

PEOPLE OF THE PHILIPPINES, PETITIONER-APPELLEE, VS. DANIEL PINTO, JR. AND NARCISO-BUENAFLOR, JR., DEFENDANTS-APPELLANTS.

G.R. No. L-39519. November 21, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

As an aftermath of the mission of the Legazpi City Police Department to serve on Christmas day in 1970 a search warrant on Francisco Bello who was allegedly training a private army, patrolmen Daniel Pinto, Jr. and Narciso Buenaflor, Jr. were found guilty beyond reasonable doubt by the then Circuit Criminal Court in said city, of killing not only Bello but also 9-year-old Richard Tiongson and Rosalio Andes and seriously wounding Maria Theresa Tiongson. The dispositive portion of the decision of June 13, 1974[1] reads:

"WHEREFORE, the Court finds the accused Narciso Buenaflor, Jr. and Daniel Pinto, Jr. GUILTY beyond reasonable doubt of the crime of:

(a) MURDER in CCC-X-288-Albay, and hereby sentences each of them to suffer imprisonment for the rest of their lives (Reclusion Perpetua); to indemnify the heir of Rosalio Andes in the amount of Twenty-five Thousand (P25,000.00) Pesos, jointly and severally; and to pay the costs;

(b) MURDER in CCC-X-289-Albay, and hereby sentences each of them to suffer imprisonment for the rest of their lives (Reclusion Perpetua); to indemnify the heirs of Francisco Bello in the amount of Twenty-five Thousand (P25,000.00) Pesos, jointly and severally; and to pay the costs;

(c) MURDER in CCC-X-298-Legazpi City, and hereby sentences each of them to suffer imprisonment for the rest of their lives (Reclusion Perpetua); to indemnify the heirs of Richard Tiongson in the amount of Twenty five Thousand (P25,000.00) Pesos, jointly and severally; and to pay the costs;

(d) FRUSTRATED MURDER in CCC-X-299 Legazpi City, and hereby sentences each of them to suffer imprisonment of from Six (6) Years and One (1) Day of Prison Mayor as Minimum, to Twelve (12) Years and One (1) Day of Reclusion Temporal as Maximum; to indemnify the victim, Maria Theresa Tiongson, in the amount of Eight Thousand (P8,000.00) Pesos, jointly and severally; and to pay the costs.

In addition to the foregoing the accused are sentenced to suffer perpetual disqualification from public office."

According to the prosecution, on December 25, 1970, the Legazpi City Police secured from the City Court of Legazpi a warrant for the search of the house and premises of Francisco Bello in Mariawa, Legazpi City on the ground that the police had probable cause to believe that Bello illegally possessed a garand rifle, a thompson submachinegun and two automatic pistols.[2] The police had earlier undertaken a surveillance of Bello on the basis of information it had received that he was conducting an "obstacle course" or training men for combat since October, 1970.[3]

Upon receipt of the search warrant, the Chief of Police, Dr. Solomon Adornado, [4] called his officers to a

"confidential conference" at the residence of Mayor Gregorio Imperial. Present at said conference were the mayor, his secretary, and the officers of the patrol division, secret service and the administration of the city police. The Chief of Police was assisted by Major Alfredo Molo, head of the intelligence division of the city police, in briefing the group on how to serve the search warrant and to arrest Bello as the latter had been identified as the one who shot Salustiano Botin the night before. At the time of the briefing, no warrant of arrest had yet been issued against Bello.[5]

The policemen were divided into three teams and around five members of the Philippine Constabulary (PC) who were also present were assigned to the different teams.[6] Team 3 was placed under the charge of Sgt. Salvador de la Paz with a policeman named Luna and appellants Buenaflor and Pinto as members. Wilfredo Romero was the PC member assigned to the team.[7] Except for Romero and Pinto who were each armed with a carbine, the policemen of Team 3 each carried a .38 caliber pistol.[8]

Loaded in four vehicles, the three teams proceeded from the residence of the Mayor to barrio Homapon arriving there at around seven o'clock in the evening. The four vehicles met at the junction of Homapon and the road to Mariawa. They had decided to ride on the way to Mariawa when one of the jeeps bogged down because of the muddy road. Hence, the three teams had to walk in single file on the right side of the road with the teams maintaining a distance of around ten meters between them.[9]

Suddenly, Romero noticed the members of his team running. He ran with them and then he heard someone shout "Pondo!" (stop). The shout was followed by a shot and then a burst of gunfire. The team had by then deployed to the right side of the road. When Romero checked the men by shouting the agreed pass?word of "bayawas" for which the person challenged answered "santol",[10] he found that Buenaflor was 5 meters in front of him "at the bank of the road", Pinto was two meters to the right of Buenaflor, Sgt. de la Paz was two meters to his (Romero's) right, Luna who was holding a walkie-talkie was to his left and another policeman was in front of Luna.[11] When Romero heard the gunburst, he saw "flashes of fire" "just in front" of him or from the place where Buenaflor was.[12]

The area where the team deployed was lower in elevation than the road but Romero heard the rumbling of a jeep going towards the direction of Homapon when he heard the burst of gunfire and saw the flashes of fire from the direction of Buenaflor.[13]

On the jeep which passed by the deployed policemen were Fr. Felix Capellan, Mrs. Zenaida Stilianopolous Tiongson, her six children and the driver. They had just come from a lechonada party in the hacienda in Mariawa of Mrs. Purificacion Napal Anduiza, the mother of Francisco Bello. Fr. Capellan had celebrated mass to commemorate the death anniversary of Mrs. Anduiza's father. When Fr. Capellan decided to go back to his parish, the Anduizas offered their jeep for his transportation.[14] Seated on the front seat of the "McArthur type" jeep which had only a canvass top but no cover on the sides and back,[15] were the driver, Mrs. Tiongson with a child on her lap and Fr. Capellan.[16] Richard Tiongson was seated on the steel seat behind the driver while his sister Maria Theresa was beside him.[17] The three other children were also seated at the back.

