

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT AND ANGELITO ALIVIA Y ABALOS, RESPONDENTS.

G.R. Nos. 66939-41. January 10, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision of respondent Intermediate Appellate Court (IAC), now Court of Appeals (CA), in AC-G.R. No. SP-01320-22 promulgated January 24, 1984, granting the petition for bail of accused Angelito Alivia y Abalos and nullifying the Orders of the trial court, dated February 23, 1983 and May 13, 1983 in Criminal Cases Nos. 1272-74, entitled People of the Philippines vs. Angelito Alivia y Abalos. Said orders of the trial court denied accused's application for bail holding that the accused Angelito Alivia is charged with three (3) capital offenses, the evidence of guilt of which, in each case, is strong.

Accused Angelito Alivia y Abalos was charged before the then CFI of Isabela with the crimes of (1) assault upon on agent of person in authority with murder with the use of illegally possessed firearm, with respect to the killing of Lt. Cesar Rumbaoa, (Crim. Case No. 1272), (2) assault upon an agent of person in authority with murder with use of illegally possessed firearm (Crim. Case No. 1274) and (3) murder of Atty. Norberto Maramba with the use of illegally possessed firearm, (Crim. Case No. 1273). The trial court ordered the consolidation of the three (3) criminal cases since they arose from the same incident. The Provincial Fiscal recommended no bail for the accused in the three aforementioned cases. Accused filed an omnibus motion praying among other things that he be allowed bail contending that the evidence of his guilt is not strong, but said motion was denied by the trial court. Upon denial of his Motion for Reconsideration, accused filed with the IAC a petition for certiorari questioning the decision of the trial court on his motion for bail. After considering the records of the criminal cases which were transmitted to it from the trial court, the IAC promulgated a decision granting petitioner bail and nullifying the Orders of the trial court dated February 23, 1983 and May 13, 1983 and fixing the amount of bail at Eighty Thousand Pesos (P80,000.00). After denial of petitioner's motion for reconsideration, the present petition was filed.

The facts as found by the trial court, which facts were adopted by respondent IAC,[1] are as follows:

"At the recently concluded barangay elections for barangay Saranay, Cabatuan, Isabela, two candidates ran for the position of Barangay Captain thereat, namely accused Angelito Alivia and one Antonio Bogausan. Herein accused lost in that election, but he filed with the Municipal Circuit Court of Cabatuan, an election protest. Antonio Bagausan was duly proclaimed and he assumed office accordingly. The late former Municipal Judge of Cabatuan, Atty. Norberto Maramba (Criminal Case No. 1273) was counsel for the protestee. (tsn., pp. 27-28, November 16, 1982).

"The hearing of the election protest was set in the morning of June 4, 1982, but was postponed. After which, at about 10:00 o'clock that same morning, the late Atty. Maramba invited witness Virgilio Yanuaria, the late Police Lt. Cesar Rumbaoa (Criminal Case No. 1272), Antonio Bagausan and others to play bowling/billiards

at the Cabatuan Recreation Center. They played up to 2:00 o'clock in the afternoon of the same day with the bet that the loser will pay the beer they will order. (tsn., pp. 28-29, *ibid*).

"Later, the late Atty. Maramba, Police Lt. Rumbaoa and witness Virgilio Yanuaria (Antonio Bagausan did not join them) proceeded to the Azarcon Restaurant at the public market, Cabatuan, Isabela, for lunch. They occupied round table No. 2 (see sketch). The late Police Lt. Rumbaoa was seated on chair No. A, facing west, the late Atty. Maramba, on chair No. B, facing south and witness Virgilio Yanuaria in chair No. C, facing east. They ordered lunch and three (3) bottles of beer, but Atty. Maramba did not drink, because he joined the group of accused Angelito Alivia. (tsn., pp. 20, 29-34, *ibid*)

"It appears that the group of the accused Angelito Alivia arrived at the Azarcon Restaurant much earlier, and the members of the group are (1) Angelito Alivia, accused herein; (2) Municipal Judge Estanislao Cudal; (3) Feliciano Gaspar; (4) Pat. Elpidio Sogun; (5) Pat. Danilo Rosario; (6) Engr. Charlie Martin; (7-8) a newly married couple, not identified. The late Patrolman Elpidio Sagun and witness Pat. Danilo del Rosario also went to the Azarcon Restaurant to buy pansit noodles, but were invited by the accused to join them in their group while drinking beer with chaser (pullutan). Accused Angelito Alivia told Pat. del Rosario to drop by his house and get ammunition for pistol Cal. 38 and Pat. Elpidio Sagun for the armalite magazine. (tsn., pp. 88-93, November 17, 1982).

