

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. GAUDENCIO MONGADO, JILLY SEGADOR, AND BELESANDE SALAR, ACCUSED.

G.R. No. L-24877. June 30, 1969

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/fa41fab92835/>

PER CURIAM:

Up for automatic review, in this case of robbery with double homicide and rape, is the trial court's decision imposing the capital penalty upon the accused Gaudencio Mongado, Jilly Segador and Bele-sande Salar, on a plea of guilty[1] entered into by each of them with the assistance of counsel de oficio, to the second amended informa-tion of June 16, 1965, which reads:

"SECOND AMENDED INFORMATION

The undersigned Assistant Provincial Fiscal hereby accuses GAUDENCIO MONGADO, JILLY SEGADOR, BELESANDE SALAR, ANASTACIO CADENAS and ANDRES CAGADAS of the crime of ROBBERY WITH DOUBLE HOMICIDE AND RAPE, committed as follows:

That on or about the 17th day of March, 1965, in the municipality of Mainit, province of Surigao del Norte, Philippines, and within the jurisdiction of this honorable Court, the said accused, Gaudencio Mongado, Jilly Segador, Belesande Salar, Anastacio Cadenas and Andres Cagadas with evident premedi-tation, conspiring, confederating together and mutually helping one another, and armed with an unlicensed .22 cal. revolver, a small sharp-pointed bolo, a toy revolver marked 'Kit gun' and a wooden club, with intent to gain, after having gained entrance to the residence of Silvino Lincuna and Emilia Dalit, husband and wife respectively, by abusing the good-will of the said spouses, the latter being the uncle and aunt respectively of the accused Gaudencio Mongado, did then and there willfully, unlawfully and feloniously by means of force upon things thru violence as alleged in the third paragraph of this information that is by breaking the aparadors and a trunk where valuables and personal effects were then kept, take, steal and carry away the following articles, to wit:

1. One (1) shotgun, 12 gauge - - - - -

P250.00

more or less

2. One (1) radio (Kharman) - - - - -

250.00

" " "

3. One (1) radiophono - - - - -

450.00

" " "

4. One (1) ring - - - - -

75.00

" " "

5. One (1) ring - - - - -

40.00

" " "

6. One (1) necklace (chinese gold) - -

180.00

" " "

7. One (1) necklace (gold alloy) - - - -

75.00

" " "

8. One (1) microphone - - - - -

90.00

" " "

Cash money - - - - -

300.00

" " "

P1,710.00

having a total value of P1,710.00, more or less, belonging to the said Silvino Lincuna and Emilia Dalit, as owners, to their ultimate damage and prejudice in the aforementioned amount.

That on the same occasion, in the foregoing manner as charged and pursuant to their conspiracy, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack and assault in a treacherous manner the said spouses, Silvino Lincuna and Emilia Dalit; that is, the accused Belesande Salar clubbing Silvino Lincuna on the head, Gaudencio Mongado tying him helplessly to a chair with the use of radio antennae and stuffing his mouth with rolls of gauze, and Jilly Segador attacking him with fatal thrusts by means of a sharp-pointed bolo, and finally with Belesande Salar, also with the use of the same sharp-pointed bolo, stabbing Emilia Dalit with several fatal thrusts; who as a result thereof suffered the following injuries, to wit:

SILVINO LINCUNA

'Contusion: 1. Frontal region, left;

2. Orbital region, left;

3. Maxillary region, left;

4. Nassal region.

'Incised wounds:

1. Earlobe, left;

2. Hemathorax, anteriorly, left (4)

(a) 4 inches below midelevicular bone; 3 inches deep

(b) Upper-lateral to nipple

(c) Below nipple

(d) Lateral to nipple'

EMILIA DALIT

'1. Contusions buccal region with fracture right mandible;

2. Incised wounds

1. Infraclavicular region, left;

2. Mammary region, laterally left;

3. 4 inches below axilla, mid-axillary line, right;

4. Humeral region (2) right;

a. Lateral aspect

b. Medial aspect

5. Mammary region, upper right;

6. Numural region, left;

7. Infrascapular region, left (3);

8. Back right.'

which injuries directly caused the death of the said Silvino Lincuna and Emilia Dalit.

That on the occasion of the said Robbery, with Double Homicide, in the manner as charged in this information and pursuant to their conspiracy, the accused Belesande Salar after having fatally assaulted the wife, Emilia Dalit, and while she was still alive and helpless, did then and there willfully, unlawfully and feloniously have carnal knowledge with the said Emilia Dalit at the residence referred to where the aforementioned crime was committed.

