

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FEDERICO C. TOREJAS ALIAS & BEN; AND BONIFACIO C.
TOREJAS ALIAS & QUILINO, DEFENDANTS AND
APPELLANTS.**

G.R. No. L-29935. January 31, 1972

Ponente: FERNANDO, J.

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FERNANDO, J.:

Artemio Dasalla was stabbed to death in the morning of June 29, 1963 in the Municipality of Urdaneta, Pangasinan. Two brothers, Federico C. Torejas and Bonifacio C. Torejas, now appellants, were charged with murder, the qualifying circumstance alleged being that of treachery, in an information filed on November 25, 1963. After trial duly had, they were convicted and sentenced to reclusion perpetua by the lower court, no credence being paid to the claim of self-defense by Bonifacio C. Torejas who, at the same time, did impress on the trial judge that his brother, Federico, was in nowise involved, although he was present at such occurrence. In the decision of October 30, 1968, both were found guilty beyond reasonable doubt of the crime of murder and sentenced as indicated above, being required likewise to indemnify jointly and severally the heirs of Artemio Dasalla in the sum of P12,000.00. Hence this appeal. A careful study of the records of the case discloses that while appellants are not entitled to an acquittal, still there was a failure to appreciate the mitigating circumstance of voluntary surrender in their favor and there was no sufficient showing of the qualifying circumstance of treachery and the aggravating circumstance of evident premeditation. Moreover, the liability justly incurred by appellant Federico C. Torejas is at the most that of an accomplice. Hence, a modification of the judgment is indicated.

The conviction was primarily based on the testimony of a lone eyewitness, Federico Rivera, who testified that at about 8:30 in the morning of June 29, 1963, while he was hauling palay in the store of a certain Mrs. Julia Marquez at Urdaneta, Pangasinan, he saw "Artemio Dasalla stabbed by the Torejas brothers." [1] The stabbing incident, according to him, took place at the New Life Store near where he was working. [2] His version was to the effect that while Artemio Dasalla was lighting a cigarette, he saw the accused, Bonifacio C. Torejas, hit him on the head with a bottle, after which he was stabbed by the other accused, Federico C. Torejas, with a small bolo. [3] The victim did run away, but he was followed by Bonifacio C. Torejas who, with his bolo, continued to stab him several more times, with the witness unable to remember how many. [4] All the while, Federico, the other accused, was just standing by the door of the store of the employer of the witness. [5]

It was primarily on that basis that the conviction of both accused was predicated, the lower court disregarding their version of self-defense, with Bonifacio C. Torejas admitting that he inflicted the stab wounds to protect himself from an aggression coming from the deceased, his brother, Federico C. Torejas, not participating at all in such tragic incident. This is their version, as summarized in the decision of the court: "That on June 29, 1963 at about 8:40 o'clock in the morning Bonifacio Torejas stopped his calesa in front of the New Life Store in the Poblacion of Urdaneta, Pangasinan, because he had a passenger who alighted at that place. As this passenger had

no loose change for his fare, Bonifacio went to the New Life Store to have the money given to him by the passenger changed. Artemio Dasalla followed Bonifacio inside the store. Upon getting near, Artemio held Bonifacio by the shoulder and drew a Batangas knife from his pocket, opened it and with it tried to stab Bonifacio but as the latter's brother, Federico Torejas, timely shouted, 'You are in danger' * * *, Bonifacio ran away to the northern door of the New Life Store. But Artemio followed Bonifacio, so the latter turned around, and grappled with Artemio and stabbed him several times with a small bolo. * * * When Bonifacio was stabbing Artemio, his brother Federico Torejas did not do anything. After Bonifacio had stabbed Artemio, the latter ran out from the New Life Store to the store of one Julia Marquez, and Bonifacio did not follow him anymore. It was at that instance policemen arrived at the scene."[6]