"The relative positions and sitting arrangements of the two groups as found in the ocular inspection conducted in the morning of November 17, 1982, at the Azarcon Restaurant, Cabatuan are the following (pp. 130-131, record, Crim. Case No. 1272)

"The group of accused Angelito Alivia was the first to arrive at the Azarcon Restaurant, and this group joined two small square tables, identified as square tables Nos. 5 and 6, to form a rectangle.

There are eight (8) of them, namely: (1) accused Angelito Alivia, who seated himself on a stool marked (AA) north of square table No. 5; (2) Pat. Danilo Rosario, was seated on a stool marked (DR) left of accused Alivia, who was facing south, square table No. 5; (3) a man, unknown, occupied a stool marked (UK); (4) further left, by Feliciano Gaspar, occupied a stool marked (FG); (5) exactly opposite the accused, was seated Municipal Judge Estanislao Cudal, marked (EC) on square table No. 6; (6) on his left, was seated the late Pat. Elpidio Sagun, on a stool marked (ES) in square table No. 6; (7) left of Elpidio Sagun, was seated, Engr. Charlie Martin, marked (CM) on table No. 6; and (8) on his left, was the woman, unknown, on square table No. 5, (tsn., pp. 24-29, November 17, 1982).

"The three member group of the late Atty. Maramba, who arrived later, occupied round table NO. 2, namely: (1) the late Police Lt. Cesar Rumbaoa, facing west, occupied chair A; (2) the late Atty. Maramba, facing south, occupied chair B; and (3) witness Virgilio Yanuaria, facing east, occupied chair C. (tsn., pp. 22-23, November 17, 1982).

"The distance from chair B, occupied by the late Atty. Maramba, in round table No. 2, to the tip of square table No. 6, where Judge Cudal was seated is 90 centimeters, and the distance from the seat of accused Angelito Alivia, north of square table No. 5, to the stool of Judge Cudal, which was later occupied by the late Atty. Maramba is around 189 centimeters. (tsn., pp. 19-21, *ibid*)

"Upon arrival at the Azarcon restaurant, the late Atty. Maramba, engaged Municipal Judge Estanislao Cudal in a conversation on topics, among which was about the barangay election. Thereafter, Judge Cudal and Feliciano Gaspar left and proceeded to the municipal building. When Judge Cudal and Gaspar left, the late Atty. Maramba seated himself on the stool formerly occupied by Judge Cudal and engaged the accused Angelito Alivia who was seated opposite north of square table No. 5, at a distance of 189 centimeters facing each other, in a conversation on matters the witness can not remember. (tsn., pp. 30-31, November 17, 1982; tsn., pp. 94-97, November 17, 1982).

"Meanwhile, Pat. del Rosario noticed accused Angelito Alivia go out from the Azarcon Restaurant thru the main door (No. 1) towards the west of the restaurant, where his car was parked three (3) meters from the main door, east (west) side of the restaurant. (tsn., pp. 98-100, November 17, 1982).

"Later, Angelito Alivia returned to his former place. In a little while, Patrolman Danilo del Rosario stood up and went to the municipal building, while the late Patrolman Elpidio Sagun remained inside the restaurant. (tsn., pp. 103-104, November 17, 1982)

"The lunch ordered by the group of the late Atty. Maramba being ready, the late Police Lt. Cesar Rumbaoa called for Atty. Maramba to join them and eat ('kakain na tayo'). Hence, the late Atty. Maramba stood up from where he was then seated with the group of accused Angelito Alivia. However, he was not able to reach round table No. 2 to eat, because he was suddenly shot on the chest (Dr. Angobung) by accused Angelito Alivia using a firearm identified as Llama Automatic Pistol Super 38, SN-532937 (Exh. "K") causing him to fall to the cemented floor. (tsn., pp. 32-34, November 17, 1982)

