

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERTO BENITO Y RESTUBOG, ACCUSED-APPELLANT.***G.R. No. L-32042. December 17, 1976*

Ponente: AQUINO, J.

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Alberto Benito was sentenced to death by the Circuit Criminal Court of Manila after he pleaded guilty to the charge of murder for having shot with a .22 caliber revolver Pedro Moncayo, Jr. on December 12, 1969. The killing was qualified by treachery and aggravated by premeditation and disregard of rank. It was mitigated by plea of guilty.

After a mandatory review of the death sentence, this Court in its decision of February 13, 1975 affirmed the judgment of conviction. It appreciated in Benito's favor the mitigating circumstance of voluntary surrender. The penalty was reduced to reclusion perpetua. (People vs. Benito, 62 SCRA 351).

Benito filed a motion for reconsideration. He contends that he is entitled to the mitigating circumstance of immediate vindication of a rave offense and that the aggravating circumstance of rank should not be appreciated against him.

Benito, 26, a native of Naga City, in his sworn statement, which was taken, about five hours after the shooting, by Corporal E. Cortez and Patrolmen J. de la Cruz, Jr. and H. Roxas of the Manila Police, recounted the background and circumstances of the tragic incident in this manner (Exh. A):

"... alam ninyo ho, ako ay dating empleyado ng Civil Service Commission sa kalye P. Paredes, Sampaloc, Maynila, at ako ay Clerk 2 sa Administrative Division at ako ay nagumpisa ng pagtratra-baho sa Civil Service magmula pa noong November 7, 1963 tuloy-tuloy hanggang November, 1965 ng ako ay nasuspende sa aking trabaho dahil kinargohan nila ako ng 'DISHONESTY' at nasuspende ako ng 60 days at nabalik ako sa trabaho noong January 1966 pero kinarguhan uli nila ako ng 'MALVERSATION OF PUBLIC FUNDS, QUALIFIED THEFT, ESTAFA at FALSIFICATION OF PUBLIC DOCUMENT at dinimanda din ako ng Civil Service ng Administrative case ng 'DISHONESTY' at dinimiss na ako sa tra-bajo ni Commissioner Subido noong February 16, 1966.

"At magmula noon ay nawalan na ako ng trabaho pero lahat ho noong kinargo nila sa akin na sinabi ko sa inyo ay 'fabricated' lang ang mga evidensiya at ang gumawa ho noong ay ang binaril ko kanina na si PEDRO MONCAYO JR. Y RAMOS at naka pending pa ngayon sa City Fiscal ng Maynila kay Asst. Fiscal Magat at iyon namang 'dismissal order ni Commis-sioner Subido ay inapela ko sa Civil Service Board of Appeals.

"Magmula noong idinimiss nila ako sa aking trabaho dahil sa 'fabricated' charges ay naghirap na ako sa aking buhay at nahihiya ako sa mga kaibigan ko. Ako ay assign(ed) sa collecting department noon at nagagalit sa akin ang mga empleyado ng Civil Service dahil mahigpit ako sa kanila.

"Noong bandang alas 7:00 ng gabi noong Dec. 11, 1969, ako ay nagpunta sa Civil Service sa kalye Paredes at nakita ko si PEDRO MONCAYO, Jr. at kinausap ko siya at tinanong ko siya na iyong kaso ko ay matagal na at

hindi pa natatapos at baka matulungan niyan ako at ang sagot niya ay 'UMALIS KA NA NGA DIYAN BAKA MAY MANGYARI PA SA IYO AT BAKA IPAYARI KITA DITO' at umalis na ako.

"Kaninang bandang alas 11:00 ng umaga ay nagkita kami ni PEDRO MONCAYO Jr. sa loob ng compound ng Civil Service at sa harapan ng maraming tao sinabi niya na 'NAGIISTAMBAY PALA DITO ANG MAGNANAKAW' kaya ang ginawa ko ay umalis na ako.

