

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELICIANO MUÑOZ, ALIAS “TONY,” ET AL., ACCUSED, MARVIN MILLORA, TOMAS TAYABA, ALIAS “TAMY TAYABA” AND JOSE MISLANG, DEFENDANTS...

G.R. Nos. L-38968-70. February 09, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

Of the four persons convicted in this case, one has not appealed and thus impliedly accepted his sentence. The others have questioned their conviction and insist that they are innocent. The prosecution did not think so, and neither does the Solicitor General now. The brief for the appellee would affirm the finding of guilt and in fact even increase the penalty.

The prosecution presented a bizarre case of arbitrary condemnation and instant punishment meted out by what appear to be the members of a private army. Eleven persons, most of them bodyguards of the town mayor, went out in a jeep at the behest of one of them who had complained of having been victimized by cattle rustler. Having found their supposed quarry, they proceeded to execute each one of them in cold blood without further ado and without mercy. One was shot in the mouth and died instantly as his son and daughter looked on in horror. The second was forced to lie down on the ground and then shot twice, also in the head, before his terrified wife and son. The third, who was only sixteen years old, was kicked in the head until he bled before he too had his brains blown out. To all appearances, the unfortunate victims were only innocent farmers and not the dangerous criminals they were pronounced to be.

Bizarre but true, as the trial court agreed.

Of the eleven persons who were charged with murder in three separate informations, the four who stood trial were found guilty.[1] The other seven have yet to be identified and tried. The sentence of Feliciano Muñoz, who did not appeal, has long become final and EXECUTORY and is now being served.[2] We deal here only with the appeals of the other convicts, namely, Marvin Millora, Tomas Tayaba, and Jose Mislang, who all ask for a reversal.

The killings occurred in the morning of June 30, 1972, in Balite Sur, San Carlos City, Pangasinan.[3]

As established by the prosecution, Feliciano Muñoz, Marvin Millora, Tomas Tayaba, Jose Mislang, and the other seven unidentified men went to the house of Mauro Bulatao and asked for the address of his son Arsenio. All four of them went inside while the rest surrounded the house. All eleven men were armed. Mauro, who was then bathing his horse, was called by the accused. As he approached and while under his house, he was met by Millora who simply shot him at arm's length with a long firearm, hitting him in the mouth and killing him as he fell. At that precise time, Muñoz, Tayaba and Mislang were standing by Millora, evidently giving him armed support. None of them made any move to restrain or dissuade him.[4]

After killing Mauro, the four accused dragged out of the house his sixteen year old son, Aquilino and knocked

him down. Muñoz kicked him several times in the head as he lay on the ground while the others looked on in silent approval or at least without objection. They then took the bleeding man with them to look for their third target, Alejandro Bulatao.[5]

In Alejandro's house, the group forced his wife, Juana to go with them and direct them to her husband. They found him tending to their cows with his son Pedro. Muñoz ordered Alejandro and his wife to lie down and then, even as Pedro pleaded for his father's life, shot Alejandro twice in the head, killing him instantly. Millora, Tayaba and Mislang, along with their companions, merely stood by as the brutal act was committed. Juana watched her husband's death in terror and the 12-year old boy made a desperate run for his life as one of the accused fired at him and missed.[6]

The second victim having been murdered as the first, the accused then vented their violence on Aquilino, whom Muñoz again brutally kicked as the others looked on. Aquilino was entirely defenseless. Finally, Muñoz ended the boy's agony and shot him to death, hitting him in the head and body. Muñoz and Millora then picked up all the empty shells and fled with the rest of their companions, leaving the terrified Juana with the two grisly corpses.[7]

The above events were narrated at the trial by Melecia Bulatao,[8] Mauro's daughter and Aquilino's sister; Jose Bulatao,[9] Mauro's son and Aquilino's brother; Juana Bulatao,[10] Alejandro's wife; and Pedro Bulatao,[11] their son. Their testimony was corroborated by Dr: Juanito de Vera,[12] who performed the autopsy on the three victims.

Melecia and Jose testified on the killing of their father by Marvin Millora as the other accused stood by and the mauling of their brother Aquilino before he was dragged away by the group. The trial court especially noted the straightforward account given by Jose, who positively identified Millora as the killer and described the participation of the others, including the savage kicking of his brother by Muñoz.[13] Melecia earlier pointed to Mislang as the one who had shot her father but changed her mind later on cross-examination and named Millora as the actual killer. She explained her turn-about by confessing that she had earlier agreed to exonerate Millora in exchange for the sum of P3,000.00 promised by his father although she actually did not receive the money.[14] For her part, Juana related how she was threatened with death unless she accompanied the accused to where her husband was. She narrated in detail how Alejandro was killed before her very eyes and how Aquilino was later kicked and then also shot to death, also by Muñoz, while the other accused stood by.[15] Her testimony was corroborated by Pedro, her son, whom the accused had also thought of killing because he was "talkative" and indeed was shot at when he successfully escaped after his father's murder.[16]

The defense makes much of the fact that it was only months after the killings that it occurred to these witnesses to denounce the accused and suggests that this delay should impugn their credibility. As correctly pointed out by the trial judge, however, these witnesses were naturally deterred from doing so for fear that they would meet the same fate that befell their relatives. These were humble barrio folk whose timidity did not allow them to report their grievances beyond the barrio officials they knew, more so since the higher authorities appeared to be indifferent and gave no attention, much less encouragement, to their complaints.

