

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JOSE ENCOMIENDA Y NAVARRO, DEFENDANTS AND APPELLANT.***G.R. No. L-26750. August 18, 1972*

Ponente: MAKASIAR, J.

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The accused Jose Encomienda y Navarro appealed on September 22, 1966 from the decision dated September 12, 1966 of the Court of First Instance of Nueva Ecija [Branch IV Guimba] (p. 97, Vol. I, rec.) sentencing him for murder aggravated by recidivism but mitigated by voluntary surrender, to life imprisonment or reclusion perpetua, to indemnify the heirs of the deceased Severino Cabaral in the sum of P6,000.00, to suffer the accessories provided for by law, and to pay the costs (pp. 84-96, Vol. 1, rec.).

The record of the case was received on October 25, 1966 by the Clerk of Court of the Supreme Court (p. 1, Vol. II, rec.) from the Clerk of Court of the Court of Appeals, who received the same on October 20, 1966, without the transcript of stenographic notes, which transcript was submitted to the Supreme Court on November 11, 1966 (p. 1, t.s.n., Vol. III) from the deputy clerk of the trial court (p. 2, Vol. II, rec.).

After the briefs of appellant and appellee were filed respectively on January 18, 1967 (pp. 26-48, Vol. II, rec.) and July 2, 1967 (p. 67, Vol. II, rec.), the case was submitted for decision on August 14, 1967 (p. 73, Vol. II, rec.).

On January 14, 1970, one AFP T/Sgt Venancio B. Bañaga, through counsel, filed a petition for an order directing the clerk of court of Branch IV of the Court of First Instance of Nueva Ecija to deliver to him the .32 caliber revolver with serial No. 154646, Exhibit "E", alleging that after the appealed decision was rendered by the trial court, the ownership of said revolver was transferred to him by reason of which he was issued by the Philippine Constabulary Special Permit No. 369246 authorizing him to possess the said revolver while he is in the active service (AFP), attaching the said special permit as Annex "A" to his petition (pp. 74-75, 76, Vol. II, rec.), and that his motion to withdraw the said revolver was denied by the trial court due to the pendency of this case before the Supreme Court (Annex "B", p. 78, Vol. II, rec.). Said petition was deemed submitted for resolution on March 18, 1970 after the Solicitor General failed to comment thereon within the period allowed him (pp. 79, 80, 82, Vol. II, rec.).

Arraigned on the following information for murder:

"That on or about the 30th day of May, 1965, in the municipality of Cuyapo, province of Nueva Ecija, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and mutually aiding one another, armed with a bolo and blunt instrument, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack and hack one Severino Cabaral, inflicting upon him multiple wounds which caused his instantaneous death.

"That the accused Jose Encomienda y Navarro is a recidivist having been convicted of the crime of Murder on April 30, 1958, in Criminal Case No. 4382 by the Court of First Instance of Nueva Ecija." (p. 47, Vol. I, rec.),

accused appellant who waived the presence of his counsel at said arraignment (p. 53, Vol. I, rec.), pleaded not guilty on June 2, 1966 (p. 54, Vol. I, rec.).

The evidence for the prosecution consists of the testimonies of Cuyapo health officer Pio Alberto, policeman Esmenino Delo and police inspector Casimiro Aguinaldo.

Patrolman Esmenino Delo declared that about 4 o'clock in the afternoon of May 30, 1965, he was with policeman Federico Olog at police outpost No. 2 in Cuyapo, Nueva Ecija, when one Franklin Ancheta reported that Severino Cabaral was wounded in the yard of the accused Jose Encomienda. He proceeded to the defendant's yard where he saw Severino mortally wounded in a kneeling position about two or three meters in front of the stairs of the house of the accused and could not raise his head. Severino was unconscious but still breathing (pp. 13-14, t.s.n.). On his query, the wounded Severino told him in the presence of policemen Eufemio Delo and Mateo Castillo, that the accused Jose Encomienda stabbed him (pp. 9-10, t.s.n.), which statement he wrote down in Ilocano on a piece of ruled paper (Exhibit "C", p. 4, Vol. II, rec.), on which the deceased affixed his right thumbmark and duly signed by patrolmen Mateo Castillo and Eufemio Delo as witnesses (p. 11, t.s.n.). Said alleged ante mortem statement of the victim, Exhibit "C", was translated into English by police inspector Casimiro Aguinaldo (Exh. "C-1", pp. 14 & 19, t.s.n.).

