

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PACIANO NIERRA ALIAS PACING, GAUDENCIA NIERRA, FELICISIMO
DOBLÉN ALIAS SIMOY AND VICENTE ROJAS,
ACCUSED-APPELLANTS. GASPAR...**

G.R. No. L-32624. February 12, 1980

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a82045117d48/>

PER CURIAM:

Felicisimo Doblén, Vicente Rojas and the spouses Paciano Nierra and Gaudencia Nierra appealed from the decision dated March 4, 1970 of Judge Pedro Samson C. Animas of the Court of First Instance of South Cotabato, General Santos City Branch II, convicting them of murder, sentencing each of them to death and ordering them to pay solidarily an indemnity of twelve thousand pesos to the heirs of the victim, Juliana Nierra (Criminal Case No. 2081).

Gaspar Misa, who pleaded guilty to the murder charge, was also sentenced to death and ordered to pay a similar indemnity (Decision of August 25, 1969, pp. 36-8, Record). His death sentence is under automatic review.

According to the evidence of the prosecution, Juliana Gadugdug-Nierra, 52, and Paciano Nierra, 39, her brother-in-law, were competitors in the businesses of launch transportation and the sale of soft drinks in Barrio Tinago, General Santos City. Juliana sold coca-cola while Paciano sold pepsi-cola. Juliana was the owner of two motor launches, Elsa I and II, while Paciano was the owner of two launches, Sylvania I and II. Juliana was the wife of Aniceto Nierra, Paciano's elder brother. To mollify Paciano, by diminishing the competition between their launches, Aniceto sold Elsa II. Nonetheless, Aniceto and Paciano were not on speaking terms.

In order to monopolize those businesses in the locality, Paciano Nierra conceived the idea of liquidating his competitor, Juliana. For that purpose, Felicisimo Doblén, a cousin-in-law of Paciano, accompanied to Paciano's house in the afternoon of July 4, 1969 Gaspar Misa, 29, a convicted murderer who in 1965 had escaped from the Davao Penal Colony (Exh. E-4 and E-5, pp. 10-11, Folder of Exhibits). Misa came to Barrio Tinago in June, 1969. He resided with his cousin, Silvestre Misa. (See *Pareja vs. Gomez and People*, 115 Phil. 820.)

Upstairs in the bedroom of Paciano's house, Misa, in the presence of Gaudencia Garrido-Nierra, the wife of Paciano, agreed to kill Juliana in consideration of three thousand pesos. Paciano promised that in the morning after the killing he would pay Misa four hundred pesos near the municipal hall of Tupi, South Cotabato which is about forty kilo-meters away from General Santos City. The balance would be paid in the same place on August 12, 1969.

That arrangement was confirmed by Gaudencia. When Misa scheduled the assassination on July 8, 1969, Paciano said that it was up to Misa since he was the one who would kill Juliana.

In the evening of July 6, 1969, Doblén, in behalf of Paciano Nierra, delivered to Misa at the beach a package containing a caliber .38 pistol with five bullets. Misa contacted his friend, Vicente Rojas, and apprised him that he (Misa) had been hired to kill Juliana. Misa asked Rojas to act as lookout on the night of July 8, 1969 when the

killing would be perpetrated.

On that night, Rojas posted himself at the Bernadette store near the creek or canal about twenty-seven steps from the scene of the crime. Gaudencia was stationed near the house of Maning Desinorio about eighteen steps from the scene of the crime. Paciano was near the house of Juanito Desinorio about twenty-seven steps from the scene of the crime. The houses of the two Desinorios were separated from the house of Juliana Nierra by an alley.

Misa secluded himself near a warehouse about five steps from the scene of the crime in close proximity to the back of Ju-liana's house where, as he had previously observed some nights before, she used to answer the call of nature. The house was at the back of the Esso Gas Station near the beach of Sarangani Bay at Barrio Tinago, General Santos City.

Between seven and eight o'clock that night, the unwary Juliana went to the beach where she was accustomed to void and when she squatted, Misa unexpectedly appeared behind her, held her hair, thus tilting her face, and while in that posture, he inserted into her mouth the muzzle of the pistol and fired it. Paciano and Gaudencia, who were near the beach, witnessed the actual killing.

The postmortem examination disclosed that Juliana sustained a gunshot wound in the tongue. The bullet passed through the buccal cavity down to the spinal column where the slug was extracted.

