

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MICHAEL J. BUTLER, ACCUSED-APPELLANT.

G.R. No. 50276. January 27, 1983

Ponente: GUERRERO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-50276/>

GUERRERO, J.:

This is an automatic review of the judgment of the Court of First Instance of Zambales, Third Judicial District, Branch I, finding the accused Michael J. Butler in Criminal Case No. 2465 guilty beyond reasonable doubt of the crime of murder qualified by abuse of superior strength, with the attendance of aggravating circumstances of treachery and scoffing at the corpse of the deceased, without any mitigating circumstance and sentencing the accused with the penalty of death, and ordering him to indemnify the heirs of the victim with the sum of P24,000.00.

In an Information dated October 16, 1975, accused-appellant Michael J. Butler was charged with the crime of murder committed as follows:

"That on or about the 8th day of August, 1975, in the City of Olongapo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and taking advantage of his superior strength, did then and there wilfully, unlawfully and feloniously assault, attack and hit with a statue of Jesus Christ one Enriquita Alipo alias 'Gina Barrios' and after said Enriquita Alipo fell flat on her face, the above-named accused, again taking advantage of his superior strength then and there apply force and pressure on the back of the head of said Enriquita Alipo thereby forcing and sinking the latter's mouth and nose against the mattress of the bed, and as a result thereof, the said Enriquita Alipo was not able to breathe and was choked, thus directly causing the death of said Enriquita Alipo alias 'Gina Barrios'."

Upon arraignment, accused-appellant pleaded not guilty, hence the trial was conducted and at the termination of which, judgment of conviction was rendered.

It appears from the records of the case that on August 7, 1975, at about 10:30 p.m., accused-appellant Michael Butler and the victim, Enriquita Alipo alias Gina Barrios were together at Colonial Restaurant in Olongapo City. They were seen together by Lilia Paz, an entertainer and friend of the victim, who claimed to have had a small conversation with the accused, and by one Rosemarie Juarez, also a friend of the victim. At about 11:00 of the same evening, the accused and the victim left the said restaurant,[1] after the latter invited Rosemarie Juarez to come to her house that night.

Emelita Pasco, the housemaid of the victim, testified that, at about 11:30 p.m. or so of August 7, 1975, her mistress (Gina Barrios) came home with the accused-appellant. As soon as she opened the door for them, the victim and accused-appellant immediately entered the victim's bedroom. Shortly thereafter, the victim left her bedroom holding an ID card and a piece of paper, and on the piece of paper, the victim purportedly wrote the following words: MICHAEL J. BUTLER, 44252-8519 USS HANCOCK. Said words were copied from the ID Card.

Pasco testified that the victim said she was copying the name of the accused because she knew he would not be going back to her. Then she rushed back to her bedroom after instructing Pasco to wake her up the following morning.[2] Before retiring, however, the victim's friend, Rosemarie Juarez, came to the former's house and after having a small conversation, also left.

The following day, August 8, 1975, at about 4:00 a.m., Pasco rose to wake her mistress as instructed. She knocked at the door. She found out that the victim was lying on her bed, facing downward, naked up to the waist, with legs spread apart, with a broken figurine beside her head. Immediately, Pasco called the landlord and they called the authorities.[3]

Patrolman Rudyard de los Reyes of the Olongapo Police Department arrived together with Fiscal Llamado and Corporal Sobrepeña at about 6:00 a.m. of August 8, 1975. Pasco informed Patrolman de los Reyes that the accused Butler slept with the victim the previous night, and the former gave the latter the piece of paper where the name of the accused was written.

Sergeant Galindo of the Olongapo Police Department handed over to Jesus Bensales, a fingerprint technician of the Police Department, a piece of cellophane together with the broken figurine for latent print examination. The latent print examination report (Exh. E-4) showed that there were three (3) fragmentary latent prints that were lifted from the cellophane wrapping of the figurine. But only one print was clear and distinguishable. This particular print was found identical with the accused's left middle fingerprint on thirteen (13) points. Bensales later testified that the latent print developed from the piece of cellophane belonged to the accused Butler.[4]

On the same day, officers of the Olongapo Police Department informed the Naval Investigation Services Resident Agency (NISRA) in Subic Bay that an American Negro by the name of Michael J. Butler on board the USS Hancock was a suspect in a murder case. Jerry Witt and Timothy Watrous, both special agents of NISRA, went on board USS Hancock. They informed the legal officer that one of the crew members was a suspect in a murder case. After being located, the accused was brought to the legal office of the ship. Witt identified himself, showed his credentials and informed the accused that he was a suspect in a murder case. Then Witt informed the accused of his constitutional rights to remain silent and right to counsel. Then the accused was searched, handcuffed, and was brought to NISRA office.

Arriving at NISRA office at about 11:00 a.m. of the same day, the investigation and interrogation were started by James Cox, NISRA investigator, at about 2:55 p.m. According to Cox's testimony, before he started the interrogation, he identified himself, informed the accused of his constitutional rights. At the cross-examination, he stated it took him about 1-1/2 hours to finish the investigation. The first 45 minutes was accordingly devoted to interrogation, and for the next 45 minutes, he called James Beaver who reduced the oral investigation into writing.

James Cox also testified that after apprising the accused of his constitutional rights to remain silent and right to counsel, he asked the accused if he needed a lawyer and if he understood his rights (constitutional rights and rights under the military code of justice). The accused accordingly said he understood his rights and that he did not need a lawyer.

The result of that investigation was thus a document taken from the accused consisting of three (3) pages, signed and initialed on all pages by him and containing a statement that he was aware of his constitutional rights, and a narration of the facts that happened on August 7, 1975.

For purposes of clarity, the entire text of the waiver of constitutional rights and the extra-judicial confession containing the narration of facts by the accused-appellant (Exhibit H) are reproduced as follows:

"Place: NISRA Subic Bay

I, SA MICHAEL JEROME BUTLER USN 142528519 have been advised by Special Agent(s) JN COX and JJ CREATURO that I am suspected of MURDER OF GINA BARRIOS ALSO KNOWN AS ENRIQUETA ALIPO FILIPINA NATIONAL AND THE USE DANGEROUS DRUGS. I have also been advised:

MJB (1) That I have the right to remain silent and make no statement at all;

MJB (2) That any statement I do make may be used as evidence against me in a trial by Court-Martial;

MJB (3) That I have the right to consult with a lawyer prior to any questioning. This lawyer may be a civilian lawyer retained by me at my own expense; or, if I wish, Navy/Marine Corps authority will appoint a Military lawyer to act as my counsel without cost to me;

MJB (4) That I have the right to have such retained civilian lawyer or appointed military lawyer present during this interview;

MJB (5) That I have the right to terminate this interview at any time for any reason. MJB I understand my rights as related to me and as set forth above. With that understanding, I have decided that I do not desire to remain silent, that I do not desire to consult with either a civilian or military lawyer at this time and I do not desire to have such a lawyer present during this interview. I make this decision freely and voluntarily and it is made with no threats having been made or promises extended to me.

(Sgd.)

Signature: MICHAEL J. BUTLER

Date & Time: 1502 8 Aug. 1975

1546 hours

Witnessed JN COX S/A NIS

JJ CREATURO S/A NIS

Date & Time: 8 August 1975

At this time, I, SA Michael Jerome Butler, 14258519, desire to make the following voluntary statement. This statement is made with an understanding of my rights as previously related to me and as set forth above, and it is made with no threats having been made or promises extended to me. This statement is being typed by YNI James R. BEAVER, USN, as I discussed its contents with Mr. COX and Mr. CREATURO. I was born 09-04-57 at Orlando, Florida. I am a black, male American 6 foot tall and I weigh 155 pounds. I enlisted in the US Navy on 3 February 1975 for four years. Since 10 June 1975, I have been assigned to the USS HANCOCK (CV-10).

