

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS ALVIS, RODOLFO GERON, EDUARDO ARIOLA, GUILBERTO LLAMOSO, ARTURO SANTOS, FELIMON OLIVER, ROLANDO GALANG, ROLANDO RAMOS, A...

G.R. No. L-39049. June 24, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The death sentence imposed by the then Circuit Criminal Court, 7th Judicial District, Pasig, Metro Manila, on the 14 accused herein, all convicted prisoners at the national penitentiary, is before us for mandatory review.

The Information filed against them charged them with Murder as follows:

"That on or about the 18th day of October, 1971, in the New Bilibid Prison, Muntinlupa, Rizal, and within the jurisdiction of this Honorable Court, the aforementioned accused, while then serving sentences at the said institution, acting upon a common understanding, conspiring together, confederating and helping one another, with treachery, deliberate intent to kill, evident premeditation, and armed with clubs and other similar deadly weapons—did, then and there wilfully, unlawfully and feloniously, simultaneously assault, attack and strike therewith one Prison Guard Andres ESPORLAS, thereby inflicting upon the latter the following injuries:

- "1. Intracerebral Hematoma, frontal right;
- "2. Subdural Hematoma, frontal right;
- "3. Encephalomalacia, frontal lobe, right;
- "4. Cerebral contusion, frontal lobe, right;
- "5. Cerebral edema & swelling, left jaw.

which directly caused his death.

"The crime when committed by the aforementioned accused is attended by the following aggravating circumstances: (1) disregard for the rank of the deceased who was a prison official and as such exercises authority over the accused; (2) night time; (3) use of superior strength; and, (4) recidivism and quasi-recidivism based on previous convictions of the following accused:

"Jesus Alvis convicted of Frustrated Robbery with Homicide on August 25, 1960; Evasion of Service of Sentence on July 2, 1963; and Frustrated Murder on August 24, 1964 by the Courts of First Instance of Pampanga, Palawan and Rizal respectively;

"Rodolfo Geron convicted of Frustrated Homicide and Frustrated Murder by the Court of First Instance of Batangas on November 8, 1961 and September 21, 1961 respectively; Frustrated Homicide by the Court of First Instance of Rizal on August 22, 1966 and Homicide (2 counts) by same court on August 31, 1966;

"Eduardo Ariola convicted of Homicide by the Court of First Instance of Zambales on June 24, 1968 and Homicide by the Court of First Instance of Manila on July 30, 1968 respectively;

"Guilberto Llamoso convicted of Robbery in Band with Homicide by the Court of First Instance of Manila on June 14, 1965;

"Arturo Santos convicted of Murder by the Court of First Instance of Rizal on April 23, 1970;

"Felimon Oliver convicted of Homicide by the Court of First Instance of Manila and of the same crime by the Court of First Instance of Camarines Norte on January 11, 1965 and on October 31, 1960 respectively;

"Rolando Galang convicted of Theft by the City Court of Manila on October 14, 1968 and Murder by the Circuit Criminal Court of Manila on December 2, 1968 respectively;

"Rolando Ramos convicted of Frustrated Homicide by the Court of First Instance of Rizal on March 25, 1962; Murder and Attempted Murder by the Court of First Instance of Rizal (Quezon City, Branch V) on February 2, 1970 and Homicide by the same court on March 11, 1971;

"Antonio Borebor convicted of Robbery with Less Serious Physical Injuries by the Court of First Instance of Sorsogon on September 27, 1967 and Evasion of Service of Sentence by the Court of First Instance of Rizal on September 24, 1968;

"Reydante Salem convicted of Homicide by the Court of First Instance of Manila on August 9, 1967;

"Jose Balais convicted of Theft and Robbery by the Court of First Instance of Manila; Homicide by the Court of First Instance of Rizal; Robbery (2 counts) by the Court of First Instance of Manila; Violation of the City Ordinance of Manila, Rep. Act No. 3553; Robbery (3 counts) by the Court of First Instance of Manila; Attempted Robbery with Frustrated Homicide by the Court of First Instance of Rizal; Attempted Robbery and Theft (3 counts) by the Court of First Instance of Manila; and Robbery (2 counts) by the Court of First Instance of Manila;

"Eduardo Villamor convicted of Theft (2 counts) by the Court of First Instance of Zambales; Robbery by the Court of First Instance of Occidental Mindoro and Evasion of Service of Sentence by the same court;

"Federico Dominico convicted of Serious Physical Injuries by the Court of First Instance of Zambales and Robbery by the Circuit Criminal Court of Manila respectively;

"Policarpio Ramirez convicted of Qualified Theft by the Court of First Instance of Nueva Ecija; Theft (3 counts) by the Municipal Court of Cabanatuan; Robbery by the Court of First Instance of Nueva Ecija and Evasion of Service of Sentence (2 counts) by the Court of First Instance of Davao del Norte.

