

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO SAAVEDRA Y PADUA, DEFENDANT-APPELLANT.

G.R. No. L-48738. May 18, 1987

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

On June 23, 1978, the then Circuit Criminal Court sitting in Cebu City rendered a decision[1] sentencing Romeo Saavedra y Padua, born on February 24, 1958 in Cebu City, to the supreme penalty of death for the murder of Ernesto Pulmares. The decision is before us on automatic review.

The facts established by the evidence on record are as follows:

On January 14, 1977, the deceased, a foreman[2] at Cummins Diesel Philippines, Mandaue City branch, joined Alfredo Pavon, Cummins Diesel quality control manager,[3] at the guest house of the company compound at San Jose de la Montaña in Mabolo, Cebu City,[4] where Pavon dropped two secretaries.[5] According to Pavon, it was "after office hours"[6] when he met the deceased. Thereupon, he asked the deceased to accompany him to Kan-Irag hotel, a local inn located at uptown Cebu City,[7] where he (Pavon) had instructed another employee, Eleazar Asuncion, to make a long distance telephone call regarding a company matter.[8]

As he prepared to drive to the hotel, he noticed a red taxi cab parked at the Cummins Diesel guest house gate.[9] Three persons — Romeo Saavedra, the herein accused-appellant, Henry Fernandez, and Reynaldo Quilala — occupied the cab, although Pavon neither knew them nor noticed that they were on board.[10]

It was around 9:00 p.m. when they reached the hotel.[11] After parking his car, Pavon proceeded to the lobby where Pulmares followed him. Upon entering the hotel, he heard a commotion behind him.[12] He turned and saw two men running toward a waiting taxi cab outside.[13] According to him, one "looked at me and smiled and made a thumbs-up sign." [14] He later identified the first as Henry Fernandez and the one who gave the thumbs-up sign as Romeo Saavedra.[15]

Subsequently, he saw Ernesto Pulmares holding on to his abdomen.[16] "[M]ay tama ako,"[17] Pulmares uttered. He had just been stabbed.

Pavon rushed Pulmares to the Chong Hua Hospital in Cebu City,[18] It was about 9:15 p.m. when they reached the hospital.[19]

Dr. Jesus Lim, company physician at Cummins Diesel, was shortly summoned to attend to Pulmares.[20] He forth-with prepared him for operation.[21]

From the record of operation,[22] Pulmares suffered a stab wound in the right "hypochondriac region"[23] and an inch-long laceration at the left "distal forearm." [24] The victim survived the operation[25] but developed uremia later.[26] He was then sent to the Cebu Doctor's Hospital where he was placed in peretonal dialysis.[27] But that notwithstanding, he died. He was pronounced dead on January 18, 1977.[28]

Eleazar Asuncion, a Cummins manager, corroborated substantially Pavon's testimony. He testified that he met the deceased at the Kan-Irag Hotel, but when he saw him, he was clutching at his abdomen, wounded.[29] Like Pavon, he heard him declare "I'm wounded,"[30] after which they rushed him to the Chong Hua Hospital.[31]

Elenita Diores, a housemaid cum cook at the Cummins Diesel guest house,[32] claimed on the other hand that Reynaldo Quilala and Romeo Saavedra had been shadowing the guest house premises as early as 5:00 p.m. on January 14, 1977.[33] She testified that at about the time Pavon and Pulmares arrived at 9:00 p.m., a red taxi cab had been parked at the gate.[34] She pointed to Quilala, Saavedra, and an unnamed person as the occupants of the cab.[35] And when Pavon and Pulmares left, the three followed them.[36]

She further testified that while at the guest house, Saavedra and his unnamed companion entered the premises and inquired for "Ernie,"[37] whom she identified as the deceased Ernesto Pulmares.[38] She admitted that she did not know, at that time, the companion of Saavedra and Quilala, but claimed having remembered his face.[39] She later pointed to Henry Fernandez as that third man.[40]

The prosecution presented Exhibits "C",[41] "C-1"[42], and "G",[43] consisting of an alleged communication sent by Romeo Saavedra to Henry Fernandez advising him not to "make any confession"[44] and assuring him that "we will not also mention you." [45]

The prosecution likewise presented Exhibits "D"[46], "D-1"[47], and "E" to "E-4",[48] Fernandez's alleged extra-judicial confession, as well as Exhibits "H"[49] and "H-1",[50] an alleged statement given by Saavedra admitting being in Fernandez's company on the night of the tragedy, but claiming that they were there to "face Ernesto whom he [Fernandez] will challenge to a fist fight." [51]

On August 12, 1977, Remigio Arzadon, District State Prosecutor, filed an information[52] to wit:

x x x x x x x x

The undersigned, District State Prosecutor, accuses Reynaldo Quilala y Fernandez, Romeo Saavedra y Padua and Henry Fernandez y Dakay of the crime of Murder, committed as follows:

That on or about the 14[th] day of January, 1977, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a deadly sharp pointed weapon known as Samurai, taking advantage of nighttime and superior strength, with known premeditation and treachery, and with the use of a motor vehicle, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully, feloniously, and suddenly attack, assault and stab Ernesto Pulmares y Pinga, inflicting upon him a stab wound at his abdomen as a consequence thereof, the said Ernesto Pulmares died three days thereafter.

That the commission of the offense was attended by the following aggravating circumstance, first that it was committed by means of treachery and/or evident premeditation; second, the accused took advantage of nighttime to commit the offense; third, that the accused took advantage of their superior strength; and fourth, that a motor vehicle was used by the accused to accomplish their murderous act.

CONTRARY TO LAW.[53]

x x x x x x x x

The three accused were subsequently arrested and held without bail. They were arraigned on August 18, 1977.[54] Reynaldo Quilala and Romeo Saavedra entered separate pleas of "not guilty." [55] Henry Fernandez, on the other hand, pleaded "guilty." [56]

Unknown to the court, however, the three were released by the Philippine Constabulary.[57] The court thereafter

ordered their arrest and recommitment, but only Saavedra and Fernandez were apprehended. Quilala has remained at large since then.[58]

On November 12, 1977, the trial court rendered a separate decision against Fernandez,[59] the dispositive portion of which reads as follows:

X X X X X X X X

WHEREFORE, the Court finds the accused Henry Fernandez y Dakay GUILTY beyond reasonable doubt of the crime of Murder, qualified by treachery, as defined and penalized under Article 248 of the Revised Penal Code, as principal by direct participation, upon his plea of guilty made freely, voluntarily and spontaneously in open court with the assistance of counsel, and favorably appreciating the mitigating circumstances of intoxication, plea of guilty and voluntary surrender, two of which are offset by the aggravating circumstances of use of a motor vehicle and known premeditation and after applying the Indeterminate Sentence Law, finds the proper imposable penalty to be TEN (10) YEARS and ONE (1) day of prision mayor as the minimum, to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal as the maximum, to indemnify the heirs of the deceased Ernesto Pulmares y Pinga in the amount of P12,000.00, plus P18,000.00 for moral and exemplary damages, and to pay the costs of this suit.

