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Baylon, as President of the Union, fought for the rights and protection of his members. We are satisfied that the Court's finding, in the above regard, are supported by substantial evidence on the record considered as a whole.

IN VIEW WHEREOF, the petition for *certiorari* is hereby DISMISSED.

Fernando (Actg. CJ.), Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

Aquino, J., took no part.

Barredo, J., on leave.

EN BANC

[G.R. No. L-38725. May 15, 1979]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTONIO ARTIEDA,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY FAILURE TO EXPOSE NAME OF KILLER TO AUTHORITIES. — The failure of a witness to expose the name of the killer due to fear of reprisal when he informed the authorities does not discredit him. Experience has shown that witnesses are reluctant to identify the accused until they are safe enough from probable harm.

2. ID.; ID.; SUFFICIENCY OF IDENTIFICATION OF ACCUSED. — It is not impossible for the accused to have been recognized and identified by the eyewitnesses, even if there was no moon at the time of incident, where it appears that the accused was already known to the eyewitnesses before the happening of

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the incident in question, and that one of the eyewitnesses who was elbowed on the stomach and breast by the accused was carrying a lamp.

3. **CRIMINAL LAW; CONSPIRACY; LIABILITY OF CONSPIRATOR.** — Although there is no direct evidence linking an accused to the killing, he may be held liable for the victim's death if he was positively identified as one of the persons who had forcibly taken away the victim and it can be logically concluded that the group collectively, or one of them individually, killed the victim, and that as a group which acted in unison, the act of one is the act of all.

4. **REMEDIAL LAW; EVIDENCE; MOTIVE; HOW PROVED.** — The accused was held to have a motive to kill the victim, where it appears that the victim was charged with the murder of accused's brother but was acquitted for insufficiency of evidence.

5. **ID.; ID.; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT TO CONVICT.** — Circumstantial evidence is sufficient to convict. Thus, although there is no direct evidence pointing to the accused as the person who inflicted the wound that accused the death of the deceased, when the circumstances constitute more than sufficient evidence to show that he is the only person with sufficient motive to wish the death of the deceased, it was held that accused was properly convicted of homicide.

6. **ID.; ID.; ALIBI; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF THE ACCUSED.** — The defense of alibi cannot prosper in the face of positive identification by prosecution witnesses, especially where accused has not established by convincing evidence that he was at another place for such a period of time that it was impossible for him to have been at the scene of the crime at the time of its commission. The defense of alibi is an issue of fact that hinges on credibility and in this respect the relative weight that the trial court assigns to the testimony of witnesses must, unless patently and clearly inconsistent with the evidence of record, be accepted.

7. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN APPRECIATED.**— The qualifying circumstance of treachery is present when the killing is carried out without risk

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to appellant such as when the victim is killed while his hands are tied together at his back.

8. ID.; AGGRAVATING CIRCUMSTANCES; NOCTURNITY ABSORBED IN TREACHERY. — Nocturnity is absorbed in treachery where the former cannot be perceived distinctly from the latter.

9. ID.; ID.; CRUELTY; CANNOT BE PRESUMED. — In the absence of a showing that the wounds found in the body were inflicted to prolong the victims suffering before the fatal wound was dealt, it cannot be concluded that the aggravating circumstance of cruelty was duly proven. Cruelty cannot be presumed.

10. ID.; MITIGATING CIRCUMSTANCES; PLEA OF GUILTY; WHEN NOT APPRECIATED. — When the admission takes place after the prosecution has presented its evidence, the mitigating circumstances of plea of guilty can no longer be considered. So also where the extrajudicial confession of appellant was made during the pendency of the appeal, the mitigating circumstance of plea of guilty can not be considered in his favor.

APPEARANCES OF COUNSEL

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Hugo E. Gutierrez, Jr. and *Solicitor Cecilio F. Balagot* for plaintiff-appellee.

Alvero & Associates for defendant-appellant.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

This is an automatic review of the Decision of the Court of First Instance of Laguna, Branch IV, convicting the accused, Antonio Artieda, of the crime of Murder and imposing upon him the penalty of death. His co-accused, Rodolfo Artieda and Venancio Dorado, were acquitted of the crime for insufficiency of evidence. The fourth accused, Bernabe Artieda, *alias* David, *alias* Abe, has remained at large.

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The three brothers, namely, Antonio, Rodolfo and David, all surnamed Artieda, together with their first degree cousin, Venancio Dorado, and other "Does" were originally charged with the complex crime of Kidnapping with Murder. The trial Court, however, found only the crime of Murder as established, and Antonio as the only one guilty thereof.

