

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LEOPOLDO LUNAR AND BIENVENIDO AUSTRIA, ACCUSED AND APPELLANTS.

G.R. No. L-15579. May 29, 1972

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/683ae735741a/>

PER CURIAM:

Automatic review of the death sentence imposed upon the two accused-appellants for the complex crime of murder with assault upon an agent of a person in authority.

On December 27, 1957, two informations were filed with the Court of First Instance of Rizal charging the two herein accused and ten others, all detainees at the Rizal provincial jail, (a) with the crime of frustrated murder committed in a jailbreak on December 23, 1957 against the person of Jose Olivar, a trustee police prisoner in the said jail, attended by aggravating circumstances of superior strength and nocturnity;^[1] and (b) with the crime of murder, amended on January 9, 1958 to a complex charge of murder with assault upon an agent of a person in authority for having inflicted with evident premeditation and treachery on the occasion of the same jailbreak of December 23, 1957 stab and gunshot wounds against provincial jail guard Alfredo Pablo which directly caused his death, attended by the aggravating circumstances of superior strength, nocturnity and insult to public authority.^[2]

At the arraignment on January 20, 1958 before Judge Gustavo Victoriano then presiding the trial court, the accused Bienvenido Austria voluntarily pleaded guilty to both charges with the assistance of counsel de oficio Atty. Maximino San Diego. In two separate sentences promulgated on January 21, 1958, said trial judge in Case No. 7540 sentenced Austria to death with the accessories of the law after "considering in his favor the mitigating circumstance of the voluntary plea of guilty, which when offset by the aggravating circumstances of nocturnity, abuse of superior strength and insult to public authority alleged in the information, leaves two (2) aggravating circumstances against him;" in Case No. 7539, said trial judge sentenced Austria to life imprisonment with the accessories of the law and to pay 1/12 of the costs, after finding the guilty plea insufficient to overcome the two cited aggravating circumstances of nocturnity and abuse of superior strength. No appeal was taken by Austria^[2a] but the trial judge ordered that the capital case be forwarded to this Court for automatic review, which the clerk of the lower court however failed to comply with, presumably because the other co-accused had yet to undergo trial.

At the arraignment in turn on January 23, 1958 of the accused Leopoldo Lunar, said accused insisted on pleading guilty to both offenses against the advice of his counsel de oficio; an Atty. Balbastro,^[3] who accordingly was relieved as such upon his (counsel's) own request, after his previous proposal that he would advise said accused to plead guilty to a lesser charge of homicide with assault was rejected by the fiscal. The trial judge, after questioning the accused Lunar on his participation in the crimes charged, and noting that he was trying to exculpate himself as to willful intent, ordered a plea of not guilty entered for him.^[4]

The two cases were heard and tried jointly by agreement, since the two offenses were committed on one and the same occasion of the jailbreak from the Rizal provincial jail on December 23, 1957 and the same witnesses were

to testify in both cases against the same accused.

At the instance of the prosecution, two of the co-accused, namely, Rodolfo Fuerte and Celso Valentino were discharged from the accusations and utilized as state witnesses. Likewise upon the State's motion, the charges against six other co-accused, namely, Mariano Nuñez, Agripino Reyes, Pedro Lucas, Ricardo Mercado, Enrico Diaz and Demetrio Parera, were dismissed "after careful scrutiny" for insufficiency of evidence.[5] Four accused were thus left to answer for the crimes charged. Accused Austria having pleaded guilty, three remained to stand trial, viz, namely, the herein principal accused Lunar who was to be meted the supreme penalty and two others, Rotillo Lorica and Benito Millare, who were to be found guilty as accomplices.

The prosecution's evidence was received at six hearing dates commencing on January 23, 1958 and terminating on March 18, 1958 by Judge Victoriano, who thereafter was succeeded by Judge (now appellate court justice) Cecilia Muñoz Palma, who in turn continued and terminated the trial on July 15, 1958 and after submittal of the case on November 10, 1958, promulgated on December 22, 1958 the trial court's decision dated November 28, 1958.

The lower court's decision found after trial the three remaining accused, Leopoldo Lunar, Rotillo Lorica and Benito Millare, guilty of the crimes charged, as follows:

"CONCLUSION in Criminal Case No. 7539:

"Wherefore, it is the finding of this Court in this particular case that the evidence on record proves beyond reasonable doubt the guilt of the herein accused Leopoldo Lunar, as principal, and of Rotillo Lorica and Benito Millare as accomplices, for the crime of 'Frustrated Murder' and holds said accused GUILTY of said offense with the aggravating circumstance of nocturnity which facilitated the commission of the crime, and pursuant to the provisions of Art. 248 in conjunction with Arts. 50 and 54 of the Revised Penal Code and the Indeterminate Sentence Law, this Court hereby imposes upon the accused LEOPOLDO LUNAR, as principal, an indeterminate penalty ranging from SIX YEARS AND ONE DAY of prision mayor as minimum to FOURTEEN YEARS, TEN MONTHS, AND TWENTY-ONE DAYS of reclusion temporal as maximum, with the corresponding accessory penalties provided for by law, and upon each of the accused ROTILLO LORICA and BENITO MILLARE, as accomplices, an indeterminate penalty ranging from TWO YEARS, of prision correccional as minimum to EIGHT YEARS, TWENTY-ONE DAYS of prision mayor as maximum, with the accessory penalties thereof; and hereby orders the three accused Lunar, Lorica, and Millare to indemnify Jose Olivar in the sum of P1,000.00 by way of moral damages and to pay the proportionate costs.

