

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICTOR ASIBAR Y BALUYOT AND JULIO MANZANO Y ROLDAN,
DEFENDANTS-APPELLANTS.**

G.R. No. L-37255. October 23, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

This is an automatic review of the decision of the Court of First Instance of Occidental Mindoro, Mamburao, Branch I in Criminal Case No. Z-57 entitled "People of the Philippines vs. Victor Asibar, et al."

Records show that on July 21, 1972, VICTOR ASIBAR y BALUYOT alias "Romy Tan" and JULIO MANZANO y ROLDAN were indicted with the crime of Robbery with Homicide in an information, which reads:

"That on or about the 18th day of April, 1972 in the sitio of Baribuan, barrio of Casague, Municipality of Santa Cruz, Province of Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court the above-named accused, both recidivist, conspiring and confederating together and mutually helping one another with intent of gain and against the will and consent of the owner thereof did, then and there will-fully, unlawfully and feloniously by means of force and violence, take, steal and carry away the following personal properties to wit:

- (a) Seven Thousand (P7,000.00) Pesos Philippine Currency;
- (b) One (1) Automatic Carbine with two long magazines (both loaded);
- (c) One (1) Caliber .45 Pistol with three magazines (all loaded);
- (d) One (1) Caliber .22 Revolver with two boxes of bullets (Magnum);
- (e) One (1) Attache Case contain-ing different documents and cash money;
- (f) One (1) Diamond Ring costing Five Thousand (P5,000.00) Pesos;
- (g) One (1) Ring (Jade);
- (h) One (1) Smoke Glass; and
- (i) One (1) box of bullets (Double Zero)

all belonging to and owned by one Cesar Malabanan with a total value of EIGHTEEN THOUSAND (P18,000.00) Pesos, Philippine Currency, to the damage and prejudice of said Cesar Malabanan in the said amount.

"That on the occasion of the said robbery and in pursuance of their con-spiracy, for the purpose of enabling them to take, steal and carry away the properties above-mentioned, the above-named accused VICTOR ASIBAR y BALUYOT alias ROMY TAN and JULIO R. MANZANO, armed with a homemade shotgun commonly named as 'BAROG' did, then and there, willfully, unlawfully and feloniously, with evident

premeditation and treachery and in an uninhabited place and without any justifiable motive and with intent to kill, attack, assault, shoot and wound said Cesar Malabanan, thereby inflicting upon the latter mortal wounds on the different parts of his body which injuries directly caused the death of said Cesar Malabanan.

"That the accused VICTOR ASIBAR Y BALUYOT (alias ROMY TAN) and JULIO R. MANZANO had been previously convicted by final judgment of another crime embraced in the same title of the Revised Penal Code.

"CONTRARY TO LAW: With the aggravating circumstances of:

"1. Recidivism for both accused having been previously convicted by final judgment of another crime embraced in the same title of the Revised Penal Code.

"2. That the crime was committed in an uninhabited place where help to the victim is difficult and the escape of the accused is easy which they purposely sought to facilitate the commission of the offense.

"3. That the crime was committed with treachery and evident premeditation.

"4. That Victor Asibar y Baluyot is an escaped convict from SPCF on February 3, 1972."

Upon being arraigned, Victor Asibar y Baluyot entered a plea of guilty, while Julio Manzano y Roldan pleaded not guilty.

The trial court, mindful of the doctrines laid down by this Court and considering the fact that there is no law prohibiting the taking of testimony after a plea of guilty, where a grave offense is charged, reserved its decision on the plea of guilty of Victor Asibar y Baluyot and held trial on the merits.

The lower court heard the testimonies of several persons, as well as the two (2) accused, following which, on March 26, 1973, it rendered its decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered as follows:

"1. Accused Victor Asibar y Baluyot is hereby found GUILTY beyond reasonable doubt as principal by direct participation of the crime of Robbery with Homicide and there being proved the mitigating circumstance of plea of guilty, offset, however, by the aggravating circumstances of treachery, recidivism and in an uninhabited place, the Court sentences him to DEATH;

"2. Accused Julio Manzano y Roldan is hereby found GUILTY beyond reasonable doubt as principal by cooperation of the crime of Robbery with Homicide, with the aggravating circumstances of recidivism, treachery and in an uninhabited place, without any mitigating circumstance to offset the same, the Court sentences him to LIFE IMPRISONMENT.

