

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARCADIO DE LA ROSA Y LANDICHO, DEFENDANT-APPELLANT.***G.R. No. L-33606. May 16, 1983*

Ponente: GUERRERO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/f581c7aaf1aa/>**GUERRERO, J.:**

On December 4, 1970, at about 12:00 noon, on the occasion of a student demonstration being held in the vicinity of Feati University in Sta. Cruz district, Manila, tragedy struck unexpectedly. Francis Sontillano, a 16-year old student of the Philippine Science High School, along with Marlon Fuentes, Ciriaco Lagunsad, and Eleuterio Gutierrez, also students of the same school, were hit by a pillbox bomb causing the instantaneous death of Sontillano and physical injuries to the others.

On December 14, 1970, an indictment for "Murder with Multiple Attempted Murder" was filed with the Circuit Criminal Court of Manila against Arcadio de la Rosa y Landicho, a security guard of Feati University, charging:

"That on or about December 4, 1970, in the City of Manila, Philippines, the said accused, with intent to kill, did then and there wilfully, unlawfully and feloniously treacherously threw a pillbox bomb at the student demonstrators who were then marching along Helios Street, in the Southside of Paterno Bldg., Feati University, in said City, resulting in an explosion, which act was so sudden and unexpected and without giving a chance to the people gathered therein to defend themselves, and as a consequence thereof, it hit one Francis Santillano who sustained mortal wounds which were the direct and immediate cause of his death thereafter; that as a further consequence of said explosion, the following persons were hit, to wit: Marlon Fuentes, Ciriaco Lagunsad and Eleuterio Gutierrez, who likewise sustained physical injuries, but the said accused did not perform all the acts of execution which should have produced the crime of multiple murder as a consequence, by reason of causes other than his own spontaneous desistance, that is the injuries sustained by said Marlon Fuentes, Ciriaco Lagunsad and Eleuterio Gutierrez were not necessarily mortal."

An extensive and speedy trial was conducted. As the People's Brief has adopted as its "own appellant's statement of the case and of the facts that are pertinent to the prosecution, the same being substantially correct," We quote hereunder the evidence of the prosecution and the defense as recited in the latter's Brief, thus:

"The prosecution presented both testimonial, documentary and real evidence. For discussion purposes, the prosecution witnesses are grouped into medico-legal officers, police investigators and alleged eyewitnesses. Substantially, their testimonies are as discussed hereunder.

- Medico-Legal Officers

Dr. Luis Larion re-stated and affirmed his findings in his Postmortem Report that Francisco Sontillano suffered, among others, lacerated wound, extensive and avulsing with powder burns and singeing of the hairs located on the vortex of the head with multiple fractures of the skull and maceration of the brain; that the top of the head was blasted down; and that the cause of death was shock and hemorrhage due to explosive blast injuries of the head, fracturing the skull and macerating the brain (pp. 46-55, t.s.n., Larion, January 7, 1971, A.M.; Exh. "M").

The formal examinations of Dr. Rodolfo Pineda and Dr. Rodolfo Valera were dispensed with in view of the admission of the defense that Dr. Pineda examined and treated Marlon Fuentes and Ciriaco Lagunsad as indicated in the medical certificates marked as Exhs. "F" and "G", and that Dr. Valera examined and treated Eleuterio Gutierrez as described in the medical certificate marked as Exh. "H" (pp. 109-113, t.s.n., Pineda & Valera, January 5, 1971, P.M.).

- Police Investigators

- Jesus Patajo --

This witness stated that on December 5, 1970, he received for chemistry examination 11 pieces of CW nails; that he found the nails positive for Nitrates and Nitrites which are probably caused by residues as a result of an explosion; that the nails were negative for Chloride Ions which indicated probable absence of Potassium Chloride which is one of the explosive substances; and that there can be explosion without potassium chloride (pp. 9-18, t.s.n., Patajo, Jan. 5, 1971, A.M.; Exhs. "A", "A-1").

- Capt. Raymundo Paredes --

The formal presentation of this witness, who would have testified that a pillbox is an explosive and that its explosion could cause injuries like those sustained by Francis Sontillano, was dispensed with in view of the admission of the defense that a pillbox could have caused injuries like those suffered by Sontillano (pp. 56, 57, t.s.n., Manifestation, Jan. 7, 1971, A.M.).

- Pat. Alex Querimit --

On direct examination, Pat. Querimit of Pct. 2, MPD, claimed that at about 3:00 p.m., December 4, 1970, he, Cpl. Raveno and Pat. Luis Santos, went to the FEATI University compound to investigate a case of homicide with multiple physical injuries due to explosion (pp. 19-21, t.s.n., Querimit, Jan. 5, 1971, A.M.); that at the spot where the violent incident happened, they found and picked up on the asphalted road several pieces of small CW nails (pp. 21, 22, supra, Exh. "A") and that he submitted said nails to the CILAB, MPD for examination (pp. 22-24, supra; Exh. "A-2").

On cross-examination, he stated that he saw the nails six (6) feet from the Paterno Building and about a meter from a pool of blood (pp. 27,28, supra; Exh. "1-A"); that at Precinct 2, he interviewed Arthur Romero and submitted the police report marked as Exh. "2" (pp. 28, 30, supra); and that the portion of said report which reads:

"A student witness Arthur Romero y Gondino stated that while he was marching with his fellow students along Helios St., turning at the right south wall of the Paterno Building, he saw a falling object from atop the Paterno Building of Feati University and fell directly on the head of Francis Sontillano which subsequently exploded."

was stated to him by Romero (pp. 30-32, supra; Exh. "2-A").

- Pat. Ricardo Martinez --

On direct examination, this witness claimed that at about 1:00 a.m., December 5, 1970, he was with the Follow-up squad of Pct. 2, composed of Sgt. Juanito Lagasca, Pat. Ermelo Pelayo, Pat. Ernesto Querol and Pat. Nicolas Basco, when they apprehended the accused near the corner of P. Paterno St., and Rizal Avenue as a suspect in the FEATI case (pp. 35,37, t.s.n., Martinez, Jan. 5, 1971, A.M.); that they asked the accused about the case but he was reluctant to answer and kept shaking his head (pp. 37, 38, supra); that they brought him to Pct. 2 where the accused, after being asked some questions, finally admitted before him (witness), Sgt. Lagasca, Pats. Querol, Basco and Pelayo, that he was the one who threw the pillbox at Helios St. (pp. 38-40, supra); that the accused voluntarily gave a written statement and affixed his signatures thereon with his left hand, (pp. 40-42, supra; Exh.

"B"); that the signature above the typewritten name 'ARCADIO L. DE LA ROSA' on page 2 of Exh. "B" was affixed by the accused at Pct. 2 and the other signature above was affixed before Fiscal Guevarra (p. 43, supra); that the accused superimposed the word 'binata' over the word 'may-asawa' on Q. 3 of Exh. "B" (p. 44, supra); that from Fiscal Guevarra they brought the accused to Maj. Castillo, Pct. 2 Commander and then to Mayor Villegas (pp. 44, 45, supra); and in the afternoon of December 5, the accused was brought to the Jose Reyes Memorial Hospital for physical examination (pp. 45, 46, supra). Pat. Martinez claimed that the accused verbally admitted that the pillbox was as big as a balut egg and somebody gave it to him (accused) in the morning of December 4, 1970 (pp. 47, 48, supra).

On cross-examination, this witness stated that they picked up the accused and arrived at Pct. 2 at about 1:30 a.m., (pp. 49, 50, supra); that the accused was not willing to give any answer and continued shaking his head (p. 50, supra); that together with Sgt. Lagasca, Pats. Querol and Basco, they brought the accused to the room of Capt. Crame with no other persons present (pp. 53, 54, supra); that before the accused gave his written statement at 3:00 a.m., he was orally investigated by him and his three companions (pp. 53-54, supra); that he asked all the questions appearing in Exh. "B" and typed the questions and answers thereto (p. 56, supra); that he was aware that the taking of the written statement was during an unholy hour but he could not wait for 6:00 or 7:00 a.m., because he wanted to be through with the investigation (pp. 55, 59, supra); that he conducted an ocular inspection of the FEATI compound and is familiar with the Helios side near the Pasig river and the Paterno building adjacent to the Northern approach of McArthur bridge (pp. 70-73, supra; Exh. "1"); that he, Sgt. Lagasca, Pats. Querol and Basco brought the accused to the residence of Fiscal Guevarra at past 6:00 a.m., December 5, 1970 for the administration of the oath to the written statement (pp. 75, 78, supra); that they proceeded to New Selecta for breakfast (p. 78, supra); and that they did not use any, violence, intimidation or pressure of any sort (p. 80, supra). On further cross-examination, Pat. Martinez claimed that it took him about 1 hour to ask preliminary questions (p. 83, supra); that they arrived in Pct. 2 about 1:30 a.m., and the written statement was made at 3:00 a.m., or after 1-1/2 hours (p. 85, supra); that they submitted a report of the investigation but could not locate a copy thereof (p. 96, supra); that he did not include in the report that the accused is left handed (p. 96, supra); that he overlooked to include the questions and answers in the written statement of the accused about the latter's claim as to the size of the pillbox and that the same was given to him (accused) by somebody (p. 99, supra).

On re-direct, examination, the witness claimed that the accused demonstrated in the office how he threw the pillbox by extending the upper torso forward and the left hand throwing a supposed pillbox from left to right making an arc almost overhead (p. 102, supra).

On re-cross examination, Pat. Martinez said that he asked the accused how he threw the pillbox when they were in the investigation room because he considered such question very important but he failed to include that question in accused's written statement (pp. 103, 104, supra); and that the window marked as Exh. "3-C" is the most probable window where the accused threw the pillbox (p. 105, supra).

- Pat. Ernesto Querol --

On direct examination, this witness claimed that as a member of the Follow-up squad of Pct. 2, MPD, he was informed at about 3:00 p.m. December 4, 1971, by Capt. Adolfo regarding the FEATI incident and he in turn notified Sgt. Lagasca about the matter (pp. 108, 109, t.s.n., Querol, Jan, 5, 1971, A.M.); that Sgt. Lagasca contacted an informant and briefed the members of his unit that the suspect was a certain Arcadio who was a FEATI security guard (pp. 110, 111, supra); that upon being informed by their informant at past 12:00 midnight, December 4, he, Sgt. Lagasca, Pat. Martinez, Pat. Basco and Pat. Pelayo went to Rizal Avenue where they saw and caught up with the suspect near the corner of P. Paterno St. and Rizal Avenue and they identified themselves as policemen (pp. 113-116, supra); that they told the suspect about his responsibility for the death of a student but

he refused to answer so they took him to the office of Capt. Crame at Pct. 2 (pp. 115, 116, 121, supra); that they continued the interrogation of the suspect but he still denied having killed anyone (p. 117, supra); that the suspect later asked for help and even inquired about the possible bailbond until finally he became cooperative and spontaneously narrated the facts (pp. 117, 119, supra); that the accused claimed that he threw a pillbox, which he smuggled in previous demonstrations, from an open window without shutter at the main building for the purpose of scaring but without any intention of killing the demonstrators (pp. 119, 120, 130, supra); that the accused demonstrated how he threw the pillbox (p. 129, supra); that the verbal admission of the accused, which was made in the presence of Sgt. Lagasca, Pats. Martinez, Basco and himself (witness), was later reduced into writing with Sgt. Lagasca propounding the questions and Pat. Martinez acting as typist and occasionally asking also questions (p. 121, supra); that the accused signed his written statement and in the morning they brought the accused to the residence of Fiscal Guevarra (pp. 122, 123, supra; Exh. "B"); that from the Fiscal's residence they proceeded to New Selecta Restaurant for breakfast, then to City Hall Manila and finally returned to Pct. 2 (pp. 123, 124, supra); that when the accused was interviewed by Maj. Castillo in the presence of members of the media and other officers, the accused claimed they usually threw pillboxes during demonstrations to scare demonstrators (pp. 125, 126, supra); that when asked to demonstrate how he threw the pillbox, the accused said that they can ask the police because he had already demonstrated it to them (p. 128; supra). The witness further claimed that from the office of Maj. Castillo they brought the accused to the office of Capt. Crame where they asked the accused to prepare a sketch of the crime scene but accused said he had rather point to the place so at about 11:00 a.m., December 5, 1970, they (accused, Capt. Crame, Sgt. Lagasca, witness, members of uniform patrolmen and other operatives and a photographer) proceeded to the FEATI compound (pp. 2-4, t.s.n., Querol, Jan. 5, 1971, P.M. with Mr. Delim as relief stenographer); that the accused pointed to the place where the victim fell and the window of the second floor of the main building where he threw the pillbox and photographs were taken (pp. 4-6, supra); that at past 12:00 noon, they (accused, Capt. Crame, Sgt. Lagasca, witness, Pat. Basco) went to Mayor Villegas at City Hall where the accused admitted to the Mayor that he threw the pillbox and was ready for the punishment (pp. 7-11, supra); and that from the office of Mayor Villegas they returned to Pct. 2 (p. 15, supra).

