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

EN BANC

[G.R. No. L-30101. July 16, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUANCHO CORACHEA Y RAMOS,** *defendant-appellant.*

SYLLABUS

1. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; INHERENT IN ROBBERY.**— In robbery, evident premeditation is not considered as an aggravating circumstance because the same is inherent in the crime.

2. **ID.; ID.; ID.; IN ROBBERY WITH HOMICIDE, EVIDENT PREMEDITATION TO KILL MUST BE PROVED TO BE CONSIDERED AS AGGRAVATING.**— In the crime of robbery with homicide, there should be evident premeditation to kill, besides stealing, in order that it can be considered as an aggravating circumstance.

3. **ID.; ID.; ID.; REQUISITES.**— Requisites of evident premeditation: (a) the time when the accused determined to kill and rob the victim; (b) the act showing that he had clung to his determination; and (c) a sufficient interval of time between the determination and the execution that would have afforded him full opportunity for meditation and reflection and allowed his conscience to overcome the resolution of his will had he wanted to hearken to its warnings.

4. **ID.; ID.; NOCTURNITY; WHEN NOT APPRECIATED.**— But nothing in said statement shows that the accused had purposely sought nighttime to commit the offense. Not having been purposely sought in the commission of the crime, this aggravating circumstance should not have been taken into account. It has been consistently ruled by this Court that nighttime *per se* is not an aggravating circumstance.

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5. ID.; ID.; ID.; ELEMENTS.— To be an aggravating circumstance, the accused must have planned and sought darkness to prevent him from being recognized. Nighttime can only be appreciated as an aggravating circumstance when it facilitated the commission of the crime and was specially sought for or taken advantage of by the accused for the purpose of impunity.

6. ID.; ID.; ID.; NOT APPRECIATED AS AGGRAVATING IN CASE AT BAR.— As rightly argued by the counsel *de oficio*, "although the criminal act was perpetrated by the accused at night, at about 7:00-7:30 in the evening, this fact standing alone, does not indubitably show that said time was purposely chosen by the accused to commit the crime. It should be noted that the victim had finished collecting from his customers quite late in the afternoon. This was something that accused could not have helped. That the victim should have chosen to take the 7:00 BLTB Co. bus was something that could not be helped. These circumstances were clearly beyond his control and discretion." Furthermore, although the crime took place during nighttime, this Court does not lose sight of the fact that the same was perpetrated in the presence of other passengers. In fact, the accused threatened them by shouting that they should not make any move, otherwise, they would die. So the passengers were able to recognize the accused. Thus, nocturnity did not facilitate the commission of the crime. It was merely an accidental circumstance which was not purposely sought by the accused.

APPEARANCES OF COUNSEL

Estelito P. Mendoza (Counsel de Oficio) for defendant-appellant.

Solicitor General Felix Q. Antonio, Assistant Solicitor General Hector Fule and *Solicitor Francisco J. Bautista* for plaintiff-appellee.

D E C I S I O N

FERNANDEZ, *J.*:

This is an automatic review of the decision of the Circuit Criminal Court of Batangas in Criminal Case No. CCC-VIII-40, finding the accused, Juancho Corachea *y* Ramos, guilty of

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the complex crime of robbery with homicide attended by the aggravating circumstances of nocturnity and evident premeditation with only the mitigating circumstance of plea of guilty to offset one of the said aggravating circumstances, and sentencing him to suffer the penalty of DEATH, to indemnify the heirs of the deceased the sum of ₱12,000.00 and to pay the costs.[1]

The proceedings had before the Circuit Criminal Court of Batangas were summarized by the counsel *de oficio* for the accused thus:

"On December 27, 1968, the accused was arraigned before the Circuit Criminal Court of Batangas for the crime of robbery with homicide allegedly committed, as follows:

> 'That on or about the 18th day of December, 1968 at about 7:30 o'clock in the evening, in Barrio Balagtas of the Municipality of Batangas, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a caliber .45 pistol, with intent of gain and to kill, with violence against and intimidation of persons, and with evident premeditation and (treachery), did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Sia Lak *alias* Paeng with the firearm he was then provided, and without the consent of the owner thereof, the said Sia Lak *alias* Paeng did then and there wilfully, unlawfully, and feloniously take, rob and carry away a bag containing personal effects and money in the total amount of no less than ₱73.46 to the damage and prejudice of said Sia Lak *alias* Paeng in the aforementioned amount of no less than ₱73.46; that as a further consequence thereof, said Sia Lak *alias* Paeng suffered gunshot wounds at the neck, thru and thru, which directly caused his instantaneous death.
>
> 'That in the commission of the crime the aggravating circumstance of nocturnity deliberately sought was also present.
>
> 'Contrary to Law.'