"CONCLUSION in Criminal Case No. 7540:

"Wherefore, finding that the evidence establishes beyond reasonable doubt the guilt of the herein accused Leopoldo Lunar as principal and of Rotillo Lorica and Benito Millare as accomplices, this Court hereby holds and declares said accused GUILTY of the complex crime of MURDER WITH ASSAULT UPON AN AGENT OF A PERSON IN AUTHORITY; with the aggravating circumstance of nocturnity which facilitated the commission of the crime, and pursuant to the provisions of Art. 48, in conjunction with Arts. 248 and 52, of the Revised Penal Code, this Court hereby imposes upon the accused LEOPOLDO LUNAR, as principal, the extreme penalty of DEATH, and upon the accused, LORICA and MILLARE, as accomplices, an indeterminate sentence ranging from TEN YEARS of prision mayor as minimum to SEVENTEEN YEARS AND FOUR MONTHS of reclusion temporal as maximum with the corresponding accessory penalties provided for by law, and orders said accused LEOPOLDO LUNAR to indemnify the heirs of the deceased Alfredo Pablo in the sum of SIX THOUSAND PESOS and for the accused ROTILLO LORICA and BENITO MILLARE to indemnify said heirs in the amount of THREE THOUSAND PESOS, and to pay the proportionate costs.

"In both cases, accused Lorica and Millare shall be credited with one-half of such preventive imprisonment as they may have suffered by reason of this case should it appear that they are not recidivists or have not been convicted previously twice or more of any crime.

"Let the records of this case be elevated to the Supreme Court for review in connection with the case of the accused Leopoldo Lunar."[6]

The clerk of the lower court transmitted to this Court on June 23, 1959 the records of the two cases thus decided by Judge Palma of the lower court on the basis of the accused Benito Millare's appeal from the verdict finding him guilty as an accomplice in the two crimes charged pursuant to the judge's order of January 10, 1959 directing that his appeal "be forwarded to the Supreme Court which will review the case of the other accused, Leopoldo Lunar."[71] No mention whatsoever was made of the previous death sentence imposed earlier on January 21, 1958 by Judge Victoriano on the accused Bienvenido Austria pursuant to the latter's guilty plea, anent which it has been noted earlier that the clerk of the lower court did not comply with the judge's order to forward his case to this Court for automatic review. Such death sentence which by law has to be reviewed by this Court was to be noted only much later in the course of the Court's examining the lower court's record of the case.[7a]

Hence, the Clerk's notice to the accused to appoint his counsel for the review of the case, with notice that the Court would otherwise appoint a counsel deoficio for him was served on Lunar alone under date July 3, 1959.[8] Pursuant thereto, the Laurel Law Offices entered on July 10, 1959 their appearance as counsel for Lunar. Upon completion of the transcript of the hearing, notice to file brief was served on October 31, 1962 only on counsel for Lunar, Attys. Salvador H. Laurel and Julianito Sinay, who in due course filed their brief on March 13, 1963. The Solicitor General in turn filed the brief for the State on July 25, 1963.

The record shows that the appeal was heard on October 23, 1963 with Atty. Laurel arguing the case for Lunar, but that it was only in 1969 that the Court motuproprio noted the absence of transmittal of the earlier imposition of the death sentence on Austria for review by this Court and the lack of any representation on behalf of Austria, which thus impeded the Court's then handing down its decision in the case at bar. Accordingly, the Court appointed on April 11, 1969 Atty. Lorenzo F. Miravite of the Manuel L. Quezon University College of Law as counsel deoficio for the accused Austria, who filed his brief on August 7, 1969 with the State in turn filing its brief on December 22, 1969, and the case was finally submitted for decision on January 26, 1970.

The accused Benito Millare alone filed an appeal from the lower court's decision, but subsequently filed with this Court a motion to withdraw his appeal which was granted on March 3, 1960 and entry of judgment made on March 5, 1960. Accordingly, what remains for decision by this Court in its review of the death sentence imposed by Judge Victoriano on January 21, 1958 on the accused Austria after his guilty plea to the charge of murder with assault upon the agent of a person in authority and of the death sentence imposed on December 22, 1958 on the accused Lunar for the same offense in Judge Palma's decision.

As recounted in the lower court's well-written decision the crimes occurred "(A) few minutes before 1:00 o'clock in the morning of December 23, 1957 (when) a commotion broke out in the premises of the provincial jail of Pasig, Rizal. On that occasion Alfredo Pablo, corporal of the guard and assigned at the time a desk sergeant in the provincial jail and Jose Olivar, as prisoner trustee, were attacked and assaulted and both had to be rushed to the Rizal Provincial Hospital. Dr. Benjamin Antonio found Alfredo Pablo in a state of severe shock due to gunshot and stab wounds (see Exh. 'L') and examining his person, the Doctor saw the outer end of a half-scissor blade sticking out of the back of the patient. A radiography taken of the chest of Alfredo Pablo showed a bullet lodged on the lower surface of the liver and a scissor blade penetrating the soft tissue of the right chest (see Exh. 'L' p. 3). The half-scissor blade was extracted by Dr. Antonio (see Exh. 'C') and a blood transfusion was given to the patient. In the afternoon of that day, the patient was brought to the Philippine General Hospital, but notwithstanding all the medical attention given to him, he died the following day, December 24, at about 6:15 in the morning. An autopsy was performed on the body of Alfredo Pablo by Dr. Nery Y. Ramirez, medico-legal officer of the NBI, who made the following post-mortem findings:

'Abrasion with dark red scab, 0.9 x 0.3 cm., left mandibular region.'

'Wounds, surgical, sutured: 16.3 cm., long, median anterior abdominal, extending from navel to epigastrium; 5.2 cm. long, running transversely, left upper umbilical, medial extremity is at median line; 1.1 cm. long, running obliquely downward and laterally dorso-lateral aspect, right chest, 120.2 cms., above sole of feet, with a rubber tubing drain inserted thru it.'

'Wounds, incised, sutured: 3.2 cm. long, running obliquely downward and medially at upper anterior aspect, right chest, level of 2nd intercostal space, 7.3 cm. from median line; 2.1 cm. long running obliquely downward and forward, left lateral aspect, chest, along mid-axillary line, 122.7 cms. above sole of feet.'

