

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICTORINO SUMAYO Y BERSEBAL, ET AL., DEFENDANTS,
VICTORINO SUMAYO Y BERSEBAL, ANTONIO JUANINGO Y PESEBRE,
AND JESUS SALLAN...**

G.R. No. L-30713. April 30, 1976

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PER CURIAM:

The deceased, Domingo Viernes, while driving a taxi-cab "in order to earn extra money for the matriculation of his children", a dutiful father whose "devotion to his family is a pearl beyond price, a rare virtue that shone with special luster", was stabbed to death on the night of May 24, 1969, in a robbery hold-up at Donada Street, Pasay City, for the measly sum of P30.00.

Sergeant Severo Tizo and patrolmen Agustin and Villacorta of the Pasay City Police Department, responding to a call reporting the robbery hold-up that night, proceeded to the place of the incident at Donada Street, Pasay City, in front of the North Philippine Union Mission of the Seventh Day Adventist Church, and there saw the victim lying flat on his back "with blood oozing from the mouth and left lower arm-pit which was caused by a stab wound of about four inches in length", and that there was a "Belmas" taxicab painted yellow with left front door widely opened, parked at the center of the street with a fare of P6.80 registered on its meter.

A security guard of the Seventh Day Adventist Church by the name of Eduardo de Vera was able to shed some light on the incident when he narrated in his sworn statement (Exhibit "C") that while on duty as security guard on the night of May 24, 1969, at about 11:45 P.M. in the vicinity of the North Philippine Union Mission of the Seventh Day Adventist at 2059 Donada Street, Pasay City, he heard sounds of people arguing on the street, so he approached the gate and shouted inquiring what the trouble was; that suddenly three persons emerged from a taxicab and they ran towards Buendia street; then the driver of the taxicab emerged and told de Vera that he was wounded and requested to be brought to the hospital but de Vera was at that moment looking at the three persons who ran away; that when de Vera saw the victim wounded at his left side, he fired a shot to stop the fleeing three persons but they simply increased their speed; that after several minutes a policeman came and called up the headquarters; that the Metrocom came and also the doctor summoned by de Vera.

According to the autopsy report (Exhibit "D") of Dr. Ricardo G. Ibarrola, Jr., Medico-Legal Officer of the National Bureau of Investigation, the cause of death of the victim was the stab wound at the left side of the chest.

The accused Victorino Sumayo (alias Batman), Jesus Sallan (alias Boboy), Antonio Juaningo (alias Totoy), and Hubert Villaruz (alias Bert) were apprehended "thru reliable information of a civic-minded lady who invited Sgt. Severo Tizo to her house and informed him that her brother overheard the gang of a certain Batman in a drinking spree, talking about the robbery hold-up of a taxi driver committed by them on May 24, 1969, somewhere at Donada Street, Pasay City". The Pasay City Police Department had knowledge by dossier or tip that the Batman gang included Jose Sallan, alias Boboy; Genaro Flores, Jr., alias Rocky Boy; Antonio Juaningo, alias Totoy; Victorino Sumayo, alias Batman; Hubert Villaruz, alias Bert; and two others known as Tony and Boy. Policemen

went to the hideout of the Batman gang at Callejon San Juan in front of 189 Donada Street (house of Mrs. Isabel Gallardo) but none of the gang-members was there at the time. In the afternoon of May 28, 1969, at about 4:00 P.M., Major Juanito Gusayco, Sr., the Acting Chief of the Secret Service Division of the Pasay City Police Department, informed the policemen that the accused Jesus Sallan, Victorino Sumayo, Antonio Juaningo and Hubert Villaruz were apprehended and ready for investigation.

Based on an information charging the four accused, together with Genaro Flores, Jr. (not apprehended), John Doe, alias Tony, and Peter Doe, alias Boy Tramo (accurate identity unknown), with the crime of "Robbery Hold-Up with Homicide", filed by Special Counsel Manuel G. Garcia with the conformity of Pasay City Fiscal Gregorio G. Pineda, the four accused, Sallan, Sumayo, Juaningo and Villaruz, were arraigned and they pleaded not guilty on May 31, 1969.

