

PEOPLE OF THE PHILIPPINES, PLAINTIFF APPELLEE, VS. RUBEN BACHO @ RUBEN PADOLLA, RAYMUNDO HORCA @ MUNDO, EDUARDO PARAGATO @ DAYDO, AND ROGELIO MUNCADA @ NGOLA, DEFENDANTS. RUBEN ...

G.R. No. 66645. March 29, 1989

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-66645/>

PADILLA, J.:

Ruben Bacho alias Ruben Padolla, Raymundo Horca alias Mundo, Eduardo Paragato alias Daydo, and Rogelio Muncada alias Ngola were charged with the crime of Murder before the Court of First Instance of Northern Samar, docketed therein as Criminal Case No. 1381, committed as follows:

"That on or about the 16[th] day of April 1981, at around 11:30 o'clock in the evening, in the municipality of Catarman, province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolos, an iron pipe 5 feet long and two inches in diameter, a chair, and a piece of stone, conspiring together, confederating with and mutually helping one another, together with one Bregido Escasinas @ Breeding who is still at large, with intent to kill, evident premeditation and treachery, and with abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, stab, club, and hit one Felipe Openiano, Jr., with said weapons, which the herein accused had conveniently provided themselves for the purpose, thereby inflicting upon the latter multiple serious injuries and mortal wounds on different parts of his body, which directly caused his death."[1]

When arraigned, the accused Ruben Bacho alias Ruben Padolla, Raymundo Horca and Eduardo Paragato entered pleas of "Not Guilty." However, the arraignment of Rogelio Muncada alias Ngola, a deaf-mute, who was found to be mentally ill, was deferred until such time as he could face his accusers.[2]

He was to die later at the Provincial Jail during the trial of this case and the case against him was dismissed.[3]

Before the trial, the accused Raymundo Horca and Ruben Bacho alias Ruben Padolla offered to plead guilty to the lesser offense of homicide, but the trial court denied their request.[4]

Consequently, trial was conducted and at the completion thereof, Judge Andres Santos found the three (3) accused guilty of the crime charged and sentenced each of them to suffer the death penalty. The dispositive part of the decision reads as follows:

"WHEREFORE, premises considered, the Court declares all the accused Ruben Bacho, alias Ruben Padolla, Eduardo Paragato and Raymundo Horca, GUILTY of the offense of MURDER, committed with the attendant qualifying circumstances of TREACHERY and ABUSE OF SUPERIOR STRENGTH, without any mitigating circumstance and sentences each of them to suffer the supreme penalty of DEATH. The accused must pay 1/5 each of the amount of twelve Thousand Pesos (P12,000.00) to the heirs of Felipe Openiano, Jr., without subsidiary imprisonment in case of insolvency. They are entitled full credit of the preventive imprisonment they have suffered if they have signed the agreement pertaining to convicted prisoners, with costs against the

accused.

"The case against Rogelio Muncada, who died at the Provincial Jail, is hereby ordered dismissed, with costs de oficio." [5]

In view of the penalty imposed, the records of the case were elevated to this Court for review. With the commutation of the death penalty to reclusion perpetua pursuant to Art. III, Sec. 19(1) of the 1987 Constitution, the accused were asked if they wanted to continue with their case as an appealed case, [6] and the said accused, except for Raymundo Horca who died in the meantime, [7] manifested their desire to proceed with their case as an appealed case. [8]

The evidence for the prosecution shows that at about 11:30 o'clock in the evening of 16 April 1981, Melchor Mora and the deceased Felipe Openiano, Jr. were walking along Del Pilar Street in Catarman, Northern Samar, towards the garage of Estanislao de Silva. They just came from the house of one Jose Sevilla where Melchor Mora remitted the proceeds of the sale of fresh fish he got from the said Jose Sevilla for sale in the market. [9] Before reaching the garage, however, Melchor Mora stopped and urinated at the side of the road. Felipe Openiano, Jr. did not wait for him and went ahead. After relieving himself, Melchor Mora went to the garage of Estanislao de Silva. But, Felipe Openiano, Jr., was not there. So he went back to Del Pilar Street and walked towards the corner of Nalazon Street. [10]

About 11 meters ahead of him (Mora) and near the corner where a Pepsi Cola truck was parked, he saw Ruben Bacho, Eduardo Paragato, Raymundo Horca, Rogelio Muncada and Brigido Escasinas "ganging up" on Felipe Openiano, Jr. and taking turns in boxing him. He also saw Ruben Bacho stab Felipe Openiano, Jr. at the back which caused the latter to fall. Melchor Mora tried to help Felipe Openiano, Jr., but Ruben Bacho, who was holding a bolo, prevented him from coming near.

