

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ABUNDIO LABINIA AND MICHAEL ANDAYA, DEFENDANTS-APPELLANTS.*G.R. No. L-38140. July 20, 1982*

Ponente: MELENCIO-HERRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/2efb5ac5f289/>**MELENCIO-HERRERA, J.:**

Automatic review of the Decision of the Circuit Criminal Court of Pasig, Rizal, in CCC-VII-1014-Rizal, for Murder, convicting the accused, Abundio Labinia and Michael Andaya, of the crime charged, and sentencing them to death. The third accused, Jimmy Heights, was allowed by the Court, with the conformity of the Fiscal to withdraw his plea of Not Guilty and plead Guilty to the lesser offense of Homicide, before the commencement of the trial of the case, and was sentenced accordingly.

All three accused are inmates of the New Bilibid Prisons at Muntinlupa, Rizal, serving their respective sentences, Abundio Labinia for Murder[1] and Michael Andaya for Robbery having been convicted by the Court of First Instance of Masbate, and for having killed a person in 1972 for which he was sentenced to reclusion perpetua.[2] The victim, Edilberto de los Santos, was also an inmate.

The incident occurred on October 15, 1970. Prior to that date, the accused Labinia entrusted the amount of P40.00 to Edilberto de los Santos, who could go in and out of the brigade, for the latter to buy some goods which the former would sell to his fellow inmates at the penitentiary.[3] Labinia had, several times in the past, requested Edilberto to buy goods for him with which the latter complied. But this time Edilberto misappropriated the money and failed to deliver the goods despite repeated demands by Labinia. The latter learned later on, that the victim had lost the money in gambling, and this aroused Labinia's ire.

In the morning of October 15, 1970, Labinia confided to his friend, accused Michael Andaya, his gripes against the victim.[4] At about, 4:45 in the afternoon of that same day, Edilberto was stabbed somewhere in the plaza between the Reception and Diagnostic Center (RDC) and Dormitory 5-B, by Jimmy Heights.[5] The victim ran towards Dormitory Labinia, who was at the door of the brigade, stabbed him four or more times with an ice pick about 11 inches long.[6] Then the victim was stabbed by Andaya with an improvised weapon called 'matalas'. [7] The victim staggered towards the kitchen where he was followed by Labinia and Andaya, and stabbed again until he slumped dead.[8] The stabbing in the kitchen was witnessed by PG Andres Esporlas then on duty as Acting Food Supervisor, Thereafter, the three inmates surrendered to prison guard, Polistico, and gave up their "matalas" or improvised weapons.

The victim sustained twenty (20) stab wounds, two of which were fatal, several incised wounds and abrasions, and two wounds, allegedly inflicted in his defense, on the right and left arms.[9] The three inmates were investigated by PG-Investigator Jesus B. Tomangan[10] and they executed sworn statements in the early evening of October 15, 1970 admitting their participation in the crime committed.[11]

An information for Murder was filed against Jimmy Heights, Abundio Labinia and Michael Andaya before the Circuit Criminal Court of Pasig, Rizal, reading:

"That on or about October 15, 1970, in the New Bilibid Prison, Muntinlupa, Rizal, Philippines, and within the jurisdiction of this Honorable Court, the said accused while then confined at the said institution, being members of the "OXO" Gang, conspiring, confederating and acting together and each armed with improvised deadly weapon, did then and there willfully, unlawfully and feloniously assault and wound therewith one EDILBERTO DELOS SANTOS, No. 10782=P, a sentenced prisoner in the same institution, inflicting upon him multiple stab wounds, while then unarmed and unable to defend himself from the attack launched by the accused, as a result of which said de los Santos died instantly.

That the offense when committed the above accused was attended by the qualifying circumstance of treachery and the generic aggravating circumstance of evident premeditation. That the accused Labinia is a recidivist having been convicted by the Circuit Criminal Court of Manila on December 4, 1969 for the crime of Murder.