After a speedy trial that ended with the case being submitted for decision on June 9, 1969, the Hon. Onofre A. Villaluz of the Circuit Criminal Court (Branch VII) of Pasig, Rizal, found the accused Victorino Sumayo, alias "Batman" and Jesus Sallan, alias "Boboy" guilty beyond reasonable doubt of the commission of the crime of robbery (hold-up) with homicide, under Article 294 of the Revised Penal Code, as charged in the information, and sentenced each one of them to suffer the penalty of death; to indemnify the heirs of the offended party in the amount of P12,030.00, jointly and severally, and to pay their proportionate share of the costs. With respect to the accused, Antonio Juaningo, the Court found him guilty, beyond reasonable doubt, of the same offense as charged in the information and was sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of the offended party in the amount of P12,030.00, jointly and severally with the accused, Victorino Sumayo and Jesus Sallan, and to pay the costs. As far as the accused, Hubert Villaruz is concerned, based on the evidence on record, the Court entertained doubt as to his guilt for insufficiency of evidence and acquitted him of the crime of robbery (hold-up) with homicide as charged in the information. Said accused was ordered released from detention immediately unless de-tained for some other legal cause.

Accused Antonio Juaningo was given a penalty of reclusion perpetua based on the trial court's finding that he was only seventeen years of age at the time he committed the offense. Under paragraph 2, Article 68 of the Revised Penal Code, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period, upon a person of over fifteen and under eighteen years of age. The penalty prescribed by law (Art. 294 of the Revised Penal Code) for the crime charged is reclusion perpetua to death.

This case is now before Us for review because of the death sentence imposed on accused Sumayo and Sallan, and because of the appeal of accused Juaningo.

A close scrutiny of the trial court's judgment of conviction readily shows that the court based its approximation of moral certainty on the guilt of the accused on the assumption that the sworn statements (Exhibits "A", "B", "F", and "G") by the accused Sallan, Sumayo, Juaningo, and Villaruz, respectively, were voluntarily given and not extracted by force or intimidation, as claimed by the accused Sallan, Sumayo and Juaningo. The trial court was convinced of the credibility of the narration freely given in their extrajudicial confession when it stated that said statements reveal "so many details in the commission of the crime, details that could have not been known to the police investigators if the same were not voluntarily given by the said accused." The defense of denial and alibi interposed by the accused Sumayo, Sallan and Juaningo, were considered significantly deficient to overwhelm the convincingly credible evidence of the prosecution proving their participation in the commission of the crime.

I

Under these circumstances it becomes imperative for Us to determine in the light of the evidence on record the crucial issue of whether or not the extrajudicial confessions of the accused (Exhibits "A", "B", "F" and "G") were given voluntarily or extracted from them by force or intimidation, as they claim in their defense. These extrajudicial confessions were supposed to have been given before Sgt. Severo Tizo of the Pasay City Police Force (statements of Sallan and Sumayo, pp. 1-14 t.s.n. hearing of June 4, 1969), Patrolman Claro R. Agustin of the Pasay City Police Force (statement of Juaningo, p. 19 t.s.n. hearing of June 5, 1969), and Detective Conrado Rogaccion of the Pasay City Police Force (statement of Villaruz, p. 30 t.s.n. hearing of June 5, 1969) on the night of May 28, 1969, and the same statements were supposedly sworn to before Assistant Fiscal Manuel Garcia of Pasay City on the morning of May 29, 1969. Sergeant Tizo, Patrolman Agustin and Detective Rogaccion testified that the answers to the questions in the extra-judicial confessions were given voluntarily, and that the investigation took place on the night of May 28, 1969, after the accused were apprehended and all of them were then at the Police Headquarters of Pasay City. The accused were investigated in one place where there were many persons present because of other cases (pp. 24 to 25 t.s.n. hearing of June 5, 1969).

When the accused, Victorino Sumayo, testified he claimed that he was forced to sign the extrajudicial confession, Exhibit "B", and he was whipped with rattan but he could not point to any definite person who allegedly maltreated him. The court could not find any signs of maltreatment nor scars when he was examined by the Judge during his testimony on June 6, 1969 when he was supposed to have been physically maltreated on May 28, 1969 or just a few days before he appeared before the court (pp. 7 and 8, t.s.n., hearing of June 6, 1969). No cases against the policemen who allegedly maltreated him were even filed (p. 6 t.s.n. hearing of June 6, 1969). He admitted that he signed Exhibit "B" and even if he alleged that he was forced to sign he could not point to anybody who forced him to do so (p. 11 t.s.n. hearing of June 6, 1969). He even admitted that he answered voluntarily some of the questions asked him during the investigation (p. 10 t.s.n. hearing of June 6, 1969).