Exhibit "C-1" shows that the same was taken down at 4:45 P.M. of May 30, 1965 and contains the following conversation between patrolman Esmenino Delo and the victim:

"Q - Who boloed you?

A - Jose Encomienda.

"Q - Is this true?

A - Yes.

"Q - You thumbmark.

A - Yes." (p. 5, Vol. I, rec.).

Assisted by policemen Mateo Castillo, Eufemio Delo and Federico Olog, patrolman Esmenino Delo brought the victim to the private clinic of Dr. Potenciano Garcia, after which he looked for the accused in the premises of the scene of the incident. Failing to locate the accused thereat, patrolman Esmenino Delo, together with lieutenant Gamboa, proceeded to the municipal building to report the incident, after which they conducted an investigation in the premises of the incident, where they found blood stains in the yard and in front of the stairway of the house of the accused (pp. 11-12, t.s.n.). About 5:30 in the afternoon of that same day, May 30, 1965, they returned to the municipal building where they saw police inspector Casimiro Aguinaldo interrogating the accused. According to police inspector Aguinaldo (p. 13, t.s.n.), the accused went to the municipal building alone at about 4:55 p.m. of May 30, 1965, surrendering a bolo and a .32 caliber revolver (Exhs. "D" & "E") together with two live bullets (Exhs. "E-1" & "E-2") and four empty shells contained in an envelope. The bolo (Exh. "D") is about 13 inches long with a wooden handle about 18 centimeters long. He placed the bolo and the revolver in separate wrappers (Exhs. "D-1" & "E-3", pp. 15-17, 19, t.s.n.). After entrusting the accused to the guard, he and policeman Esmenino Delo went to the scene of the incident, saw blood stains on the stairs of the house of the accused and a box of water mixed with blood. Thereafter, they repaired to the clinic of Dr. Garcia where they saw the victim about 6:30 that evening and stayed there for about five minutes, after which they returned to the municipal building (pp. 16-17, t.s.n.). When he asked the accused whether he was willing to give any statement, the accused replied in the negative and stressed that he would wait for his lawyer (pp. 17, 19, t.s.n.). He translated into English the alleged dying declaration, Exhibit "C", of the victim (Exh. "C-1", p. 15, Vol. I, rec.; p. 19, t.s.n.). When he asked the

accused why he boloed the victim, the accused replied that he would not talk and he would wait for his lawyer. He did not examine the hands of the accused for powder burns as he did not know the procedure therefor. Neither did he request the Philippine Constabulary to conduct such examination of the victim for powder burns. He did not know who fired the revolver. The victim bore no gunshot wounds. The accused did not tell him that the victim fired at him. But the victim's son told him that the revolver was licensed in the name of the victim (pp. 19-20, t.s.n.).

Dr. Pio Alberto, the Cuyapo health officer, recounted that about 6:00 P.M. of May 30, 1965, he examined the victim in the clinic of Dr. Potenciano Garcia, executed the medical certificate Exhibit "A" (p. 2, Vol. I, rec.), and issued the death certificate showing that the victim was born in 1898 and was 67 years old when he died on May 30, 1965 (Exh. "B", p. 3, Vol. I, rec.).

The medical certificate, which states that the victim died about 10 o'clock in the evening of May 30, 1965 from shock and hemorrhage, describes the injuries sustained by the victim Severino Cabaral, thus:

"1. - A clean cut horizontal wound about 1 inch above both eyebrows extending from the outer tip of the left to the outer tip of the right eyebrow; cutting the frontal bone and exposing the brain tissue. Fragments of the frontal bone were extracted during the operation.

"2. - A clean cut almost horizontal wound about 2 inches long from inwards downwards and outwards at the latero-posterior aspect of the left wrist exposing the ligaments which were found to be intact.

"3. - An oblique clean cut wound about 1 1/2 inch long on the postero-medial aspect of right forearm about 3 inches above the wrist joint from outward downwards and inwards.

"4. - Swelling and echimosis about 2 1/2 inches by 3 1/2 inches on lower angle of right scapula.

"5. - Swelling and echimosis about 2 1/2 inches by 3 1/2 inches just above the brim of the right hip bone at the back." (Exh. "A", p. 2, Vol. I, rec.).