Contrary to Law."

On April 28, 1972, the three accused were arraigned and pleaded not guilty.[12] At the hearing of August 12, 1972, the accused Jimmy Heights, assisted by counsel de officio, moved that he be allowed to withdraw his former plea of not guilty and substitute it with a plea of guilty to the lesser offense of Homicide. No objection having been interposed by the Fiscal, the Court granted the Motion and sentenced Jimmy Heights to 12 years and 1 day of reclusion temporal, as minimum, to 20 years of reclusion temporal, as maximum, to indemnify the heirs of the victim in the amount of P12,000.00, to pay moral damages of P10,000.00, exemplary damages of P10,000.00, and costs.[13]

The prosecution's evidence consisted of the testimony of Dr. Ricardo G. Ibarrola, a Medico-Legal Officer of the National Bureau of Investigation, who performed the autopsy on the cadaver of the deceased, and Mr. Jesus Tomagan, prison guard of the New Bilibid Prison, who conducted the investigation on the incident. An eye-witness, prison guard Andres P. Esporlas, who was on duty as Acting Food Supervisor at the kitchen from 4:00 P.M. to 12:00 M.N. on the date of the incident, executed an Affidavit[14] concerning the occurrence. However, he was unable to testify because he was liquidated by some prisoners before the trial of the case.[15]

After the prosecution had rested, and on the date set for the reception of evidence for the defense, the accused Labinia, after testifying that he had stabbed the victim, moved, through his counsel, to withdraw his plea of not guilty and to plead guilty to Homicide. The Fiscal objected, the Court denied the Motion, and ordered the defense to continue with the presentation of its evidence.[16]

Labinia and Andaya admitted having stabbed the deceased, but Labinia alleged that he did it in self-defense, while Andaya claimed that he only went to the succor of Labinia.

On January 22, 1974, the Trial Court convicted Labinia and Andaya of Murder and sentenced them to death, as follows:

"WHEREFORE, finding the accused Abundio Labinia and Michael Andaya, GUILTY, beyond reasonable doubt, of the crime of Murder, as defined under Article 248 of the Revised Penal Code, as charged in the information, the Court hereby sentences them to suffer the penalty of DEATH; to indemnify the heirs of the of-fended party the amount of P10,000.00; to pay moral damages in the amount of P5,000.00 and another P5,000.00 as exemplary damages, jointly and severally; and to pay their proportionate share of the costs."

Labinia assigned the following errors:

- "1) The trial court erred in not allowing the accused-appellant to withdraw his plea of not guilty and in lieu thereof to enter a plea of guilty to a lesser offense of Homicide.
- 2) The trial court erred in finding the accused guilty of murder.

3) The trial court erred in assuming that the appellant conspired together in stabbing and killing the victim, E. de los Santos.

Whereas Andaya's assignment of errors follows:

- "1) The trial court erred in admitting in evidence the statement of prison guard Esporlas considering he was already dead and did not testify during the trial.
- 2) The trial court erred in not motu proprio having dismissed the information considering that when the prosecution rested its case, it had not established the corpus delicti, much less, proven a prima facie case.
- 3) Assuming arguendo that the proceeding in the court a quo were not improper, the trial court nonetheless erred in finding the accused appellant guilty of a crime of murder, first, in the absence of evidence, in support of the qualifying circumstance; and, second, in the absence of a specific finding of facts in the decision showing how the qualifying circumstance is constituted."

On Labinia's Offer to Change His Plea:

In his first assigned error, Labinia maintains that there was no justification in the denial of his Motion to withdraw his former plea of not guilty to Murder, and to substitute it with a plea of guilty to Homicide after the trial Court had earlier granted a similar Motion by a co-accused, Jimmy Heights.

