

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MAURICIO PETALCORIN ALIAS JUNIO BUDLAT AND BERTOLDO
ABAIS ALIAS TOLDONG, DEFENDANTS-APPELLANTS.**

G.R. No. 65376. December 29, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

It was about 2:00 o'clock in the afternoon of April 18, 1979 when Joemarico Porcadilla and Bonifacio Paden were riding on a pumpboat called LOU JR from Cebu City bound for Banacan Island in the Municipality of Jetafe, Province of Bohol. The pumpboat was owned by Luis Miasco and was at that time loaded with assorted cargoes.

While negotiating the seawaters at Pandanon Island said pumpboat was bumped by another pumpboat piloted by Bertoldo Abais. Aboard said pumpboat were Mauricio Petalcorin and Paul Sagarino. Immediately thereafter, Petalcorin fired at Paden three times who was hit at the back and as a consequence thereof, he fell into the sea. Petalcorin then boarded the pumpboat of Paden and pointed and fired his gun at Porcadilla who was hit on the right arm. When Petalcorin attempted to fire for the second time, Porcadilla rushed at him and grappled for the possession of the gun. Petalcorin shouted for help.

Sagarino boarded the pumpboat where Petalcorin and Porcadilla were and fired his gun at Porcadilla. However, the gun jammed so Sagarino picked up an empty liter size soft drink bottle and struck Porcadilla on the head which made him dizzy. Upon the latter's recovery, Sagarino tried to hit Porcadilla again with the same bottle but the latter parried the same and fought back. Petalcorin and Sagarino ganged up on Porcadilla so he fell into the sea. The two sped away in the pumpboat of Paden. Paden was able to hold on to the outrigger of the pumpboat and was dragged along. Abais operated the other pumpboat and left.

Porcadilla who floated on the water for sometime was later rescued by a pumpboat which happened to pass by. He was brought to the house of the barangay captain in Nasingin Island. He was later brought to Banasan Island where he received medical treatment for his injuries. Bonifacio Paden died due to the wounds he suffered.

The commission of this offense was discovered only in January, 1983 when Vicente Evardo, Station Police Commander of Jetafe Police Station, Jetafe, Bohol, apprehended Abais in the Island of Cotoban, Talibon, Bohol as one of the suspects in a series of burglaries committed in Jetafe and Talibon. In the course of the investigation Abais revealed the commission of piracy in the island of Pandanon, Jetafe, Bohol sometime on April 18, 1979. Accompanied by the policemen they were able to recover the engine block and fuel tank of the pumpboat from Felix Estillore at St. Bernard, Southern Leyte.[1] Estillore gave a statement that was sworn to before Judge Gervasio.[2] Similarly, Abais was investigated and he gave a written statement that was sworn to before Judge Romualdo Buno.[3]

In due course, an information was filed in the Regional Trial Court of the City of Tagbilaran against Mauricio Petalcorin and Bertoldo Abais alias Toldong, which reads as follows:

"The undersigned, Acting Third Asst. Provincial Fiscal, hereby accuses Mauricio Petalcorin alias Junior Budlat and Bertoldo Abais alias Toldong of the crime of PIRACY, committed as follows:

That on or about the 18th day of April, 1979, in the seawaters of Pandanon and Nasingin Islands, municipality of Jetafe, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with Paul Sagarino alias Polan and Felix Estillore who are still at large and whose case is still pending preliminary investigation before the Municipal Circuit Trial Court of Talibon-Jetafe, Bohol, conspiring, confederating and mutually helping with each other, with intent to gain, with the use of firearms, not being members of the crew nor passengers of the pumpboat named LOU JR owned by and belonging to Luis Miasco, by means of violence against or intimidation, attacked, shot and hit Joemarico C. Porcadilla and Bonifacio Paden who, on the occasion thereof, were seriously injured and killed, respectively; and, thereafter, the abovenamed accused did then and there willfully, unlawfully and feloniously seize said pumpboat, and, without the consent of the owner, forcibly take and carry away the following properties, viz.:

One (1) pumpboat valued at

P 7,000.00;

One (1) engine brand Briggs & Stratton 10 H.P.

3,000.00;

One (1) canvass yellow green in color

500.00;

Five (5) containers of ordinary gasoline containing 100 liters

400.00;

Three (3) sacks of corn grits

270.00;

Cash money belonging to Bonifacio Paden

220.00;

Nine (9) cases of Pepsi Cola and Coca Cola (family size)

216.00;

Two (2) cartons of vino Kulafu

84.00;

One (1) carton of candies

50.00;

One (1) box of bread

30.00;

in the total amount of ELEVEN THOUSAND SEVEN HUNDRED AND SEVENTY PESOS (P11,770.00), Philippine Currency; to the damage and prejudice of Luis Miasco, Joemarico Porcadilla and the heirs of Bonifacio Paden; with the special qualifying aggravating circumstances of (1) abandoning the victims without means of saving themselves and (2) seizure of the pumpboat accomplished by firing upon or boarding the

same.

