

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODOLFO ANDAYA, DEFENDANT-APPELLANT.***G.R. No. L-48735. January 19, 1981*

Ponente: PER CURIAM: Automatic review of the death sentence imposed on the appellant, Rodolfo Andaya, in a decision dated October 10, 1977 of the Court of First Instance of Davao (Branch III, Davao City). This is a second death sentence imposed on the appellant for the same offense after the first was set aside by this Court when it came up for review, on the ground of same having been pronounced on an improvident plea of guilty.[1]The death sentence now under review was imposed after proper hearing, as directed by this Court in its decision promulgated on July 23, 1973, the prosecution presenting its evidence, notwithstanding appellant's entering a conditional plea of guilty, because it was with a prayer "to be sentenced only to life imprisonment"[2] which the trial court directed to be entered as a plea of not guilty.[3] However, upon request for re-arraignment on August 3, 1977, by his counsel, appellant changed his conditional plea to one of unqualified plea of guilty, on which appellant stood firm, even, after being apprised by the Court a quo of the real import and grave consequences of such a plea, particularly the inevitability of the imposition of the death penalty, in view of the presence of aggravating circumstances as alleged in the information, among which, that of quasi-recidivism. The defense also presented its evidence but only for the purpose of proving mitigating circumstances in favor of appellant. The evidence presented by the prosecution is, as summarized in the decision under review dated October 10, 1977, as follows: "Accordingly, the prosecution presented as its first witness Judge Sabas Sayon, Municipal Judge of Sto. Tomas, Davao, who substantially declared: that he has been the Municipal Judge of Sto. Tomas, Davao, since 1960 up to the present; that sometime in July 1967 he remembered that the affidavit of accused Rodolfo Andaya (Exhibit 'D') was subscribed and sworn to before him, the former having signed it in his presence after the (accused) was made to fully understand the contents thereof; that he (witness) himself conducted the investigation in the mixed Visayan and Tagalog, which are the dialect and language accused speaks and understands; that he affirmed that he (accused Rodolfo Andaya) had admitted having stabbed the victim Paulino Malbas in the course of his investigation and which admission is found in the affidavit (Exhibit 'D-1'); that the affiant Rodolfo Andaya in Exhibit 'D' is the very same person who now stands charged of the crime of MURDER; that he remembered likewise that another affidavit (Exhibit 'E') was subscribed and sworn to before him by affiant thereof, the herein accused Rodolfo Andaya; that although the said affidavit (Exhibit 'E') was already prepared by the police, he investigated again the said affiant Rodolfo Andaya as to the veracity of its contents which the latter readily affirmed having fully understood its contents; that witness really took the necessary steps to ascertain that the affiant understood its contents, particularly the answer admitting that he (Rodolfo Andaya) stabbed the victim with a bolo (machette) at different parts of the body of the victim until he died (Exhibit 'E-1'); that he (Rodolfo Andaya) affirmed the truth of such statement (Exhibit 'E-1', t.s.n., pp. 25- 32). "On cross-examination, witness Judge Sayon further averred: that at the time accused Rodolfo Andaya affixed his signature in his affidavit (Exhibit 'E'), only the two of them were present in his office; that although the accused was escorted by a peace officer in going to his office, the moment that they entered his office, the peace officer went out (t.s.n., pp. 33-35); "The second witness of the prosecution is Sgt. Felix Luego, who testified: that he is a member of the Integrated National Police with station at Sto. Tomas Police Station, Davao del Norte; that he has been a Policeman in Sto. Tomas since October 4, 1960 up to the present; that he knew one Paulino Malbas who was killed on June 30, 1967 by Rodolfo Andaya as he was with Judge Sabas Sayon when the latter conducted the inquest; that he came to know that it was Rodolfo Andaya who killed Paulino Malbas when the late Reynaldo Olavieja reported to their office on June 30, 1967 at 6:00 o'clock in the morning about the surrender of Rodolfo Andaya for having killed the victim Paulino Malbas; that the killing took place at Sitio Kilaw, Barrio Balagunan, Municipality of Sto. Tomas, Davao; that witness was able to identify the accused Rodolfo Andaya inside the Courtroom; that he conducted an ocular inspection at the scene of the crime where he saw the cadaver of the

