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[G.R. No. L-45266. August 6, 1979]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEOPOLDO PARDILLA, RUDY MANZANO, and REYNALDO PARDILLA,** *defendants-appellants.*

[G.R. No. L-48450. August 6, 1979]

LEOPOLDO PARDILLA, RUDY MANZANO, and REYNALDO PARDILLA, *petitioners, vs.* **DIRECTOR OF PRISONS, Muntinglupa (Rizal), Metro Manila,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; MUST BE ALLEGED IN THE INFORMATION TO BE APPRECIATED.**— We take note of the fact that the information filed against the accused does not alleged any qualifying circumstance. The *gravest offense therefore*, for which they may be found guilty is only homicide.

2. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; WHEN FINAL AND EXECUTORY.**— The records of Criminal Case No. 4079, however show that after the denial of the motion for reconsideration of the decision, the accused, Leopoldo Pardilla, who was "sentenced to life imprisonment" did not file a notice of his intention to appeal the decision. Hence, the judgment of the lower court, insofar as he is concerned, has already become final and executory.

BARREDO, *J., concurring:*

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; AN ALLEGATION OF CONSPIRACY, WITHOUT MORE, CANNOT *BE EQUATED* WITH THE QUALIFYING CIRCUMSTANCE OF EVIDENT PREMEDITATION.**— The bare allegation in the information to the effect that the three accused "conspiring, confederating

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together and mutually helping each other, armed with a sharp-pointed knife known as pinote and canes, with intent to kill, did then and there wilfully, unlawfully and feloniously attack" the deceased cannot be construed, as the trial judge erroneously did, as alleging either evident premeditation or abuse of superior strength, much less employing means to weaken the defense. That two or three persons have conspired and confederated together and mutually helped one another in committing an offense does not necessarily imply evident premeditation. It is quite clear in the law that conspiracy is deemed to exist the moment "two or more persons come to an agreement concerning the commission of a felony and decide to commit it." (Art. 8, Revised Penal Code.) On the other hand, "to authorize the finding of premeditation it must appear not only that the accused had formed a determination to commit the crime prior to the moment of its execution but that this determination was the result of meditation, calculation, reflection or persistent attempt." Thus, an allegation of conspiracy, without more, cannot be equated with the qualifying circumstance of evident premeditation, (*People vs. Peralta*, 25 SCRA 759; *People vs. Mendoza*, 91 Phil. 58; *People vs. Lesada*, 70 Phil. 525; *People vs. Pareja*, 30 SCRA 694) specially when such allegation is taken together with the fact that the fiscal must have had in mind only homicide as proven by the denomination he specifically attached to the offense in the information signed by him.

2. **ID.; ID.; ID.; RULE IN CASE OF VARIANCE BETWEEN THE BODY OF THE INFORMATION AND THE NAMING OF THE OFFENSE BY THE FISCAL.**— In case of doubt when there is seeming variance between the body of the information and the naming of the offense by the fiscal, such doubt must be resolved in favor of the accused.

3. **ID.; ID.; ID.; A CIRCUMSTANCE ALLEGED IN THE INFORMATION, WHICH BY ITS NATURE IS A QUALIFYING ONE, MAY BE DEEMED AS SUCH ONLY WHEN THE CRIME IS DENOMINATED BY THE FISCAL SPECIFICALLY AS MURDER.**— In this connection, it may be stated that while it is perhaps best that in cases of murder, the fiscal should allege clearly the qualifying circumstance he means to charge distinctly from the aggravating circumstances also mentioned in the information, the present practice whereby the denomination itself of the charge as murder is already considered as sufficiently

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indicating that any qualifying circumstances therein alleged, unless otherwise indicated, is intended to be so is permissible, as long as at the arraignment the exact nature of the charge is clearly explained to the accused. Thus, a circumstance alleged in the information, which by its nature is a qualifying one, may be deemed as such only when the crime is denominated by the fiscal specifically as murder.

