

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO DORIA, ACCUSED-APPELLANT. THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO DORIA AND BARTOLOME L...

G.R. Nos. L-26188, L-26189 and L-26190. January 31, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

In L-26188 defendant Francisco Doria appealed from the decision of the Court of First Instance of Pangasinan, convicting him of illegal possession of a firearm and sentencing him to an indeterminate penalty of one (1) year to five (5) years and to pay a fine of one thousand pesos plus costs (Criminal Case No. U-400).

In L-26189 defendants Francisco Doria and Bartolome Lazarte appealed from the decision of the same court, convicting them of murder, sentencing Doria to "life imprisonment" and Lazarte to an indeterminate penalty of twelve (12) years of prision mayor to twenty (20) years of reclusion temporal, and ordering each of them to indemnify the heirs of Martin Pasuquin (Pasuquen) in the sum of six thousand pesos plus costs (Criminal Case No. U-401).

In L-26190 defendant Bernabe Lazarte appealed from the decision of the same court, convicting him of frustrated murder, sentencing him to an indeterminate penalty of six (6) months of arresto mayor to four (4) years and two (2) months of prision correccional and to indemnify Manuel Pasuquin (Pasuquen) in the sum of two thousand pesos, with subsidiary imprisonment in case of insolvency, plus costs (Criminal Case No. U--402).

The evidence for the prosecution, as shown in the record and as summarized by the trial court and the Solicitor General, may be restated as follows:

The dramatis personae in this case, namely, the victims, the brothers Manuel Pasuquin and Martin Pasuquin, and their brother-in-law, Antonio Reyes, as well as the accused Francisco Doria, the brothers Bartolome Lazarte and Bernabe Lazarte, their uncle, Filemon Lazarte, and their friend Rodolfo Fernandez, all resided in the vicinity of Malong Street in the poblacion of Alcala, Pangasinan. They were neighbors. Doria, the stepfather of Bartolome Lazarte and Bernabe Lazarte, stayed with them in the same house. Filemon Lazarte lived in his house at the corner of Malong and Funston Streets (Sketch, Exh. B in Criminal Case No. U-401; Exh. D in Criminal Case No. U-402).

The assaults presently to be recounted have their background in the smoldering enmity between Doria and the Pasuquin brothers. Certain incidents had strained their relations to the breaking point. At one time in 1957 Doria suspected Martin Pasuquin of having stolen his cassava. In September, 1957 Doria charged Martin Pasuquin with having stolen his bananas. The case was amicably settled by the chief of police. In February, 1958, Martin Pasuquin was again charged by Doria with having allegedly stolen the latter's palay. Martin was acquitted. In May, 1959 Doria denounced Martin to the police for having stolen his plow. On the night of November 24, 1959,

Bernabe Lazarte, Doria's stepson, was mauled. Manuel Pasuquin was suspected to be one of the maulers.

It was thus expectable that the tension between Doria and the Pasuquin brothers would erupt in some manifestation of violence.

At about seven o'clock in the morning of November 26, 1959, Martin Pasuquin and Manuel Pasuquin, together with their brother-in-law, Antonio Reyes, and six companions named Alfredo Dilan, Rudy Cacabilos, Ernesto Gambol, Berting Baldomero, Bernardo Tadeo, and Villamor Ferrer went to Bersamin, a barrio of Alcala, to cut grass as fodder for their carabaos. They rode in five bulcarts following one another. Manuel Pasuquin rode in the first cart.

As they passed the corner of Malong and Funston Streets, Filemon Lazarte, who chanced to be stationed at the window of his house, saw the passing bulcarts. When the Pasuquin brothers were nearing the place where they were to cut grass in Barrio Bersamin, they espied in the distance a carromata (carretela) following them. It was driven by Doria, its owner. His passengers were Bartolome Lazarte, Bernabe Lazarte, Filemon Lazarte and Rodolfo Fernandez (who was not on speaking terms with Martin Pasuquin since July, 1958).

