

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OLIMPIO RIZAL, ACCUSED-APPELLANT.

G.R. Nos. L-43487-89. February 26, 1981

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PER CURIAM:

The accused, Olimpio Rizal, stands convicted of murder in Criminal Case No. IV-374, and two frustrated murders in Criminal Cases Nos. IV-376 and IV-377, which were tried jointly by the Court of First Instance of Lanao del Norte. The dispositive portion of the decision in these three cases which the court referred to as "the first major incident which triggered the troubles of the province of Lanao del Norte and caused the mass evacuation of the residents of Kapatagan Valley," reads as follows:

"WHEREFORE, this Court finds the accused Olimpio Rizal GUILTY as principal and beyond reasonable doubt in Criminal Case No. IV-374 of the crime of murder under Article 248 of the Revised Penal Code with the attending aggravating and qualifying circumstances of treachery and evident premeditation and the ordinary aggravating circumstances of contempt of or with insult to the public authorities, employment of craft and disguise, and commission of the crime by a band, and no attending mitigating circumstance and hereby sentences him to suffer the supreme penalty of death.

In Criminal Case Nos. IV-376 and IV-377, the accused Olimpio Rizal is likewise found guilty as principal and beyond reasonable doubt of the crime of Frustrated Murder under Article 248 in relation with Article 6 of the Revised Penal Code with the same attending qualifying and aggravating circumstances and no mitigating circumstance and he is sentenced in each case to suffer an indeterminate penalty consisting of imprisonment of TEN (10) YEARS OF prision mayor as minimum to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal as maximum.

Further, the accused is sentenced to indemnify the heirs of the late Mayor Pablito Abragan represented by his widow, Mrs. Perla Vda. de Abragan, in the amount of P12,000.00 for actual or compensatory damages, P50,000.00 for moral damages and P20,000.00 in the form of exemplary damages. He is also sentenced to indemnify Elpidio Zosa in the amount of P8,000.00 for actual or compensatory damages, P20,000.00 for moral damages and P5,000.00 for exemplary damages. Also, he is sentenced to indemnify Margarito Pongasi in the amount of P1,000.00 for actual or compensatory damages, P2,000.00 for moral damages and P500.00 for exemplary damages. He is sentenced to pay the costs of proceedings in all three cases."

Criminal Case No. IV-374 was elevated to this Court on automatic review while Criminal Cases Nos. IV-376 and IV-377 are appealed by the counsel de oficio of the accused.

The informations dated October 13 and 15, 1973 charged the accused Olimpio Rizal in:

Criminal Case No. IV-374 for Murder -

"That on or about the 14th day of July, 1971, in the Poblacion of Kapatagan, Municipality of Kapatagan, Province of Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring together, confederating and mutually helping with Erning Doe, John Doe, Richard Doe and William Doe who are still at large, who were all armed with shotgun, carbine, and hand grenade and with intent to kill, did then and there willfully, unlawfully and feloniously attacked, shot and fired thereof one Pablito Abragan, Municipal Mayor of Kapatagan, Lanao del Norte, together with his companions while they were near the Municipal Market of the said municipality, inflicting upon him mortal gunshot wounds in the different parts of his body and as a direct result thereof, said Mayor Pablito Abragan died thereafter.

The said accused be adjudged to indemnify the heirs of the deceased the sum of P12,000.00 and to pay them the sum of P100,000.00 representing moral and exemplary damages for their mental anguish.

Contrary to and in violation of Article 248 of the Revised Penal Code with aggravating circumstances of treachery, evident premeditation, craft and/or disguise, superior strength and that the crime was committed with insult to the public authorities or in disregard of the respect due the offended party being the incumbent Municipal Mayor of the said place and while he was engaged in the discharge of his public duties."

Criminal Case No. IV-376 for Frustrated Murder -

"That on or about the 14th day of July, 1971, in the Poblacion of Kapatagan, Municipality of Kapatagan, Province of Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping with ERNING DOE, JOHN DOE, RICHARD DOE, and WILLIAM DOE who were all armed with shotgun, carbine and hand grenade and with intent to kill, did then and there willfully, unlawfully and feloniously attack, fire and shoot one ELPIDIO ZOSA, driver of the Toyota Jeep of the late Mayor Pablito Abragan, inflicting upon him the following gunshot wounds, to wit:

- Angle of the jaw, left;
- Right elbow with fractured lower and humerus;
- Left antecubital area with ruptured brachial artery;
- Left forearm with fractured left radius;
- Left buttock;
- Left thigh;
- Back level of T-12 with perforation to transverse colon and macelon, perforations of stomach posterior wall; and
- Plus multiple perforating metallic fragments,

which the said accused performed all the acts of execution to produce the crime of murder as a consequence but did not produce it by reason of causes independent of the will of the accused, that is, by the timely medical

assistance rendered to said ELPIDIO ZOSA which prevented his death.

Contrary to and in violation of Article 248 of the Revised Penal Code in relation with Article 6 of the same code."

Criminal Case No. IV-377 for Frustrated Murder -

"That on or about the 14th day of July, 1971, in the Poblacion of Kapatagan, Municipality of Kapatagan, Province of Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating and mutually helping with ERNING DOE, JOHN DOE, RICHARD DOE and WILLIAM DOE who were all armed with shotgun, carbine and hand gre-name and with intent to kill, did then and there willfully, unlawfully and feloniously attack, fire and shoot thereof with treachery one Patrolman MARGARITO PONGASI, Security Guard of the late Mayor Pablito Abragan while riding in the Toyota Jeep, inflicting upon him an open fracture of the medial epicondyle with injury to ulnar nerve, which the said accused performed all the acts of execution to produce the crime of murder as a consequence but did not produce it by reason of causes independent of the will of the accused, that is, by the timely medical attendance rendered to said MARGARITO PONGASI which prevented his death.

Contrary to and in violation of Article 248 of the Revised Penal Code in relation with Article 6 of the same Code."

Upon arraignment, the accused pleaded not guilty to the three charges imputed against him. By agreement of both parties, the three cases were tried jointly, having arisen from the same incident.

The following are the uncontroverted facts:

In July, 1971, Dr. Pablito P. Abragan, a physician by profession, was the incumbent mayor of Kapatagan, Lanao del Norte. In the same month and year, Elpidio Zosa, Margarito Pongasi and Antonio Angeles, Jr., members of Kapatagan Police Force, were assigned as security of Mayor Abragan.

