

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SALVADOR ESPAÑOL Y ELMERANES, ACCUSED WHOSE DEATH
SENTENCE IS UNDER REVIEW. NICANOR RIVERA Y BARTOLATA AND
PABLITO BOMBALL...**

G.R. Nos. 57597, 57598 and 57599. June 29, 1982

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PER CURIAM:

This is a case of robbery with homicide. Between two and three o'clock in the early morning of Christmas Eve, December 24, 1979, Anselma Marcelo-Arellano, 32, and her housemaid, Cirila Moscoso, 20, were feloniously killed in the master bedroom of Juan Arellano's residence located at 7855 Makati Avenue, Makati, Metro Manila.

On the same occasion, cash and checks amounting to P140,908.50 were taken from Arellano's safe inside the bedroom and an attempt was made to choke to death his three-year-old daughter, Catherine, who was also in the bedroom. The cash and checks were recovered by the police and turned over to Victor R. Marcelo, Anselma's nephew (Exh. E).

The autopsy disclosed that Anselma had contused abrasions on the chin, left jaw and neck, covering an area eleven by twelve centimeters, and a fracture in the thyroid region of the neck. There was hemorrhage in the anterior portion of the neck. Death was due to "asphyxia by strangulation" (Exh. U).

Cirila had contused abrasions and hematoma in the head, neck and shoulders. Death was due to the injuries to her brain (Exh. Y). Catherine had an abrasion in the neck and a hematoma in the shoulder (Exh. K).

A few hours after the incident, the police got the statements of Salvador Español, 19, Nicanor Rivera, 20, and Pablito Bomballes, 20, all natives of Masbate and employees in the Arellano wine and liquor store which was a part of the said residence (Exh. FF).

Español in his confession revealed that he conspired with Rivera and Bomballes to steal the money in Arellano's safe. He said that at around midnight of December 23, 1979, after Bomballes and Rivera arrived from the discotheque, the three of them entered the master bedroom. Rivera got the money from the safe. Later, he struck Anselma Marcelo with a lead pipe. She fell from the bed. She was bloodied all over.

Then, Español used the lead pipe to strike Cirila Moscoso on the neck and face. Bomballes took the pipe from Español and used it to strike Anselma and Cirila. When the three noticed that the child Catherine had awakened, they took turns in trying to choke her to death.

Bomballes and Rivera brought the loot outside the Arellano residence by climbing over the rear wall. Español went to sleep. At around two-thirty in the morning, Rivera and Bomballes returned to the Arellano residence. Later, the police arrived and investigated the three (Exh. F, G and I).

Bomballes and Rivera gave different versions in their statements. Bomballes in his statement admitted that he conspired with Rivera and Español to kill the Arellano spouses and to get their money from the safe but he

clarified that he did not take part in the robbery and killing perpetrated by Rivera and Español and that he merely accompanied Rivera in bringing the bag containing the money to the residence of Rivera's mother at J.P. Rizal Street, Makati (Exh. G).

Rivera in his statement declared that it was Español who perpetrated the robbery and killing and that he (Rivera), at the request of Español, brought the bag containing the loot to the residence of Rivera's mother located at the corner of Taguig and J.P. Rizal Streets, Makati because Español would be leaving on that day (Exh. 1).

On the basis of Español's confession, an assistant fiscal of Rizal filed against Español, Rivera and Bomballes (1) an information for robbery with homicide in connection with the killing of Cirila Moscoso, (2) another information for robbery with homicide in connection with the killing of Anselma Marcelo and (3) an information for attempted murder in connection with the assault on the child, Catherine Arellano (Criminal Cases Nos. 33274-76).

At the arraignment on January 16, 1980, the trial judge personally read to the three accused the informations in Tagalog and interrogated them in Tagalog. With the assistance of counsel de oficio, Rivera and Bomballes pleaded not guilty while Español pleaded guilty in spite of the repeated warnings given to him that he would be sentenced to death.

Español admitted that he was one of those who took the amount of P140,908.50 and placed it in a sack, that he struck Cirila twice on the neck with the pipe, that he killed Anselma by hitting her also twice with the same pipe and that he squeezed Catherine's neck with both hands (2-9 tsn). Español deviated from his confession by assuming sole responsibility for the robbery with double homicide and attempted murder.

At the start of the trial, the three accused moved to quash the three informations on the ground that only one information should have been filed for the special complex crime of robbery with homicide. The trial court held in abeyance the resolution of that motion until the cases were submitted for decision (2-11 tsn, Jan. 22, 1980). The three cases were tried jointly.

