

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO PAGADUAN AND FELICIANO DE GRACIA,
DEFENDANTS-APPELLANTS.***G.R. No. L-26948. August 25, 1969*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c9838c496654/>**PER CURIAM:**

This case is before us owing to the death penalty meted out to Feliciano de Gracia, for the crime of murder, of which he was convicted by the Court of First Instance of Cagayan, in the above-entitled case, and the appeal taken by defendant Marcelino Pagaduan, from the decision therein, in which he was found guilty as an accomplice and sentenced to an indeterminate penalty ranging from 12 years of prison mayor to 20 years of reclusion temporal, with the corresponding accessory penal-ties, and, jointly and severally with De Gracia, to indemnify the heirs of Nicomedes Fernandez in the sum of P6, 000, without subsidiary imprisonment in case of insolvency, as well as to pay the costs proportionately.

In the evening of June 9, 1965, Nicomedes Fernandez and his family were asleep in their house at the Barrio of Sidem, Municipality of Gattaran, Province of Cagayan. Between 10 and 11 p.m., he was awakened by the voice of appellant Marcelino Pagaduan, calling him from the yard, followed by a similar call of Federico Belen, who bade Fernandez to come down. As Fernandez did so, he found Belen and Pagaduan standing near his house, together with Feliciano de Gracia, Dante Brillantes and Hermenegildo Urian. Belen had a .22 rifle, whereas De Gracia carried a grease gun. In addition to a small bolo tucked in his waist, Pagaduan had, according to the prosecution, a home-made gun (paltik), whereas Brillantes held a wooden club. No sooner had Fernandez emerged from his house than Belen bade him to raise his arms and lie down on the ground, facing downward. Then Belen asked him where his gun was. Fernandez replied that he had already returned it to the local Judge. Thereupon, Belen ordered Fernandez to call the people in his house, which Fernandez did. When his wife and children, and a couple of natives, who were their househelp, came down, Belen, likewise, bade them to lie down on their stomachs, beside Fernandez. Thereupon, De Gracia and Brillantes went up the house, upon orders of Belen, to ascertain whether there were other people therein, but they found none. De Gracia proceeded to ransack the house, seemingly in search for a gun, with negative result. Then, he took from the house a flashlight, a razor, a pair of scissors and the sum of P20 in cash. As De Gracia and Brillantes returned to the yard, Belen inquired about the gun. Upon learning of their failure to find any, Belen scolded De Gracia. After bidding his (Belen's) companions to watch Fernandez and his family, Belen went up their house, to verify whether or not there was a gun therein. Soon he emerged therefrom carrying a bow and three (3) arrows. Then, picking up a piece of wood, he threw it at Fernandez, hitting him on the head. Belen asked Fernandez, once more, where his gun was hidden, but Fernandez reiterated his previous answer. Seemingly exasperated, Belen kicked him twice, called him a liar and shot him with his (Belen's) .22 rifle. And, making use of the bow, Belen imbedded the three (3) arrows into the body of Fernandez. Soon thereafter, the group, composed of Belen, De Gracia, Pagaduan, Brillantes and Urian, left; but, before doing so, Belen warned the wife and children of Fernandez not to report the matter to the PC because, otherwise, he would kill them.

After leaving the scene of the occurrence, the group passed by the house of Pagaduan, who remained there, with instructions not to report to the PC. Before departing, Belen got four (4) chicken from Pagaduan. Next to drop from the group was Urian, followed by Brillantes, both of whom were warned by Belen to keep their mouths shut. Thereafter, Belen and De Gracia went to the forest, where they spent the night.