It is true that there were several inconsistencies in the testimony of these witnesses as painstakingly pointed out by the appellants,[17] but these are minor flaws that do not detract from the essential truthfulness of their accounts of the ruthless killings.[18]

The brutality of the murders and the veracity of the testimony of the said witnesses are emphasized by the medical reports[19] of the injuries sustained by the victims as follows:

Mauro Bulatao:

"1. Thru and thru gunshot wound with point of entrance at the upper lip left side around 1 cm. in diameter and with the exit at the middle of the back of the head around 1-1/2 cm. in diameter.

"2. Gunshot wound at the lower lip left side of the mouth."

Alejandro Bulatao:

"1. Lacerated gunshot wound at the left eye with the whole eye practically lacerated.

"2. Lacerated gunshot wound of the right eye and the forehead practically opened with the brain tissue outside."

Aquilino Bulatao:

"1. Thru and thru gunshot wound with point of entrance at the upper right jaw bone around 1-1/2 cm. in diameter and with the exit at the middle of the back of the head around 2 cm. in diameter.

"2. Gunshot wound at the upper left shoulder out the middle of the left clavicle around 1-1/2 inches in diameter."

The three appellants invoked individual defenses which the trial court correctly rejected as false and unbelievable. All claimed the Bulataos were killed as a result of an exchange of gunfire with a rather hazy group and each claimed he was not involved in the shoot-out.

Testifying for Millora on the alleged encounter between the Bulataos and their adversaries, Victoriano Bacani said that the latter included Tayaba, Misleng and five others who fled from the scene in a jeep.[20]

Graciano Muñoz, corroborating Bacani, said he himself saw seven men in a jeep coming from the sound of the gunfire after he had paid Mauro P400.00 to redeem his stolen carabao.[21] Another witness for Millora, Orlando de los Santos, testified to having seen the encounter between the Bulataos and the other group and declared that the former were armed with carbines and Garand rifles.[22]

The trial court rejected Bacani's testimony because he appeared hesitant and suspicious on the stand and did not give the impression that he was telling the truth.[23] Moreover, it took him all of one year to report the alleged shooting encounter, which he also did not mention that same afternoon when he visited Mauro's family to condole with them.[24] It is also not believable that the group would flee because they had no more bullets when their supposed three adversaries were already dead in the field. The alleged redemption made by Muñoz was described by the trial court as preposterous, especially since no shred of evidence had been presented to show that Mauro was a cattle rustler, let alone his 16-year old son.[25] As for De los Santos, no firearms were discovered beside the dead bodies of the Bulataos, including Mauro, who was found not in the supposed battleground but under his house, as testified to by Dr. De Vera.[26]

Millora's own defense was that he was in Dagupan City at the time of the killings, having gone there in the evening of June 29, 1972. He claimed he had stayed there overnight with a female companion after drinking beer with Atty. Antonio Resangit, returning to San Carlos City only between 8 and 9 o'clock the following morning or June 30, 1972.[27] The lawyer corroborated him,[28] but he cannot be more credible than Mauro's own children, Jose and Melecia, who positively identified Millora as the person who actually shot their father in the face and killed him instantly. Such a traumatic experience could not have been forgotten by these witnesses who saw their father murdered without warning or mercy nor could their memory of the heartless killer have been easily wiped out from their minds.

It is stressed that Juana Bulatao and her son Pedro also categorically declared that Millora was with the group that she took to the field where her husband and Aquilino were killed by Muñoz.[29]

Tayaba and Mislang offered a common defense, also of alibi. Both claimed that Mislang having complained of cattle rustlers, a group of policemen, including Tayaba, stayed in the former's house the whole night of June 29, 1972, leaving only at 8 o'clock the following morning of June 30, 1972, after Mislang had served them breakfast.[30] Significantly, however, barrio Bacnar, where Mislang's house was located, is only two kilometers from Balite Sur.[31] Moreover, the trial court doubted the testimony given by Sgt. Lomibao, who corroborated them and spoke of having heard the gunfire narrated by Millora's witnesses. The decision noted that Lomibao was mysteriously absent when the police chief and Dr. de Vera went to the scene of the crime at 9 o'clock that morning to investigate the killings. In fact, it expressed the suspicion that Lomibao and Patrolman Liwanag, who also testified for the accused, might have been among the seven unidentified persons who were with Muñoz and the three appellants herein when the Bulataos were murdered.[32]

All told, we affirm the findings of the trial judge, who had the opportunity to observe the witnesses at the trial and assess their credibility. As we said in a previous case:

"We see no reason to reverse the factual findings of the trial judge, who had the opportunity to observe the demeanor of the witnesses and to assess their credibility. The written record will not show that nuance of tone or voice, the meaningful contract between the hesitant pause and the prompt reply, and the expression or color or tilt of face that will affirm the truth or expose the fabrication. All these subtle factors could be considered by the trial judge in weighing the conflicting declarations before him, and we do not find that he has erred." [33]

We agree that the three appellants, together with Muñoz and their seven other companions, participated in the killings of the three Bulataos in the manner described by the witnesses for the prosecution. The defenses of the herein appellants should be, as they properly were, rejected as undeserving of belief in the light of the more convincing and telling evidence submitted by the government.