The lower court premised its failure to accept what was testified to by the defense on the following ground: "Both accused, Bonifacio Torejas and Federico Torejas, testified that the deceased had a Batangas knife with which he supposedly tried to assault Bonifacio Torejas. However, it appears undisputed that upon arrival of police corporal Geronimo Antonio and patrolman Teofilo Leal in the scene immediately after the stabbing of the deceased, both accused at once surrendered their small bolos * * * to Cpl. Antonio who brought them and their bolos to the office of the chief of police of Urdaneta, while patrolman Leal brought Artemio Dasalla in a tricycle to the health center of Urdaneta. Now, if really the deceased Artemio Dasalla was armed with a Batangas knife as claimed by both accused, then Pat. Leal could have gotten that knife from the person of the deceased or found one within the place or vicinity of the scene of the stabbing. It could not at all be that the deceased who was gravely wounded had hid his alleged arm upon arrival of the policemen for not even accused Federico Torejas who claims non-participation in the stabbing had himself so hid his small bolo. So it was certain that the deceased was not armed. This is further shown by the testimony of prosecution eye-witness Federico Rivera who emphatically declared that the deceased only tried to parry the thrusts against him because he was unarmed."[7] It therefore found both accused guilty of the crime of murder qualified by treachery, with the aggravating circumstance of evident premeditation, presumably arising from an earlier incident between the deceased and the accused, Bonifacio C. Torejas, and without any mitigating circumstance, notwithstanding the testimony by the police corporal that both accused voluntarily surrendered. Even if the question be looked at from the standpoint of the credibility to which the respective versions of prosecution and defense were entitled, a modification of the judgment is indicated for as will be pointed out, certain well-settled principles did not receive from the lower court the deference to which they are entitled.

1. Geronimo Antonio, a police corporal of Urdaneta, Pangasinan, testified that he was on duty on June 29, 1963, and that in the course thereof he noticed the incident that did take place in the store of Julia Marquez, both of the accused immediately thereafter having "voluntarily surrendered." [8] With such testimony coming from an unbiased source, it is difficult to understand why such a mitigating circumstance was not taken into consideration by the lower court. [9] When one gives himself up, thus obviating the need, in the language of the then Justice, now Chief Justice Concepcion, "of peace officers having to look for them," [10] then the above codal provision comes into play. It does provide an incentive for such laudable conduct. It encourages an accused to allow the law to take its course, rather than take flight. Such exercise of will, the law approves.

So it was held in a 1934 decision [11] where such a legal rule was for the first time accorded an interpretation by this Court: "In order that the mitigating circumstance of voluntary surrender may be taken into consideration in favor of an accused, it is necessary that the same be spontaneous in such manner that it shows the intent of said accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense necessarily incurred in his search and capture." [12] As a matter of fact, five years later, the then Chief Justice Avanceña had occasion to state: [13] "It is admitted that five days after the commission of the crime and two days after the issuance of the order for the arrest of the appellant, the latter

presented himself in the municipal building to post the bond for his temporary release. We hold that this voluntary surrender constitutes a mitigating circumstance under paragraph 7 of article 13 of the Revised Penal Code." [14] The latest case in point, the opinion being penned by Justice J.B.L. Reyes, [15] makes clear that the attitude of liberality has not been deviated from. Thus: "But we have to appreciate in favor of the accused the mitigating circumstance of voluntary surrender. For while it is true that the warrant for his arrest was dated 7 March 1967 and the police authorities were able to take custody of the accused only on 31 March 1967, there is nothing on record to show that the warrant had actually been served on him, or that it had been returned unserved for failure of the server to locate said accused. Upon the other hand, there is direct evidence that the accused voluntarily presented himself to the police on 31 March 1967. And the fact that it was effected sometime after the warrant of arrest had been issued does not in the least detract from the voluntary character of the surrender, in the absence of proof to the contrary. Thus, in one case, this Court considered voluntary surrender in favor of the accused, notwithstanding that he showed up 16 days after the order for his arrest was issued, on the ground that the law does not require that before the privilege may be availed of the surrender should take place prior to the issuance of the arrest order." [16]