Fortunately, a man with flashlight (Nicolas Ubaldo) arrived, and Eduardo Paragato, Raymundo Horca and Brigido Escasinas scampered away towards the bodega of the Pepsi Cola. Nicolas Ubaldo told him (Mora) to report the incident to the police and when Melchor Mora came back with some policemen a few minutes later, Ruben Bacho was still there brandishing his bolo and challenging everybody to a fight. The policemen arrested Ruben Bacho. They also brought the victim to the hospital, but he died on the way to the hospital. [11]

Dr. Hernando Cometa, Provincial Health Officer of Northern Samar, conducted an autopsy on the cadaver of Felipe Openiano, Jr. and found three (3) stab wounds on the body of the deceased, two (2) of which were located at the front and one at the back. He also found abrasions under the left eye, nose, left elbow, knees and left shin and hematoma below the sternal notch, as well as an incised wound on the right index finger. [12]

The accused-appellants, upon the other hand, denied having inflicted the wounds which resulted in the death of Felipe Openiano, Jr. Ruben Bacho alias Ruben Padolla declared that while he was lying on a bench beside the parked Pepsi Cola truck in the evening of 16 April 1981, which was a Maundy Thursday, a person came and held him by the neck and struck him with a hollow block on the head. He showed a scar above his left eye. Then, when the man stabbed him, hitting him at the right lower armpit, he pushed the man and ran away. He was later brought to the Northern Samar General Hospital where he was treated for his wounds. [13]

The appellant, Eduardo Paragato, for his part, stated that he was asleep at the back of the Pepsi Cola Bodega and did not know of the incident until he woke up the next day. [14]

The trial court did not give credence to the claims of the accused and found them guilty of the crime of Murder, qualified by treachery and abuse of superior strength.

Counsel de oficio of defendants-appellants now claims, and the Solicitor General agrees, that the trial court erred

in finding that there was conspiracy in the killing of Felipe Openiano. Jr. and that the crime committed by the appellants is murder, qualified by treachery and abuse of superior strength.

We find no merit in the contention that no conspiracy existed in the commission of the crime. The evidence presented by the prosecution clearly indicates that the acts and behavior of the accused reveal their common purpose to assault and inflict harm upon the deceased and that there was a concerted execution of that common purpose from which the element of conspiracy can be deduced.

The existence of a common agreement to assault the deceased can be inferred from the fact that the accused, who were all workers in the warehouse of the Pepsi Cola Bottling Co. in Catarman, Northern Samar,[15] had ganged up on the deceased Felipe Openiano, Jr. and took turns in beating him up,[16] and fled together towards the other side of a parked Pepsi Cola truck.[17]

The fact that it was the appellant Ruben Bacho who wielded the bolo and stabbed the deceased while his co-accused had merely used their fists in attacking the deceased cannot be considered an indication of lack of conspiracy, because the use of the bolo in order to inflict injury upon the deceased is not a radical departure from what the accused had intended to commit which is to inflict serious injury upon the deceased. As stated by this Court in *People vs. Enriquez*:[18]

"x x x The accused had undoubtedly conspired to do grave personal injury to the deceased, and now that the injuries actually inflicted have resulted in death, they cannot escape from the legal effect of their acts on the ground that one of the wounds was inflicted in a different way from that which had been intended, x x x In *United States vs. Patten*, the court said: 'Conspirators who join in a criminal attack on a defenseless man with dangerous weapons, knock him

down, and when he tries to escape, pursue him with increased numbers, and continue the assault, are liable for manslaughter when the victim is killed by a knife wound inflicted by one of them during the beating, although in the beginning they did not contemplate the use of a knife, (42 Appeals, D.C., 239)."

We find, however, that the commission of the offense is not attended by treachery. For alevosia or treachery to be appreciated as an aggravating or qualifying circumstance, the offender should have employed means, methods or forms in the execution of the crime which tended directly and specifically to insure its execution without any risk to himself arising from the defense which the offended party might make. It must clearly appear that the method of assault adopted by the aggressor was deliberately chosen with a special view to the accomplishment of the act without risk to the aggressor. Hence, it has been ruled that alevosia cannot be appreciated against the accused where the crime was the result of a casual encounter and the accused had no time to reflect on the method of executing the crime.[19]

Alevosia cannot also be appreciated where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed.[20]

The evidence presented by the prosecution in this case does not show the manner in which the aggression was made or how the act which resulted in the death of the deceased Felipe Openiano. Jr. began and developed. Melchor Mora, who testified for the prosecution, merely declared that when he found that Felipe Openiano, Jr. was not in the garage of Estanislao de Silva, he left the place and went back to Del Pilar Street, and that while he was walking along the street, he saw, at a distance, the deceased Felipe Openiano. Jr., being assaulted by five (5) persons. But, he did not see how the incident began.

