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The instant award of damages against Catalina de Leon is justified by the finding both of the trial court and the Court of Appeals that the deed of assignment in favor of Catalina de Leon was, in effect, a simulated one. Catalina de Leon was a possessor in bad faith, whose insistence on her simulated title prevented Castañeda from taking possession over the questioned property. Since the damages suffered by Castañeda are by reason of his inability to take possession of the questioned property and enjoy his rights of ownership, Catalina de Leon is, properly, the one liable for the damages.

**WHEREFORE**, the decision appealed from is hereby affirmed.

It is evident that petitioner, as stated by Justice J.B.L Reyes, "has spent all efforts to drag out these litigations as far as possible." Her actuations have to be rebuked and, accordingly, she shall pay treble costs.

**SO ORDERED.**

*Barredo (Chairman), Antonio, Aquino,* and *Santos, JJ.*, concur.

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**EN BANC**

[G.R. No. L-26704. June 29, 1979]

**THE PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **DALMACIO SABENORIO, ROLANDO SABENORIO and TORIBIO ORTIZ,** *defendants* (*at large*), **ESTEBAN ANGCON,** *defendant whose death sentence is under review.*

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SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; ACCUSED CAN BE CONVICTED ONLY OF THE CRIME CHARGED THEREIN; CASE AT BAR.**— Only robbery in band with homicide was charged in the original and amended information and in the complaint filed by the chief of police in the municipal court. Although there are indications in the record that Gregoria Casas and Bonifacia Avila suffered physical injuries, nevertheless, inasmuch as the information did not include physical injuries, the trial court could not expand the special complex crime charged therein by adding thereto the offense of physical injuries.

2. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; BAND; WHEN THE EVIDENCE SHOWS THAT ONLY THREE OF THE FIVE ACCUSED WERE ARMED, IT CANNOT BE CATEGORICALLY AVERRED THAT THE CRIME WAS COMMITTED BY A *CUADRILLA*.**— While the prosecution witnesses testified that the three of the five accused who entered the victim's house were armed, it is not certain that the two who remained outside were also armed. Hence, it cannot be categorically averred that the crime was committed by a *cuadrilla*.

3. **ID.; ID.; NOCTURNITY; CONSIDERED WHEN THE MALEFACTORS SOUGHT THE COVER OF THE NIGHT TO CONSUMMATE THE CRIME WITH IMPUNITY.**— Counsel *de oficio's* contention that nocturnity is not aggravating cannot be sustained considering that it may be deduced from Esteban Angcon's confession and the circumstances surrounding the commission of the crime that the five malefactors sought the cover of night in order to consummate the crime with impunity.

4. **ID.; ID.; EVIDENT PREMEDITATION; INHERENT IN ROBBERY WITH FORCE UPON THINGS BUT MAY BE AGGRAVATING IN ROBBERY WITH HOMICIDE.**— Evident premeditation is inherent in robbery with force upon things but may be aggravating in robbery with homicide with respect to the homicide.

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**5. ID.; ID.; ID.; APPRECIATED WHEN THERE IS CONSPIRACY IN THE AFTERNOON TO COMMIT THE ROBBERY IN THE EVENING.**— Considering that, according to Esteban's confession, there was a conspiracy in the afternoon to commit the robbery in the evening and considering the manner in which the robbery was committed, there is sufficient basis for concluding that the conspirators' plan embraced the killing of Marentes. Hence, *premeditacion conocida* is aggravating.

**6. ID.; ID.; MITIGATING CIRCUMSTANCES; LACK OF INTENT TO COMMIT SO GRAVE A WRONG; CANNOT BE APPRECIATED WHEN THE ACCUSED SHOT THE VICTIM INSPITE OF THE LATTER'S SUBMISSIVE ATTITUDE AND PLEA FOR MERCY BY HIS WIFE.**— As to lack of intent to commit so grave a wrong, it should be noted that Esteban Angcon shot the victim in spite of the latter's submissive attitude and the plea for mercy made by his wife. Hence, it cannot be said that Esteban did not intend to commit the grave wrong of killing the unarmed and docile victim. Esteban acted with a high degree of perversity in killing Marentes.