Aniceto Nierra, on hearing the gunshot and the ensuing commotion, went down from the house and saw his prostrate wife with blood oozing from her mouth and nose. Her panty was pulled down, her dress was raised up to her waist, and her genital organ was exposed. At the hospital, the doctor pronounced her dead.

After firing the gun, Misa walked slowly on the beach in front of Paciano and Gaudencia, passed by the alley between the houses of Tony Desinorio and Francisco Desinorio, emerged at the back of the Esso Gas Station, crossed the creek or canal on the west, reached the Lagao road, threw the gun into the dense talahib grass and rode on a bus. He proceeded to the Saint Eliza-beth Hospital. Then, he changed his mind and returned to the beach near the victim's house.

The Nierra spouses left the scene of the crime by passing through the alley between the house of the victim and the Desinorio houses, which alley separated the buildings of the Northern Lines and the Matutum Hotel from the Esso Gas Station, and emerged on A. Morrow Boulevard which intersects Saguing Street where Paciano and Gaudencia resided. Their residence was about two hundred meters away from the scene of the crime.

A witness, residing at Morrow Boulevard, who happened to be at the Villa Bus Terminal at around eight-thirty in the evening of July 8, 1969, when the killing was perpetrated, testified that she saw Paciano Nierra wearing an underwear and striped T-shirt running from Saguing Street to Barrio Tinago. About five minutes later, she saw Paciano crossing the boulevard and running towards Saguing Street. He was wearing long pants. The witness made a statement to the police about what she had seen.

Early in the morning of the next day, Misa took a bus bound for Tupi and alighted near the municipal building. Paciano Nierra arrived in that place and gave him four hundred pesos. Misa returned to General Santos City, gave fifty pesos to Rojas, and proceeded to the victim's house where he mingled with the persons playing cards and domino. He kept vigil there, staying there for four nights.

He resumed his old job of looking for passengers for the buses and the pumpboat of Rojas. He received a commission of one peso per passenger. Policemen arrested him and Rojas for questioning but they were later released. He left the city and brought his family to Barrio Luan, Maitum, South Cotabato. There, he was arrested again, this time by Constabulary soldiers.

On August 7, 1969, Misa was interrogated by Patrolman A. B. Vencer, Jr. of the city police department. He signed a confession admitting the killing of Juliana Nierra and implicating the other accused therein. The statement was sworn to before the fiscal. Two days later, he reenacted the killing. Photographs were taken of the reenactment. A sketch of the scene of the crime was prepared.

On August 11, 1969, Misa testified at the preliminary investigation. In his testimony, he admitted again the killing and confirmed his confession implicating Paciano Nierra, his wife Gaudencia, Doblen and Rojas. He executed another confession on August 12, 1969 which was sworn to before the city judge.

Thirty-seven days after the killing or on August 14, 1969, Misa, Doblen, Rojas and the Nierra spouses, as co-conspirators, were charged with murder aggravated by reward, treachery, evident premeditation, nocturnity, ignominy and abuse of superiority and, as to Misa, recidivism, since he had been sentenced to reclusion perpetua for the murder of Antonio Abad Tormis in Cebu City.

As already stated, Misa pleaded guilty. At the trial of his co-accused, his confessions and testimony were offered by the pro-secution and were the main bases of the judgment of conviction and the imposition of the death penalty.

As separate briefs were filed for the defendants, their individual cases will be separately reviewed.

Misa's case. - His counsel de oficio contends that Misa made an improvident plea because the trial court allegedly failed to explain thoroughly to him the gravity of the offense and the consequences of his plea of guilty.

That contention is not well-taken. Misa, as an escaped prisoner, had acquired some experience in criminal procedure. Not only that. He executed two extrajudicial confessions. He reenacted the crime as the triggerman. He testified at the preliminary investigation, and, after he was sentenced to death, he was the prosecution star witness during the trial of his co-accused. His testimony against his co-accused, delineating their roles in the commission of the killing, which he had perpetrated, fortified his plea of guilty and removed any scintilla of doubt as to his culpability and as to his understanding of the consequences of his mea culpa (See *People vs. Duaban*, L-31912, August 24, 1979).

