

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO RAVELO, JERRY RAVELO, BONIFACIO PATYONG; PADILLA, ROMEO ASPIRIN, NICOLAS GUADALUPE, HERMIE PAHIT AND JOSEN RAVELO, ACCU...

G.R. Nos. 78781-82. October 15, 1991

Ponente: GUTIERREZ, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-nos-78781-82/>

GUTIERREZ, JR., J.:

The accused Pedro Ravelo, Bonifacio "Patyong" Padilla, Romeo Aspirin, Nicolas Guadalupe and Hermie Pahit appeal the two (2) judgments of the Regional Trial Court of Tandag, Surigao del Sur, Branch 27, which convicted them of murder of one Reynaldo Cabrera Gaurano and of frustrated murder of Joey Lugatiman.

In the murder case (Criminal Case No. 1187), each of the accused was sentenced to serve the penalty of reclusion perpetua and to severally pay an indemnity of P25,000.00 to the mother of the victim. In the frustrated murder case (Criminal Case No. 1194), each of them was sentenced to serve the penalty of imprisonment ranging from eight (8) years and one (1) day of prison mayor as minimum to ten (10) years of prison mayor as maximum.

The accused were all charged with kidnapping with murder and kidnapping with frustrated murder. However, the trial court found accused-appellants guilty only of murder and frustrated murder as convicted. The accused Josen Ravelo and Jerry Ravelo are still at large.

The present petition was originally one that sought the issuance of a writ of habeas corpus. The Court instead resolved to treat it as an appeal in view of the near capital nature of the crimes for which the appellants were convicted.

The accused-appellants are all members of the Civilian Home Defense Force (CHDF) stationed at a checkpoint near the airport at Awasian in Mabua, Tandag, Surigao del Sur. The prosecution alleged that they stopped the two (2) victims for questioning on the suspicion that the latter were insurgents or members of the New People's Army. (NPA).

In Criminal Case No. 1187, the accused-appellants were charged with having committed kidnapping with murder in the following manner:

"That at approximately 6:30 o'clock in the evening, May 21, 1984, in Barangay Dawis, San Agustin Sur, municipality of Tandag, province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, PEDRO RAVELO, JERRY RAVELO, BONIFACIO 'Patyong' PADILLA, ROMEO ASPIRIN, NICOLAS GUADALUPE, HERMIE PAHIT and JOSEN RAVELO, conspiring, confederating, and mutually helping each other did, then and there, wilfully, unlawfully and feloniously take, pick-up, kidnap by means of force, one REYNALDO CABRERA GAURANO, a minor, while the latter was walking along Tandag Bridge at barangay Dawis, San Agustin Sur, then the above-named accused carried away the said, Reynaldo Cabrera Gaurano to barangay Awasian and detained, kept and locked him in a room at the house of Pedro Ravelo, one of the accused herein, from 7:00 o'clock in the evening, May 21, 1984 to 4:00

o'clock dawn, May 22, 1984, or a period of 10 hours under restraint and against the will of said minor, Reynaldo Cabrera Gaurano and that the above named accused during the said period of kidnapping, maltreated and refused to release said Reynaldo Cabrera Gaurano, and while on the same period of time at about 4:00 o'clock dawn, May 22, 1984, at barangay Awasian, Tandag, Surigao del Sur and within the jurisdiction of this Honorable Court, the above-named accused, Pedro Ravelo, Jerry Ravelo, Bonifacio 'Patyong' Padilla, Romeo Aspirin, Nicolas Guadalupe, Hermie Pahit, and Josen Ravelo, conspiring, confederating, and mutually helping each other, armed with a pistol, armalites, and carbines, with intent to kill, with treachery and evident premeditation did, then and there wilfully, unlawfully and feloniously, assault, attack, cut, slash, and burn, the said Reynaldo Cabrera. Guarano, hitting and inflicting upon the latter, the following wounds or injuries:

1. Blisters formation noted all over the body reddish in color, which easily peel off on pressure; containing clear fluids; with hemorrhagic reaction beneath blisters;
2. Swollen face with contusion and hematoma formation; loosening of hair notes; right ear missing with circular incised wound around;
3. Incised wound 24 cm. length around the neck cutting the esophagus, pharynx, arteries and veins; up to the 2nd cervical bone in depth;
4. Contusions and hematomas noted anterior chest wall, abdomen and at the back; upper and lower extremities of different sizes and forms." (Rollo, pp. 8-9)

In Criminal Case No. 1194, they were charged with kidnapping with frustrated murder committed as follows:

