

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOSEPH CASEY ALIAS "BURI"; AND RICARDO FELIX
ALIAS "CARDING TUWAD", DEFENDANTS-APPELLANTS.**

G.R. No. L-30146. February 24, 1981

Ponente: GUERRERO, J.

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GUERRERO, J.:

Automatic review of the judgment of the Circuit Criminal Court in Criminal Case No. CCC-VII-6, Rizal (17857), imposing upon Joseph Casey alias "Buri" and Ricardo Felix alias "Carding Tuwad" the capital punishment for the death of Alfredo Valdez. The dispositive portion thereof, states:

"WHEREFORE, the Court finds the accused, Joseph Casey alias "Buri" and Ricardo Felix alias "Carding Tuwad", GUILTY, beyond reasonable doubt, of the commission of the crime of Murder, under Article No. 248 of the Revised Penal Code, as charged in an Information, and hereby sentences them to suffer the PENALTY OF DEATH, with accessory penalties as prescribed by law; to indemnify the heirs of the deceased, Alfredo Valdez, in the amount of TWELVE THOUSAND (P12,000) PESOS, jointly and severally; and to pay the costs."

On May 22, 1968, Assistant Fiscal Herminio I. Benito filed an Information for Murder against accused-appellant Joseph Casey alias "Buri", alleging:

"That on or about the 31st day of March, 1968, in the municipality of San Juan, province of Rizal, a place within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a knife, together with one Ricardo Felix alias "Carding Tuwad" who is then armed with a firearm and who was (sic) still at large, and the two of them conspiring and confederating together and mutually helping and aiding one another, with intent to kill, evident premeditation and treachery and taking advantage of superior strength, did, then and there wilfully, unlawfully and feloniously attack, assault and shoot and stab with the said firearm and knife one Alfredo Valdez, thereby inflicting upon the latter fatal wounds which directly caused his death.

Contrary to law."^[1]

On June 24, 1968, upon arraignment, said accused pleaded not guilty to the crime charged in the said complaint. Then, sometime in September, 1968, accused-appellant Ricardo Felix alias "Carding Tuwad" was arrested. Accordingly, an Amended Information was filed by the same fiscal to include Ricardo Felix as an accused, stating as follows:

"That on or about the 31st day of March, 1968, in the municipality of San Juan, province of Rizal, a place within the jurisdiction of this Honorable Court, the above named accused Joseph Casey alias "Buri" being then armed with a knife, together with the accused Ricardo Felix alias "Carding Tuwad" who was then armed with a firearm, and the two of them conspiring and confederating together and mutually helping and aiding one another, with intent to kill, evident premeditation and treachery and taking advantage of superior strength, did, then and there wilfully, unlawfully and feloniously attack, assault and shoot and stab with the said firearm and knife one Alfredo Valdez, thereby inflicting upon the latter fatal wounds which directly caused his death.

Contrary to law."[2]

On October 15, 1968, accused Ricardo Felix entered the plea of not guilty upon being arraigned and trial was accordingly had.

Mercedes Palomo, 28, resident of 242 Mahinhin Street, San Juan, Rizal, testified that on March 31, 1968, at around three o'clock in the afternoon, while in the house of her aunt, she heard a shot coming from the pool room located near her aunt's place. She then looked towards the direction of the pool room and saw three men coming out, one of them being pursued by the two others. She recognized the man being pursued as Alfredo Valdez alias "G.I." She, however, did not know the names of the pursuers but described one of them as a short man, with curly black hair and black complexion while the other as having a fair complexion. When asked as to whether she can identify them, she answered in the affirmative and pointed to Joseph Casey and Ricardo Felix.[3]

Continuing her testimony, she said that she saw the one with curly hair overtake and stab the victim several times, while in the meantime, Ricardo Felix stood nearby holding a gun which he later fired once at the victim.[4]

Jose Rivera, 57 years old, a policeman, was presented by the prosecution to testify on the investigation he conducted before Judge Alfredo M. Gorgonio on April 1, 1968 involving the accused Joseph Casey. He submitted in evidence the extrajudicial statement of the said accused, contained in a two page sworn statement wherein said accused narrated having a rendezvous with the accused Ricardo Felix and with another person named "Rody" at Cubao Rotonda, Quezon City at about nine o'clock in the morning of March 31, 1968 and thereafter proceeding to Barrio Halo-Halo, San Juan, Rizal at about three o'clock in the afternoon, where the incident happened.[5]

