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EN BANC

[G.R. No. L-32205. August 31, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiffs-appellee, vs.* **(1) EMERITO ABELLA *alias* Kulot, (2) GORGONIO AÑOVER, (3) RODOLFO APOLINARIO, (4) MAXIMO APOLONIAS, (5) DOMINGO ASTROLOGIA *alias* Blackie, (6) JOSE BARBAJO, (7) PERFECTO BILBAR *alias* Porping, (8) CATALINO CABCABAN *alias* Inday, (9) RODOLFO CARBALLO, (10) RUSTICO CIDRO, (11) CRESENCIO CUIZON, (12) FRANCISCO DIONISIO *alias* Satud, (13) ELINO DURAN, (14) ABSALON ENRIGAN, (15) JOSE FRANCISCO *alias* Karate, (16) SINDOLFO GALANTO, (17) LEOCADIO GAVILAGUIN *alias* Cadio, (18) ALFREDO GAYLAN, (19) ROMULO GELLE, (20) FELIX HERNANDEZ, (21) GUILLERMO IGNACIO, (22) ALFREDO LAGARTO, (23) BENEDICTO LORAÑA *alias* Payat, (24) ELEUTERIO MALDECIR *alias* Aswang, (25) CIRIACO OPSIAR *alias* Simaron, (26) ROBERTO PANGILINAN, (27) ROLANDO PANGILINAN, (28) EUGENIO PROVIDO, JR., (29) VICENTE QUIJANO, (3) JUANITO REBUTASO, (31) ROMEO RICAFORT *alias* Romy, (32) MARCELO SARDENIA, (33) ELEUTERIO TABOY, (34) ANGEL TAGANA, (35) AGUSTIN VILLAFLOR *alias* Tisoy, (36) JOSE VILLARAMA and (37) SOFRONIO VILLEGAS,** *accused.* **(1) EMERITO ABELLA, (2) MAXIMO APOLONIAS, (3) JOSE BARBAJO, (4) CATALINO CABCABAN, (5) RODOLFO CARBALLO, (6) FRANCISCO DIONISIO, (7) ELINO DURAN, (8) ABSOLON ENRIGAN, (9) JOSE FRANCISCO, (10) LEOCADIO GAVILAGUIN, (11) FELIX HERNANDEZ, (12) GUILLERMO IGNACIO, (13) BENEDICTO LORAÑA, (14) EUGENIO PROVIDO, JR., (15) VICENTE QUIJANO, (16) ELEUTERIO TABOY, (17) ANGEL TAGANA, (18) JOSE**

Supreme Court E-Library

VILLARAMA and (19) SOFRONIO VILLEGAS, *accused whose death sentences are under automatic review.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; EXTRAJUDICIAL CONFESSIONS; RULE UNDER 1973 CONSTITUTION; APPLICATION.**— The requirements of Section 20, Article IV of the Constitution with respect to extrajudicial confessions are not applicable to the confessions herein because they were taken before the effectivity of the Constitution or before January 17, 1973. *Magtoto vs. Manguera*, L-37201-02, *Simeon vs. Villaluz*, L-37424 and *People vs. Isnani*, L-38929, all decided on March 3, 1975, 63 SCRA 4).

2. **ID.; ID.; ID.; EFFECT IF CORROBORATED BY *CORPUS DELICTI*.**— After a perusal of their confessions, we find that their admission of guilt therein is corroborated by evidence of the *corpus delicti* or the fact that the massacre described therein actually took place.

3. **ID.; ID.; PLEA OF GUILTY; IMPROVIDENT; REQUIREMENT.**— This Court, in resolving the contention of the counsel *de oficio* that the accused had made an improvident plea, held that the trial judge must have been fully satisfied that the accused entered the plea of guilty with full knowledge of the meaning and consequences thereof. That observation may be applied to the instant case. (Same holding in *People vs. Perete*, 111 Phil. 943 and *People vs. Yamson*, 111 Phil. 406.)

4. **ID.; ID.; PLEA OF NOT GUILTY; DUTY OF THE COURT.**— As to the other nine accused, who pleaded not guilty and were tried and sentenced to death, namely, Apolonias, Barbajo, Cabcaban, Carballo, Duran, Francisco, Ignacio, Providio. Jr. and Tagana, it is necessary to make a painstaking examination of the evidence in order to ascertain whether their guilt was established beyond reasonable doubt.

5. **ID.; EVIDENCE; CONSPIRACY; WHEN PRESENT.**— The record supports the trial court's finding that "conspiracy can logically be inferred from the simultaneous and concerted acts of (the) sixteen raiders who, after putting down the guard and entering the big cell, joined and combined forces with their friends and

Supreme Court E-Library

associates-inmates of the big cell who were waiting for the go-signal to commence the attack in pursuance of their criminal objective." The trial court added that the acts and conduct of the accused from the start of their aggression until the riot was suppressed were characterized "by a swift, united and concerted movement that could easily indicate a community of purpose, closeness of association and concurrence of wills," as shown particularly by the order of the two "close-confined" prisoners, Abella and Villaflor, that the Visayans in the big cell should stay on one side so that it could be ascertained that they were the allies of the sixteen raiders.

6. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; *REITERACION*; WHEN CONSIDERED.**— In order that the aggravating circumstance of reiteration may be taken into account, it should be shown that the offender against whom it is appreciated had already served out his sentences for the prior offenses (*People vs. Layson*, L-25177, October 31, 1969, 30 SCRA 92, 97).

7. **ID.; PENALTIES; DEATH; WHEN IMPOSED IN CASE OF MURDER.**— But since the accused are quasi-recidivists, the fact that reiteration cannot be appreciated against them and that their plea of guilty is mitigating will not affect the imposition of the death penalty for the murders and frustrated murders which they had committed. Quasi-recidivism is a special aggravating circumstance which justifies the imposition of the penalty for murder (*reclusion temporal* maximum to death) in its maximum period or death.

8. **ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; WHEN NOT CONSIDERED.**— The accused did not surrender voluntarily and unconditionally. They rejected the initial requests for their surrender. They surrendered after prison officials armed with guns demanded their surrender. They chose the person to whom they would surrender, namely, Jorge, the overseer.

9. **ID.; COMPLEX CRIME; DEFINED.**— The ruling in the *De los Santos* case is predicated on the theory that "when, for the attainment of a single purpose which constitutes an offense, various acts are executed, such acts must be considered only as one offense," a complex one.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Solicitor General Estelito P. Mendoza Assistant Solicitor General Octavio R. Ramirez and *Solicitor Felix M. de Guzman* for appellee.

Picazo Agcaoili Santayana and *Reyes* for accused.

D E C I S I O N

AQUINO, *J.*:

This case is about the massacre of certain prisoners in the Davao Penal Colony. It was a reprise of a similar riot which occurred in the national penitentiary at Muntinlupa, Rizal on Sunday morning, February 16, 1958 (*People vs. De los Santos,* L-19067-68, July 30, 1965, 14 SCRA 702).

The record reveals that in the morning of Sunday, June 27, 1965 Numeriano Reynon, a prisoner-trustee, was performing guard duty at the jailhouse of the penal colony in Panabo, Davao del Norte.

The jailhouse (*bartolina*) was a two-story building whose second floor was divided by a corridor or passageway one and half meters wide. On one side was a single cell about ten meters long and eight meters wide. On the opposite side were three small cells.

