

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FLORIANO T. BUYNAY, ET AL., ACCUSED, FLORIANO T. BUYNAY,
DOMINGO L. CHAVES AND REYNALDO ARELLANO,
ACCUSED-APPELLANTS.**

G.R. Nos. L-39960-61. March 05, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Floriano T. Buynay, Domingo L. Chaves, Arturo C. Netuda, Reynaldo Arellano, Leopoldo Porlas, Alfonso Rama, Mansueto Cabale, Crisanto Velez, Florencio Tadtas, Jesus Medina and Rodrigo D. Sacala were charged with the crimes of Direct Assault with Frustrated Murder in Criminal Case No. CCC-XV-543 and with Direct Assault with Murder in Criminal Case No. CCC-XV-591 before the then Circuit Criminal Court of Misamis Oriental.

In Criminal Case No. CCC-XV-543, Reynaldo Arellano, Floriano T. Buynay and Domingo Chaves pleaded guilty to the charge and were sentenced accordingly, while Rodrigo Sacala, Leopoldo Porlas, Alfonso Rama and Arturo Netuda pleaded not guilty. Jesus Medina, Mansueto Cabale and Crisanto Velez have remained at large. After his arraignment, Alfonso Rama escaped and was tried in absentia.

In Criminal Case No. CCC-XV-591, Floriano Buynay, Domingo Chaves and Reynaldo Arellano pleaded guilty on arraignment, while Rodrigo Sacala, Leopoldo Porlas, Arturo Netuda and Alfonso Rama pleaded not guilty. Alfonso Rama was tried in absentia. Jesus Medina, Crisanto Velez and Mansueto Cabale are still at large. Notwithstanding the plea of guilty interposed by Buynay, Chaves and Arellano in this capital offense, the lower court proceeded to receive evidence to determine the degree of their culpability.

A joint trial of the two cases was held and, after hearing, the lower court rendered judgment finding Floriano Buynay, Domingo Chaves and Reynaldo Arellano guilty as principals of the crime of Direct Assault with Murder in CCC-XV-591 and sentencing each of them to suffer the penalty of death, to indemnify jointly and severally the heirs of Patrolman Romeo Tangara the sum of P12,000.00 and to pay 1/3 each of the costs. Thus, this appeal concerns only Floriano Buynay, Domingo Chaves and Reynaldo Arellano.

On reasonable doubt, Rodrigo Sacala, Alfonso Rama, Leopoldo Porlas and Arturo Netuda were acquitted of the crimes charged.

Prosecution evidence shows that early morning of October 21, 1973 prisoners Floriano Buynay, Domingo Chaves, Reynaldo Arellano and other prisoners of the City Jail of Cagayan de Oro City conceived the plan to escape. They were able to cut or chisel their leg irons with a file or saw. About 5:30 in the afternoon of the same day, when the door of the jail was opened to bring back to the cells the plywood bedding or "tarimas" which were taken out to the yards for airing, appellants Buynay, Chaves and Arellano and other prisoners rushed out of their cells. Buynay, effectively, as planned, immediately approached and stabbed the guard on duty, Patrolman Romeo Tangara, on the right chest near the armpit with a stainless steel knife, while Chaves and Arellano together with

prisoners Tadtas and Velez, stabbed Patrolman Gregorio Recla who was also on duty as corporal of the guard, at the back left armpit and on the head.

Patrolman Tangara died of shock due to hemorrhage resulting from stab wounds inflicted on him by Buynay. Pfc. Recla survived the injuries he suffered because of medical attendance given him.

Chaves, Arellano and Buynay succeeded in escaping from the city jail that afternoon. However, they were captured the following day in a river near Burgos Street. Buynay and Chaves were investigated and both, after they were apprised of their rights to remain silent and to have counsel, gave their statements (Exhibits "B" and "A") which were signed and sworn to before Fiscal Noli -Catli and Deputy Clerk of Court Aurelio Zaldivar, respectively.

Appellant Reynaldo Arellano testified that he was a detained prisoner in Cagayan de Oro City when in the afternoon of October 21, 1973 there was disorder and confusion among the prisoners in the city jail. He left his cell and immediately a shot rang out and he was hit on the stomach and on the left leg. He stood up and seeing the other prisoners jumping out the fence, he followed them and escaped. They did not plan to kill the guards.

He admitted that he was an escapee from the Davao Penal Colony while serving sentence of from 8 to 14 years imposed by the then Court of First Instance of Pasay for the crime of robbery. He was captured and detained in the city jail of Cagayan de Oro.

