

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMAN DERILO, ISIDORO BALDIMO Y QUILLO, ALIAS “SIDO”, LUCAS DOÑOS, ALEJANDRO COFUENTES, AND JOHN DOE, ACCUSED. ISIDORO BALDIMO...

G.R. No. 117818. April 18, 1997

Ponente: REGALADO, J.

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REGALADO, J.:

Roman Derilo, Isidoro Baldimo y Quillo, Lucas Doños, Alejandro Cofuentes and one John Doe were charged with the so-called crime of murder committed by a band before the First Branch of the former Court of First Instance of Borongan, Eastern Samar.[1] The information filed therefor alleges -

That on Januar 1, 1982 at about 6:00 o'clock P.M. at sitio Palaspas, Taft, Eastern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with treachery and evident premeditation, with intent to kill, with the use of firearm and bolos, confederating and mutually helping one another did then and there shot (sic) and stabbed (sic) one Perpetua Adalim thus inflicting injuries which caused her death.

CONTRARY TO LAW.[2]

Of the five accused, only accused-appellant Isidoro Q. Baldimo was apprehended and brought within the trial court's jurisdiction. At his arraignment on March 18, 1985, and after the information was translated in the Waray dialect with which he is well versed, appellant pleaded not guilty.[3] Trial on the merits was conducted thereafter.

However, by the time the People had formally finished presenting its evidence on August 6, 1986, appellant, through his counsel de parte, manifested to the court a quo that he wanted to withdraw his earlier plea of not guilty and substitute the same with one of guilty. Consequently, a re-arraignment was ordered by the lower court and, this time, appellant entered a plea of guilty to the charge of murder.[4]

A series of questions was then propounded by the trial court to test appellant's voluntariness and comprehension of the consequences in making his new plea of guilty. Satisfied with the answers of appellant, the trial court convicted him of the crime of murder defined and punished under Article 248 of the Revised Penal Code.[5]

A detailed account of the killing was furnished by prosecution eyewitness Cresencio Lupido.[6] According to him, Perpetua C. Adalim went to his house at Sitio Palaspas, Barangay Polangi in Taft, Eastern Samar in the early evening of January 1, 1982 to look for farmlands willing and desiring to work in her ricefields. Lupido was an agricultural tenant of Perpetua and lived on one of the properties owned by the latter. Upon her arrival, Perpetua instructed Lupido's wife to get food from her house in the poblacion as she had decided to spend the night at Sitio Palaspas.

While Perpetua was waiting and standing in the yard of the house, five armed men arrived and confronted Perpetua. Lupido recognized two of the men as Roman Derilo and appellant Isidoro Baldimo, as these two

frequently passed by his house at Sitio Palaspas. He did not know the other three men but he claimed that he could identify them if brought before him.

Roman Derilo talked momentarily with Perpetua. Then, without any warning, Derilo shot Perpetua three times with the pistol he was carrying. After she fell to the ground, appellant, who was standing at the right side of Derilo, approached Perpetua and stabbed her several times with a knife that looked like either a Batangas knife or a bolo known locally as “depang.” A third member of the group, with a short and stout physique, followed suit in stabbing Perpetua. After the repeated stabbings, the gang walked around the yard for some time and left, walking in the direction of the mountains. All of them carried long firearms.

As soon as the group had left the scene of the crime, Lupido hurriedly went to Perpetua’s house in the poblacion of Taft where he informed the family of the deceased about the incident.[7]

I

Appellant does not deny his participation in the commission of the crime. Rather, in his brief pitifully consisting of two pages, he merely asks for the modification of the death penalty imposed by the lower court to life imprisonment.[8] Although appellant is aware that he has made his plea of guilty after the prosecution had presented its evidence, thus foreclosing the application of paragraph 7, Article 13 of the Revised Penal Code,[9] he contends that his untimely acknowledgment of culpability may still be treated by analogy as a mitigating circumstance under paragraph 10 of the same article, invoking therefor the aforesaid case of Coronel.[10]

Unfortunately, that decision relied upon by appellant is inapplicable to his case. The death penalty in *People vs. Coronel, et al.*[11] was modified to “life imprisonment” not in consideration of paragraph 10, Article 13 of the code but because the number of votes then required to affirm a sentence of death imposed by a lower court[12] was not secured by this Court in its automatic review of the judgment. Apparently, the required number for concurrence was not obtained because some members of the Court treated the belated confession of the accused therein as an indication on his part to reform, and they felt that he should only suffer the same penalty imposed on some of his co-conspirators.

The late plea of guilty entered by herein appellant cannot be considered mitigating because the plea made is not “of a similar nature and analogous” to the plea of guilty contemplated in paragraph 7 of Article 13. A plea of guilty is considered mitigating on the rationale that an accused spontaneously and willingly admits his guilt at the first opportunity as an act of repentance. An accused should not be allowed to speculate on the outcome of the proceedings by pleading not guilty on arraignment, only to later substitute the same with a plea of guilty after discovering that the People has a strong case against him. Withal, all is not lost for appellant.

The killing of the victim, Perpetua C. Adalim, was found by the lower court to have been qualified to murder by treachery. Although not alleged in the information, the circumstances of superior strength and cuadrilla were taken note of by the court a quo based on the evidence presented by the prosecution, but the same were correctly regarded by said court as absorbed in *alevosia*. However, it found that the generic aggravating circumstance of evident premeditation likewise attended the commission of the crime. Hence, with no mitigating circumstance to offset this aggravating circumstance, the trial court sentenced appellant to suffer the supreme penalty of death and to indemnify and pay damages to the heirs of the victim.

It will be observed from a reading of the lower court’s decision[13] that its judgment was obviously based not only on the evidence presented by the prosecution but also on appellant’s belated admission of guilt, together with some inconclusive pronouncements of this Court on conspiracy. The former apparently proved the circumstances of treachery, superior strength and cuadrilla, while the latter supposedly supplied the ground for the

finding of evident premeditation.