On cross-examination, Pat. Querol claimed that he did not know the informant of Sgt. Lagasca and did not bother to inquire about the informant although later he said that he asked for the name of the informer but Sgt. Lagasca did not tell the name (pp. 19-22, supra); that he was told by Sgt. Lagasca that the accused narrated to the informant how he (accused) hurled the pillbox (pp. 25; 26, supra); that they never informed the Fiscal who was the informant to whom the accused confessed (p. 27, supra); that when they apprehended the accused at about 1:00 a.m., the accused remained silent, shook his head, expressly denied having killed the student (pp. 31-33, supra); that they arrived at Pct. 2 about 1:05 or 1:10 and the oral interrogation of the accused lasted for about 2 hours (pp. 34-39, supra); that the accused began to admit when they arrived at Pct. 2 (p. 47, supra); that the accused admitted 30 minutes after arriving at Pct. 2 (p. 47, supra); that minutes after the accused admitted having thrown the pillbox the written statement was taken at about 3:00 a.m. (pp. 53, 54, supra); that Sgt. Lagasca propounded most of the questions and Pat. Martinez asked also some questions (pp. 55-57, supra); that the accused told him that he (accused) smuggled the pillbox into the University compound during one of the demonstrations (pp. 56-61, supra); that he was present on three (3) occasions when the accused demonstrated how he threw the pillbox (p. 64, supra); that the first demonstration was at Pct. 2 before the accused gave his written statement (p. 64, supra); that he was aware that the demonstration was very important but (after a long pause) did not suggest the inclusion of such question in the written statement (pp. 67, 68, supra); that at the re-enactment at the FEATI compound, the accused also demonstrated how he threw the pillbox which was a very important aspect of said re-enactment (pp. 70, 72, supra); that he did not order the photographer to take pictures of the throwing because he could not account for the photographer's duties (p. 73, supra); that he reminded the photographer to take picture of the demonstration because it was very important but he did not know whether the photographer

took said picture (pp. 73-75, supra); that during the re-enactment he came to now that the accused threw the pillbox from the first open window without shutter of the second floor of the FEATI new main building (pp. 77-79, 81, 82, supra); that he learned about the retraction of the accused in the afternoon of Saturday, (December 5) and the following day at about 12:00 noon, December 6, 1970, somebody reported to Capt. Crame claiming that he was an eyewitness to the FEATI incident (pp. 84, 85, supra); that he read on a date he could not remember the portion of the report of Pat. Querimit regarding the claim of Arthur Romero that the pillbox came from atop the Paterno building (Exh. "2-A") but he was not accountable for the version of Romero and it did not occur to him to call up Arthur (pp. 88-92, supra); and it was only on January 3, 1971 that accused was included in a line-up at the City Jail and pointed to by Jose Yambao (p. 93, supra). In answer to the question of the Court, he stated that it was only on January 3, 1971 that Yambao contacted the police precinct (pp. 93, 94, supra).

On re-direct examination, Pat. Querol said that he met Yambao for the first time on December 6, 1970 in the office of Capt. Crame (p. 95, supra); that Yambao said the accused was then wearing a T-shirt with black trimming around edge of sleeves, the same attire he was wearing in Exh. "3" (pp. 96-97, supra); and that he was alone when the accused told him that he (accused) smuggled the pillbox inside the FEATI compound (p. 98, supra). On additional re-direct examination, Pat. Querol said that at 3:00 p.m., December 5, 1970, they brought the accused to the Jose Rizal Memorial Hospital and a medical certificate was issued (pp. 99-101, supra; Exh. "E").

On further cross and re-cross examination, Pat. Querol said that he does not know what a watercure is about (p. 102, supra); that it did not occur to him to tell Pat. Martinez about the claim of the accused that he smuggled the pillbox (p. 106, supra); and that they cannot locate Yambao to confront the accused on December 17, 1970 (p. 108, supra).

- Alleged Eye-Witnesses

- Arthur Romero --

On direct examination this witness stated that on December 4, 1970, he and about 50 students of the Philippine Science High School (PSHS) joined a rally of students (pp. 117-119, t.s.n., Romero, Jan. 5, 1971, P.M.); that at about 12:45 p.m., the rallyists numbering about 5,000 passed through the FEATI University along Helios St. (PP. 121-122, supra); that they, were at the tail of the demonstrators with Francisco Sontillano ahead of him by about 1 to 2 meters (pp. 123, 124, supra); that he also noticed Marlon Fuentes, Eleuterio Gutierrez and Ciriaco Lagunsad in their march which was generally peaceful (pp. 125, 126, supra); that as they entered the FEATI compound and were about to pass under the McArthur bridge he saw a bomb, travelling at a fast speed which he could not describe nor ascertain from what direction it came from although he noticed it when it was exactly over the head of Sontillano (pp. 127, 128, supra); that the bomb exploded over the head of Sontillano who fell to the ground with the brain scattered out (pp., 128-131, supra); that with four other companions including Julius Ferrare who was wounded, they went to a nearby store (pp. 129, 130, supra); that some students brought Sontillano in a taxi to Pct. 2 (p. 131, supra); that after about 30 minutes they were invited to go to Pct. 2 where he was investigated and gave a written statement to the police (pp. 130-132, supra). On additional direct examination, Romero claimed that he does not know the color of the object that fell on Sontillano's head because it travelled so fast and he saw it about 1 foot from Sontillano's head (pp. 7, 8, t.s.n., Sontillano, Jan. 7, 1971, supra); and that the sound of the explosion resembled the blast of pillboxes which he heard on previous occasions (p. 9, supra).

On cross-examination, Romero admitted that the sworn statement marked as Exh. "4" was executed by him at 2:45 p.m., December 4, 1970 and that he was re-affirming under oath the truth of the answer thereon (pp. 10-13, t.s.n., Romero, Jan. 7, 1971, A.M.). Confronted with the portion of his statement which was marked as Exh.

"4-A", to wit:

"T.

Nakita mo ba naman kung saan nagbuhat iyong bagay na pumutok?

"S.

Nagbuhat ho sa itaas ng building ng Feati University at isa hong pillbox."

Romero claimed that his answer was merely a presumption that the object came from the top of any of the buildings of FEATI University (pp. 13-16, supra); that he is a Tagalog but did not state 'Nagbuhat ho sa itaas ng alinmang sa mga building ng Feati University' because he was then confused and he even informed the police investigator about his confusion and asked for the postponement of his statement but the police officers said that it will not harm him anyway (pp. 15-17, supra); that he was not sure whether he told the policeman, 'Nagbuhat ho sa itaas ng building,' although he subsequently admitted that he told the investigator 'Nagbuhat ho sa itaas ng Feati Building' (p. 22, supra); that the following question and answer were made during the investigation -- "T- Nakikilala mo ba naman kung sino iyong nagtapon ng pillbox buhat sa itaas ng Feati Building? S- Hindi ho, sa mga taong nagbato sa galit ay maaaring makilala iyon." (p.20, supra; Exh. "4-B"); that before signing his statement he read it and even told the police investigator that he was still confused and had rather not sign it but the investigator said it will not harm him anyway (p. 23, supra); that he read again Exh. "4" only when he was under cross-examination (January 7, 1971) and that he never talked to any policemen about the incident except when he gave his statement on December 4, 1970 (pp. 26, 27, supra); that Sontillano fell down right at the place where he was hit (p. 30, supra); that he could not remember whether the object was 1 foot directly on top, back, front or side of the head of Sontillano (p. 31, supra); and that there were about 30 to 50 students behind him (p. 37, supra).

On re-direct examination, Romero said that the explosion caused momentary blindness (p. 38, supra).

On re-cross examination, Romero said that he can now remember that the explosion was on top of the head of Sontillano (p. 39, supra); that the explosion was 1 foot from the head and not on top of the head of Sontillano (p. 40, supra); and later on claimed that the explosion was on top of the head but not one foot from the head of Sontillano (p. 41).

- Eleuterio Gutierrez --

On direct examination, this witness claimed that he knows Francis Sontillano, Ciriaco Lagunsad, Marlon Fuentes and Arthur Romero who are also students of the PSHS (p. 4, t.s.n., Gutierrez, Jan. 8, 1971); that at about 12:45 p.m., December 4, 1970, he was with some of his schoolmates, particularly Sontillano, Fuentes and Lagunsad in a demonstration sympathizing with students who were not admitted in their schools (pp. 3-7, supra); that while walking towards McArthur bridge at Helios St. between Pasig River and Paterno building, Sontillano was 2 feet in front of him a little oblique to the left (p. 5, supra); that he heard a blast in front of him and saw nothing besides the blast but felt numbness on his face because of injuries received from the blast (pp. 7, 8, supra); and that he was brought to the Jose Reyes Memorial Hospital where he was treated by Dr. Valera (pp. 9-11, supra).

On cross-examination, Gutierrez said that at the time of the blast he was about 2 feet from Sontillano (p. 12, supra); that they were about to go under the bridge (p. 14, supra); and that he was about 2 feet from the nearest wall of the Paterno building at the time of the blast (p. 14, supra).

- Marlon Fuentes, Ciriaco Lagunsad --

The testimonies of these witnesses were dispensed with in view of the admission of the defense that they heard a

blast, that they suffered injuries by reason of said blast and that their injuries are indicated in the medical certificates previously identified by the attending physicians (pp. 17-22, t.s.n., Jan. 8, 1971).

- Jose Borbon Yambao --

On direct examination, this witness claimed that at about 12:00 noon, December 4, 1970, he was walking on the right side of McArthur bridge from Plaza Lawton to Echague (pp. 59, 61, t.s.n., Yambao, Jan. 17, 1971, A.M.); that while on top of the bridge, he saw more than 100 students walking on the street beside the right side of the bridge (pp. 61, 62, supra); that there was nobody inside the Paterno building (p. 63, supra; Exh. "3-B"); that at the FEATI building, he saw a man, the only person in that place, throwing with his left hand an object towards the McArthur bridge which hit a group of students and exploded (pp. 66-72, 77, 78, supra; Exhs. "3-D", "E"); that said person threw the object by swinging his left hand from left to right making an arc over his head and his torso extended outwards (pp. 72-75, supra); that said person, who was wearing a white T-shirt with a black neckline and about 50 paces away, left the place after throwing the object (pp. 75, 76, supra); that the students scampered away and a man lying flat on his stomach on the road side with a pool of blood near his head was left behind (pp. 78, 79, supra); that after a while people converged on the person lying on the ground (p. 79, supra); that after the incident, he did not have a chance to go to the police (p. 80, supra); that he thought somebody, among the many witnesses, would have reported the matter to the police and he read in the Saturday newspapers that the culprit admitted his guilt (p. 81, supra); that on December 6, 1970, his conscience prompted him to go to the police to tell them what he saw (p. 85, supra); and that the person who threw the object, which was as big as a duck egg, was the accused Arcadio dela Rosa (pp. 84, 85, supra).

