

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ALFREDO PERALTA, ET AL., DEFENDANTS. ALFREDO PERALTA AND ROMAN FERNANDO, DEFENDANTS AND APPELLANTS.**

*G.R. No. 15959. October 11, 1961*

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**PER CURIAM:**

This case is before us en consulta, insofar as defendants Alfredo Peralta and Roman Fernando are concerned, both having been sentenced by the Court of First Instance of Rizal to suffer the death penalty and to jointly and severally indemnify the heirs of Guillermo Lutero in the sum of P3,000.00, as well as to pay each one-sixth (1/6) of the costs.

Said defendants were accused, together with Marcial Ama, Conrado Medina, Alfredo Cariño and Rolando Pangcubit, of the crime of murder, the information alleging:

"That on or about the 26th day of December, 1958, in the New Bilibid Prison, municipality of Muntinlupa, province of Rizal, Philippines' and within the jurisdiction of the Honorable Court, the above-named accused conspiring and confederating together and mutually helping one another, with intent to kill, with treachery and evident premeditation, armed with wooden club, did then and there, willfully, unlawfully and feloniously attack, assault, hit one Guillermo Lutero on the different parts of his body and by strangling the neck of said Guillermo Lutero thereby inflicting several wounds on the latter's body which caused the death of said Guillermo Lutero.

"That the accused are quasi-recidivists having committed the above-mentioned felony while serving their respective sentence after having been convicted of final judgment."

Upon arraignment, the six (6) defendants entered a plea of not guilty. However, when the case was called for trial, on August 24, 1959, defendants Alfredo Peralta and Roman Fernando, assisted by their counsel de oficio withdrew their aforementioned plea and entered, in lieu thereof, that of guilty. Thereupon, the lower court set the case for promulgation of the decision on September 1, 1959. Prior thereto; however, the prosecution had filed a motion to dismiss the case as regards the other defendants, namely, Marcial Ama, Conrado Medina, Alfredo Carino and Rolando Pangcubit, upon the ground that a reinvestigation of the case as regards these defendants had revealed the insufficiency of the evidence to establish their participation in the commission of the crime charged. Hence, on September 1, 1959, the lower court issued an order dismissing the case, insofar as Marcial Ama, Conrado Medina, Alfredo Carifio and Rolando Pangcubit are concerned, with the proportionate part of the costs de oficio. On the same date, the court rendered its decision finding Alfredo Peralta and Roman Fernando guilty of the crime of murder, committed with evident premeditation, as qualifying circumstance, as well as with the generic aggravating circumstance of treachery, offset by their voluntary plea of guilty, and the special circumstance of quasi-recidivism, and, accordingly, imposing, pursuant of Article 160 of the Revised Penal Code, the maximum penalty prescribed by law for the aforementioned crime, namely, the death penalty.

Counsel de oficio for these two (2) defendants maintains that the decision appealed from should be reversed and

the case- demanded to the lower court for a new trial, upon the ground that said court should have taken such evidence as was available to assure itself that Alfredo Peralta and Roman Fernando had understood fully and completely the precise nature of the charge against them and the consequences of their plea of guilty. Upon the other hand, Attorneys Orteza and Orteza, as counsel de parte for Alfredo Peralta, contend that the allegation of quasi-recidivism in the above information is ambiguous, in that it fails to state whether the offenses for which the defendants were serving sentence at the time of the commission of the crime charged were penalized by the Revised Penal Code, or by a special law.

We find no merit in either pretense. With respect to counsel de oficio's contention, the transcript of the proceedings in the lower court on August 24, 1959, shows that defendants Alfredo Peralta and Roman Fernando insisted on pleading guilty to the charge, although their counsel de oficio had advised them that the maximum penalty for the crime of murder would, as a consequence, be imposed upon them. As regards the contention of Attys. Orteza and Orteza, it makes no difference, for purposes of the effect of quasi-recidivism, under Article 160 of the Revised Penal Code, whether the crime for which an accused is serving sentence at the time of the commission of the offense charged, falls under said Code or under a special law.

At any rate, we have examined the records of said defendants in the Bureau of Prisons and found that, at the time of the commission of the crime of murder charged in the case at bar, they were serving sentences for violations of the Revised Penal Code. More specifically, Alfredo Peralta was serving two (2) sentences, namely: (a) one for robbery, by virtue of a final judgment of the Court of First Instance of Manila, in Criminal Case No. 25676 thereof, rendered on April 1, 1954, which, furthermore declared him a habitual delinquent, he having been previously convicted of theft on September 6, 1952, and of attempted robbery with physical injuries, on December 6, 1953; and (b) another for frustrated homicide, by virtue of a final judgment of the Court of First Instance of Rizal, in Criminal Case No. 263-R thereof, dated November 14, 1957. Similarly, Roman Fernando was serving a sentence for homicide by virtue of a final judgment of the Court of First Instance of Sulu, in Criminal Case No. 1168 thereof, dated March 24, 1955.

Wherefore, the aforementioned decision of the lower court is hereby affirmed, with costs against defendants Alfredo Peralta and Roman Fernando. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes and De Leon, JJ., concur.

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