

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.  
NAPOLEON C. ORTIZ, ALIAS &#8220;LEON&#8221;, DEFENDANT AND  
APPELLANT.**

*G.R. No. L-19585. November 29, 1965*

Ponente: DIZON, J.

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**DIZON, J.:**

Charged in the Court of First Instance of Pangasinan (Criminal Case No. D-1210) with the murder of Alfredo Ducusion and the frustrated murder of the latter wife, Virginia Munar, Napoleon C. Ortiz, alias Leon, pleaded not guilty. After two witnesses for the prosecution had testified, said defendant, through counsel, manifested his willingness to plead guilty to the lesser offenses of homicide and frustrated homicide. Consequently the Assistant Provincial Fiscal, with the approval of the court, amended the information accordingly, and upon new arraignment, the said defendant entered a plea of guilty to the amended information.

Thereafter, the defendant, with leave of court, presented as witness the Chief of Police of San Fabian, Pangasinan, to prove the mitigating circumstance of voluntary surrender. Thereafter, the court, considering the mitigating circumstance of voluntary surrender, rendered judgment sentencing the accused to an indeterminate penalty of from 6 years and 1 day of prision mayor to 12 years and 1 day of reclusion temporal for the crime of homicide, and from 6 months and 1 day of prision correctional to 6 years and 1 day of prision mayor for the crime of frustrated homicide; to indemnify the offended party, Virginia Munar, in the sum of P6,000 and to pay the costs.

The Court refused to give the defendant the benefit of the mitigating circumstance of plea of guilty because the same was made after the prosecution had already commenced the presentation of its evidence. Claiming that the trial court erred in this respect, the defendant interposed the present appeal.

The only question to be resolved in this appeal is whether or not the lower court erred in not considering in favor of appellant the mitigating circumstance of plea of guilty,

On the strength of our decision in *People vs. Intal*, 101 Phil., 306, We find appellant's contention - that said mitigating circumstance should have been considered in His favor - to be meritorious.

It is true that, upon the original information for murder and frustrated murder, the trial had already begun. However, when in view of the willingness of appellant to plead guilty for a lesser offense the prosecution, with leave of court, amended said information to make it one for homicide and frustrated homicide, appellant pleaded guilty thereto. That was an entirely new information and no evidence was presented in connection with the charges made therein before appellant entered his plea of guilty. We believe therefor that, as in the *Intal* case, appellant was entitled to have the mitigating circumstance of plea of guilty considered in his favor in connection with the imposition of the corresponding penalty.

Wherefore, the decision appealed from is hereby modified as follows:

(a) In the homicide case, the defendant is sentenced to suffer an indeterminate penalty of not less than 2 years 4

months and 1 day of prison correctional, nor more than 10 years of prision mayor.

(b) In the case for frustrated homicide, the same appellant is hereby sentenced to suffer an indeterminate penalty of not less than 6 months of arresto mayor, nor more than 2 years, 4 months of and 1 day of prison correctional.

(c) The carbine used by appellant in committing the offenses charged, with serial number 3215519, Gal. 30 (Irwin-Pedersen) is hereby ordered confiscated.

The appealed judgment is affirmed in all other respects. With costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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