However, in view of the fact that the accused is a youthful offender under the provisions of Presidential Decree No. 603, the Court suspends the sentence upon him and orders his commitment temporarily to the care and custody of Inspector Antonio Paguia of the PC-CIS, III PC Jose, until further orders and until he shall have reached the age of majority or for such shorter period as the Court may determine and deem proper under the circumstances, subject to the visitation, control and supervision of the Department of Social Services and Development Region No. VII, Cebu City, which office is required to submit quarterly reports of his progress, conduct and/or behavior while under commitment, until otherwise ordered by this Court.

SO ORDERED.[60]

Fernandez did not appeal, and the decision has since become final.

That notwithstanding, Fernandez took the stand for the prosecution in the trial against Saavedra.

Fernandez, a pier worker at Trans Asia Shipping,[61] testified that on January 14, 1977, Saavedra and Quilala went to see him in his house.[62] According to him, Saavedra was an old friend,[63] while that was the first time that he saw Quilala.[64] Saavedra invited him for a drink, which he initially declined since he did not have money.[65] Saavedra, however, offered to pay for the drinks.[66] They then repaired to the Sable store, located at Magsaysay Street, Cebu City.[67] Saavedra and Quilala, at that time, had already a few drinks.[68]

He further admitted that after drinking (he claimed to have consumed 14 bottles of beer),[69] they proceeded to San Jose de la Montaña aboard a red taxi cab.[70] It was the first time he went there,[71] and he did not know why they were going there.[72]

Quilala instructed him to enter the Cummins Diesel guest house compound,[73] which he did. Later, Pavon's red car arrived. Pavon dropped two women, after which he drove to Kan-Irag Hotel[74] where they tailed him.[75]

While on their way, Quilala landed him a four-inch samurai, the murder weapon.[76] He did not inquire what it was for, and was only told, "you just hold it there." [77]

Upon reaching Kan-Irag hotel, Pavon and the victim alighted. The tandem of Fernandez and Saavedra likewise alighted one after the other.[78] Quilala allegedly instructed Fernandez: "Go ahead Rey that's my enemy, you stab him." [79] Fernandez was supposed to have expressed initial hesitation ("No Bay, I will not do it, we will commit sin"),[80] but Quilala threatened him: "Okay, if you will not stab him, I will shoot you with this Indian pana,

Indian target."[81] It was a threat Saavedra himself allegedly seconded: "[Y]ou just go ahead, Rey, so that you will not meet an accident." [82]

Fernandez thereafter approached Pulmares at the hotel doorway.[83] He lunged the samurai at him twice, once at the abdomen and again at the midsection.[84] He then dashed toward the cab outside wherein Quilala was waiting for them.[85] Saavedra followed him.[86]

They headed toward the Cebu City Colleges where they alighted.[87] They boarded a tartanilla and disembarked at the Pasil Parochial Church.[88] They agreed to drink again.[89]

Fernandez further averred that upon learning that Pulmares died three days later, he left for Manila where he stayed for about one month.[90] When he returned to Cebu City, he was apprehended by elements of the Cebu police.[91]

He likewise identified Exhibit "C", the letter in which Saavedra advised him not to "make any confession." [92]

On cross-examination, he added that Saavedra subsequently admitted to him that he (Saavedra) gesticulated with a "thumbs-up" sign after he (Fernandez) had inflicted the fatal wounds upon Pulmares.[93] He likewise stressed that he had not seen Pulmares before and that he took his life "on orders" [94] of Quilala, who was allegedly then aiming an Indian pana at him.[95]

For his part, the herein accused-appellant, Romeo Saavedra, testified that both Quilala and Fernandez were old friends.[96] Quilala saw him (Saavedra) in the afternoon of January 14, 1977 at a basketball court, who asked to be accompanied to the Cummins Diesel plant.[97] He met, on the other hand, Fernandez in the same basketball court in the evening.[98] Both were but chance meetings.[99]

Quilala then invited them for a drink at Sable store.[100] After a few drinks, Saavedra went home for dinner but returned shortly.[101] Quilala and Fernandez were then set to leave ("[t]hey are going somewhere") [102] and he went along.[103]

They proceeded to San Jose dela Montaña aboard a red taxi cab.[104] It was already about 9:00 o'clock at night. Quilala instructed both Saavedra and Fernandez to look for the deceased.[105] Saavedra testified that he did not know the deceased.[106]

A red automobile soon arrived, driven by Pavon,[107] beside whom sat the victim. Two women alighted after which the car proceeded toward Ramos Street. Saavedra averred that he did not know Pavon. Thereafter, they pursued Pavon's car until Kan-Irag Hotel.[108] Pavon and the deceased then got off the car and entered the hotel. He testified that Quilala ordered Fernandez "to go to the deceased and tell him that Rene [Quilala] wants to say something" [109] to him. Quilala likewise ordered him to accompany Fernandez.[110]

Saavedra declared that he was about seven meters away from Fernandez at the time of the fatal stabbing.[111] He then ran back toward the car.[112] He denied that they had plotted to do away with the victim and insisted that he "happened only [to be] with them during the drinking." [113] He likewise denied having threatened Fernandez with bodily harm. He also denied having seen Quilala aiming an Indian pana at Fernandez at the time of the killing.[114] He denied finally having gestured "thumbs-up" during or after the stabbing as both Fernandez and Pavon claimed.[115]

He further stated that after the stabbing, they proceeded to the Cebu Central Colleges where they hailed a rig on their way home.[116] Quilala and Fernandez resumed drinking but he went straight home.[117]

He admitted that he did not inform the authorities of the incident. He disclosed that Quilala saw him the following day and threatened to kill him if he squealed.[118] Further, according to him, "he [Quilala] has lots of tough

guys."[119] Neither did he inform his parents nor brothers or sisters for the same reason.[120]

And while he knew Quilala; he denied having known that he was a Cummins Diesel employee, or, inferentially, that he maintained a grudge against the victim.[121] It seems that the victim had earlier recommended Quilala's dismissal from the firm.[122]

On cross-examination, he reiterated that he did not know why they were going to San Jose de la Montaña,[123] and that he was just told to go along.[124] He added that he did not know the victim and, most of all, the purpose for which Quilala wished to see him.[125]

He likewise admitted that Exhibits "G" and "H" were his handwritten statements.[126]

The defense thereafter rested, and the case was submitted for decision.