Accused, assisted by counsel, pleaded not guilty to the crime charged in the information.

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[1] *Rollo*, p. 10.

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Subsequently, upon motion of counsel for the accused, the trial court granted a ten minute recess to enable the accused and his counsel to confer before formal trial proceedings start. After the conference, the accused, through counsel, requested for leave to withdraw his original plea of not guilty and to substitute a plea of guilty without the aggravating circumstance of treachery. The prosecution acceded to the request and accordingly, the word 'treachery' was deleted from the information (t.s.n., 3, December 27, 1968).

Upon re-arraignment, the accused pleaded guilty to the crime charged in the amended information. However, in view of the gravity of the offense and the fact that the death penalty may be imposed, and apparently because there existed some doubt in the mind of the lower court as to the existence of the aggravating circumstances alleged in the information, particularly that of evident premeditation, the lower court deferred the imposition of the penalty and asked the prosecution to present evidence to prove said aggravating circumstances (t.s.n. 6, *ibid.*).

The evidence presented by the prosecution to prove evident premeditation to kill the victim consisted of the extrajudicial statements of the accused marked as Exhibits 'A' and 'B'."[2]

After trial, the lower court rendered a decision, a portion of which reads:

"The evidence adduced in the course of the aforesaid proceedings disclosed the existence of a deliberate, determined and well-conceived plan to rob the victim as early as October, 1968. The sworn extrajudicial confessions of the accused presented and marked as Exhibits 'A' & 'B' the due execution and truth of which was not contested by the accused thru counsel, evinces the tenacious and resolute determination of the accused to carry out the contrived plan as he stalked and trailed the victim, with cunning and patience, and *bided* his time for the most opportune moment to strike. The statements reveal that the moment of decision came when the victim boarded the BLTB Co. bus at about 7:00 o'clock in the evening of December 18, 1968 at the municipality of San Jose, Batangas, bound for Batangas, Batangas. The evidence palpably shows that accused conducted a close surveillance of the movements of the victim from 2:00 o'clock in the afternoon of that date, followed him (victim) as the latter made

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[2] Brief for the Accused, *Rollo*, pp. 50-52.

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his usual rounds collecting money from customers, until the evening of that date when the accused finally made up his mind to perpetrate the crime. The evidence presented to this Court clearly shows that the accused had reflected and deliberated on the consequences of the intended crime, for the opportunity for reflection, continuously persisted and remained present, from *October, 1968* when the plan was hatched until the cold blooded execution thereof in the evening of *December 18, 1968*. Needless to state, to the mind of this Court, the evidence of the prosecution conclusively proves the existence of evident premeditation with respect to the commission of the crime of Robbery. However, as enunciated by the Supreme Court in the two (2) cases previously alluded to, to fall squarely within the purview of the doctrines laid down in those decision, and to be able to consider evident premeditation as an aggravating circumstance in the crime of robbery with homicide, there must not only be *premeditated intention to steal*, but also *evident intent to kill* the victim.

However, predicated upon the confessions of the accused with reference to the circumstances which preceded and attended the commission of the crime charged, the existence of the homicidal intent to kill the victim is manifestly evidenced by the outward acts of the accused which were undeniably calculated to ensure the desired objective. The character of the weapon used, an unlicensed .45 caliber pistol with a defaced serial number, the passive attitude of the victim at the time of the incident, and the fact that the accused shot victim at close range in the neck near the adam's apple, a vital organ of the body, are factors that weighed heavily in the mind of this Court in arriving at the finding that there was also evident premeditation to kill the victim.

These are facts that rule out or negate absence of criminal design to kill because the same are clear and notorious manifestations indicative of the presence of a premeditated plan to kill the intended victim. These circumstances and factors, when taken in conjunction with the prosecution evidence showing that the crime was well-planned and that the evil design continuously prevailed upon the accused for a period spanning over two (2) months, are so clear and convincing that this Court can not escape the conclusion that the killing like the robbery was also *premeditated* and *intended*, and not merely incidental to the commission of the crime of robbery.