The Information filed on January 30, 1973 reads as follows:

"That at or about 9:00 o'clock in the evening on May 8, 1972, in the Municipality of Nagcarlan, Province of Laguna, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ANTONIO ARTIEDA, RODOLFO ARTIEDA, BERNABE *alias* DAVID ARTIEDA *alias* ABE, VENANCIO DORADO and the other "DOES" while conveniently provided with firearms and conspiring, confederating and mutually helping one another, with evident premeditation and treachery and taking advantage of superior strength did then and there willfully, unlawfully and feloniously take and bring along with them SIMEON RIVERA to a certain place to be killed, and thereafter, in the pursuit of their criminal intent, purpose and design, tied the hands, attack, assault and inflicted mortal wounds upon him which caused the death of the said SIMEON RIVERA.

"That in the commission of the crime, the qualifying and generic aggravating circumstances of nighttime sought to facilitate the commission thereof, evident premeditation, treachery, cruelty, and use of superior strength were present and attendant."[1]

As a factual backdrop, it may be stated that prior to the incident involved herein, the younger brother of the appellant was killed. The victim, Simeon Rivera, was charged in Court for his death but was acquitted for insufficiency of evidence. Prior to the judgment of acquittal Simeon had escaped from jail.

The evidence for the prosecution may be summarized as follows:

On May 8, 1972, at about 9:00 o'clock in the evening, Simeon Rivera and his wife Apolonia Heraldo, were already lying down

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[1] p. 40, Appellant's Brief.

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about to go to sleep in their house at barrio Palayan Nagcarlan, Laguna, when someone called "*Tao po. Tao po*, we are authorities, P.C." Apolonia stood up, got a lamp and opened the door. She held the lamp over her head to be able to identify the persons who called and she saw the accused Venancio Dorado, Rodolfo Artieda and Antonio Artieda. She greeted them "Good evening." Her husband, who followed her, greeted them, too. All of a sudden, Venancio Dorado, who was on the first step of the stairs, pulled her husband causing him to fall to the ground face downward and hit him on the leg with a gun. Then, Antonio Artieda got a rope from his pocket and with it, tied the hands of the victim at his back with the help of Rodolfo. All this while, Apolonia was very near the accused pleading with them to spare her husband.

While the victim was being assaulted, Bernabe Artieda went inside the house and thrust the point of his gun at the stomach of Mario Pomperada, the son of Apolonia, causing him to fall. Apolonia pleaded with him not to hurt her son, and whispered to the latter to jump down and run, which he did going towards the direction of his uncle's house.

After the victim was taken towards the direction of the house of Rufino Artieda, appellant's father, Apolonia ran to her brother-in-law, Garding Pomperada, whose house was about 250 meters away. Her son, who was already there, had informed his uncle that his step-father was forcibly taken away. She did not tell her brother-in-law that she recognized four of her husband's abductors "because I was afraid since they (witness pointing to the three accused) threatened me before they left" and "I might be the next victim." She only asked her sister-in-law, Juling, about the relation of Venancio Dorado to Rufino Artieda, and was told that Venancio is the nephew of Rufino's wife, Aurelia. She spent the rest of the night in her brother-in-law's house.

The following morning she returned to their house at about 5:00 o'clock in the morning to cook rice, which she brought to the Nagcarlan municipal building for her husband. Failing to find her husband at the detention cell, she went upstairs to the

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office of the Mayor and inquired if he had caused the arrest of her husband by the PC, to which the Mayor replied in the negative. In her talk with the latter, neither did she reveal the identities of the "abductors" of her husband out of fear for her safety and that of her son. Following the advice of the Mayor, she reported the incident to the Chief of Police without, however, informing the latter either of the persons who were responsible for it. The Chief of Police then advised her to go to the PC because the police had no long arms or guns.

The following day, May 10, 1972, at about 9:00 o'clock in the morning, the Chief of Police, policeman Gonzalo Sotoya and Cesar Soriano, barrio councilman Leonardo Pomperada of Palayan and others found the dead body of Simeon Rivera in a forest in barrio Palayan. The Rural Health Physician of Nagcarlan, Dr. Ciriaco Porteras and Sanitary Inspector Cesar Sumaribe, examined the body of the victim, which was already in a decomposed stage. The doctor placed the time of death at about 2 ½ days to 3 days earlier. Pictures were taken of the cadaver (Exhs. "A", "B", & "C") showing the hands tied at the back, the legs bent at the knees and the intestines protruding. The medical certificate issued by the physician showed the following findings:

"Cause of Death — Intra abdominal hemorrhage, stab wound penetrating internal organ.