After crossing the creek on their way to Homapon and as the driver "changed to high gear with a dual",[18] Mrs. Tiongson saw blinking lights some 300 yards ahead.[19] Fearing that there might be "people with bad intentions" or hold-uppers, Fr. Capellan told the driver to go faster.[20] Then Fr. Capellan heard one shot and after a few seconds and around 50 meters ahead, there was rapid firing with some of the bullets hitting the jeep.[21] According to Mrs. Tiongson, the widow of Col. Angel Tiongson of the PC, the rapid firing sounded "automatic".[22] The firing came from the left rear side of the jeep.[23]

Before they were fired upon, Maria Theresa saw a man lying flat on his stomach while holding a gun on the left

side of the road just ahead of the jeep.[24] Through the light of the jeep, Maria Theresa noticed that the man was wearing a jacket and a hat and he was on the shoulder of the road.[25] After passing the man, the rapid firing ensued. Richard said "ugh" and fell on the floor of the jeep. Maria Theresa was about to hold Richard when she felt herself hit at the buttocks. Then they all screamed.[26]

The jeep continued its fast uphill climb until it reached a level area and almost fell into a ditch were it not for a clump of banana plants. The jeep came to a full stop. Fr. Capellan saw three men with flashlights but he could not distinguish their faces as it was dark and their flashlights were focused on the ground.[27] Mrs. Tiongson saw a PC jeep and some cars and, believing that one of the cars was that of the Mayor, she called Tia Citang, the mother of the mayor, at the same time identifying herself.[28] She must have managed to take Richard from the jeep and was cuddling him on the ground near the left rear end of the jeep when she requested Fr. Capellan to administer extreme unction on Richard. As Fr. Capellan had no holy oil, he gave the boy absolution.[29]

Even after Mrs. Tiongson had identified herself as the widow of Col. Tiongson to the men around, nobody listened to her appeal for help. When she approached Chief of Police Adornado, she hit him and asked him why they shot her and her companions. The Chief of Police replied that the shooting was no longer his fault because Mrs. Tiongson and her companions did not stop when told to do so. She requested the Chief of Police for a car in which to take Richard to the hospital or for a driver and even for a walkie-talkie so she could talk to Mayor Imperial but the Chief of Police did not heed her pleas.[30] (TSN, February 9, 1972, pp. 17-22).

A few minutes later, a jeep driven by Fernando Anduisa arrived. Mrs. Tiongson and her children boarded the jeep. At the intersection of the road to Legazpi City proper and the road to Mariawa, the area was brightly lighted and armed men ordered them to put their hands up. They were told to alight from the jeep to be searched but Mrs. Tiongson begged the lieutenant manning the area to let them pass so they could bring her two children to the hospital.[31]

Richard and Maria Theresa were brought to the Sacred Heart Clinic in Legazpi City. Thirteen-year-old Maria Theresa was treated for a gunshot wound at the "right upper quadrant of the right buttocks".[32] Her pelvis and abdomen were x-rayed. One of the x-ray plates[33] revealed an oval spot indicating a foreign body in Maria Theresa's pelvis. The attending physician decided not to extract the foreign body as Maria Theresa was not a "very good surgical risk".[34] The hospital charged P282.90 for Theresa's hospitalization.[35] She was later brought by an army plane to the PC Station Hospital in Camp Crame, Quezon City for further treatment and hospitalization[36] but the foreign body was never removed from her pelvic area.

Richard sustained a gunshot wound at the back about the level of the 5th lumbar vertebrae. The bullet traveled obliquely to the left kidney, the lesser sac, the liver and the right auricle.[37] Richard was operated at the hospital but he died at 8:45 the following morning due to massive hemorrhage caused by the gunshot wound.[38] When he was autopsied, a lead slug was found embedded in his heart.[39] His mother paid P862.35[40] for his hospitalization and was charged P200 by the church. Mayor Imperial paid P500 to Funeraria Oro for Richard's burial.[41]

Meanwhile, according to Chief of Police Adornado, after the shooting incident involving the Tiongsos, the police pursued their mission to serve the search warrant on Bello. When they reached Bello's residence in Mariawa, they were met by a "volley of fire." Suddenly, the house was lighted and a certain Escobar met him. Although Bello and his parents, Mr. and Mrs. Anduiza, were not around, the police searched the area and found a Japanese Springfield rifle, ammunition of a garand rifle, ammunition of a carbine, live ammunition for a .38 caliber pistol and 380 bullets for an automatic pistol.[42] Thereafter, the Chief of Police declared the search terminated and the entire searching party left for headquarters.[43] The following day, he issued Special Order

No. 24 which states:

".December 26, 1970

"To All Concerned:

"The following men mentioned below are hereby assigned at Homapon until their mission is accomplished, effective as of today, December 26, 1970:

"1. Sgt. Salvador de la Paz, In-charge

"2. Pfc. Carlos Barbin, member

"3. Pat. Eduardo Arcinue, member

"4. Pat. Juan Luna, member

"5. Pat. Daniel Pinto, member

"6. Pat. Celedonio Abordo, member

"7. Pat. Narciso Buenaflor, member

"Report progress of mission any time of day through the radio system. For strict compliance.

(Sgd.)

SOLOMON B. ADORNADO

Chief of Police

"Copy furnished: The Honorable City Mayor, The Patrol Command, LCPD, the OIC and file."[44]

The mission was to keep peace and order in the specified place and to determine the whereabouts of Bello.[45] It was not necessary to specify the mission in the order itself because the Chief of Police "had a close understanding with the squad that went to Homapon".[46] For a "convenient tactical deployment," Sgt. De la Paz further divided Team 3 into three groups with patrolmen Buenaflor and Pinto composing Group II.[47]

At noontime of December 26, 1991, Francisco Bello, more popularly known as Paquito, arrived at the residence of Inocencia Malbas in sitio Ando, Talahib, Daraga, Albay. He was with Inocencia's brother, Francisco Andes, Francisco's son Ananias, and Leoncio Mostoles. Rosalio, another son of Francisco, also arrived with the group.[48] Bello requested Inocencia and her husband that he and his group be allowed to spend the night in Inocencia's house.[49]

Inocencia woke up at around 5:00 o'clock in the morning of December 27, 1991. At the sala, on her way from her room to the kitchen, she saw Bello sleeping alone. From the kitchen, Inocencia went to the balcony through the sala. On her way back to the kitchen, she noticed that Bello, who was wearing a red shirt and an underwear, had awakened. Bello opened the window, spat out and went to the balcony. He reentered the sala and, saying that it was cold, Bello put on his clothes and pants. He also wore his jacket. He went back to the balcony and asked for water. Inocencia's husband gave Bello a glass of water. After gurgling, Bello placed the glass on the window sill and asked Inocencia's husband for a cup of coffee.[50]