'Tracheotomy wound, anterior aspect, base, neck.'

'Thoracotomy wound, sutured, 18.8 cm. long, curvilinear, anterior aspect, left chest, level of 4th intercostal space.'

'Wounds, stab sutured: (1) 2.1 cm. long, running obliquely upward and medially at right infra-scapular region, level of 7th intercostal space. 12.5 cm. from median line, edges clean cut and extremities sharp, directed forward, downward and medially and penetrating chest cavity; (2) 2.0 cm. long, modified, running horizontally at left hypochondrium 9.8 cm. from median line, directed backward, downward and medially, penetrating abdominal cavity; (3) 1.4 cm. long, running vertically at lower portion, right thenar eminence, edges are clean cut and extremities sharp, directed upward, slightly backward and laterally, taking a muscular course and cause an exit wound, 1.0 cm. long, running in line, with its entrance at super-lateral region, thenar eminence, same hand, 2.4 cm. above entrance; and (4) 0.9 cm. long, running vertically at antero-medial aspect, middle 3rd, right thigh, 6.3 cm. above sole of feet, directed backward and upward, with a depth of 3.0 cm.'

'Wound, gunshot, entrance, sutured, 2.3 cm. 0.9 cm. located at upper anterior aspect right chest, level of 2nd intercostal space, contused abraded collar, widest diameter at superomedial portion, directed backward and downward penetrating chest cavity by fracturing comminutely the 4th 5th and 6th ribs, then pierced the posterior thoracic wall causing a tract which is connected to the stab wound at infra scapular region * * * (Exh 'I'; see also Exhs. 'J', 'J-I' 'J-2' and 'K').'

"In the same report, Dr. Nery Y. Ramirez gave as the cause of death of Alfredo Pablo:

'Peritonitis acute, severe, generalized, secondary to penetrating stab wound of abdomen.'

"With respect to the patient Jose Olivar, Dr. Antonio found that the latter had sustained the following injuries:

- '1. Stab wounds, pre-auricular region, left;
- '2. Stab wounds, nape of the neck, left;
- '3. Incise wound, infraclavicular region, left:
- '4. Traumatic perforation, eardrum, left' (Exh. 'H').

which caused his confinement at the hospital from December 23, 1957 up to January 4, 1958."

To prove the herein principal accused's liability for the brutal murder of Alfredo Pablo, the unfortunate provincial jail guard, the prosecution presented an array of witnesses, the gist of whose testimonies is thus given in Judge Muñoz' decision: "(R)odolfoFuerte, 27 years of age, detainee at the Provincial jail, in brief declared that while he was in the corridor of the jail working on a lantern he saw the three accused Millare, Austria, and Lunar talking with each other, in the course of which Millare handed a pair of scissor to Austria and Lunar, after which Millare poked a half-scissor blade at his back and told him to keep quiet or else he would be killed, while Austria and Lunar returned to their respective places in the corridor as shown in the sketch Exhibit 'E'; not long after, accused

Lorica called the guard Alfredo Pablo saying: 'Tata Fred, see this lantern that I made, it is beautiful'; the guard went to Lorica's place and squatted in front of the latter; while Alfredo Pablo was in that position Lunar and Austria approached and Lunar encircled with his left arm the neck of Pablo while with his right hand he poked a scissor blade at the guard saying: 'Keep quiet or else I will kill you'; Lorica then held the two hands of the guard but the latter kicked Lorica and struggled to stand up and as he did so, Austria stabbed him with a pair of scissors (Exh. 'A'); Lunar and Pablo then wrestled and Lunar also stabbed the latter; in the meantime, Austria had gone to the place where the prisoner trustee, Jose Olivar, was seated and attacked him; Millare then shouted to Austria to open the cells, and at that moment he (the witness) ran towards the table of the desk sergeant and shouted 'guard, guard', and at that instance he heard a gunshot and looking back he saw Lunar holding a gun, after which he ran and hid inside the bathroom.

"CelsoValentino, 18 years of age, and a detainee at the provincial jail, corroborated the testimony of Rodolfo Fuerte and in addition testified that he saw Lunar actually shoot the guard 'Tata Fred' and that upon hearing the gunshot he hid and laid down on the floor. The witness stated, however, that he did not see what happened to the trustee, Jose Olivar on that evening.

"JuanitoManabat, 30 years old and also a prisoner at the provincial jail, declared solely on the fact that he saw Lunar and the guard Alfredo Pablo (see Exh. 'G') wrestling with each other on the evening of the incident and that during the struggle Lunar succeeded in taking hold of the gun of the guard with which Lunar shot the latter.

"JoseOlivar, 45 years of age and also a detention prisoner in turn testified that on December 23 he was a trustee in the office of the Provincial Warden, and on that particular evening he had the keys of the jail and he was assigned at the control gate; while he was seated by the gate, accused Ben Austria suddenly stabbed him with a scissor hitting him on the left ear while accused Millare hit him on the head with a piece of wood; as Austria got the keys from his pocket he heard a shot and he saw that Lunar had fired upon the guard Pablo; after the riot had subsided he was taken to the Rizal provincial hospital where he was treated for his injuries for about two weeks.

