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Barredo (Chairman), Antonio, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

EN BANC

[G.R. No. L-23431. July 20, 1979]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE REPATO, ET AL.,** *defendants-appellants.*

SYLLABUS

1. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; IN ROBBERY WITH HOMICIDE, IT IS ONLY A GENERIC AGGRAVATING CIRCUMSTANCE AND NOT QUALIFYING.**— In robbery with homicide, treachery is only a generic aggravating circumstance and is not qualifying. It does not change the qualification of homicide to murder.

2. **ID.; ID.; ID.; WHEN APPRECIATED.**— There is treachery when the victim was first bound before being killed because such means tended directly and particularly to insure the consummation of the crime without risk to the aggressors, inasmuch as thus bound and disarmed, the victim could not defend himself in any manner against his assailants.

3. **ID.; PENALTY; APPLICATION THEREOF IN ROBBERY WITH HOMICIDE WHEN ATTENDED BY ONE AGGRAVATING CIRCUMSTANCE.**— We find the crime to be attended by the aggravating circumstance of treachery. The Revised Penal Code, Art. 294 (1) imposes the penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed. Since the law prescribes a penalty composed of two indivisible penalties, and there is present one aggravating circumstance, the greater penalty shall be applied.

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APPEARANCES OF COUNSEL

Magpuri C. Jabson (Counsel de Oficio) for defendants-appellants.

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Octavio R. Ramirez and *Solicitor Guillermo C. Nakar, Jr.* for plaintiff-appellee.

D E C I S I O N

PER CURIAM:

This is an appeal from the decision of April 30, 1964, by the Court of First Instance, Branch II, at Rizal, in Criminal Case No. 9943, *PP vs. Jose Repato, alias Peping, and Francisco de la Cruz, alias Pancit, also alias Francing.* At his arraignment, the accused De la Cruz pleaded guilty and was sentenced accordingly, leaving the other defendant, Repato, to be tried.

After trial, Repato was convicted and sentenced to death as follows:

> In view of all the foregoing, the Court finds defendant JOSE REPATO guilty beyond reasonable doubt of the offense charged against him. Article 294 of the Revised Penal Code provides that any person guilty of robbery with the use of violence against or intimidating of any person shall suffer (sub-paragraph 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. In the instant case, it was fully established that defendants took advantage of nighttime in order to rob and that they deliberately killed the deceased Francisco Bernal as shown by the fact that they tied his hands and then shot him thereafter. There are, therefore, two aggravating circumstances in this case which should be considered in the imposition of the penalty to the defendant.
>
> WHEREFORE, the Court hereby imposes the DEATH PENALTY upon the defendant. Defendant is further ordered to indemnify the heirs of the deceased Francisco Bernal in the sum of ₱822.00 as well as the value of the watch which had not been recovered in the amount of ₱180.00. The defendant shall also pay for the proportionate part of the costs. He is also hereby condemned to indemnify the heirs of the deceased Francisco Bernal in the sum of ₱6,000.00.

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After the decision in this case has become final, the Clerk of Court will return the valise as well as the pair of binoculars to the heirs of the deceased.

Repato escaped from the New Bilibid Prison on August 4, 1968, and is still at large. His escape does not affect this automatic review of the judgment of conviction. (*People vs. Cornelio*, L-1289, June 7, 1971, 39 SCRA 435).

It appears that before the incident which gave rise to this case, both the accused lived with one Clemente Hermogene. All three worked in a construction project at Balara, Quezon City, and they lived in a *bodega* where the construction materials were stored. In the evening of August 14, 1960, Hermogene saw Repato and De la Cruz take a carbine from under the box which all of them used as a bed. Repato cleaned the carbine, dismantled it, and then wrapped the component pieces with a paper cement bag. This bundle he inserted in another bundle consisting of pieces of wood. Then he tied the last bundle and placed it in a *buri* bag which was secured by De la Cruz. Both of the accused went out, although it was rainy and stormy; they returned after midnight. Upon their return, De la Cruz awakened Hermogene, who opened the door to admit them. The two accused changed their clothes and laid down to sleep. Hermogene did not see them bring back the *bayong* which they were carrying when they went out. Instead, Hermogene saw that they had brought back with them a leather valise.