On July 14, 1971 at about five o'clock in the afternoon, Mayor Abragan, Patrolmen Zosa and Pongasi were aboard the mayor's Toyota jeep. They came from the municipal building and were going home to the mayor's residence. Zosa was at the wheel, the mayor was seated at the front right side and Pongasi was seated at the back. At the junction turning to the road leading to the mayor's residence, there was a sudden volley of gunfire followed by an explosion of a hand grenade all directed towards the Toyota jeep. Although already wounded, the three aboard the jeep were able to get down, seek cover and tried to return fire. The jeep was in shambles. Its four tires were busted, the windshield was shattered with bullet holes, the rear glass windowpanes and the left headlight were shattered to pieces and the left and front of the jeep's body were riddled with bullet holes.

Mayor Abragan was seriously wounded. For lack of adequate medical facilities in Kapatagan Valley, he was rushed to Iligan City some ninety-two kilometers away. He did not reach the city alive. His dead body was examined by Dr. Manuel Simon, the medico-legal officer of Iligan City Police Department and the following injuries were found upon external examination:

- Multiple puncture wounds, left upper extremities and left flank;
- Gunshot wounds, lower border of the right scapular with point of exit at the anterior portion of the axili.

The late mayor also suffered the following internal injuries:

- Atetectatis right lungs with bullet perforation;
- Moderate right, hemothorax;

- Lacerated right axillary artery.

Indicated in the Certificate of Death (Exh. "E") as cause of death were "shock, hemorrhage and gunshot wound, upper back right."

Zosa and Pongasi were brought to Dr. Uy's Hospital in Iligan City. They were examined by Dr. George Layug, surgeon of the said hospital. Upon examination it was found out that Zosa suffered gunshot wounds in the following parts of his body:

- Angle of the jaw, left;
- Right elbow with fractured lower end of humerus;
- Left antecubital area with ruptured trachial artery;
- Left forearm with fractured left radius;
- Left buttock;
- Left thigh;
- Back level of the T12 with perforation to transverse colon and mesolon, perforations of stomach posterior wall;
- Plus multiple perforating metallic fragments to abdomen perforating the small intestines.

Zosa underwent an "exploratory laparotomy" on July 14, 1971 for repair of the perforation of the visci and repair of the left brachial artery. On July 19, it became evident that gas gangrene has developed necessitating an amputation from above the elbow.

The third, fourth, seventh and eight wounds enumerated above were fatal and would have caused death if medical attention had not supervened on time.[1]

Pongasi, on the other hand, suffered an open fracture of the medial epicondyle with injury to the ulnar nerve as a result of the gunshot wounds. As per testimony of Dr. Layug, the injury was not fatal and would not produce death even if it was not medically attended. At the time of his examination, Dr. Layug saw only the wound at the ankle of the jaw. He did not see the wound at four inches above the right nipple.[2]

The prosecution presented several witnesses, three of them, Elpidio Zosa, Romulo Aljo and Antonio Angeles, Jr. positively identified the accused as one of the five men who ambushed the mayor and his security guards. The defense of the accused is alibi. He presented, besides himself, six other witnesses, namely, Raymundo Barrot, Ceferino Cabahug, Ricardo Barnido, Teofilo Retizo, Lolita Acosta Retazo and Rosario Rizal to corroborate his allegation that he was at his residence at Pansilan, Sapad, Lanao del Norte at the time the incident took place. The lower court took judicial notice that Sapad is a former barrio of Kapatagan which was then known as Buriasan and that the Municipality of Sapad was only created in 1971.

The evidence of the prosecution established the following facts: On July 14, 1971 at about five o'clock in the afternoon, in the poblacion of Kapatagan, Mayor Pablito P. Abragan was aboard his Toyota jeep on his way home from the municipal hall. With him were Pat. Elpidio Zosa, Pat. Margarito Pongasi and Pat. Antonio Angeles, Jr., members of Kapatagan Police Force assigned as his security. Zosa was driving the jeep, the mayor was seated at his side. Angeles and Pongasi were seated at the back. When the jeep neared the kiosk of the plaza, Mayor Abragan asked Angeles to buy some "Halls" candy for his cough. Angeles then alighted from the jeep and proceeded to the store owned by a certain Go which is near the house of Acoy, the owner of the Shell gasoline

station at the junction. The jeep went along the national highway towards the direction of Maranding, Lala to a repair shop. They immediately returned and proceeded to the house of Mayor Abragan. Upon reaching the junction leading to the house of the mayor and when the jeep was about to make the right turn, it was suddenly fired upon by five persons in two different places. One group consisted of three armed men wearing fatigue uniforms positioned in the yard of the house of a certain Moli facing directly the front of the Toyota jeep, some eight meters away. The other group was composed of two armed men, also wearing fatigue uniforms, positioned at the Shell gasoline station at the left side direction of the jeep. The first volley of gunfire which came from the three men from the house of Moli shattered the windshield of the jeep hitting Zosa at the left cheek, another just above the throat and another at the right elbow. A hand grenade was rolled by a member of this group towards the front of the jeep exploding immediately, busting the four tires of the vehicle. At this instant, Mayor Abragan and Pongasi were already out of the jeep. The mayor was at its rear right side trying to seek cover. Blood oozed from his forehead. Beside him was Pongasi firing his carbine.

After the explosion of the grenade, Pongasi and the mayor withdrew towards the waiting shed, the former covering the withdrawal of the latter. As they stood at the waiting shed, Pongasi saw the group of two persons at the Shell gasoline station, now also firing at them. They tried to return fire. Mayor Abragan was now mortally wounded, while Pongasi was hit at the left elbow. The two withdrew to Boboy Go's store behind the shed. The mayor sat on the floor and leaned on the concrete wall. Pongasi told Boboy Go's wife to help stop the bleeding of the mayor's wound while he (Pongasi) would look for an exit where they can pass. He mistakenly went to the bathroom where he was accidentally locked by the maid in the ensuing commotion and was finally let out by the mistress of the house. He found out that the mayor was taken to the clinic of Dr. Gatchalian.