During the evening hours of 7 August 1975, while on liberty, I went to Bob's Tailor Shop in Olongapo City, R.P. While I was there I talked to a girl and drank some gin and beer and got drunk. The girl's name was Victoria PENA. There was another girl in the tailor shop and she was making eyes at me. I walked outside the tailor shop and she followed me and we spoke to each other. This was sometime after 9 PM. She asked me if I wanted to go home with her and I said yes. We caught a tricycle and went to her house. She paid the man one peso. When we got to the house another girl let us in. After we got to the house, the girl that I was with showed me her health card, but I couldn't read the name on it. I went upstairs and the girl that I was with showed me the bedroom which was just to the left at the top of the stairs. I went in and sat down on the bed. She came in and asked me for some money. She told me she was going to screw me. (By this I understood we were going to

engage in sexual intercourse). I gave her approximately 27 pesos. She left the room and said that she was going to get some cigarettes and would be right back. She came back later and came into the room, walked out of the room, and said something to the girl in the next room. The two of them came into the bedroom where I was and they were laughing about something. The other girl then left and the two of us were in the bedroom alone. Both of us got undressed and I laid down on the bed and went to sleep. I woke up sometime later and she was in bed with me. At this point I rolled the girl over and made love to her. (By this I mean I engaged in sexual intercourse with her from the rear). My intention was to screw her in the vagina. If I screwed her in the rectum, I didn't intend to. After we finished, I rolled over and went back to sleep again. Roosters started crowing and I woke up and it was starting to get daylight. The girl was already awake. I thought that it was time for me to go back to the ship so I told her that I had to leave. I couldn't find my watch and asked her where it was and she said that the girl in the next room had it. I was sitting on the bed and I reached down to pull up my sock and I discovered that a five peso note that I had in my sock was missing. I asked her about it and she said that she had gotten it. We started arguing about my five pesos and she started saying something to me in the Filipino language and I told her to speak English. I walked over and looked at her hard and she wanted to know what I was looking at and I asked her why she took my money. I said 'Ah, fuck it,' and pushed her down onto the bed. She got off the bed and smacked me and I smacked her back. She started tussling and acting like she was going to hit me with a karate chop. I thought she was going to do something dangerous to me so I grabbed her, and we started wrestling on the bed. She grabbed me by the throat and I picked up a statue of Jesus Christ that was sitting on a bedside stand and I hit her in the head. She fell flat on her face. I didn't intend to kill the girl but I was mad and wanted to hurt her. She didn't say anything to me but she was making some kind of groaning noise. I went in the next room and got my watch, came back in the bedroom, got dressed and left. I started walking towards the base. I saw the lights of a vehicle coming so I stepped inside of a building so I wouldn't be caught out after the curfew. As it turned out it was a Marine in a military truck, I'm not sure if he was with the Armed Forces Police or the Shore Patrol. The Marine was white and bald headed and wore a badge. He gave me a ride to the Armed Forces Police Station at the Main Gate, Subic Bay, I then went from there to my ship. I was dressed in civilian clothing and I had on a pair of burgandy trousers and a blue and white printed shirt. I left these items of clothing on the top of my bunk located in the 2nd Division berthing area.

When I was with the girl last night, I was drunk from drinking alcohol. I did not take any narcotics or dangerous drugs because I do not use them. I never did know the girl's name that I was with. She was a Filipina, approximately 4'11", black hair (long). She wore glasses (tinted). When she and I engaged in sexual intercourse I reached a climax while my penis was in her. When I met her she was wearing a two-piece fish net top and skirt, they were both purple. This is all I can remember about what she looked like. I don't know the exact location at which she lived except that it was somewhere in Olongapo City, R.P. To my knowledge, the girl did not take any drugs while I was with her.

I have read the above statement, consisting of three pages, and it is true and correct to the best of my knowledge. No threats or promises have been made to induce me to make this statement.

(Sgd.)

MICHAEL J. BUTLER

(Name, date, time)

1634-8 Aug. 75"

James Beaver later testified that he typed the statement of the accused, that the accused gave his statement in answer to the questions of James Cox and that the accused signed all the pages of the statement, that he was apprised of his constitutional rights to remain silent and to counsel by James Cox, that the accused was aware of his constitutional rights and that he affixed his signature and initials on the document which contained the warning regarding his rights.[5]

In the meantime, Dr. Angeles Roxas, Medico- Legal Officer of the Olongapo Police Department who also came to the scene of the crime on August 8, 1975, examined the corpse of the victim and later issued an autopsy report (Exhibit D) with the following findings:

"NAME: - ENRIQUITA ALEPO y Apolinario alias Enriquita Barrios

DATE & TIME: - 10:30 A.M., August 8, 1975

PLACE: - Funeraria Fernandez Morgue

The body is that of a middle-aged woman identified as Enriquita Alepo y Apolinario, about 26 years old, native of Bugasong, Antique and resident of 8 Fontaine Extension, Olongapo City, found sprawling on her face with her legs widely spread far apart, with no underwear and her housedress folded from below upwards up to her waistline, thus exposing her private parts. There was starting rigidity of the extremities and starting lividity of the face, neck and abdomen which are the dependent portions of the body. On top of the head are broken pieces of porcelain wares.

Close examination of the body showed fine, short, curly hairs numbering five in all, found in the area of the anal region, with small amount of blood in the between the anal folds. There were also fine pieces of porcelain wares on her teeth and gums, upper and lower, just behind the upper and lower lips. Further examination failed to show any sign of external physical injuries, except for a slight abrasion, measuring 3 mm. in diameter, posterior portion, junction of the anal mucous membrane and the skin.

The body was opened in the usual Y-shaped incision of the chest and abdomen to expose the different vital internal organs. The head was likewise opened by means of a sagittal incision of the scalp, then deflecting the anterior and posterior portions, and then making a coronal incision of the skull to expose the brain substance. The following are the significant findings:

- HEAD and NECK: - Failed to find any fracture of the skull. Brain apparently normal. No sign of intra-cranial hemorrhage.

- CHEST:

- Heart: - apparently normal except that the right side of the heart is fully filled with blood.

- Lungs: - Markedly congested but no sign of edema. No obstruction of the trachea.

- ABDOMEN: all the internal abdominal organs are apparently normal.

NO OTHER SIGNIFICANT FINDING.

Specimens from the anal and vaginal smears were submitted to the OCGHI laboratory for examinations.

CAUSE OF DEATH: - Asphyxia due to suffocation.

(Sgd.)

Angeles S. Roxas, M.M.

Medico-Legal Officer

Olongapo Police Station 21"

Dr. Roxas later testified that anal intercourse was had with the victim after her death as indicated by the partly opened anus and the presence of spermatozoa in it. He testified that the anus would have automatically and completely closed had the intercourse occurred while the victim was still alive. He also categorically testified that the victim died of asphyxia due to suffocation when extreme pressure was exerted on her head pushing it downward, thereby pressing her nose and mouth against the mattress.[6]

After trial, judgment was promulgated on December 3, 1976 finding the accused guilty beyond reasonable doubt of the offense charged. The dispositive portion of the decision reads as follows:

"WHEREFORE, judgment is hereby rendered:

(a) Finding the accused Michael J. Butler guilty beyond reasonable doubt of the crime of murder qualified by abuse of superior strength and there being proven the aggravating circumstance of treachery and outraging or scoffing at the corpse of the deceased, not offset by any mitigating circumstance, the Court hereby sentences him to DEATH;

(b) Ordering the accused to indemnify the heirs of the deceased Enriquita Alipo alias "Gina Barrios" the sum of TWENTY FOUR THOUSAND (P24,000.00) PESOS; and

(c) Ordering the accused to pay the litigation expenses and the costs of the proceedings.