"That on or about 1:00 o'clock in the morning on May 22, 1984 in barangay Awasian, municipality of Tandag, province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above named accused PEDRO RAVELO, HERMIE PAHIT, BONIFACIO PADILLA, ROMEO ASPIRIN, NICOLAS GUADALUPE, JERRY RAVELO AND JOSEN RAVELO, conspiring, confederating and mutually aiding one another armed with the deadly weapons such as pistols, armalite and carbine, did then and there wilfully, unlawfully and feloniously by means of force and at gun point stop the hauler truck of the South Sea Merchant Company which was on the way to Tandag, Surigao del Sur from sitio Lumbayagan, Barangay Maticdom, municipality of Tandag, Surigao del Sur and kidnap one JOEY LUGATIMAN, who is on board the said hauler truck by forcibly taking said Joey Lugatiman and carry him to the house of accused Pedro Ravelo then to the Airborne Headquarters at Mabua, Tandag, Surigao del Sur, and while thereat and in pursuance of their conspiracy, with intent to kill, with evident premeditation and treachery and by taking advantage of their superior strength being armed with deadly weapon did then and there wilfully, unlawfully and feloniously assault, by hitting and inflicting upon the latter the following wounds or injuries:

1. Small abrasion and hematoma, both wrist and left ankle;
2. Multiple small abrasions, chest and right neck and right ankle;
3. Multiple small abrasions and small hematoma, back;
4. Abrasion, upper left lips." (Rollo, pp.18-19)

The trial court based its findings on evidence presented by the prosecution at the trial proper which commenced several months after the informations were filed. The prosecution evidence in Criminal Case No. 1187 are quoted from the judgment, thus:

"Witness Edilberto Salazar, 17 years old, student and resident of Tandag, testified that he knew all the accused Pedro Ravelo, Bonifacio Padilla, Romeo Aspirin, Nicolas Guadalupe and Hermie Pahit. On May 21, 1984 at 5:30 in the afternoon, he was with a certain Diego Gallardo and Reynaldo Cabrera Gaurano walking from Dawis to Dagocdoc to attend a dance. The dance not having began being too early yet, they decided to go back

to Dawis. On their way back while crossing the Tandag bridge across the Tandag river, the accused Pedro Ravelo, Jerry Ravelo, Josen Ravelo, Bonifacio Padilla, Romeo Aspirin, Hermie Pahit and Nicolas Guadalupe stopped them by pointing their guns. He and Diego Gallardo ran away towards a group of old junk tractors and hid there. He saw Reynaldo Gaurano chased by all the accused. He saw Reynaldo Gaurano ran up to the house of a certain Fernando Cortes which was just opposite the tractors they were hiding, and which was just across the road in front of the house of Fernando Cortes. Reynaldo Gaurano was caught up in the house by Jerry Ravelo, Bonifacio Padilla and Nicolas Guadalupe. He saw Reynaldo Gaurano forced and dragged down to a waiting pick-up on the road by Jerry Ravelo, Bonifacio Padilla and Nicolas Guadalupe. Reynaldo Gaurano was loaded on the pick-up owned and driven by the accused Pedro Ravelo. All the accused, together with Reynaldo Gaurano rode on the pick-up towards the Tandag airport at Awasian. After Reynaldo Gaurano disappeared, he and Diego Gallardo went to the police and reported the matter that Reynaldo Gaurano was brought by the accused to the airport.

On May 23, 1984, he was with the group who exhumed the body of Reynaldo Gaurano under a mango tree near the Tandag airport and pointed to the investigator that that was the body of Reynaldo Gaurano with blisters, without ear and a big wound on the neck. Placed on the mat the cadaver was brought to the Mata Funeral Parlor at Tandag, Surigao del Sur in that morning of May 23, 1984.

Witness Francisco Villasis, 48 years old, farmer and resident of Awasian, testified that he knew very well all the accused and that he personally saw them in the early dawn of May 22, 1984. He declared that he was at the Awasian creek near a mango tree catching crabs with the use of a 'panggal', a bamboo knitted trap. From a distance of around twenty meters away, he saw a man hanging from the mango tree over a fire. He saw the accused Jerry Ravelo placed fire on the hanging person and the accused Romeo Aspirin placed a burning torch made of dried coconut leaves at the back of the hanging person. The man hanging was not known to him. The man hanged was also surrounded by Pedro Ravelo, Josen Ravelo, Nicolas Guadalupe, Hermie Pahit and Bonifacio Padilla. For five minutes watching, he saw the clothing and body burned, he heard the moanings of the person and heard the laughs of the accused. After witnessing that horrible incident he went home hurriedly. On cross examination he further stated that he saw for the first time the man already hanging under a fire (sic).