Section 6, Rule 118 of the Rules of Court provides:

"Sec. 6. Plea of guilty - Withdrawal of. - The court may in its discretion at any time before sentence permit a plea of guilty to be withdrawn. If judgment of conviction has been entered thereon and the same has not become final, the court may set aside such judgment, and allow a plea of not guilty, or, with the consent of the fiscal, allow a plea of guilty of a lesser offense which is necessarily included in the charge."

It is evident that the withdrawal of a plea of not guilty to one of guilty to a lesser offense rests within the sound discretion of the Court and of the Fiscal. It is not a matter of strict right.[17] Court is in duty bound to inquire carefully into the circumstances on which it is premised.[18] In not allowing the change of plea, the Trial Court merely exercised a clearly discretionary power in a way that was warranted by the circumstances. As contrasted to the plea made by the accused Jimmy Heights before trial on the merits, Labinia offered to substitute his plea only after the prosecution had already presented its evidence and had apparently sufficiently established the crime of Murder. As held in the case of *People vs. Parohinog*, 96 SCRA 373 (1980), after the prosecution in a murder case has rested its case, a change of plea of guilty to Homicide would be highly improper and irregular if the evidence has made out a case of Murder, for then the Trial Court and the Prosecuting Fiscal would be helping the accused to avoid receiving a more severe penalty.

The Circumstance of Treachery:

In Labinia's second and Andaya's third assigned errors, they claim that there was no iota of evidence in support of the qualifying circumstance of treachery and that the trial Court's "Sentence" does not disclose any specific finding of fact constitutive of that qualifying circumstance.

These asseverations deserve scant consideration. The judgment under review details sufficiently how the deceased was stabbed suddenly and successively by the three accused without risk on their part. The initial attack on the victim by Jimmy Heights was made when the victim's back was turned from Jimmy Heights.[19] After the victim was stabbed by Jimmy, Labinia took his turn in stabbing the victim four or more times, after which he was also stabbed by Andaya, again for four or more times. When the victim staggered towards the kitchen, he was chased by Labinia and Andaya and stabbed again. The victim was already helpless, according to Andaya when the latter

stabbed the former.

All the three malefactors were admittedly armed with sharp pointed instruments, while the victim was unarmed and in his wounded state was in no position to defend himself. Andaya declared that the deceased was not even able to parry his stab blows because he (deceased) was blocked by Labinia, and that the attack was sudden.[20]

All the foregoing clearly reveal the existence of treachery. There is treachery where the victim after the first stabbing, runs away and is pursued by his assailants and in that defenseless state stabbed once more.[21]

Labinia's claim of self-defense:

Labinia further claims that he merely acted in self-defense when he stabbed the victim who was then in the act of throwing an empty stainless pot at him.[22]

Self-defense, like alibi, is a defense which can easily be concocted,[23] so that the burden of proving such defense is on the accused invoking the same.[24] It is settled that to prove self-defense, the accused must show with clear and convincing evidence, (1) that he is not the unlawful aggressor; (2) that there was lack of sufficient provocation on his part; (3) that he employed reasonable means to prevent or repel the aggression. A mere threatening or intimidating attitude, like aiming to throw a pot, is not sufficient. The offensive act must have been made positively determining the intent of the aggressor to cause an injury.[25] The victim in this case was not even able to hit Labinia with the pot because he dropped the same when Labinia stabbed him.[26] Moreover, the fact that Labinia even chased the victim to the kitchen and stabbed him again belies the plea of self defense.

The Existence of Conspiracy:

In his third assignment of error, Labinia claims that the attack on the victim was not done by the three of them simultaneously, nor was it a concerted one; that the victim initiated the aggression; that in the process of repelling the victim's aggression he had to shout for help; that the accused Andaya came into the picture only when he heard his (Labinia's) shout for help. All these, he argues, negate the existence of conspiracy.