Around seventy (seventy-five, according to defendant Cabcaban) prisoners were incarcerated in the big cell. It was indubitably congested. The prisoners used a drum to dispose of their waste matter. Confined in the three small cells were seventeen prisoners who had committed grave misconduct and who were known as "close-confined" prisoners to distinguish them from the prisoners in the big cell who were just undergoing punishment.

The prisoners belonged to two gangs: the Oxo gang, whose members were Visayans with an Oxo mark tattooed on their bodies, and the Sigue-Sigue gang whose members hailed from Luzon. The name *Sigue-Sigue* was tattooed on their thighs or

Supreme Court E-Library

buttocks. The existence of these gangs in the New Bilibid Prison was traced by Judge (now Justice) Andres Reyes in the *De los Santos case, supra*. See *People vs. Peralta,* 25 SCRA 759.

Shortly before noontime of that Sunday, June 27, 1965, or after the inmates of the big cell had taken their lunch, Reynon locked that cell. The seventeen inmates of the three small cells, all members of the Oxo gang, had also taken their lunch but Reynon did not lock their cells because he was waiting for the prisoner-janitor to bring out from those cells the cans used as urinals.

At that juncture, Leocadio Gavilaguin, a prisoner from the small cell, approached Reynon and asked permission to pawn his pillow to Rodolfo Carballo, an inmate of the big cell. Reynon told Gavilaguin that Carballo would not accept his pillow because it was very dirty. As it turned out, Gavilaguin was simply employing a ruse to inveigle Reynon into opening the door to the big cell.

When Reynon refused to open the door, Gavilaguin grabbed him from behind. Then, as if on cue, "the close-confined" prisoners from the small cells surrounded Reynon and assaulted him. One prisoner stabbed Reynon while the others hit him on the chest and right temple with fistic blows. Reynon lost consciousness and collapsed on the floor.

A prisoner took the bunch of keys which were in Reynon's custody and opened the door of the big cell. (According to some extrajudicial confessions, Reynon himself opened the door.) Led by Kulot (Emerito Abella), Tisoy (Agustin Villaflor) and Cadio (Gavilaguin), the other thirteen prisoners from the small cells rushed into the big cell. They were (1) Gorgonio Añover, (2) Rustico Cidro, (3) Absalon Enrigan, (4) Sindolfo Galanto, (5) Felix Hernandez, (6) Benedicto Loraña *alias* Payat, (7) Eleuterio Maldecir *alias* Aswang, (8) Ciriaco Opsiar *alias* Simaron, (9) Vicente Quijano, (10) Juanito Rebutaso, (11) Eleuterio Taboy, (12) Jose Villarama and (13) Sofronio Villegas. They were armed with improvised weapons. So, there were around

Supreme Court E-Library

eighty-six prisoners in the eighty-square-meter big cell when the massacre occurred.

The seventeenth closely confined prisoner, Perfecto Bilbar *alias* Proping, stayed in the small cell. He locked its door and closed the padlock of the big cell (Page 9, Record, Report of Jose T. Castro).

Inside the big cell, Villaflor (Tisoy) shouted: "*Tumabi ang Bisaya*!" ("Visayans go to the sides"). Guillermo Ignacio *alias* Pilay, an inmate of the big cell, placed pieces of wood and a blanket on the door to keep it closed (16 tsn July 25, 1967).

According to the eyewitnesses, Arsenio Guevarra, Juan del Rosario (a victim), and Roberto Rodrigo, all prisoners, the inmates from the big cell, who joined the sixteen raiders from the three cells in assaulting the victims, were (1) Rodolfo Apolinario, (2) Maximo Apolonias *alias* Max, (3) Domingo Astrologia *alias* Blackie, (4) Jose Barbajo *alias* Joe, (5) Catalino Cabcaban *alias* Inday, (6) Rodolfo Carballo *alias* Rudy, (7) Crescencio Cuizon *alias* Sianong Kulot, (8) Francisco Dionisio (he pleaded guilty), (9) Elino Duran, (10) Jose Francisco *alias* Karate, (11) Guillermo Ignacio *alias* Pilay, (12) Roberto Pangilinan *alias* Pagong, (13) Rolando Pangilinan, (14) Eugenio Provido, Jr. *alias* Junior, (15) Romeo Ricafort *alias* Romy, (16) Marcelo Sardenia and (17) Angel Tagana.

Some of these seventeen prisoners destroyed the floor of the big cell, removed the wood therefrom and used the pieces of wood in clubbing to death some of the victims.

The assaulted prisoners, who were unarmed, did not resist the attack. Many of them were lying flat on the floor with raised hands or clinging to the walls made of steel-matting. The affray lasted for about an hour. Although three whistles were sounded at the start of the massacre and prison officials rushed to the corridor near the big cell, they could not do anything because the door was locked and the key was held by one of the raiders. No one among the assailants was injured.

The offenders at first did not surrender to prison officials who had arrived at the scene after the alarm was sounded. It

Supreme Court E-Library

was only after they were assured that they would not be maltreated that Abella advised his companions to surrender.

Villaflor gathered all the weapons used by his group. He gave them and the bunch of keys to Geronimo Jorge, the overseer of the penal colony, through the holes of the steel-matting. Those weapons consisted of five sharp-pointed wooden daggers, seven sharp-pointed aluminum daggers, three wire ice picks, two bamboo ice picks, two Gillete blades with wooden handles, a stone wrapped with cloth (*caburata*), a wooden club (Reynon's *balila*) and twenty-two pieces of wood.

Ten victims, identified as (1) Romeo Bulatao, (2) Manalo Castillo, (3) Jose Castro, (4) Gualberto Fuentes, (5) Jose Magpantay, (6) Severino Pacon, (7) Carlito Padilla, (8) Generoso Palino, (9) Jacinto Refugia and (10) Delfin San Miguel, were pronounced dead on arrival at the penal colony hospital. Salvador Abique, Demetrio Camo, Manuel Cayetano and Armando Sanchez died in that hospital. The fourteen victims died of shock, cerebral hemorrhage and severe external and internal hemorrhage.

Three other victims survived. Reynon sustained a lacerated wound on his eyebrow and a stab wound on the left shoulder. He was confined in the hospital for nineteen days.

Juan del Rosario, a prisoner in the big cell, suffered a lacerated wound in the head and six incised wounds on the right cheek, mid-anterior side of the neck, right side of the neck and the left arm.

Bartolome de Guzman had a lacerated wound on the head, two incised wounds at the nape and at the left hypochondriac region, a stab wound on the neck which penetrated the larynx and two superficial punctured wounds on the left and right sides of the chest.

The examining physician testified that Reynon, Del Rosario and De Guzman would have died had there been no timely medical attendance.

In July, 1965 the statements of several jail inmates were taken by the prison investigator. They were sworn to before the municipal judge of Panabo.

Supreme Court E-Library

On September 24, 1965 Vicente B. Afurong, supervising prison guard and senior investigator of the Davao Penal Colony, filed in the municipal court of Panabo a complaint for multiple murder and multiple frustrated murder against thirty-seven prisoners of the penal colony who allegedly took part in the assault (Criminal Case No. 1773).

The accused waived the second stage of the preliminary investigation. On October 22, 1965, a special counsel of the provincial fiscal's office filed an information in the Court of First Instance of Davao, Davao City Branch II, charging the thirty-seven accused with *multiple murder and multiple frustrated murder* (Criminal Case No. 9405).