In the morning of the next day, August 15, 1960, the Marikina Police Department received a report that one Francisco Bernal had been shot to death and robbed the previous night at his residence in Mapunso, Parang, Marikina, Rizal. Several members of the police force, accompanied by the victim's common-law wife, proceeded to the scene of the crime. It was learned that the victim was an ex-Navy man and was a pensioner of the US government. The house was in an isolated place, and inside they saw the victim lying face downward in the sala, with his hands tied behind his back with galvanized wire. The policemen sent the body to the Funeraria Quiogue morgue at Manila for examination by NBI medico-legal officers.

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The night of the killing, several articles belonging to the victim had disappeared. The missing articles consisted of: an "Omega" wrist watch with the name "*Francisco Bernal U.S. Navy*" engraved on the back, worth ₱180.00; a pair of binoculars costing ₱100.00; two printed polo shirts worth ₱20.00; ten (10) pairs of trousers of different kinds worth ₱450,00; one leather traveling trunk worth ₱150.00; one traveling bag worth ₱45.00; one brief case worth ₱7.00; and cash money amounting to ₱300.00.

On August 16, 1960, Repato went to the house of his cousin, Artemio Damio, at Bo. Calsib, Aguilar, Pangasinan. Repato had with him a valise, a traveling bag, several pairs of pants, a pair of binoculars, a newspaper, a jacket, and a gun. Damio, later testifying for the prosecution, identified the valise, the binoculars, and the carbine as articles which Repato had brought to Damio's house. Damio testified that Repato said he and others had robbed and killed a man at Marikina, Rizal. Repato showed him the *Manila Chronicle* of August 16, 1960, which carried a picture of the man who was killed. Repato admitted that he and De la Cruz were the ones who killed the Navy man and that the carbine was the instrument used.

After about two hours, Repato left Damio's house, carrying with him the gun and a watch at the back of which was engraved the name "Francisco Bernal." After four days, Repato returned to Damio's house and tried to pawn the watch, but Damio refused him because the watch was stolen. A few days later, Damio learned that Repato had killed someone in Bo. Bucaclio.

Damio further testified that subsequently, he received the letter of October 3, 1960, written to him in the Pangasinan dialect by Repato who was then detained at the provincial jail of Lingayen, Pangasinan. The letter spoke of "an understanding with respect to the articles that I had left in your place . . ." Damio later surrendered to the P.C. detachment at Lingayen this letter, a traveling trunk, and binoculars.

Damio identified the carbine as the one which Repato had shown him. He was previously interviewed by Victorino Santiago, an investigator of the PC detachment assigned to Rizal. Santiago testified that Damio told the investigators that he had jotted

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down the serial number of the carbine on a torn bus ticket. Damio took from the wall of his house Ticket No. 45-R issued by the Pangasinan Transportation Company, on the back of which was written 1755533, the serial number of the firearm.

At the trial, Major Jose G. Fernandez, the chief of the Ballistics Section of the PC, gave the opinion that evidence bullet which he designated as "N" had been fired from the carbine rifle, Exhibit "A". Dr. Jesus Crisostomo of the NBI medico-legal staff testified that he conducted an autopsy on the body of the deceased Bernal. He said that the cause of death was hemorrhage, severe, secondary to multiple gunshot wounds.

Deputy Provincial Sheriff Amado C. Poquiz of Pangasinan brought to the court the carbine after having obtained it from the Clerk of the Court of the Court of First Instance at Lingayen, Pangasinan. It appears that the carbine was used as an exhibit in Criminal Case No. 41732, *PP vs. Repato, et al.*, where Repato was found guilty of murder for having killed one Prudencio Vaelo at Barrio Bucaclio, Aguilar, Pangasinan, sometime before September 1, 1960. It appears that the carbine was the instrument used to kill Vaelo.

Both the accused testified at the trial. De la Cruz repudiated his sworn statement given to the Marikina Police Department on April 6, 1961. In that statement he mentioned Repato as his companion in killing Bernal. But in his testimony, he claimed that he signed the statement without understanding the contents because he hardly understood the Tagalog dialect. He also claimed that he was threatened with maltreatment unless he mentioned Repato as his companion. The trial judge was not convinced. The court found that Damio's answers contained in his statement, Exhibit "I", were true; and that his claim — that his companions in killing the deceased Bernal were Damio and Hermogene — is incredible and contrary to the evidence submitted by the prosecution.

The other accused, Repato, denied having committed the crime with which he is charged. He claimed that on August 14, 1960, he was employed at the Census Bureau and that he reported for work on August 15, 1960. He denied having written

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the letter to Damio. Like De la Cruz, Repato failed to convince the trial court.