However, we do not accept the different, degrees of participation assigned by the court a quo, to each of the appellants in each of the three offenses imputed to them. In Criminal Case No. 0176, Millora was found guilty as principal and Muñoz and the other two herein appellants only accomplices, and in Criminal Case Nos. 0177 and 0178, Muñoz was found guilty as principal and the herein appellants only as accomplices.[34] In support of this finding, the trial court said that there was no evidence of conspiracy to justify holding each of the accused equally liable for the three murders.

We hold that there was. Indeed, it is clear that from the very start, when the eleven men went out to look for the suspected cattle rustlers, there was already an agreement among them to ferret out and punish the Bulataos whom they had condemned beforehand. They knew whom they were looking for. They knew where to look for them. They sought each of them with drawn and ready weapons. When they reached Mauro Bulatao's house, four of them went inside while the rest deployed themselves in strategic positions. When Millora shot Mauro, the appellants and the others stood by with guns at the ready. Nobody moved to dissuade or stop him. Together they dragged Aquilino from the house and the rest watched while Muñoz kicked him in the head while helpless on the ground. Together, they took him with them and then forced Juana Bulatao to lead them to her husband. The rest stood by with their weapons as Muñoz shot Alejandro in the head. No one interceded to stop him from also killing Aquilino. There is no question that the group moved in concert, pursuing a common design previously agreed upon, that made each of them part of a conspiracy.[35] As such, each of them is liable in equal degree with the others for each of the three killings. Each member of the conspiracy to commit the crime of murder is guilty as a co-principal, regardless of who actually pulled the trigger that killed the three victims. It is settled that in a conspiracy the act of one is the act of all.[36]

Each of the three killings constituted the crime of murder, qualified by alevosia. There was treachery because every one of the three victims was completely helpless and defenseless when shot and killed by the accused with

no risk to themselves. Mauro was completely taken by surprise when he was shot in the face. Alejandro was lying down when he was shot in the head. Aquilino was seated when he was shot in the head and shoulders. None of the three victims had a chance to resist.

The penalty for murder under Article 248 of the Revised Penal Code was reclusion temporal in its maximum period to death, but this was modified by Article III, Section 19 (1) of the 1987 Constitution providing as follows:

"Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua."

Conformably, the Court has since February 2, 1987 not imposed the death penalty whenever it was called for under the said article but instead reduced the same to reclusion perpetua as mandated by the above provision. The maximum period of the penalty was thus in effect lowered to the medium, the same period applied, as before, where the offense was not attended by any modifying circumstance, with the minimum period, i.e., reclusion temporal maximum, being still applicable in all other cases. The three-grade scheme of the original penalty, including death, was thus maintained except that the maximum period was not imposed because of the constitutional prohibition.

In *People v. Gavarra*,^[37] Justice Pedro L. Yap declared for the Court that "in view of the abolition of the death penalty under Section 19, Article III of the 1987 Constitution, the penalty that may be imposed for murder is reclusion temporal in its maximum period to reclusion perpetua," thereby eliminating death as the original maximum period. Later, without categorically saying so, the Court, through Justice Ameurфина A. Melencio-Herrera in *People v. Masangkay*^[38] and through Justice Andres R. Narvasa in *People v. Atencio*,^[39] divided the modified penalty into three new periods, the limits of which were specified by Justice Edgardo L. Paras in *People v. Intino*,^[40] as follows: the lower half of reclusion temporal maximum as the minimum; the upper half of reclusion temporal maximum as the medium; and reclusion perpetua as the maximum.

The Court has reconsidered the above cases and, after extended discussion, come to the conclusion that the doctrine announced therein does not reflect the intention of the framers as embodied in Article III, Section 19(1) of the Constitution. This conclusion is not unanimous, to be sure. Indeed, there is much to be said of the opposite view, which was in fact shared by many of those now voting for its reversal. The majority of the Court, however, is of the belief that the original interpretation should be restored as the more acceptable reading of the constitutional provision in question.

The advocates of the *Masangkay* ruling argue that the Constitution abolished the death penalty and thereby limited the penalty for murder to the remaining periods, to wit, the minimum and the medium. These should now be divided into three new periods in keeping with the three-grade scheme intended by the legislature. Those who disagree feel that Article III, Section 19(1) merely prohibits the imposition of the death penalty and has not, by reducing it to reclusion perpetua, also correspondingly reduced the remaining penalties. These should be maintained intact.