We agree with the finding of the court below that appellant participated in the treacherous killing of Perpetua C. Adalim. Appellant's presence in the locus criminis and his identification were positively supplied by the prosecution's eyewitness. The unwavering and unequivocal testimony of Lupido, corroborated by that of Dr. Eduardo S. Evardone who conducted the postmortem examination on the corpse of the victim[14] and submitted his corresponding autopsy report,[15] indubitably show the deliberate employment by the accused of a reliable and unfailing means to ensure the killing without giving the victim an opportunity to defend herself.

However, we cannot give the same stamp of approval to the finding on premeditation conocida declared by the trial court. The disturbing conclusions of said court thereon need to be clarified to obviate misconceptions that may affect the stability of our present rules on evidence and criminal procedure. Said the lower court on this aspect:

The aggravating circumstance of evident premeditation is likewise present in the commission of the offense of murder as the existence of the conspiracy among the accused Baldimo and his co-accused having been duly proven also beyond peradventure of doubt, presupposes evident premeditation (People vs. Belen, L-13895, Sept. 30, 1963, 9 SCRA 39) which the said accused himself supplied the evidence on this score by virtue of his plea of guilty, which circumstance is not the least disproven by the evidence on record. Thus, its appreciation as an aggravating circumstance in this case.

A plea of guilty constitute(s) an admission of all material facts alleged in the information, including the aggravating circumstances alleged, although the offense charged be capital. (People vs. Boyles, L-15308, May 29, 1964, 11 SCRA 88; People vs. Mongado, L-24877, June 30, 1969, 28 SCRA 642; People vs. Tilos, L-27151, Nov. 29, 1969, 30 SCRA 734).

A plea of guilty is mitigating and at the same time it constitutes an admission of all the material facts alleged in the information, including the aggravating circumstances, and it matters not that the offense is capital. Because of the aforesaid legal effect of Pineda's plea of guilty, it was not incumbent upon the trial court to receive his evidence, much less require his presence in court. (People vs. Jose, 37 SCRA 450; People vs. Estebia, 40 SCRA 90).[16]

The trial court should not have concluded that evident premeditation attended the commission of the crime of murder on the bases of its findings regarding the admission of guilt by appellant and the existence of conspiracy with his co-accused. As earlier stated, appellant entered his plea of guilty after the prosecution had presented its evidence. Thereafter, no further evidence whatsoever was adduced by it to prove the supposed evident premeditation. The records and the transcripts of stenographic notes are barren of any proof tending to show any prior reflection on, followed after some time by persistence in, the criminal resolution of the five accused.

It is elementary law that to establish evident premeditation, there must be proof of (1) the time when the offender determined to commit the crime, (2) an act manifestly indicating that the culprit has clung to his determination, and (3) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will had he desired to hearken to its warnings.[17]

The essence of premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[18] When it is not shown as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered. Evident premeditation must be based on external acts and must be evident, not merely suspected, indicating deliberate planning. Otherwise stated, there must be a demonstration by outward acts of a criminal intent that is notorious and manifest.[19]

As there is no proof, direct or circumstantial, offered by the prosecution to show when appellant and his co-accused meditated and reflected upon their decision to kill the victim and the intervening time that elapsed before this plan was carried out, the circumstance of evident premeditation cannot be presumed against appellant. As early as 1905, we laid down the rule that the circumstances specifying an offense or aggravating the penalty thereof must be proved as conclusively as the act itself, mere suppositions or presumptions being insufficient to establish their presence. No matter how truthful these suppositions or presumptions may seem, they must not and cannot produce the effect of aggravating the liability of the accused.[20]

It is an ancient but revered doctrine that qualifying and aggravating circumstance before being taken into consideration for the purpose of increasing the degree of the penalty to be imposed must be proved with equal certainty and clearness as that which establishes the commission of the act charged as the criminal offense.[21] It is not only the central fact of a killing that must be shown beyond reasonable doubt; every qualifying or aggravating circumstance alleged to have been present and to have attended such killing, must similarly be shown by the same degree of proof.[22]

II

The foregoing doctrines consequently point to the need of reconciling them with the old rule that a plea of guilty admits not only the crime but also its attendant circumstances which is relied upon and invoked by the lower court in this case to justify its conclusion of evident premeditation to aggravate the liability of appellant.

Over the years and through numerous cases, this Court has adopted an exception to the erstwhile rule enunciating that there is no need to prove the presence of aggravating circumstances alleged in an information or complaint when the accused pleads guilty to the charge. Our rulings regarding this principle were expressed more or less in this wise:

Having pleaded guilty to the information, these aggravating circumstances were deemed fully established, for the plea of guilty to the information covers both the crime as well as its attendant circumstances qualifying and/or aggravating the crime.[23]

We are not, however, concerned here merely with the doctrine itself but more specifically with the consequences thereof. Thus, in *People vs. Rapirap*,[24] it was formerly explained that the subject doctrine has the following effects:

A plea of guilty does not merely join the issues of the complaint or information, but amounts to an admission of guilt and of the material facts alleged in the complaint or information and in this sense takes the place of the trial itself. Such plea removes the necessity of presenting further evidence and for all intents and purposes the case is deemed tried on its merits and submitted for decision. It leaves the court with no alternative but to impose the penalty prescribed by law.

Then, in *People vs. Lambino*,[25] we prevented the accused in criminal actions from contradicting the outcome of his admission, with our holding that by the plea of guilty, the accused admits all the facts alleged in the information and, by that plea, he is precluded from showing that he has not committed them.

People vs. Yamson, et al.[26]thereafter expanded the application of the doctrine to both capital and non-capital cases:

A plea of guilty is an admission of all the material facts alleged in the complaint or information. A plea of guilty when formally entered in arraignment is sufficient to sustain a conviction for any offense charged in the information, without the necessity of requiring additional evidence, since by so pleading, the defendant himself has supplied the necessary proof. It matters not even if the offense is capital for the admission (plea of guilty)

covers both the crime as well as its attendant circumstances.

