

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY REGALA AND DELFIN FLORES, DEFENDANTS, RUDY REGALA, DEFENDANT-APPELLANT.

G.R. No. L-23693. April 27, 1982

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Defendants Rudy Regala and Delfin Flores were charged with the crime of murder with assault upon an agent of a person in authority in an information filed on June 27, 1964 by the provincial fiscal of Masbate with the Court of First Instance of Masbate which reads:

"That on or about the 13th day of June, 1964, at the Magallanes Gate in the poblacion of the Municipality of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and helping each other, with deliberate intent to kill, with evident premeditation and treachery and taking advantage of nighttime, did then and there willfully, unlawfully and feloniously attack and stab with a knife (cuchillo) one Sgt. Juan Desilos, Jr., a member of the Philippine Constabulary while he was then in the performance of his official duty, thereby inflicting upon the latter serious stab wounds at the mid- epigastric region penetrating abdominal cavity and perforating cardinal and cardiac regions which injury directly caused his instantaneous death."

to which defendants pleaded not guilty.

To establish its case against defendants, the prosecution initially presented five witnesses, namely, Erlinda Tidon, Juanito Evangelista, Modesto Taleon, Dr. Orlando delos Santos and Municipal Judge Jose M. Angustia.

Erlinda Tidon and Juanito Evangelista both testified that they were at the scene of the crime and saw the accused Rudy Regala stab the victim, Sgt. Juan Desilos Jr.. In other words, they claimed to be eyewitnesses to the crime.

Erlinda Tidon who at the time she testified on August 7, 1964 was 22 years old, single, housekeeper and a resident of barrio Luy-a, municipality of Aroroy, province of Masbate, declared that she knew the victim, Juan Desilos, Jr., who was a sergeant of the Philippine Constabulary; that in the evening of June 12, 1964, she was at the Magallanes Gate, Masbate, Masbate, because she wanted to get inside to dance; that at the Magallanes Gate which was well lighted, she saw Sgt. Juan Desilos, Jr. in uniform attending to the exit door; that while Sgt. Juan Desilos, Jr. was guarding the Magallanes Gate and trying to clear the exit gate of people, accused Rudy Regala, with co-accused Delfin Flores who had his arm on the shoulder of the former (Rudy Regala), arrived; that thereafter, she tried her best to get inside the Magallanes Gate and Delfin Flores and Rudy Regala "were there at the Magallanes Gate in my front. I was at their back"; that when accused Rudy Regala and Delfin Flores reached the exit gate where Sgt. Juan Desilos, Jr. was stationed, Sgt. Juan Desilos, Jr. pushed accused Rudy Regala and told him "not to get thru this entrance because this is for the exit" (p. 9, t.s.n., Vol. III, rec.); that the person pushed by Sgt. Desilos was accused Delfin Flores (id., at p. 10); that while Sgt. Juan Desilos, Jr. was pushing accused Delfin Flores, accused Rudy Regala became angry, got his knife from his waist and stabbed Sgt. Juan

Desilos, Jr.; that Exhibit "A", which is a long knife with a white sharp blade, was the same knife used by accused Rudy Regala in stabbing Sgt. Juan Desilos, Jr.; that accused Delfin Flores was at the back of accused Rudy Regala when the latter stabbed Sgt. Juan Desilos, Jr.; that accused Delfin Flores was one-half meter, more or less, from Sgt. Juan Desilos, but accused Rudy Regala was nearer to Sgt. Juan Desilos, Jr.; that Sgt. Juan Desilos, Jr. was hit in the abdomen and he fell down and then accused Rudy Regala and Delfin Flores ran away, with the latter following the former; that she was one-half meter, more or less, from Sgt. Juan Desilos, Jr., accused Rudy Regala and Delfin Flores; that Sgt. Juan Desilos, Jr. was stabbed on June 12, 1964 at twelve o'clock midnight, more or less, at the Magallanes Gate, municipality of Masbate, province of Masbate; that Exhibit "B" is the uniform of Sgt. Juan Desilos at the time he was stabbed by accused Rudy Regala; that she was investigated in connection with the stabbing incident by Sgt. Balase; and that she knew Sgt. Taleon who also investigated her in connection with the case (pp. 3-16, t.s.n., Vol. III, rec.).

On cross-examination, witness revealed that in Masbate, Masbate, she has been staying at the house of Sgt. Dominador Balase since Tuesday, August 5, 1964, because he wanted her to stay thereat; that she attended the town fiesta of Masbate, Masbate, on June 12, 1964 to dance and enjoy the evening; that her religion is Roman Catholic and as such she follows its precepts; that she was on that occasion with her sister Nenita Tidon, who is also single; that she and her sister did not have any escorts; that she arrived at the Magallanes Gate on June 12, 1964 and she was not able to enter the plaza immediately because it was then too crowded as there were many people inside the plaza, at the gate, as well as outside the gate at Quezon Street; that she intended to get inside the plaza through the exit gate because the entrance gate was already closed; that she saw Sgt. Juan Desilos, Jr. guarding the exit gate which was so marked as "EXIT" where people were then milling around; that the exit gate was lighted with three (3) electric bulbs placed thereat separately; that before this case was filed she knew accused Rudy Regala only by appearance and she came to know his name only after he was already accused of the crime in this case; that during the investigation, she did not know the name of accused Rudy Regala but knew his appearance; that she executed on June 15, 1964 an affidavit marked as Exhibit "1" for the defense, wherein she declared that she knew Rudy Regala only by face; that she told the PC investigator all the truth she knew about the case, but was not able to name the accused as that was the truth; that she came to know the name of Rudy Regala only when an information or a complaint was filed on June 15, 1964 against him by the PC authorities with the Justice of the Peace Court of Masbate, Masbate; that on the 12th, 13th and 14th of June, 1964, she did not yet know the name of the accused Rudy Regala; that she has known Sgt. Juan Desilos, Jr. even before June 12, 1964 or since 1963; that she saw accused Rudy Regala on June 12, 1964 approach the exit of Magallanes Gate which Sgt. Juan Desilos, Jr. was regulating the flow of traffic; that she saw at that instance Rudy Regala placing his hand on the shoulder of accused Delfin Flores, but she cannot remember which hand; that in the evening of June 12, 1964, she did not also know the name of accused Delfin Flores although she knew him by his appearance, because she had not seen accused Delfin Flores and accused Rudy Regala before; that she came to know his name only on June 15, 1964 when he was already accused of the crime in this case; that the name of Delfin Flores was told to her by PC Sgts. Balase and Taleon who investigated her; that Sgt. Balase and Sgt. Taleon showed her the appearance of accused Rudy Regala; that at the Magallanes Gate, one could not move very fast because of the heavy traffic; that even if she had wanted to run because of fright, she could not because of the heavy traffic; that the distance between the exit gate and Quezon road is about two (2) meters; that there is a concrete road embankment between the exit gate and Quezon road; that the space between the exit gate and Quezon road was full of people; that she did not see any policeman outside the Magallanes Gate; that at the time Sgt. Juan Desilos, Jr. was stabbed by the accused Rudy Regala, she was facing Sgt. Desilos, Jr. and the distance between them was ½ meter (demonstration made by witness in open court showed that she was oblique to, not directly facing, Sgt. Juan Desilos, Jr.); that in that position Rudy Regala appeared from the right side going towards Sgt. Juan Desilos, Jr. (witness pointing to her right side which was directly in front of Sgt. Juan Desilos,

Jr. and approximately the same distance (see p. 49, t.s.n., Vol. III); that when accused Rudy Regala was in that position which was in line with her, they were pushed by Sgt. Juan Desilos, Jr. who told them "Don't get inside this gate because this is for exit"; that it was accused Delfin Flores who was pushed by Sgt. Juan Desilos, Jr., who was then at the side of Rudy Regala, but she does not know whether accused Delfin Flores was at the right side or at the left side of accused Rudy Regala; that accused Delfin Flores was next to accused Rudy Regala and they were in the same line with her; and it was in that position that Sgt. Juan Desilos, Jr. pushed accused Delfin Flores; that both accused Delfin Flores and Rudy Regala were pushed by Sgt. Juan Desilos, Jr. but it was accused Delfin Flores who was directly hit by Sgt. Juan Desilos, Jr.; that because of the pushing, accused Rudy Regala got angry and still at the same distance, he drew his knife from the left side of his waist which was covered by his shirt and then stabbed with it Sgt. Juan Desilos, Jr. in the stomach; that at the time accused Rudy Regala stabbed Sgt. Juan Desilos, Jr., she was still at the same distance from him as before; that accused Rudy Regala was able to pull off the knife from the body of Sgt. Juan Desilos, Jr., but she was not able to see whether blood immediately spurted from the wound because she had already left; that accused Rudy Regala was then wearing a close-necked buttonless blue shirt with short sleeves; that all that accused Delfin Flores did during the incident was to walk, together with accused Rudy Regala who placed his arm on accused Delfin Flores' shoulder, towards Sgt. Juan Desilos, Jr.; that no other act or acts were made by accused Delfin Flores; that when she saw the horrible incident she went towards the road, walking naturally and slowly because there were plenty of people; that there was no other unusual occurrence that took place within the immediate vicinity of the place where Sgt. Juan Desilos, Jr. was stabbed; that she came to Masbate to testify of her own volition; and that she was served with a subpoena by a policeman of Aroroy, Masbate, in connection with this case (pp. 17-57, t.s.n., Vol. III, rec.).