On June 23, 1978, the court rendered judgment[127] against Saavedra, the dispositive portion of which reads as follows:

X X X X X X X X

WHEREFORE, the Court finds, after trial on the merits, the accused Romeo Saavedra y Padua GUILTY beyond reasonable doubt of the crime of Murder, qualified by treachery, as defined and penalized under Article 248 of the Revised Penal Code, as co-principal thereof, and there being present and proven the generic aggravating circumstances of use of a motor vehicle and drunkenness which was intentional without any mitigating circumstances to offset them, hereby sentences said to suffer the extreme penalty of DEATH, with the accessory penalties provided by law, to indemnify jointly and severally with his co-accused, the heirs of the deceased Ernesto Palmares in the amount of P12,000.00 plus P18,000.00 for moral and exemplary damages, and to pay the costs of this action.

It appearing that accused Reynaldo Quilala y Fernandez is still at-large up to this date, let alias warrants be issued for his arrest to be coursed through the III CIS, PC District, Cebu City, the National Bureau of Investigation, Manila, and the METROCOM, PC-INP, Metro Manila.

SO ORDERED.[128]

X X X X X X X X

Neither the corpus delicti nor the identity of the killer is in issue in this case. There is no doubt that the deceased, Ernesto Pulmares, died as a consequence of a stabbing, a crime to which Henry Fernandez pleaded guilty, and for which he was tried and accordingly sentenced. It has been our constant and invariable holding that, unless improvidently made, a plea of guilty is equivalent to a confession of the charges for which the court may duly pass sentence against the accused.[129] What is in controversy is whether or not the accused-appellant, Romeo Saavedra, may, based on the evidence, be held liable as a co-conspirator in the killing in question.

While Fernandez and Saavedra both pointed to Reynaldo Quilala as the brains behind the slay, we are not concerned here with Quilala's guilt or innocence since he has not been brought within our jurisdiction. Accordingly, our concern is the verdict alone against Saavedra.

We hold that upon the evidence on record, Romeo Saavedra's complicity has not been established beyond reasonable doubt.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[130] Proof of the agreement need not rest on direct evidence and may be inferred from the conduct of the accused disclosing a common understanding among them with respect to the commission of the

offense.[131] But like the offense itself, conspiracy must be shown beyond reasonable doubt.[132]

We find nothing in the records that would satisfactorily establish Saavedra's involvement in the plot, if there was one, to liquidate the victim. As we stated, it is not necessary that the actual agreement be proven in court, yet, there must be some proof of it.

The trial court, in deciding against the accused-appellant, pointed to certain acts he was supposed to have committed, acts that are allegedly consistent with a conspiracy. We quote, in part:

X X X X X X X X

First of all, accused Saavedra has not explained satisfactorily or convincingly his companionship and togetherness with his two co-accused Quilala and Fernandez that fateful evening of January 14, 1977. All indications point unerringly and inescapably to the conclusions that it was he and Quilala who originally hatched the plan to kill the victim earlier that same afternoon due to Quilala's desire to avenge his being fired from his employment at Cummins at the instance of the victim who was his foreman. This conclusion is supported not only by his admission that he went to collect the latter's salary at around 4:00 o'clock in the afternoon, but by the un rebutted testimony of prosecution witness Elenita Diores that she had seen Saavedra and Quilala at the Cummins guest house in San Jose de la Montaña Street loitering near the gate around four times earlier that afternoon.

Secondly, while Saavedra claims that it was he who was approached by Quilala and the latter invited him and Fernandez to a drinking spree, yet there is the testimony of Fernandez, which the Court finds to be more credible, that Quilala and Saavedra had jointly invited him. It was also Saavedra who accompanied Fernandez in alighting from the taxi and looking for the victim at the Cummins guests house earlier that evening, and was also with Fernandez when they alighted at Kan-Irag Hotel and Fernandez stabbed the victim.

Thirdly, even after Saavedra saw Fernandez stab the victim, he did not separate from Fernandez and Quilala. He did not run away to report the incident to any authority or to his own father who was a policeman of Cebu City. Instead, he still joined Fernandez and Quilala inside the same getaway vehicle and, after making a thumbs-up gesture which was seen by prosecution witness Alfredo Pavon, went with them to resume their drinking spree. He also did not tell anyone in his family about what had happened when he went home that evening and for twelve (12) days thereafter. Despite his claims or pretensions of innocence, he did not give any statement to the CIS, PC upon his arrest narrating his version of the incident the way he described it in Court.

Fourthly, Saavedra not only failed or refused to give a correct version of the incident to the CIS while under detention but even tried to mislead the investigators by giving a statement (Exhibit "H") which tried to shift the blame for the killing on a certain "Jessie," which he said he made upon the instructions of Quilala. Furthermore, Saavedra admitted that he wrote the letter to Fernandez (Exhibit "C") wherein he cautioned the latter not to make any confession about the killing or to implicate them therein as there was no evidence against all of them, and promising Fernandez that he will not also be implicated by him and Quilala.

Fifthly, there is on the record the plea of guilty of Fernandez to the crime charged against him in conspiring with Saavedra and Quilala, as well as his testimony as a prosecution witness against Saavedra, which all constitute judicial admissions which are admissible against Saavedra as proof of conspiracy. There is also the extra-judicial confessional statements of Fernandez (Exhibits "D" and "D-1", "E" to "E-4") which were given voluntarily and dovetail with his judicial testimony. These statements are admissible, likewise, to show and prove that other persons participated in the perpetration of the crime charged and proved (People v. Aquino, 57 SCRA 43). They are also admissible and may be taken into account and consideration as circumstances in assessing and passing upon the weight and credibility of the testimony of an accomplice as well as those of the witnesses or the opposing parties (People v. Domondon, 43 SCRA 486).[133]

X X X X X X X X

We shall take these up ad seriatim.

The fact that the trio of Fernandez, Saavedra, and Quilala had earlier, met, engaged in a drinking session, and proceeded to the Kan-Irag hotel — the chain of events prefacing the tragedy — is not enough indication that they had conspired to kill Pulmares. Conspiracy is more than that. It transcends mere companionship. So we said in *People v. Custodio*:^[134]

x x x x x x x x

It is well to recall the settled rule that conspiracy presupposes the existence of a preconceived plan or agree-ment and in order to establish the existence of such a circumstance, it is not enough that the persons supposedly engaged or connected with the same be present when the crime was perpetrated. There must be a logical relationship between the commission of the crime and the supposed conspirators, evidencing a clear and more intimate connection between and among the latter, such as by their overt acts committed in pursuance of a common design. x x x^[135]

x x x x x x x x

Moreover, presence at the scene of the crime, without more, does not imply conspiracy. That has been our consistent ruling.^[136]

Saavedra's failure to explain "his companionship and togetherness with his two co-accused Quilala and Fernandez"^[137] is therefore of no moment. Saavedra is not bound to account for the company he keeps. The burden remains upon the state to demonstrate the existence of conspiracy arising from that companionship. But more important, and as a rule, relationship or association alone is not a badge of conspiracy.^[138] To borrow from *Custodio*, the accused "may have accompanied [the assassin] only out of sense of good fellowship."^[139]

The circumstances alone that the accused-appellant had earlier been seen within the vicinity of San Jose de la Montaña Street and may have collected Quilala's salary earlier on the same day is no proof that he was part of the cabal alleged. The fact that the accused-appellant had earlier been trailing the deceased or had curried favors for Quilala does not suggest that he had been in fact out to kill the deceased pursuant to a conspiracy.