Finally, *People vs. Aduhan, Jr.*[27] cited by some of the cases relied upon by the lower court, declared that -

While an unqualified plea of guilty is mitigating, it at the same time constitutes an admission of all material facts alleged in the information, including the aggravating circumstance therein recited. x x x The prosecution does not need to prove the three aggravating circumstances (all alleged in the second amended information) since the accused, by his plea of guilty, has supplied the requisite proof.

With the foregoing presentation, the trial court must have believed that it had acted correctly in presuming the existence of evident premeditation based on appellant's plea of guilty without any proof being presented to establish such aggravating circumstance. However, the developmental growth of our procedural rules did not stop there. With the advent of the revised Rules on Criminal Procedure on January 1, 1985, a new rule, specifically mandating the course that trial courts should follow in capital cases where the accused pleads guilty, was introduced into our remedial law with this provision:

SEC. 3. Plea of guilty to capital offense; reception of evidence - When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf.[28]

We expounded on this in *People vs. Camay*[29] with this explanation:

Under the new formulation, three (3) things are enjoined of the trial court after a plea of guilty to a capital offense has been entered by the accused: 1. The court must conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea; 2. The court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and 3. The court must ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires.

The amended rule is a capsulization of the provisions of the old rule and pertinent jurisprudence. We had several occasions to issue the caveat that even if the trial court is satisfied that the plea of guilty was entered with full knowledge of its meaning and consequences, the Court must still require the introduction of evidence for the purpose of establishing the guilt and degree of culpability of the defendant. This is the proper norm to be followed not only to satisfy the trial judge but also to aid the Court in determining whether or not the accused really and truly comprehended the meaning, full significance and consequences of his plea.

The presentation of evidence is required in order to preclude any room for reasonable doubt in the mind of the trial court, or the Supreme Court on review, as to the possibility that there might have been some misunderstanding on the part of the accused as to the nature of the charge to which he pleaded guilty, and to ascertain the circumstances attendant to the commission of the crime which justify or require the exercise of a greater or lesser degree of severity in the imposition of the prescribed penalty.[30]

To emphasize its importance this Court held in *People vs. Dayot*[31] that the rule in Section 3, Rule 116 is mandatory, and issued the warning that any judge who fails to observe its command commits a grave abuse of discretion.

This Court has come a long way in adopting a mandatory rule with regard to the presentation of evidence in capital cases where the accused pleads guilty to the criminal charge. From granting trial courts in the earlier Rules of Court[32] sufficient discretion in requiring evidence whenever guilt is admitted by the accused, the Court has now made it mandatory on the part of the lower courts to compel the presentation of evidence and make sure that the accused fully comprehends the nature and consequences of his plea of guilty.

III

There is another reason why we have to reject the aforesaid conclusion reached by the lower court in this case. Under settled jurisprudence, the consequences of aggravating circumstances alleged in the information must be explained to the accused when he pleads guilty to a crime imputed against him.

A reading of the questions directed at appellant during his re-arraignment reveals a shortcoming on the part of the trial court to fully explain to appellant the consequences of his plea.[33]

COURT:

All right, please come forward, Mr. Baldimo. Your lawyer, Atty. Camilo Libanan manifested to the court that you intimated to him your desire to withdraw your plea of not guilty when arraigned in this case and to substitute the same with a plea of not guilty after the prosecution has already presented evidence and in fact closed its evidence this morning. What have you to say about the manifestation of your lawyer, Atty. Libanan?

ACCUSED:

Yes, your honor.

COURT:

All right, re-arraign the accused. Did you understand the information charging you with the crime of murder along with some other persons?

A Yes, your honor.

Q All right, what will your plea be?

ACCUSED:

Guilty.

COURT:

When you withdraw your plea of not guilty to the information when arraigned the first time and substitute the same with a plea of guilty this morning, did you do so of your free and voluntary will?

A Yes, sir.

Q Were you not forced, threatened, coerced or intimidated to change your plea of not guilty and substitute the same with a plea of guilty?

A I was not.

Q Were you not under influence by any person or persons who exercises legal authority over you which may have been the consideration why you are now pleading guilty to the offense charged?

A None.

Q Do you realize the consequences of a plea, of your plea of guilty?

A Yes, your honor.

Q You are therefore aware that by your plea of guilty you will be penalized by the court and ordered to indemnify your victim as well as other accessory penalties provided for by law?

A Yes, your honor.

Q And this notwithstanding your realization of what a plea of guilty entail, will you still insist on your plea of guilty to the information charging you with the crime of murder committed by a band?

A Yes, your honor.

Q Was it your realization that you actually committed the crime charged and the prodding of your conscience that you now enter the plea of guilty?

A Yes, your honor.

Q Are you now repentant?

A I am not repentant.

Q You are not repentant for what you have done?

A Yes, sir, I am repentant.

Q In other words, you regret having committed the acts, having committed the crime charged?

A Yes, your honor.

COURT:

All right, promulgation is set on August 18.

All right, September 1.

A plea of guilty is improvidently accepted where no effort was even made to explain to the accused that a plea of guilty to an information for a capital offense, attended by an aggravating circumstance, may result in the imposition of the death penalty.[34] We cannot declare with reasonable certainty that when appellant pleaded guilty to the crime charged in the information he knew that he was at the same time admitting the presence and serious effects of the aggravating circumstances alleged therein. We are more inclined to believe, as a matter of judicial experience, that when he admitted his role in the killing of the deceased, he only intended to limit such admission to the crime charged and not to the aggravating circumstances.