"Aside from the above witnesses, the following also testified for the Government, to wit:

"RectorinoSantiago, a soldier of the Philippine Constabulary, declared that when the headquarters of the 26th PC Co. stationed at Pasig received a report regarding the trouble at the Provincial jail, he was instructed by the Commanding Officer to investigate the matter; he proceeded immediately to the provincial jail where he questioned some of the prisoners; as he was informed that the suspects used firearms and scissors, he also searched for the said weapons and he found a pair of scissors near the barbed wire fence (see Exh. 'A'); he and his companions, Sgt. Macarayo and Sgt. Magtoto then proceeded to the provincial hospital to interview the victims, and upon arriving at the place he found the guard Alfredo Pablo in a critical condition, and so he began asking questions from the latter; at first Pablo said 'Hirap na hirap na ako' and so he asked him if he was expecting to survive and Pablo shook his head several times; he then propounded questions to the victim which he put down in writing together with the answers given by the latter and in the statement given to him, Alfredo Pablo mentioned the names of Austria, Lunar and Rotillo as the ones who stabbed him. (See Exh. 'B')

"Catalino S. David, a police sergeant of the municipality of Taguig, Rizal, testified that at about 5:45 o'clock in the morning of December 23 a telephone call was received in the police headquarters to the effect that two detention prisoners had escaped from the provincial jail; he and the Chief of Police then proceeded to barrio Tipas to look for the escapees and there they were informed that two persons had boarded a TPT bus; they immediately went inside the bus which was at the time parked waiting for passengers and the Chief of Police saw two persons hiding behind the rear seat; the Chief of Police then told the persons concerned to surrender but one of them, the accused Lunar, pulled out a gun and fired at the Chief of Police who was hit on the left forearm; he then grappled with Lunar who also attacked him hitting him on the right thigh with the gun; after a

while he succeeded in wresting away the firearm of Lunar which was a .38 cal. revolver, Wesson, with serial number 939797 (see Exh. 'C'), and the two prisoners who were captured, the accused Lunar and Austria, were then brought back to the provincial jail.

"Leopoldo R. Echebarria, Provincial Warden at the time, and ElpidioCruz, employee at the Office of the Provincial Governor, both testified on the appointment of Alfredo Pablo as a provincial guard in the office of the provincial jail of Rizal since July of 1949 (see Exhs. 'N' and 'N-I'), and in addition, the provincial warden declared that on December 23, 1957, Cpl. Pablo was on duty as desk sergeant in charge of the guards and the jail at the time.

"Fernando C. Beech, executive officer of the provincial guards, in turn testified that Cpl. Alfredo Pablo was given a firearm to be used in the performance of his duties as a provincial guard and as per receipt, Exhibit 'P', the said firearm was a .38 cal. revolver, Smith & Wesson, with serial number 939797, and that said firearm was the one in the possession of Cpl. Pablo on December 23, 1957.

"Lastly, the two medical officers, Dr. Benjamin Antonio of the Rizal Provincial Hospital and Dr. Nery Y. Ramirez of the NBI testified to their respective examinations which have been treated in the early part of this Decision."

Recounting on the other hand, the disclaimer of the three accused headed by Lunar who stood trial as to any direct participation in the killing of the victim, Alfredo Pablo, and in the infliction of serious injuries on the prison trustee Olivar which would have caused the latter's death but for prompt and proper medical attention, and their shifting the whole blame on the accused Austria (who had earlier pleaded guilty and been meted the supreme penalty), the lower court gave this faithful narration of their declarations on the witness stand: "(R)otillo Lorica, 20 years old, single, and a resident of Makati, Rizal, stated that he was serving sentence at the provincial jail for the crime of theft; as one of those trusted by the guard, 'Tata Fred', he used to shine the latter's shoes, wash his dishes, clean his gun, and even accompanied him in his tour of the jail; on the night in question he was outside of his cell as he was together with others making a lantern in the aisle of the jail; as he was working, the guard 'Tata Fred' was watching him with his right foot on a chair and his body bent forward and his right forearm rested on his right knee (see Exh. '1-Lorica'); while 'Tata Fred' was in that position, Austria suddenly approached and stabbed the guard; 'Tata Fred' then pulled his gun and as he was afraid of being hit, he ran towards the place marked as Exhibit '1-a' in Exhibit '1-Lorica', where he stayed for about fifteen minutes lying on the floor with his face down; while he was in the position he described he heard a shot; later as he looked up he saw the body of the guard in front of the control gate at the place marked 'X' in the sketch, Exhibit 1-Lorica', and when they saw that the guard was still alive he with the aid of Millare, Fuerte and Diaz, placed his body on the table of the desk sergeant; he stayed by the side of Alfredo Pablo who ordered Millare to call for an ambulance, and notwithstanding the fact that the doors of the jail were open and there was a commotion, he did not escape.

"Testifying in behalf of his co-accused Millare, Lorica declared that during the incident Millare was on that place indicated in the sketch, Exhibit 'E', which was about 10 meters from where he was at the time; that what the witness Fuerte declared as to what Millare did was not true for it was the latter who even rang the alarm bell when the trouble started. Lorica also testified that he did not see at all what happened to the trustee Jose Olivar.

"LeopoldoLunar, 21 years of age, single and a resident of Marikina, Rizal, declared that in December, 1957, he was a detention prisoner awaiting trial for a homicide case; on the evening of the incident he was outside his cell as he was working on a lantern together with some other prisoners; on that occasion they were seated on the benches facing the table and near him were Austria and Valentino; while he was working he heard someone say 'huag' (don't) and when he looked back he saw Austria stabbing Tata Fred; he then stood up with the intention of stopping Austria from stabbing the guard, but as he approached, Tata Fred pulled out his gun,

so he took hold of Tata Fred to prevent him from firing the gun but as he was holding him, Austria suddenly grabbed the firearm and so he hid under the table; Austria, however, followed him and pointing the gun at him ordered him to come out and as he was afraid he obeyed; he and Austria then went out to the grounds but he did not see Olivar as they went out nor did he know what happened to the latter.

"Declaring in favor of his co-accused Millare, Lunar stated that it was not true what the witness Rodolfo Fuerte testified that Millare gave him a pair of scissors as he did not use any scissors that night; neither did he see Millare poke a scissor blade at Rodolfo Fuerte as Millare was near the table of the desk sergeant, and as a matter of fact he did not see him during the trouble.