Description of wound:

1) Stab wound 1" x 3/4 external line at the level of xyphoid process.

2) Stab wound — hypochondriac region 1" x 3/4

3) Stab wound 1" x 3/4 right iliar

4) Stab wound 4" x 3" hypoyastrin"[2]

The body was brought to the municipal building and was later on buried.

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[2] Exhibit, "D", p. 49, Original Records.

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On May 12, 1972, Apolonia Heraldo decided to reveal all she knew and to give her statement to Sgt. Calcetas of the PC, naming appellant and two others as three of those who forcibly took her husband on the night of May 8, 1972.

The defense, for its part, pleaded alibi and sought to impeach the credibility of Apolonio Heraldo. Appellant Antonio Artieda maintains that on May 8, 1972, from half past six o'clock in the evening until two o'clock in the early morning of the following day, he was at Rizal, Laguna, at the place where the shows were being held because it was then their town fiesta. His witness, Aquilino Carpena, confirmed that he saw Antonio there at about 10:00 o'clock in the evening near the place where "*beto-beto*" games were being played.

After trial, the lower Court found "reasonable basis to conclude that Antonio Artieda participated directly and actively in the killing of Simeon Rivera. And (that) x x x it was qualified by treachery and aggravated by cruelty. It was further aggravated by the circumstance of nighttime for undoubtedly this circumstance facilitated the commission of the crime." Accordingly, it sentenced Antonio Artieda to death in its Decision dated April 26, 1974, the dispositive portion of which is worded thus:

"WHEREFORE, in view of the foregoing considerations, the accused Antonio Artieda is hereby declared guilty beyond reasonable doubt of the crime of murder with the attendance of two aggravating circumstances, for the killing of Simeon Rivera.

"This Court is reluctant to impose the supreme penalty of death, especially in this case where the accused evidently decided to take the law in their own hands because they had no more recourse left against Simeon Rivera whom they must have believed to be the killer of the younger brother of the accused Artiedas inspite of his acquittal. But this circumstance cannot be considered mitigating for it cannot even be considered as an immediate vindication of a wrong.

"The law does not leave this Court any choice. It requires that the penalty of death be imposed. Therefore the accused Antonio Artieda is hereby sentenced to suffer the supreme penalty of death as provided by Article 248 in relation to Article 64, paragraph 3, of

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the Revised Penal Code. He is further ordered to indemnify the heirs of Simeon Rivera in the sum of eighteen thousand pesos (₱18,000.00) as moral damages, and to pay one third of the costs.

"With respect to the accused, Rodolfo Artieda and Venancio Dorado, they are hereby acquitted because their identity as among those who abducted the victim Simeon Rivera, has not been established with proof beyond reasonable doubt. Their immediate release from preventive imprisonment is hereby ordered. With two-thirds of the costs *de oficio*.

xxx xxx xxx"[3]

Appellant assigns the following errors to the Trial Court:

"I

THE TRIAL COURT ERRED IN CONCLUDING THAT APOLONIA HERALDO RECOGNIZED AND WAS ABLE TO IDENTIFY ANTONIO ARTIEDA AS ONE OF THE PERSONS WHO ABDUCTED HER HUSBAND SIMEON RIVERA ON MAY 8, 1972.

"II

THE TRIAL COURT ERRED IN HOLDING THAT THE QUALIFYING AGGRAVATING CIRCUMSTANCE OF TREACHERY AND THE AGGRAVATING CIRCUMSTANCES OF NOCTURNITY AND CRUELTY WERE PRESENT.

"III

THE TRIAL COURT ERRED IN CONCLUDING THAT THE MOTIVE IN THE KILLING OF SIMEON RIVERA IS TO REVENGE THE DEATH OF A BROTHER OF ANTONIO ARTIEDA AT THE HANDS OF THE VICTIM IN THIS CASE, SIMEON RIVERA.

"IV

THE TRIAL COURT ERRED IN CONVICTING ANTONIO ARTIEDA OF MURDER ON THE BASIS OF THE WEAKNESS OF HIS DEFENSE RATHER THAN ON PROOF BEYOND REASONABLE DOUBT."

During the pendency of this appeal, the appellant wrote a letter, dated January 9, 1979, to the late Chief Justice, which we quote:

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[3] p. 294, Original Records.