The trial judge did not himself try to inform or advise appellant regarding the consequences of pleading guilty to having killed the victim with both circumstances of evident premeditation and treachery. More particularly, the trial judge did not himself try to convey to appellant, in ordinary language that appellant would be assumed to understand, the meaning of evident premeditation and treachery as circumstances that would qualify the killing to murder and to aggravate the penalty as to call for the maximum penalty of death.[35]

We quote from the old but instructive and still authoritative case of *U.S. vs. Jamad*. [36]

If the accused does not clearly and fully understand the nature of the offense charged, if he is not advised as to the meaning and effect of the technical language so often used in formal complaints and informations in qualifying the acts constituting the offense, or if he does not clearly understand the consequences by way of a heavy and even a capital penalty flowing from his admission of his guilt of the crime in the precise technical manner and form in which it is charged, his plea of guilty should not be held to be sufficient to sustain a conviction.

Our experience has taught us that it not infrequently happens that, upon arraignment, accused persons plead "guilty" to the commission of the gravest offenses, qualified by marked aggravating circumstances, when in truth and in fact they intend merely to admit that they committed the act or acts charged in the complaint, and have no thought of admitting the technical charges of aggravating circumstances. It not infrequently happens that after a formal plea of "guilty" it develops under the probe of the trial judge, or in the course of the statement of the accused made at the time of the entry of his plea, or upon the witness stand, that the accused, while admitting the commission of the acts charged in the information, believes or pretends to believe that these acts were committed under such circumstances as to exempt him in whole or in part from criminal liability. Clearly, a formal plea of guilty entered under such circumstances is not sufficient to sustain a

conviction of the aggravated crime charged in the information.

In *People vs. Alamada*,^[37] this Court found the trial court to have failed in observing that quantum of care which it had prescribed for the valid admission of a plea of guilty by an accused, especially in capital cases, when it did not explain to the accused the nature of the charges against him, particularly the allegations regarding conspiracy, treachery, evident premeditation and abuse of superior strength, which are terms so technical that the layman, especially an unschooled one like the accused in the said case, cannot possibly understand without proper elucidation.

It is neither just nor reasonable to assume that an uneducated person understands the allegation that “the aggravating circumstances of treachery and premeditation were present in the commission of the crime,” inasmuch as “treachery” and “premeditation” are highly technical terms the juridical meaning of which is beyond the understanding not of the illiterates alone but even of those who, being educated, are not lawyers.^[38]

If many members of the Bar are unable to call to mind the technical requisites of “treachery” and “evident premeditation” as qualifying and aggravating circumstances, there is no reason for supposing that the accused, who is a farmer by occupation, understood such elements and requisites after a few minutes of whispered advice from a counsel de oficio in open court.^[39]

Another reason why we cannot agree with the lower court’s posture on this issue is the consistent holding in several cases that a plea of guilty to an information alleging aggravating circumstances will not be considered an admission of such circumstances if the evidence presented by the prosecution fails to establish them.

Even the case of *People vs. Boyles*^[40] cited by the trial court disallowed the appreciation of the aggravating circumstance of nighttime when the Supreme Court found out that other than the time of the commission of the crime, nothing else suggested the circumstance of nocturnidad as understood in criminal law, to wit:

Not one of the prosecution evidence, oral or documentary, makes the slightest indication that the protection of the night’s darkness was deliberately availed of by the appellants. In view of this deficiency in the case for the Government, we are constrained to disallow the said circumstance even as, technically, it may have been accepted by them when they pleaded guilty on arraignment.

On the same ratiocination, although herein appellant pleaded guilty to the charge as alleged in the information, evident premeditation may not be taken against him since the evidence presented by the People does not adequately disclose the existence of the same.^[41] Where the aggravating circumstances listed in the information were not supported by the evidence adduced, a plea of guilty to a capital offense cannot constitute an admission of the aggravating circumstances set forth in the information.^[42]

The above rulings drew from *People vs. Corachea*^[43] which, in turn, reiterated the dictum in *People vs. Galapia*^[44] that even under the old rule on judicial confession of guilt, to be appreciated the aggravating circumstances must further be duly proved.

The rule is that a judicial confession of guilt admits all the material facts alleged in the information including the aggravating circumstances listed therein. But, where such circumstances are disproven by the evidence, it should be disallowed in the judgment. Thus, in *People vs. Gungab* (64 Phil. 779), the Court ruled “that when an accused, who lacks instruction, pleads guilty to the crime of parricide described in the information as having been committed with the aggravating circumstances of treachery and evident premeditation and his testimony given under oath before the trial court, upon his petition fails to show the existence of such aggravating circumstances, his plea of guilty shall be understood as being limited to the admission of having committed the crime of parricide, not having done so with treachery and evident premeditation.”

In view of the present requirement of Section 3, Rule 116 for the presentation of evidence but with due explanation to appellant of the significance of the aggravating circumstances alleged in an information, and considering the insufficiency of the People's evidence showing evident premeditation in this case, we cannot consider appellant's plea of guilty as an admission of the existence of that aggravating circumstance.

As the pertinent principle lays down a rule of procedure, the plea of guilty of an accused cannot stand in place of the evidence that must be presented and is called for by said Section 3 of Rule 116. Trial courts should no longer assume that a plea of guilty includes an admission of the attending circumstances alleged in the information as they are now required to demand that the prosecution should prove the exact liability of the accused. The requirements of Section 3 would become idle and fruitless if we were to allow conclusions of criminal liability and aggravating circumstances on the dubious strength of a presumptive rule.

While it may be argued that appellant entered an improvident plea of guilty when re-arraigned, we find no need, however, to remand the case to the lower court for further reception of evidence. As a rule, this Court has set aside convictions based on pleas of guilty in capital offenses because of improvidence thereof and when such plea is the sole basis of the condemnatory judgment. However, where the trial court receives evidence to determine precisely whether or not the accused has erred in admitting his guilt, the manner in which the plea of guilty is made (improvidently or not) loses legal significance, for the simple reason that the conviction is based on the evidence proving the commission by the accused of the offense charged.[45]

Thus, even without considering the plea of guilty of appellant, he may still be convicted if there is adequate evidence on record on which to predicate his conviction.[46] As already observed, the prosecution had already rested when appellant decided to change his plea. The prosecution then had all the opportunity to verify the material allegations in the information. Despite such opportunity, it only successfully established treachery but failed to present any evidence tending to prove evident premeditation.