2. Equally deplorable was the failure of the lower court to abide by well-settled principles as to when the circumstance of alevosia and evident premeditation, whether as qualifying or aggravating, could be taken into consideration. Here, the crime for which the appellants were convicted by it is murder, the killing in its opinion being qualified by alevosia attended by the aggravating circumstance of evident premeditation. In that respect, the decision is open to objection for it ignored the exacting standard imposed by law as to when such a finding is warranted. The same degree of proof to dispel any reasonable doubt is required for such a conclusion. The test that must be met is likewise impressed with that character. Unless the evidence then, measures up to such a requirement, it cannot be validly held that the criminal act was attended with either circumstance. Such a principle goes back to a 1903 decision, *United States vs. Barbosa*, [17] where this Court, through the then Justice Torres, categorically stated: "Beyond these we think that no other should be considered, not even those of premeditation and treachery, appreciated by the court below in its judgment, since the case does not furnish any evidence, to the effect that Barbosa had formed the deliberate, premeditated intention to take the life of his wife, and there was no eyewitness as to the manner in which the deceased was strangled; consequently, there is no provision of law under which we can hold that the crime was committed with treachery, and it must be borne in mind that the qualifying circumstances of a crime in its commission, in order to be considered, must be established by competent evidence as well as the crime to which they relate." [18] Not long after, in 1905, an equally eminent jurist, the then Justice, later Chief Justice, Mapa, affirmed such a doctrine. Thus: "The circumstances specifying an offense or aggravating the penalty thereof must be proved as conclusively as the act itself, mere suppositions or presumptions being insufficient to establish their presence according to law. No matter how truthful these suppositions or presumptions may seem, they must not and can not produce the effect of aggravating the condition of the defendant." [19] Such an approach, all the while, has been consistently followed by this Court.

3. More specifically, as to treachery, there is this ruling handed down the same year, again from the pen of Justice Mapa: "As the [qualifying] circumstance of treachery (alevosia) is an important one, in considering it, it should by all means be based on some positive conclusive proof and not merely upon hypothetical facts, drawn more or less logically, because it is necessary that the existence of this circumstance in the commission of the crime should be proven as fully as the crime itself, in order to aggravate the penalty incurred by the guilty party." [20] On what was the finding by the lower court of qualifying circumstance of alevosia predicated? All that appears from the testimony of the lone eyewitness presented, a certain Federico Rivera, was that while the deceased Dasalla was lighting a cigarette at the New Life Store, he saw "Bonifacio Torejas hit the head of Artemio Dasalla with a bottle." [21] The lower court was able to elicit the admission from him that at that time he was lifting a sack of

palay at the adjacent store of a certain Julia Marquez, where he was a laborer.[22] It cannot be certain, then, that all the while he was fully aware of what transpired between the appellant Bonifacio Torejas and the deceased. While the lower court's finding that there was no unlawful aggression from the deceased, it being shown that he was unarmed, could be given credence, it does not exclude the probability that there must have been some exchange of words between the two before appellant Torejas hit the victim with a bottle. The eyewitness might have seen what was happening, but it does not follow that he was likewise in a position to hear what was uttered by either participant on such an occasion. The evidence of alevosia was indeed tenuous.

What was said by the then Justice Villamor in *People vs. Ramiscal*[23] has some bearing. Thus: "From this point of view the only circumstance in the record to show the qualifying circumstance of alevosia, which qualifies the crime of murder, is the fact that the wound was inflicted in the right underarm of the deceased. In our opinion, however, this circumstance alone, and even taken in conjunction with the testimony of Umali that he saw the accused stab the deceased while the latter was in a position of placing something within the show case, and considering the last words of the conversation between the accused and the deceased, is not sufficient to hold, with reasonable certainty, that the latter was completely unaware of the attack that might have come from the defendant. The qualifying circumstance of treachery (alevosia) may not be deducted from indicia nor from presumption. The fact that the defendant employed ways and means in the execution of the crime, tending directly and specially to insure it, must be proven with convincing evidence. As there is no certainty that in the death of the deceased there was treachery, which characterizes the crime of murder, the crime may only be punished as homicide." [24] Alevosia, to repeat, "is not to be presumed, but must be proved as conclusively as the act which it qualifies." [25] Unfortunately, the lower court was deaf to the admonition that it "cannot be held to be present from mere conclusions or inferences." [26]

Even assuming the mere suddenness of the attack, it did not, of itself, suffice, as pointed out by the then Justice, later Chief Justice Paras, for a finding of alevosia "because the mode adopted by the appellants does not positively tend to prove that they thereby knowingly intended to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that [might be offered]." [27] Only then, if the victim were caught "completely unaware and deprived of any chance to ward off the assault," would it be proper to consider the existence of alevosia. [28] This is so because in the explicit language of the Revised Penal Code, alevosia or treachery exists "when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution, thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make." [29]