Conspiracy, indeed, presupposes a prior knowledge of the criminal design. The particular circumstances mentioned by the lower court do not, to us, evince such advance knowledge.

On the other hand, both Fernandez and Saavedra vehemently denied any intimation of the tragedy that was about to happen.^[140] This does not make Saavedra a part of the scheme, assuming there was one, to execute the deceased.^[141]

The reliance of the trial court upon Fernandez's testimony that it was Saavedra, along with Quilala, who summoned him (Fernandez) for a drinking session and who accompanied him to the Cummins Diesel guest house to inquire for the whereabouts of the victim is not quite well-taken. Fernandez's claims of innocence are to begin with, impressed with serious doubts. As the actual assassin, he is a polluted source. And as such, he was obviously trying to minimize as much as possible further liability, by pinning lone authorship of the offense upon Saavedra and Quilala.

For the same reason, we cannot rely on Fernandez's claim that Saavedra admitted to him having signalled "thumbs-up" after the fatal stabbing, or that he (Saavedra) ordered him (Fernandez) to "go ahead Tsoy so nothing will happen to you,"^[142] or "you just go ahead, Rey, so that you will not meet an accident,"^[143] which Saavedra denied having made.

But even then, these alleged acts and utterances are not necessarily inculpatory as far as Saavedra is concerned.

The fact that Saavedra may have motioned "thumbs up" is not sufficient an indicium that he was in on the murder plot. It does not establish the "logical relationship" between such an overt act and Fernandez's deadly plan referred to in Custodio. Conspiracy, as we said, depends on positive and convincing proof. It is not a matter of speculation.

Saavedra's alleged warnings ("go ahead Tsoy so nothing will happen to you";[144] "you just go ahead, Rey, so that you will not meet an accident"[145]) are equally indecisive. For Saavedra may have been in fact voicing a concern for Fernandez's personal safety.

Indeed, Fernandez could not categorically pinpoint Saavedra as a party to the alleged conspiracy, thus:

X X X X X X X X

Q

Did Romeo Saavedra utter anything as you were conversing with Quilala?

ATTY. MATHEW:

Objection, leading, your Honor.

Q

What was Romeo Saavedra doing when Quilala told you to do?

A

He said, "you just go ahead, Rey, so that you will not meet an accident." [146]

X X X X X X X X

Q

From the Khan Irag Hotel up to the place where you reached Cebu Central College or CCC, was there any conversation that transpired between you and Quilala and Saavedra?

A

No sir, but upon arriving CCC we disembarked and boarded the tartanilla.[147]

Q

When you were on board the tartanilla, was there a conversation among you?

A

Yes sir, and Quilala said, he will surely die and that time, I was scared.[148]

X X X X X X X X

Q

Before you left for Manila, did you have a conversation with Quilala and Saavedra?

ATTY. MATHEW:

Leading.

COURT:

May answer.

A

Not anymore, sir.[149]

X X X X X X X X

Q

How did Saavedra participated in inducing you to kill the victim?

A

He was the one who said, when we will be at Kanirag you go ahead Tsoy so nothing will happen to you.[150]

x x x x x x x x

Q

How did Quilala come to know you when before that time you did not know each other?

A

Because the two of them were together.

Q

And they went to you?

A

Yes they fetched me.

Q

Who actually fetched you?

A

Romeo Saavedra.

Q

Did Romeo Saavedra tell you what was the reason why he fetched you?

A

No, he just said let's have a drink.[151]

x x x x x x x x

Q

When did you come to know that you are going to kill somebody?

A

It was during the time when I was aimed at.

Q

How did you come to know that you were hired to kill?

A

He (referring to Quilala) told me that he has some animosities with that man.

FISCAL:

Q

Was that in San Jose dela Montaña or in Kan-irag?

A

In Kan-irag already.

Q

When Quilala told you that where was Romeo Saavedra?

A

Behind.

Q

Did you hear anything from Romeo Saavedra by way of comment to the statement given by Quilala to you?

A

He said you go ahead so you will not meet an accident.[152]

x x x x x x x x

FISCAL:

Q

Where was Romeo Saavedra when the samurai was given to you?

A

He was present.

Q

Was there any statement given by Saavedra to you when that samurai was given to you?

WITNESS — (Fernandez)

A

There was nothing.

FISCAL:

Q

After you stabbed the victim and you and Saavedra returned to the taxi was there any statement uttered by Romeo Saavedra?

ATTY MATHEW :

Leading and improper your Honor.

COURT:

Witness may answer.

WITNESS:

A He said he will surely die.[153]

X X X X X X X X

COURT:

Q

While drinking at Sable's store and before going to San Jose dela Montaña when you said that the two were conversing most of the time, did you hear anything in that conversation which would give you an indication regarding the intention of Quilala towards that man whom you stabbed at Kan-irag Hotel?

A

I heard from them that the two of them have already gone to San Jose dela Montaña.

Q

I heard it from whom?

A

From the two of them who were talking about it.

Q

That was ALL you heard that right before you went to Kan-irag?

A

Yes sir.

COURT:

Q

After the stabbing in the hotel and you went back to the taxi and you took a tartanilla to Sable's store to resume drinking was any information related to you by either Quilala or Saavedra as to what prompted Quilala to have you kill that man?

A

Nothing, they were happy about it.[154]

x x x x x x x x

While Fernandez was straightforward in condemning Quilala as the mastermind, he was not as unequivocal with respect to Saavedra. From his testimony, all Saavedra did was to invite him for a drink and thereafter, to accompany them in what would turn out to be a deadly expedition to Kan-Irag hotel. Aside from Saavedra's alleged orders to "go ahead"[155], which Saavedra denied, Fernandez did not indeed say for certain that Saavedra

knew, or was a part of, the murder plot. We cannot suppose conspiracy from these circumstances alone.

We do not likewise see how Saavedra's failure to separate from Fernandez and Quilala after the incident can make Saavedra a co-conspirator. As we stated, it is possible that he joined Fernandez and Quilala, admittedly two old friends of his,[156] out of camaraderie — not conspiracy — and it is not remote that he went with them to San Jose dela Montaña out of the same sense of comradeship.

This court is further hard put to accept the argument that Saavedra should have given a statement to the police authorities upon his arrest if he were truly innocent of the charges. An accused has the right to remain silent.[157] Saavedra's silence should not be therefore construed as an admission of guilt.[158]

The trial court next makes capital of Exhibit "H",[159] a letter in which Saavedra implicated a certain "Jessie" as the mastermind. According to the court, it was an attempt by Saavedra "to mislead the investigation." [160] According, however, to Saavedra, he executed Exhibit "H" "upon instructions of Quilala." [161]

Be that as it may, we do not believe that Exhibit "H" establishes Saavedra's complicity in the murder under review. It is at best, an effort by Saavedra to shield Quilala from the law, arising presumably from a distorted sense of loyalty, or if he is to be believed, out of fear of Quilala indeed.