Neither did the other prosecution witness, Nicolas Ubaldo, see how the aggression started. According to him, he was walking along Del Pilar Street when he saw at a distance a group of persons who clashed, after which a

person fell and when he focused his flashlight on them, he recognized the fallen man to be the deceased, Felipe Openiano, Jr. His testimony reads, as follows:

"Q

What did you observe or witness in that incident?

A

What I actually saw was that there was a group of persons which clashed after that there was one who fell down already: in less than a minute there was one fell down.

Q

About how far were you to that group of persons who clashed and in less than one minute one person fell down?

A

Not more than 4 fathoms away.

Q

Finally did you recognize that person who fell down after the clashed?

A

When I beamed my flashlight it was Felipe Openiano, Jr.

Q Besides the person who fell down, how many persons were there who were in the group which clashed?

A I saw about 5."^[21]

Besides, it would appear that the accused had no opportunity to plan the way, method, or means with which to execute the felony, as the meeting between the accused and the deceased was accidental since there is no evidence that the accused knew beforehand that the deceased would be passing by the warehouse where they were working at that particular time.

The mere fact that the victim had a stab wound at the back is not indicative of alevosia, it appearing that the deceased had sustained two (2) other stab wounds at the front,^[22] and the evidence clearly shows that the stab wound at the back was the last to be inflicted. Melchor Mora declared that the deceased fell after he was stabbed by Ruben Bacho. His testimony reads, as follows:

"Q Where was the victim hit by Bacho when he was stabbed?

A At the back and that was the cause why he fell down." [23]

But, the commission of the felony is characterized by abuse of superiority in number since there were five (5) persons, one of whom (Bacho) was armed with a bolo, another (Horca) with a lead pipe and another (Muncada) with stones, who all took advantage of their combined strength in assaulting their unarmed victim.

It results that the crime committed is Murder, qualified by abuse of superior strength. There being no mitigating nor aggravating circumstance attending the commission of the crime charged, the penalty to be imposed upon the accused should be the medium period of the penalty prescribed under Article 248 of the Revised Penal Code, which is reclusion perpetua. [24] But the indemnity to be paid to the heirs of the deceased should be increased to P30,000.00 in line with recent decisions of the Court, to be paid, jointly and severally, by the accused Ruben Bacho alias Ruben Padolla and Eduardo Paragato since the case against the accused Rogelio Muncada and Raymundo Horca was dismissed following their death. [25]

WHEREFORE, the judgment appealed from is hereby **AFFIRMED** with the modification that the accused-appellants Ruben Bacho alias Ruben Padolla and Eduardo Paragato are sentenced to suffer the penalty of reclusion perpetua and to pay, jointly and severally, the heirs of the deceased Felipe Openiano, Jr. in the amount of P30,000.00. With proportionate costs against the appellants.

SO ORDERED.

Regalado, J., concurs.

Melencio-Herrera, J., with reservations re penalty per her dissent in Millora, G.R. Nos. L-38968-70.

Paras, J., concurs subject to reservations on the penalty.

Sarmiento, J., concurs subject to his reservations re the penalty manifested in the Millora case, G.R. Nos. L-38968-70.

[1] Original Record, p. 30.

[2] Id., pp. 50-51.

[3] Id., p. 135.

[4] Id., p. 55. see also tsn of May 27, 1983, p. 10.

[5] Id., p. 135.

[6] Rollo, p. 102-a.

[7] Id., p. 101.

[8] Id., p. 108.

[9] Tsn of May 13.1983, pp. 4, 9.

[10] Id., p. 11.

- [11] Id., pp. 5-6.
- [12] Tsn of Nov. 15, 1982. pp. 2-4: also Exh. B.
- [13] Tsn of May 17, 1983. p. 5: also Exh. I.
- [14] Tsn of June 17, 1983. p. 5.
- [15] Tsn of Oct. 12, 1982. p. 5.
- [16] Tsn of May 13, 1983. pp. 13-15.
- [17] Tsn of Oct. 12, 1982. pp. 3-4.
- [18] 58 Phil. 536. 542-543.
- [19] People vs. Plaza, G. R. No. 69511. Nov. 22, 1985. 140 SCRA 277.
- [20] U.S. vs. Perdon, 4 Phil. 141.
- [21] Tsn of Oct. 12, 1982. p. 3.
- [22] See Autopsy Report. Exh. B. Original Record, p. 2.
- [23] Tsn of May 13, 1983, p. 5.
- [24] People vs. Munoz, et al, G.R. No. 66634, February 27, 1989.
- [25] Original Record, p. 135; Rollo. p. 106.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.