**7. ID.; ID.; PENALTIES; CAPITAL PUNISHMENT; APPLICATION THEREOF.**— Until the lawmaking body "sees fit to repeal or modify the imposition of the extreme penalty, the courts will continue to impose the same when the facts and circumstances in a case so warrant" (*People vs. Olaes*, 105 Phil. 502). The "courts do not shirk their disagreeable duty to impose the death penalty in cases where the law so requires."

## D E C I S I O N

***PER CURIAM:***

This is an automatic review of the death sentence imposed by the Court of First Instance of Leyte, Tacloban City Branch VII, on Esteban Angcon, who, together with his brother Policarpo Angcon (who died during the pendency of this case), was convicted of robbery in band with homicide and physical injuries and was ordered to pay an indemnity of nine thousand pesos to the heirs of Melecio Marentes (Criminal Case No. N-0315).

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The review of the death sentence is simplified by the fact that Esteban Angcon, a twenty-six-year old farmer, signed an extrajudicial confession in the Cebuano dialect which was taken by the chief of police and sworn to before the municipal mayor (Exh. C and C-1).

In that confession, he admitted that in the afternoon of Sunday, December 6, 1964, while he was in the cockpit, he and his younger brother Policarpo Angcon, and his companions, Dalmacio Sabenorio, Lando Sabenorio and Dioso Ortiz, conspired to rob Melecio Marentes because the latter had received "plenty of money from the sale of his land."

In pursuance of that conspiracy, Esteban, who was armed with a sawed-off shotgun, and his four companions went at seven o'clock in the evening to the house of Marentes located at Sitio Bunacan, Barrio Villalon, Calubian, Leyte. Dalmacio fire at the lock of the house and Dioso pounded it with a piece of wood. Esteban and his companions entered the house.

Esteban recounted in his confession that once inside the house he shot Marentes who was in a kneeling position. Marentes died. Esteban and his companions were able to get three thousand pesos which amount was entrusted to Dalmacio. He did not give Esteban any part of it.

Policarpo Angcon signed a similar confession before the chief of police. It was also sworn to before the municipal mayor (Exh. B).

The counsel *de oficio* of Esteban Angcon candidly stated in his brief that after he "has made a very careful and conscientious study of the records of this case" and read several times the transcripts of the stenographic notes, "*in conscience*, he is fully convinced" that Esteban Angcon took part in the robbery and killed Melecio Marentes (Page 116 of *Rollo*).

At the trial, two eyewitnesses, namely, Gregoria Casas, the victim's wife, and his mother-in-law, Bonifacia Avila, who were with the victim in his house at the time of the killing and the robbery, testified that they saw Esteban Angcon shooting

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Marentes while he was in a kneeling position and that the sum of three thousand pesos was taken by Esteban and his companions.

The two eyewitnesses were acquainted with Esteban because he resided in the same *barrio*; he was a neighbor and a friend, and, as a cockfight aficionado, he frequented the house of Marentes for the purpose of holding practice cockfights (*purok*).

The municipal health officer, who performed the autopsy on the body of the twenty-two-year-old victim, certified and testified that the victim sustained a gunshot wound in the chest which perforated his left lung and the ventricles of his heart. The wound was fatal (Exh. A).

As to why the robbery was committed, the prosecution proved that thirteen days before the incident Prudencio Esmero paid ₱2,820 to Gregoria Casas, the victim's wife, as part payment of the price of an eight-hectare land (Exh. F). That payment was the major part of the sum of three thousand pesos which Esteban Angcon and his companions took from the overnight bag in the victim's house and which, according to his confession, was entrusted to Dalmacio Sabenorio.

Thus, the evidence of the *corpus delicti* or the fact of the commission of the robbery with homicide confirms the extrajudicial confession of Esteban Angcon. Esteban's counsel *de oficio* admits that even without his confession and on the basis alone of the prosecution's other evidence, said counsel is morally convinced that Esteban committed robbery with homicide.

At the trial, the Angcon brothers impugned the voluntariness of their confessions. They claimed that they were maltreated by the police. The chief of police and the municipal mayor testified that the confessions were executed by the two accused without any violence, coercion or duress.

