

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENIGNO PEREZ AND ERNESTO ARAMBULO,
DEFENDANTS-APPELLANTS.**

G.R. No. L-44188. January 27, 1981

Ponente: PER CURIAM: At about 6:45 p.m. of April 13, 1971, several prisoners suddenly attacked and stabbed to death with improvised deadly weapons inmate Ernesto Witack (No. 58786-P) inside the New Bilibid Prisons, at Muntinglupa, Rizal. After investigation by the authorities, an information was filed on September 5, 1972, for Murder, against Benigno Perez (No. 66063-P) and Ernesto Arambulo (No. 60852-P), to wit: "Information "The undersigned Special Prosecutor, by authority of Administrative Order No. 22, series of 1971, of the Secretary of Justice, hereby accuses Benigno Perez, No. 66063-P, and Ernesto Arambulo, No. 60852-P, both prisoners confined at the New Bilibid Prisons, Muntinglupa, Rizal, of having committed the crime of Murder, in violation of Article 248 of the Revised Penal Code, committed as follows: "That on or about April 13, 1971, in the New Bilibid Prisons, Muntinglupa, Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above named accused while then confined at the said institution, conspiring, confederating, and helping one another with treachery and evident premeditation, and each armed with improvised deadly weapons did then and there wilfully, unlawfully and feloniously assault and wound therewith, one Ernesto Witack, No. 58786-P, a sentenced prisoner in the same institution, inflicting upon him multiple stab wounds, while then unarmed and unable to defend himself from the attack launched by the accused, as a result of which the said Ernesto Witack died instantly. "That the offense when committed by the above-accused was attended by recidivism, the accused Arambulo having been convicted for multiple murder and multiple frustrated murder by the Court of First Instance of Davao del Norte." [1] The version of the prosecution is as follows: At about 6:45 p.m. of April 13, 1971, prisoner Ernesto Witack, while going to his Dormitory 5-D, was suddenly attacked by assailants who stabbed the victim repeatedly on different parts of his body, causing his death at about 7:55 p.m. the same evening. [2] Prison guards Juanito Bagabag and Amado Dandoy saw Witack being stabbed by several prisoners and they rushed to the scene of the crime to save Witack. Guard Bagabag recognized Ernesto Arambulo and Benigno Perez among the assailants, and he clubbed them to prevent further attack on Witack. Both Arambulo and Perez ran towards their dormitories. [3] Guard Bagabag, before the stabbing incident, saw accused Arambulo standing by the place where the victim Witack was expected to pass while accused Benigno Perez came from Dormitory 5-A. When Witack was about to pass by, accused Arambulo approached Witack, embraced the latter, and said, "Kumusta kabayan" (How are you, countryman?). Witack responded, "Huwag kang magbiro ng ganyan brod" (Do not joke like that, brother). Immediately after, Arambulo drew a weapon from his waist and repeatedly stabbed Witack. Several prisoners joined the attack against Witack but guard Bagabag recognized only Arambulo and Perez, both of whom Bagabag clubbed to prevent them from persisting in their attack on Witack. [4] Prisoner Ernesto Samson saw the stabbing incident. He saw Arambulo stab Witack first, and then Perez joined the attack. After Witack fell, Samson saw Arambulo and Perez run towards their dormitories with bloodied bladed weapons. [5] Prisoner Benjamin Moya was also an eyewitness to the stabbing incident. He saw guards Bagabag and Dandoy club accused Arambulo when the latter stabbed Witack. [6] Dr. Mariano B. Cueva, medico-legal officer of the NBI conducted the autopsy on the body of victim Ernesto Witack, [7] and prepared the necropsy report, to wit: "Postmortem Findings "Pallor, severe and generalized. "Stab wound, 8 in number, spindle shape, presenting both extremities sharp, edges clean cut and sutured; 2 wounds located at epigastric region, 3 wounds at posterior chest, 1 wound at left forearm, 1 wound at right forearm and 1 wound involving left thigh; generally directed forward or backward downward and medially with a single fatal wound located at left infrascapular region of posterior chest, directed forward, downward and medially, piercing 11th intercostal space and severing left renal artery with an