Inocencia's husband was about to offer Bello a cup of coffee when she heard a successive burst of gunfire. Bello, who was on the balcony facing the copra kiln ("agonan") with his back towards the pili tree, gradually fell to the floor with his hands above his head. Then there was another burst of gunfire. From the kitchen, Inocencia rushed to the door from where she saw a man holding a long firearm, whom she later identified as Pinto, near the pili tree

which was around eight meters from where Bello was, and another man, also holding a gun, crouching near the stairs.[51]

Inocencia, with her two-year-old child in her arms,[52] was about to rush to Bello when her husband pulled her. Just then a man, whom Inocencia identified as Buenaflor, came up the house, pointed a gun at Inocencia and her husband and told them to lay flat on the floor. The man asked them where the gun was. Inocencia told him that there was no gun in the house but then, when she looked around, she saw a long firearm with its muzzle pointed upward leaning against the wall near the door around two meters from where Bello laid flat on his back. Bello himself had a gun but it was in its holster tucked on his waist.[53] It was Buenaflor who took both the long firearm and the gun in Bello's holster.[54]

When Francisco Andes went up the house, he told Inocencia that Rosalio was dead.[55] Inocencia went near the pili tree where Rosalio's body was, knelt down and asked the man with a long firearm why he killed Rosalio. The man answered that Rosalio fought back. However, Inocencia did not notice any weapon near Rosalio's body.[56]

Bello's hands and feet were tied together and a bamboo pole was inserted between them so that two men, one of them being Francisco Andes, could carry the cadaver.[57] Bello died because of "shock secondary to massive hemorrhage due to multiple gunshot wounds".[58] A former pilot and 28 years old at the time of his death, Bello sustained a gunshot wound at the left temple, an inch above the highest point of the pinna of the left ear. The bullet which entered his head through the squamous temporal bone travelled towards the occipital region down to the floor of the left middle cranial fosa until it reached the base of the tongue.

Bello had three gunshot wounds on his chest. One bullet entered the superior part of the right scapular area about the level of the third thoracic vertebrae. The bullet travelled to the right inna in a slightly upward direction making its exit at the lateral part of the right supraclavicular fossa above the clavicle. The second gunshot wound was at the left side inter?scapular area. The bullet travelled upwards and to the right fracturing the 7th rib, entered the lower lobe of the left lung, punctured the pulmonary conus, went through the junction of the right auricular appendage and the right auricle, the anteromedial side of the pericardium, grazed the medial surface of the middle lobe of the right lung and exited at the right side of the chest. The third gunshot wound was below the right nipple. The bullet went to the chest cavity, the lower lobe of the right lung, the dome of the diaphragm, the right lobe of the liver, the 8th thoracic vertebra and exited at the left of the midline at the inferior interscapular area.[59]

While Bello's corpse was being autopsied, a slug fell from his jacket. A bullet jacket and lead fragments were found at the base of his skull and a slug was extracted from the floor of his mouth.[60]

Rosalio Andes, 23 years old, also died of shock due to multiple gunshot wounds. A bullet entered his right temporal area, macerated the brain, fractured both parietal bones and exited at the left parietal bone. Another bullet entered the left interscapular area below the level of the 6th rib, travelled to the dome of the left diaphragm, the left lobe of the liver, the pancreas, the small intestines, and the perineum below the ramus of the right pubis. The slug was found at the gluteo-perineal junction about 2 inches below the tip of the coccys and 2 1/2 inches above the gluteal line. A third bullet entered the left knee and exited at the medial side of the leg.[61]

The slugs and parts of bullets which were extracted from the bodies of the victims were turned over to the National Bureau of Investigation (NBI) on December 29, 1970 by Fiscal Aquilino Bonto for safekeeping purposes.[62] The empty shells and slugs which both the PC and the Legazpi City police found in Talahib were also turned over to the NBI[63] in the same manner that the four empty carbine shells[64] found by the PC near the coconut tree a meter from the shoulder of the road to Mariawa were also turned over to the NBI.[65] Also submitted to the NBI for ballistic examination were twelve Smith & Wesson caliber .38 revolvers, two Smith & Wesson "paltik" caliber .22, four Tell caliber .38 revolvers, one Bosque automatic pistol caliber .380, four US

carbine Inland rifles caliber .30, three US Springfield rifles caliber .30, one Thompson submachine gun caliber .45 and one Colt automatic pistol caliber .45.[66]

Defendants Pinto and Buenaflor both denied having fired at the jeep bearing the Tiongson family.[67] Pinto, who admitted carrying a caliber .30 carbine during the incident,[68] testified that the shooting occurred because the Tiongsons' jeep "was going towards" them.[69]

According to Pinto, when they reached Mariawa, it was he who fired one shot in the air.[70] After the search had been conducted in Bello's premises, Team 3 was instructed by a "superior officer" "to remain and maintain peace and order in (the) vicinity including Mariawa".[71] While he and Buenaflor were patrolling the area, at around midnight, they "chanced upon a house" wherein Bello and his group were staying. They captured four of Bello's bodyguards and tied them to a pili tree with the torn shirt of one of the captives.[72]

At daybreak, Pinto saw Bello smoking at the porch. Buena-flor, who was behind him, called Bello. Then a single shot coming from the house rang out. It was answered by a burst of fire which Pinto "presumed" came from Buenaflor. By reflex action, Pinto transferred from the pili tree to a nearby coconut tree. But before he reached the coconut tree, he saw a man with a bolo in his hand running towards him. As the man was menacingly near him, Pinto shot him.[73]

After a lull in the firing, he went up the house to look for Bellos' other companions. He saw the body of Bello on the porch and "near" it was a garand which he took. He also got Bello's short firearm "from a holster." He turned over both the garand and the short firearm to Buenaflor. One of the captured persons kicked Bello's body saying that if not for Bello, his son would not have been killed. Thereafter, the two dead person were carried by the captured bodyguards to Mariawa.[74]

In Mariawa, Pinto contacted (through the radio) police outpost No. 5 in Banquerohan and two jeeps arrived. When they reached the junction in Homapon, Major Molo, who was with Fiscal Benito Se, told Pinto to go back with him to Talahib. Although Pinto warned Major Molo that it would be dangerous to go back because one of Bello's men had escaped, they nevertheless proceeded to Talahib. With three other policemen, they arrived there between eight and nine in the morning where they were instructed to "look for evidence specifically x x x for a thompson." He found in the porch two shells and the others found a hat and a flashlight. Thereafter, they returned to Mariawa and later, to Legazpi City proper.[75]