When the Pasuquin brothers and their companions reached their destination and when they were about to unhitch their carabaos, the carromata stopped near them. Doria and his group alighted from the carromata. Thereupon, Bernabe Lazarte and Rodolfo Fernandez approached Manuel Pasuquin who was sitting on the edge or rim of his bulcart. Fernandez immediately disabled Manuel Pasuquin by holding his hands at the latter's back while Bernabe Lazarte with a sharp pointed bolo (Exh. E or 9 in Criminal Case No. U-402 and Exh. G in Criminal Case No. U-401) stabbed Manuel twice, first, at the right side of his abdomen and, second, at the right flank located below the last rib along the posterior axillary line. During the assault, Manuel Pasuquin was not able to say anything. He "was surprised".

Almost simultaneously, Doria and Bartolome Lazarte approached Martin Pasuquin who was sitting on the edge or rim of the cart of Antonio Reyes, about three or five meters from Manuel. Reyes stood beside the cart about one meter from Martin. As Doria asked Martin where he was going to cut grass, Doria forthwith shot Martin pointblank at the latter's face with a paltik gun (Exh. A and A-1 in Criminal Case U-400 and Exh. C and C-1 in Criminal Case U-401). Instinctively, Martin stood up to jump out of the cart but Bartolome Lazarte struck him with a long bolo called panabas, hitting him in his right arm (Exh. F or 8 in Criminal Case U-401). In spite of his injuries, Martin was able to jump out of the cart and run away, but Doria, Bartolome Lazarte and Felimon Lazarte chased him and, on overtaking him, repeatedly stabbed him (see sketch, Exh. F in Criminal Case No. U-402). Martin Pasuquin sustained several mortal wounds and died on the spot where he had collapsed. The scythe used by Doria in cutting the throat of Martin is Exhibit E (Criminal Case No. U-401).

Meanwhile, Rodolfo Fernandez, armed with a bolo, attacked Antonio Reyes who, after parrying the blow, ran away.

Doctor Juanita Santos Estacio, the town's municipal health officer, examined the body of the deceased twenty-two year old Martin Pasuquin in the town puericulture center at around one-thirty in the afternoon of November 26th. She found the following wounds:

"I. HEAD

1. Lacerated wound, chin right. Wound is 1-1/2 inches long, 1 inch wide and 1/2 inch deep.
2. Shotgun wounds (5 in number) produced by small pellets of lead — located at forehead left temporal region, left base of nose, left cheekbone and base of left ear.

II. NECK

1. Wound, lacerated, front of neck. It is 4 inches long, 3 inches wide and 2 inches deep, exposing some muscles, tendons and blood vessels.

III. TRUNK

1. Wound, lacerated, epigastric region. Wound is skin deep, 1 inch long by 1/2 inch wide.

2. Wound, punctured, epigastrium. It is 1--1/2 inches long, 3/4 inch wide and about 5 inches deep running inwards.

3. Wound, punctured, lumbar region, right. It is 1 inch long, 1/2 inch wide and 3 inches deep running outward and laterally.

4. Wound, punctured, abdomen — right. It is 1 inch by 1/2 inch by 1 inch deep — located 1/2 inch below the right coastal arch.

IV. EXTREMITIES

A — Right upper extremity:

1. Wound lacerated — 4 inches by 2-1/2 inches arm upper thirds lateral side.

2. Wound lacerated — 4 inches by 3 inches by 2 inches forearm, upper thirds, medial side.

3. Wound, lacerated, palm — bases of 4th and 5th fingers; size of wound is 2 inches by 1 inch by 1/2 inch.

B — Left upper extremity:

1. Fracture, compound, forearm, lower third, left. Open wound is 4 inches long gaping, exposing bone, muscles, tendons and blood vessels." (Exh. A, Criminal Case No. U-401).

The doctor opined that Martin Pasuquin died due to loss of blood and to shock as a consequence of the cutting of the blood vessels.

