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SECOND DIVISION

[G.R. No. L-49907. August 21, 1979]

ISIDRO BALLETA, JR., *petitioner, vs.* **HON. OSCAR LEVISTE, as Presiding Judge of the Court of First Instance of Capiz, Branch II,** *respondent.*

SYLLABUS

CRIMINAL LAW; PROBATION LAW; PROBATION; WHEN ALLOWED.— Considering that the accused does not fall within any of the five classes of disqualified offenders enumerated in Section 9 of the Probation Law, he may be placed on probation under the conditions indicated in Section 10 of the law and on the basis of the treatment plan proposed by the probation officer.

APPEARANCES OF COUNSEL

Roger P. Patricio for petitioner.

Solicitor General Estelito P. Mendoza Assistant Solicitor General Reynato S. Puno and *Solicitor Romeo A. de la Cruz* for respondent.

D E C I S I O N

AQUINO, *J.*:

The Court of First Instance of Capiz in its decision dated September 5, 1978 convicted Isidro Balleta, Jr. of *consented abduction* and sentenced him to an indeterminate penalty of three months and one day of *arresto mayor,* minimum, to two years, four months and one day of *prision correccional,* as maximum, and to indemnify Josephine Cabison in the sum of three thousand pesos (Criminal Case No. 897).

Balleta did not appeal. He filed a petition for probation. The probation officer of Capiz recommended favorable action on the petition. The trial court denied it on the grounds that it would be better for the accused if he served his sentence so that he

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could reform himself, correct his selfish tendencies and avoid the scandal in the community that would be caused by the grant of probation so that "the sanctity of marriage and the dignity of womanhood" would be upheld.

That order is assailed by Balleta in this *certiorari* case. Although the trial court did not specify the legal bases of its order, the grounds mentioned by it show that it relied on Section 8 of the Probation Law of 1976, Presidential Decree No 968 (72 O. G. 8506) (amended by Presidential Decree No. 1257) which provides that probation "shall be denied if the court finds that (a) the offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution" and "(c) probation will depreciate the seriousness of the offense committed."

We hold that the trial court gravely abused its discretion in not granting probation (although, of course, it cannot be faulted for following its honest conviction).

According to the trial court's decision, the seventeen-year-old complainant girl filed the complaint for forcible abduction with rape at the behest of her parents and against her will; that arrangements were made for her marriage to the accused but the marriage did not go through because she was a minor and *that the complainant pardoned the accused but the pardon did* not extinguish his criminal liability because it was given after the filing of the complaint.

The probation officer found that the twenty-one-year-old accused did not intend to cause a grave wrong and that he deserved to be under probation because he was very remorseful and he has the potential of a good probationer. The Solicitor General manifested that his office had no objection to the grant of probation to the accused.

Under those circumstances and considering that the accused does not fall within any of the five classes of disqualified offenders enumerated in Section 9 of the Probation Law, he may be placed on probation under the conditions indicated in Section 10 of the

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law and on the basis of the treatment plan proposed by the probation officer.

WHEREFORE, the trial court's order of December 5, 1978, denying probation and ordering the accused to serve his sentence, is set aside. It is directed to grant his application for probation. No costs.

SO ORDERED.

Barredo (Chairman), Antonio, Concepcion Jr., and *Guerrero, JJ.*, concur.

Santos and *Abad Santos, JJ.*, are abroad.

Guerrero, J., was designated to sit in the Second Division.

EN BANC

[G.R. No. L-31912. August 24, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff, vs.* **JOSE DUABAN** ***alias*** **Jose Waban** ***alias*** **Jessie Duaban,** *defendant whose death sentence is under review.*

SYLLABUS

1. CRIMINAL LAW; PENALTIES; DEATH PENALTY; WHEN IMPOSED IN CASE OF MURDER.— We hold that the death penalty was properly imposed considering that the accused is a quasi-recidivist. Under Article 160 of the Revised Penal Code, the penalty (*reclusion temporal* maximum to death) for the murder committed by him should be imposed in its maximum period. As correctly noted by the trial court, his plea of guilty was offset by the aggravating circumstance of dwelling.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEAS; EFFECT IN CASE OF PLEA OF GUILTY TO CAPITAL OFFENSE.—