Let a copy of this decision be furnished His Excellency President Ferdinand E. Marcos and the Honorable Secretary of Justice, Vicente Abad Santos, for their information and guidance.

SO ORDERED."

On December 17, 1976, a motion for new trial was filed by the accused-appellant. Said motion assailed the decision of the court a quo on the ground that a serious error of law was committed prejudicing his substantial rights. The accused-appellant alleged in said motion that he was a minor at the time the offense was allegedly committed, and having invoked his minority, he was entitled to the suspension of the sentence pursuant to P.D. 603, Art. 192 before its amendment by P.D. 1179 on August 15, 1977.

The motion for new trial was denied on January 25, 1977. A motion for reconsideration was subsequently filed which was also denied.

A petition for mandamus was thereafter filed with this Honorable Court praying, among other things, that an order be issued commanding respondent judge to set aside the judgment dated December 3, 1976, to declare the proceedings suspended and to commit the accused-appellant to the custody of the Department of Social Welfare (now Ministry of Social Services and Development) or any other training institution licensed by the government or any other responsible person, in accordance with P.D. 603, Art. 192 before its amendment by P.D. 1179 on August 15, 1977.

On December 13, 1978, a minute resolution was issued by this Honorable Court dismissing the petition for mandamus for lack of merit.

On May 26, 1981, accused-appellant filed in the present appeal, a manifestation and motion dated May 19, 1981, praying that the certified certificate of live birth of the accused-appellant be admitted to form part of the evidence. On June 4, 1981, this Honorable Court resolved to admit the same to form part of the evidence.

The accused-appellant made six (6) assignments of errors in his brief, and seven (7) supplemental assignments of errors in his supplemental brief. In essence, however, the issues can be reduced into the following:

- Whether or not the trial court erred in giving full credence to the testimony of the prosecution witnesses;
- Whether or not the trial court erred in admitting in evidence the alleged extra-judicial admission of the accused (Exh. H) and appreciating it against him;
- Whether or not the trial court erred in finding the accused guilty of the crime of murder qualified by abuse of superior strength, with aggravating circumstances of treachery and scoffing at the corpse of the victim;
- Whether or not the trial court erred in appreciating treachery and abuse of superior strength simultaneously and separately;
- Whether or not the trial court erred in accepting the testimony of Dr. Angeles Roxas, the Medico-Legal Officer, that asphyxiation by suffocation was the cause of death of the victim;
- Whether or not the trial court erred in denying the accused the benefits of Section 192 of P.D. 603 before its amendment by P.D. 1179 on August 15, 1977;

The first issue is whether or not the trial court erred in giving full credence to the testimony of the prosecution witnesses.

Under the issue, the accused-appellant contends that the court a quo erred in giving full credence to the testimony of the prosecution witnesses.

The rule is well-established that the findings and conclusions of the trial court on the credibility of the witnesses are matters that are left mainly to its discretion because it is the trial court which observed the demeanor and the manner of testimony of the witnesses and, therefore, the trial court is in a better position to assess the same than the appellate court. As a matter of established jurisprudence, the findings of the trial court on the credibility of a witness are not disturbed on appeal unless there is a showing that it failed to consider certain facts and circumstances which would change the same.[7]

This Court rules that the court a quo did not err in giving credence to the testimony of the prosecution witnesses. There were three (3) persons who identified the accused as the person last seen with the victim on the night in question, namely Emelita Pasco, the maid, Lilia de la Paz, the entertainer-friend of the victim, and Rosemarie Juarez, another friend of the victim.

The finger print examination showed that one of the three fragmentary latent prints lifted from the cellophane wrapping of the figurine used in striking the victim was identical with the accused's left middle finger print on thirteen (13) points.

As to the contention that the findings of the medico-legal officer were inadequate and inconclusive, We rule that the accused-appellant failed to present clear and positive evidence to overcome the scientific and specific finding and conclusion of said officer. The details of such findings and conclusions will be discussed herein later.

The second issue is whether or not the trial court erred in admitting in evidence the alleged extra-judicial admission of the accused (Exh. H) and appreciating it against him.

Counsel for the accused-appellant questions the regularity of how the arrest of the accused was made and the regularity of how warning of the accused-appellant's constitutional rights were given. Counsel contends that Sec. 20, Art. IV (Bill of Rights) of the New Constitution which embodies the constitutional rights of the person under custodial investigation against self-incrimination, and the doctrine laid down in the classic case of *Miranda vs. Arizona*[8] have been violated.

Thus, accused-appellant maintains in his brief:

"In the Miranda case, the accused was arrested by the police and taken to a special interrogation room where he signed a confession which contained a typed paragraph stating that the confession was made voluntarily with full knowledge of his legal rights and with the understanding that any statement he made might be used against him. It will be noted that the prosecution's EXHIBIT "H" and all the submarkings thereunder was obtained from the accused-appellant under precisely similar conditions as in the Miranda case. He was taken from his ship by Naval Intelligence Service special agents and roughly handled from the very start. Before he could even get his bearings, he was immediately handcuffed and told that he was a primary suspect in a very serious offense - murder. And then, before giving him any of the warnings called for under the above-quoted guidelines provided by the Miranda case, was questioned about the alleged offense which he was being suspected even while awaiting transportation to the Office of Naval Intelligence. At the Office of Naval Intelligence, the accused-appellant was placed in a special interrogation room and left alone for a little while. When he was finally joined again by NIS Investigators, he was merely given the standard mimeographed warning and told to sign the same without even so much as explaining to him the contents and significance of the mimeographed form which he was being asked to sign. The accused-appellant was never informed that whatever statements he may give might be used against him in a trial before a Philippine court and was never really given the opportunity to consult with a lawyer, whether military or civilian. The interrogation of the accused-appellant then proceeded and lasted all day without giving him the opportunity to rest. And then, in the preparation of said statement (EXHIBIT "H") a yeoman of the NIS investigator did the typing and typed only those portions of the interrogation session which the NIS investigator told him and which turned out to be incriminating to the accused-appellant. The NIS interrogation could be easily characterized as a police-dominated incommunicado interrogation. This type of interrogation is precisely the kind which was severely criticized by the Miranda doctrine."[9]

Accused-appellant further argues:

"The evidence clearly shows that the Naval Intelligence agent who interrogated the accused-appellant (special Agent Cox) employed precisely the police interrogation procedures described by the U.S. Supreme Court in the Miranda case, i.e. interrogation in privacy of their special interrogation room (incommunicado questioning) in unfamiliar surroundings, employing deceptive stratagems, and failure or inadequate warning of his rights to counsel and to remain silent etc., thereby breaking down his will power by failing to allow him some rest or respite. It is in this obviously police-dominated surrounding that the accused finally succumbed to the oppressive atmosphere of the dogged and persistent questioning of the Naval Intelligence interrogator and finally gave the questioned statement (EXHIBIT "H") just to get it over with."[10]

We reject accused-appellant's contention and argument. Contrary to what the counsel for the accused-appellant contends, there is no evidence showing that the accused was roughly handled from the very start. Neither is there any evidence to prove that he was first handcuffed and informed that he was a suspect in a murder case before he was warned of his rights.