"While in that lying position, again he was shot on the neck. Both gunshot wounds caused his instantaneous death. Before the second gun report when Virgilio Yanuaria was about to run, the late Patrolman Elpidio Sagun who was on his left pushed Virgilio Yanuaria to save him, using his right hand pressing the left shoulder of Yanuaria. After which, Yanuaria walked crouching passing thru the inside door (No. 3) and went out thru door No. 2, and proceeded to the municipal building to report the incident, after hearing successive gun reports, the number he cannot remember. (tsn., pp. 20-22, 34-35, November 17, 1982)

"Witness Virgilio Yanuaria reported the incident to Cpl. Jose Pascual in the presence of Pat. Danilo del Rosario saying "Lito Alivia shot Atty. Maramba". Immediately, four policemen, namely, Pat. Danilo del Rosario, Pat. Jose Pascual, Pat. Jose Angangan and another one, went to the crime scene. They were later followed by Pat. Celestino Apaya and Pat. Ricardo Pedro. Thereat, they saw the body of the late Police Lt. Rumbaoa (dead already) at the main door (door No. 1) lying face upward, and inside they saw the body of the late Atty. Maramba (dead already) face downward and that of the late Pat. Sagun (still breathing) face upward (tsn., pp. 45-49), November 17, 1982)

"Meanwhile, Dr. Benedicto Acosta, the incumbent Municipal Mayor of Cabatuan, arrived from Ilagan, at about 3:10, afternoon of June 4, 1982. In front of his business residence at Centro, Cabatuan, he was informed by Dr. Rolando Dacuycuy, a brother-in-law of the accused, about the shooting incident. Because he was then riding on his car, he invited him to see the incident, but Dr. Dacuycuy did not get inside the restaurant, while Mayor Acosta went inside to investigate the matter, in his capacity as Chief Executive of the town. (tsn., pp. 237-238, September 21, 1982)

"Inside the restaurant, he saw the owner of the restaurant Mrs. Azarcon, two maids and two dead bodies, identified as those of the late Atty. Maramba and Police Lt. Rumbaoa. He did not see the body of the late Pat. Elpidio Sagun because he was informed that he was then still alive and was rushed to the emergency hospital in Cauayan but died at the junction at Luna, Isabela. In his ocular inspection of the crime scene, he picked up five (5) empty shells (Exhs. "K-2", "K-3", "K-4" "K-5" and "K-6"), the four inside the restaurant, while the other one was recovered outside just in front of the main door. He likewise recovered inside the restaurant one (1) deformed lead/slug (Exh. "K-8") and two (2) lead cores (Exhs. "K-9" and "K-10"). He asked the owner Mrs. Delia Azarcon who shot and killed the late Atty. Maramba and Police Lt. Cesar Rumbaoa and she said it was Angelito Alivia who shot them. Being a doctor himself, he examined the two bodies and found that the late Atty. Maramba suffered two gunshot wounds, one at the left occipital region on the head and one at the interior surface of the scapula (chest) with a bore at his T-shirt. In the case of the late Police Lt. Cesar Rumbaoa, he suffered a gunshot wound at the left maxilla surrounded by blackening discolorations and another wound at the left lateral surface, both of the neck and also a gunshot wound at the right lateral root of the neck. (tsn., pp. 238-250, *ibid*)

"When Pat. Pedro Constancio arrived, Mayor Acosta directed him to call for a photographer and also Dr. Juan

Rigor, Jr., the Rural Health Officer of Cabatuan. Photographer de la Cruz took the pictures and Dr. Rigor examined the cadavers of the two bodies. The pictures taken were developed and Mayor Acosta identified the pictures of the late Police Lt. Cesar Rumbaoa, as Exhs. "P", "P-1", "P-2", and "P-3", appearing on Pages 35-36-A, record, in Criminal Case No. 1272. Similarly, pictures were taken of the dead body of the late Atty. Maramba, duly identified by Mayor Acosta (Exh. "Q", p. 22, record, Crim. Case No. 1273). Later Mayor Acosta called for Pat. Miguel Orodio, INP, Investigator, Cabatuan, Isabela. He also found inside the restaurant one, revolver, inside a tuck in holster. He likewise noticed three (3) bullet marks, one beside the fallen body of Atty. Maramba, another just beneath the head of Police Lt. Rumbaoa and the other at the left side wall of the restaurant. (tsn., pp. 250-274, *ibid*)