Witness Joey Lugatiman, 22 years old and resident of Dawis, Tandag, testifies that all the accused are known to him for a long time. On May 21, 1984, with ten companions they went to a place in the interior called Maticdum, Tandag, Surigao del Sur. After five hours stay, he, together with his companions left Maticdum past midnight for Tandag on a logging truck. As soon as they passed by the airport, they were stopped by the accused and were told to go down from the truck for questioning. He was brought to the house of the accused Pedro Ravelo near the checkpoint. He was asked if he was Joey Lugatiman and if he knew Reynaldo Gaurano. There at the headquarters, he was asked if he was an NPA. For almost an hour stay at the headquarters he was boxed, kicked and manhandled by Pedro Ravelo and by the other accused with the use of their guns until he became almost unconscious. Then, from the headquarters at Mabua on that early dawn he was brought again back in the same pick-up to Awasian airport, to the house of Pedro Ravelo and then to the house of Bonifacio Padilla. Before proceeding to the house of Bonifacio Padilla, he saw his friend Reynaldo Gaurano, one meter away, already weak with bruises on his face, hands tied at the back and with a gag around the mouth, moving as if in the act of trying to free himself, with a bleeding mouth. When he reached the house of Bonifacio Padilla, he was chained and tied to the wall near the window of the house. Alone, he peeped through the window and saw Reynaldo Gaurano hanging up the mango tree with fire below him. He heard the moanings of Reynaldo Gaurano while hanging from the mango tree thirty meters away from the window of the house of Bonifacio Padilla. He saw Pedro Ravelo and Josen Ravelo set fire on the body of Reynaldo Gaurano. At 5:00 o'clock a.m. May 22, 1984, when alone, after being told that he would be killed at 9:00 o'clock in the evening at the Awasian bridge, he escaped by being able to untie himself at 10:00 o'clock in the morning of May 22, 1984. He reported what happened to him and to Reynaldo Gaurano, to his parents and then to the police authorities and later submitted for physical examination on that day, May 22, 1984 and finally was investigated

on May 23, 1984 in connection with this case. On cross examination he said that he knew all the accused. He knew that all the accused are members of the CHDF.

Witness Zosima Gaurano, 46 years old, market vendor, a native of Tandag, testified that she is the mother of Reynaldo Gaurano. Her son Reynaldo Gaurano left Cebu City on April 12, 1984 for Tandag. On May 22, 1984 she received a telegram from her sister Remedios Fernandez that her son Reynaldo is dead. She left for Tandag upon receipt of the telegram and arrived at Tandag on May 24, 1984. Upon her arrival she went to the Mata Funeral Parlor and then she found the dead body of her son Reynaldo Gaurano inside the coffin and she saw many parts of the body of her son with burns. She suffered moral damages and other expenses to the tune of P64,350.00.

Witness Remedios Cabrera Fernandez, widow, meat vendor and resident of Tandag testified that Reynaldo Gaurano is her nephew because his mother Zosima is her younger sister. Her nephew Reynaldo Gaurano was here in Tandag on vacation. On May 20, 1984, with two companions, Diego Gallardo and Edilberto Salazar, he failed to go home to the house of her sister. After the second day, May 22, 1984 at around 5:00 o'clock in the afternoon Edilberto Salazar and Diego Gallardo informed her that Reynaldo Gaurano was kidnapped by Pedro Ravelo and his men. The message was relayed to her to Atty. Buenaflor and to Col. Jesus Hermosa. On the following day, May 23, 1984, Col. Hermosa, with other officers inspected the house of Pedro Ravelo and the nearby surroundings at Awasian. She was made to identify an exhumed body at the back of the house of Pedro Ravelo near the mango tree. She saw the dead body of her nephew Reynaldo Gaurano without an ear, the neck was almost cut, entire body with blisters, and naked. His body was pictured and later on brought to the Mata Funeral Parlor at Tandag. She requested Dr. Romeo delos Reyes of the Tandag Provincial Hospital to conduct an autopsy and after which the dead body of Reynaldo Gaurano was embalmed to await the arrival of the mother from Cebu City.

