

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. ALBERTO V. SEÑERIS, AS DISTRICT JUDGE, COURT OF FIRST INSTANCE, BRANCH II, SIXTEENTH JUDICIAL DISTRICT, ZAMBOANGA CITY, AND P...

G.R. No. L-48883. August 06, 1980

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

The legal issue posed in this special civil action for certiorari, with prayer for a writ of preliminary injunction, spawned by the August 4, 1978 order of respondent judge in Criminal Case No. 750 for parricide against therein accused Pilar Angeles de Pimentel, hereinafter referred to as private respondent, is the admissibility in evidence of the testimony of a prosecution witness in the said criminal case who died before completion of his cross-examination. That issue is crucial to the fate of private respondent, considering that the deceased prosecution witness "x x x is the most vital and the only eyewitness available to the prosecution against respondent Pilar Angeles de Pimentel for the commission of the gruesome crime of parricide x x x" (p. 10, rec.).

The factual background of the action is undisputed.

On February 8, 1978, Assistant Provincial Fiscal Camilo E. Tamin, who was then on official detail with the office of the City Fiscal, Zamboanga City, filed with the Court of First Instance, Sixteenth Judicial District, Zamboanga City, an amended information for parricide in Criminal Case No. 1742, charging herein private respondent as principal by inducement, Mario Nemenio y delos Santos and Salim Doe as principals by direct participation, and Moises Andaya y Julkanain as accomplice, in the fatal stabbing on September 6, 1977 in Zamboanga City of Eduardo Pimentel y Orario, the lawful husband of private respondent. The amended information reads:

"That on or about September 6, 1977, in the City of Zamboanga, Philippines, and within the jurisdiction of this Court, the above-named accused Pilar Angeles de Pimentel, with deliberate intent to kill her husband, Eduardo Pimentel y Orario, with whom she was united in lawful wedlock, did then and there, willfully, unlawfully and feloniously, induce and offer a sum of money as consideration or prize to said accused Mario Nemenio y delos Santos and Salim Doe to kill her said lawfully wedded husband Eduardo Pimentel y Orario, and because and on account of said promised consideration or prize which was accepted, the said accused Mario Nemenio y delos Santos and Salim Doe, did then and there, willfully and feloniously assault, attack and stab with a knife with which they were conveniently provided, the person of said Eduardo Pimentel y Orario, thereby inflicting upon the latter mortal wound which directly caused his death; that the above-named accused Moises Andaya y Julkanain although without having participated directly in the commission of the offense above-described, took part prior to its commission by then and there acting as the contact man in the execution of their plot to kill said Eduardo Pimentel y Orario.

"Contrary to law" (p. 13, rec.).

On January 17, 1978, private respondent, assisted by her counsel, moved and was granted a separate trial (p. 16,

rec.).

On February 22, 1978, the accused Mario Nemenio y delos Santos, assisted by his counsel de oficio, entered on arraignment a plea of guilty. Respondent judge thereafter rendered judgment convicting accused Mario Nemenio y delos Santos of murder -- qualified by the circumstance of prize and reward -- and not of parricide as charged in the information; because he "x x x had no relation whatsoever to the deceased Eduardo Pimentel x x x" and appreciating the mitigating circumstances of voluntary plea of guilty and lack of instruction and education, imposed on him the indeterminate penalty of eight (8) years of prision mayor as the minimum, to fourteen (14) years and eight (8) months of reclusion temporal as the maximum; to indemnify the heirs of the deceased Eduardo Pimentel the amount of P12,000.00 and to pay one-fourth (1/4) of the costs of the proceedings (pp. 15-19, rec.).

Immediately after promulgation of judgment, accused Mario Nemenio y delos Santos offered to testify against his co-accused, herein private respondent, in her separate trial earlier granted by the respondent judge in the same criminal case, now numbered 750. Allowed, he testified as prosecution witness on February 28, March 6, and March 22, 1978 and as summarized by the petitioner, his testimony on direct examination contained in seventy-six (76) pages of transcripts of stenographic notes (pp. 21--44, 57-64, rec.), is to the effect "x x x that he and Salim Doe were hired by respondent Pilar Angeles de Pimentel, for the consideration of P3,000.00 to kill Eduardo Pimentel, husband of respondent Pilar Angeles de Pimentel, in the evening of September 6, 1977, in the latter's residence in Zamboanga City, and that it was respondent Pilar Angeles de Pimentel herself who actually pointed out the victim Eduardo Pimentel to the witness, who then stabbed the said victim to death. x x x That he did not know the identity of the victim Eduardo Pimentel at the time of the stabbing in the evening of September 6, 1977. He was guided solely by respondent Pilar Angeles de Pimentel, who pointed out her victim spouse to him x x x" (allegation No. 4, petition, pp. 4-5, rec.).