In the meantime, Elpidio Zosa who first tried to duck at the front seat of the jeep, crawled to the rear and while so doing, he was hit again at the left hip, the right thigh and twice below the right knee. He sought cover at the left rear tire and tried to return fire with his Cal. 30 carbine rifle. He was able to fire more or less seven rounds before he was hit at the back, the bullet traversing through his body. He lost hold of his carbine and he fell to the ground facing up. The two men who were firing at him approached the jeep. One of them was Erning Retazo who removed his ammunition belt, kicked his left cheek and picked up his carbine. He handed it to his companion, the accused Olimpio Rizal. Retazo was carrying a carbine while Rizal was carrying a home-made shotgun.

Subsequently, Pongasi and Zosa were driven to Iligan City for medical attention. Upon arrival at the Dr. Uy's Hospital, the two saw Mayor Abragan already dead.

Pat. Angeles, at the time of the incident, was at Go Bakery paying for the candy he bought. When he heard the gunshots, he went outside the bakery, took cover behind a flower pot. He saw persons in fatigue uniforms, one was at the gas station and the other was at the canal. He also saw three persons likewise in fatigue uniforms under the house of Moli. He was about forty meters away from the Toyota jeep. After the firing had subsided, he saw the three men under the house of Moli come out in the open. He recognized two of them, the accused Olimpio Rizal and Erning Retazo. Retazo went near Zosa, picked up his carbine and gave it to Rizal. Then the five men withdrew. Angeles proceeded to Boboy Go's store where he saw the mayor and Pongasi wounded and bleeding.

Romulo Aljo, a poblacion resident was in his house at the time of the incident. He heard loud and small firings coming from the direction of the central school along the national highway. He went down from his house and proceeded to the road where he saw many people scampering away from the public market. He went back to his house and told his wife to gather their children and bring them to the house of his mother-in-law. He himself went to the house of his mother-in-law where he hid behind the stairs. He saw five men wearing fatigue uniforms carrying firearms coming from the direction of the firing and going towards the Bureau of Plant Industry Nursery. These men were walking fast. As they neared the house of his mother-in-law, Aljo recognized Olimpio Rizal alias

Agta as one of the men. Rizal held a carbine on his right hand and a shotgun on his left. The other four carried carbine and garands.

After the five men passed his hiding place, Aljo changed his position and hid himself behind the door of the house. He saw the men turn right to the road leading to the nursery. Again, he recognized Olimpio Rizal as one of them. As the men disappeared into the citrus and coconut trees, Aljo went out of the house and proceeded to the source of the firings. He saw the Toyota jeep of the mayor riddled with bullet holes with its four tires busted. He told Chief of Police Rafael Balatero, who was at the scene of the crime, that it was Olimpio Rizal who led the ambush and further advised him to catch up and intercept the malefactors at Buriasan as they pass by the nursery. Aljo then proceeded to Gatchalian Clinic where he saw the mayor, Pongasi and Zosa.

Chief of Police Balatero brought Mayor Abragan to Gatchalian Clinic. Thereafter, he went back to the scene of the crime to inquire as to the identity of the assailants. He was told that Olimpio Rizal was definitely one of them. Balatero formed a team and tried to pursue the five men who ambushed the mayor and his security guards but the peace officers failed to catch up with them. They then proceeded to the house of Olimpio Rizal at Sapad but they found it abandoned by the family.

The accused, testifying for himself, maintained that at the time of the ambush he was at his house in Barrio Pansilan, Sapad, Lanao del Norte together with his wife and eight children. He further testified that on that fateful day, he plowed his field from three o'clock in the morning up to five in the afternoon when he rested in his house. Accused also alleged that he continued to move around Kapatagan after July 14, 1971 and was never bothered by the peace officers of the town. He met the chief of police on several occasions and one time this chief of police even tapped him at his shoulders. On December 23, 1972, he met Sgt. Juan Salazar who told him he (Rizal) had a case in connection with the ambush of Mayor Abragan. He subsequently reported to this sergeant and together they enplaned to Cotabato where he surrendered to General Encarnacion, the then commanding officer of the Fourth PC Zone.

On his defense of alibi, the accused is corroborated by his wife, Rosario Rizal, Mrs. Lolita Acosta Vda. de Retazo, Ricardo Barnido, Raymundo Barrot and Ceferino Cabahug.

Rosario Rizal testified that Dr. Pablito Abragan in his capacity as the rural health officer treated several members of her family including her husband, Olimpio Rizal. She also testified that at five o'clock in the afternoon of July 14, 1971 the whole family was in their house at barrio Pansilan and that she knew for a fact that her husband had been plowing their field on that day.

Lolita Acosta testified that she is the widow of Erning Retazo, allegedly one of the men who ambushed the mayor and his security guards. She said that on June 24, 1971, about two weeks after she delivered her second baby, she and her husband were at their house in Pansilan. A man arrived to fetch her husband. Three days later, her husband returned and told her that they have a big problem because Vicente Pangilinan, the mayor of Sapad, Lanao del Norte, wanted him (Retazo) to kill Mayor Abragan. They went to Olimpio Rizal to seek his advice on this matter. Rizal allegedly told her husband that it is not a good idea to kill the mayor because it will destroy them and their children. They went home immediately and after partaking supper her husband went out without asking her permission. Her husband did not return until the fifteenth of July, 1971.

Lolita Acosta further testified that on July 14, 1971, while she and her two children were at their house, she heard firings coming from the poblacion of Kapatagan. She ran towards the house of Olimpio Rizal bringing with her the two children. She asked Olimpio Rizal what to do since she was scared. Rizal admonished her to keep calm and not to mind the firings or she might have a relapse. After a while, she and her children returned to their house. In the following morning her husband arrived and told her that they were the ones who ambushed Mayor Abragan

and that the mayor is already dead.

Another witness, Ricardo Barnido, testified that at the time of the ambush he was riding a carabao on his way from Mabugnao to Bagong Silang. While he was nearing Barrio Pansilan, he heard one big explosion followed by several small ones. He whipped his carabao faster. He reached the house of the accused where he saw him together with his family, also listening to the unusual sounds. Barnido asked the accused what was it all about to which the accused suggested that they would just observe the situation.

Barnido continued his journey. On the land of Diego Silang, he met four persons walking very fast. They wore fatigue uniforms and all of them had long firearms. They came from the poblacion and were on their way to Pansilan. He recognized one of the men as Erning Retazo. Retazo even asked him why he was going home late, to which he answered that it was because he came from a far place.