Witness Dr. Romeo delos Reyes, a senior resident physician of the Tandag Provincial Hospital testified that he conducted an autopsy on the dead body of a certain Reynaldo Gaurano, Exhibit "A", at the Mata Funeral Parlor. He found blisters formation caused by fire burns throughout; the body was reddish and skin peels off easily; swollen face, hematoma, contusion, losing of hair, wound around the neck; and these injuries could have been inflicted 36 to 48 hours before the autopsy. Death certificate, Exhibit "B" was issued. The burns and the injuries above stated were suffered before Reynaldo Gaurano died.

Witness Roberto Awa, a photographer of the Similar Studio who, for fifteen years, is a photographer at Tandag, testified that he took the pictures of a dead man inside a hole upon orders of Col. Hermosa at Awasian near the airport. He took pictures as shown in Exhibit "C" "C-1"; he took 8 positions of the dead body. While yet inside the hole exhibit "D" and as shown in Exhibits "E" and "F", that was the dead body of Reynaldo Gaurano near the mango tree; Exhibit "G", while the cadaver was inside the hole and Exhibit "H" is the picture while the body was lying on the mat.

Witness Cresenciano Rulona, Police Investigator of the Tandag Police Force, testified that at around 8:00 o'clock in the morning of May 23, 1984, he was the assistant team leader of the group that proceeded to Tambacan, Awasian, Tandag to look for and inspect the place where a certain Reynaldo Gaurano was kidnapped. Under a mango tree and about 25 meters near house of Bonifacio Padilla the group recovered a P.25 coin, a small comb, two zippers and burned pieces of cloth and burned coconut leaves, together with new excavated soil. Further search under the mango tree led to the very place where the body of Reynaldo Gaurano was buried. At around 10:00 o'clock a.m., May 23, 1984, they exhumed the dead body which was buried under a depth of around one meter under the mango tree which was around 25 meters from the house of Bonifacio Padilla and around 150 meters from the house of Pedro Ravelo. The cadaver was first identified to be that of Reynaldo Gaurano by Edilberto Salazar. A photographer was called and pictures were taken of the dead body of Reynaldo Gaurano from the hole and then the body was brought to the surface and placed on the mat. Not one of the accused was present during the period while the group was searching and exhuming the body of Reynaldo Gaurano. The body of Reynaldo Gaurano shows signs of burns and several injuries, and was

finally brought to the funeral parlor at Tandag.

As shown by the evidence, Reynaldo Cabrera Gaurano died on May 22, 1984 at Awasian, Tandag, Surigao del Sur. His death was the result of the shock secondary to the wound around the neck, Exhibit "A", and occurred while he was hanged by the accused with hands tied to a branch of a mango tree. Sufferings of pains, through his moanings, were augmented and aggravated by the tortures inflicted as vividly seen through the removal of the right ear, the wound around the neck and placing of fires on his body, and the fire below his feet. Not only were these acts brutal and cruel but also heartless and savage acts of the accused, devoid of an iota of sympathy, who, instead, were happy and delighted to see the miseries suffered by their victim. Further, it was shown that they helped one another or conspired with one another in torturing with the use of their firearms, and in killing Reynaldo Gaurano." (Rollo, pp. 10-16)

Meanwhile, the prosecution evidence in Criminal Case No. 1194 are as follows:

"The evidence of the prosecution consisted of the testimonies of the witnesses and the Medical Certificate. Witness Joey Lugatiman, 22 years old, resident of Dawis, Tandag, Surigao del Sur testified that he personally knew all the accused for quite a long time. On May 21, 1984 with ten companions he went to a place called Maticdom, Tandag, Surigao del Sur. After staying at Maticdum for five hours he went home on board a cargo truck. On the way near the Tandag Airport they were stopped by all the accused. They, including himself, were ordered by the accused Pedro Ravelo to come down from the truck. Then he was brought to the nearby house of Pedro Ravelo and there he was asked if he was Joey Lugatiman and if he knows Reynaldo Gaurano.