The three accused testified at the trial. Their versions differed from the recitals in their statements. They made it appear that only Español perpetrated the robbery with double homicide and attempted murder and that Rivera and Bomballes had no participation therein and the two merely brought the plastic bag containing the loot to the residence of Rivera's aunt believing that it contained Español's clothes only.

Español, who reached Grade six, testified that from June to December, 1979 he was employed by the Arellano spouses as a delivery boy and houseboy. He delivered bottles of wine, worked in the garden and sometimes cooked. He was often scolded by Anselma whom he called Ate Emma.

With Emma's permission, he left the wine store at around five o'clock in the afternoon of December 23, 1979 in order to watch a movie in Guadalupe, Makati. He stayed in the theater up to nine o'clock, then drank allegedly twelve bottles of beer in a small restaurant, thus becoming inebriated, and returned to the wine store at midnight.

Emma opened the door. She berated him for having arrived late. She fired him. He replied that he would leave if she gave him his salary. She did not give Español his salary. So, he told her that he would steal her money.

After a while, when Español thought that Emma was already asleep, he entered the master bedroom and tried to open the safe. When Emma was awakened, Español clobbered her twice in the neck with a lead pipe.

Cirila, the housemaid who was also sleeping in the master bedroom, was also awakened. Español clubbed her twice in the neck with the same lead pipe. Then, he squeezed the neck of Catherine, Emma's three-year-old child

who was also in the bedroom.

Believing that she was dead, Español returned to the safe and tried to open it. With a kitchen knife (Exh. S), he was able to tear one side of the safe (See photo, Exh. EE). He took the money inside the safe, placed it in a plastic bag, covered it with his clothes and covered the clothes with old newspapers.

He was not able to get all the contents of the safe because he heard a knock on the door of the store. He came out of the bedroom and peeped through the door of the store. He saw Rivera and Bomballes who at about ten o'clock on the preceding night were allowed by Emma Marcelo to go to the Calesa Disco house at Pasay Road, Makati.

Instead of opening the door, Español delivered the plastic bag to Rivera through a service window with the request that the two should take it to Rivera's aunt for safekeeping. Español said that he would pick up the bag later because he was terminating his employment with the Arellano spouses and would be leaving for the Visayas.

Rivera and Bomballes in their testimonies repudiated their statements. They made it appear that they arrived at the Arellano residence between two-thirty and three o'clock in the morning, coming from the discotheque. When they knocked at the door, Español, instead of allowing them to enter, gave them the plastic bag supposedly containing his clothes only, with the request that they bring it to the house of Rivera's aunt.

Rivera and Bomballes hailed a taxicab and gave the bag to Rivera's mother, Nelda Bartolata, who was residing at 9512 Taguig Street, corner J.P. Rizal Street, Makati. When the two returned to the residence of the Arellanos, the place was swarming with policemen about twenty in all.

It turned out that after Rivera and Bomballes had left the house, the little girl, Catherine, who survived Español's attempt to strangle her to death, was crying inside the master bedroom. The laundry woman, on hearing her cries, woke up Efigenia Marcelo, Emma's sister. Catherine opened the door. Efigenia entered the bedroom and discovered Emma sprawled on the floor and Cirila on her bed bathed in blood. The gruesome incident was reported to the police.

The trial court in connection with the death of Anselma Marcelo convicted Español of robbery with homicide, sentenced him to death and ordered him to pay an indemnity of P47,747.90 to her heirs. It held that Bomballes and Rivera were only guilty as accessories in the crime of simple robbery.

The trial court also convicted Español of homicide for having killed the housemaid, Cirila Moscoso, sentenced him to an indeterminate penalty of ten years and one day of prisión mayor as minimum to seventeen years, four months and one day of reclusión temporal as maximum and ordered him to pay an indemnity of P16,700 to the victim's heirs.

Español was also convicted of attempted murder and sentenced to an indeterminate penalty of four years, two months and one day of prisión correccional as minimum to ten years of prisión mayor as maximum and to reimburse Catherine's father the sum of P624.90 as medical expenses.

Thus, the trial court denied the oral motion to quash of the accused and sustained the procedure followed by the fiscal in filing separate informations for three distinct offenses instead of only one information for the special complex crime of robo con homicidio. The three cases were elevated for automatic review.

