

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIOSDADO DE GUIA, ACCUSED-APPELLANT.

G.R. No. 59876. August 31, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

This case came before us on automatic appeal from a decision of the then Court of First Instance of Zambales, Branch 2, Iba, imposing the death penalty upon the accused in Criminal Case No. 1456-I.

The accused-appellant was charged with the crime of murder in an information which read as follows:

"That on or about the 21st day of July, 1981, in Barangay San Agustin, in the municipality of Iba, province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a deadly weapon, to wit: A bolo, with intent to kill, and with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, hack and wound one Narciso Gonzales, thereby inflicting upon the latter, the following injuries, to wit:

1. Hypolemic shock;
2. Wound, hacking, depressed, penetrating cranial cavity, about 15 cm. left maxilla to temporal area with bleeding thru left ear;
3. Wound, hacking, depressed, penetrating cranial cavity, about 10 cm. right occipital area extending to the neck;
4. Wound, hacking, deep, 10 cm. left posterior chest wall;
5. Chip fracture, left scapula;
6. Wound lacerated, superficial about 3 cm. long left posterior chest wall;
7. Wound lacerated, superficial, interrupted, about 7 cm. left posterior chest wall;
8. Wound, lacerated, superficial about 3 cm. left posterior chest wall

which injuries directly caused the death of said Narciso Gonzales." [1]

The facts of this case as found by the trial court are set out in the evidence for the prosecution, since counsel for the defense did not present any evidence:

"Evidence for the prosecution

EMMA VALDEZ, medical records clerk of the President Ramon Magsaysay Memorial Hospital, testified on and identified the certificate of death (Exhibit 'A') and the medico-legal Certificate (Exhibit 'B'), both signed and issued by Dr. Linda Fabunan.

NOEL MONTEFALCON, a farmer, testified that he and Narciso Gonzales plowed a parcel of land in Sitio

Marangla, Barangay San Agustin, Iba from eight to ten o'clock in the morning on July 21, 1981. Thereafter, they went to the house of Nena Abrigo, also in Barangay San Agustin, arriving thereat at around eleven o'clock. Nena Abrigo requested them to clean pieces of fish called 'ke-ey'. While they were cleaning fish at the kitchen, Diosdado de Guia (a person identified earlier by the witness) entered 'from behind' and began hacking Narciso Gonzales. He and Narciso Gonzales were standing, cleaning fish, when the latter was hacked by Diosdado de Guia. Diosdado de Guia hacked Narciso Gonzales several times, hitting the latter on the left face, at the back of the head, and on the middle portion of the back. With his wounds, Narciso Gonzales ran to the roof of a shed for firewood to hide, but Diosdado de Guia continued looking for him.

He had to scamper away from the place (he was then around ten meters away from the shed), because Diosdado de Guia also went after him. Later, he hailed a mini-bus, because he wanted to bring Narciso Gonzales to the hospital. Narciso Gonzales was able to board the mini-bus, but he failed to follow suit because Diosdado de Guia chased him. As a matter of fact, Diosdado de Guia hacked anew Narciso Gonzales on the back -- in the presence of many persons -- while the latter was boarding the mini-bus, thereby spurring the vehicle to speed away. He succeeded in evading any tragedy by outrunning Diosdado de Guia. He was investigated by police officer Warlito Quinto in connection with the case, which investigation was reduced to writing (Exhibit 'A'). He affirmed the contents of his sworn statement and identified the signature thereon.

EUDIAS ABRIGO, a housekeeper in San Agustin, testified that she knew the accused, Diosdado de Guia, and the victim Narciso Gonzales, the former being a barangay mate in San Agustin, while the latter being a helper at the house of her mother, Nena Abrigo. The house of her mother is around twenty meters from here. Narciso Gonzales was hacked to death by Diosdado de Guia (the person whom he (sic) had earlier identified inside the courtroom). As a result, she and her mother incurred expenses to the tune of P2,800.00 (Exhibit 'D-1-a'). Of said amount, P1,800.00 went to the funeral parlor, while P1,000.00 was spent for food and beverages during the wake (Exhibit 'D-1').

