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We hold that the accused is guilty beyond reasonable doubt of murder. There was *alevosia* or treachery because the defenseless victim was shot from behind without any risk to his assailants.

WHEREFORE, the trial court's judgment is affirmed with the modification that the indemnity is raised to P30,000. Costs *de oficio*.

SO ORDERED.

Concepcion Jr. (Chairman), Abad Santos, Escolin, Cuevas, and *Alampay, JJ.,* concur.

FIRST DIVISION

[G.R. No. 59378. February 11, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NELIA NICANDRO y VELARMA,** *accused-appellant.*

SYLLABUS

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST SELF-INCRIMINATION; VIOLATED IN CASE THE TRIAL COURT RELIED PARTLY ON THE ORAL ADMISSION DURING CUSTODIAL INVESTIGATION.—** In convicting the appellant, the trial court relied partly on her alleged oral admission during custodial investigation, as testified to by Pat. Joves. This reliance is assailed as violative of Section 20 of Article IV of the Constitution which reads: "No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

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2. **ID.; ID.; RIGHT TO REMAIN SILENT AND TO COUNSEL; IT IS PRESUMED TO CONTEMPLATE THE TRANSMISSION OF A MEANINGFUL INFORMATION.**— When the Constitution requires a person under investigation "to be informed" of his right to remain silent and to counsel, it must be presumed to contemplate the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle. As a rule, therefor, it would not be sufficient for a police officer just to repeat to the person under investigation the provisions of Section 20, Article IV of the Constitution. He is not only duty-bound to tell the person the rights to which the latter is entitled; he must also explain their effects in practical terms, e.g., what the person under interrogation may or may not do, and in a language the subject fairly understands. (See *People vs. Ramos*, 122 SCRA 312; *People vs. Caguioa*, 96 SCRA 2) In other words, the right of a person under interrogation "to be informed" implies a correlative obligation on the part of the police investigator to explain, and contemplates an effective communication that results in understanding what is conveyed. Short of this, there is a denial of the right, as it cannot truly be said that the person has been "informed" of his rights. Now, since the right "to be informed" implies comprehension, the degree of explanation required will necessary vary, depending upon the education, intelligence and other relevant personal circumstances of the person under investigation. Suffice it to say that a simpler and more lucid explanation is needed where the subject is unlettered.

3. **ID.; ID.; ID.; WAIVER OF THE RIGHT MUST BE MADE KNOWINGLY AND INTELLIGENTLY.**— Like other constitutional rights, the right against self-incrimination, including the right of a person under investigation to remain silent and to counsel, and to be informed of such right, may be waived. To be valid, however, a waiver of the right must not only be voluntary; it must be made *knowingly* and *intelligently* (*People vs. Caguioa, supra*), which presupposes an awareness or understanding of what is being waived. It stands to reason that where the right has not been adequately explained and there are serious doubts as to whether the person interrogated knew and understood his relevant constitutional rights when he answered the questions, it is idle to talk of waiver of rights.

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4. **ID.; ID.; ID.; IT IS THE DUTY OF THE PROSECUTION TO AFFIRMATIVELY ESTABLISH COMPLIANCE BY THE INVESTIGATING OFFICER OF HIS OBLIGATION.**— According to Pat. Joves, he informed appellant of her constitutional rights when she was under custodial investigation. What specific rights he mentioned to appellant, he did not say. Neither did he state the manner in which the appellant was advised of her constitutional rights so as to make her understand them. This is particularly significant in the instant case because appellant is illiterate and cannot be expected to be able to grasp the significance of her right to silence and to counsel upon merely hearing an abstract statement thereof. As it is the obligation of the investigating officer to inform a person under investigation of his right to remain silent and to counsel, so it is the duty of the prosecution to affirmatively establish compliance by the investigating officer with his said obligation. Absent such affirmative showing, the admission or confession made by a person under investigation cannot be admitted in evidence.

5. **REMEDIAL LAW; EVIDENCE; EXTRAJUDICIAL ADMISSION; INADMISSIBLE IF TAKEN IN VIOLATION OF ACCUSED'S CONSTITUTIONAL RIGHTS.**— in *People vs. Ramos*, (122 SCRA 312), the Court ruled that the verbal admission of the accused during custodial investigation was *inadmissible*, although he had been apprised of his constitutional rights to silence and to counsel, for the reason that the prosecution failed to show that those rights were explained to him, such that it could not be said that "the apprisal was sufficiently manifested and intelligently understood" by the accused.