As already stated, Bomballes and Rivera were originally convicted by the trial court as accessories in simple robbery and they were each sentenced to four months of arresto mayor. But on motion for reconsideration filed by the prosecution and over the opposition of counsel de oficio, the trial court amended its decision, convicted Bomballes and Rivera as accessories in robo con homicidio and sentenced each of them to an indeterminate penalty of six years of prisión correccional as minimum to ten years of prisión mayor as maximum. They

appealed from that amendatory order.

Español 's case. - His counsel contends that Español is liable only for robbery with homicide and that the trial court erred in convicting him of three crimes, robbery with homicide, homicide and attempted murder. The Solicitor General agrees with that contention. It is meritorious.

The fiscal should have charged Español with the special complex crime of robbery with double homicide and attempted murder, instead of filing two informations for robbery with homicide and one information for attempted murder. The trial court should have convicted him only of that complex offense. The fiscal unjustifiably split the criminal action.

The killings of Anselma and Cirila and the attempt on Catherine's life were perpetrated by reason and on the occasion of the robbery. Español's purpose was to prevent them from interfering with the robbery which was his main objective.

The crime of robbery with homicide remains fundamentally the same regardless of the number of persons killed in connection with the robbery (People vs. Mones, 58 Phil. 46, 59). "Cuando con ocasión o motivo del robo resulten varias muertes, la jurisprudencia, inspirándose en la idea de la individualidad de esta infracción, declaró que existía un único delito" (2 Cuello Calón, Derecho, Penal, 1975 14th Edition, p. 874).

"The juridical concept of robbery with homicide does not limit the taking of human life to one single victim making the slaying of human beings in excess of that number punishable as separate, independent offense or offenses. All the homicides or murders are merged in the composite, integrated whole that is robbery with homicide so long as all the killings were perpetrated by reason or on the occasion of the robbery" (People vs. Madrid, 88 Phil. 1, 14-15).

Thus, where four assassinations were committed with the sole end in view of removing opposition to the robbery or suppressing evidence thereof, or both, the appellant's acts constitute one crime of robbery with homicide and not four separate offenses (People vs. Madrid, supra).

The trial court, in convicting Español of three separate offenses, relied on People vs. Campomanis, L-27999-28000, November 23, 1971, 42 SCRA 222, where the four accused took the cow of Dionisio Tracarol at night and when Tracarol came down from his house, they assaulted him. Tracarol's wife, Maxima Baroro, on learning that her husband had been assaulted, began to scream. She was at the window of the house.

To silence her, Miguel Campomanis went up the house and killed her. He went down and, on noticing that Tracarol was still shouting, Campomanis stabbed Tracarol. Then, Campomanis and another malefactor went back to the house and brought down the trunk of the couple.

The accused were convicted of robbery with homicide for the killing of Tracarol and the taking of the cow and the trunk but as to the killing of the wife they were convicted of homicide only. It is manifest that the facts of the Campomanis case distinguish it from the instant case where Español is unquestionably liable for robbery with double homicide and attempted murder which were committed by reason and on the occasion of the robbery.

Another contention of Español is that the trial court erred in appreciating dwelling as an aggravating circumstance. It is true that Español and the victims lived in the same house but the fact is that his dwelling place was the bodega of the wine store, a place distinct from the residential portion of the house where the master bedroom was located. It is not proper to conclude under the circumstances that Español and his victims had the same dwelling. (See U.S. vs. Chu Ning Co., 7 Phil. 710.)

While it is true that Anselma Marcelo berated Español for having arrived late, that circumstance cannot be regarded as a provocation that would nullify dwelling as an aggravating circumstance. The scolding did not immediately provoke the robbery (See *People vs. Dequiña*, 60 Phil. 279).

Español's contention that the trial court erred in appreciating the aggravating circumstance of abuse of confidence is not well-taken. Español was allowed to have lodging in the bodega of the store because of the trust and confidence reposed in him by his employers, the Arellano spouses. Abuse of confidence was considered aggravating in a case where the cook inflicted physical injuries on his mistress (*U.S. vs. Trinidad*, 4 Phil; 152). Español's situation in the Arellano residence is similar to that of the cook in the Trinidad case.

Treachery aggravated the killing of Anselma and Cirila and the wounding of the child Catherine Arellano. Nocturnity may be appreciated as a distinct aggravating circumstance with respect to the robbery.

The fact that there were two killings and an attempt on the life of Catherine Arellano is also an aggravating circumstance. A contrary rule would mean that robbery with a single homicide would be of the same gravity as robbery with multiple killings (*People vs. Mabilangan*, L-48217, January 30, 1982).