A reading of Section 19(1) of Article III will readily show that there is really nothing therein which expressly declares the abolition of the death penalty. The provision merely says that the death penalty shall not be imposed unless for compelling reasons involving heinous crimes the Congress hereafter provides for it and, if already imposed, shall be reduced to reclusion perpetua. The language, while rather awkward, is still plain enough. And it is a settled rule of legal hermeneutics that if the language under consideration is plain, it is neither necessary nor permissible to resort to extrinsic aids, like the records of the constitutional convention, for its interpretation.^[41]

At that, the Court finds that such resort, even if made, would not be of much assistance either in the case at bar.

Accepting *arguendo* that it was the intention of the framers to abolish the death penalty, we are still not convinced from the debates in the Constitutional Commission that there was also a requirement to adjust the two remaining periods by dividing them into three shorter periods. This is not a necessary consequence of the provision as worded. The following exchange cited by those in favor of Masangkay is at best thought-provoking but not decisive of the question:

"FR. BERNAS: The effect is the abolition of the death penalty from those statutes - only the death penalty. The statute is not abolished, but the penalty is abolished.

"MR. MAAMBONG: That is what I am worried about, because the statutes, especially in the General Criminal Law, which is the Revised Penal Code, do not necessarily punish directly with death. Sometimes it has a range of reclusion temporal to death or reclusion perpetua to death. And what would be the effect on the judges, for example, if the range is reclusion temporal to death and he can no longer impose the death penalty? He will have difficulty in computing the degrees.

"Could the committee enlighten us on how the judge will look at the specific situation.

"FR. BERNAS: I grant that the judges will have difficulty, but I suppose that the judges will be equal to their tasks. The only thing is, if there is a range, the range cannot go as far as death (Record, CONCOM, July 18, 1986, Vol. I, 749).

"FR. BERNAS: Certainly, the penalties lower than death remain.

"MR. REGALADO: That would be reclusion perpetua. But the range of the penalty for murder consists of three periods. The maximum period of reclusion temporal under the present status is the minimum period for the penalty for murder. The medium period is reclusion perpetua. The maximum period is death. If we now remove the death penalty, we will, therefore, have a range of penalty of 17 years, 4 months and 1 day to 20 years of reclusion temporal up to reclusion perpetua. You cannot divide reclusion perpetua into two. While it has a duration of 30 years, it is an indivisible penalty. Where do we get the medium period now until such time that Congress gets around to accommodate this amendment?

"FR. BERNAS: As I said, this is a matter which lawyers can argue with judges about. All we are saying is, the judges cannot impose the death penalty (Records, CONCOM July 18, 1986, Vol. I, p. 750)."

So there we have it - "this is a matter which lawyers can argue with judges about." Assuming that Commissioner Bernas's answer reflected the consensus of the body, we are still not persuaded that it was the intention of the framers to lower not only the maximum period but also the other periods of the original penalty. That is not necessarily inferable from his statement that "the judges will be equal to their task," especially so since he also said - and we think with more definiteness - that "all we are saying is that the judges cannot impose the death penalty" (*italics supplied*). We understand this to mean that they were not saying more.

The question as we see it is not whether the framers intended to abolish the death penalty or merely to prevent its imposition. Whatever the intention was, what we should determine is whether or not they also meant to require a corresponding modification in the other periods as a result of the prohibition against the death penalty.

It is definite that such a requirement, if there really was one, is not at all expressed in Article III, Section 19(1) of the Constitution or indicated therein by at least clear and unmistakable implication. It would have been so easy, assuming such intention, to state it categorically and plainly, leaving no doubt as to its meaning. One searches in vain for such a statement, express or even implied. The writer of this opinion makes the personal observation that this might be still another instance where the framers meant one thing and said another or - strangely, considering their loquacity elsewhere - did not say enough.

The original ruling as applied in the Gavarra, Masangkay, Atencio and Intino cases represented the unanimous thinking of the Court as it was then constituted. All but two members[42] at that time still sit on the Court today. If we have seen fit to take a second look at the doctrine on which we were all agreed before, it is not because of a change in the composition of this body. It is virtually the same Court that is changing its mind after reflecting on the question again in the light of new perspectives. And well it might, and can, for the tenets it lays down are not immutable. The decisions of this Court are not petrified rules grown rigid once pronounced but vital, growing things subject to change as all life is. While we are told that the trodden path is best, this should not prevent us from opening a fresh trail or exploring the other side or testing a new idea in a spirit of continuing inquiry.

Accordingly, with the hope that "as judges, (we) will be equal to (our) tasks," whatever that means, we hereby reverse the current doctrine providing for three new periods for the penalty for murder as reduced by the Constitution. Instead, we return to our original interpretation and hold that Article III, Section 19(1) does not change the periods of the penalty prescribed by Article 248 of the Revised Penal Code except only insofar as it prohibits the imposition of the death penalty and reduces it to reclusion perpetua. The range of the medium and minimum penalties remains unchanged.