4. **ID.; ID.; FISCALS; PRIMARY DUTY.**— Fiscals have the primary responsibility to frame informations with due care, so as to avoid controversy as to the definite nature of the offense charged therein. They should always bear in mind the imperative need for such definiteness, considering the legal complications that can arise otherwise. That an accused person can be convicted only of a lesser offense than that actually committed by him, only because of ambiguity or error in the framing of the information is a rank disservice to the interests of justice and public order.

5. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TAKING ADVANTAGE OF SUPERIOR STRENGTH; NOT A MATTER OF NUMBER.**— Neither can the offense here in question be deemed as qualified by the allegation that there were three persons (the accused) who attacked the deceased, which the trial court considered as constituting sufficient allegation of taking advantage of superior strength. *Superioridad* is not a matter of number. Even the additional allegation in the information that the accused were "armed with a sharp-pointed knife and known as pinote and canes" be deemed as adequately alleging "*taking advantage of superior strength*," there being no other circumstances alleged leading inexorably to such conclusion."

6. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; EXCESS OF JURISDICTION; COMMITTED IN CASE AN ACCUSED IS CONVICTED OF MURDER INSTEAD OF HOMICIDE.** — The error of the trial court I have explained above of convicting the appellants of murder instead of homicide only is not just an error of judgment but one of excess of jurisdiction. For a trial court to convict an accused of homicide where he is charged with murder because of erroneous appreciation of the evidence or of a misapplication of the pertinent provisions of the Revised Penal Code would be an error of judgment only because he would be acting within his powers, homicide being

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an offense included in that which is charged. In a case, however, where the offense charged is homicide and nothing in the allegations in the information can be clearly construed as a qualifying circumstance, such as to make the accused aware at the arraignment that upon proof thereof it could be considered as such against him, but, in the mind of the judge, the evidence shows the existence of such qualifying circumstance, like the situation in the case at bar, there is the explicit injunction of Section 4 of Rule 120 to the effect that in the face of such variance between the allegation in the information and the proof, the "defendant shall be convicted (only) of the offense charged included in that which is proved" and never of the offense proved.

7. ID.; ID.; *CERTIORARI* AND *MANDAMUS*; WHEN AVAILED OF.— *Certiorari*, like the other special civil actions of prohibition and *mandamus* is conditioned on the absence of "appeal or any other plain, speedy and adequate remedy in the ordinary course of law." (Sections 1, 2 and 3, Rule 65.) Thus, it is only when such appeal or other remedy is inadequate to avoid irreparable injury or obvious injustice that a special civil action may be resorted to even where want to excess of jurisdiction is alleged.

8. ID.; SPECIAL PROCEEDINGS; *HABEAS CORPUS*; WHEN *HABEAS CORPUS* WOULD LIE.— Indeed, in actual practice, erroneous denial of bail in cases involving capital offenses has always been brought to this Court *via habeas corpus* petitions and We have always entertained them as such. Hence, I cannot see any reason why under the peculiar circumstances of the case of herein appellants, *habeas corpus* would not lie, the denial of the petition for *certiorari* in G.R. No. L-45149 notwithstanding, specially because said denial was not based on the merits but on a procedural ground. Besides, the conviction of the appellants of a crime graver than that they were charged with is in more than a sense similar to the imposition of a penalty that is excessive, where the remedy is *habeas corpus*.

9. CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; DUE PROCESS; DENIED ON CASE AN ACCUSED IS CONVICTED OF AN OFFENSE GRAVER THAN THAT CHARGED. — Indeed, We have already held that convicting an accused of an offense graver than that charged is a denial

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of due process and consequently, the court most be deemed to exceed its jurisdiction. if it does so.