As specified in the information, at the time the massacre occurred the thirty-seven accused were quasi-recidivists because they were serving sentences for different crimes after having been convicted by final judgment, as indicated below:

(1) Abella — qualified theft, murder and frustrated murder; (2) Añover — murder, theft of large cattle and evasion of service of sentence; (3) Apolinario — qualified theft; (4) Apolonias — homicide; (5) Astrologia — robbery, homicide, frustrated homicide and qualified theft; (6) Barbajo — robbery with habitual delinquency; (7) Bilbar — homicide; (8) Cabcaban — theft;

(9) Carballo — homicide; (10) Cidro — frustrated murder and evasion of service of sentence; (11) Cuizon — murder and robbery; (12) Dionisio — murder, robbery in an inhabited house, six counts, and theft, four counts; (13) Duran — homicide; (14) Enrigan — homicide; (15) Francisco — robbery; (16) Galanto — homicide; (17) Gavilaguin — murder, homicide and evasion of service of sentence; (18) Gaylan — murder; (19) Gelle — murder; (20) Hernandez — homicide;

(21) Ignacio — murder, arson, evasion of service of sentence and frustrated murder; (22) Lagarto — murder; (23) Loraña — murder, frustrated murder, attempted robbery with homicide and robbery with serious physical injuries; (24) Maldecir — murder, frustrated murder, double homicide and evasion of service of sentence; (25) Opsiar — murder, frustrated murder and qualified theft; (26) Roberto Pangilinan — murder and theft, two counts, (27) Rolando Pangilinan — murder;

Supreme Court E-Library

(28) Provido, Jr. — theft, two counts and violation of Articles 157 and 178 of the Revised Penal Code;

(29) Quijano — murder; (30) Rebutaso — robbery; (31) Ricafort — homicide and attempted homicide; (32) Sardenia — robbery, four counts; (33) Taboy — murder; (34) Tagana — robbery with physical injuries, malicious mischief, slander by deed, slander with slight physical injuries and violations of Manila ordinances; (35) Villaflor — robbery, frustrated homicide and evasion of service of sentence; (36) Villarama — frustrated homicide and evasion of service of sentence, and (37) Villegas — murder and evasion of service of sentence.

At the arraignment on March 5, 1966, the accused were represented by two lawyers *de oficio*. The information was read and explained to them in the Tagalog dialect.

The nineteen accused who *pleaded guilty* were (1) Abella, (2) Añover, (3) Cidro, (4) Dionisio, (5) Enrigan, (6) Galanto, (7) Gavilaguin, (8) Hernandez, (9) Loraña, (10) Maldecir, (11) Opsiar, (12) Rolando Pangilinan, (13) Quijano, (14) Rebutaso, (15) Ricafort, (16) Taboy, (17) Villaflor, (18) Villarama and (19) Villegas.

Of the nineteen who pleaded guilty, sixteen were "close-confined" prisoners from the three small cells while three (Dionisio, Pangilinan and Ricafort) were from the big cell.

The seventeen accused who pleaded *not guilty* were (1) Apolinario, (2) Apolonias, (3) Astrologia, (4) Barbajo, (5) Bilbar, (6) Cabcaban, (7) Carballo, (8) Cuizon, (9) Duran, (10) Francisco, (11) Gaylan, (12) Gelle, (13) Lagarto, (14) Roberto Pangilinan, (15) Provido, Jr., (16) Sardenia and (17) Tagana.

The thirty-seventh accused, Guillermo Ignacio, at first pleaded guilty but when he repudiated his extrajudicial confession, a plea of not guilty was substituted for his plea of guilty.

After the pleas were entered, the trial court required the fiscal to present evidence as to those who had pleaded guilty. The fiscal submitted as exhibits the extrajudicial confessions of the nineteen accused which were sworn to before the municipal judge.

Supreme Court E-Library

At the fiscal's behest, the trial court ordered the interpreter to ask individually the nineteen accused whether they confirmed their confessions. In open court, all of them ratified their confessions.

Typical of the confessions of the accused was Villaflor's statement taken by Ramon C. Alicarte, an investigator, on July 14, 1965 at the so-called "reading center" of the penal colony. Villaflor said:

"13. Q. — Will you please narrate to me what you know about that unusual incident (in the morning of June 27, 1965)?

"A. — On that particular time and date, the inmates of the big cell opposite our cell were already inside their cell after they have eaten their noon meal and after they were locked in the big cell. we inmates in the close-confinement cells were also sent out to have our noon meal.

"But before we went out from our cells, we had already agreed that we are going to get inside the big cell and we also made an agreement that one of us from the close-confinement cells by the name of Cadio (Gavilaguin) would find a way so that we can get inside the big cell.

"After Cadio had finished eating, he went to his cell and got a pillow which was to be sold to our contact inside the big cell. When Cadio was already at the aisle between the big cell and the close-confinement cells, our contact in the big cell by the name of Ruding Pakpak (Arsenio Guevarra) (should be Rodolfo Carballo) came near the door of their cell and asked Cadio if the pillow he (Cadio) was holding is made of cotton.

"Cadio then called the trusty police on duty, prisoner Numeriano Reynon, and requested him (Reynon) that he (Cadio) is going to pledge the said pillow to Ruding Pakpak (Carballo) but the said trusty was hesitant at first. When Cadio's request was seconded by Emerito Abella by saying: '*Sigi na pare, dahil sa wala kaming pangbili ng cigarilyo*,' *Reynon opened* the door of the big cell and Ruding Pakpak said: '*Abi, Abi tingnan ko ang unan kung bulak ang laman.*'

"Then, I saw that Reynon was grappled by some of my co-inmates from the close confinement cell and then my companions began entering the big cell. When I also went inside the big cell, Ruding

Supreme Court E-Library

Pakpak met me and said to me: '*Saan ang sa akin?*' I pulled from my waist his weapon and gave it to him.

"I then began looking for the inmate who had incriminated me in the previous incident in the prison compound which caused my being jailed in the close-confinement cells. I then asked Pakpak as to where is Jimmy (Refugia) and he pointed Refugia to me who was then at the ceiling.

"When I saw Refugia, I also climbed and pulled him down. When he fell down the floor, I stabbed him and after that I left Jimmy (Jacinto) who was already fatally wounded. Then, I began looking for another of our enemies. I then saw Manuel Cayetano who was already wounded. I took the club from Emerito Abella and began beating Cayetano with it until I stopped beating him when I saw that he was no longer moving. I gave the club to Kulot (Emerito Abella) and rested for a while.

"I then saw Pakpak grappling with Bundat and Pakpak called for me to help him. I went near them and I stabbed Bundat once. And Bundat lessened his grip from Pakpak then began stabbing Bundat (sic) and when he saw that Bundat is (was) dead, he mixed with the rest.

"Then, he asked me: '*Ano ba ito Cusa (Agustin), aamin rin ba ako*?' Then, I told him: '*siempre tapos na rin iyon*' and he kept quiet. I then continued my rest until at (sic) the employees and guards arrived at the jail. While the rest of my companions continued stabbing and beating our victims, I rested." (Exh. B, pp. 63-64, Record).

Gavilaguin's narrative of the massacre is as follows:

"15. Q. — Will you narrate to me the story of said incident?