"Both accused are further ordered to jointly and severally indemnify the heirs of the deceased Cesar Malabanan in the sum of P12,000.00 for the death of the latter; the sum of P10,000.00 by way of moral damages; the sum of P10,000.00 by way of exemplary damages, and to return to the heirs of Cesar Malabanan the unrecovered articles and cash money taken from the said victim or to jointly and severally indemnify them in the amount representing the value thereof which is P11,255.00, if they fail to do so and to pay the costs.

"The sum of P1,195.00 in cash and the attache case recovered from both accused are hereby ordered returned to the heirs of Cesar Malabanan, while the firearms which were recovered be turned over to the Philippine Constabulary for proper disposition.

"Atty. Jose Z. Calabio, Jr. is awarded an attorney's fee of P400.00 as counsel de oficio of both accused." (pp. 552-553, Record).

WE quote the evidence of the prosecution from the brief of the Solicitor General, as follows:

"Accused Victor Asibar y Baluyot was committed to the Bureau of Prisons on November 6, 1970 after he was convicted for the crime of Homicide by the Court of First Instance of Zambales (Exhibit 'A') (p. 12, tsn., Nov. 6, 1972). While serving sentence in Muntinglupa, he came to know accused Julio Manzano y Roldan who was serving sentence for Theft of Large Cattle (p. 2, tsn, Nov. 9, 1972; pp. 8-9, tsn, Dec. 20, 1972; p. 22, tsn, Dec. 21, 1972).

"On March 11, 1971, accused Asibar was transferred to the Sablayan Penal Colony from where he escaped on February 3, 1972 (pp. 11-12, tsn, Nov. 6, 1972). On the other hand, accused Julio Manzano y Roldan was released on parole on February 25, 1971 (Exhibit 'B') (p. 14, tsn, Nov. 6, 1972; p. 21, tsn, Dec. 21, 1972). Under the terms of his parole, he was to report to the Municipal Judge of Puerto Galera, Oriental Mindoro where he resided (p. 15, tsn, Nov. 6, 1972)

"While riding in a Bureau of Prisons' truck coming from Sablayan going to Mamburao while still a detainee at the Sablayan Penal Colony, Asibar met along the way his co-accused Manzano (pp. 3-4, tsn, Nov. 9, 1972). After accused Asibar escaped in February 1972 from the Sablayan Penal Colony, he went to the house of accused Manzano at Lusacan and stayed there (pp. 6-7, tsn, Dec. 20, 1972). After about a week he was asked to leave after confiding to Manzano and his wife that he was an escapee (pp. 7-8, tsn, Dec. 20, 1972). Subsequently, Asibar was employed as a farm laborer by a certain Bienvenido Rodriguez of Sta. Cruz, Occidental Mindoro (pp. 10-11, tsn, Dec. 20, 1972)

"While working as laborer in Sta. Cruz, accused Asibar saw the deceased Cesar Malabanan, when he was still alive, as the latter passed by Sta. Cruz and he was pointed out to Asibar by the latter's friends (p. 11, tsn, Dec. 20, 1972). Also, Asibar used to pass along the Pola River bed in going to his place of work and many times he saw Cesar Malabanan pass the same place riding in his jeep and in possession of several firearms which he became interested to possess (p. 28, tsn, Nov. 7, 1972; pp. 11, 18, tsn, Dec. 20, 1972).

"On April 18, 1972, the two accused waited for deceased Malabanan along the dried river bed of Pola River (pp. 21-24, tsn, Nov. 8, 1972). At about 1:00 o'clock p.m., the deceased passed by (pp. 11-12, 18, tsn, Dec. 20, 1972). Accused Asibar was then hiding behind a cluster of talahib grass while accused Manzano stood about one hundred (100) yards away at an elevated place to watch for the approach of the victim and then signal Asibar (pp. 23-24, tsn, Nov. 8, 1972). When the jeep of the victim approached, Manzano signalled Asibar who positioned himself and got ready to shoot the victim (pp. 26-27, tsn, Nov. 7, 1972; pp. 13-15, tsn, Dec. 20, 1972; pp. 17-18, tsn, Dec. 11, 1972). When the jeep of the victim was about twenty (20) meters away from him and it stopped apparently because of engine trouble, the victim alighted and began tinkering with something in its engine (p. 14, tsn, Dec. 20, 1972). Asibar then fired his first shot (p. 15, tsn, Dec. 20, 1972). The victim made several steps forward in his direction but later retreated to a distance of about ten (10) meters, apparently to return to his jeep (p. 15, tsn, Dec. 20, 1972).

