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[G.R. No. L-30518. November 7, 1979]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARIO RABUYA *Y* GALLETO @ MARIO NERI @ MEDEL @ NELI @ MAR @ ELMER BUSTRILLO @ MARIO GALLARDO @ MARIO BUSTRILLO**, *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA OF GUILTY TO CAPITAL OFFENSE; REQUIREMENTS THEREOF, COMPLIED WITH IN CASE AT BAR.**— We believe that the trial court complied with its duty in accepting the plea of guilty and that the appellant had full knowledge of its consequences when he voluntarily entered the plea in the light of the following circumstances: (1) the change of plea was made with the assistance of counsel; (2) the trial court declared a recess to enable the accused and his counsel to confer in respect of the change of plea; (3) the trial court explicitly told the accused that as a consequence of his plea of guilty he "will be punished by death or life imprisonment;" and (4) the evidence for the prosecution had already shown his guilt independently of his plea.

2. **ID.; ID.; PLEA OF GUILTY CONSTITUTES AN ADMISSION OF ALL THE MATERIAL FACTS ALLEGED IN THE INFORMATION.**— Elementary is the rule that a plea of guilty constitutes an admission of all the material facts alleged in the information, including the aggravating circumstances recited therein.

APPEARANCES OF COUNSEL

Solicitor General Felix Q. Antonio, Assistant Solicitor General Alicia V. Sempio-Diy and *Solicitor Felix M. de Guzman* for plaintiff-appellee.

Andres R. Narvasa for defendant-appellants.

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DECISION

***PER CURIAM*:**

This is an automatic review of the death sentence imposed on Mario Rabuya *y* Galleto by the Circuit Criminal Court of the Seventh Judicial District on March 6, 1969, for the crime of robbery with homicide and serious physical injuries committed according to the Amended Information as follows:

"The undersigned City Fiscal accuses Ricardo CARRALOS @ ZALDY @ ALLEN @ DADOY, BENEFICIO CHIONG *Y* OLO @ SHIOPPE @ MEL, MARIO NERI @ MARIO REBUYA *Y* GALLETO, @ MEDEL NERI @ MAR @ ELMER BUSTRILLO @ MARIO GALLARDO @ MARIO BUSTRILLO, ALBERTO GUMERA @ ALBERTO SANDOVAL @ ALBERTO CASTAÑEDA @ BERT, FERDINAND CAMACHO *Y* TAMBIS @ EDDIE MENDOZA, ANTONIO ROBERTO *Y* ALCANTARA @ ANTONIO ALCANTARA *Y* IGNACIO @ TONY HAPON AND RUFINO MALONJAO, JR. of the crime of ROBBERY WITH HOMICIDE AND SERIOUS PHYSICAL INJURIES, committed as follows:

That on or about the 6th day of November, 1968, at nighttime, a circumstance purposely sought to insure the commission of the crime, in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Ricardo Carralos @ Zaldy @ Allen @ Dadoy, Beneficio Chiong *y* Olo @ Shioppe @ Mel Mario Neri, Alberto Gumera @ Alberto Sandoval @ Alberto Castañeda @ Bert, Ferdinand Camacho *y* Tambis @ Eddie Mendoza, @ Antonio Roberto *y* Alcantara @ Antonio Alcantara *y* Ignacio @ Tony Hapon and Rufino Malonjao, Jr., all armed with firearms, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously, and with evident premeditation and by means of force, violence and intimidation, hijack PAL Plane Flight 158 Romeo PI-C-536 piloted by Capt. Luis Bonnevie and thereafter, pursuant to their preconceived plan, took, stole, robbed and divested the following passengers of said plane of jewelries and cash in different denomination, to wit:

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From Norberto Quisumbing, Jr.:		
Jewelry	₱	15,000.00
Cash		3,500.00
From Cristina Layosa de Mulcahy:		
Cash		100.00
From Nestor Sy:		
Cash		410.00
Rolex Watch		2,800.00
From Jose Clemente:		
Wristwatch		660.00
Cash		339.00
From Vitaliano Pagaran: (deceased)		
Cash	₱	100,000.00
From Florencio Villarin:		
One revolver, cal. .38, Smit & Wesson		300.00
	₱	123,109.00

against the will and consent of the owners thereof, to their damage and prejudice in the total amount of ₱123,109.00;

That by reason of or on the occasion of the said robbery and for the purpose of enabling them to take, steal and carry away the articles above mentioned, herein accused did then and there wilfully, unlawfully and feloniously, with intent to kill, treacherously attack, assault and shoot Vitaliano Pagaran and Florencio Villarin, thereby inflicting upon the said Vitaliano Pagaran mortal wounds which caused his death, and serious physical injuries upon the person of Florencio Villarin which injuries have required and will require medical attendance for a period of more than 30 days and incapacitated and will incapacitate him from performing his habitual work during the same period of time.