DECISION

PLANA, *J.*:

This is an appeal from a judgment of the then Court of First Instance of Manila, Branch VIII, convicting the accused Nelia Nicandro y Velarma of violation of Section 4, Article II, in relation to Section 2(e), (f), (l), (m), and (o), Article I, of Republic Act 6425, as amended (Dangerous Drugs Act), upon an information which reads:

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"That on or about November 6, 1981, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, deliver, give away to another or distribute any prohibited drug, did then and there willfully, unlawfully, and knowingly sell or offer for sale four (4) sticks of marijuana cigarettes, marijuana flowering tops wrapped in a piece of newspaper, one (1) roach marijuana cigarette and marijuana seeds and ashes contained in a white plastic bag, which are prohibited drugs."

The People's version of the facts is as follows:

"Not long before November 6, 1981, the Drug Enforcement Unit of Police Station No. 5, Western Police District, Metropolitan Police Force, Manila, received complaints from concerned citizens regarding the illegal sale of prohibited drugs by one alias 'Nel' in the Commodore Pension House at Arquiza Street, Ermita, Manila (p. 4, tsn, Dec. 8, 1981). It was also informed that the use of prohibited drugs in said place was rampant (pp. 3, 18-19, tsn, *ibid.*).

"Responding to said complaints and reports, Cpl. Salvador Guitan and Pfc. Romeo Joves of the Drug Enforcement Unit of said Police Station No. 5 placed the Commodore Pension House and its surroundings under surveillance for about a week (pp. 4-5, tsn, *ibid.*). After the complaints and reports were verified to be true, an entrapment with the confidential informant acting as the buyer of marijuana was organized. (pp. 5-6, 29-30, 38, tsn, *ibid.*).

"At about 9:00 p.m. on November 6, 1981, the police team formed to carry out the entrapment plan was alerted of the presence of the drug pusher, alias 'Nel', at room 301 of the Commodore Pension House, selling marijuana to drug users (pp. 6, 32-33, tsn, *ibid.*). Immediately, Cpl. Salvador Guitan, Pat. Proceso Federes, Pat. Aurora Gomez and Pfc. Romeo Joves proceeded to the said Commodore Pension House and met the female confidential informant at the corner of Arquiza Street and M.H. del Pilar Street, Ermita, Manila (pp. 6, 23, 33, tsn, Dec. 8, 1981; pp. 15-16, tsn. Dec. 9, 1981). Pfc. Joves gave the informant two (2) P5.00 bills, marked Exhibits "D" and "E", with his initial thereon, marked Exhibits "D-1", and "E-1 " (Exhs. "D", "D-1", "E" and "E-1", pp. 3-4, Folio of Exhs.; pp. 6, 8, 35, tsn, Dec. 8, 1981; p. 16, tsn, Dec. 9, 1981). They instructed her to follow them to the Commodore Pension House (p. 33, tsn, Dec. 8, 1981).

"Following later, the informant went to room 301 of the Commodore Pension House (p. 6, tsn, Dec. 8, 1981; p. 17, tsn, Dec. 9, 1981).

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Upon a given signal, she knocked on the door of the room. Appellant Nelia Nicandro y Velarma, alias 'Nel', opened the door (p. 6, tsn, Dec. 8, 1981). The informant asked to buy some marijuana cigarette and gave appellant the two (2) marked P5.00 bills (p. 6, tsn, Dec. 8, 1981; p. 17, tsn, Dec. 9, 1981). Thereupon, the appellant delivered to informant four (4) sticks of marijuana cigarette (pp. 7, 25, tsn, Dec. 8, 1981; p. 8, tsn, Dec. 9, 1981).

"Immediately the police team closed in and nabbed appellant (p. 7, tsn, Dec. 8, 1981; p. 17, tsn, Dec. 9, 1981). Pat. Gomez frisked appellant and got from the right front pocket of her pants the two (2) marked P5.00 bills (Exhs. "D" & "E") and from the left pocket of her pants marijuana flowering tops wrapped in a piece of newspaper (pp. 8-9, 12, 34, tsn, Dec. 8, 1981; pp. 9-10, 17-19, tsn. Dec. 9, 1981). Appellant tried to escape by entering her rented room 301 but was immediately collared (pp. 8-9, tsn, Dec. 9, 1981).

x x x x x x x x x

"Upon being investigated and after having been duly apprised of her constitutional rights, appellant orally admitted having sold the four (4) sticks of marijuana cigarettes and the ownership of the marijuana flowering tops taken from her pocket, but refused to reduce her confession to writing (pp. 12-13, tsn, Dec. 8, 1981. x x x" (People's Brief, pp. 3-6, 8.)

