

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
APOLONIO APDUHAN, JR. ALIAS JUNIOR, ET AL., DEFENDANTS,
APOLONIO APDUHAN, JR. ALIAS JUNIOR, DEFENDANT-APPELLANT.**

G.R. No. L-19491. August 30, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

This is an automatic review of the judgment rendered on August 30, 1961 by the Court of First Instance of Bohol (Judge Hipolito Alo presiding) convicting Apolonk) Apduhan, Jr. of robbery with homicide and sentencing him to death and "to indemnify the heirs of the deceased Geronimo Miano in the amount of P6,000.00, to indemnify the heirs of the other deceased Norberto Aton in the same amount of P6.000.00. ..."

On August 2, 1961 the accused Apduhan, then represented by Atty. David Ocasas, together with his co-accused Rodulfo Huiso and Felipe Quimson, both represented by Atty. David Tirol, pleaded not guilty to a second amended information which recites:

"The undersigned Provincial Fiscal accuses Apolonio Apduhan, Jr., alias Junior, Rodulfo Huiso and Felipe Quimson of the crime of Robbery With Homicide, committed as follows:

"That on or about the 23rd day of May, 1961, at about 7:00 o'clock in the evening, in the municipality of Mabini, province of Bohol, Philippines, the above-named accused and five (5) other persons whose true names are not yet known (they are presently known only with their aliases of Bernabe Miano, Rudy, Angel-Angi, Romeo and Tony) and who are still at large (they will be charged in separate information or informations as soon as they are arrested and preliminary proceedings in Crim. Case No. 176 completed before the Justice of the Peace Court), all of them armed with different unlicensed firearms, daggers, and other deadly weapons, conspiring, confederating and helping one another, with intent of gain, did then and there willfully, unlawfully and feloniously enter, by means of violence, the dwelling house of the spouses Honorato Miano and Antonia Miano, which was also the dwelling house of their children, the spouses Geronimo Miano and Herminigilda de Miano; and, once inside the said dwelling house, the above-named accused with their five (5) other companions, did attack, hack and shoot Geronimo Miano and another person by the name of Norberto Aton, who happened to be also in the said dwelling house, thereby inflicting upon the said two (2) persons physical injuries which caused their death; and thereafter the same accused and their five (5) other companions, did take and carry away from said dwelling house cash money amounting to Three Hundred Twenty-two Pesos (P322.00), Philippine Currency, belonging to Honorato Miano and Geronimo Miano, to the damage and prejudice of the said Honorato Miano and Geronimo Miano, and the heirs of the deceased Geronimo Miano in the sum of Three Hundred Twenty-two Pesos (P322.00) with respect to the amount robbed, and also to the damage and prejudice of the heirs of deceased Geremmo Miano and Norberto Aton by reason of the death of these two persons.

"Act committed contrary to the provisions of Art. 294, par. I, of the Revised Penal Code with the special aggravating circumstance that the crime was committed by a band with the use of unlicensed firearms (Art. 296, Rev. Penal Code), and other aggravating circumstances, as follows:

- "1. That the crime was committed in the dwelling of the offended parties without any provocation from the latter;
- "2. That nighttime was purposely sought to facilitate the commission of the crime; and
- "3. That advantage was taken of superior strength, accused and their companions, who were fully armed, being numerically superior to the offended parties who were unarmed and defenseless."

When the case was called for trial on August 9, 1961, Atty. Tirol informed the court a quo that he was appearing also for Apduhan, but only as counsel de oficio. In view of this manifestation, the trial court appointed Atty. Tirol as counsel de oficio for the said accused. Forthwith, Atty. Tirol manifested that Apduhan would change his former plea of not guilty to a plea of guilty. The record discloses that after the trial judge had repeatedly apprised Apduhan of the severity of the offense for which he was indicted and the strong possibility that the capital penalty might be imposed upon him despite a plea of guilty, Apduhan persisted in his intention to plead guilty with the request, however, that the death penalty be not imposed. Then after hearing the arguments of Provincial Fiscal Jesus N. Borromeo and Atty. Tirol on the effect of Articles 295 and 296 of the Revised Penal Code on the case at bar, the trial judge advised the herein accused anew that he could be sentenced to death notwithstanding his projected plea of guilty, but the latter reiterated his desire to confess his guilt on the specific condition that he be sentenced to life imprisonment. Eventually, however, Apduhan desisted from pleading guilty and let his previous plea stand on record after further warnings that he faced the grave danger of being sentenced to death in view of the circumstances of his case. But the aforesaid desistance was merely momentary as it did not end the accused's equivocation on the matter of his plea. After a five-minute recess requested by Atty. Tirol in order to confer with the accused, the former informed the court a quo that his client would insist on entering a plea of guilty. The following appears on record:

