

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO CALMA ALIAS "EAGLE,"
DEFENDANT-APPELLANT.**

G.R. No. L-7565. June 16, 1955

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a judgment of the Court, of First Instance of Rizal finding defendant-appellant Alejandro Calma, alias "Eagle," guilty of the crime of homicide, and sentencing him to a prison term of from 17 years, 4 months and 1 day to 20 years, to indemnify the offended party in the sum of P3,000, and to pay the costs. The case was appealed to the Court of Appeals, but the latter has remanded it to Us on the ground that only questions of law are involved in the appeal.

The record discloses that defendant-appellant was charged with the crime of murder in an information which reads as follows:

"That on or about the 2nd day of July, 1952, in the municipality of Caloocan, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and known premeditation, in the dwelling of Mariano Inocencio, who is 56 years old and the father-in-law of the accused, armed with a .45-cal. pistol, did then and there willfully, unlawfully and feloniously shoot Mariano Inocencio on the different parts of his body, thus inflicting upon the latter three (3) gunshot wounds, and as a result thereof, Mariano Inocencio died instantly.

"All contrary to Law, with the qualifying circumstance of treachery and known premeditation and the generic aggravating circumstance of insult or disregard of the respect due the offended party because of his age and that the crime was committed in the dwelling of the offended party and the alternative circumstance of relationship, the offended party being the father-in-law of the accused."

When the defendant was read the information on arraignment, he entered a plea of not guilty. When his case was called for hearing, after several postponements, the following proceedings took place in the trial courts:

"ATTY. DE LA CRUZ:

If Your Honor please, after conferring with the accused in this case I found out that he had already entered a plea of not guilty. But after we have discussed with the Fiscal the circumstances and the facts on record, I suggested that because it is not clear that the accused had premeditated the killing of the victim, I suggested that the information be amended to homicide in which case my client will be willing to change his plea from not guilty to guilty.

"COURT:

What do you say Fiscal?

"FISCAL:

I move, If Your Honor please, that the information in Crim. Case No. 3651 be amended from murder to homicide.

"COURT:

Motion granted.

"ATTY. DE LA CRUZ:

In view of the amendment to homicide of the information, the accused would beg this Honorable Court for permission to allow him to withdraw his former plea of not guilty and permit him to plead guilty.

"COURT:

Permission granted.

"COURT TO ACCUSED:

Your lawyer informed the Court that you are asking that you be allowed to withdraw your former plea of not guilty and change it with that of guilty. What do you say about that?

"ACCUSED:

Yes, Your Honor,

"COURT:

In view of the plea of guilty of the accused...

"ATTY. DE LA CRUZ:

Yes, Your Honor.

"COURT:

Decision, x x x."

In view of the plea of guilty entered by the accused, the court thereupon rendered the judgment appealed from. Against this judgment the defendant has prosecuted this appeal claiming that there was no valid amended information and arraignment and a plea thereto of guilty entered by the accused and that the lower court erred in imposing the maximum penalty for homicide and in not applying the Indeterminate Sentence Law. The Solicitor General joins the counsel for the appellant in the request that the proceedings be declared annulled and the case remanded to the court below for the amendment of the information, arraignment thereon, etc.

The record does not show that an amended information was filed by the fiscal or that amendments were inserted in the body of the original information read to the accused. It is clear, however, from the amendment of the crime charged from that of murder to that of homicide, as announced by the fiscal. and approved by the court,, that the two qualifying circumstances of murder expressly alleged in the information, namely, treachery and evident premeditation, were meant to be suppressed from the information. The most proper course for the fiscal and the court to follow was to have the information then and there amended by the fiscal by making the suppressions or changes on the original information read to the accused, or an amended information filed, and then to have said amended information read to the accused for his plea thereon. But the irregularity committed in the case at bar seems to be a technical one, which should not be permitted to prejudice the accused and upon which the Rules frown. The prejudice to the accused of remanding the case for the filing of an amended information and his arraignment thereon would arise from the further delay of the proceedings in violation of the right of an accused

to a speedy disposition of his case. In any case, there seems to be no question that the understanding between the prosecution and defense and court at the time of the trial was that the allegations of treachery and evident premeditation were to be considered eliminated so that the defendant-appellant would be charged with homicide and that he was pleading guilty thereto. This understanding is not questioned and was taken as correct by the defendant-appellant until the judgment was rendered, when he was sentenced to a term which the amended information could not have justified.

We find that the accused by his plea of guilty has admitted the commission of the crime of homicide attended by the aggravating circumstances of insult or in disregard of the respect due the offended party on account of his age and of dwelling. At the same time we should consider his plea of guilty as a mitigating circumstance, which should compensate one of the above aggravating circumstances. The defendant-appellant should therefore be sentenced for homicide with the attendance of one aggravating circumstance. The judgment appealed from is hereby modified, and the defendant-appellant hereby sentenced to a penalty which shall not be less than 8 years and one day of prision mayor and not more than 17 years 4 months and 1 day of reclusion temporal, to indemnify the heirs of the offended party in the sum of P3,000, and to pay the costs.

Bengzon, Padilla, Montemayor, Reyes, Bautista Angelo, Concepcion, and Reyes, J.B.L., JJ., concur.

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