victim Paulino Malbas; that it was their Deputy Chief of Police, Bernabe Dujali, who had confronted the accused regarding the incident (t.s.n., pp. 35-40). "On cross-examination witness Felix Luego declared further: that the report made by Mr. Olavieja about the voluntary surrender of Rodolfo Andaya was duly recorded in the Police Blotter (Exhibits 'I', 'I-A'); (t.s.n., pp. 40-41). "Prosecution next presented Deputy Chief of Police Bernabe Dujali who testified in substance: that he had been a police officer in the Municipality of Sto. Tomas, Davao from 1960 to 1967; that sometime in July 1967 he was still the Deputy Chief of Police of Sto. Tomas; that he know one Paulino Malbas to be a victim of murder upon due verification as Deputy Chief of Police; that the victim was killed by Rodolfo Andaya whom he (witness) pointed inside the Courtroom when asked to identify the accused; that he investigated the accused Rodolfo Andaya, which investigation was reduced to writing (Exhibit 'E'); that accused signed his affidavit (Exhibit 'E') in his presence; that the contents in the affidavit (Exhibit 'E') which are in English were all translated to the accused in the Visayan dialect, the dialect which he spoke fluently and understood (t.s.n., pp. 42-46). "Upon cross-examination witness Dujali declared: that in the investigation he conducted of Rodolfo Andaya, he interrogated the latter in the Visayan dialect and the questions and answers were reduced to writing immediately by him; that the statement (Exhibit 'E') was signed by Rodolfo Andaya in the office of the Municipal Judge Sayon in his presence; that in the course of the interrogation, the accused Rodolfo Andaya showed me hesitation in answering his questions or that all his (accused's) answers were voluntarily given (t.s.n., pp. 46-47). "The fourth witness presented by the prosecution was Andres Perez, an employee of the Davao Penal Colony, who made the following testimony; that he has been connected with the Bureau of Prisons since November 2, 1952 up to the present and assigned at the Davao Penal Colony (DAPELCO) at Sto. Tomas, Davao; that in the month of June 1967, he was holding the position of commander of the guards; that he happened to know Rodolfo Andaya because he was one of the inmates confined in the Davao Penal Colony, having been committed thereat sometime on May 16, 1964; that accused was then serving sentence for imprisonment ranging from SIX (6) to TWELVE (12) YEARS; that witness readily pointed to accused Rodolfo Andaya inside the Courtroom when asked to identify him; that he is the same Rodolfo Andaya who was serving sentence in the Davao Penal Colony; that accused was serving sentence of a final judgment rendered by the Court of First Instance of Masbate when he was committed to the Davao Penal Colony sometime in 1964 as reflected in Special Order No. 203, Series of 1964 (Exhibits 'F' & 'F-1'); that on February 7, 1966, accused Rodolfo Andaya was given the privilege of being classified living-out prisoner or minimum security prisoner due to exemplary behavior and industry (Exhibits 'X', 'X-1' and 'X-2'); that witness recalled that while Rodolfo Andaya was a living-out prisoner under minimum security, he committed the crime of murder t.s.n., pp. 48-55). "Witness, on cross-examination, further declared: that prior to the commission of the crime subject of the instant rehearing, accused Rodolfo Andaya had not committed any other offense; that in his capacity as an employee of DAPECOL, witness personally attested to the fact that accused Rodolfo Andaya was really conducting an exemplary behavior and industry before the commission of the crime he is now being charged of; that witness in his capacity as DAPECOL employee know for a fact that accused Rodolfo Andaya is not a habitual drinker of intoxicating liquor; that witness also identified Special Order No. 181, Series of 1966, dated May 20, 1966 (Exhibit '3'), to be the very special order which assigned accused Rodolfo Andaya as house help (sleep-out) in the quarters of Mr. Reynaldo Olavieja as a result of his exemplary behavior and industry (t.s.n., pp. 5660). (pp. 11-16, Decision)," (pp. 7-12, p. 105, Rollo). In his effort to save appellant from the death penalty, his counsel de oficio, Atty. Ponciano Mortera, invokes the provision of Article 297 of the Revised Penal Code which reads: "Article 297. - Attempted and frustrated robbery committed under certain circumstances.- When by reason or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offenses shall be punished by reclusion perpetua, unless the homicide committed shall deserve a higher penalty under the provisions of this Code." (Italics supplied). It is counsel's contention that upon consideration of the evidence of the prosecution, the trial court should have found the offense committed not as murder as charged, but that of "attempted robbery with homicide" as defined under Article 297 of the Revised Penal Code, and punished therein only with reclusion perpetua. Counsel, quoted from appellant's sworn statement given during the inquest conducted by the Sto. Tomas Municipal Judge, Sabas C. Sayon (Exhibit 'D') to show that the primary intent of appellant and his co-accused Carlos Villarante was to rob the victim. Thus - "Court: Mr. Andaya, I called your attention to come over for a clarification of your statements taken before the Chief of Police on July 3, 1967. You stated in your affidavit that one