"A. — At about 11:55 a. m., June 27, 1965, we were sent out of the cell for our lunch. After the lunch I called the jailer (trusty police) the person of Reynon and told him: '*Pare*, we finished our meal. Please come and I'll tell you something.' Then, he approached and said: 'What?' 'I have a pillow to be given to Rudy Pakpak for sale. You may inspect it if you wish.'

"After (he) inspected, he called Rudy Pakpak and said: 'Will you buy this pillow?" and Rudy said: 'Open the door so that I can see it.' Reynon opened the door and when it was opened, Sofronio Villegas (prisoner) held him (Reynon) tightly, and I grabbed the key

Supreme Court E-Library

from the hand of Reynon. When I got (it), I pushed him away and opened the door. When I got inside the cell, I said: '*Visaya at Ilocano ay tumabi.*'

"My companions followed me inside in the big cell and I told them to watch on the door. I saw trusty police Budoy and (he) closed the door and said: '*Mamatay kayong lahat diyan.*'

"When I went to the middle part of the big cell, I met Abiki having Sigi-sigi tatoo. I stabbed him and he was able to stab the weapon (sharp-pointed stakes) taken from me. When he held my hand, he told me: 'Kalugar (sic), Pilay, you help me. *Tulongan mo ako. Malaki masyado ito.*'

"Pilay approached us and I gave him the blade and he used the same to cut off the neck of Abiki. Abiki released me and I continued stabbing for several others (*sic*). When I saw him down, I left him and went to the other. I saw some Sigi-sigi members. I also stabbed them after which I told Rudy Pakpak: '*Hilahin mo dito and mga patay.*'

"I saw some who were still alive and I told him: Beat them on the head with the wooden clubs.' Afterwards, the employees arrived and shouted: 'You surrender' and we called Mr. Jorge for whom we made the surrender by giving to him our weapons such as sharpened stakes and others.

"Then, we were ordered to go down naked with hands tied and thereafter, we were instructed to go to the place near the toilet until the Judge arrived. The dead ones were brought down x x x." (Exh, E, pp. 76-77 or 55-56, Record)

The trial court forthwith rendered a partial decision convicting the nineteen accused, who pleaded guilty, of the complex crime of multiple murder and multiple frustrated murder, qualified by treachery and premeditation (alleged in the information) and with the special aggravating circumstance of quasi-recidivism which was not offset by their plea of guilty.

In addition, recidivism, which was alleged in the information, was appreciated against Abella, Añover, Cidro, Dionisio, Enrigan, Galanto, Gavilaguin, Hernandez, Loraña, Maldecir, Opsiar, Rolando Pangilinan, Quijano, Ricafort, Taboy, Villaflor and Villegas.

Supreme Court E-Library

Reiteration, which was also alleged in the information, was appreciated against Abella, Gavilaguin, Maldecir, Villaflor, Villarama and Dionisio.

Eighteen accused who pleaded guilty were sentenced to death. Rebutaso the nineteenth accused who also pleaded guilty, was sentenced to *cadena perpetua* (should be *reclusion perpetua*). All of them were ordered to pay solidarily an indemnity of six thousand pesos to the heirs of each of the fourteen victims (Decision of March 5, 1966, p. 238, *Expediente* of Criminal Case No. 9405).

Those who were convicted were sent to the national penitentiary. The eighteen accused (including Ignacio) who pleaded not guilty were tried. Upon motion of the fiscal, on the ground of lack of evidence, the trial court dismissed the case as to Perfecto Bilbar (page 299, *Expediente*).

After trial, the lower court in its decision of September 14, 1969 convicted twelve of the said eighteen defendants, namely (1) Apolonias, (2) Astrologia, (3) Barbajo, (4) Cabcaban, (5) Carballo (6) Cuizon, (7) Duran, (8) Francisco, (9) Ignacio, (10) Pangilinan, (11) Provido, Jr. and (12) Tagana, of the complex crime of multiple murder and multiple frustrated murder with the aggravating circumstances of premeditation and quasi-recidivism (treachery was not mentioned).

The trial court sentenced to death each of the said twelve accused (in addition to the eighteen "close-confined" prisoners who pleaded guilty and were already sentenced to death in the trial court's 1966 partial decision) and ordered them to pay solidarily an indemnity of six thousand pesos to the heirs of each of the fourteen victims, namely, Abique, Bulatao, Camo, Castillo, Castro, Cayetano, Fuentes, Magpantay, Pacon, Padilla, Palino, Refugia, Sanchez and San Miguel. The twelve defendants were further ordered to pay solidarily an indemnity of three thousand pesos to each of the frustrated murder victims, Numeriano Reynon, Juan del Rosario and Bartolome de Guzman.

For lack of evidence, a verdict of acquittal was rendered for six accused, namely, Apolinario, Bilbar, Gaylan, Gelle, Lagarto

Supreme Court E-Library

and Sardenia (Decision of September 14, 1969, page 400, *Expediente*).

So, *thirty of the thirty-seven accused were sentenced to death.* The case of Rebutaso, who was sentenced to *cadena perpetua* and who did not appeal, is not under review.

The death sentence imposed upon Astrologia is likewise not under review because it was not promulgated. After the trial, he was returned to the national penitentiary for security reasons. On October 10, 1969 he was erroneously paroled because the Board of Pardons and Parole was not informed that he was sentenced to death in the Davao court's decision of September 14, 1969 (Pages 413-4 of *Expediente* and pages 1, 152 and 159, *Rollo*).

After the rendition of that decision or during the pendency of this case, death ended the agonies of ten of the twenty-nine accused who were sentenced to death. The ten dead defendants were Añover, Cidro, Cuizon, Galanto, Maldecir, Opsiar, Roberto Pangilinan, Rolando Pangilinan, Ricafort and Villaflor (Pages 98, 125, 171, 176, 181, 212, 336-B, 662, 717 and 750, Volumes I and II of the *Rollo*).

The death penalty imposed on the *remaining nineteen accused named in the title of this case* (Including Abella, Apolonias and Villegas who escaped from confinement, page 158, *Rollo*), is the one under automatic review "as law and justice shall dictate."

Review of death sentence on those who pleaded guilty. — It may be recapitulated that of the nineteen accused in the death row, ten, namely (1) Abella, an escapee, (2) Dionisio, (3) Enrigan, (4) Gavilaguin, (5) Hernandez, (6) Loraña, (7) Quijano, (8) Taboy, (9) Villarama (he allegedly killed on February 12, 1976 a fellow prisoner in the national penitentiary, page 712, Volume II of *Rollo*), and (10) Villegas, an escapee, pleaded guilty upon arraignment and in open court ratified their extrajudicial confessions which were sworn to before the municipal judge. They were sentenced to death in the trial court's 1966 partial decision.

Supreme Court E-Library

Nine of the ten were among the sixteen "close-confined" prisoners in the three small cells who invaded the big cell. The tenth, Dionisio, was confined in the big cell.

After a perusal of their confessions, we find that their admission of guilt therein is corroborated by evidence of the *corpus delicti* or the fact that the massacre described therein actually took place.

The requirements of Section 20, Article IV of the Constitution with respect to extrajudicial confessions are not applicable to the confessions herein because they were taken before the effectivity of the Constitution or before January 17, 1973; *Magtoto vs. Manguera,* L-37201-02; *Simeon vs. Villaluz,* L-37424 and *People vs. Isnani*, L-38929, all decided on March 3, 1975, 63 SCRA 4).