Accused Jesus Sallan also claimed that he was hit at the stomach to compel him to confess but he could not identify the person who hit him (p. 8 t.s.n. hearing of June 7, 1969). He admitted that he signed Exhibit "A" but claimed "they covered this paper and they just let me sign it". (p. 12 t.s.n. hearing of June 7, 1969)

Likewise, accused Antonio Juaningo claimed that he was compelled to admit his participation in the crime because "they hit me", but could not identify the person or persons who hit him (p. 12 t.s.n. hearing of June 9, 1969). He admitted having signed Exhibit "F", but claimed "it was covered and they forced me to sign it." (p. 13 t.s.n. hearing of June 9, 1969). He could not point to any definite person who allegedly forced him to sign (p. 13 t.s.n. hearing of June 9, 1969).

On the other hand, accused Hubert Villaruz, while admitting that he together with accused Jesus Sallan, Victorino Sumayo, and Antonio Juaningo were arrested and investigated on May 28, 1969, stated that he voluntarily signed Exhibit "G" and was never maltreated (pp. 28-29 t.s.n. hearing of June 9, 1969).

The mother of accused Juaningo, Consuelo Juaningo, testified that she and her daughter visited her son Antonio in jail after he was arrested and that she saw contusions at the back of her son and "cracked lips" and she was told by her son that he was whipped (pp. 24 to 25 t.s.n. hearing of June 9, 1969). This witness, however, admitted on cross examination that she once complained to Sergeant Tizo against her son Antonio for quarrelling with her and her daughter while he was drunk (p. 26 t.s.n. hearing of June 9, 1969).

To bolster the contention that accused Sumayo, Sallan and Juaningo were maltreated to force them to admit participation in the crime, the defense presented as witness Dr. Aurora Padilla Cruz who was ordered by the trial court on June 2, 1969, to conduct a physical examination of accused Sumayo, Sallan and Juaningo. She testified

that she examined the three of them and made a report (page 15 of Record, C.C.C.-VII-161 Pasay City) on June 2, 1969, wherein she found on Victorino Sumayo, a contusion on lateral portion of the scapula, left, a contusion of the left arm and a contusion of the elbow, left arm. No physical injury was found on Jesus Sallan and on Antonio Juaningo. On the contusions found on Sumayo, Dr. Padilla Cruz testified that the same could have been caused by a blow and these contusions were inflicted a day before she examined Sumayo on June 2, 1969 (p. 4 t.s.n. hearing of June 9, 1969). If the accused alleged that the maltreatment took place on May 28, 1969, then it is very manifest that the contusion found by Dr. Cruz on Sumayo as of June 2, 1969, supposed to have been inflicted a day before, or June 1, 1969, could not have resulted from the alleged maltreatment but from some other cause.

It is also observed that the disputable presumption that official duty has been regularly performed and that the law has been obeyed (Sec. 5, (m) (ff), Rule 131, Rules of Court) heavily favor the presumed regularity in the execution of the sworn statements Exhibits "A", "B" and "F", signed as they are by Assistant Fiscal Manuel Garcia of Pasay City, and each one of them accompanied by the Pasay City Police Department Booking Sheet and Arrest Report duly accomplished (Exhibits "A-1", "B-3", and "F-1").

Not one of the accused complained to Assistant Fiscal Manuel Garcia at the time he signed those sworn statements that they were extracted by force or intimidation from those subscribing to them. There is not a single indication nor evidence of motive on the part of the police investigators that could have induced them to resort to unlawful means in the method of determining true facts, thereby deviating from normal procedure in investigation and thus perverting the quest for truth and justice. The candid admission of the accused Villaruz, who at the time he testified could not have foreseen that he would be acquitted, that he voluntarily signed the statement Exhibit "G" and he was not maltreated, it being clear that this accused was investigated together with accused Sumayo, Sallan and Juaningo on the same night and in the same place, in the presence of other people, is the most convincing argument that those statements (Exhibits "A", "B" and "F1") were really signed voluntarily by the accused.