The trial court, summarizing its findings of fact, found that "defendants Repato and Francisco de la Cruz, the latter already convicted because he had pleaded guilty, had really gone into the house of the deceased Francisco Bernal in the night of August 14, 1960 and then after they had tied his wrist behind his back with a piece of wire (Exhibit D-1) they shot him to death with the carbine, Exhibit "A", and thereafter they took and carried away with intent to gain several articles belonging to the deceased, namely, one Omega watch on which the name Francisco Bernal was engraved; one pair of binoculars with its leather case; some polo shirts; and a jacket; and several pairs of pants."

In his Brief, Repato submitted "that a narration of the evidence presented by the prosecution and the defense in this case would only be unnecessary." He assigned three errors. *Firstly*, Repato contended that the lower court erred in giving full faith and credit to the testimonies of the prosecution witnesses Clemente Hermogene and Artemio Damio. He said that their testimonies "are such as would evoke suspicion that they are merely the results of their own concoctions, contrary to the ordinary course of human conduct, bereft of any semblance of truth, and tainted with improper and unlawful motives as would make them inadmissible, as competent evidence in a court of justice." We do not agree. Hermogene testified that he and the accused Repato were co-workers in a construction project. Repato belied this, claiming that he could not possibly be a laborer like Hermogene because he "is a clean-cut person, neat in appearance during the trial." We perceive no incongruity between a clean-cut appearance and working in a construction project.

Hermogene also testified that after Repato had cleaned the carbine, he dismantled it and placed it with pieces of wood inside a *buri* bag. Repato claims that it is contrary to the ordinary course of human conduct for a person to dismantle a gun which he intends to use only a few hours later. But it was necessary to dismantle the carbine, in order that it would fit in the *buri*

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bag, and in order that it would be inconspicuous among the pieces of wood in the same bag. Hence, there is nothing extraordinary about Hermogene's testimony on this point, which indicates that Repato took precautionary measures to avoid suspicion.

Repato also assailed Damio's testimony as incredible. Damio testified that Repato went to his house in Pangasinan on August 16, 1960, and that Repato confessed that, together with others, he had robbed and killed Bernal. That a man makes a clean breast of an act of crime to another is not unusual, if both are related by ties of consanguinity. Repato himself admitted that Damio is his cousin. Damio also testified that he wrote the serial number of the carbine on the back of a bus ticket. Repato characterizes Damio's act as an "unusual display of interest." It is only a deep-seated sense of cynicism which would view as unusual the civic-spirited act of a citizen in preserving evidence which he suspects as pointing to a crime. Such an act, instead of being viewed as eyebrow-raising, should instead be commended and encouraged in order to assuage claims that ours is a society grown too impersonal and uncaring.

Furthermore, the first assignment of errors banks on the improper motive of revenge which allegedly impelled Hermogene and Damio to testify against Repato. It is said that in another case where Repato was accused, Hermogene is related to the deceased, while Damio is related to the wife of the deceased. This contention does not hold water, for the general rule is that the relationship of a witness to a victim does not render the clear and positive testimony of witnesses less worthy of full faith and credit. (*People vs. Ricaplaza*, L-25856, April 29, 1968, 23 SCRA 374). Moreover, the appellant failed to prove his contention that these two witnesses were motivated by revenge, for at the time they testified, Repato had already been convicted in the other case. Where there is no credible evidence showing that the witnesses are prejudiced against the accused, it is presumed that the witnesses would not have imputed to the accused the commission of such a grave offense if it was not true that he was really guilty thereof. (*People v. Ali*, L-18519, October 30, 1969, 29 SCRA 756).

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Secondly, Repato claims that the lower court erred in refusing to give full faith and credit to the testimonies of the accused Repato and his witness co-accused De la Cruz. We perceive no such error. De la Cruz tried to absolve Repato, and to pinpoint Hermogene and Damio as his comrades in crime. But De la Cruz offered no proof to substantiate his scenario. His testimony controverts his sworn statement which he later sought to recant. We find no proof that De la Cruz was intimidated or coerced into executing and signing the statement. He allegedly said that he was "ordered to sign it"; whereas, Lt. Romeo Vergara, who took the statement, testified as to the regularity of his investigation. We grant the presumption of regularity to the law-enforcement officer, and discount the claim to the contrary sought to be foisted by the accused De la Cruz. Moreover, De la Cruz asserted that the carbine marked as "Exhibit A" is not the one used in the robbery-killing. But ballistic examination showed that at least one evidence bullet recovered came from the carbine introduced as Exhibit "A". This proof, buttressed by the positive testimony of the other prosecution witnesses, serves to demolish the posture of the accused.