Witness Juanito Evangelista, then 26 years old, married, driver by profession and a resident of Bagumbayan, Masbate, declared that in the evening of June 12, 1964, he went to the plaza at the Magallanes Gate and there met Sgt. Juan Desilos, Jr. who was in PC uniform; that Sgt. Juan Desilos, Jr. was stabbed in the abdomen by accused Rudy Regala with a sharp pointed knife; that Exhibit "A" is the knife used by accused Rudy Regala in stabbing Sgt. Juan Desilos, Jr. at the exit of Magallanes Gate on the night of June 12, 1964; that Exhibit "B" is the uniform of Sgt. Juan Desilos, Jr. at the time he was stabbed; that he knows accused Delfin Flores who was then by the side of accused Rudy Regala when he stabbed Sgt. Juan Desilos, Jr.; that before accused Rudy Regala stabbed Sgt. Juan Desilos, Jr., he (Regala) first pushed aside accused Delfin Flores; that Sgt. Juan Desilos, Jr. fell on the ground; that he was very near Sgt. Desilos when he was stabbed by accused Rudy Regala; that the place of the incident was well-lighted as there was a dance going on; that after Sgt. Juan Desilos, Jr. fell, accused Rudy Regala and Delfin Flores ran outside; that he ran after them to know who they were but was not able to catch up with them because they ran fast; that he saw accused Rudy Regala throw away the knife (Exh. "A") on the road; that he did not pick up the knife; that he did not know the names of the accused but knew their appearances; that he had seen the face of accused Delfin Flores before the incident; that he now knows the name of accused Delfin Flores; and that he did not know the reason why Sgt. Juan Desilos, Jr. was stabbed by accused Rudy Regala (pp. 70-82, t.s.n., Vol. III, rec.).

Upon cross examination, witness Evangelista stated that it was at around seven o'clock in the evening of June 12, 1964 when he went to the Magallanes Plaza at Masbate, Masbate; that the stabbing incident took place at around 1 o'clock in the morning (obviously referring to June 13, 1964); that he was at the gate when the incident took place and there were many people; that Sgt. Juan Desilos was guarding the Magallanes Gate because people were rushing towards it. When asked whether he also then wanted to enter the gate, he answered that he was there inside, about a distance of one meter from the gate, and when asked once more, he affirmed his answer (pp. 82-87, t.s.n., Vol. III, rec.).

Witness Dr. Orlando delos Santos, then 35 years old, married and a resident physician of Masbate Provincial

Hospital at Masbate, Masbate, told the court that on or about midnight of June 12, 1964, he was on duty in the hospital when the dead body of Sgt. Juan Desilos, Jr. of the Philippine Constabulary was brought in. According to him the probable cause of death was cardiac hemorrhage; and that the stab wound at the mid- epigastric region, penetrating the abdominal cavity and perforating the cardiac region was caused by a sharp blunt instrument and that the injury directly caused the death of Sgt. Juan Desilos, Jr.. He opined that the knife Exhibit "A" could have caused the wound on the body of Sgt. Juan Desilos, Jr. and he identified Exhibit "B" as the uniform of Sgt. Juan Desilos, Jr. and Exhibit "B-1" as the cut on the front right side of said uniform. He further identified Exhibit "C", the death certificate he issued, and Exhibit "C-1", his signature thereon (pp. 58-65, t.s.n., Vol. III, rec.).

When cross-examined, witness admitted that it was his first time to see the knife Exhibit "A" and that he did not examine the same as it was not brought to the hospital for chemical examination. He opined that Exhibit "A" is stained with blood but he cannot distinguish whether it is human blood or animal blood. (pp. 65-67, t.s.n. , Vol. III, rec.).

Questioned by the Court, he ventured the opinion that the stain in the uniform of Sgt. Juan Desilos, Jr. could be the blood that came from the wound inflicted on him. He further declared that he probed the wound of Sgt. Juan, Desilos, Jr. with an instrument to find out the extent of the entrance and penetration of the wound and found that the wound was midway umbilicus, the point of entrance of the stab wound was one-half inch to the right, which is at the epigastric region; and that the wound was directed a little upward and in a lateral way, about 7 to 8 inches deep. He was certain that the cause of death was the stab wound which was caused by a sharp-pointed instrument (pp. 67-69, t.s.n., Vol. III, rec.).

Technical Sergeant Modesto Taleon, assigned as investigator and platoon sergeant of the 60th PC Company, Masbate, Masbate, testified that he has been connected with the Philippine Constabulary since May 27, 1941; that he knew Sgt. Juan Desilos, Jr. who was one of their platoon sergeants and who relieved him as security on June 12, 1964 at the Magallanes Gate, where there was then a coronation dance. Their designation as security in charge was in writing, marked as Exhibit "D", signed by their Commanding Officer, Capt. Eugenio. In said Exhibit "D", the name of Sgt. Juan Desilos, Jr. appears, with seven enlisted men, whose time of duty started as therein specified at 1900 hours. On the night of June 12, 1964, he was at the Magallanes Gate and Sgt. Juan Desilos, Jr., who was in uniform and with a sidearm, was also there as he was performing security duties at the coronation dance and maintaining peace and order thereat. When he (witness) was near the stage and while looking at the crooner, he saw Chief Salvacion take the microphone from the singer and call for a doctor as the soldier assigned at the Magallanes Gate had been stabbed. When he heard the announcement, he immediately rushed to the scene of the crime and found that there were already many men in uniform at the scene, and Sgt. Juan Desilos, Jr. was no longer there as he had already been brought to the Masbate Provincial Hospital. So he, together with his commanding officer, investigated the incident and they were able to recover the fatal weapon which was then dripping with blood; he identified said weapon in open court, which was marked as Exhibit "A" and the blood stains thereon as Exhibit "A-1". He found the knife, Exhibit "A", on the road facing the Magallanes Gate around five meters away from the scene of the crime, wrapped it and presented it to the commanding officer for safekeeping. Then they proceeded to the Masbate Provincial Hospital where they saw Sgt. Juan Desilos, Jr. in the operating room already dead; Sgt. Desilos' uniform which was already removed, was stained with blood with a cut at the last button of the uniform (Exh. "B-1") which appeared to have been pierced by a blunt instrument and coincided with the wound of the deceased, Sgt. Juan Desilos, Jr.. The uniform, including the pants, Exhibit "B", was full of blood. He identified the patch on the uniform as that of the P.C. (Exh. "B-2") and the chevron of a staff sergeant (pp. 87-105, t.s.n. , Vol. III, rec.).

The cross-examination elicited from witness the fact that he studied criminal investigation and he specialized on

the subject as he was sent in 1958 by the Government to Camp Crame to take up criminal investigation and he likewise trained in 1963 in a seminar held in Cebu. He applied what he had learned in his investigations at Masbate, including the investigation of this stabbing incident. He affirmed that he, together with two companions, recovered the fatal knife, Exhibit "A", on the road five meters away from the scene of the crime but outside of the area cordoned off by the PC and admitted that he did not actually measure the distance but merely calculated it; although he advanced the opinion that where an incident took place in a crowded place, a trained investigator gets the actual distance. According to him, the place of the incident was cordoned off or surrounded by soldiers who did not tamper with anything thereat. As other people and peace officers arrived ahead of him at the scene of the incident, he did not know the investigating officer who arrived first. When they found the knife, he just grabbed it and presented it to his commanding officer, because he already knew that it was the fatal knife as it was then dripping with blood and lying flat on the ground. But when he picked it up, it was no longer dripping with blood but it was wet with blood. The route where the blood came from and where the knife was found was marked with blood stains. He admitted that per investigation procedure, important evidence like Exhibit "A" should not be touched with the (bare) hands; but he explained and demonstrated that he handed Exhibit "A" with care, with his thumb in the inner blade, and his two fingers on the outer blade, near the foot of the wooden handle, without touching its blade. He revealed that after the said Exhibit "A" was presented to his commanding officer nothing more was done. Exhibit "A" was not sent to the PC laboratory to test its blood stains; neither was the same examined for fingerprints. In fact, the suspects were never fingerprinted. He just concluded that Exhibit "A" was the fatal weapon (pp. 106-118, t.s.n., Vol. III, rec.).

Judge Jose M. Angustia, then 63 years old, married, municipal judge of Masbate, Masbate, resident of Masbate, Masbate, declared that he knew Rodolfo Regala, alias Rudy Regala, as he was brought several times before his court as accused in cases involving peace and order. Lately, he convicted him of the crime of malicious mischief. He could not recall having convicted him of the crime of physical injuries; but he identified Exhibit "E" as the original duplicate copy of a decision in criminal case No. 2794 of the Municipal Court of Masbate, convicting accused Rodolfo Regala of the crime of slight physical injuries and Exhibit "E-1" as his signature affixed thereon (pp. 123-127, t.s.n., Vol. III, rec.).

Immediately after aforesaid witness had testified, counsel for accused moved to strike out the testimony on the ground that the same is impertinent and immaterial but said motion was denied as without merit by the court (pp. 128-131, t.s.n., Vol. III, rec.).

Thereafter, counsel for accused asked the court for the recall of prosecution witness Juanito Evangelista for further cross-examination on the ground that there were vital matters overlooked by said defense counsel who earlier, in obedience to the order of the court, had to enter trial without having first consulted the accused. The prosecuting fiscal objected on the ground that prosecution witness Juanito Evangelista who had earlier informed him of his fears of reprisal, was not in the courtroom. Defense counsel, in insisting on the recall of said witness, informed the court that it has come to his knowledge that "x x x the first suspect of the PC was Evangelista. His clothes were found with blood stains as well as his hands x x." Nevertheless, the court denied the motion to recall but advised defense counsel to establish that fact as a defense of the accused (pp. 131-135, t.s.n., Vol. III, rec.).

After the evidence for the prosecution was admitted by the court, defense counsel moved, by way of demurrer, for the dismissal of the case on the grounds that the prosecution miserably failed to establish the guilt of accused Delfin Flores and second, that there was variance between the date of the commission of the crime as alleged in the information and that proved by the evidence (pp. 138-151, t.s.n., Vol. III, rec.).

The prosecuting fiscal interposed his objection on the main ground that the alleged variance was not substantial as the events leading to the stabbing incident began in the late hour of June 12, 1964 culminating at around midnight

or immediately thereafter. Hence, the information alleged the time of the crime as "x x x on or about the 13th of June, 1964 x x x" (pp. 151-162, t.s.n., Vol. III, rec.).

Defense counsel prayed for time to file his memorandum in support of his motion to dismiss and he was granted by the court up to August 21, 1964 to file the same and the provincial fiscal was required to reply thereto up to August 29, 1964 (p. 166, t.s.n., Vol. III, rec.).

On August 14, 1964, defense counsel filed his memorandum in support of his motion to dismiss and prayed for the dismissal of the case against both accused (pp. 34-44, Vol. II, rec.), and thereafter or on August 25, 1964, he filed a supplementary memorandum (pp. 45-54, Vol. II, rec.).

On August 25, 1964, without waiting for the reply memorandum of the prosecuting fiscal, which was filed only on September 7, 1964 (pp. 59-60, Vol. II, rec.), the trial court denied the motion to dismiss (pp. 55-58, Vol. II, rec.).