The Court realizes that this interpretation may lead to certain inequities that would not have arisen under Article 248 of the Revised Penal Code before its modification. Thus, a person originally subject to the death penalty and another who committed the murder without the attendance of any modifying circumstance will now be both punishable with the same medium period although the former is concededly more guilty than the latter. True enough. But that is the will not of this Court but of the Constitution. That is a question of wisdom, not construction. Of some relevance perhaps is the parable in the Bible of the workman who was paid the stipulated daily wage of one penny although he had worked longer than others hired later in the day but also paid the same amount. When he complained because he felt unjustly treated by the householder, the latter replied: "Friend, I do you no wrong. Did you not agree with me for a penny?"

The problem in any event is addressed not to this Court but to the Congress. Penalties are prescribed by statute and are essentially and exclusively legislative. As judges, we can only interpret and apply them and have no authority to modify them or revise their range as determined exclusively by the legislature. We should not encroach on this prerogative of the lawmaking body.

Coming back to the case at bar, we find that there being no generic aggravating or mitigating circumstance attending the commission of the offenses, the applicable sentence is the medium period of the penalty prescribed by Article 248 of the Revised Penal Code which, conformably to the new doctrine here adopted and announced, is still reclusion perpetua. This is the penalty we impose on all the accused-appellants for each of the three murders they have committed in conspiracy with the others. The award of civil indemnity for the heirs of each of the victims is affirmed but the amount thereof is hereby increased to P30,000.00 in line with the present policy.

It remains to observe that the crimes inflicted upon the humble farmers would have remained unpunished were it not for the vigilance of certain responsible officials, especially the police and the prosecuting officer, who took up the cudgels for the victims' families. The courage and conscientiousness they displayed are still the most potent weapons against those who, in their arrogance, believe that they can flout the law and frustrate justice because they have the protection of powerful patrons.

WHEREFORE, the appealed decision is MODIFIED and all the accused-appellants are hereby declared guilty as principals in Criminal Case Nos. 0176, 0177 and 0178. Each of them is sentenced to suffer three (3) penalties of reclusion perpetua, and to pay solidarily to the heirs of their victims civil indemnity in the sum of P30,000.00 for each of the deceased, or a total indemnity of P90,000.00, with costs.

SO ORDERED.

Fernan, C. J, Gutierrez, Jr., Feliciano, Gancayco, Padilla, Bidin, Griño-Aquino, and Medialdea, JJ., concur.
Melencio-Herrera, J., with separate concurring and dissenting opinion.
Narvasa, Sarmiento, and Cortes, JJ., joins Mme. Justice Herrera in her separate opinion.
Paras, and Regalado, JJ., concur. in the dissent of Justice Amuerfina Herrera.

[1] Decision was penned by Judge Himerio B. Garcia, Circuit Criminal Court, Judicial District, Dagupan City, Rollo, pp. 28-58.

[2] Consolidated Brief for the Appellee, p. 5, Rollo, p. 296.

[3] Rollo, p. 28.

[4] TSNs, May 16, 1973, pp. 40-45; May 23, 1973, pp. 181-189.

[5] Ibid., pp 45-48; Id., 190-194.

[6] TSNs, May 18, 1973, pp. 124-128; May 24, 1973, pp. 231-236, 258-259.

[7] Ibid. pp. 128-131; Id., p. 236.

[8] TSNs, May 16, 1973, pp.39-71; May 17, 1973, pp. 76-104.

[9] TSN, May 23, 1973, pp. 180-221.

[10] TSN, May 24, 1973, pp. 230-269.

[11] TSNs, May 18, 1973, pp. 119-146; May 23, 1973, pp. 151-178.

[12] TSN, May 16, 1973, pp. 7-39.

[13] Decision, Rollo, pp. 38-39.

[14] TSN, May 17, 1973, pp. 102-103.

[15] TSN, May 24, 1973, pp. 230-236.

[16] TSN, May 18, 1973, pp. 124-132.

[17] Brief for accused-appellant Marvin Millora, Rollo, pp. 243-254; Brief for accused-appellant Tomas Tayaba, pp. 15-33; Rollo, p. 193; Brief for accused-appellant Jose Misleng, pp. 8-10, Rollo, p. 212.

[18] People v. Abigan, 144 SCRA 130; People v. Bautista, 142 SCRA 649; People v. Valentino, 141 SCRA 397; People v. Arbois, 138 SCRA 24; People v. Pacabes, 137 SCRA 158.

[19] Exh. "A," Records of Crim. Case No. III-0176, p. 88, Exh "A," Records of Crim. Case No. III-0177, p. 43; Exh. "A," Records of Crim. Case No. III-0178, p. 40.

[20] TSN, June 11, 1973, pp. 351-353.

[21] TSN, July 25, 1973, pp. 388-394.

[22] Ibid., pp. 427-432.

[23] Decision, Rollo, p. 43.

[24] Ibid.

[25] Id., pp. 43-44.

[26] Id., p. 43; TSN, May 16, 1973, pp. 23-24.

[27] TSN, December 20, 1973, pp. 473-478.

[28] Ibid., pp. 502-505.

[29] TSNs, May 24, 1973, pp. 231-233, 236; May 18, 1973, pp. 126-127, 131.