Only plea of guilty can be appreciated as an extenuating circumstance in favor of Español.

We hold that the trial court did not err in imposing the death penalty on Español on the basis of his plea of guilty and testimony and even disregarding his confession. He is hereby convicted of robbery with double homicide and attempted murder.

Case of Rivera and Bomballes. — They contend that their liability as accessories after the fact has not been proven beyond reasonable doubt and, therefore, they should be acquitted. That contention cannot be sustained. The record contains many indications that they had knowledge of the robbery with double homicide and attempted murder when they concealed the bag containing the loot in the house of Rivera's aunt.

Their alternative contention is that the trial court erred in amending its decision and convicting them as accessories in robbery with homicide and imposing upon them the indeterminate penalty of six years of *prisión correccional* as minimum to ten years of *prisión mayor* as maximum.

The Solicitor General in his brief and in his comment on May 11, 1982 recommends that Bomballes and Rivera be released because the original decision allegedly became final as to them on April 1, 1981, when they waived their right to appeal, or on April 7, 1981, when the reglementary fifteen-day period within which to appeal expired.

The original decision convicting Rivera and Bomballes as accessories in simple robbery and sentencing each of them to four months of *arresto mayor* was promulgated on March 23, 1981.

On that same day, March 23, the trial judge (who was allegedly verbally informed by the counsel de oficio that Rivera and Bomballes were not going to appeal) issued an order directing the elevation to this Court of the records of the three cases for automatic review of the death penalty (pp. 238 and 265, Record). Bomballes and Rivera did not file a notice of appeal from that decision.

On the following day, March 24, the private prosecutor filed a motion for reconsideration wherein he prayed that Rivera and Bomballes be considered accessories in the crime of robbery with homicide and that their sentence be increased accordingly. The fiscal adopted that motion for reconsideration and alleged that the two accessories be penalized by *prisión mayor*.

On April 1, 1981, Rivera and Bomballes filed a motion reiterating their counsel de oficio 's alleged verbal manifestation before the trial judge in his chamber on March 23 that they were not appealing from his judgment and that since they had been under preventive imprisonment in the provincial jail since January 14, 1980, or for more than fifteen months, they had already served the sentence of four months' imprisonment meted out to them. They prayed that they be released. They opposed the prosecution's motion for reconsideration.

As already stated, the trial court in its order of April 2, 1981, promulgated on April 8, 1981, or sixteen days after the promulgation of the original decision, amended its decision by convicting Rivera and Bomballes as accessories in robbery with homicide and increasing their penalty. It issued a commitment order on April 8, 1981 stating that the imprisonment of Bomballes and Rivera would commence on April 2, 1981.

The issue is whether the trial judge could amend his decision by increasing the penalty and promulgate the amendatory order sixteen days after the original decision was promulgated. Rule 120 of the Rules of Court provides:

"SEC. 7. Modification of judgment.— A judgment of conviction may be modified or set aside by the court rendering it before the judgment has become final or appeal has been perfected. A judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the defendant has expressly waived in writing his right to appeal."

It is a fact that on April 1, 1981, or nine days after the promulgation of the original decision, Bomballes and Rivera filed a manifestation wherein they stated that they were not appealing from the decision convicting them as accessories in simple robbery and sentencing each of them to four months of arresto mayor (p. 248, Record). They waived expressly in writing their right to appeal. That waiver had the effect of causing the judgment against them to become final.

That being so, the trial court could not modify or amend that final judgment in an order dated April 2, 1981 which was promulgated on April 8, 1981 or sixteen days after the promulgation of the original decision. Regardless of the pendency of the motion for reconsideration, the original judgment became final after the lapse of fifteen days or on April 7, 1981 (U.S. vs. Court of First Instance, 24 Phil. 321; People vs. Tamayo, 86 Phil. 209).

WHEREFORE, the trial court's judgments in Criminal Cases Nos. 33274 and 33276, convicting Salvador Español of homicide and attempted murder, are set aside. Its judgment in Criminal Case No. 33275 is modified. Español is hereby convicted of robbery with double homicide and attempted murder and sentenced to death. The lower court's judgment as to his civil liability in the three cases is affirmed.

The trial court's amendatory order on April 2, 1981, convicting Nicanor Rivera and Pablito Bomballes as accessories in robbery with homicide is set aside. Said accused should be released immediately from imprisonment unless they are detained for some other offense. Costs de oficio.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Aquino, Concepción Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.
Teehankee, J., concurs in the result.

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