RESOLUTION

CONCEPCION JR., *J.*:

Petitioners Leopoldo Pardilla, Rudy Manzano and Reynaldo Pardilla were charged before the Court of First Instance of Iloilo with the killing of one Alfredo Solinap, Sr., in Pototan, Iloilo, on February 28. 1976. in an information which reads, as follows:

"PEOPLE OF THE PHILIPPINES,

– *versus* – CRIM. CASE NO. 4079

LEOPOLDO PARDILLA, RUDY MANZANO and REYNALDO PARDILLA, Accused. HOMICIDE

x -x

INFORMATION

"The undersigned Provincial Fiscal accuses LEOPOLDO PARDILLA, RUDY MANZANO, and REYNALDO PARDILLA of the crime of HOMICIDE. committed as follows:

"That on or about February 28, 1975. in the Municipality of Pototan, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused conspiring, confederating together and mutually helping each other, armed with a sharp pointed knife known as pinote and canes, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, beat and stab ALFREDO SOLINAP, SR. with the weapons they were then provided, inflicting upon him stub wound on the head which caused the death of said ALFREDO SOLINAP, SR.

"Iloilo City, Philippines.

May 2, 1975

BENJAMIN A. DEFENSOR
Provincial Fiscal

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By:

(Sgd.) DAVID TUBONGBANUA
Assistant Provincial Fiscal

"WITNESSES:

1. Dra. Grecia P. Buenvenida
   Western Visayas Regional Hospital
   Pototan, Iloilo
2. Cesar Polistico
   Barrio Lombo, Pototan, Iloilo
3. Norberto Barrios
   (do)

and others."[1]

Upon their arrest, the said petitioners posted bail bonds in the amount of ₱12,000.00, each, for their temporary release from custody. After trial, the court presided over by Judge Midpantao L. Adil rendered a decision, the dispositive portion of which reads, as follows:

"WHEREFORE, premises considered, all accused, namely, Rudy Manzano, Reynaldo Pardilla and Leopoldo Pardilla are hereby found GUILTY beyond reasonable doubt of the crime of Murder which was erroneously denominated as homicide. Rudy Manzano and Reynaldo Pardilla are hereby sentenced to death while Leopoldo Pardilla is hereby sentenced to life imprisonment, in view of his old age. We are imposing this maximum penalty in view of the presence of three aggravating circumstances, namely: conspiracy which we concluded as equal or synonymous with evident premeditation and therefore, qualified the killing as murder, and the aggravating circumstance of superior strength and means to weaken the defense.

"On account of the penalty imposed the Indeterminate Sentence Law does not apply.

"All accused are jointly and severally condemned to indemnify the heirs of the late Alfredo Solinap, Sr. the sum of Twelve Thousand (₱12,000.00) Pesos by way of death compensation, plus funeral and burial expenses of Five Thousand (₱5,000.00) Pesos, and to pay the costs.

[1] *Rollo*, p. 21.

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"The effects of crime are confiscated in favor of the State.

"The convicts shall suffer no subsidiary imprisonment in case of insolvency in view of the penalty imposed.

"The bail bonds for the provisional liberty of all the accused are hereby cancelled and all convicts are ordered committed to jail. No bail bond is fixed in case they should appeal."[2]

As ordered, the bail bonds of the accused were cancelled and the accused were committed to the Iloilo Provincial Jail.

On September 1, 1976, the accused filed their notice to appeal the decision to this Court.[3] However, on September 10, 1976, the said accused filed a motion to withdraw their notice of appeal to enable their new counsel, Atty. Ramon Gonzales, to file a motion for the reconsideration of the decision.[4]

On September 12, 1976, the accused filed a motion for the reconsideration of said decision, contending that since they were charged with homicide, they cannot be convicted of murder; that while the decision finds that there was superior strength or means employed to weaken the defense, the same was not alleged in the information and can only be considered, if ever, as an aggravating circumstance in the crime of homicide, but not a circumstance that would qualify the offense as murder; that the allegation of conspiracy is not equivalent to an allegation that the offense was committed with evident premeditation; and that since the information charges homicide, and conviction cannot be more than said crime, the accused should be released on their bail bonds, pending appeal, at the discretion of the court.[5] The trial court, however, denied the motion on November 11, 1976.[6]

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[2] *Id.*, pp. 22, 41.