4. The finding that a crime was attended with evident premeditation is even more indefensible. It cannot even be said that it was based on evidence tenuous in character; it would appear to rest on mere conjecture. All that the lower court could go on was a statement elicited from the accused Bonifacio Torejas that two years before this tragic event, there was an altercation between him and the deceased, which was amicably settled. Moreover, during all the time previous to the stabbing, there was no misunderstanding at all between the two. [30] This is a case, then, where the observation in *People vs. Lamson* [31] calls for application: "It is also very clear that it happened in the spur of the moment and without any intervening period during which the appellant could have meditated, reflected and resolved upon the act she was about to commit or sufficient time to allow her conscience to overcome the resolution to carry out what she had proposed or decided to do." [32] It would be to ignore what has so long been the constant doctrine of this Court that the circumstance of deliberate premeditation exists only if it could be shown beyond reasonable doubt that there intervened a period of time long enough in a judicial sense to afford full opportunity for meditation and reflection thus enabling the conscience of the accused to overcome the resolution of his will if he would only pay heed to its warning. [33]

In other words, this circumstance can be taken into account only when there had been a cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act.[34] There must be "an opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what they had planned to do, an interval long enough for [the] conscience and better judgment to overcome [the] evil desire and scheme." [35] Where "there was no direct evidence of the planning or preparation" it cannot be said to exist "since it is not enough that premeditation be suspected or surmised, but the criminal intent must be evidenced by notorious untoward acts evincing determination to commit the crime. It is not 'premeditation' merely; it is 'evident premeditation.'" [36] It follows then that if at most, the accused was heard to express a resolve to commit a crime without any evidence that he did seek out the deceased to kill him, it cannot be said that the crime was so attended, as it must "be well-defined." [37] It must be remembered in this connection that to justify such a finding, it is not enough that there be a threat on the life of the victim; it must be proved that the accused not only had decided to commit the crime but also that the decision was the result of meditation, calculation and reflection. [38] Nor is it to be forgotten that premeditation, as in the case of any other aggravating circumstance, must be duly proved. [39] Otherwise stated, the evidence must be such as to dispel any reasonable doubt as to its existence. [40] The same quantum as is necessary to establish the crime is required; that degree of clarity is indispensable. [41]

It is thus obvious that the lower court deviated from the controlling legal doctrines in finding the existence of the qualifying circumstance of alevosia as well as the aggravating circumstance of evident premeditation.

5. Now, as to the criminal liability of the appellants. Clearly, Bonifacio C. Torejas is guilty as principal, but only of the crime of homicide, there being no qualifying circumstance of treachery. He likewise has in his favor the mitigating circumstance of voluntary surrender. As above noted, the aggravating circumstance of evident premeditation should not be taken against him. As to Federico C. Torejas, while he could not be exculpated from any criminal liability, notwithstanding the strong plea made on his behalf on the witness stand by his brother Bonifacio C. Torejas, he should not either, considering all the relevant facts above narrated, be liable as a principal. At the most, his liability should be that of an accomplice. So this Court did hold in the recent case of *People vs. Tolentino*. [42] For, in the language of the above decision: "What was done by him did not entail the responsibility that the law imposes on a principal. His criminal liability amounts at most to that of accomplice." [43] The *Tolentino* opinion likewise drew support from the leading case of *People vs. Tamayo*, [44] extensively quoted therein, where this Court, speaking through the then Justice Street, stated: "Upon this point it is undoubtedly true that concert of action at moment of consummating the homicide, and the form and manner in which assistance is rendered, may determine complicity where it would not be otherwise evident. Thus, in a decision of December 29, 1884, the case was that after two individuals had beaten another and thrown him to the ground, the accused got upon him, trampling his breast and face. As a consequence of the injuries received from the beating by the first two, the injured person died. It was held by the Supreme Court of Spain that the accused was guilty in the character of accomplice, saying: 'Although the accused did not intervene in giving the mortal injury caused by the cudgel, for which reason he is not comprehended in article 13, he simultaneously trampled upon the deceased who was on the floor; and this simultaneity of acts contributing to the homicide makes him an accomplice in the same.' (Decision, Dec. 29, 1884; Viada, vol. 1, p. 375.)" [45] After referring to several other decisions of the Supreme Court of Spain, as cited by Viada, the opinion went on to state: "Now, although, as thus demonstrated, participation on the part of an accomplice in the criminal design of the principal is essential to the same extent as such participation is necessary on the part of one charged as co-principal, nevertheless, it is evident, — and the cases above cited abundantly prove — that, as against an accomplice, a court will sometimes draw the inference of guilty participation in the criminal design from acts of concert in the consummation of the criminal act and from the form and manner in which assistance is rendered, where it would not draw the same inference for the purpose of holding the same accused in the character of principal. This is because, in case of