The manner of arrest as testified to by witness Jerry Witt, which was not controverted, was as follows:[11]

"Q - Will you tell how you make arrest of a serviceman on board a ship?

A - We went to the USS HANCOCK to contact the legal officer and told him that one of his crew members is a suspect in a murder case and we went to talk to him.

Q - And what did the legal officer do?

A - They tried to locate him.

Q - Were you with the group who located Michael Butler?

A - Yes.

Q - Who were with you?

A - Watrous, the legal officer, ship master whose name I do not know.

Q - After you found Michael Butler, where was he brought?

.....

Q - When Michael Butler was brought to the legal office, what happened?

A - I identified myself, showed my credentials and said he was a suspect in a murder case, that it is his right to remain silent and his right to a lawyer. He was informed of the crime and asked him to put up his arm against the wall, we made body search to look for possible weapon. He had some kind of tools, handcuffed him and took him to our office.

Q - Did he refuse?

A - He was very submissive.

Q - Why did you make him face the wall and search him?

A - Normal procedure.

Q - And did he ever resist?

A - No.

Q - How about being handcuffed?

A - Not at all.

Q - And this manner of searching and handcuffing, was it done in the presence of the legal officer?

A - Yes."

It is clear that there was no manhandling on the part of the accused. Neither could it be deduced from the events which transpired on board the ship that there was any moral coercion exerted to break his will. It should also be noted that as early as this time, the accused-appellant had already been informed of his constitutional rights. On this point, NISRA investigator James Cox on direct examination said:

"Q - Prior to your interrogation being an investigator, what are the requisites in your talking to the suspect?

A - By identifying myself to him, advising him of his rights, of his constitutional rights.

Q - And this advise of his rights are reduced to writing?

A - Yes.

Q - And is this done to Michael Butler?

A - Yes.

Q - And you said that prior to your interrogating Michael Butler you have warned him of his constitutional rights and his rights under the Uniform Code of Military Justice, and the same reduced to writing. . . I will withdraw.

Q - You said that the interrogation on Mr. Butler has been reduced to writing, I have here a three-page statement of Michael Butler, will you tell what is the relation of this to the statement you have taken on Michael Butler?

A - This is the statement I took from Michael Butler, on AUGUST 8, 1975.

.....

Q - You said that you warned the accused of his rights under the military code of justice, is this embodied in the statement?

A - Yes.

Q - Will you please point to the statement, where is it? (Witness pointing to the first half upper portion of page one of Exh. "A" motion)

.....

Q - And do you know if the accused understood his rights as warned by you?

A - He said he did.

Q - Do you have evidence that he understood the warning you gave in connection with his rights?

A - I asked him if he understood, he said yes. I asked him if he needed a lawyer, he said no, and put his initial in my presence."[12]

On cross-examination, witness Jerry Witt declared:

"Q - You did not stay long in the office of the legal officer after he was brought in?

A - No.

Q - In short, the only thing that happened in the legal office is that he was searched, had his body to the wall and handcuffed him?

A - He was warned.

Q - But at that time there was no interrogation?

A - Right.

Q - And he did not say anything?

A - I do not remember him saying anything.

Q - Was the warning given before he was handcuffed?

A - That was the very first thing.

Q - Do I understand that you gave him the warning in the deck?

A - Down in the legal office, I do not want to embarrass him, I did it in private.

Q - In the presence of Watrous?

A - Yes, and the legal officer.

Q - How long after you said this warning before you handcuffed him?

A - Two or three minutes.

Q - And after you handcuffed him you did not reiterate your warning anymore?

A - No more, just to come with us."[13]

Neither are We convinced of the accused-appellant's assertion to the effect that the "police-dominated incommunicado interrogation" at NISRA office morally coerced him to sign the "mimeographed warning" and to give the extra-judicial admission. While it may be true that a considerable span of time elapsed from the moment the accused was brought to the NISRA office to the time the interrogation was begun and reduced to writing, there is no competent evidence presented to support the allegation that the statement made by the accused was a result of pressure and badgerings. In the absence of such competent evidence, that argument remains to be a mere speculation which cannot be made to prevail over what the prosecution witnesses have established and which have not been successfully controverted.

We agree with the court a quo that the Miranda doctrine finds no application in this case. As the court a quo observes:

"The Miranda Doctrine does not apply in this case as the accused had already waived his right to remain silent and to counsel after he was duly informed of said rights by his investigators. The Court is not persuaded by the claim of the accused as there is no reliable evidence to support it except his naked testimony that he was threatened and coerced, which allegation was contradicted and negated by the fact that he signed and

initialed each and every page of Exhibit H, showing no signs of tremor as a result of the maltreatment, threats or coercion. The naked denial of the accused regarding the preparation of Exhibit H cannot overwhelm the true and positive testimonies of the prosecution witnesses James Robert Beaver and James Creaturo, James Cox and Jerry Witt as there appears no visible indication for his fellow Americans to fabricate their declarations and testify falsely against the accused. Besides, it is a well-settled rule that in weighing conflicting testimonies, greater weight must be generally given to the positive testimonies of the witnesses, for the prosecution than the denials of the accused."

The third issue is whether or not the trial court erred in finding the accused guilty of the crime of murder qualified by abuse of superior strength, with aggravating circumstances of treachery and scoffing at the corpse of the victim.

The prosecution maintains that there is abuse of superior strength as can be deduced from the fact that the victim was slender, only 4'11" in height while the accused is about 6 feet tall and 155 lbs.; that the accused took advantage of this unequal physical condition when he struck the victim with the figurine which made the victim unconscious, after which he shoved and pressed the victim's mouth and nose against the bed mattress.[14]

On the other hand, it is the defense counsel's contention that the court a quo erred in appreciating the qualifying circumstance of abuse of superior strength because like treachery, nocturnity and evident premeditation, this circumstance has to be deliberately and purposely utilized to assure the accomplishment of the criminal purpose without risk to the offender which might arise from the defense that the victim might offer. The defense counsel further maintains that there is no evidence to support that advantage was taken by the accused of his superior strength as, contrary to what the court a quo said in its decision, there was no evidence nor testimony on the part of the medico-legal officer to the effect that when the victim was hit by a figurine, she went into a coma, then her head was pushed by a pillow, causing her nose and mouth to be pressed against the bed mattress. In addition to this, the defense counsel further maintains that the instrument used by the accused, which was a brittle porcelain statue of Jesus Christ, could not produce physical injury nor render the victim unconscious as testified to at cross-examination by the medico-legal officer.

In *People vs. Bustos*,[15] this Court held that to be properly appreciated, it must be shown that the accused is physically stronger than the victim or the relative strength of the parties must be proved. In *People vs. Casillar*,[16] this Court said that the essence of this circumstance is that advantage is taken by the offender of this physical strength which is relatively superior to that of the offended party. The fact that the offender is strong does not of itself prove its existence.[17]

Still, in *People vs. Cabiling*, a guideline to determine whether or not there is abuse of superior strength has been laid down. In that case this Court ruled:

"To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. This circumstance should always be considered whenever there is notorious inequality of forces between aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. To properly appreciate it, not only is it necessary to evaluate the physical conditions of the protagonists or opposing forces and the arms or objects employed by both sides, but it is also necessary to analyze the incidents and episodes constituting the total development of the event."[18]

In the light of the above legal precepts and considering the evidence adduced, this Court holds that there was an abuse of superior strength attending the commission of the crime. It is not only the notorious advantage of height that the accused had over his hapless victim, he being 6 feet tall and weighing 155 lbs. while the girl was only 4 ft. 11 inches tall, but also his strength which he wielded in striking her with the figurine on the head and in shoving

her head and pressing her mouth and nose against the bed mattress, which pressure must have been very strong and powerful to suffocate her to death and without risk to himself in any manner or mode whatsoever that she may have taken to defend herself or retaliate since she was already struck and helpless on the bed, that convinced Us to find and rule that the crime committed is murder with the qualifying circumstance of abuse of superior strength.