Under the circumstances, we cannot grant counsel de oficio's prayer that the judgment of conviction be set aside and that the case be remanded to the lower court for new trial. To hold a new trial, wherein Misa himself would again be the star prosecution witness, would be a repetitious and preposterous ceremony.

The case of the Nierra spouses. - They denied any complicity in the killing of Juliana Nierra. Their version is that in the evening of July 8, 1969, at about eight o'clock in the evening, Paciano Nierra was inside a room of his house. Gaudencia Nierra was in her room, writing something. Eduardo Nierra, the couple's son, was alone in the sala while Encarnacion Sabihon, a housemaid, was somewhere in the house premises.

Paciano heard somebody coming up the house. When he came out of the room, he met Nolasco Docallos who said that Juliana Nierra was shot. Paciano Nierra asked who shot her. Docallos answered that he did not know.

Docallos asked Paciano for permission to use the latter's motorcycle in going to the hospital. Paciano instructed his son Eduardo to render assistance. Paciano could not go out because two years before he had undergone a surgical operation in Cebu City. Gaudencia could not leave the children alone in the house. Eduardo phoned from the funeral parlor that Juliana was already dead.

At about five-thirty in the morning of the following day, Gaudencia went to the funeral parlor. She talked with Rodelio, the son of Juliana. Aniceto Nierra, her brother-in-law and husband of the victim, did not answer when she tried to talk with him.

Paciano woke up at six o'clock that morning. He and his wife and their Muslim friend Pandita E. Saguil and Fernando Erro, the uncle of Paciano, boarded a bus and went to Tupi ostensibly to buy bamboos for the outrigger of a vinta, a trip which the Nierra spouses had previously agreed upon with Saguil. They arrived in Tupi at past ten o'clock. They were not able to buy bamboos. They ate lunch at the Fernandez Restaurant.

The group returned to General Santos City, arriving there at two o'clock in the afternoon. They went to the funeral parlor. They were not able to talk with Aniceto Nierra. In the evening of that day, Gaudencia led the prayers for the repose of the soul of Juliana and she performed that task on the second, third and fourth nights. She did not lead the prayers on the succeeding nights because she was advised that it was bad for her to do so. Their child attended the novena. Paciano could not attend the novena because he had kidney trouble. They gave one hundred pesos to Juliana's family as contribution to the funeral expenses.

The Nierra spouses attended the funeral. During the burial, Aniceto lost consciousness and collapsed. Paciano revived him by pressing his abdomen. After the coffin was placed in the tomb, Paciano closed the niche. The Nierra spouses gave to Aniceto an additional two hundred pesos (Pars. 5-6 and 9-15, pp. 6-11, Appellants' Brief).

Appellants Nierra contend that Misa was not a credible witness because he was a recidivist and his testimony is riddled with inconsistencies. That contention is devoid of merit.

Misa testified against his own penal interest. The basic point in his confessions and testimony was that he was hired by the Nierra spouses, through Doblen, to kill Juliana for the price of three thousand pesos. That is sufficient for the con-viction of the Nierra spouses as the inducers of the assassination of Juliana. The discrepancies in his testimony refer to minor details.

And the fact that the Nierra spouses did not comply with their contractual commitment to pay Misa the balance of two thousand six hundred pesos must have impelled him to unmask them and to reveal the truth even if such a revelation spelled his own destruction.

The contention that there was no proof of conspiracy among the accused is belied by the facts shown in the record. Misa had no personal motive for killing Juliana Nierra. He was induced to do so because of the monetary consideration promised by the Nierra spouses. Doblen (Simoy), married to Paciano's cousin, introduced Misa to the Nierra spouses. Before Juliana's assassination, Gaudencia had contracted Misa to kill Nene Amador, her former housemaid, who was allegedly Paciano's mistress. That projected killing did not materialize.

Appellants Nierra contend that Misa's testimony as to the alleged conspiracy is inadmissible in view of the rule that "the act or declaration of a conspirator relating to the conspi-racy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration" (Sec. 27, Rule 130, Rules of Court).

It is argued that before Misa's testimony could be admitted as evidence against appellants Nierra, the alleged cons-piracy must first be proven by evidence other than such testi-mony and that there is no such independent evidence. This argument is wrong. It is not supported by section 27 of Rule 130.

Section 27 "applies only to extrajudicial acts or declara-tions but not to testimony given on the stand at the trial where the defendant has the opportunity to cross-examine the declarant" (People vs. Serrano, 105 Phil. 531, 541).