On cross-examination, Pinto stated that he did not know that they found Bello in an area which was beyond the jurisdiction of Legazpi City. He admitted that while they were instructed to patrol the area, they were also told to effect the arrest of Bello even if no complaint had been lodged against him.[76] According to Pinto, of the fifteen bullets in the magazine of his carbine, only two remained. He fired "most" of the thirteen shots during the "Bello incident".[77]

Pinto shot the man later identified as Rosalio Andes when he was at a distance of around three meters. Rosalio was "face-to-face" with him when Pinto shot him. As Rosalio did not fall from the first shot, Pinto continued shooting him.[78] When he went up the porch he saw the garand "lying on the floor" but the gun tucked on Bello's waist was still in its holster.[79]

On the Tiongson incident, Pinto asserted that he did not fire his carbine.[80] When he saw the headlight of the Tiongsons' jeep, he also saw a flashlight being waved. A little later, he heard a shout ordering the jeep to stop. Then he heard one shot and immediately after, the volley of fire as the jeep was going towards his direction. As it passed by him, he heard the jeep's passengers shriek.[81]

For his part, Buenaflor declared that during the mission to serve the search warrant on Bello, he carried the ".38

caliber revolver Tel." (sic) which had been issued to him by the Legazpi City Police Department. He did not fire his gun at the Tiongsongs and, "as a matter of fact," he surrendered his firearm for ballistic examination.[82] In the afternoon of December 26, however, Major Molo issued him a Thompson submachinegun.[83]

While patrolling Homapon, he and Pinto "chanced upon" some persons who told them that they could guide them to where Bello was. At the place which they later found to be Talahib, they went near a pili tree from where they saw a house "below." Then he saw a man who turned out to be Mostoles. Buenaflor apprehended Mostoles because the latter was Bello's bodyguard and he had a .22 caliber firearm with him. He came by another man with a bolo, named "Banteque" and apprehended him also. Then, from behind the pili tree, Pinto appeared with yet another man. They waited for a while until another man, who turned out to be Francisco Andes, came within four meters of him. Buenaflor pointed his submachinegun at him so Andes approached him. Buenaflor confiscated Andes' .22 caliber firearm.[84]

From the group, Buenaflor learned that Bello provided them with firearms and that Bello himself had a pistol tucked in his holster as well as a garand. He and Pinto then tied the men to the pili tree. Later, he saw a person in the balcony of the house below and Buenaflor shouted twice: "Paquito, mag-surrender ka!" Then Buenaflor heard "a shot coming from the direction of the balcony followed by successive shots." He sought cover behind the pili tree and, while in a crouching position, fired his submachinegun towards the balcony. Pinto was then behind him. As Pinto shifted his position while firing his carbine, Buenaflor went down to the "elevated portion going down to the nipa shack" until he was near the coconut tree. There he found a person lying with his face down. He later found out that the person was the son of Francisco Andes.[85]

After the firing had stopped, Pinto told him that Bello was dead. Pinto then went up the house. Buenaflor went back to the pili tree, untied the four persons they had captured, and told them to do something so they could carry the bodies of Bello and (Rosalio) Andes.[86]

Like Pinto, on cross-examination, Buenaflor also asserted that he did not fire his gun at the jeep carrying the Tiongsongs.[87] While admitting that the person who led them to Bello had told them that the latter was in Talahib, Buenaflor did not know that Talahib was a barrio of Daraga, Albay and not of Legazpi City.[88] He reiterated that he shouted at Bello urging him to surrender[89] but he was not able to fire a warning shot or identify himself as a member of the police force "because after the second shot there was already a burst of gunfire".[90]

Buenaflor affirmed that the first shot emanating from the balcony of the house in Talahib which was around fifteen meters from the pili tree, came from a "high caliber firearm." [91] After they had found out that Bello was dead, Pinto went up the house. Later, Pinto gave him Bello's 380 automatic pistol and garand.[92] Although he looked at those firearms, he did not determine whether they had been fired.[93] He noticed, however, that the magazine of the garand was "intact".[94] Aside from Bello's fire?arms, Buenaflor and Pinto confiscated two .22 caliber revolvers and two bolos from Bello's bodyguards.[95]

Buenaflor stated that his Thompson submachinegun had two clips with each clip containing 30 bullets. When he gave back the firearm to Major Molo, only four bullets were left of the one clip he had used.[96] He remembered having squeezed twice the trigger of his Thompson submachinegun or automatic rifle in Talahib.[97] His service revolver was still with him then.[98]

As a result of this series of events, four separate informations were filed against Pinto and Buenaflor. The information charging Pinto and Buenaflor for the murder of Andes which was filed on July 26, 1971 reads:

"That on or about the 27th day of December, 1970, in sitio Ando, Barrio Talahib, Daraga, Albay and within the jurisdiction of this Honorable Court the accused, conspiring and confederating together and mutually helping one another, without any justifiable cause or motive, with intent to kill, did, then and there, willfully,

unlawfully and feloniously, with treachery and evident premeditation, accused Pat. Narciso Buenaflor, Jr and Pat. Daniel Pinto, Jr., and by means of a Cal. 45 Thompson Sub-Machine Gun, SN-213436 and a US Carbine Inland, Cal. 30, SN-5099407, owned respectively by said accused, shoot one Rosalio Andes, inflicting upon him gunshot wounds as described in the attached Autopsy Report marked as Annex "A" and being made an integral part of this information, thereby causing upon said Rosalio Andes serious and mortal wounds which led to his instantaneous death.

"Contrary to law."

The information charging Pinto and Buenaflor with having murdered Bello contains basically the same allegations as the above and it was filed on the same date. On August 24, 1971 two other informations were filed against Pinto and Buenaflor: one for the murder of Richard Tiongson and another for the frustrated murder of Maria Theresa Tiongson. On arraignment, Pinto and Buenaflor both pleaded not guilty to all the charges.

After trial, the trial court rendered the aforementioned judgment of conviction. For the killing of Bello and Andes, the trial court appreciated evident premeditation as a qualifying circumstance and treachery, nighttime and use of public position as aggravating circumstances. For the incident involving the Tiongson children, it considered the crimes as qualified by treachery and aggravated by the use of public position.

Pinto and Buenaflor instituted the instant appeal praying for exoneration mainly on the basis of their claim that the killings were perpetrated in the course of the performance of their official duties as peace officers in obedience to the lawful order of their superiors.

