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SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and *Azcuna, JJ.*, concur.

Ynares-Santiago, J., on leave.

EN BANC

[G.R. No. 131804. February 26, 2003]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBERTO OSTIA @ "ROBERT,"** *accused-appellant.*

SYNOPSIS

Accused-appellant was charged with the crime of rape with homicide committed against four-year old Beverly Onato. Appellant pleaded not guilty to the charge during arraignment. However, he subsequently withdrew his plea of not guilty to rape with homicide and entered a plea of guilty to a lesser offense of murder. Appellant was re-arraigned for the crime of murder and pleaded guilty thereto. During trial, the prosecution presented its evidence to prove the guilt of the appellant. The defense, however, did not anymore adduce any evidence in his behalf. After trial, the court found appellant guilty of murder with the qualifying circumstance of evident premeditation and with the generic aggravating circumstances of abuse of confidence, nighttime and *despoblado*, and meted the penalty of death on appellant. Hence, this automatic review. Appellant assailed his conviction alleging that his plea of guilt was improvidently made.

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The Supreme Court agreed with appellant that his plea of guilty to the crime of murder was improvidently made. The Court found that the trial court failed to comply with its duties under Section 3, Rule 116 of the Rules of Court. However, notwithstanding this improvident plea of guilty, the Court found it unnecessary to remand the case to the trial court. This is so because independent of appellant's plea of guilty and his testimony admitting liability for the victim's death, the evidence adduced by the prosecution, albeit circumstantial, established the guilt of appellant beyond reasonable doubt.

While the Court agreed with the ruling of the trial court that appellant was guilty of murder, however, it found that the appropriate qualifying circumstance in the commission of the crime was treachery, not evident premeditation. Treachery was alleged in the information and duly proved. On the other hand, evident premeditation was not alleged in the Information nor proved during the trial. The Court likewise found that the trial court erred in appreciating nighttime, *despoblado* and abuse of confidence as generic aggravating circumstances in the commission of the crime. The prosecution failed to prove the above-mentioned circumstances. Hence, in the absence of any generic aggravating or mitigating circumstances in the commission of the crime, the proper penalty is *reclusion perpetua*. The Court, therefore, affirmed the decision of the trial court with modification as to penalty imposed and award of damages.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PLEAS; PLEA OF GUILTY TO CAPITAL OFFENSE; CAPITAL OFFENSE, DEFINED; CASE AT BAR.**— Section 3, Rule 116 of the Rules of Court applies only where the accused pleads guilty to a capital offense charged in the Information or complaint or amended Information or complaint. Section 4 of Rule 114 of the said rules defines a capital offense as that which under the law existing at the time of its commission may be punished with death. Irrefragably, murder punishable by *reclusion perpetua* to death is a capital offense because, with the presence of aggravating circumstances absent any mitigating circumstance,

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the death penalty may be imposed conformably with Article 63 of the Revised Penal Code.

2. **ID.; ID.; ID.; ID.; MANDATORY DUTIES OF THE COURT; GRAVE ABUSE OF DISCRETION COMMITTED BY A TRIAL JUDGE FOR NON-OBSERVANCE OF THE RULE.**— When an accused enters a plea of guilty to a capital offense, the trial court is mandated to do the following: x x x (1) conduct a searching inquiry into the voluntariness of the plea and the accused's full comprehension of the consequences thereof; (2) require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires. x x x The procedure in said rule is mandatory and a judge who fails to observe with fealty the said rule commits grave abuse of discretion.

3. **ID.; ID.; ID.; ID.; TRIAL JUDGES MUST PROCEED WITH METICULOUS CARE WHENEVER THE IMPOSABLE PENALTY FOR THE CRIME CHARGED IS DEATH.**— This Court had cautioned trial judges to proceed with meticulous care whenever the imposable penalty for the crime charged is death: x x x The execution of a death sentence is irrevocable and experience has shown that innocent persons have, at times, pleaded guilty. In capital offenses, the essence of judicial review is anchored on the principle that while society allows violent retribution for heinous crimes committed against it, it always must make certain that the blood of the innocent is not spilled, or that the guilty are not made to suffer more than their just measure of punishment and retribution. The prudent course to follow is to take testimony not only to satisfy the trial judge but also to aid the Supreme Court in determining whether the accused understood the significance and consequences of his plea. This is to preclude any room for reasonable doubt in the mind of the trial court, or this Court on review, as to the possibility that there might have been some misunderstanding by the accused of the nature of the charge to which he pleaded guilty, and to ascertain the circumstances attendant to the commission of the crime which justify or require the exercise of a greater or lesser degree of severity in the imposition of the prescribed penalties.