"Atty. D. TIROL:

"Your Honor, please, I had a conference with the accused and apprised him with the situation of the case and after hearing our appraisal he manifested that he will insist on his entering a plea of guilty, Your Honor. I made it clear to him that we are not forcing him to enter the plea of guilty.

"COURT (To accused Apolonio Apduhan, Jr.):

"Q. Is it true that you are withdrawing your plea of not guilty?

"A. I will just enter the plea of guilty.

"Q. Have you been forced to enter the plea of guilty by your lawyer?

"A. No, Sir.

"Q. And why do you said 'I will JUST enter the plea of not guilty?

"A.

I have proposed to enter the plea of guilty even before.

"Q. Now the Court warns you again. Are you conscious of the fact that notwithstanding your plea of guilty the court may impose upon you the penalty of death?

"A. I win just enter the plea of guilty, at the discretion of the Court.

"Q. Even with all those dangers mentioned by the Court to you?

"A. Yes, Sir." (t.s.n. pp. 23-25)

Subsequently, the prosecuting fiscal and the counsel de oficio resumed their oral arguments regarding the effect on the instant case of Articles 295 and 296, particularly the use of unlicensed firearm as a special aggravating circumstance under the latter article. Also discussed were the existence and effect of the alleged mitigating and aggravating circumstances. All of these points will be later analyzed.

When the lower court subsequently reviewed the proceedings, it found that the accused's plea of guilty was ambiguous. Hence, on August 30, 1961, the case was reopened with respect to Apduhan, and on said date the latter entered a categorical plea of guilty, as evidenced by the record:

"COURT (To Accused Apduhan, Jr.):

"The Court reopened this case because after a review of the proceedings it found that your plea was not definite. In answer to a question of the Court you simply said 'I will just enter the plea of guilty'. The court wants to know whether you enter the plea of guilty of the crime charged in the second amended information.

"ACCUSED APDUHAN:

"I enter the plea of guilty. "COURT (To same accused Apduhan):

"Q. Therefore, you admit that you have committed the crime charged in the second information?

"A. Yes, Your Honor.

"Q. Is it necessary for you that the second amended information be read again?

"A. No more; it is not necessary.

"Q. Do you want that the second amended information be read to you again?

"A. No more, Your Honor." (t.s.n. pp. 50-51)

On the same day, the court a quo rendered its decision, the pertinent dispositive portion of which reads:

"PREMISES CONSIDERED, the court renders judgment finding accused Apolonio Apduhan, Jr. alias Junior guilty of the complex crime of robbery with homicide, punished by Article 294 of the Revised Penal code, in relation to Article 296 of the saffle Code, as amended, and sentences him to suffer the penalty of death."

Considering that Apduhan had voluntarily confessed his guilt in open court, then the only aspect of the case properly subject to review is the correctness of the penalty imposed by the court a quo. In this respect, the appreciation of the use of unlicensed firearm as a special aggravating circumstance (Art. 296) in fixing the appropriate penalty for robbery with homicide (Art. 294[1]) committed by a band with the use of unlicensed firearms, and the interplay and counter-balancing of the attendant mitigating and aggravating circumstances, would determine the severity of the penalty imposable.

The disposition of the question at hand necessitates a discussion of the interrelation among articles 294, 295 and 296 of the Revised Penal Code. For this purpose the said articles are hereunder quoted:

"ART. 294. Robbery with violence against or intimidation of persons — Penalties.— Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

"1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.

"2. The penalty of reclusion temporal in its medium period to reclusion perpetua, when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of 263 shall have been inflicted.

"3. The penalty of reclusion temporal, when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted.