We went to great lengths on a thorough scrutiny of available evidence to determine if accused Sumayo, Sallan and Juaningo were maltreated to make them sign the extrajudicial confessions Exhibits "A", "B" and "F", and there is nothing sufficiently convincing for Us to alter the trial court's conclusion that the overwhelming evidence indicate voluntariness in the execution of the said sworn statements.

II

Proceeding now from the premise that Exhibits "A", "B" and "F" were voluntarily given, as was also the case with Exhibit "G", We can reconstruct with some degree of accurate approximation what really happened on the night of May 24, 1969, when the victim was ruthlessly killed and robbed of the paltry sum of P30.00.

One fact that is definitely sure is that on the night of May 24, 1969, at about 10:00 o'clock, the accused Victorino Sumayo, Genaro Flores, Jr. (not apprehended), Jesus Sallan, Antonio Juaningo, Hubert Villaruz (acquitted) were together, drinking beer and later hard liquor (Tanduay rum) within the vicinity of a barbeque stand at Dapitan Street; then at Suerte Street, San Juan Street, Donada Street (where the crime was committed) and Buendia Street, all situated in close proximity to each other in Pasay City (Exhibits "A", "B", "F" and "G"; testimonies of accused Sumayo, hearing of June 6, 1969; accused Sallan, hearing of June 7, 1969; and accused Juaningo, hearing of June 9, 1969).

The versions of the crime as contained in Exhibits "A", "B" and "F" are as follows:

- (1) Exhibit "A" — Accused Sallan stated that after drinking at Suerte Street, accused Sumayo (alias Batman) suggested that they (the group) commit a "hold-up"; that Sumayo instructed him (Sallan) to call a taxi at the corner of San Juan and Leveriza Streets, Pasay City; that Sumayo (Batman), Flores Jr. (Rock-boy) (at large),

Tony and Boy (John and Peter Doe) rode in the taxi; that accused Villaruz (Bert) (acquitted), accused Juaningo (Totoy), and Sallan were given instruction to walk to Donada Street and wait for the taxicab they boarded so they could meet at Donada Street; that at about 11:40 p.m. the taxicab boarded by Batman and his three companions arrived at Donada Street; that Sallan saw the taxicab stop near a church and he saw Batman (Sumayo) stab the driver who fought back; that Sallan and Juaningo (Totoy) ran towards San Juan Street; that the five in the group arrived at San Juan Street near Leveriza Street at the designated place about 4:00 a.m. of May 25, 1969, where Batman (Sumayo) gave Sallan eleven pesos, five pesos of which the latter kept and six pesos given to Totoy (Juaningo).

(2) Exhibit "B" — Accused Sumayo stated that he was with the group but he was not the one who killed since it was accused Genaro Flores, Jr. (Rock-boy) (at large) who killed the taxi driver; Sumayo identified the homemade kitchen knife used by Rock-boy (Flores) but said Totoy (Juaningo) owned the knife which was entrusted to Sumayo by Juaningo; that he did not know Boy and Tony (John and Peter Doe); that the color of the taxicab they held-up was yellow; that he identified the victim when he was shown a photograph; that he saw Rock-boy (Flores Jr.) when the latter stabbed the victim; that Tony got the money from the victim; that they afterwards fled to San Juan Street; and that the group subsequently met at Suerte Street where Sumayo was given five pesos by Tony.

(3) Exhibit "F" — Accused Juaningo stated that the "hold-up" took place at Donada Street, near San Juan Street; that accused Sallan was the one who called the taxi that was held up; after drinking, Boy and Tony (John and Peter Doe) came while they were at the end of Suerte Street, where Sallan (Boboy), Flores (Rock-boy), and Sumayo (Batman) talked; Sallan called a taxi and Sumayo (Batman), Flores (Rock-boy), Boy and Tony (John and Peter Doe) boarded the taxi; that after the taxi left, accused Sallan (Boboy) told Juaningo that Batman and his companions will commit a "hold-up" of the driver in the taxi they rode in and for Sallan and him (Juaningo) to walk towards Donada to help in the robbery; they went to Donada Street in front of the church and after ten minutes the taxi with Batman and his companions arrived; that Juaningo heard the driver groaning; that after Batman, Rock-boy, Tony and Boy alighted from the taxi, accused Sallan and Juaningo ran towards San Juan Street; that at about 4:00 a.m. of that morning they saw each other at San Juan Street, near Leveriza where Batman gave Juaningo six pesos; that on said occasion Rock-boy (Flores) showed the knife with blood telling the group that the driver resisted and that was the reason why Flores stabbed him; that Batman also told the group that he also stabbed the driver but there was no blood and he did not know if he was able to hit the driver; that when shown the kitchen knife, he said it was not the knife shown to the group by Rock-boy (Flores) but the knife belonged to Batman; and that after the stabbing of the victim Batman, Tony, Boy, and Rock-boy ran towards Buendia.