"The empty shells and slugs were given to Cpl. Jose Pascual and the latter submitted them to the Police Investigator. These empty shells, cartridge and deformed slugs, together with the Llama automatic pistol Cal. 38 with magazine were later submitted to the NBI, Manila, for ballistic examination, which were examined by Feliciano S. Lunasco, NBI, Supervising Ballistician, and testified in Court that the empty shells, deformed slugs, cartridge and lead cores were fired from the same firearm (Exh. "K"). (tsn., pp. 285-288, September 21, 1982; tsn., pp. 203-210, December 15, 1982)

"Dr. Ruben Angobung, NBI, Medico Legal Officer, testified that he conducted the autopsy examination on the cadaver of the deceased Atty. Norberto Maramba, Police Lt. Cesar Rumbaoa and Pat. Elpidio Sagun upon request of their relatives. The cause of death of each of the three (3) victims was hemorrhage due to gun shot wounds. It was possible that deceased Atty. Maramba and Police Lt. Cesar Rumbaoa were likewise shot when they have already fallen on the cemented floor as evidenced by the gunshot wounds on their heads. He found marks on the head of Police Lt. Rumbaoa which shows that the assailant was shot at close range and the muzzle of the gun used was at a distance of not more than 24 inches from the head. From the trajectory of the gunshot wounds on the head of the deceased Atty. Maramba and Police Lt. Cesar Rumbaoa, it was possible that the assailant was then at the back of said victims (Testimony of Dr. Angobung). (tsn., pp. 86-148, December 1, 1982)

"Immediately after the shooting, the accused Angelito Alivia, accompanied by his uncle and counsel de parte, Atty. Artemio Alivia, voluntarily surrendered to the Provincial Commander, Col. Oscar. M. Florendo, at the PC Headquarters, Calamagui, Ilagan, Isabela. The accused verbally admitted to Col. Florendo that he shot to death the late Atty. Maramba, Police Lt. Cesar Rumbaoa and Pat. Elpidio Sagun, at the Azarcon Restaurant, located at the public marker, Cabatuan, Isabela. In the process, the accused surrendered the firearm, Llama automatic Pistol SN532937 (Exh. "K") which he used in the killing of the three (3) victims. (tsn., pp. 158-167, December 15, 1982)

"In addition to this, the accused executed an extra-judicial confession (Exhs. "J", "J-1" and "J-2"), taken by M/SGT Severino Goday, Jr., PC, in that same afternoon of June 4, 1982, at PC, Headquarters in the presence of his lawyer uncle. He freely and voluntarily admitted having shot to death Atty. Norberto Maramba at Centro, Cabatuan, Isabela, Police Lt. Cesar Rumbaoa and Pat. Elpidio Sagun, both of INP, Cabatuan, at around 2:00 o'clock P.M. of June 4, 1982, inside the Azarcon Restaurant, located inside the public market of Cabatuan, Isabela with the use of Llama automatic pistol Ca. 38, SN-532937 (Exh. "K"). (Testimonies of Col. Oscar M. Florendo and M/Sgt. Severino Goday, Jr., PC). (tsn., pp. 218-225, September 21, 1982)

"C. FACTUAL ANALYSIS

"Counsel for the defense admits that the offenses with which the accused was charged are capital offenses, which carry the supreme penalty of death.

"Eyewitness Virgilio Yanuaria testified that the accused Angelito Alivia suddenly shot the late Atty. Norberto Maramba, when the latter stood up to eat lunch upon call by the late Police Lt. Cesar Rumbaoa. The first gun shot wound was fatal and the victim Atty. Maramba fell to the cemented floor. There is evidence that the

accused again shot the victim while lying down.

"Meanwhile, the late Pat. Elpidio Sagun, who was on his left side, pushed Virgilio Yanuaria on the shoulders to save him and the latter escaped crouching towards the inside door (door No. 3) and exited thru door No. 2, southern portion of the restaurant. He heard several gun reports thereafter, while he proceeded to the municipal building to report the incident to Cpl. Jose Pascual in the presence of Pat. Danilo del Rosario, both INP of Cabatuan, Isabela, and based on this report, police investigators repaired to the scene of the crime immediately thereafter.