In order that the justifying circumstance of fulfillment of a duty under Article 11 of the Revised Penal Code may be success-fully invoked, the defense has to prove that these two requisites are present: (a) the offender acted in the performance of a duty and (b) the injury or offense committed be the necessary consequence of the due performance or lawful exercise of such duty. In the absence of the second requisite, the justification becomes an incomplete one thereby converting it into a mitigating circumstance under Articles 13 and 69 of the same Code.[99]

Admittedly, the appellants and the rest of the police force involved, originally set out to perform a legal duty: the service of a search warrant on Bello. In the process, however, the appellants abused their authority resulting in unauthorized and unlawful moves and consequences. Armed with only a search warrant and the oral order to apprehend Bello, they went beyond the ambit of their mission and deprived Bello and two other persons of their lives.

While the defense presented proofs that Bello had a string of record in the police blotter for misdeeds ranging from taking the harvest of their hacienda without the permission of his parents to assaulting his stepfather, and that he was "dangerous while under the influence of liquor",[100] there was no proof that he had been convicted of any offense or that he was a dangerous fugitive from justice which would warrant a "shoot-to-kill" order from police authorities. Proof of bad moral character of the victim only establishes a probability that he committed a crime but it certainly cannot be the reason for annihilating him nor may it prevail over facts proven showing that the same victim had been cold-bloodedly killed.[101] As such, the suspicion that Bello was maintaining a private army was not a sufficient justification for his being rubbed out without due process of law.

The police theory that Bello authored the shooting of one Salustiano Botin on Christmas eve is neither a justification for his arrest without a warrant. It should be observed that while the police had obtained a search warrant for illegal possession of firearms against Bello even on Christmas day which was supposed to be a holiday, no such effort was made in securing a warrant of arrest for Bello's alleged frustrated killing of Botin. The improbability of the defense evidence through the testimony of Botin himself that Bello had shot him in the

evening of December 24, 1970 is bolstered by the same testimony showing that while he was shot by Bello in the presence of the police force who were converging at the Junction of Homapon and Mariawa, the same law enforcers were unable to arrest Bello. Besides the fact that no other eyewitness corroborated Botin's testimony even in the face of his own admission that Bello had no reason to shoot him, no complaint was ever lodged against Bello for the alleged shooting.[102]

On the other hand, the prosecution, through eyewitness Rogelio Escobar, tried to establish that during said shooting incident, the police were looking for Bello at the store of a certain Serrano.[103] Unable to find Bello, the police, specifically Pinto, mauled Escobar while asking him to testify against Bello for allegedly shooting Botin.[104] The police had focused their vehicles' headlights near the bodega of ex-Mayor Los Baños in their effort to flush out Bello who, unknown to the police, had earlier left the vicinity. It was when the police fired at the said bodega that Botin must have been accidentally shot.[105] This story was uncorroborated but if true, would show the police's dangerous propensity for using otherwise official operations in an unlawful manner.

A propensity for rash judgment was likewise amply shown at the incident involving the Tiongson children. Since the jeep coming towards them was owned by the Anduizas, the appellants acted obviously in the belief that Bello was its passenger and posthaste they fired upon it even without any reasonable inquiry as to the identity of its passengers.[106] Granting that the police indeed fired a warning shot, sound discretion and restraint dictated that, there being no responding shots from its passengers after the alleged warning shot and considering the condition of the road which was not only muddy but uphill, instead of directing aimless gunburst at the jeep, the most that they could have done was to render the jeep immobile by shooting its tires. That way, they could have verified the identity of the passengers. 'As it were, they riddled the jeep with bullets injuring in the process innocent passengers who were completely unaware of what they were up against.

Appellants' stark denial of firing their guns upon the Tiongson family falls flat in the face of various circumstantial evidence which point to their culpability. There is the unflinching testimony of Sgt. Romero that he saw "flashes of fire" from the direction of Buenaflor as the jeep bearing the Tiongsos passed by. Said testimony was corroborated by that of Rafael Jacob, the PC member of team 2, that while no one in his team fired his gun, the "sporadic firing" came from team 3 after the first burst of fire which occurred while the jeep was "abreast of team 2".[107] Even defense witness Mariano Rico, a policeman who led team 1, was "sure" that he heard gunshots at the moment when "the jeep had just passed team 2".[108]

Then there are the four empty .30 caliber carbine shells which were found near the coconut tree where, according to Romero, Pinto was deployed. While he himself carried a carbine, Romero did not fire it and his testimony was never contradicted. When the four empty shells were compared with the test shells which were fired from the US carbine, caliber .30 Inland Division, SN-5099407, which, according to the aforequoted information charging appellants with having killed Andes, was used by Pinto, they were found to have "significant similar individual characteristics".[109]

While it is true that the ballistic report reveals that the lead bullet taken from the body of Richard was fired from a Smith & Wesson type firearm[110] and Buenaflor was proven to be carrying a .38 caliber Tell revolver, the findings of expert witnesses or, in this case, the ballistic report pointing to another kind of caliber .38 weapon as the source of Richard's wound only serves as a guide for the courts after considering all the facts of the case.[111] The undisputed fact is that Buenaflor was specifically pointed by Romero as the one who fired his firearm as the Anduiza jeep bearing the Tiongsos passed by. Inasmuch as no evidence that Romero would prevaricate to pin responsibility on Buenaflor was ever presented, there is, therefore, no reason to discredit his testimony.[112]

In addition to all these, Buenaflor's motive for wanting to do away with Bello has been established. Such motive

provided circumstantial evidence leading to the inference that indeed he fires his gun.[113] According to the un rebutted testimony of Rogelio Escobar, an overseer of the Napal hacienda and constant companion of Bello, on November 1, 1970, Buenaflor and another policeman named Santos Urbina, Jr. borrowed Bello's jeep on the pretext that they needed it to transfer Moscoso, the suspect in the Perez killing, to the Albay Police Headquarters. When it was returned, the jeep had bloodstains. Bello and Escobar later learned from a PC officer that the jeep had been used in dumping in Guinobatan the body of Moscoso. Confronted by the PC officer, Bello admitted that the jeep was borrowed by Buenaflor and Urbina and agreed to execute a sworn statement on the matter. Consequently, the PC authorities notified Mayor Imperial of the solution of the Moscoso killing.

