^[14] the Court explained:

“The desired role of counsel in the process of custodial investigation is rendered meaningless if the lawyer merely gives perfunctory advice as opposed to a meaningful advocacy of the rights of the person undergoing questioning. If the advice given is so cursory as to be useless, voluntariness is impaired. If the lawyer’s role is reduced to being that of a mere witness to the signing of a pre-prepared document albeit indicating therein compliance with the accused’s constitutional rights, the constitutional standard guaranteed by Article III, Section 12(1) is not met. The process above-described fulfills the prophylactic purpose of the constitutional provision by avoiding the ‘pernicious practice of extorting false or coerced admissions or confessions from the lips of the person undergoing interrogation for the commission of the offense’ and ensuring that the accused’s waiver of his right to self incrimination during the investigation is an informed one in all aspects.”

The modifier competent and independent in the 1987 Constitution is not an empty rhetoric. It stresses the need to accord the accused, under the uniquely stressful conditions of a custodial investigation, an informed judgment on the choices explained to him by a diligent and capable lawyer.^[15]

With respect *Edgardo Batocan*, we hold that his extrajudicial confession was obtained in violation of his constitutional rights. This appellant did not finish first year high school.^[16] Yet Atty. Rous, who is touted by the prosecution as a competent and independent counsel, interviewed Batocan -- before the latter gave his confession -- for only around “five minutes.”^[17] After this initial interview, Atty. Rous just listened nonchalantly to the questions propounded by the police and to the answers given by Batocan. Counsel was not even sure that he had explained to appellant the consequences of his extrajudicial confession. Furthermore, Atty. Rous’ attention was divided while attending the custodial investigation as he was also looking over another paper work on his desk.^[18]

In view of these proven circumstances, we are not convinced that counsel had fully explained to Batocan his constitutional rights and what they entailed or the nature and the consequences of an extrajudicial confession -- explanations that would have enabled him to make an informed judgment on whether to confess; and if so, on what matters. There is no showing that Atty. Rous properly explained the choices or options open to appellant, a

duty expected of any counsel under the circumstances. In sum, he did not turn out to be the competent and independent counsel envisioned by the Constitution.

We now go to the extrajudicial confessions of Edgar and Nerio Suela. Atty. Sansano supposedly stood as counsel for the Suela brothers during their custodial investigation. He testified on how he discharged his duties as follows:

“Q:

Did you also inform them of the nature of the charge against them and the circumstances s[u]rrounding the taking of their statement?

A:

I did not have the opportunity to inform them about the nature of their charge because at that time, when they introduced to me, I have not yet informed them what they are going to do and what being took their statement.

Q:

In other words, Mr. Witness, you did not inform the[m] that the [imposable] penalty in this crime is death?

A:

Well, during my personal interview as I said, at that time, I don’t even know that they are charged for Murder and Homicide.

Q:

But anyway, Mr. Witness, when this case was brought to you by the police officer, you really informed that the crime charged was robbery-homicide, Carnapping and extortion?

A:

Nobody informed me about the nature of the charge as they stated. They were just brought before me there. I was asked to provide the free legal assistance other than the investigation conducted by the police officer.

Q:

Did you not ask the police why these people were brought to you?

A:

They told me that they are going to be asked questions, to be investigated in connection with that incident in Dr. Rosas home.

Q:

And did you not ask the police what was that incident?

A:

The police told me already that the two boys were going to give statement in connection with that incident in

Dr. Rosas house where one was killed in the house of Dr. Rosas.[19]

x x x x xx x x x

Q:

But, nevertheless, Mr. Witness, it was the policeman who choose you to be the lawyer to assist?

A:

No, sir, the police only thru their duties, to suggest or provide where counsel can be sought, now, it happened that under our agreement, with the police, if the two boys were going to give their statement and if the declarant got no lawyer that they will bring them to the IBP because we even provide the assistance that are needed in order to be able to conduct an investigation.”[20] (Italics supplied)

x x x x xx x x x

“Q:

Anyway, you already knew that the incident of robbery and killing of a person was involved, is that right?

A:

Yes sir, after the investigation.

Q:

So when you already knew the possible charge based on the testimony of the two declarants?

A:

Yes sir, it was robbery with homicide.

Q:

You said a while ago that your duty as assisting counsel was only to advise the suspects one of which is to advise them that they can if they do not want to answer those questions that they would think damaging then they can do that?

A:

Yes sir, and the best evidence is the evidence that they gave in their statements.