[3] Original Record of Crim. Case No. 4079, p. 337-a.

[4] *Id.*, p. 338.

[5] Par. 5 of Petition, *Rollo*, p. 3; See also Orig. Record of Crim. Case No. 4079, p. 341.

[6] Orig. Record of Crim. Case No. 4079, p. 368.

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The accused filed a petition on December 3, 1976 for *certiorari* and *mandamus* with preliminary injunction,[7] to annul and set aside the decision, upon the ground that conspiracy, which the trial court found to be synonymous with evident premeditation, could not qualify the crime as MURDER, but may be appreciated only, if ever, as an aggravating circumstance of HOMICIDE.

The records of Criminal Case No. 4079 were elevated on December 21, 1976 to the Court for the automatic review of the decision and the case was docketed as G.R. No. L-45266.

The Court dismissed the petition for *certiorari* and *mandamus* with preliminary injunction (G.R. No. L-45149) on March 30, 1978, the issue therein raised being involved in the automatic review of the judgment.

On June 12, 1978, the petitioners filed the instant petition for *habeas corpus*, praying, *inter alia*, that they be released on their original bail bonds pending the review of the trial court's decision.

The court issued on July 13, 1978 the writ of *habeas corpus* returnable to the court and required the respondent to make a return of the writ not later than July 19, 1978 at 10-30 a.m.[8]

On July 19, 1978, the Solicitor General submitted a return to the writ and answer to the petition, asking for the dismissal of the petition upon the ground that the information charged the petitioners with the crime of MURDER and that the petition for *habeas corpus* will not lie since the petitioners are lawfully detained by virtue of a decision rendered by a court of competent jurisdiction.[9]

In the instant petition for *habeas corpus*, the petitioners pray that they be released on their original bail bonds pending the review of the trial court's decision.

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[7] G.R. No. L-45149. *Leopoldo Pardilla, et al. vs. People of the Philippines, et al.*

[8] *Rollo*, p. 51.

[9] *Id.*, p. 53

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We take note of the fact that the information filed against the accused does not allege any qualifying circumstance. The gravest offense therefore, for which they may be found guilty is only homicide. For this reason, the instant petition shall be considered as a petition for bail and an incident in case G.R. No. L-45266. It is consistent with equity and justice that the accused should be released on bail pending determination of the criminal case against them on the merits. The records of Criminal Case No. 4079, however show that after the denial of the motion for reconsideration of the decision, the accused, Leopoldo Pardilla, who was "sentenced to life imprisonment" did not file a notice of his intention to appeal the decision. Hence, the judgment of the lower court, insofar as he is concerned, has already become final and executory.

WHEREFORE, the accused-petitioners Rudy Manzano and Reynaldo Pardilla are hereby ordered released from custody upon their filing of a bond in the amount of ₱20,000.00, each, unless there be any other reason for which they shall continue to be detained.

SO ORDERED.

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

Fernando, C.J., concurs in both opinions.

Barredo, J., concurs in a separate opinion.

Santos and *Abad Santos, JJ.*, took no part.

BARREDO, *J., concurring:*

I concur but inasmuch as the circumstances of this case are rather unusual I would like to explain my vote in favor of allowing accused-appellants Rudy Manzano and Reynaldo Pardilla in G.R. No. L-45266 to be released on bail because I deem it particularly necessary to elucidate on the propriety of *habeas corpus* in G.R. No. L-48450.

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As explained in the main opinion penned by our distinguished colleague, Mr. Justice Concepcion Jr., the accused-appellants-petitioners above named were convicted of murder by the trial court, with Rudy Manzano and Reynaldo Pardilla being sentenced to suffer the capital penalty of death and Leopoldo Pardilla that of life imprisonment. The peculiarity, however, of such judgment lies in that the fiscal labeled the charge against them in the information as homicide and yet, their conviction was for murder. Hence, the first issue submitted for Our resolution is the legality of such conviction for an offense allegedly graver than that charged.

