

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BRENDOP. PAGAL, A.K.A. “DINDO,” ACCUSED-APPELLANT.

G.R. No. 241257. September 29, 2020

Ponente: GESMUNDO, J.

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GESMUNDO, J.:

"For there is but one essential justice which cements society, and one law which establishes this justice. This law is right reason, which is the true rule of all commandments and prohibitions. Whoever neglects this law, whether written or unwritten, is necessarily unjust and wicked."[1]

— Marcus Tullius Cicero

"In addition, the Court remains mindful of the fact that the State possesses vast powers and has immense resources at its disposal. Indeed, as the Court held in *Secretary of Justice v. Lantion*, the individual citizen is but a speck of particle or molecule vis-a-vis the vast and overwhelming powers of government and his only guarantee against oppression and tyranny are his fundamental liberties under the Bill of Rights which shield him in times of need."[2]

This is an appeal from the Decision[3] promulgated on May 8, 2018 by the Court of Appeals (CA) in CA-G.R. CR-HC No. 01521, which annulled and set aside the October 5, 2011 Order[4] of the Regional Trial Court of Hilongos, Leyte, Branch 18 (RTC) that found Brendo P. Pagal (accused-appellant) guilty beyond reasonable doubt of murder solely based on his plea of guilty. Accused-appellant was sentenced to suffer the penalty of reclusion perpetua. On appeal, the CA did not rule on the merits of the case but remanded it to the RTC for further proceedings.

The Antecedents

Accused-appellant was indicted under an Information dated July 10, 2009, the delictual allegations of which reads:

That on or about December 15, 2008, in Brgy. Esperanza, Matalom, Leyte, within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there, [willfully], unlawfully, feloniously, with treachery and taking advantage of superior strength, without any justifiable reason whatsoever, slabbbed Selma Pagal, with a sharp bladed weapon, wounding her at the back penetrating the chest, thereby causing [her] direct and immediate death.

CONTRARY TO LAW.[5]

During his arraignment on August 20, 2009, accused-appellant pleaded "guilty" to the crime charged. The RTC found the plea to be voluntary and with full understanding of its consequences. Thus, it directed the prosecution to present evidence to prove the guilt of accused-appellant and to determine the exact degree of his culpability in accordance with Section 3,[6] Rule 116[7] of the 2000 Revised Rules of Criminal Procedure (2000 Revised Rules).[8]

In its August 20, 2009 Order, the RTC, in specific recognition of the duties imposed by Sec. 3 of Rule 116, stated that "WHEREFORE, premise considered and in consonance to the rules as to the plea of guilty to the capital offense, let the trial and presentation of first prosecution witness to determine the culpability of the accused on May 5, 2010 at 8:30 o'clock in the morning session of this Court." [9] On February 24, 2010, it issued a subpoena to Angelito Pagal, Cesar Jarden, [10] and Emelita Calupas to appear and testify before it on the said date. [11]

On November 22, 2010, the RTC issued another subpoena directed to Angelito Pagal to appear before it on February 22, 2011 at 8:30 in the morning. [12] This was received by a certain Malima Pagal and Angelito Pagal on December 15, 2010. [13] On January 12, 2011, Subpoena/Warrant Server SPO1 Antonino R. Cabal PNP certified that the subpoena was duly served and received. [14]

In the February 22, 2011 Order, the RTC noted that "[s]upposed witness is Angelito P. Pagal who was subpoenaed by this court and properly served upon his person. However, his absence is very conspicuous to this court. The prosecution is so desirous to present prosecution witnesses to determine the culpability of the accused who readily pleaded guilty to the crime charged, requested that other witnesses be subpoenaed for them to testify in court in the event that Angelito Pagal could not come to court on the next setting." [15] It then set the trial and presentation of any prosecution witness on May 11, 2011 at 8:30 in the morning. It ordered a repeat subpoena be issued to Angelito Pagal, Cesar G. Jarden and Jaimelito Calupas. [16]

The repeat subpoena was issued to said prosecution witnesses on March 4, 2011. Included in the subpoena was Dr. Radegunda Uy, RHU, LGU, Matalom, Leyte. [17] This was duly received by all four (4) subpoenaed witnesses as indicated in the receiving copy. [18] On April 11, 2011, Subpoena/Warrant Server SPO1 Antonino R. Cabal PNP certified that the subpoena was duly served and received by all four subpoenaed witnesses. [19]

In its May 11, 2011 Order, the RTC once more noted that "[t]he prosecution is serious enough to prove the degree of culpability of the accused Brendo Pagal who pleaded guilty to the crime charged of murder but for several times there were absences made by the prosecution witness despite proper service of subpoena or notices. The prosecution on this situation requested for a resetting and in the event no prosecution witness would appear and testify, this case is submitted to the x x x discretion of this court inviting the degree of culpability." [20] The RTC then set the trial and presentation of prosecution witnesses on July 20, 2011 at 8:30 o'clock in the morning. It sent another repeat subpoena to Angelito Pagal, Cesar Jarden, and Dr. Radegunda Uy. [21] On June 8, 2011, the RTC issued the repeat subpoena to said three witnesses and also included Jaimelito Calupas therein. [22] This was received by Angelito Pagal, Elesia Jarden on behalf of Cesar Jarden, "Teresita" Calopay on behalf of Jaimelito Calupas, and by Dr. Radegunda Uy as shown by the receiving copy. [23]

In its July 20, 2011 Order, the RTC stated that "[t]he prosecution after having exerted its effort to present any prosecution witness in determining the degree of culpability of the accused who pleaded guilty to the crime charged, has no one to be presented. On this matter, the prosecution now submitted the case for decision and as joined by the defense who has also no witness to be presented." [24]

As detailed above, none of the prosecution witnesses appeared and testified on the scheduled hearing dates of November 17, 2010; February 22, 2011; May 11, 2011; and July 20, 2011 for the presentation of the prosecution's evidence despite repeat subpoenas duly issued and received by them. The defense chose not to present any evidence in view of the prosecution's non-presentation. Both the prosecution and the defense moved for the submission of the case for decision. [25]

The Ruling of the RTC

In its October 5, 2011 Order, the RTC found accused-appellant guilty beyond reasonable doubt based solely on his plea of guilty. It stated that accused-appellant maintained his plea despite being apprised that he will be sentenced and imprisoned on the basis thereof.[26]

The dispositive portion of the RTC Order[27] reads:

WHEREFORE, in view of the foregoing, accused BRENDO P. PAGAL alyas "DINDO" is hereby found GUILTY beyond reasonable doubt and sentenced to suffer the imprisonment of RECLUSION PERPETUA. And to pay the heirs of SELMA PAGAL P50,000.00 as indemnification and P50,000.00 as moral damages.

In the service of his sentence, accused is hereby credited with the full time of his preventive imprisonment if he agreed to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he will only be entitled to 4/5 of the same.

SO ORDERED.[28]

Accused-appellant appealed the RTC Order to the CA and raised this singular error committed by the lower court, viz.:

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED SOLELY ON THE BASIS OF THE LATTER'S PLEA OF GUILT AND DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[29]

The Ruling of the CA

The CA annulled and set aside the October 5, 2011 Order of the RTC and remanded the case for further proceedings in accordance with the guidelines to be observed in the proper conduct of a searching inquiry as required by Sec. 3, Rule 116 of the 2000 Revised Rules.[30]

The CA held that the RTC failed to comply with the requirements of Sec. 3, Rule 116 regarding the treatment of a plea of guilty to a capital offense, particularly the conduct of a searching inquiry into accused-appellant's voluntariness and full comprehension of the consequences of his plea. Also, the CA observed that the prosecution's evidence was insufficient to sustain a judgment of conviction independent of the plea of guilty. In fact, the CA noted that the prosecution did not present any evidence; thus, it remanded the case to the RTC with a directive that it follow the mandate of Sec. 3, Rule 116.[31]

Hence, this recourse.

The Petition Before the Court

On September 26, 2018, the Court issued a Resolution[32] to the parties that they could file their respective supplemental briefs, if they so desired, within thirty (30) days from notice. Both parties manifested that they would adopt their respective briefs before the CA.

Accused-appellant maintains that the RTC erred in convicting him on the sole basis of his guilty plea despite the failure of the prosecution to prove his guilt beyond reasonable doubt. He points to the fact that the prosecution was given numerous opportunities to present its evidence yet still failed to do so. He emphasizes that there is no evidence in support of his conviction except for his guilty plea. Considering that the prosecution failed to prove his guilt, the RTC should have dismissed *motu proprio* the action on the basis of insufficiency of evidence. He cites the case of *People v. Janjalani* (Janjalani),[33] where the Court stated that "[c]onvictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment." [34] He concludes that

since his conviction was based solely on his improvident plea of guilt, the RTC should have acquitted him. Lastly, he also invokes the equipoise rule: since neither the prosecution nor the defense presented any evidence, the law should be tilted in his favor.[35]

The Ruling of the Court

Accused-appellant's arguments are meritorious.

This Court sets aside the CA's order of remand. Dictates of constitutionally guaranteed fundamental rights mandate this course of action.

Accused-appellant availed of the
wrong remedy

Procedurally, it must be noted that accused-appellant availed of the wrong remedy in questioning the May 8, 2018 CA Decision before this Court.

He filed a notice of appeal pursuant to Sec. 13(c), Rule 124 of the 2000 Revised Rules of Court, as amended by A.M. No. 00-5-03-SC, which provides:

SECTION 13. Certification or Appeal of Cases to Supreme Court. —

x x x x

(c) In cases where the Court of Appeals imposes reclusion perpetua, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

Here, the CA Decision annulled and set aside the RTC conviction and ordered the remand of the case to the RTC for further proceedings. Notably, the assailed CA Decision did not affirm the conviction or the penalty imposed by the RTC. Thus, Sec. 13(c), Rule 124 is not applicable to the case at bench.

Instead, accused-appellant should have filed an appeal by certiorari under Rule 45 of the Rules of Civil Procedure to assail the CA Decision pursuant to Sec. 3(e), Rule 122 of the 2000 Revised Rules, which expressly provides that "[e]xcept as provided in the last paragraph of Sec. 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on certiorari under Rule 45."

Accordingly, the remedy available to accused-appellant to question the CA Decision is an appeal by certiorari under Rule 45 of the Rules of Civil Procedure. It is an oft-repeated rule that appeals of criminal cases shall be brought to the Court by filing a petition for review on certiorari under Rule 45 of the Rules of Court except when the CA imposed a penalty of reclusion perpetua or life imprisonment, in which case the appeal shall be made by a mere notice of appeal before the CA.[36] Evidently, accused-appellant availed of the wrong remedy when it filed a notice of appeal to question the May 8, 2018 CA Decision.

Nonetheless, this Court, in the interest of substantial justice, shall treat the instant ordinary appeal as an appeal by certiorari so as to resolve the substantive issues with finality.

The evolution of the duty of trial
courts in instances where the accused
pleaded guilty to a capital offense

Accused-appellant was charged with murder, defined and penalized under Article 248 of the Revised Penal Code (RPC). Murder is punishable by reclusion perpetua to death, making said crime a capital offense.[37]

It must be noted that murder remains a capital offense despite the proscription against the imposition of death as a punishment.[38] In *People v. Albert*,[39] the Court ruled that "in case death was found to be the imposable penalty, the same would only have to be reduced to reclusion perpetua in view of the prohibition against the imposition of the capital punishment, but the nature of the offense of murder as a capital crime, and for that matter, of all crimes properly characterized as capital offenses under the Revised Penal Code, was never tempered to that of a non-capital offense." [40]

Thus, when accused-appellant pleaded guilty during his arraignment, he pleaded to a capital offense. Sec. 3, Rule 116 of the 2000 Revised Rules is relevant, viz.:

SECTION 3. Plea of guilty to capital offense; reception of evidence. — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and [shall] require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

Interestingly, the rule encapsulated in Sec. 3, Rule 116 was not the rule prior to the advent of the 1985 Rules on Criminal Procedure. The evolution of the rule reveals a dichotomy which the Court now addresses. The development of the rule, as well as jurisprudence, dictates a just resolution of the case.

Even prior to the adoption of the 1940 Rules of Court, jurisprudence has had to grapple with instances where an accused pleaded guilty to a capital offense. In such instances, the Court maintained a policy of restraint in rendering judgment on the sole basis of such plea.

As early as 1903, in *U.S. v. Patala*,[41] the Court cautioned against the acceptance of pleas of guilty and opined that the trial judge should freely exercise his discretion in allowing pleas of guilty to be withdrawn if the accused does not fully realize the probable effects of his admission:

The pleas of "guilty" and "not guilty" as accepted in American law were unknown to the Spanish law. Under the Spanish law there was what was called "judicial confession," whereby the accused admitted the commission of the act alleged in the complaint, but by so doing the defendant did not attempt to characterize the act as criminal, as is the case with a defendant who pleads "guilty" under American law. It also appears that there are no words in the Tagalog or Visayan dialects which can express exactly the idea conveyed by the English word "guilty." In a case of homicide, for instance, when the question is put to the defendant in either of these two dialects as to whether he is guilty or not guilty, he is asked whether he killed the deceased or not. If he answers that he did kill the deceased, he merely admits that he committed the material act which caused the death of the deceased. He does not, however, understand it to be an admission on his part that he has no defense and must be punished. The case at bar serves to illustrate this fact. Under these circumstances, we are of opinion that the trial judge should freely exercise his discretion in allowing the plea of "guilty" to be withdrawn; indeed, he must, on his own motion, order that it be withdrawn if, in his opinion, the accused does not fully realize the probable effect of his admission.[42]

Again, in the 1917 case of *U.S. v. Jamad (Jamad)*,[43] this Court noted that "[n]otwithstanding the plea of 'guilty,' several witnesses were examined, under the well-settled practice in this jurisdiction which contemplates the taking of additional evidence in cases wherein pleas of 'guilty' are entered to complaints or information charging grave crimes, and more especially crimes for which the prescribed penalty is death." [44] Hence, the following guidelines were adopted:

We may say then, in response to the request for a ruling on this subject by the Attorney-General:

(1) The essence of the plea of guilty in a criminal trial is that the accused, on arraignment, admits his guilt freely, voluntarily, and with full knowledge of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime or crimes charged in the complaint or information.

(2) Such a plea of guilty, when formally entered on arraignment, is sufficient to sustain a conviction of any offense charged in the information, even a capital offense, without the introduction of further evidence, the defendant having himself supplied the necessary proof.

(3) There is nothing in the law in this jurisdiction which forbids the introduction of evidence as to the guilt of the accused, and the circumstances attendant upon the commission of the crime, after the entry of a plea of "guilty."

(4) Having in mind the danger of the entry of improvident pleas of "guilty" in criminal cases, the prudent and advisable course, especially in cases wherein grave crimes are charged, is to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime.

(5) The better practice would indicate that, when practicable, such additional evidence should be sufficient to sustain a judgment of conviction independently of the plea of guilty, or at least to leave no room for reasonable doubt in the mind of either the trial or the appellate court as to the possibility of a misunderstanding on the part of the accused as to the precise nature of the charges to which he pleaded guilty.

(6) Notwithstanding what has been said, it lies in the sound judicial discretion of the trial judge whether he will take evidence or not in any case wherein he is satisfied that a plea of "guilty" has been entered by the accused, with full knowledge of the meaning and consequences of his act.

(7) But in the event that no evidence is taken, this court, if called upon to review the proceedings had in the court below, may reverse and send back for a new trial, if, on the whole record, a reasonable doubt arises as to whether the accused did in fact enter the plea of "guilty" with full knowledge of the meaning and consequences of the act.[45]

From the foregoing, it is evident that this jurisdiction places a premium on ensuring that an accused pleading guilty to a grave crime understands his plea and the possible consequences thereof. Further, this Court expressly recognized the wisdom in receiving evidence in such cases despite the fact that Sec. 31[46] of General Order No. 58[47] contemplated the reception of evidence only in cases where a plea of not guilty has been entered.

The Jamad guidelines became the standard for trial courts when confronted with similar circumstances. It must be noted, however, that the reception of evidence in cases where the accused pleads guilty remained discretionary on the part of the trial court. In fact, convictions solely on the basis of a plea of guilty were upheld by this Court.

In *U.S. v. Burlado*,[48] this Court affirmed therein accused's conviction for the crime of qualified theft on the strength of his plea of guilty. The Court explained that "[a] plea of guilty, when formally entered on arraignment, is sufficient to sustain a conviction of any offense charged in the information without the introduction of further evidence, the defendant himself having supplied the necessary proof by his plea of guilty. (*United States v. Dineros*, 18 Phil. 566 (1911); *United States v. Jamad*, 37 Phil. 305 (1917).) The defendant having admitted his guilt of the facts charged in the complaint, the only question left for decision is the penalty"[49]

The 1940 Rules of Court, the earliest progenitor of the 2000 Revised Rules, extended the same level of protection. Sec. 5, Rule 114 of the 1940 Rules of Court reads:

SECTION 5. Plea of Guilty — Determination of Punishment. — Where the defendant pleads guilty to a complaint or information, if the court accepts the plea and has discretion as to the punishment for the offense, it may hear witnesses to determine what punishment shall be imposed.[50]

The 1964 version of the Rules of Court reproduced this section verbatim.[51] Thus, when an accused pleads guilty to a capital offense, the court may hear witnesses for purposes of determining the punishment to be imposed; the guilt of the accused was a forgone conclusion. The rule seemed to institutionalize Jamad as shown by the discretionary nature of the hearing.

Accordingly, in *People v. Ng Pek*,^[52] this Court stated that "[t]he record shows that when the case was called for the arraignment of the accused on November 3, 1947, the accused waived his right to be assisted by counsel and then and there entered the plea of guilty. That plea necessarily foreclosed the right of the accused to defend himself and left the court with no other alternative than to impose the penalty prescribed by law."^[53]

In the same breath, the Court, in *People v. Santa Rosa*,^[54] upheld the conviction of therein accused for illegal possession of a firearm due to his plea of guilty. It stated that "[t]he general rule is that 'a plea of guilty when formally entered on arraignment is sufficient to sustain a conviction of any offense charged in the information without the introduction of further evidence, the defendant himself having supplied the necessary proof by his plea of guilty.'"^[55]

Finally, in *People v. Acosta*,^[56] which involved the imposition of the supreme penalty of death for the crime of robbery with homicide, this Court upheld the conviction and penalty imposed and stated that:

"x x x the essence of the plea of guilty in a criminal trial is that the accused, on arraignment, admits his guilt freely, voluntarily and with full knowledge of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime charged in the information; that when formally entered, such a plea is sufficient to sustain a conviction of any offense charged in the information, even a capital offense, without the introduction of further evidence, the defendant having himself supplied the necessary proof; and that while it may be prudent and advisable in some cases, especially where grave crimes are charged, to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime nevertheless it lies in the sound discretion of the court whether to take evidence or not in any case where it is satisfied that the plea of guilty has been entered by the accused with full knowledge of the meaning and consequences of his act. (citations omitted)"^[57]

Clearly, to this point, the reception of evidence when an accused pleads guilty depended on the sound discretion of the trial court.

However, the 1985 Rules on Criminal Procedure (1985 Rules) introduced a paradigm shift to the formerly discretionary role of trial courts when an accused pleads guilty to a capital offense. The 1985 version of the rule,^[58] as amended, reads:

SECTION 3. Plea of Guilty to Capital Offense; Reception of Evidence. — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf. (5a, R-118)

The 2000 Revised Rules retained the salient points of the 1985 amendment. Hence, at present, the three (3)-fold duty of the trial court in instances where the accused pleads guilty to a capital offense is as follows: (1) conduct a searching inquiry, (2) require the prosecution to prove the accused's guilt and precise degree of culpability, and (3) allow the accused to present evidence on his behalf.

The present rules formalized the requirement of the conduct of a searching inquiry as to the accused's voluntariness and full comprehension of the consequences of his plea. Further, it made mandatory the reception of evidence in cases where the accused pleads guilty to a capital offense. Most importantly, the present rules require that the prosecution prove beyond reasonable doubt the guilt of the accused. Evidently, starting with the 1985 Rules, the accused may no longer be convicted for a capital offense on the sole basis of his plea of guilty.

The Court acknowledged the paradigm shift in *People v. Lagarto*,^[59] thus:

Section 5, Rule 118 of the old Rules of Court provides that "Where the defendant pleads guilty to a complaint or information, if the trial court accepts the plea and has discretion as to the punishment for the offense, it may

hear witnesses to determine what punishments shall be imposed." The trial court in a criminal case may sentence a defendant who pleads guilty to the offense charged in the information, without the necessity of taking testimony. (US v. Talbanos, 6 Phil. 541). Yet, it is advisable for the trial court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant. (People vs. Comendador, supra) The present Revised Rules of Court, however, decrees that where the accused pleads guilty to a capital offense, it is now mandatory for the court to require the prosecution to prove the guilt of the accused and his precise degree of culpability, with the accused being likewise entitled to present evidence to prove, inter alia, mitigating circumstances (See People vs. Camay, 152 SCRA 401; Section 3, Rule 116 of Rules of Court).[60] (emphasis supplied)

It is equally important to note that the 1985 Rules retained the directive that the reception of evidence in cases where the accused pleads guilty to a non-capital offense is discretionary on the part of the trial court.

This is encapsulated in Sec. 4, Rule 116 of the 1985 Rules.[61] The 2000 Revised Rules adopted Sec. 4, Rule 116 of the 1985 Rules verbatim.

Considering the mandatory nature of Sec. 3, Rule 116 of the 2000 Revised Rules, this Court, in *People v. Gambao* (Gambao),[62] restated the duties of the trial court when the accused pleads guilty to a capital offense as follows:

- (1) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt,
- (2) to require the prosecution to still prove the guilt of the accused and the precise degree of his culpability, and
- (3) to inquire whether or not the accused wishes to present evidence in his behalf and allow him to do so if he desires.[63]

Gambao also explained the rationale for these duties, thus:

Courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence is irreversible. The primordial purpose is to avoid improvident pleas of guilt on the part of an accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeiting his life and liberty without having fully understood the meaning, significance and consequence of his plea. Moreover, the requirement of taking further evidence would aid this Court on appellate review in determining the propriety or impropriety of the plea.[64] (emphasis supplied)

For a better understanding of these duties, a closer look is in order.

The essence of the requirement of the conduct of a searching inquiry is the ascertainment of the accused's voluntariness and full comprehension of the consequences of his plea

The searching inquiry requirement means more than informing cursorily the accused that he faces a jail term but also, the exact length of imprisonment under the law and the certainty that he will serve time at the national penitentiary or a penal colony.[65] The searching inquiry of the trial court must be focused on: (1) the voluntariness of the plea, and (2) the full comprehension of the consequences of the plea.[66]

Not infrequently indeed, an accused pleads guilty in the hope of lenient treatment, or upon bad advice, or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to see to it that the accused does not labor under these mistaken impressions."[67]

A searching inquiry likewise compels the judge to content himself reasonably that the accused has not been coerced or placed under a state of duress — and that his guilty plea has not therefore been given improvidently — either by actual threats of physical harm from malevolent quarters or simply because of his, the judge's, intimidating robes.[68]

Further, a searching inquiry must not only comply with the requirements of Sec. 1, par. (a), of Rule 116 but must also expound on the events that actually took place during the arraignment, the words spoken and the warnings given, with special attention to the age of the accused, his educational attainment and socio-economic status as well as the manner of his arrest and detention, the provision of counsel in his behalf during the custodial and preliminary investigations, and the opportunity of his defense counsel to confer with him. These matters are relevant since they serve as trustworthy indices of his capacity to give a free and informed plea of guilt. Lastly, the trial court must explain the essential elements of the crime he was charged with and its respective penalties and civil liabilities, and also direct a series of questions to defense counsel to determine whether he has conferred with the accused and has completely explained to him the meaning of a plea of guilty. This formula is mandatory and absent any showing that it was followed, a searching inquiry cannot be said to have been undertaken.[69]

Simply, the requirement ensures that the plea of guilty was voluntarily made and that the accused comprehends the severe consequences of his plea. This means asking a myriad of questions which would solicit any indication of coercion, misunderstanding, error, or fraud that may have influenced the decision of the accused to plead guilty to a capital offense.

Thus, in every case where the accused enters a plea of guilty to a capital offense, especially when he is ignorant with little or no education, the proper and prudent course to follow is to take such evidence as are available and necessary in support of the material allegations of the information, including the aggravating circumstances therein enumerated, not only to satisfy the trial judge himself but also to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance, and consequences of his plea.[70] In particular, trial courts are mandated to conduct the searching inquiry, thus:

Although there is no definite and concrete rule as to how a trial judge must conduct a "searching inquiry," we have held that the following guidelines should be observed:

- Ascertain from the accused himself
- how he was brought into the custody of the law;
- whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and
- under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.
- Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.
- Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.
- Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these

mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

- Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.
- All questions posed to the accused should be in a language known and understood by the latter.
- The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[71]

Corollary to this duty, a plea of guilty to a capital offense without the benefit of a searching inquiry or an ineffectual inquiry, as required by Sec. 3, Rule 116 of the 2000 Revised Rules, results to an improvident plea of guilty. It has even been held that the failure of the court to inquire into whether the accused knows the crime with which he is charged and to fully explain to him the elements of the crime constitutes a violation of the accused's fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.[72]

This requirement is a reminder that judges must be cautioned against the demands of sheer speed in disposing of cases for their mission, after all, and as has been time and again put, is to see that justice is done.[73]

The plea of guilt made by the accused
does not relieve the prosecution of the
duty to prove the guilt of the accused
beyond reasonable doubt

On account of the amendment of the 1964 Rules of the Court, the second duty of the trial court, to require the prosecution to present evidence of the guilt of the accused beyond reasonable doubt, has become mandatory. Hence, it is imperative that the trial court requires the presentation of evidence from the prosecution to enable itself to determine the precise participation and the degree of culpability of the accused in the perpetration of the capital offense charged.[74]

The reason behind this requirement is that the plea of guilt alone can never be sufficient to produce guilt beyond reasonable doubt. It must be remembered that a plea of guilty is only a supporting evidence or secondary basis for a finding of culpability, the main proof being the evidence presented by the prosecution to prove the accused's guilt beyond reasonable doubt. Once an accused charged with a capital offense enters a plea of guilty, a regular trial shall be conducted just the same as if no such plea was entered. The court cannot, and should not, relieve the prosecution of its duty to prove the guilt of the accused and the precise degree of his culpability by the requisite quantum of evidence. The reason for such rule is to preclude any room for reasonable doubt in the mind of the trial court, or the Supreme Court on review, as to the possibility that the accused might have misunderstood the nature of the charge to which he pleaded guilty, and to ascertain the circumstances attendant to the commission of the crime which may justify or require either a greater or lesser degree of severity in the imposition of the prescribed penalties.[75]

Thus, as it stands, the conviction of the accused no longer depends solely on his plea of guilty but rather on the strength of the prosecution's evidence.

The accused must be given a reasonable
opportunity to present evidence

The third duty imposed on the trial court by the 2000 Revised Rules is to allow the accused to present exculpatory or mitigating evidence on his behalf in order to properly calibrate the correct imposable penalty. This duty, however, does not mean that the trial court can compel the accused to present evidence. Of course, the court cannot force the accused to present evidence when there is none. The accused is free to waive his right to present evidence if he so desires.

Consistent with the policy of the law, the Court has issued guidelines regarding the waiver of the accused of his right to present evidence under this rule, thus:

Henceforth, to protect the constitutional right to due process of every accused in a capital offense and to avoid any confusion about the proper steps to be taken when a trial court comes face to face with an accused or his counsel who wants to waive his client's right to present evidence and be heard, it shall be the unequivocal duty of the trial court to observe, as a prerequisite to the validity of such waiver, a procedure akin to a "searching inquiry" as specified in *People v. Aranzado* when an accused pleads guilty, particularly —

1. The trial court shall hear both the prosecution and the accused with their respective counsel on the desire or manifestation of the accused to waive the right to present evidence and be heard.

2. The trial court shall ensure the attendance of the prosecution and especially the accused with their respective counsel in the hearing which must be recorded. Their presence must be duly entered in the minutes of the proceedings.

3. During the hearing, it shall be the task of the trial court to —

a. ask the defense counsel a series of question to determine whether he had conferred with and completely explained to the accused that he had the right to present evidence and be heard as well as its meaning and consequences, together with the significance and outcome of the waiver of such right. If the lawyer for the accused has not done so, the trial court shall give the latter enough time to fulfill this professional obligation.

b. inquire from the defense counsel with conformity of the accused whether he wants to present evidence or submit a memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any, or in default theory, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence is so weak that it need not even be rebutted. If there is a desire to do so, the trial court shall give the defense enough time to this purpose.

c. elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed waiver.

d. all questions posed to the accused should be in a language known and understood by the latter, hence, the record must state the language used for this purpose as well as reflect the corresponding translation thereof in English.

In passing, trial courts may also abide by the foregoing procedure even when the waiver of the right to be present and be heard is made in criminal cases involving non-capital offenses. After all, in whatever action or forum the accused is situated, the waiver that he makes if it is to be binding and effective must still be exhibited in the case records to have been validly undertaken, that is, it was done voluntarily, knowingly and intelligently with sufficient awareness of the relevant circumstances and likely consequences. As a matter of good court practice, the trial court would have to rely upon the most convenient, if not primary, evidence of the validity of the waiver which would amount to the same thing as showing its adherence to the step-by-step process outlined above.

Clearly, the rationale behind the foregoing requirements is that courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence in

irrevocable and experience has shown that innocent persons have at times thrown caution to the wind and given up defending themselves out of ignorance or desperation. Moreover, the necessity of taking further evidence would aid this Court in determining on appellate review the propriety or impropriety of the waiver.[76] (emphasis supplied, citations omitted)

The RTC failed to comply with the
mandate of Sec. 3, Rule 116 of the 2000
Revised Rules on Criminal Procedure

Applying the foregoing principles in this case, it is evident that the trial court failed miserably to comply with the duties imposed by the 2000 Revised Rules. As regards the first duty, the trial court failed to conduct a searching inquiry to determine the voluntariness and full comprehension by accused-appellant of his plea of guilty. The Court scanned the records of the case to see compliance with the said duty. The search, however, was in vain. The records are barren of any proceeding where the trial court gauged the mindset of the accused when he pleaded guilty.

There is no transcript of stenographic notes which would reveal what actually took place, what words were spoken, what warnings were given, if a translation was made and the manner by which it was made, and whether or not the guidelines for a searching inquiry were duly observed.

The RTC merely stated in its August 20, 2009 Order[77] that "[a]ll the contents of the Information as well as the particular crime charged was personally read to accused-appellant in a Cebuano-Visayan dialect." [78] The RTC further stated that the court and his counsel explained to accused-appellant the consequences of his plea of guilt and that he will be sentenced and imprisoned. Despite this, accused-appellant maintained his plea of guilty.

Simply, there is no proof whatsoever that the herein judge conducted the searching inquiry required. No other conclusion can be made other than that the RTC failed to discharge its duties. Accused-appellant's plea of guilt is improvident.

What compounded the RTC's strenuous oversight is the fact that the trial court penalized accused-appellant of the crime charged despite failure of the prosecution to present evidence of his guilt. This is in direct contravention of the mandate of the second duty stated in Sec. 3, Rule 116 of the 2000 Revised Rules.

In this regard, the Court agrees with the CA that accused-appellant's guilt for the crime of murder was not proven beyond reasonable doubt. It is beyond cavil that the prosecution did not present any witness, despite being given four (4) separate hearing dates to do so. Thus, the RTC's conviction of accused-appellant relied solely on his improvident plea of guilty.

Lastly, as regard the third requisite, the October 5, 2011 Order of the RTC stated that "[a]ccused[-appellant,] despite the non-reception of prosecution's evidence,] opted not to present any evidence in [sic] his behalf." [79] It would appear that accused-appellant waived his right to present evidence under Sec. 3, Rule 116 of the 2000 Revised Rules. However, the same Order and the records of the case are bereft of any showing that the trial court complied with the guidelines promulgated by the Court in *People v. Bodoso*. Such cavalier attitude of the trial court to the Rules of Court and existing jurisprudence leaves much to be desired.

The RTC's noncompliance with the Rules of Court is beyond dispute. Both the OSG and accused-appellant agree on this point. The divergence, however, is centered on the effect of such noncompliance. Accused-appellant contends that he should be acquitted while the OSG agrees with the CA's order to remand the case for reception of evidence to prove accused-appellant's guilt.

The acquittal of accused-appellant is in order.

Jurisprudence dictates that the correct course of action depends on whether the prosecution has presented evidence to establish the guilt of the accused

The State insists that the case must be remanded to the trial court for further proceedings so that the trial court may comply with the requirements of Sec. 3, Rule 116.

For his part, accused-appellant insists that he should be acquitted because his guilt was not proven beyond reasonable doubt. In support thereof, he cited *Janjalani*[80] which ruled that "[c]onvictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment."

Unfortunately, accused-appellant's quote is misleading. While it is true that convictions based on an improvident plea of guilt are indeed set aside if the plea is the sole basis of the judgment, it does not automatically result in the acquittal of the accused. Rather, the case is remanded to the lower court for compliance with Sec. 3, Rule 116 of the 2000 Revised Rules.