CONTRARY TO LAW."[1]

After pleas of not guilty and after due trial, all fourteen accused were found guilty of Murder and, as aforesated, sentenced to death:

"WHEREFORE, finding the accused, namely: Jesus Alvis, Rodolfo Geron, Eduardo Ariola, Guilberto Llamoso, Arturo Santos, Felimon Oliver, Rolando Galang, Rolando Ramos, Antonio Boredor, Reydante Salem, Jose Balais, Eduardo Villamor, Federico Dominico and Policarpio Ramirez, all GUILTY, beyond reasonable doubt, of the crime of Murder, as defined under Art. 248 of the Revised Penal Code, as charged in the information, the Court hereby sentences each one of them to suffer the penalty of DEATH; to indemnify the heirs of the victim, Andres Esporlas, the amount of P20,000.00, jointly and severally; to pay moral damages in the amount of P12,000.00, and another P12,000.00 as exemplary damages, jointly and severally; and to pay their proportionate shares of the costs."[2]

All appealed, with 3 separate Briefs having been filed: one, for Alvis, Santos, Dominico, Oliver, Villamor, Balais, Ramos and Llamoso; the other for Ariola, Galang, Ramirez and Salem; and the third for Borebor and Geron. The

Solicitor General filed a consolidated Brief.

The prosecution has summarized the facts as follows:

"On or about October 16, 1971, several prisoners confined in Dormitory 5-B of the New Bilibid Prison, Muntinlupa, Rizal, all matters of the notorious 'Bahala Na Gang', held a meeting at the 'kubol' (quarters) of prisoner Jose Balais. The meeting was conducted by prisoner Jesus Alvis and Balais, 'bosiyo' (bosses or leaders) of Dormitory 5-B, also referred to as a brigade, Alvis being the 'chief squad leader' or 'mayor' and Balais the 'assistant mayor'.

"In that meeting, which began at 7 or 8 o'clock in the evening and lasted up to 11 P.M., it was decided that Andres Esporlas, prison guard, who was regarded as 'too strict', would be liquidated, and that after that the prisoners would stage a mass escape. As agreed upon, the details of the plan were: The plotters would have a prisoner box Esporlas, after which they would take turns clubbing the said prison guard. Prisoner Eduardo Villamor, who resembled Esporlas, would then wear the latter's uniform and thereafter feign to escort the other prisoners to the Reception Diagnostic Center, from the roof of which they would scale the perimeter fence. It was also decided in that meeting that prisoner Miguel Obiña, an ex-professional boxer, would be the one to box Esporlas.

"Present in the aforesaid meeting, other than Alvis and Balais, were the following prisoners: Villamor, Policarpio Ramirez, Federico Dominico, Arturo Santos, Guilberto Llamoso, Eduardo Ariola, Antonio Borebor and Rodolfo Geron.

"The foregoing facts concerning the meeting which took place on or about October 16, 1971 may be culled from the testimony of prosecution witness Antonio Reyes (tsn, January 15, 1974, p. 11), who shared quarters with Balais, and from the sworn statements of Dominico (Exh. 'E'), Ramirez (Exh. 'F'), and Boredor (Exh. 'R').

"Pursuant to the agreement arrived at in the said meeting, Villamor contacted Obiña and gave him the order to box Esporlas. To ensure that Obiña would comply, Villamor threatened him and told him that he would watch him closely. Obiña was not however informed of the details of the plot (Exh. 'P', sworn statement of Villamor).

"The plan hatched in the meeting of October 16, 1971 was implemented in the evening of October 18, 1971, at around 7 o'clock, while Esporlas, keeper of Dormitory 5-B, was about to conduct a headcount of the prisoners in that brigade. As soon as the prisoners, numbering more than one hundred, had lined up for the counting and Esporlas had entered the dormitory, Obiña suddenly stood and boxed Esporlas on the jaw. This was testified to by prisoners Isidro Bondoc (tsn, January 7, 1974, pp. 19-20) and Antonio Reyes (tsn, January 15, 1974, pp. 7-8), prosecution witnesses who were in Dormitory 5-B and actually saw the incident.