After the prosecution had terminated on March 22, 1978 the direct examination of its witness Mario Nemenio y delos Santos, counsel for private respondent moved for the holding in abeyance of the cross-examination of the said prosecution witness until after he (counsel) shall have been furnished with the transcripts of the stenographic notes of the direct examination of said prosecution witness (p. 47, TSN, March 22, 1978, p. 64, rec.); allegation No. 5, petition, p. 5, rec.). The same was granted by the respondent judge who ordered the resumption of the hearing on April 19, 1978 (pp. 64, 94, 108, rec.).

But on April 19, 1978, aforesaid prosecution witness failed to appear because he was not served with a subpoena (p. 108, rec.). Consequently, the hearing was reset for June 7, 1978 (ibid.)

On June 7, 1978, counsel for private respondent commenced his cross-examination of prosecution witness Mario Nemenio y delos Santos, which cross-examination however was not completed on that session for lack of material time, thus:

"ATTY. CALVENTO:

"I reserve my right to cross-examine the witness further.

"COURT

"Reservation to continue the cross-examination is granted.

ORDER: For lack of material time, as prayed for and upon agreement of the parties today's hearing is hereby adjourned and to be resumed on July 3, 1978 at 8:30 o'clock in the morning" (p. 84, rec.).

According to the petition, the uncompleted cross-examination reduced in fifty-three (53) pages of transcripts of stenographic notes (pp. 65-84, rec.) had already "xxx touched on the conspiracy existing among Salim Doe,

witness Mario Nemenio and respondent Pilar Angeles de Pimentel to kill Eduardo Pimentel, in the latter's residence in Zamboanga City in the evening of September 6, 1977, and also on the actual stabbing by witness Mario Nemenio of the victim Eduardo Pimentel who was pointed out to the witness-killer by his wife, respondent Pilar Angeles de Pimentel xxx" (p. 7, rec.). This is not disputed by private respondent.

Continuation of the cross-examination was, as afore-stated, set for July 3, 1978 at 8:30 o'clock in the morning.

However, prosecution witness Mario Nemenio y delos Santos was shot dead by the Integrated National Police patrols on June 21, 1978 while allegedly escaping from the San Ramon Prison and Penal Farm, Zamboanga City, where he was then serving his sentence. Consequently, the completion of his cross-examination became an impossibility.

On July 20, 1978, petitioner, without any motion on the part of the defense for the striking out of the deceased witness's testimony, filed with the respondent court a motion praying for a ruling on the admissibility of the testimony of deceased witness Mario Nemenio y delos Santos.

On August 4, 1978, respondent judge issued an order declaring as inadmissible the entire testimony of the deceased witness Mario Nemenio y delos Santos on the principal ground "x x x that the defense was not able to complete its cross-examination of said witness. x x x", relying on the case of *Ortigas, Jr. vs. Lufthansa, etc.*, L-28773, June 30, 1975, 64 SCRA, pp. 610, 636-37).

Hence, this action, to which WE gave due course on December 4, 1978, after considering private respondent's comment as well as those of the Solicitor General and of the respondent judge who was required to file one. On even date, WE likewise issued a temporary restraining order "x x x effective immediately and until further orders from this Court enjoining respondent District Judge from continuing with the trial of Criminal Case No. 750 (1742) entitled *People of the Philippines, plaintiff, versus Pilar Angeles de Pimentel, accused*, in the Court of First Instance of Zamboanga City, Branch II."

Petitioner contends that respondent judge gravely abused his discretion in ruling as inadmissible the testimony of prosecution witness Mario Nemenio y delos Santos.

WE agree.