The issue of the effects of an improvident plea of guilty on a conviction is not novel.

The applicable course of action prior to the 1985 Rules is clear. As stated above, the conviction of the accused simply depends on whether the plea of guilty to a capital offense was improvident or not. An indubitable admission of guilt automatically results to a conviction. Otherwise, a conviction on the basis of an improvident plea of guilt, on appeal, would be set aside and the case would be remanded for presentation of evidence. An exception to this is when, despite the existence of an improvident plea, a conviction will not be disturbed when the prosecution presented sufficient evidence during trial to prove the guilt of the accused beyond reasonable doubt. The existing rules, however, shifted the focus from the nature of the plea to whether evidence was presented during the trial to prove the guilt of the accused.

People v. Derilo[81] explained this shift, thus:

Over the years and through numerous cases, this Court has adopted an exception to the erstwhile rule enunciating that there is no need to prove the presence of aggravating circumstances alleged in an information or complaint when the accused pleads guilty to the charge. Our rulings regarding this principle were expressed more or less in this wise:

Having pleaded guilty to the information, these aggravating circumstances were deemed fully established, for the plea of guilty to the information covers both the crime as well as its attendant circumstances qualifying and/or aggravating the crime.

We are not, however, concerned here merely with the doctrine itself but more specifically with the consequences thereof. Thus, in *People vs. Rapirap*, it was formerly explained that the subject doctrine has the following effects:

A plea of guilty does not merely join the issues of the complaint or information, but amounts to an admission of guilt and of the material facts alleged in the complaint or information and in this sense takes the place of the trial itself. Such plea removes the necessity of presenting further evidence and for all intents and purposes the case is deemed tried on its merits and submitted for decision. It leaves the court with no alternative but to impose the penalty prescribed by law.

Then, in *People vs. Lambino*, we prevented the accused in criminal actions from contradicting the outcome of his admission, with our holding that by the plea of guilty, the accused admits all the facts alleged in the information and, by that plea, he is precluded from showing that he has not committed them.

People vs. Yamson, et al. thereafter expanded the application of the doctrine to both capital and non-capital cases:

A plea of guilty is an admission of all the material facts alleged in the complaint or information. A plea of guilty when formally entered in arraignment is sufficient to sustain a conviction for any offense charged in the information, without the necessity of requiring additional evidence, since by so pleading, the defendant himself has supplied the necessary proof. It matters not even if the offense is capital for the admission (plea of guilty) covers both the crime as well as its attendant circumstances.

Finally, People vs. Apduhan, Jr. cited by some of the cases relied upon by the lower court, declared that —

While an unqualified plea of guilty is mitigating, it at the same time constitutes an admission of all material facts alleged in the information, including the aggravating circumstance therein recited, x x x The prosecution does not need to prove the three aggravating circumstances (all alleged in the second amended information) since the accused, by his plea of guilty, has supplied the requisite proof.

With the foregoing presentation, the trial court must have believed that it had acted correctly in presuming the existence of evident premeditation based on appellant's plea of guilty without any proof being presented to establish such aggravating circumstance. However, the developmental growth of our procedural rules did not stop there. With the advent of the revised Rules on Criminal Procedure on January 1, 1985, a new rule, specifically mandating the course that trial courts should follow in capital cases where the accused pleads guilty, was introduced into our remedial law with this provision:

SEC. 3. Plea of guilty to capital offense; reception of evidence — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf.

We expounded on this in People vs. Camay with this explanation:

Under the new formulation, three (3) things are enjoined of the trial court after a plea of guilty to a capital offense has been entered by the accused: 1. The court must conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea; 2. The court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and 3. The court must ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires.

The amended rule is a capsulization of the provisions of the old rule and pertinent jurisprudence. We had several occasions to issue the caveat that even if the trial court is satisfied that the plea of guilty was entered with full knowledge of its meaning and consequences, the Court must still require the introduction of evidence for the purpose of establishing the guilt and degree of culpability of the defendant. This is the proper norm to be followed not only to satisfy the trial judge but also to aid the Court in determining whether or not the accused really and truly comprehended the meaning, full significance and consequences of his plea.

The presentation of evidence is required in order to preclude any room for reasonable doubt in the mind of the trial court, or the Supreme Court on review, as to the possibility that there might have been some misunderstanding on the part of the accused as to the nature of the charge to which he pleaded guilty, and to ascertain the circumstances attendant to the commission of the crime which justify or require the exercise of a greater or lesser degree of severity in the imposition of the prescribed penalty.

To emphasize its importance this Court held in People vs. Dayot that the rule in Section 3, Rule 116 is mandatory, and issued the warning that any judge who fails to observe its command commits a grave abuse of discretion.

This Court has come a long way in adopting a mandatory rule with regard to the presentation of evidence in capital cases where the accused pleads guilty to the criminal charge. From granting trial courts in the

earlier Rules of Court sufficient discretion in requiring evidence whenever guilt is admitted by the accused, the Court has now made it mandatory on the part of the lower courts to compel the presentation of evidence and make sure that the accused fully comprehends the nature and consequences of his plea of guilty.[82] (citations omitted)

Thus, the plea of guilty of an accused cannot stand in place of the evidence that must be presented and is called for by Sec. 3 of Rule 116. Trial courts should no longer assume that a plea of guilty includes an admission of the attending circumstances alleged in the information as they are now required to demand that the prosecution prove the exact liability of the accused. The requirements of Sec. 3 would become idle and fruitless if we were to allow conclusions of criminal liability and aggravating circumstances on the dubious strength of a presumptive rule.[83]

As it stands, the conviction of the accused shall be based principally on the evidence presented by the prosecution. The improvident plea of guilty by the accused becomes secondary.

Accordingly, convictions involving improvident pleas are affirmed if the same are supported by proof beyond reasonable doubt. Otherwise, the conviction is set aside and the case remanded for re-trial when the conviction is predicated solely on the basis of the improvident plea of guilt, meaning that the prosecution was unable to prove the accused's guilt beyond reasonable doubt. Thus:

As in the case of an improvident plea of guilty, an invalid waiver of the right to present evidence and be heard per se does not work to vacate a finding of guilt in the criminal case and enforce an automatic remand thereof to the trial court. In *People v. Molina*, to warrant the remand of the case it must also be proved that as a result of such irregularity there was inadequate representation of facts by either the prosecution or the defense during the trial —

In *People v. Abapo* we found that undue reliance upon an invalid plea of guilty prevented the prosecution from fully presenting its evidence, and thus remanded the criminal case for further proceedings. Similarly in *People v. Durango* where an improvident plea of guilty was followed by an abbreviated proceeding with practically no role at all being played by the defense, we ruled that this procedure was "just too meager to accept as being the standard constitutional due process at work enough to forfeit a human life" and so threw back the criminal case to the trial court for appropriate action. Verily the relevant matter that justifies the remand of the criminal case to the trial court is the procedural unfairness or complete miscarriage of justice in the handling of the proceedings a quo as occasioned by xxx the "attendant circumstances."

Conversely, where facts are adequately represented in the criminal case and no procedural unfairness or irregularity has prejudiced either the prosecution or the defense as a result of the invalid waiver, the rule is that the guilty verdict may nevertheless be upheld where the judgment is supported beyond reasonable doubt by the evidence on record. Verily, in such a case, it would be a useless ritual to return the case to the trial court for further proceedings.[84] (emphases supplied)

Accordingly, this Court has sustained convictions[85] involving improvident pleas of guilt because, in any case, the sentence of conviction is supported by proof beyond reasonable doubt independent of the accused's plea of guilty.

However, where the conviction is predicated solely on the basis of an improvident plea of guilty, this Court has consistently chosen to set aside said conviction and, instead, remand the case to the lower court for further proceedings. This was the ruling in an unbroken line of jurisprudence.[86] "Further proceedings" usually entails re-arraignment and reception of evidence from both the prosecution and the defense in compliance with Sec. 3, Rule 116.

In *People v. Dalacat*,[87] this Court, in deciding to remand the case, stated the following:

Given the unchanging state of the three-tiered requisites in Section 3, Rule 116, there is, indeed, no

justification for the trial court's failure to observe them.

Thus, we purge the decision under review of its errors and remand the case to the trial court for further re-arraignment, a more incisive searching inquiry and the reception of evidence for the prosecution and the defense, if the latter so desires, in accordance with the foregoing guideposts.[88] (citation omitted)

Parenthetically, it is a mistake to assume that an invalid arraignment automatically results to a remand of the case. In *People v. Ong* (Ong),[89] the Court decided the case on its merits despite a determination of an invalid arraignment.

Jurisprudence has developed in such a way that cases are remanded back to the trial court for re-arraignment and re-trial when undue prejudice was brought about by the improvident plea of guilty. The Court explains this course of action in *People v. Abapo*,[90] viz:

We are not unmindful of the rulings of this Court to the effect that the manner by which the plea of guilt was made, whether improvidently or not, loses its legal significance where the conviction is based on the evidence proving the commission by the accused of the offense charged. However, after a careful examination of the records of this case, we find that the improvident plea of guilt of the accused-appellant has affected the manner by which the prosecution conducted its presentation of the evidence. The presentation of the prosecution's case was lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense. The state prosecutor in his examination of the victim was evidently concerned only with proving the respective dates of the commission of the repeated rapes, and did not attempt to elicit details about the commission of each rape that would satisfy the requirements for establishing proof beyond reasonable doubt that the offenses charged have in fact been committed by the accused. It is clear to our mind that the prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of the accused, x x x.[91] (citation omitted)

The Court repeated the rule in *People v. Molina* (Molina)[92] when it held that:

It is also urged in the Brief for the Appellant that an improvident plea of guilty per se results in the remand of the criminal case(s) to the trial court for the re-arraignment of accused-appellant and for further proceedings. We hold that this argument does not accurately reflect the standing principle. Our jurisdiction does not subscribe to a per se rule that once a plea of guilty is deemed improvidently made that the accused-appellant is at once entitled to a remand. To warrant a remand of the criminal case, it must also be proved that as a result of such irregularity there was inadequate representation of facts by either the prosecution or the defense during the trial. In *People v. Abapo*, we found that undue reliance upon an invalid plea of guilty prevented the prosecution from fully presenting its evidence, and thus remanded the criminal case for further proceedings. Similarly in *People v. Durango* where an improvident plea of guilty was followed by an abbreviated proceeding with practically no role at all being played by the defense, we ruled that this procedure was "just too meager to accept as being the standard constitutional due process at work enough to forfeit a human life" and so threw back the criminal case to the trial court for appropriate action. Verily the relevant matter that justifies the remand of the criminal case to the trial court is the procedural unfairness or complete miscarriage of justice in the handling of the proceedings a quo as occasioned by the improvident plea of guilty, or what *People v. Tizon*, encapsulizes as the "attendant circumstances." [93] (citations omitted, emphasis supplied)

Here, the Court cannot sustain the conviction as there is nothing in the records that would show the guilt of accused-appellant. Neither is it just to remand the case. This is not a situation where the prosecution was wholly deprived of the opportunity to perform its duties under the 2000 Revised Rules to warrant a remand. In this case, the prosecution was already given reasonable opportunity to prove its case against accused-appellant. Regrettably, the State squandered its chances to the detriment of accused-appellant. If anything, the State, given its vast resources and awesome powers, cannot be allowed to vex an accused with criminal prosecution more than once.

The State should, first and foremost, exercise fairness.

The records also do not disclose that the improvident plea of guilty jeopardized the presentation of evidence by the prosecution, to the prejudice of either the prosecution or accused-appellant.

Therefore, in instances where an improvident plea of guilt has been entered and the prosecution was given reasonable opportunity to present evidence to establish the guilt of the accused but failed to do so, the accused is entitled to an acquittal, if only to give rise to the constitutionally guaranteed right to due process and the presumption of innocence.

Since the prosecution was given four (4) separate hearing dates to present evidence against accused-appellant and, despite these chances, the prosecution was unable to prove his guilt, the Court acquits accused-appellant for failure of the prosecution to establish his guilt beyond reasonable doubt for the crime of murder.

The Refutation of the Dissents

Remand of the case to the trial court is unreasonable under the circumstances of the case

The Court respects the contrary position taken by other Members of the Court. While they agree that the trial court failed to comply with the three-fold duty imposed by Sec. 3, Rule 116 of the 2000 Revised Rules, they, however, are in unison that a remand of the instant case is more just and proper for a myriad of reasons. Their considerations will now be addressed in an effort to fully ventilate the issues at hand.

First, in his separate Opinion, Mr. Justice Rodil V. Zalameda argues that there was no evidence proving the prosecution was sorely remiss in its duties as to warrant the acquittal of accused-appellant and that this failure on the part of the prosecution may be justified. Further, he asserts that there was no showing that the prosecution was given an opportunity to explain why it failed to present its evidence and no showing that the defense raised any prejudice caused by the prosecution's inaction during the trial proper.[94] In short, he urges the Court to examine the reasons for such failure to determine whether the failure to prosecute was excusable or not. For this purpose, he proposes that the Court employ an approach similar to that adopted in cases of inordinate delay, as elucidated in *Cagang v. Sandiganbayan Fifth Division (Cagang)*.^[95] The purpose of this proposal is to determine whether the delay is excusable considering that institutional delays may have occurred, which should not be taken against the State.

Second, he highlights the fact that accused-appellant maintained his plea of guilt despite the reading of the allegations of the information and the explanation given to him by counsel regarding the consequences of his plea. Thus, while accused-appellant's arraignment was less than ideal, the learned Justice asserts that to ignore the accused's "resolute stance" would be to unduly favor the accused and to ignore the interests of the State and the victim's relatives.^[96] Madame Justice Amy C. Lazaro-Javier, in turn, posits that to acquit accused-appellant now would be to put a sad closure to the death of Selma and the sufferings of her family.^[97]

Third, Mr. Justice Zalameda also found sufficient basis to engender the belief that accused-appellant was likely responsible for Selma's death and should be held for trial. He cites the affidavits submitted during preliminary investigation, wherein the affiants narrated the events concerning the death of the victim, Selma. His Opinion also notes that most of the affiants were relatives of accused-appellant,^[98] thereby implying that this is most likely the reason why the prosecution had a hard time and even failed to prosecute. Mr. Justice Edgardo L. Delos Santos shared this view. He opined that "accused's plea of guilt and relationship with the private complainant indeed affected the supposed postponements and the absence of the key witness during the trial."^[99]

Fourth, Mr. Justice Zalameda opines that the prosecution should have sought the provisional dismissal of the instant case. He further opines that the trial court should have issued a bench warrant instead of allowing the trial to terminate without any witnesses presented by either of the parties.[100] He reasons that "the trial judge should have been more discerning and proactive by assisting the prosecution in securing its witnesses' attendance before hastily terminating the trial, and convicting the accused." [101] He concludes that "[p]erforce, courts, within ethical limits, should afford the prosecution a real opportunity to ventilate its accusations through the use of authorized court processes to compel production of evidence. After all, the State is also entitled to due process in criminal cases, that is, a fair opportunity to prosecute and convict." [102] Madame Justice Javier, for her part, observes that "[t]he evidence at the preliminary investigation was overwhelmingly inculpatory of murder that, together with appellant's guilty plea, should have compelled the trial judge and the trial prosecutor to have acted pro-actively." [103] Mr. Justice Mario V. Lopez, on the other hand, asserts that the case should be remanded because "the trial court committed an error or abuse of discretion when it allowed nolle prosequi amounting to dereliction of duty." [104] The learned Justice opines that "[the trial] court should have directed the prosecution, under pain of contempt, to prove the corpus delicti and to require the presentation of the victim's death certificate, the autopsy report, and the investigation report x x x. These documentary evidence coupled with the confession of the accused may suffice to satisfy the required quantum of evidence to secure a conviction, at least for the crime of homicide, assuming that no witness can be presented to the court." [105]

Fifth, for his part, Mr. Justice Samuel H. Gaerlan posits that "[i]t is indubitable xxx that the trial court judge was guilty of negligence in his duty of ensuring that due process is observed despite a voluntary plea of guilt on the part of the appellant" [106] since the Court "made no mention of anything that would show that the trial court judge obliged the prosecution to present their evidence despite a voluntary plea of guilty. The ponencia cited no order or resolution from the trial court judge further requiring and directing the prosecution to proceed to the presentation of its witnesses after the latter's initial failure to present its evidence on the four hearing dates scheduled for such purpose. Instead, records show that the judge ordered the appellant to present witnesses in his defense, which appellant opted to waive." [107]

Sixth, Mr. Justice Gaerlan claims that "the parties' deliberate omission to present their evidence in support of their respective claims and defenses, was the effect of appellant's plea of guilt, which later on has been proven to be made improvidently. There was, therefore, undue reliance on the part of both the prosecution and the defense upon an invalid plea of guilty which prevented them from fully presenting their respective evidence." [108] Thus, it is of no moment that the prosecution failed to present its evidence despite reasonable opportunity to do so. Further, he opines that the failure of the prosecution to present its evidence "x x x is not the lone fault of the prosecution but also of the trial court judge." [109] This justifies the remand of the case.

Finally, Madame Senior Associate Justice Estela M. Perlas-Bernabe argues that the instant case be remanded because the lack of a valid plea taints the entire criminal proceedings and precludes the trial court from rendering a valid verdict. [110] She posits that an invalid arraignment should be considered as a fatal defect in criminal proceedings because it taints the accused's ability to defend himself [111] and may likewise affect the prosecution's strategy and vigor in presenting its case. [112] She asserts that an invalid arraignment should result in the remand of the case. This view is shared by Madame Justice Javier. [113] Meanwhile, Mr. Justice Lopez asseverates that accused-appellant should be re-arraigned to enter a proper plea so that the court may render a valid verdict. [114]

In sum, they recommend that the case be remanded for re-trial.

Regrettably, the Court does not agree with these positions. Following existing laws and jurisprudence, the Court is convinced that justice is better achieved with accused-appellant's acquittal and, with due respect, the positions

taken by some members of the Court would serve as a dangerous precedent that would put the accused in a more disadvantageous position, thereby jeopardizing fairness in criminal proceedings.

Allow Us to explain.

First, Mr. Justice Zalameda contends that it cannot be concluded that the prosecution was sorely remiss in its duties as to warrant the acquittal of accused-appellant and proposes to use the framework adopted in *Cagang*, *supra*, to balance the interest of all parties involved.

The Court respectfully begs to differ.

To the Court's mind, the proposal to determine the justification of the delay lacks basis and is unwarranted. There is nothing in the records that would show any inkling that the delay was excusable; otherwise the prosecution would have raised the same or the trial court would have stated otherwise. Further, the State had the opportunity to raise the reason for the prosecution's failure to present evidence in the appeal before the CA and this Court. Yet, it had been silent. The fact that none was noted or raised means that there were 110 extraordinary circumstances that would warrant re-trial.

On the contrary, there were sufficient reasons why the trial court was justified in waiving the prosecution's opportunity to present its evidence and proceeded with the promulgation of the decision.

To reiterate, Sec. 3, Rule 116 of the 2000 Revised Rules imposes upon the prosecution the duty to prove beyond reasonable doubt the guilt of the accused for the capital offense he pleaded guilty to. Aside from proving his guilt, the prosecution must also prove the accused's precise degree of culpability.

Clearly, the prosecution failed to discharge this duty. It failed to prove accused-appellant's guilt for the crime of murder beyond reasonable doubt. It did not present any evidence despite more than ample opportunity to do

As stated, the trial court provided the prosecution with reasonable opportunity to present its evidence. No less than four (4) separate hearing dates were given to the prosecution. Upon its failure to present evidence on the fourth hearing date, the prosecution did not seek another hearing date to once again attempt to present its evidence. Rather, the prosecution, together with the defense, submitted the case for decision.[115]

Sec. 11, Rule 119 of the 2000 Revised Rules provides:

SECTION 11. Order of Trial. — The trial shall proceed in the following order:

- (a) The prosecution shall present evidence to prove the charge and, in the proper case, the civil liability.
- (b) The accused may present evidence to prove his defense and damages, if any, arising from the issuance of a provisional remedy in the case.
- (c) The prosecution and the defense may, in that order, present rebuttal and sur-rebuttal evidence unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.
- (d) Upon admission of the evidence of the parties, the case shall be deemed submitted for decision unless the court directs them to argue orally or to submit written memoranda.
- (e) When the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified. (3a) (emphasis supplied)

By submitting the case for decision, the prosecution impliedly declared that it is ready for the trial court to render its decision on the basis of the offered evidence. It must be stressed that the submission of the case for resolution did not originate from the trial court judge. It was on motion of both parties that the case be submitted. It is

evident that the prosecution was not prevented from presenting its evidence as to accused-appellant's guilt and degree of culpability; rather, it appears that the prosecution merely chose not to pursue the same. No one prevented the prosecution from asking for more time to present its evidence; it was free to do so. However, when it chose to submit the case for decision, the State should have been ready for the consequences of its actions.

The fact that the defense joined the prosecution in its submission of the case for resolution should not be taken against accused-appellant. "In criminal cases, the prosecution has the onus probandi of establishing the guilt of the accused. *Ei incumbit probatio non qui negat*. He who asserts — not he who denies — must prove. The burden must be discharged by the prosecution on the strength of its own evidence, not on the weakness of that for the defense." [116]

The prosecution's failure to present evidence equates to a failure to discharge its duty under Sec. 3 of Rule 116: to prove beyond reasonable doubt the guilt of accused-appellant for the crime of murder. The prosecution's failure to discharge said duty, absent any undue prejudice to either the prosecution or the defense, warrants the acquittal of accused-appellant.

Thus, there is no need to dwell on the justifications for the delay as there are no circumstances that would warrant suspicion that there was something amiss in the proceedings, especially when the prosecution actively participated in the waiver of its opportunity to present evidence.

Since there is no reason to delve into the justifications of the delay, there is no need to adopt a system similar to that adopted in *Cagang*. [117]

While the Court agrees that institutional delay is a matter which must be addressed and that such institutional delay must not be taken against the State, We are of the opinion that the instant case does not involve any evidence of institutional delay. The prosecution had reasonable opportunity to manifest to the trial court that its failure to present evidence on the hearing dates provided to it was due to any institutional delay. It did not do so. Instead of pursuing any of the remedies allowed by law for it to present evidence, the prosecution chose to move for submission of the case for resolution of the trial court. This belies any claim of institutional delay.

Ultimately, the duty placed on the prosecution by Sec. 3, Rule 116 is to prove beyond reasonable doubt the guilt of accused-appellant for the capital offense of murder. The prosecution failed to discharge this duty. To allow a re-trial would reward the prosecution for its inefficiency and nonfeasance. Justice and fairness dictate that accused-appellant be acquitted; lest, the Court would, wittingly or unwittingly, place the accused-appellant at a distinct disadvantage, a position that fairness would never allow.

Second, Mr. Justice Zalameda theorizes that to ignore accused-appellant's resolute maintenance of his plea of guilt would be to unduly favor accused-appellant and to ignore the interests of the State and of the victims' relatives. Simply put, accused-appellant's unusual resoluteness in maintaining his guilty plea should be enough justification for re-trial.

Again, the Court respectfully disagrees.

As discussed, the existing rules have shifted the focus from the nature of the plea to the quantum of evidence presented during trial to prove the guilt of the accused. The plea of guilty of an accused cannot stand in place of the evidence that must be presented and is called for by Sec. 3 of Rule 116. Trial courts should no longer assume that a plea of guilty includes an admission of the attending circumstances alleged in the information as they are now required to demand that the prosecution should prove the exact liability of the accused. The requirements of Sec. 3 would become idle and fruitless if we were to allow conclusions of criminal liability and aggravating circumstances on the dubious strength of a presumptive rule. [118]

The fact that accused-appellant maintained his plea of guilt is of no consequence. His plea does not merit any weight and should not be considered by this Court in arriving at its resolution of the instant case.

Foremost, such plea was improvidently made. Accused-appellant did not have the benefit of the guidance of a searching inquiry. Thus, his plea cannot be legally considered as having been voluntarily made and with full comprehension of the consequences of such plea.

The strongest evidence to support accused-appellant's improvident plea is the fact that after the judgment of conviction had been rendered, accused-appellant appealed the case before the CA to have his conviction overturned. This shows that he is unaware of the consequences of his plea. Further, it belies any and all claims that he is resolute in the maintenance of his plea of guilt. If he is truly resolute in his guilty plea, he should not have appealed his conviction. This, however, is not the case.

Time and again, this Court has recognized that "[n]ot infrequently indeed, an accused pleads guilty in the hope of lenient treatment, or upon bad advice, or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to see to it that the accused does not labor under these mistaken impressions." [119] A searching inquiry likewise compels the judge to content himself reasonably that the accused has not been coerced or placed under a state of duress and that his guilty plea has not therefore been given improvidently — either by actual threats of physical harm from malevolent quarters or simply because of his, the judge's, intimidating robes." [120]

To give any iota of weight to accused-appellant's improvident plea of guilt would run counter to a long line of jurisprudence, as well as to the tenets of justice and the constitutional presumption of innocence. It would also render inutile the requirements of Sec. 3, Rule 116 of the 2000 Revised Rules, which have been placed to protect the rights of the accused.

Aside from the fact that accused-appellant's plea was improvidently made, it is important to note that, with the advent of the 1985 Rules which introduced Sec. 3 of Rule 116, the plea entered by an accused in criminal cases involving a capital offense is negligible. The conviction of the accused shall stand solely on the strength of the evidence of the prosecution.

Here, there is nothing in the records that would show the guilt of accused-appellant. It is also not just to remand the case because this is not a situation where the prosecution was wholly deprived of the opportunity to perform its duties under the 2000 Revised Rules. In truth, to remand the instant case in the face of the prosecution's failure to discharge its duty under Sec. 3, Rule 116 would be to unduly favor the State and the victims' relatives to the detriment of the constitutional rights of accused-appellant. This is not what our Constitution envisioned. This is especially true because Sec. 3 of Rule 116 has been in place since 1985. The duty of the prosecution to prove the accused's guilt for the capital offense, despite his plea of guilt, whether improvidently made or not, is not novel. No special considerations should be allotted the prosecution for its failure. In dubio pro reo. When in doubt, rule for the accused.

Moreover, existing laws and jurisprudence do not prevent the private complainant from attaining justice. The acquittal of accused-appellant does not disclose a claim for civil damages against the accused.

Lastly, to construe the silence and lack of action to withdraw his guilty plea as an evidence of his guilt would not only read too much on such omission but rather run afoul against the right of the accused-appellant to remain silent. To be sure, to require or even expect the accused-appellant to act in a particular way lest he be adjudged guilty would not only make his right to be silent, but also the presumption of innocence, an empty constitutional promise.

Hence, in this Decision, the interest of all parties concerned are protected.

Third, Mr. Justice Zalameda, joined by Mr. Justice Delos Santos, also posits that there is sufficient basis to engender the belief that accused-appellant was likely responsible for Selma's death and should be held for trial. They cite the narration of events surrounding the death of Selma stated in the records of the preliminary investigation and theorize that the plea of guilt affects the prosecution's presentation of evidence. They hypothesize that "Angelito's absences were based upon his reliance on his brother's admission of guilt;"[121] that "accused-appellant's plea of guilt to the charge was an acknowledgment of his authorship of the crime and an attempt to give his family some type of closure." [122]

With due respect, the Court cannot accept that proposition and to adopt this position would be treading on dangerous ground as it would consider evidence not presented during trial and, worse, allow surmises, conjectures, or inferences of the likelihood of the accused's guilt and, on said basis, order that the accused be tried again.

At the risk of being repetitive, there is nothing on record to support the guilt of accused-appellant aside from his improvident plea of guilt. This is something that is conceded. This is why the Court acquitted accused-appellant because there is no evidence to support his conviction. This acquittal is based on the duty of appellate courts to determine whether the quantum of evidence has been met for conviction. It must be made clear that appellate courts are not called to determine whether there is sufficient ground to engender the belief that the accused committed the crime and, thus, should be tried again. If the appellate court undertakes such a course of action, it would be acting beyond its authority and may even constitute grave abuse of discretion.

Here, the case already underwent proceedings in a court of law. The prosecution already had reasonable opportunity to discharge its duty under Sec. 3, Rule 116. Unfortunately, it failed to discharge said duty. There was no evidence of fraud or collusion. Neither was there prejudice in the proceedings that resulted to conviction of the accused by the trial court. Considering the foregoing, the Court submits that it is imprudent and unjust to once more determine the likelihood of accused-appellant's guilt and, on said basis, remand the case.

To be sure, the recommendation to remand is not based on any evidence on record but on assumptions, surmises and conjectures that are inferred from evidence aliunde. Evidence to support conviction or even re-trial should be based on evidence on record; otherwise, it would violate the due process rights of the accused, particularly, the presumption of innocence. A court that would lend its imprimatur to this act would be at a loss, for "indeed, the sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass." [123]

While, indeed, the function of the Court is to ferret out the truth, equally important is the mandate of the Court to put primacy on constitutional safeguards of human life and liberty. The truth surrounding Selma's death may only be ferreted out on the basis of evidence presented in court, as the Court is a court of record and of due process. Settled is the rule that "x x x courts will only consider as evidence that which has been formally offered." [124] This "x x x ensures the right of the adverse party to due process of law, for, otherwise, the adverse party would not be put in the position to timely object to the evidence, as well as to properly counter the impact of evidence not formally offered." [125] In the absence of inculpatory evidence amounting to proof beyond reasonable doubt, the Court is mandated by the constitutional presumption of innocence to acquit accused-appellant.

Fourth, Mr. Justice Zalameda argues that the prosecution should have sought the provisional dismissal of the instant case. He further opines that the trial court should have issued a bench warrant instead of terminating the trial proceedings. Meanwhile, Mr. Justice Lopez opines that the trial court should have ordered the prosecution to prove the corpus delicti and the submission of documentary evidence so as to prove accused-appellant's guilt.

The Court agrees that the remedies of provisional dismissal and the issuance of a bench warrant were available to both the prosecution and the trial court during trial proper. However, there was nothing in the records that would show that the prosecution sought the issuance of a bench warrant. Likewise, there was no indication that the prosecution sought the provisional dismissal of the case under Sec. 8, Rule 117 of the Rules of Court. Admittedly, the trial court could have directed the prosecution to submit documentary evidence to prove the guilt of accused-appellant. Nonetheless, these considerations should not weigh in the mind of the Court in resolving the instant case.

The sole duty of the appellate court in the instant case is to determine whether the trial court discharged its three-fold duty under Sec. 3, Rule 116 of the 2000 Revised Rules. Again, the three-fold duty of the trial court is to (1) conduct a searching inquiry, (2) require the prosecution to prove the accused's guilt and precise degree of culpability, and (3) allow the accused to present evidence on his behalf.

It is established that the trial court failed to discharge its duties. Thus, the sole question before the Court, then, is what the result is of such failure on the part of the trial court. This is the question to be resolved. It is submitted that the failure of the prosecution to move for provisional dismissal, the failure of the trial court to issue a bench warrant, and the failure of the trial court to order the presentation of documentary evidence is irrelevant in resolving the instant issue. What is clear is that the trial court afforded the prosecution reasonable opportunity to prove accused-appellant's guilt and precise degree of culpability but the prosecution failed to do so. Despite such failure, the trial court convicted accused-appellant based solely on his plea of guilt. To delve into what the RTC and the prosecution should have done, outside of their duties as outlined in Sec. 3, Rule 116, is beyond the pale.

Fifth, it must be clarified that the trial court indeed obliged the prosecution to present its evidence despite a plea of guilty on the part of accused-appellant. This is extant in the records and described in the early portions of this Decision. The records undisputedly show that the insistence of Mr. Justice Gaerlan and Madame Justice Javier that the trial court failed to or even negligently ordered the prosecution to present evidence despite the guilty plea is without basis. At this point, We reiterate the narration of events in the early portions of this Decision:

In its August 20, 2009 Order, the RTC, in specific recognition of the duties imposed by Sec. 3 of Rule 116, stated that "WHEREFORE, premise considered and in consonance to the rules as to the plea of guilty to the capital offense, let the trial and presentation of first prosecution witness to determine the culpability of the accused on May 5, 2010 at 8:30 o'clock in the morning session of this Court." On February 24, 2010, it issued a subpoena to Angelito Pagal, Cesar Jarden, and Emelita Calupas to appear and testify before it on the said date.

On November 22, 2010, the RTC issued another subpoena directed to Angelito Pagal to appear before it on February 22, 2011 at 8:30 in the morning. This was received by a certain Malima Pagal and Angelito Pagal on December 15, 2010. On January 12, 2011, Subpoena/Warrant Server SPO1 Antonino R. Cabal PNP certified that the subpoena was duly served and received.

In the February 22, 2011 Order, the RTC noted that "[s]upposed witness is Angelito P. Pagal who was subpoenaed by this court and properly served upon his person. However, his absence is very conspicuous to this court. The prosecution is so desirous to present prosecution witnesses to determine the culpability of the accused who readily pleaded guilty to the crime charged, requested that other witnesses be subpoenaed for them to testify in court in the event that Angelito Pagal could not come to court on the next setting." It then set the trial and presentation of any prosecution witness on May 11, 2011 at 8:30 in the morning. It ordered a repeat subpoena be issued to Angelito Pagal, Cesar G. Jarden and Jaimelito Calupas.