"Accused Benito Millare, 20 years old, single and a resident of Makati, Rizal, testified that just before the commotion on that particular evening, he was seated near the table of the desk sergeant as shown in the sketch, Exh. '1-Millare', while Lunar and Lorica were at their indicated places in the same sketch; at that time, he was busy working on a lantern which Patrolman de los Santos asked him to make; as he was working he did not talk with anybody except to the police, neither did he use any tools such as scissors; late in the evening he heard the sound of the fall of a bench and looking around he saw Austria stabbing Cpl. Pablo on point marked Exh. '1-a' in the said sketch; because of the stabbing he ran to the place where the bell was (see Exh. '1-b') and he rang the alarm bell so as to call the guards; while he was ringing the bell, he heard the explosion of a gunshot coming from the aisle; later the guards arrived but the persons who stabbed Cpl. Pablo were no longer in the jail, namely, Austria and Lunar; he came out of his hiding place and he saw Cpl. Pablo bleeding at point Exh. '1-c' in the sketch, Exh. 1-Millare; he called his companions and they placed the body of the guard on the table of the desk sergeant as the guard was still alive; Pablo then called him and told him to call the hospital as he was dying, and so he called by phone the provincial hospital and asked for an ambulance and not long after the ambulance arrived.

"Millare also declared that the testimony of Rodolfo Fuerte implicating him is not true and that said witness testified against him for at least three reasons, to wit: first, in order that the witness Fuerte and his companion Valentino may be released from the 'bartolina' where they were all confined after that riot; second, so as to escape from any responsibility for the charges filed against them by becoming state witness; and third because as patrol leader in the cell, he used to punish these two prisoners, Rodolfo Fuerte and Celso Valentino, and so they had a grudge against him.

"Accused Millare also denied having hit Jose Olivar as declared by the latter, and stated that as a matter of fact he did not see at all the stabbing of said Olivar during that incident, although he came to know later that Austria was the one who stabbed said trustee."

The trial court, after announcing its resolution not to give due credit to the testimonies of the declarations of the accused's fellow-detainees Fuerte and Valentino "who might indeed have their own motives for testifying against said accused, they having been discharged from the accusation to become state witnesses" unless there were strong corroborative evidence on record to substantiate the different matters testified to by them, found "overwhelming proof on the truth of the testimonies of the (said) witnesses."

The trial court thus enumerated the corroborative and cumulative proof of guilt of the accused, thus: '(F)irst and foremost is the dying declaration of the victim, Alfredo Pablo, given to Sgt. Rectorino Santiago of the 28th Philippine Constabulary Company stationed in Pasig, Rizal. Lying in a state of severe shock, hovering between life and death, and conscious that he was soon to meet his Creator, Cpl. Alfredo Pablo, upon being questioned by Sgt. Santiago regarding the identities of the persons who attacked him named them one by one to be Austria, Lunar and Rotillo. This statement given by the victim is indeed significant as it substantiates the testimony of Rodolfo Fuerte to the effect that it was Lunar and Austria who stabbed Cpl. Pablo while the latter was facing and squatting before the accused Rotillo Lorica, who, in turn, helped his co-accused by holding the two hands of said guard." The trial court emphasized that despite the probing questions of Sgt. Santiago, the victim "mentioned no

other than Austria, Lunar and Rotillo Lorica," as they alone were the ones who attacked and assaulted him.

The trial court continued with its appraisal of the evidence establishing the accused's guilt, as follows: "(N)ext is the testimony of Juanito Manabat, another prisoner, who declared that he saw accused Lunar shoot at Cpl. Pablo that evening. This witness corroborates the declaration of Celso Valentino that it was Lunar who fired at the guard, and that of Rodolfo Fuerte who testified that after the gunshot he saw Lunar holding the gun. No reason has been given by any of the accused, more particularly by Lunar, why this particular witness, Juanito Manabat, would testify for the prosecution in this respect. There is no circumstance whatsoever which shows that said witness was motivated by bias, prejudice, or interest when he took the stand; as a matter of fact, it is to be noted that Juanito Manabat was not one of those originally included in the accusation, and therefore, it cannot be charged that he testified solely for his self preservation.

"Another evidence of significance is the declaration of the witness, Jose Olivar, who stated that he saw Lunar fire at Cpl. Pablo and who also positively identified his assailants to be accused Austria and Millare, the latter being the one who hit him on the head with a piece of wood. Such Testimony strengthens the evidence against Lunar and strongly leads this Court to believe that Millare was indeed part of the conspiracy of effecting a 'jailbreak' on that particular occasion. It is to be remembered that Rodolfo Fuerte declared that he saw Millare talking with Lunar and Austria just before the trouble and that Millare handed over a pair of scissors to said Lunar and Austria which was used in stabbing Cpl. Pablo. These facts together with the statement of Jose Olivar that Millare was one of those who attacked him belie Millare's pretensions of innocence and clearly show his guilty participation in the plan. No motive has been attributed to Jose Olivar for testifying against the accused Lunar and Millare, and this Court finds no ground for discrediting his testimony on this matter. * * *.

"The last piece of evidence which completes the chain of events on that day of December 23, 1957 consists of the act that both Austria and Lunar escaped from the provincial jail during the commotion and were recaptured only after they were over-powered by the local police of Taguig, Rizal. The escape of these two proves that the motive or cause for the riot was to effect a mass 'jailbreak' for the provincial prisoners. The claim of Lunar that he was threatened by Austria into escaping with him is utterly absurd as the evidence shows that he offered strong resistance to the attempts of the Chief of Police of Taguig to re-arrest him. It was testified to by Sgt. Catalino David that when told to surrender, Lunar, who was armed with a gun (Exh. 'O'), fired first at the Chief of Police and then at him hitting both of them. Such conduct simply proves Lunar effected his escape of his own free will and in accordance with a pre-conceived plan.

"Finally, there is the statement of accused Leopoldo Lunar offered in rebuttal (Exh. 'Q') wherein he admitted the fact that he stabbed Alfredo Pablo although he disclaimed knowledge of having shot the latter."