The evidence on record, however, is not sufficient to show clearly and prove distinctly that treachery attended the commission of the crime since there was no eyewitness account of the killing. The extra-judicial confession of the accused merely stated, thus: "I thought she was going to do something dangerous to me so I grabbed her, and we started wrestling on the bed. She grabbed me by the throat and I picked up a statue of Jesus Christ that was sitting on the bedside stand and I hit her in the head. She fell flat on her face." Although the figurine was found broken beside her head, the medical report, however, do not show any injury or fracture of the skull and no sign of intracranial hemorrhage.

While We reject the presence of treachery, We, however, find and sustain the finding of the lower court that the aggravating circumstance of outraging or scoffing at the corpse of the deceased applies against the accused since it is established that he mocked or outraged at the person or corpse of his victim by having an anal intercourse with her after she was already dead. The fact that the muscles of the anus did not close and also the presence of spermatozoa in the anal region as testified to by Dr. Angeles Roxas, the medico-legal officer, and confirmed to be positive in the Laboratory Report, Exhibit "B-1", clearly established the coitus after death. This act of the accused in having anal intercourse with the woman after killing her is, undoubtedly, an outrage at her corpse.

It is true as maintained by the defense that the aggravating circumstance of outraging at the corpse of the victim is not alleged in the information and that the lower court found it had been proved but its contention that the said aggravating circumstance should not have been appreciated against the accused is without merit. And this is so because the rule is that a generic aggravating circumstance not alleged in the information may be proven during the trial over the objection of the defense and may be appreciated in imposing the penalty (*People vs. Martinez Godinez*, 106 Phil. 597). Aggravating circumstances not alleged in the information but proven during the trial serve only to aid the court in fixing the limits of the penalty but do not change the character of the offense. (*People vs. Collado*, 60 Phil. 610, 614; *People vs. Campo*, 23 Phil. 368; *People vs. Vega*, 31 Phil. 450; *People vs. Domondon*, 64 Phil. 729)

On the claim of the defense that the accused is entitled to the benefits of Section 192 of P.D. 603 before its amendment by P.D. 1179 on August 15, 1977, the records disclose that at the time of the commission of the crime on August 8, 1975, said accused was seventeen (17) years, eleven (11) months and four (4) days old, he having been born on September 4, 1957 in Orlando, Florida, U.S.A. The records further disclose that during the consideration of the defense's motion to suppress the extra-judicial confession (Exhibit "H") the accused declared that he was eighteen (18) years old as evidenced by the certification issued by Vice Consul Leovigildo Anolin of the Consul General of the Philippines in New York City dated November 14, 1975 (Exhibit "1"-Motion). According to the trial court, notwithstanding the presentation of Exhibit "1"-Motion, the accused did not make any serious effort to invoke Article 192 of Presidential Decree 603 and further, since the accused was found guilty of a capital offense, the suspension of sentence and the commitment of the accused to the custody of any institution or person recommended by the Department of Social Welfare cannot be carried out.

On December 17, 1976, an Urgent Motion for New Trial was filed by the defense on the ground that a serious error of law was committed during the trial prejudicial to the substantial right of the accused and newly discovered evidence which would probably change the judgment of the court. The trial court denied the motion for lack of merit as well as the subsequent Motion for Reconsideration and Second Motion for Reconsideration.

Thereupon, the records of the case were ordered immediately forwarded to the Supreme Court for automatic review pursuant to law.

At the time of the commission of the offense, trial and rendition of judgment, the applicable law was P.D. 603 otherwise known as Child and Youth Welfare Code. The relevant provisions of the said law to the instant case are Articles 189 and 192 which provide the following:

"Art. 189. Youthful Offender. Defined. — A youthful offender is one who is over nine years but under twenty-one years of age at the time of the commission of the offense.

A child nine years of age or under at the time of the offense shall be exempt from criminal liability and shall be committed to the care of his or her father or mother or nearest relative or family friend in the discretion of the court and subject to its supervision. The same shall be done for a child over nine years and under fifteen years of age at the time of the commission of the offense, unless he acted with discernment, in which case he shall be proceeded against in accordance with Article 192.

The provisions of Article 80 of the Revised Penal Code shall be deemed modified by the provisions of this Chapter.

Art. 192. Suspension of Sentence and Commitment of Youthful Offender. — If after hearing and the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him, the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court, upon application of the youthful offender, if it finds that the best interest of the public as well as that of the offender will be served thereby, may suspend all further proceedings."

The trial court refused to consider and appreciate the minority of the accused because the proof submitted by the defense was not duly authenticated as required by the Rules of Court under Section 25 of Rule 132, said proof being merely a certification issued by Consul Leovigildo Anolin of the Consulate General of the Philippines in New York City, U.S.A. that the attached document is a xerox copy of the original birth certificate of Michael Jerome Butler issued by the Department of Health and Rehabilitation Service, State of Florida, U.S.A. shown by Mr. Butler's mother, Mrs. Ethel Butler. (Exhibit "1", "1-A")

After the lower court had ordered the records of the case forwarded to the Supreme Court for automatic review on January 25, 1977, as stated earlier accused-appellant filed on August 25, 1978 a petition for mandamus in G.R. No. L-48786 entitled "Michael J. Butler, minor, assisted by Lt. Commander Charles T. Riedel, U.S. Navy (guardian ad litem) vs. Hon. Regino T. Veridiano, et al." praying that respondent judge be ordered and commanded to set aside the judgment of conviction, to declare the proceedings suspended and order the commitment of the accused pursuant to Article 193, P.D. 603. The petition was denied by Us for lack of merit in Our Resolution of December 13, 1978.

Subsequently, however, the required proof was submitted as annexes to the defense' Manifestation and Motion to Admit (Certified Copy of Certificate of Live Birth) filed May 26, 1981 in the instant proceedings (See Records, pp. 137-141). In Our Resolution of June 4, 1981, We admitted the certified copy of the Certificate of Live Birth of accused-appellant to form part of the evidence.

We do not agree with the reasoning of the trial court that the accused had not invoked the privilege granted under Article 192 of P.D. 603 before its amendment because the records manifestly show the vigorous plea of the accused for its application not only in the Motion for New Trial but also in the Motion for Reconsideration filed by the accused (See pp. 237-248, 261-271, Records of Criminal Case No. 2465, People vs. Michael J. Butler, CFI of Zambales, Branch I, Olongapo City). We hold and rule that the lower court erred in not applying the provisions

of Article 192 of P.D. 603 suspending all further proceedings after the court had found that the accused had committed the acts charged against him, determined the impossible penalty including any civil liability chargeable against him. The trial court should not have pronounced judgment convicting the accused, imposing upon him the penalty of death.