The repeat subpoena was issued to said prosecution witnesses on March 4, 2011. Included in the subpoena was Dr. Radegunda Uy, RHU, LGU, Matalom, Leyte. This was duly received by all four (4) subpoenaed witnesses as indicated in the receiving copy. On April 11, 2011, Subpoena/Warrant Server SPO1 Antonino R. Cabal PNP

certified that the subpoena was duly served and received by all four subpoenaed witnesses.

In its May 11, 2011 Order, the RTC once more noted that "[t]he prosecution is serious enough to prove the degree of culpability of the accused Brendo Pagal who pleaded guilty to the crime charged of murder but for several times there were absences made by the prosecution witness despite proper service of subpoena or notices. The prosecution on this situation requested for a resetting and in the event no prosecution witness would appear and testify, this case is submitted to the x x x discretion of this court inviting the degree of culpability." The RTC then set the trial and presentation of prosecution witness on July 20, 2011 at 8:30 o'clock in the morning. It sent another repeat subpoena to Angelito Pagal, Cesar Jarden, and Dr. Radegunda Uy. On June 8, 2011, the RTC issued the repeat subpoena to said three witnesses and also included Jaimelito Calupas therein. This was received by Angelito Pagal, Elesia Jarden on behalf of Cesar Jarden, "Teresita" Calopay on behalf of Jaimelito Calupas, and by Dr. Radegunda Uy as shown by the receiving copy.

In its July 20, 2011 Order, the RTC stated that "[t]he prosecution after having exerted its effort to present any prosecution witness in determining the degree of culpability of the accused who pleaded guilty to the crime charged, has no one to be presented. On this matter, the prosecution now submitted the case for decision and as joined by the defense who has also no witness to be presented." (citations omitted)

Based on the foregoing, in no manner can it be concluded that the trial court did not oblige the prosecution to present its evidence or exert efforts to secure the presence of the four (4) prosecution witnesses. It is worthy to note that one of the prosecution witnesses, Dr. Radegunda Uy, appears to be a third party. The failure of the prosecution to present her as a witness, despite the numerous subpoenas issued and which she duly received, is telling.

Again, at the risk of sounding repetitious, the second duty imposed on the trial court by Sec. 3, Rule 116 is to require the prosecution to prove the guilt and precise degree of culpability of the accused to the capital offense he pleaded guilty to. The trial court afforded the prosecution the opportunity to present its evidence. The prosecution failed to do so. As such, there is no evidence in support of accused-appellant's conviction. Despite this, the trial court convicted accused-appellant. The failure of the prosecution to prove the guilt of accused-appellant should necessarily result in his acquittal, especially because there is no ambiguity in Sec. 3, Rule 116. The prosecution must prove the guilt of accused-appellant despite his plea of guilty. Absent such proof, he must be acquitted as mandated by the constitutional presumption of innocence.

It must also be respectfully pointed out that, contrary to the characterization of Mr. Justice Gaerlan, Mr. Justice Lopez,[126] and Mr. Justice Delos Santos[127] in their respective opinions, accused-appellant's plea is not a "voluntary plea of guilty." [128] Accused-appellant did not enter a "free, truthful, and voluntary plea of guilty to the crime of murder." [129] As has been established, said plea cannot be taken, in any manner whatsoever, as free, voluntary, and truthful because it did not benefit from the guidance of a searching inquiry as required by Sec. 3, Rule 116.

This brings us to the sixth argument for the remand of the instant case.

Mr. Justice Gaerlan asserts that there was undue reliance on the part of both the prosecution and the defense upon an "invalid plea of guilty" [130] which prevented them from fully presenting their respective evidence. [131] Thus, consistent with Molina [132] and *People v. Murillo* (Murillo), [133] this undue reliance necessitates the remand of the case to the trial court for re-arraignment and re-trial.

Regrettably, the Court does not agree that, in the instant case, the prosecution and the defense unduly relied upon the plea of guilty by accused-appellant such that a remand of the case is proper.

The rulings in *Molina*, and *Murillo*, particularly on the undue reliance exhibited by the prosecution and the

defense therein on the accused's plea of guilty, do not apply in the instant case because the facts differ from one another.

The undue reliance determined to be present by the Court in these two cases is not the failure of the prosecution to present evidence. Rather, it is the failure of the prosecution to prove its case as evidenced by its approach and attitude, as well as the failure of the defense to faithfully protect the rights of the accused. In both cases, the Court harbored serious doubts as to the guilt of the accused because the defense failed to protect the interests of the accused despite the inculpatory evidence presented therein by the prosecution.

In *Molina*, "x x x the prosecution evidence consisted of (a) the testimonies of Brenda, her mother, the police investigators, a barangay councilor, and the medico-legal officer, and (b) certain documents, e.g., the birth certificate of Brenda, the medico-legal certificate, and the letter of accused-appellant to his daughter Brenda begging the latter's forgiveness. While the defense counsel cross-examined the prosecution witnesses, he did not introduce any evidence in behalf of accused-appellant." [134]

The finding that the improvident plea of guilt of accused-appellant affected the manner by which the prosecution and the defense conducted its presentation of the evidence, and the trial court in carefully evaluating the evidence on record, was based on specific instances carefully outlined in the decision, viz.:

xxx. First, the prosecution failed to lay the proper foundation for the introduction of the alleged handwritten letter of accused-appellant acknowledging his guilt for the rape of his daughter. This could very well be attributed to the fact that this letter was introduced only after accused-appellant pleaded guilty to the accusations for which reason the prosecution no longer endeavored to elicit the proper foundation for this evidence.

x x x x

Second, the presentation of the prosecution's case was lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense. In his examination of Brenda after accused-appellant pleaded guilty, the public prosecutor was evidently concerned with abbreviating the proceedings as shown by his failure to clarify such ambiguous statements as "he repeated to me what he had done to me" when previously he pursued such ambiguities to their clear intended meanings. It is clear to our mind that the prosecution did not discharge its obligation as seriously as it should have had, had there been no plea of guilt on the part of the accused.

x x x x

Third, the prosecution could very well clarify why on 1 March 1999 after accused-appellant's wife saw him and Brenda sleeping side by side and after she confronted his husband about it and was told by her daughter that "if I will tell it to you, my father will kill us," accused-appellant was still allegedly able to attempt a rape on his daughter on the same date. It is our understanding of the behavior of gutter criminals that with the confrontation between him and his wife, he would have laid low a while even for just that day. The prosecution may want to elucidate on this seemingly unnatural behavior.

Fourth, neither the defense nor the prosecution elicited from the private complainant whether the accusations for incestuous rape and attempted rape were in a manner colored by the seething allegations in the transcript of stenographic notes that accused-appellant was a violent person towards his family, most especially his wife who is Brenda's mother. This Court would want to know for sure that these criminal cases under review are not merciless equivalents of the alleged violence done by accused-appellant. Our endeavor is to try the case on the facts and not upon the supposedly despicable character of the man.

Fifth, the improvident plea appears to have sent the wrong signal to the defense that proceedings thereafter would be abbreviated. There was thus a perfunctory representation of accused-appellant as shown by (a) his

counsel's failure to object to and correct the irregularities during his client's re-arraignment; (b) his failure to question the offer of the alleged letter wherein accused-appellant acknowledged his authorship of the dastardly crimes; (c) his failure to present evidence in behalf of accused-appellant or to so inform the latter of his right to adduce evidence whether in support of the guilty plea or in deviation therefrom; (d) his failure to object to his client's warrantless arrest and the designation of the crime in Crim. Case No. 99-02821-D as attempted rape when the evidence may appear not to warrant the same; and, (e) his failure to file a notice of appeal as regards Crim. Case No. 99-02821-D to the Court of Appeals for appropriate review. This Court perceives no reasonable basis for excusing these omissions as counsel's strategic decision in his handling of the case. Rather, they constitute inadequate representation that renders the result of the trial suspect or unreliable, and as we explained in *People v. Durango*, in violation of the right to counsel of accused-appellant

x x x x

The flawed re-arraignment of accused-appellant and the invalid admission of his supposed letter-admission were caused by the omission of minimal standards for a searching inquiry in the former and the admissibility of private documents in the latter. We cannot conceive any reasonable legal basis to explain the oversight to contest these errors.

x x x x

The accusation and conviction of accused-appellant for attempted rape in Crim. Case No. 99-02821-D were based on the testimony of Brenda that she was watching television when her father unexpectedly sat beside her, pushed her to the floor, went on top of her, and with their clothes on, wiggled his hips while drubbing his penis on her unexposed vagina. As she further testified, her friends suddenly called out her name from the house's frontage since they were supposed to attend a wake at a relative's house, and the unexpected visitors forced accused-appellant to stop his prurient motions. Considering these allegations, the defense could have plausibly argued accused-appellant's absence of intent to lie with the victim, or given accused-appellant's alleged willingness to plead guilty, at least conferred with the latter to inquire from him if he did have the intention then to have carnal knowledge of his daughter since the crime may constitute acts of lasciviousness and not the crime charged.

Still, as regards the conviction for attempted rape, this Court notes the conspicuous absence of a Notice of Appeal to the Court of Appeals for proper review. It was necessary to file such notice since the conviction does not fall under Sec. 17, par. (1), RA 296 (The Judiciary Act of 1948) as amended which outlines our jurisdiction over "[a]ll criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense x x x."

x x x x

This omission is fatal since ordinarily the conviction for attempted rape would by now be already final and executory. No doubt this omission was caused by accused-appellant's improvident plea of guilty that led the public defender to simply shorten the proceedings. Given that the plea of guilty has been set aside, effective counseling would have nonetheless dictated the institution of at least a precautionary appeal to the appellate court if only to assure protection of his client's rights.

Sixth, for whatever reason, accused-appellant had not found a voice in the proceedings a quo. Oddly from the preliminary investigation to the promulgation of judgment his version was never heard of even if prior to his re-arraignment he appeared adamant at denying the crimes charged against him. This situation is lamentable since at the preliminary investigation of a criminal case the Constitution requires that an accused be informed of his right to counsel and provided with a lawyer if he cannot afford to hire one, and that a waiver of these rights requires the assistance of counsel.

While it is true that un rebutted evidence provides itself an effective corroboration, we cannot give credence to this rule given the circumstances under which such deficiency came about. For one, had the trial court correctly implemented the corresponding rules on plea of guilty, we may not be having this situation where only the private complainant was heard. The absence of the transcripts of stenographic notes of the arraignment proceedings already denies us "full opportunity to review the cases fairly and intelligently." After having set aside the plea of guilty, we could never be sure that accused-appellant would waive telling his version of the story, or that the facts would still be the same after we hear him say his side. Moreover, the sad fact of this omission is that obviously we could have learned more about the crimes alleged by the prosecution if accused-appellant had also participated meaningfully in all the proceedings below. His voice could better assure the fairness of any action for or against him. As in similar situations, we should achieve such comforting posture if the court a quo is required to establish with moral certainty the guilt of accused-appellant who allegedly wanted to confess his guilt by requiring him to narrate the incident or making him reenact it, or by causing him to furnish the missing details.

Lastly, the idea that in our midst runs a paucity of facts is substantiated by the assailed Decision of the trial court itself. It bewailed the sloppy pacing of the trial proper, but in coming up with the judgment of conviction barely summed up the testimony of the private complainant and other prosecution evidence. No reason is given why the trial court found the testimonies of the prosecution witnesses credible except for the bare statement that Brenda wept while on the witness stand and the inadmissible letter allegedly from accused-appellant admitting the charges against him. The assailed Judgment fails to state, in short, the factual and legal reasons on which the trial court based the conviction, contrary to Sec. 2 of Rule 120, 1985 Rules on Criminal Procedure. Thus even the Decision lacks the "assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning x x x a safeguard against the impetuosity of the judge, preventing him from deciding by ipse dixit." [135] (emphases supplied)

It is apparent from the foregoing that the Court, in *Molina*, harbored serious doubts as to the guilt of therein accused on the basis of the evidence presented during trial proper, as well as the kind of protection extended by the defense counsel. The specific instances it cited to support its conclusion that the prosecution and the defense unduly relied on the plea of guilt is undeniable.

In contrast, there are no specific instances in the case at bench that would point to the supposed undue reliance of the prosecution and the defense on accused-appellant's plea of guilt. It must also be noted that the prosecutors were optimistic in presenting their evidence-in-chief every time they asked for continuance from the trial court. This attitude of the prosecution is a far cry from what *Molina* or *Murillo* describes as undue reliance on the guilty plea. As shown in the Orders of the trial court granting continuance in favor of the prosecution, the latter did not take the case for granted due to the fact that accused-appellant pleaded guilty. Neither should the inaction of accused-appellant be considered as undue reliance to the guilty plea because his inaction to participate stems from his right to remain silent throughout the proceedings.

Be that as it may, in this case, the only thing clear from the records is that the prosecution was afforded reasonable opportunity, in the form of four (4) separate hearing dates, to present its evidence. When its witnesses did not appear, the prosecution, together with the defense, submitted the case for decision. [136] The defense's choice not to present evidence is wholly understandable in the face of the lack of evidence presented by the prosecution. The rule in criminal proceedings is clear; it is the burden of the prosecution to present evidence to prove the guilt of the accused beyond reasonable doubt. The accused need not present evidence to prove his defense. [137]

Meanwhile, in *Murillo*, the Court ordered the remand of the case due to the improvident plea of guilt and the lackluster defense afforded the accused therein by his counsel. In a marked difference from the instant case, the prosecution therein had, in fact, established the facts of the case through the testimony of therein accused, as hostile witness, and its other witnesses. The Court's recital of facts in *Murillo* was expressly prefaced with the

statement that the prosecution's witnesses established the following facts.[138] However, the Court deemed it proper to remand the case because the defense failed to faithfully protect the rights of therein accused in the face of the evidence mounted by the prosecution. The Court's disquisition on the matter is as follows:

The failure of the defense counsel to faithfully protect the rights of appellant also cannot go unnoticed. Records show that defense counsel Atty. Dante O. Garin, never cross-examined three of the four witnesses of the prosecution, namely Sancho Fereras, Ramon Saraos, and Dr. Ludivino Lagat. The only prosecution witness he cross-examined was SPO2 Nieves to whom he asked four questions pertaining only as to how the police came to the conclusion that the body parts belong to Paz Abiera. Apart from these, no other questions were ever offered.

There is also no record anywhere that the defense counsel presented evidence for the accused nor that the trial court even inform him of his right to do so if he so desires.

For these reasons, it cannot be said that the appellant's rights were observed in the proceedings a quo.

It is well established that the due process requirement is part of a person's basic rights and is not a mere formality that may be dispensed with or performed perfunctorily. An accused needs the aid of counsel lest he be the victim of overzealous prosecutors, of the law's complexity or of his own ignorance and bewilderment. Indeed, the right to counsel springs from the fundamental principle of due process. The right to counsel, however, means more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections. The right to counsel means that the accused is sufficiently accorded legal assistance extended by a counsel who commits himself to the cause for the defense and acts accordingly. This right necessitates an active involvement by the lawyer in the proceedings, particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case and his knowing the fundamental procedures, essential laws and existing jurisprudence. Indeed, the right of an accused to counsel finds meaning only in the performance by the lawyer of his sworn duty of fidelity to his client and an efficient and truly decisive legal assistance which is not just a simple perfunctory representation.

Atty. Garin, had the duty to defend his client and protect his rights, no matter how guilty or evil he perceives appellant to be. The performance of this duty was all the more imperative since the life of appellant hangs in the balance. As a defense counsel, he should have performed his duty with all the zeal and vigor at his command to protect and safeguard appellant's fundamental rights.

While our jurisdiction does not subscribe to a per se rule that once a plea of guilty is found improvidently he is at once entitled to a remand, the circumstances of this case warrant that a remand to the trial court be made. To warrant a remand of the criminal case, the Court has held that it must be shown that as a result of such irregularity there was inadequate representation of facts by either the prosecution or the defense during the trial. Where the improvident plea of guilty was followed by an abbreviated proceeding with practically no role at all played by the defense, we have ruled that this procedure was just too meager to accept as being the standard constitutional due process at work enough to forfeit a human life. What justifies the remand of the criminal case to the trial court is the unfairness or complete miscarriage of justice in the handling of the proceedings a quo as occasioned by the improvident plea of guilt. In this case, apart from the testimony of appellant, the prosecution does not have any other evidence to hold him liable for the crime charged."[139] (citations omitted, emphasis supplied)

All told, it is apparent that in Molina and Murillo, the evidence presented by the prosecution, uncontested and untested by the defense, could have resulted in the conviction of the accused therein. However, the failure of the defense to mount the proper legal defense on behalf of therein accused cast serious doubts on the evidence presented by the prosecution. Thus, the Court, in an effort to balance the interests of both the State and the victim, opted to remand the case in order to rid itself of any doubts as to the guilt of the therein accused.

While the Court understands that some of its Members believe that such similar balancing is needed in the instant case, the Court fails to see any rationale for such course of action. The choice of the defense herein not to present evidence cannot be attributed to the plea of guilty made by accused-appellant. The defense appears to have chosen not to present evidence because there was no inculpatory evidence to rebut or contradict. In the face of the failure of the prosecution to prove beyond reasonable doubt the guilt of accused-appellant, the defense rested its case. As previously noted by this Court, "if the prosecution fails to meet the required quantum of evidence, the defense may logically not even present evidence on its behalf. In which case, the presumption of innocence shall prevail and, hence, the accused shall be acquitted." [140]

The prosecution's failure, on the other hand, cannot be said to have been due to the plea of guilty made by accused-appellant. There is no specific conduct or specific utterance that would lend credence to such conclusion. The mere failure of the prosecution, absent any proof of the whys and hows, cannot be used as rationale for a remand. This is especially true because the prosecution was not lacking in any opportunity to raise any justifying reasons for its failure. Thus, to remand the case absent such proof would be to unduly favor the State at the expense of the accused. To stress once more, it would be unjust and contrary to the constitutional presumption of innocence. All doubts must be resolved in favor of the accused.

Finally, Madame Senior Associate Justice Perlas-Bernabe argues that the instant case be remanded because the lack of a valid plea taints the entire criminal proceedings and precludes the trial court from rendering a valid verdict. [141] This, according to Mr. Justice Lopez, necessitates the remand of the instant case so that the Court may render a valid verdict.

The Court respectfully disagrees.

As previously mentioned, it would be a mistake to assume or conclude that an invalid arraignment automatically results in a remand of the case.

In *Ong*, [142] the Court, speaking through Chief Justice Reynato Puno, decided the case on its merits despite a determination of an invalid arraignment. In fact, the Court therein acquitted the two accused.

In said case, the Court found that the arraignment of therein two (2) accused violated the requirement that the information be read in a language or dialect known to them. It was observed that therein two accused were Chinese nationals who were unable "to fully or sufficiently comprehend any other language than Chinese and any of its dialect. Despite this inability, however, the [accused therein] were arraigned on an Information written in the English language." [143]

The Court declared that "[W]e again emphasize that the requirement that the information should be read in a language or dialect known to the accused is mandatory. It must be strictly complied with as it is intended to protect the constitutional right of the accused to be informed of the nature and cause of the accusation against him. The constitutional protection is part of due process. Failure to observe the rules necessarily nullifies the arraignment." [144]

Nonetheless, despite such express finding of an invalid arraignment, the Court proceeded to discuss the merits of said case and, ultimately, found that the two accused should be acquitted.

Meanwhile, in *People v. Crisologo*, [145] the Court, through Senior Associate Justice Teodoro R. Padilla, decided the case on the merits despite the accused, who was deaf-mute, having been arraigned without an interpreter for the sign language. Similar to *Ong*, the Court did not order the remand of the case despite the invalid arraignment but, rather, acquitted the accused. [146]

On the basis of the foregoing, and by reason of parity, it is respectfully submitted that an invalid arraignment does not automatically result in the remand of the case. While it is true that a judgment of conviction cannot stand on an invalid arraignment, a judgment of acquittal may proceed from such invalid arraignment. The invalid arraignment itself is ground for acquittal.

The proposal to remand, if carried out,
may very well violate accused-appellant's
right to speedy disposition of cases

At this juncture, it must be emphasized that accused-appellant was indicted with the charge of murder on July 10, 2009.[147] Since the issuance of the warrant of arrest against him last July 22, 2009 or about (11) eleven years ago, accused-appellant remains under preventive detention.[148] Upon conviction by the trial court, he was transferred to the National Penitentiary in Muntinlupa on November 28, 2015.[149] If the proposal to remand is adopted, he will remain imprisoned during the re-trial. This begs the question whether such course of action would be a violation of accused-appellant's constitutional right to speedy disposition of cases.

Sec. 16, Article III of the 1987 Constitution guarantees the constitutional right to speedy disposition of cases. It provides that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."

Initially embodied in Sec. 16, Article IV of the 1973 Constitution, the aforesaid constitutional provision is one of three (3) provisions mandating speedier dispensation of justice. It guarantees the right of all persons to 'a speedy disposition of their case'; includes within its contemplation the periods before, during and after trial, and affords broader protection than Sec. 14(2), which only guarantees the right to a speedy trial. It is more embracing than the protection under Article VII, Sec. 15, which covers only the period after the submission of the case. The present constitutional provision applies to civil, criminal and administrative cases.[150]

The Court's disquisition in *Corpuz v. Sandiganbayan*[151] is illuminating:

The right of the accused to a speedy trial and to a speedy disposition of the case against him was designed to prevent the oppression of the citizen by holding criminal prosecution suspended over him for an indefinite time, and to prevent delays in the administration of justice by mandating the courts to proceed with reasonable dispatch in the trial of criminal cases. Such right to a speedy trial and a speedy disposition of a case is violated only when the proceeding is attended by vexatious, capricious and oppressive delays. The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification. The concept of a speedy disposition is a relative term and must necessarily be a flexible concept.

While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.

A balancing test of applying societal interests and the rights of the accused necessarily compels the court to approach speedy trial cases on an ad hoc basis.

In determining whether the accused has been deprived of his right to a speedy disposition of the case and to a speedy trial, four factors must be considered: (a) length of delay; (b) the reason for the delay; (c) the defendant's assertion of his right; and (d) prejudice to the defendant. Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that

his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.[152](citations omitted, emphases supplied)

It is respectfully submitted that the resulting delay in the disposition of the instant case, if the proposal to remand is earned out, would be prejudicial to accused-appellant. As mentioned, accused-appellant was charged with murder in the year 2009. The incident involving the death of Selma occurred in 2008. He has been languishing in jail since 2009[153] and he will continue to be incarcerated during the period of the re-trial. At this point in time, accused-appellant has been incarcerated for more or less eleven (11) years. To require that he undergo re-trial, when the failure of the prosecution to prove his guilt beyond reasonable doubt was through no fault of his, is unreasonably oppressive.

Further, the resulting delay in the disposition of this case, if it were remanded, cannot be characterized, in any manner, as being reasonably attributable to the ordinary processes of justice. It cannot be denied that the decision to remand is in order to afford the prosecution another opportunity to prove what it failed to do the first time around: the guilt of accused-appellant. This cannot be characterized as an ordinary process of justice. After all, the ordinary process of justice demands that the accused be acquitted when his guilt is not proven beyond reasonable doubt after trial.

As a practical point, it must also be noted that the incident involving the death of Selma occurred in 2008. More than twelve (12) years has passed since then. The likelihood of the prosecution witnesses remembering with certainty the events surrounding the incident is miniscule. Any defense witness would also likely have a hard time recalling the events surrounding that fateful day. Thus, the defense would likely be impaired due to the passage of time. This is prejudicial to accused-appellant.[154]

The Court is aware of the esteemed Madame Senior Associate Justice Perlas-Bernabe's proposition that accused-appellant's failure to timely raise the violation of his right to speedy disposition of cases amounts to a waiver of such right.

Respectfully, the Court cannot join such proposition. As things stand right now, there was no violation of accused-appellant's right to speedy disposition of cases. A violation would arise only when the Court adopts the position of the other Members of the Court to remand the case for re-trial. Such act of the Court is the triggering mechanism which would give rise to the violation of accused-appellant's right to speedy disposition of cases. In other words, there is no waiver of the right to speedy disposition of cases as yet because there is no violation of the right as of now. Therefore, accused-appellant could not have validly waived his right to speedy disposition of cases.

In *People v. Monje* (Monje),[155] the accused therein, who was charged with three (3) others for the crime of rape

with homicide involving a 15-year old, was acquitted by the Court due to insufficiency of evidence. On the proposal to remand the case to allow further proceedings, the Court En Banc, speaking through Senior Associate Justice Josue N. Bellosillo, had this to say:

A proposal has been expressed for the remand of this case to the trial court for further proceedings, apparently to enable the prosecution to prove again what it failed to prove in the first instance. We cannot agree because it will set a dangerous precedent. Aside from its being unprocedural, it would open the floodgates to endless litigations because whenever an accused is on the brink of acquittal after trial, and realizing its inadequacy, the prosecution would insist to be allowed to augment its evidence which should have been presented much earlier. This is a criminal prosecution, and to order the remand of this case to the court a quo to enable the prosecution to present additional evidence would violate the constitutional right of the accused to due process, and to speedy determination of his case. The lamentable failure of the prosecution to fill the vital gaps in its evidence, while prejudicial to the State and the private offended party, should not be treated by this Court with indulgence, to the extent of affording the prosecution a fresh opportunity to refurbish its evidence.

In fine, we are not unmindful of the gravity of the crime charged; but justice must be dispensed with an even hand. Regardless of how much we want to punish the perpetrators of this ghastly crime and give justice to the victim and her family, the protection provided by the Bill of Rights is bestowed upon all individuals, without exception, regardless of race, color, creed, gender or political persuasion — whether privileged or less privileged — to be invoked without fear or favor. Hence, the accused deserves no less than an acquittal; ergo, he is not called upon to disprove what the prosecution has not proved.[156] (emphases supplied)

While Monje admittedly did not involve a plea of guilty, improvident or not, the Court's aforequoted statement equally applies in the case at bar for the simple reason that, with the advent of the 1985 Rules which introduced Sec. 3 of Rule 116, the plea entered by an accused in criminal cases involving a capital offense is negligible. It is as if he entered a plea of not guilty. His guilt must be proven beyond reasonable doubt. Absent such proof, he must be acquitted as is necessitated by due process.

Confluence of errors committed by the
prosecution, the defense, and the trial court
are egregious and an affront to justice

The final nail in the coffin, so to speak, is the confluence of errors perpetrated by the perennial actors in Our criminal justice system. Three (3) principal actors play an integral part in the administration of criminal justice in Our jurisdiction. These principal actors are the public prosecutor, the defense, and the trial court. The result of acquittal in the instant case was ordained by the actuations of these three principal actors.

The prosecution, despite the numerous opportunities and aid offered to it in the form of repeat subpoenas, miserably failed to present its case for the conviction of accused-appellant. We remind the prosecution that "[t]he role of the fiscal or prosecutor as We all know is to see that justice is done xxx Thus, xxx, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted." [157]

On the other hand, the defense failed to mount any kind of protection on behalf of its client, accused-appellant. While it is true that the defense was well-within its rights not to present evidence on account of the prosecution's non-presentation, as well as the right of the accused to remain silent, the defense's failure to object to the grievous noncompliance with Sec. 3, Rule 116, particularly on the requirement for a searching inquiry, is an absolute failure on its part to protect the rights of accused-appellant.

Lastly, the trial court completely failed to discharge its duties under Sec. 3, Rule 116. It did not conduct the mandated searching inquiry. It convicted accused-appellant despite the failure of the prosecution to prove his guilt

beyond reasonable doubt. It failed to comply with the guidelines laid down in *People v. Bodoso*[158] for the waiver by the accused of his right to present evidence under Sec. 3, Rule 116. But, above all, the most appalling mistake committed by the trial court lies in its fallo:

WHEREFORE, in view of the foregoing, accused BRENDO P. PAGAL alyas "DINDO" is hereby found GUILTY beyond reasonable doubt and sentenced to suffer the imprisonment of RECLUSION PERPETUA. And to pay the heirs of SELMA PAGAL [P]50,000.00 as indemnification and [P] 50,000.00 as moral damages.

In the service of his sentence[,] accused is hereby credited with the full time of his preventive imprisonment if he agreed to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he will only be entitled to 4/5 of the same.

SO ORDERED.[159]

In *Velarde v. Social Justice Society*,[160] the Court stated the essential elements of a good decision. Particularly, "[i]n a criminal case, the disposition should include a finding of innocence or guilt, the specific crime committed, the penalty imposed, the participation of the accused, the modifying circumstances if any, and the civil liability and costs. In case an acquittal is decreed, the court must order the immediate release of the accused if detained, unless he/she is being held for another cause, and order the director of the Bureau of Corrections (or wherever the accused is detained) to report, within a maximum of ten (10) days from notice, the exact date when the accused were set free."[161]

Thus, the glaring absence in the fallo of the specific crime accused-appellant was convicted for by the trial court is so egregious and shocking that it appalls the sensibilities of the Court. At its core, the RTC Decision on which the conviction rests, and on which basis accused-appellant has been imprisoned for the past years, lacks a definitive statement as to what crime accused-appellant was being imprisoned for. Worse, what makes the error more atrocious is the fact that even on appeal, the appellate court failed to notice such basic and inexcusable mistake.

To remand in spite of this lackadaisical conviction, and the numerous transgressions committed by the trial court, the prosecution, and the defense, would be to countenance their fault, negligence, inattention, and lack of care at the expense of accused-appellant's constitutional rights to due process, presumption of innocence, and speedy disposition of cases. It would be to completely disregard the rights of accused-appellant for what is essentially a misguided attempt to vindicate the victim and her heirs. To remand would be nothing short of an egregious miscarriage of justice.

Lest it be misunderstood, the decision to acquit is not recompense to accused-appellant and penalty for the trial court and the State's failure to abide by Sec. 3, Rule 116. It is the result demanded by applicable law and jurisprudence.

At the end of day, the Court deeply feels and echoes the cry for justice for Selma and her family. However, such justice cannot be achieved at the expense of trampling on accused-appellant's constitutional rights to due process, presumption of innocence, and speedy disposition of cases. In that case, justice would not be justice at all. For while "[t]he sovereign power has the inherent right to protect itself and its people from vicious acts which endanger the proper administration of justice; hence, the State has every right to prosecute and punish violators of the law,"[162] "in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former"[163]

In all criminal prosecutions, the State bears the burden of establishing the guilt of the accused beyond reasonable doubt. When the State fails to overcome the presumption of innocence in favor of the accused, such as in this

case, the accused must be acquitted and set free. No less than the precepts of justice and fairness demand this.

Here, the acquittal of accused-appellant is fair and just under the circumstances; that between the State and the accused, the latter should be given preference. Accused-appellant's acquittal is not just based on justice and fairness but also based on humanity as the accused should not be made to answer for the State's blunders.

Indeed, while justice is the first virtue of the court, yet admittedly, humanity is the second.[164]

Summary

For the guidance of the bench and the bar, this Court adopts the following guidelines concerning pleas of guilty to capital offenses:

- **AT THE TRIAL STAGE.** When the accused makes a plea of guilty to a capital offense, the trial court must strictly abide by the provisions of Sec. 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure. In particular, it must afford the prosecution an opportunity to present evidence as to the guilt of the accused and the precise degree of his culpability. Failure to comply with these mandates constitute grave abuse of discretion.
- In case the plea of guilty to a capital offense is supported by proof beyond reasonable doubt, the trial court shall enter a judgment of conviction.
- In case the prosecution presents evidence but fails to prove the accused's guilt beyond reasonable doubt, the trial court shall enter a judgment of acquittal in favor of the accused.
- In case the prosecution fails to present any evidence despite opportunity to do so, the trial court shall enter a judgment of acquittal in favor of the accused.

In the above instance, the trial court shall require the prosecution to explain in writing within ten (10) days from receipt its failure to present evidence. Any instance of collusion between the prosecution and the accused shall be dealt with to the full extent of the law.

- **AT THE APPEAL STAGE:**

- When the accused is convicted of a capital offense on the basis of his plea of guilty, whether improvident or not, and proof beyond reasonable doubt was established, the judgment of conviction shall be sustained.
- When the accused is convicted of a capital offense solely on the basis of his plea of guilty, whether improvident or not, without proof beyond reasonable doubt because the prosecution was not given an opportunity to present its evidence, or was given the opportunity to present evidence but the improvident plea of guilt resulted to an undue prejudice to either the prosecution or the accused, the judgment of conviction shall be set aside and the case remanded for re-arraignment and for reception of evidence pursuant to Sec. 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure.
- When the accused is convicted of a capital offense solely on the basis of a plea of guilty, whether improvident or not, without proof beyond reasonable doubt because the prosecution failed to prove the accused's guilt despite opportunity to do so, the judgment of conviction shall be set aside and the accused acquitted.

Said guidelines shall be applied prospectively.

WHEREFORE, the Court GRANTS the appeal; REVERSES and SETS ASIDE the May 8, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01521; ACQUITS accused-appellant Brendo P. Pagal a.k.a. "Dindo" of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, for failure to prove his guilt beyond reasonable doubt; and ORDERS his IMMEDIATE RELEASE from detention unless he is confined

for another lawful cause.

Let a copy of this Decision be furnished the Penal Superintendent, Leyte Penal Colony for immediate implementation and he is ORDERED to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

Peralta, C.J. , Hernando, Carandang and Inting, JJ., concur.