"Kaninang bandang alas 5:25 ng hapon, nitong araw naito, Desiyembre 12, 1969, nakita ko si PEDRO MONCAYO Jr. na nagmamanejo noong kotse niya sa kalye P. Paredes sa tapat ng Civil Service, sinundan ko siya at pagliko ng kotse niya sa kanto ng P. Paredes at Lepanto, Sampaloc, Maynila, ay binaril ko siya ng walong beses at tinamaan siya at napatumba siya sa kaniyang upuan sa kotse.

"Pagkatapos ay tumawag ako sa telepono sa MPD Headquarters para sumurender at kayo nga ang dumating kasama ninyo iyong mga kasama ninyo."

Benito surrendered to the police the revolver (Exh. C) used in the shooting with the eight empty shells of the bullets which he had fired at Moncayo.

The police report contains the following background and description of the killing (Exh. B):

"According to the suspect, he was a former employee of the Civil Service Commission at its main office located at P. Paredes, Sampaloc, Mla., and was assigned as Clerk 2 in the Administrative Division from Nov. 1963 continuously up to Nov. 1965 when he was suspended for 'DISHONESTY'.

"After two months, he was reinstated but was criminally charged for QUALIFIED THEFT, MALVERSATION OF PUBLIC FUNDS, ESTAFA and FALSIFICATION OF PUBLIC DOCUMENTS and administratively charged for 'DISHONESTY' culminating in his dismissal from the Civil Service on February 1966.

"The aforecited criminal charges against the suspect was allegedly investigated by Asst. Fiscal MAGAT. Records from the CRID, MPD, reveals that on Dec. 6, 1966, Hon. Judge ROAN of the City Court of Mla. issued a Warrant No. E-316758 for the arrest of the suspect for the crime of ESTAFA.

"On May 24, 1969, Hon. Judge JUAN O. REYES of the CFI of Mla. issued an order No. OA-87409 for the arrest of the suspect for the crime of MAL-VERSATION OF PUBLIC FUNDS. According to the suspect, the aforecited criminal and administrative charges filed against him were allegedly instigated and contrived by the victim and since the time of his dismissal, he was allegedly jobless.

"On Dec. 11, 1969, the suspect went to the Civil Service at P. Paredes st. and requested the victim to help him in his cases but the former allegedly uttered to the suspect 'UMALIS KA NGA DIYAN BAKA MAY MANGYARI PA SA IYO AT BAKA IPAYARI KITA DITO'.

"The suspect left and returned the following morning at 11:00 a.m. of Dec. 12, 1969, and when they met again, the victim allegedly remarked in the presence of many people, 'NAGIISTAMBAY PALA DITO ANG MAGNANAKAW'. The suspect who was humiliated and incensed, left.

"At about 5:25 p.m. of that same day, Dec. 12, 1969, the suspect who was armed with an unlicensed Cal. 22 black revolver (w/ SN - P-5317, Trademarked 'SENTINEL', SQUIRES BINGHAM MFG. CO. INC., MLA., P. I.) loaded with nine (9) live Cal. 22 bullets in its cylinder, waited for the victim outside the Civil Service compound at P. Paredes st., Sampaloc, Mla.

"The victim showed up and drove his green Chevrolet 2 door car (w/ Plate No. L-10578 Mla. 69) along P. Paredes st. The suspect, with evident premeditation, surreptitiously followed the victim and when the latter's car was at a full stop at the corner of Lepanto and P. Paredes sts. due to heavy traffic of motor vehicles, the suspect without any warning or provocation, suddenly and treacherously shot the victim eight (8) times on the

head and different parts of the body at close range which consequently caused the latter's death on the spot inside his car.

"The suspect then fled while the victim was conveyed on board a red private car (w/ Plate No. L-55117) by his co-employees (composed of VICTOR VILLAR, ELEUTERIO MENDOZA & FORTUNATO JOSE Jr.) to the FEU Hospital. Unfortunately, the victim was pronounced DOA by Dr. P. PAHUTAN, SOD, at 5:40 p.m. of Dec. 12, 1969."