I

1. The constitutional right of confrontation, which guarantees to the accused the right to cross-examine the witnesses for the prosecution, is one of the most basic rights of an accused person under our system of justice. It is a fundamental right which is part of due process not only in criminal proceedings but also in civil proceedings as well as in proceedings in administrative tribunals with quasi-judicial powers (*Savory Luncheonette vs. Lakas Manggagawang Pilipino, et al.*, 62 SCRA 258 [1975]).

In almost exactly the same language, both the 1935 and 1973 Constitutions secured it, thus: "In all criminal prosecutions, the accused x x x shall enjoy the right x x x to meet the witnesses face to face x x x" (Section 19, Art. IV, Bill of Rights, 1973 Constitution; Section 17, Art. III, 1935 Constitution). Echoing the same guarantee, Section 1(f) of Rule 115 of the Revised Rules of Court provides that in all criminal proceedings the defendant shall have the right to be confronted at the trial by, and to cross-examine the witnesses against him. Constitutional confrontation requirements apply specifically to criminal proceedings and have been held to have two purposes: first and primarily, to secure the opportunity of cross-examination, and secondarily, to obtain the benefit of the moral impact of the courtroom atmosphere as it affects the witness's demeanor (21 Am Jur 2d 360). Stated otherwise, it insures that the witness will give his testimony under oath, thus deterring lying by the threat of

perjury charge; it forces the witness to submit to cross-examination, a valuable instrument in exposing falsehood and bringing out the truth; and it enables the court to observe the demeanor of the witness and assess his credibility (*California v. Green*, 339 U.S. 157 [1970]).

2. But while the right to confrontation and cross-examination is a fundamental right, WE have ruled that the same can be waived expressly or impliedly by conduct amounting to a renunciation of the right of cross-examination (*Savory Luncheonette vs. Lakas ng Manggagawang Pilipino, et al.*, supra, p. 259, citing *U.S. v. Atanacio*, 6 Phil. 413 [1906]; *People vs. dela Cruz*, 56 SCRA 84, 91 [1974]). The conduct of a party which may be construed as an implied waiver of the right to cross-examine may take various forms. But the common basic principles underlying the application of the rule on implied waiver is that the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record (*Savory Luncheonette vs. Lakas ng Manggagawang Pilipino, et al.*, supra, citing *Francisco, Revised Rules of Court, Vol. on Evidence*, p. 853, in turn citing *People vs. Cole*, 43 N.Y. 508-512 and *Bradley vs. Mirick*, 91 N.Y. 293; see also 29 Am. Jur. 2d 749).

On the other hand, when the cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, as was the situation in the *Lufthansa German Airlines* case (64 SCRA 610 [1975]) relied upon by respondent judge, the uncompleted testimony is thereby rendered incompetent and inadmissible in evidence. WE emphasized in the said case that "[T]he right of a party to cross examine the witness of his adversary is invaluable as it is inviolable in civil cases, no less than the right of the accused in criminal cases. The express recognition of such right of the accused in the Constitution does not render the right of parties in civil cases less constitutionally based, for it is an indispensable part of the due process guaranteed by the fundamental law. Subject to appropriate supervision by the judge in order to avoid unnecessary delays on account of its being unduly protracted and to needed injunctions protective of the right of the witness against self-incrimination and oppressive and unwarranted harassment and embarrassment, a party is absolutely entitled to a full cross-examination as prescribed in Section 8 of Rule 132 x x x. Until such cross-examination has been finished, the testimony of the witness cannot be considered as complete and may not, therefore, be allowed to form part of the evidence to be considered by the court in deciding the case" (p. 637). However, WE likewise therein emphasized that where the right to cross examine is lost wholly or in part through the fault of the cross-examiner, then the testimony on direct examination may be taken into account; but when cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent (p. 636).