Contrary to Article 294, paragraphs 1 and 2 of the Revised Penal Code with the aggravating circumstances of treachery, ignominy, evident pre-meditation and abuse of confidence, and with an additional aggravating circumstance of recidivism against Gaudencio Mongado for having been pre-viously convicted of the crime for robbery in Case No. 2470 before this Honorable Court on December 8, 1960 and made to suffer the penalty of not less than 2 years, 4 months and one day of prision cor-rectional, as minimum, to not more than 8 years of prision mayor, as maximum.

Surigao, Surigao del Norte, June 16, 1965.

(SGD.) ILDEFONSO G. MANTILLA

Assistant Provincial Fiscal"

It was on June 28, 1965 when the three accused, together with two others, were arraigned before His Honor, Judge Teofilo B. Buslon of the Court of First Instance of Surigao del Norte.[2] According to the decision below, during the arraignment, the information was translated to the accused "into the Visayan dialect, the dialect which each of the five accused speaks and understands." The accused Gaudencio Mongado, Jilly Segador and Belesande Salar pleaded guilty. The two others, Anastacio Cadenas and Andres Cagadas, pleaded not guilty. Those who admitted guilt were asked by the court, in the words of the trial judge, "if they understood the consequence of their plea of guilty which is that they would be punished according to law which might be death in the Electric Chair, to which question each of the three accused answered in the affirmative." Thus did the trial court state in its decision that it "is satisfied that when each of the above-named accused, GAUDENCIO MONGADO, BELE-SANDE SALAR and JILLY SEGADOR, entered the plea of guilty, each of them was well aware of its consequences and that each of them did so freely and voluntarily."

On July 8, 1965, without taking any evidence, but taking stock of the affidavits of admission of the three accused, as attached to the record, the trial court found that the commission of the crime charged was attended by the aggravating circumstances of treachery, ignominy, evident premeditation, dwelling and abuse of confidence for all the three accused, and recidivism as regards the accused Gaudencio Mongado (who was a parolee at the time of the commission of this crime), all offset only by the mitigating circumstance of voluntary plea of guilty. The court, accordingly, sentenced the three, Gaudencio Mongado, Belesande Salar and Jilly Segador (Anastacio Cadenas and Andres Cagadas were to be tried separately) to suffer the penalty of death for the crime of robbery with double homicide and rape defined and penalized under Article 294, para-graphs 1 and 2 of the Revised Penal Code, to indemnify jointly and severally the heirs of the victims Silvino Lincuna and Emilia Dalit in the amount of P6,000 each, plus P596.15,[3] the value of the things taken by the accused but not recovered, with 3/5 of the costs. The trial court also directed the return to the heirs of the victims, of a radio receiving set, a radiophono, cash money of P163.85, six pieces of assorted clothes of the victims and other things taken by the accused but recovered; and likewise ordered the deposit with the Philippine Constabulary Provincial Command of Surigao del Norte of the 12 ga. shotgun until it can be bought by any qualified person, the proceeds of which shall be turned over to the heirs of the victims. The home-made revolver, cal. .22, the rounds of ammunitions thereof, the toy gun revolver, the small sharp-pointed bolo, and the wooden club used as instruments of the crime, were ordered forfeited in favor of the government.

On July 15, 1965, the trial court came out with an order directing that the decision disposing of the things recovered and forfeiting to the government all the articles used in the commission of the crime, shall not be implemented until after the case of the remaining two defendants, Andres Cagadas and Anastacio Cadenas, "will have been tried and decided."

1. It is clear error on the part of the trial court to consider the affidavits of admission of the three accused attached to the record in appreciating aggravating circumstances against them. Affidavits are generally classed as hearsay evidence; they are objectionable on hearsay grounds;[4] they are not admissible evidence of the facts they narrate.[5] These affidavits must first be formally offered and admitted in evidence before the court may consider their contents. Thus, in *People vs. Parayno* (1968), 24 SCRA 3, 17, affidavits of prosecution witnesses and the record of the preliminary investigation "were offered as exhibits" and "legally before the Court" and were thus properly considered. And again, in *People vs. Tarrayo*, L-26489, April 21, 1969, a capital case, the transcript of stenographic notes taken at the preliminary investigation was received in evidence after the accused pleaded guilty. It was thus also appropriately utilized by the court.

The fundamental rule on this point is found in Section 35, Rule 132, Rules of Court, which provides that "[t]he court, shall consider no evidence which has not been formally offered." It is the duty of the judge to rest his findings of facts and his judgment only and strictly upon the evidence adduced.[6] Here, the affidavits of admission have not been formally offered, much less admitted, in evidence. They cannot be taken into account.

The result is that solely the factual averments in the second amended information - to which the three accused have pleaded guilty - may be made the basis of any court finding as to the aggravating circumstances.