Suffice it to state that Exhibit "H" was executed without the assistance of counsel, and there is no showing that he waived his right to counsel, with the assistance of counsel.[162]

With respect to Exhibit "C", [163] still another letter in which Saavedra counselled Fernandez to desist from making any confession, we find nothing incriminatory in the same. We hereinbelow reproduce the same:

Too Henry

Henry una sa tanan ako manguusta kanimo nga maayo ba imong pagkahimutang diha. Henry ayaw kasuko kanamo ni Rene ang imong ngalan wala namo banggit ug nahimo ayaw pag-amen niining kaso kay wa silay ibedensiya. Henry duna diay informer diha sa ato nga si Loklok umagad ni Pedro Sepe nga tigbantay sa Don Bosco. Henry balikon ko sa pagsulti ayaw gyod pagamen kay ligtas ka niining kaso kay kami sa ni Rene dili usab mo amen niini. Henry ug mosulat ka kanamo ipadala lag sekreto ngahan sa tao nga tigpadala ug pagkaon nganha kang Ben Villarin. Henry ayaw gyog sultih si Ben niining nahitabo kay informer usab kana nganha. Kami usab ni Rene maayo man ang among pagkabutang nganhi sa Lahug Detention Center. Henry bantayi ang imong mga baba sa pagsulti nganha sa Investigador nga si Paguia ka wise kana. Henry ayaw banggita ang among ngalan ni Rene nga ikaw naka-ila kanamo kay kami usab dili mo banggit kanimo sama ra sa dita kaila.

Imong Amigo

Iyok

ABRIL 12 1977[164]

Exhibit "C" is not in the nature of an extrajudicial confession. Saavedra is not admitting liability there and neither is he therein demanding that Fernandez conceal the "truth." He is merely appealing to him, in what may in fact be considered a brotherly advice, to take precautions ("Henry bantayi ang imong mga baba sa pagsulti nganha sa Investigador nga si Paguia ka wise kana"[165]) and in a manner of speaking, to keep his mouth shut, a Constitutional right in fact of Fernandez.

It is true that Saavedra, in the same exhibit, urged Fernandez not to admit knowing him (Saavedra), yet, that is but a natural behavior. It is not necessarily indicative of guilt. It is consistent with human tendency of self-protection, whether one be truly guilty or innocent.

The accused-appellant's neglect in informing the authorities of the incident except some twelve days thereafter

cannot be taken against him. Failure to report violations of the law, save in certain cases — misprision of treason[166] for one, concealing "evil practices" in the course of a sedition[167] for another — is not a crime.[168] But what should not be lost sight of is the fact that Saavedra, as he claims,[169] feared reprisals from Quilala. It is a natural reaction, to our mind, and does not of necessity suggest Saavedra's guilt, let alone, his parti-cipation in a common criminal design.

It should be noted that Saavedra had no motive to take the life of the victim. The records show that he did not know him at all.[170]

In rejecting the court a quo's finding of conspiracy, we are not foreclosing the possibility that Reynaldo Quilala, indeed, had a hand in the killing of Esnesto Pulmares, whether as a co-conspirator or a principal by induc-tion.[171] Until Quilala is brought to the bar of justice, however, this court is powerless to rule on his culpability. But as far as the evidence in this case is concerned, we are not persuaded that conspiracy has been pro-ven. It is an evidence that does not accordingly pass the legal test. It has not demonstrated conspiracy beyond reasonable doubt.

It is not important that the accused-appellant's evidence consists of bare denials and generalizations. For the rule is that the prosecution must rely on the strength of its evidence and not on the weakness of the defense evidence.[172] Moreover:

x x x x x x x x

If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused of the crime charged and the other consistent with their guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. (U.S. vs. Maaño [1903], 2 Phil. 718.) x x x[173]

x x x x x x x x

As a consequence, the parties' liabilities should be considered individually.[174] Fernandez should thus be held liable in the light of his actual participation. In the instant case, although the trial court found him guilty of murder by direct participation upon his plea of guilty[175] he was sentenced to a relatively light penalty.[176]

On the other hand, may the accused-appellant be considered an accomplice? An accomplice is defined by statute[177] as one who, not being a principal, cooperates in the execution of the offense by previous or simultaneous acts.[178]

We hold in the negative.

Saavedra's presence at the locus criminis, we earlier said, is not enough to make him a conspirator. Neither is it sufficient to hold him liable in the character of an accomplice.[179]

What should be stressed is the fact that an accomplice, to be such, must have had previous knowledge of the principal's criminal intent, and must have performed an overt act that contributed to the death of the victim or, in any event, helped in the consummation of the offense, either by way of material or moral aid, but short of direct participation.[180] In *People v. Tatlonghari*,[181] we found the accused guilty for such complicity in "casting stones at the victim, and distracting his attention,"[182] although such acts were not indispensable to the consummation of the crime of murder (of which we convicted the actual killer).

Here, Saavedra did not perform such act that would suggest cooperation on his part in the killing of the deceased. And as we have stated, the prosecution has not shown that a mutual design existed between Saavedra and Fernandez at the time of that killing.

Neither can it be argued that Saavedra, by his presence, provided moral aid to Fernandez in liquidating the victim. In *People v. Tamayo*,^[183] we held the accused, who shouted oral encouragements ("go ahead!"^[184] "strike them";^[185] "this is the time,"^[186]) to the principal, liable as a complice. Unlike Tamayo, however, Saavedra here merely stood behind Fernandez. In fact, Fernandez testified that he was "conversing with somebody" at that time.^[187] That does not amount to the moral assistance contemplated by law.

While Saavedra is said to have made a "thumbs up" signal, that is by itself an ambiguous act. Furthermore, it came after Fernandez had inflicted the lethal wounds upon the victim. It could not have therefore served Fernandez any more purpose, the crime having been completed.

There is further no showing that Saavedra was aware that Fernandez was armed with the miniature samurai when they entered Kan-Irag hotel or when they were aboard the cab. While Fernandez testified that Saavedra and Quilala were seated beside each other at the rear of the automobile,^[188] it is not far-fetched for Quilala to have slipped the murder weapon from behind unnoticed. With a four-inch knife,^[189] this is not at all impossible. For the same reason, Fernandez could have easily concealed the same in his person when he entered the hotel without Saavedra (who tagged along from behind) knowing about it. In fact, he must have hidden it to avoid detection by possible eyewitnesses in the hotel.

In the light of our findings, the accused-appellant Romeo Saavedra is entitled to an acquittal.