His companions were ordered to proceed to Tandag while he was loaded on a service pick up driven by the accused Pedro Ravelo. He was brought by all the accused to the Headquarters of the Airborne Company at Mabua, Tandag, Surigao del Sur. In the Headquarters of the Airborne, he was interrogated if he was an NPA. After hearing his denial of being an NPA he was boxed, kicked and pistol whipped by the accused Pedro Ravelo and his co-accused. He was manhandled by the accused with the use of the firearms for almost an hour. Later he was brought back again to Awasian Airport to the house of Pedro Ravell (should be Ravelo) then to the house of Bonifacio Padilla. But before proceeding to the house of Bonifacio Padilla, he saw his friend Reynaldo Gaurano one meter away, already weak with bruises on the face, hands, tied at the back and gagged around the mouth. Reynaldo Gaurano could not talk and he was moving in the act to free himself and with a bleeding mouth. Upon arriving in the house of Bonifacio Padilla he was chained and hogtied near the open window by the companions of Pedro Ravelo. Not long after, through the window, he saw Reynaldo Gaurano hanging up the mango tree and a big fire was set on the ground. He heard the groaning and moaning of Reynaldo Gaurano. He saw Pedro Ravelo and Jerry Ravelo setting fire on the right and left side of Reynaldo Gaurano with the use of dried coconut leaves. He saw all the accused surrounding and watching the hanging and burning of Reynaldo Gaurano. It was Pedro Ravelo who cut the right ear and who also slashed the neck of Reynaldo Gaurano. He could not shout because he was afraid. While lying down after he saw the horrible incident he fell asleep. At around 5:00 o'clock in the morning of May 22, 1984 he awoke and saw Bonifacio Padilla bringing nylon line with which he was tied to a piece of wood; while Nicolas Gaudalupe gagged him, and he was blind folded by Hermie Pahit. While the three were about to leave him behind, he heard them saying that they will kill him at the Awasian bridge at 9:00 o'clock in the evening of May 22, 1984. When he was left alone in that house he successfully freed himself. He jumped out of the window and escaped via the nipa palm grove. As consequences of the manhandling of the accused, he suffered several bruises on the breast, at the back and his mouth. He was physically examined by a doctor in the Provincial Hospital on that day, Exhibit "A", "A-1" and "A-2" which is Exhibit "1" and "2", "1-A", and "1-B" for the defense. On cross examination, he testified that he escaped at around 10:00 o'clock in the morning from the house of Bonifacio Padilla, and that he knew all the accused to be members of the Civilian Home Defense Force (CHDF). He testified that the house of Pedro Ravelo and the house of Bonifacio Padilla are around one hundred (100) meters away from each other.

Witness Dr. Petronila Montero testified that she is a resident physician of the Provincial Hospital, and on May

22, 1984 she examined Joey Lugatiman and she issued a medical certificate, Exhibit "A". All her findings were placed down in Exhibit "A". Upon being cross-examined, she testified that the hematomas, small abrasions will not cause death. When she examined Joey Lugatiman, she found that he was weak and haggard caused by the injuries mentioned in Exhibit "A".

Witness Emilio Espinoza, 68 years old, farmer, resident of Awasian, Tandag testified that while he was tendering his carabao near the house of Bonifacio Padilla he was surprised to see Joey Lugatiman, wearing blue t-shirt and a jogging pants jumped out of the window of the house of Bonifacio Padilla, twelve meters away from him. He saw Joey Lugatiman ran towards the nipa palm then ran towards the airport. He knew Joey Lugatiman because during the barrio fiesta Joey used to stay in his house at Awasian.

Witness Bernardo Frias, 21 years old, farmer and resident of Awasian, testified that on May 22, 1984 he was in Maticdom together with Joey Lugatiman, Miguel, Gregorio Urbiztondo, Leonildo Naragas, Jesus Espinoza, Mauricio Estoya, the driver and a helper from 5:00 o'clock in the afternoon and started to go home at around 11:00 o'clock p.m. for Tandag. On the way, near the airport, he, together with his companions on a logging truck was stopped by the accused Pedro Ravelo, Jerry Ravelo, Josen Ravelo, Hermie Pahit, Bonifacio Padilla, Romeo Aspirin and Nicolas Guadalupe. They were ordered to come down and were made to identify each other. He saw Bonifacio Padilla dragged Joey Lugatiman to the house of Pedro Ravelo. It was Pedro Ravelo who later brought Joey Lugatiman to the pick-up. They were ordered to board on the truck except Joey Lugatiman who loaded in the pick-up driven by Pedro Ravelo. Then, the accused Bonifacio Padilla ordered the group to proceed to Tandag while Joey Lugatiman was left behind. He reported to the police authorities that his companion Joey Lugatiman was being held under arrest at Awasian and that he knows all the accused before this incident." (Rollo, pp. 21-24)

The accused-appellants were not able to or did not present evidence on their behalf, nor were they themselves able to confront the prosecution witnesses who testified against them except through a counsel de oficio appointed by the trial judge to represent them namely, Atty. Pretextato Montenegro and Atty. Florito Cuartero, in place of their defense counsel, Atty. Eliseo Cruz.