The version of accused Hubert Villaruz (acquitted) contained in Exhibit "G" was that on May 29, 1969 he was with accused Juaningo, Sallan, Sumayo and Flores at Suerte Street, near Leveriza Street, Pasay City but before eleven o'clock the group left and he separated from them. Aside from the statement contained in Exhibit "A" made by accused Sallan that accused Villaruz was also given instruction by Batman to walk towards Donada Street, together with accused Sallan and Juaningo to aid in the robbery, a lone version not corroborated by the statements of Sumayo and Juaningo, there is no evidence indicating accused Villaruz's participation in the crime and the trial court correctly exonerated him.

III

When the accused Victorino Sumayo, Jesus Sallan, and Antonio Juaningo testified for the defense, all of them admitted that on the night of May 24, 1969 they (Antonio Juaningo, Hubert Villaruz, Jesus Sallan, Genaro Flores, Victorino Sumayo) were together at Suerte Street, Pasay City, drinking beer and hard liquor (Tanduay rum). As alibi, they narrated that after drinking and telling stories they slept and denied that they participated in the crime.

Examining the statements (Exhibits "A", "B" and "F") given voluntarily by the accused Sumayo, Sallan and

Juaningo about four days after the commission of the crime. We find an amazing consistency and accuracy in the narration of events and of facts which according to the trial court "could have not been known to the police investigators if the same were not voluntarily given by the said accused." The narrations contained in the extrajudicial confessions leave us no room for doubt that when the group on the night of the incident was already under the influence of liquor, accused Sumayo (Batman) proposed that they commit "hold-up"; that all agreed and accused Sallan was the one instructed to call a taxi; that they were armed, the accused Juaningo even claiming in his sworn statement that the kitchen knife (Exhibit "B-1") shown him during the investigation was not the same knife shown to the group by Rock-boy (Flores) after the stabbing, but said knife belonged to accused Sumayo (Batman). The question of ownership of the death weapon (whether owned by Juaningo as claimed by Sumayo or by Sumayo as claimed by Juaningo) becomes immaterial and irrelevant because what appears significant is that at the time the accused agreed to commit robbery they were armed, showing that they intended to inflict harm on the victim if thwarted in their design to rob. Accused Juaningo could not claim that there was no concerted plan to rob because the evidence clearly shows, even by his own statement, that they as a group agreed to commit the hold-up and he (Juaningo) knew at the time that the group was armed, accused Sumayo even pointing to Juaningo as the owner of the death knife (Exhibit "B-1"). This weapon was recovered from the house of Mrs. Isabel Gallardo (Aling Abeng), known hideout of the Batman gang, and even accused Sumayo admitted that said weapon was recovered from that place (p. 32 t.s.n. hearing of June 4, 1969; p. 14 t.s.n. hearing of June 6, 1969). All of those who conspired to commit the crime of robbery, knowing that members of the group were armed for the purpose of attaining their unlawful objective, should be responsible for the consequences of the criminal act, in this case the death of the victim. As conspirators they cannot afterwards claim that they planned to rob only and not to kill and that if someone in the group killed in the course of the robbery he alone should be responsible. Any person with ordinary foresight can foresee that committing robbery with the use of force upon a person always entails the danger of injuring or killing the victim, especially if the conspirators plan to commit, and did commit, their dastardly act while armed and in a group.