But may we dwell on certain final observations. In his brief,^[190] the appellant accuses the trial judge of bias. He alleges that while the prosecution propounded but 83 questions upon the accused, the judge asked a total of 111 questions.

The intervention of the judge in the conduct of the proceedings is not per se improper, and the number of his questions is immaterial. In *Domanico v. Court of Appeals*,^[191] we held that a judge may intervene in the trial to expedite the same or to clarify an obscurity.

But this is not an iron-clad rule. Judges are nonetheless admonished to observe proper decorum, especially when interrogating witnesses. This is to avoid subsequent charges of oppression or, as in this case, partiality. A judge is, needless to state, a neutral arbiter of controversies. He is called upon not only to act impartially, but also to appear impartial.^[192]

From a reading of the records, it appears that His Honor deviated from this norm. Thus:

x x x x x x x x

COURT QUESTIONS —

Q

Why what is, what has he done or he has shown to you that you have to be afraid to him and you did not even ask help from your own father?

A

I'm afraid of him because he has lots of tough guys.

Q

You did not think before that may be the Court will not believe in you, so that you will also suffer the same fate as Rene Quilala?

A

No, sir.

Q

Now, was your fear of telling the truth because of the fact that according to the evidence of the prosecution it is possible that you, Rene Quilala and Henry Fernandez according to the prosecution that you connived in Sable Store to kill that man?

A

No sir, we did not plan it there.

Q

You still want to stick to your story despite the testimony of Henry Fernandez and Alfredo Pabon?

A

Yes, sir.¹⁹²

x x x x x x x x

This is likewise quite apparent from the challenged decision^[193] itself thus:

x x x x x x x x

Finally, the Court notes from Saavedra's behavior and manner of testifying while on the witness stand to be indicative of lack of repentance or remorse for his participation in the savage and heinous assault upon a fellow human being who was not even known to him and had not done him any harm. On the contrary, up to the trial of his case, he has tried to mislead the Court by giving incredible, implausible and illogical reasons for his behavior during the incident in question, and had even tried to dissuade or induce Fernandez while under detention to cover-up and camouflage the actual happenings of that fateful night to prevent the solution of the crime. Such accusations on his part deserve severe censure and condemnation if only to serve as a warning to future transgressors.^[194]

x x x x x x x x

In any event, this reversal cures whatever impropriety may have attended the case below.

WHEREFORE, the sentence appealed from is REVERSED and the accused-appellant, Romeo Saavedra y Padua, is hereby ACQUITTED. His release from confinement is hereby ordered, unless he is held for another legal cause. With costs de oficio.

SO ORDERED.

Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, and Cortes, JJ., concur.

Teehankee, C.J., in the result.

[1] *People v. Reynaldo Quilala*, CCC (Cebu City), Crim. Case No. 1672, June 23, 1978; Record, 245-265; Hon. Romeo Escareal, presiding Judge.

[2] T.s.n., session of December 21, 1977, 6; also t.s.n., session of January 27, 1978, 11.

[3] T.s.n., session of December 21, 1977, id., 4.

[4] Id., 10.

[5] Id., 11.

[6] Id., 8.

[7] *People v. Reynaldo Quilala*, supra, 249.

[8] T.s.n., session of December 21, 1977, id., 11.

[9] Id., 12-13; 21.

[10] Id., 13.

[11] Id., 15.

[12] Id., 16.

[13] Id.

[14] Id., 16-17.

[15] Id., 25.

[16] Id., 23.

[17] Id.

[18] Id., 24.

[19] T.s.n., session of December 14, 1977, 3.

[20] Id.

[21] Id.

[22] Exhibit "A", Record, id., 1-2.

[23] Id.

[24] Id.

[25] T.s.n., session of December 14, 1977, id., 5.

[26] Id.

- [27] Id., 6.
- [28] Exhibit "B", Record, id., 3.
- [29] T.s.n., session of January 27, 1978, 12-13.
- [30] Id., 13.
- [31] Id.
- [32] T.s.n., session of February 20, 1978, 5.
- [33] Id., 7.
- [34] Id., 14.
- [35] Id., 15.
- [36] Id. 14, 20.
- [37] Id., 16.
- [38] Id., 16-17.
- [39] Id., 32.
- [40] Id., 36.
- [41] Record, id., 4.
- [42] Id., 5.
- [43] Id., 19.
- [44] Exhibits "C-1", id., 5.
- [45] Id.
- [46] Id., 7.
- [47] Id., 8-9.
- [48] Id., 10-14.
- [49] Id., 20.
- [50] Id., 21.
- [51] Id.
- [52] Id., 1-3.
- [53] Id., 1-2.
- [54] Id., 29-30.
- [55] Id., 29.
- [56] Id.
- [57] Id., 50-51.

- [58] *People v. Reynaldo Quilala*, *supra*, 120-131.
- [59] *Supra*, 129-139.
- [60] *Supra*, 138-139.
- [61] T.s.n., session of December 14, 1977, *id.*, 3.
- [62] *Id.*, 3-4.
- [63] *Id.*, 3.
- [64] *Id.*, 5; also t.s.n., session of December 20, 1977, 12.
- [65] *Id.*, 4.
- [66] *Id.*
- [67] *Id.*
- [68] *Id.*
- [69] *Id.*, 4-5.
- [70] *Id.*, 5.
- [71] *Id.*
- [72] *Id.*, 6.
- [73] *Id.*, 5.
- [74] *Id.*, 6, 7.
- [75] *Id.*
- [76] *Id.*, 8, 9; also t.s.n., session of December 20, 1977, *id.*, 15.
- [77] *Id.*, 9; also t.s.n., session of December 20, 1977, *id.*, 6.
- [78] *Id.*, 7.
- [79] *Id.*, 8.
- [80] *Id.*; also, 9.
- [81] *Id.*
- [82] *Id.*, 9.
- [83] *Id.*, 8.
- [84] *Id.*, 10.
- [85] *Id.*
- [86] *Id.*
- [87] *Id.*, 11.
- [88] *Id.*

- [89] Id.
- [90] Id., 11-12.
- [91] Id., 13.
- [92] Id., 13-14; Record, id., 5.
- [93] T.s.n., session of December 20, 1977, id., 10.
- [94] Id., 15.
- [95] Id., 15-16; 24.
- [96] T.s.n., session of May 26, 1978, 4.
- [97] Id., 5.
- [98] Id., 6.
- [99] Id., 5-6.
- [100] Id., 7.
- [101] Id., 8.
- [102] Id.
- [103] Id. 9.
- [104] Id.
- [105] Id.
- [106] Id.
- [107] Id., 12.
- [108] Id., 14
- [109] Id., 15.
- [110] Id., 16.
- [111] Id., 17.
- [112] Id.
- [113] Id., 19.
- [114] Id., 20-21.
- [115] Id., 21-22.
- [116] Id., 23.
- [117] Id., 22-23.
- [118] Id., 24.
- [119] Id., 70.