Meanwhile, Mrs. Fernandez and her children had brought into their house the dead body of Nicomedes Fernandez, which had the following injuries:

1. Lacerated wound at the right upper frontal region.
2. Lacerated wound above the middle of the right eye.
3. Lacerated wound above the inner cantus of the right eye.
4. Lacerated wound at the upper portion of the right pinna of the ear.
5. Gunshot wound between the clavicle and the first rib at the middle of the right shoulder blade.
6. Gunshot wound at the epigastric region left of the xyphoid process.
7. Stab wound at the right side, at the right mid-axillary line between the ninth and tenth ribs.
8. Stab wound at the posterior right axillary line between the tenth and eleventh ribs.
9. Stab wound at the right posterior axillary line one inch below stab wound No. 8.

According to the municipal health officer of Gattaran, who examined said body, Fernandez had died owing to the injuries sustained by him in the liver and the thoracic organs.

Early the next morning, a son of Fernandez, reported the occurrence to the authorities. Forthwith, Sgt. Pagawisan of the PC organized a posse of members thereof and policemen, who went in search of the culprits. It appears that Belen had been wanted for some time by agents of the law. On June 11, at about 7:07 a. m., the posse caught up with him and De Gracia proceeding southward towards the municipality of Alcala. The posse fired at the fugitives and succeeded in killing Belen, whose grease gun was found slung on his shoulder. De Gracia managed, however, to escape, dropping his rifle behind; but his freedom was short-lived, for two (2) days later, or, on June 13, Sgt. Pagawisan apprehended him on board the ferry at Camalaniugan. Brought to the PC Headquarters at Nassiping, Gattaran, De Gracia admitted his participation in the killing of Fernandez and signed the affidavit, Exhibit D, before the Clerk of the Court of First Instance of Cagayan. Prior thereto, Pagaduan had surrendered to the authorities, claiming that he had acted at the point of the gun of Belen.

Thereafter, an information was filed with said Court, accusing Pagaduan, Urian De Gracia and Brillantes, of robbery in band with homicide. Brillantes was, subsequently; discharged from said information, to be a state witness. Still later, the case against Urian was dismissed provisionally, on motion of the prosecution and with the conformity of Mrs. Fernandez. As a consequence, only Pagaduan and De Gracia stood trial, after which, the lower court rendered a decision, finding De Gracia guilty as principal by cooperation, of robbery with homicide, with the aggravating circumstances of band, nocturnity and dwelling, and convicting Pagaduan of said crime, as accomplice, and imposing upon them the penalties already adverted to.

It is not disputed that both Pagaduan and De Gracia were with Belen, as well as Brillantes and Urian, when Fernandez was killed by Belen under the circumstances above mentioned. The lower court found De Gracia responsible for the acts of Belen, upon the ground that there was conspiracy between them. The question as regards De Gracia is whether the existence of such conspiracy has been duly established.

In this connection, the record shows that Brillantes was 17 years of age; that he lived with his sister Gloria, at the Barrio of Nagatutuan; that on June 9, 1965, at about 8 p.m., Belen and De Gracia showed up thereat and bade Brillantes to come with them to Taligan; that De Gracia then held a gun, which he pointed to Brillantes whereas Belen carried another gun with a "long barrel"; that, upon arrival at Taligan, Belen instructed Brillantes to take them to the house of Urian; that, upon reaching this house, Belen ordered Urian to come down; that as Urian obeyed, Belen inquired about his (Urian's) firearm; that Urian said he had none, but added that Nicomedes Fernandez had a .38 caliber revolver; that Belen then directed Urian to come with them, which Urian did; that the four of them then went Northward, until they reached the house of Pagaduan, whom Belen, likewise, bade to join the group, which, thereupon, proceeded Eastward; that, as the house of Fernandez - about 100 meters away from that of Pagaduan - came within their view, Belen told his companions to stand guard around it; that, when they were near the house, Belen bade Pagaduan to call Fernandez; and that, as Pagaduan did so, the events already narrated took place.