2. Of importance here is the existence of circumstances in aggravation or in mitigation of the penalty for the crime committed. For, at stake are the lives of the three accused. Deep-rooted in criminal law is the precept that the existence of aggravating circumstances must be based on positive and conclusive proof, not merely on hypothetical facts, no matter how truthful suppositions and presumptions may seem.[7]

There is, of course, the firmly settled jurisprudential principle that an unqualified plea of guilty constitutes an admission of all the material facts alleged in the information including the aggravating circumstances therein stated.[8] Excepted therefrom are conclusions of fact,[9] and mere conjectures.[10] Thus it is, that a plea of guilty is sufficient to sustain a conviction of any offense charged in the information, even a capital offense, without the introduction of further evidence, the defendant having himself supplied the necessary proof.[11]

Parting from the foregoing premises, we take a look at the aggravating circumstances found by the trial court.

3. Counsel de oficio contends that alevosia may not be considered in aggravation, because here it did not exist at the inception of the attack.

True, the general rule is that treachery should normally attend the inception of the attack.[12] But "if a person is first seized and bound, with a view to rendering him incapable of defense, and he is then slain either by the person who reduced him to this helpless state or by another", alevosia is present.[13] Reason for this is that "[i]n a case of that kind it is obvious that the binding of the victim of the aggression introduces a material change in the conditions of the homicide; and in slaying a person so circumstanced, the author of the crime obviously avails himself of a form or means directly tending to insure the execution of the deed without risk to himself from any defense on the part of the person slain." [14]

In this case, the second amended information specifically charged that defendants killed Silvino Lincuna "in a treacherous manner x x x that is, the accused Belesande Salar clubbing Silvino Lincuna on the head, Gaudencio Mongado tying him helplessly to a chair with the use of radio antennae and stuffing his mouth with rolls of gauze, and Jilly Segador attacking him with fatal thrusts by means of a sharp-pointed bolo." No doubt, the principles heretofore stated fit into the foregoing facts. Treachery has been properly appreciated.

4. Ignominy was deemed an aggravating circumstance because of the rape committed on the occasion of the robbery with double homicide.

The second amended information charges: "That on the occasion of the said Robbery, with Double Homicide, in the manner as charged in this information and pursuant to their conspiracy, the accused Belesande Salar after having fatally assaulted the wife, Emilia Dalit, and while she was still alive and helpless, did then and there willfully, unlawfully and feloniously have carnal knowledge with the said Emilia Dalit at the residence referred to where the aforementioned crime was committed."

Article 14 of the Revised Penal Code, in enumerating aggravating circumstances, states in its paragraph 17: "That means be employed or circumstances brought about which add ignominy to the natural effects of the act."

We do not believe that the rape here committed added ignominy to the crime. Nothing in the information suggests

that the rape of Emilia Dalit was perpetrated by the satyr in the presence or with the knowledge of her husband Silvino Lincuna. This act was done after the fatal thrusts were inflicted on Lincuna. Thereafter, the wife was first fatally assaulted and, while still alive and helpless, was ravished. This last averment by itself and without more leaves us under serious doubt as to whether rape did really "add ignominy" to the killing.

The foregoing notwithstanding, it is the uniform jurisprudence of this Court that where the crime charged is robbery with homicide and rape, the legal definition of the crime is robbery with homicide punishable under paragraph 1, Article 294 of the Penal Code; and the rape committed on the occasion of that crime is considered an aggravating circumstance.[15] Instead of ignominy, therefore, it is the rape itself that aggravates.

5. Dwelling was properly included as an aggravating circumstance, although not specifically alleged in the information as such an aggravating circumstance.[16] And this, because from the factual narration in the second amended information, the robbery, the killing and the rape were all perpetrated in the "residence" of the offended parties. We have said in the recent case of *People vs. Apduhan* (August 30, 1968), *supra*, at p. 815, that -

"The settled rule is that dwelling is aggra-vating in robbery with violence or intimidation of persons,[17] like the offense at bar. The rationale behind this pronouncement is that this class of robbery could be committed without the necessity of transgressing the sanctity of the home. Morada is inherent only in crimes which could be committed in no other place than in the house of another, such as trespass and robbery in an inhabited house. This Court in *People vs. Pinca*, citing *People vs. Valdez*, ruled that the 'circumstances (of dwelling and scaling) were certainly not inherent in the crime committed, because, the crime being robbery with violence or intimidation against persons (specifically, robbery with homicide) that authors thereof could have committed it without the necessity of violating or scaling the domicile of their victim.' Cuello Calon opines that the commission of the crime in another's dwelling shows greater perversity in the accused and produces greater alarm."

No reason exists why we should depart from the pronouncement just quoted.[18]

6. Counsel de oficio invokes in mitigation lack of instruction. But lack of instruction should be proved; it cannot be inferred.[19] There is no such proof here. It was not invoked below.