Perlas-Bernabe, J., please see dissenting opinion.

Leonen, J., concur. see separate opinion.

Caguioa, J., left his vote, please see concurring opinion.

Lazaro-Javier, J., see dissenting opinion.

Zalameda, J., please see dissenting opinion.

Lopez, J., please see dissenting opinion.

Delos Santos, J., left his vote, please see dissenting opinion.

Gaerlan, J., please see dissenting opinion.

Baltazar-Padilla, J., on leave.

[1] Marcus Tullius Cicero, On the Laws, Seton University (last visited September 29, 2020), <http://pirate.shu.edu/~knightna/westciv1/cicero.htm>.

[2] People v. Solar, G.R. No. 225595, August 6, 2019.

[3] Rollo, pp. 4-11; penned by Associate Justice Gabriel T. Robeniol with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap, concurring.

[4] Records, pp. 60-62; penned by Judge Ephrem S. Abando.

[5] Id. at 10.

[6] SECTION 3. Plea of Guilty to Capital Offense; Reception of Evidence. — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

[7] Entitled Arraignment and Plea.

[8] Rollo, p. 5.

[9] Records, p. 22.

[10] Referred to as "Jardin" in some parts of the records.

[11] Records, pp. 24, 26 and 28.

[12] Id. at 35 and 39.

[13] Id. at 39.

[14] Id. (back of the page).

[15] Id. at 41.

[16] Id.

[17] Id. at 43.

[18] Id. at 46.

[19] Id. (back of the page).

[20] Id. at 48.

[21] Id.

[22] Id. at 50.

[23] Id. at 52.

[24] Id. at 54.

[25] Rollo, p. 5.

[26] CA rollo, pp. 39-40.

[27] It must be noted that the dispositive portion did not identify the felony to which the accused was found guilty of.

[28] CA rollo, p. 40.

[29] Id. at 29.

[30] Rollo, p. 11.

[31] Id. at 7-11.

[32] Id. at 22-23.

[33] 654 Phil. 148 (2011).

[34] Id. at 161.

[35] CA rollo, pp. 29-38.

[36] Arambullo v. People, G.R. No. 241834, July 24, 2019.

[37] SECTION 6. Capital offense, defined. — A capital offense is an offense which, under the law existing at the time of its commission and of the application for admission to bail, may be punished with death. (Rule 114, Revised Rules on Criminal Procedure)

[38] People v. Albert, 321 Phil. 500. 508 (1995).

[39] Id.

[40] Id. at 508.

[41] 2 Phil. 752 (1903).

[42] Id. at 755.

[43] 37 Phil. 305 (1917).

[44] Id. at 307-308.

[45] Id. at 317-318.

[46] SECTION 31. The plea of not guilty having been entered, the trial must proceed in the following order:

1. The counsel for the United States must offer evidence in support of the charges.
2. The defendant or his counsel may offer evidence in support of the charges.
3. The parties may then respectively offer rebutting testimony, but rebutting testimony only, unless the court, in furtherance of justice, permit them to offer new and additional evidence bearing upon the main issue in question.
4. When the introduction of testimony shall have been concluded, unless the case is submitted to the court without argument, the counsel for the United States must open the argument, the counsel for the defence must follow, and the counsel for the United States may conclude the same. The argument by either counsel may be oral or written, or partly oral and partly written, but only the written arguments, or such portions of the same as may be in writing shall be preserved in the records of the case.

[47] CODE OF CRIMINAL PROCEDURE OF THE PHILIPPINE ISLANDS, April 23, 1900.

[48] 42 Phil. 72(1921).

[49] Id. at 74. (emphasis supplied)

[50] 1940 RULES OF COURT, Rule 114. The provision was lifted from Section 229, Criminal Proc. Of the American Law Institute, per Moran, Comments on the Rules of Court, Rev. Ed. 1952, Vol. II, p. 829.

[51] 1964 RULES OF COURT, Rule 118, Sec. 5.

[52] 81 Phil. 562 (1948).

[53] Id. at 563.

[54] 88 Phil. 487 (1951).

[55] Id. at 489. (emphasis supplied)

[56] 98 Phil. 642 (1956).

[57] Id. at 644-645.

[58] 1985 RULES ON CRIMINAL PROCEDURE, Rule 116.

[59] 274 Phil. 11 (1991).

[60] Id. at 18-19.

[61] SECTION 4. Plea of Guilty to Non-Capital Offense; Reception of Evidence, Discretionary. — When the accused pleads guilty to a non-capital offense, the court may receive evidence from the parties to determine the penalty to be imposed. (5a, R-118)

[62] 718 Phil. 507 (2013).

[63] Id. at 520-521.

[64] Id. at 521.

[65] *People v. Francisco*, 649 Phil. 729, 740 (2010).

[66] *People v. Nuelan*, 419 Phil. 160, 173 (2001).

[67] *Id.* at 175.

[68] *People v. Dayot*, 265 Phil. 669, 677 (1990).

[69] *People v. Molina*, 423 Phil. 637, 649-650 (2001). (citations omitted)

[70] *People v. Nadera, Jr.*, 381 Phil. 484, 498 (2000).

[71] *People v. Gambao*, 718 Phil. 507, 521-522 (2013).

[72] *Id.* at 522.

[73] *People v. Dayot*, *supra* note 68 at 678.

[74] *People v. De Luna*, 255 Phil. 893, 901 (1989).

[75] *People v. Besonia*, 466 Phil. 822, 841-842 (2004). (citation omitted)

[76] *People v. Bodoso*, 446 Phil. 838, 855-857 (2003).

[77] *Records*, p. 22.

[78] *Id.*

[79] *Id.* at 61.

[80] *Supra* note 33.

[81] 338 Phil. 350 (1997).

[82] *Id.* at 365-368.

[83] *Id.* at 373-374.

[84] *People v. Bodoso*, *supra* note 76 at 857-858.

[85] *People v. Petalcorin*, 259 Phil. 1173 (1989); *People v. Nunez*, 369 Phil. 422 (1999), *People v. Gumimba*, 545 Phil. 627 (2007), *People v. Ceredon*, 566 Phil. 536 (2008), and *People v. Francisco*, 649 Phil. 729 (2010).

[86] *People v. Alicando*, 321 Phil. 656 (1995); *People v. Diaz*, 325 Phil. 217 (1996); *People v. Estomaca*, 326 Phil. 429 (1996); *People v. Abapo*, 385 Phil. 1175 (2000); *People v. Samontanez*, 400 Phil. 703 (2000); *People v. Sta. Teresa*, 407 Phil. 194 (2001); *People v. Galvez*, 428 Phil. 438 (2002); *People v. Pastor*, 428 Phil. 976 (2002); *People v. Ernas*, 455 Phil. 829 (2003); *People v. Besonia*, 466 Phil. 822 (2004); *People v. Murillo*, 478 Phil. 446 (2004); and *People v. Dalacat*, 485 Phil. 35 (2004).

[87] *People v. Dalacat*, *supra*.

[88] *Id.* at 54.

[89] 476 Phil. 553 (2004).

[90] *Supra* note 86 at 1186-1187.

[91] *Id.*

[92] *Supra* note 69.

- [93] Id. at 651-652.
- [94] Reflections of J. Zalameda, pp. 2-3.
- [95] G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, 875 SCRA 374.
- [96] Reflections of J. Zalameda, p. 3.
- [97] Revised Reflections of J. Javier, p. 4.
- [98] Reflections of J. Zalameda, pp. 3-5.
- [99] Reflections of J. Delos Santos, pp. 2-3.
- [100] Reflections of J. Zalameda, pp. 7-9.
- [101] Id. at 8.
- [102] Id. at 8-9.
- [103] Revised Reflections of J. Javier, p. 2.
- [104] Reflections of J. Lopez, p. 1.
- [105] Id.
- [106] Reflections of J. Gaerlan, p. 6.
- [107] Id. at 5-6.
- [108] Id. at 5.
- [109] Id.
- [110] Revised Reflections of J. Perlas-Bernabe, p. 1.
- [111] Id. at 3.
- [112] Id. at 6.
- [113] Revised Reflections of J. Javier, pp. 1-2.
- [114] Reflections of J. Lopez, p. 1.
- [115] Rollo, p. 5; records, p. 54.
- [116] *People v. Asis*, 439 Phil. 707, 727-728 (2002).
- [117] *Supra* note 95.
- [118] *People v. Derilo*, *supra* note 81 at 373-374. (emphasis supplied)
- [119] *People v. Nuelan*, 419 Phil. 160, 175 (2001).
- [120] *People v. Dayot*, *supra* note 68.
- [121] Reflections of J. Zalameda, p. 4.
- [122] Id.
- [123] *People v. Asis*, *supra* note 116 at 728. (emphasis supplied)

[124] *Beirut v. People*, 744 Phil. 20, 27 (2014).

[125] *Id.*

[126] Mr. Justice Lopez opined that "the remand of this case is proper to afford the State its right to penalize the accused based on the crime he voluntarily pleaded." (Reflections of J. Lopez, p. 2).

[127] Mr. Justice Delos Santos stated that "[t]he accused Brendo P. Pagal (accused) in this case entered a free, truthful, and voluntary plea of guilty to the crime of murder against victim Selma Pagal (Selma)." (Reflections of J. Delos Santos, p. 1.)

[128] Reflections of J. Gaerlan, p. 5.

[129] Reflections of J. Delos Santos, p. 1.

[130] Reflections of J. Gaerlan, p. 5.

[131] *Id.* at 5-6.

[132] *Supra* note 69.

[133] *Supra* note 86.

[134] *Supra* note 69 at 646.

[135] *People v. Molina*, *supra* note 69 at 653-662.

[136] *Rollo*, p. 5; records, p. 54.

[137] See *Macayan, Jr., v. People*, 756 Phil. 202, 214 (2015).

[138] "The prosecution presented Sancho Ferreras, brother of the victim; barangay tanod Ramon Saraos; SPO2 Angel Nieves of the Parañaque Police; and NBI Medico-legal Officer Ludivino Lagat. They established the following facts: x x x" (*People v. Murillo*, *supra* note 86 at 452).

[139] *People v. Murillo*, *supra* note 86 at 463-465.

[140] *People v. Lorenzo*, 633 Phil. 393, 401 (2010).

[141] Reflections of J. Perlas-Bernabe, p. 1.

[142] *Supra* note 89.

[143] *Id.* at 565.

[144] *Id.* (emphasis supplied)

[145] 234 Phil. 644(1987).

[146] *Id.* at 653.

[147] Records, pp. 10-11.

[148] *Id.* at 14.

[149] CA *rollo*, p. 43.

[150] *Dansal v. Fernandez, Sr.*, 383 Phil. 897, 905 (2000).

[151] 484 Phil. 899 (2004).

[152] Id. at 917-918.

[153] Records, p. 14.

[154] In *Inocentes v. People*, the Court held that "[p]lainly, the delay of at least seven (7) years before the informations were filed skews the fairness which the right to speedy disposition of cases seeks to maintain. Undoubtedly, the delay in the resolution of this case prejudiced Inocentes since the defense witnesses he would present would be unable to recall accurately the events of the distant past." (789 Phil. 318, 337, (2016).

[155] 438 Phil. 716 (2002).

[156] Id. at 735-736.

[157] *Crespo v. Mogul*, 235 Phil. 465, 475 (1987).

[158] *Supra* note 76.

[159] CA rollo, p. 40.

[160] 472 Phil. 285 (2004).

[161] Id. at 325.

[162] *Allado v. Judge Diokno*, 302 Phil. 213, 238 (1994).

[163] Id. (emphasis supplied)

[164] *Padilla v. Court of Appeals*, 328 Phil. 1266, 1270 (1996).

CONCURRING OPINION

PERALTA, C.J.:

I concur with the ponencia of Justice Alexander G. Gesmundo. I make this submission, however, in order to fully articulate my thoughts as to why appellant Brendo P. Pagal is entitled to be acquitted when his conviction for murder was set aside for being based solely on his plea of guilt.

A brief rundown of the antecedents is imperative.

Appellant Brendo Pagal was charged of murder, a capital offense, before a Regional Trial Court (RTC). During arraignment, he entered a guilty plea. Finding the plea to be in order, the RTC set four (4) hearing dates for the prosecution to present evidence to prove the guilt of the appellant and to determine the exact degree of his culpability. On the hearing dates, however, none of the prosecution witnesses appeared. For its part, the defense also chose not to present any evidence. Under such premises, the prosecution and the defense then moved for the submission of the case for decision. Soon enough, the RTC issued its judgment convicting the appellant as charged by relying solely on the latter's plea of guilt.

On appeal, the Court of Appeals (CA) reversed. The CA found that the RTC actually failed to perform its duty, under Section 3 of Rule 116 of the Rules of Court, to conduct a searching inquiry into the voluntariness of the appellant's plea of guilt and his full comprehension of the consequences thereof. For this reason, the appellate court considered appellant's plea of guilty to a capital offense as improvident and, hence, invalid. As the appellant's conviction was based solely on an improvident plea of guilt, the CA set aside such conviction

and—following settled precedents—forthwith ordered the remand of the case for further proceedings.

Unsatisfied, appellant lodged the present appeal where he asked for a complete acquittal.

The ponencia granted the appeal. As said, I concur.

Jurisprudence up until now has been consistent in how courts ought to deal with convictions for capital offenses that are based solely on improvident pleas of guilt.[1] When a conviction for a capital offense is appealed and is there found to be based exclusively on an improvident plea of guilt, case law typically compels the appellate court to set aside the conviction of the accused and remand the entire case back to the trial court for re-arraignment and the conduct of further proceedings.[2]

While I concede that a conviction for a capital offense when based solely on an improvident plea of guilt must always be set aside, I believe that a remand of the criminal case should not be ordered ipso facto as a matter of course. In tune to what the ponencia advances, I venture that an exception to the remand directive should be made in instances where the prosecution was previously given the opportunity to present evidence to prove the guilt of the accused but failed to do so for no justifiable reason. I submit that, in such instances, it actually becomes the duty of the appellate court to render a judgment of acquittal in favor of the accused.

Such exception, while novel, is grounded on existing rules and sound reason.

It should be stressed that under our current rules of procedure, a guilty plea—whether improvident or not—can never on its own justify a conviction for a capital offense. This is the unequivocal import of Section 3 of Rule 116 of the 2000 Revised Rules of Criminal Procedure:

SECTION 3. Plea of Guilty to Capital Offense: Reception of Evidence. — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

In *People v. Oden*,^[3] we held that the above provision mandated trial courts to fulfill three (3) distinct duties whenever an accused pleads guilty to a capital offense, to wit:

(1)

It must conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt,

(2)

It must require the prosecution to still prove the guilt of the accused and the precise degree of his culpability, and

(3)

It must inquire whether or not the accused wishes to present evidence in his behalf and allow him to do so if he desires.^[4]

The second duty of the trial court under Section 3 of Rule 116 confirms a subsisting obligation on the part of the prosecution to present evidence and prove the guilt of the accused charged of a capital offense—notwithstanding the latter's guilty plea. Indeed, by the provision, such onus of the prosecution remains even if the trial court had already fulfilled its first duty, and even if the plea of guilty by the accused was determined to have been voluntarily and intelligently taken by the latter.

Hence, in cases where the accused enters a plea of guilty to a capital offense, the issue of whether such plea was

improvidently taken or not will not actually determine the ultimate fate of the accused. As can be seen, regardless of the quality of the accused's plea of guilty, the prosecution is never discharged of its burden to adduce evidence and prove the guilt of the former. The implication of this procedure is crystal—in cases involving capital offenses, the accused's conviction or acquittal will still have to depend on whether the prosecution is able to discharge its burden of proving the guilt of the accused beyond reasonable doubt.[5] Accordingly, it is only when the prosecution is able to do so that the trial court would be justified in rendering a judgment of conviction. Otherwise, the accused—in spite of his plea of guilt—must be acquitted consistent with the constitutional presumption of innocence.

The case at bench, therefore, simply pertains to a situation where the prosecution was not able to discharge its burden of proving the guilt of an accused charged of a capital offense, after being required and given the opportunity by the trial court to do so.

It may be recalled that, after the appellant entered a plea of guilty to the crime of murder, the RTC—in fulfillment of its second duty under Section 3 of Rule 116—set four (4) hearing dates for the prosecution to present its evidence. However, the prosecution still failed to present any witness or evidence on any of the provided hearing dates. Obviously, the guilt of the appellant was never proven independently of his guilty plea.

When the case against the appellant was thus submitted for decision, it is clear that the RTC should have rendered a judgment of acquittal in favor of the appellant. At that juncture, and by the Constitution and our rules, the appellant already deserves to be acquitted on the ground of the failure of the prosecution to prove his guilt by reasonable doubt. It is only unfortunate that the RTC erred and rendered a judgment of conviction on the sole basis of the appellant's guilty plea.

From that perspective, I believe that the relief that should be accorded to the appellant on appeal must also be his complete acquittal from the crime charged. This is consistent with the basic purpose of an appeal which is to rectify errors of judgment committed by a lower court.[6] Here, the rectification of the RTC's judgment could only be achieved when it is superseded by that which should have been issued by the trial court in the first place.

Rendering a judgment of acquittal in favor of the appellant on appeal, in other words, merely recognizes the verdict the latter was legally entitled from the start.

Conversely, requiring the remand of the case back to the RTC under the present circumstances, would be nothing short of inflicting a complete injustice to the appellant.

For one, a remand will undeservingly cure all the prosecution's lapses and shortcomings during the trial stage. It will disregard the fact that the prosecution was already given, but had squandered for no justifiable reason, an opportunity to adduce evidence against and prove the guilt of the appellant. Allowing such an outcome—under the peculiar facts of this case—sets a dangerous precedent for the administration of criminal justice as it seems to encourage, if not reward, indolence in the prosecution of capital offenses.

Second, ordering a remand would undeniably work considerable prejudice to the appellant—particularly in his ability to raise a viable legal defense against the crime with which he was charged. It should be stressed that the appellant himself had not seen the need to present any evidence in his defense during the trial, most likely because the prosecution itself did not present any evidence to establish his guilt. Hence, conducting a re-trial at this stage would practically mean that the appellant has to, for the first time, collect evidence and build a case for his defense—a whole eleven years since he was indicted and almost a decade later after he was erroneously convicted by the RTC. Under such circumstances, a remand would not in any sense be fair to the appellant and would only prolong his unrest and anxiety. With these considerations, I therefore agree with the astute conclusion of

Associate Justice Alfredo Benjamin S. Caguioa that remanding the present case back to the RTC may run the risk of violating the appellant's right to speedy trial.[7]

Lastly, the Court is not unmindful of the case of *People v. Abapo*[8] wherein we rationalized the necessity of the remand directive as such:

xxx. However, after a careful examination of the records of this case, we find that the improvident plea of guilt of the accused-appellant has affected the manner by which the prosecution conducted its presentation of the evidence. The presentation of the prosecution's case was lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense. The state prosecutor in his examination of the victim was evidently concerned only with proving the respective dates of the commission of the repeated rapes, and did not attempt to elicit details about the commission of each rape that would satisfy the requirements for establishing proof beyond reasonable doubt that the offenses charged have in fact been committed by the accused. It is clear to our mind that the prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of the accused. (Emphasis supplied)

In essence, *Abapo* predicated the need to remand on what it perceived to be as the detrimental effect of an accused's plea of guilt on "the manner by which the prosecution conduct[s] its presentation of the evidence." [9] It observed that a plea of guilty to a capital offense may lead "the prosecution not [to] discharge its obligation as seriously as it would have had there been no plea of guilt." [10] Consequently, when a conviction for a capital offense was hinged solely on the accused's plea of guilt, but the plea was later determined to be improvident on appeal, the case has to be remanded back to the trial court because the prosecution, which relied on the accused's plea of guilt, could be said to have been effectively prevented from fully presenting its evidence.

Abapo's ruminations, however, seem to contradict the import of Section 3 of Rule 116 and, thus, should be revisited. As discussed earlier, the provision recognizes a subsisting duty on the part of the prosecution to present evidence and prove the guilt of an accused charged of a capital offense— notwithstanding the latter's guilty plea. The obvious significance of this rule is that, in cases involving capital offenses, the plea of guilt of the accused, regardless of whether it was improvidently taken or not, by itself will never discharge the prosecution of its burden to adduce evidence and prove the guilt of the accused.

Hence, contrary to *Abapo*, I find that the prosecution can never be justified into letting a plea of guilt to a capital offense adversely affect the manner by which it presents its evidence. Under our rules, the prosecution is expected, nay obligated, to present evidence and prove the guilt of an accused charged of capital offense with all seriousness, zeal and fervor, whatever the plea entered by the accused. The prosecution's reliance on a plea of guilty and the perceived detrimental effect thereof on how it presents its case, therefore, should never be considered as a valid ground for remand.

I then inevitably arrive at the same conclusion reached by the ponencia. The appellant, by all accounts, should be acquitted. The criminal case against him should no longer be remanded back to the trial court because the prosecution was already given the opportunity to prove the guilt of the appellant, only the latter did not. Insisting on a remand, under such circumstances, would not be consistent with the procedure prescribed under Section 3 of Rule 116 of the Rules of Court and will work considerable prejudice to the appellant. The appellant's situation is a valid exception to the remand directive.

IN VIEW WHEREOF, I cast my vote in favor of granting the instant appeal and of acquitting the appellant of the crime of murder.

[1] See page 24 of the ponencia

[2] Id.

[3] 471 Phil. 638 (2004).

[4] Id. at 648.

[5] The procedure under Section 3 of Rule 116, thus, effectively removes the distinction between a plea of guilty and a plea of not guilty in the prosecution of capital offenses. As observed by Justice Alfredo Benjamin S. Caguioa in his Concurring Opinion:

Thus, as it stands, there is effectively no difference between a plea of guilty or not guilty to a capital offense - that is, in both instances, the prosecution is required to present evidence to prove the guilt of the accused beyond reasonable doubt. An accused who made an improvident plea of guilty may nonetheless be found guilty of the crime charged if, independent of the improvident plea, the evidence adduced by the prosecution establishes his guilt beyond reasonable doubt. To the contrary, absent proof by the prosecution proving beyond reasonable doubt the guilt of the accused, such accused who pleads guilty to a capital offense, must be acquitted. (Emphasis and underscoring in the original).

[6] *Silverio v. Court of Appeals*, 225 Phil. 459, 471 (1986).

[7] See Concurring Opinion of Justice Alfredo Benjamin S. Caguioa, pp. 18-19.

[8] 385 Phil. 1175, 1187 (2000).

[9] Id.

[10] Id.

DISSENTING OPINION

PERLAS-BERNABE, J.:

Respectfully, I disagree with the ponencia's proposal to acquit accused-appellant Brendo P. Pagal (accused). For the reasons herein explained, the case should be remanded to the trial court so that the accused may be re-arraigned, and in so doing, enter the proper plea. The lack of a valid plea in this case taints the entire criminal proceedings and hence, precludes the trial court from rendering a valid verdict.

To recount, the accused was charged with, and thereafter, pleaded guilty to the capital offense of Murder. Under Section 3, Rule 116 of the Rules of Criminal Procedure (Section 3, Rule 116), "[w]hen the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability, x x x"[1] However, the trial court judge failed to conduct the required searching inquiry. The prosecution was then given four (4) hearing dates to present its evidence, but none of its witnesses appeared and testified during any of these dates. In light of this, the defense likewise chose not to present any evidence. Eventually, both the prosecution and the defense submitted the case for decision.

The trial court convicted the accused of Murder based solely on his plea of guilty. On appeal, the Court of Appeals (CA) set aside accused's conviction and instead, ordered that the case be remanded with a directive that the trial court follow the mandate of Section 3, Rule 116.

The ponencia reverses and sets aside the CA ruling and instead, pronounces that the accused be acquitted. It held that since the prosecution was given four (4) separate hearing dates to present evidence against the accused, and despite these chances, the prosecution was unable to prove his guilt, his acquittal is in order.[2]

As earlier intimated, I respectfully disagree.

In criminal proceedings, an arraignment has been regarded as an integral requirement of procedural due process:

Procedural due process requires that the accused be arraigned so that he [or she] may be informed of the reason for his [or her] indictment, the specific charges he [or she] is bound to face, and the corresponding penalty that could be possibly meted against him [or her].[3]

Particularly, an arraignment is "the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him." [4] In *Borja v. Mendoza*, [5] the Court has highlighted that "[a]n arraignment x x x [is] indispensable as the means 'for bringing the accused into court and notifying him of the cause he is required to meet.'" [6] In the same case, the Court discussed the complementary relation of a valid arraignment to the rule regarding the sufficiency of the Information, which both serve the purpose of preserving the accused's right to be informed of the nature and cause of the accusation against him:

[I]t is at that stage where in the mode and manner required by the Rules, an accused, for the first time, is granted the opportunity to know the precise charge that confronts him. It is imperative that he is thus made fully aware of possible loss of freedom, even of his life, depending on the nature of the crime imputed to him. At the very least then, he must be fully informed of why the prosecuting arm of the state is mobilized against him. An arraignment serves that purpose. Thereafter he is no longer in the dark. It is true, the complaint or information may not be worded with sufficient clarity. He would be in a much worse position though if he does not even have such an opportunity to plead to the charge. With his counsel by his side, he is thus in a position to enter his plea with full knowledge of the consequences. He is not even required to do so immediately. He may move to quash. What is thus evident is that an arraignment assures that he be fully acquainted with the nature of the crime imputed to him and the circumstances under which it is allegedly committed. It is thus a vital aspect of the constitutional rights guaranteed him. It is not useless formality, much less an idle ceremony. [7] (Emphases supplied)

Since the arraignment is meant to formally inform the accused of the essential details of the charge against him, a valid arraignment is also important for the accused to adequately prepare his defense. The groundwork for the defense stems from the accused's preliminary understanding of the import and consequences of the charge against him. Case laws states that "the right of an accused to be informed of the precise nature of the accusation leveled at him x x x is, therefore, really an avenue for him to be able to hoist the necessary defense in rebuttal thereof." [8] In *People v. Alcalde*: [9]

The constitutional right to be informed of the nature and cause of the accusation against him under the Bill of Rights carries with it the correlative obligation to effectively convey to the accused the information to enable him to effectively prepare for his defense. [10]

Without a valid arraignment, therefore, the accused's ability to defend himself is tainted; hence, an invalid arraignment must be considered as a fatal defect in the criminal proceedings.

The importance of a valid arraignment gains additional nuance when the accused pleads guilty to a capital offense. As mentioned, Section 3, Rule 116 requires that on such occasion, the trial court judge must first conduct a searching inquiry into the voluntariness and full comprehension of the accused of his plea of guilty to a capital offense. In addition, trial court judges are enjoined to require the prosecution to present evidence to prove the guilt

of the accused and the precise degree of his culpability; and to ask the accused to present evidence in his behalf and allow him to do so if he so desires.[11]

The rationale behind this special rule on searching inquiries is that "courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty. The primordial purpose is to avoid improvident pleas of guilt on the part of an accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully understood the meaning, significance and consequence of his plea." [12]

While the Rules of Criminal Procedure do not specify the actual matters that must be addressed during this searching inquiry, the Court, in several cases, has laid down the following guidelines that trial court judges must observe in this respect:

- Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.
- Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.
- Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.
- Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.
- Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.
- All questions posed to the accused should be in a language known and understood by the latter.
- The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[13] (Emphases supplied)

Ultimately, however, "[t]he bottom line of the rule is that the plea of guilt must be based on a free and informed judgment. Thus, the searching inquiry of the trial court must be focused on: (1) the voluntariness of the plea, and (2) the full comprehension of the consequences of the plea. The questions of the trial court [must] show the voluntariness of the plea of guilt of the [accused] [and that] the questions demonstrate appellant's full comprehension of the consequences of his plea." [14]

Recent cases convey that a conviction based solely on an improvident plea of guilt shall be set aside and the case remanded for further proceedings.[15] This notwithstanding, some of these cases interestingly show that despite an improvident plea, a judgment of conviction may be sustained if the prosecution is nonetheless able to present

ample evidence independent from the improvident guilty plea.[16] To my mind, these more recent cases appear to gloss over the older line of jurisprudence which soundly holds that "no valid judgment can be rendered upon an invalid arraignment." [17]

In *People v. Molina*, [18] the Court set aside the plea of guilt and remanded the case since it could not determine whether or not the trial court complied with the conduct of searching questions to ensure the accused's plea of guilt was proper. This Court declared that a "judgment of conviction cannot stand upon an invalid arraignment." [19]

In *People v. Tizon*, [20] the Court observed that "[s]o indispensable is this requirement that a plea of guilt to a capital offense can be held null and void where the trial court has inadequately discharged the duty of conducting the prescribed 'searching inquiry.'" [21] "Verily, a judgment of conviction cannot stand upon an Invalid arraignment. In the interest of substantial justice then, this Court has no recourse but to remand the case to the trial court for further and appropriate proceedings." [22]

In *People v. Estomaca*, [23] citing *People v. Alicando*, [24] the Court similarly ruled that "[n]o valid judgment can be rendered upon an invalid arraignment. Since x x x the arraignment of appellant therein was void, the judgment of conviction rendered against him was likewise void, hence in fairness to him and in justice to the offended party that case was remanded to the trial court for further proceedings." [25]

Indeed, I subscribe to these earlier cases on the subject since ultimately, an invalid arraignment constitutes a fatal defect in the criminal proceedings precluding the trial court from making a valid judgment, whether of acquittal or conviction. On the contrary, I maintain reservations with the more recent cases which still uphold a judgment of conviction if there is evidence to sustain such finding, notwithstanding the improvident plea of guilt by the accused. As I see it, a trial court will not even be able to properly arrive at any determination of guilt if the arraignment is, in the first place, defective. This is because an invalid arraignment impairs the understanding of the accused of the nature and cause of the accusation against him to which his defense strategy depends. In turn, an impaired defense effectively plays into the relative strength of the prosecution's evidence since an accused who does not understand the charge against him may very well leave the prosecution's allegations un rebutted or evidence unobjected. The lack of rebuttal and objection consequently plays a role in the trial court's calibration of the evidence, and leads to a judgment of conviction that is tainted. In the end, any finding of guilt beyond reasonable doubt to sustain a conviction will be clouded by the irregularity of the arraignment, begging the question: had the accused intelligently understood the consequences of his plea, would he then allow the prosecution's allegations to remain un rebutted and evidence unobjected, and consequently alter the trial court's assessment of the case?

In fact, I add that not only does an invalid arraignment impair the defense, but, in some cases, may likewise affect the prosecution's strategy and vigor in presenting its case. Hence, in my view, a judgment of acquittal can neither be made.

The above observation finds bearing in existing jurisprudence. In *People v. Abapo*, [26] the Court remanded the case after observing that the prosecution's presentation of evidence was improperly impaired by the accused's improvident plea of guilt. It discerned that the prosecution's evidence was "lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense." [27] Specifically, it found that the prosecution focused on obtaining the frequency and the material dates the crimes were committed, instead of eliciting details material to prove the elements of the crime.

In *People v. Besonia*, [28] Court likewise ordered the remand of the case, finding, among others, that "the trial court and the prosecution unduly relied on [the accused-appellant's] plea of guilty and his admissions made during

the searching inquiry. The prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of [the accused-appellant]."[29]

Overall, whether from the standpoint of the prosecution or the defense, the foregoing considerations show how a miscarriage of justice may result from an improvident plea of guilt. Hence, a remand of the case is in order so that the arraignment may be conducted properly and in turn, for the trial court to render a valid judgment. To reiterate, the absence of a valid arraignment in this case is a fatal defect in the proceedings. This defect is not merely procedural but is substantive in nature as it affects not only the constitutional rights of the accused but, as shown by the foregoing cases, may equally impair the proper prosecution of crimes which is undeniably imbued with public interest. To this end, I disagree with the ponencia's notion that "[w]hile it is true that a judgment of conviction cannot stand on an invalid arraignment, a judgment of acquittal may proceed from such invalid arraignment," adding that "[t]he invalid arraignment itself is ground for acquittal." [30] This selective treatment clearly defies the substantive nature of an arraignment, the invalidity of which renders null and void the ensuing proceedings in its entirety.

Further, to suppose that an invalid arraignment is a ground for acquittal runs counter to the basic rule on double jeopardy that a first jeopardy may attach only upon a valid arraignment. [31] As such, an acquittal cannot spring from an invalid arraignment.

In addition, the ponencia's statement loses sight of the fact that an acquittal is premised on a determination of non-guilt on the merits, which should not obtain just because of an invalid arraignment. In fact, it does not even warrant dismissal since it is still remediable by the remand of the case for the re-arraignment of the accused, which is my position herein.