Counsel *de oficio* contends that the accused made an improvident plea of guilty because the lower court did not apprise them of the meaning and consequences of their plea. Reliance is placed on the dictum that in capital cases "it is advisable for the court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant" (*U.S. vs. Talbanos*, 6 Phil. 541, 543).

Also cited is the admonition that "judges are duty-bound to be extra solicitous in seeing to it that when an accused pleads guilty he understands fully the meaning of his plea and the import of an inevitable conviction" (*People vs. Apduhan, Jr.*, L-19491, August 30, 1968, 24 SCRA 798, 817).

And the long settled rule is that in case a plea of guilty is made in capital cases "the proper and prudent course to follow is to take such evidence as are available and necessary in support of the material allegations of the information, including the aggravating circumstances therein enumerated, not only to satisfy the trial judge himself but also to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea" (*People vs. Bulalake*, 106 Phil.

Supreme Court E-Library

767, 770. See *People vs. Baluyot,* L-32752-3, January 31, 1977, 75 SCRA 148).

As already indicated in our recital of the proceedings below, the trial court, in order to comply with the procedure in capital cases when a plea of guilty is entered, required the fiscal to present evidence. The latter presented the confessions of those who pleaded guilty.

It is true that the trial judge did not adhere to the ritualistic formula of explaining to the accused the meaning and consequences of their plea of guilty and the nature of the aggravating circumstances.

Presumably, the trial court did not do so, not only because the judicial confessions of the accused (pleas of guilty) were reinforced by their extrajudicial confessions, but also because it was cognizant of the fact that all the accused were quasi-recidivists who had already acquired experience in criminal proceedings and had, therefore, some comprehension of what a plea of guilty signifies.

We hold that in this case the accused did not make an improvident plea of guilty. As held in *U.S. vs. Jamad,* 37 Phil. 305, 318, it lies within the sound discretion of the trial judge whether he is satisfied that a plea of guilty has been entered by the accused with full knowledge of the meaning and consequences thereof.

People vs. Yamson and Romero, 109 Phil. 793, is a case similar to the instant case. In the *Yamson* case two prisoners in the New Bilibid Prison killed their fellow convict. At their arraignment for murder, they pleaded guilty with the assistance of a counsel *de oficio*. They were forthwith convicted by the trial court and sentenced to death, being quasi-recidivists.

The accused appealed. This Court, in resolving the contention of the counsel *de oficio* that the accused had made an improvident plea, held that the trial judge must have been fully satisfied that the accused entered the plea of guilty with full knowledge of the meaning and consequences thereof. That observation

Supreme Court E-Library

may be applied to the instant case. (Same holding in *People vs. Perete,* 111 Phil. 943 and *People vs. Yamson*, 111 Phil. 406.)

Review of the death sentence on those who pleaded not guilty. — As to the other nine accused, who pleaded not guilty and were tried and sentenced to death, namely, Apolonias, Barbajo, Cabcaban, Carballo, Duran, Francisco, Ignacio, Provido. Jr. and Tagana, it is necessary to make a painstaking examination of the evidence in order to ascertain whether their guilt was established beyond reasonable doubt.

Those nine accused were in the big cell (*bartolina*). The prosecution's theory is that they conspired with the sixteen raiders from the three small cells to kill the fourteen victims and inflict injuries on the three other victims.

1. *Maximo Apolonias alias Max.* — He was born in Barrio Anas, Dimasalang, Masbate. He finished grade four. He was convicted of homicide by the Court of First Instance of Masbate and sentenced to an indeterminate penalty of six months and one day of *prision correccional,* as minimum, to six years and one day of *prision mayor*, as maximum. He was imprisoned in the national penitentiary on December 26, 1964. He arrived in the Davao Penal Colony on May 8, 1965. He was twenty-four years old when he testified on March 13, 1968.

He testified that when the massacre occurred he climbed the wall of steel-matting. He allegedly did not know what transpired when the sixteen "close-confined" raiders entered the big cell. In his statement of August 9, 1965, he denied having joined the sixteen raiders. He repeatedly declared that he could not have been involved in the massacre because he was a new arrival in the penal colony. The massacre took place fifty days after his arrival.

Witness Guevarra said that he did not see Apolonias assaulting the victims (109 tsn November 16, 1966). Witnesses Del Rosario and Rodrigo implicated Apolonias but did not state definitely the acts perpetrated by the latter during the assault.

We find that the prosecution's evidence does not establish beyond reasonable doubt the guilt of Apolonias. As to him, it

Supreme Court E-Library

is not sufficient to justify the judgment of conviction.

2. *Jose Barbajo alias Joe.* — He is a native of Mabolo, Cebu City. He finished grade three. He was eighteen years old when he was convicted of robbery. The Court of First Instance of Cebu imposed upon him a penalty of six years and eight months of *prision mayor* (as a habitual delinquent he was not entitled to an indeterminate sentence) plus three years, six months and twenty-one days for habitual delinquency. He was received in the national penitentiary on July 9, 1964. He arrived in the Davao Penal Colony on September 13, 1964.

He was twenty-five years old when he testified on March 12, 1968. He declared that he was sick when the massacre occurred. He climbed the wall of steel-matting. He said that he was not a member of any prison gang.

Witness Guevarra identified Barbajo as a member of the Oxo gang and as having beaten with a piece of wood one "Bandes" (108, 115 and 127 tsn November 17 and 18, 1966). Witness Del Rosario implicated Barbajo and witness Rodrigo definitely testified that Barbajo supplied to his companions the pieces of wood which they used in beating the victims (10 tsn July 25, 1967).

3. *Catalino Cabcaban alias Inday.* — He was born in Barrio Asagna, Tanjay, Negros Oriental. He finished the fourth grade. He was convicted of theft and evasion of service of sentence. He was confined in the national penitentiary starting August 29, 1962. He arrived in the Davao Penal Colony on May 15, 1964. He was twenty-six years old on October 20, 1967 when he testified.

In his statement (Exh. DD), he admitted that he was a member of the Oxo gang but he denied that he helped the sixteen raiders in assaulting the victims. He testified that at the time the massacre was being perpetrated he was clinging to the wall made of steel-matting. His body was examined while he was on the witness stand. It was tattooed but not with the letters "OXO."

Witnesses Guevarra and Del Rosario, the companions of Cabcaban in the big cell, testified that Cabcaban was a member

Supreme Court E-Library

of the Oxo gang and that he helped Abella's group in attacking the members of the Sigue-Sigue gang in the big cell. Witness Rodrigo, a prisoner acting as a special policeman, pointed to Cabcaban as the person who beat Cabile with a piece of wood (4 tsn July 25, 1967). There is no victim surnamed Cabile, as reported in the transcript, but Rodrigo was probably referring to the victim named Salvador Abique who was also identified by a witness as Tabique. The name "Cabile" might be an error in transcription.

4. *Rodolfo Carballo alias Ruding Pakpak.* — He was born in Villadolid, Negros Occidental. He resided at 958 Antipolo Street, Tondo, Manila. He finished grade six. He was convicted of homicide by the Court of First Instance of Manila and sentenced to six years and one day of *prision mayor* to twelve years and one day of *reclusion temporal.*

He was brought to the New Bilibid Prison on December 8, 1962. He arrived in the Davao Penal Colony on June 20, 1964. He escaped from the penal colony on August 12, 1964 and was recaptured on May 15, 1965. He was twenty-seven years old when he testified on January 8, 1968.