Doctor Estacio also attended to the sixteen-year old Manuel Pasuquin at about ten o'clock in the morning of November 26th. Her findings were as follows:

A. Preliminary Findings:

1. Patient is pale, conscious, complaining of pain at the abdomen.
2. There's profuse bleeding of wound at abdomen staining his clothes.

B. Physical Examination:

1. Wound, punctured abdomen — right. Wound is located at right side of abdomen 2 inches below the coastal arch. It is 1 inch long, 1/3 inch wide and about 4 inches deep going inwards and medially.
2. Wound, punctured — right flank located below the last rib along the posterior axillary line. It's about 1/2 inch long, 1/3 inch wide and 1 inch deep.

It takes about 2 weeks for the 2nd wound to heal barring complications and about 1 month for the 1st wound depending on treatment and complications (Exh. A in Criminal Case No. U-402).

Doctor Crisofero P. Cabangon, who operated on Manuel Pasuquin, described his abdominal wound thus:

"Wound stab lateral, hypochondriac region with laceration of liver; massive hematoma of transverse

mesocolon; shock, secondary to massive abdominal hemorrhage." (7 tsn, Abalos).

Doctors Estacio and Cabangon were of the opinion that the wounds of Manuel Pasuquin were serious and sufficient to cause his death. He was given blood transfusion at the San Carlos General Hospital. He would have died were it not for the operation or timely medical attendance.

On that same morning or immediately after the tragic occurrence, Bartolome Lazarte surrendered to the police. He delivered to the guard the pointed bolo and the panabas. He confessed to the police that he had killed Martin Pasuquin (25 tsn, Rollolazo).

Doria visited Bartolome Lazarte in prison. He was arrested on that occasion. He was investigated by Manuel Castro, a private of the Philippine Constabulary (PC). He signed a statement sworn to before the justice of the peace wherein he admitted that he had fired his twelve-gauge paltik gun in the morning of the incident. The chief of police also investigated him on that same day. He admitted to that police officer that he was the owner of the paltik gun and ammunition. He had no license to possess the same.

As a result of the prompt investigation conducted by the police and the Constabulary, sworn statements were executed on that same date, November 26th, by Rudy Cacabilos, Alfredo Dilan, Villamor Ferrer and Antonio Reyes (Exh. 10, Criminal Case No. U-402). In substance, they stated that Doria, Bartolome Lazarte and Filemon Lazarte killed Martin Pasuquin while Bernabe Lazarte wounded Manuel Pasuquin with the help of Rodolfo Fernandez. The police recovered the paltik gun, one bolo and two scythes.

On the basis of the eyewitnesses' affidavits and the medical certificates, three complaints dated November 26, 1959 were filed by the chief of police in the justice of the peace court of Alcala.

One complaint was for illegal possession of a firearm against the twenty-eight year old Doria (Econg). The second complaint was for murder against Doria, Bartolome Lazarte (Roming) and Filemon Lazarte for the killing of Martin Pasuquin. The third complaint was for frustrated murder against Bernabe Lazarte (Bening) and Rodolfo Fernandez (Ruding). (Criminal Cases Nos. 418, 419 and 420).

The appellants waived the second stage of the preliminary investigation. The cases were elevated to the Court of First Instance, where the special counsel of the fiscal's office filed three informations: (1) an information against Doria for illegal possession of a revolver, twelve-gauge paltik, and one round of ammunition, in violation of section 2692, in relation to section 878, of the Revised Administrative Code and as amended by Commonwealth Act No. 56 and Republic Act No. 4 (Criminal Case No. U-400); (2) an information charging Doria, Bartolome Lazarte and Filemon Lazarte with the murder of Martin Pasuquin, qualified by treachery and evident premeditation (Criminal Case No. U-401), and (3) an information for frustrated murder against Bernabe Lazarte and Rodolfo Fernandez qualified also by treachery and evident premeditation in connection with the wounding of Manuel Pasuquin (Criminal Case No. U-402). The three cases were tried jointly. The trial court rendered one decision.