To support the charges, the prosecution relied principally on Pat. Joves, who testified that he saw the accused sell marijuana cigarettes to the unnamed police informant, which allegedly the accused verbally admitted when she was under custodial investigation. Pat. Joves declared:

"Q Where were you when the informant handed the two P5.00 bills to the accused?

A We were hidden within the vicinity of Room 301 sir.

Q After your confidential informant have handed the two P5.00 bills to the accused, what happened next?

"A The accused in turn handed one small plastic bag containing suspected marijuana leaves. I beg to correct sir. I think it was four sticks of marijuana cigarettes sir. It is not a plastic bag sir.

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Q What did you do when you saw the accused hand over to the confidential informant the four sticks of cigarettes containing marijuana?

A When we saw the accused handed the four sticks of suspected marijuana cigarettes to our confidential informant, and after a pre-arranged signal was given by the confidential informant that the accused had already sold her the marijuana cigarettes, we immediately nabbed said suspect and at the same time we identified ourselves as police officers." (TSN, Dec. 8, 1981, p. 7.)

x x x x x x x x x

"Q You also conducted the investigation of this accused and confiscation of the articles of the crime?

A Yes, sir.

Q How did you conduct the investigation?

A The first thing I did was I informed the accused of her constitutional rights.

Q What next?

A Then I questioned her about the marijuan cigarettes and leaves that were confiscated and also the marked money and she verbally admitted that she sold the four sticks of suspected marijuana cigarettes and possession and ownership of the other marijuana leaves which was confiscated from her possession.

Q Did you place that in writing?

A The accused refused to place her statement in writing, sir." (*Ibid.*, pp. 12-13.).

x x x x x x x x x

CROSS EXAMINATION

"Q And who were your companions in apprehending the accused?

A I was with Police Cpl. Salvador Guitan, Pat. Federis and Policewoman Aurora Gomez, sir.

Q When you posted yourselves and other companions at the third floor of Commodore Pensione House, were there any other persons present in the premises, Pat. Joves?

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A There were other persons passing by or walking in the place from where we were posted sir.

Q In fact, there were several or many persons in that place because there is a lodging house Pat. Joves when you posted yourselves there? There were several persons present there?

A There are several persons present but they are just passing by or walking towards their rooms, sir.

Q And you want this Court to believe that in spite of the presence of these people walking and passing on the place where you made the apprehension, you want this Court to believe that the accused was then selling the alleged marijuana sticks?

WITNESS:

Please repeat the questions?

ATTY. CARINGAL:

Q You want the Court to believe that the accused was selling the prohibited drug in public because according to you there were several persons present then?

A There were several persons passing by sir at that place.

Q You testified a while ago Pat. Joves that you have seen the accused handing a plastic bag to your confidential informant. How big is that plastic bag?

A It was not a plastic bag, sir but four sticks of marijuana cigarettes, sir.

Q Do you want to impress this Honorable Court that the accused was selling this marijuana cigarette in the open?

A The accused sold marijuana cigarettes also in a way that she will not be noticed by other persons sir.

Q How were you able to say that the things handed by the accused to your confidential informant were four sticks of marijuana cigarettes when you have just said that the transactions was done secretly?

A She was handing the marijuana cigarette secretly, sir.

Q How were you able to say and how were you able to determine that the things handed to your confidential informant were four sticks of marijuana cigarettes?

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A We saw and observed that the accused handed sticks of suspected marijuana cigarettes and we also have a prearranged signal from the confidential informant that the marijuana was already sold by the accused, sir." (*Ibid.*, pp. 23-25.)

Policewoman Aurora Gomez also testified but her testimony was limited to events subsequent to the alleged sale of marijuana cigarettes. She did not witness the sale. (TSN, Dec. 9, 1981. pp. 17-18, 21.) Neither did Cpl. Guitan or Pat. Federis.

After trial, the trial court convicted the accused as aforesaid and imposed the penalty of *reclusion perpetua* and a fine of P20,000.00.

In the instant appeal, defendant-appellant has assigned the following errors:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED FOR VIOLATION OF SECTION 4 OF ARTICLE II IN RELATION TO SECTION 2(e), (l), (f) and (o), ARTICLE 1, R.A. 6425, AS AMENDED BY P.D. NO. 44 AND FURTHER AMENDED BY P.D. NO. 1675.