"After Obiña boxed Esporlas, the following prisoners clubbed the said prison guard: Alvis (Exh. 'R', sworn statement of Borebor), Balais (Exh. 'R'), Villamor (Exh. 'P', his own sworn statement; Exh. 'E', sworn statement of Dominico; Exh. 'F', sworn statement of Ramirez), Ramirez (Exh. 'R', his own sworn statement; Exhs. 'E' and 'P'), Dominico (Exh. 'E', his own sworn statement; Exh. 'S', sworn statement of Santos; Exhs. 'F' and 'P'), Rolando Ramos (Exhs. 'P' and 'S'), Santos (Exh. 'S', his own sworn statement; Exhs. 'E', 'F', 'P' and 'R'), Llamoso (Exh. 'F'), Borebor (Exh. 'F'), and Geron (Exhs. 'F', 'R' and 'S'). In addition, eyewitnesses Bondoc and Reyes testified that Balais, Villamor, Ramirez, Dominico, Ramos, Galang and Borebor were among those who mauled Esporlas (tsn, January 7, 1974, p. 20; tsn, January 9, 1974, p. 13; tsn, January 15, 1974, p. 8). Esporlas was rendered unconscious by the mauling (tsn, January 7, 1974, p. 20; tsn, January 15, 1974, p. 9).

"At this point, Villamor, Dominico and Ariola took off Esporlas' uniform (tsn, January 7, 1974, p. 20; tsn, January 15, 1974, p. 8; Exh. 'S'), while Reydante Salem and Dominico removed his shoes (tsn, January 15, 1974, p. 8; Exhs. 'R' and 'S'). Then Villamor shouted that those prisoners who wanted to could join the escape (Exh. 'S').

"By this time, prisoners in the other building looked to find out what was happening. This caused panic on the

plotting prisoners. Villamor and Borebor then decided to have Esporlas taken to the hospital for fear that he would die while in their hands (Exh. 'S'). Accordingly, Salem took Esporlas to the hospital (tsn, January 16, 1974, p. 4; Exh. 'S').

"To dissemble their plan and to prevent Obiña from giving any statement to the authorities, Alvis ordered his group to beat up Obiña and thereby make it appear that they did not approve of what he had done to Esporlas (Exh. 'H', sworn statement of Alvis; Exh. 'P'). Those who roughed up Obiña were the following: Alvis (Exh. 'L', sworn statement of Ariola; Exh. 'M', sworn statement of Ramos; Exh. 'T', sworn statement of Llamoso; Exh. 'R'; tsn, January 9, 1974, p. 15; tsn, January 15, 1974, p. 9), Balais (Exh. 'Q', his own sworn statement; Exhs. 'L', 'M', 'R' and 'T'; tsn, January 9, 1974, p. 15; tsn, January 15, 1974, p. 9), Ramirez (Exh. 'M'), Ramos (Exh. 'M', his own sworn statement), Llamoso (Exh. 'T', his own sworn statement; Exh. 'L'), Ariola (Exh. 'L', his own sworn statement; tsn, January 9, 1974, p. 15; tsn, January 15, 1974, p. 9), Geron (Exh. 'G', his own sworn statement; tsn, January 7, 1974, p. 20), Santos (tsn, January 7, 1974, p. 20), Oliver (tsn, January 7, 1974, p. 20; tsn, January 9, 1974, p. 15; tsn, January 15, 1974, p. 9), Dominico (tsn, January 7, 1974, p. 20; tsn, January 9, 1974, p. 15), Villamor (tsn, January 7, 1974, p. 20), Galang (tsn, January 9, 1974, p. 15), and Borebor (tsn, January 7, 1974, p. 20; tsn, January 9, 1974, p. 15). Obiña was also rendered unconscious (tsn, January 7, 1974, p. 20). Believing that Obiña was already dead, they had him taken to the hospital (Exh. 'P').

"As a result of the aforementioned incident, Esporlas suffered injuries on the left jaw and in the brain (Exhs. 'C' and 'C-3'; tsn, December 19, 1973, p. 5). He had an hematoma at the back of the head above the nape (tsn, January 15, 1974, p. 4). When he was admitted in the New Bilibid Prison Hospital and later in the Veterans Memorial Hospital, he was unconscious and in serious condition (Exh. 'C'; tsn, December 19, 1973, p. 5). He never regained consciousness and died after several days (Exh. 'E', death certificate; tsn, December 19, 1973, pp. 6, 7). Had he lived, one-half of his body, both upper and lower parts, would have been completely paralyzed and his face would have been deformed and his memory impaired (ibid., p. 7).

