

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ARCADIO TORRES Y ESPALDON, DEFENDANT-APPELLANT.***G.R. No. 48083. August 14, 1941*

Ponente: MORAN, J.

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Charged in the Court of First Instance of Manila with the crime of murder of one Lorenzo Castro, Arcadio Torres y Espaldon entered on November 9, 1940, his plea of not guilty. The lower court set the case for trial on December 18, 1940, but on this date, defendant, thru attorney Edejer, moved for postponement on the ground that the defense was not then ready, said attorney having been engaged only the night before the trial and had not had, therefore, any opportunity to confer with the defense witnesses. This motion was denied. The trial accordingly proceeded and after the prosecution had rested its case, defendant, thru counsel, waived his right to present his evidence. Defendant was found guilty of the crime charged and was sentenced to reclusion pwpetua and to indemnify the heirs of the deceased in the sum of P2,000, without subsidiary imprisonment in case of insolvency. On July 14, 1941, counsel for the defendant filed in the trial court a motion for new trial which was denied. This appeal was given due course. On February 3, 1941, the motion for new trial was renewed in this court, but we defer action thereon until the consideration of the appeal on its merits.

The motion for new trial here presented alleges as grounds therefor, among others, the trial court's denial of defendant's motion for postponement of the case and new and material evidence discovered after the trial pointing to defendant's surrender to the authorities. The fact of the defendant's surrender to the authorities appears to be attested to by a certificate of the Assistant Chief of the Manila Police, dated January 14, 1941, which reads as follows:

"This is to certify that the records of the North District Police Station show that one Arcadio Torres, 27 years of age, presented himself to that station on October 29, 1940, after stabbing Lorenzo Castro who died in the Saint Joseph's hospital on the same date. (Sgd.) GREGORIO ALCID, Assistant Chief of Police."

Considering the gravity of the offense charged against the defendant and that due to unpreparedness of his counsel he could not even testify to present his side of the case, it is but fair that he be accorded full opportunity to present evidence at least on the mitigating circumstance above-mentioned which, if shown, would greatly diminish the penalty imposed upon him.

Let this case be thus remanded to the trial court for new trial on the matter of appellant's surrender to the authorities and on such other issues as the prosecution and the defense may desire to adduce, but the evidence already received shall stand and shall be considered with the new evidence, in accordance with the provisions of Rule 117, section 5 (b), without costs.

Avanceña, C. J., Abad Santos, Diaz, and Horrilleno, JJ., Case remanded for new trial.

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