II

THE COURT A QUO GRAVELY ERRED IN GIVING PROBATIVE VALUE TO THE TESTIMONIES OF ALL POLICE OFFICERS WHICH ARE HEARSAY.

III

THE COURT A QUO GRAVELY ERRED IN ADMITTING PROSECUTION EVIDENCE WHICH WERE OBTAINED IN VIOLATION OF ACCUSED CONSTITUTIONAL RIGHTS.

IV

THE CONSTITUTIONAL RIGHTS OF THE ACCUSED MORE PARTICULARLY THE RIGHT TO CONFRONTATION AND TO CROSS-EXAMINE WITNESS AGAINST HER HAS BEEN VIOLATED.

Numerous factors combine to make the appeal meritorious.

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The prosecution evidence leaves much to be desired. It is at best uncertain whether any prosecution witness really saw the alleged sale of marijuana cigarettes. Patrolman Joves allegedly was an eyewitness. He testified that he saw the appellant sell marijuana cigarettes to the police informant, as the transaction took place openly just outside room 301, in the presence of several persons "passing by or walking in the place". But when his attention was called to the improbability that an illegal merchandise would openly be sold, he qualified his story by saying that appellant handed the marijuana cigarettes to appellant "secretly".

Pat. Joves was not certain as to what he saw. At first, he said that after the police informant had paid appellant, the latter handed to the former "one small plastic bag containing suspected marijuana leaves." Then he corrected himself by saying: "I think it was four sticks of marijuana cigarettes sir. It is not a plastic bag sir."

It is probable that Pat. Joves really did not see either the alleged delivery of the marijuana cigarettes or the supposed payment therefor. After all, according to him, the transaction was effected "secretly". On the other hand, if the sale was made within the view of Pat. Joves and his companions, there would have been no need for them to wait for a signal from the police informant to indicate that the transaction had been completed, before closing in and arresting appellant.

With the testimony of Pat. Joves seriously placed in doubt, there is not much left of the prosecution evidence. Note that the police informant was not presented as a witness, prompting the accused to invoke with reason the presumption that evidence willfully suppressed would be adverse if produced. (Rules of Court, Rule 131, Sec. 5(e).]

In convicting the appellant, the trial court relied partly on her alleged oral admission during custodial investigation, as testified to by Pat. Joves. This reliance is assailed as violative of Section 20 of Article IV of the Constitution which reads:

"No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense

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shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."

The above provision is an expanded version of the guarantee against self-incrimination, formally incorporating the doctrine in the landmark American case of *Miranda vs. Arizona* —

"x x x Our holding will be spelled out with some specificity in the pages which follow, but briefly stated, it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of those rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned." [384 U.S. 436, 444-445. Incidentally, the Miranda doctrine rests on just one broad guarantee in the U.S. Constitution, i.e., that no person shall be compelled in any criminal case to be a witness against himself. (Fifth Amendment.)]

When the Constitution requires a person under investigation "to be informed" of his right to remain silent and to counsel,

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it must be presumed to contemplate the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle. As a rule, therefor, it would not be sufficient for a police officer just to repeat to the person under investigation the provisions of Section 20, Article IV of the Constitution. He is not only duty-bound to tell the person the rights to which the latter is entitled; he must also explain their effects in practical terms, e.g., what the person under interrogation may or may not do, and in a language the subject fairly understands. (See *People vs. Ramos*, 122 SCRA 312; *People vs. Caguioa*, 96 SCRA 2.) In other words, the right of a person under interrogation "to be informed" implies a correlative obligation on the part of the police investigator to explain, and contemplates an effective communication that results in understanding what is conveyed. Short of this, there is a denial of the right, as it cannot truly be said that the person has been "informed" of his rights. Now, since the right "to be informed" implies comprehension, the degree of explanation required will necessary vary, depending upon the education, intelligence and other relevant personal circumstances of the person under investigation. Suffice it to say that a simpler and more lucid explanation is needed where the subject is unlettered.

Thus, in the cited case of *People vs. Ramos*, this Court said:

"In the case at bar, appellant has only finished Grade VI, which means that he is not adequately educated to understand fairly and fully the significance of his constitutional rights to silence and to counsel. As mandated, it is not enough that the police investigator merely informs him of his constitutional rights to silence and to counsel, and then taking his statements down, the interrogating officer must have patience in explaining these rights to him. The records do not reveal that these requirements have been fully complied with, nor was there any showing that appellant has been represented by counsel during custodial investigation. In consonance with Section 20 of the Bill of Rights which states that 'any confession obtained in violation of this section shall be inadmissible in evidence,' We hold that the verbal admissions of appellant during custodial investigation may not be taken in evidence against him." (pp. 321-322.)