The thirty-six year old victim, a certified public accountant, was the Assistant Chief of the Personnel Transactions Division and Acting Chief, Administrative Division of the Civil Service Commission (Exh. E to E-2). The accused was a clerk in the cash section, Administrative Division of the Commission, receiving P1,884 per annum (Exh. D). He started working in the Commission on November 7, 1963.

On October 21, 1965 Moncayo, as an administrative officer, reported to the Commissioner of Civil Service that Benito admitted having malversed an amount between P4,000 and P5,000 from his sales of examination fee stamps. Moncayo's report reads as follows (Exh. F):

"MEMORANDUM for –
The Commissioner
Through Proper Channels

"This refers to the case of Mr. ALBERTO R. BENITO, Clerk II in the Administrative Division of this Commission, who, as had previously been reported, malversed public funds in the amount of approximately P5,000.00 out of his collections from the sale of examination fee stamps.

"I wish to state that this matter came to my attention on the evening of March 1, 1965 when Mr. Teodoro Abarquez, Acting Cashier I, reported to me that fifty (50) money orders at P2.00 each with a total value of P100.00 were missing from a bundle of money orders received from the Provincial Treasurer of Cotabato, which were kept by him in one of the cabinets inside the Cashier's room.

"At that same time he also informed me that he suspected that Mr. Benito stole the missing money orders. His suspicion arose from the fact that he found several money orders marked 'Cotabato' as their place of issue among the cash receipts turned over to him by Mr. Benito that afternoon as his collection from the sale of examination fee stamps. Mr. Abarquez showed to me the said money orders issued in Cotabato which were turned over to him by Mr. Benito and after checking their serial numbers with the records of list of remittances on file, we were able to establish definitely the fact that the said money orders were those missing.

"It may be stated that at that time, Mr. Benito was assigned to work in the Cash Section and one of his duties was to sell examination fee stamps to applicants for examinations. It was then the practice of the cashier to issue to Mr. Benito in the morning examination fee stamps to be sold during the day and in the afternoon he turned over to the Cashier the proceeds from the sale of stamps including the unsold stamps issued to him. After considering the work performed by Mr. Benito, it became evident that he succeeded in malversing the amount of P100.00 by substituting equivalent amount of money orders in the place of the cash extracted by him from his daily collections from the sale of examination fee stamps when he clears his accountability with the Cashier.

"The following day, I confronted Mr. Benito in the presence of Mr. Abarquez and ask him whether he had something to do with the loss of the fifty (50) money orders at P2.00 each. At first he denied, but when I asked him where he obtained the money orders issued in Cotabato which were included in his collections the day preceding, he admitted having stolen the missing money orders.

"Having confessed his guilt, I then asked Mr. Benito when he started committing the said irregularity and how much in all did he actually malversed out of his daily collections from the time that he started the anomaly. He

stated in the presence of Mr. Abarquez that he started in January, 1965 and that although he did not know exactly the total amount malversed by him, he believed the amount to be between P4,000.00 to P5,000.00. He also confessed that he used the money orders remitted by the Provincial Treasurer of Negros Occidental in the amount of P3,436.00 in substituting various amounts extracted by him from his daily cash collections and used by him for personal purposes.

"It appears from the records that the List of Remittance covering the money orders received from the Provincial Treasurer of Negros Occidental was duly receipted by Mr. Benito. He was supposed to issue an Official Receipt therefor in favor of the said Provincial Treasurer and then turn over to the Cashier the amount involved for deposit to the National Treasurer. The said List of Remittance, duly signed by Mr. Benito, is enclosed for use as evidence in this case.

"I told Mr. Benito that I cannot do anything but report the matter to the Commissioner. However, he pleaded that he be given first an opportunity to restore the amount before I make my report in order that the penalty that may be imposed upon him may be lessened to a certain degree. As I thought it wise in the interest of the service to recover the amount involved, I allowed him to go and see his parents in Naga City to raise the amount in question.

"After two weeks, Mr. Benito informed me that his parents filed an application for a loan with the Government Service Insurance System and that the proceeds of the said loan which he intended to use in restoring the amount malversed by him were expected to be released during the last week of May, 1965. However, when the month of May, 1965 elapsed without the amount involved having been restored, I conferred with Mr. del Prado, my immediate superior and asked him whether we should wait further for the release of the said loan in order that the amount involved may be re-covered. Mr. Prado consented to giving him a little more time.