"There is no eyewitness presented on the shooting of the other two victims, namely: the late Police Lt. Cesar Rumbaoa and the late Pat. Elpidio Sagun. However, there is evidence that said two victims were likewise shot by the accused Angelito Alivia. The cadavers were examined and the autopsy reports reveal that the cause of death of said two victims was hemorrhage due to gun shot wounds. The five (5) empty shells (Exhs. "K-2", "K-3", "K-4", "K-5", and "K-6") and the two lead cores (Exhs. "K-9" and "K-10"), all recovered at the crime scene (Azarcon restaurant), were subjected to ballistic examination at the NBI, Manila. Witness Feliciano Lunasco, NBI, Supervising Ballistician, Manila, testified that the empty shells, deformed slugs, cartridge and lead cores were fired from the same gun, Llama automatic pistol, Cal. 38 (Exh. "K").

"Mrs. Delia Azarcon, the owner of the restaurant, when interviewed by Mayor Benedict Acosta who arrived at the restaurant upon being informed of the incident that same afternoon not long after the shooting, told the Mayor, that it was the accused Angelito Alivia who shot the three (3) victims, whose bodies lay prostrate on the cemented floor. There were three (3) bullet marks on the cemented floor, one beside the fallen body of the late Atty. Maramba, another just beneath the head of the late Police Lt. Rumbaoa, and the other at the left side wall of the restaurant. Pictures were taken of the cadavers of the late Atty. Maramba (Exh. "Q") and that of the late Police Lt. Rumbaoa (Exhs. "P", "P-1", "P-2" and "P-3", p. 2, and pp. 36-36-A, respectively, record, Crim. Case No. 1272).

"To top it all, accused Angelito Alivia, duly assisted by his lawyer-uncle, immediately after the incident, left for Ilagan and voluntarily surrendered to Col. Oscar M. Florendo, Provincial Commander, PC, Ilagan. In the process, accused surrendered the firearm used, Llama automatic pistol, Cal. 38 (Exh. "K"), and orally admitted to Col. Florendo advised the accused in the presence of his lawyer to have his oral confession reduced in writing, which the accused and counsel agreed. M/Sgt. Severino Goday, Jr., PC Investigator, was tasked to get the statement of the accused, who, when called to testify in Court told the story that the extra-judicial confession (Exh. "J", p. 7, record, Crim. Case No. 1272) was freely and voluntarily given by the accused duly assisted by his counsel.

"There are present, two (2) mitigating circumstances which may be credited in favor of the accused, namely: (1) voluntary surrender and (2) drunkenness probably not habitual, but at this stage of the proceedings as they relate to the legal incident in question, such circumstances may not sway to mitigate the question on bail in favor of the accused. Persuasively, said two mitigating circumstances may have great weight after trial on the merits." (pp. 10-20, Rollo)

Notwithstanding said findings of facts, the IAC ruled that accused is entitled to bail in the amount of P80,000.00 thus nullifying the Orders of the trial court, dated January 23, 1983 and May 15, 1983. Hence, this petition with the following assigned alleged errors:

I. Respondent Intermediate Appellate Court gravely erred in holding that the evidence of guilt of accused is not strong, contrary to the findings of the trial court.

II. Respondent Intermediate Appellate Court gravely erred in holding that Lt. Cesar Rumbaoa and Pat. Elpidio Sagun were not in the official performance of their duties as peace officers at the time of the incident; and

III. Respondent Intermediate Appellate Court gravely erred in relying on the resolution in the case of

"Montano vs. Ocampo" which is not controlling.

(p. 21, rollo)

The contentions of petitioner are well-taken. The crimes charged are clearly capital offenses as the phrase is defined in Sec. 5 Rule 114 of the Rules of Court. An offense is capital, if it may be punished by death under both the law prevailing at the time of its commission and that prevailing at the time of the application for bail, even if after conviction a penalty less than death is imposed. In its assailed decision, respondent IAC concurred with the trial court that the charges against accused are capital offenses and that the evidence of guilt of the accused is strong. However, the respondent Court ruled that while the evidence clearly established that the petitioner[2] "was responsible for the shooting of Atty. Maramba, Lt. Rumbaoa and Patrolman Sagun and he so admitted responsibility for their death in his confession" the crime is ostensibly that of homicide merely, not murder.