Consequently, the case was set for the reception of the evidence of the defense. Eight witnesses were presented by the defense, including accused Rudy Regala and Delfin Flores. Three of these witnesses -- Alberto Abayon, Eladio Mendoza and Noemi Almirol -- claimed to have been at the scene of the crime and seen the stabbing of Sgt. Juan Desilos, Jr..

Alberto Abayon, then 19 years old, single, and a student of Osmeña College, Masbate, testified that on June 12, 1964, he was at the Magallanes Gate, arriving thereat at about 9:30 o'clock in the evening, together with Shirley Letada, Rogelio Ora-a, and Violeta Sorsogon. They could not immediately enter the auditorium because of so many people crowding the place. They were able to enter at about 10:00 o'clock in the evening. He was not aware whether there were movie actresses inside. He stayed in the plaza for a long time and went home at around 12:30 in the morning (June 13, 1964), with Noemi Almirol. Upon reaching Magallanes Gate on his way home, he saw a person whom he did not know, stab Sgt. Juan Desilos, Jr.. He was then behind Sgt. Desilos, Jr. and around one meter away from him. He saw blood dripping from Sgt. Juan Desilos, Jr.'s abdomen. His companion, Noemi Almirol who was then at his left side, fainted upon seeing the blood flowing from Sgt. Juan Desilos, Jr.. Then he heard Sgt. Desilos say, " Noy, please accompany me," but he does not know the person requested by Sgt. Desilos, Jr.. Witness described the man who stabbed Sgt. Juan Desilos, Jr. as tall, with long hair, quite black in complexion and wearing a short-sleeved polo shirt with red stripes (pp. 168-170, t.s.n., Vol. III, rec.).

He saw Rudy Regala at around 12:20 in the morning (June 13, 1964) drinking beer with companions inside the canteen at the Magallanes Gate, a place beside the Liceo School. He does not know the companions of Rudy Regala. Said accused was at that time wearing a white polo shirt. Shortly thereafter, he (witness) left for home at which time Rudy Regala was standing inside the canteen (p. 171, t.s.n., Vol. III, rec.).

After Noemi Almirol had recovered, he brought her home alone and as they passed by the gate, Sgt. Juan Desilos, Jr. was no longer there (p. 172, t.s.n., Vol. III, rec.).

Claiming that he is familiar with Magallanes Gate, witness affirmed that it is enclosed with concrete walls on its sides except at its back which is enclosed with wire. Its side facing Quezon street is walled with hollow blocks. According to him, if one were inside the Plaza Magallanes and looked towards Quezon street, he would not be able to see the persons outside who are facing the wall; and if one were outside at Quezon street and looked towards the plaza, he would not be able to see the people inside (pp. 171-172, t.s.n., Vol. III, rec.).

On cross-examination, witness disclosed that he went to the plaza that evening of June 12, 1964 to dance; that before he entered Osmeña College, he studied in Masbate High School but Rudy Regala was not one of his classmates there; that he did not report what he saw to and he was not interviewed by, the police, but the

following morning, he was interviewed by a PC man whom he did not know and they had an exchange of opinions and he was asked by the PC man whether he knew the man who stabbed Sgt. Desilos and he answered that he did not. He affirmed and he was sure that he saw Rudy Regala drinking in the canteen inside the Magallanes Gate and that said canteen is far from the Magallanes Gate but he could not calculate the distance; and that Sgt. Desilos was stabbed right at the gate marked as EXIT of Magallanes Gate at which precise moment he was a meter behind Sgt. Desilos. He saw Rudy Regala at about 12:20 in the morning and this was before the stabbing incident. He does not know whether the gate was closed at the time of the stabbing incident but knew for a fact that there were many persons milling around the gate marked EXIT. He did not see the fatal weapon used by the culprit (pp. 172-174, t.s.n., Vol. III, rec.).

In re-direct, he affirmed that he was a meter behind Sgt. Desilos, when the latter was stabbed and Noemi Almirol was beside him and there were many people outside (p. 174, t.s.n., Vol. III, rec.).

Questioned by the Court, he revealed that Noemi Almirol is a young girl; that he brought her alone to her home at 12:30 in the morning; that he does not know her age; that he had known her for a long time as they were once neighbors; that the residence of Noemi Almirol is at Quezon Street, far from Magallanes Gate, somewhere near the Medinas, in front of the residence of Dr. Sta. Cruz; that he is 16 years old but does not know who is older between him and Noemi Almirol; that Noemi Almirol is a third year high school student at Masbate High School; that he is a high school graduate as of June 13, 1964; and that he did not use to go out with Noemi Almirol and he had not gone to her house (pp. 174-175, t.s.n., Vol. III, rec.).

Noemi Almirol, then 18 years old, single, a resident of Masbate, Masbate and a student of Masbate High School, testified that on June 12, 1964, she was at the Plaza Magallanes Gate, arriving there at 10:00 o'clock in the evening, with Amparo de Paz, Luningning Bonan, and Elena Esparaguerra. They were able to enter the plaza immediately and stayed thereat up to 12:00 o'clock midnight. At about 12:00 o'clock midnight, she met Alberto Abayon and they went home together at around 2:00 o'clock the following morning of June 13, 1964; that at the gate of Plaza Magallanes, she observed something unusual which was the killing of a PC soldier, and she fainted when she saw blood flowing from the body of Sgt. Desilos, who was about one meter from her. She has known accused Rudy Regala for a long time and before she fainted she did not see Rudy Regala at the place where the PC man was bleeding (pp. 186-187, t.s.n., Vol. III, rec.).

Cross-examined, she affirmed that in going home, she was with Alberto Abayon and it was then about 2:00 o'clock in the morning of June 13, 1964, although she is not sure of the time; and that she was behind the victim who was about a meter away from her. She did not know what happened after she fainted nor did she hear the announcement made by Police Chief Salvacion about the stabbing incident. She further declared that Rudy Regala was not her classmate at Masbate High School; nor did she ever see him there as she had just transferred to that school. She did not know that Rudy Regala was also studying in the Masbate High School (pp. 188-189, t.s.n., Vol. III, rec.).

Upon redirect examination, she revealed that she had a time piece on that night of the incident but she did not check it before leaving for home (p. 189, t.s.n., Vol. III, rec.).

Questioned by the Court, she insisted that she did not see Rudy Regala that evening. She stated however that she was not alone in going home with Alberto Abayon as there were many girls with them and that it was not true that Alberto Abayon brought her home alone (p. 189, t.s.n., Vol. III, rec.).

Witness Eladio Mendoza, then 21 years old, single, third year high school student of Masbate College, Masbate, Masbate, told the Court that he resides at Domingo Street, Masbate, Masbate; that he knows the accused Rudy Regala; that on the evening of June 12, 1964, he was at the Plaza Magallanes gate which is in the poblacion of

Masbate, Masbate; that he arrived there at 9:00 o'clock in the evening; that his companions that night were Rudy Regala, Rudy Espinas and Pedro Verga and they were not able to enter the gate immediately because it was crowded by many people but were able to enter at around 9:00 o'clock in the evening; that once inside he went around and then together with his companions, Rudy Regala, Pedro Verga and Rudy Espinas, went to the canteen which was managed by a priest, at the left side of the Magallanes Gate (as one enters the same) near the Liceo College; they drank beer in the said canteen and stayed there for a long time; that he did not dance, but Rudy Regala did at around 11:30 P.M. with the queen, Carol Bataga and this lasted for about 2 minutes, and at the next piece, with one of the princesses whose name he (witness) did not know and after this dance with the princess, Rudy Regala went back to the canteen and drank beer; that at about midnight, he (witness) was still at the canteen and at that time, more or less, something unusual happened, which was the stabbing of a PC man at the gate which he learned about through the announcement made by Chief Salvacion on the stage at around 12:30 in the morning of June 13, 1964; that at that time, accused Rudy Regala was at his side drinking beer; that he did not do anything after the said announcement; neither did accused Rudy Regala do anything; that accused was at that time wearing a short-sleeved white polo shirt; that he cannot remember how many bottles of beer he drank that evening but the whole gang finished one case of beer; that he knows Sgt. Desilos, although he did not see him that night; that he went home at around 2:00 o'clock of the morning of June 13, 1964 at which time accused Rudy Regala was still seated inside the other canteen located at the right side of Magallanes Gate, belonging to Mayor Ben Magallanes (pp. 175-178, t.s.n., Vol. III, rec.).

He testified during the cross-examination that he studied at Liceo de Masbate, not at the Masbate High School, before he transferred to Masbate College; that on June 12, 1964 when he went inside the gate, there were many people; and that he went inside the auditorium together with Rudy Regala, Espinas, and Verga and they drank beer in the canteen owned by a priest (p. 179, t.s.n., Vol. III, rec.).

Questioning by the Court extracted from him the fact that he is a very good friend of Rudy Regala as they have been friends since childhood; that they were not together too often as they are studying in different schools, Regala in Masbate High School while he, at Liceo; and that they go out together and drink once in a while (p. 179, t.s.n., Vol. III, rec.).

Thereafter, defense counsel manifested in open court that the testimonies of the other defense witnesses, Pedro Verga and Rudy Espinas, will corroborate the testimony of defense witness Eladio Mendoza in all its material aspects or that they will testify as Eladio Mendoza did. Prosecuting Fiscal did not interpose any objection; hence, such fact was made of record.

Witness Eddie Zaragoza, then 34 years old, married, a municipal policeman of Masbate, Masbate (since July 1, 1961) testified that in the evening of June 12, 1964, he was detailed as guard at the Magallanes Gate, at Quezon Street, near the church of Masbate, Masbate and he stayed there until the dance which started at around 8:00 o'clock in the evening, was over at past 1:00 o'clock of the following morning; that on that midnight of June 12, 1964, when he was the guard, nothing unusual happened, but the next night, June 13, 1964, at around 11:00 o'clock an incident happened near the Exit gate of the plaza around 75 meters from his post; that he went to the scene of the incident to investigate and saw Sgt. Desilos being carried by Sgt. Hilario to the jeep of the vice-governor, Moises Espinosa, to be brought to the hospital; that while investigating the people around the scene of the incident, he heard Dick Avinas, driver of the vice-governor, shouting, "Here is a knife that was dropped"; that Dick Avinas was then inside when he shouted; that he (witness), together with chief of police Salvacion, went to the spot of the incident and saw a knife near the bumper of the jeep; that he got a piece of paper and with it held the knife's blade and delivered it to chief of police Salvacion, who told him that the blade should be held but not the handle; that thereafter, he continued with his investigation by gathering information

from the people present but the result of his investigation was negative (pp. 5-12, t.s.n., Vol. IV, rec.).