Q:

Now, since you advised them about damaging testimonies, did you not advise them that to make a confession would be damaging to themselves as assisting counsel?

A:

The confession became clearly damaging only after the answers were given following the question but as I said, at that stage I did not stop the declarant from giving his answer because if I objected then that would be an obstruction in the investigation itself.”[21]

Evidently, Atty. Sansano did not understand the exact nature of appellants’ rights to counsel and to remain silent during their custodial investigations. He viewed a refusal to answer as an obstruction in the investigation. This shows that he was incapable or unwilling to advise appellants that remaining silent was a right they could freely exercise without fear of any untoward consequence. As counsel, he could have stopped his clients from answering the propounded questions and advised them of their right to remain silent, if they preferred to do so. That the process of investigation could have been “obstructed” should not have concerned him because his duty was to his clients and not to the prosecution or to the police investigators.

Moreover, when he interviewed appellants, he did not even bother to find out the gist of their proposed statements in order to be able to inform them properly of the nature and consequences of their extrajudicial confessions. Clearly and sadly, appellants were not accorded competent and independent counsel whom they could rely on to look after their interests.

“In *People v. dela Cruz*, we stated that ‘a confession made in an atmosphere characterized by deficiencies in informing the accused of all rights to which he is entitled would be rendered valueless and inadmissible, perforated, as it is, by non-compliance with the procedural and substantive safeguards to which an accused is entitled under the Bill of Rights and as now further implemented and ramified by statutory law.’”[22]

Where the prosecution failed to discharge the State’s burden of proving with clear and convincing evidence that the accused had enjoyed effective and vigilant counsel before he extrajudicially admitted his guilt, the extrajudicial confession cannot be given any probative value.[23]

The extrajudicial confessions of all three appellants are thus inadmissible in evidence.

Second Issue: Admissibility of Wristwatch and Letter

Wristwatch

Edgardo Batocan allegedly confessed in Leyte that the stolen Citizen wristwatch had been given to his girlfriend. When he rendered this confession, he did not execute any written waiver of his right to remain silent or of his right to counsel. “Any admission wrung from the accused in violation of his constitutional rights is inadmissible in evidence against him.”[24] Therefore, his alleged statement as to the location of the wristwatch is inadmissible.

Furthermore, the prosecution’s claim that the wristwatch was recovered from his girlfriend is hearsay and hence, has limited probative value.[25] The prosecution did not present anyone who had actually witnessed the alleged recovery of the wristwatch from the girl. S/Insp. Benjamin Labadia recounted the incident in this plainly insufficient manner:

“Q:

Alright Mr. Witness, you said that a wrist watch was also a part of the loot and that Batocan told your team that it was in the custody of his sweetheart. When so informed that this wrist watch was in the custody of his sweetheart, what did the police operatives do?

A:

The police operatives together with Edgardo Batocan went to the place and when they came back, I did not go

with them, the wrist watch was already in the possession of the Quezon City Police operative, Sir.

Q:

Did you actually see, Mr. Witness when the team proceeded to the place where the sweetheart of accused Edgardo Batocan was staying, give this wrist watch to the Quezon City Police operatives?

A:

I said, Sir. I did not accompany them.”[26]

As for the wristwatch itself, we agree with appellant that its seizure, if it was really taken from Batocan’s girlfriend, was irregular. As succinctly explained in Batocan’s Brief:

“x x x. Clearly, the watch was taken without a search warrant and not as an incident of a valid arrest. The seizure was irregular. There is also no evidence on record that it was taken under any of the exempting circumstances where a warrantless seizure is permissible. It was not shown if the girlfriend voluntarily and validly consented to the taking x x x. Lacking such evidence, no presumption of regularity can be assumed. ‘Where the search was conducted with irregularity, i.e. without a warrant, the Court cannot appreciate consent based merely on the presumption of regularity of the performance of duty.’ (People vs. Encinada, 280 SCRA 72).

“The wristwatch is clearly a fruit of a ‘fruit of a poisonous tree.’ As such, it should not have been admitted and appreciated against the accused.”[27]

Letter

Nerio Suela also contends that his January 31, 1996 letter to Director Rosas is inadmissible in evidence. The letter reads as follows:

“Jan-31-96

“Dearest Sir DIR. NILO ROSAS

“Sir matagal kona sana ito ipagtapat sa iyo dahil tuwing kitay nakikita na lumoloha ka parang hindi ako maka hinga ng sisikip and aking dibdib. Tuwing tayo’y nasa simbahan homihinge ako ng tawad sa panginoon ang nagawa kong ito nararamdaman ko na parabang hinde niya tinatanggap.