Dr. Alberto opined that wound no. 1 on the forehead was mortal and was caused by a sharp instrument like a bolo, with the assailant on the side of and higher than the victim or the victim was stooping at the time said wound was inflicted (pp. 3, 4, 7, t.s.n.); that wound no. 2, about 2 inches long on the left wrist of the victim, was also caused by a sharp instrument like a bolo, was not fatal and could have been inflicted when the victim raised his hands in self-defense with the right hand a little higher than the left, adding that the victim could still move his hands (pp. 3, 4, & 8, t.s.n.); that wound no. 3 on the right forearm and about 3 or 4 inches above the wrist could have been inflicted with a sharp instrument like a bolo when the victim raised his hands in self-defense (pp. 3, 4, & 8, t.s.n.); that wound no. 4, the swelling and ecchymosis about 2 1/2 inches by 3 1/2 inches on the lower angle of the right scapula and about 8 inches below the right armpit, could have been caused by a rod or a bat or a fall or a bolo's handle, but not by the narrow back of a bolo (p. 5, t.s.n.); that wound no. 5, the swelling and ecchymosis about 2 1/2 inches by 3 1/2 inches on the right pelvic bone just above the waistline, could have been caused by a rod with the assailant on the side of the victim (pp. 5-6, t.s.n.); that the victim was in a state of shock at the time he examined him; that he left the victim at about 8:30 that evening of May 30, 1965 sleeping in Dr. Garcia's clinic; and that the next day, he saw the victim already dead due to shock and hemorrhage (pp. 6-7, t.s.n.).

Appellant narrated that since 1947 he was a tenant of hacienda Doña Nena in Cuyapo, Nueva Ecija; that the victim Severino Cabaral was the hacienda overseer (pp. 22, 27, t.s.n.); that the land he was working was recorded in the name of his late father, who died in 1963 (p. 28, t.s.n.); that about one week before May 30, 1965, the victim went to his house and invited him to go to his (victim's) house telling him that he could no longer work on the land for the land is not in his name; that he did not go with the victim to the latter's house then; that he was not mad when the victim told him for the first time that he can no longer work on the land; that the second time the

victim went to his house was on a Friday or Saturday, but only his little child was home then as he was out and his wife was in the market; that the third time the victim went to his house was about 4:30 in the afternoon of May 30, 1965 telling him that he was sent by the hacienda owner to tell him that he cannot work in the hacienda and that he will be removed as tenant; that he was then cutting wood beside the stairway with a bolo (Exh. "D"), while the victim was standing also beside the stairs; that when he asked why he was being removed as tenant when it was his means of livelihood, the victim replied that he had no right to work on the land because it was not in his name, to which he countered that the victim had no right to remove him for he (the victim) was only a messenger and also a tenant like him in the hacienda, which alone has the right to remove him (pp. 23, 30, t.s.n.); that the victim became angry and with his right hand drew his revolver tucked in his left side when they were about one meter apart (p. 23, t.s.n.); that with his left hand he immediately grabbed the victim's right hand holding the revolver, forcing the victim to lean on the stairway, pinned the victim's right hand also on the stairs; that during their struggle, the revolver fired four times continuously; that with the bolo in his right hand he struck the victim's right forearm; that when the victim wanted to get the gun with his left hand, he boloed the victim's left arm about one inch from the left wrist; that he shook the victim's right arm downward causing the gun to fall to the ground; that when the victim tried to pick up the gun, he stepped backward and hacked the victim's forehead causing the victim to fall backward on the stairway, as he (appellant) retrieved the gun to prevent the victim from picking it up again and then stepped about two meters backward for the victim might grab him (pp. 24, 25, 31, 32, 34, t.s.n.); that thereafter the victim slowly got up and washed his forehead with the water from the box nearby while sitting in front of said box, after which he went to the municipal building with the bolo and the gun which he surrendered to police inspector Casimiro Aguinaldo; that the ecchymosis on the lower and right scapula of the victim might be due to his having violently pushed the victim against the bamboo stairway with two wooden lower steps (pp. 26, 27, t.s.n.); that he was alone in the house that afternoon of May 30, 1965 when the incident happened as his wife was then out selling meat and his children were with his father-in-law (p. 29, t.s.n.); that the victim was taller and slightly bigger than he is; that the victim's son, Guillermo, is taller than his deceased father (p. 32, t.s.n.); and that he is right-handed (p. 33, t.s.n.).