[120] Id., 26-29.

[121] Id., 31-34.

[122] Id., 33.

[123] Id., 38.

[124] Id.

[125] Id., 41, 42, 43.

[126] Id., 48-50.

[127] *People v. Quilala*, supra.

[128] Supra, 265.

[129] *People v. Formentera*, No. L-30892, June 29, 1984, 130 SCRA 114 (1984); *People v. Perez*, No. L-44188, January 27, 1981, 102 SCRA 352 (1981); *People v. Ariola*, No. L-38457, October 29, 1980, 100 SCRA 523 (1980); *People v. Alicia*, No. L-38176, January 22, 1980, 95 SCRA 227 (1980); *People v. Retania y Rodelas*, No. L-34841, January 22, 1980, 95 SCRA 201 (1980); *People v. Laspardes*, No. L-46146, October 23, 1979, 93 SCRA 638 (1979); *People v. Gonzales*, No. L-34674, August 6, 1979, 92 SCRA 527 (1979); *People v. Pagal*, No. L-32040, October 25, 1977, 79 SCRA 570 (1977); *People v. Estebia*, No. L-26868, July 29, 1971, 40 SCRA 90 (1971); *People v. Mongado*, No. L-24877, June 30, 1969, 28 SCRA 642 (1969); *People v. Tarrayo*, No. L-26489, April 21, 1969, 27 SCRA 953 (1969); *People v. Roldan*, No. L-22030, May 29, 1968, 23 SCRA 907 (1968); *People v. Boyles*, No. L-15308, May 29, 1964, 11 SCRA 88 (1964); *People v. Perete*, No. L-15515, April 29, 1961, 1 SCRA 1290 (1961); *People v. Lambino*, 103 Phil. 504 (1958).

[130] REV. PEN. CODE, art. 8; *People v. Rojas*, G.R. Nos. 46960-62, January 8, 1987; *People v. Alvis*, No. L-39049, June 24, 1983, 122 SCRA 815 (1983); *People v. Monaga*, No. L-39528, November 19, 1982, 118 SCRA 466 (1982); *People v. Alonzo*, No. L-32163, October 19, 1976, 73 SCRA 483 (1976); *People v. Ogapay*, No. L-28566, August 21, 1975, 66 SCRA 209 (1975); *People v. Largo*, No. L-28106, August 18, 1972, 46 SCRA 597 (1972); *People v. Pudpud*, No. L-26731, June 30, 1971, 39 SCRA 618 (1971); *People v. Peralta*, No. L-19069, October 29, 1968, 25 SCRA 759 (1968); *People v. Clarit*, No. L-14150, October 30, 1961, 3 SCRA 331 (1961); *People v. Gin Sam*, 94 Phil. 139 (1953).

[131] *People v. Villanueva*, No. L-32274, April 2, 1984, 128 SCRA 488 (1984); *People v. Pueblas*, No. L-32859, February 24, 1984, 127 SCRA 746 (1984); *People v. Monaga*, supra; *People v. Villason*, No. L-38208, July 30, 1982, 115 SCRA 716 (1982); *People v. Labinia*, No. L-38140, July 20, 1982, 115 SCRA 223 (1982); *People v. Sy*, No. L-39400, March 29, 1982, 113 SCRA 207 (1982); *People v. Muñoz*, No. L-38016, September 10, 1981, 107 SCRA 313 (1981); *People v. Garcia y Cabarse*, No. L-30449, October 31, 1979, 94 SCRA 14 (1979); *People v. Ruiz*, Nos. L-33604-05, October 30, 1979, 93 SCRA 739 (1979); *People v. Cercano*, No. L-37853, November 21, 1978, 87 SCRA 1 (1978); *People v. Candado*, No. L-34089, August 1, 1978, 84 SCRA 508 (1978); *People v. Roncal*, Nos. L-26857-58, October 21, 1977, 79 SCRA 509 (1977); *People v. Cabiling*, No. L-38091, December 17, 1976, 74 SCRA 289 (1976); *People v. Alonzo*, supra; *People v. Ogapay*, supra; *People v. Genoguín*, No. L-23019, March 28, 1974, 56 SCRA 181 (1974); *People v. Cariño*, No. L-33608, February 12, 1974, 55 SCRA 516 (1974); *People v. Mejia*, No. L-26195, January 31, 1974, 55 SCRA 453 (1974); *People v. Alcantara*, No. L-26867, June 30, 1970, 33 SCRA 812 (1970); *People v. Peralta*, supra; *People v. Belen*, No. L-31895, September 30, 1963, 9 SCRA 39 (1963); *People v. Macul*, 86 Phil. 423 (1950); *People v. Manabat*, 82 Phil. 471 (1948); *People v. Carbonel*, 48 Phil. 868 (1926).

[132] *People v. Palon*, No. L-33271, February 20, 1984, 127 SCRA 529 (1984); *People v. Benavidez*, No. L-59985, January 30, 1984, 127 SCRA 188 (1984); *People v. Drilon, Jr.*, No. L-33431, June 28, 1983, 123 SCRA 72 (1983); *People v. Varroga*, No. L-38100, March 15, 1982, 112 SCRA 457 (1982); *People v. Sosing*, No. L-42791, January 30, 1982, 111 SCRA 368 (1982); *People v. Marquez*, No. L-31403, December 14, 1981, 110 SCRA 91 (1981); *People v. Aniel*, No. L-34416, February 21, 1980, 96 SCRA 199 (1980); *People v. Vistido*, No. L-31582, October 26, 1977, 79 SCRA 616 (1977); *People v. Macatanaw*, No. L-37883, February 25, 1975, 62 SCRA 516 (1975); *People v. Dorico*, No. L-31568, November 29, 1973, 54 SCRA 172 (1973); *People v. Custodio*, No. L-30463, October 30, 1972, 47 SCRA 289 (1972); *People v. Tingson*, No. L-31228, October 24, 1972, 47 SCRA 243 (1972); *People v. Bartolay*, No. L-30610, October 22, 1971, 42 SCRA 1 (1971); *People v. Vicente*, No. L-26241, May 21, 1969, 28 SCRA 247 (1969); *People v. Tatlonghari*, No. L-22094, March 28, 1969, 27 SCRA 726 (1969); *People v. Chaw Yaw Shun*, No. L-19590, April 25, 1968, 23 SCRA 127 (1968); *People v. Tividad*, No. L-21469, June 30, 1967, 20 SCRA 549 (1967); *People v. Cerdeña*, 51 Phil. 393 (1928).

[133] *People v. Quilala*, *supra*, 259-261.

[134] *Supra*.

[135] At 302.

[136] *People v. Sabilano*, Nos. L-32866-7, September 21, 1984, 132 SCRA 83 (1984); *People v. Madera*, No. L-35133, May 31, 1974, 57 SCRA 349 (1974); *People v. Wong*, Nos. L-22130-32, April 25, 1968, 23 SCRA 146 (1968); *People v. Tividad*, *supra*; *People v. Izon*, 104 Phil. 690 (1958); *People v. Ibañez*, 77 Phil. 664 (1946).