Filemon Lazarte died of pulmonary tuberculosis on November 9, 1962, or eight days after he signed his confession (Exh. 1). As to him the case was dismissed. Rodolfo Fernandez was acquitted on the ground of reasonable doubt.

In this appeal, the appellants, through Manuel M. Crudo, their counsel de oficio, argue that the trial court erred (1) in giving credence to the testimonies of the prosecution witnesses which were allegedly vitiated by contradictions and inconsistencies; (2) in admitting the alleged hearsay, irrelevant, incompetent, and immaterial testimonies of the prosecution witnesses; (3) in disregarding the evidence for the defense such as the medical certificate as to the injuries of Francisco Doria (Exh. 2) and the supposed dying declaration of Filemon Lazarte (Exh. 1); (4) in basing

Francisco Doria's conviction for illegal possession of a firearm on his sworn statement which was not voluntarily executed; (5) in holding that the chief of police regularly performed his duties; (6) in holding as improbable that only one assailant inflicted thirteen wounds on the Pasuquin brothers; (7) in discrediting Filemon Lazarte's admission that he alone assaulted the Pasuquin brothers; (8) in not giving the defense the benefit of the doubt; (9) in not acquitting Francisco Doria and Bartolome Lazarte of murder; (10) in not acquitting Bernabe Lazarte of frustrated murder, like Rodolfo Fernandez, and (11) in not holding that it had not acquired jurisdiction because there was no preliminary investigation conducted by the special counsel who filed the informations.

Appellants' last assignment of error raises a jurisdictional or procedural issue which should first be resolved. They note that the special counsel did not certify under oath in the three informations that the accused were "given a chance to appear in person or by counsel" at the corresponding preliminary investigation conducted by the fiscal. They contend that the trial court "had not acquired jurisdiction to try the three cases". They invoke Rule 112 of the 1964 Rules of Court which provides:

SEC. 14. Preliminary examination and investigation by provincial or city fiscal or by state attorney in cases cognizable by the Court of First Instance. — Except where an investigation has been conducted by a judge of first instance, municipal judge or other officer in accordance with the provisions of the preceding sections, no information for an offense cognizable by the Court of First Instance shall be filed by the provincial or city fiscal, or state attorney, without first giving the accused a chance to be heard in a preliminary investigation conducted by him or by his assistant by issuing a corresponding subpoena. If the accused appears the investigation shall be conducted in his presence and he shall have the right to be heard, to cross-examine the complainant and his witnesses, and to adduce evidence in his favor. If he cannot be subpoenaed, or if subpoenaed he does not appear before the fiscal, the investigation shall proceed without him.

The fiscal or state attorney shall certify under oath in the information to be filed by him that the defendant was given a chance to appear in person or by counsel at said examination and investigation.

Appellants' contention is untenable. The epigraph and opening exclusionary clause of section 14 shows that it applies only to the preliminary investigation conducted by the fiscal or state attorney (See Sec. 1687, Revised Administrative Code; Republic Acts Nos. 732 and 5180 and Presidential Decree No. 77 dated December 6, 1972). It does not apply to the preliminary investigation conducted by the justice of the peace, now municipal judge.

Moreover, section 14 is a new provision of the 1964 Rules of Court. It is not found in the 1940 Rules of Court which were in force in 1959 when these three cases arose.

As already noted, the preliminary investigation was conducted by the justice of the peace of Alcala. The defendants waived the second stage of the preliminary investigation. The special counsel of the fiscal's office based the informations on the record of the preliminary investigation elevated by the justice of the peace to the Court of First Instance. It was not incumbent upon the fiscal to conduct another preliminary investigation. On the basis of that record, "he may forthwith file the information in the Court of First Instance" (People vs. Pervez, 110 Phil. 214, 218; People vs. Reginaldo, L-15960, April 29, 1961, 1 SCRA 1307; People vs. Mapa, L-15345, May 26, 1962, 5 SCRA 95).