There is no doubt in our mind that the agreement to commit the crime took place and not one of the accused did anything to prevent it from being carried out. Hence all those who conspired must be held liable as principals for the consequence of the offense committed. It is very difficult to believe accused Juaningo's statement that he was told of the plan to rob the taxicab by accused Sallan only after the group (Sumayo and his companions) had boarded the taxicab, because he admitted he was with the group on that night since they started drinking and he (Juaningo) even stated that in the "hold-up" it was the accused Sallan who called the taxicab. The statements in Exhibits "A", "B", and "F" are consistent in many material details, persistently so if we may say, and they are admissible against the accused on the doctrine of interlocking confessions as corroborative evidence (*People vs. Condemena*, G.R. L-22426, May 29, 1968; *People vs. Prudente* 45 O.G. No. 12, 5587 (1949)).

What strikes us as the most deplorable aspect of this crime, and which characterizes it as one of the utmost depravity and wanton devilry, is that the robbery that caused the death of the victim and for the paltry sum of thirty pesos was perpetrated by human beings who were not in dire need of food or other necessities of life but who could afford to go on a drinking spree and run afoul of the law as if they were having some fun or a form of relaxation to while away their idle time. The lower court did not err in stating:

"The accused though in their prime youth, have already shown criminal perversity of the highest order. It is clear that it was not necessary for them to kill the deceased, in order that they may take away his earnings. Yet they went beyond killing the poor earner, confirming their complete disregard of the value of human life, for mercy or pity is a total stranger to them. By their own misdeeds, they must be denied free association with society, for what is needed is their complete isolation as a means of self-preservation, before they envelop us in a disaster beyond our capabilities to overcome."

In the commission of the crime of robbery with homicide herein charged, the same was attended by two aggravating circumstances as against the accused, Victorino Sumayo and Jesus Sallan. Victorino Sumayo was charged with robbery (snatching) on December 31, 1967, and served a sentence of two (2) months and one (1) day of arresto mayor in Criminal Case No. 7700-P, Court of First Instance of Rizal, Branch VII, Pasay City. Jesus Sallan was charged with robbery (hold-up) on August 12, 1967, and served a sentence of six (6) months of arresto mayor by order of Judge Pedro J. Bautista, Branch III, Court of First Instance of Rizal, Pasay City. The two accused abovenamed are, therefore, recidivists because at the time they were convicted in this case they had been previously convicted by final judgment of another offense embraced in the same title of the Revised Penal Code (Art. 14, par. 9, Revised Penal Code. See Exh. "E", pages 122-123, original record of c.c.c.-VII-161- Pasay City).

The crime herein charged was committed at night time which facilitated the commission of the robbery, the same having taken place at around 10:00 o'clock in the evening of May 24, 1969.

The imposition of the extreme penalty of death under the circumstances of this case is, therefore, fully justified, there being no mitigating circumstance to offset the aggravating circumstances.

The penalty of reclusion perpetua imposed on the accused Antonio Juaningo is not in accordance with law. Because of the fact that he was only 17 years at the time he committed the crime, under paragraph 2 of Article 68 of the Revised Penal Code the proper imposable penalty must be one degree lower than that prescribed by law in its proper period. The penalty prescribed by law (Art. 294 of the Revised Penal Code) for the crime committed is reclusion perpetua to death (two indivisible penalties). The penalty next lower in degree is reclusion temporal, or 12 years and 1 day to 20 years (Art. 61, par. 2, Revised Penal Code). Reclusion temporal is a divisible penalty that has three periods (12 years and 1 day to 14 years and 8 months as minimum; 14 years, 8 months and 1 day to 17 years and 4 months as medium; 17 years, 4 months and 1 day to 20 years as maximum). The crime having been committed without any aggravating or mitigating circumstances, insofar as Antonio Juaningo is concerned, the penalty in its medium period must be imposed. Applying the Indeterminate Sentence Law (People vs. Sanidad, et als., G.R. No. L-32495, August 13, 1975) the proper indeterminate penalty for Antonio Juaningo is a minimum of not less than ten (10) years of prision mayor and a maximum of not more than 17 years and 4 months of reclusion temporal.

WHEREFORE, modified as above indicated as regards the penalty for the accused, Antonio Juaningo, the decision of the trial court imposing the death penalty and other penalties on Victorino Sumayo y Bersebal and Jesus Sallan y Paz is affirmed. Costs against all accused.

SO ORDERED.

Castro, C.J., Fernando, Teehankee, Barredo, Makasiar, Esguerra, Muñoz Palma, Aquino, Concepcion Jr., and Martin, JJ., concur.

Antonio, J., took no part.

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