“Sir napakalaki ng nagawa kong kasalanan sa iyo at sana bigyan mo pa ako ng isang pagkakataon pagsisihan ko lahat ang pagkakasala sa iyo babagohin ko na ang buhay ko maglilingkod ako sa diyos.

“Sir nandito ako sa likod ng bakal na rihas halos lahat ng oras ng dadasal ako bigyan mo pa ako ng isang pagkakataon patawaring mo ako.

“Sir alam ng diyos na hindi ako ang kriminal may kinalaman lang ako inamin ko na lang. Para naman magkaroon ng lonas yong problima mo hindi narin ako makatiis hindi pa makatolog. Lalo na nakikita kita na ng hihirap ang inyong katawan lalo na ang in kalooban sana sir bigyan mo pa ako ng isang pagkakataon patawarin mo ako isa rin ako na anak ng diyos na naligaw ng langdas ngayon pinagsisihan ko lahat ang nagawa kong kasalanan sir ayaw ko pang mamatay maliliit ang aking mga anak mahal ako ng aking asawa.

“Sir. Edgardo Batocan ang pumatay kay Sir JERRY sangayon nandoon siya sa Jaro Leyte Bo. San Agostin. Sir hinde ko maggawang pomatay ng tao somama lang ako dahil baka kayo ang patayin nang doon lang ako sa may pito. Yung kapatid ko namana siya ang may baril siya and nanotok si Edgardo Batocan siya ang komoha ng pira tapos omalis na kami ako ang ng drive ng kotse. Tapos inewan namin sa Ricto tapos ng hiwalay hiwa

na kame yon tike. Dian ng kapatid ko.

“Sir patawarin mo na ako hinde naman akong masamang tao na pasama lang ako.

“Sana po & sir babaan mo naman ang aking sintinesia ayaw ko pang mamatay.

Nerio Suela
(signed)
Quezon City Jail

Sir. Sagotin mo naman
itong sulat ko,
(signed)”[28]

This letter was properly identified. Nerio was no longer under custodial investigation when he wrote it. In open court, he admitted having written it. Thus, contrary to his contention, the fact that he was not assisted by counsel when he wrote it will not make the letter inadmissible in evidence. Constitutional procedures on custodial investigation do not apply to a spontaneous statement, not elicited through questioning by the authorities.[29] Hence, the letter is admissible in evidence.

Third Issue:

Liability for Robbery with Homicide

Without the wristwatch and the uncounseled extrajudicial confessions, are the remaining pieces of evidence still sufficient to prove appellants’ guilt beyond reasonable doubt? Fortunately for the prosecution, our answer is “Yes.”

Excluding the wristwatch and the written extrajudicial confessions, the material evidence on record are as follows:

1)

The testimony of the medicolegal officer in conjunction with the medico legal Report[30] which proved the existence of five stab wounds on the cadaver of Geronimo Gabilo;

2)

The stolen colored Sony television set and the knife used in stabbing Geronimo Gabilo, which were recovered from the house of Nerio Suela;

3)

The handwritten letter of Nerio Suela asking for forgiveness and admitting his participation in the crime;

4)

The handwritten tip on the identity of the malefactors voluntarily handed by Edgar Suela to Araceli Tubaga, which -- in open court -- he admitted having written. It states:

‘1.

Nerio Suela – ang utak ng pagpaslang

‘2.

TV color and evidencia nasa bahay niya ang tunay na pangalan national ngayon ay pinalitan ng Panasonic

‘3.

Ang knife na ginamit nasa bahay niya 8 inc.’

5)

The testimony of Director Rosas who narrated how three hooded men brandishing guns and a knife barged into his room on the night of January 18, 1996, and hogtied him, Gabilo and Norman.[31] They were then threatened and intimidated into giving the location of their money and valuables, which the criminals eventually took.[32] The malefactors then dragged Gabilo downstairs.[33] Shortly, thereafter, he followed them and found Gabilo in a pool of his own blood.[34] He observed that the height and built of the three malefactors were the same as those of appellants;[35]

6)

The oral admissions made by Nerio Suela and Edgardo Batocan to Director Rosas and his officemates. Rosas testified as follows:

“Q

After Nerio Suela was told that somebody will be talking with him thru the phone, what happened next, if any?