approximate depth of 10.0 cms.; other wounds non-fatal and non-penetrating with an average depth of 4.0 cms. "Hematoma, retro-peritoneal, severe, bilateral. "Heart and its big vessels, almost empty of blood. "Brain and other visceral organs, markedly pale. "Stomach, with moderate amount of grayish fluid. "CAUSE OF DEATH: Hemorrhage, severe, secondary to stab wounds of body." [8] Accused Benigno Perez, when investigated by prison investigator Abraham de las Alas on April 17, 1971, voluntarily admitted that he together with accused Arambulo and others, stabbed Witack on the evening of April 13, 1971. Arambulo was the first to stab Witack four times while Perez followed by stabbing Witack five times. Arambulo and Perez agreed to stab Witack after lunch of April 13, 1971. Perez confirmed that guard Bagabag and another prison guard were present when Witack was attacked. Arambulo and Perez did not respect the presence of the guards because they wanted to kill Witack. [9] In another sworn statement [10] executed before investigator Jesus Tomagan, accused Perez on June 10, 1971, identified the weapon (improvised blade 11-1/2 inches long including handle) he used to stab Witack on April 13, 1971. Accused Ernesto Arambulo also voluntarily admitted his participation in the crime when he was investigated by investigator Jesus Tomagan on April 16, 1971. Arambulo was a member of the "Commando" gang. He admitted that he was the first to stab Witack on April 13, 1971. Benigno Perez was with him during that incident. They stabbed Witack because he was the supplier of bladed weapons for the "B.C.J." ("Batang City Jail", a rival gang of the "Commando"). Arambulo even identified the weapon (improvised weapon, 13 inches long including handle, made of water pipe divided into two halves) he used to stab Witack. Witack did not fight back when he was stabbed. [11] Jesus Tomagan, Prison Investigator, who conducted the investigation of accused Ernesto Arambulo stated that the latter voluntarily executed the sworn extrajudicial confession Exhibits "P" and "G". [12] Tomagan, in like manner, witnessed the voluntariness with which the extrajudicial statements of Arambulo [13] and Perez [14] were executed. [15] Investigator Abraham de las Alas testified that accused Benigno Perez voluntarily executed his extrajudicial confession (Exh. "E"). [16] He also narrated how he investigated prison guard Juanito Bagabag, and prisoners Samon and Moya, who were all eyewitnesses to the crime. [17] Upon arraignment, both accused Benjamin Perez and Ernesto Arambulo pleaded guilty, and notwithstanding the fact that they were informed by the trial court that the consequences of their plea of guilty would be the imposition of the maximum penalty of death, they insisted on their plea of guilty. [18] The prosecution was ordered by the trial court to present evidence to determine the guilt and degree of culpability of the accused. After the prosecution presented its evidence, both of the accused changed their minds, repudiated their extrajudicial confessions and their plea of guilty, by presenting evidence denying the criminal charge against them. After the protracted trial of the case, the trial court (Judge Onofre A. Villaluz) rendered and promulgated its decision in open court on June 8, 1976, the dispositive portion of which reads as follows: "WHEREFORE, after determining the degree of culpability of the accused Benigno Perez and Ernesto Arambulo, the Court finds them Guilty beyond reasonable doubt of the crime of murder as defined under Article 248 of the Revised Penal Code, as charged in the information, and hereby sentences them to suffer the penalty of death; to indemnify the heirs of the offended party the amount of P10,000.00; to pay moral damages in the amount of P5,000.00 and another P5,000.00 as exemplary damages; and to pay their proportionate share of the costs. "SO ORDERED." [19] The defense, on the other hand, after the plea of guilty of both accused at the early stage of the trial of this case way back on September 7, 1972, repudiated said plea of guilty. Both accused testified, and denied their participation in the crime, claiming that their extrajudicial confessions executed in 1971 were extracted from them by force and intimidation. Accused Ernesto Arambulo denied his participation in the killing of Witack. He claimed that he was maltreated by investigator De la Alas. He pleaded guilty to the charge before the trial court because he was maltreated and because he was "fed up with the trial in court". He never filed any case against the prison officials who allegedly maltreated him and he never told his sister who used to visit him about said maltreatment. He admitted that he was convicted in a crime of killing in Davao. [20] Accused Benigno Perez also denied any participation in the killing of Witack and likewise claimed that he was maltreated by prison guard de las Alas. He said he was forced to sign the extrajudicial statement Exhibit "N", but he could not explain why his signature on said document was done in a very clear manner notwithstanding his allegation that he was physically tortured before he signed the confession. [21] What is significant about the testimony of accused Perez is that he admitted that immediately after the stabbing of Witack on April 13, 1971, a prison guard clubbed him. [22] Perez also admitted that he and Arambulo belonged to the "Commando" gang. [23] We cannot give