He admitted in his statement to the investigator that he was a member of the Oxo gang and had the Oxo tattoo mark. He testified that during the massacre he climbed the wall of steel-matting but someone pulled his feet and he fell down on the floor.

Witness Guevarra testified that Gavilaguin, a closely-confined prisoner, wanted to sell his pillow to Carballo (who is identified in the confessions as Ruding Pakpak), a prisoner in the big cell. It was that ruse which started the commotion (95-98 tsn November 16, 1966). Guevarra identified Carballo as one of those who helped the sixteen raiders (107 tsn November 17, 1966). That testimony was corroborated by witnesses Del Rosario and Rodrigo.

5. *Elino Duran.* — He was born in Catbalogan, Samar. He finished grade five. He was convicted of homicide by the Court of First Instance of Samar and sentenced to six years

Supreme Court E-Library

and one day of *prision mayor* to fourteen years and eight months of *reclusion temporal.* He was brought to the national penitentiary on December 18, 1962. He arrived in the Davao Penal Colony on March 5, 1963. He was twenty-nine years old when he testified on March 12, 1968.

In his statement and testimony, he denied any participation in the massacre. He said that during the riot he climbed the wall of steel-matting. He said that he was not a member of the Oxo gang but he believed that he was counted as an Oxo sympathizer because he is a Visayan.

He admitted that he executed a statement and that the contents thereof were true (Exh. EE). On the witness stand, he pointed to Ignacio *alias* Pilay, Tagana, Astrologia, Cabcaban and Carballo *alias* Rudy as among those who took part in the massacre.

In his statement, he identified Cuizon, Roberto Pangilinan, Rolando Pangilinan, Cabcaban, Lagarto, Apolonias, Astrologia, Ricafort, Carballo, Ignacio, Tagana and Dionisio as having taken part in the killings (See No. 12, Exh. EE).

Prosecution eyewitnesses Guevarra, Del Rosario and Rodrigo identified Duran as having collaborated with the sixteen raiders in perpetrating the massacre.

6. *Jose Francisco alias Karate.* — He was born in Pila, Laguna and resided at San Andres Extension, Manila. He finished the first year of high school. He used to be a judo instructor. In 1964, he was convicted of robbery by the Court of First Instance of Manila and sentenced to imprisonment for two years and four months of *prision correccional*, as minimum, to eight years and one day of *prision mayor*, as maximum (Exh. J-5). He was confined in the national penitentiary on February 15, 1964. He was received in the Davao Penal Colony on May 15, 1964 and confined in the big cell on June 25, 1965, or two days before the riot, because he was suspected of having smuggled deadly weapons into the prison compound (pp. 93 or 115, Record). He was twenty-five years old when he testified on January 8, 1968.

Supreme Court E-Library

He declared that when the raiders entered the big cell he stepped aside, climbed the wall of steel-matting and prayed. However, witness Guevarra identified Francisco as a member of the Oxo gang who helped the raiders and who, armed with a wooden club, beat the victim, Gualberto Fuentes, who died (108, 114-115 and 127 tsn November 17 and 18, 1966). Witness Del Rosario included Francisco in his wholesale identification of twelve assailants who helped the raiders from the small cells.

Counsel *de oficio*, who filed a brief for Francisco only, contended that the trial court erred in holding that Francisco was a co-conspirator. Said counsel alleged that Francisco was convicted of robbery (snatching) because he was framed up by a certain Patrolman Liwanag of the Manila police. According to counsel, Francisco and one Roberto Gonzales (an actor) had charged Liwanag with extorting money from the Karate-Club, of which Francisco was a member, and, in revenge, Liwanag fabricated a complaint for robbery against Francisco who was convicted and sent to the Davao Penal Colony. No evidence was presented in the lower court by Francisco to prove that he was convicted on a trumped-up charge of robbery.

7. *Guillermo Ignacio alias Pilay.* — He was born in La Carlota, Negros Occidental. He finished grade five. He was convicted of murder, frustrated murder, arson and evasion of service of sentence. He was received in the national penitentiary on July 27, 1953. He arrived in the Davao Penal Colony on September 22, 1961. He escaped three times from prison (Exh. J-12). He was thirty-eight years old when he testified on March 12, 1968.

He declared that when the massacre began, he stood beside the steel-matting. He saw his fellow prisoner, Arsenio Guevarra (the prosecution witness), carrying a pillow. After the riot, he was investigated. He said that he did not read his statement but he was just made to sign it and he signed it so that he would not be maltreated. In his statement, he admitted he was a member of the Oxo gang.

Guevarra said that he did not see Ignacio helping the group (108 tsn November 17, 1966).

Supreme Court E-Library

Witness Rodrigo, a prisoner acting as a special policeman, identified Ignacio as a member of the Oxo gang and as the prisoner who, during the riot, covered the door of the big cell with a blanket and pieces of wood and who, armed with a wooden club, took part in beating the victims (15-16 tsn July 25, 1967)

Witness Del Rosario, in his wholesale identification of the twelve prisoners who took part in the assault, included Ignacio (222 tsn February 10, 1967)

8. *Eugenio Provido, Jr.* — He was born in Sta. Barbara, Iloilo. He finished the sixth grade. He was convicted of theft and violations of Articles 157 and 178 of the Revised Penal Code. He was received in the national penitentiary on December 3, 1959. He arrived in the Davao Penal Colony on February 29, 1964 (Exh. J-17). He was twenty-six years old when he testified on July 10, 1968.

He declared that when the sixteen raiders entered the big cell he was driven to a corner and was shielded by the other prisoners and in that situation he heard the shouts of the rioters. He said that he did not know what actually happened because he was solicitous about his own personal safety. He did not climb the steel-matting. He said that during the investigation of the case, he was told that he would be utilized as a State witness. He denied that he was a member of the Oxo gang.

Witness Guevarra testified that he did not know Provido (90 tsn November 16, 1966). However, when he was asked to point to his (Guevarra's) companions in the big cell who helped Abella's group, Guevarra fingered Provido and identified him as a member of the Oxo gang and as having beaten the victims with a piece of wood (*Ibid.*, 108 and 115; 127 tsn Nov. 18, 1966).

Witness Rodrigo identified Provido as having beaten the deceased Jose Magpantay with a piece of wood (10-11 tsn July 25, 1967). Witness Del Rosario included Provido as among those who participated in the assault (222 tsn February 10, 1967).

Supreme Court E-Library

9. *Angel Tagana.* — He was born in Dulag, Leyte. He finished grade two. He resided in Pandacan, Manila. He had six convictions for robbery with physical injuries, malicious mischief and slander by deed and violations of city ordinances. He was received in the national penitentiary on June 15, 1963. He arrived in the Davao Penal Colony on May 8, 1965 (Exh. J-9). He was twenty-six years old when he testified on January 9, 1968.

He declared that when the sixteen raiders entered the big cell and started stabbing his companions he ran to the side of the cell. He was not assaulted by anyone.

In his statement, he admitted that he was a member of the Oxo gang (p. 119 or 143, Record). Witness Guevarra identified him as a member of that group and as having used a piece of wood in beating one victim (115 and 127 tsn November 17, 1966). Witnesses Del Rosario and Rodrigo also pointed to Tagana as one of those who helped Abella's group (222 tsn February 10, 1967 and 14-15 tsn July 25, 1967).