A

Nerio Suela pale faced, admitted the commission of the crime and he was very apologetic to me and he said: “Sir, patawarin mo po ako sa aking nagawa, nagkamali lang po ako, tulungan naman po ninyo ako”, those were the statements of Mr. Nerio Suela as he was being interrogated by Mr. Patriarca.

Q

What else did he tell you?

A

Those were the only statements that I actually heard from Nerio Suela.[36]

x x x x xx x x x

Q

Again, do you know a person by the name of Edgardo Batocan?

A

I learned about him only from the letter of Nerio Suela and also when I met him on March 13, 1996, sir.

Q:

Where did you meet this Edgardo Batocan for the first time, Mr. Witness?

A:

I met him in the second floor of station 9 along Anonas Street.

Q:

Under what circumstances were you able to meet him?

A:

Upon his arrest on March 13, 1996 at around 3:00 in the afternoon, I was called by the Station Commander of Station 9 to meet Mr. Edgardo Batocan and present also during that time were the relatives of Gerry Gabilo, sir.

Q:

What transpired when you met Edgardo Batocan in the office of the Station Commander of Station 9?

A:

We talked about the crime and he mentioned to us that it was Nerio Suela who planned the whole thing at their place and the plan was hatched three days before the commission of the crime on July 26, 1995.

Q:

What else did he tell you, Mr. Witness, at that time?

x x x x xx x x x

A:

He insisted that it was actually Mr. Nerio Suela who masterminded because on the way down from the second floor, Mr. Gerry Gabilo was pleading with him for them not to harm him and felt quite remorseful when he

was already about to stab my friend but it was Nerio Suela who pushed him to kill Gerry and then one of my staff even asked him “how many times did you stab, Mr. Gabilo?”

x x x x xx x x x

Q:

What did Edgar Batocan answer to one of your staff?.

A:

He answered that he hit him five times, sir

COURT:

Q:

You were present when your staff member asked Edgardo about the question?

A:

Yes, I was there.

Q:

You were also present when Edgardo Batocan gave the answer?

A:

Yes, Your Honor.

x x x x xx x x x

Q:

Was there any investigation being conducted by the police at that time you were talking with Edgardo Batocan?

A:

There was none, Your Honor.

Q:

Or you were alone with Edgardo Batocan together with your staff member?

A:

We were left alone at the second floor with some of my staff member together with the family of Gerry Gabilo, so we were asking him the circumstances on how he did it and so forth and so on.

Q:

Did he ask for forgiveness?

A:

No, he did not Your Honor.[37]

Edgardo Batocan's confession to Rosas who is not a police officer is admissible in evidence.[38] The Rules state that "the declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein, may be given in evidence against him." [39] Batocan's verbal declarations are not covered by Sections 12 (1) and (3) of Article III of the Constitution,[40] because they were not extracted while he was under custodial investigation.

In *People v. Tawat*, [41] the Court declared:

"The rule is that "any person, otherwise competent as a witness, who heard the confession, is competent to testify as to the substance of what he heard is he heard and understood all of it. An oral confession need not be repeated verbatim, but in such case it must be given in its substance."

"Proof of the contents of an oral extrajudicial confession may be made by the testimony of a person who testifies that he was present, heard, understood, and remembers the substance of the conversation or statement made by the accused."

These pieces of evidence sufficiently prove beyond reasonable doubt the commission of the crime of robbery with homicide.

Identities of Appellants

As Malefactors

Edgardo Batocan's oral admission to Rosas that he stabbed Gabilo five times dovetails on material points with the letter of Nerio. In turn, Nerio's letter to Rosas asking for forgiveness and admitting his participation in the crime, taken together with the recovery from his house of the stolen TV and knife used in killing Gabilo; plus the oral admission of Batocan and the written tip of Edgar Suela pointing to him as the mastermind prove beyond reasonable doubt his identity as one of the malefactors.

The evidence showing the identity of Edgar Suela are circumstantial in character. It is basic that an accused may be convicted on the basis of circumstantial evidence alone, provided that: (a) there is more than one circumstance, (b) the facts from which the inferences are derived are proven, and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[42] In the present case, all these requirements are satisfied.

These circumstances may be summarized, thus: (1) Edgar's intimate personal knowledge of the details of the crime which he wrote down as tips; (2) as a security guard, he possessed a gun on the night of the incident; (3) he was the brother of one of the malefactors and a friend of the other; (4) the interlocking admissions to Director Rosas of Batocan and his brother Nerio point to Edgar as their cohort; (5) Rosas also identified him as one of the malefactors. These are duly proven circumstances which sufficiently establish beyond reasonable doubt his

identity as one of the malefactors.