credence to the claim of the defense that the extrajudicial statements and confessions of accused Perez and Arambulo were extracted by force and maltreatment for the reason that they never questioned the legality and validity of said statements nor the voluntariness of their execution when they pleaded guilty to the charge against them on September 7, 1972. They did not inform the trial court nor did they complain on the said occasion that they were maltreated, when they could have freely done so. The trial court apprised the accused of the consequences of their plea of guilty and they manifested that they were aware of the fact that punishment in accordance with law meant the imposition of the death penalty to them by reason of the gravity of the offense they admitted to have committed. Both Perez and Arambulo insisted on their plea of guilty. The narration included in the extrajudicial confessions fitted squarely with the facts proven by the prosecution as to how the crime happened. Even without the extrajudicial confessions, the accused were positively identified by eyewitnesses to the crime. Their attempt to repudiate their confessions in 1975 came much too late after they themselves affirmed its contents when they pleaded guilty to the crime in 1972. The extrajudicial confessions of both accused were executed on April 16, 1971, only three days after the crime was committed on April 13, 1971, and both of them contained details which could not have been known by the investigators were they not provided by both accused voluntarily. Both investigators Abraham de las Alas and Jesus Tomagan did not possess any proven motive or grudge against the accused in falsely imputing to them the commission of the crime charged as narrated in their confessions. The investigators were merely disinterested persons. The alleged threat, force and maltreatment utilized to extract the confessions from the accused are general in nature, bereft of details, and therefore cannot inspire confidence in its credibility.[24] Both the accused never complained to the prison officials about the alleged maltreatment when they could have done so. They did not report to Exequiel Santos nor to Assistant Director Diosdado Aguiluz before whom the statements of the accused[25] were sworn to. Their confessions are admissible against them for the clear preponderance of evidence indicates voluntariness in their execution. There is no question that a plea of guilty constitutes an admission of the crime and all the attendant circumstances alleged in the information.[26] Treachery attended the commission of the crime and qualifies it to murder. It was proven that while the victim Witack was walking towards his dormitory, Arambulo approached him, even greeted him in a friendly manner before he suddenly drew the weapon tucked at his waist and successively stabbed the victim. Perez joined the sudden attack giving no chance to the victim to defend himself not to inflict injury on his assailants. In fact the victim did not even fight back. The attack, having been sudden, unexpected and unprovoked, was treacherous.[27] Evident premeditation was also obviously present in the crime. Both the accused talked of the plan to kill Witack immediately after lunch on April 13, 1971.[28] The plan was carried out at about 6:45 in the evening of said date and both accused met the victim Witack armed with improvised bladed weapons inside the prison compound. There was undoubtedly a concert of criminal design and ample time lapsed for both accused to reconsider the execution of their planned crime before they actually put it into execution, thereby clearly manifesting the presence of evident premeditation.[29] The plan to kill Witack arose from his being the suspected supplier of "matalas" (sharp instruments), which are improvised weapons, to the members of the B.C.J. ("Batang City Jail"), a rival gang of the "Commandos," to which both accused Arambulo and Perez admittedly belonged. It is not disputed that both accused Perez and Arambulo were serving sentences at the time of the commission of the crime.[30] The proper penalty to be imposed must be the maximum period of the penalty prescribed by law in accordance with Article 160 of the Revised Penal Code. In this case where murder was committed beyond doubt, the proper penalty in its maximum period is death. The special aggravating circumstance of quasi- recidivism cannot be offset by the ordinary mitigating circumstance of voluntary plea of guilty.[31] WHEREFORE, the decision of the trial court dated June 8, 1976, being in accordance with law and the evidence, is hereby affirmed, with proportionate costs against both accused. SO ORDERED. Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Abad Santos, De Castro and Melencio-Herrera, JJ., concur. Fernando, C.J., concurs in a separate opinion of Justice Teehankee that the penalty imposed should be reclusion perpetua. There is therefore lack of necessary ten votes for the imposition of the death penalty. Accordingly, the sentence is one of reclusion perpetua. Teehankee, J., voted for the imposition of reclusion perpetua in a separate opinion. Guerrero, J., concur with the opinion of Justice Teehankee. [1] pp. 1-2, Original Record. [2] Exhibit "D". [3] Exhibit "I". [4] Exhibit "I". [5] Exhibit "J". [6] Exhibit "K". [7] pp. 2-10, t.s.n., February 10, 1975. [8] Exh. "A", p. 47, Original Record, CCC-VII-1190-Rizal. [9] Exhibit "E". [10] Exhibit "N". [11] Exhibits "F" and "G". [12] pp. 2-17, t.s.n., February 13,