We also doubt the applicability to the case at bar of *People vs. Belen*,[47] cited by the lower court, to the effect that conspiracy presupposes evident premeditation. A reading of *People vs. Timbang, et al.*[48] upon which *Belen* is based, does not state, either categorically or impliedly, that evident premeditation exists where conspiracy is proven.

There is no doubt that conspiracy was shown in the instant case from the concerted actions of the accused. The existence of this mode in the commission of a felony can be inferred from the sudden shooting of the victim by Derilo and the successive stabbing of her person by appellant and his unidentified companion.

However, to claim that evident premeditation can be inferred from conspiracy violates the fundamental principle that aggravating circumstances should also be proved beyond reasonable doubt as the crime alleged to have been committed. While the court below did not equate conspiracy with evident premeditation, the latter cannot be deduced from the former as the elements of conspiracy and evident premeditation are completely different.

There is conspiracy when two or more persons come to an agreement, the agreement concerned the commission of a felony, and the execution of the felony is decided upon. However, unlike evident premeditation, where a sufficient period of time must elapse to afford full opportunity for meditation and reflection and for the perpetrator to deliberate on the consequences on his intended deed, conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once this assent is established, each and everyone of the conspirators is made criminally liable for the crime committed by anyone of them.[49]

To establish conspiracy, it is not essential that there be proof as to the previous agreement and decision to commit

the crime, it being sufficient that the malefactors shall have acted in concert pursuant to the same objective.[50] To end any doubt on this matter, we quote our ruling in *People vs. Rizal*:[51]

There is no proof, aside from conspiracy, that the accused and his companions had sufficient time to plan the killing, reflect on it and after reflection decided to commit the evil deed. Under ordinary circumstances where conspiracy is present with proof of attendant deliberation and selection of the method, times and means of executing the crime, the existence of evident premeditation is taken for granted. But when conspiracy is merely inferred from the acts of the accused and his companions in the perpetration of the crime and there is no showing that characterizes evident premeditation, such aggravating circumstance cannot be taken for granted but must be proved like any other of its kind. (Emphasis supplied).

It can thus be said that evident premeditation can only be deduced from conspiracy if in the course of directly proving conspiracy, the elements of evident premeditation were likewise presented and proven. But then, in such a case, evident premeditation would not merely be presumed but actually established. Hence, it follows that there is really a need for the presentation of evidence indicating the existence of premeditation *conocida*, which was not done in this case.

IV

We could stop at this juncture, with the vital points against the death penalty having been made, but there are certain facets of this case which necessitate elucidation. Indeed, the peculiar antecedents and chronological milieu of the instant case confront us now with what appear to be the problematical application of two penal laws.

At the time of the commission of the crime on January 1, 1982 and the conviction of the accused on October 12, 1986, the substantive law in force dealing with the crime of murder was Article 248 of the Revised Penal Code which took effect way back on January 1, 1932. Said provision provided that any person guilty of murder shall be punished by reclusion temporal in its maximum period to death.

Then on February 2, 1987, a new Constitution came into force after its ratification on that date by the people. The 1987 Constitution, regarded by some as progressive since it contains new provisions not covered by our earlier two Constitutions, proscribed in Section 19, Article III (Bill of Rights) thereof the imposition of the death penalty, as follows:

Sec. 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua. (Italics supplied).

x x x

Responding to the alarming increase of horrible crimes being committed in the country, Congress passed a law imposing the death penalty on certain heinous offenses and further amending for that purpose the Revised Penal Code and other special penal laws. Said law was officially enacted as Republic Act No. 7659 and took effect on December 31, 1993. This is now the governing penal law at the time of this review of the case at bar.

Although the elements and circumstances which qualify a killing to murder were maintained, Republic Act No. 7659 amended Article 248 of the Code by imposing a heavier penalty for murder than that originally prescribed, the new penalty provided in Section 6 of said amendatory statute being reclusion perpetua to death.

Being a penal law, such provision of Republic Act No. 7659 may not be applied to the crime of murder committed in 1982 by appellant, based on the principle of prospectivity of penal laws. Further, the presumption is that laws

operate prospectively, unless the contrary clearly appears or is clearly, plainly and unequivocally expressed or necessarily implied.[52] In every case of doubt, the doubt will be resolved against the retroactive operation of laws.[53] Nor can the prospective application of Republic Act No. 7659 be doubted just because of the constitutional provision leaving to Congress the matter of the death penalty in cases of heinous crimes, since Congress did not otherwise provide.

The interpellations in the Constitutional Commission tasked to draw up the present Constitution is enlightening in our determination of the non-retroactivity of said law, thus:

MR. BENGZON. And then, supposing Congress passes a law imposing the death penalty on those very same crimes committed by those that were convicted of the death penalty which penalty has been commuted to reclusion perpetua, will they go back?

MR. MONSOD. No.

MR. BENGZON. Not anymore?

MR. MONSOD. Any new law passed by the National Assembly would be prospective in character.[54]

One of the universally accepted characteristics of a penal law is prospectivity. This general principle of criminal law is embodied in Article 21 of the Revised Penal Code which provides that “no felony shall be punishable by any penalty not prescribed by law prior to its commission,” and was applied by the Supreme Court in two early cases to mean that no act or omission shall be held to be a crime, nor its author punished, except by virtue of a law in force at the time the act was committed.[55]

Besides, to give retroactive effect to the pertinent provision of Republic Act No. 7659 would be violative of the constitutional prohibition against ex post facto laws.[56] Among others, an ex post facto law has been defined as one which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed.[57]

It is settled that a penal law may have retroactive effect only when it is favorable to the accused.[58] Obviously, with a penalty more onerous than that provided by the Revised Penal Code for murder, the pertinent amendment thereof by Republic Act No. 7659 cannot fall within the exception to the general rule on prospectivity of penal laws.