The testimony of Raymundo Barrot consists of the following: That in the year 1971 he was assigned as public school teacher of Pel-es Primary School in Kapatagan, Lanao del Norte. At about five to five thirty in the afternoon of July 14, 1971, he was on his way home from the school where he was teaching. He was riding his bicycle, his usual mode of transportation. While he was nearing Vicente Primary School, he heard a loud explosion followed by several firings coming from the poblacion of Kapatagan. He continued his journey towards his home which was situated in the western part of the town. While he was thus preoccupied in going home, he met four armed men heading towards the Cathedral Falls. He encountered these men in front of the BPI Nursery. He could not recognize their faces but he was certain that Olimpio Rizal was not one of them. One of the men told him to tell the police to prepare because they will be coming back. He did not reply.

Ceferino Cabahug is another witness for the defense. He testified that his house is near the scene of the crime. On that day and at about five to five thirty in the afternoon, while he was in his house together with his children, he heard a loud explosion and several gunfires. While the gunshots continued, he went down and ran towards a buri palm about fifteen meters away from his house. Along the junction, he saw Mayor Abragan jump from the right side of the Toyota jeep together with Pongasi. He also saw Zosa sprawled on the ground near the jeep. The mayor and Pongasi ran towards the waiting shed then to the store of Boboy Go. He noticed that there was a man behind the gasoline pump and another at the canal. Both were wearing fatigue uniforms. These men were firing at the mayor. When the mayor and Pongasi were already in the store of Boboy Go, these men stopped firing and went towards the jeep where Zosa lay Sprawled. One of the men slightly kicked Zosa, got his firearm and handed it to his companion. Cabahug recognized one of them as Erning Retazo. These two men together with two others, also wearing fatigue uniforms left the scene of the crime. Cabahug did not recognize the three men but the accused was definitely not one of them, according to him.

The following were assigned as errors committed by the trial court:

I. The lower court erred in giving full faith and credence to the testimonies of the prosecution witnesses although suffering from inherent improbabilities and apparent inconsistencies.

II. The lower court erred in completely ignoring or disregarding the testimonies of the defense witnesses, although unbiased, reasonable and trustworthy.

III. The lower court erred in considering as an alibi the categorical statements of the defense witnesses that the

appellant Olimpio Rizal was not at the scene of the crime at the time of its commission but was in his house with his wife and children some distance away.

IV. The lower court erred in declaring that the guilt of Olimpio Rizal for the crimes of murder and frustrated murders was proven beyond reasonable doubt.

V. Assuming arguendo, that the lower court did not commit an error in declaring that the guilt of the appellant Olimpio Rizal for the crimes of murder and frustrated murders was proven beyond reasonable doubt, still the lower court erred -

-- (a) In appreciating the existence of the aggravating circumstances of contempt of or with insult to public authorities, employment of craft and/or disguise and commission of a crime by a band;

-- (b) In declaring that no mitigating circumstances attended the commission of the crime;

-- (c) In imposing on appellant Olimpio Rizal the penalty of death in Crim. Case No. IV-374 and the indeterminate penalty of imprisonment of ten years of prison mayor as minimum to seventeen years and four months of reclusion temporal as maximum in Crim. Case No. IV-376 and Crim. Case No. IV-377.

These assignments of errors hang on the issue of whether or not Olimpio Rizal was one of the men who ambushed Mayor Abragan and his security guards on July 14, 1971 and if he was, whether or not the penalties imposed by the trial court were proper considering the attending aggravating and mitigating circumstances present in the commission of the crime.

The identity of the accused Olimpio Rizal as one of those who ambushed Mayor Abragan and his security guards is established beyond reasonable doubt. The following categorical statements from the three prosecution witnesses definitely and clearly point out the fact that Rizal was one of the ambushers:

Testimony of Elpidio Zosa -

....

"q. You said Mr. Witness, that you were ambushed by firings. Can you tell the Honorable Court the number of persons that (sic) ambushed you?

a. About five (5) persons, Sir.

q. Do you know the five persons that (sic) ambushed you?

Atty. Padilla: We object, the witness stated about five persons he saw and therefore, the next question should be, if he know the five persons.

Fiscal Fajardo: I was thinking that particular point the number of persons were already fixed to five (5).

Court: Alright, reform the question. You ask the witness if he knows the persons that (sic) he saw and if he recognizes them, let him name them.

Fiscal Fajardo: Continuing

q. Did you recognize the persons whom you saw?
a. I know some of them.

Court: Asking

q. Did you know or recognize them?
a. I recognized some of them.

Fiscal Fajardo: Continuing

q. Can you give the names of those whom you recognized?
a. Yes, sir.

q. Please name them.
a. One is Erning but I don't know the family name.

Court: Asking

q. Anybody else that (sic) you recognize?
a. Olimpio Rizal."[3]

Testimony of Patrolman Antonio Angeles, Jr.

x x x x

"q. Did you recognize or do you know who were those five persons who fired towards the Toyota jeep of the mayor?

a. I recognize two of them but the other three, I don't know them because that was the first time I saw them.

q. Who were the two persons whom you recognized?

a. The first I recognized was Olimpio Rizal.

q. Where did you see Olimpio Rizal?

Court: Interrupting

q. Was he one of the two persons in the gasoline station or one of the three persons in the house of Moli?

a. I saw Olimpio Rizal coming from under the house of Moli."[4]

x x x x

Court: Asking

q. Mr. Angeles, Jr., are you aware that the accused Olimpio Rizal is charged of murder?

a. Yes, Sir.

q. Are you aware that if the accused Olimpio Rizal is convicted in this case it might cost him his life?

a. Yes, Sir.

q. And you swear before God and man that you saw Olimpio Rizal at the place of the ambush on that date?

Can you swear before God and man that you saw him?

a. Yes, Sir.

q. You don't have any doubt at all that you saw him on that date?

a. Yes, Sir.

Testimony of Romulo Aljo -

x x x x

"q. Did you recognize those five persons who passed by the place you were hiding?

a. I recognized one of them but I have not recognized the four of them. But if their faces is shown to me I could recognize them.

q. You said you recognized one of them. Will you kindly tell the Honorable Court his name?

a. Yes, Sir.

q. Please tell the Court.

a. He is Olimpio Rizal.

q. What did you notice from Olimpio Rizal and his companions when they pass by the place you were hiding?

a. I saw in his hands two long firearms.

q. When you said "he" to whom are you referring to?

a. Olimpio Rizal, Sir."^[5]

These witnesses had known the accused several years before the incident took place. They were living in the same municipality and had seen him frequently in public places like the market and the cockpit house. It does not appear nor was it shown that these witnesses bear personal grudge against the accused. There was absolutely no motive for these witnesses to testify falsely against the accused, he being their friend of long standing.