"With respect to Obiña, he suffered injuries on the forehead, nape, head, right and left legs, and left hand (Exhs. 'A', 'A-1', and 'A-2'; tsn, December 14, 1973, pp. 8-10). At the time he was taken to the New Bilibid Prison Hospital, he was unconscious, his pulse was imperceptible, and he was in serious condition (tsn, December 14, 1973, p. 8). Obiña would have died were it not for timely medical attendance (tsn, December 14, 1973, p. 13).

"Immediately after the incident prison authorities conducted an investigation. The statements of Ariola (Exh. 'L') and Llamoso (Exh. 'T') were taken on October 21, 1971; that of Ramos (Exh. 'M') on October 22; those of Alvis (Exhs. 'H' and 'H-1'), Balais (Exhs. 'Q' and 'Q-1'), Villamor (Exhs. 'P' and 'P-1'), Borebor (Exhs. 'R' and 'R-1'), and Santos (Exh. 'S') on October 25; and those of Ramirez (Exhs. 'F' and 'F-1'), Dominico (Exhs. 'E', 'E-1' and 'E-2'), and Geron (Exhs. 'G' and 'G-1') on October 27, 1971. All the declarations of the afore-mentioned prisoners contain statements to the effect that the declarants were advised of their constitutional rights and that the same were voluntarily given.

"In addition, the statement of the following eyewitnesses were taken: Armando Temporosa (Exh. 'D'), Marcelo Apostol (Exh. 'K'), and Antonio Reyes (Exh. 'O'), Obiña gave a statement on October 23, 1971 (Exh. 'J').

"On October 29, 1971, Filomeno C. Mencero, Chief, Investigation Section, of the New Bilibid Prison, submitted his report to the Superintendent (Exhs. 'B', 'B-1' to 'B-5'). In this report, Mencero found that the following prisoners were liable for the death of Esporlas: Alvis, Balais, Villamor, Ramirez, Dominico, Santos, Llamoso, Oliver, Ramos, Ariola, Galang, Salem, Borebor and Geron.

"Subsequent to the submission of said report, two additional eyewitnesses, Isidro Bondoc and Fausto Erillana, gave statements (Exhs. 'N' and 'T', respectively) concerning the incident in question." [3]

The respective testimonies of the accused in their defense have been summarized by the Trial Court thus:

"Jesus Alvis testified that on October 18, 1971, while he was inside Dormitory 5-B, prison guard Esporlas entered the door to make a physical counting of the prisoners therein; that when keeper Esporlas was about to make the first count, Miguel Obiña who was right in front of the victim, suddenly boxed the latter on the right jaw; that Esporlas fell down and Obiña kicked the victim, so he refrained him and ordered the inmates to maul Obiña; that he was about to go to the Officer of the Day, but he was met by Balais who told him to bring out Esporlas to the hospital; that he denied any participation in the beating of Esporlas and he just ordered his co-inmates to maul Obiña. He is a Bahala Na Gang member.

"Arturo Santos, another Bahala Na Gang member, testified that on October 18, 1971, there was an unusual incident that happened at dormitory 5-B when Mr. Esporlas entered the brigade to make a counting of the inmates; that suddenly Obiña gave a fist blow to Esporlas; that he was about three arms'-length from the two when Obiña boxed the victim on the upper waist, right side and on the jaw; that Esporlas fell down; that he was forced to give a written statement because he was mauled by the prison authorities, namely: de las Alas, de la Cuesta, Alambro, Planta, Casanova and Cabasas; that because of the maltreatment given him by the investigators, he was forced to sign his statement although the contents thereof are not true.

"Federico Dominico, another Bahala Na Gang member and a resident of dormitory 5-B, testified that on October 18, 1971, he was inside the brigade and he saw Obiña box Esporlas and the latter fell down; that he approached Obiña and asked why he did it to Esporlas and the former answered, 'naaaburido ako'; that he gave a fist blow on the nape of Obiña; that later on employees came and took Obiña out of the brigade and was beaten by the employees outside; that he gave two statements to the authorities, the first one was the truth, but the investigators did not believe him so another statement was given by him which was not true and he was only forced to make it because he was maltreated and forced to sign it; that he was the only one who beat Obiña.