On cross-examination, he declared that it was coronation night when the incident happened but it was not before midnight of June 12, 1964; that there were two nights for coronation, June 12, 1964 for Baby Queen and June 13, 1964 for Lady Queen; that the incident took place during the coronation of the Lady Queen; that he could not remember whether the coronation of the baby queen was held prior to June 12, 1964, but it was the night previous to the coronation of the lady queen; that on June 12, 1964, he was on duty as guard at the Magallanes Gate from 8:00 o'clock in the evening up to after midnight (pp. 12-17, t.s.n., Vol. IV, rec.).

Clarificatory questions were propounded by the prosecuting fiscal and the trial judge with respect to the actual date and time of the incident, thus:

" Butalid

"Q - And on the night of June 12, 1964, past midnight, the incident occurred?

"WITNESS

" A - No, sir.

"Q - But it was after your duty on June 12, 1964 at about 8 o'clock that the incident occurred?

"BLANCA

Misleading, your Honor. We object.

"COURT

"Q - You were a guard on June 12, 1964 from 8 o'clock to past midnight?

" A - Yes, your Honor.

"Q - And when you said that on June 12, up to midnight there was no incident about Sgt. Desilos?

" A - Yes, your Honor.

"Q - After midnight of June 12, it is already June 13, 1964?

" A - Yes, your Honor.

"Q - And after midnight of June 12, which is June 13, 1964, that was the time when Sgt. Desilos, according to you, met an accident?

"BLANCA

If your Honor, please, with due respect to the question of the Honorable Court, we would like to make it of record our objection, on the ground that it is misleading.

"COURT

Put it on record.

"WITNESS

" A - No, your Honor.

"COURT

"Q - In other words, from one minute after 12:00 o'clock of June 12, 1964 until 6:00 o'clock of that morning,

which is June 12, Desilos was still alive? No incident happened to Sgt. Desilos?

" A - Nothing happened.

"Q - According to you, Desilos was killed on June 14, 1964?

"BLANCA

"If your Honor, please, we shall again, with due respect to the question of the Honorable Court, we are constrained again to make our objection on the ground that it is misleading. The testimony of the witness said that the incident took place about past 11:00 o'clock in the evening of June 13, 1964.

"COURT

Past 11:00 o'clock. Let the witness answer because he does not clarify.

"WITNESS

" A - Not yet.

"COURT

"Q - When was it? Tell us the definite date?

" A - More or less, at 11:00 o'clock in the evening of June 13, 1964 when the incident took place.

"Q - So it was on June 13, 1964 at 11:00 o'clock?

" A - More or less, your Honor.

"Q - You are sure about that?

" A - Yes, your Honor.

xx xx xx" (pp. 14-16, t.s.n., Vol. IV, rec.).

Defendants Rudy Regala and Delfin Flores testified in their defense and both claimed that they were not present at the spot of the commission of the crime and that they are strangers to each other.

Rudy Regala declared that he is 21 years old, single, a student at Masbate High School at Masbate, Masbate; that he was at the Magallanes Gate, Masbate, Masbate in the evening of June 12, 1964, together with Rudy Espinas, Pedro Verga and Eladio Mendoza, and they were not able to immediately enter the gate; that as soon as they had entered the gate, they looked around the auditorium and afterwards at around 10:00 o'clock they proceeded to the canteen near the Liceo College; that the canteen is at the right side of, if one is facing, the grandstand; that they drank beer in the canteen which is owned by a priest; that at around 11:30 in the evening, he danced with the queen, Carol Bataga, for about 2 minutes and then with the princess whose name he does not know, which dance also lasted for about two minutes; that after his dance with the princess, he went back to the canteen; that thereafter, or at around 12:40 in the evening, and while still in the canteen, he heard Chief Salvacion announce that a PC man was stabbed; that after the announcement he did not do anything; that he went home around 2:30 to 3:00 o'clock in the morning of June 13, 1964; and that except to dance, he did not leave the canteen (pp. 189-192, t.s.n., Vol. III, rec.).

He further informed the Court that he knew Sgt. Desilos, but did not see him that night when he (deceased) entered the gate; neither did he see him in the morning or afternoon of that day; that he has no grudge against him nor any motive to kill him; that his family has no grudge against Sgt. Desilos; and that his family, however, has a quarrel with the PC (p. 182, t.s.n., Vol. III, rec.).

Moreover, he testified that he does not know prosecution witness Erlinda Tidon and it was only on the witness stand that he first saw her and he denied as true her declarations; that he knows prosecution witness Juanito Evangelista but denied as true his declarations; that he did not know his co-accused Delfin Flores either before or on that night of June 12, 1964; that he came to know him only at the PC headquarters on June 16, 1964 when they returned to the municipal building and it was only on June 14, 1964 that he saw for the first time Delfin Flores at the PC compound; that his attire at the Magallanes Gate that evening of June 12, 1964 was a short-sleeved shirt which appears yellow at daytime but blue during nighttime; that said shift which he identified in court (Exh. "2") is now in the possession of his lawyer (pp. 192-193, t.s.n., Vol. III, rec.).

Testifying further, he told the court that he was arrested with Roger Ampuan by Sgt. Gotis at around 10:30 to 11:00 o'clock in the morning of June 13, 1964 at the market and they were brought to the PC compound where they stayed up to 5:00 o'clock in the afternoon; that St. Gotis investigated him that same day and pointed to him as the companion of Roger Ampuan in stabbing Sgt. Desilos but he told Sgt. Gotis that this was not true; that after 5:00 o'clock in the afternoon, he and Roger Ampuan were allowed by Capt. Eugenio to go home; that he was again arrested by Sgt. Gotis and his companion on June 14, 1964 at about 12:30 to 1:00 in the afternoon in the market area; that this time, he was arrested with Rudy Espinas and they were brought to the PC compound where they were immediately placed in separate rooms; that inside the room, he was maltreated by a person whom he knows only by appearance; that he was ordered to admit the crime because according to the investigators, Rudy Espinas had already told them that he (accused) was the one who stabbed Sgt. Desilos, Jr., but he told them that that was not true; that he was boxed, then kicked and made to squat; one pulled him by his buckle and he was made to look upward with the man's fingers pointed towards his (accused) nose; that it was a PC soldier named Formalejo and two others, whose faces he could recognize, who did the maltreatment and that Peroy Merillo kicked him at the side of his body while inside the toilet; that he was given only ten minutes to rest and he was continuously maltreated that day of June 14, 1964, from 12:00 or 1:00 o'clock to 5:00 o'clock in the afternoon; that in the evening nothing was done to him at the PC compound where he slept although he was investigated by Sgt. Taleon who did not reduce into writing his investigation; that on June 15, 1964, nothing happened to him as he was not investigated that day; that he stayed in the PC compound from the 14th to the 16th of June, 1964; that there was seven persons investigated at the PC compound, namely, Rudy Espinas, Pedro Verga, Eladio Mendoza, Miller Gaton, Roger Ampuan, Delfin Flores and himself; that on June 16, 1964, he and Delfin Flores were brought to the municipal building; then they were taken on June 23, 1964 to the provincial jail and they passed by the PC barracks where he got his eyeglasses and hat; that he was at that time accompanied by Patrolman Natural; that in the PC barracks, he was called by Sgt. Balase and, leaving behind Pat. Natural, he approached Sgt. Balase who told him that now that he is being pointed to as the killer, it would be better for him to tell the truth as to who was the real author of the crime so that he (accused) would be utilized as witness, but he told Sgt. Balase that he was very innocent of and did not know anything about the crime; that before the body of Sgt. Desilos was brought to the cemetery it was shown to him by Sgt. Balase and the coffin was placed in front of him; and that on that occasion, PC Formalejo who was then with Sgt. Balase, attempted to box him (accused) but Formalejo was cautioned by Sgt. Balase (pp. 194-197, t.s.n., Vol. III, rec.).

Accused Rudy Regala further revealed that when he saw on June 13, 1964 witness Juanito Evangelista at the PC barracks, the latter asked him why he and Roger Ampuan were at the PC compound and he replied that they were taken by the PC because of the incident the night before and Evangelista told him "You were not present there that evening"; that their conversation took place in the presence of a PC officer whom he can recognize by appearance only; that he met Capt. Eugenio on June 13 to the 16th; that on June 14, Capt. Eugenio told him that there was another suspect who wore a blue shirt with stripes; that another PC officer asked him who was the owner of that blue shirt with stripes and he answered that he saw somebody wearing that; that during his

maltreatment by the PC, a PC soldier who was posted as guard went inside the room and hit and kicked him; that he had not seen Exhibit "A", the knife used in the stabbing, before, as it was only in court that he first saw that knife; that he does not use that kind of knife; and that when he went to the Magallanes Gate that evening of June 12, 1964, he had no weapon or knife with him (pp. 197-198, t.s.n., Vol. III, rec.).