3. The effects of absence of and incomplete cross-examination of a witness on the admissibility in evidence of his testimony on direct examination has been extensively discussed thus: "As a general rule, the testimony of a witness, given on direct examination, should be stricken where there is not an adequate opportunity for cross-examination, as where the witness by reason of his death, illness, or absence cannot be subjected to cross-examination. Although the contrary has been held (*Scott v. McCann*, 24 A. 536, 76 Md. 47), the testimony of a witness, given on direct examination, should be stricken where there is not an adequate opportunity for cross-examination (*Nehring v. Smith*, 49 N.W. 2d 831, 243 Iowa 225), as where the party against whom he testified is, through no fault of his own, deprived of the right to cross-examine him by reason of his death (*Henderson v. Twin Falls County*, 80 P. 2d 801, 59 Idaho 97; *Twin Falls County, State of Idaho v. Henderson*, 59 S. Ct. 149, 305 U.S. 568, 83 L. Ed. 358), or as a result of the illness of the witness or absence, or a mistrial ordered. The direct testimony of a witness who dies before conclusion of the cross-examination can be stricken only insofar as not covered by the cross-examination (*Curtice v. West*, 2 NYS 507, 50 Hun 47, affirmed 24 N.E.

1099, 121 N.Y. 696), and absence of a witness is not enough to warrant striking his testimony for failure to appear for further cross-examination where the witness has already been sufficiently cross-examined (*Lew Choy v. Jim Sing*, 216 P. 888, 125 Wash. 631), or the matter on which further cross-examination is sought is not in controversy (*supra*). It has been held that a referee has no power to strike the examination of a witness on his failure to appear for cross-examination where a good excuse is given (*In re Crooks*, 23 Hun 696)" [98 CJS 126-127, underscoring supplied].

Moreover, "[I]f one is deprived of the opportunity of a cross-examination without fault upon his part, as in the case of the illness or death of a witness after direct examination, it is generally held that he is entitled to have the direct testimony stricken from the record. This doctrine rests on the common law rule that no evidence should be admitted but what was or might be under the examination of both parties, and that ex-parte statements are too uncertain and unreliable to be considered in the investigation of controverted facts (*Wray vs. State*, 154 Ala 36, 45 So 697; *People vs. Manchetti*, 29 Cal. 2d 452, 175 P2d 533; *A. H. Angerstein, Inc. vs. Jankowski*, 55 Del 304, 187 A2d 81; *Nehring vs. Smith*, 243 Iowa 225, 49 NW2d 831; *Citizens Bank & Trust Co. vs. Reid Motor Co.*, 216 NC 432, 5 SE2d 318). It has been held, however, that the trial court did not abuse its discretion in refusing to discharge the jury where the state witness collapsed before cross-examination was completed, it being shown that no motion to strike the testimony was made, that it was not indicated what further information was sought to be produced by further cross-examination, and that the witness' testimony was largely cumulative (*Banks vs. Commonwealth*, 312 Ky 297, 227 SW 2d 426)" [81 Am Jur2d 474].

4. Wigmore, eminent authority on evidence, opined that:

"xx xx xx xx

"xx xx where the death or illness prevents cross-examination under such circumstances of that no responsibility of any sort can be attributed to either the witness or his party, it seems harsh measure to strike out all that has been obtained on the direct examination. Principle requires in strictness nothing less. But the true solution would be to avoid any inflexible rule, and to leave it to the trial judge to admit the direct examination so far as the loss of cross-examination can be shown to him to be not in that instance a material loss. Courts differ in their treatment of this difficult situation; except that by general concession a cross-examination begun but unfinished suffices if its purposes have been substantially accomplished.

"xx xx xx xx"

(Vol. II, p. 108, italics supplied).

II

1. Respondent judge's full reliance on the Lufthansa German Airlines case cannot be sustained. To be sure, while the cross-examination of the witness in the aforesaid Lufthansa case and that of the witness in the present action were both uncompleted, the causes thereof were different in that while in the present case it was the death of the witness, in the Lufthansa case, it was the unjustified and unexplained failure of Lufthansa to present its witness on the scheduled date for his cross-examination which had already been preceded by several postponements initiated by Lufthansa itself, thus depriving the other party the opportunity to complete the cross-examination of said witness. Consequently, this Court therein correctly ruled as inadmissible the testimony of the said witness on the principle that "x x x when cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent x x x" (*supra*, at p. 636). As clear as day, the Lufthansa ruling therefore applies only if there is a finding that the cause for non-completion of the cross-examination of a witness was attributable to the very party offering the said witness. Consequently, the same is inapplicable to the instant action as the cause for the non-completion of the