1975. [13] Exhibit "F". [14] Exhibit "N". [15] pp. 2-17, t.s.n., February 20, 1975. [16] pp. 2-25, t.s.n., February 12, 1975. [17] pp. 18-29, t.s.n., February 13, 1975. [18] p. 5, Original Record, CCC-VII-1190-Rizal. [19] pp. 151-152, Original Record, CCC-VII-1190-Rizal. [20] pp. 2-8, t.s.n., June 19, 1975; pp. 2-11, t.s.n., July 3, 1975. [21] pp. 2-15, t.s.n., June 26, 1975. [22] p. 15, t.s.n., June 26, 1975. [23] p. 23, t.s.n., June 26, 1975. [24] People vs. Bautista, 65 SCRA 460. [25] Exhs. "E", "F", "G", "N". [26] People vs. Roldan, 23 SCRA 907; People vs. Tilos, 30 SCRA 734; Longao v. Fakat, 30 SCRA 866. [27] People vs. Vicente, 28 SCRA 247. [28] Exhibit "E". [29] People vs. Hanasan, 29 SCRA 534; People vs. Pajenado, 31 SCRA 812. [30] pp. 6-7, t.s.n., July 3, 1975; pp. 8, 26-30, t.s.n., April 14, 1975. [31] People vs. Bautista, 65 SCRA 460. SEPARATE OPINION TEEHANKEE, J.

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After investigation by the authorities, an information was filed on September 5, 1972, for Murder, against Benigno Perez (No. 66063-P) and Ernesto Arambulo (No. 60852-P), to wit:

"Information

"The undersigned Special Prosecutor, by authority of Administrative Order No. 22, series of 1971, of the Secretary of Justice, hereby accuses Benigno Perez, No. 66063-P, and Ernesto Arambulo, No. 60852-P, both prisoners confined at the New Bilibid Prisons, Muntinglupa, Rizal, of having committed the crime of Murder, in violation of Article 248 of the Revised Penal Code, committed as follows:

"That on or about April 13, 1971, in the New Bilibid Prisons, Muntinglupa, Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above named accused while then confined at the said institution, conspiring, confederating, and helping one another with treachery and evident premeditation, and each armed with improvised deadly weapons did then and there wilfully, unlawfully and feloniously assault and wound therewith, one Ernesto Witack, No. 58786-P, a sentenced prisoner in the same institution, inflicting upon him multiple stab wounds, while then unarmed and unable to defend himself from the attack launched by the accused, as a result of which the said Ernesto Witack died instantly.