In the course of his cross-examination, accused Rudy Regala was caught smiling by the trial judge who warned him of his act and behavior and not to take the trial lightly as the trial is not a joke, nor was there anything funny, and advised him to be serious as he is fighting for his life (p. 198, t.s.n., Vol. III, rec.). He confirmed that he studied for two years at Masbate High School, but denied breaking the crystal (glass) of the bulletin board of the school; that he was arrested on June 13, 1964 by Sgt. Gotis at the market place between 10:30 and 11:00 o'clock in the morning; that at the time of his arrest no knife was taken from him by Sgt. Gotis; that he was maltreated but not investigated by Forma-lejo; that he does not remember any incident he had with Formalejo; that he does not remember and it was not true that a knife was confiscated from him by Laguerta when he (accused) was about to stab PC Formalejo; that he stays at the market place; that it is not true that during vacation time, he worked as part time butcher in the market; that he knows Patrolman Perez; that he knows former policeman Cornal; that he has a tattoo in his shoulder (which he showed to the court) and the tattoo consists of the words "Black Jack No. 3"; that Black Jack is not a gang but a club to put up recreational facilities in the market and the president of the club, of which he is a member, is Tony Aguilar; that Rudy Espinas is also a member but not Pedro Verga, Floresta and Alberto Abayon; that every member of the club must have to be tattooed with Black Jack. According to him, his body was battered because of the maltreatment he suffered from the PC; that he was confined in the provincial jail for the first time on June 23, 1964 at around 9:30 to 10:00 o'clock and that until now he is still confined there; that he was maltreated only on the 14th of June, 1964; that at the provincial jail, he was not able to ask somebody to examine his battered body because he was not even allowed to communicate with the persons he knows as he was isolated in the provincial jail; that in a room in the provincial jail, he was with one named Julian Bartido who was the same person who was convicted in the shooting of Moises Espinas and the wounding of Marcial Tamares; that he was not therefore examined by a physician; that the purpose of the PC in maltreating him is to force him to admit his guilt but he did not admit; that there were seven other persons investigated in the PC compound; that he, Delfin Flores, and the seven other persons were lined up in the PC compound and he was the one called by Sgt. Balase; and that at the time he was called by Sgt. Balase, he did not see Juanito Evangelista (pp. 198-204, t.s.n., Vol. III, rec.).

Defense witness Romeo Floresta, who was then 16 years old, single, a first year high school student of the Masbate College and a resident of Masbate, Masbate, corroborated defendant's defense of denial and alibi and thus declared that on the evening of June 12, 1964, he went to the Magallanes Gate and returned home at 2:30 in the morning of the following day, June 13, 1964; that at around 12:00 midnight, he saw Rudy Regala drinking beer in the canteen inside the plaza (Magallanes Gate); that from the time he met Rudy Regala at 10:00 up to the time he went home, he saw Rudy Regala drinking in the canteen; that the plaza was crowded that evening of June 12, 1964; and that he went home together with Rudy Regala (pp. 183-184, t.s.n., Vol. III, rec.).

He revealed on cross-examination that he saw Rudy Regala that evening dance twice; that the canteen where he stayed the whole night was the one located at the left side, if entering the gate; that he never left that canteen from the time he entered the same up to the time he left for home; that Rudy Regala likewise did not leave the canteen except to dance after which he returned to the canteen; that from the time he entered the plaza at 8:00 o'clock of June 12, 1964 up to the time he and Rudy Regala went home together, he was always with Rudy Regala and that he saw Rudy Regala at the canteen situated at the left side of Magallanes Gate (pp. 184-185, t.s.n., Vol. III, rec.).

Defendant Rudy Regala's father, Cleto Regala, then 52 years old, married, a merchant and residing since 1947 at

the market site, Masbate, Masbate, testified that as a merchant he sells vegetables and sari-sari; that he does not sell coffee; that in the evening of June 12, 1964, he was at the pingpong game site and he was selling coffee because it was the town fiesta; that he knows that his son Rudy Regala went to the dance at the Magallanes Gate that evening; that at around 3:00 o'clock of the following morning of June 13, 1964, his son Rudy Regala arrived at the pingpong site where he was selling coffee; that his son did not talk to him, neither did he talk to his son; that his son drank coffee and thereafter he slept on the bench; that he had not seen Exhibit "A" (knife), as among those in his household; that his son had not used that kind of weapon; that at around 10:30 to 11:00 o'clock in the morning of June 13, 1964, PC Sgt. Gotis picked up his son at his residence and brought him to a car; that in the evening of June 14, 1964, Sgt. Gotis arrived at his (witness) residence and asked for the blue banlon shirt of Rudy Regala as according to him (Sgt. Gotis) Rudy Regala needed it as he was feeling cold; that he gave Sgt. Gotis a newly ironed shirt but Sgt. Gotis told him that that was not the one because he (Sgt. Gotis) was looking for a blue banlon shirt with stripes; that the shirt of Rudy Regala when he came home from the plaza was one which appeared to be yellow during daytime but white during nighttime; that Exhibit "2" is the shirt he was referring to as worn by Rudy Regala that morning; that this was the very shirt he showed Sgt. Gotis but Sgt. Gotis told him that that was not the one; and that Rudy Regala does not have a blue shirt with red stripes (pp. 180-183, t.s.n., Vol. III, rec.).

The other accused Delfin Flores who was then 24 years old, single, a farmer and a resident of Cawayan Interior, Masbate, Masbate, testified in his defense that in the evening of June 12, 1964, he arrived at around 9:00 o'clock without any companion at the dance at Plaza Magallanes and he was able to enter immediately; that he stayed there up to 1:00 o'clock of the following morning, June 13, 1964; that at 1:00 o'clock nothing happened to him; that before 1:00 o'clock in the morning of June 13, 1964, while he was dancing, Chief of Police Salvacion announced on the stage that a PC man had been stabbed; that after that announcement, he was boxed by one Bacalano from the Island by reason of which he fell and when he stood up he drew his double-bladed knife but policeman David Natural approached and told him to surrender the knife, which he did, and then he was arrested and taken to the municipal building of Masbate, Masbate, where he was lodged in jail until the next (whole) morning; that on or before June 12, 1964, he did not yet know his co-defendant Rudy Regala; that he came to know Rudy Regala for the first time in the PC camp on June 16, 1964 when they were brought to the municipal building of Masbate, Masbate; that on June 13, 1964 at 2:00 o'clock in the afternoon he was taken by a PC man whom he did not know, from the municipal building to the PC camp; that at the PC compound, he was investigated by persons whom he does not know; that in the investigation he was told to admit the crime because according to them Rudy Regala had already admitted and pointed to him (accused) as one of Rudy Regala's companions but he told them that he could not admit because Rudy Regala was not his companion; that because of his denial, he was boxed by them in the abdomen and he fell down with his buttocks on the ground; then he was boxed again on the left side of his buttocks by reason of which he rolled on the ground; that he does not know the names of those who boxed him; that the maltreatment was done inside the room without the presence of PC officers, as only the PC man who boxed him was present; that there were two PC men who boxed him but he does not know their names; that he stayed up to 4:00 o'clock in the afternoon of June 13, 1964 in the PC compound; that on that day, June 13, 1964, there were six other suspects who were investigated but he does not know their names; that he was returned to the municipal jail on June 13, 1964 and on June 14, 1964, at around 8:00 o'clock in the morning, 2 PC soldiers, whose names he does not know, took him from the municipal jail and brought him back to the PC compound and, again, he was told by a PC captain who investigated him, to admit the crime because according to them, Rudy Regala had already admitted and pointed to him as his companion when he (Rudy Regala) stabbed Sgt. Desilos, but he told them that he could not admit as Rudy Regala was not his companion; that while he was being investigated by the PC captain, another PC soldier got hold of his abdomen and boxed him; that he does not know this PC soldier but he can recognize his face; that the investigation results

were not reduced into writing; that he did not sign anything nor was he ever subjected to fingerprinting; that he was brought to the PC compound four times in all; that every time he was brought to the PC compound he was being told to admit the crime as Rudy Regala had already admitted and pointed to him as his companion who stabbed Sgt. Desilos but in all such occasions, he answered them that he could not admit because Rudy Regala was not his companion; that the second time that he was brought back to the PC compound, there were six other suspects in the compound who were investigated but he does not know them; that he was mixed with the other six suspects and lined up inside the PC compound; that when they were lined up, the PC did not do anything but only left them there lined up; that they were lined up only once.

He further testified that he does not know either Sgt. Juan Desilos, Jr. or Erlinda Tidon; that the declarations of Erlinda Tidon in the witness stand regarding his participation in the stabbing of Sgt. Juan Desilos, Jr. are not true; that it was only while Erlinda Tidon was on the witness stand that he first saw her; that he did not see Erlinda Tidon at the Plaza Magallanes in the evening of June 12, 1964; that neither does he know witness Juanito Evangelista; that the declarations of Juanito Evangelista with respect to his participation in the stabbing of Sgt. Desilos are not true; that he saw Juanito Evangelista for the first time only when the case was being tried by the court; and that he did not see witness Juanito Evangelista in the evening of June 12, 1964 at Plaza Magallanes (pp. 17-36, t.s.n., Vol. IV, rec.).

Cross-examined, he revealed that his educational attainment is Grade VI. Over the objection of his counsel the Court allowed a question propounded to him about his previous criminal conviction and he declared that he was convicted of the crime of murder in Masbate, Masbate by Judge Benedicto; that the victim in that crime of murder was Ricardo Cuyos; that by reason of his conviction he served sentence in Muntinglupa and thereafter he was paroled; that on the night of June 12, 1964 at 9:00 o'clock in the evening, he went to the dance at Magallanes Gate; that at that time, there were so many people trying to get in; that there was no PC soldier at the gate but there were many people around the vicinity going to the entrance; that he went inside the auditorium and saw the coronation of the queen; that he was not at Magallanes Gate the night previous to June 12, 1964 as it was only that evening of June 12, 1964 that he went there; that he was dancing when Chief Salvacion made the announcement; that he does not know the name of the person with whom he was dancing; that the music being played previous to the announcement was sweet; that when Chief Salvacion made the announcement, the music stopped and so everybody stopped dancing; that he was at a distance of 15 meters from the gate when the dance was stopped; that he was no longer dancing with his unknown partner when Chief Salvacion announced the stabbing of the PC soldier; that he does not know witnesses Erlinda Tidon and Juanito Evangelista and does not know of any grievance or trouble with them; that he knows Balacano who boxed him several times after the announcement made by Chief Salvacion; that he was arrested only after Chief Salvacion had finished his announcement; that before his arrest, he was no longer dancing; that he was not dancing when Balacano boxed him; that David Natural, a policeman, of Masbate, Masbate arrested him that night inside the Magallanes Gate 15 meters from the gate; that after his arrest, he was brought to the municipal building of Masbate, Masbate; that policeman Natural was with PC soldiers who escorted him to the municipal building where they arrived at past 1:00 o'clock; and he stayed there until that time that the PC soldiers got him from the municipal jail at around 8:00 o'clock in the morning of June 13, 1964; and that from 1:00 o'clock to 8:00 o'clock of June 13, 1964, he was detained in the municipal jail of Masbate, Masbate.