"When Mr. Benito still failed to restore the amount in question by the end of June, 1965, I got hold of him on July 5, 1965 and together with Messrs. del Prado, Abarquez, and Gat-chalian, also of this Commission, brought him before Deputy Commissioner A. L. Buenaventura and reported the entire matter to the Deputy Commissioner. In the presence of Messrs. del Prado, Abarquez, Gatchalian and myself, Mr. Benito admitted readily and voluntarily before the Deputy Commissioner the commission of the offense of malversation of public funds as stated above.

"In view of the foregoing, it is recommended that Mr. Benito be charged formally and that he be suspended from office immediately considering the gravity of the offense committed by him.

(Sgd.) PEDRO R. MONCAYO
Administrative Officer II"

Benito was charged with dishonesty. He had admitted to Deputy Commissioner Alipio Buenaventura that he had misappropriated his collections and spent the amount in nightclubs and pleasure spots and for personal purposes. The decision dismissing him from the service reads as follows (Exh. G):

"This is an administrative case against Mr. Alberto R. Benito, Clerk I, Cash Section, Administrative Division of this Office, for dishonesty.

"The following excerpts from the letter dated October 22, 1965 of the Commissioner of Civil Service connect respondent with the alleged misappropriation of public funds representing his collection from the sale of examination fee stamps and constitute the basis of the instant case against him:

'An investigation made by this Commission shows that you malversed public funds in the amount of P3,536.00 out of your collections from the sale of examination fee stamps while in the performance of your official duties as Clerk II in the Cash Section, Administrative Division of this Office. It appears that you succeeded in

malversing the above-stated amount from your cash collections by substituting in lieu thereof money orders worth P3,436.00 remitted to this Commission by the Provincial Treasurer of Negros Occidental which were duly receipted for by you. It also appears that you extracted from a bundle of money orders remitted by the Provincial Treasurer of Cotabato the amount of P100.00 in money orders which were kept in one of the cabinets in the Cashier's room.'

"Respondent denied the charge. He explained, among others, that money orders were always kept in the Cashier's safe and he had no access to them. Although he admitted having received money orders amounting to P3,436.00 remitted by the Provincial Treasurer of Negros Occidental and another remittance of the Provincial Treasurer of Cotabato, he, however, disclaimed having substituted the same for cash collections in his sale of examination fee stamps. He reasoned out further that he could not be charged with malversation of public funds inasmuch as he was not then an accountable officer.

"It appears that respondent, as Clerk in the Cash Section, performs, among other duties, the selling of examination fee stamps, receiving payments therefor, and receiving remittances in form of cash and/or money orders from provincial treasurers in connection with examinations held in the provinces. It was also his duty to issue official receipts for said remittances. In the course of the performance of his duties, he received said remittances from the Provincial Treasurers of Negros Occidental and Cotabato, but no official receipts were issued by him, as shown by the reply telegrams pertaining thereto. While records disclose that remittances from the province of Cotabato were submitted to the Cashier of the Civil Service Commission, there is no evidence showing that remittances from Negros Occidental were likewise submitted.

"Investigation further reveals that 50 money orders were discovered missing from the remittances of Cotabato Provincial Treasurer which were kept in the cabinet of the Cashier. On or about March 2, 1965, the Cashier of the Commission noticed that 15 money orders turned over by respondent as part of his collections in the sale of examination fee stamps were among the missing money orders. This triggered off the filing of this case against the respondent.

"On July 5, 1965, respondent admitted before the then Deputy Commissioner Alipio Buenaventura having misappropriated an aggregate amount ranging from P3,000 to P7,000, which he spent in night clubs, pleasure spots and other personal benefits. Despite the testimonies of several witnesses regarding his confession, including that of the then Deputy Commissioner himself, respondent, when asked to take the stand, denied his previous admission.