alias Carling proposed to you to rob his neighbor Paul as the latter have some money and that because he also planned to kill Paul on account of that portion of land where he is, that is want to get the possession of the land from Paul, is that right? "A Yes sir. "Q Alright, you tell the Court all about that transpired between you and Carling the killing of Paul? "A You see long before the incident, I know Carling already because he was working on the land near to the portion occupied by Mr. Olavieja where I was working. Until that time when Mr. Olavieja told Carling to get another area as the portion he was occupying was the occupied portion of Mr. Olavieja, Carling went to stay with Paul the victim near to the latter's house. Few days later Carling and his family moved to another house about 80 meters distance from the house of Paul. From then on Carling used to come over to my hut to ask for something for his family like corn, rice, salt, and others that I have. Until last Wednesday on the 29th day of June at noon time Carling came over and told me and asked me to join him in robbing Paul as the latter has money, and that he wanted to drive Paul or kill him so he can get and occupy his cultivation as he was planning to squat the place. "Q When he invited you to join him what did you stay? "A I told him that I will join with you. "Q Proceed. "A Before he went home he told me that he will wait at the house of Eduardo Madrano about 100 meters from the house of Paul on that night. About 10:00 o'clock in the evening that night of June 29, 1967, I went to the house of Madrano, and upon arriving at, Carling was already there drinking tuba. I joined with him drinking the tuba, about 1:00 o'clock in the morning, we went down from the house of Madrano and proceeded to the house of Paul. Upon arriving at, Carling called Paul to come down as he had something to say. At this time Paul was awake lighting his flashlight around. Carling asked him of why he was flashing the light around, Paul told that he is watching something. When Carling told him to come down, Paul went down the stairs. Upon reaching the ground, Carling asked him where was his money, at the same time holding Paul on his collar and his left hand, Paul said that he had no money, so they rushed. They stand up with the same position, Carling holding his collar and his left hand, and at this time I stabbed Paul few times until he died." (Exhibit 'D' and 'D-1', italics ours). (pp. 71-72, Rollo). To counter appellant's contention, the Solicitor General also quoted the following: "COURT: What can you say as to this? "A That is true, your Honor. "Q But Olavieja has nothing to do with the killing. "A None, Your Honor. "Q You made it your personal concern to do the killing because you owe Olavieja some gratitude? "A Yes, Your Honor." (Italics supplied; p. 16, t.s.n., August 15, 1977). (p. 105, Rollo). On appellant's own admission, the killing, authorship of which he readily owned, was motivated not by any desire to rob, but for personal reasons totally unrelated to depriving the victim of his money. For even if robbery was what appeared to have been used by appellant's co-accused to induce him to join in his criminal design against the victim, as killing may not have been in the original design of said co-accused, the killing was not by reason or on the occasion of robbery, for no robbery was committed in any of its stages, but by some other reason as far as appellant is concerned, as he himself revealed, which was more by way of retaliation for the stealing of the fighting cock of Reynaldo Olavieja by the victim, appellant as a living-out prisoner having been assigned as househelp in the quarters of Olavieja for his exemplary conduct and industry. This fact showing the reason for the killing was entered on page 105 of the police blotter dated June 30, 1967.[4] From the statement of appellant as quoted in his brief (pp. 20-21), the victim had no money which appellant's co-accused proposed to him to be stolen by them. Robbery could, therefore, not have been committed. What was committed insofar as the intention to rob is concerned, is the so-called impossible crime under Article 4, paragraph 2, of the Revised Penal Code entirely distinct and different from the crime of attempted robbery. In no way, therefore, may the crime committed by appellant be that of "attempted robbery with homicide" to earn for him, as counsel has ingenuously tried to do, the lesser penalty of reclusion perpetua instead of death. Moreover, as correctly observed by the Solicitor General, the term "homicide is used in Article 297 of the Revised Penal Code in the generic sense.[5] It could include murder if the killing is attended by any of the qualifying circumstances enumerated in Article 248 of the Revised Penal Code, as is the killing involved in the case at bar, parricide and infanticide. This is unmistakably so if the phrase "unless the homicide committed shall deserve a higher penalty under the provision of this Code", found in the aforesaid provision is given its plain and implicit meaning. In so providing, Article 297 expressly permits, if not requires, prosecution of the grave offense of murder, if the killing by reason or on the occasion of an attempted or frustrated robbery, is qualified, as in the instant case, by treachery, abuse of superior strength, although this may be absorbed by treachery[6] and evident premeditation, all of which are alleged in the information - to which appellant entered