Appellants Nierra contend that the trial court erred in finding that the motive for the killing was to stifle business competition. This argument is refuted by the testimonies of Aniceto Nierra and his son Rodelio which show that Paciano Nierra was antagonistic to his sister-in-law, Juliana, the manager or "brains" of Aniceto's transportation and coca-cola distribution businesses.

In 1967, Paciano attempted to destroy Aniceto's launch, Elsa II, while it was under construction. Aniceto had to sell that launch because of Paciano's threat that somebody would be hurt if its operation was continued. Paciano told Rodelio that the latter's mother, Juliana, who was pockmarked, was bad and dominated her husband Aniceto. On two occasions, Paciano even challenged his brother to a fight.

Another contention of the appellants is that the trial court convicted them on the basis of the hearsay testimonies of Guillermo Sanchez and Jose Samoya. This argument is mis-leading. The judgment of conviction was anchored principally on the confessions and testimony of Misa, the tool used by the Nierra spouses in encompassing Juliana's death. Misa's evidence cannot be regarded as hearsay.

The testimonies of Sanchez and Samoya merely proved that Misa, Rojas and Doblen were implicated in the killing of Juliana Nierra. It was the affidavit of Sanchez, linking Misa to the killing, that gave the police a breakthrough in the solution of the case. After the connection of Misa with the crime was established, the police arrested him and obtained his confessions which implicated appellants Nierra as the instigators.

The Nierras in their fifth assignment of error contend that the trial court erred in admitting as evidence the affidavit of appellant Vicente Rojas (Exh. J) which was obtained through an alleged promise of immunity. The record is not clear as to that promise of immunity. Rojas' statement was taken on August 1, 1969. On August 12, he testified at the preliminary investigation. The record of his testimony before the fiscal was signed by him. He was assisted by counsel at that preliminary investigation. (Exh. K et seq.) No promise of immunity was shown to have been made by the fiscal to Rojas.

In any event, his affidavit is a minor piece of evidence and is cumulative in character. As already stated, the crucial and decisive evidence consists of Misa's testimony and confessions.

Appellants Nierra complain that lawyer Cornelio Falgui acted at the preliminary investigation as counsel of appellant Doblen, having been allegedly hired by the offended party, Aniceto Nierra, and then at the trial, he acted as counsel de oficio of Misa who pleaded guilty. He also appeared for Doblen (6 and 19 tsn).

The alleged double role of Falgui cannot be regarded as having unduly prejudiced appellants Nierra who, as already noted, were convicted on the basis of Misa's confessions and testimony. The appellants have not successfully overthrown or rebutted Misa's evidence.

It was Doblen who acted as a double agent. He was a tool of Paciano Nierra and at the same time he posed as a friend of Aniceto Nierra by pretending that he had no hand in the assassination of Aniceto's wife.

We are convinced that the guilt of appellants Nierra was proven beyond reasonable doubt. On the night of the shooting, Paciano Nierra and Gaudencia Nierra did not go to the funeral parlor to view the remains of Juliana.

After Paciano and Gaudencia were charged with murder, there was a confrontation between the said spouses and Aniceto Nierra in the house of their brother, Alonso, in the presence of their other brother, Gerundio. The following dialogue took place between Paciano and Aniceto:

Paciano: "Noy, why did you suspect us to be the killers of your wife?"

Aniceto: "Will you still deny when Gaspar Misa pointed to you that you were standing by the post and Paciano (Gaudencia) was also standing in another post when he (Misa) killed my wife. From now on, I have no brother by the name of Pacing."

Paciano did not comment on his brother's accusation.

Moreover, Misa wrote the following note to Paciano when they were confined in the city jail (translation):

"My companion Pacing (Paciano):

"I am directly telling you and you could be sure that I will do my best that you will be free. Before the trial of (in) court, I would like that you give me the sum of P600 even if you give the cash advance of P500 before Sunday. OK and you give the same thru the hole.

"Your companion,

Sgd. Gaspar Misa

"Believe me that I will free you and burn this imme-diately." (Exh. 1)

The above note clearly proves that Misa and Paciano were co-conspirators. The Nierras were co-principals by inducement. By acting as lookouts during the perpetration of the killing, they became co-principals by cooperation as well.