Of moment also in the resolution of the issue of evident premeditation in instant case, is the complete absence of any effort

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on the part of the defense to present any evidence tending to refute, disprove or rebut the proof presented by the prosecution to show evident premeditation as regards the killing of the victim.

Premises considered, this Court finds the accused Juancho Corachea *y* Ramos guilty beyond reasonable doubt as principal of the crime of Robbery with Homicide attended by the aggravating circumstances of *nocturnity* and *evident premeditation* with only the mitigating circumstance of *plea of guilty* to offset one of the said aggravating circumstances and hereby sentences him to Death, to indemnify the heirs of the deceased Sia Lak *alias* Paeng the sum of TWELVE THOUSAND PESOS (₱12,000.00) and to pay the costs.'[3]

On January 25, 1969, the Deputy Clerk of Court of the Circuit Criminal Court of Batangas transmitted the records of the case to this Court for automatic review.[4]

Counsel *de oficio* does not seek the reversal of the judgment in this case and the consequent acquittal of the accused, Juancho Corachea *y* Ramos, since said accused had voluntarily entered a plea of guilty to the charge. He, however, contends that the imposition of the death penalty is incorrect and, therefore, prays for a reduction of the penalty to *reclusion perpetua*. Thus, the accused assigns the following errors:

"I

THE TRIAL COURT ERRED IN CONSIDERING THE EXTRA-JUDICIAL STATEMENTS OF THE ACCUSED-APPELLANT AS EVIDENCE TO PROVE THE AGGRAVATING CIRCUMSTANCE OF EVIDENT PREMEDITATION.

"II

EVEN ASSUMING THAT THE SAID EXTRAJUDICIAL STATEMENTS ARE ADMISSIBLE, THE TRIAL COURT ERRED IN FINDING THAT THE AGGRAVATING CIRCUMSTANCE OF EVIDENT PREMEDITATION ATTENDED THE KILLING OF THE VICTIM.

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[3] *Rollo*, pp. 71-73.

[4] *Rollo*, p. 1.

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"III

THE TRIAL COURT ERRED IN CONSIDERING THE AGGRAVATING CIRCUMSTANCE OF NOCTURNITY."[5]

Under the first assignment of error, the accused claims that the trial court erred in considering his extrajudicial statements (Exhibits "A" and "B") as evidence to prove the aggravating circumstance of evident premeditation. The accused further argues that said extrajudicial statements are inadmissible in evidence because they were illegally procured, in complete disregard of the constitutional rights of the right to counsel (Sec. 1 [17], Article III, 1935 Constitution) and the right against self-incrimination (Sec. 1 [18], Article III, 1935 Constitution); and that he was not assisted by counsel during the custodial interrogation. He strongly relied upon the cases of *Miranda v. Arizona* (16 L. ed. 2d. 694) and *Escobedo v. Illinois* (12 L. ed. 2d. 977, 982) to support his stand.

This contention of the accused is without merit. In the case of *People v. Jose*,[6] where the same issue had been raised, this Court held:

"The provision of the Constitution of the Philippines in point is Article III (Bill of Rights), Section 1, par. 17 of which provides: 'In all criminal prosecution, the accused shall enjoy the right to be heard by himself and counsel x x x.' While the said provision is identical to that in the Constitution of the United States, in this jurisdiction the term *criminal prosecutions* was interpreted by this Court, in *U.S. vs. Beecham*, 23 Phil. 258 (1912), in connection with a similar provision in the Philippine Bill of Rights (Section 5 of Act of Congress of July 1, 1902) to mean proceeding before the trial court from arraignment to rendition of judgment. Implementing the said constitutional provision, We have provided in Section 1, Rule 115 of the Rules of Court that 'In all criminal prosecutions the defendant shall be entitled x x x (b) to be present and defend in person and by attorney at every stage of the proceedings, *that is, from the arraignment to the promulgation of the judgment.*' The only instances where an accused

[5] Brief of Accused, pp. 3-4, *Rollo* pp. 52-53.

[6] *Rollo*, pp. 65-65.