By actual measurement, Guillermo Cabaral is 5'6" tall; while the accused has a height of 5'3" (p. 33, t.s.n.).

The prosecution did not offer any rebuttal evidence and relied mainly on the alleged ante mortem statement Exhibits "C" & "C-1" of the deceased and on the medical testimony of Dr. Pio Alberto, the town health officer. There is therefore no testimonial evidence for the state as to how and why the incident occurred for no eyewitness was presented.

It is most unfortunate that the police authorities did not cause the immediate examination of the trigger of the revolver for finger prints and of the stairs, the hands and clothing of both the accused and the victim for powder burns, to determine whose fingers were actually on the trigger of the revolver.

If the four slugs had been recovered, the same would have been helpful in ascertaining the trajectory and direction of the bullets and whether they could have been fired from the stairs or not.

The un rebutted fact that the incident happened inside the yard and just beside the stairway of the house of the accused and that the victim was armed with a revolver licensed in his name, confirms appellant's story that the deceased, as the hacienda overseer, went to the residence of the accused, informed the latter that the hacienda owner had removed him as tenant, and directed him to vacate the land tilled by him as it was not recorded in his name. When the accused questioned the victim's authority to remove him, the victim became furious and drew his gun.

While it is true that the victim was taller and slightly bigger than the accused, the latter could match the strength

of the right hand of the victim with his left hand since he was then a 37-year old farmer and the victim was 67 years of age or 30 years his senior. In his excitement and apprehension of the peril to his life, appellant was not expected nor had the time, to determine whether he could save himself by just kicking the gun away from the victim or stepping on it or pushing the victim away from the latter when the victim tried to pick up the gun after he was already wounded on both forearms; or whether the victim, if able to pick up the gun, could have fired the remaining two bullets at appellant who was just about a meter away.

The alleged dying declaration of the deceased which consists only of three brief, mostly monosyllabic, answers to equally brief questions of patrolman Esmenino Delo, to wit:

"Q - Who boloed you?

A - Jose Encomienda.

"Q - Is this true?

A - Yes.

"Q - You thumbmark.

A -Yes." (Exhs. "C" & "C-1", pp. 4-5, Vol. I, rec.),

uncorroborated as it is bereft of essential details as to the motive and circumstances surrounding the incident, does not generate the moral certainty as to the culpability of appellant. The evidence of the prosecution lacks the requisite sufficiency to persuade the human mind to agree with the conclusion of the trial court, whose decision cannot as a consequence be sustained.

It is also doubtful whether the victim could hear or understand the three questions propounded to him or could clearly mumble his three answers thereto or could nod his head; because policeman Esmenino Delo himself admitted that the victim was unconscious, although still breathing, and could not raise his head when they found him in the yard of the defendant (pp. 13-14, t.s.n., Vol. III).

On the other hand, the plausibility and credibility of the un rebutted narrative of the appellant as to the motive and circumstances surrounding and leading to the incident, is enhanced by its detail and by the fact that appellant immediately surrendered that same afternoon to the police authorities with his bolo and the revolver of the deceased,[1] despite the fact that he was already laboring under a handicap by virtue of his previous conviction as an accomplice to the crime of murder, which ordinarily would impair his trustworthiness.

Under the circumstances, the version of the appellant appears to meet the required clear and convincing evidence to establish self-defense,[2] or weakens all the more and therefore neutralizes the effect of the proof of the prosecution. The story of the appellant is partly corroborated by Aurelio Encomienda, his second cousin (p. 41, t.s.n., Vol. III) and his nearest neighbor just about four meters away (p. 37, t.s.n., Vol. III), who testified to his having heard several gunshots while he was lying down that afternoon and thereafter his having seen through a hole in his kitchen wall the victim sitting under the shed of the stairs of appellant's house, who was also sitting in front of the victim and holding a bolo and a revolver, which Aurelio Encomienda related the next morning to the barrio captain, who called for him (pp. 37-40, t.s.n., Vol. III).