"Felimon Oliver, also a member of the Bahala na Gang, testified that on October 18, 1971, he was at his kubol fixing and arranging his things when he heard a shout and when he went out he saw Andres Esporlas lying down; that he went near Esporlas and touched his breast but he was no longer breathing, so they brought him to the hospital; that he was brought to the IS for investigation but he did not give any statement although he was maltreated; that he was included in the information because his name was just mentioned.

"Eduardo Villamor, another Bahala Na Gang member and a resident of Dormitory 5-B, testified that on October 18, 1971, there was an incident that happened, that of Obiña boxing Esporlas as told to him by his companions; that he was inside the kubol that is why he did not see Obiña box the keeper; that at that time he had sore eyes and he was surprised why he was implicated in the incident; that he did not give any statement regarding said incident and that he was told to sign three sheets of paper where nothing was written on them; that he was mauled before signing said statement and because of said mauling he was hospitalized and that he was mauled for more than one week.

"Jose Balais, another member of the Bahala Na Gang and a resident of dormitory 5-B, testified that on October 18, 1971, the keeper was making a count in their brigade and he was at a distance of only one meter or two from Obiña and Esporlas; that suddenly Obiña boxed Esporlas on the jaw and he asked Obiña why he did it but the latter did not answer and tried to get loose instead and trying to get out of the brigade; that because of his anger to what happened to Esporlas, he beat Obiña and reported the matter to prisoner guard Planta and he was with Jesus Alvis when he reported the matter; that he gave a sworn statement to the authorities (Exh. 'G') admitting the beating of Obiña but denied any participation in the killing of Esporlas; that he was not coerced nor maltreated in giving a statement to de la Cuesta.

"Rolando Ramos, also a member of the Bahala Na Gang and a resident of dormitory 5-B, testified that on October 18, 1971, he was in the buyong, when he heard a shout coming from Alvis, saying 'tarima', and suddenly there was a commotion inside the brigade and when he went out from the buyong he saw Esporlas being beaten by Miguel Obiña; so that his co-accused beat Obiña and he hit Obiña also; that he was implicated

only by Ramirez but the truth is that he did not have any participation in the beating of Esporlas.

"Guilberto Llamoso, also a member of the Bahala Na Gang testified that on October 18, 1971, he was at Dormitory 5-B when he heard a noise at the door of said brigade; that when he looked out he saw that the noise (kalampag) came from the door caused by Esporlas; that he heard Esporlas ask Ariola if the prisoners were ready for counting and then, Ariola answered 'yes'; that no sooner had Esporlas asked the question when Miguel Obiña made two steps forward and suddenly gave a fist blow on Esporlas; that he did not know the reason why Obiña boxed Esporlas and did not likewise see what happened to Esporlas because of the commotion inside the brigade; that he was 5 to 6 meters away from the incident; that he was only able to move for a short while because he was taken by surprise; and that after the incident he gave a sworn statement before the prison authorities, marked as Exhibit 'I'.

"Eduardo Ariola, also a member of the Bahala Na Gang, testified that the victim was killed by Obiña and he learned of the death of said victim thru the co-employees of Esporlas; that Esporlas was very good to them and he was near him helping the latter in counting the prisoners; that he was inside the brigade on October 18, 1971, and when he learned of the incident he ran out but was blocked from the door because they did not like what Obiña did to Esporlas; that he had no participation whatsoever in the boxing of Esporlas.

"Rolando Galang, a resident of dormitory 5-B and also a member of the Bahala Na Gang testified that on October 18, 1971, he was in his tarima being counted by keeper Esporlas, when Miguel Obiña boxed him (Esporlas); that he was at the end of the tarima which is about four to five meters away from the place of the incident; that when he saw Obiña box Esporlas, he launched at Obiña and gave him fist blows; that he had nothing to do with the death of Esporlas as they did not talk of killing him; that it is not true also that they used deadly weapons in attacking Esporlas; that he was investigated by Mr. Alambro and in spite of the fact that he was maltreated he did not admit the crime, because he did not do it really; that he was not aware of any misunderstanding between Obiña and Esporlas; and that their leader or mayor is Alvis and Balais is their second mayor.

"Policarpio Ramirez who testified that he was also a member of the Bahala Na Gang and a resident of dormitory 5-B; that on October 18, 1971, he was in his tarima and he saw Obiña box Esporlas and when he asked Obiña why he did it he the latter did not answer, so he boxed and beat him.