It should be noted that De Gracia accompanied Belen when the latter went to the house of Gloria Brillantes, on June 9, 1965, at 8 p.m.; that the first two, armed with guns, awakened Brillantes; that De Gracia pointed his gun at Brillantes, when Belen bade the latter to come with them to Taligan; that De Gracia went up the house of Fernandez to find out whether there were other people therein, after Fernandez, his wife and children and other members of their household had gone down to the yard and lain down on the ground, by order of Belen; that De Gracia had his gun aimed at Brillantes when they entered the house; that, although the only instruction given by Belen, before De Gracia went up the house, was for him to ascertain whether there were other people therein, De Gracia ransacked the place, in search of the fire-arm Belen was looking for, thereby indicating that De Gracia was posted beforehand on Belen's objective; that De Gracia, moreover, took and carried away a flashlight, a razor, a pair of scissors and the sum of P20, before leaving the house; that it was De Gracia to whom Belen entrusted the custody of Fernandez and the members of his family lying down on the ground, as Belen personally went up the house of Fernandez; that, subsequently to the commission of the crime charged, De Gracia was the only member of the group of Belen who stuck to him, after leaving Pagaduan, Urian and Brillantes in their respective places of abode; that De Gracia even spent over 24 hours hiding in the forests, together with Belen, until the agents of the law shot and killed the latter; and that, even then, De Gracia kept on eluding the authorities, until his apprehension on board a ferry boat, two (2) days later. Thus, it is manifest that Belen and De Gracia had unity, not only of purpose, but, also, in the execution thereof, thereby evincing the existence of conspiracy between them.

As regards Pagaduan, it appears that he was the last man to join the group headed by Belen, before reaching the house of Fernandez; that the purpose of Belen and De Gracia, when they picked up Brillantes, was to look for Urian, who was believed to have a firearm; that the idea of going to the house of Fernandez did not develop until Urian denied that he had any gun and revealed that it was Fernandez who had one; and that Pagaduan was not picked up by Belen and De Gracia, accompanied by Brillantes and Urian, until these four (4) were on the way to the residence of Fernandez. In other words, the record suggests that Pagaduan did not know about the intent of Belen and De Gracia to get the gun they thought Urian had, and could have had no previous knowledge that their group, including Brillantes, would go to the place of Fernandez. Upon the other hand, the very evidence for the prosecution shows that Pagaduan had been ordered by Belen to join his group; that, although Pagaduan called Fernandez as soon as the group reached the scene of the occurrence, Pagaduan did so by order of Belen; that Pagaduan was the first member of the group to detach himself therefrom, after the commission of the crime charged; and that, before leaving Pagaduan in his house, Belen bade him to refrain from reporting the matter to the Philippine Constabulary. These circumstances bolster up the theory of Pagaduan to the effect that he had acted under compulsion from Belen, who was known to be a police character.

The prosecution argues that the failure of Pagaduan to escape when Belen went up the house, in order to find out

by himself whether there was any firearm therein, demonstrates that the former was in conspiracy with the latter. We should not overlook, however, the fact that De Gracia was then in the yard, armed with a gun, with which he could have shot Pagaduan, had he tried to escape. In fact, Pagaduan surrendered to the authorities shortly after Belen was killed. In short, Pagaduan's complicity has not been established beyond reasonable doubt, and the case should be dismissed, insofar as he is concerned, with the proportionate part of the costs de officio.

Considering that the crime of robbery with homicide was committed with several aggravating circumstances which are not compensated by any mitigating circumstance, the extreme penalty imposed upon Feliciano de Gracia is in accordance with law, although the indemnity due from him should be increased to P12, 000.[1]

Modified as above indicated, the decision of the lower court is hereby affirmed, in all other respects, with the proportionate part of the costs against Feliciano de Gracia.

IT IS SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Castro, Fernando, Capistrano, and Teehankee JJ., concur.
Reyes, J., on leave.

Barredo, J., did not take part, on official leave abroad.

[1] People v. Pantoja, G.R. No. L-18793, Oct. 11, 1968; People v. Gutierrez, G.R. No. L-25372, Nov. 29, 1968; People v. Buenbrazo, G.R. No. L-27852, Nov. 29, 1968; People v. Mabaga, G.R. No. L-26337, July 25, 1969.

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