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is entitled to counsel before arraignment, if he so requests, are during the second stage of the preliminary investigation (Rule 112, Section 11) and after the arrest (Rule 113, Section 18). The rule in the United States need not be unquestioningly adhered to in this jurisdiction, not only because it has no binding effect here, but also because in interpreting a provision of the Constitution the meaning attached thereto at the time of the adoption thereof should be considered. And even there the said rule is not yet quite settled, as can be deduced from the absence of unanimity in the voting by the members of the United States Supreme Court in all the three above cited cases."

In the light of the above-quoted ruling, the accused cannot claim that his extrajudicial statements were illegally procured because his constitutional right to counsel was disregarded. At the time he executed the extrajudicial statements, no such right was afforded to an accused before arraignment. As stated in the above case, the phrase "criminal prosecution" mentioned in Article III, Section 1, Par. 17 of the Philippine Constitution which provides that "In all criminal prosecution the accused x x x shall enjoy the right to be heard by himself and counsel" has always been interpreted to mean proceedings before the trial court, from arraignment up to the rendition of decision.

In a more recent case,[7] this Court held that:

"x x x In *Magtoto vs. Manguerra* (63 SCRA 4), We ruled that the proscription against the admissibility of confession obtained from accused during the period of custodial interrogation, in violation of the aforementioned procedural safeguards, applies to confessions obtained after the effectivity of the new charter on January 17, 1973."

In view of the aforequoted ruling of this Court, the extrajudicial statements (Exhibits "A" and "B") are admissible in evidence because they were obtained before the effectivity of the New Constitution. The extrajudicial statements of accused were not illegally procured. No constitutional right of the accused was violated.

Anent the second and the third errors assigned, the appellee argues that the contention of the accused that the trial court

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[7] *People v. Jimenez*, L-40677, May 31, 1976, 71 SCRA 186, 195-196.

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erred in finding that the aggravating circumstances of evident premeditation and nocturnity attended the killing of the victim, has no basis; that the trial court in its decision, stated the facts from which could be clearly inferred the presence of the said aggravating circumstances which were voluntarily admitted by appellant when he entered a plea of guilty; that the settled doctrine in this jurisdiction is that a plea of guilty admits all the material facts alleged in the information, including the aggravating circumstances mentioned therein x x x; that it is of no moment that the crime charged is capital because a plea of guilty covers not only the crime but also the attending circumstances qualifying and/or aggravating the same x x x; that the amended information not only adequately described the complex crime of robbery with homicide, but also specifically mentioned the aggravating circumstances of evident premeditation and nocturnity, hence, the maximum penalty of death was properly and validly imposed.[8]

It is true that in several cases,[9] this Court has consistently enunciated the rule that a plea of guilty admits all the material facts alleged in the information including the aggravating circumstances mentioned therein. However, in the recent case of *People v. Galapia*,[10] this Court made an exception by holding that:

"The rule is that a judicial confession of guilt admits all the material facts alleged in the information including the aggravating circumstances listed therein. But, where such circumstances are disproven by the evidence, it should be disallowed in the judgment. Thus, in *People v. Gungab* (64 Phil. 779), the Court ruled 'that when an accused, who lacks instruction, pleads guilty to the crime of parricide described in the information as having been committed with the aggravating circumstances of treachery and evident premeditation and his testimony given under oath before the trial court, upon his petition, fails to show the existence of such aggravating circumstances,

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[8] Appellee's Brief, pp. 4-5, *Rollo*, p. 108.

[9] *People v. Boyles*, L- 15308, May 29, 1964, 11 SCRA 88; *People v. Tilos*, L-27151, Nov. 29, 1969, 30 SCRA 734.

[10] L-39303-05, August 1, 1978, 84 SCRA 526.

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his plea of guilty shall be understood as being limited to the admission of having committed the crime of parricide, not of having done so with treachery and evident premeditation.'"

Hence the question that arises is whether or not the extrajudicial statements (Exhibits "A" and "B") have adequately proven that the aggravating circumstances of evident premeditation and nocturnity attended the killing of the victim.