The result, therefore, of our review of the record is that the crime here under consideration is attended by the aggravating circumstances of (1) treachery, (2) dwelling, and (3) rape against all the three accused, with the added aggravating circumstance of (4) recidivism against Gaudencio Mongado. And only one mitigating circumstance - that of voluntary plea of guilty - can be considered in favor of the three accused. By the law, the three accused merit the penalty of death.

We do not thus find it necessary to pass upon the lower court's pronouncement that the aggravating circumstances of evident premeditation and abuse of confidence also attended the commission of the crime. The result is the same. The penalty is death.

For the reasons given, the decision under review is hereby affirmed; the three defendants Gaudencio Mongado, Jilly Segador and Belesande Salar are hereby sentenced to DEATH, and are ordered, jointly and severally, to indemnify the heirs of each of the deceased, Silvino Lincuna and Emilia Dalit, in the sum of P12,000.00, and to pay the said heirs, jointly and severally, the sum of P596.15, the value of the things taken but not recovered, and to pay the costs.

SO ORDERED.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Dizon, J., took no part.

[1] The three accused Gaudencio Mongado, Jilly Segador and Belesande Salar, assisted by counsel de oficio, also pleaded guilty upon arraign-ment before the municipal judge of Mainit, Surigao del Norte, on March 27, 1965. Record below, pp. 26, 28, 29, 72.

[2] Criminal Case 3946, Court of First Instance of Surigao del Norte, entitled "People of the Philippines, Plaintiff, versus Gaudencio Mongado, Jilly Segador, Belesande Salar, Anastacio Cadenas and Andres Cagadas, Accused."

[3] "Of the things taken by the accused on the occasion of the robbery, the amount of P163.85 in cash, the Kharman Radio-phono, valued at P450.00; and the 12 ga. shotgun valued at P250.00; have been recovered, the total value of which is P1,113.85, leaving a balance of P596.15 not recovered." Decision below, Record, p. 75.

[4] People vs. Pagkalinawan, 76 Phil. 457, 460; People vs. Caggauan, 94 Phil. 118, 125-126. See: Salonga, Philippine Law on Evidence, 3rd ed., p. 372.

[5] 1 Am. Jur., p. 955, citing cases.

[6] U.S. vs. Solaña, 33 Phil. 582, 593.

[7] I Aquino, The Revised Penal Code, 1961 ed., pp. 273-274, citing U.S. vs. Barbosa, 1 Phil. 741; U.S. vs. Perdon, 4 Phil. 141; U.S. vs. Rana, 4 Phil. 231; People vs. Talledo, 85 Phil. 533.

[8] U.S. vs. Burlado, 42 Phil. 72, 74; People vs. Apduhan, 24 SCRA 798, 814, citing People vs. Egido, 90 Phil. 762 and People vs. Santos, 105 Phil. 40; People vs. Arpa, L-26789, April 25, 1969, citing People vs. Boyles, L-15308, May 29, 1964, citing cases; People vs. Pujinio, L-21690, April 29, 1969.

[9] People vs. Venus, 63 Phil. 435, 440-442.

[10] People vs. Serrano, 85 Phil. 835, 838.

[11] U.S. vs. Jamad, 37 Phil. 305, 317; People vs. Salazar, 105 Phil. 1058, 1063-1064. See also: People vs. Pujinio, supra.

[12] U.S. vs. Balagtas, 19 Phil. 164, 172-173; People vs. Cañete, 44 Phil. 478, 481; People vs. Durante, 53 Phil. 363, 368-369; People vs. De la Peña, 54 Phil. 818, 820; People vs. Elizaga, 86 Phil. 364, 382-383.

[13] People vs. Cañete, supra, at p. 481, citing U.S. vs. Elicanal, 35 Phil. 209, 218 and cases there cited.

[14] Id. at pp. 481-482.

[15] People vs. Ganal, 85 Phil. 743, 751; People vs. Bacsá, 104 Phil. 136, 142; and People vs. Tarrayo, supra. See also: People vs. Carillo, 85 Phil. 611, 635.

[16] "[G]eneric aggravating circumstances, although not alleged in the information, may be proved." People vs. Raquinio, 17 SCRA 914, 919, citing cases.

[17] Citing U.S. vs. Leyba, 8 Phil. 671; People vs. Sebastian, 85 Phil. 602; People vs. Napili, 85 Phil. 521.

[18] See also: People vs. Atencio, 22 SCRA 88, 103; People vs. Condemena, 23 SCRA 910, 920; People vs.

Tarrayo, *supra*.

[19] *People vs. Sakam*, 61 Phil. 27, 34.

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.