The defense tried to discredit the testimonies of the prosecution witnesses for alleged falsity and inconsistencies by contending that a person inside Go Bakery (where Angeles was at the time of the incident) could not possibly have seen the Toyota jeep as it approached the junction since there is a wall blocking the view. Moreover, according to the defense, it is rather strange that Angeles did not give any statement to the police or the NBI after the crime was perpetrated. As for witness Zosa, the defense could not find fault in his testimony except that this witness declared that the accused wore a yellow Japanese slipper while witness Aljo stated that the accused wore no footwear at all. More importantly, the defense argued, Aljo and Angeles are not impartial and unbiased witnesses considering that after the ambush, both worked in a security agency owned by a cousin of the late mayor.

The defense had missed a significant portion of Angeles' testimony in that said witness did not remain all the time inside Go Bakery. After he heard the first volley of shots, he ran outside, hid behind a cement flower pot where he had a vantage view of what took place near the junction. He was even able to fire shots at the two men in the gasoline station. Defense witness Cabahug who testified that there is a wall blocking the view admitted in cross-examination that even if a person is inside Go Bakery, the Toyota jeep and the person at the canal near the gasoline station can be seen.^[6] It must be stressed at this point that Angeles recognized Rizal at the time when the said accused, together with Retazo approached Zosa who was lying near the Toyota jeep. Even granting for the sake of argument that only the jeep can be seen from the Go Bakery, this fact cannot discredit Angeles' testimony that he recognized the accused for there is ample evidence establishing that the two men namely, Olimpio Rizal and Erning Retazo, approached Zosa who was already hit and lying sprawled on the ground, and Erning Retazo picked up Zosa's firearm and ammunition belt and handed them to Olimpio Rizal.

The argument that because Angeles had not made any statement in writing to the police, the NBI or the CIS, his

testimony is a mere fabrication, is without merit for the reason that factually, he reported what he saw to the Chief of Police of Kapatagan shortly after the incident. (t.s.n. April 8, 1974, pp. 342-343)

With regards to the inconsistency between Zosa's and Aljo's testimony on the footwear of the accused, the defense contended that this materially affects Zosa's credibility. We hold that it is not so. Considering that Zosa had seen the footwear of the accused clearly because Retazo and Rizal had approached him and this witness had ample opportunity to observe the footwear of the accused, whereas Aljo, on the other hand, being fifty-five meters away from Rizal and his companions who were walking very fast, might not have seen the footwear of the accused considering that the distance affected his view of the accused's footwear.

Even granting for the sake of argument that the testimonies of Elpidio Zosa and Romulo Aljo were inconsistent on this point, such contradiction is on a small detail which does not affect the substantial testimony of the witnesses because it shows that they were not rehearsed. Honest witnesses at times do not coincide in the narration of events swiftly occurring before them, especially with respect to trifling details.[7] In *People v. Monadi*,[8] We said, "(I)f the witnesses for government had chosen to make an airtight case and clinched it for the prosecution, it would have been easy for them to have told the court that they all saw only four persons and that they readily recognized said four persons to be the appellants herein, this, without any fear of contradiction or impeachment by the defense, and yet, as already stated, they actually testified as they did thereby rendering it more difficult for the prosecution to sort out and correlate their different versions. This may indicate that they were not rehearsed nor taught to tell the same story."

The fact that Aljo and Angeles were working in the security agency owned by a cousin of the late mayor right after the ambush, in itself, does not mean that their testimonies could not be believed. Their testimonies being natural, reasonable and consistent with other facts of the case should and are entitled to credit and belief. Furthermore, this Court could not believe that the sympathy and gratitude of these witnesses for the late mayor and his family would extend to naming a person who is their long time friend as one of the killers if such were not true.

Accused-appellant contends that since the three informations filed by the prosecution in November, 1973 did not include Ernesto Retazo as one of the accused, it follows that Angeles and Zosa could not have identified Retazo earlier. This contention is devoid of merit. Elpidio Zosa in his statement[9] dated July 19, 1971 had identified one Erning as one of the killers, thus:

"..."

Q. Kinsa may nagpusil ninyo ni Mayor ug Pat. Margarito Pongasi?

(Who shot the Mayor, Pat. Pongasi and you?)

A. Erning ug si Agta.

(Erning and Agta)

Q. Kinsa man ning si Erning ug si Agta? (Who is this Erning and Agta?)

A. Si Erning, wala ko kaila sa apilledo, apan kini si Agta mao ni si Olimpio Rizal.

(I don't know the surname of Erning but this Agta is Olimpio Rizal)."

XXX XXX XXX

The "Erning" mentioned by Zosa in the statements quoted above is the same Erning Doe accused in the in-formations together with Olimpio Rizal, John Doe, Richard Doe and William Doe. If there was any doubt in the mind of the fiscal who prepared the informations, it was only as to the surname of Erning and not with his identity.

The defense of the accused is alibi. He alleged that he was somewhere other than the scene of the crime at the time it was perpetrated.

It is settled in Our jurisprudence that alibi is a weak defense and it cannot prevail over the positive identification of the accused by the witnesses. The reason for this is that alibi is easy of fabrication especially between parents and children, relatives and even those not related.[10] Moreover, for the defense of alibi to prosper, it is not enough to prove that the accused was somewhere other than the scene of the crime at the time it was perpetrated. It must also be proven that he was at such other place for so long a time that it was impossible for him to be at the place where the crime was committed either before or after the time he was at such other place.[11]

It appears that the house of the accused is just a short distance from the poblacion of Kapatagan.[12] It was even alleged by witnesses of the defense that gunshots and grenade explosions could be heard from there. The accused could have easily slipped from his house, went to the poblacion to commit the crime and return to his house unnoticed.

The accused also contends that it was unlikely for him to be considered as a real suspect in the slaying of Mayor Abragan because he roamed around Kapatagan unmolested. He was not arrested by the peace officers right after the incident took place. He met the chief of police several times and the latter did not even mention that the accused was being suspected of participating in the ambush of Mayor Abragan and his security guards.