The defense counsel conformed to all the evidence formally offered by the prosecution. Also, he did not present any evidence to substantiate his verbal prayer for leniency."^[2]

After presentation of evidence by the prosecution, the defense not having presented any evidence for the accused-appellant, the trial court rendered a decision on 5 April 1982 finding the accused Diosdado de Guia guilty beyond reasonable doubt of the crime of murder and sentencing him to death, and to indemnify the heirs of Narciso Gonzales in the sum of P12,000.00 apart from paying expenses incurred by Eudias Abrigo in the amount of P2,800.00, plus costs.

Accused-appellant de Guia, through his new counsel de oficio, Atty. Reynaldo T. Mempin, alleged in his brief that the trial court erred in:

"I

x x x failing to exercise the solicitous care in seeing to it that when an accused pleads guilty he understands clearly and fully the meaning of his plea and/or the effects of an affirmative plea thereto, especially considering that he changed his plea four times;

II

x x x failing to appreciate the nature of the accused's final plea of 'guilty' which was not unequivocal as he attempted to qualify it, through counsel, by saying 'there is a little bit frustration which tended to be the killing of the victim,' and that he denied he did it 'with evident premeditation' and 'with treachery'.

III

x x x not ascertaining the age, occupation and education of the accused, and other facts which would guide this Honorable Supreme Court in determining whether he acted with discernment in pleading guilty.

IV

x x x failing to consider that no sufficient evidence was presented in support of the material allegations of the information, including the circumstances of treachery and evident premeditation, for the purpose of establishing beyond reasonable doubt the guilt of the accused and the nature and extent of the penalty to be imposed, considering that the accused was charged with capital offense."[3]

The foregoing assigned errors may be compressed into two (2):

- (1) Whether or not the trial court had erred in accepting appellant's allegedly improvident plea of guilty; and
- (2) Whether or not the trial court had erred in finding that appellant had committed the crime of murder and in finding the presence of qualifying circumstances of treachery and evident premeditation.

I

It is vigorously claimed by defense counsel that the trial court had failed to apprise the accused fully of the meaning and consequences of a plea of guilty to a charge of murder, with treachery and evident premeditation being alleged as qualifying circumstances.

The record shows that accused-appellant was arraigned four (4) times and entered four (4) different pleas:

- (1) 7 September 1981 - Accused, assisted by his original counsel de oficio Atty. Roberto Ferrer, initially pleaded "not guilty";
- (2) 17 September 1981 - Accused, assisted by the same counsel, pleaded "guilty";
- (3) 8 November 1981 - Accused, still assisted by the same counsel, pleaded "not guilty"; and
- (4) 11 January 1982 - Accused, assisted by a new counsel de oficio Atty. Dionisio D. Dizon, once more changed his plea to "guilty".

1. First Change of Plea:

from "not guilty" to "guilty"

When first arraigned, on 7 September 1981, appellant pleaded not guilty to the offense charged in the information. However, when trial commenced ten (10) days later, i.e., on 17 September 1981, and the first witness for the prosecution, Noel Montefalcon, had just stated his personal circumstance and had just identified the accused in open court, appellant's de oficio counsel Atty. Ferrer manifested to the trial court that his client had acknowledged to him (Atty. Ferrer) his guilt and his desire to enter a plea of guilty. The trial court warned Atty. Ferrer that the plea of guilty would no longer be considered as a mitigating circumstance since the prosecution had already started presenting its evidence. Atty. Ferrer nonetheless asked for re-arraignment. Accordingly, the information was, for the second time, read to the accused?appellant by the court interpreter who translated the same into Zambal, a language understood by the accused-appellant. Thus --

"x x x x x x x x x x

ATTY. FERRER:

Your Honor, I have confronted with the accused in this case and he intimated to me that he really killed the victim in this case and he is entering a plea of guilty.

COURT:

But Atty. Ferrer, take note that the prosecution has already started presenting his evidence and so there will be no mitigating circumstance of a plea of guilty here.

ATTY. FERRER:

Well, if your Honor please, anyway that is just the personal circumstances.

x x x x x x x x

COURT:

Let the accused be re-arraigned on condition that he will enter a plea of guilty.

The accused is being re-arraigned and the Court Interpreter is reading the information and translating in the Zambal dialect, the dialect understood by the accused.

To be sure of the plea of the accused; in this information, you are charged with having willfully, unlawfully and feloniously attack, hack and wound one Narciso Gonzales thereby inflicting on him injuries which are mentioned to you by the Court Interpreter, do you admit that accusation of the provincial Fiscal in this information?