"Reydante Salem, a resident of Dormitory 5-B and a member of the Bahala Na Gang, testified that in the evening of October 18, 1971, he was at the brigade with Antonio Reyes, Isidro Bondoc and Temporosa; that he was inside the bathroom taking a bath when he heard a noise and after taking a bath he fixed himself in preparation for the counting of the keeper; that while Esporlas was already inside the brigade, Miguel Obiña suddenly stood up in front of Esporlas and boxed him on the face; that Esporlas fell down and he was about two or three meters away from the incident so that he helped his companions, namely: Lopez Generoso and Dugtong in bringing Esporlas to the hospital and from there he did not know anymore what happened to Esporlas, because he was sent home by the nurse.

"Antonio Borebor, also a member of the Bahala Na Gang, testified that he was cooking viand at the time of the commission of the crime; that although there was a commotion he continued cooking viand; that he does not know anything about the beating of Esporlas and that he did not see Obiña box Esporlas; that his statement was taken by means of force and intimidation, he being kicked by de las Alas; and that the contents of the statement were not true, because he could not remember if he talked with Alvis nor with his co-accused on that date.

"Rodolfo Geron testified that he was at the gola when he heard a commotion at Dormitory 5-B; that Obiña boxed Esporlas; that he was just informed of the said boxing and he did not actually see it because he was outside, and he did not even know if Esporlas was brought to the hospital; that he did not conspire and confederate with his co-accused, but admitted that he is a member of the Bahala Na Gang."

It should be noted that, initially, the accused were also charged with Frustrated Murder for the injuries inflicted on

Miguel Obiña. However, after the prosecution had rested its case, upon motion of the defense, the Trial Court dismissed that charge primarily on the ground that Miguel Obiña was never presented by the prosecution and the charge could not be substantiated. The records show that it was actually Atty. Benjamin Domingo, one of the accused's counsel, who presented Obiña as a witness.[4]

During the pendency of this appeal, Ramirez and Dominico died so that the case as against them was dismissed in so far as their criminal liabilities are concerned.[5]

In their respective Briefs, accused-appellants assigned the following errors:

1) By Alvis, Santos, Dominico, Oliver, Villamor, Balais, Ramos and Llamoso:

- "1) That the lower court erred in believing the testimony of Miguel Obiña and other witnesses for the prosecution;
- "2) That the lower court erred in not giving weight to the testimonies of the appellants and their witnesses;
- "3) That the lower court erred in convicting the accused-appellants."

2) By Ariola, Galang, Ramirez and Salem:

- "1) That the trial court erred in considering treachery and evident premeditation as an aggravating circumstance;
- "2) That the trial court erred in convicting them;
- "3) That the trial court erred in not acquitting them, beyond reasonable doubt of the crime of Murder."

3) By Borebor and Geron:

- "1) The trial court erred in not finding that Miguel Obiña was the lone assailant of Andres Esporlas;
- "2) The trial court erred in finding that Borebor and Geron had conspired with their co-accused in the killing of Esporlas;
- "3) The trial court erred in convicting Borebor and Geron on the basis of their alleged extrajudicial confession of guilt;
- "4) The trial court erred in convicting Borebor and Geron on the basis of the purported extrajudicial confessions of Borebor, Dominico and Ramirez;
- "5) The trial court erred in not acquitting Borebor and Geron on ground of reasonable doubt.
- "6) Assuming arguendo that the culpability of the accused for the death of Andres Esporlas has been established by proof beyond reasonable doubt, nevertheless, the trial court erred:
 - a) in finding that the killing was attended by the qualifying circumstance of treachery and the aggravating circumstances of evident premeditation and recidivism; and
 - b) in failing to appreciate voluntary surrender and lack of intention to commit so grave a wrong as mitigating circumstances in favor of Borebor and Geron.
- "7) The trial court erred in ordering Borebor and Geron to pay actual, moral and exemplary damages to the heirs of Esporlas and the costs of suit."

All of which funnel down to the core issue of whether or not the guilt of all the accused has been proved beyond reasonable doubt.