The chief of police, testifying in the rebuttal, denied having seen the accused after the ambush. He had a standing warrant of arrest issued by the municipal judge of Kapatagan. They could have arrested the accused had they seen him anywhere. Immediately after the ambush, the accused was already identified by Romulo Aljo as one of the malefactors. This is why the peace officers of Kapatagan rushed to the house of the accused after they failed to apprehend them in Barrio San Vicente. They found the house abandoned belying accused's allegation that he and his family spent the whole night in their home.

The trial court found and We agree that the testimonies of the defense witnesses were replete with inconsistencies and most of them testified to matters which were beyond the realm of credibility. One witness, Teofilo Retiza, was found by the trial court to be definitely lying. He does not claim to be a close confidant of Vicente Pangilinan, yet he alleged that he was present when the said Pangilinan allegedly ordered his men to kill Mayor Abragan. It is very unlikely that Pangilinan would disclose such a serious matter which is criminal in purpose in the presence of a man who does not even claim to be a close friend. Moreover, in his written statement,[13] Teofilo Retiza categorically stated that "Buro" was not one of the men who left with Vicente Pangilinan that day when they hatched the plan to kill Mayor Abragan. Yet in his testimony, he stated that "Buro" was one of the three companions of Pangilinan.

Another defense witness, Ricardo Barnido, testified that he used his carabao in plowing the field in that particular day, on July 14, 1971 from 8:00 a.m. to 12:00 noon then 2:00 to 5:00 p.m. and thereafter, went home riding his carabao and saw the accused with members of his family inside their house, listening to the unusual sounds. This testimony is weak for in his written statement, Barnido declared that he cannot remember the exact date when he met the four men in fatigue uniforms. He also stated that he could not remember the date when he heard the

explosions. Surprisingly, one year after he stated the preceding statements he recalled the exact date of his encounter with the four men and that was on July 14, 1971, a Wednesday. Barnido was very evasive in his answers to very simple questions. He claims that he could not calculate distances, cannot determine the time of day even by the position of the sun nor could he even remember whether the sun was shining brightly that day. Yet, he can remember in smallest detail his seeing Olimpio Rizal in the latter's house. He could also remember the formation of the four men when he saw them, their attire, footwear and the firearms they were carrying.

Raymundo Barrot is also another witness whose credibility is seriously doubted. He claimed that he negotiated with a bicycle a distance of one hundred meters within a span of five seconds. The road he was traversing was gravelly and full of potholes. Dusk was about to set in. It is simply not possible to cover one hundred meters within five seconds in the road condition just mentioned.

Barrot also claimed that he heard the explosion and the gunfire while he was in San Vicente Primary School. He saw the four men in fatigue uniforms in the BPI Nursery which is about 100 meters away from the primary school. As mentioned above, he allegedly travelled this distance within five seconds. Following his line of contention, it took only five seconds for the four men to reach the nursery from the scene of the crime. The distance between these two places is quite considerable. One has to traverse the junction first, then turn left up to the house of Romeo Aljo's mother-in-law, turn right then left again before the nursery is reached.[14] It is highly improbable or even impossible that these four men could reach the nursery on foot within five seconds after the last gunfire had subsided.

Lastly, Barrot claimed that he heard an explosion first followed by several gunfires. It is established that there was a volley of gunfires first before the hand grenade exploded followed by another round of gunshots.

Cabahug also claimed that he heard an explosion first before he heard a volley of gunfires. Yet he claimed to be present at the scene of the crime. It is inconceivable that he could miss hearing the first round of gunshots. This witness was also found definitely lying when he alleged that he surrendered his home-made shotgun he bought from Erning Retazo to the Philippine Army. Neither the army officer nor the records of the military confirm such surrender.

Cabahug further testified that as soon as he heard the explosion, he gathered his children inside his house. After doing so, he allegedly went out to investigate the source of the explosion and he was just in time to see Mayor Abragan and Pat. Pongasi leaped out of the jeep. Yet, according to Pat. Pongasi to whom the defense conceded to be the most unbiased witness, both he and the mayor were already out of the jeep before the hand grenade exploded. If Cabahug was still inside his house when the hand grenade exploded, he could not have seen the mayor and Pongasi leaped out of the jeep.

The defense capitalizes on the testimony of Pat. Pongasi, a witness for the prosecution, who stated that he did not recognize with certainty any of the ambushers in the following excerpt of his testimony:

...

Q. Did you recognize any of the person who fired at you or at the jeep?

A. I did not recognize any of them, Your Honor.

Q. You look at the accused Olimpio Rizal very well. Can you honestly say before God and man that you have

seen him at the premises (sic) during that time?

A. I cannot clearly say so, Your Honor.

...

The defense concluded from the foregoing that Pongasi ruled out the possibility that the accused was among the assailants. This is clearly non sequitur. Pongasi's testimony simply means that he was unable to observe the faces of those who ambushed them with such concentration so as to state with certainty that the appellant was one of them. Pongasi's assertion that "he cannot clearly say" that he had seen the accused at the scene of the crime does not preclude that fact that the accused was present only that he was not seen by this witness. Pongasi's uncertainty as to whether the accused was at the scene of the crime may be attributed to the fact that he fired at the men who were stationed under the house of Moli. He could not even state how many men were firing at them. The persons whom Pongasi could account with certainty were the two assailants near the gasoline station. He fired at them as he saw them. By the time the accused and Retazo approached Zosa, the mayor and Pongasi were already inside the store of Boboy Go. Consequently, Pongasi could not have seen nor recognized the accused. But even assuming that he had seen the accused, there is absolutely nothing in the record that will show that these two had known each other before the ambushade took place.

The trial court faulted the demeanor of Lolita Acosta Vda. de Retazo in the witness stand. She pretended to cry but in closer scrutiny, the Court found out that she was smiling. Such actuation seriously casts doubt to the veracity of her testimony.

The defense, as a last resort, contended that the accused could not have participated in the ambushade since he bears no grudge against the mayor and that according to the wife of the accused, they were grateful to the late mayor for treating for free the members of their family including the accused when they incurred different illnesses.

The evidence, however, establish that the accused had a motive in killing Mayor Abragan. Several witnesses, including the accused, testified that even before the ambushade took place, there were already several encounters between the Christians (locally known as Ilagas) and the Muslims (locally known as the Barracudas). The accused participated in at least four encounters against the Muslims fighting side by side with the PC soldiers. According to Teofilo Retiza, a witness for the defense, Vicente Pangilinan, the accepted leader of the Christian community, announced during a meeting held in his house that Mayor Abragan had to be killed because he was allegedly supporting the Muslims. The accused was present at this meeting, wherein the plot to kill the late mayor was hatched.