"Instead, he argued that the cash and accounts of the Cashier of the Civil Service Commission, when examined by representatives of the Auditor's Office, did not indicate any shortage and therefore there was no irregularity involved. This argument is not well taken. Inasmuch as the remittances received by respondent from said Provincial Treasurers of Negros Occidental and Cotabato were not in turn given corresponding official receipts, naturally, the same were not reflected on the Cashier's cash book.

"The weakness of respondent's defense lies not so much on its failure to establish convincingly his innocence as its irreconcilability with established facts. Obviously, none of the circumstances in this case is consistent with his claim of innocence. On the contrary, all of them put together produce reasonable assurance of respondent's guilt.

"In view of the foregoing, this Office finds respondent Alberto R. Benito guilty as charged. Wherefore, he is dismissed from the service effective upon his receipt of this decision.

"In the interest of the service this decision is executed also on the date of his receipt of this decision."

Benito appealed to the Civil Service Board of Appeals from the Commissioner's decision dismissing him. The

appeal was pending at the time when he assassinated Moncayo (Exh. I).

The foregoing antecedents of the assassination shed light on the remark which the victim, Moncayo, allegedly made upon seeing Benito in the compound of the Civil Service Commission near the canteen at eleven o'clock in the morning of December 12, 1969 (about six hours before the shooting): "Nagiistambay pala dito ang magnanakaw." (Exh. A or 1); or, as Benito testified, Moncayo said: "Hindi ko alam na itong Civil Service pala ay istambayan ng magnanakaw." (27 tsn December 26, 1969).

Mitigating circumstance of immediate vindication of a grave offense . - Benito contends that Moncayo insulted him when he (Moncayo) remarked that a thief was loitering in the premises of the Civil Service Commission. Benito argues that that remark "was tantamount to kicking a man already down and to rubbing salt into a raw wound" and that, as it was made publicly and in a loud voice, he was exposed to ridicule in the presence of his officemates.

Benito attached to his motion a copy of the decision of Judge Jose C. Colayco dated January 16, 1975, acquitting him of the charge of malversation in connection with his alleged mis-appropriation of the fees collected from the examinees of the 1974 patrolman examination. That same decision makes reference to Benito's exoneration from the administrative charge. The court's decision reads as follows:

"The accused is charged with malversation under the following information:

'That on or about and during the period comprised between October 17, 1964, to February, 1965, inclusive, in the City of Manila, Philippines, the said accused being then employed as Clerk I of the Civil Service Commission, a branch of the government of the Republic of the Philippines, among whose duties were to accept payments of fees collected from the examinees of the 1964 Patrolman examination, and by reason of his said position received the total amount of P3,536.00, with the duty to turn over and/or account for his collections to the cashier of the Civil Service Commission immediately or upon demand but the said accused once in possession of the said amount of P3,536.00, with intent to de-fraud, despite repeated demands made upon him to turn over and to account for the same, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert and malverse the said amount to his own personal use and benefit, to the detriment of public interest and to the damage and prejudice of the said Civil Service Commission in the said amount of P3,536.00, Philippine currency.

'Contrary to law.'

"The evidence shows that the accused had an appointment as clerk in the Civil Service Commission from May 27, 1964, as clerk I, range 23 from June 1, 1965 and as clerk I, range 26 from July 23, 1965 (Exhibits A, A-1, A-2). He had the duty, among others, of selling Civil Service examination-fee stamps and to receive payment therefor, as well as to receive remittances of money orders and checks from the pro-vincial treasurers for payments of examination-fee stamps (Exhibit B).