Appellant Floriano Buynay declared that when the beds were brought inside the cells, the other prisoners rushed out. When Arellano and he went out also, Patrolman Tangara fired at and hit Arellano who fell to the ground. He approached Patrolman Tangara and tried to take the policeman's pistol but failed because he was bumped by the other prisoners who were rushing out. He was captured about 6:00 in the morning of the following day, October 22, 1973.

He claimed to have been maltreated, boxed and mauled by Patrolman Macalla and other policemen. He was not apprised of his constitutional rights when his affidavit, Exhibit "B", was taken but he signed it before the fiscal because he was afraid. Their plan was to escape but not to kill anyone.

Appellant Domingo Chaves did not take the witness stand.

Defense counsel, Atty. Luis R. Fera, in his brief admits that the evidence adduced by the prosecution "both direct and circumstantial, clearly establishes the existence of a conspiracy among the appellants. The extrajudicial confessions of appellants Chaves (Exhibit "A") and Buynay (Exhibit "B"), as well as the testimonies of prosecution witnesses Agustin Flores and Patrolman Recla depicting the conduct of the appellants and their concerted and coordinated action in the commission of the crime clearly show the presence of conspiracy in its commission (People vs. Pedro, 16 SCRA 57; People vs. Verzo, 21 SCRA 1403; People vs. Cabiltes, 25 SCRA 112, and many others). And undoubtedly, these extra-judicial confessions, Exhibits "A" and "B", are admissible against the other co-conspirators not only because conspiracy here has been proven by independent evidence other than the confession (People vs. Chaw Yaw Shun, 23 SCRA 127) but also because it is clear from the facts and circumstances that persons other than the declarant perpetrated the crime charged (People vs. Sta. Maria, 15 SCRA 222) (Appellants' Brief, pp. 6-7)

However, appellants submit that the lower court erred in convicting them of the complex crime of direct assault with murder because the killing of the deceased Tangara is not murder, qualified by treachery, but only simple homicide.

The contention is without merit. Prosecution evidence is clear that after appellants rushed out of their cells,

Buynay held the hand of Patrolman Tangara who was then watching a game of "dama", and inquired if he was the guard on duty. Without waiting for an answer, Buynay immediately stabbed Tangara. The suddenness of the assault on the unsuspecting victim made it impossible for him to parry and avoid the stab blows. The mode of attack adopted by the appellants insured the accomplishment of their purpose without risk to themselves arising from the defense which the person attacked might make. (People vs. Curiano, 9 SCRA 323)

Likewise, there is no merit in appellants' claim that there was no evident premeditation which attended the commission of the crime. The plan to escape and attack the guards was hatched in the early morning of October 21, 1973. The first thing they did was to chisel their leg irons with a file. In the afternoon of the same day, as planned, they waited for the plywood beds to be brought in and, immediately, they rushed out and attacked their guards, an act manifestly indicating that they did cling to their determination. Between the planning and the execution there was sufficient lapse of time to reflect and meditate upon the consequences of their act. In fact, they were so prepared that they were armed with deadly weapons for the purpose of assaulting whoever were the guards on duty. It is therefore hard to believe that the plan was only to escape. What is credible is: they would escape and attack whoever would be on the way.

As admitted by defense counsel in his brief, page 11, appellants Buynay and Arellano are quasi-recidivists. Under Article 160 of the Revised Penal Code, quasi-recidivism is a special aggravating circumstance and the offender shall be punished with the maximum period of the penalty prescribed by law for the new felony. It cannot be off-set by the ordinary mitigating circumstance of plea of guilty.

Domingo Chaves escaped from the New Bilibid Prison, Muntinlupa on October 8, 1981 and has remained at-large up to this date. Being a death convict, his escape will not automatically result in the dismissal of this appeal.

The trial court did not err in imposing upon appellants the death penalty. However, for lack of necessary votes the penalty is reduced to reclusion perpetua.

WHEREFORE, as modified in the sense that the penalty is reclusion perpetua for each of the appellants, the appealed decision is **AFFIRMED** in all other respects. With costs.

SO ORDERED.

Makasiar, Acting C.J., Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin and Gutierrez, Jr., JJ., concur.

Fernando, C.J. and Teehankee, J., on leave (abroad).

Aquino, J., no part.

Abad Santos, J., he concurs but the indemnity should be increased to P30,000.

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