"At this juncture, Asibar fired a second shot and the victim fell (p. 15, tsn, Dec. 20, 1972). When said accused was certain that the victim was already dying, he got the victim's money from the latter's jacket in the amount of P1,000, more or less, and gave to accused Manzano the sum of P395.00 (Exhibit 'N') as the latter's share (pp. 12-13, tsn, Dec. 20, 1972). Manzano and Asibar likewise got from the deceased three (3) firearms, namely: one (1) carbin (Exhibit 'L'), one (1) pistol caliber 45 (Exhibit 'R'), one (1) revolver, magnum caliber 22 (Exhibit 'V'), one (1) attache case (Exhibit 'M') (pp. 33-34, tsn, Nov. 8, 1972; pp. 10-11, 19-20, tsn, December 11, 1972; pp. 12-13, 16-17, tsn, December 20, 1972). After accused had taken the aforesaid articles from the victim, Asibar proceeded to a nearby forested area and at a banana plantation where he forced open the attache case (Exhibit 'M') and got therefrom two bundles of money and other documents (pp. 26-27, tsn, Dec. 20, 1972).

"Dr. Vicente A. Hernandez, Assistant Provincial Health Officer of Occidental Mindoro, performed the autopsy of deceased Cesar Malabanan and issued the correspond-ing Death Certificate (Exhibit 'C', p. 7, Record), simultaneously with the records of the autopsy (Exhibit 'P') and the accompanying diagram to said autopsy report (Exhibit 'D-1', pp. 8-10, Record). He found nine (9) gunshot wounds on the deceased, three of which

were on the head and six (6) on the thorax (pp. 25-26, tsn, Nov. 6, 1972; Exhibit 'D-1'). In the course of his autopsy of the victim he recovered three (3) pellets, one (1) from the head and two (2) from the thorax, which he thenceforth kept in a small bottle (Exhibit 'E'; pp. 22-23, tsn, Nov. 6, 1972). When the gunshot wounds on the head were sustained by the victim, he must have been on a stooping position while the assailant faced the victim with a distance of more than five (5) meters between them (pp. 23-25, tsn, Nov. 6, 1972). The six (6) gunshot wounds on the thorax of the victim were caused by pellets and when said six (6) gunshot wounds were sustained by the victim, assailant must have been five (5) meters behind, the 'point of entrance' being at back of the victim (pp. 29-30, tsn, Nov. 6, 1972).

"The injuries sustained by the victim on the head were fatal and, taken independently, could have caused the death of the victim (pp. 32-33, tsn, Nov. 6, 1972). Likewise, the six (6) gunshot wounds on the thorax are also fatal and if such were the only injuries sustained by the victim, they could have caused his death just as well (pp. 33-34, tsn, Nov. 6, 1972). The said injuries sustained by the victim were caused by a Gauge 12 shotgun and during the autopsy, Dr. Hernandez recovered about 300 cc. of blood causing severe damage on the brain of the victim and the cause of death of victim Cesar Malabanan was hemorrhage, internal, severe secondary to gunshot wounds, multiple (pp. 26, 28, 33, tsn, Nov. 6, 1972).

"At the time of his death, the deceased Cesar Malabanan had with him P7,000.00 to pay the wages of workers in his poultry and defray expenses for necessary supplies and materials in the operation of the same project, as well as three (3) firearms (Cal. 45 pistol, Cal. 30 carbine and Cal. 22 magnum) all licensed in his name, and his attache case (pp. 19-20, 21-23, tsn, Nov. 9, 1972; p. 5, tsn, December 19, 1972). He also wore his diamond ring (Solitaire brillante) valued at P6,500.00, a jade ring valued at P250.00, a sunglass valued at P200.00 and a box of live ammunitions (pp. 30-31, tsn, Nov. 9, 1972; pp. 9-11, tsn, Dec. 19, 1972). During the lifetime of deceased Malabanan he was employed in the License Division, Office of the City Treasurer, Manila, with the salary of P650.00 monthly (p. 18, tsn, December 19, 1972).