It is also pertinent to add here that lack of proof of motive does not preclude a conviction if there is sufficient proof of guilt. While it is a recognized rule of human conduct that a crime is the response of the evil mind to some temptation and men of sound mind are rarely, if ever prompted to commit crime without some impelling motive, it does not follow and it is not the law, that prosecution, in order to justify a conviction in a certain case, must be so successful in fathoming the mysteries of the human mind and in revealing the possibly hidden secrets influencing as to develop and to disclose to the court a motive sufficient and adequate for the commission of the offense.

As a matter of procedure and for the purpose of meeting the requirement of proof beyond reasonable doubt, motive is essential to conviction where there is doubt as to the identity of the culprit^[15] or where there are no eyewitnesses and suspicion is likely to fall upon a number of persons.^[16] But if the assailant is fully identified by eyewitnesses, failure to establish a motive is inconsequential.^[17]

The ambushade took place in a broad daylight. The accused was positively identified by at least three witnesses as one of the assailants. It had been proven beyond reasonable doubt that the accused had committed the crime imputed against him. The presence or absence of motive, therefore is not important.

We agree with the Solicitor General as counsel for the People that appellant's defense cannot be believed, first because appellant has been positively identified by no less than three witnesses (Zosa, Aljo and Angeles) as one of the five men who ambushed the party of the late Mayor Abragan and that appellant's alibi that he was in the neighboring town of Sapad cannot prevail over the certainty of that identification; second, because the scene of the ambush was so close to the house of appellant that it is alleged that the firing could be heard from there and it was an easy matter for appellant to go to his house immediately after participating in the ambush in time to establish an alibi that his supposedly visiting neighbors could later support; third, because the claim that it was Ernesto Retazo and others with him who perpetrated the crime is a convenient defense for appellant to invoke for at the time appellant presented his defense, Retazo was already dead, having been slain in an encounter between warring factions in Lanao del Norte; and finally, appellant's claim that he forewarned the deceased mayor regarding the planned assassination is self-serving considering that the mayor could no longer refute it.

We must also consider that since the trial court rejected the testimonies of the witnesses of the defense not only for their inherent improbability but also because the demeanor of these witnesses while testifying suggested lack of candor, the well-established rule that since the judge who heard the witnesses at the trial had the opportunity to observe the gestures, features, demeanor and manner of testifying of said witnesses, the reviewing court will not interfere with his judgment in the determination of their credibility (U.S. v. Pico, 15 Phil. 549; U.S. v. Maralit, 36 Phil. 155; U.S. v. Remigio, 37 Phil. 599; People v. Cabrera, 43 Phil. 64; People v. De Otero, 51 Phil. 201; People v. Legones, 69 SCRA 210; People v. Jose, 71 SCRA 273; People v. Sarile, 71 SCRA 593; People v. Godoy, 72 SCRA 69; People v. Estenzo, 72 SCRA 428; People v. Cabiling, 74 SCRA 285) stands four-square in its application to the case at bar.

Treachery qualified the killing of Mayor Abragan to murder. The victims were taken by surprise. The attack was sudden and unexpected. There was a feeble attempt on the part of the mayor and his group to retaliate but not one of the five armed men was hit. All of them escaped unscathed.

The aggravating circumstances of evident premeditation, commission of the crime with insult to public authority and abuse of superior strength cannot be appreciated in this case as the Solicitor General, counsel for the government, himself points in his Brief, p. 25. It is essential in evident premeditation to prove (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and, (3) a sufficient lapse of time between the determination and the execution to reflect.[18] There is no proof, aside from conspiracy, that the accused and his companions had sufficient time to plan the killing, reflect on it and after reflection decided to commit the evil deed. Under ordinary circumstances where conspiracy is present with proof of attendant deliberation and selection of the method, times and means of executing the crime, the existence of evident premeditation is taken for granted. But when conspiracy is merely inferred from the acts of the accused and his companions in the perpetration of the crime and there is no showing that there was an opportunity for reflection and persistence in the criminal intent that characterizes evident premeditation, such aggravating circumstance cannot be taken for granted but must be proved like any other of its kind.[19]

In order that the aggravating circumstance of commission of a crime with insult to public authority be appreciated, it must not only be shown that the crime was committed in the presence of the public authority but also that the crime was not committed against the public authority himself.[20] Mayor Abragan, the only public authority who figured in this ambushade was one of the victims. Hence, We rule that the trial court erred in including commission of the crime with insult to public authority as one of the aggravating circumstances in this case.

The trial court also improperly appreciated abuse of superior strength as one of the aggravating circumstances attendant to the commission of the crime. Where treachery or alevosia is present, abuse of superior strength is deemed absorbed.[21] Since treachery had been proven to exist in the case at bar, abuse of superior strength may not be further taken into consideration.

The aggravating circumstances of craft and/or disguise and commission of the crime by a band are present in this case. The accused and his four companions disguised themselves as army men by wearing fatigue uniforms and jungle packets. Attired as they were, the people who had seen them thought that they were members of the Philippine Army. They had concealed their identities effectively. It is of no moment that Zosa, Angeles and Aljo were able to identify the accused as one of the five armed men because this is only incidental to the fact that their attire or uniforms gave them the false appearance of being legitimate soldiers patrolling the streets.

The accused alleges and claims voluntary surrender, passion or obfuscation and lack of education as mitigating circumstances in his favor. Only voluntary surrender can be taken into consideration which the Solicitor General concedes. Records show that sometime in December, 1972, accused met Sgt. Salazar in Maranding, Lanao del Norte three times. In their second meeting, Sgt. Salazar informed Olimpio Rizal that he had a pending case in connection with the murder of Mayor Abragan. Accused immediately agreed to go with Sgt. Salazar to Cotabato City where he could surrender. Accused then surrendered to General Encarnacion, the head of the Fourth PC Zone. They went to Tipanoy to apply for amnesty. His application was denied on the ground that the crimes he committed were not included in the crimes entitled to amnesty.