"4. The penalty of prision mayor in its maximum period to reclusion temporal in its minimum period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of the execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by subdivisions 3 and 4 of said article 263.

"5. The penalty of prision correccional in its maximum period to prision mayor in its medium period in other cases." (As amended by Rep. Act 18.)

"ART. 295. Robbery with physical injuries, committed in an uninhabited place and by a band, or with the use of firearm on a street, road or alley. —If the offenses mentioned in subdivisions three, four, and five of the next preceding article shall have been committed in an uninhabited place or by a band, or by attacking a moving

train, street car, motor vehicle or airship, or by entering the passengers' compartments in a train or, in any manner, taking the passengers thereof by surprise in the respective conveyances, or on a street, road, highway, or alley, and the intimidation is made with the use of a firearm, the offender shall be punished by the maximum period of the proper penalties. (As amended by Rep. Act Nos. 12 and 373.)" (Italics supplied)

"ART. 296. Definition of a band and penalty incurred by the members thereof—When more than three armed malefactors take part in the commission of a robbery, it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such unlicensed firearm.

"Any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any assaults committed by the band, unless it be shown that he attempted to prevent the same (As amended by Rep. Act No. 12)." (Italics supplied).

The afore-quoted Art. 294 enumerates five classes of robbery with violence against or intimidation of persons and prescribes the corresponding penalties. The case at bar falls under Art.294(1) which defines robbery with homicide and fixes the penalty from reclusion perpetua to death.

Article 295 provides, inter alia, that when the offenses described in subdivisions 3, 4, and 5 of Art. 295 are committed by a band, the proper penalties must be imposed in the maximum periods. The circumstance of band is therefore qualifying only in robbery punished by subdivisions 3, 4, and 5 of Art. 294. Consequently, Art.295 is inapplicable to robbery with homicide, rape, intentional mutilation, and lesiones graves resulting in insanity, imbecility, impotency or blindness. If the foregoing classes of robbery which are described in Art. 294(1) and (2) are perpetrated by a band, they would not be punishable under Art. 295, but then cuadrilla would be a generic aggravating under art. 14 of the Code.[1] Hence, with the present wording of Art. 295[2] there is no crime as "robbery with homicide in band." If robbery with homicide is committed by a band, the indictable offense would still be denominated as "robbery with homicide" under Art. 294(1), but the element of band, as stated above, would be appreciated as an ordinary aggravating circumstance.

Article 296, as quoted above, defines "band", creates the special aggravating circumstance of use of unlicensed firearm, and provides the criminal liability incurred by the members of the band. The ascertainment of the definite function and range of applicability of this article in relation to Articles 294 and 295 is essential in the disposition of the case at bar.

In imposing the death penalty, the trial court appears to have accorded validity to the Provincial Fiscal's contention that in robbery with homicide committed by a band, the use of unlicensed firearm must be appreciated as a special aggravating circumstance pursuant to Art. 296. Thus convinced, the trial judge stressed in his decision that "under the express mandate of the law, we cannot escape the arduous task of imposing the death penalty." Subscribing to the said position, the Solicitor General adds that the "penalty for robbery under the circumstances mentioned in Articles 294, paragraph 1, and 296 of the Code is the maximum of reclusion perpetua to death, or the supreme penalty of death. This is mandatory."

On the other hand, Atty. Alberto M. Meer, the accused's counsel de oficio in the present review, contends that the use of unlicensed firearm, if ever appreciated in the case at bar, must be considered a generic aggravating factor which "may be offset by the existence of mitigating circumstances to that the penalty to be imposed should be the penalty of reclusion perpetua."

Both the foregoing contentions are untenable.

After a perceptive analysis of the provisions of Art. 296, we reach the considered opinion that the said article is

exclusively linked and singularly applicable to the immediately antecedent provision of Art: 295 on robbery in band, as the later article in turn, is explicitly limited in scope to subdivisions 3, 4, 5 of Art. 294. Consequently, although the use of unlicensed firearm is a special aggravating circumstance under art. 296, as amended by Rep. Act 12,[3] it cannot be appreciated as such in relation to robbery with homicide, described and penalized under paragraph 1 of Art. 294.