The combined evidence calls for an affirmative finding. We find as established that at a meeting held in the evening of October 16, 1971 by members of the "Bahala Na Gang" in Dormitory 5-B of the New Bilibid Prison, Muntinlupa, headed by accused Jesus Alvis and Jose Balais, as "bosiyo", it was agreed that prison guard, Andres Esporlas, would be liquidated ("ipatira") and thereafter the prisoners would stage a mass escape. Prisoner Miguel Obiña, an ex-professional boxer was selected to box Esporlas. Present at the meeting other than Alvis and Balais were accused Villamor, Ramirez, Dominico, Santos, Llamoso, Ariola, Borebor and Geron. Villamor thereafter contacted Obiña and instructed him to box Esporlas, threatening him with harm if he did not comply. Obiña, however, was not informed of the other details of the plot.

On October 18, 1971, at around 7:00 P.M., while Esporlas was about to conduct a headcount of prisoners in Dormitory 5-B, Obiña suddenly stood up and boxed Esporlas on the left jaw. Esporlas reeled but managed to stand up after which Alvis, Balais, Villamor, Ramirez, Dominico, Ramos, Santos, Llamoso, Borebor and Geron clubbed Esporlas. Inmate Antonio Reyes (not one of the accused) also identified those who had ganged up and clubbed Esporlas as Ramirez, Dominico, Galang, Ramos, Ariola, Salem and Villamor, the latter having beaten the victim with a "pamalo" wrapped in white T-Shirt. Villamor, Dominico and Ariola took off Esporlas' uniform, while Salem and Dominico removed the victim's shoes. These last two overt acts were in pursuance of the group's plan to make Villamor appear like Esporlas. Accused Borebor likewise made mention of the following as responsible for the killing of Esporlas: Ramirez, Dominico, Borebor, Villamor and Ramos.[6] Esporlas was rendered unconscious by the mauling. For fear that he would die in their hands, Salem took Esporlas to the hospital, upon instructions of Villamor and Borebor, where he died several days after.

After the mauling of Esporlas, Alvis ordered the group to beat up Obiña to make it appear that they did not approve of what he had done to Esporlas. Responsible for the roughing up of Obiña were: Alvis, Balais, Ramirez, Ramos, Llamoso, Ariola, Geron, Oliver, Dominico, Villamor, Galang, and Borebor. As a result, Obiña was rendered unconscious, taken to the hospital, and would have died but for timely medical assistance.

The contention of Borebor and Geron that Obiña was the sole perpetrator of the crime and should have been the one charged and convicted deserves but passing consideration. In accused Dominico's statement,[7] he stated that Esporlas was still standing after Obiña delivered the blow. To quote:

"8. T. —

Isalaysay mo nga sa aking ang tunay na pangyayari na naganap sa loob ng brigada ninyo sangayon sa iyong sinasabi?

S. —

Nang araw at oras po na binanggit ko sa itaas ay kinalampag ni Jesus Alviz ang pintuan ng aming brigada na kasama sa labas ni Mr. Esporlas, Jose Balais at Eddie Arriola. Pagkabukas po ng pinto ay purnasok na sila at kami naman ay nakatarima na at ang iba ay hindi pa. Nasa ganoon pong ayos ng biglang tumayo si Miguel Obiña at walang kaabog-abog ay sinuntok niya si Mr. Esporlas sa kanang panga. Nahilo po si Mr. Esporlas subalit nakatayo pa rin at sabay palo namin nina Ramirez, Villamor, Arturo Santos. Ako po ay pumalo sa kanang braso, minsan lamang, si Villamor po naman ay sa ulo, si Ramirez po ay sa ulo rin at si Arturo Santos po naman ay sa dibdib. Pagkapalo po namin ng sabaysabay ay bumagsak si Mr. Esporlas na and parteng ulo ay malapit sa pintuan ng aking brigada. Nagkagulo po ang mga tao, si Ubiña po naman ay pinagpapalo na ng aking mga kasamahan hanggang sa mawalan ng malay tao. Nang magkagulo po ang mga tao ay nagpunta na ako sa kubol ko nang lumabas ako ay wala na o naihatid na si Mr. Esporlas sa Ospital."

A similar declaration was made by accused Ramirez (now deceased). And eyewitness Reyes testified that it was only after Esporlas was clubbed and hit on the head and other parts of his body by the accused that Esporlas fell

down on the floor.[8] The extensive injuries suffered by Esporlas in the brain must have resulted from the clubbings delivered by several persons. In other words, Esporlas' death was not the consequence of Obiñas' act of boxing said victim but was the result of the accused's concerted assault against him. Obiña was just the "fall guy".