Cross-examined by the Court, accused Delfin Flores affirmed that the only time he attended the dance at the Magallanes Gate was on the evening of June 12, 1964; that he entered the gate at about 8:00 o'clock in the evening that he did not have a watch at that time; that per his calculation, Chief Salvacion made the announcement on the stage at about 11:00 o'clock in the evening of June 12, 1964; that because he had no watch it was possible that the time when Chief Salvacion made the announcement was midnight of June 12, 1964 or one

minute thereafter, which was already June 13, 1964; that he was no longer dancing at the time Chief Salvacion made the announcement as he was then conversing with a lady at a place around 15 meters from the Magallanes Gate; that on that night he had in his possession a double-bladed knife which he brought with him to the dance hall because he was alone when he left his house; that he hid the knife in his body so that nobody could see it; that at the time he was dancing with his unknown partner, the knife was in his body; that he knew that he was a suspect not because he had a conversation with the PC but because he was placed in a line-up; that when he was being placed in the line-up, he did not know that he was being scrutinized by certain individuals from somewhere, but there were people in the PC barracks; that he did not know whether these Miss Tidon and Mr. Evangelista were looking at him while he was placed in the line-up; that he was placed in the line-up only once; that he did not come to know that on that evening after the line-up there were persons who have identified him and Rudy Regala as the persons seen at the Magallanes Gate near the exit gate; neither did he come to know that after the line-up that evening, Miss Tidon and Mr. Evangelista had pinpointed him and Rudy Regala as the persons they saw in front of Sgt. Desilos immediately before he fell down wounded by a knife; that the PC soldiers maltreated him; that he was not made to sign anything; neither was he forced by the PC to sign anything; that Rudy Regala was not also forced to sign anything nor obliged to declare anything; that he did not know that Sgt. Desilos was a PC soldier; that at the time he was arrested that evening he already knew that a PC soldier had been stabbed but did not know yet that it was Sgt. Desilos; that he only came to know the victim as Sgt. Desilos in the morning of June 13, 1964; that he was charged with concealment of a deadly weapon by the police force of Masbate; and that he pleaded guilty to the charge and was consequently sentenced to two months' imprisonment which he had served out already (pp. 45-60, t.s.n., Vol. IV, rec.).

On re-direct, he revealed that in the criminal case of People versus Delfin Flores for the murder of Cuyos, he pleaded guilty to the crime charged, and affirmed in the case of illegal possession of deadly weapon, he also pleaded guilty (pp. 60-61, t.s.n., Vol. IV, rec.).

By way of rebuttal evidence, prosecution presented witnesses Felixberto Laguerta and Gerardo Gotis.

Felixberto Laguerta who was then 43 years old, married, and a policeman of Masbate, Masbate, testified that the testimony of Rudy Regala that the Black Jack organization is a club and not a gang, is not true because it is called the Black Jack gang; that he knows that it is a gang and not a club because the members have tattoos on their shoulders; that it is also not true that Pedro Verga, Eladio Mendoza, Rudy Espinas, Romeo Floresta and Alberto Abayon are not members of the Black Jack gang; that all of them were arrested for being members of the said gang; that it is also not true as testified by Rudy Regala that he was not arrested by him at the cockpit when he (Rudy) was about to stab PC Formalejo for the truth was that on December 22, 1963 he arrested him and confiscated from him a knife; that Exhibit "F" is the same knife he confiscated from Rudy Regala, but no case was filed against Rudy Regala in connection therewith because Formalejo refused to file a complaint against Regala (pp. 63-67, t.s.n., Vol. IV, rec.).

Cross-examined, he testified that he has been a policeman for 19 years; that he was told by Fiscal Butalid to testify in this case; that he did not execute any affidavit in connection with his arrest of Rudy Regala and confiscation from him of a knife, Exhibit "F"; that he reported the matter to the chief of police of Masbate, Masbate, Chief Salvacion; that he does not know whether the arrest and confiscation were recorded in the police blotter as it was the police sergeant who was in charge of recording the same; that the basis of his testimony that Rudy Espinas, Pedro Verga, Romeo Floresta are members of the Black Jack gang is the tattoo on their shoulders which is in the form of cards and that all of them were arrested by reason of the fact that they are all members of said gang; that membership in the Black Jack gang is a crime; that because they are members of a gang, he suspected them of doing something bad; and that they were arrested because they were doing something wrong in

the poblacion (pp. 68-72, t.s.n., Vol. IV, rec.).

Cross-examined by the trial judge, witness confirmed that Rudy Regala is a relative of a very high ranking municipal official of the town of Masbate, Masbate, as the mother of Rudy Regala is the cousin of the town mayor -- Mayor Magallanes. However, he does not know whether it was by reason of this relationship that Rudy Regala's father and mother are living inside the market site of Masbate, Masbate. He further revealed that he delivered the knife "Exhibit "F" to Chief Salvacion but no action was taken by Chief Salvacion against Rudy Regala in connection therewith (pp. 72-73, t.s.n., Vol. IV, rec.).

The other rebuttal witness, Gerardo Gotis, then 47 years old, married, and sergeant of the PC at Masbate, Masbate, testified that Rudy Regala's assertion on the witness stand that he was maltreated at the PC barracks was a lie as Rudy Regala was never maltreated; that when he arrested Rudy Regala on June 13, 1964 at the market place, he was able to confiscate from him a knife (identified as Exh. "G") [pp. 74-76, t.s.n., Vol. IV, rec.].

Cross-examined by defense counsel, he affirmed that he got the knife, Exhibit "G" from Rudy Regala last June 13, 1964; that he did not file any case against Rudy Regala in connection with Exhibit "G" as he merely indorsed the same to the 1st PC sergeant and because his commanding officer, Capt. Eugenio, ordered him not to file any case as there was already a case against Rudy Regala. However, he retracted his testimony that the non-filing of the case was the order of Capt. Eugenio. The reason for the non-filing was because it was merely overlooked as they were then busy investigating suspects in this murder case (pp. 76-78, t.s.n., Vol. IV, rec.).

The trial Judge gave more weight and credence to the testimonies of the witnesses of the People than that of the accused, resulting thus, as aforesaid, in the conviction of accused Rudy Regala for the complex crime of murder with assault upon an agent of a person in authority, and the imposition on him of the supreme penalty of death. However, with respect to the other accused, Delfin Flores, the trial Judge found him guilty only as an accessory after the fact. Consequently, the trial Judge imposed upon accused Delfin Flores the penalty of eight months and 21 days as minimum, to six years and 1 day of prision mayor as maximum with the recommendation that his parole be immediately cancelled.

Before Us therefore by way of review is only the death penalty imposed on accused Rudy Regala; because Delfin Flores did not interpose any appeal from his conviction as an accessory after the fact, and was accordingly released on June 11, 1973 after the expiration of his sentence as certified by the Director of the NBP (p. 198, Vol. I, rec.).

Counsel de officio contends that the trial court erred in failing to give the two accused a fair trial; in holding Rudy Regala responsible for the killing of Juan Desilos, Jr.; in convicting Rudy Regala, assuming arguendo that he was the man who stabbed the victim, of the crime of murder with assault upon an agent of a person of authority; and in holding Delfin Flores, under the alleged facts of the case, liable as accessory after the fact of the crime of murder with assault against an agent of a person in authority.

I

Counsel de officio claims in support of the first assigned error that the indignation and revulsion of the trial Judge at the commission of the monstrous crime herein involved as can be gleaned from the decision under review, thus:

"Murder as a crime is indeed heinous. But when the crime had to be committed in a public place, where people were enjoying the spirit of the fiesta, and amidst the sound of the drums and the trumpets and the tantalizing sweetness of the dance music, the devilry of the perpetrator is compounded. The perversity of the perpetrator is even made more ugly and ugliest indeed because the victim was in the uniform of an agent of the law and was performing his duty as he saw fit. He was there foregoing the pleasure of the evening so that others may enjoy. He

was there as a symbol of authority so that peace may be maintained for those many who love peace and tranquility. He was there, distant from his home, his wife and his children who would want him near them during those happy and festive moments in answer to the call of duty, only to be treacherously killed by an assassin with the blackest soul. He died almost in the spot where duty demanded of him. He died so that others may enjoy and live. His was a fruitful life with a duty well done and his was a heroic death. He died in the altar of public service and his was a death of a hero. The Court would be recreant of its duty if it should fail to notice this splendid performance of a lowly but loyal public servant" (p. 44, Vol. I, rec.).

directly caused undue prejudice against the accused because of his previous criminal record as manifested by the following portions of the decision of the trial Judge --

"Who is Rudy Regala? He is a convict, although in the crime of slight physical injuries. According to Municipal Judge Jose Angustia of Masbate, he has been brought very often to his Court for several mischiefs he has committed. And who is Delfin Flores? He is a convicted murderer and a parolee. Birds of the same feather, flock together" (p. 32, Vol. I, rec.).

"Is there a possibility that Rudy Regala could perpetrate the crime in company of Delfin Flores, a parolee, moments before midnight and/or moments after midnight? The distance of the canteen from the exit gate is not considerable. Rudy Regala could have been at the canteen early that evening and could have gone out with Delfin Flores and then returned at the exit door, committed the crime and then returned to the canteen to prepare for his alibi? This may be conjectural, but the possibility would not be farfetched. To a man with criminal mind and criminal tendencies, anything could be possible" (p. 25, Vol. I, rec.).

"x x x So that after the incident, he could have disappeared among the crowd and he and Rudy Regala could have returned inside in order to establish an alibi. It should be remembered that Delfin Flores and Rudy Regala are convicts and are dangerously mischievous. Although it may be argued that criminals would not at times return to the scene of their misadventures, nevertheless, there are those who, to prepare an alibi, would do so, accustomed as they have been in committing acts of devilry. Is this possible and/or probable?

"While witnesses of the defense, because of their ages, their being acquaintances close and tight, have every reason to help their friend Rudy Regala in his terrible predicament, Rudy Regala, a member of an organization with tatoos on their right arm, could have certain moral ascendancy over Abayon, Mendoza and Florista and even with Noemi Almirol, that in the spirit of friendship they are coming to the rescue of criminal friend Rudy Regala" (pp. 25-26, Vol. I, rec.).