an unqualified plea of guilty the second time around - after his first plea of guilty was set aside by this Court as improvidently entered. With all the proceedings taken when the case was remanded to the lower court upon a review of the death sentence first imposed, We are convinced beyond doubt that when arraigned anew, appellant entered his plea of guilty with full awareness of the legal consequences of his plea, after being helped by the trial court itself to understand the full legal impact of what he was doing. From the evidence presented by the prosecution, consisting mainly of appellant's extra-judicial confession's which he affirmed in court, or at least, never repudiated, there is equally no reason to doubt that appellant killed the victim under circumstances that would raise the killing to that of murder. With the undisputed fact that appellant was serving sentence for homicide when he killed the victim, this circumstance of quasi-recidivism alone, would render unavoidable the imposition of the death penalty, pursuant to Article 160 of the Revised Penal Code, despite the presence of the mitigating circumstances of voluntary surrender, intoxication and voluntary plea of guilty, as duly proven by appellant. WHEREFORE, the judgment appealed from should be, as it is hereby, affirmed in toto for being in accordance with law and the evidence, as so recommended by the Solicitor General, who joins the court a quo in recommending to His Excellency, the President of the Republic, the commutation of this death penalty to that of life imprisonment. We find this recommendation by both the trial court and the Solicitor General justified by the exemplary conduct and industry of appellant as duly attested to, and the mitigating circumstances already adverted to, and is fully in keeping with the aims and ideals of our new, just and compassionate society. Let a copy of this decision be furnished the Honorable, the Minister of Justice, for such action as he may deem proper along the recommendation for executive leniency. SO ORDERED. Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, and Melencio-Herrera, JJ., concur. Fernando, C.J., concurs with the separate opinion of J. Teehankee that the penalty imposed should be reclusion perpetua. Thus the vote required for the imposition of the death penalty is insufficient. Accordingly, accused Rodolfo Andaya is sentenced to reclusion perpetua. Teehankee, J., voted for the imposition of reclusion perpetua in a separate opinion. Barredo, J., vote with Justice Aquino. [1] G. R. No. L-29644, entitled the People of the Philippines vs. Rodolfo Andaya and Carlos Villarante, prom. July 25, 1973. [2] pp. 14-15, t.s.n., August 2, 1977. [3] pp. 15-16, t.s.n., August 2, 1977. [4] Exhibits 1, 1-A and 1-B. [5] People vs. Manuel, 44 Phil. 333. [6] People vs. Undong, 66 SCRA 386; People vs. Pajenado, 69 SCRA 172; People vs. Saspeña, et al., 102 Phil. 199. SEPARATE OPINION TEEHANKEE, J.