Patrolman Honorio Carritero, 46 years old, also a policeman, testified that in the afternoon of March 31, 1968, he was awakened by noise that somebody was stabbed and shot. Upon going out to investigate, he saw the victim lying down near the toilet with stab wounds but still alive, hovering between life and death. He then called for a jeep and brought him to a hospital.[6]

Finally, Dr. Mariano B. Cueva, 32 years of age, a physician, was presented to testify on the Necropsy Report No. 58-425 of Alfredo Valdez, herein quoted as follows:

"Marked paleness of lips, nailbeds, and integument.

Abrasion, 1.5 x 0.7 cm., right scapular region of back, 12.0 cm. from posterior median line.

Stab wounds: (1) 1.1 cm. long, spindle shape, located at left hypochondriac region of abdomen, 11.0 cm. from anterior median line, level of 8th intercostal space; long axis is oriented horizontally, medial extremity sharp, lateral extremity contused, edges clean-cut and slightly gaping, with bevelled lower border; track is directed

backward upward medially, entering abdominal cavity and perforating along its track the greater omentum, body of stomach, body of pancreas, and partly severing the abdominal aorta at the level of 12th thoracic vertebra; approximate depth, 11.0 cms.

(2) 1.1 cm. long, spindle shape, located at umbilical region of abdomen, 2.3 cm. to the left of anterior median line, 6.0 cm. above the level of navel; long axis oriented horizontally, medial extremity sharp, lateral extremity contused, edges clean-cut and gaping, with bevelled lower border; track is directed backward upward and medially, entering abdominal cavity and perforating along its track the greater omentum, pylorus of stomach and body of pancreas; approximate depth, 10.0 cms.

(3) 1.0 cm. long, spindle shape, located at left infra-scapular region of the back, 8.5 cm. from posterior median line, level of 9th rib; long axis is oriented slightly downward and laterally, lateral extremity sharp, medial extremity contused, edges clean-cut and gaping with bevelled upper border; track is directed downward slightly forward and medially taking a deep intramuscular route at left posterior lumbar region to a depth of 9.0 cm.

(4) 1.2 cm. long, slightly curvilinear in shape, located at right posterior lumbar region, 8.0 cm. from posterior median line, 12.0 cm. above iliac crest; convexity of wound is directed upward, medial extremity sharp, lateral extremity contused, edges clean-cut and gaping, with bevelled upper border; track is directed downward slightly forward and laterally, taking a subcutaneous route at right lateral lumbar region to a depth of 6.5 cm.

Hemoperitoneum - 840 cc.

Hematomas, retro-peritoneal, severe, bilateral.

Heart and its big vessels, almost empty of blood.

Brain and other visceral organs, markedly pale.

Stomach, filled with dark fluid and clotted blood about 800 cc."[7]

Cause of Death: Hemorrhage, severe, secondary to stab wounds of abdomen.

On the other hand, the evidence for the defense consisted of the testimonies of the two accused. Joseph Casey, when called to testify on his behalf, admitted having stabbed the victim, Alfredo Valdez but alleged that he did so in self-defense. His version of the incident was that on March 31, 1968, he went to the house of Ricardo Felix but was told that he was not in. So he proceeded to the pool room, located around two or three meters away from the residence of Ricardo Felix. At the start, he simply witnessed those playing pool and when they were through, he himself played. While playing, he accidentally bumped the victim with the pool cue (tako). He accordingly asked for apology but the victim simply ignored him and left the place immediately.[8]

When he was through playing, he went out and saw the victim waiting for him outside, accompanied by six or seven persons holding pieces of wood. As the place had no other exit, he proceeded on his way together with one person named "Rody". While passing by, the victim suddenly drew a "balisong" and lunged it on him. But he was able to parry the thrust. He then took hold of the victim's right hand and grappled with him. In the process, he successfully wrested the knife from him. He then used the weapon against him, hitting him about two or three times. While he was contending with the victim, the latter's companions joined in and hit him with pieces of wood, inflicting "gasgas" or abrasions on his back.[9]

The other accused, Ricardo Felix, testified that he did not see Joseph Casey on March 31, 1968. Likewise, he said that he knew the victim, Alfredo Valdez; that he last saw him alive in a store on the same day that he was killed when he was about to leave for Manila; and that he learned that he was dead when he returned home.[10]

On the basis of the aforesaid evidence, the court a quo rendered the aforementioned judgment of conviction. It found that two aggravating circumstances attended the commission of the crime, namely: employing or taking advantage of superior strength and evident premeditation, one of which qualified the killing to murder. Hence, this automatic review.