The continued absence of Atty. Cruz, a Quezon City-based lawyer who perennially made requests for postponements by telegrams stating his inability to appear for health reasons, led to the refusal by the accused-appellants to be present at the trial. The accused - appellants alleged that Atty. Cruz left an instruction that they will not submit themselves to trial without him.

The accused-appellants now maintain that they did not "waive" their right to be present during the trial because their refusal was not done by their own free will but only in accordance with their lawyer's instructions.

The Court notes that Atty. Cruz resorted to several other delaying tactics aside from sending telegraphic notes requesting for postponements. He filed a petition for change of place of detention and venue for trial before this Court, which denied it; a first petition for habeas corpus on the ground that they should be tried by a military tribunal, which petition was denied; and a motion for new trial on the ground of lack of due process due to improper waiver of presence at the trial. This motion for new trial was granted to give the accused-appellants a last chance to be heard and be present. Still, the defense counsel failed to appear and so did the appellants.

In their second petition for habeas corpus which we now treat as an appeal, Atty. Cruz failed to file the required brief. The Court then appointed a new counsel de oficio for the accused-appellants.

Accused-appellants raised the following alleged errors of the trial court:

I

THE LOWER COURT'S FINDING THAT ACCUSED-APPELLANTS ARE GUILTY OF FRUSTRATED

MURDER HAS NO BASIS IN FACT AND IN LAW.

II

THE LOWER COURT ERRED IN CONCLUDING THAT ACCUSED-APPELLANTS WAIVED THEIR RIGHTS TO BE PRESENT DURING THE TRIALS AND TO PRESENT EVIDENCE TO PROVE THEIR INNOCENCE (Brief for Appellants, pp. 10-11; Rollo, p. 144)

It is contended that there can be no frustrated murder committed in Criminal Case No. 1194 absent any proof of intent to kill, which is an essential element of the offense of frustrated murder.

Appellants aver that the trial court erroneously based its conclusion on the fact that when Lugatiman was tied and gagged, the latter heard one of the accused-appellants utter that they would kill him at Awasian bridge.

The trial court made the following inference which we find to be erroneous:

"To this Court the real intention to kill Joey Lugatiman was made manifest at 5:00 in the morning of May 22, 1984 when the accused Bonifacio Padilla together with Hermie Pahit and Nicolas Guadalupe tied his hands to the wall with a nylon line and gagged him; and when the accused said they will kill him (Joey Lugatiman) at 9:00 o'clock p.m. at Awasian bridge. These final and parting words uttered to Joey Lugatiman eloquently expressed intent to kill. Killing, however, was not consummated because Joey Lugatiman was able to escape at around 10:00 o'clock in the morning of May 22, 1984." (Rollo, p. 25)

The facts and evidence on record do not show anything from which intent to kill could be deduced to warrant a conviction for frustrated murder. A mere statement by the accused stating that Lugatiman would be killed is not sufficient proof of intent to kill to convict a person of frustrated murder.

In a crime of murder or an attempt or frustration thereof, the offender must have the intent or the actual design to kill (US v. Burns, 41 Phil. 418 [1921]) which must be manifested by external acts. For there to be frustrated murder, the offender must perform all the acts of execution that would produce the felony as a consequence, but the felony is not thereby produced by reason of causes independent of the will of the perpetrator. A verbal expression that Lugatiman would be killed sixteen (16) hours after such statement was made is not sufficient to show an actual design to perpetrate the act. Intent must be shown not only by a statement by the aggressor of the purpose to kill, but also by the execution of all acts and the use of means necessary to deliver a fatal blow while the victim is not placed in a position to defend himself. However, after the performance of the last act necessary, or after the subjective phase of the criminal act was passed, the crime is not produced by reason of forces outside of the will of the aggressor. (People v. Borinaga, 55 Phil., 433 [1930]).

Tying the victim's left leg with a chain on a 2" by 3" piece of wood and leaving him inside the house of accused-appellant, Bonifacio Padilla are not acts that would result in death. These were done only to restrain his liberty of movement for the period of time the accused-appellants were busy hanging and burning the body of Reynaldo Gaurano some thirty (30) meters away from where Lugatiman was left. Also, tying Lugatiman's hands behind his back and his whole body to the wall, and blindfolding him were for the purpose of restraining his liberty until the evening of May 22, 1984 came.