"That the offense when committed by the above-accused was attended by recidivism, the accused Arambulo having been convicted for multiple murder and multiple frustrated murder by the Court of First Instance of Davao del Norte."[1]

The version of the prosecution is as follows:

At about 6:45 p.m. of April 13, 1971, prisoner Ernesto Witack, while going to his Dormitory 5-D, was suddenly attacked by assailants who stabbed the victim repeatedly on different parts of his body, causing his death at about 7:55 p.m. the same evening.[2] Prison guards Juanito Bagabag and Amado Dandoy saw Witack being stabbed by several prisoners and they rushed to the scene of the crime to save Witack. Guard Bagabag

recognized Ernesto Arambulo and Benigno Perez among the assailants, and he clubbed them to prevent further attack on Witack. Both Arambulo and Perez ran towards their dormitories.[3] Guard Bagabag, before the stabbing incident, saw accused Arambulo standing by the place where the victim Witack was expected to pass while accused Benigno Perez came from Dormitory 5-A. When Witack was about to pass by, accused Arambulo approached Witack, embraced the latter, and said, "Kumusta kabayan" (How are you, countryman?). Witack responded, "Huwag kang magbiro ng ganyan brod" (Do not joke like that, brother). Immediately after, Arambulo drew a weapon from his waist and repeatedly stabbed Witack. Several prisoners joined the attack against Witack but guard Bagabag recognized only Arambulo and Perez, both of whom Bagabag clubbed to prevent them from persisting in their attack on Witack.[4] Prisoner Ernesto Samson saw the stabbing incident. He saw Arambulo stab Witack first, and then Perez joined the attack. After Witack fell, Samson saw Arambulo and Perez run towards their dormitories with bloodied bladed weapons.[5] Prisoner Benjamin Moya was also an eyewitness to the stabbing incident. He saw guards Bagabag and Dandoy club accused Arambulo when the latter stabbed Witack.[6]

Dr. Mariano B. Cueva, medico-legal officer of the NBI conducted the autopsy on the body of victim Ernesto Witack,[7] and prepared the necropsy report, to wit:

"Postmortem Findings

"Pallor, severe and generalized.

"Stab wound, 8 in number, spindle shape, presenting both extremities sharp, edges clean cut and sutured; 2 wounds located at epigastric region, 3 wounds at posterior chest, 1 wound at left forearm, 1 wound at right forearm and 1 wound involving left thigh; generally directed forward or backward downward and medially with a single fatal wound located at left infrascapular region of posterior chest, directed forward, downward and medially, piercing 11th intercostal space and severing left renal artery with an approximate depth of 10.0 cms.; other wounds non-fatal and non-penetrating with an average depth of 4.0 cms.

"Hematoma, retro-peritoneal, severe, bilateral.

"Heart and its big vessels, almost empty of blood.

"Brain and other visceral organs, markedly pale.

"Stomach, with moderate amount of grayish fluid.

"CAUSE OF DEATH: Hemorrhage, severe, secondary to stab wounds of body." [8]

Accused Benigno Perez, when investigated by prison investigator Abraham de las Alas on April 17, 1971, voluntarily admitted that he together with accused Arambulo and others, stabbed Witack on the evening of April

13, 1971. Arambulo was the first to stab Witack four times while Perez followed by stabbing Witack five times. Arambulo and Perez agreed to stab Witack after lunch of April 13, 1971. Perez confirmed that guard Bagabag and another prison guard were present when Witack was attacked. Arambulo and Perez did not respect the presence of the guards because they wanted to kill Witack.[9] In another sworn statement[10] executed before investigator Jesus Tomagan, accused Perez on June 10, 1971, identified the weapon (improvised blade 11-1/2 inches long including handle) he used to stab Witack on April 13, 1971.

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Jesus Tomagan, Prison Investigator, who conducted the investigation of accused Ernesto Arambulo stated that the latter voluntarily executed the sworn extrajudicial confession Exhibits "P" and "G".[12] Tomagan, in like manner, witnessed the voluntariness with which the extrajudicial statements of Arambulo[13] and Perez[14] were executed.[15]

Investigator Abraham de las Alas testified that accused Benigno Perez voluntarily executed his extrajudicial confession (Exh. "E").[16] He also narrated how he investigated prison guard Juanito Bagabag, and prisoners Samon and Moya, who were all eyewitnesses to the crime.[17]

Upon arraignment, both accused Benjamin Perez and Ernesto Arambulo pleaded guilty, and notwithstanding the fact that they were informed by the trial court that the consequences of their plea of guilty would be the imposition of the maximum penalty of death, they insisted on their plea of guilty.[18]