Passion or obfuscation or something analogous thereto cannot be appreciated in this case even as the records disclose that before July 14, 1971 up to about 1973, the Muslims went on a rampage, rustling the cattle of the Christians and killing Christians, their wives and families and that there was practically a state of war not only in the Municipality of Kapatagan, Lanao del Norte but also in other municipalities of the province and the neighboring provinces as well and that the Muslims (Barracudas) and the Christians (Ilagas) were engaged in a death struggle (Records, p. 38). There is no evidence that the accused was overwhelmed with these emotions when he took part in the ambush. In fact, nothing was said on the state of mind of the accused just before the ambush took place. There was no altercation between the victims and the accused or between any member of their families which would justify the inclusion of passion and obfuscation as one of the mitigating circumstances.

Lack of education cannot likewise be considered in this case. While records show that the accused reached only up to Grade III in schooling and that he could not read English, these do not prove that he is so ignorant so as not to be aware of the import of his act.[22] In *People vs. Agustin*,[23] We held that "(t)he condition of lack of education cannot be taken as a mitigating circumstance in this case because it has not been established illiteracy that was coupled with such a low degree of intelligence that the malefactor did not fully realize the consequences of his criminal act." As proved by his testimony in the trial court, the accused answered all the questions propounded to him in a logical and calculated manner which leaves no doubt as to his innate intelligence. The fact that he cannot read English does not necessarily mean that he is illiterate.

One mitigating circumstance of voluntary surrender can offset only one aggravating circumstance that attended the commission of the crimes. Since there are two ordinary aggravating circumstances of craft and/or disguise and commission of the crime by a band aside from treachery or alevosia which qualified the crimes to murder, the proper imposable penalty must be in the maximum period for each crime committed by the accused.

The decision of the lower court in Criminal Case No. IV-374 for the crime of murder imposed the penalty of death; in Criminal Case Nos. IV-376 and IV-377 for frustrated murder, the penalty imposed is the indeterminate sentence of ten years of prison mayor as minimum to seventeen years and four months of reclusion temporal as

maximum. We find the penalties correct and in accordance with law.

WHEREFORE, the judgment appealed from and under automatic review is hereby AFFIRMED en toto, including the awards for damages.

Costs against the appellant.

SO ORDERED.

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

Fernando, C.J., took no part.

[1] t.s.n., p. 258, 260, 261.

[2] Ibid., p. 273.

[3] t.s.n., pp. 41-43.

[4] Ibid., pp. 303-304.

[5] t.s.n., pp. 41-43.

[6] Ibid., p. 124.

[7] People vs. Valera, L-15662, August 30, 1962, 5 SCRA 910, 914.

[8] 97 Phil. 575, 581.

[9] Exhibit "F" for the prosecution.

[10] People vs. Lumantas, L-16383, May 20, 1962, 5 SCRA 157; People vs. Pelagio, L-16177, May 24, 1967, 20 SCRA 153; People vs. Fontanoza, L-19421, May 29, 1967, 20 SCRA 429; People vs. Gomez, L-25815, May 31, 1969, 28 SCRA 440; People vs. Bulawin, L-30069, September 30, 1969, 29 SCRA 710; People vs. Ragas, L-29393, March 29, 1972, 44 SCRA 152; People vs. Mori, L-23511 and L-23512, January 31, 1974; People vs. Dereje, L-31155, April 22, 1974, 56 SCRA 554; People vs. Zapatero, L-31960, August 15, 1974, 58 SCRA 450.

[11] People vs. Jistiado, L-5478, April 29, 1954, 94 Phil. 825; People vs. Venegas, L-4928, June 11, 1954, 95 Phil. 209; People vs. Guzman, L-13340, April 30, 1960, 107 Phil. 1122; People vs. Alban, L-15203, March 29, 1961, 1 SCRA 931; People vs. Curiano, L-15256-57, October 31, 1961, 9 SCRA 323; People vs. Secapuri, L-17518-19, February 29, 1966, 16 SCRA 199; People vs. Akiran, L-18760, September 29, 1966, 18 SCRA 375; People vs. Jamero, L-19852, July 29, 1968, 24 SCRA 201; People vs. Briosos, L-28482, January 30, 1971, 37 SCRA 336; People vs. Diaz, L-24002, January 21, 1978, 55 SCRA 178; People vs. Ybañez, L-30421, March 28, 1974, 56 SCRA 210; People vs. Salazar, L-32858, August 19, 1974, 58 SCRA 467; People vs. Ancheta, L-29581-82, October 30, 1974, 60 SCRA 333; People vs. Sarmiento, L-26183, June 19, 1975, 64 SCRA 350; People vs. De la Victoria, L-30037, June 27, 1975, 64 SCRA 400; People vs. Cabiling, L-38091, December 17, 1976, 74 SCRA 825.

[12] Memorandum for the Prosecution, p. 10.

[13] Exhibit "10".

[14] Exhibit "4".

[15] People vs. Verzo, L-22517, Dec. 26, 1967, 21 SCRA 1403.

[16] People vs. Solana, L-13967, Sept. 29, 1962, 6 SCRA 60; People vs. Romawak, L-19644, Oct. 31, 1964, 12 SCRA 332; People vs. Raquel, L-17401, Nov. 28, 1964, 12 SCRA 441; People vs. Portugueza, L-22064, July 31, 1967, 20 SCRA 901.

[17] People vs. Evaristo, L-14520, Feb. 26, 1965, 13 SCRA 172; People vs. Lumantas, L-28355, July 17, 1969, 28 SCRA 764.

[18] People vs. Pantoja, L-22946, Oct. 11, 1968, 25 SCRA 468; People vs. Ramolete, L-28108, March 27, 1974, 56 SCRA 66; People vs. Cardenas, L-29090, April 29, 1974, 56 SCRA 631; People vs. Manzano, L-33643-44, July 31, 1974, 58 SCRA 250; People vs. Lacao, L-32078, Sept. 30, 1974, 60 SCRA 89.

[19] People vs. Mendoza, 91 Phil. 58; People vs. Custodio, 97 Phil. 698; People vs. Ardiza, L-29351, Jan. 23, 1974, 55 SCRA 245.

[20] U.S. vs. Rodriguez, 19 Phil. 150; People vs. Siojo, 61 Phil. 307.

[21] People vs. Mori, I-23511-12, Jan. 31, 1974, 55 SCRA 382.

[22] People vs. Ripas, 95 Phil. 63; People vs. Gorospe, 105 Phil. 184; People vs. Geronimo, L-35700, Oct. 15, 1973, 53 SCRA 246.

[23] L-18368, March 31, 1966, 16 SCRA 467.

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