The Court further notes that while Lunar in testifying on his own behalf at the trial feigned complete passivity and non-participation in the criminal acts resulting in Pablo's death, [9] and "fingered" Austria as the one who stabbed and shot Pablo, his own previous statements of record belie his claims and made them unworthy of credence. Thus, in his very statement of December 23, 1957 taken after his apprehension, Exhibit "Q", where most of his replies were evasive, he admitted having stabbed the victim. Pablo, although he could not remember how many times he did so. Again, at his arraignment on January 23, 1958, when the trial court ordered the entering of a not guilty plea for him despite his insistent, manifestation on pleading guilty, he admitted in open court that he grabbed Pablo's gun and shot him once although claiming "(he) did not intend to kill" and that he fired two other shots with the gun "outside the cell of the provincial jail and when the guards were shooting me (sic) I fired back to scare them away." [10]

The trial court accordingly found Lunar guilty as principal and Lorica and Millare guilty as accomplices of the crime of murder with assault upon an agent of a person in authority, with evident premeditation qualifying the crime as murder and attended by the aggravating circumstances of treachery and nocturnity, as follows: "It is

Murder because the killing of Cpl. Pablo was premeditated and planned to insure the success of the conspiracy to break jail. The fact that the leaders of the conspiracy, Austria and Lunar, armed themselves with scissor blades is significant as it shows that they had in mind the liquidation of the guard on duty to accomplish their purpose. Aside from evident premeditation, there is also present the qualifying circumstance of treachery. As defined by law, there is treachery when the offender commits the crime employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the victim might make. (par. 16, Art. 14, Rev Pen. Code). In this particular case, pursuant to their plan, Lunar approached the victim from behind, encircled his arm around the neck of the guard, while accused Rotillo Lorica held his two hands, and as the victim was in that position unable to defend himself, he was stabbed by the other co-conspirator, Bienvenido Austria, only to be stabbed again by Lunar who was holding a scissor blade in his right hand and shot by the latter with the guard's own gun. The multiple wounds sustained by the victim attest to the fact that he was overpowered by his assailants and had no opportunity of offering effective resistance or of defending himself against the aggression. Aside from treachery, there is the aggravating circumstance of nighttime which should be considered in this particular case for reasons already stated before.[10a] All the other aggravating circumstances alleged in the Information are absorbed either by treachery or by the elements of the offense of 'Assault upon a person in authority' which is complexed with the crime of Murder. The victim in this case was a provincial guard and by the nature of his duties, was an agent of a person in authority. At the time that Cpl. Pablo was attacked; he was in the discharge of his official functions as he was then assigned as desk sergeant in charge of the peace and order situation inside the provincial jail. The attack on him, therefore, while he was engaged in the performance of his duties constitute the offense of Direct Assault as defined and penalized under Art. 148 of the Revised Penal Code."

Counsel for Lunar assigns as errors the trial court's findings that evident premeditation and treachery attended the killing of the victim, and contends on the other hand that there was no conspiracy to kill him and a failure of proof that Lunar actually inflicted the allegedly single fatal abdominal wound and consequently, assuming that Lunar did inflict said fatal wound, he should be convicted only of homicide, not murder, with assault upon an agent of a person in authority.

Counsel deoficio for Austria advances the same contentions of absence of evident premeditation and treachery and of conspiracy in the killing of the victim, while conceding that "as accused Austria pleaded guilty on arraignment, the trial court had no alternative but to consider treachery and evident premeditation as circumstances to qualify the killing of Alfredo Pablo." [11] He pleads however that whereas Austria was sentenced to death on his plea of guilty before Judge Victoriano, while the decision of Judge Palma was rendered after a full dress trial, that "accused Austria shall be given the benefit of findings favorable to him in said decision."

1. On the question of evident premeditation, the Court dot's not find persuasive defense counsel's theory that "the conspiracy to break jail, which the trial court found, appears to be but a drawn inference" [12] from Fuerte's testimony "that he saw Millare talking with Lunar and Austria just before the trouble and that Millare handed over a pair of scissors to said Lunar and Austria which was used in Stabbing Cpl. Pablo." The record shows, as stressed by the State, that long before the night for Christmas lantern making by the detainees at the provincial jail and of the savage stabbing and killing of Cpl. Pablo at 1:00 a. m. of December 23, 1957, a plan had been reached to stage the jailbreak complete with details of how the escapees would be met by a courier from a certain Commander Romy and that there would be a vehicle to take them to the mountains, and of how Lunar, Austria, Rotillo, Valentino and Fuerte would dispose of Cpl. Pablo. This was divulged by the accused Millare in his statement of December 27, 1957, Exhibit "R", which he voluntarily affirmed [13] when he took the witness stand on his own behalf on July 7 and 8, 1958, and expressly identified Lunar and Austria as the persons who stabbed the victim. [14] Lunar made no attempt to repudiate these damaging statements of his co-accused Millare.

The details of the escape plan thus revealed by the accused Millare substantially tallied with the events as they actually unfolded at the early hours of that fateful day of December 23, 1957, with Lunar and Austria making good their escape from the jail after killing the courageous victim who tried to foil their plot notwithstanding their treacherous attack and superior strength, and proceeding to barrio Tipas (some four kilometers from the municipal building of Taguig)[15] to board the bus there to effect their escape and get to their scheduled rendezvous with Commander Romy. Such planned rendezvous with specific outsiders could certainly not have been arranged for and taken place if there has been no contacts and planning which of course establish evident premeditation and by their very nature required a considerable lapse of time for sufficient reflection on the part of the accused. The burden of showing that this was mere coincidence and that the lapse of time between the determination and execution of the criminal plan was insufficient for reflection thus shifted to the accused under such circumstances. The trial court after noting that "nighttime was purposely sought by the conspirators as at that time the other provincial guards were asleep and there was only Cpl. Pablo who was watching over the prisoners with the help of the trustee, Jose Olivar, which fact rendered the possibility of succour quite difficult, if not remote," and the treachery and suddenness of the assault by Lunar and Austria who were armed with scissor blades, whereby Cpl. Pablo was encircled from behind by Lunar and rendered helpless, according to plan, with multiple stab wounds inflicted upon him when he offered brave but futile resistance "attesting to the fact that he was overpowered by his assailants and had no opportunity of offering effective resistance or of defending himself against the aggression," committed no error in concluding that evident premeditation and planning qualified the killing as murder.