We likewise hold that the penalty of death was not justified. Since murder was committed by the accused, under Article 248 of the Revised Penal Code, the crime is punishable by reclusion temporal in its maximum period to death. The accused is a minor and he is entitled to the privileged mitigating circumstance of minority which reduces the penalty one degree lower and that is prision mayor in its maximum period to reclusion temporal in its medium period, or ten (10) years and one (1) day to seventeen (17) years and four (4) months. (Article 68, Revised Penal Code). With one aggravating circumstance, that of outraging at the corpse of the victim, the penalty impossible is the maximum period which is reclusion temporal medium or fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Imposing the Indeterminate Sentence Law, the impossible penalty is eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum.

We find in the records the Order of the Honorable Regina T. Veridiano II, Presiding Judge of the Court of First Instance of Zambales, Branch I at Olongapo City, committing the accused in the custody of the Commander, U.S. Naval Base, Subic Bay, Philippines dated December 3, 1976, "(p)ending the finality of judgment rendered in the above-entitled case, pursuant to the provisions of Para. 5, Article 13 of the Revised Base Military Agreement." (p. 190, original records).

After the appeal had been submitted for decision pursuant to Our Resolution of November 20, 1980, the accused-appellant, through counsel, filed a Verified Motion to Dismiss Case Under P.D. 603 praying that an order be issued "(1) Dismissing the case against accused-appellant; (2) Ordering the immediate discharge of accused-appellant; (3) Granting accused-appellant such other relief as may be deemed just and equitable in the premises," alleging:

"IV

"8) During his entire period of continued imprisonment in the BRIG, from August 11, 1975 to the present, accused-appellant has behaved properly and has shown his capability to be a useful member of the community. Documentary proofs of these are as follows:

(a) Official Report of the BRIG Commander, U.S.N., Subic Naval Base, attached hereto as Annex "A" and made an integral part hereof;

(b) Progress Report filed with this Honorable Court on November 6, 1980, by the Ministry of Social Services and Development, Olongapo City Branch, found on pp. 113-114, of the Rollo, and attached hereto as Annex "B" and made an integral part hereof. Thus:

'Based on the informations we gathered thru interviews and observations, we would like to recommend to the Hon. Supreme Court, that Michael Butler be given a chance to enjoy his life fully outside the jail, thus promoting his best interest and welfare.'

(c) Progress Report with annexes, dated February 18, 1981, filed on March 4, 1981, by the Ministry of Social Services and Development, Olongapo City Branch, found on pp. 128-131 of the Rollo, a xerox copy of which is hereto attached as Annex "C" and made an integral part hereof. Thus:

'In view of the fact that Mr. Michael Butler is now fully rehabilitated, it is our recommendation that he be given an opportunity to live happily and prove himself outside the Brig.'

(d) Diploma awarded by the University of La Verne, California, U.S.A., to accused-appellant as evidence of his having completed a course in Behavioral Science, on January 24, 1981, while he was a prisoner in the BRIG. A xerox copy of said Diploma and that of the accompanying group photograph showing a picture of accused-appellant taken on the occasion of the commencement exercises, are hereto attached as Annexes "D" and "D-1", respectively, and made integral parts hereof. The originals are found on p. 133 of the Rollo. (The original of his transcript of record is also hereto attached as Annex "E")

V

"9) Under the foregoing facts and circumstances, and while it is now a legal and physical impossibility to place accused-appellant under the care and custody of the Ministry of Social Services and Development which was what should have been done in the beginning under P.D. 603, it is submitted that accused-appellant's unfortunate situation could still be remedied and salvaged. . . .as justice now demands. . . .and that is, by treating accused-appellant's imprisonment in the BRIG, as equivalent to what should have been his full period of commitment under the care and custody of the Ministry of Social Services and Development. After all, and as said Ministry has reported, it has been regularly visiting accused-appellant at his cell in the BRIG, and, is, therefore, in a position to attest to the exceptional behavior of accused-appellant."

Counsel for the People opposes the Motion to Dismiss on the following grounds: 1- That the dismissal for lack of merit by this Court of the petition for mandamus earlier filed and docketed as G.R. L-48788 barred the accused from raising or litigating anew the issue of his minority; 2- That an offender is not entitled to the benefit of suspension of sentence if at the time of trial he could no longer qualify as a minor offender for purposes of the rule on suspension of sentence because of his age, citing the cases of *People vs. Capistrano*, 92 Phil. 127 and *People vs. Estefa*, 86 Phil. 104; and 3- That under Section 192, P.D. 603, as amended, accused-appellant is not entitled to the benefit of suspension because he was convicted of an offense punishable by death, considering that the retroactive application to him of Articles 189 and 192, P.D. 603 as amended by P.D. 1179 may not be assailed because said articles are procedural in nature and there is no vested right in rules of procedure.

We find no merit to the opposition of the People. Our dismissal of the mandamus petition in G.R. L-48788 which was for lack of merit due to the insufficient proof of minority of the accused is no bar to raising the same issue in the instant automatic review of the case after We had admitted the proper authentication of the accused's birth certificate "to form part of the evidence." (See Resolution of June 4, 1981, rollo). The second ground is likewise without merit for the accused was below 21 years at the time of his trial and even at the time judgment was promulgated to him on December 3, 1976 (he was then 19 years, 3 months and 3 days old). Neither does the third ground hold water because P.D. 603 was amended on May 15, 1977, which was after the trial and conviction already of the accused. The amendment passed during the pendency of the appeal and it cannot adversely affect the right, privilege or benefit accorded to the minor for suspension of the sentence under the original provision of Article 192 of P.D. 603 which reads as follows:

"Art. 192. Suspension of Sentence and Commitment of Youthful Offender. — If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such minor to the custody or care of the Department of Social Welfare, or to any training institution operated by the government, or duly licensed agencies or any other responsible person, until he shall have reached twenty-one years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare or the agency or responsible individual under whose care he has been committed.

The youthful offender shall be subject to visitation and supervision by a representative of the Department of

Social Welfare or any duly licensed agency or such other officer as the Court may designate subject to such conditions as it may prescribe."

P.D. 1179, Section 2 and made effective August 15, 1977 amended Articles 192 and 193 of P.D. 603 by adding as its penultimate paragraph the following:

"The benefits of this article shall not apply to a youthful offender who has once enjoyed suspension of sentence under its provisions or to one who is convicted of an offense punishable by death or life imprisonment." (Italics supplied)

The lower court having erred in not suspending the sentence of conviction against the accused-appellant who is entitled thereto under the original provisions of Article 192 of P.D. 603, We agree with the defense plea that the "accused-appellant's imprisonment in the BRIG, (be treated) as equivalent to what should have been his full period of commitment under the care and custody of the Ministry of Social Services and Development. After all, and as said Ministry has reported, it has been regularly visiting accused-appellant at his cell in the BRIG, and is, therefore, in a position to attest to the exceptional behavior of accused-appellant."

We have examined carefully the documentary proofs attached to the appellant's Motion to Dismiss showing that from August 11, 1975 to the present, accused-appellant has behaved properly and has shown his capability to be a useful member of the community, and these are (a) Official Report of the BRIG Commander, U.S.N., Subic Naval Base; (b) Progress Report filed with this Court on November 6, 1980 by the Ministry of Social Services and Development, Olongapo City Branch; and (c) Progress Report with annexes dated February 18, 1981 filed on March 4, 1981 by the Ministry of Social Services and Development; and (d) Diploma awarded by the University of La Verne, California, U.S.A. showing completion of a course in Behavioral Science, on January 24, 1981, while he was a prisoner in the BRIG. The Final Report prepared and submitted by the Supervising Social Worker of the Ministry of Social Services and Development dated September 14, 1981 was subsequently filed with Us and it states as follows:

"FINAL REPORT

In compliance with the request of the Legal Office, U.S. Naval Base, the Ministry of Social Services and Development, Olongapo City Branch Office respectfully submits this final report on the progress of the behavior of the above-mentioned youth.