Lastly, observance of juridical uniformity in the decisions of this Court requires that we refrain from applying Republic Act No. 7659 to the case at bar. The present case is not the first and only instance where the Court has had to review a sentence for death after this amendatory law came into force. To give retroactive effect to said law in this case will disturb the numerous decisions of the Court imposing reclusion perpetua on the accused who committed capital offenses prior to the effectivity of the 1987 Constitution and were convicted after its effectivity but before that of Republic Act No. 7659, even though the penalty imposable would have been death.

Having eliminated the possibility of applying the death penalty under Republic Act No. 7659 in the present case, we now examine the applicability of Article 248 of the Revised Penal Code, prior to its aforesaid amendment. On May 20, 1987, this Court issued Circular No. 9 regarding the imposition of the death penalty, under the circumstances therein defined. In the said circular, all courts were enjoined to impose only the penalty of reclusion perpetua, even in those cases wherein our penal laws provide for the imposition of the death penalty, until Congress shall have provided by law for the definition of the heinous crimes contemplated in the 1987 Constitution.

Prior thereto, in an en banc resolution dated April 30, 1987 issued in Administrative Matter No. 87-5-3173-0, the

Court took cognizance of the Cabinet Meeting held on April 8, 1987 wherein, among others, the President agreed to issue a statement officially commuting to life imprisonment the death sentence theretofore imposed on some convicts, in accordance with the letter and spirit of the 1987 Constitution. However, a verification with the Executive Department, through the Department of Justice, reveals that the projected presidential commutation never materialized.

It will further be noted that said circular referred only to those cases then “under automatic review by the Court,” and the aforesaid resolution quoted therein likewise contemplated “pending cases before the Court,” that is, as of May 20, 1987. Those issuances could not therefore apply to the present case since, as hereinafter explained, the case at bar was brought on appeal to this Court only on July 20, 1994.

Be that as it may, however, whether or not evident premeditation was present in this case and regardless of the inapplicability thereto of the aforementioned circular and resolution, the Court is reasonably convinced that it cannot validly impose the capital punishment on appellant. The words of the Constitution are clear: Any death penalty already imposed shall be reduced to reclusion perpetua. Appellant, it will be recalled, was sentenced in 1986 to suffer the death penalty as then provided under the Revised Penal Code. With the ratification of the Constitution in 1987, that sentence should have been reduced to reclusion perpetua under such constitutional fiat.

The fact that this Court will have the opportunity to review appellant’s case only now does not detract from the force of such directive of the Constitution. Neither will the fact that Circular No. 9 was not yet issued when appellant was tried and convicted prevent the application to him of that Constitutional provision. It is not the action of the courts which, under the circumstances, convert his sentence of death to reclusion perpetua. Such reduction is directed and effected by the explicit words of the fundamental charter; the courts merely apply this express and self-executing provision of the Constitution when they impose the penalty of reclusion perpetua rather than the imposable penalty of death in appropriate cases.

Again, the following proceedings in the Constitutional Commission yield light on the foregoing proposition:

MR. DE CASTRO. The proponent’s amendment is a comma (,) after “inflicted” on line 29 to be followed by the clause “UNLESS FOR COMPELLING REASONS INVOLVING HEINOUS CRIMES THE NATIONAL ASSEMBLY PROVIDES FOR THE DEATH PENALTY.” In this proposed amendment, there will still be a need for the National Assembly to pass a law providing for the death penalty. Is this correct?

MR. MONSOD. Yes.

MR. DE CASTRO. What happens to those awaiting execution, having already the death penalty on their heads, but there is no law yet passed by the National Assembly?

MR. MONSOD. Then the next sentence will apply: “Death penalty already imposed shall be commuted to reclusion perpetua.”[59]

It can be readily seen that the reduction of the penalty is not and was not made dependent on a law, decree, condition, or period before the aforementioned Section 19 can be applied by the courts. It cannot be inferred, either from the wordings of the subject provision or from the intention of the framers of the Constitution, that a death sentence should be brought to the Supreme Court for review within a certain time frame in order that it can be reduced to reclusion perpetua.

The fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it. The intention to which force is to be given is that which is embodied and expressed in the constitutional provisions themselves.[60] *Interpretatio fienda est ut res magis valeat quam pereat*. A law should be interpreted with a view to upholding rather than destroying it.

The fact that no proclamation or grant of commutation was officially issued by the President will not prevent the implementation and operation of Section 19 to appellant. To argue otherwise would be subordinating the command of the Constitution to the will of the President. The framers of the Constitution never intended that the non-imposition or non-execution of the death sentence under those constitutional provisions would be dependent on the act or omission of the Chief Executive.

Resort to the deliberations of the Constitutional Commission will justify this conclusion:

MR. REGALADO. May I ask Commissioner Monsod about this second sentence. "Death penalty already imposed shall be commuted to reclusion perpetua."

When we say commuted to reclusion perpetua, I think we refer to the power of the President to effect commutations because only the President can commute sentences already final and imposed by the courts. Is that correct?

MR. MONSOD. Madam President, I am not the proponent of that sentence. Perhaps the Committee should answer that.

MR. REGALADO. That was the answer of the Gentleman in response to the inquiry of Commissioner Bengzon.

MR. MONSOD. My answer is reflective of what the Committee had answered before. And since that has not been changed, I suppose the answer would be the same. But if the Committee would like to answer it in more detail, perhaps it should be the one to answer that.

FR. BERNAS. The intention of the provision here is, upon ratification of this Constitution, the death penalty already imposed is automatically - without need for any action by the President - commuted.