The prosecution was ordered by the trial court to present evidence to determine the guilt and degree of culpability of the accused. After the prosecution presented its evidence, both of the accused changed their minds, repudiated their extrajudicial confessions and their plea of guilty, by presenting evidence denying the criminal charge against them. After the protracted trial of the case, the trial court (Judge Onofre A. Villaluz) rendered and promulgated its decision in open court on June 8, 1976, the dispositive portion of which reads as follows:

"WHEREFORE, after determining the degree of culpability of the accused Benigno Perez and Ernesto Arambulo, the Court finds them Guilty beyond reasonable doubt of the crime of murder as defined under Article 248 of the Revised Penal Code, as charged in the information, and hereby sentences them to suffer the penalty of death; to indemnify the heirs of the offended party the amount of P10,000.00; to pay moral damages in the amount of P5,000.00 and another P5,000.00 as exemplary damages; and to pay their proportionate share of the costs.

"SO ORDERED."[19]

The defense, on the other hand, after the plea of guilty of both accused at the early stage of the trial of this case way back on September 7, 1972, repudiated said plea of guilty. Both accused testified, and denied their participation in the crime, claiming that their extrajudicial confessions executed in 1971 were extracted from them by force and intimidation.

Accused Ernesto Arambulo denied his participation in the killing of Witack. He claimed that he was maltreated by investigator De la Alas. He pleaded guilty to the charge before the trial court because he was maltreated and because he was "fed up with the trial in court". He never filed any case against the prison officials who allegedly maltreated him and he never told his sister who used to visit him about said maltreatment. He admitted that he was convicted in a crime of killing in Davao.[20]

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What is significant about the testimony of accused Perez is that he admitted that immediately after the stabbing of Witack on April 13, 1971, a prison guard clubbed him.[22] Perez also admitted that he and Arambulo belonged to the "Commando" gang.[23]

We cannot give credence to the claim of the defense that the extrajudicial statements and confessions of accused Perez and Arambulo were extracted by force and maltreatment for the reason that they never questioned the legality and validity of said statements nor the voluntariness of their execution when they pleaded guilty to the charge against them on September 7, 1972. They did not inform the trial court nor did they complain on the said occasion that they were maltreated, when they could have freely done so. The trial court apprised the accused of the consequences of their plea of guilty and they manifested that they were aware of the fact that punishment in accordance with law meant the imposition of the death penalty to them by reason of the gravity of the offense they admitted to have committed. Both Perez and Arambulo insisted on their plea of guilty. The narration included in the extrajudicial confessions fitted squarely with the facts proven by the prosecution as to how the crime happened. Even without the extrajudicial confessions, the accused were positively identified by eyewitnesses to the crime. Their attempt to repudiate their confessions in 1975 came much too late after they themselves affirmed its contents when they pleaded guilty to the crime in 1972. The extrajudicial confessions of both accused were executed on April 16, 1971, only three days after the crime was committed on April 13, 1971, and both of them contained details which could not have been known by the investigators were they not provided by both accused voluntarily.

Both investigators Abraham de las Alas and Jesus Tomagan did not possess any proven motive or grudge against the accused in falsely imputing to them the commission of the crime charged as narrated in their confessions. The investigators were merely disinterested persons.

The alleged threat, force and maltreatment utilized to extract the confessions from the accused are general in nature, bereft of details, and therefore cannot inspire confidence in its credibility.[24]

Both the accused never complained to the prison officials about the alleged maltreatment when they could have done so. They did not report to Exequiel Santos nor to Assistant Director Diosdado Aguiluz before whom the statements of the accused[25] were sworn to. Their confessions are admissible against them for the clear preponderance of evidence indicates voluntariness in their execution.