[30] TSN, January 30, 1974, pp. 627-631; January 31, 1974, pp. 672-678.

[31] TSN, January 29, 1974, p. 597.

[32] Decision, Rollo, pp. 47-50.

[33] People v. Guardo, et al., G.R. No. L-42965, December 3, 1987.

[34] Decision, Rollo, pp. 55-58.

[35] Consolidated Brief for the Appellee, pp. 45-46, Rollo, p. 296.

[36] People v. Punzalan, 153 SCRA 1; People v. Liza, 152 SCRA 318; People v. Serante, 152 SCRA 510; People v. Rojas, 147 SCRA 169; People v. Loren, 130 SCRA 311.

[37] 155 SCRA 327.

[38] 155 SCRA 113.

[39] 156 SCRA 242.

[40] L-69934, September 26, 1988.

[41] 16 C. J. S. 67-68.

[42] Chief Justice Teehankee and Chief Justice Yap.

CONCURRING AND DISSENTING

MELENCIO-HERRERA, J.:

Concurrence is expressed in so far as conviction of the appellants is concerned.

Dissent is registered, however, as to the penalty imposed which, in our view, should adhere to that provided in the Gavarra, followed by Masangkay, Atencio and Intino cases, which is more reflective of the true intent of the framers of the 1987 Constitution.

Simply put, the question is did Section 19(1), Article III of the 1987 Constitution, abolish the death penalty or not? The pertinent portion thereof provides:

"x x x

"Neither shall death penalty be imposed, unless for compelling reasons involving heinous crimes the Congress

hereafter provides for it.

x x x"

The majority pronouncement is that said provision did not abolish the death penalty but only provided for its non-imposition. Our reading, however, is that when the Constitution states that the death penalty shall not be imposed, it can only mean that capital punishment is now deemed non-existent in our penal statutes.

It is because of the imperfection ("awkward" as termed by the majority) of the language used, and its susceptibility to two conflicting interpretations, contrary to the majority opinion that the text is plain, that resort must be had to judicial construction.

It is elementary in statutory construction that it is the intent of the statute that must be given effect. The spirit, rather than the letter of a statute determines the construction thereof, and the Court looks less to its words and more to its context, subject matter, consequence and effects (*Manila Race Horse Trainers Association vs. de la Fuente*, 88 Phil. 60). A statute must be read according to its spirit and intent, and where legislative intent apparently conflicts with the letter of the law, the former prevails over the latter (*Tanada vs. Cuenco*, 103 Phil. 1051). This intent must be ascertained from the words of the statutory provision itself. However, in a situation such as in the case at bar, where the intent does not decisively appear in the text of the provision as it admits of more than one construction, reliance may be made on extrinsic aids such as the records of the deliberations of the body that framed the law in order to clearly ascertain that intent.

The records of the Constitutional Commission (CONCOM) leave no doubt as to the intention of that body to abolish the death penalty. Thus, Fr. Bernas spoke of the constitutional abolition of the death penalty in his speech, sponsoring the provision:

"My recollection on this is that there was a division in the Committee not on whether the death penalty should be abolished or not, but rather on whether the abolition should be done by the Constitution - in which case it cannot be restored by the legislature - or left to the legislature. The majority voted for the constitutional abolition of the death penalty. And the reason is that capital punishment is inhuman for the convict and his family who are traumatized by the waiting, even if it is never carried out. There is no evidence that the death penalty deterred deadly criminals, hence, life should not be destroyed just in the hope that other lives might be saved. Assuming mastery over the life of another man is just to presumptuous for any man. The fact that the death penalty as an institution has been there from time immemorial should not deter us from reviewing it. Human life is more valuable than an institution intended precisely to service human life. So, basically, this is the summary of the reasons which were presented in support of the constitutional abolition of the death penalty" (Record, CONCOM, July 17, 1986, Vol. I, p. 676). [*Italics supplied*]

Expounding on this abolition, Fr. Bernas also stated: "Rather than wait for legislative discretion to abolish the death penalty, the Commission went ahead to abolish it but left the matter open for Congress to revive capital punishment at its discretion for compelling reasons involving heinous crimes." "By a show of hands, the abolition of the death penalty was approved, 19 to 18. On motion of Commissioner Rodrigo, nominal voting was called and the outcome was still for abolition, 22 to 17" (Bernas, *Constitution of the Philippines*, Vol. I, pp. 442-443).

Another member of the CONCOM, Mr. Florenz Regalado, now a member of this Court, spoke for the retention of the death penalty, arguing that the law has provided numerous procedural and substantive safeguards that must be observed before the death penalty could be carried out. Among the safeguards are the requirement that evidence still be presented to justify the imposition of the death penalty although the accused has pleaded guilty, and the automatic review of such death penalty when imposed by Trial Courts. Commissioner Regalado also mentioned the fact that the Supreme Court has modified the death sentences imposed by Trial Courts in many instances.

