

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
VICENTE QUESADA Y BERNAL, DEFENDANT AND APPELLANT.***G.R. No. L-15372. April 29, 1960*

Ponente: BAUTISTA ANGELO, J.

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Vicente Quesada y Bernal was charged with frustrated homicide before the Court of First Instance of Manila who, upon arraignment, pleaded not guilty. When the case was tailed for hearing, Dr. Crisostomo Arcilla, a physician working at the Philippine General Hospital, was presented by the fiscal as witness for the prosecution, and testified regarding the wounds suffered by the victim Hugodino Lim y Cosin. Later, when the hearing was resumed, the accused petitioned thru counsel that he be allowed to withdraw his former plea of not guilty and substitute it with that of guilty. The petition was granted. Upon rearraignment, he pleaded guilty, after which he was allowed to prove the mitigating circumstance of voluntary surrender. After hearing, the court rendered decision sentencing him to suffer a penalty of not less than 2 years 4 months and 1 day of prision correccional, and not more than 8 years and 1 day of prision mayor, to indemnify the offended party in the sum of P3,000.00, and to pay the costs.

The accused appealed to the Court of Appeals, but the case was certified to us on the ground that only questions of law are involved.

The main issue raised by appellant is that the trial court erred in not considering his plea of guilty as a mitigating circumstance and in not imposing upon him the corresponding penalty after considering said mitigating circumstance. He avers that his plea of guilty was free and spontaneous despite the fact that he did so after the prosecution had presented a witness, because at that stage there was yet no prima facie evidence that the accused had committed the crime charged, and that when he asked that his former plea be changed he did so because of his sincere desire to repent for what he has done.

The claim has no merit. Article 13, paragraph 7, of the Revised Penal Code, as interpreted by this Court, requires that the plea of guilty, to be entertained, be made (1) in open court; (2) spontaneously; and (3) prior to the presentation of the evidence for the prosecution (People vs. Dela Peña, 66 Phil., 451; People vs. Co Chang, 60 Phil., 29S; People vs. Dela Cruz, 63 Phil., 874). Requirements 2 and 3 are not here present. The record shows that appellant committed the felonious act on March 22, 1956 and when arraigned on May 14, 1956, he pleaded not guilty, and it was only on August 11, 1957, or about 1 year 3 months and 7 days afterwards that he felt a contrite and repentant act by Changing his former plea of not guilty to that of guilty. Obviously, his plea of guilty was not spontaneous, and apparently was done not because of his sincere desire to repent, as he claims, but because of his fear of eventual conviction. Indeed, if it was really his desire to repent and to reform realizing the implication of what he has done, he could have had pleaded guilty at the very first opportunity when his arraignment was first set. He only changed his mind more than one year afterwards.

Even if it be granted that his plea was spontaneous or one born of his sincere desire to repent, still he cannot be

given credit for that plea because he did so after the prosecution had commenced presenting its evidence, which is contrary to one of the requirements of the law. As this Court has aptly said: "Confession of guilt constitutes a cause for the mitigation of the penalty, because it is an act of repentance and respect for the law; it indicates a moral disposition in the accused favorable to his reform. These benefits are not deserved by the accused who submits to the law only after the presentation of some evidence for the prosecution, believing that in the end the trial will result in his conviction" (People vs. Dela Cruz, *supra*).

Wherefore, the decision appealed from is affirmed, with costs against appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Endencia, Barrera, and Gutierrez David, JJ., concur.
Concepcion, J., concurs in the result.

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