2. Accused's contention that treachery did not attend the brutal killing of Cpl. Pablo is refuted by the record itself.

As defined by law, "(T)here is treachery when the offender commits the crime employing means, methods, or forms of execution thereof which tend directly and specially to ensure its execution without risk to himself arising from the defense which the victim might make." [16]

Here, it was duly established as found by the trial court that Lunar approached the victim from behind, encircling his arm in a tight grip around the victim's neck while accused Rotillo held the victim's two hands, and as the victim was thus rendered helpless and unable to defend himself, both Austria and Lunar stabbed the victim with scissor blades inflicting upon him at least four serious stab wounds, anyone of which could have caused his death [17] with one half scissor blade plunged so deep that it was imbedded in the victim's back with only its outer end sticking out. Still, Lunar mercilessly shot the victim with the latter's own gun which they had easily wrested from him. As testified by Dr. Benjamin Antonio, resident physician at the provincial hospital, "the bullet traversed the (victim's) chest cavity and fractured the four ribs (so) the patient could have died from shock." [18]

The victim's utter helplessness is starkly portrayed in his own poignant words in his dying declaration, Exhibit "B" that "Sinaksak, binaril * * * inipit * * sinakalako" making a hand gesture with three fingers to denote three persons who assaulted him (whom he named eventually as Lunar, Austria and Rotillo).

Lunar's counsel in effect concedes treachery in that the accused had "numerical superiority and the element of surprise" in arguing in another portion of the brief that "(O)n the other hand, it cannot be said that killing Pablo was part of the conspiracy to escape. The liquidation of Pablo was not essential or necessary to the success of the conspiracy. Guarding was lax perhaps because the detainees, then making Christmas lanterns, were freely moving around. With their numerical superiority and the element of surprise, the detainees could have easily overpowered and tied up the lone guard. This was their true plan. As confessed by Lunar to the trial court on arraignment, the plan was 'to tie him (Pablo) only and bring him inside the cell and for us to escape.' " (t.s.n., Jan. 23, 1958, p. 7). [19]

That Lunar and his co-accused indeed "could have easily overpowered and tied up the lone guard" without inflicting upon him the multiple mortal injuries that caused his death serves only to establish the treachery and perversity that attended his killing.

3. The third contention jointly pressed by Lunar's and Austria's counsels is that the trial court erred in virtually holding that there was a conspiracy to kill Cpl. Pablo (with Lunar and Austria as principals) when there was no direct proof thereof and the most that could be said was that the accused conspired to break and escape from jail.

Accused's contention is untenable. It has long been established that where as in this case there was a general plan to kill anyone who might put up violent resistance to their criminal plot to break from jail, all natural and inherent consequences of such plan are deemed to be within the conspiracy.[20]

As was held in *People vs. Timbol*,[21] usually the conspiracy, from the secrecy of the crime and of the planning, may only be inferred from a number of definite acts, conditions and circumstances which vary according to the purposes to be accomplished, If it be proved that the defendants by their acts aimed at the same object, one performing one part and another, part of the same so as to complete it, with a view to the attainment of the same object, and their acts, though apparently independent, were in fact connected and cooperative, indicating closeness of sentiment, the court will be justified in concluding that the defendants were engaged in a conspiracy, particularly where they concertedly and simultaneously launched a collective aggression against the victims.[22]

In *People vs. del Rosario*,[23] the late Chief Justice Avanceña reiterated the principle that "the attack upon the deceased ultimately launched by Sisoy (a co-conspirator), who inflicted the death wound with a file, was an incident and a consequence of the agreement between the appellant and his companions" to thrash and manhandle the victim and therefore the appellant was held responsible for murder as the result of the concerted action between him and his co-conspirators.[24]

Our jurisprudence is replete with cases where there was no evidence of direct conspiracy to commit the crime but it has been consistently held as in *People vs. Monadi*[25] that "conspiracy can be inferred and proven by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests," and such unity of purpose and concert of action serve to establish the existence of the conspiracy and the criminal liability as principals of the conspirators.

4. Lunar's fourth assignment of error that the allegedly single fatal stab wound cannot be attributed to him is grounded on erroneous factual and legal premises.

Lunar's contention is that "(A)ccording to the evidence of the prosecution, it was Lunar who inflicted the one gunshot wound, but it was he and Austria who inflicted the stab wounds. Of the four (4) stab wounds, it is not specified how many were inflicted by Austria, and how many by Lunar. Nor were the stab wounds caused by each identified. Yet only one wound was fatal: the 'penetrating stab wound of abdomen' from which peritonitis developed,"[26] and that "if this wound was inflicted by Austria who was already convicted on a plea of guilty to murder with assault upon an agent of a person in authority (Decision, p. 35), then the same act cannot be blamed on Lunar, in the absence of a conspiracy to kill which, we submit, was not sufficiently established by the prosecution. Hence, the mere multiplicity of the wounds cannot be used as a safe basis for a holding of treachery on the part of Lunar."[27]

Lunar's factual error is that not only one of the four stab wounds inflicted on the victim was fatal. Describing the four stab wounds, Dr. Antonio of the Rizal provincial hospital testified that "the patient on admission was suffering from severe shock and severe hemorrhage and peritonitis acute" and that "any of these (stab) injuries could cause the death of the victim." [28] The gunshot wound inflicted by Lunar could likewise have caused the

victim's death from shock. Since Lunar admittedly inflicted at least a stab wound and the gunshot wound on the victim, there can be no factual question as to his responsibility for the victim's death.