"Because of the gravity of the offense and the manner it was perpetrated, a PC Team of investigators headed by T/Sgt. Victor Ona and Senior NBI Agents Zacarias R. Leus and Juanito Gonzaga of the National Bureau of Investigation were assigned to assist the local police authorities of Mamburao, Occidental Mindoro (pp. 3-5, 43-44, tsn, November 7, 1972).

"On April 21, 1972, Julio Manzano y Roldan was first arrested (pp. 4, 9-10, tsn, Dec. 11, 1972). Upon inquiry by PC Sgt. Descanzo and his co-soldiers, Manzano accompanied them to the poblacion of Sta. Cruz where Victor Asibar was arrested. From Asibar were recovered two firearms, caliber 45 pistol (Exhibit 'R') with magazines and live bullets (Exhibits 'R-1' and 'R-2') and caliber 22 revolver Magnum (Exhibit 'V') with holster (Exh. 'V-1') and P800.00 in various denominations (Exhibit 'S'; pp. 9-13, tsn, Dec. 11, 1972).

"Both accused were then brought to the Office of the Chief of Police of Mamburao where they were investigated about the killing of Cesar Malabanan (pp. 4, 14-15, tsn, Dec. 11, 1972). In said investigation they admitted that they killed Malabanan and stole his personal belongings (pp. 9-14, tsn, Dec. 11, 1972). They also narrated their respective participation in the killing (pp. 43-44, tsn, Nov. 7, 1972; pp. 9-10, tsn, Dec. 11, 1972).

"Both accused were next brought to barrio Lusacan, Sta. Cruz, Occidental Mindoro to recover the articles and other items mentioned by them in their respective statements (p. 44, tsn, Nov. 7, 1972). Upon arrival thereat, they proceeded to the house of accused Manzano where they met Manzano's wife who, upon being interrogated, refused to inform that the money was in their possession (pp. 48, tsn, Nov. 7, 1972). However, her eight year old son, who was then present, readily pointed to the money which was hidden at their backyard inside the trunk of a tree (pp. 46-47, tsn, Nov. 7, 1972). He told the investigators that said money was given by his father (pp. 46-47, tsn, November 7, 1972). The money (Exh. 'N') recovered which was wrapped in cellophane amounted to P395.00 in 5-peso and 20-peso bill denominations which Sgt. Ona entrusted to Fiscal Malabanan, brother of the deceased (pp. 49-50, tsn, November 7, 1972).

"In the same backyard of Manzano they likewise recovered a carbine (Exhibit 'L') underneath dried leaves and

a small log (pp. 51-52, tsn, Nov. 7, 1972). It was the accused Manzano himself who pointed to the said hiding place (p. 52, tsn, Nov. 7, 1972). Upon recovery of Exhibit 'L' (carbine) T/Sgt. Ona confronted Manzano who admitted that it was given to him by accused Asibar (p. 52, tsn, Nov. 7, 1972). Exhibit 'L' was identified by Asibar to be the same carbine he got from the deceased after he had killed him and which he subsequently gave to Manzano (pp. 51-54, tsn, Nov. 7, 1972). The serial number of said carbine, No. 7203022, tallied with the serial number appearing on the License to Possess (Exhibit 'Q') in the name of the deceased (p. 54, tsn, Nov. 7, 1972).