[137] *People v. Quilala*, *supra*, 259.

[138] *People v. Sosing*, *supra*.

[139] *Supra*, at 303.

[140] T.s.n., session of December 14, 1977, *id.*, 6; also t.s.n., session of May 26, 1978, *id.*, 19.

[141] See *People v. Palacpac*, No. L-27822, February 28, 1973, 49 SCRA 440 (1973).

[142] T.s.n., session of December 20, 1977, *id.*, 3.

[143] T.s.n., session of December 14, 1977, *id.*, 9.

[144] T.s.n., session of December 20, 1977, *id.*, 3.

[145] T.s.n., session of December 14, 1977, *id.*, 9.

[146] T.s.n., session of December 14, 1977, *id.*, 9.

[147] *Id.*, 10.

[148] *Id.*, 11.

[149] *Id.*, 12.

[150] T.s.n., session of December 20, 1977, *id.*, 3; *emphasis supplied*.

[151] *Id.*, 13.

[152] *Id.*, 18-19.

[153] *Id.*, 22-23.

[154] *Id.*, 28-29.

[155] *Id.*, 9.

[156] T.s.n., session of May 26, 1978, *id.*, 4.

[157] CONST. (1973), art. IV, sec. 20.

[158] *People v. Arciaga*, No. L-38179, June 16, 1980, 98 SCRA 1 (1980).

[159] *Record*, *id.*, 20.

[160] *People v. Quilala*, *supra*, 261.

[161] *Supra*.

[162] *Morales, Jr. v. Enrile*, Nos. L-61016 and 61107, April 26, 1983, 121 SCRA 538 (1983); *People v. Galit*, No. L-51770, March 20, 1985, 135 SCRA 465 (1985).

[163] *Record*, *id.*, 4.

[164] *Id.*; the English translation follows:

"To Henry, HENRY first of all, I am greeting you if you are in a good state there. Henry don't be mad with us with Rene. We did not mentioned your name and as possible don't make any confession in this case because he has no evidence. Henry there is one informer there in our place who is Loklok the son in law of Pedro Sepe who is the care taker of Don Bosco. Henry I am telling you again not to make any confession because we are safe in this case because we also and Rene will not make any confession to this. Henry if you will write to us send it very secretly to person who is bringing food to Ben Villarin. Henry never tell Ben about this incident because he is also an informer there. We also with Rene are also in good condition here at Lahug Detention Center. Henry be careful with your mouth with what you're going to tell to the investigator who is Paguia because he is wise. Henry don't mention our name and Rene that you know us because we will not also mention you, in such a way that we do not know each other. Your friend, Iyok April 12, 1977." (Exhibit "C-1", *id.*, 5.)

[165] *Id.*; the English translation follows:

"Henry be careful with your mouth with what you're going to tell to the investigator who is Paguia because he is wise." (*Id.*; 5.)

[166] REV. PEN. CODE, art. 116.

[167] *Id.*, art. 142.

[168] *U.S. v. Caballeros*, 4 Phil. 350 (1905).

[169] T.s.n., session of May 26, 1978, *id.*, 24.

[170] See *People v. Realon*, No. L-30832, August 29, 1980, 99 SCRA 422 (1980); also, *People v. Aniel*, *supra*.

[171] REV. PEN. CODE, art. 17.

[172] *People v. Ramirez*, No. L-39007, August 21, 1982, 116 SCRA 48 (1982); *People v. Tabayoyong*, No. L-31084, May 29, 1981, 104 SCRA 724 (1981); *Duran v. Court of Appeals*, No. L-39758, May 7, 1976, 71 SCRA 68 (1976).

[173] *People v. Pacana*, 47 Phil. 48, 57 (1924); also, *People v. Abana*, 76 Phil. 1 (1946); *People v. Dacanay*, No.

L-33240, November 21, 1979, 94 SCRA 383, de Castro, J., Dissenting.

[174] *People v. Marquez*, supra; *People v. Quinto*, No. L-35278, October 23, 1979, 93 SCRA 605 (1979); *People v. Marano*, No. L-38606, July 14, 1978, 84 SCRA 87 (1978); *People v. Bartolay*, supra; *People v. Tividad*, supra; *People v. Cerdeña*, supra.

[175] *People v. Quilala*, supra, 138-139.

[176] Ten (10) years and one (1) day of prision mayor as the minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as the maximum, a sentence suspended at that, Fernandez having been found to be a youthful offender — he was born on June 8, 1958, or only one hundred four (104) days younger than Saavedra who was born on February 28, 1958, as stated earlier.

[177] REV. PEN. CODE, art. 18.

[178] Supra; *People v. Mandolado*, Nos. L-51304-05, June 28, 1983, 123 SCRA 133 (1983); *People v. Medrano*, No. L-55831, May 31, 1982, 114 SCRA 335 (1982); *People v. Nierra*, No. L-32624, February 12, 1980, 96 SCRA 1 (1980); *People v. Toling*, No. L-28548, July 13, 1979, 91 SCRA 382 (1979); *People v. Tatlonghari*, supra; *People v. Ibañez*, supra; *People v. Silvestre and Atienza*, 56 Phil. 353 (1931); *People v. Tamayo*, 44 Phil. 38 (1922); *U.S. v. Flores*, 25 Phil. 595 (1913); *U.S. v. Dasal*, 3 Phil. 6 (1903).

[179] *People v. Silvestre and Atienza*, supra.

[180] *People v. Ibañez*, supra; *People v. Tamayo*, supra.

[181] Supra.

[182] Supra, at 740.

[183] Supra.

[184] At 56.

[185] Supra.

[186] Supra.

[187] T.s.n., session of December 20, 1977, id., 9.

[188] T.s.n., session of December 14, 1977, id., 8.

[189] Id., 9.

[190] Rollo, 61.

[191] No. L-38139, May 16, 1983, 122 SCRA 218 (1983); also, *People v. Mui*, No. L-48875, October 21, 1982, 117 SCRA 696 (1982); *Sta. Maria v. Zamuco*, Adm. Matter No. 1567-MJ, December 28, 1981, 110 SCRA 477 (1981); *People v. Catindihan*, Nos. L-32508 and 42104, April 28, 1980, 97 SCRA 196 (1980); *People v. Cuadra*, No. L-27973, October 23, 1978, 85 SCRA 576 (1978).

[192] *Santos v. De Gracia*, Adm. Matter No. 2510-MJ, December 15, 1982, 119 SCRA 189 (1982); *Fernandez v. Presbitero*, Adm. Matter No. 486-MJ, September 13, 1977, 79 SCRA 60 (1977).

192 T.s.n., session of May 26, 1978, id., 70.

[193] *People v. Quilala*, supra.

[194] At 263.

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