Counsels *de oficio* contend that the trial court erred in holding that there was a conspiracy among the accused. That contention has no basis in the evidence. The record supports the trial court's finding that "conspiracy can logically be inferred from the simultaneous and concerted acts of (the) sixteen raiders who, after putting down the guard and entering the big cell, joined and combined forces with their friends and associates-inmates of the big cell who were waiting for the go-signal to commence the attack in pursuance of their criminal objective."

The trial court added that the acts and conduct of the accused from the start of their aggression until the riot was suppressed were characterized "by a swift, united and concerted movement that could easily indicate a community of purpose, closeness of association and concurrence of wills," as shown particularly by the order of the two "close-confined" prisoners, Abella and Villaflor, that the Visayans in the big cell should stay on one side so that it could be ascertained that they were the allies of the sixteen raiders.

Supreme Court E-Library

The conspiracy among the accused was manifest and indubitable. The massacre had been planned by the sixteen "close-confined" prisoners in collaboration with the other members of the Oxo gang in the big cell.

Counsel *de oficio* assails the credibility of witnesses Guevarra and Del Rosario. These two witnesses were prisoners in the big cell. They had sufficient opportunity to observe what took place during the hour-long riot. Del Rosario was himself a victim.

Counsel *de oficio* contends that reiteration is not aggravating because there is no evidence that the said accused had been previously punished for an offense to which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty. On the contrary, according to counsel, the said accused were still serving sentence for their prior convictions.

Counsel's contention is correct as to Abella. Dionisio, Gavilaguin, Maldecir, Villaflor and Villarama against whom reiteration was considered aggravating. They were still serving sentence for their previous crimes at the time the riot occurred. In order that the aggravating circumstance of reiteration may be taken into account, it should be shown that the offender against whom it is appreciated had already served out his sentences for the prior offenses (*People vs. Layson,* L-25177, October 31, 1969, 30 SCRA 92, 97).

But since the accused are quasi-recidivists, the fact that reiteration cannot be appreciated against them and that their plea of guilty is mitigating will not affect the imposition of the death penalty for the murders and frustrated murders which they had committed.

The other contention of counsel *de oficio* that all the accused should be given the benefit of the extenuating circumstance of voluntary surrender to the authorities is not correct. The accused did not surrender voluntarily and unconditionally. They rejected the initial requests for their surrender. They surrendered after prison officials armed with guns demanded their surrender. They

Supreme Court E-Library

chose the person to whom they would surrender, namely, Jorge, the overseer.

Defense counsel's contention that treachery and evident premeditation are not aggravating in this case is untenable. The accused, who were all armed, unexpectedly attacked the unarmed and defenseless *Sigue-Sigue* inmates in the big cell who had no means of escaping from that cell and who could not avoid their assaults. The victims did not offer any resistance.

The accused had deliberately planned the attack as shown by the manner in which they executed the massacre. They provided themselves with improvised weapons. No one among the accused sustained any injuries or was exposed to any risk arising from any defense that the victims might have made. The victims were not able to make any retaliation. Moreover, there was abuse of superiority which absorbed *cuadrilla.*

In *People vs. Layson,* L-25177, October 31, 1969, 30 SCRA 92, the four accused, also inmates of the Davao Penal Colony, who were armed with bladed weapons, entered on January 17, 1964 the cell of their fellow prisoners, locked the door thereof and stabbed him to death. It was held that the crime was murder aggravated by treachery, evident premeditation and quasi-recidivism.

The *Layson* case is similar to the instant case. The difference between the two cases is that in the instant case, more prisoners were involved and there were seventeen victims.

Motion for new trial. — On October 30, 1973 or after the Solicitor General had filed his brief, twenty of the thirty accused, who were sentenced to death, filed, personally or without the assistance of counsel, a motion for new trial. Those twenty movants are Añover *alias* Abarca (who died on June 18, 1976), Barbajo, Cabcaban, Carballo, Cuizon (who died on November 6, 1977), Dionisio, Duran, Enrigan, Francisco, Gavilaguin, Hernandez, Ignacio, Loraña, Opsiar (who died on April 2, 1974), Provido, Quijano, Tagana, Taboy, Villarama and Villegas.

Of those twenty, ten accused, namely, Dionisio, Enrigan, Gavilaguin, Hernandez, Loraña, Opsiar, Quijano, Taboy, Villarama

Supreme Court E-Library

and Villegas had pleaded guilty. Nine of the ten were "close-confined" prisoners in the three cells. The tenth, Dionisio, was in the big cell. The other ten of the twenty accused were from the big cell. They pleaded not guilty and they were tried.

The twenty movants alleged in their motion for new trial that those who pleaded guilty did so due to "the coercion, harassment and intimidation applied by the prison authorities" or due to "third degree" and other brutalities. They further alleged that one of the "fabricated (prosecution) witnesses" was Guillermo Ignacio who made a retraction and that another witness, Elino Duran, was forced to sign his affidavit.

The Solicitor General commented that the grounds relied upon by the movants are not the grounds for a new trial under Sections 2 and 3, Rule 121 and Section 13, Rule 124 of the Rules of Court. He correctly observed that Ignacio and Duran were not utilized as prosecution witnesses.

Action on the motion for new trial was deferred until the case is decided on the merits. After an evaluation of the said motion, we find that it is devoid of merit and is not in order.

The record does not show that Ignacio retracted his statement. Duran never claimed that he was intimidated into making his statement. Those movants who pleaded guilty were convicted on the basis of their confessions which they ratified during the trial. On the other hand, those who pleaded not guilty were given a fair trial. They testified and they had the opportunity to prove their innocence. Their testimonies (except Apolonias' testimony) did not generate any reasonable doubt as to their guilt.

Propriety of the imposition of the death penalty on the eighteen accused. — As to the fourteen deceased victims, the crime is murder qualified by treachery which absorbs abuse of superiority and *cuadrilla*. As to those who pleaded guilty, that mitigating circumstance is offset by evident premeditation. Recidivism is aggravating as to some accused. As to all the eighteen accused, quasi-recidivism is a special aggravating circumstance which justifies the imposition of the penalty for

Supreme Court E-Library

murder (*reclusion temporal* maximum to death) in its maximum period or death.

The fiscal and the trial court treated the fourteen killings and the injuries inflicted on the three victims as a complex crime of multiple murder and multiple frustrated murder. The trial court imposed a *single death penalty.*

However, the Solicitor General submits that the accused should be convicted of fourteen separate murders and three separate frustrated murders and punished, respectively, by *fourteen death penalties* and three penalties for the frustrated murders because the killings and injuries were effected by distinct acts.

It is argued that Article 48 of the Revised Penal Code is not applicable to this case. Cited in support of that stand is the ruling in *U.S. vs. Ferrer,* 1 Phil. 56 that "where the defendant has fired two shots, killing one party and wounding another, the acts constitute two distinct crimes, each of which must be tried separately."

We hold that the Solicitor General's submission is not well-taken. In the *De los Santos* case, *supra,* which involved two riots on two successive days in the National Penitentiary wherein nine prisoners were killed (five on the first day and four on the second day), the fourteen members of the *Sigue-Sigue* gang who took part in the killing were convicted of multiple murder (a complex crime) and not of nine separate murders. Only one death penalty was imposed. It was commuted to *reclusion perpetua* for lack of necessary votes.

There is no compelling reason for not deciding this case in the same way as the *De los Santos* case. The two cases are very similar.