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PER CURIAM:

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The evidence presented by the prosecution is, as summarized in the decision under review dated October 10, 1977, as follows:

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"On cross-examination, witness Judge Sayon further averred: that at the time accused Rodolfo Andaya affixed his signature in his affidavit (Exhibit 'E'), only the two of them were present in his office; that although the accused was escorted by a peace officer in going to his office, the moment that they entered his office, the peace officer went out (t.s.n., pp. 33-35);

"The second witness of the prosecution is Sgt. Felix Luego, who testified: that he is a member of the Integrated National Police with station at Sto. Tomas Police Station, Davao del Norte; that he has been a Policeman in Sto. Tomas since October 4, 1960 up to the present; that he knew one Paulino Malbas who was killed on June 30, 1967 by Rodolfo Andaya as he was with Judge Sabas Sayon when the latter conducted the inquest; that he came to know that it was Rodolfo Andaya who killed Paulino Malbas when the late Reynaldo Olavieja reported to their office on June 30, 1967 at 6:00 o'clock in the morning about the surrender of Rodolfo Andaya for having killed the victim Paulino Malbas; that the killing took place at Sitio Kilaw, Barrio Balagunan, Municipality of Sto. Tomas, Davao; that witness was able to identify the accused Rodolfo Andaya inside the Courtroom; that he conducted an ocular inspection at the scene of the crime where he saw the cadaver of the victim Paulino Malbas; that it was their Deputy Chief of Police, Bernabe Dujali, who had confronted the accused regarding the incident (t.s.n., pp. 35-40).

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he was still the Deputy Chief of Police of Sto. Tomas; that he know one Paulino Malbas to be a victim of murder upon due verification as Deputy Chief of Police; that the victim was killed by Rodolfo Andaya whom he (witness) pointed inside the Courtroom when asked to identify the accused; that he investigated the accused Rodolfo Andaya, which investigation was reduced to writing (Exhibit 'E'); that accused signed his affidavit (Exhibit 'E') in his presence; that the contents in the affidavit (Exhibit 'E') which are in English were all translated to the accused in the Visayan dialect, the dialect which he spoke fluently and understood (t.s.n., pp. 42-46).

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"The fourth witness presented by the prosecution was Andres Perez, an employee of the Davao Penal Colony, who made the following testimony; that he has been connected with the Bureau of Prisons since November 2, 1952 up to the present and assigned at the Davao Penal Colony (DAPELCO) at Sto. Tomas, Davao; that in the month of June 1967, he was holding the position of commander of the guards; that he happened to know Rodolfo Andaya because he was one of the inmates confined in the Davao Penal Colony, having been committed thereat sometime on May 16, 1964; that accused was then serving sentence for imprisonment ranging from SIX (6) to TWELVE (12) YEARS; that witness readily pointed to accused Rodolfo Andaya inside the Courtroom when asked to identify him; that he is the same Rodolfo Andaya who was serving sentence in the Davao Penal Colony; that accused was serving sentence of a final judgment rendered by the Court of First Instance of Masbate when he was committed to the Davao Penal Colony sometime in 1964 as reflected in Special Order No. 203, Series of 1964 (Exhibits 'F' & 'F-1'); that on February 7, 1966, accused Rodolfo Andaya was given the privilege of being classified living-out prisoner or minimum security prisoner due to exemplary behavior and industry (Exhibits 'X', 'X-1' and 'X-2'); that witness recalled that while Rodolfo Andaya was a living-out prisoner under minimum security, he committed the crime of murder t.s.n., pp. 48-55).