There is no question that a plea of guilty constitutes an admission of the crime and all the attendant circumstances alleged in the information.[26]

Treachery attended the commission of the crime and qualifies it to murder. It was proven that while the victim Witack was walking towards his dormitory, Arambulo approached him, even greeted him in a friendly manner before he suddenly drew the weapon tucked at his waist and successively stabbed the victim. Perez joined the

sudden attack giving no chance to the victim to defend himself not to inflict injury on his assailants. In fact the victim did not even fight back. The attack, having been sudden, unexpected and unprovoked, was treacherous.[27]

Evident premeditation was also obviously present in the crime. Both the accused talked of the plan to kill Witack immediately after lunch on April 13, 1971.[28] The plan was carried out at about 6:45 in the evening of said date and both accused met the victim Witack armed with improvised bladed weapons inside the prison compound. There was undoubtedly a concert of criminal design and ample time lapsed for both accused to reconsider the execution of their planned crime before they actually put it into execution, thereby clearly manifesting the presence of evident premeditation.[29]

The plan to kill Witack arose from his being the suspected supplier of "matalas" (sharp instruments), which are improvised weapons, to the members of the B.C.J. ("Batang City Jail"), a rival gang of the "Commandos," to which both accused Arambulo and Perez admittedly belonged.

It is not disputed that both accused Perez and Arambulo were serving sentences at the time of the commission of the crime.[30] The proper penalty to be imposed must be the maximum period of the penalty prescribed by law in accordance with Article 160 of the Revised Penal Code. In this case where murder was committed beyond doubt, the proper penalty in its maximum period is death. The special aggravating circumstance of quasi- recidivism cannot be offset by the ordinary mitigating circumstance of voluntary plea of guilty.[31]

WHEREFORE, the decision of the trial court dated June 8, 1976, being in accordance with law and the evidence, is hereby affirmed, with proportionate costs against both accused.

SO ORDERED.

Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Abad Santos, De Castro and Melencio-Herrera, JJ., concur.

Fernando, C.J., concurs in a separate opinion of Justice Teehankee that the penalty imposed should be reclusion perpetua. There is therefore lack of necessary ten votes for the imposition of the death penalty. Accordingly, the sentence is one of reclusion perpetua.

Teehankee, J., voted for the imposition of reclusion perpetua in a separate opinion.

Guerrero, J., concur with the opinion of Justice Teehankee.

[1] pp. 1-2, Original Record.

[2] Exhibit "D".

[3] Exhibit "I".

[4] Exhibit "I".

[5] Exhibit "J".

[6] Exhibit "K".

[7] pp. 2-10, t.s.n., February 10, 1975.

[8] Exh. "A", p. 47, Original Record, CCC-VII-1190-Rizal.

[9] Exhibit "E".

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- [12] pp. 2-17, t.s.n., February 13, 1975.
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- [16] pp. 2-25, t.s.n., February 12, 1975.
- [17] pp. 18-29, t.s.n., February 13, 1975.
- [18] p. 5, Original Record, CCC-VII-1190-Rizal.
- [19] pp. 151-152, Original Record, CCC-VII-1190-Rizal.
- [20] pp. 2-8, t.s.n., June 19, 1975; pp. 2-11, t.s.n., July 3, 1975.
- [21] pp. 2-15, t.s.n., June 26, 1975.
- [22] p. 15, t.s.n., June 26, 1975.
- [23] p. 23, t.s.n., June 26, 1975.
- [24] *People vs. Bautista*, 65 SCRA 460.
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SEPARATE OPINION

TEEHANKEE, J.:

I vote for the imposition of reclusion perpetua. While the evidence has proven the accused-appellants to be guilty of the crime of murder as charged, still in view of the contributory role of the sub-human conditions and "incredible overcrowding of prison cells" that lead inevitably to the formation of rival gangs and wolfpacks and confine prisoners "under circumstances that strangle all sense of decency (and) reduce convicts to the level of animals," (as expressly noted by the Court in *People vs. de los Santos*, 14 SCRA 702, 712 [1965], vs. *Simeon*, 47 SCRA 129, 134-135 [1972], vs. *Dahil*, 90 SCRA 553, 560-561 [1979], vs. *Abella*, 93 SCRA 25, 54 [1979] and other cases) and tempering justice with mercy and in the hope that accused-appellants are not beyond rehabilitation with the proper care and concern of the State, the death penalty imposed by the trial court should be

reduced to reclusion perpetua.

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