Appellants' assignment of errors revolve around the issue of credibility. Their theory is that the deceased Filemon Lazarte single-handedly killed Martin Pasuquin and wounded Manuel Pasuquin and that they merely witnessed the encounter between Filemon and the Pasuquin brothers. That theory is based on Filemon's handwritten statement in the dialect dated November 1, 1962, or about three years after the incident. In that statement Filemon declared:

"I would like to declare before I die that my co-accused had no participation in the killing because I was the

one who killed Martin and wounded Manuel.

"Yes, sir, it was all my fault. They do not have any participation when I killed Martin and also Manuel" (Exh. 1 and 1-A).

The appellants characterize Filemon's confession as a "dying declaration".

That characterization is not correct. Filemon's confession that he alone killed Martin Pasuquin and wounded Manuel Pasuquin is an admission against his penal interest. It is not the dying declaration contemplated in section 28, Rule 123 of the 1940 Rules of Court (now Sec. 31, Rule 130, 1964 Rules of Court) which constitutes an exception to the hearsay rule. Section 28 refers to the "declaration of a dying person, made under a consciousness of an impending death", which "may be received in a criminal case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death".

The declaration of Filemon Lazarte does not deal with the cause and circumstances surrounding his death. It refers to the killing of Martin Pasuquin and the wounding of Manuel Pasuquin. Filemon Lazarte was not the victim whose death is the subject of inquiry in these cases. He was one of the assailants. He did not die as a consequence of the wounds sustained in the incident. He died of tuberculosis (Exh. 3, 4 and 7, pages 181, 216 and 261, Criminal Case No. U-400).

The trial court branded appellants' theory as "utterly incredible". The Solicitor General dismissed it as "unnatural", "possible only within the realm of fantastic fiction" and, therefore, "obviously a fabrication".

The justification for such superlative epithets is that Martin Pasuquin sustained ten lacerated and punctured wounds in the head, neck, trunk and arms and five gunshot wounds in the neck, while Manuel Pasuquin had two wounds. It seems unbelievable that one person could have inflicted all those wounds in an encounter with two antagonists, considering that the fight transpired in a matter of minutes. Appellants' theory is negated by the fact that Bartolome Lazarte surrendered immediately after the killing.

Moreover, no motive had been established as to why Filemon Lazarte would be the only person to assault the Pasuquin brothers. Doria testified that he could not tell why Filemon Lazarte fought the Pasuquin brothers (10 tsn October 2, 1967). On the other hand, it is obvious that he collaborated with Doria and his nephew, Bartolome Lazarte, in killing Martin Pasuquin because Doria, who was in a way his relative by affinity, wanted to chastise Martin for the wrongs supposedly committed by Martin against Doria.

One circumstance which shows the irrationality of appellants' theory is that if, according to them, they saw Filemon Lazarte fighting the Pasuquin brothers, it was quite strange that they did not bother to succor Filemon. He was the uncle of Bartolome Lazarte and Bernabe Lazarte, being the brother of their father. He should be close to Doria who is the stepfather of his nephews. Yet Doria and the Lazarte brothers, according to their theory, did not help Filemon at all. He did not sustain any wound.

The appellants point to certain contradictions in the testimonies of prosecution witnesses, Manuel Pasuquin and Antonio Reyes.

For example, the appellants allege that the testimonies of Reyes and Manuel Pasuquin do not agree on the number of bullcarts, the time when the bullcarts arrived at Bersamin, the place where Martin Pasuquin was positioned at the time he was shot by Doria, and the question uttered by Doria before he assaulted Martin.

Those inconsistencies refer to trivial and minor details that do not impair the credibility of Reyes and Manuel Pasuquin. The discrepancies signify that the two witnesses did not deliberately pervert the truth in their narrations. The discordances in their testimonies on collateral matters heighten their credibility and show that their

testimonies were not coached nor rehearsed (People vs. Resayaga, L-23234, December 26, 1973; 6 Moran, Comments on the Rules of Court, 1970 Edition, pages 138-141).