Three days later, Escobar and Bello met Urbina who warned Bello, "Kit, if you want to give your statement, just say that I borrowed your jeep for thirty minutes. This is a brotherly advice because something might happen to you." Bello retorted that he would do what was right and that was to tell the truth. Urbina said that it was up to Bello but he repeated that he was giving Bello a brotherly warning that something might happen to him[114] (TSN, August 23, 1973, pp. 4-20). These facts were of course denied by Buenaflor. However, as between the positive declaration of a prosecution witness and the negative denial of the accused, the former deserves more credence.[115]

All these pieces of circumstantial evidence point to no other inference than that Pinto and Buenaflor fired their guns in defiance of their superior officer's order only "to find the whereabouts" of Bello[116] and to desist from using their weapons "without clearance from the Chief of Police".[117] Since there is more than one circumstance and the facts from which the inferences are derived are proven, the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[118]

The fact that the victims were different from the one the appellants intended to injure cannot save them from conviction. *Aberratio ictus* or mistake in the identity of the victim carries the same gravity as when the accused zeroes in on his intended victim. The main reason behind this conclusion is the fact that the accused had acted with such a disregard for the life of the victim(s) -- without checking carefully the latter's identity -- as to place himself on the same legal plane as one who kills another willfully, unlawfully and feloniously.[119] Neither may the fact that the accused made a mistake in killing one man instead of another be considered a mitigating circumstance.[120]

It is not even necessary to pinpoint who between Pinto and Buenaflor actually caused the death of Richard or the wounding of Maria Theresa in the presence of proof beyond reasonable doubt that they acted in conspiracy with each other.[121] Prior agreement between the appellants to kill their intended victim is not essential to prove conspiracy as the same may be inferred from their own acts showing joint purpose and design.[122] In this case, such unity of purpose and design is shown by the fact that only the two of them fired their guns when the Anduiza jeep with the Tiongsos passed by. This they did in defiance of the order of their superior not to shoot unless ordered to do so. Conspiracy having been proved, the guilt or culpability is imposable on both appellants in equal degrees.[123]

The same conspiracy was evident in the killing of Bello and Andes. The appellants' concerted action was shown by the manner by which they killed the two. In this incident, however, they invoke self-defense as a justifying circumstance. Evidence at hand, however, do not favor their claim.

Under Article 11 (1) of the Rules of Court, an accused must prove the presence of all the following elements of said exempting circumstance: (a) unlawful aggression, (b) reasonable necessity of the means employed to prevent or repel it, and (c) lack of sufficient provocation on the part of the person defending himself.[124] The presence of unlawful aggression is a condition *sine qua non*. There can be no self-defense, complete or incomplete, unless the

victim has committed an unlawful aggression against the person defending himself.[125]

In this case, Buenaflor insists that he fired at Bello because, after calling out to him to surrender, his shout was answered by a gunshot. Pinto corroborates his story but the principal prosecution eyewitness in this incident, Inocencia Malbas, swears that she heard no such shout to surrender nor a gunshot from Bello's direction before Bello was fired upon by the appellants. Physical evidence as well as the testimonies of Buenaflor himself and Pinto show that Inocencia, and not the appellants, was telling the truth.

Rafael Señora, the NBI agent who went to Talahib and the road to Mariawa to investigate as well as to take pictures, found no bullet marks at the crime scene which would pertain to a .22 caliber "paltik" firearm which Bello's men allegedly used.[126] As no other "paltik" firearms were recovered from the crime scene other than the two which Buenaflor confiscated from Mostoles and Francisco Andes, the possibility of said firearms or one of its kind having been used by Bello's men against the appellant particularly the one who escaped is nil.

Buenaflor claimed that the shot after his call to Bello belonged to a high-powered gun[127] obviously referring to the firearms recovered from Bello himself. According to Buenaflor, however, when he found the rifle, its magazine was "intact" and he did not manipulate the rifle to know how many of its bullets had been used.[128] Moreover, if Bello indeed fired a gun, it must be the firearm in his holster and not the garand which was found a couple of meters from where Bello had fallen. That Bello did not fire any of his two firearms is buttressed by Pinto's own testimony that Bello was smoking with his back towards them when he was shot at and that at that moment, he did not see Bello holding a gun.[129] We cannot help, therefore, but conclude that the defense claim that Buenaflor's call to Bello was answered by a gunshot is but a figment of their imagination designed for their own exoneration.

Appellants' claim of unlawful aggression on the part of Bello or his men would have been clarified had any of Bello's men whom they had captured been presented in court. These men, Leoncio Mostoles, Francisco Andes, Domingo Bantigue and Ananias Andes had executed statements before the Legazpi City police to the effect that they heard Buenaflor's call for Bello to surrender and that Bello fired his gun at the appellants. However, all four of them later executed statements before the NBI retracting said earlier statements in view of the fact that the police had threatened them to make the statements favorable to the appellants.[130]

As regards the unlawful aggression of Rosalio Andes against Pinto, we find that if we are to believe Pinto, we have to stamp full credibility on his statement alone. Even Buenaflor admitted that he did not see Rosalio Andes attack Pinto.[131] Inocencia swore that she did not see any weapon near the fallen Rosalio. Indeed, if the aggression did occur, Pinto would not have lost time in presenting in court the bolo which Andes threatened to use on him. But granting that Rosalio had a bolo, Pinto was not justified in inflicting the wounds sustained by Rosalio because a mere threatening attitude of the victim will not constitute unlawful aggression.[132] Moreover, Pinto's testimony that Rosalio menacingly approached him with a bolo after Buenaflor had released a gunburst directed at the house where Bello was, is contrary to human behavior if not totally ridiculous. On the contrary, by his own admission, Pinto continued firing until he saw Rosalio fall.

An accused who admits inflicting fatal injury on his victim and invokes self-defense must rely on the strength of his own evidence and not only on the weakness of that of the prosecution for, even if weak, the prosecution evidence gains more credibility.[133] Unfortunately, in this case, in spite of the fact that the prosecution had only one eyewitness to the killing of Bello and Andes, the appellants had not presented sufficiently strong evidence to shore up their claim of self-defense.

We agree with the trial court that treachery attended the commission of all four crimes in this case. The killing of Richard Tiongson, Francisco Bello and Rosalio Andes as well as the wounding of Maria Theresa Tiongson were

all so sudden that all of them were left defenseless. This is shown not only by the testimonial evidence of the commission of the crimes but also by the nature and location of the wounds of all the victims.[134] The presence of treachery qualifies the killings to murder and the wounding of Maria Theresa to frustrated murder. Nighttime, however, may not be appreciated as there is no proof that it was specifically sought in the commission of the crime and therefore we deem it absorbed by treachery.