doubt, the courts naturally lean to the milder form of responsibility." [46] Mention should likewise be made that in the Tolentino opinion, there is likewise the following relevant excerpt: "Only recently, the same doctrine was reiterated in *People vs. Rival*, this Court speaking through the then Chief Justice Bengzon. As set forth therein: 'However, lack of complete evidence of conspiracy, that creates the doubt whether they had acted as principals or accomplices in the perpetration of the offense, impels this Court to resolve in their favor the question, by holding like the court below, that they were guilty of the "milder form of responsibility," i.e. guilty as mere accomplices.'" [47]

WHEREFORE, the decision of the lower court of October 30, 1968 is modified in the sense that appellant Bonifacio C. Torejas is found guilty as principal of the crime of homicide with the mitigating circumstance in his favor of voluntary surrender and adjudged to suffer an indeterminate sentence of six months and one day to twelve years and one day, while appellant Federico C. Torejas is found guilty as accomplice in the aforesaid crime of homicide with the mitigating circumstance of voluntary surrender in his favor and adjudged to suffer an indeterminate sentence of six months and one day to six years and one day, with both appellants ordered to indemnify jointly and severally the heirs of Artemio Dasalla in the sum of P12,000.00 and to pay the costs of this proceeding.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Barredo, and Villamor, JJ., concur.

Castro and Teehankee, JJ., concur in the result.

Makasiar, J., took no part.

[1] T.s.n., Session of February 15, 1967, p. 25.

[2] *Ibid*, p. 26.

[3] *Ibid*, pp. 26-27.

[4] *Ibid*, pp. 28-30.

[5] *Ibid*, p. 30.

[6] Decision, Appendix A to Brief for Appellants, pp. 14-15.

[7] *Ibid*, pp. 18-20.

[8] *Ibid*, p. 14.

[9] Art. 13 of the Revised Penal Code, in mitigating circumstances, insofar as pertinent, reads: "7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution."

[10] *People vs. Saturnino*, 96 Phil. 868 (1955).

[11] *People vs. Sakan*, 61 Phil. 27.

[12] *Ibid*, pp. 34-35.

[13] *People vs. Yecla*, 68 Phil. 740 (1939).

[14] *Ibid*, p. 741.

[15] *People vs. Brana*, L-29210, Oct. 31, 1969, 30 SCRA 307. Cf. *People vs. Sakam*, 61 Phil. 27 (1934); *People*