Conspiracy need not be proved by direct evidence. It may be inferred from the mode and manner in which the offense was perpetrated.[27] The claim of unlawful aggression on the part of the victim was not proved. Neither is the allegation that Labinia shouted for help credible. He was armed with an improvised ice pick, which he admittedly used in stabbing the victim, who was unable to parry the same with the pot he was allegedly holding because he dropped the pot when Labinia struck him.[28] If there had been any shout for help, the same must have come from the wounded victim who was then being attacked by Labinia.

The acts of the three accused in stabbing the victim one after the other show a community of criminal purpose or design. Although no previous agreement to commit the crime has been proven, such is not essential. It is sufficient that the malefactors acted in concert pursuant to the same objective.[29] The tacit and spontaneous cooperation and coordination by the three accused in inflicting multiple stab wounds on different parts of the victim's body shows the existence of conspiracy.[30]

The Prison Guard's Statement:

Andaya avers in his first assigned error that the trial Court erred in admitting in evidence the statement of prison guard Esporlas, who witnessed the stabbing in the kitchen, but who was killed before he could be presented in Court. The defense objected to its formal offer in evidence on the ground that it was hearsay but the trial Court, nonetheless, admitted the said statement. This is reversible error. The affidavit of Esporlas is inadmissible as the affiant could not have been cross-examined on the facts stated therein. However, even without this sworn statement, the accused could still be convicted of the offense charged on the basis of their admission of the killing,

albeit with their own respective defenses.

The "corpus delicti":

Andaya's second assignment of error avers that the prosecution had not established the corpus delicti, nor proven a prima facie case. He stated that the trial Court utilized Exhibit 1 (Affidavit of Esporlas) as the evidence required by Rule 133, Section 3, to establish corpus delicti, and since said exhibit is manifestly hearsay, it was grave error for the trial Court to have considered the same.

The fact of death or the killing is the corpus delicti in Murder.[31] It is the substance of the crime, the fact that a crime has actually been committed.[32] The Necroscopy Report (Exh. A) with the accompanying photographs of the victim's body,[33] together with the admission of both accused that they killed the victim sufficiently establish corpus delicti.

Evident premeditation:

The aggravating circumstance of evident premeditation cannot be considered against the accused. No evidence of planning by them and sufficient lapse of time before determination and execution to allow them to reflect on the consequence of their act was adduced.[34] In the absence of proof reflection and persistence of criminal intent, evident premeditation cannot be appreciated.[35]

Quasi-recidivism:

Under Article 160 of the Revised Penal Code, quasi-recidivism is a special aggravating circumstance where a person, after having been convicted by final judgment, shall commit a new felony before beginning to serve such sentence, or while serving the same. It is not required that the felony previously committed be embraced in the same title of the Code.[36] It is punishable by the maximum period of the penalty prescribed by law for the new felony and cannot be offset by any ordinary mitigating circumstance.[37]

Quasi-recidivism was properly appreciated against the accused Labinia. He was serving sentence for Murder by virtue of a conviction by the Circuit Criminal Court of Manila when he killed de los Santos.

As far as Andaya is concerned, the Information specifically alleges that the crime was committed by all three accused "while they were confined at the New Bilibid Prison, Muntinlupa, Rizal." That is a sufficient allegation of quasi-recidivism within the meaning of Article 160 of the Revised Penal Code.[38] It is not disputed that Labinia and Andaya were serving sentence for other offenses at the time of the commission of the present crime. In the words of the Trial Court:

"The accused Labinia claimed that he has been sentenced for the crime of murder by the Circuit Criminal Court of Manila, whereas accused Andaya has been serving a life imprisonment penalty during the commission of the crime."

Under Article 248 of the Revised Penal Code, the penalty for Murder is reclusion temporal in its maximum period to death. Taking into account the special aggravating circumstance of quasi-recidivism, which cannot be offset by the mitigating circumstance of voluntary surrender, the imposition of the death penalty by the Trial Court is justified.