On legal premises, Lunar's contention is likewise erroneous. Conspiracy has been clearly shown by Lunar's direct and active participation in the assault against the victim, simultaneously with the other conspirators, and the presence of multiple stab wounds in different parts of the victim's body, front and back, reveal the concerted attack made by the conspirators with unity of action and a joint purpose and design of annihilating the victim, and consequently, the act of one conspirator was the act of all. Under the proven facts, Lunar was also directly liable as a principal by direct participation for having inflicted mortal stab and gunshot wounds on the victim. Prescinding from the fact that the four stab wounds inflicted were all held to be mortal and fatal, the question raised by Lunar now as to who between him and Austria inflicted which wounds and how many, is of no legal relevance, since each is responsible for the acts of the other as his co-principal and co-conspirator.

5. Lunar's last contention that he should at most be convicted only of homicide, not murder, with assault upon an agent of a person in authority, must necessarily fail, in the light of the foregoing exposition showing his guilt beyond reasonable doubt of the capital crime as charged.

6. As to Austria, his counsel deofficio raises the question of the trial court "going against the consequences of conspiracy as a concept" in that while it found conspiracy to exist, "yet it classified the responsibility of the accused by making two (Lunar and Austria) liable as principals and two (Rotillo and Millare) as accomplices." [29] The case of the two co-accused convicted as accomplices has not been appealed and can in no way affect or lessen the criminal liability of the two herein principal accused as principals and direct perpetrators of the dastardly crime. Suffice it to state however, that obviously the trial court imposed lesser sentences on Rotillo and Millare since it considered them as having repented and withdrawn from the unlawful design to break violently from jail, when they took compassion upon the fallen victim and attended to him instead of joining Lunar and Austria who made good their escape.

Austria's counsel's plea that only nocturnity was found in Judge Palma's decision after trial as an aggravating circumstance, which should be deemed offset by his voluntary plea of guilty is factually erroneous, since the trial court also found the crime to have been attended also by treachery as an aggravating circumstance. Furthermore, since the crime of which he is charged and found guilty is a complex crime, the penalty to be applied under Article 48 of the Revised Penal Code must be the maximum, or death, which is the maximum penalty provided for murder [30] regardless of the attendance of mitigating or aggravating circumstances in the commission of the crime. [31]

The Court, upon its review of the death sentence imposed upon the accused Leopoldo Lunar after due trial and of the death sentence imposed upon the accused Bienvenido Austria after his plea of guilty finds no justification to modify or set aside the same.

ACCORDINGLY, the Court finds the accused Leopoldo Lunar and Beinvenido Austria guilty beyond reasonable doubt of the complex crime of murder with assault upon an agent of a person in authority and affirms in review the sentence of death imposed upon them by the trial court. The said accused are sentenced jointly and severally to indemnify the heirs of the deceased Alfredo Pablo in the increased sum of twelve thousand pesos (P12,000.00). [32]

SO ORDERED.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Antonio, JJ., concur.

Makasiar, J., did not take part.

Concepcion, C.J., on leave.

[1] Criminal Case No. 7539 of the lower court.

[2] Criminal Case No. 7540 of the lower court.

[2a] The life sentence imposed for frustrated murder is obviously in excess of that provided by law. Even applied in the maximum period, under the indeterminate sentence law, the imposable penalty would range between prision correccional, maximum - prision mayor medium, minimum to prision mayor, maximum - reclusion temporal, medium, as maximum. The matter is however moot, in view of the death sentence correctly imposed upon him in Case 7540, which is the subject of this review.

[3] His first name was not given by him in the record, t.s.n. Jan. 23, 1958, p.5.

[4] T.s.n. January 23, 1958, pp. 1-9.

[5] Record, pp. 85, 132.

[6] Emphasis copied.

[7] Rec. p. 179.

[7a] Record of Criminal Case No. 7540, p. 34.

[8] Rollo, p. 47.

[9] Supra, at pp. 10-11; T.s.n. June 25, 1958, pp. 5 et seq; T.s.n. July 7, 1958, pp. 1-5.

[10] T.s.n. Jan. 23, 1958, p. 8.

[10a] Infra, p. 16, relating the trial court's finding that nighttime was purposely sought and Cpl. Pablo was then the lone guard on duty.

[11] Rollo, p. 116.

[12] Lunar's brief, p. 4.

[13] T.s.n. July 8, 1958, p. 2.

[14] T.s.n., July 7, 1958, p. 10.

[15] T.s.n., Mar. 18, 1958, p. 5.

[16] Art. 14, par. 16, Rev. Penal Code.

[17] T.s.n. March 6, 1958, p. 5.

[18] T.s.n. Feb. 19, 1958, p. 23.

[19] Lunar's brief, p. 15, italics supplied.

[20] People vs. Timbol, G.R. Nos. 47471 - 73, Aug. 4, 1944; see I Padilla's Criminal Law, 1971 ed., 458.

[21] Supra, fn. 20.

[22] Citing *People vs. Cabrera*, 43 Phil 82; *People vs. Carbonel*, 48 Phil 868.

[23] 68 Phil. 720.

[24] See also *People vs. Santos*, 84 Phil 97, where "the fact that (accused) was not present on the spot where (the victim) was killed does not minimize or mitigate his criminal liability because the killing was done by his co-conspirators in pursuance of the conspiracy."

[25] 97 Phil 575, 584; see also *People - vs. Pedro*, 16 SCRA 57; - vs. *Verzo*, 21 SCRA 1403; vs. *Paredes*, 24 SCRA 635; - vs. *Pagaduan*, 29 SCRA 54.

[26] Lunar's brief, p. 24.

[27] *Idem*, at p. 21.

[28] Supra, at pp. 16-17; t.s.n. March 6, 1958, pp. 4-5.

[29] Rollo, p. 122; notes in italics supplied.

[30] Article 248, Revised Penal Code.

[31] Article 63, par. 1, Revised Penal Code.

[32] *People vs. Pantoja*, 25 SCRA 468 (1968).

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.