cross-examination of petitioner's witness was a fortuitous event as he was killed, as per the pleadings submitted in this action, by the law enforcers (Integrated National Police Patrols) after his escape from prison. As a matter of fact, respondent judge, in his questioned order, did not lay any basis for the application of the Lufthansa ruling as he failed to make any finding that the non-completion was due to petitioner, the party offering the witness, whose testimony he declared as inadmissible in evidence. A reading of the questioned order reveals that respondent judge ruled as inadmissible said questioned testimony mainly because private respondent can no longer finish her cross-examination; hence incomplete. However, private respondent advanced in this action the cavalier theory that the failure of her counsel to complete his cross-examination of petitioner's witness was due to the fault of or was attributable to the petitioner, People of the Philippines, because it was the very agents of State who killed its own witness; hence, making the questioned testimony of petitioner's witness inadmissible, per the Lufthansa ruling.

The contention does not deserve serious consideration. There was no finding nor any showing as the same is far-fetched or inconceivable that the killing of the witness of petitioner by its own agents was ill-motivated. The prosecution did not order the shooting of the government witness. He was shot while escaping from prison. It is petitioner's cause which will possibly suffer from said death; not the cause of private respondent. It may be true that the escape of the said witness and his consequent death may be attributable to the negligence of petitioner's agents; but such negligence may not bind the petitioner as to prejudicially affect its cause and interest -- the prosecution of criminal offenses -- by reason of the generally accepted principle that the State is not bound by the negligence or tortious acts of its agents. As the cause of non-completion was, as aforesaid, beyond the control of the prosecution, respondent judge's questioned order cannot be sustained on the basis of the Lufthansa ruling which, as aforesaid, was principally anchored on the finding that the cause of the non-completion of the cross-examination of the therein witness was attributable to the very party offering him as a witness.

2. On the other hand, WE find no merit in petitioner's contention that the testimony of its deceased witness is admissible on the ground that private respondent had waived her right to cross-examine the witness and that the cause of non-completion was attributable to said private respondent. As correctly pointed out by private respondent and sustained by respondent judge, petitioner is not justified in attributing fault to her (private respondent) and in contending that she is deemed to have partly lost already the right of cross-examination by not availing of the right to cross-examine the witness Mario Nemenio on March 22, 1978 or right after his direct examination was closed and delaying until the lapse of two and a half (2½) months thereafter before making such cross-examination; because while it is true that her counsel did not immediately start with his cross-examination of the deceased witness on March 22, 1978, he did avail, however, of such right on the same day by initially obtaining an opportunity to make preparations for an effective exercise thereof considering the nature of the case -- a capital one -- and the length of the direct examination; three sittings on three different dates or on February 28, 1978, March 6, 1978 and March 22, 1978. Hence, there was no waiver of her right of cross-examination. Moreover, the deferment of the cross-examination of the witness requested by private respondent on March 22, 1978 was approved by respondent judge without any objection on the part of petitioner (pp. 45, 46, 64, rec.). And on the date for the cross-examination of the witness Mario Nemenio or on April 19, 1978, counsel for private respondent failed to cross-examine the said witness not of his own design but because said witness failed to appear on that date for the reason that due to the oversight of the court's personnel the subpoena for said witness was not served on him at the San Ramon Prison and Penal Farm (pp. 90, 108, rec.). And respondent judge had to re-set the hearing for the cross-examination of the witness by the private respondent only to June 7, 1978 because of the fact that respondent judge took, with the approval of the Supreme Court, his summer vacation the whole month of May, 1978.

It is thus apparent that no fault can be imputed to the private respondent for the length of time that elapsed before

her counsel was able to commence his cross-examination of the witness. And private respondent's counsel was not able to complete his cross-examination of the witness on June 7, 1978 for lack of material time by reason of which and upon agreement of the parties the hearing was adjourned and ordered resumed on July 3, 1978 (p. 84, rec.).

It appears, therefore, that the situation is one whereby the cause of non-completion of the cross-examination of the deceased witness was attributable neither to the fault of petitioner nor the private respondent. Consequently, the admissibility or inadmissibility of the testimony of the said witness cannot be resolved on the basis of the rule enunciated in the *Lufthansa* case.

III

There is merit in the contention of the petitioner that the questioned testimony of its deceased witness is admissible in evidence because private respondent's counsel had already "x x x rigorously and extensively cross-examined witness Mario Nemenio on all essential elements of the crime charged (parricide), all of which have been testified upon by said witness in his direct examination-in-chief, and consequently, the cross--examination-in-chief, has already been concluded."