"The defense of the accused is alibi. Rudy Regala claimed that he was inside the canteen, which was a few meters from the exit door of the Magallanes auditorium on the night Sgt. Desilos was stabbed. Rudy Regala is a convict and a notorious young man and the Court will take the same into account" (p. 29, Vol. I, rec.).

In essence, therefore, counsel de officio's first assigned error boils down to the delicate question of whether appellant Rudy Regala was denied due process of law. It must be emphasized that the jurisprudence under the 1935 Constitution treated the right of an accused to impartial trial as an aspect of the guarantee of due process. Under the present Constitution, that right to impartial trial is now expressly declared as one of the cardinal rights of an accused. Thus its Section 19, Article IV (Bill of Rights), provides that "[I]n all criminal prosecutions, the accused x x x shall enjoy the right x x x to have a speedy, impartial, and public trial, xx x" (emphasis provided). WE have declared that "xx x It is a fundamental right enshrined in the Constitution that no one is to be deprived of his liberty without due process of law. Moreover, there is a specific reference to its indispensability in a criminal prosecution. Thus is emphasized its importance for an accused. He can rely on the guarantee of fairness according to the fundamental law, which moreover, provides additional safeguards at the stage of trial. Our Constitution does indeed go far in throwing the mantle of its protection on the one who is caught in the meshes of criminal law. The proceeding must neither be arbitrary nor unjust. It is to underscore the importance of a trial

judge being detached and objective, free from bias either for or against the prosecution or for the person indicted. As was so aptly put by Justice Dizon: 'It has been said, in fact, that due process of law requires a hearing before an impartial and disinterested tribunal and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge x x x.' Earlier in *People vs. Castañeda*, Justice Laurel made clear the necessity for a 'trial before an impartial judge.' If it were otherwise, the pledge of due process becomes a myth. The trial is reduced to nothing but a useless formality, an idle ceremony. If a judge had made up his mind to convict, even innocence would not suffice as a defense" (*People vs. Angcap*, 43 SCRA 437, 441-442 [1972]).

The thrust of appellant's posture is that the trial Judge, considering "his fully justified indignation and revulsion at the commission of such a monstrous crime" of murder, became prejudiced against appellant (as well as his co-defendant) after his previous criminal conviction was brought forth during the trial, to the extent that the trial Judge no longer gave due consideration to the evidence of the defense (pp. 73-78, Vol. I, rec.).

On the other hand, the Solicitor General submits that the above argument of counsel de officio does not properly fit the assigned error, because it assails the decision of the trial court and its appreciation of the evidence submitted therein rather than the conduct of the trial itself (pp. 607, Appellant's Brief, p. 184, Vol. I, rec.).

An impartial trial necessarily requires an impartial judge to conduct the same. In other words, absent an impartial judge, there can be no fair and impartial trial. Appellant impugns the impartiality of the trial judge, who was allegedly prejudiced against the appellant.

WE do not agree with counsel de officio that the trial court failed to accord appellant Rudy Regala a fair trial. Appellant has not pointed, and We have found none, to any part or stage of the trial betraying the trial Judge's hostility, bias and prejudice against the appellant after the prosecution had brought forth the fact of appellant's previous criminal conviction. As a matter of fact, appellant's previous conviction of the crimes of malicious mischief and slight physical injuries was testified to only by the witness last presented by the prosecution in its evidence in chief. And the trial Judge, contrary to the claim of the appellant, gave due consideration to his evidence as shown by the fact that in the decision of conviction, the trial Judge examined extensively the testimonies of all the eight witnesses for the defense.

Consequently, while the quoted portions of the judgment of conviction are interspersed with statements and phrases which properly should not have been made as they may be wrongly interpreted as indicative of bias and prejudice, such aforesaid statements and phrases in the judgment of conviction do not per se constitute evidence of bias and impartiality in the conduct of the trial by the trial Judge as to violate appellant's right to an impartial trial. WE view the trial Judge's aforequoted statements and phrases as merely an expression, in the very words of appellant's counsel de officio herself, of the Judge's "x x x fully justified indignation and revulsion at the commission of such a monstrous crime x x x x."

II

1. The trial court correctly rejected appellant Regala's defense of alibi and denial. Indeed such defenses cannot prevail over the affirmative testimonies of Erlinda Tidon and Juanito Evangelista who positively identified appellant Rudy Regala as the one who inflicted the single but fatal wound on the deceased Sgt. Juan Desilos Jr. (*People vs. Cabiling*, 74 SCRA 285 [1976]; *People vs. Roxas*, 73 SCRA 583, 591 [1976]). And the exit gate where the stabbing took place was just in the vicinity of -- about 15 meters from -- the canteen where appellant was allegedly drinking beer during the night of June 12 until the early morning of the 13th. Alibi, to be convincing, must preclude any possibility that the accused could have been physically present at the place of the crime nor its immediate vicinity at the time of its commission (*People vs. Roxas*, supra).

While the crime took place at midnight or a little past thereafter, such circumstance does not vitiate witnesses' identification of appellant Rudy Regala as the person who stabbed to death Sgt. Juan Desilos Jr.; because the place at that time was well lighted by reason of the affair being celebrated (pp. 16, 78, Vol. III, rec.). Furthermore, the two witnesses were close to the exact spot of the incident as witness Tidon was barely one-half meter from the victim (p. 14, Vol. III, rec.), while witness Evangelista was about a meter from the exit gate where the victim was stabbed (p. 84, Vol. III, rec.). Hence, the possibility of erroneous identification is remote. Despite the fact that both witnesses before the stabbing incident did not know appellant by name, they both declared that they knew him by face or appearance (pp. 31, 81, Vol. III, rec.).

Furthermore, appellant has not shown by evidence of any evil motive on the part of prosecution witnesses Tidon and Evangelista to testify in the manner they did. The absence of any such improper motive enhances the credibility of said witnesses (*People vs. Roxas*, supra).

2. It is a recognized principle that on the matter of credibility of witnesses, the observation of the trial court must be accorded respect and great weight in view of its special opportunity to observe closely the demeanor of the individual witnesses. As a matter of fact, the trial court gave its observations on the witnesses' conduct and candor on the witness stand, thus:

"Because of the seriousness of the offense not only because of the challenge that the perpetrator has poised upon the community the people and all citizenry because of the brazen manner of its commission, which was made before several people and in the midst of the festive mood of the occasion but because of the grave penalty which the crime carries, the Court took special interest in the two witnesses for the prosecution. It was carefully observed by the Court that both witnesses were curt on their declaration, they were straightforward in their reply and their voice carry the ring of sincerity and truth. Their manner of replying on (sic) the question of the prosecution were those (sic) of serene, honest and truthful individuals, who wanted to impart clearly what they saw. Their answer to the cross examination were (sic) given with a clear and convincing manner. They were men who sat on the witness stand merely to convey what they have seen and noticed then, without hesitation.

"The Court cannot help but be convinced of the trustworthiness of their revelation. Under the searching barrage of cross-examination, they were never ruffled but they withstood the fire with simple dignity, speaking with a voice full of candor and truth. That is the impression these two witnesses have created in the mind of the Court. The clearness and simplicity of their assertion and their direct and positive identification of the accused Rodolfo Regala alias Rudy Regala and Delfin Flores have convinced this Court" (underscoring supplied).

Because the trial Judge had spoken on a matter, which he indisputedly is in a much better position to appreciate, this Court can do no less than to place its imprimatur thereon. Indeed, it has been aptly observed that

"x x x the judge who tries a case in the court below has vastly superior advantages for the ascertainment of truth and the decision of falsehood over an appellate court sitting as a court of review. The appellate court can merely follow with the eye the cold words of the witness transcribed upon the record, knowing at the same time, from actual experience, that more or less of what the witness actually did say is always lost in the process of transcribing. But the main difficulty does not lie here. There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court. For this reason the rule is firmly established that where there is an irreconcilable conflict in the testimony, the appellate court will not reverse the judgment of the trial court, where the evidence of the successful party, when considered by itself, is clearly sufficient to sustain the verdict

(several cases cited) or unless some conclusion established from the fact is inconsistent with the court findings or there is some inherent weakness in the evidence upon which the conclusion is based, or unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted, as where the trial court in the valuation of testimony misinterpreted a supposed inherent weakness thereof not arising from the behaviour of the witness on the stand xx x" (People vs. Alto, 26 SCRA 342, 365 [1968]).

3. Consequently, the inconsistencies and incredibilities in the testimonies of the material witnesses of the prosecution as pointed out by the appellant are better left to the appreciation of the trial court, which has not found the same sufficient to destroy the probity of said witnesses.

Appellant contends that prosecution witness Erlinda Tidon's testimony to the effect that appellant Rudy Regala and accused Delfin Flores ran away after appellant Rudy Regala had stabbed Sgt. Juan Desilos Jr., is improbable considering that, according to Tidon herself, the scene of the crime was crowded or overflowing with people and consequently one cannot move fast or run (pp. 15, 16, 43, Vol. III, rec.). Such inconsistency or improbability is more apparent than real. It may be true that under normal condition, that is, absent any unusual incident such as the killing of a peace officer, such assertion may be characterized as improbable. This is not so, however, in the instant case; because the commotion created by the stabbing incident enabled the culprits to easily disappear among the milling throng.

Again, the testimony of Erlinda Tidon to the effect that no other unusual incident occurred after the stabbing incident may not be characterized as false; because witness Tidon may have treated the stabbing incident and the consequent commotion engendered by the same as one continuing incident, instead of treating them as two separate incidents. Hence, she answered that aside from the stabbing incident no other unusual incident took place.

Moreover, We have noted in People vs. Resayaga (54 SCRA 350 [1973]) that it is a common phenomenon to find inconsistencies, even improbabilities, in the testimony of a witness, especially on minor details or collateral matters. That the accounts of witnesses regarding the same occurrence are contradictory on certain details is not unusual. There is no perfect or omniscient witness because there is no person with perfect faculties or senses or a perfect control of his emotions. An adroit cross-examiner may trap a witness into making statements contradicting his testimony on direct examination. By intensive cross-examination on points not anticipated by the witness and his lawyer, a witness may be misled or trapped into making statements that do not dovetail with the testimonies of other witnesses on the same points. Yet, if it appears that the witness has not wilfully perverted the truth, as may be gleaned from the tenor of his testimony and as appreciated by the trial Judge from his demeanor and behaviour on the witness stand, his credibility on material points may be accepted.