"Both accused admitted that the articles and items recovered and identified by them were taken by Asibar from the deceased at the crime scene (pp. 4-5, tsn, Nov. 8, 1972). While they were recovering said articles, Sgt. Ona asked accused Asibar where he hid the attache case and other firearms as well as the firearm he used in shooting the victim (p. 5, tsn, Nov. 8, 1972). Asibar pointed to the general direction of Pola River, Sitio Baribuan, Barrio Barahan, Sta. Cruz, Occidental Mindoro (p. 5, tsn, November 8, 1972). T/Sgt. Ona and his companions with both accused repaired to the place indicated. After they had travelled less than half a kilometer, they were led by Asibar to a forested area nearby where, underneath banana leaves, Asibar himself recovered the attache case (Exhibit 'M') which he admitted was the one he took from the deceased (pp. 6-7, 9-10, tsn, Nov. 8, 1972). Sgt. Ona asked Asibar for the firearm which he used in shooting the deceased and Asibar led them to a forested area about 700 yards from the place where the attache case was recovered and in their presence accused Asibar re-covered the homemade shotgun (Exhibit 'F') which he used in shooting the deceased together with twenty-one (21) rounds of live ammunitions, Gauge 12 (Exhibits 'F-2' to 'F-22'). Asibar informed them further that said shot gun was given to him by Manzano (pp. 26-27, tsn, Dec. 11, 1972; pp. 11-12, tsn, Nov. 8, 1972).

"The live ammunitions (Exhs.'F-2' to 'F-22') were found in a creek about 600 yards away from the crime scene which was along the road near the Pola River. An empty cartridge (Exhibit 'F-1') was also found in the crime scene among the talahib grass (pp. 16-18, tsn, Nov. 8, 1972).

"Upon searching the surrounding area, a growth of talahib grass about 10 yards away from the scene of the crime was noted as slightly bent indicating that somebody had stepped on it (pp. 19-20, tsn, Nov. 8, 1972). Indeed, there was a foot print (pp. 18-20, tsn, Nov. 8, 1972). Asibar admitted during the confrontation and re-enactment of the crime that he stayed at the place where the talahib growth was slightly bent and that his companion was Julio Manzano who was at an elevated place on the other side of the river about 100 yards away opposite him (Asibar) to watch for the arrival of the victim and to make the necessary signal to Asibar (pp. 21-24, tsn, Nov. 8, 1972).

"On April 25, 1972, T/Sgt. Ona and his group of investigators and the NBI Agents went to the crime scene for the second time for the re-enactment of the crime (p. 6, tsn, Nov. 9, 1972). This was performed by the two accused (p. 6, tsn, Nov. 9, 1972). The re-enactment by both accused was recorded in photographs (Exhs. 'U', 'U-1' to 'U-19').

"It was Atty. Juanito Gonzaga, NBI Agent, who verbally interrogated both accused, in coordination with PC Sgt. Ona in the Municipal Building of Mamburao (pp. 10-12, tsn, Nov. 9, 1972). On April 26, 1972 he took the statement of Victor Asibar in question and answer form (Exhibit 'I', pp. 11-16, Record). On April 27, 1972, Atty. Juanito Gonzaga in collaboration with T/Sgt. Ona also reduced into writing the statement of accused Julio Manzano (Exhibit 'J', pp. 17-21, Record). The aforesaid statements were voluntarily executed and were subscribed and sworn to by both accused before NBI Agent Leus in the absence of the Municipal Judge in his office (pp. 11, 13, tsn, Nov. 9, 1972).

"On April 29, 1972, T/Sgt. Ona filed a Criminal Complaint against appellants for robbery with homicide (Exhibit 'P', pp. 2-4, Record; pp. 18-19, tsn, Nov. 9, 1972). In the preliminary investigation conducted by Municipal Judge Rosie L. Isler of Sta. Cruz, Occidental Mindoro, both accused pleaded guilty (Exhibit 'G', p. 35, Record)."

On December 11, 1978, the Clerk of Court of this Court received a letter from Mr. Pablo L. Rosales, Officer-in-Charge, Bureau of Prisons, informing "the death of Prisoner JULIO MANZANO y ROLDAN, No. 10676-D, defendant-appellant for Robbery with Homicide, in the New Bilibid Prison Hospital, Muntinlupa, Metro Manila, on November 27, 1978 of Miliary Tuberculosis," (p. 145 of the Rollo). Attached to the letter is the Certificate of Death of the deceased prisoner (p. 146 of the Rollo).

On January 4, 1979, this Court issued a resolution requiring the Solicitor General to comment on the letter of Mr. Rosales within ten (10) days from notice.