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"*SULAT PAN-TULONG SA MATAAS NA HUKOMAN (SC)*

xxx xxx xxx

"*Kagalang-galang na Hukom,*

"*Ang may-lagda, isa pong bilanggo na kasalukuyan hinatulan ng kamatayan sa silya elektrika* (Death by Electrocution) *sa mababang Hukoman (CFI). Ayon sa kaso nabanggit sa itaas ay buong paggalang nagsasalaysay nitong sumusunod:*

"*Mula sa labi o bibig ni Justice Antonio Barredo nuong nagsalita pa siya dito sa loob ng Pambansang Piitan, 1978, ay winika pa niya:' — sa dami ng mga kaso o asunto na nakabinbin sa Korte Suprema na dapat pag-aralan 'For Review' at dahil sa kakulangan sa miembro ng mahistrado ay ikinalulongkot kong sabihin sa inyo na, kahit na araw at gabi ang aming pagsisikap na pag-aralan ang inyong kaso ay hindi namin makakaya. Kaya, ang payo ko sa inyo na kong kayo man ay totoong nagkasala sumulat na kayo sa korte SC — at sabihin ang katotohanan.'*

"*Kagalang-galang na mga Hukom —, sumulat po ako sa inyo at nais kong ipaabot po sa inyong ka-alaman ang tunay na pangyayari at dahilan sa nabanggit kong kaso sa itaas . . . Ako po ang tunay na salarin sa pagkamatay ni Simeon Rivera nuong Mayo 8, 1972, sa barrio Palayan, Nagcarlan, Laguna. Oo, pinatay ko kagalang-galang na Hukom — si Simeon Rivera sapagkat ang nasabing Simeon Rivera ay siya rin ang pumatay sa aking bunsong kapatid nuong niloloob ni Simeon ang bahay ng aking magulang na si Rufino Artieda. Dapat lamang po si Simeon Rivera magbayad ng buhay sapagkat marami siyang buhay na inutang. Ako ang kriminal at may sapat na dahilan.*

"*Kong anoman po ang ina-akala ninyo na karapat-dapat sa akin ay handa akong tumanggap at magdusa na walang pagsisisi sapagkat ako ang tunay na kriminal.*

"*Upang patunayan ang aking sinasabi sa itaas, heto po pirmahan o lagda-an ko ngayong Enero 9, 1979, dito sa aming dormitory, New Bilibid Prison, Metro Manila.*

(SGD.) ANTONIO ARTIEDA
(T) ANTONIO ARTIEDA
Pris. No. 10939-D
Dormitory 7A-2, NBP"[4]

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[4] p. 110, *Rollo*.

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Notwithstanding the execution of this extrajudicial confession by the appellant, the nature of the offense and the gravity of the penalty imposed by the trial Court dictate that we delve into the merits of the case.

In his first assigned error, appellant contends that the trial Court erred in concluding that Apolonia Heraldo recognized and identified Antonio Artieda as one of the persons who "abducted" (*dinukot*) her husband Simeon Rivera. He maintains that Apolonia Heraldo was not candid and truthful in her testimony because she did not reveal immediately to her brother-in-law nor to the authorities the identities of the persons who forcibly took her husband away on the night of May 8, 1972 until after the lapse of four (4) days. As testified to by Apolonia Heraldo, however, she did not disclose the names of the culprits because she was threatened by them and she was afraid that she might be the next victim if she had immediately disclosed the truth to the authorities. This attitude of Apolonia does not destroy her credibility. As this Court held in *People vs. Almirez*,[5] failure of the witness to expose the name of the killer due to fear of reprisal when he informed the authorities does not discredit him. Experience has shown that witnesses are reluctant to identify the accused until they are safe enough from probable harm.[6]

Antonio Artieda was recognized and identified by Apolonia Heraldo and her son, Mario Pomperada, as Antonio was already known to them long before the happening of the incident in question. They came close enough to appellant to enable them to recognize him, especially Apolonia Heraldo, who was even elbowed on the stomach and breast by Antonio as she pleaded that the assailants spare her husband. So, even if there were no moon that night, as the defense has successfully established through a witness from the Weather Bureau, it was not impossible for appellant to have been recognized by the said witness particularly since the latter was carrying a lamp.

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[5] 3 SCRA 252 (1961).

[6] *People vs. Elizaga*, 73 SCRA 524 (1976).

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It is true that there is no direct evidence linking appellant to the killing of the victim; but he was positively identified as one of the persons who had forcibly taken away (*dinukot*) Simeon Rivera, who was found dead two days later. Examination of the body of the victim, which was already in a decomposed stage, revealed that he was already dead for 2½ days when he was found and, therefore, must have been killed in the evening of May 8, 1972 after he was forcibly taken from his home by at least four men. It can be logically concluded that the group collectively, or one of them individually, killed the victim, and that as a group which acted in unison, the act of one is the act of all.