The trial court, the Hon. Midpantao Adil presiding, obviously aware of the rule that an accused cannot be convicted of an offense graver than that charged even if the evidence proves the graver offense (Sec. 4, Rule 120; Sec. 13, Rule 110), justified its assailed judgment by holding that the information under which appellants were tried actually charged the crime of murder in its factual allegations and that the denomination of the fiscal of the offense as homicide was erroneous, and since the evidence supports such allegations in the information, the conviction in question is in accordance with law.

The main opinion rightly holds that such posture of the trial judge is erroneous. True it is that what is decisive in construing an information or criminal complaint is not the nomenclature of the offense given by the fiscal or complainant but the material facts alleged in its body. On that score, however, I agree with the holding in the main opinion that the facts alleged in the information here involved do not constitute murder.

The bare allegation in the information to the effect that the three accused "conspiring, confederating together and mutually *helping each other, armed with a sharp-pointed knife known* as pinote and canes, with intent to kill, did then and there wilfully, unlawfully and feloniously attack" the deceased cannot be construed, as the trial judge erroneously did, as alleging either evident premeditation or abuse of superior strength, much less employing means to weaken the defense. That two or three persons have conspired and confederated together and mutually

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helped one another in committing an offense does not necessarily imply evident premeditation. It is quite clear in the law that conspiracy is deemed to exist the moment "two or more persons come to an agreement concerning the commission of a felony and decide to commit it." (Art. 8, Revised Penal Code.) On the other hand, "to authorize the finding of premeditation it must appear not only that the accused had formed a determination to commit the crime prior to the moment of its execution but that this determination was the result of meditation, calculation, reflection or persistent attempt." (Aquino, *Revised Penal Code,* Vol. I, pp. 326-327.) Thus, an allegation of conspiracy, without more, cannot be equated with the qualifying circumstance of evident premeditation, (*People vs. Peralta,* 25 SCRA 759; *People vs. Mendoza,* 91 Phil. 58; *People vs. Lesada,* 70 Phil. 525; *People vs. Pareja,* 30 SCRA 694) specially when such allegation is taken together with the fact that the fiscal must have had in mind only homicide as proven by the denomination he specifically attached to the offense in the information signed by him. Indeed, in case of doubt when there is seeming variance between the body of the information and the naming of the offense by the fiscal, such doubt must be resolved in favor of the accused.

In this connection, it may be stated that while it is perhaps best that in cases of murder, the fiscal should allege clearly the qualifying circumstance he means to charge distinctly from the aggravating circumstances also mentioned in the information, the present practice whereby the denomination itself of the charge as murder is already considered as sufficiently indicating that any qualifying circumstances therein alleged, unless otherwise indicated, is intended to be so is permissible, as long as at the arraignment the exact nature of the charge is clearly explained to the accused. Thus, a circumstance alleged in the information, which by its nature is a qualifying one, may be deemed as such only when the crime is denominated by the fiscal specifically as murder.

Neither can the offense here in question be deemed as qualified by the allegation that there were three persons (the accused) who attacked the deceased, which the trial court

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considered as constituting sufficient allegation of taking advantage of superior strength. *Superioridad* is not a matter of number. Even the additional allegation in the information that the accused were "armed with a sharp-pointed knife and known as pinote and canes" be deemed as adequately alleging "taking advantage of superior strength," there being no other circumstances alleged leading inexorably to such conclusion." It is to be presumed that since the fiscal denominated the offense as homicide instead of murder, he must have done so because the facts gathered by him during the preliminary investigation do not warrant such a conclusion, notwithstanding the number of the accused and the weapons they were armed with.