It was Doria who made inconsistent declarations. Aside from admitting at first that he was the owner of the paltik revolver (Exh. A) and later denying that it was his property, Doria committed a flagrant contradiction which reveals the fabricated nature of his defense. When he testified on February 10, 1965, he made it appear that he went to Barrio Bersamin to cut grass (82 tsn, Abalos). That testimony was corroborated by Rodolfo Fernandez, Bartolome Lazarte and Bernabe Lazarte (92, 98, 111 tsn, Abalos).

But when Doria testified on October 2, 1967 (his testimony had to be retaken because of the loss of the stenographic notes of his testimony on direct examination), he declared that he went to Barrio Bersamin to buy pigs (2 tsn). The discrepancy is not minor. It refers to a vital detail of Doria's defense. It shows his deliberate distortion of the truth. The prosecution established that Doria and his companions went to Barrio Bersamin on that fateful morning of November 26, 1959 for the sole purpose of assassinating the Pasuquin brothers. Doria did not buy any pigs. Neither did he and his companions cut grass.

The Court has painstakingly scrutinized the evidence. It is convinced that the culpability of the appellants for the killing of Martin Pasuquin and the wounding of Manuel Pasuquin has been established beyond reasonable doubt.

Appellant Doria contends that credence should have been given to the medical certificate dated November 27, 1959, that he suffered contusions with hematoma in the neck and abdomen (Exh. 2), as proof that he was maltreated while under custody. He claims that he admitted ownership of the paltik gun, as indicated in his sworn statement, because he was under duress. Doctor Estacio testified that the contusions described in the medical certificate could possibly have been self-inflicted. The chief of police and the Constabulary soldier, who investigated Doria, denied that the latter was maltreated. Doria did not complain to the justice of the peace, before whom his statement was sworn to (page 2, Record of Criminal Case No. 400), that he was maltreated. The circumstance that in his statement he did not admit that he shot Martin Pasuquin is an indicium of its voluntariness.

The crime of illegal possession of a firearm, imputed to Doria, was proven beyond reasonable doubt by his written confession and his oral admission to the chief of police that he used the paltik revolver (Exh. A). He was not able to produce any license or permit for its possession (People vs. Ramos, 62 O. G. 6326; 8 SCRA 758). The chief of police testified that Doria was not among the residents of Alcala who held licenses to possess firearms.

No license may be issued for a paltik revolver (People vs. Fajardo, L-18257, June 30, 1966, 17 SCRA 494). The admission of the accused that he had killed a person with an unlicensed firearm is sufficient evidence to prove the offense of illegal possession of a firearm (People vs. Garcia, 92 Phil. 195).

The crime of illegal possession of a firearm (which is not a rifle, etc.) is "punished by imprisonment for a period of not less than one year and one day nor more than five years, or both such imprisonment and a fine of not less than one thousand pesos nor more than five thousand pesos, in the discretion of the court" (Sec. 2692, Revised Administrative Code). A conviction carries with it "the forfeiture of the prohibited article or articles to the Philippine Government" (Sec. 2692, Revised Administrative Code as amended by Republic Act No. 4).

In Criminal Case No. U-400, now L-26188, the indeterminate penalty of one year to five years and a fine of one thousand pesos, imposed on Doria by the trial court, should be modified as to the minimum range, which should be one year and one day. (See Sec. 1, Act No. 4103 as amended by Act No. 4225).

The informations for murder and frustrated murder in the other two cases qualify the offenses with the aggravating circumstances of treachery and premeditation. The trial court found that there was premeditation in

the killing of Martin Pasuquin and in the wounding of Manuel Pasuquin. It held that the sudden attack on the Pasuquin brothers was treacherous.