Accused-appellants also maintain that the injuries sustained by Lugatiman from the manhandling at the Headquarters of the Airborne Company were not fatal as stated by the prosecution's expert witness, Dr. Petronila Montero; hence, there can be no frustrated murder. This is supported by the records (Exhibit "A-2", Records of Criminal Case No. 1194, p. 21; TSN, June 4, 1985, pp. 24-26) Lugatiman did not lose consciousness as a result of the blows he sustained (TSN, May 31, 1985, p. 49, Record, p. 115)

It is worthy to note that the trial court, in concluding the existence of frustrated murder, did not even use as its

basis, the manhandling of Lugatiman. The trial court in fact concedes that the real purpose of the manhandling or torture was to have Lugatiman admit and confess his being a member of the New People's Army (NPA) and the activities of the NPA's. It was the statement made by the accused-appellant Nicolas Guadalupe that Lugatiman would later be killed, that was the basis of the court for inferring the commission of frustrated murder. According to the trial court, murder was not committed because of the timely escape. Escape from the aggressors cannot establish frustrated murder without first showing that the aggressors intended to kill and that they really attacked the victim.

Under the circumstances, accused-appellants could not even be convicted of an attempt to commit murder. There was no commencement of the criminal act by overt acts which have a direct connection with the crime of murder intended to be committed. As stated earlier the manhandling, express statement of purpose, and the restraint of liberty were not such as to put the victim in danger of an imminent death. The small abrasions and hematomas of the victim resulting from the torture by the accused were not mortal. After the victim was restrained of his liberty immediately before Gaurano was killed, he was able to watch how Gaurano was burned hanging upside down from a mango tree near the Awasian bridge. Due to his fatigue and extreme weakness, he was even able to lie down and sleep after looking at the horrible incident. (TSN, May 31, 1985, pp. 22-23)

During the long period of time Lugatiman was informed that "he would be killed" and was left behind (5:00 in the morning) until he was able to escape at 10:00 in the morning, it was not certain whether or not appellants would really kill him as they did to Gaurano. Anything could have happened in between. There was no distinct evidence to prove that the accused appellants were really decided on killing him at the time specified.

The records show that Lugatiman himself was not sure that the accused-appellants would pursue it.

The uncertainty can be seen from Lugatiman's testimony on cross-examination, thus:

x x x x x x x x

Q.

Why did you say a while ago that 'I will be the next one to be hung and to be killed by Ravelo and his group'?

A.

I was just afraid that I will be the next.

Q.

Now, when you saw these persons burning the body of Reynaldo, did you hear also what the people around Reynaldo were talking of?

A.

What I heard was their laughing and the moaning.

Q.

And you heard their laughing?

A.

Yes.

Q.

Why did you know that they were laughing?

A.

Because I heard it.

Q.

Their appearance you can see?

A.

Their appearance is clear because there is a big light.

Q.

And your name was never mentioned that you will be the next to be hung?

A.

I did not hear them saying.

Q.

There were also no other people like you who were apprehended or being detained by Pedro Ravelo and his group?

A.

I did not see.

Q.

You only saw Reynaldo Gaurano, including yourself detained by Ravelo and his group on May 21, in the early

morning rather, on May 22, 1984 dawn?

A.

Yes." (TSN, May 31, 1985, pp. 54-55)

After a review of the allegations of the information in Criminal Case No. 1194 and the evidence received and admitted by the court a quo, the Court is of the view that accused-appellants are not guilty of frustrated murder but only the crime of slight physical injuries. There is evidence to show that the several small abrasions on the chest, right neck and right ankle of Lugatiman as well as the hematoma at his back was due to the hitting by a rough, hard object like a butt of a gun. The prosecution witness, Dr. Montero testified that the injuries were inflicted by some other persons aside from the victim, and needed medical treatment of four (4) to five (5) days to avoid infection. (TSN, June 4, 1985, pp. 21-26)

Accused-appellants aver that there was no deliberate waiver on their part of their right to be present at the scheduled hearing dates because they "did not appear to know the import of their decision not to appear in the trials." According to them, the judge should have explained to them the meaning and the consequences of their decision not to appear.

The issue of due process had been fully considered by this Court when we acted on the habeas corpus petition. In our May 8, 1988 resolution, we outlined in detail the reasons for our finding of dilatory tactics on the part of the petitioners and their counsel and why the lower court correctly proceeded with trial.

After stating the various incidents characterizing the initial proceedings and the trial of the case, we stated:

x x x x x x x x

"The petitioners are members of the Civilian Home Defense Force (CHDF) who have been convicted of murder and frustrated murder committed under particularly brutal circumstances. A notice of appeal was filed thirty-nine (39) days from the promulgation of judgment and was clearly out of time. A motion for new trial was also characterized by plainly dilatory tactics in its handling.