MR. REGALADO. Yes, because the wording here is: "Death penalty already imposed shall be commuted to reclusion perpetua." The power of commutation is a presidential prerogative.

FR. BERNAS. Or we can say "ARE HEREBY commuted," if that is clearer. But that is the intention.

MR. REGALADO. Does the Commission mean "are hereby reduced"?

FR. BERNAS. Commuted to the death penalty.

MR. REGALADO. It "shall be REDUCED to reclusion perpetua"?

FR. BERNAS. To reclusion perpetua, yes.

MR. REGALADO. Maybe the Commissioner should eliminate the word "commute" because we are invading the presidential prerogative.

THE PRESIDENT. Is the Gentleman proposing an amendment to the amendment?[61]

Although Commissioner Regalado was not able to formally propose an amendment because of an intervening question by another commissioner, his observation was correspondingly accepted by the Commission as shown by the use of the word "reduced" in the present provision of the Constitution, instead of "commute" as originally proposed. The fact is that he did not have to propose an amendment as Commissioner Bernas, who was representing the committee concerned, had already taken note thereof and acceded thereto.

Thus, in his work on the 1987 Constitution, Commissioner Bernas had this to say on the matter:

"x x x. But since "commutation" is technically an executive prerogative, the Commission, in order to make the effect automatic without having to wait for presidential action, deliberately avoided the use of the word

“commuted” and, on the suggestion of Commissioner Regalado, used instead “reduced”. Thus the provision reads: “Any death penalty already imposed shall be reduced to reclusion perpetua.” The phrase “shall be reduced” is not a description of some future act but a command that is immediately effective. (Nevertheless, President Aquino issued an Executive Order, perhaps *ad cautelam*, commuting death sentences already imposed.)[62]

From the foregoing, it is apparent that no presidential action is necessary in order that any accused sentenced to the death penalty under the same circumstances as herein appellant may avail of the benefit of Section 19. The accused, *ipso jure*, is entitled to a reduction of his sentence. As the Constitution is not primarily a lawyer’s document, its language should be understood in the sense that it may have in common use. Its words should be given their ordinary meaning except where technical terms are employed.[63] While “to commute” necessitates presidential initiative, “to reduce” does not.

Therefore, with or without an official executive issuance on commutation, the death penalty prescribed in Article 248 of the Revised Penal Code and imposed on appellant by the lower court in 1986 cannot be carried out even though the case was brought to the Supreme Court only in 1994 after Republic Act No. 7659 had taken effect. Nor can this law be deemed to have revived the death penalty in the case of appellant, for reasons stated earlier. By February 2, 1987, that penalty had already been automatically reduced to reclusion perpetua, not by the grace of the President or of the courts, but by the mandate of the fundamental law of the land.

Before we end, we note the extremely protracted delay in bringing appellant’s conviction to the attention of this Court. Although the judgment of the lower court was promulgated on October 12, 1986, the records of this case were elevated to this Court only on July 20, 1994.[64] Even by this date, the records were not yet complete as some of the transcripts of stenographic notes taken during the trial were not included in the records forwarded to this Court.

We can only blame the court of origin for this improbable and unexplained delay of almost eight years. It is the express and specific duty of the clerk thereof to transmit to this Court, within the periods allowed therefor, the complete records of the case where the death penalty is imposed for automatic review. Paragraph 5, Section L (Appeal), Chapter VI (Duties in Criminal Cases) of the Manual for Clerks of Court, which is a verbatim reproduction of Section 10, Rule 122 of the Rules of Court, provides:

5. Transmission of Records in Case of Death Penalty. -- In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment, within twenty (20) days but not earlier than fifteen (15) days after promulgation of the judgment or notice of denial of any motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter.

The Office of the Court Administrator is accordingly directed to investigate this matter and submit the corresponding evaluation, report and recommendation to this Court within ninety (90) days from notice hereof.

All clerks of court are hereby ordered to scrupulously comply with their duty and responsibility of seasonably transmitting to this Court the complete records of cases where the death penalty was imposed, especially now that the trial courts have imposed the death penalty in many cases involving heinous crimes.

With respect to the case at bar, in justice to appellant this appellate proceeding shall be treated as an automatic review because there is no showing in the records that he was advised that the death penalty imposed upon him has been reduced to reclusion perpetua pursuant to the pertinent provisions of the 1987 Constitution; and that his case is no longer subject to automatic review, as provided and required in Circular No. 9 of this Court, hence a notice of appeal should have been filed.

WHEREFORE, for failure of the prosecution to prove the aggravating circumstance of evident premeditation and by virtue of the command of the 1987 Constitution, the judgment of the court a quo is accordingly MODIFIED. Accused-appellant Isidoro Q. Baldimo is hereby sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of P50,000.00 in consonance with our current case law and policy on death indemnity.

SO ORDERED.

Narvasa, C.J., Padilla, Davide Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Panganiban, and Torres, Jr., JJ., concur.
Hermosisima, Jr., J., on leave.

[1] Presided over by Executive Judge Sixto T. Balanquit, Jr. who penned the decision under review.

[2] Original Record, 2.

[3] Ibid., 15.

[4] TSN, August 6, 1986, 51-56.

[5] Original Record, 116; Decision, 10.

[6] His surname is spelled “Lopido” in the transcripts.

[7] TSN, September 23, 1985, 14-33.

[8] Brief for Appellant, 2; Rollo, 56-57. Appellant is erroneously using the term of life imprisonment instead of the penalty of reclusion perpetua. This error arose from this Court’s imposition of “life imprisonment” as the penalty for robbery with homicide in *People vs. Coronel, et al.* (G.R. No. L-19091, June 30, 1966, 17 SCRA 509) cited by appellant.

[9] Art. 13. Mitigating circumstances. - The following are mitigating circumstances:

7. That the offender x x x had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

[10] Rollo, 56-57; Appellant’s Brief, 1-2.