Notably, should there be any inordinate delay [32] borne from the remand, the ground for dismissal is violation of the accused's right to speedy disposition which is a ground for dismissal tantamount to an acquittal. However, based on the records, this ground was never raised. In this regard, jurisprudence provides that the "[f]ailure to seasonably raise the right to speedy trial precludes the accused from relying thereon as a ground to dismiss the case. He is deemed to have slept on his rights by not asserting the right to speedy disposition at the earliest possible opportunity." [33]

At this juncture, while I do recognize that a doctrinal directive to remand upon an improvident plea of guilt purports a policy of "resetting" the proceedings and hence may promote inexpediency, the underlying considerations are not merely procedural but are substantive in nature and thus, cannot be simply ignored for expediency's sake. The solution to this concern may lie, however, in the Court revisiting the current procedural framework and identify gaps that need to be bridged. In this light, I join the call of Associate Justices Rodil V. Zalameda and Amy C. Lazaro-Javier to codify the proper searching inquiry guidelines and other relevant procedures that trial court judges must follow whenever an accused pleads guilty to a capital offense. In addition, I suggest that the consequences of the failure to comply with these procedures - with respect to the criminal proceedings, and maybe, even as to disciplinary sanctions as to the mishandling judge - should be explicitly provided for proper guidance. Further, I propose that the Court look into crafting a procedure to account for findings of improvident guilty pleas at the latter stage of the case but at the same time, preserving the proceedings already conducted. In this regard, the crucial consideration is that the parties are given the opportunity to consider any change in legal strategy upon the accused's proper understanding of the nature and cause of the accusation against him as embodied in a valid plea. In the final analysis, the Court must strive to ensure fairness not only to the State and the accused, but also to the private offended party, whose interest, despite being merely civil in theory, is in reality, a strident call for retributive justice.

All told, I vote to affirm the CA ruling ordering the remand of the case to the trial court with the directive to strictly follow the procedure laid out in Section 3, Rule 116 of the Rules of Criminal Procedure, as well as the pertinent guidelines on searching inquiries as stated in our current jurisprudence. I further suggest that the Court undertake the necessary revision of the Rules of Criminal Procedure as discussed herein.

[1] Emphasis supplied.

[2] Ponencia, p. 58

[3] See *Corpus, Jr. v. Pamular*, G.R. No. 186403, September 5, 2018.

[4] See *People v. Palema*, G.R. No. 228000, July 10, 2019; emphasis supplied. See also *People v. Nuelan*, 419 Phil. 160 (2001).

[5] 168 Phil. 83 (1977)

[6] *Id.* at 86; emphasis supplied.

[7] *Id.* at 87.

[8] *People v. Estomaca*, 326 Phil. 429, 438 (1996).

[9] 432 Phil. 366 (2002).

[10] *Id.* at 379.

[11] See *People v. Magat*, 388 Phil. 311, 322 (2000).

[12] *People v. Ernas*, 455 Phil. 829, 838 (2003).

[13] See *People v. Gambao*, 718 Phil 507, 521-522 (2013); and *People v. Mira*, 561 Phil. 646, 656-657 (2007); *People v. Ernas*, *supra*, at 839-840; and *People v. Pastor*, 428 Phil. 976, 986-987 (2002).

[14] *People v. Alicando*, 321 Phil. 656, 681 (1995); emphases supplied.

[15] See *People v. Durango*, 386 Phil. 202 (2000).

[16] See *People v. Gambao*, *supra* note 13; *People v. Francisco*, 649 Phil. 729 (2010); *People v. Documento*, 629 Phil. 579 (2010); *People v. Talusan*, 610 Phil. 378 (2009); *People v. Tanyacao*, 412 Phil. 608 (2004); *People v. Alborida*, 412 Phil. 81 (2001).

[17] *People v. Durango*, *supra* note 15, at 213; and *People v. Estomaca*; *supra* note 8, at 449-450; emphases supplied.

[18] 423 Phil. 637(2001).

[19] *Id.* at 663; emphasis supplied.

[20] 375 Phil. 1096 (1999).

[21] *Id.* at 1104.

[22] *Id.* at 1104-1105; emphasis supplied.

[23] *Supra* note 8.

- [24] Supra note 14; also citing *Binabay v. People*, 147 Phil. 402 (1971).
- [25] *People v. Estomaca*, supra note 8, at 449-450; emphasis supplied.
- [26] 385 Phil. 1175 (2000).
- [27] Id. at 1187; emphasis supplied.
- [28] 466 Phil. 822 (2004).
- [29] Id. at 843; emphasis supplied.
- [30] Ponencia, p. 50.
- [31] *Tan, Jr. v. Sandiganbayan*, 354 Phil. 463 (1998).
- [32] The ponencia states that "accused-appellant has been incarcerated for more or less eleven (11) years." See ponencia, p. 52.
- [33] *Valencia v. Sandiganbayan*, 510 Phil. 70, 88 (2005).

CONCURRING OPINION

LEONEN, J:

I concur with Associate Justice Alexander G. Gesmundo's ponencia. The assailed May 18, 2018 Decision of the Court of Appeals must be reversed and set aside. Accused-appellant Brendo P. Pagal a.k.a. "Dindo" must be acquitted of the charge of murder.

The resolution of this case centers on the proper appreciation and application of an accused's most basic rights: to be held to answer for a criminal offense only with due process of law,[1] and to be presumed innocent until the prosecution proves their guilt beyond reasonable doubt.[2] Failing compliance with these rights, acquittal inevitably ensues. Moreover, in proper cases, pending criminal proceedings must cease, foreclosing any further proceedings and absolving the accused of criminal liability.

From these, two pivotal doctrinal propositions may be identified. First, in appropriate cases where the continuation of the proceedings would perpetuate violations of an accused's constitutional rights, subsequent proceedings become pointless. Second, as a consequence of this inefficacy, a full dismissal that amounts to acquittal must ensue.

I

A basic, ineluctable precept underlies all criminal proceedings: that the prosecution carrier the burden of proving an accused's guilt beyond reasonable doubt, Its case must rise on its own merits, not trusting on the weakness of the defense. This is a matter of due process. The prosecution's failure to discharge its burden necessarily negates the accused's criminal liability. In *Macayan, Jr. v. People*:^[3]

This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:

We ruled in *People v. Ganguso*:

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.

Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[4]

II

In the ordinary course of things, the prosecution completes its presentation of evidence. Only then do the accused present their evidence. From these, judgment is rendered, either convicting or acquitting the accused. This sequence of events confirms the prosecution's basic duty to establish guilt beyond reasonable doubt.

Accordingly, at the appropriate stage of the proceedings—when it is manifest that the prosecution has failed to discharge its burden—the Revised Rules of Criminal Procedure facilitate a means through which the accused may be relieved of the ordeal of standing prolonged trial, sparing them from the vexation of continuing criminal prosecution. Rule 119, Section 23 provides:

SECTION 23. Demurrer to evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment.

The 1987 Constitution provides benchmarks that define how trial should be conducted. These are all designed to serve the accused's right to due process. They also confirm the prosecution's duty to secure a conviction through its own decorous, prompt, and disciplined efforts. Article III, Section 14 reads in full:

SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have

compulsory process to secure the attendance, of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

Article III, Section 14(1) articulates the demand of due process. Meanwhile, Section 14(2) spells out the prosecution's duty to establish guilt beyond reasonable doubt.¹ It also identifies norms that serve the general, overarching principles of due process and guilt having to be shown by the prosecution itself: first, the right of an accused "to be heard by [him/her]self and counsel"; second, the need for an accused "to be informed of the nature and cause of the accusation against him [or her]"; third, the imperative of "a speedy, impartial, and public trial"; fourth, the right "to meet the witnesses face to face"; and fifth, the right "to have compulsory process to secure the attendance of witnesses and the production of evidence in his [or her] behalf."

These normative benchmarks are confirmed in Rule 115[5] of the Revised Rules of Criminal Procedure, which provides for an accused's rights during trial.

Ultimately, even when trial conforms to all of the Constitution's normative benchmarks, and the accused's rights during trial are respected, acquittal will ensue for as long as the prosecution is unable to establish guilt beyond reasonable doubt. This is the logical consequence of lack of proof beyond reasonable doubt despite the prosecution's potentially best efforts.

Jurisprudence has considered the effects of the prosecution's utter and abject inability to discharge its function in the midst of trial. When it is manifest that the prosecution—despite its competence and all reasonable opportunity being afforded to it—has all but abandoned its duty to prove an accused's guilt, it becomes unjust for one to continue to stand trial, or otherwise be put in jeopardy of having to be made criminally liable. "The Bill of Rights provisions of the 1987 Constitution were precisely crafted to expand substantive fair trial rights and to protect citizens from procedural machinations which tend to nullify those rights."^[6]

This unjustness—borne not by the fault of the accused, but of those who should be dutifully pursuing the case against the accused—has led this Court to rule that delays and missteps not only during trial, but even in stages preceding trial proper, are fatal to the continued pursuit of criminal cases.

In *Tatad v. Sandiganbayan*,^[7] this Court considered "inordinate delay" and how it justified the "radical relief" of dismissing a criminal complaint:

In a number of cases, this Court has not hesitated to grant the so-called "radical relief" and to spare the accused from undergoing the rigors and expense of a full-blown trial where it is clear that he has been deprived of due process of law or other constitutionally guaranteed rights. Of course, it goes without saying that in the application of the doctrine enunciated in those cases, particular regard must be taken of the facts and circumstances peculiar to each case.^[8]

In *Tatad*, this Court found that the manner by which the proceedings were conducted had been "politically motivated[.]"^[9] ultimately running afoul of due process:

We find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutional guarantee of "speedy disposition"¹ of cases as embodied in Section 16 of the Bill of Rights (both in the 1973 and the 1987 Constitutions), the inordinate delay is violative of the petitioner's constitutional rights. A delay of close to three (3) years cannot be deemed reasonable or justifiable in the light of the circumstance obtaining in the case at bar. We are not impressed by

the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and grueling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high-ranking government official." In the first place, such a statement suggests a double standard of treatment, which must be emphatically rejected. Secondly, three out of the five charges against the petitioner were for his alleged failure to file his sworn statement of assets and liabilities required by Republic Act No. 3019, which certainly did not involve complicated legal and factual issues necessitating such "painstaking and grueling scrutiny" as would justify a delay of almost three years in terminating the preliminary investigation. The other two charges relating to alleged bribery and alleged giving of unwarranted benefits to a relative, while presenting more substantial legal and factual issues, certainly do not warrant or justify the period of three years, which it took the Tanodbayan to resolve the case.[10]

Notably, the determination of inordinate delay has not been confined to whether there were underlying political considerations. In *Cagang v. Sandiganbayan*, Fifth Division:[11]

Political motivation, however, is merely one of the circumstances to be factored in when determining whether the delay is inordinate. The absence of political motivation will not prevent this Court from granting the same "radical relief." Thus, in *Angchangco v. Ombudsman*, this Court dismissed the criminal complaints even if the petition filed before this Court was a petition for mandamus to compel the Office of the Ombudsman to resolve the complaints against him after more than six (6) years of inaction:

Here, the Office of the Ombudsman, due to its failure to resolve the criminal charges against petitioner for more than six years, has transgressed on the constitutional right of petitioner to due process and to a speedy disposition of the cases against him, as well as the Ombudsman's own constitutional duty to act promptly on complaints filed before it. For all these past 6 years, petitioner has remained under a cloud, and since his retirement in September 1994, he has been deprived of the fruits of his retirement after serving the government for over 42 years all because of the inaction of respondent Ombudsman. If we wait any longer, it may be too late for petitioner to receive his retirement benefits, not to speak of clearing his name. This is a case of plain injustice which calls for the issuance of the writ prayed for.[12] (Citations omitted)

Cagang further clarified that in "determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation." [13] It adds:

What may constitute a reasonable time to resolve a proceeding is not determined by "mere mathematical reckoning." It requires consideration of a number of factors, including the time required to investigate the complaint, to file the information, to conduct an arraignment, the application for bail, pre-trial, trial proper, and the submission of the case for decision. Unforeseen circumstances, such as unavoidable postponements or force majeure, must also be taken into account.

....

The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis.[14] (Citations omitted)

Since Tatad, many other cases have similarly considered inordinate delay and how it justified the "radical relief" of dismissing a case: *Angchangco, Jr. v. Ombudsman*,[15] *Duterte v. Sandiganbayan*,[16] *Roque v. Ombudsman*,[17] *Cervantes v. Sandiganbayan*,[18] *Lopez, Jr. v. Ombudsman*,[19] *Licaros v. Sandiganbayan*,[20]

People v. SPO4 Anonas,[21] Enriquez v. Ombudsman,[22] People v. Sandiganbayan, First Division,[23] Inocentes v. People[24] Almeda v. Ombudsman,[25] People v. Sandiganbayan, Fifth Division,[26] Torres v. Sandiganbayan,[27] and Remulla v. Sandiganbayan,[28]

As in those cases, the prosecution's sheer inaction here means that it has failed to diligently and timely pursue its case. Such failure amounts to a violation of an accused's constitutional rights, warranting the "radical relief" of putting an end to the proceedings.

The prosecution failed to establish accused-appellant's guilt despite having multiple opportunities to do so. The ponencia recounts the material incidents in detail: For over eight months, hearings were repeatedly set for the presentation of the prosecution's evidence. Yet, not once did the prosecution present a witness.[29] The ponencia's summation of the prosecution's own fatal negligence hits the nail on its head:

This is not a situation where the prosecution was wholly deprived of the opportunity to perform its duties under the 2000 Revised Rules that would warrant a remand. In this case, the prosecution was already given a reasonable opportunity to prove its case against accused-appellant. Regrettably, the State squandered its chances to the detriment of accused-appellant. If anything, the State, given its vast resources and awesome powers, cannot be allowed to vex an accused with criminal prosecution more than once. The State should, first and foremost, exercise fairness.[30]

The prosecution's lackadaisical attitude was what led to its failure to establish its case. It had its chance and blew it. To give the prosecution a second chance despite its demonstrated negligence would be unfairly generous to it. It would give it an unfair advantage, an opportunity to win a case that it had lost on its own.

More than being overly generous to the prosecution, it would be a violation of accused-appellant's right to due process and to be deemed innocent unless the prosecution is able to establish his guilt beyond reasonable doubt. It would be a dangerous precedent that will, in the future, enable cavalier prosecution at the expense of our cherished civil liberties.

V

This Court cannot afford to be distracted by the coincidence that accused-appellant happened to have made a guilty plea. This is not the point on which the case turns. I echo the ponencia's words that "the conviction of the accused shall be based solely on the evidence presented by the prosecution. The improvident plea of guilty by the accused is negligible." [31] Whichever way the accused pleads during arraignment, their right to be presumed innocent—along with the prosecution's concomitant duty to establish guilt beyond reasonable doubt—remains. The nature of a criminal proceeding as one where the burden of proof lies in the prosecution is not altered by the plea that the accused makes.

Some members of this Court maintain that the improvidence of accused-appellant's guilty plea should entail the remand of the case to the trial court.[32] I maintain reservations to this. It is a potentially dangerous proposition that amounts to our justice system turning a blind eye to the inherently unjust, even possibly outright damning, manner by which the accused are induced to declare their guilt. Consistent with due process and the prosecution's burden, improvident pleas should be viewed with immense distrust, not as an opportunity for the prosecution to reset its game plan.

Improvident pleas of guilt bring to mind the same considerations of being untrustworthy as those that, in the classic case of *Miranda v. Arizona*, [33] had led the United States Supreme Court—and our own legal system, following *Miranda's* example—to maintain that confessions of guilt obtained under dubious circumstances deserve no credence and are inadmissible. Of course, the circumstances in *Miranda* were different, having involved admissions obtained during custodial investigation. This case involves an acknowledgment of guilt obtained in

open court, in the presence of a judge.

Yet, that difference actually makes an improvident plea even more problematic. Officers conducting custodial investigation may be expected to be inclined to pursue an accused's guilt. Of course, this does not excuse the use of wrongful methods in custodial investigation, but at least it accounts for it. A judge, on the other hand, is duty bound to proceed with utmost care and impartiality. That an improvident plea was obtained under the watch of a supposedly diligent and fair judge invites greater distrust. All the more, the yielded plea should carry no weight and cannot induce subsequent action.

The members of this Court who urge a remand also assert that it will address a potential miscarriage of justice suffered by the prosecution.[34] I take exception to giving, the prosecution here a chance to rebuild its case owing to how its strategy or vigor may have been affected by accused-appellant's plea.[35] I reiterate that its duty to establish guilt beyond reasonable doubt remained the same regardless of the plea entered by accused-appellant. The constitutional imperative is not weakened by an accused's posture.

It is well to disabuse prosecutors, law enforcers, and similarly situated officers of the notion that their work is made easier by an accused's declaration of liability. Our Constitution wisely maintains the presumption of innocence—regardless of antecedent circumstances, such as supposed admissions of guilt—precisely to keep law enforcement and the prosecution on their toes, that they may proceed only with utmost care. The same injunction applies to the Judiciary, that it may render judgments of conviction only when warranted by proof beyond reasonable doubt.

The potential miscarriage of justice suffered by an accused wrongly convicted is far greater than that which lackadaisical prosecution stands to suffer. This is granting that it can even be called a "miscarriage of justice" on the part of negligent prosecution. Our Bill of Rights is a bundle of protections adopted with the intent of guarding against the State's excesses. The State has immense resources and unparalleled competencies at its disposal. Against these, individuals can only count on the State's temperance and forthrightness. In discharging its judicial function, this Court must see to the protection of individuals, rather than the inordinate enabling of government when it must face the consequences of its own indolence.

VI

Attention has also been called to the material adduced during the preliminary investigation.[36] However, it is dangerous for this Court to make an independent consideration of what transpired in and what was adduced during the prior stage of preliminary investigation, when its real task is to appraise the consequences of the how the trial itself was conducted. Although related, preliminary investigation and trial are distinct processes. In this regard, as the ponencia notes, "there is nothing in the [case] records that would show the guilt of accused-appellant." [37] The prosecution's case should stand on its own during trial. For this Court to go out of its way to bring into the equation what transpired during preliminary investigation—particularly at this late juncture—runs the risk of this Court making itself a surrogate for the prosecution, where it is already making its own case to convict accused-appellant.

If at all, the supposed strength of inculpatory matters considered during preliminary investigation only makes things worse for the prosecution, whose abject inaction during trial was blatant. If, indeed, there had been a solid case against accused-appellant as adduced during preliminary investigation, it is more damning that the prosecution bungled its chance at the proper opportunity to demonstrate its case to the trial court.

At this point, accused-appellant's guilty plea has been used as nothing more than a smokescreen to hide the prosecution's own dismal and inexcusable negligence. It is not this Court's desire to see crimes go unaddressed. However, it is our primordial duty to uphold constitutional rights. This duty compels us to rule for an acquittal at

every instance that the prosecution fails to discharge its burden. For whatever unsavory consequences, if there be any, the prosecution need only look at itself. It only has itself to blame for bungling the chance to win its case. It cannot look to this Court to bend the standards—anchored on no less than the Constitution—to afford it another shot at doing what it has already shown itself incapable of accomplishing.

ACCORDINGLY, I vote that the Court of Appeals' May 8, 2018 Decision in CA-G.R. CR-HC No. 01521 be REVERSED and SET ASIDE, and that accused-appellant Brendo P. Pagal a.k.a. "Dindo" be ACQUITTED of the charge of murder.

[1] CONST., art. III, sec. 14 (1) states:

SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law.

[2] The Revised Rules of Criminal Procedure identifies this as the first of the rights of an accused during trial. Rule 115, Section 1(a) states that an accused has the right "[t]o be presumed innocent until the contrary is proved beyond reasonable doubt." This is in keeping with the 1987 Constitution which, in Article III, Section 14 (2) provides that all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved."

[3] 756 Phil. 202 (2015) [Per J. Leonen, Second Division].

[4] Id. at 213-214 citing CONST., art. III, sec 1; CONST., art. III, sec. 14(2); *People v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division]; and *Boac v. People*, 591 Phil. 508 (2008) [Per J. Velasco, Jr., Second Division].

[5] RULES OF COURT, Rule 115 provides:

RULE 115

Rights of Accused

SECTION 1. Rights of accused at the trial. — In all criminal prosecutions, the accused shall be entitled to the following rights:

(a)

To be presumed innocent until the contrary is proved beyond reasonable doubt.

(b)

To be informed-of the nature and cause of the accusation against him,

(c)

To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his bail, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his right without the assistance of counsel.

(d)

To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him.

(e)

To be exempt from being compelled to be a witness against himself

(f)

To confront and cross-examine the witnesses against him, at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.

(g)

To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf.

(h)

To have speedy, impartial and public trial.

(i)

To appeal in such cases allowed and in the manner prescribed by law.

[6] *Abadia v. Court of Appeals*, 306 Phil. 690, 698-699 (1994) [Per J. Kapunan, En Banc].

[7] 242 Phil. 563 (1988) [Per J. Yap, En Banc].

[8] *Id.* at 573 citing *Salonga v. Cruz Pano*, 219 Phil. 402 (1985) [Per J. Gutierrez, En Banc]; *Mead v. Argel*, 200 Phil. 650 (1982) [Per J. Vasquez, First Division]; *Yap v. Lutero*, 105 Phil. 1307 (1959) [Per J. Concepcion, En Banc]; and *People v. Zulueta*, 89 Phil. 752 (1951) [Per J. Bengzon, First Division].

[9] *Id.* at 575.

[10] *Id.* at 575-576.

[11] G.R. Nos. 206438, 206458, and 210141-42, July 31, 2018, <
<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64581> > [Per J. Leonen, En Banc].

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] 335 Phil. 766 (1997) [Per J. Melo, Third Division].

[16] 352 Phil. 557 (1998) [Per J. Kapunan, Third Division].

[17] 366 Phil. 368 (1999) [Per J. Panganiban, Third Division].

[18] 366 Phil. 602 (1999) [Per J. Pardo, First Division].

[19] 417 Phil. 39 (2001) [Per J. Gonzaga-Reyes, Third Division].

- [20] 421 Phil. 1075 (2001) [Per J. Panganiban, En Banc].
- [21] 542 Phil. 539 (2007) [Per J. Sandoval-Gutierrez, First Division].
- [22] 569 Phil. 309 (2008) [Per J. Sandoval-Gutierrez, First Division].
- [23] 723 Phil. 444 (2013) [Per J. Bersamin, First Division].
- [24] 789 Phil. 318 (2016) [Per J. Brion, Second Division].
- [25] 791 Phil. 129 (2016) [Per J. Del Castillo, Second Division].
- [26] 791 Phil. 37 (2016) [Per J. Peralta, Third Division].
- [27] 796 Phil. 856 (2016) [Per J. Velasco, Jr., Third Division].
- [28] 808 Phil. 739 (2017) [Per J. Mendoza, Second Division].
- [29] Ponencia, p. 2.
- [30] Id. at 26.
- [31] Id. at 23.
- [32] J. Perlas-Bernabe, Dissenting Opinion, pp. 7-8. J. Zalameda, Dissenting Opinion, pp. 4-5.

[33] 384 U.S. 436 (1966).

- [34] J. Zalameda, Dissenting Opinion, pp. 4-5; J. Perlas-Bernabe, Dissenting Opinion, pp. 7 -8.
- [35] J. Perlas-Bernabe, Dissenting Opinion, pp. 7 -8.
- [36] J. Zalameda, Dissenting Opinion, pp. 3-4; J. Lazaro-Javier, Dissenting Opinion, p. 2.
- [37] Ponencia. p. 26.

CONCURRING OPINION

CAGUIOA, J:

I concur with the ponencia. The failure of the prosecution, through its own fault or negligence, to present evidence against accused-appellant Brendo P. Pagal (Pagal), after the latter had pleaded guilty to a capital offense, should result in Pagal's acquittal based on reasonable doubt.

The mandatory taking of the
prosecution's evidence
independent of a guilty plea to a
capital offense safeguards an
accused against the consequences
of an improvident plea of guilty.

The practice of requiring the prosecution to present evidence to prove the guilt and precise degree of culpability of an accused over and above, or in spite of, his guilty plea, is a unique safeguard founded on our own legal tradition.[1] Although it became mandatory only under the 1985 Rules of

Criminal Procedure, the taking of evidence despite the guilty plea of an accused has been an established practice in our jurisdiction — even in the absence of such requirement in the rules of procedure prevailing at that time.[2]

In the 1906 case of *US v. Talbanos*[3] (*Talbanos*), despite therein accused's guilty plea to a charge for murder, the Court of First Instance in the Province of Samar called witnesses to ascertain factual matters in the case. Holding that the judge was correct in ordering the presentation of evidence since therein accused pleaded guilty to a charge for an offense where the penalty may be death, the Court remanded the case for compliance with the proper procedure for taking the testimony of a witness:[4]

Notwithstanding the plea of guilty so entered by the defendant, the court, evidently desiring to be advised upon all the facts of these case, called four witnesses for the purpose probably of ascertaining for itself the degree of culpability of the defendant as well as for the purpose of fixing the grade of punishment to be inflicted under the brigandage law. During the examination of these four witnesses the court made some memoranda of the facts to which these witnesses testified; the court made no effort to record the specific questions nor the answer to the same. This memorandum of the court was united with the record which was brought to this court.

x x x x

It is argued that this court ought not to consider the notes made by the judge in the form above indicated as evidence taken in this cause, for the reason that this evidence, if evidence it may be considered, was not taken in accordance with the requirements of section 32 of General Orders, No. 58 x x x. This leaves the case without any evidence in the record. The question arises, Can this court affirm a sentence rendered by an inferior court upon a complaint and plea of guilty unsupported by the testimony of witnesses? Can the Courts of First Instance sentence defendants in criminal causes upon the plea of guilty without further proof of the guilt of the defendant? Section 31 of General Orders, No. 58, provides for the procedure in the trial of a cause where the defendant pleads not guilty. The procedure for the trial of criminal causes makes no specific provision for the trial of a cause when the defendant pleads guilty. We are of the opinion and so hold that the Courts of First Instance may sentence defendants in criminal causes who plead guilty to the offense charged in the complaint, without the necessity of taking testimony. However, in all cases, and especially in cases where the punishment to be inflicted is severe, the court should be sure that the defendant fully understands the nature of the charges preferred against him and the character of the punishment to be imposed before sentencing him. While there is no law requiring it, yet in every case under the plea of guilty where the penalty may be death it is advisable for the court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant. This, however, must be left to the discretion of the trial court. Nevertheless, if the trial court shall deem it necessary and advisable to examine witnesses in any case where the defendant pleads guilty, he should comply in the taking of said testimony with said section 32 of General Orders, No. 58.[5]

In *US v. Rota*[6] (*Rota*), after therein accused had pleaded guilty, the court, over the objection of the defense, permitted the prosecution to introduce testimony to support the allegations in the complaint. The Supreme Court, in said case, reiterated the *Talbanos* doctrine:

It is contended that the judgment and sentence of the trial court should be reversed —

First, because testimony was taken over the objection of the defendant.

Second, because the trial court of its own motion, set aside the judgment originally pronounced, and called the accused to the witness stand to testify in his own behalf.

x x x x

There is no provision of law which prohibits the taking of testimony where the accused enters a plea of "guilty," and that procedure is the proper and prudent course, especially in cases where grave crimes are

charged, and where the court is required to exercise its discretion in imposing a more or less severe penalty in view of all the circumstances attending the commission of the crime. In discussing this question in the case of the United States vs. Talbanos (6 Phil. Rep., 541), it was said (p. 543):

The procedure for the trial of criminal causes makes no specific provision for the trial of a cause when the defendant pleads guilty. We are of the opinion, and so hold, that the Courts of First Instance may sentence defendants in criminal causes who plead guilty to the offense charged in the complaint, without the necessity of taking testimony. However, in all case, and especially in cases where the punishment to be inflicted is severe, the court should be sure that the defendant fully understands the nature of the charges preferred against him and the character of the punishment to be imposed before sentencing him. While there is no law requiring it, yet in every case under the plea of guilty where the penalty may be death it is advisable for the court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant. This, however, must be left to the discretion of the trial court.[7]

In the 1915 case of *US v. Agcaoili*[8] (*Agcaoili*), the Court echoed *Talbanos* but this time, rationalizing the practice of taking evidence as a guard against an improvident guilty plea. The Court remanded the case to the trial court for reception of evidence:

No evidence was taken at the trial and after a careful examination of the whole record we cannot rid our minds of a reasonable doubt as to whether the accused did or did not thoroughly understand the precise nature and effect of his plea upon arraignment. We are not wholly satisfied that he understood that in pleading "guilty" of the crime charged in the information, he pleaded guilty to its commission marked with all the aggravating circumstances alleged therein x x x.

x x x x

In this connection we deem it proper to invite attention to the rule of practice recommended in the cases of *United States v. Talbanos* (6 Phil. Rep., 541), and *United States v. Rota* (9 Phil. Rep., 426). x x x

X X X x

While it is true that a judgment convicting and sentencing a defendant may lawfully be pronounced upon a solemn plea of "guilty" in open court and on arraignment, entered by the accused with full knowledge of the meaning and effect of his plea, nevertheless, where the complaint charges a capital offense, the possibility of misunderstanding or mistake in so grave a matter, justifies and in most instances requires the taking of such available evidence in support of the allegations of the information as the trial judge may deem necessary to remove all reasonable possibility that the accused might have entered his plea of "guilty" improvidently, or without a clear and precise understanding of its meaning and effect.[9]

In *US v. Jamad*[10] (*Jamad*), when the Attorney-General asked for a clarification as to the practice of admitting evidence after a plea of guilty of therein accused, the Court, reiterating the *Talbanos* doctrine, settled the issue, ruling as follows:

Our experience has taught us that it not infrequently happens that, upon arraignment, accused persons plead "guilty" to the commission of the gravest offenses, qualified by marked aggravating circumstances, when in truth and in fact they intend merely to admit that they committed the act or acts charged in the complaint, and have no thought of admitting the technical charges of aggravating circumstances. It not infrequently happens that after a formal plea of "guilty" it develops under the probe of the trial judge, or in the course of the statement of the accused made at the time of the entry of his plea, or upon the witness stand, that the accused, while admitting the commission of the acts charged in the information, believes or pretends to believe that these acts were committed under such circumstances as to exempt him in whole or in part from criminal liability. Clearly, a formal plea of guilty entered under such circumstances is not sufficient to sustain a conviction of the aggravated crime charged in the information.

As will readily be understood, the danger of the entry of improvident pleas of this kind is greatly augmented in cases wherein the accused is a member of an uncivilized tribe, or a densely ignorant man who speaks a dialect unknown to his own lawyer, to the trial judge, and to the court officers other than the interpreter. In the course of the last fifteen years we have had before us a number of instances wherein members of uncivilized tribes have pleaded guilty to the commission of crimes marked with one or more aggravating circumstances, for which the prescribed penalty is that of death, life imprisonment, or a long term of imprisonment. In not a few of these cases the evidence, taken under the rule of practice in this jurisdiction, has disclosed the fact that the crimes actually committed were not marked with the aggravating circumstances set forth in the information, and in some cases it has developed that the accused was either wholly or partially exempt from criminal liability.

X X X X

We may say then, in response to the request for a ruling on this subject by the Attorney-General:

- (1) The essence of the plea of guilty in a criminal trial is that the accused, on arraignment, admits his guilt freely, voluntarily, and with full knowledge of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime or crimes charged in the complaint or information.
- (2) Such a plea of guilty, when formally entered on arraignment, is sufficient to sustain a conviction of any offense charged in the information, even a capital offense, without the introduction of further evidence, the defendant having himself supplied the necessary proof.
- (3) There is nothing in the law in this jurisdiction which forbids the introduction of evidence as to the guilt of the accused, and the circumstances attendant upon the commission of the crime, after the entry of a plea of "guilty."
- (4) Having in mind the danger of the entry of improvident pleas of "guilty" in criminal cases, the prudent and advisable course, especially in cases wherein grave crimes are charged, is to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime.
- (5) The better practice would indicate that, when practicable, such additional evidence should be sufficient to sustain a judgment of conviction independently of the plea of guilty, or at least to leave no room for reasonable doubt in the mind of either the trial or the appellate court as to the possibility of a misunderstanding on the part of the accused as to the precise nature of the charges to which he pleaded guilty.
- (6) Notwithstanding what has been said, it lies in the sound judicial discretion of the trial judge whether he will take evidence or not in any case wherein he is satisfied that a plea of "guilty" has been entered by the accused, with full knowledge of the meaning and consequences of his act.
- (7) But in the event that no evidence is taken, this court, if called upon to review the proceedings had in the court below, may reverse and send back for a new trial, if, on the whole record, a reasonable doubt arises as to whether the accused did in fact enter the plea of "guilty" with full knowledge of the meaning and consequences of the act.[11]

Jamad further stated that the reason for receiving evidence despite the guilty plea of an accused to a capital offense is:

to establish independently the commission of the crime, or at least to leave no room for reasonable doubt in the mind of either the trial court or this court, on review, as to the possibility that there might have been some misunderstanding on the part of the accused as to the nature of the charges to which he pleaded guilty; and, further, to develop the circumstances surrounding the commission of the crime which justify or require the exercise of a greater or less degree of severity in the imposition of the prescribed penalties.[12]

In other words, the Court, in *Talbanos*, *Rota*, *Agcaoili*, and *Jamad*, recognized that personal circumstances such as language barrier and the level of education of the accused may result in an improvident plea of guilt. In some instances, an accused may have committed the act alleged in the information but with none of the aggravating circumstance/s that would qualify the criminal act to a capital offense. The Court likewise acknowledged the reality that if no evidence was presented during trial, then it would have no basis for its review of the case other than the guilty plea of the accused. Since convictions for capital offenses are subject to automatic review by the Supreme Court, then the more prudent course would be to require the presentation of evidence in capital offense cases despite a guilty plea — especially since a guilty plea almost always leads to a conviction by the trial court.