"Teodoro Abarquez, a cashier of the Civil Service Commission during the period alleged in the information, testified in his direct examination that Benito was working in his office; that one of the duties that he assigned to him was to sell exami-nation-fee stamps; that it was customary for him to give stamps to Benito at the start of office hours in the morning and that Benito turned over to him the proceeds of the sale, as well as the unsold stamps, at the close of office hours in the afternoon; that one afternoon he noticed that Benito turned over to him 50 money orders from Cotabato, toge-ther with some cash, as proceeds of the sale of stamps for that day; that he remembered that he was missing money orders from one of his cabinets where he kept them; that when he discovered that the 50 money orders were those which were missing, he reported the matter to Pedro Moncayo, the chief adminis-trative officer, on March 1, 1965; that the money orders were for P2.00 each, and were

payments of the examination fees from Cotabato (Exhibit F); that he discovered the loss of the 50 money orders on February 28, 1965 and reported it to Moncayo on March 1, 1965, together with the list of missing money orders (Exhibit M); that after receiving the report, Moncayo called Benito to the office of Abarquez where he admitted taking the missing money orders; that Moncayo submitted a memorandum to the Commissioner, dated October 21, 1965, after giving Benito a chance to refund the value of the money orders (Exhibit O). Alipio Buena-ventura, acting Deputy Commissioner at the time, and Eliseo S. Gatchalian, budget officer, testified that when Benito was confronted with the report of Moncayo and Abarquez, he admitted that he misappropriated about P3,000.00 because of bad company and that he asked for a chance to refund the money.

"Under cross-examination, Abarquez elucidated his testimony in his direct examination and explained that when Benito turned over the pro-ceeds of the sale of stamps for that particular day, he kept the sum of P100.00 and replaced it with the 50 money orders that he had taken from the cashier's office to cover up the money that he had pocketed. When he was asked when he discovered that Benito substituted the 50 money orders from Cotabato, he answered that he checked them the following night (March 2, 1965) with the list of money orders remitted by the Provincial treasurer (Exhibits F, F-1); but when he was confronted with his affidavit which he executed on April 18, 1966 (Exhibit R), he reluctantly admitted that he had only verified 15 money orders missing as of April 18, 1966 and that he did not keep any record of the money and the money orders given to him by Benito on March 1, 1965.

"He also admitted that the room where he kept the money orders in an unlocked drawer was also occupied by two other per-sons, and that this was the first time that he had not followed the usual procedure of keeping them in the safe. He further ad-mitted that, although regular examinations were conducted during the period of October 1, 1964 to February 28, 1965 by the exami-ners of the Civil Service Commission and the auditors of the General Auditing Office, they did not find any shortage in the accounts of Benito.

"Finally, when the Court asked him what happened to the 50 money orders, at first he hinted that they were not deposited with the Bureau of Treasury because they were reported missing; but when pressed further, he said that he deposited them, but did not issue any official receipt for them. When asked if he had any evidence to show that they were actually deposited, he admitted that he could not pro-duce the deposit slip and that he could not even remember when he deposited them.

"The testimony of Teodoro Abarquez, upon which the prosecution has built its case, is too weak and shaky to sustain a finding of guilt because of his glaring inconsistencies, contradictions and gaps in memory. The prosecution has failed to present convincing evidence that the 50 money orders were even lost. According to Abarquez he had only verified the loss of 15 on April 18, 1966, although he testified earlier that he determined the loss of 50 the night after March 1, 1965.

"The examiners of the Civil Service Commission and the auditors of the General Auditing Office did not find any irregularity in the cash accountability of Benito, according to Abarquez. This was corroborated by Romeo Jarabelo, auditor of the Commission on Audit and Miguel Games, auditing examiner assigned to the Civil Service Commission, who testified for the accused. Benito was in fact exonerated of the administrative charge filed against him for the same transaction(Exhibit E).

"In fact, the testimony of Abarquez under cross-examination that he has not issued any official receipt for the 50 money orders and his inability to prove that he deposited them with the Bureau of Treasury gives rise to the suspicion that other persons, not the accused, may have stolen the 50 missing money orders. Even without taking into account the testimony of the accused, who denied the testimonies of the witnesses for the prosecution, the court believes that the prosecution has failed to prove the guilt of the accused.

"WHEREFORE, judgment is hereby rendered acquitting the accused, with costs de oficio."