In respect of the civil indemnity and as correctly observed by the Solicitor General, the indemnity to the heirs of the victim should be increased from P10,000.00 to P12,000.00, which is now the minimum amount of compensatory damages provided by law for death caused by a crime.[39]

WHEREFORE, the judgment under automatic review is hereby affirmed. However, for lack of the necessary

votes, the death penalty imposed by the Trial Court is commuted to reclusion perpetua. Both accused are ordered, jointly and severally, to pay an indemnity of P12,000.00 to the heirs of Edilberto de los Santos. In all other respects, the appealed judgment is affirmed.

Proportionate costs against the accused.

SO ORDERED.

Fernando, C.J., Makasiar, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur. Barredo, J., I concur in the finding of guilty of appellants and because they have been in detention for more than ten (10) years, I concur in this penalty imposed of reclusion perpetua. Aquino, J., in the result. Teehankee, J., no part.

[1] pp. 15 & 17, tsn., Dec. 26, 1973, CCC Record.

[2] p. 3, tsn., Dec. 27, 1973, *ibid* and Exh. G.

[3] pp. 9-10, tsn., Dec. 26, 1973, *ibid*.

[4] p. 5, tsn., Dec. 27, 1973, *ibid*.

[5] p. 17, tsn., Dec. 26, 1973; Exh. F, p. 92, *ibid*.

[6] p. 14, tsn., Dec. 26, 1973. *ibid*.

[7] pp. 13, 17, tsn., Dec. 27, 1973.

[8] p. 35, tsn., Dec. 26, 1973; p. 17, tsn., Dec. 27, 1973.

[9] Exhs. A, A-I, B, B-1 to B-4, pp. 85-91, CCC Record.

[10] Exh. F, p. 92, *ibid*.

[11] Exhs. G & H, pp. 93-95, *ibid*.

[12] p. 5, *ibid*.

[13] pp. 31-33, *ibid*.

[14] Exh. I, I-1, p. 96, *ibid*.

[15] p. 14, tsn., Aug. 19, 1972, pp. 3-4, tsn., July 21, 1973, *ibid*.

[16] pp. 4-6, tsn., Dec. 26, 1973, *ibid*.

[17] *People vs. Nueno*, 70 Phil. 556 (194D).

[18] *People vs. Kayanan*, 83 SCRA 437 (1978).

[19] p. 19, tsn., 26, 1973.

[20] pp. 10-11, tsn., Dec. 27, 1973.

[21] *People vs. Vegayan*, 91 SCRA 572 (1979).

[22] p. 7, tsn., Dec. 26, 1973.

- [23] *People vs. Pay-an*, 84 SCRA 353 (1978).
- [24] *People vs. Talabok, Jr.*, 30 SCRA 87 (1969).
- [25] *People vs. Castañares*, 92 SCRA 567 (1979).
- [26] p. 25 tsn., Dec. 26, 1973.
- [27] *People vs. Ruiz*, 93 SCRA 739 (1979).
- [28] p. 25 tsn., Dec. 26, 1973.
- [29] *People vs. Garcia y Cabarse*, 94 SCRA 14 (1979).
- [30] *People vs. Aleta*, 72 SCRA 542 (1976).
- [31] *People vs. Fontanosa*, 20 SCRA 249 (1967).
- [32] *People vs. Madlangbayan*, 94 SCRA 679 (1979).
- [33] Exhs. B, B-1, to B-4.
- [34] *People vs. Casiguran*, 94 SCRA 244 (1979).
- [35] *People vs. Resurreccion*, 94 SCRA 696 (1979).
- [36] *U.S. vs. Mohamad*, 33 Phil 524 (1916).
- [37] *People vs. Perez*; 102 SCRA 352 (1981); *People vs. Villacores*, 97 SCRA 567 (1980); and *People vs. Majuri*, 96 SCRA 472 (1980).
- [38] see *People vs. Gonzales*, 101 SCRA 246 (1980).
- [39] *Palisoc vs. Brillantes*, 41 SCRA 548 (1971); *People vs. Cardenas*, 56 SCRA 631 (1974).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.