Parsed from the foregoing jurisprudential pronouncements, the taking of evidence upon a guilty plea to a capital offense is prudent and proper: (1) to guard against an improvident guilty plea; (2) to establish the guilt of the accused independent of the guilty plea; and (3) to determine the punishment or degree of culpability of the accused.

The wisdom behind the abovementioned cases was later adopted by the Court, as part of its mandated procedure, when the 1985 Rules on Criminal Procedure required the prosecution to prove the guilt of the accused independent of a guilty plea. Section 3, Rule 116 of the 1985 Rules of Criminal Procedure reads:

SECTION 3. Plea of Guilty to Capital Offense; Reception of Evidence. — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf.

Except for the deletion of the word "also" in the last sentence, Section 3, Rule 116 of the 1985 Rules of Criminal Procedure was reproduced verbatim in Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure, which provides:

SECTION 3. Plea of Guilty to Capital Offense; Reception of Evidence. — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

Thus, under the current formulation of our rules of procedure, when an accused pleads guilty to a capital offense, the trial court is enjoined to do three things: (1) it must conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea; (2) it must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) it must ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires.[13]

Anent the first requirement, the searching inquiry must determine whether the plea of guilt was based on a free and informed judgment. Hence, it must focus on (1) the voluntariness of the plea, and (2) the full comprehension of the consequences of the plea. Although there is no definite and concrete rule as to how a trial judge must conduct a searching inquiry, jurisprudence has developed the following guidelines:

1. Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.
2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

6. All questions posed to the accused should be in a language known and understood by the latter.

7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[14]

As to the second requirement, the rules make it mandatory for the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability. This means that even as the accused had admitted to the commission of the crime and enters a voluntary and informed plea of guilty, the prosecution is still charged with the onus of proof to establish his guilt beyond reasonable doubt. An accused charged with a capital offense cannot therefore be convicted based on his guilty plea alone. A plea of guilty is only a supporting evidence or secondary basis for a finding of culpability, the main proof being the evidence presented by the prosecution to prove the accused's guilt beyond reasonable doubt. Once an accused charged with a capital offense enters a plea of guilty, a regular trial shall be conducted just the same as if no guilty plea was entered.[15] Thus, a guilty plea to a capital offense is not and cannot be considered a judicial admission[16] which requires no further proof.[17] Neither is it comparable to an extrajudicial confession.[18] An extrajudicial confession takes place prior to the start of the trial. The concern on whether the accused fully understands the consequences of his guilty plea does not come into play. Similar to a guilty plea in a capital offense, an extrajudicial confession (for any offense) is not a sufficient ground for conviction. An extrajudicial confession only forms a prima facie case against an accused.[19] To sustain a conviction, the prosecution must first establish that the extrajudicial confession is admissible, and that the same is corroborated by evidence of corpus delicti.[20]

At this juncture, it must be emphasized that a defective searching inquiry which results in an improvident plea under Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure is distinct from an invalid arraignment under Section 1, Rule 116.[21] Arraignment is the formal mode and manner of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him. The purpose of arraignment is to apprise the accused of the possible loss of freedom, even of his life, depending on the nature of the crime imputed to him, or at the very least to inform him of why the prosecuting arm of the State is mobilized against him.[22] On the other hand, a searching inquiry is conducted to inquire into the voluntariness and full comprehension by the accused of the consequences of his guilty plea. It entails more than informing the accused that he faces a jail term, but also the exact length of imprisonment under the law and the certainty that he will serve time at the national penitentiary or a penal colony. This is because an accused often pleads guilty in the hope of a lenient treatment, or upon bad advice, or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse.[23] Verily, the purpose of an arraignment is different from that

of a searching inquiry. Arraignment is aimed at informing the accused of the charges against him or her so that he or she can properly prepare his or her defense while the conduct of a searching inquiry (after the accused pleads guilty) is intended to remove any erroneous impression of the accused that a lighter penalty will be meted out if he or she pleads guilty.

While an invalid arraignment necessarily results in an improvident plea since an accused cannot enter a proper plea unless he or she understands the charges against him or her, the reverse is not true: an improvident plea is not always preceded by an invalid arraignment. It may happen that an accused was informed of the nature and cause of the accusation against him or her but nonetheless enters an improvident guilty plea because he or she mistakenly believes that he or she will get a lighter sentence by doing so. Hence, the principle that a conviction cannot stand on an invalid arraignment (because it amounts to a violation of the constitutional right of the accused to be informed of the nature and cause of the accusation against him or her) does not invariably apply to instances where an accused makes an improvident guilty plea.

Therefore, the absence of the first requirement, as in this case — where there is no proof that an inquiry as to the voluntariness of the plea of guilty was conducted by the judge — does not automatically render the criminal proceedings defective and invalid, which would necessitate a remand of the case to the trial court. To insist otherwise would render nugatory a legal tradition that was finally ensconced in the 1985 Rules of Criminal Procedure and carried over and reiterated in the 2000 Revised Rules of Criminal Procedure. To stress, the requirement under the rules that the prosecution prove beyond reasonable doubt the guilt of the accused in instances where the latter pleads guilty to a capital offense/s the safeguard against an improvident plea. Regardless of the improvident plea of the accused, there should be on record evidence to determine whether the accused is guilty beyond reasonable doubt — as the prosecution is required to present such evidence under the rules. The remand then of the case based solely on the improvident guilty plea of the accused would effectively be a retrial of the case: the accused would have to again enter his plea; the prosecution would have to again establish the guilt of the accused; and the accused would have to again prove his defenses — a useless and impractical exercise that is unfair and oppressive to both the prosecution and the accused.

Again, it bears to emphasize that the mandatory taking of the prosecution's evidence, under the second requirement, persists, as indeed, this was adopted into our rules of procedure precisely to safeguard against an improvident plea of the accused and to allow the trial court, and subsequently the reviewing court, to make its own determination as to the guilt and culpability of the accused, independent of the guilty plea — improvident or otherwise. In fact, based on prevailing jurisprudence, our jurisdiction does not subscribe to a per se rule that once a plea of guilty is deemed improvidently made that the case is at once remanded to the trial court.[24]

Thus, as it stands, in capital offenses, there is effectively no difference between a plea of guilty or not guilty — that is, in both instances, the prosecution is required to present evidence to prove the guilt of the accused beyond reasonable doubt. An accused who made an improvident plea of guilty may nonetheless be found guilty of the crime charged if, independent of the improvident plea, the evidence adduced by the prosecution establishes his guilt beyond reasonable doubt. In the same vein, an accused who made an improvident plea must perforce be acquitted if the prosecution failed to establish his guilt beyond reasonable doubt.

In *People v. Enciso*[25] (*Enciso*), a case tried before the 1985 Rules of Criminal Procedure,[26] when the taking of evidence was not even mandatory, the Court acquitted therein accused despite pleading guilty to robbery with homicide — a capital offense. The trial court, in accordance with practice and a long line of jurisprudence, required the prosecution to present evidence to prove the guilt of the accused, and thereafter found the accused guilty of the crime charged. On appeal, the Court acquitted the accused upon finding that the prosecution's evidence fell short of proving the guilt of the accused beyond reasonable doubt. The Court said:

It should be noted that the two accused Nestor Enciso and Jessie Suyong pleaded guilty to the offense charged in the information. And they have not questioned the validity of this plea. It should likewise be noted that conspiracy is alleged in the information. A plea of guilty constitutes an admission of the crime and the attendant circumstances alleged in the information. Nonetheless, despite Enciso's and Suyong's pleas of guilty. We believe the pleas must not be taken against them, for as clearly borne out by the evidence presented, said guilt has not actually been proved beyond reasonable doubt. The fact that they did not appeal is of no consequence, for after all, this case is before Us on automatic review (that is whether appeal was made or not). Accordingly, both Enciso and Suyong are ACQUITTED on reasonable doubt.

In the same vein and on reasonable doubt, the third accused Balasbas is ACQUITTED on reasonable doubt.[27]

I find the Court's ruling in Enciso applicable to this case.

Similarly, Pagal entered a plea of guilty to murder — a capital offense. After arraignment, trial ensued and the prosecution was granted by the trial court in no less than four separate hearing dates, spread from November 17, 2010 until July 20, 2011, to present evidence to establish the guilt of Pagal. Despite being given eight months to do so, the prosecution failed miserably to produce any evidence. In other words, the prosecution utterly failed to discharge its burden to prove the guilt of Pagal beyond reasonable doubt (as it could not have established the guilt of Pagal) for failure to present any evidence. The total absence of proof against Pagal warrants his acquittal in this case.

A remand of the case to the trial court applies only when there is a deprivation of due process or undue prejudice to the accused.

I am not unaware of existing jurisprudence where the Court had remanded the case to the trial court for re-arraignment and further proceedings after finding that the plea of guilty of the accused to a capital offense had affected trial proceedings.

In *People v. Abapo*[28] (Abapo), the Court held that the prosecution was prejudiced by the improvident guilty plea of therein accused:

x x x However, after a careful examination of the records of this case, we find that the improvident plea of guilt of the accused-appellant has affected the manner by which the prosecution conducted its presentation of the evidence. The presentation of the prosecution's case was lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense. The state prosecutor in his examination of the victim was evidently concerned only with proving the respective dates of the commission of the repeated rapes, and did not attempt to elicit details about the commission of each rape that would satisfy the requirements for establishing proof beyond reasonable doubt that the offenses charged have in fact been committed by the accused. It is clear to our mind that the prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of the accused, x x x

x x x x

It will be seen that with the above admission made by the defense counsel, the prosecution desisted from availing of the opportunity to fully submit its case. The improvident plea of guilt had adversely influenced the prosecution's presentation of evidence.[29]

In *People v. Durango*[30] (Durango), the Court found that the defense was prejudiced by the improvident guilty

plea of therein accused:

This Court, in the recent case of *People vs. Tizon*, has expressed the rationale behind the rule and it is, at bottom —

xxx that no accused is wrongly convicted or erroneously sentenced. It constantly behooves the courts to proceed with utmost care in each and every case before them but perhaps nothing can be more demanding of judges in that respect than when the punishment is in its severest form — death x x x.

x x x x

The records would show that thenceforth defense counsel spoke not one word. Nor would it appear that the trial court gave defense counsel or the accused any chance to talk for when the prosecutor ended his direct examination of Noniebeth, the latter was thereupon simply excused and the court forthwith declared the case submitted for decision, xxx

x x x x

The improvident plea, followed by an abbreviated proceeding, with practically no role at all played by the defense, is just too meager to accept as being the standard constitutional due process at work enough to forfeit a human life.[31]

In *People v. Molina*[32] (*Molina*), the Court ruled that both the prosecution and the defense were prejudiced by the improvident guilty plea of therein accused:

After a careful examination of the records, we find that the improvident plea of guilt of accused-appellant has affected the manner by which the prosecution and the defense conducted its presentation of the evidence, and the trial court in carefully evaluating the evidence on record. Remand of Crim. Cases Nos. 99-02817-D, 99-02818-D, 99-02819-D, 99- 02820-D and 99-02821-D for re-arraignment and further relevant proceedings is therefore proper. First, the prosecution failed to lay the proper foundation for the introduction of the alleged handwritten letter of accused-appellant acknowledging his guilt for the rape of his daughter. This could very well be attributed to the fact that this letter was introduced only after accused-appellant pleaded guilty to the accusations for which reason the prosecution no longer endeavored to elicit the proper foundation for this evidence.

x x x x

Second, the presentation of the prosecution's case was lacking in assiduity and was not characterized with the meticulous attention to details that is necessarily expected in a prosecution for a capital offense, x x x

x x x x

Third, the prosecution could very well clarify why on 1 March 1999 after accused-appellant's wife saw him and Brenda sleeping side by side and after she confronted his husband about it and was told by her daughter that "if I will tell it to you, my father will kill us," accused-appellant was still allegedly able to attempt a rape on his daughter on the same date, x x x

Fourth, neither the defense nor the prosecution elicited from the private complainant whether the accusations for incestuous rape and attempted rape were in a manner colored by the seething allegations in the transcript of stenographic notes that accused-appellant was a violent person towards his family, most especially his wife who is Brenda's mother, x x x

Fifth, the improvident plea appears to have sent the wrong signal to the defense that proceedings thereafter would be abbreviated. There was thus a perfunctory representation of accused-appellant as shown by (a) his counsel's failure to object to and correct the irregularities during his client's re-arraignment; (b) his failure to

question the offer of the alleged letter wherein accused-appellant acknowledged his authorship of the dastardly crimes; (c) his failure to present evidence in behalf of accused-appellant to so inform the latter of his right to adduce evidence whether in support of the guilty plea or in deviation therefrom; (d) his failure to object to his client's warrantless arrest and the designation of the crime in Crim. Case No. 99-02821-D as attempted rape when the evidence may appear not to warrant the same; and, (e) his failure to file a notice of appeal as regards Crim. Case No. 99-02821-D to the Court of Appeals for appropriate review. This Court perceives no reasonable basis for excusing these omissions as counsel's strategic decision in his handling of the case.[33]

In *People v. Ernas*[34] (Ernas), the Court found supposed errors committed by the trial court subsequent to the improvident guilty plea entered by therein accused:

With the plea of guilty entered by the appellant on the three counts of rape, the prosecution opted to dispense with the direct testimony of the complaining witnesses and formally offered the following exhibits:

x x x x

Appellant has made an improvident plea of guilty.

x x x x

Fourth, the Judge should have asked appellant to recount what he exactly did to show that he fully understood the nature of the crimes filed against him. Moreover, as already stated, the trial judge failed to require the prosecution to present its evidence. We have consistently held that the taking of the testimony is the prudent and proper course to follow for the purpose of establishing not only the guilt but also the precise degree of culpability of the accused taking into account the presence of other possible aggravating or mitigating circumstances — and thereafter, to make the accused present his own evidence x x x.

x x x x

It must be stressed that under the 1985 Rules of Criminal Procedure, a conviction in capital offenses cannot rest alone on a plea of guilt. The prosecution evidence must be sufficient to sustain a judgment of conviction independently of the plea of [guilty].

We, therefore, cannot accept as valid the plea of guilty entered by the appellant to the three charges of rape. His re-arraignments as to the three charges are fatally flawed. The trial court erred in believing that the questions propounded to the appellant and the latter's answers as well as the documentary exhibits offered by the People would aid it in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea.

It likewise erred in allowing the prosecution to dispense with the testimonies of the complaining witnesses. As we have ruled, even if the trial court is satisfied that the plea of guilty was entered with full knowledge of its meaning and consequences, the introduction of evidence to establish the guilt and the degree of culpability of the accused is still required. Judges therefore must be cautioned, toward this end, against the demands of sheer speed in disposing of cases, for their mission after all, and as has been time and again put, is to see that justice is done,[35]

Based on the foregoing, the Court had, in the foregoing cases, gone out of its way to find reasons to remand the cases to the trial court for perceived prejudices caused to and tactical errors committed by the prosecution, defense, and even the trial court judge in the conduct of trial. The Court remanded the cases to essentially allow the prosecution to correct its mistakes and present evidence to prove the guilt of the accused.

However, in light of the now mandatory duty of the prosecution to present evidence to establish the guilt of an accused who pleads guilty to a capital offense, I believe the foregoing cases are no longer controlling.

Stripped to the basics, the prosecution in Abapo and Molina simply failed to present sufficient evidence to prove the guilt of the accused beyond reasonable doubt. In Ernas, the trial court judge did not require the prosecution to present evidence. The prosecution's error in dispensing with the direct testimony of the other witnesses and its mistaken reliance on its documentary exhibits should have resulted in the acquittal of the accused. To drive home the point, in these cases, had the accused pleaded "not guilty," he or she would have been entitled to an acquittal. If the Court were to still follow the foregoing cases, an accused is better off pleading not guilty to a capital offense. Otherwise, he would risk a remand of his case to the trial court to give the prosecution another chance to prove his guilt beyond reasonable doubt. It is my submission that this should not be the rule because the basic right of an accused to be presumed innocent until proven guilty applies even after he or she enters a guilty plea to a capital offense. The convoluted approach adopted in these cases of remanding cases to the trial court jeopardizes this right of the accused guaranteed by no less than our Constitution.

Moreover, the past practice of remanding cases to the trial court could be justified prior to the 1985 Rules of Criminal Procedure because the taking of evidence (upon a guilty plea to a capital offense) then was discretionary. In instances where the Court entertained doubts as to the validity of the guilty plea of the accused, it had no basis for review because no evidence was presented during trial. Thus, remand of the cases was necessary.

The Court should not revert back to the rules enunciated in the foregoing cases because under the 2000 Revised Rules of Criminal Procedure, the taking of evidence after a guilty plea to a capital offense is made mandatory. Regardless of the plea of the accused, the prosecution is required to prove his or her guilt with proof beyond reasonable doubt. A guilty plea is merely a supporting evidence in favor of the prosecution.[36] Hence, if the prosecution fails to present proof beyond reasonable doubt for any reason whatsoever, the accused should be acquitted — regardless of his or her guilty plea.

It should thus be clear that with the current ponencia, decided en banc, the rulings in Abapo, Durango, Molina and Ernas are, as they ought to be considered, abandoned.

In this regard, while I agree with the guidelines[37] stated in the ponencia as to the application of Section 3, Rule 116 at the trial stage, I submit, however, that the Court should only remand cases for retrial in situations when the prosecution was completely deprived of its right to present evidence and when undue prejudice is caused to the accused such as in Durango, where the defense lawyer's failure to assert and protect the rights of the accused was flagrant and manifest. I believe a remand is proper in these instances because it involves a violation of due process and a deprivation of the right of the accused to defend himself. Further, the latter exception is in recognition of the inherent imbalance in our criminal justice system with the scales tipped against the accused:

The presence and participation of counsel in criminal proceedings should never be taken lightly. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. The right of an accused to counsel is guaranteed to minimize the imbalance in the adversarial system where the accused is pitted against the awesome prosecutory machinery of the State. Such right proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned.[38]

The imbalance is even greater when an accused pleads guilty to a capital offense. Since the accused has already admitted the crime, the defense is left with the task of mitigating the consequences of the guilty plea. This is when counsel of the accused is called upon to be more vigilant and protective of the rights of his client.

Remanding the instant case for
retrial run the risk of violating the

constitutional right to speedy disposition of cases.

Finally, I find that remanding the cases to the trial court violates the accused's right to speedy trial.

One of the factors used in determining whether there is a violation of the accused's right to speedy trial is the prejudice to the accused caused by the delay in the proceedings. Prejudice is determined through its effect on three interests of the accused that the right to a speedy trial is designed to protect, which are: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.[39] Of these, the most serious is the last because the inability of a defendant to adequately prepare his case skews the fairness of the entire system.[40]

Here, the prosecution was given a total of eight months to present its evidence but it failed to do so. Pagal already pleaded guilty to the charge of murder. That there is nothing on record to explain why the prosecution did not present any evidence is irrelevant. The burden to prove the guilt of the accused falls on the prosecution even when an accused pleads guilty to a capital offense. Again, the rules require the prosecution to present evidence to prove the guilt of the accused despite a guilty plea. Thus, there is no need for the trial court to inquire as to why the prosecution was not able to present any evidence. Had it the intention to present evidence, the prosecution could have made its case before the trial court and asked for additional hearing dates. But it did not. The fact of the matter is that the prosecution failed to present any evidence despite all the time and opportunity given to it. Pagal was therefore already prejudiced when the prosecution failed to present its evidence during all the settings given to it by the court.

To now remand the case to the trial court (after nine years that this case has languished on appeal) and compel Pagal to undergo essentially a new trial, through no fault of his own, and to allow the prosecution another chance, would only further aggravate the prejudice to Pagal caused by the delay in the trial of his case. Here, since the prosecution did not present any evidence, the defense saw no need to present evidence of its own. Remanding the case would mean that Pagal would have to build his defense evidence all over again almost a decade after the trial court convicted him. Indeed, the objective of the right to speedy trial is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.[41]

The Court should enjoin trial courts to strictly comply with Section 3, Rule 116.

It has been suggested by some members of the Court that Section 3, Rule 116 of the Rules of Court should be revisited and amended by codifying a second-stage searching inquiry in cases where the prosecution fails to adduce evidence despite being required by the rules to do so or, alternatively, by completely removing the rule of requiring the prosecution to prove an accused's guilt beyond reasonable doubt despite the latter's guilty plea.[42]

As to the first proposition, I find it unnecessary to add another layer of searching inquiry only to find out why the prosecution cannot present evidence to prove the guilt of the accused even though it is specifically required by the rules to do so. It begs the question: What comes after the searching inquiry? Should the trial court dispense with the presentation of evidence by the prosecution if the latter were able to give sufficient reason for its failure to prove the guilt of the accused? To my mind, adding a second tier of searching inquiry after the prosecution fails to present evidence, without providing any reason therefor, is to unduly favor the State and reward the prosecution's

ineptitude to comply with its mandate to prove an accused's guilt beyond reasonable doubt.

As to the second proposition, to dispense with the mandatory taking of the prosecution's evidence despite an accused's guilty plea is to remove the very safeguard of an accused against an improvident guilty plea. Such proposition runs counter to the constitutional right of presumption of innocence and to a long-established rule in our jurisdiction that a plea of guilty alone is insufficient to support a conviction. Further, putting a heavy weight on guilty pleas will open the gates to convictions grounded on confessions extracted through force, torture, violence and intimidation.

Rather than revising Section 3, Rule 116, I agree with the ponencia in instead enjoining trial courts to strictly abide by the provisions of the said rule.

Indeed, justice is served not only when the guilty is convicted or the innocent acquitted. Justice is served when trials are fair and both parties are afforded due process. Technical rules serve a purpose. Every rule has the objective of a more efficient and effective judicial system. The three requirements in Section 3, Rule 116 ensure that both parties are afforded fairness and due process. These requirements aid in striking a balance between the State's right to prosecute crimes and the constitutional rights of the accused, which the courts are duty-bound to protect.

In view of the foregoing considerations, I vote with the ponencia in acquitting accused-appellant Brendo P. Pagal of Murder for failure of the prosecution to prove his guilt beyond reasonable doubt.

[1] The Federal Rules of Criminal Procedure does not require the presentation of evidence after a guilty plea. Rule 11 thereof provides:

(a) Entering a Plea.

- (1) In General. A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.
- (2) Conditional Plea. With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.
- (3) Nolo Contendere Plea. Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.
- (4) Failure to Enter a Plea. If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

- (1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:
 - (A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;
 - (B) the right to plead not guilty, or having already so pleaded, to persist in that plea;
 - (C) the right to a jury trial;
 - (D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;
 - (E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;
 - (F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

- (G) the nature of each charge to which the defendant is pleading;
- (H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;
- (I) any mandatory minimum penalty;
- (J) any applicable forfeiture;
- (K) the court's authority to order restitution;
- (L) the court's obligation to impose a special assessment;
- (M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. §3553(a);
- (N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and
- (O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

(2) Ensuring That a Plea Is Voluntary. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) Determining the Factual Basis for a Plea. Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

[2] In 1900, US colonial officials issued General Order No. 58, the relevant provision of which reads: SECTION 25. A plea of guilty can be put in only by the defendant himself in open court. The court may at any time before judgment upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted.

1940 RULES OF COURT, Rule 114, Sec. 5, and 1964 RULES OF COURT, Rule 118, Sec. 5 provide: SECTION 5. Pica of Guilty — Determination of Punishment. — Where the defendant pleads guilty to a complaint or information, if the court accepts the plea and has discretion as to the punishment for the offense, it may hear witnesses to determine what punishment shall be imposed.

[3] 6 Phil. 541 (1906).

[4] SECTION 32 of General Order No. 58 provides:

In courts of first instance or similar jurisdiction each witness must be duly sworn and his testimony reduced to writing as a deposition by the court or under its direction. The deposition must state the name, residence, and occupation of the witness. It must contain all questions put to the witness and his answers thereto. If a question put is objected to and the objection be either over-ruled or sustained, the fact of objection and its nature, together with the ground on which it shall have been sustained or over-ruled must be stated, or if a witness declines to answer a question put, the fact and the proceedings taken thereon shall be entered in the record. The deposition must be read to the witness and made to conform to what he declares to be the truth. He must sign the same, or, if he refuses, his reason for such refusal must be stated. It must also be signed by the magistrate and certified by the clerk. In cases where an official stenographer is engaged, the testimony and proceedings may be taken by him in shorthand, and it will not be necessary to read the testimony to the witness nor for the latter to sign the same; but a transcript of the record made by the official stenographer and certified as correct by him shall be prima facie a correct statement of such testimony and proceedings. Supra note 3 at 542-543. Emphasis and underscoring supplied.

[5] Supra note 3 at 542-543. Emphasis and underscoring supplied.

[6] 9 Phil. 426 (1907).

[7] Id. at 431-432. Emphasis and underscoring supplied.

[8] 31 Phil. 91 (1915).

[9] Id. at 92-94. Emphasis and underscoring supplied.

[10] 37 Phil. 305 (1917).

[11] Id. at 314-318. Emphasis and underscoring supplied.

[12] Id. at 316-317.

[13] *People v. Nuelan*, G.R. No. 123075, October 8, 2001, 366 SCRA 705, 713.

[14] *People v. Pastor*, G.R. No. 140208, March 12, 2002, 379 SCRA 181, 189-190.

[15] *People v. Besonia*, G.R. Nos. 151284-85, February 5, 2004, 422 SCRA 210, 225.

[16] See Dissenting Opinion of Justice Lazaro-Javier, p. 6.

[17] RULES OF COURT, Rule 129, Sec. 4:

SECTION. 4. Judicial admissions. - An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[18] See Dissenting Opinion of Justice Lazaro-Javier, p. 6.

[19] *People v. Satorre*, G.R. No. 133858, August 12, 2003, 408 SCRA 642, 648.

[20] RULES OF COURT, Rule 133, Sec. 3:

SECTION 3. Extrajudicial confession, not sufficient ground for conviction. — An extrajudicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti.

See also *People v. Lim*, G.R. No. 90021, May 8, 1991, 196 SCRA 809, 815.

[21] See Dissenting Opinion of Justice Perlas-Bernabe, pp. 2-6.

[22] *People v. Pangilinan*, G.R. No. 171020, March 14, 2007, 518 SCRA 358, 371.

[23] *People v. Bello*, G.R. Nos. 130411-14, October 13, 1999, 316 SCRA 804, 813-814.

[24] *People v. Molina*, G.R. Nos. 141 129-33, December 14, 2001, 372 SCRA 378, 388.

[25] G.R. No. 77685, April 15, 1988, 160 SCRA 728.

[26] 1985 RULES OF CRIMINAL PROCEDURE, Rule 116, Sec. 3 reads:

SECTION 3. Plea of Guilty to Capital Offense; Reception of Evidence. — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf.

Except for the deletion of the word "also" in the last sentence, Section 3, Rule 116 of the 1985 Rules of Criminal Procedure was reproduced verbatim in Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure.

[27] *Supra* note 25 at 734-735. Emphasis and underscoring supplied.

- [28] G.R. Nos. 133387-423, March 31, 2000, 329 SCRA 513.
- [29] Id. at 523-526.
- [30] G.R. Nos. 135438-39, April 5, 2000, 329 SCRA 758.
- [31] Id. at 764, 767.
- [32] G.R. Nos. 141129-33, December 14, 2001, 372 SCRA 378.
- [33] Id. at 389-393. Emphasis and underscoring supplied.
- [34] G.R. Nos. 137256-58, August 6, 2003, 408 SCRA 391.
- [35] Id. at 307-402. Emphasis supplied.
- [36] *People v. Besonia*, supra note 15 at 225.
- [37] See ponencia, pp. 50-52.
- [38] *People v. Santocildes, Jr.*, G.R. No. 109 149, December 21, 1999, 321 SCRA 310, 315-316.
- [39] *People v. Domingo*, G.R. No. 204895, March 21, 2018, 859 SCRA 564, 567.
- [40] *Coscolluela v. Sandiganbayan*, G.R. No. 191411, July 15, 2013, 701 SCRA 188, 200.
- [41] Id. at 199-200.
- [42] See Opinion of Justice Lazaro-Javier, pp. 5-6.

DISSENTING OPINION

LAZARO-JAVIER, J.:

To remand or not to remand, that is the question.

The ponencia correctly identifies the applicable legal principles, to wit:

(i)

At present, the three-fold duty of the trial court in instances where the accused pleads guilty to a capital offense is as follows: (1) conduct a searching inquiry, (2) require the prosecution to prove the accused's guilt and precise degree of culpability, and (3) allow the accused to present evidence on his behalf.

(ii)

A justiciable template exists as to the procedure and contents of the searching inquiry (which I like to refer to now as the initial searching inquiry) not only to satisfy the trial judge himself but also to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance, and consequences of his plea.

(iii)

The rule is that a remand of the case must be made -

where as a result of [an improvident guilty plea] there was inadequate representation of facts by either the prosecution or the defense during the trial. Where the improvident plea of guilty was followed by an

abbreviated proceeding with practically no role at all played by the defense, we have ruled that this procedure was just too meager to accept as being the standard constitutional due process at work enough to forfeit a human life. What justifies the remand of the criminal case to the trial court is the unfairness or complete miscarriage of justice in the handling of the proceedings a quo as occasioned by the improvident plea of guilt.[1]

However, I most respectfully dissent when the ponencia refused to remand the instant case to the trial court because the prosecution was allegedly given four real and meaningful opportunities to present its witnesses but failed to do so despite subpoenas having been supposedly served upon its witnesses. I also do not subscribe to its insistence on acquitting appellant as a result of the inability of the prosecution to adduce evidence on any of the four hearing dates it was allotted. Like Justice Rodil Zalameda, I do not agree with the ponencia that the failure of the trial process to abide by the mandated procedure should result in the foregone perfunctory acquittal of appellant.

First. In denying the remand of the instant case to the trial court, the ponencia claims that the prosecution was given four trial dates that went for naught because none of the prosecution witnesses appeared despite notice.

I have my doubts that the subpoenas were properly served upon the prosecution witnesses in the manner subpoenas are to be served - in the same manner as the personal or if proper substituted service of summons.[2] I cannot fathom that even a government witness, Dr. Regunda Uy, would have refused to heed her subpoena.

Nonetheless, even if the prosecution witnesses had been properly served the subpoenas, if the trial judge and the trial prosecutor were both minded about the duty of the prosecution to prove the guilt of appellant beyond a reasonable doubt, the trial prosecutor should have sought, and the trial judge ought to have obliged, coercive measures to compel the attendance of the prosecution witnesses under Section 8[3] and Section 9[4] of Rule 23, Rules of Court.

The foregoing duty of the prosecution is a duty that the trial court cannot relieve the prosecution of. This duty encompasses the trial prosecutor's obligation to bring the prosecution witnesses to the court by all means necessary. As the Court has said a number of times, "[t]he court cannot, and should not, relieve the prosecution of its duty to prove the guilt of the accused and the precise degree of his culpability by the requisite quantum of evidence." [5]

Hence, just as the trial court cannot simply accede to a motion to dismiss a pending case by the prosecution,[6] the waiver of evidence by the prosecution cannot and should not be taken lightly by the trial court.

In *People v. Bodoso*, [7] the Court held that a waiver of evidence by the defense must not only be voluntary - it must also be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences. "There must thus be persuasive evidence of an actual intention to relinquish the right. Mere silence of the holder of the right should not be easily construed as surrender thereof; the courts must indulge every reasonable presumption against the existence and validity of such waiver. Necessarily, where there is a reservation as to the nature of any manifestation or proposed action affecting the right of the accused to be heard before he is condemned, certainly, the doubt must be resolved in his favor to be allowed to proffer evidence in his behalf."

In addition, *Bodoso* elucidated:

This Court notes with deep regret the failure of the trial court to inquire from accused-appellant himself whether he wanted to present evidence; or submit his memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any; or in default thereof, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence is so weak that it need not even be rebutted. The

inquiry is simply part and parcel of the determination of the validity of the waiver, i.e., "not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences" which ought to have been done by the trial court not only because this was supposed to be an uncomplicated and routine task on its part, but more importantly since accused-appellant himself did not personally, on a person-to-person basis, manifest to the trial court the waiver of his own right.

As things stand, both this Court and the trial court being asked hook, line and sinker to take the word of counsel de officio whose own concern in that particular phase of the proceedings a quo may have been compromised by pressures of his other commitments. For all we know, the statutory counsel of the indigent accused at that time of the trial, although not evident in the other aspects of his representation, only wanted to get rid of dreary work rather than protect the rights of his client.... But, for sure, we must inquire if the waiver was validly done.

The inquiry sought herein is not unprecedented.... To emphasize, the lower court ought to have inquired into the voluntariness and full knowledge of the consequences of accused-appellant's waiver, and prudence requires this Court to ascertain the same if only to avoid any grave miscarriage of justice....