After the confessants had sworn their confessions before the mayor, it so happened that the municipal judge arrived in his office. The chief of police brought the Angcon brothers to

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the municipal judge. That magistrate asked them whether their confessions were freely executed. They did not complain of any maltreatment.

In view of Esteban Angcon's confession, which should be given full credence, his defense of alibi was correctly rejected by the trial court. His guilt was established beyond reasonable doubt. (The Sabenorio brothers and Toribio Ortiz are at large.)

Counsel *de oficio*, Virgilio B. Jara, who submitted a well-written brief and who thoroughly studied the case, contends that the trial court erred in not holding (1) that the crime committed was robbery with homicide only and not robbery in band with homicide and physical injuries, (2) that nocturnity and evident premeditation are not aggravating, (3) that lack of instruction and lack of intent to commit so grave a wrong are mitigating and (4) that *reclusion perpetua*, and not death, is the proper penalty.

1. We agree with the counsel *de oficio* that the trial court erred in holding that Esteban Angcon is guilty of physical injuries in addition to robbery in band with homicide. Only robbery in band with homicide was charged in the original and amended information and in the complaint filed by the chief of police in the municipal court.

Although there are indications in the record that Gregoria Casas and Bonifacia Avila suffered physical injuries, nevertheless, inasmuch as the information did not include physical injuries, the trial court could not expand the special complex crime charged therein by adding thereto the offense of physical injuries (See Sec. 4, Rule 120, Rules of Court).

Counsel's contention that there is no conclusive evidence that the *robo con homicidio* was committed by a band is correct. In the confession of Policarpo Angcon, it is stated that only two of the five accused were armed with guns (Exh. B). While the prosecution witnesses testified that the three of the five accused who entered the victim's house were armed, it is not certain that the two who remained outside were also armed.

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Hence, it cannot be categorically averred that the crime was committed by a *cuadrilla.*

2. Counsel *de oficio's* contention that nocturnity is not aggravating cannot be sustained considering that it may be deduced from Esteban Angcon's confession and the circumstances surrounding the commission of the crime that the five malefactors sought the cover of night in order to consummate the crime with impunity.

The contention that evident premeditation is not aggravating is based on the testimonies of the two prosecution eyewitnesses. It is argued that their testimonies do not show that the killing of the victim was included in the conspiracy to commit robbery.

As correctly observed by the defense counsel, evident premeditation is inherent in robbery with force upon things but may be aggravating in robbery with homicide with respect to the homicide.

In the instant case, the oral evidence shows that Esteban Angcon and his two companions, upon entering the house of Marentes, asked his wife where her husband was and they looked for him in the bedroom. On finding him, they kicked him and Esteban shot him while he was kneeling and pleading for mercy and his wife was entreating that his life be spared.

Considering that, according to Esteban's confession, there was a conspiracy in the afternoon to commit the robbery in the evening and considering the manner in which the robbery was committed, there is sufficient basis for concluding that the conspirators' plan embraced the killing of Marentes. Hence, *premeditacion conocida* is aggravating.

3. There is no merit in the contention that lack of instruction is mitigating. Esteban Angcon knows how to sign his name. It is for the trial court to determine whether the accused is a person of low intelligence. No such finding was made by the trial court.

As to lack of intent to commit so grave a wrong, it should be noted that Esteban Angcon shot the victim in spite of the latter's submissive attitude and the plea for mercy made by his

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wife. Hence, it cannot be said that Esteban did not intend to commit the grave wrong of killing the unarmed and docile victim. Esteban acted with a high degree of perversity in killing Marentes.

4. Dwelling is admittedly aggravating in this case. Since three aggravating circumstances attended the commission of the robbery with homicide and no mitigating circumstance can be appreciated in favor of Esteban Angcon, the trial court did not err in imposing the death penalty on him (Arts. 63[1] and 294[1], Revised Penal Code).

The Solicitor General's recommendation that the death penalty, being "harsh and excessive," a request for executive clemency should be made is not in order. Until the lawmaking body "sees fit to repeal or modify the imposition of the extreme penalty, the courts will continue to impose the same when the facts and circumstances in a case so warrant" (*People vs. Olaes*, 105 Phil. 502). The "courts do not shirk their disagreeable duty to impose the death penalty in cases where the law so requires" (*People vs. Carillo and Raquenio*, 85 Phil. 611). The instant case is such a case.