Michael Jerome Butler has been detained at the Naval Station Brig of the U.S. Naval Base for a period of six years now. Since his detention, he has been visited and was given counselling by the Social Worker.

While in confinement, he was assigned to the Brig's Library, Coffee Mess and at present at the Administrative Office. At the Administrative Office, he is responsible in keeping the records on file, typing various forms and correspondence and forms reproduction. The present Brig Officer said that Prisoner Butler works well requiring limited supervision as he sets and pursues goals in an organized manner. He can be relied upon to complete an assigned task in a timely manner. He also performs all janitorial work required for the above-mentioned spaces.

He gets along very well with the Brig's Staff and other confinees and he goes out of his way to help other confinees adjust to confinement and to rehabilitate themselves.

He made use of his time in the Brig constructively and on January 29, 1981, he graduated at the La Verne College with the degree in Behavioral Science. This was made possible thru his self-determination, diligence, courage and interest. He also takes an active part in promoting health and physical fitness to all confinees as well as staff.

Confinee Butler is not only involved in assisting and helping his co-confinee but also gives financial support to

a disabled person in the person of Benjamin dela Cruz and to his (Butler) mother who is in United States.

Mr. Butler has been incharge of the complete operation of the Brig's Library and he kept it well stocked and completely clean and neat. He also taken the duties of a Coffee Mess and had accomplished the job expertly.

He was given a task within the compound that only trusted confinee would be given and had carried them with zest.

His personal appearance and uniforms are always in accord with the Navy standard.

With the above findings and Mr. Butler's desire to start life anew, this Final Report is submitted.

Prepared and Submitted by:

(SGD.) ELOISA A. GARCIA

Supervising Social Worker

14 Sept. 1981

Noted by:

(SGD.) JUANITA B. LAFORTEZA

City Social Welfare Officer"

From these reports, We are fully satisfied that the accused-appellant has behaved properly and has shown his capability to be a useful member of the community. It is of no moment that the accused had not been specifically committed by the court to the custody or care of the Department of Social Welfare then, now the Ministry of Social Services and Development, or to any training institution operated by the government or duly-licensed agencies as directed under Article 192 of P.D. 603. At any rate, the Commander of the U.S. Naval Base in Subic Bay to whom the accused was committed in the Order of December 3, 1976 pending the finality of judgment rendered in the case pursuant to the provisions of paragraph 5, Article 13 of the Revised Base Military Agreement, may be considered a responsible person to whom the accused may be committed for custody or care under the said Article 192 of P.D. 603. What is important is the result of such custody and care showing his conduct as well as the intellectual, physical, moral, social and emotional progress made by the accused as shown in the favorable recommendation of the Supervising Social Worker of the Ministry of Social Services and Development who had visited him regularly and given counselling. We hereby approve the recommendation of the Ministry that "Michael Butler be given a chance to enjoy his life fully outside the jail, thus promoting his best interest and welfare" (Progress Report dated October 27, 1980); "that Mr. Michael Butler is now fully rehabilitated, it is our recommendation that he be given an opportunity to live happily and prove himself outside the Brig" (Progress Report dated February 18, 1981); "with the above findings and Mr. Butler's desire to start life anew, this Final Report is submitted." (Final Report dated September 14, 1981).

The dismissal of the case against the accused Michael Butler is, therefore, meritorious and justifiable. We hereby order his final discharge therefrom. His final release, however, shall not obliterate his civil liability for damages in the amount of P24,000.00 to the heirs of the victim which We hereby affirm. Such release shall be without prejudice to the right for a writ of execution for the recovery of civil damages. (Article 198, P.D. 603).

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the case against the accused-appellant Michael J. Butler is hereby DISMISSED and We hereby order his final discharge from commitment and custody. The civil liability imposed upon him by the lower court shall remain.

Costs de oficio.

Motion To Dismiss granted.

SO ORDERED.

Fernando, C.J., Concepcion Jr., De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Teehankee, J., took no part.

Makasiar, J., I join the dissent of Justice Aquino.

Aquino, J., see dissent.

Abad Santos, J., I reserve my vote.

[1] t.s.n., pp. 2, 4-5, 7, July 21, 1976.

[2] t.s.n., pp. 207-209, 210-213, 218, July 14, 1976.

[3] t.s.n., pp. 215-217, July 14, 1976.

[4] t.s.n., pp. 90-91, 97-98, 100-102, 121-122, 125, May 5, 1976.

[5] t.s.n., pp. 255-258, 260-261, 264, 276, 293, July 28, 1976; t.s.n., pp. 10-11, 12-14, 17-22, May 10, 1976; t.s.n., pp. 37-38, 39-42, May 12, 1976.

[6] t.s.n., pp. 3-4, 8-16, 18-21, 26-31, May 3, 1976.

[7] People vs. Molledo, L-34248, Nov. 21, 1978, 86 SCRA 66.

[8] 384 U.S. 436.

[9] Accused-Appellant's Brief, pp. 15-17.

[10] Accused-Appellant's Brief, pp. 21-22.

[11] t.s.n., pp. 25-27, Sept. 22, 1976.

[12] t.s.n., pp. 7-9, Sept. 22, 1976.

[13] t.s.n., pp. 29-31, Sept. 22, 1976.

[14] Plaintiff-Appellee's Brief, p. 24.

[15] 51 Phil. 385.

[16] 30 SCRA 352.

[17] People vs. Apduhan, 24 SCRA 798.

[18] People vs. Cabiling, 74 SCRA 285, pp. 303-304.

DISSENTING OPINION

AQUINO, J.:

I concur in the finding that Michael J. Butler, an American Negro serving as a seaman in the U.S. Navy since February 3, 1975 (he was born on September 4, 1957), committed murder on August 8, 1975 when he killed a hostess, Enriquita Alipo, 26, a native of Bugasong, Antique, in her residence at 8 Fontaine Street, Olongapo City, as proven by his extrajudicial confession (Exh. H) which was corroborated by evidence of the corpus delicti (Exh. D).

That confession was admissible in evidence, although it was taken during custodial interrogation, when Butler was not assisted by counsel, because he voluntarily, knowingly and intelligently waived in writing his constitutional rights to have counsel and to remain silent. Such waiver is allowed (*Miranda vs. Arizona*, 16 L. Ed. 2nd 694).

Butler's confession shows that the murder was qualified by abuse of superiority. It was not aggravated by the circumstance of outraging or scoffing at her person or corpse. The trial court appreciated that aggravating circumstance because of the testimony of Doctor Angeles Roxas, the medico-legal officer, that Butler had anal intercourse with the victim after her death.

Doctor Roxas based his conclusion on the fact that the victim's anus was partly open and contained spermatozoa. He said that the anus would have completely closed had the intercourse occurred while the victim was still alive.

On the other hand, Butler in his confession said:

"I rolled the girl over and made love to her. (By this I mean I engaged in sexual intercourse with her from the rear.) My intention was to screw her in the vagina. If I screwed her in the rectum, I didn't intend to.

"After we finished, I rolled over and went back to sleep again . . . When she and I engaged in sexual intercourse, I reached a climax while my penis was in her. (Exh. H)."