Henceforth, to protect the constitutional right to due process of every accused in a capital offense and to avoid any confusion about the proper steps to be taken when a trial court comes face to face with an accused or his counsel who wants to waive his client's right to present evidence and be heard, it shall be the unequivocal duty of the trial court to observe, as a prerequisite to the validity of such waiver, a procedure akin to a "searching inquiry" as specified in *People v. Aranzado* when an accused pleads guilty, particularly —

1. The trial court shall hear both the prosecution and the accused with their respective counsel on the desire or manifestation of the accused to waive the right to present evidence and be heard.
2. The trial court shall ensure the attendance of the prosecution and especially the accused with their respective counsel in the hearing which must be recorded. Their presence must be duly entered in the minutes of the proceedings.
3. During the hearing, it shall be the task of the trial court to —
 - a. ask the defense counsel a series of question to determine whether he had conferred with and completely explained to the accused that he had the right to present evidence and be heard as well as its meaning and consequences, together with the significance and outcome of the waiver of such right. If the lawyer for the accused has not done so, the trial court shall give the latter enough time to fulfill this professional obligation.
 - b. inquire from the defense counsel with conformity of the accused whether he wants to present evidence or submit a memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any, or in default theory, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence is so weak that it need not even be rebutted. If there is a desire to do so, the trial court shall give the defense enough time to this purpose.
 - c. elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed waiver.
 - d. all questions posed to the accused should be in a language known and understood by the latter, hence, the record must state the language used for this purpose as well as reflect the corresponding translation thereof in English.

There is no reason why the Court should not require of the public prosecution service the same standards for determining the validity of its *carte blanche* waiver to present its evidence without even a single verified information from its witnesses why they would no longer be attending any of the trial dates at all. The reason lies

in the fact that the prosecution and punishment or correction of criminal offenders is a vital concern of the State, vital to its very existence. The interests of the people should not be sacrificed or jeopardized by the ignorance, negligence or malicious conduct of its prosecutors.

Further, the duty of the prosecution to present evidence is backstopped by the correlative duty of the court to inquire from the prosecution about its evidence. The court is not a mere rubber-stamp of whatever the prosecution wishes to do in litigating its case. The waiver must be tested for its validity and fairness, as explained above, and ought to conform to similarly situated proceedings where the court has to intervene by searching questions. Thus, in a petition for bail, where the prosecution is duty-bound to prove that the evidence of guilt is strong, the court is obliged to obtain clarifications by searching questions even if the prosecution despite the opportunities to call its evidence submits the resolution of the petition to the sound discretion of the court without presenting evidence "even where the prosecutor refuses to adduce evidence in opposition to the application to grant and fix bail, the court may ask the prosecution such questions as would ascertain the strength of the state's evidence or judge the adequacy of the amount of bail..."[8]

As in *Bodoso*, the remand of the instant case to the trial court is demanded not by the inadequate but by the utter absence of facts appropriate to the level of prosecutorial diligence vis-a-vis the nature and gravity of the crime. The remand is for the purposes of receiving the prosecution evidence, as it appears that the subpoenas were not properly served in the same manner as summonses, and if properly served, of imposing coercive measures that had not been resorted to compel the attendance of prosecution witnesses and thereupon conducting the second searching inquiry to explain the waiver of prosecution evidence.

Second. In close connection with the above discussion, I also respectfully submit that any accused's guilty plea should at least be a curiosity centerpiece in a criminal case, especially one involving a capital crime. It should rise to the level of an inculpatory evidence when it is adamantly adhered to despite a faulty searching inquiry. The guilty plea may not and at present will not constitute proof beyond a reasonable doubt, but in instances where the prosecution fails to present evidence, it is imperative that the prosecution and its witnesses should be subjected to a second searching inquiry, with the same zealotry and strictness as the first searching inquiry, to determine the why's and wherefore's for their absences.

In arguing for a second-stage searching inquiry, I am not arguing parallel to the constitutional concern on an accused's right to speedy trial, which addresses the systemic and human-made delay in the administration of criminal justice. While delay could be a factor to consider, the gravamen is the skewed trial and fact-finding for the purpose of establishing appellant's guilt beyond a reasonable doubt. I think this is how jurisprudence on Section 3, Rule 116 has evolved,[9] and delay has never been a keyword in describing this evolution.

In this regard, just as Justice Zalameda wishes to codify the template for the first-stage searching inquiry, there is as well a need to institutionalize and codify this second-stage searching inquiry when the prosecution fails to adduce evidence of an accused's guilt per Section 3 of Rule 116.

Third. As the ponente himself has described, the guilty plea here was improvident. As such, it voided the entire proceedings from arraignment until conviction.[10] As eloquently argued by Senior Associate Justice Estela Perlas-Bernabe, a void arraignment does not exist in law, and without an arraignment, all proceedings from that point onward are also void.

In *People v. Tizon* (G.R. No. 126955, October 28, 1999), *People v. Alicando* (251 SCRA 293), *Binabay v. People* (37 SCRA 445), *People v. Durango* (G.R. Nos. 135438-39, April 5, 2000), *People v. Estomaca* (256 SCRA 421), *People v. Badilla* (138 SCRA 513), *People v. Parba* (142 SCRA 158) and *People v. Petalcorin* (180 SCRA 685), among others, the Court invariably ruled that an arraignment is void where the accused entered an improvident

plea of guilt, sans any clear showing that the trial court has adequately discharged its duty of conducting the requisite searching inquiry. An invalid arraignment means there is no arraignment at all. Without a valid arraignment, there can be no valid proceedings, let alone, a valid judgment of conviction or acquittal by the trial court, the Court of Appeals, or even the Supreme Court.

Worse, the plea of guilt, improvident as it may be, adversely affected if not improperly impaired the prosecution's presentation of its case. As a consequence of appellant's guilty plea, the prosecution no longer zealously endeavored to elicit sufficient details beyond what was admitted. In fact, it opted to present no evidence at all. It did not even seek the coercive powers of the court to compel the attendance of its supposed witnesses. Simply stated, there appeared no genuine effort on the part of the prosecution to prove the elements of murder. It merely relied on appellant's admission of guilt to stand on its own, without more.

In *People v. Abapo*,^[11] appellant therein entered an improvident plea of guilt to 86 counts of rape. Relying on appellant's plea, the prosecution no longer presented its case with assiduity and meticulous attention to details that was necessarily expected in a prosecution for a capital offense. Consequently, when the victim testified in open court, the prosecution did not quiz her on the details of the alleged rapes beyond the approximate dates and frequency of their commission. Too, the prosecution dispensed with the testimony of the victim's mother though she was ready and willing to testify. Verily, the prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of the appellant. A remand of the case to the trial court was therefore warranted therein.

If the doctrine in *Abapo* where the prosecution had managed to present witnesses during the trial despite appellant's plea of guilt, was to remand the case to the trial court for re-arraignment and further proceedings, with more reason should the Court remand the case here since the prosecution presented no evidence at all to support the charge against appellant.

Notably, in all the aforementioned cases and even in the cases cited in the ponencia, the common denominator was the accused' improvident plea of guilt. In all these cases, the Court had one (1) uniform action, i.e. it set aside the verdict of conviction and remanded the case to the trial court for re-arraignment and trial proper. It did not ever hand down a verdict of acquittal. And it makes sense. No valid judgment, whether for conviction or acquittal may draw, nay, proceed from an invalid arraignment. It means, therefore, that the proceedings before the trial court ought to start all over again.

True, an improvident plea of guilt would not at all times warrant the remand of a case to the trial court. For when there is sufficient evidence on record to sustain a verdict of conviction independent of the admission of guilt, the manner in which the plea of guilt is made loses legal significance. *People v. Gumimba*,^[12] citing *People v. Derilo*^[13] is apropos:

Convictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment. If the trial court relied on sufficient and credible evidence to convict the accused, the conviction must be sustained, because then it is predicated not merely on the guilty plea of the accused but on evidence proving his commission of the offense charged. Thus, as we have ruled in *People v. Derilo*:

While it may be argued that appellant entered an improvident plea of guilty when re-arraigned, we find no need, however, to remand the case to the lower court for further reception of evidence. As a rule, this Court has set aside convictions based on pleas of guilty in capital offenses because of improvidence thereof and when such plea is the sole basis of the condemnatory judgment. However, where the trial court receives evidence to determine precisely whether or not the accused has erred in admitting his guilt, the manner in which the plea of guilty is made (improvidently or not) loses legal significance, for the simple reason that the conviction is based on evidence proving the commission by the accused of the offense charged.

Thus, even without considering the plea of guilty of appellant, he may still be convicted if there is adequate evidence on record on which to predicate his conviction, xxx (emphases added)

But the case here is different. The case records are bereft of any evidence from the prosecution. Evidently, there was no basis for appellant's conviction other than his improvident plea of guilt. The exception enunciated in *Gumimba*, therefore, is inapplicable here. Instead, the Court ought to apply the general rule and remand the case to the trial court.

Fourth. The evidence at the preliminary investigation was overwhelmingly inculpatory of murder that, together with appellant's guilty plea, should have compelled the trial judge and the trial prosecutor to have acted pro-actively.

By referring to the evidence at the preliminary investigation and during the trial judge's probable cause determination, I am not suggesting that appellant is actually guilty as charged. I refer to these pieces of evidence to buttress the point that the trial prosecutor did not perform his duty to prove the guilt of appellant beyond a reasonable doubt by calling in the evidence which the prosecution already had on hand as early as the preliminary investigation stage and the judicial determination of probable cause. It is these glaring pieces of evidence that were not adduced at the trial that justify the need to remand the case to explore their presentation or at least an explanation as to their non-presentation.

Fifth. The ponencia held that the Court should presume regularity in the performance of functions and we need clear and convincing evidence to disprove this presumption.

The prosecution cannot be accorded the presumption of regularity for the simple reason that the prosecution did not discharge its duty under Section 3, Rule 116. This is an irregularity that precludes the invocation of the presumption. As has been said, it is fundamental that the presumption of regularity cannot be invoked if there is a demonstration of irregularity.

As well, a presumption is an inference on the existence of a fact not actually known, and arises from its usual connection with another that is known, or a conjecture based on past experience as to what course of human affairs ordinarily takes. The presumption of regularity cannot arise from a vacuum but must be made from particular known facts.

Here, the presumption of regularity cannot be invoked because of the paucity of facts from which to infer this presumption. Thus, it is not known whether the witnesses knew of the trial dates and the critical importance of their evidence to prove the guilt of appellant beyond a reasonable doubt; it is not known whether the trial prosecutor conferred with these witnesses prior to the dates of their supposed appearances; it is not known whether these witnesses are still within the reach of the trial court's subpoenas, or are even still alive. There are so many unknown variables that the ponencia cannot reasonably conform its conclusion to deny the remand of the case to the trial court with the presumption of regularity.

Thus, to stress, the trial judge ought to have conducted the initial searching inquiry in the manner required by law, and out of abundance of caution, ought to have held as in the waiver of defense evidence a searching inquiry (following the searching inquiry as to the voluntariness of the guilty plea) when the trial prosecutor was unable to produce the prosecution evidence.

Sixth. Indeed, to acquit appellant now will put a sad closure to the death of Selma Pagal and the sufferings of her family. While "[u]nfortunately, this Court has to contend with the scarcity of records of the arraignment proceedings to make a nuanced approach." We simply cannot put a closure to a tragedy with another tragedy, worse, a travesty of what we are here for.

Seventh. As a point of clarification, appellant's guilty plea is not glamorized for its evidentiary value but as a justification for the remand of this case to the trial court. Clearly, jurisprudence favors a remand because this guilty plea, provident or improvident, skewed the orderly progression of the trial, which resulted in the non-presentation of evidence and ultimately in the injustice to both appellant and the complainants as kins of the victim.

To repeat, the totality of evidence for the preliminary investigation and the trial judge's determination of probable cause is not at this point important to the guilt or non-guilt of appellant but to the fairness of the remand of this case to the trial court for appropriate proceedings. The pieces of evidence are not hollow, they are very significant to the attainment of justice.

Appellant's outright acquittal impresses a dangerous precedent. This outcome seems to suggest that acquittal is the recompense for appellant and the penalty for the court and the State's failure to abide by Section 3 of Rule 116. While there may be consequences or sanctions that ought to be imposed upon the court and the State for their respective errors in applying Section 3 and some recognition for appellant being at the receiving end of these errors, I do not think that acquittal is the proper remedy for this purpose. At the end of the day, we cannot not recognize that there are real and named victims in this case for which acquittal would truly be an unfair outcome.

Lastly, the rule on guilty plea ought to be revisited, specifically the requirement that the prosecution still prove the guilt of an accused, besides his or her precise degree of culpability. The Court must do away with this requirement in instances where the prosecution is left hanging with no prosecution evidence after the determination of probable cause. Of course, at the start, there must have been some evidence against an accused, because otherwise, no criminal case would have been instituted to begin with.

The proposal is motivated by, first, the heavy evidentiary weight carried by a guilty plea not improvidently made as it is really a judicial admission in the most formal and solemn manner. Judicial admissions are a substitute for legal evidence at trial, and waive or dispense with the production of evidence as well as the actual proof of facts by conceding for the purpose of litigation the truthfulness of the fact alleged by the adverse party.

Indeed, if an extrajudicial confession could result in a finding of guilt beyond reasonable doubt, I see no reason why a guilty plea should not be accorded equal if not greater evidentiary weight. The adversarial nature of the proceedings where an extrajudicial confession is introduced as evidence should not make a guilty plea less desirable and weighty than an extrajudicial confession. So long as it is not improvidently made, a guilty plea is always a judicial admission that cannot be ignored especially when the prosecution loses the evidence it was earlier able to muster in filing the criminal case.

The proposal is also motivated by the underlying injustice of dismissing a criminal case and acquitting an accused despite the guilty plea because the prosecution can no longer summon the evidence it had at the beginning of the criminal case. One example is when the only prosecution witness in the case has died even before he or she could take the witness stand.

At the start, an accused may sincerely, knowingly, voluntarily and truthfully confess his guilt as a result of the strength of the evidence against him or the call of his or her conscience. If the prosecution is unable to present its evidence, it would be the height of injustice to let an accused go unpunished and unblemished despite his or her provident, truthful, voluntary, informed and sincere guilty plea, simply because of or pursuant to the mechanical application of the rule that the prosecution must still present evidence of the guilt of this accused.

ACCORDINGLY, I vote to remand this criminal case to the trial court for the prosecution to have an opportunity anew to present its evidence against appellant. In addition, I propose to institutionalize and codify a second-stage

searching inquiry if and when the prosecution fails to adduce evidence of an accused's guilt, and further propose to revisit and amend the rule requiring the prosecution to prove an accused's guilt despite his or her provident, truthful, sincere, informed and voluntary guilty plea, by allowing such guilty plea the full effects of a judicial admission.

[1] *People v. Murillo*, 478 Phil 446, 464-465 (2004).

[2] SECTION 6. Service. — Service of a subpoena shall be made in the same manner as personal or substituted service of summons. The original shall be exhibited and a copy thereof delivered to the person on whom it is served, tendering to him the fees for one day's attendance and the kilometrage allowed by these Rules, except that, when a subpoena is issued by or on behalf of the Republic of the Philippines or an officer or agency thereof, the tender need not be made. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. If the subpoena is *duces tecum*, the reasonable cost of producing the books, documents or things demanded shall also be tendered. (6a, R23)

[3] SECTION 8. Compelling Attendance. — In case of failure of a witness to attend, the court or judge issuing the subpoena, upon proof of the service thereof and of the failure of the witness, may issue a warrant to the sheriff of the province, or his deputy, to arrest the witness and bring him before the court or officer where his attendance is required, and the cost of such warrant and seizure of such witness shall be paid by the witness if the court issuing it shall determine that his failure to answer the subpoena was willful and without just excuse. (11, R23)

[4] SECTION 9. Contempt. — Failure by any person without adequate cause to obey a subpoena served upon him shall be deemed a contempt of the court from which the subpoena is issued. If the subpoena was not issued by a court, the disobedience thereto shall be punished in accordance with the applicable law or Rule. (12a, R23)

[5] *People v. Espidol*, 485 Phil. 35, 54 (2004); *People v. Besonia*, 466 Phil. 822, 841-842 (2004); *People v. Camay*, 236 Phil. 431, 434 (1987).

[6] *Heirs of Tria v. Obias*, 650 Phil. 449 (2010).

[7] 446 Phil. 838, 850-851 (2003).

[8] *Mamolo Sr. v. Narisma*, 322 Phil. 670, 675 (1996); *Zuño v. Cabebe*, 486 Phil. 605, 615 (2004); *Marzan-Gelacio v. Flores*, 389 Phil. 372, 383 (2000). With clear-cut procedural guidelines on bail now incorporated in the Rules of Court, judges have been enjoined to study them well and be guided accordingly. Concededly, judges cannot be faulted for honest lapses in judgment but this defense has become shopworn from overuse. To reiterate, although the Provincial Prosecutor had interposed no objection to the grant of bail to the accused, respondent judge should have set the application or petition for bail for hearing. 28 If the prosecution refuses to adduce evidence or fails to interpose an objection to the motion for bail, it is still mandatory for the court to conduct a hearing or ask searching and clarificatory questions. 29 For even the failure of the prosecution to interpose an objection to the grant of bail to the accused will not justify such grant without a hearing. *Borinaga v. Tainin*, 297 Phil. 223, 225-226 (1993).

[9] *People v. Galvez*, 428 Phil. 438 (2002), *People v. Nuelan*, 419 Phil. 160 (2001); *People v. Abapo*, 385 Phil. 1175 (2000); *People v. Durango*, 386 Phil. 202 (2000); *People v. Ernas*, 455 Phil. 829 (2003); *People v. Murillo*, 478 Phil. 446 (2004); *People v. Besonia*, 466 Phil. 822 (2004).

[10] *People v. Benavidez*, 437 Phil. 831 (2002).

[11] 385 Phil. 1175, (2000).

[12] 545 Phil. 627, 651 (2007).

[13] 338 Phil. 350, 374 (1997). See also *People v. Ostia*, 446 Phil. 181 (2003); *People v. Nismal*, 199 Phil. 649 (1982); *People v. Petalcorin*, 259 Phil. 1173 (1989).

ZALAMEDA, J.:

"To ferret out the truth in the maze of the conflicting claims of opposing parties is the Herculean task of the courts, the path which must always be illuminated by reason and justice. Tribunals should always insist on having the truth and judging only upon satisfactory evidence of the truth. The quest for truth is their main responsibility. To judge by means of untruths is to debase the noblest function in the hands of humanity." [1]

In this appeal, the ponente opines that accused-appellant should be acquitted despite his plea of guilty to the crime of murder. With all due respect, I am constrained to dissent. Litigation of criminal cases is not a zero-sum game, where the shortcomings of one party automatically results in the victory of another. Utmost sensitivity and a holistic consideration of the peculiar facts of the case must be made in order to ensure that case outcomes are based on truth, and that justice is fairly administered.

In this case, Selma Pagal (Selma) died in the presence of her family, and near her home, where she was supposed to feel secure. Terminating this case without any factual determination of accused-appellant's culpability, although ostensibly logical, hardly vindicates her death and the consequent disturbance of peace it has caused to her family and the community.

As will further be explained below, my vote to remand the case to the trial court should not be construed as an advocacy for or against accused-appellant, but rather a sincere submission to have the case re-evaluated to determine his supposed authorship of his sister-in-law's death.

This all the more becomes relevant in view of the allowance of the instant appeal[2] despite the wrong remedy availed of by accused-appellant in seeking his acquittal; accused-appellant filed a notice of appeal instead of an appeal by certiorari under Rule 45 of the Rules of Court, thus, rendering the decision of the Court of Appeals to remand the case to the trial court for further proceedings final. As such, the Court's leniency and broader understanding should not only be accorded to accused-appellant, but likewise, must serve the interests of substantial justice for all, prosecution and defense alike.

The conviction of accused-appellant
must be upheld

I dissent to dismiss the case and acquit accused-appellant for the following reasons:

First, it appears that the arraignment of accused-appellant was highly irregular. It has not been established that the trial court performed its duty under Sec. 3 of Rule 116 of the Rules of Court. Other than the statement in its Order dated 20 August 2009 that the Information was read to the accused in the Cebuano-Visayan dialect and that the consequences of his guilty plea were explained to him, there is nothing to establish that the trial judge sufficiently inquired into the voluntariness of such an action and accused-appellant's full understanding of the rights and liberty that he will forfeit with such admission of guilt.

Second, it is uncontested that the prosecution failed to present evidence establishing the elements of the crime and accused-appellant's guilt. As duly noted by the ponente, the prosecution failed to present its witnesses on four (4) hearing dates, viz: 17 November 2010, 22 February 2011, 11 May 2011 and 20 July 2011. However, looking closely at aforesaid dates, I hesitate to conclude that the prosecution was simply remiss in its duty, as to warrant

the acquittal of accused-appellant. After all, even our procedural rules are cognizant that delays may occur in criminal prosecution. Rule 119 Section 3[3] provides for exclusions to the time limits set to commence trial from the time of arraignment.

In *Cagang v. Sandiganbayan*,^[4] this Court acknowledged the reality of institutional delays, and the burdensome work of our government prosecutors. In that case, this Court opined that institutional delay, in the proper context, should not be taken against the State. I believe that a similar approach should be adopted in the case at bar. There is no showing that the prosecution was given an opportunity to explain why it failed to present its evidence in support of its case. Similarly, there is no showing that the defense raised any prejudice caused by the prosecution's inaction during the trial proper, since it also decided to forego presenting evidence to establish the accused's defense.

Third, accused-appellant maintained his plea of guilt throughout the reading of the allegations in the Information, and even after his counsel explained the consequences of his plea of guilt.^[5] Although far from ideal, to completely disregard accused-appellant's resolute stance would be to unduly favor him while ignoring the interests of both the State and the victim's relatives in seeking justice for the death of Selma.

Fourth, there appears to be a good reason to hold accused-appellant for trial. While our rules state that the record of the preliminary investigation does not form part of the record of the case in the trial court,^[6] I was constrained to look into the proceedings before the investigating prosecutor given the lack of formally offered evidence during trial. In any case, I believe that this Court is not prohibited to look into the records of the preliminary investigation in order to make a judicious determination of the legal issues submitted before Us.^[7]

During the preliminary investigation, all of the affiants^[8] narrated that they saw the wounded victim, Selma, running away from accused-appellant, who was then carrying a bloodied bolo. One of them was even attacked by accused-appellant, but managed to run and evade the strike.^[9] It is interesting to note that most of these affiants are related to accused-appellant. Private complainant, Angelito Pagal (Angelito), is accused-appellant's brother, while one of the witnesses, Cesar Jarden (Jarden), is Selma's brother, both of whom were not shown to have been impelled by improper motives in implicating accused-appellant. Indeed, if it is unnatural for a relative interested in vindicating a crime done to their family to accuse somebody other than the real culprit,^[10] it is even more unlikely for a sibling to accuse his own brother if the latter was truly not involved in the crime. Evidently, the aforesaid circumstances are sufficient to engender a belief that accused-appellant was likely responsible for Selma's death and should be held for trial.

Given the relationship between accused-appellant and private complainant, one has to wonder whether the plea of guilt had affected the prosecution's presentation of its evidence. A reading of the case records reveals that the cause for the postponement of the prosecution's presentation of evidence was the absence of Selma's widower and private complainant, Angelito. It is not far-fetched to consider that Angelito's absences were based upon his reliance on his own brother's admission of guilt. He could have surmised that his testimony is inconsequential or unnecessary in view of accused-appellant's plea.

In the same vein, it is equally possible that accused-appellant's plea of guilt was an acknowledgment of his authorship of the crime, and an attempt to give his family some type of closure. While I do not discount the possibility that accused-appellant might have failed to fully understand his plea, it may also be that he truly intended to be accountable for Selma's death. Unfortunately, this Court has to contend with the scarcity of records of the arraignment proceedings to make a nuanced approach.

The prosecution should have sought
the provisional dismissal of the case

While I do not regard the prosecution's actions to warrant the acquittal of the accused, I find that the prosecution was misguided in allowing the case to be submitted for decision without its witnesses' testimonies. The State should have instead moved that the case be provisionally dismissed.

Provisional dismissal is a halfway measure which allows the prosecution to maintain a case, which is at a standstill due to the absence or unavailability of the complainant, and temporarily relieves the accused of the burdens of the trial.[11] It is a mechanism to balance the sovereign right of the State to prosecute crimes with the inherent right of the accused to be protected from the unnecessary burdens of criminal litigation.[12]

Courts in the United States also acknowledge difficulties in prosecution and similarly allow the State to seek dismissal of criminal cases, without prejudice.

In the early case of *State v. Crawford*,^[13] the accused was discharged from a second indictment of murder based on a rule authorizing permanent dismissal if the accused has not been tried after three (3) regular court terms "unless the failure to try him was caused by his insanity; or by the witnesses for the State being enticed or kept away, or prevented from attending by sickness or inevitable accident; or by a continuance granted on the motion of the accused; or by reason of his escaping from jail, or failing to appear according to his recognizance, or of the inability of the jury to agree in their verdict."

The same principle was applied in *People v. Allen*,^[14] where the Illinois Supreme Court declared the defendant immune from another prosecution for the offense of involuntary slaughter because his former indictment thereon was dismissed due to delay in prosecution beyond the statutory period.

In *State of Kansas v. Ransom*,^[15] the Supreme Court of Kansas ruled that the State can move for dismissal of a criminal case and refile the same within the statutory period, in case of justified absences of witnesses. In that case, the complaint against the defendant for aggravated kidnapping, rape, aggravated battery, and aggravated robbery was initially dismissed upon the State's motion due to the unavailability of its principal witnesses. The doctors, who were supposed to testify on the process and results of their examination of the rape victim, were unable to attend the scheduled trial dates because one had to take a medical board examination, while the other had professional commitments in another state. The Kansas Supreme Court surmised that a dismissal without prejudice may be preferable for the State, as opposed to moving for continuance, if the witness' testimony is vital to the case. The court opined that although trial may proceed and an absent witness may later on be declared in contempt, a crucial testimony not presented during trial can fundamentally cripple the prosecution's case.

The prosecution's primary authority in the dismissal and refile of criminal cases has been echoed in recent cases. In *United States v. Oliver*,^[16] the US Court of Appeals for the Eighth Circuit upheld the second indictment of the defendant for the same offense of conspiracy to distribute cocaine. Citing Federal Rule of Criminal Procedure 48(a),^[17] the appellate court explained that the dismissal of a criminal complaint at the request of the Government under Rule 48 does not bar subsequent prosecution for criminal acts described in that indictment.

In the case at bar, the trial was postponed several times because of Angelito's absence; thus, it would have been more prudent for the prosecution, upon the consent of accused-appellant, to have the case provisionally dismissed.

Verily, prosecutors differ from other legal practitioners in that they advocate for the interests of the State aggrieved by the commission of crime. Representing the State, however, does not grant them boundless powers to arbitrarily persecute people, nor justify a lackadaisical approach in case of occupational difficulties. Ultimately, prosecutors aid the court in its mandate to dispense justice,^[18] even to the accused. In this case, instead of nonchalantly submitting the case for decision on the basis of accused-appellant's plea of guilt, the prosecution

should have at least sought provisional dismissal of the case as full and equal recognition of the interests of both the State and accused-appellant.

The trial judge should have issued, a bench warrant

Courts are empowered by our procedural rules with tools to ensure the full and orderly determination of the merits of the case. Upon the failure of a witness to attend court hearings, judges have the power to issue a bench warrant to compel the witness' attendance. A bench warrant is a writ issued directly by a judge to a law-enforcement officer, especially for the arrest of a person who has been held in contempt, has disobeyed a subpoena, or has to appear for a hearing or trial.[19] Jurisprudence dictates that the primary requisite for a bench warrant to be issued is that the absent-party was duly informed of the hearing date but unjustifiably failed to attend so.[20]

Here, the records of the case reveal that Angelito duly received the subpoena issued by the trial court.[21] Unfortunately, despite his authority to issue a bench warrant, Judge Abando allowed the trial to terminate without any witness presented by the prosecution and defense.

Under similar circumstances, this Court, in *Office of the Court Administrator v. Lorenzo*,[22] reminded judges to be conscientious in the conduct of their judicial duties. In that case, the judge allowed the accused to post bail because of the non-appearance of key prosecution witnesses for three (3) bail hearings despite the issuance of a proper subpoena. Upon investigation, this Court discovered that the witnesses failed to attend because one is on official mission abroad, while the other did not receive the subpoena from the trial court. Finding the judge administratively liable, the Court explained that given the materiality and relevance of the witnesses' testimony, the judge should have first inquired into the reasons for their absences before ordering the release of the accused on bail.

The same rationale applies in the case at bench. Contrary to the ponente's opinion that determination of the reasons for the delay is unnecessary, it is my humble opinion that the trial judge should have been more discerning and pro-active by assisting the prosecution in securing its witnesses' attendance before hastily terminating the trial, and convicting the accused. As discussed above, there could be a myriad of reasons for the witness' non-appearance that are not necessarily related to the diligence of the State in prosecuting the case. It is also useful to remember that there are cases"[23] where this Court ordered remand and/or continuation of the criminal proceedings despite the delay in the prosecution's presentation of evidence.

It is in view of these realities of public litigation that I referred to this Court's opinion in *Cagang v. Sandiganbayan*. I believe that it is worthwhile to be cognizant of these difficulties so that the courts and litigants can minimize lapses and ensure that trial is conducted properly. Being part of the five (5) pillars of the criminal justice system,[24] the prosecution and the court's cooperation and harmonious interaction is vital to the orderly administration of justice. Necessarily, courts, within ethical limits, should afford the prosecution a real opportunity to ventilate its accusations through the use of authorized court processes to compel production of evidence. After all, the State is also entitled to due process in criminal cases, that is, a fair opportunity to prosecute and convict.[25]

The remand of the case to the trial court serves the interests of both the defense and the prosecution

Considering the foregoing reasons, the remand to the trial court is proper. Indeed, it has been held that where the plea of guilt to a capital offense has adversely influenced or impaired the presentation of the prosecution's case,

the remand of the case to the trial court for further proceedings is imperative.[26] Compared to the acquittal of accused-appellant, further proceedings would ensure that the interests of both the prosecution and defense are duly considered and weighed. Allowing the accused-appellant to re-plead, with a definite showing that measures were undertaken to ensure that he understood the charge and the possible consequences of his plea, would also allow the trial court to determine if the accused-appellant had factual basis for his admission of guilt.

The retaking of the accused-appellant's plea is necessary since arraignment is a formal procedure in a criminal prosecution "to afford an accused due process." An arraignment is the means of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him. Actual arraignment is an element of due process, and is imperative for the accused to be fully aware of possible loss of freedom. Procedural due process requires that the accused be arraigned so that he may be informed as to why he was indicted and what penal offense he has to face, to be convicted only on a showing that his guilt is shown beyond reasonable doubt with full opportunity to disprove the evidence against him.[27]

Likewise, as recognized in the ponencia, Philippine jurisprudence has been consistent in remanding the case to the trial courts for further proceedings should the appellate courts find that the conviction was predicated solely on an improvident plea.[28] A cursory reading of US cases[29] would also reveal that convictions are vacated and remand is ordered whenever the accused is found to have improvidently pleaded guilty to a capital offense. Here, where it appears that accused-appellant may have entered an improvident plea, among others, should not be treated as an exception.

Guidelines in the conduct of
arraignment where the accused-
appellant manifests an intention to
plead guilty to a capital offense

In order to avoid confusion among trial judges, this Court's pronouncement in *People v. Gambao*[30] stating the guidelines to be observed by the trial court in conducting a "searching inquiry" should be incorporated in our rules on criminal procedure, to wit:

1. Ascertain from the accused himself:
 - (a) how he was brought into the custody of the law;
 - (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and
 - (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.
2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.
3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.
4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken

impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

6. All questions posed to the accused should be in a language known and understood by the latter.

7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[31]

Proposed amendments on trial procedure
in case of a valid and voluntary plea of
guilt

Justice Lazaro-Javier suggested that this Court re-evaluate the evidentiary weight courts accord to pleas of guilt. She proposed relieving the prosecution of the burden to prove the guilt of an accused who already declared his guilt of the offense, and merely requiring trial for determination of the accused's precise degree of culpability.[32]

I share the opinion of Justice Lazaro-Javier. Regular trial to establish the facts and elements of the crime, in a case where an accused who had been already extensively examined on his plea of guilt, is both redundant and inefficient. In *Brady v. United States*,^[33] the Supreme Court of the United States recognized the benefits of valid and voluntary pleas of guilt to the interests of the State. In that case, the Court opined that "the more prompt punishment is imposed after an admission of guilt, the more effective the State attains its objective of punishment; and with the avoidance of trial, scarce judicial and prosecutorial resources are conserved for those cases in which there is a substantial issue of the defendant's guilt or in which there is substantial doubt that the State can sustain its burden of proof."^[34]

The instant case presents the Court an opportunity to delve into the implications of entering a plea of guilt. Once a valid plea of guilt is entered, the prosecution and the defense remain an active participant only insofar as the proper sentencing of the accused is concerned. As aptly observed by Justice Lopez, this is because the ascertainment of the appropriate penalty is both for the benefit of the accused and the State.^[35]

Given the foregoing, and similar to the United States' Federal Rules of Criminal Procedure,^[36] I propose that for valid pleas of guilt, the prosecutor must be required to summarize its case and identify in writing the crime or offense committed by accused-appellant for the trial court to consider in sentencing. The prosecution must also provide any information relevant to sentencing, such as the law and jurisprudence applicable, the presence of any mitigating or aggravating circumstances, including any previous conviction of the accused, statement on the effect of the crime or offense committed to the victims or their heirs, among others. In the same vein, the trial court must likewise afford the accused an opportunity to be sentenced based on the facts as agreed by both the prosecution and the defense, or in the absence of such an agreement, if the accused wants to be sentenced on the basis of different facts proposed by the prosecution. The accused must also be allowed to introduce any evidence relevant to sentencing.