The civil liability should be increased to twelve thousand pesos and should include the sum of three thousand pesos which was taken by the malefactors.

**WHEREFORE**, the trial court's judgment is affirmed with the modifications (1) that Esteban Angcon is sentenced to death for the offense of robbery with homicide, (2) that the indemnity of nine thousand pesos is increased to twelve thousand pesos and (3) that he is further ordered to pay to the victim's heirs the sum of three thousand pesos, the amount taken during the robbery. Costs *de oficio*.

**SO ORDERED.**

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

*Abad Santos, J.*, concurs in a separate opinion.

*Santos, J.*, joins Justice Abad Santos in his concurring opinion..

*Fernando, Acting C.J.* and *Makasiar, J.*, took no part.

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**ABAD SANTOS, *J.*,** *concurring*:

I concur. Under the facts as narrated in the decision, there can be no penalty but death. For under our system of criminal justice, prescinding the recently promulgated Probation Law, the imposition of penalties is mechanistic. The rules on the application of penalties contained in the Revised Penal Code approximates the programmed mind of today's computer: input equals output which is impervious to the quibblings of the infinitely equivocal human personality. However, for reasons to be stated, I believe that Esteban Angcon is deserving of executive clemency.

I am not opposed to capital punishment. I believe that certain crimes have to be punished by the supreme retributive penalty. I also believe that capital punishment has a deterrent effect. But to achieve that effect, it must have to be implemented without unnecessary delay, lest procrastination instil skepticism about the mighty arm of the law, which smites the malefactor with righteous anger. What are the facts in this case in respect of the time element?

The crime was committed on December 6, 1964, and on the very next day Esteban and his brother Policarpio (now deceased) were arrested by police authorities. I assume that Esteban has been in detention ever since, for aside from the gravity of the crime he was accused of committing (which is robbery in band with homicide) the record does not show that he posted bail for his provisional release, which he probably could not do anyway by reason of poverty.

Esteban and Policarpio were tried by the Court of First Instance of Leyte and sentenced to die on August 18, 1966. Pursuant to law, the decision was elevated to this Court for review. It is only now that the sentence imposed on Esteban has become definite, since his detention in 1964. It would be less than perspicacious to lay the blame at the door of the Supreme Court. The delay in the disposition of the case can be attributed to "*un mar de razones*." One of them which stands out prominently, is the heavy workload of the Court. It may not be amiss to state here that notwithstanding the fact that the Court of Appeals

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was created precisely to reduce the appellate jurisdiction of this Court, many petitions (a good number of them without merit) are being filed with us to review decisions of the Court of Appeals. Another contributing factor is the burden imposed on the Court by the 1973 Constitution which gave it the power of "administrative supervision over all courts and the personnel thereof." The time which the Court spends in this area is not inconsiderable. As a result its adjudicative functions have been adversely affected. This is compounded by the fact that the Office of Court Administrator (P.D. No. 828, as amended by P.D. No. 842) which was created in 1975, has yet to be organized, If the Constitution be amended again, perhaps a re-examination of the Court's power of administrative supervision over all courts and the personnel thereof will not be inappropriate.

Considering then that in the multitudinous dark nights of the soul while under detention, the accused has suffered retribution awful to contemplate, and considering further that time has silently effected a dilution of the deterrent effect of capital punishment in this case, I recommend executive clemency for the accused.

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**SECOND DIVISION**

[G.R. No. L-31384. June 29, 1979]

**COMMODITY FINANCING CO., INC., EMERITO M. RAMOS, SUSANA B. RAMOS, EMERITO B. RAMOS, JR., JOSEFA RAMOS DE LA RAMA, ANTONIO B. RAMOS, FILOMENA RAMOS LEDESMA, RODOLFO LEDESMA, VICTORIA RAMOS TANJUATCO, and TEOFILO T. TANJUATCO, III,** *petitioners, vs.* **JOSE B. JIMENEZ in his capacity as Presiding Judge of Branch VI, Court of First Instance of Manila, BANCO FILIPINO**