As previously stated, Art. 295 provides that if any of the classes of robbery described in subdivisions 3, 4, and 5 of art. 294 is committed by a band, the offender shall be punished by the maximum period of the proper penalty. Correspondingly, the immediately following provisions of Art. 296 define the term "band, " prescribe the collective liability of the members of the band, and state that "when any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law." Viewed from the contextual relation to Articles 295 and 296, the word "offense" mentioned in the above-quoted portion of the latter article logically means the crime of robbery committed by a band, as the phrase "all the malefactors" indubitably refers to the members of the band and the phrase "the corresponding penalty provided by law" relates to the offenses of robbery described in the last three subdivisions of Art. 294 which are all encompassed within the ambit of Art. 295. Evidently, therefore, Art. 296 in its entirety is designed to amplify and modify the provision on robbery in band which is nowhere to be found but in Art. 295 in relation to subdivisions 3, 4, and 5 of art. 294. Verily, in order that the aforesaid special aggravating circumstance of use of unlicensed firearm may be appreciated to justify the imposition of the maximum of the maximum period of the proper penalty, it is a condition sine qua non that the offense charged be robbery committed by a band within the contemplation of Art. 295. To reiterate, since Art. 295 does not apply to subdivisions 1 and 2 of Art. 294, then the special aggravating factor in question, which is solely applicable to robbery in band under Art.295, cannot be considered in fixing the penalty imposable for robbery with homicide under Art. 294(1), even if the said crime was committed by a band with the use of unlicensed firearms.

The legislative intent of making Art.296 corollary to art. 295 with respect to robbery in band was unmistakably articulated by Congressman Albano in his sponsorship speech on H.B. No. 124 (subsequently enacted as Rep. Act No. 12, amending among others, Articles 295 and 296 of the Revised Penal Code). Said Congressman Albano:

"Article 296 as a corollary of Article 295 would change the definition heretofore known of the term 'band' under the law. The purpose of this amendment is to inject therein the element of aggravation, when any member of the band carries an unlicensed firearm. . ."[4]

The special aggravating circumstance of use of unlicensed firearm, however, was initially applicable to all the subdivisions of Art. 294 since the said Rep. Act No. 12 also amended Art. 295 to include within its scope all the classes of robbery described in Art.294. With the then enlarged coverage of Art. 295, Art. 296, being corollary to the former, was perforce made applicable to robbery with homicide (Art. 294[1]). Thus, in *People vs. Bersamin*,[5] this Court, in passing, opined:

"The use of unlicensed firearm is a special aggravating circumstance applicable only in cases of robbery in band (Art. 296, Revised Penal Code, as amended by section 3, Republic Act No. 12)."

In the said case, this Court, declared in effect that in *robo con homicidio* the use of unlicensed firearm is not a special aggravating circumstance when the said offense is not committed by a band. Inferentially, had the robbery with homicide in *Bersamin* been perpetrated by a band, the use of unlicensed firearm would have been appreciated. This implied pronouncement would have been justified under Art. 296 in relation to Art. 295, as amended by Rep. Act 12. But the aforesaid inference lost all legal moorings in 1949 with the enactment of Rep. Act 373 which excluded subdivisions 1 and 2 of Art.294 from the coverage of Art. 295. Since Ait.296, as repeatedly emphasized above, is corollary to Art. 295, the diminution of the latter's scope correspondingly

reduced the former's extent of applicability. In other words, the passage of the foregoing amendment did not only jettison the first two subdivisions of Art. 294 from the periphery of Art. 295 but also removed the said subdivisions (which pertain, inter alia, to the offense of robbery with homicide) from the effective range of Art. 296.

Notwithstanding that the special aggravating circumstance of use of unlicensed firearm cannot be appreciated in the instant case, we are constrained, in the final analysis, to observe that the imposition of the death penalty on the accused Apduhan would appear to be a logical legal consequence, because as against the attendant mitigating circumstances the aggravating circumstances numerically and qualitatively preponderate.