[11] *Supra*, Fn. 8.

[12] Section 9 of the Judiciary Act of 1948 (R.A. No. 296), as amended, provided that:

x x x

Whenever the judgment of the lower court imposes the death penalty, the case shall be determined by eight Justices of the Court. When eight Justices fail to reach a decision as to the propriety of the imposition of the death penalty, the penalty lower in degree shall be imposed (R.A. No. 5440).

[13] Dated August 26, 1986, but judgment was promulgated on October 14, 1986.

[14] TSN, July 19, 1985, 7-13.

[15] Exhibit B, Exhibits for the Prosecution, 2.

[16] Decision, 9-10; Original Record, 115-116.

- [17] People vs. Gravino, G.R. Nos. L-31327-29, May 16, 1983, 122 SCRA 123.
- [18] People vs. Ariola, G.R. No. L-38457, October 29, 1980, 100 SCRA 523.
- [19] People vs. Narit, G.R. No. 77087, May 23, 1991, 197 SCRA 334.
- [20] U.S. vs. Perdon, 4 Phil. 141 (1905).
- [21] U.S. vs. Ulat, 7 Phil. 559 (1907); U.S. vs. Navarro, 7 Phil. 713 (1907).
- [22] People vs. De Guia, G.R. No. 59876, August 31, 1989, 177 SCRA 112.
- [23] People vs. Yu, G.R. No. L-13780, January 28, 1961, 1 SCRA 199; People vs. Arpa, G.R. No. L-26789, April 25, 1969, 27 SCRA 1037; People vs. Alicia, G.R. No. L-38176, January 22, 1980, 95 SCRA 227.
- [24] 102 Phil. 863 (1958).
- [25] 103 Phil. 504 (1958).
- [26] 109 Phil. 793 (1960).
- [27] G.R. No. L-19491, August 30, 1968, 24 SCRA 798.
- [28] Sec. 3, Rule 116, Rules of Court.
- [29] G.R. No. 51306, July 29, 1987, 152 SCRA 401.
- [30] People vs. De Luna, G.R. No. 77969, June 22, 1989, 174 SCRA 204.
- [31] G.R. No. 88281, July 20, 1990, 187 SCRA 637.
- [32] Section 5, Rule 114 of the 1940 Rules of Court and Section 5, Rule 118 of the 1964 Rules of Court similarly provide that:
- Sec. 5. Plea of guilty; determination of punishment. - Where the defendant pleads guilty to a complaint or information, if the court accepts the plea and has discretion as to the punishment for the offense, it may hear witnesses to determine what punishment shall be imposed.
- [33] TSN, August 6, 1986, 54-56.
- [34] People vs. Espiña, G.R. No. L-33028, June 25, 1973, 57 SCRA 317.
- [35] See People vs. De Guia, G.R. No. 59876, August 31, 1989, 177 SCRA 112.
- [36] 37 Phil. 305 (1917).
- [37] G.R. Nos. L-34594-95, July 13, 1973, 52 SCRA 103.
- [38] People vs. Gungab, 64 Phil. 779 (1937).
- [39] People vs. De Guia, *supra*, Fn. 35.
- [40] G.R. No. L-15308, May 29, 1964, 11 SCRA 88.
- [41] People vs. Gravino, G.R. Nos. L-31327-29, May 16, 1983, 122 SCRA 123; People vs. Logarto, G.R. No. 65833, May 6, 1991, 196 SCRA 611.
- [42] People vs. Comendador, G.R. No. 38000, September 19, 1980, 100 SCRA 155.

- [43] G.R. No. L-30101, July 16, 1979, 91 SCRA 422.
- [44] G.R. Nos. L-39303-05, August 1, 1978, 84 SCRA 526.
- [45] *People vs. Nismal*, G.R. No. 51257, June 25, 1982, 114 SCRA 487.
- [46] See *People vs. Petalcorin*, G.R. No. 65376, December 29, 1989, 180 SCRA 685.
- [47] G.R. No. L-13895, September 30, 1963, 9 SCRA 39.
- [48] 74 Phil. 295 (1943).
- [49] *People vs. Monroy, et al.*, 104 Phil. 759 (1958).
- [50] *People vs. Sazon*, G.R. No. 89684, September 18, 1990, 189 SCRA 713.
- [51] G.R. Nos. L-43487-89, February, 26, 1981, 103 SCRA 282.
- [52] *People vs. Zeta*, 98 Phil. 143 (1955).
- [53] *Cebu Portland Cement vs. CIR*, G.R. No. L-20563, October 29, 1968, 25 SCRA 789 (1968).
- [54] I Record of the Constitutional Commission 748.
- [55] *U.S. vs. Macasaet*, 11 Phil. 447 (1908); *People vs. Moran*, 44 Phil. 387 (1923).
- [56] Sec. 22, Art. III, 1987 Constitution.
- [57] Bernas, J. G., *The Constitution of the Republic of the Philippines, A Commentary*, Vol. I, 1st ed., 488.
- [58] Art. 22, Revised Penal Code; *Escalante vs. Santos*, 56 Phil. 483 (1932).
- [59] I Record of the Constitutional Commission 747.
- [60] *Gold Creek Mining Corp. vs. Rodriguez*, 66 Phil. 259 (1938).
- [61] I Record of the Constitutional Commission 748.
- [62] Bernas, *op cit*, 444, Fr. Bernas, however, did not cite the specific Executive Order he was referring to, and we are not aware of any.
- [63] *J.M. Tuason & Co., Inc. vs. Land Tenure Administration*, G.R. No. L-21064, February 18, 1970, 31 SCRA 413 (1970).
- [64] Rollo, 23. The postmark on the envelope containing the records forwarded to this Court is dated July 20, 1994. This is because the records were prepared for transmittal only on July 18, 1994 as indicated on page 2 of the Rollo when these should have been done as early as 1986.

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