On cross-examination, Yambao stated that he is a high school graduate residing in Makati, Rizal (p. 89, supra); that on December 4, 1970, he walked from the Congress of the Philippines towards Echague where he was to board the buses going to Makati (pp. 90, 91, supra); that he used to ride in Echague because it is cheaper there (p. 92, supra); that he had no money and it would cost him more had he taken the bus at Plaza Lawton instead of Echague which is only P0.20 (p. 94, supra); that he knew he could take a bus or a jeep near the back of YMCA but he did not do so because sometimes he could take a free ride on the B-Twelve buses although he was not able to get a free ride on that day (p. 96, supra). On the resumption of the cross-examination, he admitted that buses going to Makati coming from Echague pass the corner of San Marcelino and Ayala and that the distance from Congress to the corner of San Marcelino and Ayala is very much shorter than from Congress to Echague (pp. 3-4, t.s.n., Yambao, Jan. 7, 1971, P.M.); that he went to Congress on that day to look for his sister and stayed there up to 12:00 noon without taking his lunch (p. 5, supra); that he arrived at McArthur bridge past 12:30 p.m., December 4, 1970, and stayed on the bridge for about 15 minutes (p. 5, supra); that he is not living with his wife and children in Makati but is living with the family of his nephew (pp. 9, 10, supra); that he stayed at home the rest of day and talked to his niece (nephew's wife) about family matters and did not tell her about what he saw an hour ago (pp. 11, 12, supra); that he did not see whether the skull of the person hit was blown off nor whether he had a wound on the head (p. 13, supra); that from where he stood, he saw only about 100 students although in his sworn statement marked as Exh. "5" in answer to Q-10, he claimed having seen 500 students (pp. 15, 16, supra; Exh. "5-A"); that he was sure that the object which he saw was black and the size of a duck egg although in answer to Q-22 of Exh. "5", he said that the object was 'makintab po na maputi-puti' (p. 19, supra); that he was sure there were no other persons at the FEATI building aside from the accused although in answer to Q-13 of Exh. "5", he said that 'Doon po sa building na katabi ng tulay ay wala pong lumabas na tao, pero mayroon pong mga bato at tote na lumalabas sa bintana na tumama sa ibaba. Doon po katapat na building na bukas ang mga bintana ay mayroon ding mga taong mambabato doon sa mga estudyante sa ibaba' (pp. 21, 22, supra; Exh. "5-C"); that he cannot remember how many were the persons at the FEATI building (p. 26, supra); that students were throwing stones towards the upper portion of Paterno building and bottles and stones were coming from said

building (pp. 27, 28, supra); that he was standing about 5 meters (per demonstration of witness) from a lamp post towards Plaza Goiti (p. 29, supra); that before leaving the place people converged around the area with some of them in khaki, but he was not sure whether there were policemen (pp. 30, 31, supra); that when confronted with his statement in Exh. "5", re Q-29 that 'Matagal-tagal pa po bago nilapitan ng mga tao. Nang mayroon ng dumating na Pulisya at iba pang mga tao at doon din mismo sa tulay ay marami ng nanonood, ako po ay umalis na,' he was constrained to admit there were policemen who arrived at the scene of the incident where a person laid sprawl on the ground (p. 32, supra); that it did not occur to him to tell the policemen what he saw because there were many other eye-witnesses although he did not see anybody volunteering the information to the police (pp. 32, 33, supra); that he read the Taliba issue of December 5, 1970 which reads: 'Iniutos ni Major Castillo kay Capt. Francisco Adolfo ang paggawa ng masugid na pagsisiyasat upang malaman kung sino ang naghagis ng 'pillbox' mula sa gusali ng Feati' (Exh. "6-A") which clearly showed that nobody has been suspected yet, still he (witness) did not report to the police (pp. 35-37, supra); that it was only when he found out that the suspect did not admit his guilt that he decided to go to the police (p. 36, supra); that he used to be a prison guard of the Bureau of Prisons and was exonerated of the administrative charge of maltreatment of prisoners (p. 39, supra); that as a fireman of the Manila Fire Department he was separated from the service because he was sickly for having exceeded his absence (p. 39, supra); that when he reported to the police, he was asked to demonstrate how the person threw the object he previously described as 'maputi-puti' which he later described as 'maitim' (pp. 40, 41, supra); and that when he was being investigated on December 6, 1970, he was not asked to, demonstrate how the person threw the object (p. 41, supra)

At this juncture, the defense petitioned for an ocular inspection of the place of the incident and the same was granted. At the McArthur bridge, on the right side going to Sta. Cruz, witness pointed to the lamp post of McArthur bridge where he testified to in court as the place where he was allegedly standing on December 4, 1970 (p. 45, supra). Five (5) meters from said lamp post towards Plaza Goiti where Yambao said he was at the time of incident was measured and from that place the window of the FEATI building from where the accused allegedly threw a pillbox could not be seen as the view is obstructed by the Paterno building (p. 50, supra). Noticing the physical impossibility of seeing the window of FEATI building, witness moved in the opposite direction to about 5 meters away from the lamp post towards Plaza Lawton and pointed to it as the place where he was standing (p. 47, supra). From this newly pointed position, the distance to the place pointed to where Sontillano fell is about 15 meters directly oblique if facing directly the side of the bridge and about 50 meters to the first window of the second floor of the FEATI building where the accused was allegedly seen (pp. 47, 48, supra). On the electric post near the FEATI building are 2 big cable wires and 6 transformers of about 4" by 6" (p. 48, supra).

From McArthur bridge the parties went to Helios St. at the side of McArthur bridge. Yambao pointed to the place where he claimed Sontillano fell which was 41 feet from the side of McArthur bridge and 13 feet from the wall of Paterno building (pp. 51, 52, supra). The actual measurement by the police investigators at the scene of crime immediately after the incident -- 16 feet from the side of McArthur bridge and 6 feet from the wall of the Paterno building -- was also plotted on the ground (pp. 52, 53, supra). The place indicated by Yambao grossly differed from that officially reported by the police by as much as 25 feet from the side of McArthur bridge and 7 feet from the wall of the Paterno building (p. 53, supra). From the spot where the victim fell per the police report, the window at the FEATI building pointed to by the witness as the place where the accused was could not be seen (p. 53, supra). Yambao said that he cannot tell the position of the body (p. 54, supra).

The parties then proceeded to the first window of the second floor of the FEATI building where the Honorable Presiding Judge threw (3) stones towards McArthur bridge with the first stone hitting the window of Paterno building, the second stone about 8 meters short of the spot where victim allegedly fell according to Yambao and the third Stone hitting a car parked in front of the Paterno building and short by 5 meters from the spot pointed to

by Yambao (pp. 55, 56, supra). From the first open window of the second floor of the FEATI building, the place on the bridge where Yambao previously, testified to in court as the spot he was standing (5 meters from lamp post towards Plaza Goiti) could not be seen although the place Yambao subsequently pointed to when he was already on the scene of the incident could be seen (p. 60, supra).

On re-direct examination, Yambao said that when he saw the accused throwing the object there were no other persons (p. 61, supra).

- Evidence-in-Chief of the Defense

The accused testified in his own behalf. Corroborative testimonial, documentary and real evidence were likewise presented.

- Testimony of Dela Rosa --

On direct examination, dela Rosa testified that at about 9:00 a.m., December 4, 1970, he reported for work at the FEATI University where he was a security guard (pp. 38, 39, t.s.n., dela Rosa, Jan. 12, 1971, A.M.); that at about 11:00 a.m., he left for 963 Josefine St., Sampaloc, Manila to get the College Physics he loaned to Nilda Caracas (pp. 39, 40, supra); that he arrived at Nilda's place before 12:00 noon and asked for the book but Nilda said that she was still using it (p. 41, supra); that after staying in Nilda's place for about 1-1/2 hours, he left at about 1:30 p.m. (p. 42, supra); that they accompanied Mendoza to Plaza Lawton (p. 43, supra); that at about 10:00 p.m., he went to the Golden Cup Restaurant with Geminiano Sunga and Alfonso Gomez to eat (pp. 43, 44, supra); that from the Golden Cup they went to Tony's restaurant where they drank beer (p. 45, supra); that from Tony's restaurant while on their way to Luisa & Sons, they were apprehended by five (5) policemen in civilian clothes among them Sgt. Lagasca and Pat. Basco (pp. 46, 47, supra); that he was brought to the corner of Paterno St. and Rizal Avenue and Pat. Basco said 'come here and I will blow your head off,' to which he asked, 'what is my fault,' and Pat. Basco said that he (accused) was the one who blasted off the head of Francis Sontillano (pp. 46, 48, supra); that he told them he does not know anything about that and the policemen brought him to Echague and then to Pct. 2, MPD (pp. 48, 49, supra); that all the policemen were armed with guns and while on the way to Pct. 2, Sgt. Lagasca told him that they will take him to the cemetery (sa cementerio) where they will blast off his head (pp. 49-51, supra); that upon reaching the compound of Pct 2, at the Old Bilibid Prisons, near the morgue at the Traffic Bureau, he was orally, investigated by Pat. Querol (pp. 51, 52, supra); that he was brought to the office of Capt. Crame who was not in, and Pat. Querol removed the bullets from his gun and was handing it to him but he refused to accept it (p. 54, supra); that Pat. Querol asked him to admit having thrown the pillbox at the FEATI University but he refused and he even told Querol that he has not even seen the student rally (p. 55, supra); that in answer to Pat. Querol's query as to where he was at about 12:45 p.m., December 4, 1970, he said that he was in the house of Nilda Caracas in Espana (p. 56, supra); that Pat. Martinez arrived and Pat. Querol gave to the former notes taken by him (Querol) on a piece of paper (p. 57, supra); that he tried to call up FEATI University thru the phone located near the door of the Traffic Bureau but Pat. Martinez grabbed the receiver and told him he was out of communication (p. 59, supra); that he was brought to the office of Capt. Crame at Pct. 2 and Pat. Basco asked him who is the owner of the FEATI University and he answered Araneta (pp. 59, 60, supra); that Pat. Querol asked whether Araneta is the 'one who won in the Convention' to which he replied—the husband (p. 61, supra); that Sgt. Lagasca thereupon said 'sigue, aminin muna at blackmailin natin ang Feati' but he said no (pp. 61-62, supra); that Capt. Crame arrived and Sgt. Lagasca pointed to him (dela Rosa) whereupon Capt. Crame asked whether he was the one who threw the pillbox and he answered no because he has not even seen the rally (pp. 62, 63, supra); that Capt. Crame told Sgt. Lagasca—'bahala na kayo' and then left (p. 63, supra); that Sgt. Lagasca, Pats. Martinez, Querol and Basco brought him to the back of the detention cell and told him 'admit it so that you will not be hurt' (p. 64, supra); that they boxed him as his hands were held and they required him to strip naked (p. 65, supra); that

Sgt. Lagasca poured water on him and boxed him in the stomach with fist covered by an undershirt (p. 66, supra); that they placed thumbcuffs on his thumbs and told him to lie down face upwards on a bench with his 2 hands between his thigh (p. 67, supra); that Pat. Martinez sat on his stomach facing him and as Pat. Martinez held his two hands, his face was covered by a dirty shirt with an odor that caused his tears to fall (pp. 68, 69, supra); that as they poured water on his face which entered his nose and as he could not breathe, Sgt. Lagasca kept on saying, 'Carding, admit it' (pp. 69, 70, supra); that he refused to make an admission so they kept on pouring water on his mouth while Pat. Martinez made jerking movements on his stomach (p. 70, supra); that they removed the thumbcuffs and in the same lying down position, they placed his hands behind his back and Pat. Martinez reversed his position (back towards face of dela Rosa) and inserted a hard object in the hole of his sexual organ which caused considerable pain (pp. 71-73, supra); that Sgt. Lagasca kept on saying—'admit it otherwise you will suffer more' but he refused to make any admission (p. 73, supra); that they made him lie down on the floor, blindfolded him, forced him to drink plenty of water and they removed their shoes and stepped on his stomach (p. 74, supra); that he finally agreed to make an admission and was made to sign a statement (p. 74, supra; Exh. "B"); that he affixed his signatures on the statement with his right hand at about 6:00 a.m. (p. 76, supra); that he was brought to the house of Fiscal Guevarra by Sgt. Lagasca, Pats. Martinez, Querol and Basco where he again affixed his signature before the Fiscal at about 7:00 a.m. (pp. 77, 78, supra); that they brought him to Selecta where he was not able to eat much and it is not true that he ordered four eggs because he was going to hang anyway (pp. 77, 78, supra); that they later brought him in front of Manila City Hall and finally to the office of Capt. Crame in Pct. 2 (pp. 73, 79, supra); that Capt. Crame, Sgt. Lagasca, Pats. Querol and Basco, brought him to the FEATI compound and asked him to go up the Paterno building but he refused so they told him to go to the second floor of the FEATI new main building and asked him to point to the place where he supposedly threw the pillbox but he refused (p. 83, supra); that they insisted 'just point any place because it will take us the entire afternoon and you will be hurt again,' so he pointed to the second floor (pp. 83, 84, supra); that Capt. Crame, Sgt. Lagasca, Pats. Martinez, Querol and Basco brought him to Mayor Villegas and Capt. Crame said, 'Mayor, it is impossible to happen at the place pointed to by him' (p. 84, supra); that the Mayor remained quiet (p. 85, supra); that from the City Hall, they brought him to Apollo 11 restaurant and finally proceeded near the morgue at the Old Bilibid Prisons compound where Sgt. Lagasca told him that FEATI had abandoned him and proposed 'let us make another statement to implicate FEATI University and also Mendoza' and demand an amount of P60,000.00 but he answered, 'please don't' (pp. 86-88, supra); that Sgt. Lagasca countered, 'okay, if you don't like just Mendoza' (Chief Security of FEATI University) and for P10,000.00 but again he refused to do so (pp. 88, 89, supra); that at about 2:30 p.m., December 5, 1970, he finally succeeded in contacting by phone Mr. Galang (p. 90, supra); that at past 4:00 p.m., Attorney Basobas, Magdaleno Seria and Leonardo Tagapia arrived in the office of Capt. Crame (pp. 92, 96, supra); that when Attorney Basobas and his companions arrived, he just started writing with his right hand his letter to Mayor Villegas in compliance with the advice of the Mayor that he puts in writing his complaint about the practice of the police in requiring innocent persons to admit guilt (pp. 93, 94, supra; Exh. "8"); that as he was writing there was even a reporter near him (pp. 95, 97, supra); that upon seeing Attorney Basobas, he cried and within the hearing of Capt. Crame, who was then seated about 1-1/2 meters away, and in the presence of Seria, Tagapia and his wife, he told Attorney Basobas, 'sir they maltreated me' and 'up to this time,' my body is still aching' (pp. 96, 97, supra); that the reporter was near them (p. 97, supra); and that he narrated how they covered his face with at undershirt, forced him to drink water and he demonstrated how he was maltreated (p. 97, supra). He further testified that during the maltreatment his nose bled and when he was allowed to put on his T-shirt there was still a little bleeding so much so that when he blew his nose on the T-shirt, blood spots were left on the neckline and right sleeve (pp. 99, 100, supra; Exh. "9"); and that he was never asked to demonstrate how the pillbox was thrown (pp. 100, 101, supra). At this juncture, Dela Rosa was asked by his counsel to sign his name 5 times with his right hand on the left side of a coupon bond and also as legibly as he can 5 times with his

left hand on the right side of said coupon bond and it took him 3 minutes and 10 seconds to finish signing with his left hand (p. 102, supra; Exh. "10"). He further testified that when he was telling Atty. Basobas about his maltreatment, Sgt. Lagasca was inside the office of Capt. Crame but did not say anything (p. 104, supra); and that he was not able to point Sgt. Lagasca as one of those who maltreated him because when he started crying and shouting, the persons who maltreated him left the office (pp. 103, 104, supra).