The able counsel de oficio for the accused-appellants raised the following assignments of errors in a well-prepared brief:

FIRST ASSIGNMENT OF ERROR

The Court a quo erred in illegally trying appellant Casey on the amended information without arraignment, and in finding him guilty after such illegal trial.

SECOND ASSIGNMENT OF ERROR

The Court a quo erred in holding that the appellants acted with evident premeditation and abuse of superior strength, and in qualifying the crime committed as aggravated murder.

THIRD ASSIGNMENT OF ERROR

The Court a quo erred in holding that the appellants had forged a conspiracy to kill the victim, Alfredo Valdez.

FOURTH ASSIGNMENT OF ERROR

The Court a quo erred in holding that both appellants were liable for the death of Alfredo Valdez; if any crime had been committed at all, the only person responsible therefore was appellant Casey, and, at that, only for homicide, instead of murder.

FIFTH ASSIGNMENT OF ERROR

The Court a quo erred in discounting appellant Casey's defense that he acted in legitimate self-defense.

SIXTH ASSIGNMENT OF ERROR

The Court a quo erred in discounting the defense of alibi interposed by appellant Felix.

SEVENTH ASSIGNMENT OF ERROR

The Court a quo erred in not acquitting both appellants.[11]

We do not find merit in the first assignment of error. The lack of arraignment under the amended information is objected to by accused-appellant Joseph Casey allegedly on the ground that there is a violation of his constitutional right to be informed of the charge against him. There can be a violation of such right, however, only when the amendment pertains to matters of substance. In the case at bar, the alterations introduced in the information refer to the inclusion of accused-appellant Ricardo Felix to the same charge of murder. They do not change the nature of the crime against accused-appellant Casey. Conspiracy, evident premeditation, treachery and taking advantage of superior strength are similarly alleged in both informations. No extenuating circumstance is likewise alleged in both. Thus the amendment of the information as far as accused-appellant Casey is concerned is one of form and not of substance as it is not prejudicial to his rights.

The test as to whether a defendant is prejudiced by the amendment of an information has been said to be whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the one form as in the other.[12] A look into Our jurisprudence on the matter shows that an amendment to an information introduced after the accused has pleaded not guilty thereto, which does not change the nature of the crime alleged therein, does not expose the accused to a charge which could call for a higher penalty, does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance - not prejudicial to the accused and, therefore, not prohibited by Section 13, Rule 110 of the Revised Rules of Court.[13]

We, however, find the second assignment of error of accused-appellants meritorious. The lower court erred in its findings and conclusions, herein quoted below, that the aggravating circumstances of evident premeditation and abuse of superior strength attended the commission of the crime:

"In the morning of March 31, 1968, from the evidence on the record, the two (2) accused, Joseph Casey and Ricardo Felix, had rendezvous in Cubao, Quezon City, and planned to kill the victim, Alfredo Valdez. (Evident premeditation and conspiracy) There was superior strength that was used because the victim, Alfredo Valdez, was alone, being pursued by the two accused, who were both armed. The two accused did not waste time in planning the killing of the victim on March 31, 1968. They clung to their determination of killing the victim. From 9:00 o'clock in the morning, they had the firm conviction and strong determination of killing the victim up to the time of the execution of their evil motive. (People vs. Caushi, G.R. No. L-16495)"[14]

Indeed, accused-appellant Joseph Casey gave an extra-judicial sworn statement that he met accused-appellant Ricardo Felix and another person named "Rody" in Cubao, Quezon City on that fateful day. However, there is no showing that this meeting was purposely arranged to plan the killing of the victim. In fact, the following questions and answers in the said sworn statement show that there was no preconceived design to kill the victim:

"7. T - Sino ang sinasabi mong binaril at sinaksak mo?

S - Hindi ko po kilala dahil noon ko po lamang nakita ang nasabing tao.