After Apduhan had pleaded guilty, the defense counsel offered for consideration three mitigating circumstances, namely, plea of guilty, intoxication, and lack of intent to commit so grave a wrong. Subsequently, however, the defense withdrew the last mentioned mitigating circumstance after the prosecution had withdrawn the aggravating circumstance of abuse of superior strength. The following manifestations appear on record:

"FISCAL BORRAMEO:

"In fairness to the accused, because the crime charged is robbery in band (the case at bar is actually robbery with homicide), it is natural that in robbery in band there is already abuse of superior strength, so we will just withdraw that superior strength.

"COURT (To Atty. D. Tirol):

What do you say now?

"ATTY. D. TIROL:

"Such being the case, we will not insist, on presenting evidence in support of our contention that the accused did not intend to commit so grave a wrong.

"COURT:

"Moreover, by the mere use of firearm accused cannot claim that he did not intend to commit so grave a wrong as that committed. So now you withdraw your petition that you be allowed to present evidence to that effect?

"ATTY. D. TIROL:

Yes, Your Honor." (t.s.n. pp. 47-48).

Thus, only two alleged mitigating circumstances remain for consideration.

Anent the plea of guilty, we believe that under Art. 13(7) its appreciation in the case at bar is beyond controversion.

However, apropos the alternative circumstance of intoxication, we find no evidence on record to support the defense's claim that it should be considered as a mitigating factor. This absence of proof can be attributed to the defense's erroneous belief that it was not anymore its burden to establish the state of intoxication of the accused when he committed the offense charged since anyway the prosecution had already admitted the attendance of the said mitigating circumstance on the ground that the State did not have strong evidence to overthrow the accused's claim of non-habituality to drinking. The record discloses the following pertinent discussion:

"COURT (To Fiscal Borromeo):

Do you agree, Mr. Fiscal, that the non-habitual intoxication of the accused be also taken into account in his favor as a mitigating circumstance?

"FISCAL BORROMEEO:

"We have no evidence exactly to know at this time that the accused was intoxicated, but his affidavit states that before the commission of the crime they took young coconuts and there is no mention about the taking of any liquor, so that, as it is now, we are constrained to object.

"COURT (To the Fiscal):

"But do you have evidence to counteract that allegation?

FISCAL BORROMEEO:

"We do not have any evidence to counteract that,

"COURT (To the Fiscal):

"But do you admit the attendance of that circumstance?

"FISCAL BORROMEEO:

"With that manifestation we submit because actually we do not have evidence to counter-act that he was a habitual drinker.

"COURT (To the Fiscal):

"But do you prefer to admit that mitigating circumstance or you need that evidence be presented to that effect?

"FISCAL BORROMEEO:

"Inasmuch as we do not have strong evidence to contradict that circumstance, in fairness to the accused, we would rather submit.

"COURT (To the Fiscal):

The attendance of the mitigating circumstance of non-habitual intoxication?

'FISCAL BORROMEIO:

Yes, Your Honor." (t.s.n. pp. 7-9) (Italics supplied)

From the above proceedings in the trial court, it would appear that what the prosecution actually intended to admit was the non-habituality of the accused to drinking liquor, not as a matter of fact, but due to the State's inability to disprove the same. The prosecution apparently did not concede the actual intoxication of the accused. We are of the firm conviction that, under the environmental circumstances, the defense was not relieved of its burden to prove the accused's actual state of intoxication. Otherwise, to appreciate the attendance of a mitigating factor on the mere allegation of the accused, coupled with the dubious acquiescence of the prosecution, would open wide the avenue for unscrupulous and deceitful collusion between defense and prosecution in order to unduly and unjustly minimize the penalty imposable upon the accused. The last paragraph of Art. 15 of the Code provides:

"The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional it shall be considered as an aggravating circumstance." (Italics supplied)

Under the foregoing prevision, intoxication is mitigating when it is not habitual or intentional, that is, not subsequent to the plan to commit the crime. However, to be mitigating the accused's state of intoxication must be proved.[6] Once intoxication is established by satisfactory evidence,[7] then, in the absence of proof to the contrary, it is presumed to be non-habitual or unintentional.[8]

In *People vs. Noble*[9] the defendant testified that before the murder he took a bottle of wine and drank little by little until he got drunk. The policeman who arrested the accused testified that the latter smelled wine and vomited. The Court held that the evidence presented was not satisfactory to warrant a mitigation of the penalty. Intoxication was likewise not competently proved in a case[10] where the only evidence was that the defendant had a gallon of tuba with him at the time he committed the crime.