According to him, this only shows that the imposition of capital punishment goes through all the stages of screening and processing to avoid the possibility of error (Record, CONCOM, July 18, 1986, Vol. I, pp. 745-746).

In response, Fr. Bernas said that the numerous safeguards that must be observed before the death penalty could be carried out precisely show the tremendous reluctance of Philippine society to impose the death penalty, which reluctance must be translated into a constitutional prohibition. To quote him:

FR. BERNAS: The reluctance is so grave that so many obstacles are put up against the execution of the death penalty and judges agonize whether they have to impose a death penalty or not. Legislators have made it more difficult for the death penalty to be imposed. Thus, the total abolition of the death penalty by the Constitution facilitates everything for the judges and for the legislators. It removes the agonizing process of having to decide whether the death penalty should be imposed by them or not. (Record, CONCOM, July 18, 1986, Vol. I, p. 746) [Italics supplied]

It is thus clear that when Fr. Bernas sponsored the provision regarding the non-imposition of the death penalty, what he had in mind was the total abolition and removal from the statute books of the death penalty. This became the intent of the framers of the Constitution when they approved the provision and made it a part of the Bill of Rights.

The following interpellation during the CONCOM deliberations sheds further light:

MR. MAAMBONG: Just one clarificatory question. On the assumption that this proposed amendment will be granted, what would happen to the laws which presently punish certain penal offenses by death, because those laws may have to be repealed later by the National Assembly? But as of this moment, there are so many penal offenses which are punishable by death. What would be the effect of the grant of these amendments?

FR. BERNAS: The effect is the abolition of the death penalty from those statutes - only the death penalty. The statute is not abolished, but the penalty is abolished. (Record, CONCOM, July 18, 1986, Vol. I, pp. 748-749) [Italics supplied]

It is true that Article III, Section 19 (1) also grants Congress the power to provide for the death penalty in cases involving heinous crimes. Congress was given this power precisely because it is only the law-making body which can legislate back into existence something that has been eliminated from our penal laws. Thus, the Constitution, while abolishing capital punishment, also left to Congress the power to restore it in certain cases. It is clear, however, that unless and until Congress enacts the necessary legislation, the death penalty remains non-existent in our statute books. Again, the deliberations in the CONCOM prove this point:

FR. BERNAS: The sense of this proposal is that upon the ratification of this Constitution, the legislature, if it wants to reimpose the death penalty, must repeat the act. In other words, the penalty disappears and there is need of a new act of the legislature to put it back.

MR. MAAMBONG: Could we put it more simply, Madam President? Could we say that once this amendment is accepted, all penal offenses punishable by death will no longer carry the death penalty?

FR. BERNAS: That is correct (Record, CONCOM, July 18, 1986, Vol. I, p. 749). [Italics supplied]

The following exchange on the floor when the CONCOM was deliberating on the provision giving the Legislature the power to provide for the death penalty in cases involving heinous crimes shows the understanding among the framers of what the consequences would be when the legislature does not pass a law reimposing death penalty for certain heinous crimes:

MR. DE CASTRO: What happens if the National Assembly does not pass any law concerning death penalty such as on heinous crimes?

MR. MONSOD: Then there is no death penalty.

MR. DE CASTRO: That is the effect of the amendment?

MR. MONSOD: Yes. (Record, CONCOM, July 18, 1986, Vol. I, pp. 747-748) [Italics supplied]

To say that the wordings "neither shall death penalty be imposed," do not provide for the abolition of the death penalty, but only provides for its non-imposition is to adopt a rather literal and restrictive construction that goes against the clear intent of the framers of the Constitution. The literal import or meaning of a statute must yield to its apparent intent, purpose or spirit. Intent is the spirit which gives rise to legislative enactment. It must be enforced when ascertained although it may not be consistent with the strict letter of the statute. The language of the Constitution "should be read in a sense most obvious to the common understanding at the time of its adoption" (*Eisner v. Macomber*, 15 6Ed 421, 424). The intention of the legislature and its purpose or object, being the fundamental inquiry in judicial construction, control the literal interpretation of the particular language of a statute and a language capable of more than one meaning is to be taken in such a sense as to harmonize with the intention and object and effectuate the purpose of the enactment (*US vs. Go Chico*, 14 Phil. 128).

Coming now to the penalty for Murder - the majority reverses the Decisions of this Court in *People vs. Gavarra* (L-37673, October 30, 1987, en banc, 155 SCRA 327), *People vs. Masangkay* (L-73461, October 27, 1987, 155 SCRA 113), *People vs. Atencio* (L-67721, December 10, 1987, 156 SCRA 242) and *People vs. Intino* (L-69934, September 26, 1988) with respect to the imposable penalty for Murder in the absence of modifying circumstances. Those cases held that with the constitutional ban on capital punishment, the penalty for Murder now becomes reclusion temporal maximum to reclusion perpetua. Applying the provisions of the Revised Penal Code (Article 61 [3]), the medium period would be the higher half of reclusion temporal maximum, or, 18 years, 8 months and 1 day to 20 years, and the minimum period is the lower half of reclusion temporal maximum, or, 17 years, 4 months and 1 day to 18 years and 8 months. The maximum period is, of course, reclusion perpetua, because of the prohibition regarding the death penalty.