Conspiracy

The three malefactors arrived together at the house of Director Rosas. They were all wearing ski masks and were all sporting weapons. While one was threatening Rosas, the other was intimidating Gabilo and the third was pointing his weapon on Norman. After getting the money and valuables of Gabilo and Rosas, all three went downstairs together, two of them dragging Gabilo with them. Upon the instruction of Nerio, Batocan stabbed Gabilo five times. They finally left together in the same car, with Nerio driving. These acts of the three appellants before, during and after the crime clearly indicate a joint purpose, concerted action and concurrence of sentiments. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.[43]

Hence, although Nerio and Edgar Suela did not themselves stab Gerry Gabilo, they are still liable for his death as principals because the existence of conspiracy makes the act of one the act of all.[44] Moreover, whenever the complex crime of robbery with homicide is proven to have been committed, all those who took part in the robbery are liable as principals even though they did not actually take part in the killing.[45]

Proper Penalty

The current Rules on Criminal Procedure require that even generic aggravating circumstances must be alleged in the Information. Thus, Section 9 of new Rule 110 states:

“Sec. 9. Cause of the accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

In *People v. Mauricio*,[46] the Court elucidated:

“The use of the word ‘must’ indicates that the requirement is mandatory, therefore failure to comply with Sec. 9, Rule 110, means that generic aggravating circumstances, although proven at the trial, cannot be appreciated against the accused if such circumstances are not stated in the information. It is a cardinal rule that rules of criminal procedure are given retroactive application insofar as they benefit the accused.”

In the present case, the aggravating circumstance of disguise which was appreciated by the court a quo was not alleged in the Informations against appellants. Following the above-cited new rule and current jurisprudence, we cannot appreciate the aggravating circumstance of disguise against appellants. The special complex crime of robbery with homicide carries the penalty of reclusion perpetua to death. There being no appreciable aggravating circumstance, the proper penalty to be imposed is reclusion perpetua.

Furthermore, in *People v. Catubig*,[47] we held that while a non-alleged but proven aggravating circumstance cannot be used to increase the penalty, nonetheless it can be the source of civil awards. Hence, we retain the trial court’s civil grants in this regard.

Fourth Issue:

Robbery

On the trial court’s sentence of robbery in Criminal Case No. Q-96-64618, we agree with the recommendation of the Office of the Solicitor General that Edgar Suela should be acquitted. The OSG explained:

“Simple robbery is committed by means of violence against or intimidation of persons as distinguished from the use of force upon things, but the extent of the violence or intimidation does not fall under pars. 1 to 4 of Article 294 (Revised Penal Code) [p. 175, Criminal Law, Book II, Vol. IV, Ambrosio Padilla, 1990].

“Unfortunately, in the case at bar, the prosecution failed to prove that appellant Edgar Suela employed force or intimidation on private complainant Rosas by instilling fear in his mind so as to compel the latter to cough out the amount of P200,000.00. Instead, what was established was that he had agreed to give the P200,000.00 in exchange for information regarding the identity and whereabouts of those who robbed him and killed his friend (TSN, November 4, 1996, p. 7; TSN, November 5, 1996, pp. 4-9). There was no showing that appellant Edgar Suela had exerted intimidation on him so as to leave him no choice but to give the money. Instead, what is clear was that the giving of the money was done not out of fear but because it was a choice private complainant opted because he wanted to get the information being offered to him for the consideration of P200,000.00 (TSN, November 4, 1996, pp. 5-17; *ibid.*, Decision, p. 15). In fact, the money was delivered not due to fear but for the purpose of possibly having a lead in solving the case and to possibly bring the culprit to justice (*ibid.*). As such, the elements of simple robbery have not been established in the instant case, hence, appellant Edgar Suela should be acquitted of that charge.”[48]

WHEREFORE, the appeal is hereby **PARTIALLY GRANTED** and the appealed Decision **MODIFIED**. We **AFFIRM** the judgment insofar as it refers to Criminal Case Nos. Q-96-64616 and Q-96-65071 but **REDUCE** the penalty to reclusion perpetua. The award of civil indemnities is also **AFFIRMED**. In Criminal Case No. Q-96-64618 for simple robbery, Edgar Suela y Hembra is **ACQUITTED**.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Penned by Judge Diosdado Madarang Peralta.

[2] Assailed Decision, pp. 44-45; Rollo, pp.107-108; records, pp. 245-246.