In the case at bar the accused merely alleged that when he committed the offense charged he was intoxicated although he was "not used to be drunk." [11] This self-serving statement stands uncorroborated. Obviously, it is devoid of any probative value.

To recapitulate, the accused has in his favor only one mitigating circumstance: plea of guilty. As aforementioned, the defense withdrew its claim of "lack of intent to commit so grave a wrong" and failed to substantiate its contention that intoxication should be considered mitigating.

While an unqualified plea of guilty is mitigating, it at the same time constitutes an admission of all the material facts alleged in the information including the aggravating circumstances therein recited.[12] The four aggravating circumstances are (1) band; (2) dwelling; (3) nighttime; and (4) abuse of superior strength. The circumstance of abuse of superiority was, however, withdrawn by the prosecution on the ground that since the offense of robbery with homicide was committed by a band, the element of *cuadrilla* necessarily absorbs the circumstance of abuse of superior strength. We believe that said withdrawal was ill-advised since the circumstances of band and abuse of superiority are separate and distinct legal concepts. The element of band is appreciated when the offense is committed by more than three armed malefactors regardless of the comparative strength of the victim or victims. Hence, the indispensable components of *cuadrilla* are (1) at least four malefactor and (2) all of the four malefactors are armed. On the other hand, the gravamen of abuse of superiority is the taking advantage by the culprits of their collective strength to overpower their relatively weaker victim or victims. Hence, in the latter

aggravating factor, what is taken into account is not the number of aggressors nor the fact that they are armed, but their relative physical might vis-a-vis the offended party.

Granting, however, that the withdrawal was valid, there still remain three aggravating circumstances which render inutile the solitary extenuating circumstance of plea of guilty. The prosecution does not need to prove the said three circumstances (all alleged in the second amended information) since the accused, by his plea of guilty, has supplied the requisite proof.[13] Hence, we will not belabor our discussion of the attendant aggravating circumstances.

The settled rule is that dwelling is aggravating in robbery with violence or intimidation of persons,[14] like the offense at bar. The rationale behind the pronouncement is that this class of robbery could be committed without the necessity of transgressing the sanctity of the home. Morada is inherent only in crimes which could be committed in no other place than in the house of another, such as trespass and robbery in an inhabited house.[15] This Court in *People vs. Pinca*, [16] citing *People vs. Valdez*, [17] ruled that the "circumstances (of dwelling and scaling) were certainly not inherent in the crime committed, because, the crime being robbery with violence or intimidation against persons (specifically, robbery with homicide) the authors thereof could have committed it without the necessity of violating or scaling the domicile of their victim." Cuello Calon opines that the commission of the crime in another's dwelling shows greater perversity in the accused and produces greater alarm.[18]

Nocturnity is aggravating when it is purposely and deliberately sought by the accused to facilitate the commission of the crime[19] or to prevent their being recognized or to insure unmolested escape.[20] Nocturnidad must concur with the intent and design of the offender to capitalize on the intrinsic impunity afforded by the darkness of night.[21] In the case at bar, the affidavit (exh. 1-1) of the accused Apduhan shows that he and his co-malefactors took advantage of the nighttime in the perpetration of the offense as they waited until it was dark before they came out of their hiding place to consummate their criminal designs.

In his decision, the trial judge recommends to the President of the Republic the commutation of the death sentence which he imposed on the accused to life imprisonment. The Solicitor General supports this recommendation for executive clemency.

We find no compelling reason to justify such recommendation. Contrary to the trial judge's observation, the accused's plea of guilty was far from "spontaneous" and "insistent". It will be recalled that his initial plea was one of not guilty. Later, he changed his plea but with the persistent condition that he be sentenced to life imprisonment, not death. It was only after much equivocation that he finally decided to "just" plead guilty. Because his plea was still ambiguous, the court a quo had to reopen the case to ascertain its real nature. Conceding, however, that his plea was "spontaneous" and "insistent," such manifestation of sincere repentance cannot serve to obliterate the attendant aggravating circumstances which patently reveal the accused's criminal perversity.