The pertinent portion of the extrajudicial statements relied upon by the trial court in concluding that the aggravating circumstances of evident premeditation and nocturnity are present reads:

"5. *T: Maari bang ipaliwanag mo sa aking ang buong panyayari sa pag ka baril mo ng tao at iyong kinoha ang bag na may laman ng pira?*

S: *Na ang tao na aking na baril at kinoha ang bag na may pira na kikilala ko sa pangalan ng Paing na siya ay Insik. Na siya aking na kikilala dito sa Bayan ng Batangas, Batangas bilang negociante at alam ko na siya ang nangongolikta ng pira sa mga tindahan ng mga Insik o Filipino man sa mga bayan. Na magmula buan na Octobre, 1968, aking sinosobaybayan si Paing na Insik. Sa aking pong pag subaybay aking plinano na siya ay aking holdapin at ako naghihintay ng magandang pagkakataon upang isagawa ko ang aking plano. Mula sa alas 2:00 p.m. ng hapon ika-18 ng Deciembre 1968, akin na pong sinosobaybayan si Paing na Insik sa bayan ng San Jose Batangas. Habang sinosobaybayan ko siya ay iniisip ko naman kong papanong ko siya matitempohan. Na noong ang oras humigit komolang sa alas 7:00 p.m. ng gabi ika-18 ng Deciembre 1968, nakita ko siyang (Paing) na sumakay sa Bus ng BLTB Co. patungo sa Batangas, Batangas. Sumakay na rin po ako at ako umopo sa kanyang kasikbay. Pagdating sa Crossing ng daan patungo sa Ibaan sa Barrio Balagtas, Batangas, Batangas pinara ko ang Bus na aming sinasakyan at ako ay bumaba. Pagka baba ko ay binonot ko ang aking baril na Calibre .45 pistola at sinabi sa mga pasajeros na 'huag kayong*

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> *kikilos na masama kayo mamatay' na ang baril ko naman ay nakaturo kay Paing. At ang sabi ko kay Paing na ibigay niya sa aking ang kanyang bag at ang ginawa ni Paing ay hinogot laman ng bag kaya ang sabi ko huag hogotin at ibigay mo sa akin yaan at pagkatapos hindi pa ibinigay, sa akin ang bag at laging may hinohogot doon sa bag kung kaya siya aking binaril sa bandang pa olo at natamaan at aking kinoha ang bag at ako tomakbo patungo sa Barrio Tinga, Batangas, Batangas* x x x" (Exhibit "A", emphasis ours)[11]

The foregoing does not reveal any premeditated plan to kill the victim. The extrajudicial statement of the accused only shows that it was the robbery and not the killing which was planned. And in robbery, evident premeditation is not considered as an aggravating circumstance because the same is inherent in the crime. In the crime of robbery with homicide, there should be evident premeditation to kill, besides stealing, in order that it can be considered as an aggravating circumstance.[12]

The statement of the accused did not prove the following requisites of evident premeditation: (a) the time when the accused determined to kill and rob the victim; (b) the act showing that he had clung to his determination; and (c) a sufficient interval of time between the determination and the execution that would have afforded him full opportunity for meditation and reflection and allowed his conscience to overcome the resolution of his will had he wanted to hearken to its warnings.[13]

The statement of the accused — "*huag kayong kikilos na masama kayo mamatay,*" meant nothing more than a mere warning and was intended to prevent or forestall any resistance or the possibility of any resistance on the part of the intended robbery victim and the other passengers. As aptly put by the counsel *de oficio*, the threat to kill standing alone is utterly insufficient to warrant a finding of evident premeditation.

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[11] Brief of Accused, pp. 12-13, *Rollo*, pp. 61-62.

[12] *People v. Garillo*, L-30281, August 2, 1978, 84 SCRA 537.

[13] *People v. Lim*, L-34397-9, June 10, 1976, 71 SCRA 249.

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"A threat to kill unsupported by any evidence which would disclose the true criminal state of mind of the accused may be construed only as a casual remark and not a resolution of the character involved in evident premeditation."[14]

The following portion of the extrajudicial statement of the accused:

"*At ang sabi ko kay Paing na ibigay niya sa akin ang kanyang bag at ang ginawa ni Paing ay hinogot laman ng bag kaya ang sabi ko huag hogotin at bigay mo sa akin yaan at pagkatapos hindi pa ibinigay sa akin ang bag at laging may hinohogot doon sa bag kung kaya siya aking binaril* x x x" (Exhibit "A"; emphasis supplied)[15]

disproves the allegation that the killing, like the robbery, was also premeditated. The above-quoted portion clearly reveals that the killing, far from being planned and premeditated, was an unpremeditated act, done at the spur of the moment. As correctly stated by the counsel *de oficio* "the refusal of the victim to hand over his bag and his persistent effort to pull out something therefrom might have engendered in the mind of the accused the belief that the victim was armed and that he might in the defense of his property, be ready to kill and be killed. That mistaken belief in turn must have engendered in him fear and that fear had impelled him to make the first but, unfortunately, fatal move"[16]

This Court held in *People vs. Pagal*[17] that:

"x x x evident premeditation will only be aggravating in a complex crime of robbery with homicide if it is proved that the plan is not only to rob but also to kill. In the case at bar, a perusal of the written statements of the appellants before the police investigation show that their original plan was only to rob, and that, they killed the

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[14] *People v. Fuentesuela*, 73 Phil. 553; *People v. Carillo*, 77 Phil. 572; *People v. Villamora*, 86 Phil. 287.

[15] *Rollo*, p. 64.

[16] *Rollo*, pp. 65-65.

[17] L-32040, October 25, 1977, 79 SCRA 570, 576.

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deceased only when the latter refused to open the '*kaha de yero*' and fought with them. The trial court, therefore erred in taking into consideration the aggravating circumstance of evident premeditation."

With regard to the circumstance of nocturnity, the Court finds that the records do not furnish sufficient particulars whereby its presence in the commission of the crime may be properly appreciated as an aggravating circumstance. The lower court has found the crime to have been committed in the manner described in the extrajudicial statement. But nothing in said statement shows that the accused had purposely sought nighttime to commit the offense. Not having been purposely sought in the commission of the crime, this aggravating circumstance should not have been taken into account. It has been consistently ruled by this Court that nighttime *per se* is not an aggravating circumstance. To be an aggravating circumstance, the accused must have planned and sought darkness to prevent him from being recognized. Nighttime can only be appreciated as an aggravating circumstance when it facilitated the commission of the crime and was specially sought for or taken advantage of by the accused for the purpose of impunity.[18]

As rightly argued by the counsel *de oficio*, "although the criminal act was perpetrated by the accused at night, at about 7:00-7:30 in the evening, this fact standing alone, does not indubitably show that said time was purposely chosen by the accused to commit the crime. It should be noted that the victim had finished collecting from his customers quite late in the afternoon. This was something that accused could not have helped. That the victim should have chosen to take the 7:00 BLTB Co. bus was something that could not be helped. These circumstances were clearly beyond his control and discretion."[19] Furthermore, although the crime took place during nighttime, this Court does not lose sight of the fact that the same was

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[18] *People v. Undong*, L-32641, August 29, 1975, 66 SCRA 386; *People v. Galapia*, L-39303-05, August 1, 1978, 84 SCRA 526; *People v. Roncal*, L-26857, October 21, 1977, 79 SCRA 509.

[19] *Rollo*, p. 66.

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perpetrated in the presence of other passengers. In fact, the accused threatened them by shouting that they should not make any move, otherwise, they would die. So the passengers were able to recognize the accused. Thus, nocturnity did not facilitate the commission of the crime. It was merely an accidental circumstance which was not purposely sought by the accused.

The trial court erred in appreciating evident premeditation and nocturnity as aggravating circumstance.

The penalty for robbery with homicide is *reclusion perpetua* to death.[20] There being an absence of aggravating circumstances and the presence of the mitigating circumstance of plea of guilty, the penalty properly imposable is *reclusion perpetua* which is the lesser of the two indivisible penalties.[21]

WHEREFORE, the judgment of the trial court under automatic review is modified in that the accused, Juancho Corachea *y* Ramos, is sentenced to suffer the penalty of *reclusion perpetua* to indemnify the heirs of the deceased in the sum of ₱12,000.00 and to pay the costs.

SO ORDERED.

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

Teehankee, J., concurs in the result. For his views re unqualified exclusion of confessions obtained without counsel see his dissent in *Magtoto vs. Manguera*, 63 SCRA 4, 27-30.

Fernando, C.J., in the result.

Antonio, J., took no part.

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[20] Article 294, Revised Penal Code.

[21] Article 63, Par. 3, Revised Penal Code.