[3] Rollo, pp. 10-11.

[4] *Ibid.*, p. 17.

[5] *Id.*, p. 12.

[6] Order dated September 24, 1996; records, pp. 66-67.

[7] Consolidated Appellee’s Brief, pp. 13-25, Rollo, pp. 291-303. The Brief was signed by Solicitor General Ricardo P. Galvez, Asst. Solicitor General Mariano M. Martinez and Solicitor Fay L. Garcia.

[8] This narration is taken from Appellant Edgardo Batocan’s Brief, pp. 12-18; Rollo, pp. 147-153; signed by Attys. Arceli A. Rubin, Amelia C. Garchitorena and Ma. May Zafionco Redor of PAO. The Brief for the Brothers Suela, signed by Atty. Patricio B. Tanpiengco Jr., narrates a similar story; Rollo, pp. 240-242.

[9] This case was deemed submitted for resolution on January 17, 2000 upon receipt by the Clerk of Court En Banc of the last Reply Brief.

[10] Appellant’s Brief , p. 1, Rollo, p. 136.

- [11] Rollo, p. 234.
- [12] 320 SCRA 140, 159, December 8, 1999, per Puno, J.
- [13] Ibid., citing *People v. Bacamante*, 248 SCRA 47, September 5, 1995.
- [14] 251 SCRA 626, 638-639, December 22, 1997, per Kapunan, J.
- [15] Ibid., see also *People v. Santos*, 283 SCRA 441, December 22, 1997.
- [16] TSN, September 1, 1997, p. 7.
- [17] TSN, March 13, 1997, p. 19.
- [18] Ibid., p. 11.
- [19] TSN, February 21, 1997, pp. 9-11.
- [20] Ibid., p. 17.
- [21] TSN, March 4, 1997, pp. 16-17.
- [22] *People v. Labtan*, 320 SCRA 140, 166, December 8, 1999, per Puno, J.
- [23] *People v. Paule*, 261 SCRA 649, September 11, 1996.
- [24] *People v. Mauyao*, 207 SCRA 732, April 6, 1992, per Melencio-Herrera, J.
- [25] *People v. Villaviray*, 262 SCRA 13, September 18, 1996; *People v. Parungao*, 265 SCRA 140, November 28, 1996; *People v. Julito Franco*, 269 SCRA 211, March 4, 1997.
- [26] TSN, December 10, 1996, pp. 14-15.
- [27] Page 37; Rollo, p. 172.
- [28] Exhibit "PP," records, p. 62.
- [29] *People v. Cabiles*, 284 SCRA 199, January 16, 1998.
- [30] Exhibit I.
- [31] TSN, March 21, 1997, pp.5-9.
- [32] Ibid., pp.10-19.
- [33] Id., pp. 23-25.
- [34] Id., pp. 27-29.
- [35] TSN, March 21, 1997, p. 63.
- [36] Ibid., pp. 44-45.
- [37] Ibid., pp. 58-61.
- [38] *People v. Aringue*, 263 SCRA 291, December 15, 1997; *People v. Andan*, 269 SCRA 95, March 3, 1997; *People v. Tawat*, 129 SCRA 431, May 25, 1984.
- [39] Sec. 33, Rule 130, Rules of Court.

[40] *People v. Andan*, 269 SCRA 95, March 3, 1997.

[41] 129 SCRA 431, 436-437, May 25, 1984, *per curiam*.

[42] Sec. 4, Rule 133, Rules of Court. *People v. Asis*, 286 SCRA 64, February 9, 1998; *People v. Llaguno*, 285 SCRA 124, January 25, 1998; *People v. Quitarior* 285 SCRA 196, January 28, 1998.

[43] *People v. Antonio*, 303 SCRA 414, February 19, 1999; *People v. Taclan*, 308 SCRA 368, June 17, 1999; *People v. Bitoon, Sr.*, 309 SCRA 209, June 28, 1999.

[44] *People v. Gongon*, 287 SCRA 618, March 19, 1998; *People v. Medina*, 292 SCRA 436, July 10, 1998; *People v. Tidula*, 292 SCRA 596, July 16, 1998.

[45] *People v. Pulusan*, 290 SCRA 353, May 21, 1998.

[46] GR No. 133695, February 28, 2001, *per Bellosillo, J.*; see also *People v. Arojado*, GR No. 130492, January 31, 2001.

[47] GR No. 137842, August 23, 2001.

[48] Appellee's Brief, pp. 62-63; Rollo, pp. 340-341.

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