On cross-examination, dela Rosa testified that he is married and has 2 children (p. 3, t.s.n., dela Rosa, Jan. 12, 1971, P.M.); that he has been a security guard of the FEATI University under Mr. Jorge Mendoza (p. 4, supra); that he has seen about two demonstrations and the FEATI University suffered damages in the first demonstration (p. 4, supra); that he heard about a DRB security guard, who killed a student demonstrator, having been acquitted only when he was being maltreated (p. 5, supra); that on December 4, 1970, his tour of duty was from 2:00 p.m. to 10:00 p.m. and was then assigned to the office of the Chief, Security Guard (pp. 6-7, supra); that he went to the house of Nilda Caracas past 11:00 a.m. (p. 7, supra); that at the beginning he did not tell Nilda about his being married and she was his girl friend for about 3 months but they did not live together as husband and wife (p. 8, supra); that it was only on December 6, 1971 when he told Nilda he was married (p. 9, supra); that he returned to the FEATI University about 2:00 p.m. (p. 10, supra); that at about 1:00 a.m., he and Salvador Marinda were apprehended by plain clothesmen (pp. 16, 17, supra); that he was brought without handcuffs to the residence of Fiscal Guevarra, to Selecta restaurant and in front of Manila City Hall (pp. 18, 22, supra); that he did not notice having been pointed to as a suspect (p. 24, supra); that when he was brought to the office of Mayor Villegas, where they stayed for About 45 minutes he noticed other persons aside from the policemen who went with him and he remembers having told the Mayor that sometimes he plays basketball (p. 29, supra); that the arresting officers brought him to Apollo restaurant and then near the morgue at the Traffic Bureau where he succeeded in calling up by phone at about 3:00 p.m., December 5, 1970 (pp. 29-32, supra); that he was brought to the office of Capt. Crame in Pct. 2 and while he was there, Attorney Basobas, together with Seria, Tagapia and his (accused's) wife, arrived (p. 33, supra); that during this time Sgt. Lagasca and his companions were going in and out of the office (p. 33, supra); that he was not able to talk to his wife as she was only able to say "What happened to you?" (p. 33, supra); that he talked to Attorney Basobas for not more than a minute inside the room about 2 meters from where Capt. Crame was seated (pp. 35, 36, supra); that when Attorney Basobas asked why he was in that place, he started crying and told about his maltreatment and demonstrated how it was done (p. 37, supra); that after demonstrating the maltreatment he told Attorney Basobas that he was required to sign a statement and Attorney Basobas thereupon told Capt. Crame—"Sir, how is this, my client is complaining?" (pp. 37, 38, supra).

- Corroborative Evidence

- Nilda Caracas—

On direct examination, this witness testified that she works as a waitress and at the same studies as a second year Architecture student (pp. 3-5, t.s.n., Caracas, Jan. 11, 1971, A.M.); that the accused Arcadio dela Rosa, whom she knew was single, became her sweetheart (pp. 5, 6, 11, supra); that between 11:30 and 12:00 noon, December 4, 1970, the accused came to her home at 963 Josefin St., Sampaloc, Manila to get a College Physics that she borrowed from him (p. 6, supra); that he stayed in her house up to about 2:00 p.m. (pp. 6, 7, supra); that the other persons in her house then were her sister Baby Caracas and Delarose Acosta, sister-in-law of her elder brother (p. 15, supra); that she knows Pat. Ermelo Pelayo (admitted by the parties as a member of the Follow-up Squad of Sgt. Lagasca) and his family who are occupying the upper floor of the house where she is residing (pp. 8, 9, supra); that on the Sunday following the apprehension of the accused, Mrs. Pelayo, wife of Pat. Pelayo, told her that it was a pity that the accused was the one apprehended and she replied that how could that happen when the accused was with her in her house at that time (pp. 9, 10, supra); that before the FEATI incident she heard plenty

of news about the accused being married so they quarrelled and had a break with him although they remained to be friends (pp. 12, 13, supra); that about 7:00 p.m., December 16, 1970, while working at her place of work at Luisa & Sons Restaurant, 3 persons who introduced themselves as policemen, took her to Pct. 2 (pp. 13, 14, supra); that on the way to Pct. 2, they asked her where the accused was on December 4, 1970 and she told them that he was in her house (p. 14, supra); that at Pct. 2 they asked where the accused was, and she said she did not know (p. 16, supra); and that she was thereupon brought back to her place of work (p. 16, supra).

On cross-examination, she testified that she met the accused at FEATI University and became sweethearts for more than 3 months and during that time, the accused used to go to her house at Josefina St. (pp. 16, 17, supra); that she heard about the accused being married about December 1, 1970 and they quarrelled on the same day (pp. 18, 19, supra); that she knows Blanca Julian was a friend of the accused but she does not know whether a certain Chit was the object of accused's affection (pp. 20-23, supra); that Mrs. Pelayo was the one who brought up the subject of accused's arrest (p. 23, supra); that although she knew that she will testify in this case, she was not sure whether she will be able to testify on January 11, 1971 (pp. 26, 27, supra); that she continued to be a friend, which she believes is not bad, of the accused after their quarrel (p. 29, supra); and that she cannot say whether she will be happy or sad if the accused is acquitted because she was concerned only in telling the truth (p. 31, supra).

- Attorney Teofilo Basobas—

On direct examination, Attorney Basobas testified that he is the Assistant Legal Officer and at the same time Dean of Men of the FEATI University (p. 48, t.s.n., Basobas, Jan. 11, 1971, A.14.); that as Dean of Men he is not aware of any directive prohibiting the enrollment of activists students (pp. 48, 49, supra); that at about 3:00 p.m., December 5, 1971, he received a note that dela Rosa was in the office of Capt. Crame in Pct. 2 (pp. 49, 50, supra); that at about 3:30 p.m., December 5, 1970, he and FEATI guards Seria and Tagapia went to the office of Capt. Crame at Pct. 2, MPD, and he introduced himself to Capt. Crame as the lawyer of dela Rosa (pp. 49-51, supra); that he saw dela Rosa sitting beside the table of Capt. Crame writing something on a piece of paper (p. 51, supra); that he asked Capt. Crame for permission to talk to dela Rosa and upon being allowed to do so he asked dela Rosa why he was in Pct. 2 (pp. 51, 52, supra); that dela Rosa then cried and answered—'pinahirapan ako', 'hanggang ngayon masakit ang katawan ko', at the same time holding his stomach (pp. 52, 53, supra); that dela Rosa started narrating that he was brought to the back of the detention cell, stripped naked, forced to lie down on a bench, covered with a kamiseta on the face and water poured on his face (p. 54, supra); that in the office of Capt. Crame, dela Rosa pointed to Sgt. Lagasca, Pat. Martinez, Pat. Querol and Pat. Basco as the persons who maltreated him (witness identified and pointed these persons in court) (pp. 55-60, supra); that not one of these persons pointed to by dela Rosa as having applied the watercure said anything and, except, for Sgt. Lagasca who stayed inside Capt. Crame's office, Pats. Martinez, Querol and Basco stepped outside (p. 61, supra); that Sgt. Lagasca did not say anything after his companions left (p. 62, supra); that Capt. Crame asked dela Rosa why he did not complain and dela Rosa said that he could not do so because everybody inside was a policeman (p. 62, supra); and that dela Rosa demonstrated how his face was covered with a piece of kamiseta as indicated in dela Rosa's picture in the newspaper marked as Exhs. "7" and "7-A" (pp. 62, 63, supra), Attorney Basobas further testified that he requested a photographer to take a picture of dela Rosa how his face was covered with a piece of cloth (p. 3, t.s.n., Basobas, Jan. 11, 1971, afternoon session); that he requested Capt. Crame to have dela Rosa examined by a doctor but the Captain said there was no available doctor (pp. 3, 4, supra); that after asking Capt. Crame about three times to have dela Rosa physically examined, he offered to bring dela Rosa to a hospital for examination but Capt. Crame told him to wait as a doctor will be coming (pp. 4, 5, supra); that while waiting for the doctor promised by Capt. Crame, he was informed by one of the FEATI guards that dela Rosa was brought outside in a jeep (p. 5, supra); that he told Capt. Crame about what the FEATI guard told him and it was only then that the Captain said dela Rosa was brought to the hospital (p. 6, supra); and that when dela Rosa was brought back to Pct. 2, he told him to

continue writing the letter he started to write but dela Rosa was not able to do so because he was brought back to the detention cell (pp. 6, 7, supra); Attorney Basobas further testified that Capt. Crame asked dela Rosa why he did not complain to Mayor Villegas and dela Rosa answered, 'How could I complain when all the people around me are policemen and besides, I don't know the other people present in the group' (p. 7, supra); that Capt. Crame told dela Rosa that had he wanted a lawyer he could have availed of the services of one but dela Rosa said, 'Totoo iyan, sir, pero when I wanted to get the telephone receiver, you refused to give it to me' (pp. 8, 9, supra); and that he was informed by dela Rosa that the latter was threatened before he was brought to Fiscal Guevarra (p. 8, supra).

On cross-examination, Attorney Basobas said that he has been teaching at the FEATI University since 1962 (p. 9, supra); that he saw dela Rosa in the office of Capt. Crame at about 4:00 p.m., December 5, 1970 (pp. 12, 13, supra); that as counsel of dela Rosa, he asked Capt. Crame for permission to talk to dela Rosa and he was allowed to talk to dela Rosa in the presence of Capt. Crame who was then about 2 meters away (pp. 13, 14, supra); that he did not talk to dela Rosa privately (p. 14, supra); that he had no chance to tell dela Rosa about the latter's rights as a suspect because dela Rosa, when asked what happened to him, at the outset stated that he was maltreated ('pinahirapan ako') so he (witness) thereupon let dela Rosa to narrate what happened (p. 15, supra); that after dela Rosa's narration, he told Capt. Crame and the persons around that from dela Rosa's statement it was clear dela Rosa is not admitting the confession (pp. 18, 19, supra); that he did not file any complaint against the policemen for maltreatment because any decision on that matter will depend upon dela Rosa's acquittal in court (pp. 22-24, supra); that among the persons present in the office of Capt. Crame were a reporter of the Manila Bulletin who was already inside when he arrived and another reporter from the Manila Times who arrived later (p. 20, supra); that he asked dela Rosa to pose for the picture marked as Exh. "7-A" (p. 24, supra); that the reporters heard what dela Rosa narrated and he told the reporters to publish what dela Rosa said (p. 24, supra); that the new item appearing in the Manila Daily Bulletin marked as Exhs. "7" to "7-B", insofar as it referred to the retraction of dela Rosa, was a correct and factual reporting of what took place in the office of Capt. Crame (pp. 25, 26, supra); that in the afternoon of December 5, 1970, dela Rosa informed him that the latter was in the house of Nilda Caracas at the time a student was killed (p. 27, supra); that he made efforts to contact Nilda (p. 27, supra); and that he was told by dela Rosa that Nilda was his girl friend (p. 28, supra).

- Fiscal Donato Guevarra—

Fiscal Guevarra testified that at about 7:00 a.m. December 5, 1970, Sgt. Alfredo Lagasca and about 2 or 3 police officers brought to him a certain Arcadio dela Rosa for the latter to subscribe to an oath in his affidavit (pp. 30-34, t.s.n., Guevarra, Jan. 12, 1971, A.M.); that the document marked as Exh. "B" was the one subscribed to before him by dela Rosa (pp. 34, 35, supra); that when the document was brought to him, it contained the first signature immediately above the typewritten name 'ARCADIO DELA ROSA' so he required dela Rosa to sign again in his presence (pp. 35, 36, supra); and that dela Rosa signed his name again with his right hand (p. 36, supra).