The foregoing is but in faithful adherence to the graduated three-period scheme in the Revised Penal Code whereby if an aggravating circumstance attends the commission of the crime, the imposable penalty is the maximum period; if a mitigating circumstance, the minimum period; and in the absence of any modifying circumstance, the medium period.

The majority assails the foregoing interpretation, however, in that the requirement of the modification of the penalty is not at all expressed in the Constitutional provision in question nor indicated therein by at least clear and unmistakable implication. However, to require the inclusion of such an additional provision would have made for more prolixity to a document that already is. That detail was best left to the Courts as indicated by the discussions on the floor.

Indeed, when the abolition of the death penalty was being discussed on the floor of the CONCOM, the issue of the proper penalty for Murder, specifically with regard to its medium period, was raised. The following interpellation, also repeated in the majority opinion, tackled that issue:

FR. BERNAS: The effect is the abolition of the death penalty from those statutes-only the death penalty. The statute is not abolished, but the penalty is abolished.

MR. MAAMBONG: That is what I am worried about, because the statutes, especially in the General Criminal Law, which is the Revised Penal Code, do not necessarily punish directly with death. Sometimes it has a range of reclusion temporal to death or reclusion perpetua to death. And what would be the effect on the judges, for example, if the range is reclusion temporal to death and he can no longer impose the death penalty? He will have difficulty in commuting the degrees.

Could the committee enlighten us on how the judge will look at the specific situation.

FR. BERNAS: I grant that the judges will have difficulty, but I suppose that the judges will be equal to their tasks. The only thing is, if there is a range, the range cannot go as far as death (Record, CONCOM, July 18, 1986, Vol. I, p. 749).

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FR. BERNAS: Certainly, the penalties lower than death remain.

MR. REGALADO: That would be reclusion perpetua. But the range of the penalty for murder consists of three periods. The maximum period of reclusion temporal under the present status is the minimum period for the penalty for murder. The medium period is reclusion perpetua. The maximum period is death. If we now remove the death penalty, we will, therefore, have a range of penalty of 17 years, 4 months and 1 day to 20 years of reclusion temporal up to reclusion perpetua. You cannot divide reclusion perpetua into two. While it has a duration of 30 years, it is an indivisible penalty. Where do we get the medium period now until such time that Congress gets around to accomodate this amendment?

FR. BERNAS: As I said, this is a matter which lawyers can argue with judges about. All we are saying is, the judges cannot impose the death penalty (Record, CONCOM, July 18, 1986, Vol. I, p. 750).

The fact that the medium period of the penalty for Murder was at all discussed not only bolsters the holding in the Gavarra and related cases that the death penalty had been abolished, and that the penalty for Murder was consequentially to be reduced to two periods, but also shows a keen awareness that "difficulty" would be encountered by the Courts by reason thereof. The Supreme Court had proven itself "equal to the task" by resolving that "difficulty" in the cited cases. If it were, as the majority says, that "they (the proponents) were not saying more," wherein would the "difficulty" lie? It would have been an easy matter for the proponents to have simply answered that the medium period was to be maintained at reclusion perpetua since anyway, as the majority concludes, the death penalty had not been abolished.

If, as opined by the majority, reclusion perpetua is retained as the penalty for Murder even in the absence of aggravating and modifying circumstances, while imposed also as the new maximum penalty for the crime, then, the presence or absence of modifying circumstances will no longer lead to the imposition of a higher or lesser penalty depending on the attendant circumstances, as the Penal Code has prescribed. The distinction is erased between Murder committed with a generic aggravating circumstance and Murder carried out with neither aggravating nor mitigating circumstance. In both cases, the same penalty is imposable. As a consequence, the reason of the law in creating penalties divided into periods and in providing for various modifying circumstances with different effects, that is, the need to penalize more severely a Murder attended by an aggravating circumstance than a Murder with neither aggravating nor modifying circumstance, is rendered nugatory. Certainly, the CONCOM, in banning the imposition of capital punishment, could not have also intended to discard the underlying reason of the Penal Code in imposing three-periods for the penalty for Murder, i.e., to punish the offense in different degrees of severity depending on the offender's employment of aggravating or mitigating circumstance, or the lack thereof. To say that this is "the will of the Constitution" is inaccurate for the matter was clearly left to the Courts which were expected to be "equal to the task."

In keeping with that expectation, this Court held that the modified penalty for Murder, or, reclusion temporal, maximum, to reclusion perpetua, must retain the three-period scheme. In the application of the new penalty, a medium period, less severe than the maximum penalty, must be provided for so that the original intention of the law to penalize Murder in different degrees of severity depending on the attendant circumstances, remains in effect. That was the basis for the ruling in the Masangkay and the related cases that the majority is now

abandoning. In those cases, the Court did not prescribe a penalty, a function admittedly legislative. It merely effectuated the Constitutional ban on capital punishment and harmonized it with the basic tenets underlying our Penal Code.

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