The Court Interpreter is now translating the question propounded by the Court to the accused in Zambal.

A: Ya po.

COURT:

And the accused answered, 'yes, sir'.

x x x x x x x x"[4]

In addition to clarifying its position that the new plea of guilty would not be considered a mitigating circumstance, the trial court propounded additional questions to the accused relating to the assault and killing of the deceased Narciso Gonzales with treachery and evident premeditation, as follows:

"Q: And you did that act of attacking, hacking and wounding Narciso Gonzales wilfully and voluntarily with intent to kill?

A: Yes, sir.

Q: And that you did the act of attacking and hacking Narciso Gonzales with evident premeditation and treachery? Make it on record that the defense counsel is explaining in Zambal the meaning of evident premeditation and treachery. Make it on record that the counsel even asked in Tagalog if the accused understands evident premeditation.

The accused answered 'yes, sir'.

And treachery?

Make it on record that the defense counsel is explaining the word treachery with the client.

The accused answered 'yes, sir'.

And that this incident happened on the 21st day of July, 1981 in Barangay San Agustin, Iba, this province?

The question is being translated in Zambal by the defense counsel.

Yes, sir.

Q: And that the injuries that you have inflicted caused the death of Narciso Gonzales, do you admit that fact also?

A: Yes, sir.

COURT:

What is your recommendation, Fiscal?

FISCAL NACIN:

We are recommending if your Honor please the maximum period which is death, under Article 248 of the Revised Penal Code, considering that the accused changed his plea of not guilty to that of 'guilty' only after the prosecution had begun to present its evidence.

COURT:

No mitigating circumstance."^[5]

We note in this connection that while the trial court, with some ostentation, made of record that the information was read to the accused-appellant in the Zambal dialect, and that counsel de oficio explained in Zambal to the accused-appellant "the meaning of evident premeditation and treachery" and that defense counsel asked in Tagalog as well whether accused-appellant understood "evident premeditation," the trial judge himself did not undertake to explain to accused-appellant the meaning and consequences of a change of his plea to one of guilty. The trial judge appeared concerned solely with the technical question of whether the entry of a plea of guilty would, under the circumstances here, make available a mitigating circumstance to the accused. More specifically, the trial judge made no effort to explain to the accused in ordinary day-to-day language the meaning of "treachery" and "evident premeditation" which are, of course, terms of legal art.

2. Second Change of Plea:

from "guilty" to "not guilty"

Notwithstanding the change of the original plea of not guilty to one of guilty, the prosecution continued to present evidence. Trial was resumed on 21 September 1981 with Emma M. Valdez, the Medical Records Clerk at the President Ramon Magsaysay Memorial Hospital where the victim had expired, presenting the death certificate and a medico legal certificate of the victim. At this point, defense counsel moved for suspension of the hearing upon the ground that the accused-appellant "was suffering from mental illness" and asked for re-arraignment.^[6] The trial court required defense counsel to submit evidence concerning the claimed mental illness of accused-appellant. Such evidence was, however, never presented. Nonetheless, the trial court, because of the appellant's claim to the exempting circumstance of insanity, arraigned the accused-appellant for the third time. On 9 November 1981, appellant with the assistance of Atty. Ferrer pleaded not guilty to the offense charged in the information. On 13 November 1981, the prosecution continued presenting the testimony of Noel Montefalcon.

3. Third Change of Plea:

from "not guilty" to "guilty"

On 8 January 1982, a scheduled date for hearing, Atty. Ferrer failed to appear and was promptly held in contempt by the trial court. The trial court just as promptly appointed Atty. Dionisio D. Dizon as new counsel de oficio for

appellant. Atty. Dizon then moved for deferment of the hearing.

Three days later, on 11 January 1982, Atty. Dizon moved for another change of plea from not guilty to guilty. The trial court granted the motion in open court and the accused was arraigned for the fourth and last time:

"COURT:

There was a manifestation last Friday that you are going to study of what transpired.

ATTY. DIZON:

May I be heard, your Honor. Considering the gravity of the offense charged against the accused, your Honor, I have a conference with him in the Provincial jail this morning and I advised him to change his former plea of not guilty to guilty and the accused is willing to enter a plea of guilty, your Honor, but I have to present the accused why he killed Narciso Gonzales, the victim in this case.