The trial court conjectured that "Butler not satisfied with a normal vaginal intercourse demanded from the deceased (hospitality girl) an anal intercourse. Upon being refused, the accused infuriated into a demonic frenzy, took hold of a saint figurine, knocked his victim unconscious, smothered her to death with a pillow and after she was dead, performed anal coitus with the dead person."

In my opinion the speculations of the medico-legal officer and the trial judge that there was posthumous sodomy are unwarranted. The prosecution is bound by Butler's confession. He indicated therein that he had sexual intercourse with the victim from the rear when she was alive and not after her death. He alleged that the squabble over his five-peso bill, which the victim took without his consent, was the cause of the fight which he had with the victim.

Consequently, the circumstance of having outraged or scoffed at the victim's corpse cannot be appreciated in this case.

The confession also proves that Butler did not intend to commit so grave a wrong as that which he committed and that he was intoxicated at the time the killing was perpetrated.

Taking into account the privileged mitigating circumstance of minority, the penalty imposable on Butler should be lowered by one degree. He is entitled to an indeterminate sentence.

He should be sentenced to a penalty of five years of prision correccional maximum as minimum to eleven years of prision mayor as maximum.

The trial court did not suspend the sentence of the accused although he was below eighteen years of age when he killed the victim because he did not ask for a suspended sentence and he had committed a capital offense.

On December 17, 1976, or a few days after the trial court promulgated its judgment sentencing Butler to death, when he was already 19 years, three months and thirteen days old, his counsel filed a motion for new trial wherein he asked that he be given a suspended sentence. The trial court denied the motion. That incident was terminated in the lower court when it issued an order on May 3, 1977, denying Butler's second motion for reconsideration.

Thereafter, the record of the case should have been elevated to this Court without delay for automatic review of the death penalty. But, inexplicably, the record was received in this Court more than twenty-two months later, or on March 30, 1979.

Before the elevation of the record, Butler on August 25, 1978 filed in this Court a petition for mandamus wherein he prayed that the trial court be ordered to set aside its judgment of conviction, to suspend the proceedings and to commit Butler to the custody of the Department of Social Welfare or any correctional institution pursuant to article 192 of the Child and Youth Welfare Code before it was amended by Presidential Decree No. 1179.

This Court in its minute resolution of December 13, 1978 dismissed the petition for lack of merit (Butler vs. Judge Veridiano II, L-48786).

It is incontrovertible that Butler was seventeen years, eleven months and four days old when he killed the victim. Had he not contested the validity of his confession (an exercise in futility) and had he pleaded guilty and asked for a suspended sentence, he could have been entitled to the benefits of article 192 of the Child and Youth Welfare Code (applicable to minors below twenty-one years of age) before it was amended by Presidential Decree No. 1179 which took effect on August 15, 1977. The text of article 192 is as follows:

"ART. 192. Suspension of Sentence and Commitment of Youthful Offender.- If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such minor to the custody or care of the Department of Social Welfare, or to any training institution operated by the government, or duly licensed agencies or any other responsible person, until he shall have reached twenty-one years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare or the agency or responsible individual under whose care he has been committed.

"The youthful offender shall be subject to visitation and supervision by a representative of the Department of Social Welfare or any duly licensed agency or such other officer as the Court may designate subject to such conditions as it may prescribe."

Presidential Decree No. 1179 reduced the age of youthful offenders to less than eighteen years (similar to the original provision of article 80 of the Revised Penal Code) and amended article 192 by requiring that the youthful offender should apply for a suspended sentence and that the suspension of the sentence should be allowed only when public interest and the interest of the minor would be served thereby.

The amendment also provided that there should be no suspension of the sentence of (1) one who once enjoyed the suspension of sentence under article 192, (2) one who is convicted of an offense punishable by death or life imprisonment and (3) one who is convicted for an offense by military tribunals.

The text of article 192, as amended by Presidential Decrees Nos. 1179 and 1210 (effective on October 11, 1977) is as follows:

"ART. 192. Suspension of Sentence and Commitment of Youthful Offender.- If after hearing the evidence in the proper proceedings, the court should find that the youthful offender has committed the acts charged against him, the court, shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court upon application of the youthful offender and if finds that the best interest of the public as well as that of the offender be served thereby, may suspend all further proceedings and commit such minor to the custody or care of the Department of Social Services and Development or to any training institution operated by the government or any other responsible person until he shall have reached twenty-one years of age, or for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Services and Development or the government training institution or responsible person under whose care he has been committed.

"Upon receipt of the application of the youthful offender for suspension of his sentence, the court may require the Department of Social Services and Development to prepare and submit to the court a social case study report over the offender and his family.

"The Youthful offender shall be subject to visitation and supervision by a representative of the Department of Social Services & Development or government training institution as the court may designate subject to such conditions as it may prescribe.

"The benefits of this article shall not apply to a youthful offender who has once enjoyed suspension of sentence under its provisions or to one who is convicted of an offense punishable by death or life imprisonment or to one who is convicted for an offense by the Military Tribunals."

But he assailed the admissibility of his confession under Section 20, Article IV of the Constitution. He even filed a motion for new trial on the ground of newly discovered evidence tending to prove that the victim was killed by her husband.

On September 24, 1981, Butler filed in this Court a verified motion to dismiss the case on the ground that he had been illegally deprived of his right to a suspended sentence and to be committed to a correctional institution, as prescribed in the Child and Youth Welfare Code.

It was alleged that since August 11, 1975 Butler has been confined in the Subic Bay Naval Station Brig (stockade). He even enrolled in one of the schools of the La Verne College in the Subic Naval Base and finished the course in Behavioral Science.

I dissent from the ponente's opinion that Butler should have been given a suspended sentence and that, by reason of his good behavior while confined in the Subic Naval Base Stockade, he should now be released and discharged.

Butler has taken inconsistent positions. His ambivalence is the cause of his having lost the right to ask for a suspended sentence. His repudiation of his confession and his plea of not guilty are inconsistent with his contention that he should have been given a suspended sentence, a remedy which presupposes that he is guilty.

Because Butler is now twenty-five years old, the question of whether he is entitled to a suspended sentence has become moot and academic. He is no longer a juvenile offender.

He should be made to serve his sentence of five years of prision correccional as minimum to eleven years of prision mayor as maximum. The most that can be done for him is to give him full credit for his confinement in the stockade, a period already exceeding the minimum of his indeterminate sentence, and to give him a conditional pardon or release him on parole.

This Court has ruled in several cases that where the accused was below eighteen years at the time he committed a crime but he was over eighteen years at the time of his trial or conviction, he is not entitled to a suspended

sentence (People vs. Casiguran, L-45387, November 7, 1979, 94 SCRA 244, 249).

If at the time the case is decided by this Court, the accused is no longer a minor, with more reason, he is not entitled to a suspended sentence.

Thus, where on May 14, 1963, when the robbery with homicide was committed, Teresita Nolasco, one of the accused, was 15 years and five months old, and the trial court did not suspend her sentence but convicted her, this Court in its decision dated December 19, 1970, affirmed the judgment of conviction and imposed on her the proper penalty after giving her the benefit of the privileged mitigating circumstance of minority (People vs. Espejo, L-27708, 36 SCRA 400, 425. See People vs. Parcon, L-39121, December 19, 1981, 110 SCRA 425; People vs. Labrinto, L-43528-29, October 10, 1980, 100 SCRA 299; People vs. Capistrano, 92 Phil. 125; People vs. Celespara, 82 Phil. 399; People vs. Nuñez, 85 Phil. 448).

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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