vs. Yecla, 68 Phil. 740 (1939); People vs. Yturriaga, 86 Phil. 534 (1950); People vs. Valeriano, 90 Phil. 15 (1951); People vs. Gammuac, 93 Phil. 657 (1953); People vs. Ripas, 95 Phil. 63 (1954); People vs. Izon, 104 Phil. 690 (1958); People vs. Villegas, L-16818, May 31, 1961, 2 SCRA 587; People vs. Lopez, L-12704, Sept. 30, 1961, 3 SCRA 165; People vs. Fausto, L-16381, Dec. 30, 1961, 3 SCRA 863; People vs. Tenorio, L-15478, March 30, 1962, 4 SCRA 700; People vs. Taruc, L-14010, May 30, 1962, 5 SCRA 132; People vs. Valera, L-15662, Aug. 30, 1962, 5 SCRA 910; People vs. Basbanio, L-16489, Jan. 31, 1963, 7 SCRA 82; People vs. Bello, L-18792, Feb. 28, 1964, 10 SCRA 298; People vs. Magpantay, L-19133, Nov. 27, 1964, 12 SCRA 389; People vs. Tiongson, L-9866, Nov. 28, 1964, 12 SCRA 402; People vs. Mendoza, L-16392, Jan. 30, 1965, 13 SCRA 11; People vs. Calacala, L-18348, May 31, 1965, 14 SCRA 156; People vs. Libed, L-20431, June 23, 1965, 14 SCRA 410; People vs. Secapuri, L-17518, Feb. 28, 1966, 16 SCRA 199; People vs. Coronel, L-19091, June 30, 1966, 17 SCRA 509; People vs. Casalme, L-18033, July 26, 1966, 17 SCRA 717; People vs. Clemente, L-23463, Sept. 28, 1967, 21 SCRA 261; People vs. Labis, L-22087, Nov. 15, 1967, 21 SCRA 875; People vs. Diva, L-22946, April 29, 1968, 23 SCRA 332; People vs. Garcellano, L-25345, May 13, 1968, 23 SCRA 595; People vs. Oandasan, L-29532, Sept. 28, 1968, 25 SCRA 277; People vs. Pantoja, L-18793, Oct. 11, 1968, 25 SCRA 468.

[16] Ibid, pp. 316-317.

[17] 1 Phil. 741 (1903).

[18] Ibid, pp. 745-746. To the same effect is another 1903 opinion of the same jurist in United States vs. De Jesus, 2 Phil. 514.

[19] United States vs. Perdon, 4 Phil. 141, 143 (1905).

[20] United States vs. Rana, 4 Phil. 231, 233-234 (1905).

[21] T.s.n., Session of Feb. 15, 1967, p. 26.

[22] Ibid, p. 31.

[23] 49 Phil. 103 (1926).

[24] Ibid, pp. 106-107.

[25] People vs. Abril, 51 Phil. 670, 675 (1928).

[26] People vs. Bordador, 63 Phil. 305, 311 (1936).

[27] People vs. Delgado, 77 Phil. 11, 15-16 (1946). The doctrine was followed in People vs. Calinawan, 83 Phil. 647 (1949).

[28] People vs. Monroy, 104 Phil. 759 (1958).

[29] Art. 14, par. 16.

[30] T.s.n., Session of Sept. 14, 1967, p. 69.

[31] L-14110, March 29, 1963, 7 SCRA 478.

[32] Ibid, p. 485.

[33] According to United States vs. Gil, 13 Phil. 530 (1909): "in the light of all the evidence of record the substance of which is hereinbefore set out, we are satisfied that * * * a period of time long enough to justify us in holding that the crime was committed with deliberate premeditation (premeditacion conocida), because, in a

judicial sense, it afforded full opportunity for meditation and reflection, and was amply sufficient to allow his conscience to overcome the resolution of his will (vencer las determinaciones de la voluntad) had he desired to hearken to its warnings; this being the measure of the period of time necessary to justify the inference of deliberate premeditation, as laid down in the case of the United States vs. Ricafor, (1 Phil. Rep., 173) adopting the rule laid down by the supreme court of Spain in its sentencia dated November 10, 1894." At pp. 547-548. The Gil decision was cited with approval in United States vs. Blanco, 18 Phil. 206 (1911); United States vs. Kadayum, 23 Phil. 1 (1912); United States vs. Gamao, 23 Phil. 81 (1912); United States vs. Buncad, 25 Phil. 530 (1913); United States vs. Jamad, 37 Phil. 305 (1951); People vs. Gonzalez, 76 Phil. 473 (1946); People vs. Monroy, 104 Phil. 759 (1958); People vs. Hanasan, L-25989, Sept. 30, 1969, 29 SCRA 534. Without referring to the case by name, the doctrine was followed in People vs. Parayno, L-24804, July 5, 1968, 24 SCRA 3; People vs. Pantoja, L-18793, Oct. 11, 1968, 25 SCRA 468; People vs. Mongaya, L-23708, Oct. 31, 1968, 25 SCRA 921; People vs. Ompad, L-23513, Jan. 31, 1969, 26 SCRA 750.

[34] People vs. Gonzalez, 76 Phil. 473 (1946).