The cross-examination was completed insofar as the essential elements of the crime charged - parricide, fact of killing - is concerned. What remained was merely the cross-examination regarding the price or reward, which is not an element of parricide, but only an aggravating circumstance (par. 11, Art. 14, Revised Penal Code).

As elaborated by petitioner in its memorandum:

"The crime charged in the case at bar is Parricide under Article 246 of the Revised Penal Code.

"The elements of the crime of Parricide are that a person was killed; that the killing was intentionally caused by the accused; and that the victim is a parent or child, whether legitimate or illegitimate, or the lawful spouse, or legitimate ascendant or descendant of the accused. Once these facts are established beyond reasonable doubt, conviction is warranted (See Aquino, *The Revised Penal Code*, 1961 Ed., Vol. II, p. 1171).

"The deceased Eduardo Pimentel has been sufficiently shown to be the lawful husband of private respondent Pilar Pimentel by means of the marriage contract executed between them on May 18, 1971 x x x x marked as Exhibit 'R' for the prosecution x x x x x.

"The cross-examination of witness Mario Nemenio by the counsel for private respondent on June 7, 1978 touched on the conspiracy, and agreement, existing among Salim Doe, witness Mario Nemenio and private respondent Pilar Pimentel to kill Eduardo Pimentel, in the latter's residence in Zamboanga City in the evening of September 6, 1977, and also on the actual stabbing by witness Mario Nemenio of the victim Eduardo Pimentel who was pointed out to the witness-killer by his wife, the private respondent Pilar Pimentel herself. x x x x x x x. The matter of con-sideration or price of P3,000.00, which both the public and private respondents maintain was not touched in the cross-examination of witness Mario Nemenio, is not an essential element of the crime of parricide. Price or con-sideration is merely an aggravating circumstance of the crime charged, not an essential element thereof. The failure to touch the same in the cross-examination would not at all affect the existence of the crime of parricide. Furthermore, there is no showing or even the slightest indication that the witness or his testimony would be discredited if he was cross-examined on the promised consideration. The probability is rather very great that the witness would only have confirmed the existence of the promised con-sideration were he cross-examined on the same.

"From the foregoing discussion, it is submitted that the rigorous and searching cross-examination of witness Mario Nemenio on June 7, 1978, practically concluded already the cross-examination--in-chief, or has already substantially accomplished the purpose of the cross-examination, and therefore, the failure to pursue the

privilege of further cross-examination, would not adversely affect the admissibility of the direct testimony of said witness anymore" (pp. 159-162, rec.).

Private respondent did not dwell on the aforesaid points in her memorandum.

Because the cross-examination made by the counsel of private respondent of the deceased witness was extensive and already covered the subject matter of his direct testimony as state witness relating to the essential elements of the crime of parricide, and what remained for further cross-examination is the matter of price or reward allegedly paid by private respondent for the commission of the crime, which is merely an aggravating circumstance and does not affect the existence of the offense charged, the respondent judge gravely abused his discretion in declaring as entirely inadmissible the testimony of the state witness who died through no fault of any of the parties before his cross-examination could be finished.

WHEREFORE, THE AUGUST 4, 1978 ORDER OF THE RESPONDENT JUDGE IS HEREBY SET ASIDE; THE RESTRAINING ORDER OF DECEMBER 4, 1978 ISSUED BY THIS COURT IS HEREBY LIFTED; AND RESPONDENT JUDGE OR HIS SUCCESSOR IS ACCORDINGLY ORDERED TO PROCEED WITH THE TRIAL OF CRIMINAL CASE NO. 750 (1742) AND TO ADMIT AND CONSIDER IN DECIDING THE CASE THE TESTIMONY OF THE DECEASED WITNESS MARIO NEMENIO y DELOS SANTOS EXCLUDING ONLY THE PORTION THEREOF CONCERNING THE AGGRAVATING CIRCUMSTANCE OF PRICE OR REWARD WHICH WAS NOT COVERED BY THE CROSS-EXAMINATION. NO COSTS.

Teehankee, (Chairman), Guerrero, De Castro, and Melencio-Herrera, JJ., concur.
Fernandez, J., on leave.

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