Appeal of Doblen and Rojas. - Doblen's alibi was that on the night of the killing, he was stranded at Margos, Glan, South Cotabato. He returned to General Santos City at ten o'clock in the morning of the following day. He denied that he accompanied Misa to the house of Paciano Nierra on July 4, 1969 and that he delivered to Misa the package containing the murder weapon.

Rojas' alibi was that on the night of the killing he slept in his pumpboat at Lion's Beach, General Santos City. However, that could not have precluded him from having acted as lookout on that same beach.

These appellants, like the Nierra spouses, contend that Misa's confessions and testimony have no probative value because there was no other evidence proving the alleged conspiracy. As already stated, that rule does not apply to testimony given on the witness stand where the defendants have the opportunity to cross-examine the declarant (People vs. Dacanay, 92 Phil. 872).

It is contended that Doblen was not a co-conspirator because he was not present when Misa and the Nierra spouses discussed the liquidation of Juliana Nierra and that when Doblen delivered the package to Misa, he (Doblen) did not know that it contained the murder weapon. As to Rojas, it is contended that he was not present at the said conference between Misa and the Nierra spouses.

These contentions are not well-taken. The activities of Doblen and Rojas indubitably show that they had community of design with the Nierra spouses and Misa in the assassination of Juliana Nierra.

Like appellants Nierra, Rojas' counsel de oficio contends that the trial court erred in admitting the affidavit of Rojas (Exh. J) because it was obtained under an alleged pro-mise of immunity.

It should be noted that Rojas' affidavit does not contain anything connecting him to the murder. In that affidavit, he denied that he had any participation in the commission of the crime and that he conspired with Misa. So, the admission in evidence of that affidavit did not prejudice him at all.

The killing was correctly characterized by the trial court as murder qualified by treachery and aggravated by premeditation and price or reward. As to the Nierras, relationship is an additional aggravating circumstance.

Treachery absorbed nocturnity and abuse of superiority. The manner in which Misa liquidated Juliana Nierra added shame, disgrace or obloquy to the material injury caused by the crime. Hence, ignominy is aggravating (U.S. vs. Abaigar, 2 Phil. 417).

In Misa's case, recidivism as an aggravating circumstance offset his plea of guilty. That did not preclude the imposition of the death penalty upon him.

Considering the aggravating circumstances, the death penalty imposed on the Nierra spouses is in accordance with law. However, for lack of the requisite ten votes, the death penalty imposed on Gaudencia Nierra should be commuted to reclusion perpetua.

Doblen's role was that of having introduced Misa to the Nierra spouses and delivering the murder weapon to Misa. He was not present at the scene of the crime. On the other hand, Rojas acted as lookout and received fifty pesos for his work.

After a conscientious reflection on the complicity of Doblen and Rojas, we have reached the conclusion that they should be held guilty as accomplices. It is true, strictly speaking, that as co-conspirators they should be punished as co-principals. However, since their participation was not absolutely indispensable to the consummation of the murder, the rule that the court should favor the milder form of liability may be applied to them (*People vs. Tamayo*, 44 Phil. 38 and other cases).

In some exceptional situations, having community of design with the principal does not prevent a malefactor from being regarded as an accomplice if his role in the perpetration of the homicide or murder was, relatively speaking, of a minor character (See *People vs. Ubiña*, 97 Phil. 515; *U.S. vs. Doming 1st*, 37 Phil. 446; *People vs. Daligdig*, 89 Phil. 598; *People vs. Largo*, 99 Phil. 1061).

WHEREFORE, (1) the lower court's judgment is affirmed with respect to Gaspar Misa and Paciano Nierra.

(2) The death sentence imposed on Gaudencia Nierra is commuted to reclusion perpetua. The civil liability imposed upon her by the trial court is affirmed.

(3) Appellants Felicísimo Doblen and Vicente Rojas are convicted as accomplices. They are each sentenced to an indeterminate penalty of ten years of prision mayor medium as minimum to seventeen years of reclusion temporal medium as maximum and to pay solidarily with the principals an indemnity of six thousand pesos (as their quota) to the heirs of Juliana Nierra. They are each subsidiarily liable to the extent of six thousand pesos for the principals' civil liability. Costs against the accused.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Antonio, Aquino, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Abad Santos, J., took no part.

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.