The ruling in the *De los Santos* case is predicated on the theory that "when, for the attainment of a single purpose which constitutes an offense, various acts are executed, such acts must be considered only as one offense," a complex one (*People vs. Peñas,* 66 Phil. 682, 687. See *People vs. Cu Unjieng,* 61 Phil. 236, 302 and 906, where the falsification of one hundred twenty-eight warehouse receipts during the period from November

Supreme Court E-Library

1930 to July 6, 1931, which enabled the accused to swindle the bank in the sum of one million four hundred thousand pesos was treated as only one complex crime of estafa through multiple falsification of mercantile documents and only one penalty was imposed).

That holding in the *De los Santos* case is buttressed by some precedents. Thus, in *People vs. Cabrera*, 43 Phil. 64 and 82, 102-103, where seventy-seven Constabularymen murdered six policemen (including the assistant chief of police) and two private citizens and gravely wounded three civilians, they were convicted of multiple murder with grave injuries, a complex crime. The eleven sergeants and corporals were sentenced to death while the sixty-six privates were sentenced to *reclusion perpetua*. (See *People vs. Umali,* 96 Phil. 185, *re* sedition and multiple murder.)

In *People vs. Sakam*, 61 Phil. 27, nineteen Moros, forming part of a band of one hundred, massacred fourteen Constabulary men. They were charged and convicted of multiple murder, a complex crime. Their ring leader was sentenced to death. The other eighteen accused were sentenced to *reclusion perpetua.*

In *People vs. Lawas*, 97 Phil. 975, where on a single occasion around fifty Maranaos were killed by a group of home guards (formerly Constabulary soldiers), the killing was held to be only one complex offense of multiple homicide because it "resulted from a single criminal impulse" and it was not possible to determine how many victims were killed by each of the accused. (See *U.S. vs. Fresnido*, 4 Phil. 522 where the killing of three Constabulary soldiers on a single occasion was punished as a single homicide.)

In *People vs. Manantan,* 94 Phil. 831, around eighty persons stationed on both sides of the highway in Sitio Salabusab, Bongabong, Nueva Ecija, fired at the group of Aurora *Vda. de* Quezon riding in five cars which were proceeding to Baler, Quezon Province. The group was going to attend the inauguration of a monument in honor of President Manuel L. Quezon.

Supreme Court E-Library

Killed as a result of the ambuscade were eleven persons, namely, Mrs. Quezon, Baby Quezon, Felipe Buencamino III, Mayor Ponciano Bernardo of Quezon City, Primitivo San Agustin, Antonio San Agustin, Pedro Payumo, two Constabulary lieutenants, one corporal and a soldier.

Five persons were charged with *multiple murder*, a complex crime, for complicity in the ambuscade. The trial court sentenced them to death. They appealed. The case as to three of the accused was dismissed on the ground that their confessions were taken after they had been tortured.

Two other accused, Pedro Manantan and Raymundo Viray, executed extrajudicial confessions. At the trial, they relied on alibis, which were not given credence.

This Court imposed upon Manantan and Viray only one death penalty for the multiple murder but for lack of necessary votes, the penalty was reduced to *reclusion perpetua.*

As persuasive authority, it may be noted that the Court of Appeals rendered the same ruling when it held that where a conspiracy animates several persons with a single purpose "their individual acts in pursuance of that purpose are looked upon as a single act — the act of execution — giving rise to a complex offense. The felonious agreement produces a sole and solidary liability: each confederate forms but a part of a single being" (*People vs. Leaño*, 1 ACR 447, 461 *per* Albert, *J.*, with Justices Pedro Concepcion, Moran, Sison and Paras concurring).

In the *Leaño* case, a group of twenty-five persons armed with bolos, knives, sticks and other weapons, after shouting to one another "Remember the agreement! Don't be afraid!," attacked a group of excursionists coming from the Vintar Dam in Ilocos Norte, who were riding in a Ford coupe and omnibus.

As a result of the attack, one excursionist was killed, three suffered *lesiones menos graves* and four suffered light injuries. The trial court convicted the assailants of homicide only. The Solicitor General recommended that they be convicted of *lesiones menos graves* and *lesiones leves* in addition to homicide. The

Supreme Court E-Library

Court of Appeals held that the appellants were guilty of the complex crime of homicide with *lesiones menos graves*.

The holding that there is a complex crime in cases like the instant case is similar to the rule in robbery with homicide, a special complex crime, where the number of persons killed on the occasion or by reason of the robbery does not change the nature of the crime.

We have already stated that the conviction for multiple murder and multiple frustrated murder, as a complex crime, qualified by treachery (absorbing abuse of superiority and *cuadrilla*) and aggravated by quasi-recidivism and evident premeditation (offset by plea of guilty) and recidivism, as to some accused, as shown in the record, should be affirmed.

The death penalty was properly imposed in conformity with Articles 48, 160 and 248 of the Revised Penal Code. The indemnity of six thousand pesos should be increased to twelve thousand pesos for each set of heirs of the fourteen victims.

However, justice should be tempered with mercy. Considering the circumstances which drove the accused to massacre their fellow prisoners, they deserve clemency. The death penalty should be commuted to *reclusion perpetua*. The following observations of this Court in the *De los Santos* case have some relevancy to this case:

"But the members of the Court cannot in conscience concur in the death penalty imposed, because they find it impossible to ignore the contributory role played by the inhuman conditions then reigning in the penitentiary, vividly described by the trial judge in his decision.

"It is evident that the *incredible overcrowding* of the prison cells, that taxed facilities beyond measure and the starvation allowance of ten centavos per meal for each prisoner, must have rubbed raw the nerves and dispositions of the unfortunate inmates, and predisposed them to all sorts of violence to seize from their owners the meager supplies from outside in order to eke out their miserable existence.

"All this led inevitably to the formation of gangs that preyed like wolf packs on the weak, and ultimately to pitiless gang rivalry for the control of the prisoners, abetted by the inability of the

Supreme Court E-Library

outnumbered guards to enforce discipline, and which culminated in violent riots. The government cannot evade responsibility for keeping prisoners under such sub-human and Dentesque conditions.

"Society must not close its eyes to the fact that if it has the right to exclude from its midst those who attack it, it has no right at all to confine them under circumstances that strangle all sense of decency, reduce convicts to the level of animals, and convert a prison term into prolonged torture and slow death." (See *People vs. Dahil,* L-30271, June 15, 1979.)

Justice Barredo believes that in a case like the instant case, where, since the commission of the multiple murder and multiple frustrated murder in 1965 or more than fourteen years ago, the accused have been in confinement and in fact they have been in confinement for other offenses even prior to 1965, the death penalty should be commuted to *reclusion perpetua.*

WHEREFORE, following the precedent established in the aforecited *De los Santos* case, the death penalty imposed by the lower court is reduced to *reclusion perpetua.* The indemnity of six thousand pesos is increased to twelve thousand pesos. The indemnities for the frustrated murders are affirmed. Defendant Maximo Apolonias is acquitted on the ground of insufficiency of evidence. Costs *de oficio.*

SO ORDERED.

Fernando, C.J., Teehankee, Antonio, Concepcion Jr., Fernandez, Guerrero, Abad Santos, De Castro, and *Melencio-Herrera, JJ.*, concur.

Barredo, J., concurs. Please see my concurring opinion in *People vs. Borja, et al.*, G.R. No. L-22948.

Makasiar, J., in the result.

Santos, J., abroad.