The trial court, after it is satisfied that the guilt of the accused is established beyond reasonable doubt, may now convict the accused of the appropriate crime or offense and pass the appropriate sentence. Likewise, the trial court must explain to the accused the factual and legal basis for the sentence, as well as its implications. Should the trial court find that the guilt of the accused has not been proven beyond reasonable doubt, it shall enter a judgment of

acquittal instead.

In outline form, I thus propose the following be integrated in our Rules on Criminal Procedure in cases of valid plea of guilt:

Plea of guilty to a capital offense; sentencing procedure- When the accused pleads guilty to a capital offense or those crimes punishable by reclusion perpetua and life imprisonment, and only if the court is satisfied of the voluntariness, comprehension and factual basis of the plea, the court shall:

1. require the prosecutor to-

a)

summarize the prosecution's case;

b)

identify in writing any offense that the prosecutor proposes should be taken into consideration in sentencing;

c)

provide information relevant to sentence, including—

i.

any previous conviction of the accused, and the circumstances where relevant,

ii

. any statement of the effect of the offense on the victim, the victim's family or others; and

d)

identify any other matter relevant to sentence, including—

i.

the legislation applicable,

ii.

any sentencing guidelines, or case law applicable,

iii.

aggravating and mitigating circumstances affecting the accused's culpability.

2. Clarify from the accused the factual basis of the plea, specifically whether:

a)

the accused wants to be sentenced on the basis of the facts agreed with the prosecutor; or

b)

in the absence of such agreement, the accused wants to be sentenced on the basis of different facts to those proposed by the prosecution.

3. Before passing sentence, the court must give the accused an opportunity to introduce evidence relevant to sentence.

4. Should the court be satisfied that the guilt of the accused be established by proof beyond reasonable doubt, the trial court shall convict him of the appropriate offense. Otherwise, the court shall enter a judgment of acquittal.

5. When the court has taken into account all the evidence, information and any report available, the court shall sentence the accused, and must-

a)

explain the factual and legal basis for the sentence;

b)

explain to the accused its effect, and the consequences of failing to comply with any order or payment of civil liability.

Plea of guilty to non-capital offense; reception of evidence, discretionary. — When the accused pleads guilty to a non-capital offense, the court may receive evidence from the parties to determine the penalty to be imposed.

The court may require the prosecution to:

a)

summarize the prosecution's case;

b)

identify any offense to be taken into consideration in sentencing;

c)

provide information relevant to sentence, including any statement of the effect of the offense on the victim, the victim's family or others; and

d)

where it is likely to assist the court, identify any other matter relevant to sentence, including—

i.

the legislation applicable,

ii.

any sentencing guidelines, or case law applicable,

iii.

aggravating and mitigating circumstances affecting the accused's culpability.

Record of proceedings. — A verbatim record of the proceedings of arraignment should be made and preserved.

Arguably, the specificity in the conduct of searching inquiry may entail prolonged arraignment proceedings. Likewise, the proposed rule on immediate sentencing may demand more effort from the parties' counsels.

Nonetheless, I am optimistic that my proposal would be mutually beneficial to the accused and the State if implemented properly. Under these proposed rules, the accused is given the benefit of mitigation of punishment, while lengthy trials are also avoided. Although trial is summary in nature, the accused does not lose protections currently guaranteed to him by the Constitution and the laws. Courts are still fully empowered to order acquittal should the prosecution fail to prove its accusations with moral certainty.

Accordingly, I register my dissent and vote for the denial of the instant petition.

[1] *Eduarte v. People*, G.R. No. 176566, 16 April 2009; 603 Phil. 504 (2009).

[2] *Ponencia*, pp. 7-8.

[3] Section 3. Exclusions. — The following periods of delay shall be excluded in computing the time within which trial must commence:

(a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:

- (1) Delay resulting from an examination of the physical and mental condition of the accused;
- (2) Delay resulting from proceedings with respect to other criminal charges against the accused;
- (3) Delay resulting from extraordinary remedies against interlocutory orders;
- (4) Delay resulting from pre-trial proceedings; provided, that the delay does not exceed thirty (30) days;
- (5) Delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;
- (6) Delay resulting from a finding of the existence of a prejudicial question; and
- (7) Delay reasonably attributable to any period, not exceed thirty (30) days, during which any proceeding which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of an essential witness.

For purposes of this subparagraph, an essential witness shall be considered absent when his whereabouts are unknown or his whereabouts cannot be determined by due diligence. He shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence.

(c) Any period of delay resulting from the mental incompetence or physical inability of the accused to stand trial.

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or, as to whom the time for trial has not run and no motion for separate trial has been granted.

(f) Any period of delay resulting from a continuance granted by any court *motu proprio*, or on motion of either the accused or his counsel, or the prosecution, if the court granted the continuance on the basis of its findings set forth in the order that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial.

[4] G.R. Nos. 206438, 206458 & 210141-42, 31 July 2018.

[5] *Ponencia*, p. 20.

[6] Sec. 8 (b) of the Rules on Criminal Procedure provides: Section 8. (a) xxx

(b) Record of preliminary investigation. — The record of the preliminary investigation, whether conducted by a judge or a fiscal, shall not form part of the record of the case. However, the court, on its own initiative or on motion of any party, may order the production of the record or any its part when necessary in the resolution of the case or any incident therein, or when it is to be introduced as an evidence in the case by the requesting party. (Emphasis ours)

[7] Id., See also Uy v. Office of the Ombudsman, G.R. Nos. 156399-400, 27 June 2008; 578 Phil. 635 (2008).

[8] Records, pp. 2-7, Affidavits of Angelito Pagal, Cesar Jarden, and Jaimelito Canlupas.

[9] Id. at 4-5, Affidavit of Cesar Jarden dated 08 January 2009.

[10] See People v. Reyes, G.R. No. 178300, 17 March 2009; 600 Phil. 738 (2009).

[11] See Dissenting Opinion, J. Puno, People v. Lacson, G.R. No. 149453, 01 April 2003; 448 (2003).

[12] Id.

[13] 98 S.E. 615 (1919).

[14] 14 N.E.2d 397 (III. October 22, 1937).

[15] 673 P.2d 1101 (1983); reiterated in State v. Cadle, 2015 Kan. App. Unpub. LEXIS 530 (Kan. Ct. App. June 26, 2015).

[16] United States v. Oliver, 950 F.3d 556 (8th Cir. Minn. February 19, 2020).

[17] Rule 48. Dismissal

(a) By the Government. The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent.

[18] See De Lima v. Reyes, G.R. No. 209330, 11 January 2016; 776 Phil. 623 (2016).

[19] Magleo v. De Juan-Quinagoran, A.M. No. RTJ-12-2336, 12 November 2014.

[20] Id.

[21] Records, p. 48, Order dated 11 May 2011.

[22] People v. Besonia, G.R. Nos. 151284-85, 05 February 2004; 466 Phil. 822 (2004).

[23] Tan v. People, G.R. No. 173637, 21 April 2009; 604 Phil. 68 (2009); Valencia v. Sandiganbayan, G.R. No. 165996, 17 October 2005; 510 Phil. 70 (2005).

[24] See Pagdilao, Jr. v. Angeles, A.M. No. RTJ-99-1467, 05 August 1999; 370 Phil. 780 (1999).

[25] Valencia v. Sandiganbayan, supra.

[26] People v. Besonia, G.R. Nos. 151284-85, 05 February 2004; 466 Phil. 822 (2004).

[27] People v. Nuelan, G.R. No. 123075, 08 October 2001; 419 Phil. 160 (2001).

[28] Ponencia, p.26.

[29] Class v. United States, 138 S. Ct. 798 (2018), Lee v. United States, 137 S. Ct. 1958 (2017), <

<https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3772&context=bclr> > (visited 29 September 2020); *McCarthy v. United States*, 394 U.S. 459 (1969), < <https://www.leagle.com/decision/1969853394us4591800> > (visited 29 September 2020).

[30] G.R. No. 172707, 01 October 2013; 718 Phil. 507 (2013).

[31] *Id.*

[32] See Reflections, p. 4, J. Lazaro-Javier

[33] 397 U.S. 742.

[34] *Id.*

[35] See Reflections, p. 1, J. Lopez.

[36] <https://www.justia.com/criminal/docs/frcrimp/rule11/> (visited 29 September 2020); See also https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_guiltypleas_blk/ (visited 29 September 2020).

DISSENTING OPINION

LOPEZ, J.:

With due respect to the ponencia, I disagree to acquit the accused. Foremost, the improvident plea of guilt warrants the remand of this case to the trial court for appropriate proceedings. The absence of a searching inquiry as required under Section 3, Rule 116 of the 2000 Revised Rules of Criminal Procedure, and the accused's subsequent appeal indicate that the plea of guilty may not have been voluntarily and intelligently made. These were aptly observed in the reflections of Justices Estela Perlas-Bernabe, Amy Lazaro-Javier, Rodil Zalameda, Edgardo De Los Santos, and Samuel Gaerlan. Thus, the accused should be re-arraigned to enter a proper plea so the court may render a valid verdict.

Moreover, even assuming that the plea of guilty is proper, I submit that the case should still be remanded because the trial court committed an error or abuse of discretion when it allowed *nolle prosequi* amounting to dereliction of duty. Notably, once an information has been filed, any disposition of the case, whether it results in dismissal, conviction, or acquittal of the accused, rests in the sound discretion of the trial court. The only limitation is that the accused's substantial rights must not be impaired, and the State should not be deprived of due process.^[1] Considering that there was already a plea of guilty, the trial court should have directed the prosecution, under pain of contempt, to prove the *corpus delicti* and to require the presentation of the victim's death certificate, the autopsy report, and the investigation report, which are all readily available. These documentary pieces of evidence, coupled with the accused's confession, may satisfy the required quantum of evidence to secure a conviction, at least for the crime of homicide, assuming that no eyewitness can be presented to the court.

It is my humble view that when an accused pleaded guilty, and the trial court is satisfied that it is voluntarily and intelligently made, meaning it is not improvident, the accused's presumption of innocence is already rebutted. A plea of guilty is an admission of the material facts alleged in the information and must be considered a judicial confession of guilt.^[2] A free and voluntary confession of guilt with full comprehension of its significance should be considered as evidence of high order because no person of a normal mind will deliberately admit to a crime unless prompted by truth and conscience.^[3] As such, the State and the private offended parties become interested

in the proper sentencing of the accused. The ascertainment of the appropriate penalty is for the benefit of both the accused and the State. The right to a speedy trial or speedy disposition of the case is no longer material because the accused deserves to be serving his sentence. If there is any delay, the same cannot be considered prejudicial to the accused but on the State who is the real victim entitled to retribution for the crime committed. It must be stressed that the State also deserves due process for the speedy punishment of the accused.

Accordingly, the remand of this case is proper to afford the State its right to penalize the accused based on the crime he voluntarily pleaded. The crime of homicide, which does not per se require reception of evidence in cases of a plea of guilty,[4] is considered subsumed as a lesser offense to the crime of murder.[5] Yet, a conviction for the lesser offense may not be a commensurate penalty or punishment for the crime that the accused has confessed. Justice is better served if the accused will be convicted for the proper offense. The State does not deserve conviction for a lesser offense, worse an acquittal of the accused.

Accordingly, I join my esteemed colleagues that this case should be remanded to the trial court for appropriate proceedings. I also join their observations on the need to codify proper searching inquiry guidelines and other relevant procedures that the trial court may follow in cases when an accused pleads guilty to a capital offense.

[1] *Fuentes v. Saindiganbayan*, 527 Phil. 58, 65 (2006).

[2] *People v. Lagarto*, 274 Phil. 11, 17 (1991); and *People v. Perete v. et al.*, 111 Phil. 943, 945 (1961).

[3] *United States, v. De los Santos*, 24 Phil. 329. 358 (1913).

[4] Under Section 4, Rule 116 of THE RULES OF COURT, reception of evidence is discretionary in cases of a plea of guilty for a non-capital offense.

[5] *People v. Glino*, 564 Phil. 396 (2007). Also, Rule 120. See 4. which provides: "Sec. 4. Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved."

DISSENTING OPINION

DELOS SANTOS, J.:

I dissent. I vote that the case be remanded to the Regional Trial Court (RTC) for the conduct of appropriate proceedings. The accused Brendo P. Pagal (accused) in this case entered a plea of guilty to the crime of Murder against victim Selma Pagal (Selma). The RTC found accused guilty beyond reasonable doubt of the said crime solely on such voluntary plea of guilt. On appeal, the Court of Appeals (CA) remanded the case to the RTC for the conduct of further proceedings, particularly for the conduct of a searching inquiry on the voluntariness of accused's plea of guilt as required by Rule 116, Section 3 of the Rules of Court.

The ponente's view is that the accused must be acquitted on the ground that the prosecution failed to present evidence of guilt beyond reasonable doubt.

I most respectfully disagree.

Article III, Section 14 of the 1987 Constitution provides:

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Emphasis supplied)

Rule 116, Section 3 of the Rules of Court provides:

Section 3. Plea of guilty to capital offense; reception of evidence. -When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

As correctly observed by the ponente, under Rule 116, Section 3 of the Rules of Court, the trial court has a three (3)-fold duty in instances where the accused pleads guilty to a capital offense, including the duty to: (1) conduct a searching inquiry; (2) require the prosecution to prove the accused's guilt and the accused's precise degree of culpability; and (3) allow the accused to present evidence in his behalf. In *People v. Tizon*,^[1] the Court explained the importance of the requirements of the searching inquiry under Rule 116, Section 3 of the Rules of Court, to wit:

This Court has had occasion to state that the requirements of the Rules are mandatory, affording, such as they do, the proper understanding of the all-important constitutional mandate regarding the right of an accused to be so informed of the precise nature of the accusation leveled against him so essential in aptly putting up his defense. The searching inquiry, which must be recorded, requires the court to make it indubitably certain that the accused is fully apprised of the consequences of his plea of guilt. In this case, peculiarly, the court must let the [accused] realize that a plea of guilt will not, under Republic Act No. 7659, affect or reduce the death penalty as he may have otherwise so perceived and come to believe or been advised. Not infrequently, said the Court in one case, an accused pleads guilty in the hope of a lenient treatment or upon promises of the authorities or parties of a lighter penalty, and it should compel the judge to make sure that he does not labor under these mistaken impressions. In sum, the searching inquiry under Section 3, Rule 116 must focus on: (1) the voluntariness of the plea, and (2) a complete comprehension of the legal effects of the plea, so that the plea of guilt is based on a free and informed judgment. So indispensable is this requirement that a plea of guilt to a capital offense can be held null and void where the trial court has inadequately discharged the duty of conducting the prescribed "searching inquiry." (Emphasis supplied; italics in the original)

In the case at bar, it has not been clearly established that the RTC performed its duty under the 1987 Constitution and the Rules of Court. Clearly, besides reading the Information in accused's Cebuano-Visayan dialect, there is nothing in the records of the case that would suggest that the RTC: (1) specifically inquired into the voluntariness of accused's plea of guilt; and (2) proved accused's complete comprehension of the legal effects of his plea of guilt to the capital offense of Murder. Considering that the preliminary investigation conducted on accused was marred by a number of irregularities, I respectfully believe that there should have been at least a second or further searching inquiry conducted by the RTC and the accused, who pleaded guilty to the capital offense, should be not acquitted solely on the basis of the failure of the prosecution to produce evidence of guilt beyond reasonable doubt. In this case, a further searching inquiry is proper to ensure that the criminal due process requirements under the 1987 Constitution are observed. Any acquittal which does not meet the requirements of the 1987 Constitution is inoperative.

Moreover, upon reviewing the records of the case, it is indeed glaring that the absence of key witness was, in fact,

prompted by accused's relation to the private complainant. Notably, I most respectfully agree with Justice Rodil D. Zalameda's observations that accused's plea of guilt and relationship with the private complainant indeed affected the supposed postponements and the absence of the key witness during trial. In his Dissenting Opinion, Justice Zalameda observed:

During the preliminary investigation, all of the affiants narrated that they saw the wounded victim, Selma, running away from the accused-appellant, who was then carrying a bloodied bolo. One of them was even attacked by accused-appellant, but managed to run and evade the strike. It is interesting to note that most of these affiants are related to accused-appellant. Private complainant, Angelito Pagal (Angelito), is accused-appellant's brother, while one of the witnesses, Cesar Jarden (Jarden), is Selma's brother, both of whom were not shown to have been impelled by improper motives in implicating accused-appellant. Indeed, if it is unnatural for a relative interested in vindicating a crime done to their family to accuse somebody other than the real culprit, it is even more unlikely for a sibling to accuse his own brother if the latter was truly not involved in the crime. Evidently, the aforesaid circumstances are sufficient to engender a belief that accused-appellant was likely responsible for Selma's death and should be held for trial.

Given the relationship between accused-appellant and private complainant, one has to wonder whether the plea of guilt had affected the prosecution's presentation of its evidence. A reading of the case's records reveals that the cause for the postponement of the prosecution's presentation of evidence was the absence of Selma's widower and private complainant, Angelito. It is not far-fetched to consider that Angelito's absences were based upon his reliance on his own brother's admission of guilt.[2]

Indeed, it is highly likely that the absence of the key witness was prompted by accused's plea of guilt. Given his relationship with accused, the key witness would surely have considered his testimony as inconsequential considering that accused had already entered his plea of guilt. In *People v. Besonia*,[3] the Court ruled that where the prosecution unduly relied on accused's plea of guilt and that the said plea had already adversely influenced or impaired the presentation of the prosecution's evidence, the remand to the RTC for further proceedings is already imperative, to wit:

Apparently, the trial court and the prosecution unduly relied on Besonia's plea of guilty and his admissions made during the searching inquiry. The prosecution did not discharge its obligation as seriously as it would have had there been no plea of guilt on the part of Besonia. Its presentation of its case was lacking in assiduity that is necessarily expected in a prosecution for a capital offense; it was too meager to be accepted as being the standard constitutional due process at work enough to forfeit a human life. It has been held that where the plea of guilt to a capital offense has adversely influenced or impaired the presentation of the prosecution's case, the remand of the case to the trial court for further proceedings is imperative.

Accordingly, a remand to the RTC is clearly necessary in this case to allow the RTC to properly carry out the searching inquiry and implement the provisions of Article III, Section 14 of the 1987 Constitution. The remand in this case will correct any potential improvident plea by accused. To repeat, the judgment of acquittal cannot be implemented by the Court since it is clear that the requirements of criminal due process under the 1987 Constitution were not properly observed. Notably, it is not proper to acquit accused due to the prosecution's failure to present evidence of guilt beyond reasonable doubt on account of the prosecution's flawed reliance on the sufficiency of accused's plea of guilt. The accused must clearly be re-arraigned.

The Rule on the Conduct of a
Searching Inquiry in Cases Where
an Accused Pleads Guilty to a
Capital Offense Must be Revisited.

Indeed, the rule on the conduct of a searching inquiry when an accused pleads guilty to a capital offense must also

be revisited. Following the Court's ruling in *People v. Gambao*,^[4] the specific guidelines on how judges shall conduct a searching inquiry must also be adopted. As pointed out by Justice Zalameda and by the Court in *Gambao*, the United States' Federal Rules of Criminal Procedure provides valuable guidance on this matter, to wit:

- Ascertain from the accused himself

(a)

how he was brought into the custody of the law;

(b)

whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and

(c)

under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.

- Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.

- Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

- Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.

- Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

- All questions posed to the accused should be in a language known and understood by the latter.

- The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.^[5]

ACCORDINGLY, I vote to REMAND the case to the Regional Trial Court for re-arraignment following the requirements of Rule 116, Section 3 of the Rules of Court and to give the prosecution an opportunity to present evidence against accused Brendo P. Pagal.

[1] 375 Phil. 1096 (1999).

[2] Justice Rodil V. Zalameda, Dissenting Opinion, p. 4.

[3] 466 Phil. 822 (2004).

[4] 718 Phil. 507 (2013).

DISSENTING OPINION

GAERLAN, J.:

I disagree with the conclusion of the ponencia acquitting Brendo P. Pagal a.k.a. "Dindo" (appellant) of the crime of Murder.

The ponencia made an exhaustive narration of the evolution of the duty of trial courts in instances where the accused pleaded guilty to a capital offense. Thereafter, the ponente made the pronouncement that Section 3, Rule 116 of the 2000 Revised Rules of Court (Section 3, Rule 116)[1] is indeed mandatory. The ponente then summarized the duties of the trial court when accused pleads guilty to a capital offense, viz.:

- (1) to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of the plea of guilt[;]
- (2) to require the prosecution to still prove the guilt of the accused and the precise degree of his culpability[;] and
- (3) to inquire whether or not the accused wishes to present evidence in his behalf and allow him to do so if he desires.[2]

Applying the foregoing conditions to the above-entitled case, the ponente concluded that the trial court failed to comply with these duties and declared that appellant made an improvident plea of guilt. Notwithstanding, the ponente acquitted appellant from the crime charged on the ground that the prosecution, despite being given its day in court, failed to present evidence to prove appellant's guilt.

I respectfully beg to differ only as to the conclusion of the ponente acquitting appellant from the crime charged.

At the outset, I do agree that the trial court failed to comply with its duties as enunciated by pertinent rules and jurisprudence resulting to appellant making an improvident plea of guilty to the offense of murder. This, however, does not automatically entitle the appellant to an acquittal.

To reiterate, it is established that Section 3, Rule 116 is mandatory. Based on this rule, there are three conditions that the trial court should comply with in order to forestall the entry of an improvident plea of guilty by the accused, namely:

1. The court must conduct a searching inquiry into the voluntariness xxx and full comprehension [by the accused] of the consequences [of his plea];
2. The court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and
3. The court must ask the accused [whether] he desires to present evidence on his behalf, and allow him to do so if he [so] desires.[3] (Citation omitted)

Given the unchanging state of the three-tiered requisites in Section 3, Rule 116, there is, therefore, no justification for the trial court's failure to observe them.

Now, in a plethora of cases where the trial court failed to comply with these requisites resulting to the accused

making an improvident plea of guilty to a capital offense, this Court has repeatedly remanded the case to the trial court for re-arraignment and further proceedings.

In the case of *People v. Nadera Jr.*,^[4] the Court in remanding the case to the trial court explained:

Convictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment. If the trial court relied on sufficient and credible evidence to convict the accused, the conviction must be sustained, because then it is predicated not merely on the guilty plea of the accused but on evidence proving his commission of the offense charged.^[5] (Citation omitted)

x x x x

In view of the foregoing, we find it necessary to remand the case for the proper arraignment and trial of the accused, considering not only the accused's improvident plea of guilt but also his lawyer's neglect in representing his cause. A new trial has been ordered in criminal cases on the ground of retraction of witnesses, negligence or incompetency of counsel, improvident plea of guilty, disqualification of an attorney de officio to represent the accused in the trial court, and where a judgment was rendered on a stipulation of facts entered into by both the prosecution and the defense.^[6] (Citations omitted)

In *People v. Ernas*,^[7] this Court remanded the case to the trial court for re-arraignment and re-trial on the ground that accused was found to have made an improvident plea of guilty to three counts of rape, notwithstanding the fact, that the prosecution opted not to present the testimony of the complaining witnesses in support of accused's conviction, viz.:

It must be stressed that under the 1985 Rules of Criminal Procedure, a conviction in capital offenses cannot rest alone on a plea of guilt. The prosecution evidence must be sufficient to sustain a judgment of conviction independently of the plea of guilt.

We, therefore, cannot accept as valid the plea of guilty entered by the appellant to the three charges of rape. His re-arraignments as to the three charges are fatally flawed. The trial court erred in believing that the questions propounded to the appellant and the latter's answers as well as the documentary exhibits offered by the People would aid it in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea.

It likewise erred in allowing the prosecution to dispense with the testimonies of the complaining witnesses. As we have ruled, even if the trial court is satisfied that the plea of guilty was entered with full knowledge of its meaning and consequences, the introduction of evidence to establish the guilt and the degree of culpability of the accused is still required. Judges therefore must be cautioned, toward this end, against the demands of sheer speed in disposing of cases, for their mission after all, and as has been time and again put, is to see that justice is done.^[8] (Emphasis supplied and citations omitted)

Likewise, this Court, in the case of *People v. Molina*,^[9] while admitting that there is no strict rule that once a plea of guilty is found to be improvident the case needs to be remanded to the court a quo, made a categorical pronouncement that the unfairness or complete miscarriage of justice in the handling of the proceedings a quo as occasioned by the improvident plea of guilt justifies the remand of the criminal case to the trial court,^[10] to wit:

It is also urged in the Brief for the Appellant that an improvident plea of guilty per se results in the remand of the criminal case(s) to the trial court for the re-arraignment of accused-appellant and for further proceedings. We hold that this argument does not accurately reflect the standing principle. Our jurisdiction does not subscribe to a per se rule that once a plea of guilty is deemed improvidently made that the accused-appellant is at once entitled to a remand. To warrant a remand of the criminal case, it must also be proved that as a result of such irregularity there was inadequate representation of facts by either the prosecution or the defense during the trial. In *People v. Abapo* we found that undue reliance upon an invalid plea of guilty prevented the

prosecution from fully presenting its evidence, and thus remanded the criminal case for further proceedings. Similarly, in *People v. Durango* where an improvident plea of guilty was followed by an abbreviated proceeding with practically no role at all being played by the defense, we ruled that this procedure was "just too meager to accept as being the standard constitutional due process at work enough to forfeit a human life" and so threw back the criminal case to the trial court for appropriate action. Verily the relevant matter that justifies the remand of the criminal case to the trial court is the procedural unfairness or complete miscarriage of justice in the handling of the proceedings a quo as occasioned by the improvident plea of guilty, or what *People v. Tizon* encapsulizes as the "attendant circumstances."

Where facts are however adequately represented in the criminal case and no procedural unfairness or irregularity has prejudiced either the prosecution or the defense as a result of the improvident plea of guilty, the settled rule is that a decision based on an irregular plea may nevertheless be upheld where the judgment is supported beyond reasonable doubt by other evidence on record since it would be a useless ritual to return the case to the trial court for another arraignment and further proceedings.[11](Emphasis supplied and citations omitted.)

This was reiterated in the case of *People v. Murillo*,[12] thus:

While our jurisdiction does not subscribe to a per se rule that once a plea of guilty is found improvidently he is at once entitled to a remand, the circumstances of this case warrant that a remand to the trial court be made. To warrant a remand of the criminal case, the Court has held that it must be shown that as a result of such irregularity there was inadequate representation of facts by either the prosecution or the defense during the trial. Where the improvident plea of guilty was followed by an abbreviated proceeding with practically no role at all played by the defense, we have ruled that this procedure was just too meager to accept as being the standard constitutional due process at work enough to forfeit a human life. What justifies the remand of the criminal case to the trial court is the unfairness or complete miscarriage of justice in the handling of the proceedings a quo as occasioned by the improvident plea of guilt. In this case, apart from the testimony of appellant, the prosecution does not have any other evidence to hold him liable for the crime charged.

In view of the foregoing, we find that it is imperative to remand the case for the proper arraignment and trial of the accused, considering not only the accused's improvident plea of guilt but also his lawyer's neglect in representing his cause.[13] (Emphasis supplied. Citations omitted.)

The ponencia should have followed the foregoing precedence.

In the instant case, after appellant's plea of guilty to the crime of Murder, the prosecution failed to present any evidence to support his guilt. The appellant's counsel likewise opted to forego the presentation of the defense evidence. With the submission of the case for decision, the trial court convicted appellant for murder based solely on his improvident plea of guilt.

It may be deduced from the established facts that the parties' deliberate omission to present their evidence in support of their respective claims and defenses was the effect of appellant's plea of guilt, which later on has been proven to be made improvidently. There was, therefore, undue reliance on the part of both the prosecution and the defense upon an invalid plea of guilty which prevented them from fully presenting their respective evidence. Otherwise stated, if not for the appellant's plea of guilt, the prosecution, as well as the defense, would have diligently presented their respective cases by presenting witnesses and adducing evidence in support thereof. Clearly, due to appellant's improvident plea of guilt there was inadequate representation of facts by the prosecution and defense during the trial. Such irregularity resulted to unfairness and complete miscarriage of justice in the handling of the proceedings a quo. This, in the words of this Court in the *Molina*[14] and *Murillo*[15] cases, justifies the remand of the criminal case to the trial court.

Furthermore, the failure of the prosecution to present witnesses on four hearing dates scheduled for such purpose

is of no moment. While there was due notice of the hearing dates, the prosecution most probably deemed it unnecessary to present their witnesses. As earlier discussed, it may have heavily relied on appellant's plea of guilt, thinking that such admission is sufficient to convict him for the crime charged. Such omission, moreover, is not the lone fault of the prosecution but also of the trial court judge.

It bears stressing that the proposed ponencia made no mention of anything that would show that the trial court judge obliged the prosecution to present their evidence despite a voluntary plea of guilty. The ponencia cited no order or resolution from the trial court judge further requiring and directing the prosecution to proceed to the presentation of its witnesses after the latter's initial failure to present its evidence on the four hearing dates scheduled for such purpose. Instead, records show that the judge ordered the appellant to present witnesses in his defense, which appellant opted to waive. It is indubitable, therefore, that based on the ponencia, the trial court judge was guilty of negligence in his duty of ensuring that due process is observed despite a voluntary plea of guilt on the part of the appellant. The trial court judge should have been guided by the established rule that:

xxx [t]he presentation of evidence should be required in order to preclude any room for reasonable doubt in the mind of the trial court, or the Supreme Court on review, as to the possibility that there might have been some misunderstanding on the part of the accused as to the nature of the charge to which he pleaded guilty, and to ascertain the circumstances attendant to the commission of the crime which justify or require the exercise of a greater or lesser degree of severity in the imposition of the prescribed penalties." [16]

Accordingly, pursuant to the above-quoted jurisprudence and in compliance with the mandatory character of Section 3, Rule 116, the appellant should be given the opportunity to make a proper plea after ensuring that he is duly informed of the crime charged against him and the consequences of admitting to the commission thereof. Equally important, the prosecution should likewise be given another chance to present its case and prove the allegations in the information, including the qualifying, mitigating or aggravating circumstances, if any. It is important to note that these attending circumstances, if duly proven, will then determine the proper penalty to be imposed.

Needless to state, despite appellant's voluntary plea of guilt, the prosecution must and should prove the appellant's guilt, for the crime charged and the precise degree of his culpability. If the prosecution fails to prove appellant's guilt beyond reasonable doubt for the crime of murder, or any other crime in connection thereto, then and only then may appellant be acquitted of the crime charged.

Moreover, acquitting the appellant due to the trial court's failure to strictly comply with the rules on voluntary plea of guilt in capital offenses, particularly its failure to oblige the prosecution to present its evidence, will prejudice the victim and her kin who will be deprived of due process. They should not be made victims again, this time of the trial court who refused to diligently comply with the pertinent rules.

From all the foregoing, T humbly submit that due to the court a quo's failure to comply diligently with the rules, a re-arraignment and re-trial is in order. With all due respect, instead of acquitting the appellant, the case should, therefore, be remanded to the trial court.

One final note, I humbly reiterate the pronouncement of this Court in *People v. Bello*, [17] "let it be clearly understood that the administration of justice, including among other things, the punishment of guilty persons and the protection of the innocent, is the very reason for the existence of courts. While justice demands speedy administration, courts are in duty bound to be extra solicitous in seeing to it that when an accused pleads guilty he understands fully the meaning of his plea and the import of his inevitable conviction. Any court which abets injustice or neglects to ascertain the truth with the use of all the faculties at its command abdicates its most important function and forfeits its very right to existence." [18]

I vote to DISMISS the appeal.

[1] Sec. 3. Plea of Guilty to Capital Offense; Reception of Evidence. - When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

[2] Ponencia, p. 12, citing *People v. Gambao*, 718 Phil. 507, 520-521 (2013).

[3] *People v. Dalacat*, 485 Phil. 35, 47 (2004).

[4] 381 Phil. 484 (2000).

[5] *Id.* at 499.

[6] *Id.* at 504.

[7] 455 Phil. 829 (2003).

[8] *Id.* at 842.

[9] 423 Phil. 637 (2001).

[10] *Id.* at 652.

[11] *Id.* at 651-652.

[12] 478 Phil. 446 (2004).

[13] *Id.* at 464-465.

[14] *People v. Molina*, *supra* note 9.

[15] *People v. Murillo*, *supra* note 12.

[16] *People v. Dayot*, G. R. No. 88281, July 20, 1990, 187 SCRA 637, 642

[17] 375 Phil. 277 (1999), citing *Nitafan, David G. Arraignment in Serious Offenses*, December 11, 1995, 251 SCRA 161.

[18] *Id.* at 293-294.

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