"Witness, on cross-examination, further declared: that prior to the commission of the crime subject of the instant rehearing, accused Rodolfo Andaya had not committed any other offense; that in his capacity as an employee of DAPECOL, witness personally attested to the fact that accused Rodolfo Andaya was really conducting an exemplary behavior and industry before the commission of the crime he is now being charged of; that witness in his capacity as DAPECOL employee know for a fact that accused Rodolfo Andaya is not a habitual drinker of intoxicating liquor; that witness also identified Special Order No. 181, Series of 1966, dated May 20, 1966 (Exhibit '3'), to be the very special order which assigned accused Rodolfo Andaya as house help (sleep-out) in the quarters of Mr. Reynaldo Olavieja as a result of his exemplary behavior and industry (t.s.n., pp. 5660). (pp. 11-16, Decision)," (pp. 7-12, p. 105, Rollo).

In his effort to save appellant from the death penalty, his counsel de oficio, Atty. Ponciano Mortera, invokes the provision of Article 297 of the Revised Penal Code which reads:

"Article 297. - Attempted and frustrated robbery committed under certain circumstances.- When by reason or

on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offenses shall be punished by reclusion perpetua, unless the homicide committed shall deserve a higher penalty under the provisions of this Code." (Italics supplied).

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"A Yes sir.

"Q Alright, you tell the Court all about that transpired between you and Carling the killing of Paul?

"A You see long before the incident, I know Carling already because he was working on the land near to the portion occupied by Mr. Olavieja where I was working. Until that time when Mr. Olavieja told Carling to get another area as the portion he was occupying was the occupied portion of Mr. Olavieja, Carling went to stay with Paul the victim near to the latter's house. Few days later Carling and his family moved to another house about 80 meters distance from the house of Paul. From then on Carling used to come over to my hut to ask for something for his family like corn, rice, salt, and others that I have. Until last Wednesday on the 29th day of June at noon time Carling came over and told me and asked me to join him in robbing Paul as the latter has money, and that he wanted to drive Paul or kill him so he can get and occupy his cultivation as he was planning to squat the place.

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"Q Proceed.

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To counter appellant's contention, the Solicitor General also quoted the following:

"COURT: What can you say as to this?

"A That is true, your Honor.

"Q But Olavieja has nothing to do with the killing.

"A None, Your Honor.

"Q You made it your personal concern to do the killing because you owe Olavieja some gratitude?

"A Yes, Your Honor."

(Italics supplied; p. 16, t.s.n., August 15, 1977). (p. 105, Rollo).

On appellant's own admission, the killing, authorship of which he readily owned, was motivated not by any desire to rob, but for personal reasons totally unrelated to depriving the victim of his money. For even if robbery was what appeared to have been used by appellant's co-accused to induce him to join in his criminal design against the victim, as killing may not have been in the original design of said co-accused, the killing was not by reason or on the occasion of robbery, for no robbery was committed in any of its stages, but by some other reason as far as appellant is concerned, as he himself revealed, which was more by way of retaliation for the stealing of the fighting cock of Reynaldo Olavieja by the victim, appellant as a living-out prisoner having been assigned as househelp in the quarters of Olavieja for his exemplary conduct and industry. This fact showing the reason for the killing was entered on page 105 of the police blotter dated June 30, 1967.[4]

From the statement of appellant as quoted in his brief (pp. 20-21), the victim had no money which appellant's co-accused proposed to him to be stolen by them. Robbery could, therefore, not have been committed. What was committed insofar as the intention to rob is concerned, is the so-called impossible crime under Article 4, paragraph 2, of the Revised Penal Code entirely distinct and different from the crime of attempted robbery. In no way, therefore, may the crime committed by appellant be that of "attempted robbery with homicide" to earn for him, as counsel has ingenuously tried to do, the lesser penalty of reclusion perpetua instead of death.