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4. ID.; ID.; ID.; ID.; DUTIES OF THE TRIAL COURT IN CONDUCTING SEARCHING QUESTIONS.— This Court likewise outlined the duties of the trial court in conducting searching questions, thus: x x x What is essential is that the judge should, first of all, consider the age, personality, educational background, socio-economic status and other personal circumstances of the accused confessing his guilt. The trial judge should determine whether the accused had been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent or avenging quarters, or by mistaken impressions given, wittingly or unwittingly, by authorities or parties; whether the accused had the assistance of competent counsel during the custodial and preliminary investigations; and whether he understood the charges against him. The court should inquire if the accused knows the crime with which he is charged and explain to him the elements of the crime and the corresponding penalty therefor. The court may require the accused to fully narrate the incident that spawned the charges against him, or make him reenact the manner in which he perpetrated the crime, or cause him to furnish and explain missing details of significance about his personal circumstances; about the commission of the crime and events during the custodial and preliminary investigation. In doing so, all questions posed by the judge to the accused should be in a language known and understood by the latter. Still, the inquiry need not stop with the accused. The court may also propound questions to accused's counsel to determine whether or not said counsel had conferred with, and completely explained to accused the meaning of a plea and its consequences. x x x The trial court is also required to probe thoroughly into the reasons as well as the facts and circumstances for the change of plea of the accused and his comprehension of his plea; explain to him the elements of the crime for which he is charged as well as the nature and effect of qualifying circumstances, generic aggravating circumstances and mitigating circumstances in the commission thereof; and inform him of the imposable penalty and his civil liabilities for the crime for which he would plead guilty to.

5. ID.; ID.; ID.; ID.; DUTIES THEREIN NOT COMPLIED WITH BY THE TRIAL COURT IN CASE AT BAR.— This Court is convinced that the trial court failed to comply with its duties

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under Section 3, Rule 116 of the Rules of Court. It bears stressing that accused-appellant did not even know how to read and write. In fact, he merely affixed his thumbmark on the Waiver of Right to a Preliminary Investigation. The trial court failed to explain to accused-appellant (a) the nature of murder and the elements thereof; (b) that killing Beverly, a four-year old girl, constituted treachery, a qualifying circumstance; accused-appellant being unlettered could not be presumed to understand the requisites of treachery, a highly technical legal term; (c) the nature and effect of a qualifying aggravating circumstance in the killing of Beverly and its effect on the penalty that may be imposed on him; (d) what heinous crimes are and the meaning and import of indivisible penalties; (e) the specific circumstances which may be considered by the court in the imposition of *reclusion perpetua* or death penalty; (f) whether his plea of guilty after the prosecution had commenced presenting its evidence may still be considered by the trial court as a mitigating circumstance; (g) the nature of civil liabilities that he may be ordered to pay and the amounts thereof. The trial court even failed to probe into the reasons for accused-appellant's change of plea from "not guilty" of rape with homicide to "guilty" of murder and for his failure to adduce evidence during the reinvestigation of the case despite having been granted the right to do so by the trial court. The trial court did not even bother inquiring from accused-appellant whether he sought the advice of his counsel before pleading guilty to murder and whether he wanted to adduce evidence in his behalf to prove any mitigating circumstances in the commission of the crime to warrant the imposition of the lesser penalty of *reclusion perpetua*.

6. **ID.; ID.; ID.; ID.; REMAND OF THE CASE IS UNNECESSARY EVEN IF THE PLEA OF GUILTY WAS IMPROVIDENTLY MADE, WHERE THE EVIDENCE ADDUCED BY THE PROSECUTION ESTABLISHED THE GUILT OF ACCUSED BEYOND REASONABLE DOUBT.**— Notwithstanding the improvident plea of guilty of accused-appellant, this Court finds it unnecessary to remand the case to the trial court. This is so because independent of accused-appellant's plea of guilty and his testimony admitting liability for Beverly's death, the evidence adduced by the prosecution, albeit circumstantial, established the guilt of accused-appellant for murder beyond reasonable doubt.

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7. **CRIMINAL LAW; MURDER; ACCUSED CANNOT BE CONVICTED THEREOF WHERE A QUALIFIED CIRCUMSTANCE IS NOT ALLEGED IN THE INFORMATION.**— The trial court convicted accused-appellant of murder on its finding that the killing of Beverly was qualified by evident premeditation. While we agree with the ruling of the trial court that accused-appellant is guilty of murder, however, the appropriate qualifying circumstance in the commission of the crime is treachery, not evident premeditation. Treachery was alleged in the Information and duly proved. On the other hand, evident premeditation was not alleged in the Information. An accused cannot be convicted of murder where a qualified circumstance is not alleged in the Information, otherwise the accused would be deprived of his right to be informed of the nature of the offense with which he is charged.