"Where the accused was a member of a band that appeared at the house of the deceased for the purpose of killing the latter, as he was in fact killed by two of the shots fired by some members of the band, the accused is liable for the resulting homicide although there was no evidence that he fired a shot at the deceased."[7]

Appellant further contends that the lower Court erred in concluding that the motive in the killing of Simeon Rivera was revenge. It is admitted, however, that the brother of appellant was killed and the victim in this case, Simeon Rivera, was charged for his death, but was acquitted for insufficiency of evidence. Appellant, therefore, had a motive to kill him. Appellant argues that if he really had the intention to kill Simeon, he could have easily done so when the latter escaped from jail. However, having successfully gotten away from the law, the victim must have taken every possible precaution to hide not only from the authorities but especially from the family of the deceased who believed he was the culprit. Appellant, therefore, could not have carried out his intention when the victim was in hiding. As this Court has had occasion to rule in *People vs. Cañada,*[8] circumstancial evidence is sufficient to convict. Thus, "Although there is no direct evidence pointing to the accused as the person who inflicted the wound that caused the death of the deceased,

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[7] *Criminal Law*, Luis B. Reyes, Book I, 1974 Edition, p. 426.

[8] 12 SCRA 9 (1964).

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when the circumstances pointed out by the lower Court constitute more than sufficient evidence to convince the appellate court that he is the only person with sufficient motive to wish the death of the deceased, it is held that the appellant was properly convicted of homicide."

The defense of alibi interposed by appellant cannot prosper in the face of positive identification by prosecution witnesses. Appellant's witness, Aquilino Carpena, merely stated that he saw appellant at Rizal, Laguna, at the place where the shows were being held at about 10:00 o'clock in the evening. The "abduction" was effected earlier, or at 9:00 o'clock, Barrio Palayan, Nagcarlan, Laguna, where the crime was committed is more or less four (4) kilometers away from Rizal, Laguna, and the distance between the two places could be negotiated by walking for about an hour.[9] Appellant, therefore, has not established by convincing evidence that he was at another place for such a period of time that it was impossible for him to have been at the scene of the crime at the time of it commission. As this Court has held, the defense of alibi is an issue of fact that hinges on credibility and in this respect, the relative weight which the trial Court assigns to the testimony of witnesses must, unless patently and clearly inconsistent with the evidence on record, be accepted.[10]

Neither did the trial Court err in holding that the qualifying circumstance of treachery was present in the commission of the offense. That the killing of the victim was carried out without risk to appellant is shown by the fact that when the body's victim was found, his hands were tied together at his back as, in fact they were already tied when he was forcibly taken from his home. He had no clothes on except his underwear, and he had a gaping wound on the abdomen from which his intestines protruded(Exh. "A", "A-1", "B", "B-1", "C" & "C-1"). The

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[9] T.s.n., November 19, 1973, p. 27.

[10] *People vs. Berdida*, 17 SCRA 520 (1966).

[11] *People vs. Luna*, 58 SCRA 198 (1974).

[12] *People vs. Berdida, supra.*

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killing of a victim while bound is regarded as treacherous.[11] However, in so far as nocturnity is concerned, under the circumstances obtaining, it must be deemed absorbed in treachery, as it cannot be perceived distinctly therefrom.[12] There being no showing either that the other wounds found on the body of the victim were inflicted to prolong his suffering before the fatal wound was dealt, it cannot be concluded that the aggravating circumstance of cruelty was duly proven.[13] Cruelty cannot be presumed.[14]

For consideration now is the effect of the extrajudicial confession by appellant. The fundamental rule is that when the admission takes place after the prosecution has presented its evidence, the mitigating circumstance of plea of guilty can no longer be considered.[15] The extrajudicial confession herein was made during the pendency of this appeal, for which reason, the mitigating circumstance of plea of guilty can no longer be considered in appellant's favor.

The crime committed herein is Murder, qualified by treachery, with no other modifying circumstances. The proper penalty is *reclusion perpetua*.[16]

WHEREFORE, except as to the penalty imposed, which is hereby reduced to *reclusion perpetua*, the judgment appealed from is hereby affirmed in all other respects.

SO ORDERED.

Fernando (Actg. C.J.), Teehankee, Makasiar, Antonio, Concepcion Jr., Santos, Fernandez, Guerrero, Abad Santos, and *De Castro, JJ.*, concur.

Aquino, J., concurs in the result.

Barredo, J., on official leave.

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[13] *People vs. Dayug, et al.*, 49 Phil. 423 (1926).

[14] *People vs. Jimenez*, 54. O.G. 1361.

[15] *People vs. Buco*, 21 SCRA 5 (1967).

[16] *People vs. Lopez*, 80 SCRA 18 (1977).