III

The killing of Sgt. Juan Desilos Jr., according to the trial court, was qualified as murder by the circumstances of treachery and evident premeditation and hence, appellant was convicted of the complex crime of murder with assault upon an agent of a person in authority.

Neither treachery nor evident premeditation can be properly appreciated and considered in this instant case so as to characterize the killing as murder. So appellant contends and the Solicitor General agrees. WE find the aforesaid common stand correct as the evidence supports the same.

Treachery is never presumed; it must be proven as conclusively as the act itself. It must be shown that the accused employed "x x means, methods, or forms in the execution thereof which tend directly and specially to insure its execution without risks to himself arising from the defense which the offended party might make."

By prosecution's own evidence, appellant was enraged because the deceased (Sgt. Juan Desilos Jr.) pushed his companion Delfin Flores and admonished him not to get in through the exit gate, then pulled out his knife and stabbed the victim in the abdomen. Treachery cannot therefore be appreciated as the attack made by appellant Rudy Regala was merely an immediate retaliation for the pushing made by the deceased, which act placed him on his guard. Moreover, deceased Juan Desilos Jr. at the time had a sidearm (p. 97, Vol. III, rec.) and was free to defend himself with it. If appellant's design was to be safe from a possible defense that the victim might make, he could have disarmed the victim first before stabbing him. This he did not do. Certainly, these circumstances negate treachery.

With respect to the qualifying circumstance of evident premeditation, it is well-settled that the essence of premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment. Consequently, it must be clearly established by evidence the time when the offender determined to commit the crime, and a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act. Neither the record nor the appealed decision intimates the existence of the foregoing circumstances which are essential for a positive finding of evident premeditation. On the contrary, the circumstances of the case rule out premeditation.

The principle enunciated in the Manalinde (14 Phil. 77 [1909]), Butag (38 Phil. 746 [1918]), Binayon (35 Phil. 23 [1916]) and Zalzos (40 Phil. 96 [1919]) to the effect that premeditation may exist even if there was no predetermined victim, does not apply in the instant case. In all these cases it was sufficiently established that the accused deliberately planned to kill although without a definite person as intended victim. In the present case, there is no evidence pointing to the fact that appellant planned to kill any person who may cross his path. His act of bringing with him a knife in going to the plaza is not an indication that he did plan to kill anybody.

Consequently, the killing of Sgt. Juan Desilos Jr. by appellant cannot be qualified as murder. It was simple homicide.

But the appellant cannot be convicted of the complex crime of homicide with assault upon an agent of a person in authority because the information filed against appellant did not allege the essential elements of assault that the accused then knew that, before or at the time of the assault, the victim was an agent of a person in authority (People of the Philippines vs. Rodil, L-35156, Nov. 20, 1981; People vs. CFI of Quezon, Branch V, 68 SCRA 305, Nov. 28, 1975). The information in this case barely alleged that the accused "x x with deliberate intent to kill, with evident premeditation and treachery and taking advantage of nighttime, did then and there wilfully, unlawfully and feloniously attack and stab with a knife (cuchillo) one Sgt. Juan Desilos Jr., a member of the Philippine Constabulary while he was then in the performance of his official duty thereby inflicting upon the latter serious stab wounds at the mid-epigastric region penetrating abdominal cavity and perforating cardiac and cardiac region which injury directly caused his instantaneous death," which is similar to the information in the aforesaid Rodil case -- "appellant 'attack and stab PC Lt. Guillermo Masana while the latter was in the performance of his official duties, x x x" in which We ruled that "[S]uch an allegation cannot be an adequate substitute for the essential averment to justify a conviction of the complex crime, which necessarily requires the imposition of the maximum period of the penalty prescribed for the graver offense x x."

Furthermore, as in the Rodil case, the subject information cannot be cured or validated by the doctrine enunciated in People vs. Balbar (21 SCRA 1119, Nov. 29, 1967), because unlike in the latter case, there are no allegations of facts from which it can be implied that the accused then knew that, before or at the time of the assault, the victim was an agent of a person in authority.

Moreover, the fact that the crime of assault was established by the evidence of the prosecution without any objection on the part of the accused cannot likewise cure the aforesaid defect in the information so as to validly convict the accused thereof; because to do so would be convicting the accused of a crime not properly alleged in the body of the information in violation of his constitutional right to be informed of the nature and cause of the accusation against him.

As already stated, the crime of assault was definitely demonstrated by the evidence of the People because it showed that the victim (Sgt. Juan Desilos Jr.), while maintaining peace and order at the exit gate of the Plaza Magallanes where the crime took place, was in complete PC uniform at the time the accused attacked him by reason of the latter's act of pushing the accused and his co-accused so as to prevent them from entering the plaza through its exit gate. In the aforesaid Rodil case, it was stated that "[L]ike a qualifying circumstance, such knowledge must be expressly and specifically averred in the information; otherwise, in the absence of such allegation, the required knowledge, like a qualifying circumstance, although proven, would only be appreciated as aggravating circumstance. Applying this principle, the attack on the victim, who was known to the appellant as a peace officer, could be considered only as aggravated by being 'in contempt or with insult to the public authorities' (par. 2, Art. XIV, Revised Penal Code) or as an insult or in disregard of the respect due the offended party on account of his rank x x x " (par. 3, Art. XIV, Revised Penal Code).

Appellant can therefore be convicted only of the crime of homicide, aggravated by the circumstance of "in contempt or with insult to the public authorities" (par. 2, Art. XIV, Revised Penal Code), or as an "insult or in disregard of the respect due to the offended party on account of his rank x x x " (par. 3, Revised Penal Code).

WE stated in the Rodil case, thus:

"The term 'rank' should be given its plain, ordinary meaning, and as such, refers to a high social position or standing as a grade in the armed forces (Webster's Third New International Dictionary of the English Language Unabridged, p. 1881); or to a graded official standing or social position or station (75 CJS 458);

xx xx xx xx

or to a grade or official standing, relative position in civil or social life, or in any scale of comparison, status, grade, including its grade, status or scale of comparison within a position (Vol. 36, Words and Phrases, Permanent Edition, p. 100).

xx xx xx

"As explained by Mr. Justice Mariano Albert, then of the Court of Appeals, those 'generally considered of high station in life, on account of their rank (as well as age or sex), deserve to be respected. Therefore, whenever there is a difference in social condition between the offender and the offended party, this aggravating circumstance sometimes is present' (Albert M.A. -- The Revised Penal Code Annotated, 1946 Ed., p. 109).

xx xx xx

"The aggravating circumstance of contempt of, or insult to, public authority under paragraph 2 of Article 14 of the Revised Penal Code can likewise be appreciated in the case at bar.

xx xx xx

"While it is true that in the case of U.S. vs. Rodriguez, et al. (19 Phil. 150, 157-158), People vs. Siojo (61 Phil. 307, 317), and People vs. Verzo (21 SCRA 1403), this Court ruled that the term public authority refers to a person in authority and that a PC lieutenant or town chief of police is not a public authority but merely an agent of a person in authority; there is need of re-examining such a ruling since it is not justified by the employment of the term public authority in aforesaid paragraph 2 of Article 14 instead of the term person in

authority which is specifically used in Articles 148 and 152 of the Revised Penal Code. There is no extended reasoning of the doctrine enunciated in the aforesaid three (3) cases why the phrase public authority should comprehend only persons in authority. The lawmaker could have easily utilized the term 'persons in authority' in the aforesaid paragraph 2 of Article 14 in much the same way that it employed the said phrase in Articles 148 and 152. The lawmaker must have intended a different meaning for the term public authority, which may however include, but not limited to, persons in authority.

"Under the decided cases, a municipal mayor, barrio captain, barrio lieutenant or barangay captain is a person in authority or a public authority. Even a public school teacher is now considered a person in authority under CA 578 amending Article 152 of the Revised Penal Code (Sarcepudes vs. People, 90 Phil. 228). So is the town municipal health officer (People vs. Quebral, et al., 73 Phil. 640), as well as a nurse, a municipal councilor or an agent of the Bureau of Internal Revenue (People vs. Yosoya, CA-GR No. 8522-R, May 26, 1955; People vs. Reyes, et al., O.G.S. 11 p. 24).

"The chief of police should therefore be considered a public authority or a person in authority; for he is vested with jurisdiction or authority to maintain peace and order and is specifically duty bound to prosecute and to apprehend violators of the laws and municipal ordinances, more than the aforementioned officials who cannot prosecute and who are not even enjoined to arrest malefactors although specifically mentioned as persons in authority by the decided cases and by Article 152 of the Revised Penal Code as amended by R.A. 1978 of June 22, 1957. The town chief of police heads and supervises the entire police force in the municipality as well as exercises his authority over the entire territory of the municipality, which is patently greater than and includes the school premises or the town clinic or barrio, to which small area the authority or jurisdiction of the teacher, nurse, or barrio lieutenant, respectively, is limited."

Likewise, the guilt of appellant is aggravated by recidivism as he was previously sentenced by final judgment for slight physical injuries.

WHEREFORE, APPELLANT RODOLFO REGALA ALIAS RUDY REGALA IS HEREBY FOUND GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF HOMICIDE AGGRAVATED BY RECIDIVISM AND BY CONTEMPT FOR OR INSULT TO A PUBLIC AUTHORITY OR DISREGARD OF THE RESPECT DUE THE OFFENDED PARTY ON ACCOUNT OF HIS RANK, WITHOUT ANY MITIGATING CIRCUMSTANCE, AND HE IS HEREBY SENTENCED TO SUFFER AN INDETERMINATE TERM OF IMPRISONMENT RANGING FROM TWELVE (12) YEARS OF PRISION MAYOR AS MINIMUM TO TWENTY (20) YEARS OF RECLUSION TEMPORAL AS MAXIMUM.

THUS MODIFIED, THE JUDGMENT APPEALED FROM IS HEREBY AFFIRMED IN ALL OTHER RESPECTS.

Fernando, C.J., Barredo, Fernandez, Guerrero, De Castro, Melencio-Herrera, Ericta, Plana, and Escolin, JJ., concur.

Aquino, J., in the result.

Teehankee, J., took no part.

Concepcion, Jr., and Abad Santos, JJ., on leave.

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