With respect to Repato's testimony, we reject his claims of credibility for reasons already discussed in our exposition on the first assignment of error. Moreover, we uphold the reliance by the lower court on the authenticity of the letter which the witness Damio identified as having been written by Repato. Well settled is the rule that where the issue is one of credibility of witnesses, the appellate court will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their treatment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. (*People vs. Espejo, et al.*, L-27708, December 19, 1970, 36 SCRA 401).

Thirdly, Repato contends that the lower court erred in convicting him of robbery with homicide and consequently imposing upon him the extreme penalty of death. His theory is that the three principals — De la Cruz, Hermogene, and Damio

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— committed the killing for a fee, and they committed robbery as an after-thought. We have given short shrift to Repato's effort to unload his burden of guilt on the innocent shoulders of Hermogene and Damio. Moreover, the evidence shows that the accused from the very start intended to commit robbery, and committed the killing to insure the absence of any witness. After the incident, Hermogene confronted De la Cruz, who admitted what he and Repato had done. When pressed for the source of the articles they bore, De la Cruz admitted that: "It was from a Navy man. After we got the things Repato shot him." (T.s.n., January 23, 1962 at p. 11). Repato's account of the incident also bears out the proper sequence of events, for he told Damio that he and De la Cruz had "robbed and killed the Navy man in Marikina." (T.s.n., February 26, 1963 at p. 31, 32, 34).

The trial court found two aggravating circumstances: "that defendants took advantage of nighttime in order to rob and that they deliberately killed the deceased Francisco Bernal." It appears, however, that the prosecution failed to produce any evidence to show that the conspirators purposely sought the cover of nighttime, or that it facilitated the commission of the crime. Hence, we are unable to appreciate nocturnity as an aggravating circumstance. But we take note that, according to the court *a quo*, the accused "deliberately killed the deceased Francisco Bernal as shown by the fact that they tied his hands and they shot him thereafter." We take this passage to mean that the crime was attended by treachery *i.e.*, by "employing means, methods or forms in the execution thereof which tend directly and specifically to insure its execution, without risk to himself arising from the defense which the offended party might make."

In robbery with homicide, treachery is only a generic aggravating circumstance and is not qualifying. It does not change the qualification of homicide to murder. Treachery was appreciated in robbery with quadruple homicide where the two victims were killed while bound in such a way as to be deprived of opportunity to repel the attack or escape with any possibility of success. (*PP vs. Madrid*, L-3023, Jan. 3, 1951, 88 Phil. 1).

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There is treachery when the victim was first bound before being killed because such means tended directly and particularly to insure the consummation of the crime without risk to the aggressors, inasmuch as thus bound and disarmed, the victim could not defend himself in any manner against his assailants. (*PP vs. Ancheta*, No. 422, March 14, 1902; 1 Phil. 165). A line of cases holds uniformly that the killing of a person while bound is treacherous. (These rulings are exemplified by the later cases of *PP vs. Saquing*, L-27903, Dec. 26, 1969, 30 SCRA 934; and *PP vs. Manansala*, L-23514, Feb. 17, 1970, 31 SCRA 401).

We find the crime to be attended by the aggravating circumstance of treachery. The Revised Penal Code, Art. 294 (1) imposes the penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed. Since the law prescribes a penalty composed of two indivisible penalties, and there is present one aggravating circumstance, the greater penalty shall be applied.

WHEREFORE, the judgment of the court *a quo* is hereby affirmed by imposing upon the accused the penalty of death, with the modification that the indemnity to be paid to the heirs of the deceased shall be in the sum of ₱12,000.00. The defendant is also ordered to indemnify the heirs of the deceased in the sum of ₱822.00 as well as the value of the watch which was not recovered, in the amount of ₱180.00. The defendant shall also pay a proportionate part of the costs.

SO ORDERED.

Teehankee, Makasiar, Antonio, Aquino, Concepcion Jr., Fernandez, Guerrero, Abad Santos, De Castro, and *Melencio- Herrera, JJ.*, concur.

Barredo, J., agrees to impose death because appellant has escaped and is not entitled to any reduction by reason of long detention.

Fernando, C.J. and *Santos, J.*, took no part.