- Resti Samson—

On direct examination, this witness testified that he has been a news photographer of the Manila Daily Bulletin since 1961 (p. 42, t.s.n., Samson, Jan. 12, 1971, P.M.); that at about 4:00 p.m., December 5, 1970, he was in the office of Capt. Crame at Pct. 2, because he was directed by the editor to take a picture of Arcadio dela Rosa (pp. 42, 43, supra); that he saw dela Rosa seated inside the office of Capt. Crame writing a letter to the Mayor which the latter told dela Rosa to write (p. 46, supra); that he took a picture of dela Rosa while writing as indicated by a photograph marked as Exh. "11" (showing dela Rosa writing with right hand) (pp. 44, 45, supra); that after he took the picture, a lawyer of FEATI University, whom he later knew to be Attorney Basobas, arrived (pp. 46, 47, supra); that Attorney Basobas asked dela Rosa why he was there and the latter replied that he has been suspected

of having thrown a pillbox (p. 48, supra); that a woman, who turned out to be dela Rosa's wife, arrived immediately after Attorney Basobas arrived (pp. 47, 48, supra); that Attorney Basobas asked the persons present in the office, 'May I know who are these gentlemen and from where are they' and the attorney thereafter told dela Rosa to say everything in their presence (p. 48, supra); that dela Rosa thereupon claimed that he signed a statement admitting the crime because he was subjected to third degree (p. 49, supra); that dela Rosa demonstrated how he was subjected to third degree (pp. 49, 50, supra) that he took a picture of such demonstration, with dela Rosa's right hand covering his face, as illustrated in Exh. "12" and which appeared in the Manila Daily Bulletin marked as Exhs. "7" and "7-A" (p. 51, supra); and that the original picture marked as Exh. "12" is the same as the picture marked as Exh. "7-A", although the latter was printed in a reversed position by the editor (p. 51, supra).

On cross-examination, Mr. Samson said that he saw the paper dela Rosa was writing on but he did not notice whether there was anything on the paper then (pp. 53, 54, supra); that he later found out that the woman appearing on Exh. "12" is dela Rosa's wife (pp. 55, supra); that he saw Attorney Basobas for the first time in the office of Capt. Crams and that upon learning that there were reporters inside the room, Attorney Basobas said that dela Rosa can tell everything to the press (pp. 55, 56, supra); and that dela Rosa's upper garment then was a T-shirt (pp. 56, 57, supra).

- Luciano Caliwán—

Mr. Caliwán testified that he has been a news photographer of the Evening News since February 15, 1967 (p. 59, t.s.n., Caliwán, Jan. 12, 1971, P.M.); that at about 12:45 p.m., December 4, 1970, he was at the Evening News office when he was informed about a riot at the FEATI University (p. 60, supra); that he proceeded to the place of the riot and upon arriving thereat about 1:00 p.m., a news photographer informed him that somebody died (pp. 60, 61, supra); that he went to the back of FEATI University but found the victim was no longer there (p. 61, supra); that he took a picture of the place where the victim fell as indicated by a photograph marked as Exh. "13" (p. 62, supra); that on the picture are shown smudges of blood, skull and 3 scattered pieces of brain (pp. 62-64, supra; Exh. "13-A", "13-B"); that the picture which he took appeared in the Evening News issue on December 5, 1970 (pp. 64, 65, Exhs. "14" and "14-A"); that the picture as published was cut for lack of space (p. 65, supra); that the place where the victim fell was about 6 feet from the wall of Paterno building and more or less 15 feet from the wall of McArthur bridge (pp. 65-66, supra). He further testified that he took another picture marked as Exh. "15", with a stapled typewritten note—"Two MPD policemen looking at pillbox they confiscated from Roberto Castro, 17, student of the Philippine Science High School" marked as Exh. "16" (p. 67, supra); that the typewritten note stapled to the picture was made by the police reporter (p. 68, supra); that the pillbox is the object inside the cigarette case (Exh. "15-A") (pp. 69, 70, supra); and that he asked for the name of the student because a policeman told him that the pillbox came from him (p. 69, supra).

On cross-examination, Mr. Caliwán said that the measurements he mentioned in Exh. "13" were his estimates (p. 72, supra); that he believes it was Halili (policeman) who told him that the pillbox came from Roberto Castro (p. 72, supra); that he just asked the name of Roberto Castro but did not check from Castro himself whether the pillbox was actually taken from him (p. 73, supra).

- Anita Pasag—

On direct examination, this witness testified that she is a sales assistant of the FEATI University school and office supplies store located in front of the FEATI building near the Pasig river (pp. 3-5, t.s.n., Pasag, Jan. 12, 1971, A.M.); that she reported for work at 9:00 a.m., on December 4, 1970 and at about 12:00 noon, the students marching at the McArthur bridge proceeded to Helio St. between the Paterno building and the main FEATI

building (p. 5, supra); that on Exhibit "3", the building marked as Exh. "3-A" is the FEATI building, the one marked as Exh. "3-B" is the Paterno building and the place marked as Exh. "3-E" is the store where she works (pp. 6, 7, supra); that after one of the students delivered a speech at Helios St., the students continued marching by turning right between McArthur bridge and Paterno building (p. 8, supra); that at that time there were several persons in the windows of the second floor of the FEATI building watching the rally (pp. 9, 11, supra; Exh. "3-A"); that she heard 2 blasts, the second being louder than the first (pp. 9, 10, supra); that as she heard the two explosions there were still persons, six or seven in each window of the second floor of the FEATI building (p. 10, supra; Exh. "3-A"); and that she knew dela Rosa for about a year and dela Rosa was not among the persons at the windows of the FEATI building at that time (p. 12, supra).

On cross-examination, she claimed that she knew dela Rosa because he was a security guard of the FEATI University (p. 13, supra); that she did not see dela Rosa before the marching and shouting of the students on December 4, 1970 (p. 14, supra); that she did not notice so much the face of dela Rosa before December 4, 1970 because there are many security guards and he is not close to her (pp. 14, 15, 17, supra); that she noticed dela Rosa on December 5, 1970 with handcuffs inside a car (p. 15, supra); that on December 4, 1970 they closed the door of the store only when somebody died (p. 19, supra); that the store is directly in front (facing) of the FEATI building (p. 21, supra); that at the time of the explosion, she was inside the store but on the front side (p. 22, supra); that she does not know anybody among the students by the window of the second floor of FEATI building (p. 26, supra); and that her husband is employed in the Registrar's office of FEATI University (p. 27, supra).

- Romeo Angustia—

On direct examination, this witness claimed that he is on his 5th year as a conductor and is at present a conductor of the Guadalupe De Luxe Bus on the Guadalupe-Quiapo line (pp. 31-33, 35, t.s.n., Angustia, Jan. 11, 1971); that the buses from Makati to Quiapo pass through Tejeron, Herran, Paz, Dart, United Nations Avenue, Zobel, Ayala, Taft Avenue, Plaza, Manila City Hall, Plaza Lawton up to Echague (p. 33, supra); that on the return trip, the buses pass through Echague, Ayala Bridge, Concepcion, San Marcelino, Zobel, Gen. Luna, Oregon, Paz, Herran and then Tejeron (pp. 33, 34, supra); that the fare from Plaza Lawton to Makati is P0.20, from Echague to Makati is P0.20, from the corner of Concepcion and San Marcelino to Makati is P0.15, and from the corner of San Marcelino and Ayala Avenue to Makati is P0.15 (pp. 35-37, supra); that the busy hours for buses are from 6:30 to 9:00 a.m. and from 4:30 to 7:00 p.m. (pp. 37, 38, supra); and that there are very few passengers from 12:00 noon to 2:00 p.m. (p. 38, supra).

On cross-examination, the witness said that Echague is the main stopping point of buses going to Guadalupe and the bulk of passengers board at Echague in going home to Guadalupe (p. 39, supra); and that in many instances buses are already full at Echague and the passengers are standing when they pass Concepcion Street (p. 39, supra).

Parties agreed and it is judicial notice of that the distance from Congress to the corner of San Marcelino and Concepcion is shorter than from Congress of Echague (p. 37, supra).

- Pat. Alex Querimit—

On direct examination, Pat. Querimit said that he was the one who took the statement of Arthur Romero at 2:35 p.m., December 4, 1970, which has been marked as Exh. "4" (pp. 40, 41, supra); that at the time he took the statement it is not true that Romero informed him that he (Romero) was confused (p. 41, supra); that it is not true that Romero did not like to give a statement yet (p. 41, supra); that it is not true that he insisted that Romero should give a statement (p. 41, supra); that it is not true that after Romero read his statement, Romero told him (witness) that he (Romero) was still confused (p. 42, supra); that it is not true that Romero was reluctant to sign

the statement (p. 42, supra); and that it is not true that he insisted that Romero sign his statement (p. 42, supra).

On cross-examination, Pat. Querimit said that the portion of his report marked as Exh. "2-A" was based from the statement of Romero that the latter saw a falling object from atop the Paterno building (p. 46, supra).

- Rebuttal Evidence of the Prosecution—

The prosecution presented rebuttal witnesses, to wit:

- Capt. Aquilino Crame—

On direct examination, Capt. Crame said that as Executive Officer of Pct. 2, MPD, he had a hand in the investigation of the case of dela Rosa (p. 85, t.s.n., Crame; Jan. 12, 1971); that he saw Attorney Besobas for the first time when the latter introduced himself as a lawyer of the FEATI University at about 3:30 p.m., December 5, 1970 (p. 86, supra); that Attorney Basobas talked at a very low voice to the accused at the right corner of his room for almost 10 minutes (pp. 7, 8, supra); that Attorney Basobas thereafter told him that the accused complained of maltreatment but he refused to believe it because dela Rosa should have complained to Fiscal Guevarra and/or to Mayor Villegas (pp. 88, 89, supra); that he was present when the accused was brought to Mayor Villegas and the accused explained to the Mayor that he committed the act just to make the persons leave the place (p. 90, supra); that dela Rosa told Mayor Villegas, he is engaged in basketball (pp. 90, 91, supra); that it is not true that Attorney Basobas asked for authority to have the accused examined by a doctor because he ordered Pat. Querimit to bring the accused to the hospital (p. 92, supra); that it is not true that the accused refused to point to the place where he allegedly threw the pillbox because the accused pointed to the second floor of the FEATI building (p. 93, supra); that it was the accused who ordered brandy when they were at Apollo restaurant (p. 94, supra); that the accused was not writing to the Mayor about his complaint against policemen forcing suspects to admit crimes they have not committed because what the Mayor asked him to write were the reasons why he committed the crime and the persons responsible therefor (p. 95, supra); that it is not true he told the Mayor that from the place pointed by the accused, it was impossible for the crime to be committed (p. 96, supra); that it is not true that the accused and his wife had not talked to each other because they talked for about 5 minutes (p. 98, supra).

On cross-examination, Capt. Crame admitted that the primary purpose of a re-enactment is to make the suspect re-enact what he admits in his statement as having been done by him (pp. 99, 100, supra); that at the FEATI University he asked the accused to point to the place where he threw the pillbox (p. 100, supra); that he asked that a picture be taken of the demonstration how the accused threw the pillbox (p. 100, supra); that he does not know the whereabouts of the picture of the demonstration as the photographer, whose name he does not remember, is in a better position to say where the picture is (pp. 101, 102, supra); that before going to the court he did not verify who was the photographer (p. 102, supra); and that according to Sgt. Lagasca the photographer was not able to take that particular position when the accused was demonstrating how he allegedly threw the pillbox (pp. 102, 103, supra);

On re-direct examination, Capt. Crame said that he actually saw the photographer actually taking the picture of the accused's, demonstration (p. 103, supra). At this, juncture, defense counsel manifested that while Capt. Crame was testifying, Sgt. Lagasca and Pat. Basco were present in court (p. 104, supra).

- Pat. Ermelo Pelayo—

On direct examination, he claimed that he is occupying the upper floor of the 2-storey house at 963 Josefina Street, Sampaloc, Manila, with the first floor occupied by the Caracas and Acosta families (pp. 105, 106, Pelayo, Jan. 12, 1971); that Nilda Caracas is related to the family occupying the first floor (p. 106, supra); that the claim of Nilda that from 11:00 a.m. to 2:00 p.m., December 4, 1970, the accused was in her house is not true because he

(witness) was at the base of the stairs near the iron gate from 9:00 or 10:00 to 1:00 p.m., of said date and he should have seen the accused if he were there (pp. 107, 109, supra); that from the place where he was, he could see people getting inside the house of Nilda (pp. 109, 110, supra); and that he knows the accused by face because he used to see him going to Nilda's house before December 4, 1970 (p. 110, supra).