The criterion to determine whether the offense charged is capital is the penalty provided by the law regardless of the attendant circumstances. As pointed out by the petitioner in its memorandum, the rationale of the provision lies in the difficulty and impracticability of determining the nature of the offense on the basis of the penalty actually imposable. Otherwise, the test will require consideration not only of evidence showing commission of the crime but also evidence of the aggravating and mitigating circumstances. Thus, there has to be not only a complete trial, but the trial court must also already render a decision in the case. This defeats the purpose of bail, which is to entitle the accused to provisional liberty pending trial."[3]

The posture taken by the respondent Court in granting bail to the accused and in disregarding the findings by the trial court of the guilt of the accused (respondent herein) is a clear deviation from Our ruling laid down in the case of Bolanos vs. dela Cruz, to wit:

"Under the Constitution, all persons shall, before conviction, be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. It is the trial court which is tasked to determine whether or not the evidence of guilt is strong and it has determined the affirmative in this case after consideration of the evidence already presented by the prosecution. In the absence of manifest abuse of discretion, We are not prepared to substitute our judgment for that of the trial court." Bolanos vs. Dela Cruz, supra) (Underscoring supplied for emphasis) (p. 164, rollo)

Anent the issue of whether or not the deceased Lt. Rumbaoa and Pat. Sagun were killed while in the performance of their duties, the evidence shows that while both were admittedly in civilian clothes during the incident in question they were in the performance of their duties as police officers when fired upon and killed by the bullets of the accused. As peace officers, their initial reaction to the shooting was to assert their authority in protecting and covering civilians from the indiscriminate firing by the accused. Accused instead suddenly and without warning, successively shot Lt. Rumbaoa and Pat. Sagun to death knowing fully well that they were peace officers. Although both were armed with their service guns, they were unable to offer resistance and put up a defense due to the suddenness and close succession of the shots. This is indicated by the fact that a revolver still tucked in its holster was found at the crime scene beside the bodies of the victims showing that one of the victims was unable to pull out his gun.

The commission of the crimes charged was attended by treachery as established by the testimony of the eyewitness Virgilio Yanuaria to the shooting of Atty. Maramba and by strong evidence as to the treacherous shooting of the two peace officers. Virgilio Yanuaria testified that accused suddenly and without warning shot the deceased Atty. Norberto Maramba when the latter turned his back towards the accused and returned to his table to eat. Atty. Maramba was fatally hit on the back of his head and fell to the cement floor. Atty. Maramba did not sense any danger that he would be shot by the accused considering that he and the accused knew each other

personally and that, as respondent admitted, there was no previous grudge or misunderstanding between him (accused) and Atty. Maramba. Successive shots hit the two peace officers who were caught by surprise as a result of which they died. The deceased had no inkling that the accused was armed and that he would be carried by passion to resort to violence considering his prominent stature in the locality. On these issues the trial court ruled:

"There is treachery although the shooting was frontal, when the attack was so sudden and unexpected that the victim was not in a position to offer an effective defense (People vs. Cuadra, L-27973, October 23, 1978), and when there was a deliberate surprise attack upon an unarmed victim, the killing is murder qualified by treachery (People vs. Alegria, L-40792, August 18, 1978), and furthermore, sudden, unexpected, without warning, and without giving the victim the opportunity to defend himself or repel the initial attack, the qualifying circumstance of treachery is evident and the crime committed is murder (People vs. Candado, L-34089, -90, August 9, 1979; People vs. Pay-an, L-39089-90, July 31, 1978)."

(p. 171, rollo)

WHEREFORE, judgment is hereby rendered giving due course to the petition; the assailed decision of respondent IAC is hereby SET ASIDE and the orders of the lower court court denying the petition for bail are hereby REINSTATED. If the accused is out on bail, his bail bond is hereby cancelled and he is ordered committed to prison. This decision is immediately executory.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

[1] page 66, third paragraph, Rollo.

[2] Accused Angelito Alivia

[3] Petitioner's Memorandum, p. 162 & 163, Rollo.

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