On March 1, 1979, Acting Solicitor General Ramon A. Barcelona and Solicitor Crescencia A. Caparoso-Salva submitted their comment, as follows:

"1. The Solicitor General was also furnished copy of the abovementioned letter dated December 1, 1978 of the Officer-in-Charge of the Bureau of Prisons together with a copy of the death certificate of Julio R. Manzano, one of the appellants in the above-entitled case;

"2. Verification personally made by undersigned counsel from the records of the Local Civil Registrar of Muntinlupa, Rizal, shows that Julio R. Manzano died on November 27, 1978 of Miliary Tuberculosis as per Entry No. 449 (K-78) dated December 1, 1978;

"3. The criminal liability of the herein accused-appellant Julio R. Manzano having been extinguished due to his death (Art. 89 par. 1 of the Revised Penal Code), the present appeal with respect to him should be dismissed without prejudice to the civil liability, if any, in favor of the aggrieved parties (Supreme Court Resolution dated June 9, 1978 in *People vs. Florencio Datay alias 'Lucy'*, L-39976; Supreme Court Resolution dated July 25, 1978 in *People vs. Valentino S. Estrella*, L-32706)."

On March 22, 1979, this Court issued a resolution "dismissing the case against appellant Julio R. Manzano insofar as his criminal liability is concerned, Barredo J. voted to dismiss the case against aforesaid appellant in toto." On the same day, judgment was entered as final and executory with respect to said Julio R. Manzano.

In his brief, defense counsel alleged that the trial court erred (1) in appreciating the aggravating circumstances of recidivism and uninhabited place in imposing the supreme penalty of death on accused-appellant Victor Asibar; (2) in not holding that accused-appellant Julio Manzano's extrajudicial confession (Exh. J) should be rejected for having been obtained under circumstances amounting to force and intimidation; (3) in holding that accused-appellant Julio Manzano acted in conspiracy with accused-appellant Victor Asibar; and (4) in not holding that accused-appellant Julio Manzano should be acquitted for lack of proof to show any criminal participation on his part, be it as principal, accomplice or accessory, in the commission of the crime charged.

Considering that the case against Julio Manzano y Roldan has already been dismissed, WE will take up the issues raised with respect to Victor Asibar y Baluyot only, on the presence of the aggravating circumstances of recidivism and uninhabited place.

With respect to recidivism, the Solicitor General, in his brief, agrees and to this WE approve that since the previous conviction of appellant Asibar for homicide under Article 249 falls under Title VIII of the Revised Penal Code, entitled "Crimes against Persons," and the case at bar for Robbery with Homicide under Article 294, paragraph I of the Revised Penal Code, falls under Title X, entitled "Crimes against Property," recidivism should not have been considered in this case. A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of this Code. It is one of the requisites of recidivism that both the first and second offenses are embraced in the same title of the Code.

The aggravating circumstance of an uninhabited place must be taken into account, considering the testimony of

Sgt. Laureano Descanso that he, together with Sgt. Ona, two NBI agents, Sgt. Lamuzga and CIC Sgt. Luna, went to the scene of the crime and found that there were no houses thereat or that the houses were very far from the place; or that the nearest house was more or less one (1) kilometer away. An uninhabited place is one where there are no houses at all, a place at a considerable distance from the town, or where the houses are scattered at a great distance from each other. (Reyes, Revised Penal Code, 1974, Book I, p. 318). In the case of *People vs. Aguinaldo*, 55 Phil. 610, it was held that where the nearest house was 400 meters distant, hidden by coconut groves, the place was considered despoblado. And, in *People vs. Rubia*, 52 Phil. 172, this Court held that the crime was committed in an uninhabited place because it was difficult for the offended party to receive any help, while the assailants could easily have escaped punishment.

The crime being robbery with homicide, treachery (since the attack was sudden and victim was not given the chance to defend himself) should be considered as a generic aggravating circumstance, and not a qualifying one. And, with the presence of two aggravating circumstances, namely: treachery and uninhabited place, and one mitigating circumstance, which is the plea of guilty, the penalty should be imposed in its maximum period. However, for lack of the necessary votes, the extreme penalty of death cannot be imposed.

WHEREFORE, the judgment of the lower court with respect to Victor Asibar y Baluyot is **AFFIRMED** in all respects with the sole modification that the appellant shall suffer reclusion perpetua only. Costs de oficio.

SO ORDERED.

Fernando, C.J., Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, and Gutierrez, Jr., JJ., concur.

Teehankee, J., took no part.

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