Much less may such allegation that the accused were superior in number and armed, without more, be enough to constitute an allegation that they "employed means to weaken the defense," which respondent judge considered as also a qualifying circumstance. It would be unfair to the accused to do so, for the same reasons I have discussed with reference to superior strength.

In sum, fiscals have the primary responsibility to frame informations with due care, so as to avoid controversy as to the definite nature of the offense charged therein. They should always bear in mind the imperative need for such definiteness, considering the legal complications that can arise otherwise. That an accused person can be convicted only of a lesser offense than that actually committed by him, only because of ambiguity or error in the framing of the information is a rank disservice to the interests of justice and public order. And trial judges ought not to construe any information on the basis of the evidence but only in the light of its own factual allegations, specially when such construction would prejudice the accused. If construction has to be indulged in because of any ambiguity in the information, it is imperative under the unequivocal mandate of the Bill of Rights to properly inform the accused about such need at the arraignment and not afterwards, certainly not in the decision. Such is also the demand of fairness and justice. The accused must not be made to stand trial and be convicted for an offense of which he was not duly informed beforehand. No less than the Constitution is definite that the exact nature

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of the offense must be made known and understood by the accused at the arraignment. This constitutional rule cannot be changed by the trial judges on the excuse that they are acting on the basis of the facts subsequently gathered by them from the evidence. Judges, like referees in sports contests, may not change the rules after play has began, much less at the end of the game. Indeed, We have already held that convicting an accused of an offense graver than that charged is a denial of due process (*People vs. Bumanlag,* G.R. No. L-9483, Jan. 30, 1960; *People vs. Despavellador*, 1 SCRA 205) and consequently, the court most be deemed to exceed its jurisdiction, if it does so.

There is another peculiarity in the decision under Our scrutiny, which I consider of equal, if not more significant importance, if only because it involves a point of procedure which appears to me to be of first impression. I refer to the propriety of *habeas corpus* as the remedy under the unusual situation in which petitioners-appellants have found themselves in this case thru no fault of theirs.

As will be noted, We are actually resolving the case of appellants under two expedientes: (1) the appeal of appellants from their conviction (G.R. No. L-45266) and (2) their petition for *habeas corpus* (G.R. No. L-48450). This came about because at first, when the decision in question was read to them, the accused merely filed an appeal. It was only after they had apparently perfected their appeal that their new counsel withdrew the same and filed a motion for reconsideration, calling the attention of the court to the first peculiarity I have discussed of its having convicted them of murder under a charge of homicide. When His Honor denied said motion for reconsideration, they came to us with a petition for *certiorari* and *mandamus* (in G.R. No. L-45149); which was, however, denied on the ground that the issue could be resolved in the course of the appeal itself, it being necessarily involved therein.

Again, instead of asking for the reconsideration of that dismissal, appellants filed the instant petition for *habeas corpus*, contending that they are being denied their right to liberty on bail. And so, the procedural question that confronts Us is, is

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not Our denial of that petition for *certiorari* and *mandamus* in G.R. No. L-45149 a bar to this petition for *habeas corpus*? Besides, is *habeas corpus* the appropriate remedy in the premises?

To my mind, the first thing to consider in answering these questions is that the error of the trial court I have explained above of convicting the appellants of murder instead of homicide only is not just an error of judgment but one of excess of jurisdiction. For a trial court to convict an accused of homicide where he is charged with murder because of erroneous appreciation of the evidence or of a misapplication of the pertinent provisions of the Revised Penal Code would be an error of judgment only because he would be acting within his powers, homicide being an offense included in that which is charged. In a case, however, where the offense charged is homicide and nothing in the allegations in the information can be clearly construed as a qualifying circumstance, such as to make the accused aware at the arraignment that upon proof thereof it could be considered as such against him, but, in the mind of the judge, the evidence shows the existence of such qualifying circumstance, like the situation in the case at bar, there is the explicit injunction of Section 4 of Rule 120 to the effect that in the face of such variance between the allegation in the information and the proof, the "defendant shall be convicted (only) of the offense charged included in that which is proved" and never of the offense proved. (*U.S. vs. Guzman*, 8 Phil. 21.)