All contrary to law with the following aggravating circumstances:

1. That the crime was committed at nighttime to facilitate or insure the commission of the offense;

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2. That the use of a motor vehicle to facilitate its commission concurred;

3. That the crime was committed by a band."

Ricardo Carralos and Beneficio Chiong are at large and have not been brought to trial. Alberto Gumera eluded his escorts after arraignment and is likewise at large. Ferdinand Camacho was discharged as a state witness. Antonio Roberto and Rufino Malonjao, Jr. were acquitted. Accordingly, this review concerns Mario Rabuya *y* Galleto only.

On March 5, 1969, after seven (7) witnesses had testified for the prosecution and while Ferdinand Camacho (the state witness) was being cross-examined by Rabuya's counsel, Atty. Antonio Rodriguez, the following took place:

"FISCAL MELENDRES:

> At this juncture, your Honor, the accused Mario Rabuya, stood up and he wants to say something. (The accused conferring with his counsel, Atty. Rodriguez).

ATTY. RODRIGUEZ:

> As per the accused, your Honor, he would like to change his plea of not guilty to that of guilty.

COURT:

> Make it on record that during the cross examination of the accused, Ferdinand Camacho conducted by Atty. Rodriguez, the accused, Mario Rabuya stood up — approached the rostrum and manifested that he is changing his plea of not guilty to that of a *plea of guilty*.

ATTY. RODRIGUEZ:

> May I request, Your Honor, that an interpreter from the NBI identify himself and be required to give his personal circumstances?

COURT:

> Granted.
>
> (An NBI Agent, Jesus Sagun of NBI, Manila, 32 years of age; married).

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COURT:

Pursuant to Section 6, Rule 135, of New Rules of Court, Mr. Jesus Sagun of the NBI is hereby authorized to interpret the Cebuano dialect which is the spoken dialect of the accused Mario Rabuya.

COURT:

Q: Do you know the consequences of your plea — that you will be punished by death or life imprisonment?

INTERPRETER:

The accused, your Honor, stated that he is asking for your mercy, and that he is willing to change his plea of not guilty to that of guilty on the condition that you impose a life sentence only considering that according to him he had no previous criminal record.

COURT:

What do you say?

FISCAL MELENDRES:

There is a condition to that and according to the Rules. it is as good as entering a plea of not guilty. So the accused must be advised again regarding that matter.

COURT:

He is not bound to bargain the penalty of the Court. It is up for the law to impose the penalty.

INTERPRETER:

He says that he be given a life sentence. The accused says that he is not a notorious criminal and he is asking for your mercy.

COURT:

What do you say?

FISCAL MELENDRES:

It would be upon the Court to consider. But the question is whether or not he is pleading guilty, and the question as to whether or not thereafter the Court would consider it.

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ATTY. RODRIGUEZ:

Can I say something, your Honor.

COURT:

Yes.

ATTY. RODRIGUEZ:

Your Honor, as per information, it shows that there are three alleged aggravating circumstances — in the amended information. First, the crime was committed at nighttime to facilitate the commission of the offense; Second, the accused used a vehicle to facilitate its commission; and Third, that the offense was committed by a band. I believe by the nature of the crime, this case in band is but natural to the nature of the crime charged — so that it could not be considered as an aggravating circumstance.

Your Honor, I move for a ten-minute-recess so that I could confer with the accused.

COURT:

Suspend the session for ten minutes.

x x x x x x x x x

COURT:

Would you still continue with your cross examination?

ATTY. RODRIGUEZ:

Under the circumstances, no more, you Honor.

COURT:

So you make your formal motion.

ATTY. RODRIGUEZ:

If your Honor please, it is the intention of the accused, Mario Rabuya to change his former plea of not guilty to that of guilty. I move your Honor that the accused, Mario Rabuya be rearraigned for purposes of this manifestation.

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COURT:

Granted, pursuant to Section 6, Rule 118, of the New Rules of Court, Rearraign the accused.