In Criminal Case No. U-402, now L-26190, the assault made by Bernabe Lazarte on Manuel Pasuquin while the latter's hands were held behind his back by Rodolfo Fernandez was treacherous because Bernabe Lazarte and his companion employed a form of aggression tending to insure the execution of the crime without any risk to themselves arising from any defense which Manuel Pasuquin might have made (Par. 16, Art. 14, Revised Penal Code; U. S. vs. Oracion and Lambino, 18 U. S. 530; People vs. Zosimo Gonzales, 92 Phil. 1078; U. S. vs. Valdez and Gamit, 40 Phil. 876; People vs. Carandang, 54 Phil. 503; U. S. vs. Feria, 2 Phil. 54). Treachery absorbs the abuse of superior strength employed by Lazarte and Fernandez.

The crime committed against Manuel Pasuquin is frustrated murder because Bernabe Lazarte performed all the acts of execution which would have consummated the killing. It was not consummated due to a timely medical attendance, a circumstance independent of Lazarte's will (Art. 6, Revised Penal Code).

The trial court found that Bernabe Lazarte was only thirteen years old when he committed the crime on November 26, 1959. He acted with discernment. Inasmuch as he had long passed the age of sixteen years, he is no longer entitled to a suspended sentence (Art. 80 of the Revised Penal Code) People vs. Estefa, 86 Phil. 104; People vs. Capistrano, 92 Phil. 125). But he is entitled to the privileged mitigating circumstance of minority or a two-degree reduction of the penalty (Art. 68, Revised Penal Code).

The indeterminate penalty imposed by the trial court is correct insofar as the minimum penalty of six months of *arresto mayor* is concerned. It is one day short as to the maximum range, which should be four (4) years, two (2) months and one (1) day of *prision correccional* maximum, instead of four (4) years and two (2) months only (Art. 248, in relation to Art. 61 and the table facing art. 76, Revised Penal Code).

As recommended by the Solicitor General, that part of the trial court's judgment, that Bernabe Lazarte should serve subsidiary imprisonment for the indemnity of two thousand pesos in case he is insolvent, should be eliminated. Republic Act No. 5465, which took effect April 21, 1969, amended article 39 of the Revised Penal Code by abolishing the subsidiary imprisonment for the indemnity.

In Criminal Case No. U-401, now L-26189, the crime committed by Francisco Doria and Bartolome Lazarte is murder qualified by treachery. They perpetrated a deliberate and sudden aggression on Martin Pasuquin which insured the consummation of the killing without any risk to themselves. Treachery may be appreciated in a sudden frontal assault (People vs. Noble, 77 Phil. 193).

As in L-26190, abuse of superiority is merged with treachery. As no mitigating circumstances and generic aggravating circumstances can be appreciated with respect to Doria, he should be sentenced to *reclusion perpetua* (Arts. 64[1] and 248, Revised Penal Code). "Life imprisonment" is not a correct term (People vs. Mobe, 81 Phil. 58).

The trial court properly appreciated the mitigating circumstance of voluntary surrender in favor of appellant Bartolome Lazarte. He is entitled to an indeterminate sentence. The penalty of twelve (12) years of *prision mayor* maximum to twenty (20) years of *reclusion temporal* maximum imposed on him by the trial court, is within the proper range.

However, the indemnity imposed on Doria and Bartolome Lazarte should be raised to twelve thousand pesos.

WHEREFORE, the lower court's judgment is modified as follows:

- (a) In Criminal Case No. U-400, now L-26188, for illegal possession of a firearm, the minimum range of the

penalty should be one (1) year and one (1) day. The paltik revolver and ammunition (Exh. A and C) are forfeited to the Government.

(b) In Criminal Case No. U-401, now L-26189, for murder, the indemnity is raised to P12,000. The penalty imposed should be designated as reclusion perpetua, not life imprisonment.

(c) In Criminal Case No. U-402, now L-26190, for frustrated murder, the maximum range of the indeterminate penalty imposed on appellant Bernabe Lazarte should be four (4) years, two (2) months and one (1) day of prision correccional maximum. The provision for subsidiary imprisonment is eliminated.

In other respects the judgment of the lower court in the three cases is affirmed with costs against appellants Francisco Doria, Bernabe Lazarte and Bartolome Lazarte.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, and Fernandez, JJ., concur.
Antonio, J., took no part.

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