Three essential elements must concur for legitimate self-defense to exist, namely: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the attack; and (3) lack of sufficient provocation on the part of the person defending himself.[3]

Illegal aggression is equivalent to assault or at least threatened assault of immediate and imminent kind.[4] Here

when the deceased drew his gun with his right hand, appellant grabbed with his free left hand the victim's right hand holding the revolver, forced the victim to lean on the stairs and pinned the victim's right hand also on the stairs. During the struggle, the revolver fired four times continuously and he hacked the victim's right forearm. When the victim tried to get the gun with his left hand, appellant boloed the victim's left arm and then shook the victim's tight arm downward causing the gun to fall to the ground. When the victim tried to pick up the gun, appellant stepped backward and hacked the victim's forehead, after which he himself picked up the gun so as to prevent the victim from retrieving the same.

If the deceased had no intention to use his gun on the appellant, he would not have drawn it or resisted appellant's attempt to prevent him from using it. There was therefore real danger to the life or personal safety of the appellant.[5]

The instant case is quite analogous to the case of *People vs. Pangan, et al.*,[6] wherein the accused, also an agricultural share tenant, killed with a penknife the superintendent of the hacienda. When the accused therein denied the charge of the superintendent that he was letting his carabaos run loose to destroy the tender sugar cane shoots, the deceased while berating him, struck him twice with a whip hitting him (the accused) on the left temporal and occipital regions causing his ear to bleed, against which the accused offered no resistance but only tried to evade the blows. After they were separated by a third party, the accused sat down on an acacia trunk, but the deceased approached him again and insultingly asked him whether he wanted to fight, to which accused replied he would not fight. Thereafter, the accused retired to his home. Between four and five o'clock in the afternoon of the same day, accused went to the house of the deceased to ask him to return his two cows that had been caught but the deceased kicked him and struck him with a cane, causing a welt on his left shoulder. As the accused stepped back to avoid the second blow aimed at him, the deceased placed his right hand upon the handle of the revolver he carried by his waist. When the accused saw this intention of the deceased, he drew his knife and opened it with his teeth. The deceased then drew his revolver; but before he could fire it, the accused wrestled with him and caught the hand holding the gun. During the ensuing struggle, both fell to the ground, the deceased upon his back, while the accused upon him, with one hand gripping the deceased's hand holding the revolver and with the other stabbing the deceased on the abdomen and other parts of the body including the right arm compelling the deceased to drop the revolver. Then the accused took hold of the revolver and threw it to one side. Thereafter, he ran to the municipal building and surrendered to the authorities.[7] The defense of the accused in said case was sustained by this Court.

In *U.S. vs. Domen*,[8] the theory of self-defense was likewise upheld. There the deceased and the accused quarreled about a carabao which had gotten into the corn patch of the deceased, who, by reason thereof, struck the accused four or five times with a piece of wood about one yard long and about the size of one's wrist. The accused did not retreat but struck back wounding the deceased on the forehead.

In *U.S. vs. Mojica*,[9] the deceased, a constabulary soldier, resisted arrest, struck the arresting policeman with a fist, drew a mess kit knife and brandished it at the accused, another policeman, who retreated a step or two, drew his revolver and fired, killing the soldier. WE ruled that the policeman acted in self-defense.

That there is reasonable necessity of the means employed by herein appellant to prevent or repel the unlawful aggression cannot seriously be disputed. "Reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence, in the consideration of which will enter as principal factors the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury * * * ."[10] As WE stated in the case of *People vs. Lara*, in emergencies of this kind, human nature does not act

upon processes of formal reason but in obedience to the instinct of self-preservation; and when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction the act and hold the actor irresponsible in law for the consequences."

In the case at bar, appellant did not immediately hack the deceased to completely disable him, much less to kill him. When the deceased drew his gun with his right hand, the appellant merely grabbed the right hand of the deceased holding the gun, pinning said right hand on the stairs without striking the deceased with the bolo in his right hand. After the gun fired four times continuously as they struggled, it was only then that appellant struck the right forearm of the victim with his bolo. Appellant could have continued hacking the deceased right then and there. But he did not. He bled the victim's left forearm because the victim tried to get the gun from his right hand. And then he just shook the right arm of the victim downward, forcing the latter to release the gun which fell to the ground. It was only when the deceased tried to pick up the gun that the appellant bled him on the forehead. As heretofore stated, appellant had no time to coolly deliberate on whether he could save himself by just kicking the gun away or by just pushing or boxing the victim or stepping on the hands of the deceased to prevent him from getting the gun and firing at him. The immediate danger to his life precluded such serene rationalization on his part.