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Like other constitutional rights, the right against self-incrimination, including the right of a person under investigation to remain silent and to counsel, and to be informed of such right, may be waived. To be valid, however, a waiver of the right must not only be voluntary; it must be made *knowingly* and *intelligently* (*People vs. Caguioa*, supra), which presupposes an awareness or understanding of what is being waived. It stands to reason that where the right has not been adequately explained and there are serious doubts as to whether the person interrogated knew and understood his relevant constitutional rights when he answered the questions, it is idle to talk of waiver of rights.

Going to the instant case, Pat. Joves testified that he conducted the custodial investigation of appellant. As to the manner of investigation, he tersely testified:

"Q How did you conduct the investigation?

A The first thing I did was I informed the accused of her constitutional rights.

Q What next?

A Then I questioned her about the marijuana cigarettes and leaves that were confiscated and also the marked money and she verbally admitted that she sold the four sticks of suspected marijuana cigarettes and possession and ownership of the other marijuana leaves which was confiscated from her possession." (TSN, December 8, 1981, pp. 12-13.)

According to Pat. Joves, he informed appellant of her constitutional rights when she was under custodial investigation. What specific rights he mentioned to appellant, he did not say. Neither did he state the manner in which the appellant was advised of her constitutional rights so as to make her understand them. This is particularly significant in the instant case because appellant is illiterate and cannot be expected to be able to grasp the significance of her right to silence and to counsel upon merely hearing an abstract statement thereof.

As it is the obligation of the investigating officer to inform a person under investigation of his right to remain silent and

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to counsel, so it is the duty of the prosecution to affirmatively establish compliance by the investigating officer with his said obligation. Absent such affirmative showing, the admission or confession made by a person under investigation cannot be admitted in evidence. As broadly stated in the *Miranda case* and quoted with approval by the then Chief Justice Enrique M. Fernando in *People vs. Caguioa, supra,* —

"x x x *the prosecution may not use statements*, whether exculpatory or inculpatory, stemming from custodial investigation of the defendant *unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.*" (95 SCRA 2, 9. Italics supplied.)

The reason is not difficult to see. A constitutional guarantee should be liberally construed with a view to promoting its object.

"x x x Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.

xxx xxx xxx

"In dealing with custodial interrogation, we will not presume that a defendant has been effectively apprised of his rights and that his privilege against self-incrimination has been adequately safeguarded on a record that does not show that any warnings have been given or that any effective alternative has been employed. Nor can a knowing and intelligent waiver of these rights be assumed on a silent record. x x x" (*Miranda* case, 384 U.S. 436, 491, 498-499.)

Thus, in *People vs. Ramos, supra*, the Court ruled that the verbal admission of the accused during custodial investigation was *inadmissible*, although he had been apprised of his constitutional rights to silence and to counsel, for the reason that the prosecution failed to show that those rights were explained to him, such that it could not be said that "the apprisal was sufficiently manifested and intelligently understood" by the accused.

Similarly, in *People vs. Caguioa*, the Court sustained the rejection by the trial court of the extrajudicial admission made

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by the accused during custodial investigation, there being no showing by the prosecution that there was sufficient compliance with the constitutional duty to inform the accused of his rights to silence and to counsel, without which there could be no intelligent waiver of said rights. In said case, the accused — a native of Samar — was interrogated in Tagalog. The prosecution did not show that the accused's acquaintance with Tagalog was such that he could fully understand the questions posed to him.

All considered, we hold that the guilt of appellant has not been established beyond reasonable doubt.

WHEREFORE, the appealed decision is reversed and set aside, and the appellant is hereby acquitted on the basis of reasonable doubt.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Gutierrez, Jr., De la Fuente, and *Patajo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 59730. February 11, 1986]

AURORA L. MIRANDA, GABRIEL ANGELES, FELIPE ANGELES, LORENZO ANGELES, ADRIANO DAGUIZ, SEVERO DIZON, ANGELES ESPINO, FELICIANO LACSAMANA, FRANCISCO LANSAÑGAN, ORLANDO MACAPAGAL, PONCIANO MALLARI, MARCELINO MANGOLABNAN. BENJAMIN MIRANDA, LEONARDO PANGILINAN, EXEQUIEL SALAC, CANOTO SUBA, MARCELINO SUBA, and RUBEN SUBA, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS (NINTH DIVISION) and PEDRO DUE,** *respondents.*