(Interpreter Mr. Sagun of the NBI reading the information to the accused from English to Cebuano dialect).

ACCUSED MARIO RABUYA:

Before I will enter the plea of guilty, I would like to know what would be the sentence of this Court.

COURT:

You have no business in inquiring the penalty to the Court.

ACCUSED MARIO RABUYA:

I plead guilty, your Honor.

ATTY. RODRIGUEZ:

In connection with the plea of guilty of the accused, may I be allowed to present him to prove mitigating circumstances, your Honor.

COURT:

Granted. Present him." (T.s.n., March 5, 1969, pp. 12-18.)

On March 6, 1969, the Court sentenced Mario Rabuya as follows:

"WHEREFORE, the Court finds the accused, Mario Rabuya *y* Galleto, GUILTY, beyond reasonable doubt, of the commission of the crime of Robbery with Homicide and Serious Physical Injuries under Paragraph 1, of Article 294, of the Revised Penal Code, as charged in the amended information, and hereby sentences him to suffer the penalty of DEATH.

The accused is further ordered to indemnify the offended parties as follows:

Norberto Quisumbing, Jr.	₱18,500.00
Cristina Layosa de Mulcahy	100.00
Nestor Sy	3,210.00
Jose Clemente	999.00
	₱22,809.00

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the heirs of the deceased, Vitaliano Pagaran, in the amount of One Hundred Twelve Thousand ₱112,000.00) Pesos; the offended party, Florencio Villarin, in the amount of Six Thousand Three Hundred (₱6,300.00) Pesos; and to pay the costs."

Appellant now "submits that the trial court incurred in error in accepting and acting upon a change of plea that was made in so clearly *reluctant* a manner, without a full awareness of its consequences and lacking, on that account, the full voluntariness and true intent that should characterize pleas of this nature."

We disagree. True it is that when an accused pleads guilty to a capital offense, "the court must assure itself that he is fully aware of the implications of said plea and that, to this end, it may or should take some evidence to be reasonably certain that no injustice is done to him." (*People v. Alincastre*, L-29891, Aug. 30, 1971, 49 SCRA 391.) We believe that the trial court complied with its duty in accepting the plea of guilty and that the appellant had full knowledge of its consequences when he voluntarily entered the plea in the light of the following circumstances: (1) the change of plea was made with the assistance of counsel; (2) the trial court declared a recess to enable the accused and his counsel to confer in respect of the change of plea; (3) the trial court explicitly told the accused that as a consequence of his plea of guilty he "will be punished by death or life imprisonment"; and (4) the evidence for the prosecution had already shown his guilt independently of his plea.

The appellant has made no statement of facts. Upon the other hand the statement of facts made by the Solicitor General remains uncontradicted. It reads as follows:

"Sometime in the latter part of October, 1968, the accused appellant Mario Rabuya and five (5) others namely, Bert Gumera, Ricardo Carralos, Felipe Sojian, Beneficio Chiong and Ferdinand Camacho, met at Apartment No. 2408 in Cementina St., Pasay City, to plot the hold-up of a Philippine Airlines night flight from Mactan, Cebu to Manila (pp. 45, 46 and 47, t.s.n., March 4, 1969). Pursuant to such conspiracy, accused-appellant Mario Rabuya *y* Galleto, armed with

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a .45 caliber pistol; Beneficio Chiong, armed with a .38 cal. revolver; Felipe Sojian, also armed with a .38 cal. revolver; and Ricardo Carralos, armed with a .32 cal. pistol, boarded a PAL Fokker Plane at 3:15 o' clock p.m. on November 6, 1968, at the domestic airport in Pasay City, bound for Cebu (pp. 52 and 54, t.s.n., *id.*) At past 6:00 o'clock p.m. on the same day, Alberto Gumera borrowed the car of his stepfather, and in the company of Ferdinand Camacho, proceeded to the Domestic Airport in Pasay City (p. 56, t.s.n., *id.*) and from there, they motored to the South Super-Highway in Parañaque, Rizal, between 8:33 and 8:40 p.m. to wait for the return of their four companions from Cebu (p. 57, t.s.n., *id.*) At about 9:45 p.m., Berto Gumera and Ferdinand Camacho saw an airplane landing near the Super-Highway with the lights and engine off (pp. 58 and 59, t.s.n., *id.*). For one reason or another, their four companions who were expected to arrive on the said airplane did not show up (p. 59, t.s.n., *id.*). Hence, Bert Gumera and Ferdinand Camacho returned to the apartment at Cementina St., and at around 11:00 o'clock p.m., Ricardo Carralos arrived informing them that one of their companions, Felipe Sojian (Loloy), had been wounded (pp. 61 and 62, t.s.n., *id.*). Ricardo Carralos also handed to Camacho a paper bag containing money, jewelry, and some 15 to 20 watches (pp. 64 and 65, t.s.n., *id.*). As no doctor could be called to provide medical attendance to the wounded Felipe Sojian, the latter presumably died, and his "body disposed of" by his companions (pp. 72-73, t.s.n., *id.*).