COURT:

That will be qualified.

ATTY. DIZON:

We will prove the mitigating circumstance, your Honor.

COURT:

So that will not be a plea of guilty already because he is going to interpose a mitigating circumstance.

ATTY. DIZON:

The accused is willing to withdraw the former plea of not guilty, your Honor, and enter a plea of guilty.

COURT:

Re-arraign the accused. Please inform him that he will not be entitled to any mitigating circumstances. The plea of guilty will no longer be a mitigating circumstance because the prosecution had started presenting the evidence here.

The warning is being explained by the counsel of the accused.

Make it on record that the information is being read to the accused in the Zambal dialect by the trial fiscal.

FISCAL NACIN:

The accused, after reading to him and translating to him in the Zambal dialect the information and which he understands entered a plea of guilty of the crime of murder, appearing on page 46 of the Record.

COURT TO ACCUSED:

Q: You are charged in the information with having attacked, hacked, and wounded Narciso Gonzales with intent to kill and with evident premeditation and treachery and as a result of your action, injuries were inflicted on said person. Do you admit having done these acts of attacking, hacking and wounding and killing Narciso Gonzales?

A. Yes, sir. I admit that.

Q. You admit that you did the killing of Narciso Gonzales with evident premeditation?

A. No, sir.

COURT:

That would be inconsistent that he is entering a plea of not guilty.

ATTY. DIZON:

Yes, sir. Because of the charge of evident premeditation. Your Honor please, as we have stated earlier, the aggravating circumstances mentioned in the information, one of these aggravating circumstances will qualify the same to murder. So I have to present the accused in the witness stand not necessarily to prove in fact but as I have interviewed him this morning, he intimated to me that there is a little bit frustration which tended to be the killing of the victim.

COURT:

So that is contrary because of his plea he is going to admit.

Q. About treachery, did you do it with treachery?

A. No, sir.

COURT:

So what will qualify now? The accused said 'no'.

Make it on record that the counsel is conferring with the client considering the inconsistency in his plea denying particularly premeditation and treachery.

Q. Now, will you please ask the accused if he did the act of killing Narciso Gonzales with evident premeditation?

A. Yes, I planned the killing.

Q. Did you do it with treachery?

A. Yes, sir.

COURT:

Make it on record that everything was answered by the accused voluntarily without anyone forcing him.”[7]

Once again, the trial court's concern appeared to be limited to the narrow question of the availability or non-availability of the mitigating circumstance (of plea of guilty). The trial judge did not himself try to inform or advise the accused as to the consequences of pleading guilty to having killed the deceased Narciso Gonzales with both premeditation and treachery. More particularly, the trial court judge did not himself try to convey to appellant, in popular language that the appellant might be supposed to have understood, the meaning of evident premeditation and treachery as circumstances that would qualify the killing to murder and so aggravate the penalty as to attract the maximum penalty of death. There is nothing on the record, that would indicate that Atty. Dizon was able to explain the implications of admitting the presence of the circumstances of treachery and evident premeditation. The probability that the accused-appellant did not understand the technical consequences of admitting evident premeditation and treachery is underscored by the fact that the appellant when first asked by the trial court whether he admitted having killed Narciso Gonzales "with evident premeditation," denied having done so. Again, when the judge asked appellant whether he had killed Gonzales "with treachery", appellant denied that he did so. Indeed, appellant changed his tune, as it were, only after his counsel, Atty. Dizon, upon suggestion of the court, conferred with his client concerning the "inconsistency of his plea." Apparently, the trial court was not prepared to accept a plea of guilty to an offense not involving an admission of evident premeditation and

treachery. Clearly, Atty. Dizon wanted to claim and prove the presence of a mitigating circumstance. But, the trial court apparently believed that that would result in a qualified or conditional plea of guilty which he would have been required to consider as a plea of not guilty.[8]

This Court has in the past earnestly enjoined trial judges 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 an inevitable conviction.[9] In *People v. Alamada*,[10] this Court found that the trial court had failed to observe that quantum of care that the Court had consistently prescribed for the valid admission of a plea of guilty by an accused, and set aside the judgments of conviction and remanded the cases back to the trial court for new arraignment. The Court said:

"First, the trial court did not at all explain to the defendant the nature of the charges against him, especially the allegations regarding conspiracy, treachery, evident premeditation and abuse of superior strength, which are terms so technical that the laymen, especially an unschooled one like the accused, cannot possibly understand without proper elucidation. Neither did the trial court inform the defendant of the gravity of the consequences of his plea of guilty. And, more significantly, the trial court neglected to ask him his reasons for withdrawing his former plea of not guilty and substituting in its place that of guilty. That the defendant was aided by counsel de oficio is of no moment, especially where such counsel wanted the hearing of the two criminal cases postponed due to their 'gravity' (an admission that he was not ready to proceed), and expressed his preference to continue instead with the hearing of another case in which he was obviously a counsel de parte." (Citations omitted; underscoring supplied)

We agree with the defense counsel that the trial court and the previous de oficio counsel of accused-appellant had not exercised enough solicitous care to insure that the accused here had fully understood the nature and consequences of his final plea of guilty. More specifically, we believe and so hold that whether the accused-appellant fully comprehended the meaning and effects of "evident premeditation" and "treachery" and the impact upon the characterization of the crime committed and the penalty properly entailed by such crime, is open to reasonable doubt. If many members of the Bar are unable promptly to call into mind the technical requisites of "treachery" and "evident premeditation" as qualifying and aggravating circumstances, there is no reason for supposing that the accused-appellant, a farmer by occupation, understood such elements and requisites upon the basis of a few minutes of whispered advice from counsel de oficio in open court. We cannot, in other words, regard the plea of guilty as an admission of the presence of treachery and evident premeditation as alleged in the information.

II

It is true that the prosecution did not rely wholly upon the initial change of plea by the accused-appellant from "not guilty" to "guilty". Thus Noel Montefalcon, who was with the deceased Narciso Gonzales when the latter was attacked and assaulted with a bolo, continued his testimony in the course of which he explicitly identified accused-appellant as having hacked and slashed Narciso Gonzales with a sharp bolo. Eudias Abrigo, the third witness presented by the prosecution, also testified that Narciso Gonzales was hacked to death by accused-appellant.[11] But the testimony of Abrigo was obviously hearsay on this point and should not have been admitted by the trial court. Even so, the testimony of Noel Montefalcon, an eyewitness, is quite enough evidence, independently of the admission by accused-appellant made in open court, to show beyond reasonable doubt that accused had indeed hacked to death Narciso Gonzales. There is not, however, enough evidence, in our belief, to show also beyond reasonable doubt that the killing of Narciso Gonzales had indeed been attended by the circumstances of evident premeditation and treachery. The admissions in open court by the accused made in the course of improvidently twice changing his plea from not guilty to guilty, cannot make up for such deficiency.

For treachery or alevosia to be considered as either a qualifying circumstance that would change the nature of the

crime or as a generic aggravating circumstance that would augment the proper penalty, the following requisites must be shown to concur:

(1) The accused employed means, methods, or forms of execution which tended directly and specially to insure the offender's safety from any defensive or retaliatory act on the part of the offended party, that, in other words, the offended party was given no opportunity to defend himself or to retaliate or to respond to the attack upon him; and

(2) That such means, method or manner of execution was deliberately chosen by the offender.[12]

In the light of these requisites, it will be seen that the suddenness of the attack might not in and of itself be sufficient to show the presence of treachery. In the instant case, Noel Montefalcon testified that accused-appellant had entered the kitchen of Nena Abrigo, where the witness and Narciso Gonzales stood before a stove or cooking pot cleaning fish when accused-appellant entered the kitchen "from behind". Montefalcon went on to say as follows:

"Q: What part or parts of Narciso's body that was or were hacked?

A: Here, sir (witness touching his left face). (tsn, p. 6, Nov. 13, 1981)

Q: And how many times was Narciso Gonzales hacked by accused Diosdado de Guia?

A: He was hacked here (witness touching his left face) and another here, sir (witness touching the back of his head) and here, sir (witness touching his middle part of his back) and he was hacked several times (tsn, p. 7; Brief, p. 41)."[13]

There is, in other words, no testimony that the first hacking blow by the accused-appellant was delivered from behind and directed at the back of Narciso Gonzales. There were, of course, wounds sustained on the back of Narciso Gonzales including the back of his head, but there is no showing which wound or wounds were first inflicted. The wounds on the back of Narciso Gonzales and on the back of his head could well have been caused after the hacking had already commenced as the deceased Gonzales turned to avoid and run away from his attacker. Noel Montefalcon himself fled the instant he realized that the accused was hacking at Narciso Gonzales and would quite possibly attack him also.