Evident premeditation has not been proven beyond reasonable doubt in this case but we find that the appellants indeed took advantage of their public position in perpetrating the crime. Under Article 248 of the Revised Penal Code, murder is punishable by reclusion temporal in its maximum period to death. There being no mitigating circumstance to temper the penalty and there being only the aggravating circumstance of taking advantage of their public office under Article 14 (1) of the said Code, the proper penalty is death.[135] However, in view of the constitutional abolition of the death penalty, the penalty of reclusion perpetua shall be imposed on the appellants for each of the three murders they committed.

For the wounding of Maria Theresa, the penalty imposable, applying Article 50 of the Revised Penal Code, is prision mayor maximum to reclusion temporal medium. There being no reason to further lower the penalty by one degree pursuant to the provision of Article 250, and there being one aggravating circumstance and no mitigating circumstance, the penalty should be within the range of prision mayor maximum to reclusion temporal medium. Applying the Indeterminate Sentence Law,[136] the proper penalty for the frustrated murder of Maria Theresa is six (6) years of prision correccional maximum as minimum to ten (10) years and one (1) day of prision mayor maximum as maximum. The indemnity of eight thousand pesos imposed by the lower court should be respected considering that while there is evidence as to the actual amount she spent while confined at the Sacred Heart Hospital in Legazpi City, there is no proof as to the expenses she incurred after she was transferred to the Camp Crame Hospital in Quezon City.

As in all cases wherein peace officers are accused, this case creates a feeling of frustration in everyone. The crimes committed here ought to have no place in this democratic and civilized society. True it is that a police officer is sometimes left in a quandary when faced with a situation where a decisive but legal action is needed. But, as this Court said in *Calderon vs. People and Court of Appeals* (96 Phil. 216, 225 [1954]), "(t)he judgment and discretion of public officers, in the performance of their duties, must be exercised neither capriciously nor oppressively, but within reasonable limits. In the absence of a clear and legal provision to the contrary, they must act in conformity with the dictates of a sound discretion, and with the spirit and purpose of the law." Police officers must always bear in mind that although they are dealing with criminal elements against whom society must be protected, these criminals are also human beings with human rights. In the words of then Justice Moran in the *Oanis* case (*Supra*):

"It is, however, suggested that a notorious criminal 'must be taken by storm' without regard to his right to life which he has by such notoriety already forfeited. We may approve of this standard of official conduct where the criminal offers resistance or does something which places his captors in danger of imminent attack. Otherwise, we cannot see how, as in the present case, the mere fact of notoriety can make the life of a criminal a mere trifle in the hands of officers of the law. Notoriety rightly supplies a basis for redoubled official alertness and vigilance; it never can justify precipitate action at the cost of human life. Where, as here, the precipitate action of the appellants has cost an innocent life and there exist no circumstances whatsoever to warrant action of such character in the mind of a reasonably prudent man, condemnation – not condonation – should be the rule; otherwise we would offer a premium to crime in the shelter of official action.

WHEREFORE, the decision of the lower court is hereby affirmed subject to the modifications that appellants shall solidarily be liable for the amount of Fifty Thousand (P50,000) for each of the three murders they committed and, for the frustrated murder of Maria Theresa Tiongson, each of them shall suffer the indeterminate penalty of

from six (6) years of prision correccional maximum as minimum to ten (10) years and one (1) day of prision mayor maximum as maximum.

Inasmuch as appellant Daniel Pinto, Jr. had been a police officer for only five months^[137] when the crimes were committed, let a copy of this decision be furnished the Office of the President for whatever action may be proper to temper his penalty.^[138]

SO ORDERED.

Davide, Jr., and Romero, JJ., concur.

Gutierrez, Jr., J., concur but agree with J. Bidin in the result.

Bidin, J., in the result.

[1] Penned by Judge Ricardo Payumo.

[2] Exh. Q.

[3] TSN, March 15, 1972, p. 4.

[4] He was surprisingly presented as a prosecution witness.

[5] Ibid., pp. 6-10.

[6] Ibid., pp. 14-15.

[7] TSN, March 13, 1972.

[8] Ibid., p. 61.

[9] Ibid., pp. 62-66.

[10] TSN, March 14, 1972, p. 22.

[11] TSN, March 13, 1972, pp. 67-70.

[12] Ibid., p. 71; Exh. O.

[13] Ibid., p. 72.

[14] TSN, February 9, 1972, p. 6.

[15] Ibid., Exh. B.

[16] TSN, January 27, 1972, p. 7.

[17] TSN, March 13, 1972, p. 42.

[18] TSN, January 27, 1972.

[19] TSN, February 9, 1972, p. 8.

[20] TSN, January 27, 1972, p. 7.

[21] Ibid., p. 8.

[22] TSN, February 9, 1972, p. 9.

[23] Ibid., p. 10; TSN, January 27, 1972, p. 8; TSN, March 13, 1972, p. 42.

[24] TSN, March 13, 1972, pp. 49-50.

[25] Ibid., p. 52.

[26] Ibid., pp. 42-43.

[27] TSN, January 27, 1972, pp. 8-10.

[28] TSN, February 9, 1972, pp. 11-13.

[29] TSN, January 27, 1972, pp. 8-10.

[30] According to Fr. Capellan, Mayor Imperial was in a car parked in the vicinity and he asked Fr. Capellan why he went to Mariawa when there was a "raid" that night. Fr. Capellan replied that he said Mass and did not know that there would be a raid. After pointing out to the mayor that he had lost his right shoe, the mayor jokingly retorted that he owed Fr. Capellan a shoe. The mayor then sent back Fr. Capellan to his parish in Bangkerohan in the former's car (TSN, January 27, 1972, pp. 13-14).

[31] Ibid., pp. 23-25.

[32] Exh. V.

[33] Exh. U-2.

[34] TSN, October 4, 1973, p. 16.

[35] Exh. E.

[36] TSN, February 9, 1972, pp. 40-41.

[37] Exh. K.

[38] Exh. C.

[39] Exh. M or J (Annex FF).

[40] Exh. F.

[41] TSN, February 9, 1972, pp. 35-37.

[42] TSN, March 15, 1972, pp. 17-20.

[43] Ibid., pp. 22-23.

[44] Ibid., p. 25.

[45] Ibid., pp. 26-27.

[46] Ibid., p. 42.

[47] Exh. O or R or M, p. 2.

[48] TSN, February 11, 1972, p. 17.

[49] TSN, February 10, 1972, pp. 4-5.

[50] Ibid., pp. 6-10.