It should be stressed that the victim did not sustain any gunshot wounds. After taking possession of the victim's revolver, appellant did not use it against the victim to finish him off, nor did he continue hacking the deceased with his bolo. He was free to do either as the victim was completely rendered hors de combat. Instead appellant allowed the disabled and defenseless victim to wash his wounds with water in appellant's own wooden box.

In *U.S. vs. Molina*,^[11] the accused was unarmed while the deceased attacked him with a bolo. After overpowering the deceased and wresting the bolo from him, the accused struck the deceased several times with the bolo thereby killing him almost instantaneously as the deceased tried to seize a hatchet. Under the circumstances, WE held that the accused employed reasonable means to repel the assault against his life.

In *People vs. Rabandaban*,^[12] one night appellant found his wife lying in bed with another man, who escaped through the window. He scolded his wife and ordered her to leave the house. Calling him names, the wife gathered her clothes and picked up a hobo in the kitchen. When the accused husband followed her there, she attacked him with the bolo, wounding him twice on the abdomen. Wresting the bolo from his wife, appellant stabbed her with it in the breast, causing her death that same night. WE ruled that the appellant acted in self-defense and that there was reasonable necessity of the means employed by him to repel the attack. WE overruled the opinion of the trial court wherein it stated that appellant could have saved himself by throwing away the bolo after wresting it from his wife and that there was no need for him to stab her once she was disarmed; because she struggled to regain possession of the bolo, justifying appellant's belief that his wife wanted to finish him off. Considering that he must have been losing strength due to loss of blood, with his wife armed to fight to the finish, it would have been sheer folly or stupidity on his part to throw away the bolo so that his wife may again use it against him.

In *People vs. Sumikat*,^[13] a bolo was considered a reasonable means of repelling an attack by a bully of known violent disposition, who was larger and stronger than the accused and who was trying to wrest the bolo from him.

In *People vs. Lara*, *supra*, the use of a pistol in shooting to death the deceased who was much stronger than the appellant and who in the darkness and from behind suddenly threw his arms around appellant and attempted to wrest the pistol from him, was considered reasonably necessary; because by reason of the darkness as well as the superior strength of the deceased, there was probability that the deceased would seize control of the pistol and use it against appellant.

There certainly was lack of sufficient provocation on the part of appellant. On the contrary, he was the one provoked by the deceased. He was in his own yard cutting wood when the deceased arrived ordering him to vacate the land he was then tilling, which was his livelihood. Ejecting him from the land he was farming and which his father farmed before him, was, to this simple farmer, like depriving him of his life. Yet, with all that provocation, appellant merely told the deceased that the latter had no right to eject him from the land because he was also a tenant like him in the hacienda. Certainly, this retort was no justification for the victim to draw his gun.

In view of the uncontradicted testimony of the appellant that the victim drew his revolver to assault the appellant, which is not a lawful purpose, the victim lost thereby the privilege to possess the same.

WHEREFORE, the appealed judgment is hereby reversed, the accused-appellant is hereby acquitted, and his immediate release from confinement is hereby ordered.

The .32 caliber revolver with serial No. 154646 (Exh. "E") is hereby ordered forfeited to the government and the Clerk of Court is hereby directed to deliver the same for record purposes to the official headquarters of the Philippine Constabulary at Camp Crame, Quezon City. The bolo (Exhibit "D") is ordered returned to appellant. With costs de oficio.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Antonio, and Esguerra, JJ., concur.

Barredo, J., did not take part.

[1] People vs. Constantino, L-23558, Aug. 10, 1967, 20 SCRA 940; People vs. Pelago, L-24884, Aug. 31, 1968, 24 SCRA 1026.

[2] People vs. Talabok, Jr., 30 SCRA 87; People vs. Libed, 14 SCRA 410; People vs. Mendoza, 13 SCRA 11.

[3] Art. 11, par. 1, R.P.C.; People vs. Bautista, L-17772, Oct. 21, 1962, 6 SCRA 522.

[4] People vs. Alconga, et al., 78 Phil. 366.

[5] People vs. Sabio, L-23734, April 27, 1967, 33 SCRA 40.

[6] 56 Phil. 728.

[7] 56 Phil. 729-731.

[8] 37 Phil. 57.

[9] 42 Phil. 784.

[10] People vs. Lara, 48 Phil. 153; People vs. Paras, 9 Phil. 367.

[11] 19 Phil. 227.

[12] 85 Phil. 636.

[13] 56 Phil. 643.

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