Turning to the circumstance of evident premeditation, the only evidence submitted by the prosecution tending to show that accused had conceived of the attack some time before actual execution thereof, was the testimony of Noel Montefalcon that he and Narciso Gonzales on their way from the field they had been plowing to the Abrigo house, encountered and passed by accused Diosdado de Guia and that the latter had at some distance after passing them, shouted at them and brandished his bolo at them. Approximately an hour later, accused attacked Narciso Gonzales in the Abrigo kitchen. We believe that this evidence, standing alone, is inadequate to show the presence of evident premeditation: there was no showing of the time when the accused had determined to commit the crime; there was no proof of an overt act manifesting that the accused had clung to his determination; and there was, finally, no demonstration that enough time had lapsed between conception and execution to allow accused to reflect upon the consequences of his acts.[14] As is well-known, it is not only the central fact of a killing that must be shown beyond reasonable doubt; every qualifying or aggravating circumstance alleged to have been present and to have been attended such killing, must similarly be shown by proof beyond reasonable doubt. We do not find such proof here. Indeed, the very savageness of the attack upon Narciso Gonzales suggests that the attack was preceded not by cold calculation and design but rather by powerful emotions.

Finally, the Court would commend defense counsel de oficio Atty. Reynaldo T. Mempin for the high dedication he has shown in this case to the cause of justice and the protection of the rights of his client and for the care and

diligence with which he discharged his duties to this Court and to his client.

WHEREFORE, the Decision rendered by the trial court on 5 April 1982 is hereby VACATED and a new decision is hereby ENTERED finding the accused-appellant Diosdado de Guia guilty beyond reasonable doubt of the crime of homicide, there being no aggravating nor mitigating circumstance present. Accused-appellant is hereby SENTENCED to an indeterminate term of imprisonment the minimum of which shall be ten (10) years of prison mayor and the maximum of which shall be seventeen (17) years and four (4) months of reclusion temporal. In addition, accused-appellant shall indemnify the heirs of Narciso Gonzales in the amount of P30,000.00, and pay compensatory damages incurred by Eudias Abrigo in the amount of P2,800.00. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Record on Appeal, p. 41; Rollo, pp. 129-130.

[2] Decision, Trial Court; Rollo, pp. 131-133.

[3] Brief for the Appellant, pp.12-13; Rollo, pp. 84-85.

[4] TSN, 17 September 1981, pp. 3-4; underscoring supplied.

[5] Id., pp. 4-6; underscoring supplied.

[6] TSN, p. 5, September 21, 1981.

[7] TSN, 11 January 1982, pp. 2-4.

[8] The trial court would be in error here: *People v. Yturriaga*, 86 Phil. 534 (1978); *People v. Ong*, 62 SCRA 174 (1975).

[9] *People v. Solacito*, 29 SCRA 61 at 61-62 (1969).

[10] 52 SCRA 103 (1973). See also *People v. Ybañez, et al.*, 61 SCRA 468 (1974); *People v. Estabia*, 40 SCRA 90 (1971); *People v. Aguilar*, 37 SCRA 115 (1971); *People v. Englatera*, 34 SCRA 245 (1970); *People v. Tilos*, 30 SCRA 734 (1969); *Longao v. Fakat*, 30 SCRA 866 (1969); *People v. Arpa*, 27 SCRA 747 (1969); *People v. Villas*, 27 SCRA 947 (1969); *People v. Apduhan*, 24 SCRA 798 (1968).

[11] TSN, 11 January 1982, p. 1.

[12] Art. 14. par.6, Revised Penal Code. *People v. Estillore*, 141 SCRA 456 (1986); *People v Regular*, 108 SCRA 23 (1981); *People v. Samonte*, 68 SCRA 70 (1975); *People v. Leal*, 40 SCRA 550 (1971); *U.S. v. Balagtas*, 19 Phil. 114 (1911).

[13] Rollo, pp. 120-121.

[14] *People v. Lim*, 71 SCRA 249 (1976); *People v. Boduso*, 60 SCRA 61 (1974).

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