- [51] Ibid., pp. 11-14.
- [52] TSN, February 11, 1972, p. 11.
- [53] TSN, February 10, 1972, pp. 23-28.
- [54] Ibid., p. 28; TSN, February 11, 1972, p. 27.
- [55] TSN, February 10, 1972, p. 31.
- [56] TSN, February 11, 1972, pp. 19-20.
- [57] TSN, February 10, 1972, pp. 29-30.
- [58] Exh. F (Annex TT).
- [59] Exh. H (Annex RR).
- [60] Exh. M of J (Annex FF).
- [61] Exh. I (Annex SS).
- [62] Exh. M or J (Annex FF).
- [63] TSN, January 28, 1972, pp. 22-23.
- [64] RT-1, RT-2, RT-3 & RT-4, Exh. D; TSN, March 13, 1975, pp. 36-37.
- [65] TSN, April 5, 1972, pp. 28 & 39.
- [66] Exh. E or I.
- [67] TSN, January 16, 1974, p. 13; February 12, 1974, p. 6.
- [68] TSN, January 16, 1974, p. 12.
- [69] Ibid., pp. 11-12.
- [70] Ibid., p. 15.
- [71] Ibid., pp. 18-19.
- [72] Ibid., pp. 19-22.
- [73] Ibid., pp. 22-25.
- [74] Ibid., pp. 26-29.
- [75] Ibid., pp. 30-33.
- [76] Ibid., pp. 45-47.
- [77] TSN, January 16, 1974 (p.m.), pp. 3-4.
- [78] Ibid., pp. 5-8.
- [79] Ibid., pp. 13-14.
- [80] Ibid., p. 36.
- [81] Ibid., pp. 37-40.

- [82] TSN, February 12, 1974, pp. 5-6.
- [83] Ibid., p. 12.
- [84] Ibid., pp. 13-15.
- [85] Ibid., pp. 17-19.
- [86] Ibid., pp. 19-220.
- [87] Ibid., p. 27.
- [88] Ibid., pp. 31-32.
- [89] Ibid., p. 35.
- [90] Ibid., p. 46.
- [91] Ibid., p. 45.
- [92] Ibid., pp. 59-60.
- [93] Ibid., pp. 61 & 65.
- [94] Ibid., p. 64.
- [95] TSN, February 12, 1974 (p.m.), pp. 22-23.
- [96] TSN, February 12, 1974, pp. 48-49.
- [97] TSN, February 12, 1974 (p.m.), pp. 27-29.
- [98] Ibid., p. 35.
- [99] Aquino, The Revised Penal Code, Vol. II, 1987 ed., p. 200.
- [100] TSN, December 12, 1973, p. 15.
- [101] See: People v. Sazon, G.R. No. 89684, September 18, 1990; 189 SCRA 700, 711.
- [102] TSN, October 5, 1973, pp. 33-37; 42; 44-46; 70.
- [103] TSN, August 23, 1973, p. 29.
- [104] TSN, September 6, 1973, pp. 22-26.
- [105] Ibid., pp. 27, 42-43.
- [106] People v. Oanis, 74 Phil. 257, 261 (1943).
- [107] TSN, April 5, 1972, pp. 16-17, 37.
- [108] TSN, January 17, 1974, pp. 41-42.
- [109] Supplementary Ballistics Report No. B-219-171, Exh. E-1 or I-1.
- [110] Ballistic Report No. B-219-171, Exh. E or 1.
- [111] People v. Aldana, G.R. No. 81817, July 27, 1989; 175 SCRA 635.
- [112] People v. Jutie, G.R. No. 72975, March 31, 1989, 171 SCRA 586.

- [113] *People v. Gallo*, G.R. Nos. 70193-96, January 11, 1988, 157 SCRA 17.
- [114] According to the trial court, Urbina was one of the two policemen accused of murder in Criminal Cases Nos. CCC-X-165 & X-225 before the said court but both cases were dismissed as to Urbina who died from multiple gunshot wounds sustained in an encounter with elements of the PC in Legazpi City (Decision, p. 57).
- [115] *People v. Juanga*, G.R. No. 83903, August 30, 1990, 189 SCRA 226.
- [116] TSN, March 15, 1972, p. 26.
- [117] TSN, December 13, 1973, pp. 8-9.
- [118] *People v. Madriaga IV*, G.R. No. 73057, March 8, 1989, 171 SCRA 103 citing Sec. 5, Rule 133, Rules of Court.
- [119] *Calderon v. People and Court of Appeals*, 96 Phil. 216 (1954) citing *People v. Canis*, 74 Phil. 257 (1943).
- [120] *People v. Gona*, 54 Phil. 605 (1930).
- [121] *People v. Espiritu*, G.R. No. 80406, November 20, 1990, 191 SCRA 503; *People v. Sazon*, supra at pp. 713 and 714; *People v. Salcedo*, G.R. No. 78774, April 12, 1989, 172 SCRA 78; *People v. Basilan*, G.R. No. 66257, June 20, 1989, 174 SCRA 115.
- [122] *People v. Tachado*, 170 SCRA 611.
- [123] *People v. Macalino*, G.R. No. 79387, August 31, 1989, 177 SCRA 155.
- [124] *People v. Batas*, G.R. Nos. 84277-78, August 2, 1989, 176 SCRA 46.
- [125] *People v. Sazon*, supra at p. 704 citing *People v. Batas*, supra.
- [126] TSN, January 28, 1972, pp. 22-23.
- [127] TSN, February 12, 1974, p. 45.
- [128] *Ibid.*, p. 64.
- [129] TSN, January 16, 1970 (p.m.), p. 13.
- [130] Exhs. S, T, U & V.
- [131] TSN, February 12, 1974, p. 25.
- [132] *Araneta, Jr. v. Court of Appeals*, G.R. No. 43537, July 3, 1990, 187 SCRA 123, 130; *People v. Bayocot*, G.R. No. 55285, June 28, 1989, 174 SCRA 285.
- [133] *Araneta, Jr. v. Court of Appeals*, supra at p. 130, *People v. Sazon*, supra; *People v. Lamosa*, G.R. Nos. 74291-93, May 23, 1989, 173 SCRA 518.
- [134] *People v. Maralit*, G.R. No. 71142, September 19, 1988, 165 SCRA 425 citing *People v. Abubakar*, G.R. No. 32102, February 10, 1986, 141 SCRA 286.
- [135] Article 64(3), Revised Penal Code.
- [136] *People v. Flores*, G.R. No. 71980, March 18, 1991 citing *People v. Manalang*, G.R. No. 67623, February 9, 1989, 170 SCRA 149.
- [137] He entered the police force on July 22, 1970 (Exh. B).

[138] Calderon v. People and Court of Appeals, *supra*.

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