8. T - Maari mo bang isalaysay ang buong pangyayari?

S - Kami po ay nagkita nila Carding Tuwad at isang nagngangalang Rody sa Cubao, Quezon City, ng mga alas 9:00 ng umaga, Marzo 31, 1968, at kami ay naginuman. Matapos kaming maginuman, ng mga mag-aalas 3:00 ng hapon ng araw ding iyon, nagyaya po si Carding doon sa kanila sa Barrio Halo-Halo, San Juan, Rizal, at sa paglalakad namin doon sa daang Mahinhin, San Juan, Rizal, nakita ni Carding ang isang lalaki, at ang ginawa ay nilapitan niya. Ng makita ng lalaki si Carding, tumakbo po, at ang ginawa ni Carding ay kanyang hinabol."[15]

The subsequent portions of the said sworn statement further militate against the existence of evident premeditation. Thus, when accused-appellant Casey was asked why Ricardo Felix shot the victim, he answered: "Noon pong nakasakay na kami sa jeep, tinanong ko siya kung bakit nangyari ang away na yaon at and sabi Carding ay: DATI KO NANG NAKAENKWENTRO YAONG TAO" (Question No. 28). And when asked why he stabbed the victim, he replied: Dahilan kasama ko po si Carding kaya ko po nasaksak ang tao. Hindi ko kusang kagustuhan na saksakin ang tao kung hindi dahil sa nakasama ko si Carding." (Question No. 29)

There is evident premeditation when the killing had been carefully planned by the offender or when he had previously prepared the means which he had considered adequate to carry it out, when he had prepared beforehand the means suitable for carrying it into execution, when he has had sufficient time to consider and accept the final consequences, and when there had been a concerted plan.[16] It has also been held that to appreciate the circumstances of evident premeditation, it is necessary to establish the following: (1) the time when the offender determined to commit the crime; (2) the act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will had he desired to hearken to its warning.[17]

From the answers of accused-appellant Casey in said sworn statement, it can be gleaned that the killing was not a preconceived plan. It was not preceded by any reflection or deep thought. It was just a spontaneous decision reached when the victim started to run away upon being approached by accused-appellant Ricardo Felix. Evident premeditation cannot, thus, be considered in this case. The Solicitor General himself agrees with the defense that this circumstance has not been duly proved (People's Brief, p. 8). Hence, the crime committed is simple homicide (Article 249, Revised Penal Code).

There are indeed two accused-appellants in this case charged with the murder of only one victim but superiority in number does not necessarily mean superiority in strength. It is necessary to show that the aggressors "cooperated in such a way as to secure advantage from their superiority in strength." [18] In the case of *U.S. vs. Devela, et al.*, [19] there were two accused who were armed with a bolo and a dagger. But the circumstance of abuse of superiority was not taken into consideration because the mere fact, according to this Court, of there being a superiority of number is not sufficient to bring the case within this provision. There must be proof of the relative physical strength of the aggressors and the assaulted party; [20] or proof that the accused simultaneously assaulted the deceased. [21] As likewise held in *People vs. Trumata and Baligasa*, [22] the mere fact that the two accused may have inflicted fatal wounds on the deceased with their respective bolos does not justify a finding that advantage was taken of superior strength in the absence of proof showing that they cooperated in such a way as to secure advantage from their superiority of strength.

Thus, in the face of the evidence on record showing that although the victim was pursued by both of the accused-appellants [23] and that he was unarmed [24] while the accused-appellants were both armed, one with a

gun and the other with a long pointed weapon,[25] since it is also duly proved that it was only accused-appellant Casey who assaulted and inflicted stab wounds on him as the other accused-appellant merely stood nearby toying with his gun, abuse of superiority cannot be said to have attended the commission of the crime.

The third essential issue to be resolved is whether or not there is conspiracy between the two accused in the commission of the crime. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[26] This agreement need not be in writing or be expressly manifested.[27] It is sufficient that there is a mutual implied understanding between the malefactors as shown by their concerted action towards the fulfillment of the same objective. In *People v. Cadag*,[28] it was held: "Conspiracy to exist does not require an agreement for an appreciable period prior to the occurrence; from the legal viewpoint, conspiracy exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution." To the same effect is the ruling in other cases decided by this Court.[29]