Accused Alvis, Geron, Ariola, Llamoso, Santos, Ramos, Borebor, Balais, Villamor, Dominico and Ramirez executed their respective sworn statements admitting their participation in the mauling of Esporlas and Obiña.[9] Obiña was assaulted to prevent him from giving any statement to the authorities.

On the witness stand, however, the same accused repudiated their sworn statements alleging maltreatment, and denied any participation in the mauling of Esporlas. As concluded by the Trial Court, however, the repudiation did not ring with truth. The answers to the questions in the several statements show spontaneity. The facts contained therein could not have been given by any one unfamiliar with the sequence of the acts narrated therein. Some of the declarations were exculpatory in character. The statements were taken and executed a few days after the incident in question when those who participated and witnessed the crime did not have sufficient time to fabricate the evidence. What is more, the statements substantially interlock and confirm one another as to details. The presumption that the statements were voluntarily given was not successfully rebutted. Significantly, the statements of eyewitnesses Bondoc and Reyes[10] corroborated the accused's statements in many details. Extra-judicial confessions independently made without collusion, almost identical with each other in their essential details and corroborated by other evidence on record are admissible as substantial evidence against the person or persons implicated to show probability of the latter's actual participation in the commission of the crime.[11] The inconsistencies pointed out by the defense refer merely to details and not to substance.

We likewise find for conspiracy. "Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it"[12], the objective being to perform an act or omission punishable by law.[13] The accused had held a meeting in the "kubol" of Balais two days prior to the incident to plan the killing of Esporlas, to choose Obiña as their "fall guy", he being a professional boxer, and to map out their mass escape. And even if not all of the accused were at the meeting, as the plot was eventually carried out, all of them performed acts with unity of purpose and intention in furtherance of the conspiracy and are, therefore, liable as co-principals for the murder of Esporlas.

The crime shown to have been committed beyond reasonable doubt is Murder. It was qualified by treachery and aggravated by abuse of superior strength which is absorbed by treachery, evident premeditation and quasi-recidivism. The killing took place inside the New Bilibid Prison where the accused were serving sentences for other offenses for which they were previously convicted by final judgment. The Trial Court correctly imposed the maximum period of the penalty which is death.[14] And even if Article 160 were inapplicable, as Borebor and Geron contend, the aggravating circumstance of evident premeditation without any mitigating circumstance to offset it would still warrant capital punishment. However, for lack of the necessary votes, the death penalty is commuted to reclusion perpetua.[15]

Appellants are not entitled to the mitigating circumstances of voluntary surrender and lack of intent to commit so grave a wrong as that committed, as contended by Borebor and Geron. They reported the incident to the authorities and took Esporlas to the hospital merely to cover up for their illegal acts and aborted plan for mass escape. Besides, the special aggravating circumstance of quasi-recidivism cannot be offset by any ordinary mitigating circumstance.[16]

The award of actual, moral and exemplary damages to the heirs of the victim is in order.[17]

WHEREFORE, the judgment appealed from is hereby affirmed, except as to the penalty, which is hereby modified to reclusion perpetua.

With proportionate costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion Jr., Guerrero, Abad Santos, De Castro, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Aquino, J., took no part.

[1] pp. 33-36, Rollo.

[2] pp. 56-57, *ibid.*

[3] pp. 2-8, Brief for the Appellee, p. 325, Rollo.

[4] T.s.n., May 29, 1974.

[5] pp. 390-393-A and 403-407, Rollo.

[6] Exhibit "R", Original Records.

[7] Exhibit "E", pp. 199-200, *ibid.*

[8] T.s.n., January 7, 1974, p. 20; January 9, 1974, pp. 12-13; January 15, 1974, p. 8.

[9] Exhibits "E", "F", "G", "H", "L", "M", "P", "Q", "R", "S", and "T", Original Records.

[10] Exhibits "N" and "O", *ibid.*

[11] *People vs. Ragas*, 44 SCRA 152 (1972); *People vs. Domondon*, 43 SCRA 486 (1972).

[12] Article 8, Revised Penal Code.

[13] *People vs. Pudpud*, 39 SCRA 618 (1971); *People vs. Largo*, 46 SCRA 598 (1972).

[14] Article 160, Revised Penal Code.

[15] Section 9, RA 296, as amended.

[16] *People vs. Bautista, et al.*, 65 SCRA 460 (1975).

[17] Article 100, Revised Penal Code; Articles 1157 and 2202, Civil Code.

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