8. **ID.; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; NOT PROVEN IN CASE AT BAR.**— Moreover, evident premeditation was not proved by the prosecution. There is no evidence to prove when accused-appellant decided to kill Beverly and that he clung to his determination to kill her and a sufficient lapse of time between his determination and the actual killing of Beverly.

9. **ID.; ID.; TREACHERY; KILLING A CHILD BY AN ADULT CONSTITUTES TREACHERY EVEN IF MODE OF ATTACK IS NOT PROVED.**— Under the Information, accused-appellant was charged with murder qualified by treachery. Although the Information does not specifically allege treachery as a qualifying circumstance in the commission of the crime, however, the Information alleges that the victim Beverly was four years old at the time of the killing. Such allegation is sufficient compliance with Section 6, Rule 110 of the Revised Rules of Criminal Procedure, as amended. Case law has it that killing a child by an adult constitutes treachery even if the mode of attack by the assailant is not proved by the prosecution because a child of tender years could not be expected to put up a defense and hence, at the mercy of his or her assailant.

10. **ID.; GENERIC AGGRAVATING CIRCUMSTANCES; NIGHTTIME; CANNOT BE APPRECIATED ABSENT PROOF THAT ACCUSED PURPOSELY SOUGHT OR**

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TOOK ADVANTAGE OF NIGHTTIME IN KILLING THE VICTIM; *DESPOBLADO*; CANNOT BE APPRECIATED ABSENT PROOF THAT ACCUSED SOUGHT OR TOOK ADVANTAGE OF THE SOLITUDE OF THE *SITUS CRIMINIS* IN COMMITTING THE CRIME.— The trial court likewise erred in appreciating nighttime, *despoblado* and abuse of confidence as generic aggravating circumstances in the commission of the crime. The prosecution failed to prove that accused-appellant purposely sought or took advantage of nighttime in killing Beverly. There is no evidence that accused-appellant sought or took advantage of the solitude of the *situs criminis* in committing the crime.

11. **ID.; ID.; ABUSE OF CONFIDENCE; CANNOT BE APPRECIATED WHERE THE PROSECUTION FAILED TO PROVE THAT ACCUSED TOOK ADVANTAGE OF THE TRUST AND CONFIDENCE REPOSED UPON HIM TO KILL THE VICTIM.**— Abuse of confidence could not be appreciated as generic aggravating circumstance because the prosecution failed to prove that (a) accused-appellant enjoyed the trust and confidence of Beverly or her parents; (b) and that even if accused-appellant enjoyed said confidence, he took advantage of said trust or confidence to kill Beverly. The barefaced fact that the accused-appellant and Ponciano were co-workers does not constitute evidence that the latter reposed trust and confidence in accused-appellant.

12. **CIVIL LAW; DAMAGES; AWARD OF CIVIL INDEMNITY AND MORAL DAMAGES, PROPER IN CASE AT BAR.**— The trial court ordered accused-appellant to pay to the heirs of the victim the amount of ₱50,000.00 by way of civil indemnity. However, the trial court failed to order accused-appellant to pay the amount of ₱50,000.00 by way of moral damages. The decision of the trial court shall be modified accordingly.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

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DECISION

CALLEJO, SR., *J.*:

The Spouses Ponciano Onato and Edita Onato resided with their four-year old daughter,[1] Beverly Onato, in Sitio Mactang, Barangay Ilo, Sto. Niño, Samar. Ponciano was a fisherman and a farmer but was employed by Tito Soria in his buy-and-sell of fish business. Roberto Ostia, a co-worker of Ponciano, resided in the *poblacion* of Sto. Niño. Rufo Legaspi, a carpenter and a *Barangay Tanod*, was a neighbor of Ponciano.

On May 13, 1995, a Saturday, at about 7:00 p.m., Rufo was seated near his house and resting before retiring for the evening. Momentarily, Rufo saw Roberto, with Beverly perched on his right shoulder, walking towards the direction of the *poblacion*. Roberto's left hand was holding the right hand of Mary Donoso, a nine-year old playmate of Beverly. The trio were in animated conversation on their way towards the *poblacion*.