Acts committed contrary to Presidential Decree No. 532."^[4]

Upon arraignment each of the accused assisted by a counsel de officio entered a plea of guilty to the information. Nevertheless, the trial court directed the prosecution to present its evidence in order to establish the guilt and degree of culpability of the accused.

Witnesses Vicente Evardo and Joemarico Porcadilla testified for the prosecution while the accused did not present any evidence in their defense. On September 15, 1983, the trial court rendered a decision finding both accused guilty of the crime of piracy as follows:

"After due deliberation of the evidence presented during the trial, the Court is convinced that the prosecution was able to prove the guilt of the herein accused beyond reasonable doubt thru the following findings:

1. That in the commission of the offense as charged in the Information, conspiracy among the accused existed which was clearly shown and proven thru the acts and conducts of the accused:

(a) That accused Petalcorin and Abais together with Paul Sagarino were riding on one (1) pumpboat when they chased and overtook the pumpboat named LOU JR of Paden and Porcadilla;

(b) That accused Abais did not do anything to prevent accused Petalcorin in inflicting injuries on Porcadilla and/or killing Bonifacio Paden;

(c) That accused Petalcorin and Abais were the ones who left the engine block, plywheel cover and the fuel tank with Felix Estillore (Exhs. F and F-1) and as a matter of fact, it was accused Abais who accompanied the police authorities in recovering some of the stolen articles, now marked as Exhs. F and F-1;

(d) That there was an active cooperation by all the accused in the perpetration of the crime of piracy.

and since conspiracy existed, the principle of the 'act of one is the act of all,' is applicable in this case.

2. That the accused, after wounding Porcadilla, operated the latter's pumpboat named LOU JR and brought it with them, leaving behind Porcadilla in the seawater, wounded and without any means of saving himself while the deceased Bonifacio Paden who was wounded was hanging on the outrigger of the pumpboat and that was the last time that Paden was seen alive.

3. That when accused Petalcorin boarded the pumpboat named LOU JR of Paden and Porcadilla, he immediately fired at Paden and Porcadilla without any reason at all thus, hitting Paden resulting in his falling into the seawater and later on, his death.

The crime of piracy carries the penalty of death under PD 532, Section 3, par. (a) last sentence, which provides:

'SEC. 3. x x x x x x x x x x x

'a) x x x x x x x x x x x x x

'If rape, murder or homicide is committed as a result or on the occasion of piracy, or when the offenders abandoned the victim without means of saving themselves, or when the seizure is accomplished by firing upon or boarding a vessel, the mandatory penalty of death shall be imposed.'

even without the presence of the mitigating circumstance of plea of guilty, the penalty prescribed by law that is death, being a single penalty, must be applied regardless of the presence of any mitigating or aggravating circumstance that may have attended the commission of the deed (Article 63, Revised Penal Code).

WHEREFORE, finding both accused Mauricio Petalcorin and Bertoldo Abais GUILTY beyond reasonable doubt of the crime of Piracy, they are hereby sentenced to the penalty of DEATH and to pay severally and jointly the following damages, to wit:

1. Twelve Thousand (P12,000.00) Pesos by reason of the death of Bonifacio Paden, to be paid to his legal heirs;
2. One Thousand (P1,000.00) Pesos in concept of actual damages, to be paid to offended party, Joemarico Porcadilla;
3. Eleven Thousand Seven Hundred Seventy (P11,770.00) Pesos for the value of the stolen goods including the pumpboat, to be paid to offended party Luis Miasco; and
4. To pay the Costs.

The engine block and the fuel tank marked as Exhibits F and F-1 are hereby ordered return(ed) to the offended party Luis Miasco after signing a receipt of the same with the Officer-in-Charge of this Court.

SO ORDERED."[5]

The case was elevated to this Court for automatic review. As the death penalty may no longer be imposed under the 1987 Constitution there is no more automatic review hence this case is now considered to be brought by ordinary appeal interposed by the accused.

In the brief of appellants, it is alleged that the trial court committed the following assigned errors:

1. The court erred in imposing the death penalty on the accused notwithstanding the fact that they did not comprehend the consequence of their plea.
2. The court erred in giving weight and credence to the sworn statements of Felix Estillore and accused appellant Bertoldo Abais.
3. The court erred in convicting accused-appellants notwithstanding that their guilt had not been not proved beyond reasonable doubt.