The ill-fated plane, a Fokker (PIC-536), took off from Mactan Island, Cebu, for Manila at around 7:25 o'clock on the night in question (pp. 9, 15, 23-24, 43, t.s.n., March 3, 1969). When said plane was already airborne, appellant Mario Rabuya, together with Ricardo Carrolos and Felipe Sojian, stood up from their seats and went to the rear of the aircraft. Minutes later, or approximately 45 minutes before landing time at the Manila Domestic Terminal, gunshots were fired by the appellant and his companions from the rear of the plane hitting an NBI agent Florencio Villarin above the left chest (pp. 9, 15-16, 24-29, 48, t.s.n., March 3, 1969).

Likewise at the height of the pandemonium occasioned by the said gunfire, a passenger identified as Vitaliano Pagaran, a Provincial Treasurer, died of two bullet wounds (Exhibit "E-1" and "E-2", p. 54, t.s.n., March 4, 1969; p. 14, t.s.n., March 3, 1969). After the shooting, one of the gunmen, Ricardo Carralos, poked his gun at the pilot, Luis Bonnevie, Jr., saying "this is a hijack" (p. 48, t.s.n., March 3, 1969), and almost simultaneously, another of the hijackers

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shouted, "everybody down, hold-up" (p. 9, t.s.n., *id.*). As ordered everyone in the plane sat down without a word of protest, and the hijackers dispossessed the crew and passengers of their money and other valuables (p. 11, t.s.n., March 3, 1969).

Florencio Villarin was operated on at the Manila Doctor's Hospital and during the operation, a slightly deformed jacketed bullet which approximates the size of a .45 caliber slug was recovered from his body (pp. 6-7, t.s.n., March 4, 1969). Another bullet also from a .45 caliber firearm was likewise extracted from the body of the deceased Vitaliano Pagaran (p. 18, t.s.n., *id.*), and according to NBI medico-legal expert Dr. Mariano Cueva, who performed the necropsy examination on the remains of said deceased, the two gunshot wounds that killed him were indeed inflicted by .45 caliber firearm (pp. 16, 19, t.s.n., *id.*). Dr. Cueva also testified that any of both wounds could have caused the death of Pagaran independently of each other (p. 21, t.s.n., *id.*)."

Moreover, when appellant took the witness stand to prove mitigating circumstances after he had pleaded guilty, he testified, in part, as follows:

"ATTY. RODRIGUEZ:

Q According to the information sometime on November 6, 1968 you boarded the PAL plane going to Manila from Cebu City, is that correct?

A Yes, sir.

Q Did you have any companions, if any?

A Yes, sir.

Q Who were they?

A Zaldy, Shoppi, and Loloy.*

Q In that plane trip that you had what happened?

A When I boarded that plane together with my companions I did not want my companions would do but I just followed them.

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* Zaldy is Ricardo Carralos; Shoppi is Beneficio Chiong; and Loloy is Felipe Sojian.

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Q What happened while you were in the plane going to Manila?

A While we were in the plane my companions, Loloy and Shoppi, and Zaldy were seated in front of the plane while I was sitting in the far end of the plane together with a certain man whom I recognized later on as Agent Villarin.

Q What happened then?

A While we were in the plane I heard Zaldy stated that my seatmate was an NBI agent and I became scared because I had with me a gun which was given to me by Shoppi. I wanted to return the firearm to Loloy but because I was afraid that the firearm might be confiscated by the NBI agent. But one of my companions would like to accept the firearm from me.

Q What happened?

A From where I was seated I went to the toilet and I heard Zaldy stated that I was wanted by that certain man and that was the reason why I became grievously scared. When I was in the toilet of the plane with the intention of giving the firearm to Loloy, I heard gunshot and Loloy was near me in the toilet.