"Were it not for the effectivity of the present Constitution, there is a likelihood that the petitioners would have been sentenced to capital punishment. The near-capital nature of the crimes for which the petitioners were convicted and the rather unusual circumstances surrounding the trial of the two cases and the failure to appeal, however, call for a closer look at the judgments of conviction. This can best be done by calling for all the records of the case including the transcripts of stenographic notes. If, after the consideration of the cases as appealed cases, there appears to have been a miscarriage of Justice or a need for further evidence, the case can always be remanded for further proceedings as instructed. Otherwise, the judgment will have to be affirmed or reversed on the basis of all the present records." (Rollo, p. 73)

For purposes of this decision, we emphasize that in the morning of May 30, 1985, the date of the first day of the trial proper, or after five (5) postponements, the accused-appellants came to court without their counsel of record, Atty. Eliseo Cruz. Atty. Cruz allegedly sent a telegram through one Mrs. Delfina Cruz indicating that he met a vehicular accident and requesting a resetting of the hearing date. The several instances in which the Court received similar telegrams including one where he claimed a "very sick heart ailment" led the trial court to doubt and disregard the last request of the defense. The court had earlier categorically stated that it would entertain no further requests for postponement.

The court, in deciding to push through with the trial at 2:00 in the afternoon of May 30, 1988 and in appointing two (2) counsel de oficio for the accused-appellants did not only consider the right of the accused to speedy trial

which should not be abused by the defense by willful delays, but more so, the rights of public justice. (*Mercado v. Santos*, 66 Phil. 215 [1938]). Despite their new counsel who appeared to be doing their best, the accused-appellants insisted on absenting themselves stating that they cannot and would not appear without Atty. Cruz and allegedly for fear that they would be harassed by members of the New People's Army. At this point, the Court informed them of (1) the importance of the appointment of competent counsel de oficio considering the gravity of the offense and the difficulty of the questions that may arise during the trial; and (2) the fact that there is no legal obstacle to proceeding with the reception of prosecution evidence in their absence.

Absence at the trial did not deprive the accused-appellants of cross-examination except the right to personally confront the prosecution witnesses face to face. Notwithstanding their absence, they were represented by the counsel de oficio who took turns in cross-examining each of the prosecution witnesses.

Accused-appellants also maintain that they did not actually refuse to present evidence on their behalf. They argued that the counsel de oficio misapprehended a telegram of Atty. Cruz which stated that he (Atty. Cruz) cannot attend the June 20 and 21, 1985 trial because he had a prior engagement in another court in Ilocos Sur on those dates. They also contend that their failure to appear and present evidence was "simply because of their misplaced trust and obedience to the instructions of their counsel, Atty. Eliseo Cruz, whose negligence and lack of vigilance in the handling of the cases, despite the seriousness of the crimes charged, had caused injustice to the accused-appellants." They ask this Court to take their case as an exception to the rule that a client shall suffer the consequences of negligence or incompetence of his counsel.

The actual desire of the accused-appellants to testify and present other evidence is not manifest from a thorough review of the records of the case. If it were true that they wanted to present evidence, they should have taken advantage of the opportunity to be present, to be heard and to testify in open court with the assistance of their appointed lawyers. As a matter of fact, they were able to convince the lower court to grant them a chance to have a new trial. However, they still failed to make use of their last opportunity. They cannot now claim that they were denied their right to be present and to present evidence. This Court upholds the lower court's position that the accused-appellants were given more than generous time and opportunity to exercise their constitutional rights which should not be overemphasized at the expense of public policy.

The circumstances of the case do not preclude the application of the rule that a client is bound by the acts of his counsel who represents him. Nevertheless, at the time when the lower court appointed the de oficio counsels, the court already had ample notice of the futility of waiting for Atty. Cruz to come and appear for the defense. From the time the accused-appellants were represented by Atty. Montenegro and Atty. Cuartero, their decision not to attend the trial nor to present evidence is clearly a product of their own free will.

WHEREFORE, the appealed Judgments in Criminal Cases Nos. 1187 and 1194 are hereby, respectively, affirmed and modified as to the crime proven. The accused-appellants PEDRO RAVELO, BONIFACIO "PATYONG" PADILLA, ROMEO ASPIRIN, NICOLAS GUADALUPE and HERMIE PAHIT are hereby sentenced:

(1) To serve the penalty of reclusion perpetua and to pay the increased indemnity of FIFTY THOUSAND PESOS (P50,000.00) in Criminal Case No. 1187 solidarily; and

(2) To serve the penalty of arresto menor in Criminal Case No. 1194.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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.