However, appellant Mauricio Petalcorin manifested the withdrawal of his appeal and his willingness to serve the sentence of reclusion perpetua. This was approved by this Court on September 8, 1987. Thus, only the appeal of Bertoldo Abais shall be determined.

The appeal is devoid of merit.

Upon the arraignment of the appellant the court appointed a counsel de oficio who conferred with him. During the arraignment the information was translated to the appellant in the Visayan dialect which is the language he understood, after which the following proceedings took place:

"Court:

Mauricio Petalcorin, what is your plea guilty or not guilty?

Mauricio Petalcorin:

Guilty.

Court:

Bertuldo Abais, what is your plea guilty or not guilty?

Bertuldo Abais:

Guilty Your Honor.

Court:

Do you know the implication of your plea of guilty to the offense as charged in the information Mauricio?

Mauricio Petalcorin:

Yes Your Honor.

Court:

What would be the consequence of your plea of guilty?

A We will wait for the decision Your Honor.

Court:

Being guilty to the offense as charged, do you admit that you have committed such crime, Mauricio?

Mauricio Petalcorin:

Yes Your Honor.

Court:

How about you Bertuldo Abais, do you admit that you have committed such crime?

Bertuldo Abais:

Yes, Your Honor.

Atty. Magallano:

Your Honor please, with the spontaneous plea of guilty entered by both accused, we pray that this mitigating circumstance of plea of guilty be considered.

Fiscal Vestal:

Your Honor please, considering that the penalty imposed on the accused is serious, I ask the Court that the accused in the interest of justice be given another day(s) to reflect on their respective plea.

Atty. Magallano:

I have already conferred with both accused and they have no second thoughts and they said they would plea guilty.

Court:

I think it is better to set this case to another day for the reception of the evidence for the prosecution.

Fiscal Vestal:

Yes Your Honor."[6]

The case was reset for the reception of the evidence for the prosecution and to enable the appellant to ponder on the consequences of his plea. As above related, the prosecution presented two witnesses. Porcadilla who was present during the incident gave a blow by blow account of what happened and as to the participation of the

appellant. His account is corroborated by Evardo who investigated appellant and who executed an extrajudicial statement admitting his complicity after he was informed of his constitutional rights.

It is observed that the proceeding undertaken during the arraignment leaves much to be desired. The court did not impress on the appellant the consequences of his plea of guilty and the probable penalty that may be imposed on them. Its duty is to conduct a searching inquiry into the voluntariness and full consequences of the plea.[7] Although it may be assumed that the counsel de oficio of the appellant may have duly warned him of the effect of his plea when he conferred with him, one cannot dispel the possibility that said counsel may have advised the appellant that due to the mitigating circumstance of voluntary plea of guilt, he may be imposed only the lesser penalty of reclusion perpetua and not death. Such assumption of course is erroneous as brought out in the sentence imposed by the trial court as the circumstances of the case warrant that regardless of the attending circumstances the imposable penalty was death. Thus, there was the need for the trial court to take the necessary measures to see that the accused really and truly comprehended the meaning, full significance, and consequence of his plea.

Nevertheless, even without considering said plea of guilty on the part of the appellant, as above discussed there is adequate evidence on the record on which to predicate the conviction of the appellant. In *People vs. Nismal*, [8] this Court under similar circumstances held as follows:

"As a rule, this Court has set aside convictions based on pleas of guilty in capital offenses because of improvidence of the plea only when such plea is the sole basis of the judgment of the condemnatory judgment. When, as in this case, the trial court in obedience to this Court's injunction in *Apduhan* and similar cases, receives evidence to determine precisely whether or not the accused has erred in admitting guilt, the manner in which the plea of guilty is made loses legal significance, for the simple reason that the conviction is, as in this case, predicated not on the plea but on the evidence proving the commission by the accused of the offense charged. In the instant case, ten witnesses testified for the prosecution, all of them cross examined by the defense counsel. More than that, the accused submitted the case without presenting any evidence. He did not dare to testify to deny the inculpatory testimonies and documents and real evidence presented against him. Verily, under these circumstances, to insist on the invalidity of the plea of the accused can serve no more effect than to deprive the accused of the credit of the mitigating circumstance that such plea connotes."

WHEREFORE, with the modification that the penalty imposed is reduced to reclusion perpetua and the indemnity to be paid by appellant to the heirs of victim is increased to P30,000.00, the decision appealed from is **AFFIRMED** in all other respects, with costs against the appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibits F and F-1.

[2] Exhibit A.

[3] Exhibit C.

[4] Pages 6-7, Rollo.

[5] Pages 11 to 12, Rollo.

[6] TSN, July 14, 1983, pages 3 to 5.

[7] *People vs. Verano*, G.R. No. 45589, July 28, 1988.

[8] 114 SCRA 487 (1982).

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