After the lapse of an hour or so, Edita noticed that Beverly had not yet returned to their house. She went out of the house to look for her daughter. Rufo told Edita that earlier he saw Beverly perched on the shoulder of Roberto on their way towards the direction of the *poblacion*. Thereafter, Robert sauntered by. However, Beverly was no longer with him. Puzzled, Edita inquired from Roberto where Beverly was. Instead of responding, Roberto fled. Edita was flustered. Rufo, who witnessed the incident, advised Edita to report the incident to the police authorities. Edita rushed back home and woke up Ponciano. She told her husband that Beverly had been taken by Roberto and that Beverly had not yet returned home. The couple rushed from their house and reported the incident to the police authorities. With the help of their neighbors and police officers Manuel Toribio and Dodong Espino, the couple looked for Beverly but failed to locate her. They resumed their search the next day, May 14, 1995, and, at 3:00 p.m., they found Beverly sprawled

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[1] Exhibit "G".

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in a grassy portion below a copra kiln about 120 meters away from the house of the Onato couple and about 15 meters from the nearest house. Beverly was already dead. Pictures of Beverly were taken where her body was found.[2] Ponciano and the policemen then looked for Dr. Renato Ortiz, the Municipal Health Officer, to conduct an autopsy on the cadaver of Beverly but the doctor was in Calbayog City. Lorenzo Bernabe, the Municipal Sanitary Inspector who had been trained by the District Hospital to perform autopsies in the absence of the Municipal District Officer, performed the autopsy on the cadaver of Beverly. Bernabe drew a sketch depicting the human body indicating the number and locations of the injuries sustained by Beverly.[3] Bernabe then prepared the autopsy report.

Dr. Renato Ortiz validated the report of Bernabe and signed a Medico-Legal Necropsy Report on May 24, 1995 showing the injuries sustained by Beverly and the cause of her death:

FINDINGS

1. Wound, lacerated, 3.5 cm. long, running downward from posterior vaginal wall to the anus.
2. Wound, lacerated, 2 cm. long, running upward from the vagina to *mons pubis*.
3. Contusion, purplish in color, 5.0 cm. in diameter lateral side of lumbar area, left, below the costal margin.
4. Presence of blood clots, left ear.

CAUSE OF DEATH:

Cardio-Respiratory Arrest

2ndary to severe hemorrhage[4]

According to Dr. Ortiz, the lacerated wounds sustained by Beverly from the posterior wall of her vagina to her anus and from her vagina to the *mons pubis* were caused by a blunt

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[2] Exhibits "F" and "F-1".

[3] Exhibits "B", "B-1", "C" and "C-1".

[4] Exhibit "A".

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instrument shoved violently into her vagina.[5] Such an instrument could be a penis. The doctor also signed the Certificate of Death of Beverly.[6]

Earlier on May 18, 1995, a criminal complaint for rape with homicide was filed by Ponciano against Roberto with the Municipal Circuit Trial Court[7] and after the requisite preliminary investigation, an Information charging Roberto with Rape with Homicide was filed on December 7, 1995 with Branch 32 of the Regional Trial Court of Calbayog City which reads:

> That on or about the 13th day of May, 1995, at about 7:00 o'clock in the evening, at Sitio Mactang, Barangay Ilo, Municipality of Sto. Niño, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by means of force and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge against a minor four (4) years old girl, BEVERLY ONATO, without the latter's consent and against her will, and thereafter, with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously inflict upon the said Beverly Onato fatal wounds on the different parts of her body, which caused her untimely death.
>
> CONTRARY TO LAW.[8]

On the date set for his arraignment, Roberto appeared without counsel. The court issued an order appointing Atty. Artemio Apostol as counsel *de oficio* of Roberto.[9] Said counsel prayed for the resetting of the arraignment to January 30, 1996 to enable him to secure a copy of the necropsy report and study the case intelligently. The court granted the motion.

During the arraignment of Roberto on January 30, 1996, he, through his counsel *de oficio,* manifested to the court that he was willing to plead guilty to the lesser offense of murder. However, the public prosecutor prayed for a continuance so

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[5] The crime took place before the effectivity of Republic Act 8353.

[6] Exhibit "D".

[7] Exhibit "E".

[8] Original Records, p. 1.

[9] *Id.* at 25.

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that he could consult the provincial prosecutor and the father of the victim, Ponciano, on the offer of Roberto.