Q What happened to Loloy?

A When I came out from the toilet I found out that Loloy was wounded in his body.

Q What did you feel when you saw Loloy wounded?

A When I saw Loloy wounded I had a great pity on him and he made a sign that the man who was seated beside me was the one who shot Loloy. And because I was afraid that that man would also shoot me, I fired at him also.

In the course of all of these I saw the treasurer sprawled on the floor with the gun in his hand.

Q How about the NBI agent, were you able to hit him?

A I am not sure whether I hit him or not but I saw that he was wounded also.

Q When you saw him wounded what did you do?

A When I saw him wounded this NBI agent told me: "*Pare* why did you shoot me?", and because I pitied him I tried to

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help him. I helped him and just let him lie down on the floor and told him not to move anymore.

Q What did you do after that?

A While helping Villarin I felt that Loloy slumped on my back so I tried to help him also. I would like to say that I had no intention or I did not make anything bad movement or action while in that place but I pitied Villarin.

Q Did you intend to kill him at the time?

A I did not have any intention of killing him. In fact I pitied him and I tried to help him as far as I could.

Q At the time did you have any chances of killing Villarin if you wanted to?

A I would have killed him if I wanted to.

Q How about the treasurer Pagaran, did you come to know who was able to hit him?

A That I do not know who was able to hit the treasurer, Pagaran.

Q You said that you were afraid that the NBI agent might shoot you also, what made you arrived to that conclusion?

A I came to believe that he might shoot me also because while I came out from the toilet I saw him holding a gun.

Q If you did not see Loloy hit would you shoot the NBI agent?

A If I had not seen that Loloy was hit I would not had shoot the NBI agent.

Q Did you have a plan of robbing the passengers of that PAL plane?

A When we boarded that plane I did not know of any plan of my companions to rob the passengers of that plane.

Q Do you know that they robbed the passengers of that plane?

A After that shooting incident I asked Zaldy "What shall we do?" and he instructed me to get the valuable jewelries and the money of the passengers of the plane because we will spend the money for the medical needs of Loloy.

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Q Were it not because of that instruction of Zaldy you would have not committed that robbery of those passengers?

A I would not had done it were it not of the instruction of Zaldy.

Q Why did you follow the instruction of Zaldy?

A I could not do anything else because I was just a companion of him and I was following him.

Q At the time that you were instructed according to you by Zaldy, was he holding a firearm?

A I did not see him holding a gun but I saw him inside the cockpit." (T.s.n., March 5, 1969, pp. 20-25)

Appellant's plea of guilty, his statements on the witness stand, the admissions made in his affidavit (Exh. U) dated December 20, 1968, which he did not repudiate that he was a party to the agreement to rob the plane, and the testimony of the prosecution witnesses conclusively establish his guilt.

Appellant questions the appreciation of the aggravating circumstances alleged in the information in the imposition of the death penalty. Elementary is the rule that a plea of guilty constitutes an admission of all the material facts alleged in the information, including the aggravating circumstances recited therein. (See *People vs. Valera and Imperial*, G.R. No. L-37016, May 31, 1979.) But the plea of guilty notwithstanding the prosecution had sufficiently established the aggravating circumstances recited in the information. Thus, as to nocturnity, Alberto Gumera and Ferdinand Camacho were to meet their fellow conspirators at the South Superhighway in the evening as in fact they went there between 8:33 and 8:40 p.m. The only explanation for this time factor was for the appellant and his companions to better attain and facilitate the planned plane robbery under the cover of darkness. The use of a motor vehicle to facilitate the commission of the crime was also proved for it is a fact that Gumera and Camacho used a jeep to rendezvous with their companions at the South Superhighway. Finally, as to the commission of the crime by a band, suffice

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it to say that the appellant and his three companions were all armed with pistols when they boarded the ill-fated PAL flight from Mactan to Manila.

We now consider the alleged mitigating circumstances.