It appears from a cursory reading of the decision under review that the trial judge also anchored his recommendation on the ground that there is "the possibility that the firearm was used in order to counteract the resistance of the deceased." This is no justification at all for executive clemency. Firstly, the above observation is a mere conjecture—in the language of the presiding judge, a "possibility." Secondly, even granting that the said observation relates to the actual happening, to employ a firearm in subduing the lawful resistance of innocent persons is a criminal act by any standard.

Even as we purge the decision under review of its errors, we must hasten to commend the trial judge, the Hon. Hipolito Alo, for his earnest and patient efforts to forestall the entry of an improvident plea of guilty by the

accused Apduhan, notwithstanding that the latter was already represented by a counsel de oficio and hence presumed to have been advised properly. Judge Alo made sure that the accused clearly and fully understood the seriousness of the offense charged and the severity of the penalty attached to it. When the accused proposed to confess his guilt, Judge Alo repeatedly warned him that the death penalty might be imposed despite his plea of guilty. As aforementioned, when it appeared that Apduhan's plea of guilty was ambiguous, Judge Alo reopened the case to determine with definitiveness the nature of his plea.

The virtue of Judge Alo's efforts in ascertaining whether Apduhan pleaded guilty with full knowledge of the significance and consequences of his act, recommends itself to all trial judges who must refrain from accepting with alacrity an accused's plea of guilty, for while justice demands a speedy administration, judges are duty bound to be extra solicitous in seeing to it that when an accused pleads guilty he understands fully the meaning of his plea and the import of an inevitable conviction.

As a final commentary on the criminal conduct of the accused herein, it must be emphasized that the instant review was delayed for several years because he escaped from the New Bilibid Prisons on June 17, 1963, less than six months after he was committed to the said penitentiary. He was recommitted on July 10, 1964 with a new mittimus from the Court of First Instance of Leyte for robbery in band in criminal case 10099, for which he was sentenced to serve a prison term of from 8 years and 1 day to 12 years and 1 day commencing on October 31, 1963.[22] His recommitment was reported to this Court only on July 5, 1963.

Notwithstanding the foregoing disquisition, for failure to secure the required number of votes, the penalty of death cannot be legally imposed. The penalty next lower in degree—redusion perpetua—should consequently be imposed on the accused.

ACCORDINGLY, with the modification that the death sentence upon Apolonio Apduhan, Jr. by the court a quo is reduced to redusion perpetua, the judgment a quo is affirmed in all other respects, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

Judgment affirmed with modification.

[1] People vs. Casunuran, L-7654, August 16, 1956; People vs. Leyesa, Ld-7842 August 30, 1956.

[2] Prior to Rep. Act 373, the scope of art. 295. as amended by Ren. Act No 12

[3] People vs. Bersamin. 88 Phil. 292.

[4] Philippine Congressional Record, House of Representatives, Vol. 22, June 29, 1946, p. 290.

[5]

[6] Aquino, The Revised Penal Code, vol. II, p. 399.

[7] People vs. Noble, 77 Phil. 93.

[8] U.S. vs. Fitzgerald, 2 Phil. 419.

[9] See note 7.

[10] People vs. Pardo, 79 Phil. 568.

[11] See s.n. p. 3.

- [12] People vs. Egido, 90 Phil., 762; People vs. Santos and Vicente, 105 Phil. 40.
- [13] People vs. Acosta, 98 Phil. 642; People vs. Rapirap, 102 Phil. 863.
- [14] U.S. vs. Leyba, 8 Phil. 671; People vs. Sebastian, 85 Phil. 602; People vs. Napili, 85 Phil. 521.
- [15] Aquino, Vol. I, p. 286.
- [16] L-16595, Feb. 23, 1982.
- [17] 84 Phil. 860.
- [18] Cited in Aquino, supra, p. 287.
- [19] People vs. Alcala, 46 Phil. 739; People vs. Matbagon, 60 Phil. 887; People vs. Corpus, et al., L-10104, January 28, 1961.
- [20] U.S. vs. Billedo, 32 Phil. 575; People vs. Perez and De Leon, 32 Phil. 163.
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- [22] Letter-Report from the Office of the Superintendent, New Bilibid Prison.

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