On cross-examination, Pat. Pelayo claimed that he had not yet taken his lunch at that time as he used to take lunch at home at past 1:00 p.m. (p. 111, supra); that for 4 hours he was talking to the nephew of his landlady whose name he does not know (p. 114, supra); that he remembers the date because as a policeman he was not usually home during that time (p. 114, supra); and that it is not true that he went to the province on that day (p. 115, supra).

On re-direct examination, he claimed that he fetched his family from Pampanga on December 5, 1970 and returned the following day (p. 117, supra).

- Sgt. Juanito Lagasca—

On direct examination, this witness claimed that he was the officer-in-charge of the Follow-up squad, Pct. 2, on December 4, 1970 (p. 4, t.s.n., Lagasca, Jan. 13, 1971); that it is not true that he or any member of his team subjected the accused to third degree (p. 5, supra); that it is not true that when Attorney Basobas was in the office of Capt. Crame, the accused started crying and complained about being subjected to third degree thereby making him, Pats. Martinez, Querol and Basco to suddenly leave the office (p. 5, supra); that it is not true that he told the accused that they proposed to blackmail FEATI University and Mr. Mendoza by implicating them in the crime and extorting from them P60,000.00, or that they implicate only Mr. Mendoza and demand P10,000.00 (pp. 6, 7, supra); that when they were caught by the traffic at Plaza Lawton, the accused told a newsboy that the crime has already been solved because he was the author (pp. 7, 8, supra); that at Apollo 11, the accused pleaded that he be given 2 shots of Fundador brandy (pp. 9, 10, supra); that the accused asked the Fiscal for a reduction of his bail (p. 10, supra); that he (accused) was not in the office of Capt. Crame so the accused could not have pointed to him as the one responsible for the maltreatment (p. 11, supra); that he never told the accused that he was taking the accused to the cemetery (p. 11, supra); that he never wrapped his fist with an undershirt and forced dela Rosa to admit crime (p. 12, supra); that it is not true he told the accused—'Carding, aminin mo na' because the accused admitted having thrown the pillbox (p. 13, supra); and that it is not true he told the accused to admit his guilt otherwise he will suffer more (p. 13, supra).

On cross-examination, Sgt. Lagasca said that the accused admitted having committed the crime immediately after they arrived at Pct. 2, or about 1:30 a.m. (pp. 15-18, supra); that the accused made the admission without any promise of help to him (p. 19, supra); that Pat. Ermelo Pelayo is a member of his Follow-up squad (p. 20, supra); that the re-enactment was the idea of Capt. Crame and the re-enactment actually took place (pp. 21, 22, supra); that he asked the accused to demonstrate how he threw the pillbox and as the accused demonstrated, he instructed a photographer to take a picture therefor (pp. 22, 23, supra); that the picture was not taken because according to the photographer the film was exposed (p. 23, supra); that several pictures were taken but only 2 pictures were submitted because the photographer said the other films were exposed (p. 25, supra); and that he does not remember the pictures taken by the photographer but what he remembers is the picture on the demonstration of the accused only (p. 26, supra).

On re-direct examination, he said that 2 pictures were submitted by the MPD photographer (pp. 27, 28, supra); that Exh. "0" shows the accused pointing with his right forefinger the spot below where Sontillano was standing at the time he was hit by the pillbox (pp. 28, 29, supra); and that Exh. "0-1" also showed the accused pointing with his left hand to the place where victim was standing when hit (p. 29, supra).

On re-cross examination, he said that the pictures marked as Exh. "3" was shown to him only but was taken by MPD photographer (pp. 30-32, supra); that they instructed the photographer to take the picture of the spot where the victim fell but according to the photographer the negative was exposed (p. 33, supra); that he did not take steps to retake the demonstration of the accused as he threw the pillbox and the place where victim fell after being notified of the exposure (p. 33, supra); that he refers only to Exh. "0-1" as the picture where the accused pointed to the place where the victim fell (p. 34, supra); that the accused was at the main annex at the time he was pointing to the place where victim fell (p. 35, supra).

- Bobby Castro—

This witness claimed that he was one of those who demonstrated along FEATI University when Sontillano died (p. 37, t.s.n., Castro, Jan. 13, 1971); that it is not true that a pillbox was recovered within his vicinity (p. 38, supra); that he never gave his name as Robert Castro because his real name is Bobby Castro (p. 39, supra); that there were many policemen and news reporters then and he was asked about his name (p. 40, supra).

On cross-examination, he said that he does not know where the pillbox was recovered (p. 42, supra); and that he never saw the policemen recovering a pillbox after the commotion (p. 42, supra).

- Rebuttal Evidence of the Defense—

- Nilda Caracas—

On direct examination, Miss Caracas testified that she knew Pat. Pelayo was staying in the second floor of the house where she was staying on December 4, 1970 (p. 44, t.s.n., Caracas, Jan. 13, 1971); that Pat. Pelayo was not at the base of the stairways near the iron gate between 9:00 a.m. to 1:00 p.m. on December 4, 1970, because she never saw him there when she went out to buy soap at past 9:00 a.m., and then returned to the house (p. 45, supra); that Pat. Pelayo was likewise not at the gate when she again went out about 10:00 a.m. to buy viands and returned to the house (p. 47, supra); that from the door of her place she could see the iron gate where Pelayo claimed he was but she never saw him there between 9:00 a.m. to 1:00 p.m. of said date (p. 47, supra); that on December 6, 1970, Mrs. Pelayo informed her that Pat. Pelayo and the family went to Candaba on December 4, 1970 (p. 47, supra); that after December 6, 1970, Pat. Pelayo told her to help the accused if she knew he is innocent but not to help him if she knew he is guilty (p. 48, supra); and that Pat. Pelayo never mentioned anything about the accused having been in her house (pp. 49, 50, supra). On cross-examination, she said that her house companion on December 4, 1970 was Delarose Acosta (p. 51, supra).

On February 13, 1971, the trial court found the accused guilty of the complex crime of murder with multiple attempted murder and sentenced him to death, the dispositive portion of the decision reading as follows:

"WHEREFORE, accused is hereby found guilty beyond reasonable doubt as principal of the complex crime of murder with multiple attempted murder qualified by the use of explosive and there being proved the aggravating circumstance of treachery without any mitigating circumstance to effect the same, the court sentences him to DEATH, to indemnify the heirs of the victim Francis Sontillano the sum of P12,000.00 for the death of the latter and the sum of P10,000.00 by way of moral damages, also the sum of P5,000.00 each to victims Marlon Fuentes, Ciriaco Lagunsad and Eleuterio Gutierrez by way of moral damages and to pay the costs.

SO ORDERED.

Manila, Philippines, February 13, 1971.

(SGD.) MANUEL R. PAMARAN

Judge"

From the above decision, accused-appellant appealed raising five assignments of errors:

I

"The lower Court erred in not finding that it is physically impossible for Francis Sontillano to have been hit by a pillbox allegedly thrown from the first open window of the second floor of the Feati Building.

II

"The lower Court erred in not disregarding the clearly and obviously fabricated testimony of principal prosecution witness Jose B. Yambao.

III

The lower Court erred in not finding that the alleged confession of defendant-appellant Arcadio de la Rosa is involuntary and as such inadmissible.

IV

"The lower Court erred in not upholding the testimony of defendant-appellant Arcadio de la Rosa that he was not at the scene of the incident and could not have therefore committed the offense.

V

"The lower Court erred in not acquitting defendant-appellant Arcadio de la Rosa at least on the ground of reasonable doubt."

Reviewing the defense of accused-appellant, We find that the following salient facts proved by the prosecution evidence are not disputed: (1) The findings of Dr. Luis Larion in his Postmortem Report that Francis Sontillano suffered, among others, lacerated wounds, extensive and abulsing with powder burns and singeing of the hair located at the vortex of the head with multiple fractures of the skull and maceration of the brain; that the top of the head was blasted down; and that the cause of death was shock and hemorrhage due to explosive blast injuries of the head, fracturing the skull and macerating the brain (t.s.n., pp. 46-55, Larion, January 7, 1971, A.M., Exh. "M"); (2) The results of the examinations and treatment by Dr. Rodolfo Pineda and Dr. Rodolfo Valera of victims Marlon Fuentes, Ciriaco Lagunsad and Eleuterio Gutierrez as indicated in the medical certificates marked as Exhibits "F", "G" and "H", respectively (t.s.n., pp. 109-113, Pineda and Valera, January 5, 1971, P.M.); (3) The testimony of police investigator Jesus Patajo that he found the "pieces of CW nails, which he received for chemistry examination, positive for Nitrates and Nitrites which are probably caused by residues as a result of an explosion (t.s.n., pp. 9-18, Patajo, January 5, 1971, A.M., Exhs. "A" & "A-1"); and (4) The supposed testimony of Captain Raymundo Paredes which was dispensed with in view of the admission that a pillbox could have caused injuries like those suffered by Sontillano.

The crucial question to be resolved herein is whether or not the evidence against accused Arcadio dela Rosa as the pillbox bomb thrower is so positive and certain as to meet the inflexible requirement of proof beyond reasonable doubt.

The theory of the prosecution is that the accused-appellant, standing at the first open window of the second floor of the Feati building, threw a pillbox towards McArthur bridge which hit a group of students marching along Helios Street, between Paterno building and Pasig River. In support of this theory, the prosecution relies on the testimony of the alleged witness, Jose Borbon Yambao, and on the alleged voluntary confession of the accused.

On the other hand, the position of the defense is that the above theory of the prosecution is a physical

impossibility; that the accused was not at the Feati University at the time of the incident; that the claim of the police investigators that the accused voluntarily executed his confession is a blatant and calous lie and that Yambao is a last-minute fabricated witness who was recruited to repair the damage caused by the accused's repudiation of the alleged confession, and that therefore, the accused is entitled to an acquittal.

On the alleged physical impossibility for the victim Francis Sontillano to have been hit by a pillbox allegedly thrown from the first open window of the second floor of the Feati building which accused-appellant contends and submits as the first assigned error on the part of the lower court in not so finding, We find that indeed, the evidence on records shows that the spot where Sontillano fell is disputed. From the report of Pat. Querimit (last paragraph, p. 2, Exh. 2, p. 66, Records) Sontillano fell on that portion of Helios Street between Paterno Building and Pasig River which is approximately six (6) feet from the south wall of the Paterno Building and about sixteen feet from the east wall of the north approach of the McArthur Bridge. But as pointed out by prosecution witness Jose Yambao (pp. 51-52, t.s.n., Jan. 7, 1971, P.M., Perez) it is that place thirteen feet from the south wall of Paterno building and forty one (41) feet from the east wall of McArthur bridge. The trial court adopted the latter place as the spot where the victim, Francis Sontillano, fell.

In arriving at this conclusion, the court cited the ocular inspection of the premises, the observation of the Presiding Judge and his participation therein, among others, as the basis of said conclusion, in the following excerpts:

"... accused claimed that it was physically impossible for the object to be hurled at the first window of the second floor of the Feati Building to the spot where Sontillano fell, because of the obstruction of the object hurled by a portion of the Paterno Building which is separated from the Feati Building by Helios Street. That defense, however, of the accused has no merit. From the common exhibit of the prosecution and the defense (Exhibit "3"), it is clear that if a straight line is drawn from the place where the accused threw the pillbox (Exhibit "C") to the place where Sontillano fell (Exhibit "2-C"), that portion of the Paterno Building will not obstruct the pillbox thrown. In the ocular inspection, the court has likewise observed that an object thrown, from the place where the accused was (Exhibit "C") to the place where the victim fell (Exhibit "3-C"), will not be obstructed by that portion of the Paterno Building, the post, the wires and the transformers especially the light of the testimony of Yambao that when accused threw the pillbox, accused made an upward swing of his hand from the left to the right. The Presiding Judge even got stones and threw them upward passing over the wires and transformers and though the third throw fell short of about five meters from the place where the victim fell, yet, it is clear that with the necessary strength of the thrower, it will reach the place where the victim fell without any obstruction." (Decision, pp. 255-256, original records).

We agree with the trial court that the testimony of Jose Yambao who witnessed the incident when it happened is more reliable than the report of Pat. Querimit (Exh. "2") who went to the scene to investigate when it was already 3:00 o'clock in the afternoon some three hours after the incident which occurred at about 12:00 o'clock noon of December 4, 1970 as well as the testimony of Evening News photographer Luciano Caliwan who arrived at the scene an hour after the incident. Both Patrolman Querimit and photographer Caliwan were not present when the explosion occurred and neither did they see Francis Sontillano as he lay sprawled on the road after the explosion. At most, the report of the patrolman and the testimony of the photographer indicated an estimated measurement of what they thought to be the spot where the victim fell.