Pursuant to this uniform and consistent jurisprudence on the existence of conspiracy by the mere proof of community of design and purpose on the part of the accused, We hold that conspiracy exists in this case. True enough that there is no direct evidence showing that the accused had conspired together, but their acts and the attendant circumstances disclose that common motive that would make accused Ricardo Felix as a co-principal with the actual slayer, Joseph Casey. Without doubt, he performed overt acts in furtherance of the conspiracy. In *People vs. Peralta*,[30] it was held that such overt act may consist in actively participating in the actual commission of the crime, in lending moral assistance to his co-conspirators by being present at the scene of the crime, or in exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy. In the case at bar, Ricardo Felix's overt acts consist in instigating the pursuit of the deceased, in firing a shot at him and in giving Joseph Casey encouragement by his armed presence while the latter inflicted the fatal wounds on the deceased.

From the extrajudicial confession of the accused-appellant Joseph Casey, it can also be inferred that Ricardo Felix was the moving factor of the evil act perpetrated by the former against the victim. While it was Joseph Casey who inflicted the mortal wounds that caused the death of the victim, he did so out of his perverted sense of friendship or companionship with Ricardo Felix.

Hence, it would be incongruous to acquit Ricardo Felix and put all the blame of the killing on Joseph Casey when it was the latter who merely joined the former in his criminal resolution. The fact that he did nothing but toyed with his gun when Joseph Casey successively stabbed the victim means that he concurred with the will of Casey to do away with the victim. For this reason, he should also be held accountable, notwithstanding the fact that his shot did not hit the victim and that the cause of death of the victim is the stab wounds inflicted by Casey. In *People vs. Peralta*,[31] it was held that the moment it is established that the malefactors conspired and confederated in the commission of the felony proved, collective liability of the accused conspirators attaches by reason of the conspiracy, and the court shall not speculate nor even investigate as to the actual degree of participation of each of the perpetrators present at the scene of the crime.

The above discussion also disposes of the fourth assignment of error of accused-appellants. So We proceed with the fifth assignment of error.

We find that the respondent court correctly disregarded Joseph Casey's claim of self-defense. Besides being unworthy of credence, said claim is uncorroborated and contrary to the testimony of the eyewitness, Mercedes Palomo.

The fact that the victim sustained four stab wounds while the accused complained merely of abrasions on his back

indicates the falsity of the claim. The accused failed to present a medical certificate for the bruises he allegedly sustained. He likewise failed to present anybody to attest to the truth of his allegations. There is no clear and convincing evidence that all the elements of self-defense are present. On the other hand, the prosecution had not only one but several eyewitnesses to the crime as shown by the different affidavits attached to the records of the case. Although only one of the eyewitnesses was presented in court, her lone testimony on what actually transpired, negating the claim of self-defense, is more credible than the version of Joseph Casey. Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself. Human perception can be warped by the impact of events and testimony colored by the unconscious workings of the mind. No better test has yet been found to measure the value of a witness' testimony than its conformity to the knowledge and common experience of mankind.[32]

We likewise find that respondent court correctly denied the defense of alibi of Ricardo Felix. Alibi, in order to be given full faith and credit must be clearly established and must not leave any room for doubt as to its plausibility and verity.[33] In the case at bar, said accused-appellant failed to show clearly and convincingly that he was at some other place about the time of the alleged crime. He merely said that he was at home and that he went to Manila.[34] As pointed out by the Solicitor General, he did not even specify the exact place at Manila where he had gone and the purpose for going there. Then, while said defense was corroborated by Joseph Casey, the latter's testimony lacks that character of trustworthiness since it is very apparent that he was merely attempting to assume full and exclusive responsibility for the crime. Finally, said defense is unavailing when there is positive identification. Prosecution witness, Mercedes Palomo, gave distinct attributes of Ricardo Felix in her sworn statement that leave no iota of doubt that he was one of the perpetrators of the crime.

WHEREFORE, the judgment of the trial court under automatic review is MODIFIED in that the accused-appellants Joseph Casey and Ricardo Felix are found guilty beyond reasonable doubt of the crime of homicide without any attending circumstances and should be sentenced to reclusion temporal in its medium period. But applying the Indeterminate Sentence Law, each of the accused is sentenced to an indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. The accused are likewise sentenced to indemnify the heirs of the deceased Alfredo Valdez in the amount of TWELVE THOUSAND PESOS (P12,000.00) jointly and severally, and to pay the costs.

SO ORDERED.