Moreover, as correctly observed by the Solicitor General, the term "homicide is used in Article 297 of the Revised Penal Code in the generic sense.[5] It could include murder if the killing is attended by any of the qualifying circumstances enumerated in Article 248 of the Revised Penal Code, as is the killing involved in the case at bar, parricide and infanticide. This is unmistakably so if the phrase "unless the homicide committed shall deserve a higher penalty under the provision of this Code", found in the aforecited provision is given its plain and implicit meaning. In so providing, Article 297 expressly permits, if not requires, prosecution of the grave offense of murder, if the killing by reason or on the occasion of an attempted or frustrated robbery, is qualified, as in the instant case, by treachery, abuse of superior strength, although this may be absorbed by treachery[6] and evident premeditation, all of which are alleged in the information - to which appellant entered an unqualified plea of guilty the second time around - after his first plea of guilty was set aside by this Court as improvidently entered.

With all the proceedings taken when the case was remanded to the lower court upon a review of the death sentence first imposed, We are convinced beyond doubt that when arraigned anew, appellant entered his plea of guilty with full awareness of the legal consequences of his plea, after being helped by the trial court itself to understand the full legal impact of what he was doing.

From the evidence presented by the prosecution, consisting mainly of appellant's extra-judicial confession's which he affirmed in court, or at least, never repudiated, there is equally no reason to doubt that appellant killed the victim under circumstances that would raise the killing to that of murder. With the undisputed fact that appellant was serving sentence for homicide when he killed the victim, this circumstance of quasi-recidivism alone, would render unavoidable the imposition of the death penalty, pursuant to Article 160 of the Revised Penal Code, despite the presence of the mitigating circumstances of voluntary surrender, intoxication and voluntary plea of guilty, as duly proven by appellant.

WHEREFORE, the judgment appealed from should be, as it is hereby, affirmed in toto for being in accordance with law and the evidence, as so recommended by the Solicitor General, who joins the court a quo in recommending to His Excellency, the President of the Republic, the commutation of this death penalty to that of life imprisonment. We find this recommendation by both the trial court and the Solicitor General justified by the exemplary conduct and industry of appellant as duly attested to, and the mitigating circumstances already adverted to, and is fully in keeping with the aims and ideals of our new, just and compassionate society.

Let a copy of this decision be furnished the Honorable, the Minister of Justice, for such action as he may deem proper along the recommendation for executive leniency.

SO ORDERED.

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

Fernando, C.J., concurs with the separate opinion of J. Teehankee that the penalty imposed should be reclusion perpetua. Thus the vote required for the imposition of the death penalty is insufficient. Accordingly, accused Rodolfo Andaya is sentenced to reclusion perpetua.

Teehankee, J., voted for the imposition of reclusion perpetua in a separate opinion.

Barredo, J., vote with Justice Aquino.

[1] G. R. No. L-29644, entitled the People of the Philippines vs. Rodolfo Andaya and Carlos Villarante, prom. July 25, 1973.

[2] pp. 14-15, t.s.n., August 2, 1977.

[3] pp. 15-16, t.s.n., August 2, 1977.

[4] Exhibits 1, 1-A and 1-B.

[5] *People vs. Manuel*, 44 Phil. 333.

[6] *People vs. Undong*, 66 SCRA 386; *People vs. Pajenado*, 69 SCRA 172; *People vs. Saspeña, et al.*, 102 Phil. 199.

SEPARATE OPINION

TEEHANKEE, J.:

In view of the various mitigating circumstances of voluntary surrender, intoxication and voluntary plea of guilty duly proven by accused-appellant as acknowledged in the Court's opinion, and said accused's exemplary conduct and industry as duly attested and likewise acknowledged in the Court's opinion, which bespeak his rehabilitation after he shall have paid his just debt to society, I vote for the imposition of the penalty of reclusion perpetua.

CONCURRING OPINION

AQUINO, J.:

I concur in the imposition of the death penalty. I dissent from the view that the Chief Executive should commute the death penalty to reclusion perpetua. The accused was a living-out pridejer who treacherously stabbed to death Paulino Malbas at night while the latter was being held by Carlos Villarante. The accused was a quasi-recidivist. The victim was not a prisoner. The killing was not provoked by gang rivalry. It was not perpetrated in prison. This is not a case where justice should be tempered with mercy.

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