Appellant claims his plea of guilty should be taken as a mitigating circumstance although it was not made prior to the presentation of the evidence for the prosecution on the ground that it was an act of repentance and respect for the law, indicating a moral disposition favorable to his reform. In support thereof, it is asserted that none of the witnesses ever declared having seen the accused take actual part in the commission of the crime. We agree with the Solicitor General that this claim is without merit. For as stated in the People's brief: "when appellant suddenly stood up and manifested his desire to plead guilty, it was already after the prosecution had almost finished with the presentation of its evidence consisting of the testimonies of eight witnesses who identified material documentary evidence in the course of their testimonies. Through the testimony of accused-turned-state witness Ferdinand Camacho (p. 48, t.s.n., March 4, 1969), the existence of a conspiracy between appellant and his five companions to commit the robbery charged was clearly and definitely established. Likewise, through the testimony of Camacho, it was also established that among the four-armed conspirators who board a PAL plane for Cebu to execute the planned robbery on the return flight of the PAL from Mactan to Manila, appellant was the only one carrying a .45 cal. firearm, the others having been armed either with .38 cal. or .32 cal. revolvers (pp. 52, 54. t.s.n., *id.*) Then, through the testimony of prosecution witness Florencio Villarin, one of the victims of the gunfire on the occasion of said robbery and who luckily survived his wounds, appellant's active role and participation in the robbery and his having joined his companions at the rear of the plane minutes before gunfire came from that direction of the plane (pp. 28-29, t.s.n., *id.*) was also clearly and sufficiently established."

It will be recalled that the appellant took the witness stand for the purpose of proving mitigating circumstances. It should

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be noted here that the trial court in sentencing him did not bother to assess the merits of his testimonial evidence. Such cavalier treatment is to be deplored and condemned. Although we are perhaps more busy, we shall, with patience, deal with the matter in a manner not callous.

Appellant insists that he had no intention to commit so grave a wrong for when he joined Zaldy, Shoppi and Loloy he did not know of their plan to carry out a robbery and he fired at Agent Villarin only after he had seen Loloy wounded. But in his affidavit, Exhibit U, appellant said: "Our plan was that I, ZALDY, LOLOY and CLEOFE [SHOPPI] will board the plane and rob and when the airplane reach the airport in Manila we will be met by BERT SANDOVAL and EDDIE CAMACHO and they have a vehicle ready for our use from the airport to Cementina, Pasay." And his claim that he shot Agent Villarin because he saw Loloy wounded is too crude to be convincing. At any rate, it is a fact that he shot not only Villarin but also Vitaliano Pagaran for their wounds were inflicted by a .45 caliber gun and the appellant was the only member of the band armed with that type of pistol.

Finally, appellant claims that "the facts that, according to his recorded testimony which the prosecution has not chosen to refute or disprove, he yielded to arrest without the slightest attempt to resist and he has never before this case been convicted of, or involved in, any crime" should be taken as analogous mitigating circumstances in his favor. (Art. 13, par. 10, Revised Penal Code.) But to quote the Solicitor General again:

"As regard appellant's having allegedly yielded to arrest without the slightest attempt at resistance, again this circumstance, even if true, is not one of the mitigating circumstances recognized by law. What the law considers as mitigating is the voluntary surrender of the accused before his arrest, showing either an acknowledgment of his guilt or an intention to save the authorities the trouble and expense that would be incurred in his search and capture (*People vs. Conwi*, 71 Phil., 595), even if he did not resist arrest nor struggle to free himself from custody. (*People vs. Siojo*, 61 Phil. 307; *People vs. Yuman*, 61 Phil. 786).

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"Finally, the fact that appellant has never been convicted or involved in any other crime, again even if also true, is likewise not a mitigating circumstance under the law. Besides, assuming that this circumstance can be considered in appellant's behalf to show that he is not such a person or hardened criminal nor is he incapable of reform, still this circumstance can not offset the aggravating circumstances admitted by appellant's plea of guilty and sufficiently established by the prosecution's evidence."

IN VIEW OF THE FOREGOING, we find that the guilt of the appellant Mario Rabuya *y* Galleto had been proved beyond reasonable doubt and considering the attendant circumstances we have no recourse but to affirm the judgment of the lower court in all respects.

SO ORDERED.

Concepcion Jr., Santos, Fernandez, Guerrero, Abad Santos, De Castro, and *Melencio-Herrera, JJ.*, concur.

Antonio[*] and *Fernando, J.*, took no part.

Teehankee, Makasiar, and *Aquino, JJ.*, concur in the result.

Barredo, J., I vote for the imposition of life imprisonment because of the more than ten years that he has already suffered since his conviction by the trial court.

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[*] Mr. Justice Felix Antonio took no part as he was the Solicitor General at the time the People's Brief was filed.