The Solicitor General argues that the defamatory remark imputed to Moncayo cannot give rise to the mitigating circumstance of vindication of a grave offense because it was not specifically directed at Benito. The prosecution notes that the remark was uttered by Moncayo at eleven o'clock in the morning. According to Benito's testimony (not consistent with his confession), he saw Moncayo three hours later or at two o'clock in the afternoon and inquired from him about his case and Moncayo said that he had already submitted his report and he could not do anything more about Benito's case (26 tsn). As already stated, the assassination was perpetrated at around five o'clock in the afternoon of the same day.

Assuming that Moncayo's remark was directed at Benito, we see no justification under the circumstances recited above for changing our prior opinion that the mitigating circumstance of "haber ejecutado el hecho en vindication proxima de una ofensa grave, causada al autor del delito," cannot be appreciated in Benito's favor. As aptly stated by the ponente, Justice Esguerra, Benito "had more than sufficient time to suppress his emotion over said remark if he ever did resent it".

"La apreciacion de la proximidad queda al arbitrio del tribunal; el Tribunal Supremo (de España) no ha apreciado la proximidad x x x cuando la ofensa se realizo por la mañana y el delito tuvo lugar por la tarde (Sentencia de 11 noviembre 1921); por regla general no es proxima cuando transcurre tiempo suficiente para la razon recobre su imperio sobreponiendose a la pasion (Sentencias de 28 mayo 1882, 4 noviembre 1893, 24 junio 1908, etc). x x x Si falta el requisito de la proximidad debe desestimarse (Sentencia de 3 julio 1950). Exige gravedad en la ofensa y proximidad en la reaccion." (Note 9, 1 Cuello Calon, Derecho Penal, 1975 Ed., p. 564).

The Spanish Supreme Court also held that "no puede apreciarse esta circunstancia atenuante en favor del autor de un homicidio cometido 'algunas horas despues de haberle invitado el interfecto a reñir y golpeado en el pecho con las manos', porque el tiempo transcurrido entre los golpes y la muerte fue suficiente para que el animo del reo se serenase" (Sentencia de 24 Junio 1908, Gaceta 28 Agosto 1909, IV-V Enciclopedia Juridica Española 1182).

The six-hour interval between the alleged grave offense committed by Moncayo against Benito and the assassination was more than sufficient to enable Benito to recover his serenity. But instead of using that time to regain his composure, he evolved the plan of liquidating Moncayo after office hours. Benito literally ambushed Moncayo just a few minutes after the victim had left the office. He acted with treachery and evident premeditation in perpetrating the cold-blooded murder.

The facts of the case strongly suggest that what really impelled Benito to assassinate Moncayo was not the latter's alleged defamatory remark that the Civil Service Commission compound was a hangout for a thief or for thieves but the refusal of Moncayo to change his report so as to favor Benito. Benito did not act primarily to vindicate an alleged grave offense to himself but mainly to chastise Moncayo for having exposed the alleged anomalies or defraudation committed by Benito and for obstinately refusing to change his report.

Aggravating circumstance of disregard of rank . - Benito contends that disregard of rank should not be considered against him because there was no evidence that he "deliberately intended to offend or insult the rank" of Moncayo. That contention has no merit.

It should be borne in mind that the victim was a ranking official of the Civil Service Commission and that the killer was a clerk in the same office who resented the victim's condemnatory report against him. In that situation, the existence of the aggravating circumstance of "desprecio del respeto que por la dignidad mereciere el ofendido" is manifest.

The instant case is similar to a case where the chief of the secret service division killed his superior, the chief of

police (People vs. Hollero, 88 Phil. 167) and to the killing of the acting Spanish consul by his subordinate, the chancellor of the consulate, who had misappropriated the funds of the consulates which mis-appropriation was discovered by the victim (People vs. Martinez Godinez, 106 Phil. 597, 606). In these two cases the murder was aggravated by disregard of rank.

WHEREFORE , the motion for reconsideration is denied.

SO ORDERED.

Teehankee, Makasiar, Antonio, Concepcion, Jr., and Martin, JJ., concur.

Castro, C.J., Fernando, and Muñoz Palma, in the result.

Barredo, J., upon the review of the record, he now convinced that appellant credited with the mitigating circumstance of vindication of a grave offense, so he concur in this resolution.

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