Barredo, Concepcion, Jr., Fernandez, Abad Santos, De Castro and Melencio-Herrera, JJ., concur.

Fernando, C.J., concurs in the result.

Teehankee, J., dissenting, voted for the imposition of reclusion perpetua in a separate opinion.

Makasiar, J., I join the dissent of JJ., Teehankee and Aquino, in their dissenting opinion.

Aquino J., I dissent, I agree with the Solicitor General that the crime committed is murder qualified by abuse of superiority. The proper penalty is reclusion perpetua.

[1] Original Records, p. 17.

[2] Ibid., p. 75.

[3] T.S.N., December 13, 1968, pp. 1-4.

[4] Ibid., pp. 5-7.

- [5] T.S.N., December 16, 1968, pp. 2-6.
- [6] Ibid., pp. 6-10.
- [7] Original Records, p. 139.
- [8] T.S.N., December 18, 1968, pp. 4-5.
- [9] Ibid., pp. 5-8.
- [10] Ibid., pp. 24-26.
- [11] Brief for the Appellants, pp. 44-45.
- [12] 42 C.J.S., Sec. 240, pp. 1249-1250.
- [13] U.S. vs. De la Cruz, et al., 3 Phil. 331; U.S. vs. Alabot, 38 Phil. 698; Castro, et al. vs. Ozaeta, 65 Phil. 335; Regala vs. Court of First Instance of Bataan, 77 Phil. 684; Caparas vs. Gonzales, 7 SCRA 182.
- [14] Rollo, p. 10.
- [15] Original Records, p. 5.
- [16] U.S. vs. Cornejo, 28 Phil. 457.
- [17] People vs. Lim, 71 SCRA 249; People vs. Bodoso, 60 SCRA 61; People vs. Manangan, 59 SCRA 31; People vs. Ardisa, 55 SCRA 245; People vs. Diva, et al., 23 SCRA 332; People vs. Beralde, L-32832, June 29, 1979; People vs. Corachea, L-30101, July 16, 1979.
- [18] People vs. Elizaga, 86 Phil. 365; People vs. Calucer, 94 Phil. 1048; People vs. Abang, 110 Phil. 454; People vs. Guarnes, 110 Phil. 379.
- [19] 3 Phil. 625.
- [20] People vs. Bustos, et al., 51 Phil. 385.
- [21] People vs. Rubia, et al., 52 Phil. 172.
- [22] 49 Phil. 192.
- [23] T.S.N., December 13, 1968, p. 4.
- [24] Ibid., p. 12.
- [25] Ibid., pp. 5 and 6.
- [26] Article 8, Revised Penal Code.
- [27] People vs. Ging Sam, et al., 94 Phil. 139.

[28] 2 SCRA 288.

- [29] Cf: People vs. Clarit, 3 SCRA 331; People vs. Bollena, 3 SCRA 792; People vs. Villanueva, 5 SCRA 672; People vs. Simon, 10 SCRA 280; People vs. Castro, 11 SCRA 699; People vs. Tiongson, 12 SCRA 402; People vs. Bautil, 16 SCRA 57; People vs. Reyes, 17 SCRA 309; People vs. Akiran, 18 SCRA 239; People vs. Estrada, 22 SCRA 111; People vs. Fontillas, 23 SCRA 74; People vs. Peralta, 25 SCRA 759; People vs. Magcamit, 27 SCRA 450; People vs. Tarrayo, 27 SCRA 953; People vs. Tapac, 28 SCRA 191; People vs. Pagaduan, 29 SCRA

54.

[30] Supra.

[31] Supra.

[32] People vs. Baquiran, 20 SCRA 451.

[33] People vs. Segario, 14 SCRA 468; People vs. Pasilan, 14 SCRA 694; People vs. Dayday, 14 SCRA 935.

[34] T.S.N., December 18, 1968, pp. 24-25.

DISSENTING OPINION

TEEHANKEE, J.:

The trial court correctly convicted the accused for the crime of murder, the killing having been attended by the qualifying circumstance of superior strength. The fact that the two accused pursued and overpowered their victim and one of them, Casey, inflicted several fatal stab wounds on the victim's abdomen while the other, Felix, stood nearby with a gun clearly shows the accused's abuse of superiority which insured impunity and weakened any defense on the part of the victim. The murder having been committed without any attending circumstances, the proper imposable penalty is reclusion perpetua.

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