[35] People vs. Mendoza, 91 Phil. 58, 64 (1952).

[36] People vs. Mendoza, 100 Phil. 811, 818 (1957).

[37] People vs. Baloyo, 106 Phil. 972, 980 (1966).

[38] People vs. Brana, L-29210, Oct. 31, 1969, 30 SCRA 307. Cf. People vs. Danan, 83 Phil. 252 (1949); People vs. Yturriaga, 86 Phil. 534 (1950); People vs. Mendoza, 91 Phil. 58 (1952); People vs. Lasafin, 92 Phil. 668 (1953); People vs. Rodriguez, 103 Phil. 1008 (1958); People vs. Baloyo, 106 Phil. 972 (1960); People vs. Oyco, 109 Phil. 415 (1960); People vs. Fausto, L-16381, Dec. 30, 1961, 3 SCRA 863; People vs. Taruc, L-14010, May 30, 1962, 5 SCRA 132; People vs. Rafanan, L-13289, Sept. 29, 1962, 6 SCRA 53; People vs. Tuazon, L-10614, Oct. 22, 1962, 6 SCRA 249; People vs. Enot, L-17530, Oct. 30, 1962, 6 SCRA 325; People vs. Canitan, L-16498, June 29, 1963, 8 SCRA 358; People vs. Curiano, L-15256, Oct. 31, 1963, 9 SCRA 323; People vs. Mojica, L-17234, March 31, 1964, 10 SCRA 515; People vs. Magpantay, L-19133, Nov. 27, 1964, 12 SCRA 389; People vs. Mendoza, L-16392, Jan. 30, 1965, 13 SCRA 11; People vs. Pasilan, L-18770, July 30, 1965, 14 SCRA 694; People vs. Berdida, L-20183, June 30, 1966, 17 SCRA 520; People vs. Jaravata, L-22029, Aug. 15, 1967, 20 SCRA 1014; Ramos vs. People, L-22348, Aug. 23, 1967, 20 SCRA 1109; People vs. de la Cerna, L-20911, Oct. 30, 1967, 21 SCRA 569; People vs. Parayno, L-24804, July 5, 1968, 24 SCRA 3; People vs. Pantoja, L-18793, Oct. 11, 1968, 25 SCRA 468; People vs. Mongaya, L-23708, Oct. 31, 1968, 25 SCRA, 921; People vs. Ompad, L-23513, Jan. 31, 1969, 26 SCRA 750; People vs. Mabaga, L-26337, July 25, 1969, 28 SCRA 779; People vs. Hanasan, L-25989, Sept. 30, 1969, 29 SCRA 534.

[39] People vs. Gumahin, L-22357, Oct. 31, 1967, 21 SCRA 729.

[40] People vs. Estrada, L-26103, Jan. 17, 1968, 22 SCRA 111.

[41] Cf. People vs. Diva, L-22946, April 29, 1968, 23 SCRA 332.

[42] L-29419, Aug. 31, 1971, 40 SCRA 514.

[43] Ibid, p. 518.

[44] 44 Phil. 38 (1922).

[45] Ibid, pp. 52-53.

[46] Ibid, p. 54. The Tamayo case has been cited with approval in the subsequent cases of People vs. Caballero,

53 Phil. 585 (1929); People vs. Bantagan, 54 Phil. 834 (1930); People vs. Azcona, 59 Phil. 580 (1934); People vs. Aplegido, 76 Phil. 571 (1946); People vs. Ibanez, 77 Phil. 664 (1946); People vs. Abarintos, 81 Phil. 238 (1948); People vs. Mostoles, 85 Phil. 883 (1950); People vs. Ubina, 97 Phil. 515 (1955); People vs. Arranchado, 109 Phil. 410 (1960); People vs. Rival, L-14077, March 31, 1964, 10 SCRA 462; People vs. Tividad, L-21469, June 30, 1967, 20 SCRA 549, People vs. Clemente, L-23463, Sept. 28, 1967, 21 SCRA 261; People vs. Tatlonghari, L-22094, March 28, 1969, 27 SCRA 726.

[47] People vs. Tolentino, L-29419, Aug. 31, 1971, 40 SCRA 514, 519.

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