The insistence of the defense that the physical impossibility for a pillbox thrown from the first open window of the second floor of Feati Building to have hit Sontillano at the place claimed by the defense and the strong probability that the pillbox came from the top of the Paterno Building is shown by the claim of witness Arthur Romero, immediately after the fatal incident, that he saw a falling object coming from atop the Paterno Building which fell directly on the head of Sontillano, cannot be accepted in the light of the clarification made by the same

witness, Arthur Romero, when confronted in court that he did not immediately see where the pillbox came from because when he saw it, the object was already on top of the head of the victim, Francis Sontilano, and the falling object was then exploding. When this witness reported to Pat. Querimit that the object came from atop the Paterno Building, he clarified that his reference to the Paterno Building as to where the object came from was merely presumed by him. Such explanation or clarification is natural and logical, consistent with human conduct and reaction to unusual occurrences such as the explosion of the pillbox that hit the head of the victim in the case at bar. The first circumstance that must have attracted the attention of the witness, Arthur Romero, was the nearness of the falling object to the head of the victim, followed by the explosion. At any rate, the point at issue is one of credibility where the conclusion of the trial court that heard the evidence is conclusive and binding upon this Court.

The second assigned error faults the lower court in not disregarding the testimony of the principal prosecution witness, Jose B. Yambao, which the defense brands as clearly and obviously fabricated on the grounds that he has an "untrustworthy background"; that Yambao was not at the scene of the crime; that his claim that he passed by McArthur Bridge on his way home is incredible; that Yambao's claim that he recognized the accused dela Rosa shows propensity for falsehood; that his failure to immediately report to the police raises grave doubts on his claim; and that said witness Jose Yambao made self-contradictions and inconsistencies in his affidavit and his testimony in court. This assignment of error is not impressed with merit.

Reviewing the grounds set forth above submitted by the accused-appellant in support of the second assignment of error, it is at once apparent that they all raised the question of credibility of the evidence presented in the trial of the case which, as We have pointed out earlier, the lower court being in a better position to appreciate the same, having seen and heard the witnesses themselves and observed their behavior and manner of testifying, is entitled to respect. Nonetheless, this being an automatic review of the decision imposing the death penalty, We hold that Yambao's credibility as a witness is not impaired by his inability to reply to certain administrative charges filed against him for prolonged absence without leave and deliberate failure to submit his reply, nor by a recommendation of the board of officers of the New Bilibid Prison that Yambao as prison guard be reprimanded for having maltreated prisoners on several occasions.

Appellant's contention that Yambao was not at the scene of the crime because of alleged contradiction in the latter's testimony on cross-examination that he was standing about five (5) meters from a lamp post on McArthur Bridge towards Plaza Goiti while during the ocular inspection, Yambao pointed to the lamp post of said bridge and that five (5) meters from said lamp post towards Plaza Goiti was actually measured and from that position, the Feati building where Yambao allegedly saw the accused throw a pillbox could not be seen inasmuch as the view is completely obstructed by the Paterno Building, is weak and flimsy. The observation of the lower court that Yambao, did not say that he was five, meters away from the post after passing it, is to Us, logical. We find no conflict in the statement of Yambao during the ocular inspection that he was standing five meters away before the post on the McArthur bridge coming from Plaza Lawton and his testimony in court prior to the ocular inspection that he was five meters away from the post towards Plaza Goiti for in the first instance, he was coming from Plaza Lawton and in the second, he was at the same time going towards Plaza Goiti. In any event, as the trial court correctly held, which We affirm, persons are easily liable to commit errors in the observation recollection of minute details of an important occurrence (*People vs. Tuazon*, 1717334 April 29, 1950, 86 Phil. 278).

We also reject appellant's submission that Yambao's account is too fantastic to believe not only because it is a gratuitous assertion but also because it has no sound factual basis is against the positive and credible testimony of this witness. More than that, it is of common observation that ordinary, citizens like the witness; Jose Yambao, are reluctant to come 'forward and report to the police authorities to volunteer information that will involve them in

court cases. And moreover, whatever inconsistencies or contradictions which the appellant have pointed in his Brief to impugn the credibility of witness Yambao were sufficiently explained and clarified by said witness. Anyway, the inconsistencies are trivial and as We said in *People vs. Alcantara*, L-26867, June 30, 1970, 33 SCRA 812, "The contradictions in the declarations of a witness when trivial cannot be ascribed to insidious attempt to distort the truth. It is a truism that the most candid witness oftentimes commits mistakes and incur in inconsistencies in his declarations, but such honest lapses do not necessarily impair his intrinsic credibility. Far from being evidence of falsehood they could justifiably be regarded as a demonstration of good faith and a confirmation of the fact that the witness was not a rehearsed witness."

Accused-appellant attacks the admissibility of the extrajudicial confession, Exhibit "B" given by him on December 5, 1970 to Pat. R. Martinez in the Office of the Follow-up Unit, Pct. 2, MPD on the ground that it was involuntary, having been secured by means of force, threats and intimidations. We quote hereunder in full the confession of the accused-appellant, thus:

"SALAYSAY NI ARCADIO DELA ROSA y LANDICHO NA IBINIGAY KAY PAT. R. MARTINEZ NGAYONG MAG-IKA ALAS 3:00 NG UMAGA, DISYEMBRE 5, 1970, SA TANGGAPAN NG FOLLOW-UP UNIT, PRESINTO 2, MPD, SA HARAP NI SGT. J. LAGASCA.

01. TANONG:

Nais mo bang magbigay ng isang malaya at kusang loob na salaysay at sagutin ng buong katotohanan ang lahat ng aming itatanong saiyo at dapat mong malaman na ang salaysay na ito ay maaring gamitin laban sa iyo o kanino man sa alinmang hukuman sa loob ng Pilipinas?

SAGOT:

Opo.

02. T—

Kailangan mo ba ang tulong ng isang abogado dito sa usaping ito?

S—

Hindi na po, sa husgado na lang.

03. T—

Ano ang iyong pangalan at iba pang mga bagay na nauukol sa iyong pagkatao?

S—

ARCADIO DE LA ROSA y LANDICHO, 27 taong gulang, binata, isang Security Guard sa FEATI University, ipinanganak sa Tanauan, Batangas, at kasalukuyang nakatira sa FEATI University sa main building.

04. T—

Bilang isang Security Guard ng FEATI University, gaano ka na katagal sa iyong panunungkulan?

S—

Mayroon na pong labing-tatlong (13) buwan.

05. T—

Ano ang oras ng iyong tour-of-duty bilang security guard?

S—

Buhat ng alas 2:00 ng hapon hanggang alas 10:00 ng gabi.

06. T—

Kahapon, petsa Disyembre 4, 1970, ikaw ba ay pumasok sa iyong trabaho?

S—

Opo.

07. T—

Anong oras ka nagreport sa iyong trabaho?

S—

Alas 9:00 ng umaga.

08. T—

Sa iyong pagpasok buhat alas 9:00 ng umaga, hanggang sa uwian ninyo ng bandang alas 10:00 ng gabi, mayroon bang hindi pangkaraniwang pangyayari sa iyong pinagtatrabahuan sa FEATI University?

S—

Mayroon po.

09. T—

Ano ang pangyayaring iyon?

S—

Mayroon batohan ng bote at bato at saka putukan sa Helios street at dahil dito mayroon namatay na isang estudyante.

10. T—

Maaari mo bang isalaysay ang buong pangyayari?

S—

Nang pagitan ng alas 12:00 ng tanghali at ala 1:00 ng hapon ay dumating ang mga nagmamartsang estudyante sa Helios Street na nagsisigawan at binabato ang mga kuwarto ng mga estudyante sa Paterno Building at New Main building. Pati mga guwardiya ay minumura at binabato at isinisigay na boycottin ang mga klase. At dahil ayaw lumabas ang mga estudyante sa loob ng mga kuwarto ay pinagbabato nila at pinaputukan ng baril. Nang makita kong may natamaan ng bato sa mga kasama ko at nagkakasirasira ang mga bintana ng FEATI University ay naghagis ako ng pill-box para takutin ang mga estudyanteng nambabato para umalis sila sa paligid. Hindi ko alam na mayroon pa lang natamaan sa aking paghagis.

11. T—

Saan ka ba naroroon ng maghagis ka ng pill-box?

S—

Nasa 2nd floor ng New Main building sa may dulo nakaharap sa Helios St.

12. T—

Sino ang kasama mo sa lugar na iyon?

S—

Wala po.

13. T—

Kailan mo nalaman na mayroon kang natamaan?

S—

Sinabi lang ho ng isang kasamahan ko.

14. T—

Pagkatapos ng may nagsabi sa iyo na mayroon kang natamaan, ano ang ginawa mo?

S—

Tumawag po ako ng pulis.

15. T—

Papaano ka tumawag ng pulis?

S—

Pumunta po ako sa may Echague at sinabi ko sa pulis na nakausap ko na may natamaan ng pillbox sa dulo Helios.

16. T—

Kakilala mo ba iyong pulis na nakausap mo?

S—

Hindi po.

17. T—

Pagkatapos mong mapagsabihan iyong pulis ano pa ang nangyari?

S—

Isinakay ng mga estudyante sa taksi iyong natamaan, at ako'y bumalik na sa loob ng New Main building.

18. T—

Pinaalam mo ba sa mga pinuno mo ang pagkatama ng isang estudyante ng pillbox na siyang ikinamatay?

S—

Opo.

19. T—

Kanino mo inireport ang pangyayari?

S—

Sa Chief Security na si Mr. Jorge Mendoza.

20. T—

Ano naman ang ginawa ni Mr. Mendoza pagkatapos mong iriport sa kanya ang mga pangyayari?

S—

Pinahigpit ang pag-guguardiya namin baka lusubin ng mga estudyante ang compound ng FEATI.

21. T—

Nasabi mo kanina na mayroong natamaan sa mga kasamahan mo, sino naman ang kasamahan mong ito?

S—

Si Ambrosio Pechardo at saka si Cruz ng Tamaraw Guard.

22. T—

Dinala ba sa ospital ang mga kasamahan mong natamaan?

S—

Hindi po.

23. T—

Wala ka na bang nalalaman na kasamahan mong naghagis ng pillbox?

S—

Hindi ko po alam.

24. T—

Ilan ang hinagis mong pillbox buhat sa corridor ng 2nd floor?

S—

Isa lang po.

25. T—

Matapos mong maihagis iyong pillbox mayroon ka pa bang narinig na putok?

S—

Opo. Marami pa.

26. T—

Alam mo ba ang kaibhan ng putok ng baril o pillbox?

S—

Oho.

27. T—

Ano ang kaibhan?

S—

Ang putok ng pillbox ay malakas at nakayayanig at ang putok ng baril ay matinis.

28. T—

Ano ba ang hitsura ng pill-box na hinagis mo?

S—

Medyo triangulo, mataba.

29. T—

Sabihin mo nga sa amin kung ano-ano ang sangkap at paano ginagawa ang isang pillbox?

S—

Hindi ko po alam.

30. T—

Bakit sumasabog ang pillbox kung tumatama sa matigas na bagay?

S—

Hindi ko po alam.

31. T—

Makailan beses ka na nagpasabog ng pillbox?

S—

Noon lang pong pagkakataong iyon.

32. T—

Nakakita ka na ba ng taong tinamaan ng pillbox?

S—

Hindi pa ho.

33. T—

Iyong tinamaan mo kahapon sa may Helios anong hitsura?

S—

Hindi ko po nakita.

34. T—

Ano ang natapos mo sa iyong pag-aaral?

S—

Fourth year high school.

35. T—

Samakatuwid marunong kang bumasa at umintindi ng salitang Tagalog?

S—

Opo.

36. T—

Pagkatapos mong mabasa at maunawaan itong iyong salaysay, nais mo bang lagdaan ito bilang patunay na ang lahat ng iyong inilalahad dito ay pawang katotohanan lamang?

S—

Opo.

37. T—

Mayroon ka pa bang ibig sabihin o idagdag dito sa iyong salaysay na marahil ay hindi namin naitatanong sa iyo?

S—

Wala na po.

— WAKAS NG SALAYSAY —

(SGD.) ARCADIO L. DE LA ROSA

MGA SAKSI:

1. (SGD.) Sgt. JUANITO LAGASCA
2. (SGD.) Pat. RICARDO MARTINEZ

.....

SUBSCRIBED AND SWORN to before me this 5th day of December, 1970, in the City of Manila.

(SGD.) (Illegible)

Asst. City Fiscal
7:00 a.m."

Earlier, We had recited the testimony of the accused-appellant narrating the alleged maltreatment, the force, duress and threats used by the police investigators in obtaining his confession as quoted above. We need not repeat them here. The accused, however, stresses in his Brief that the categorical testimony of maltreatment is borne out by the evidence on record; that the spontaneous complaint of the accused upon seeing his counsel clearly shows involuntariness of confession; that the unholy hour of investigation is consistent with the testimony of the accused as to his maltreatment; that the alleged demonstration by the accused is a deliberate falsehood; that the claim that said accused is left-handed is a blatant lie intended to jibe with the fabricated theory of the police

and that the gross inconsistencies of the police investigators surrounding the alleged confession show use of force, threats and intimidation. Accused-appellant further scores the failure of the police to present the alleged informant and that the police investigators had strong motive to pervert the truth.