In other words, Section 4 of Rule 20 delimits the authority and power of the court in the situations therein contemplated, such that a court would be committing an act in excess of jurisdiction rather than a mere error of judgment the moment it convicts an accused for an offense graver than that with which he is charged. Contrary to the view maintained by the Office of the Solicitor General thru then Acting Solicitor General Vicente Mendoza, Assistant Solicitor General Jose F. Racela and Solicitor Norberto P. Eduardo, I hold that the matter involved here is one of jurisdiction since, as I have already stated earlier, it amounts to a denial of due process.

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But even in such an eventuality, the error may not be corrected by *certiorari*, if it can adequately be taken up in the appeal. *Certiorari*, like the other special civil actions of prohibition and *mandamus* is conditioned on the absence of "appeal or any other plain, speedy and adequate remedy in the ordinary course of law." (Sections 1, 2 and 3, Rule 65.) Thus, it is only when such appeal or other remedy is inadequate to avoid irreparable injury or obvious injustice that a special civil action may be resorted to even where want to excess of jurisdiction is alleged.

In the instant case, when appellants came to this Court with their petition for *certiorari* and *mandamus* in G.R. No. L-45129, the Court acted pursuant to the foregoing rule. However, in ruling in Our resolution of March 13, 1979 that "the question raised (is) involved in the automatic review," We simply meant that the question being raised by petitioners need not be the subject of a separate suit or proceeding. This did not necessarily mean that the matter may not be taken up as a preliminary issue in the appeal proceedings, as for instance, in a motion for bail based, precisely on the ground that since the accused should have been convicted only of homicide, and not of murder, and could not, under the circumstances found by the trial court, have been sentenced to suffer a penalty of more than *reclusion temporal* under Article 249 of the Revised Penal Code, they are entitled to bail as a matter of right. In fact, such a motion could be filed here even after the trial court has denied a similar one filed with it.

Thus, as stated in the main opinion, disregarding technicalities of procedure, and so that herein accused appellants may enjoy immediately the right which the trial court has erroneously denied them, We have treated the petition for *habeas corpus* in G.R. No. L-48450 as the motion for bail I have referred to above.

I must add tho' that, in my view, such petition for *habeas corpus* was not out of place. In a sense, after the trial court denied appellants' petition for bail, their continued detention became illegal. I reiterate, appellants have been denied due process; their constitutional right to be properly informed of

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the charge against them has been violated. If for this alone, they are entitled to a speedy remedy by which their right to be freed on bail, accused as they are of a bailable offense, could be recognized and enforced. Pursuant to Section 1 of Rule 102, "the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty." In *Dacuyan vs. Ramos,* 85 SCRA 487, Our distinguished present Chief Justice, the Honorable Enrique M, Fernando, ruled that "*habeas corpus* lies in case of loss of jurisdiction by a tribunal due to a denial of constitutional right," citing the 1924 case of *Conde vs. Rivera.* Indeed, in actual practice, erroneous denial of bail in cases involving capital offenses has always been brought to this Court via *habeas corpus* petitions and We have always entertained them as such. Hence, I cannot see any reason why under the peculiar circumstances of the case of herein appellants, *habeas corpus* would not lie, the denial of the petition for *certiorari* in G.R. No. L-45149 notwithstanding, specially because said denial was not based on the merits but on a procedural ground. Besides, the conviction of the appellants of a crime graver than that they were charged with is in more than a sense similar to the imposition of a penalty that is excessive, where the remedy is *habeas corpus.*

Of course, the release on bail of the appellants has nothing to do with the issue of their guilt of the crime for which they have been tried. All that We are deciding here is that in any event, they cannot be convicted of murder but only of homicide. This ruling does not even close the door to their acquittal if We should find the evidence insufficient to prove their guilt beyond reasonable doubt.