Rejecting the defense's claim of involuntariness, the trial court said no evidence was presented by the accused to corroborate the fact of maltreatment; that the statement of the accused is replete with details which could be known to the accused alone and for which the police officers could not be much interested or could not have actually known them, like for example, that the students were shouting and stoning the rooms of the students in the Paterno building and the new main building, slandering the security guards, and shouting that the students boycott their classes; that he saw his companions Ambrosio Pechardo and one Cruz of the Tamaraw guard were injured; that the windows of the Feati University were destroyed; that they threw the pillbox to scare off the student demonstrators; and that he was in the second floor of the new main building at the end portion fronting Helios Street. The answers in his statement were even responsive and informative. The statement itself does not show on its face any suspicious circumstance indicating irregularity.

This conclusion of the trial court is correct and We affirm the same. For the rule is well-settled that where on its face a confession exhibits no sign of suspicious circumstances tending to cast doubt on its integrity or is replete with details which could possibly be supplied only by the defendant and the response to every question is so fully informative even beyond the requirements of the question as to indicate the mind to be free from extraneous restraints, the confession is considered to have been voluntarily given. This is the doctrine in *People vs. Tia Fong*, 98 Phil. 609; *People vs. Dorado*, 30 SCRA 53; *People vs. Casillar*, 30 SCRA 352; *People vs. Pingol*, 33 SCRA 73, followed by a long line of cases, the most recent of which are the following:

"Where the statement of the accused mentions details which only the declarant could have furnished and could not have been concocted by the investigator, the confessions considered to have been voluntarily given. (*People vs. Barrios*, L-34785, July 30, 1979, 92 SCRA 189).

"Details disclosed in the confession which could have been known only by the declarant indicate the voluntariness in executing the same, (*People vs. Bautista*, L-31900, Aug. 6, 1979, 92 SCRA 465).

"Plea that extrajudicial confession was involuntary was not given credence as same is full of details that only accused could have known. (*People vs. Beralde*, L-32832, June 20, 1979; *People vs. Ty Sui Wong*, L-32529, May 12, 1978).

"Extrajudicial confession by the accused were voluntarily executed where confessions themselves are indicative of spontaneity and truth. (*People vs. Toling*, No. 28548, July 13, 1979, 91 SCRA 382)."

It was also emphasized by the trial court that the extrajudicial confession of the accused was not only subscribed but signed again before Inquest Fiscal Donato Guevarra, who, while testifying as witness of the accused, declared that it is his practice to require a person brought before him to sign again in his presence, so that accused signed again above his first signature; that as witness for the accused, Fiscal Guevarra did not testify to any irregularity in the taking of the statement of the accused. Moreover, the accused was even brought before Mayor Villegas and in the presence of several members of the press, he was asked by the Mayor whether he was the one who threw the pillbox and he answered "Yes." The Mayor even asked him whether he knows that the penalty for what he did is death and the accused said that he is ready for that. The accused never denied this.

We agree with the trial court in considering the above circumstances, among others, as indicative of the voluntariness of the confession, much more so when the verbal admission of the accused before the Chief Executive of the City with members of the press in attendance, reiterated his commission of the crime as written in the extrajudicial confession, Exhibit "B". For there is overwhelming jurisprudence that "the failure of the

accused to complain to the Municipal Judge that he was forced to sign his confession which only the accused could have supplied negates the claim that the said confession was extracted from him through force and intimidation" (People vs. Abalos, 57 SCRA 330); that the presumption of voluntariness in the execution of the confession was not overcome when it was replete with facts which could possibly be supplied only by the accused and that they substantially interlock, confirming each other as the detail and that the alleged maltreatment was not denounced when the confession was sworn to before the Fiscal (People vs. Casillar, 30 SCRA 352; People vs. Pareja, 30 SCRA 693); that where appellant signed his extrajudicial confession in the presence of police officers and two newspapermen and thereafter brought before the City Fiscal where he affirmed the same, signing it once more and he has not presented any medical certificate to prove any injury received by him during the process of taking the confession, his claim that he was maltreated and forced into executing the confession cannot be given credence (People vs. Reyes, 17 SCRA 279).

Indeed, We find that the decision under review rendered by the Presiding Judge had made a most painstaking scrutiny in weighing the evidence relating to the confession (U.S. vs. Raymundo, 14 Phil. 416) the probative value of such evidence having been addressed in the first instance to said Presiding Judge whose discretion must be controlled by all the attendant circumstances (U.S. vs. De Leon, 27 Phil. 506). And since the Presiding Judge is duty-bound to take into consideration circumstances and conditions under which the confession was obtained in passing upon its weight and admissibility (People vs. Francisco, 74 SCRA 158), the fact as noted in the decision that "accused is not a hardened criminal for which the police will be hard against him, but a security guard of the Feati University, a station in life which will deter the police to commit any brutality," and We may add a profession that exemplifies more than average intelligence, strong courage, discipline and rigorous training, belies the claim of the accused that his confession was obtained through force, duress and intimidation.

Accused-appellant has not also pointed to any evil or bad motive that prompted the police officers to testify against him and since these prosecution witnesses have no reason to impute falsely on the defendant the commission of so grave an offense, they deserve credence and belief. (People vs. Borbano, 76 Phil. 702; People vs. Albapara, 22 SCRA 1043).

Finally but briefly, on the defense of alibi and his claim that he should have been acquitted on the ground of reasonable doubt, We hold and affirm the lower court's ruling that the alibi of the accused is a weak defense, not only because of the facility with which it was fabricated but also because it is so easy for witnesses to get confused as to the dates and becomes worthless in the face of positive identification by prosecution witnesses pointing to the accused as *particeps criminis*. For alibi to prosper, the rule is that it is not enough to prove that the defendant was somewhere else when the crime was committed but he must likewise demonstrate that it is physically impossible for him to be in the scene of the crime at the time. In the case at bar, the accused was positively identified by Jose Yambao, an eyewitness whom the court accorded unimpeachable credibility and the court further took judicial notice that it will not take more than one hour from Josefina Street, Sampaloc, Manila where the accused was supposed to be, to reach the scene of the crime. More than that, the finding of the court that the testimony of the accused alleging that he stayed with Nilda Caracas in Josefina Street for two hours just to get his College Physics from her, is unnatural and improbable since he, being a security guard, will be under strict order to stay in the premises of the university and on alert due to the impending student demonstration going to the premises of the school, is well justified, to which We give Our affirmance.

In fine, the prosecution has established the guilt of the accused beyond reasonable doubt. The evidence on record has produced the required moral certainty as to the guilt of the accused, in an unprejudiced mind. (Sec. 2, Rule 133, Revised Rules of Court). The finding of the court that the crime committed is murder with multiple attempted murder qualified by the use of explosive, is correct, as well as the presence of the aggravating

circumstance of treachery without any mitigating circumstance to offset the same.

The imposition of the death penalty by the trial court is likewise in accordance with law but in the absence of the required votes to affirm the death sentence, the same is hereby reduced to reclusion perpetua. The payment of damages to the heirs of the victim and to the offended parties shall remain.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the decision under review is hereby MODIFIED in that the accused, Arcadio de la Rosa y Landicho, is hereby sentenced to reclusion perpetua and to indemnify the heirs of the victim Francis Sontillano the sum of Twelve Thousand Pesos (P12,000.00) for the death of the latter, and the sum of Ten Thousand Pesos (P10,000.00) by way of moral damages, also the sum of Five Thousand Pesos (P5,000.00) each to victims Marlon Fuentes, Ciriaco Lagunsad, and Eleuterio Gutierrez by way of moral damages and to pay the costs.

Judgment modified.

SO ORDERED.

Concepcion Jr., Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Fernando, C.J., on official leave.

Teehankee, (Acting C.J.), and Aquino, J., took no part.

Makasiar, J., see dissenting.

DISSENTING OPINION

MAKASIAR, J.:

In his signed confession, the accused-appellant admitted throwing the pillbox only to scare the student demonstrators. Unfortunately, he miscalculated his aim and distance, as it fell on the head of and killed the victim as well as caused physical injuries to; three other student demonstrators. It appears therefore that there was no intention to commit so grave a wrong as that committed, which should be appreciated as a mitigating circumstance.

Was the crime committed murder or simply homicide?

The majority opinion considers the use of explosive as the circumstance to qualify the crime as murder. This is not sustained by paragraph 3 of Article 248 of the Revised Penal Code. To qualify the crime as murder, the explosion must involve "great waste and ruin." Here, the pillbox was only about the size of a "balut" egg and the explosion did not cause great waste and ruin. It caused the death of only one man, and serious physical injuries to three students who were in the vicinity of the explosion, among several hundred demonstrators. If it were a bomb, a grenade, or dynamite sticks, the victims would be numerous. It did not damage any structure in the vicinity. Consequently, the same should not be appreciated as qualifying circumstance (See *People vs. Laigo*, 99 Phil. 1061; *People vs. Francisco*, 94 Phil. 975; *People vs. Gallego, et al.*, 82 Phil. 335; *People vs. Agcaoili*, 86 Phil. 549; *People vs. Guillen*, 85 Phil. 307).

Considering all circumstances favorable to him, it could even be said that the accused is guilty of homicide thru reckless imprudence for he was not able to throw the pillbox way beyond the demonstrators. But he did not aim the pillbox at any particular student. He merely intended to scare the students who were stoning the classrooms and breaking the window glasses of the Feati building and shouting invectives and also hurling stones at the

security guards. And because the students inside the classrooms did not want to leave the classrooms, the demonstrators stoned and fired at them. One of his companions was hit. Thus, he stated in his confession:

" . . At dahil ayaw lumabas ang mga estudyante sa loob ng mga kuwarte ay pinagbabato nila at pinaputukan ng baril. Nang makita kong may natamaan ng bato sa mga kasama ko at nagkakasirasira ang mga bintana ng Feati University ay naghagis ako ng pill-box para takutin ang mga estudyanteng nambabato para umalis sila sa paligid. Hindi ko alam na mayroon palang natamaan sa aking paghagis.

"T — Saan ka ba naroroon ng maghagis ka ng pill-box?

"S — Nasa 2nd floor ng New main building sa may dulo nakaharap sa Helios St.."

The appellant continued to state that when he was informed by his companion security guard that someone was hit by the pillbox, he went to call a policeman at Echague St. After he called the policeman, the other student demonstrators loaded the person hit by the pillbox in a taxi. After he informed the chief security officer, Jorge Mendoza, of Feati University about the incident and that one student was hit by the pillbox, Mendoza instructed them to tighten their guarding because the student demonstrators might invade the Feati compound.

By their taunting and insulting remarks at the students and at the security guards and by hurling stones as well as firing their guns at the students inside the classrooms and at the security guards, the student demonstrators provoked the appellant security guard to react in the manner he did but only to frighten them without intending to harm them, much less kill them.

Throwing stones and firing their guns at the students who refused to go out of their classrooms and at the security guards by the student demonstrators, endangered the lives of the students inside the classrooms and the security guards. The act of the appellant in lobbing a pillbox to scare the demonstrators is similar to defense of strangers.

It is not disputed that the demonstration in December, 1970 and the demonstrations preceding it and subsequent to it were attended by violence or were held in a background of violence typified by the mendiola bloody incident.

While demonstration is protected by the constitutional guarantee of free expression and peaceful assembly, the exercise or enjoyment of which is accorded utmost generosity or liberality, such constitutional rights are not without limitation. When the demonstration is set against the background of violence or staged in the context of violence, it divests itself of constitutional protection; because the employment of violence is illegal (see *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 US 287, 293). In the words of Chief Justice Fernando: "There is no excuse for violence, injury to property, acts of vandalism. To give vent to one's destructive urge is to call for condemnation. It is to make a mockery of the high estate occupied by intellectual liberty in our constitutional scheme" (E.M. Fernando, *The Bill of Rights*, 1977 Ed., p. 621). When a demonstration is accompanied or characterized by violence, it ceases to be peaceful and becomes an illegal assembly which forfeits its right to invoke the protection of the Constitution.

As Mr. Justice Frankfurter so eloquently stated in the *Milk Wagon Drivers Union* case, supra: "It must never be forgotten, however, that the Bill of Rights was the child of the Enlightenment. Back of the guaranty of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosion due to restrictions upon rational modes of communications that the guaranty of free speech was given a generous scope. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution."

The appellant herein had the duty as security guard of the school to protect the lives of the students and properties of the institution which employed him.

The violent provocation initiated by the student demonstrators should therefore justify in characterizing the crime committed by appellant as simple homicide and not murder.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.