The arraignment of Roberto was reset to February 29, 1996, on which date, he, through his counsel *de oficio*, moved that a reinvestigation be conducted by the public prosecutor. The motion was granted by the trial court.[10] However, despite notice from the office of the public prosecutor, Roberto failed to adduce controverting evidence. On motion of the prosecution, the arraignment of Roberto was set on August 9, 1996. When arraigned on said date, Roberto, with the assistance of his counsel *de oficio*, entered a plea of Not Guilty to the charge of rape with homicide.[11]

Trial ensued. The prosecution presented Dr. Renato Ortiz as its first witness. Before the trial resumed on February 24, 1997, the counsel *de oficio* of Roberto manifested that the latter was intending to plead guilty to murder and prayed for the deferment of the trial. The public prosecutor manifested to the court that he had no objection to Roberto's pleading guilty to murder as he did not have sufficient evidence to prove that the latter raped Beverly but that he had sufficient evidence to prove that he killed her.

During the trial set on May 6, 1997, Roberto, through counsel, moved that he be allowed to withdraw his plea of not guilty to rape with homicide and to enter a plea of guilty to murder. Ponciano, the father of Beverly, and the public prosecutor agreed to Roberto's pleading guilty to murder. On May 19, 1997, Roberto, per Certificate of Re-arraignment signed by the Branch Clerk of Court,[12] was re-arraigned for the lesser offense of murder and pleaded guilty thereto.[13] The court then informed Roberto that the penalty for murder was *reclusion perpetua* to death, two indivisible penalties, and that the court may impose

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[10] *Id.* at 53.

[11] *Id.* at 59.

[12] *Id.* at 101.

[13] *Id.*

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the death penalty on him depending on the circumstances found by the trial court.

When trial resumed on May 22, 1997, for the prosecution to continue presenting its evidence, Roberto took the witness stand to answer more questions from the court. He testified that he killed Beverly by smashing a piece of rock bigger than the size of his fist, about seven inches in diameter, on her head and chest and on the other parts of her body because, in the meantime, he lost control of himself. He further stated that he was not forced or coerced in so testifying before the court. He admitted that he caused the death of the victim.

During the trial on May 26, 1997, the prosecution formally offered its documentary evidence. The court admitted all the prosecution's documentary evidence without any objection from Roberto. The latter did not anymore adduce any testimonial and documentary evidence in his behalf and on said date, the court issued an order declaring that the case was submitted for its decision.[14]

On August 25, 1997, the trial court rendered judgment[15] finding Roberto guilty beyond reasonable doubt of murder with the qualifying circumstance of evident premeditation and with the generic aggravating circumstances of (a) abuse of confidence considering that Roberto and Ponciano were co-workers, (b) nighttime considering that Beverly was killed in the evening and (c) *despoblado* considering that the nearest house to the *situs criminis* was fourteen meters. The decretal portion of the decision reads:

> WHEREFORE, the Court, accepting the plea of guilt of the accused ROBERTO OSTIA *alias* ROBERT to the crime of Murder, and likewise considering that the evidence has sufficiently proved that the crime has been committed, finds and declares the said accused guilty of Murder beyond reasonable doubt[s], as principal, and considering three aggravating circumstances which are not offset by any mitigating circumstances, hereby sentences the accused to suffer the penalty

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[14] *Id.* at 110.

[15] Penned by Acting Presiding Judge Clemente C. Rosales.

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of DEATH, to be carried out in accordance with law, and to pay the costs.

Likewise, the Court hereby condemns the accused to indemnify the heirs of the victim Beverly Onato in the amount of ₱50,000.00.

Let the entire records of the case, together with the stenographic transcripts and exhibits be forwarded to the honorable Supreme Court for automatic review of this decision.

SO ORDERED.[16]

The case was brought to the Court on automatic appeal the death penalty having been imposed on Roberto by the trial court.

Accused-appellant Roberto assails the decision of the trial court with the following assignments of error:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME OF MURDER DESPITE HIS IMPROVIDENT PLEA OF GUILTY.

II

THE COURT A QUO ERRED IN RULING THAT EVIDENT PREMEDITATION QUALIFIED THE KILLING TO MURDER.

III

ON THE ASSUMPTION THAT ACCUSED-APPELLANT COMMITTED THE CRIME MURDER (SIC) THE COURT A QUO ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH UPON HIM.[17]

On the first assignment of error, accused-appellant avers that the trial court failed to comply with its mandatory duties when he pleaded guilty to murder, a capital offense, the imposable penalty for which is *reclusion perpetua* to death. More specifically, the trial court allegedly failed to comply with Section 3, Rule 116 of the Rules of Court when it failed to conduct a searching inquiry into the voluntariness and full comprehension of accused-

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[16] Original Records, pp. 128-129.

[17] *Rollo*, pp. 55-56.

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appellant of the consequences of his plea of guilty to murder and to inquire from him if he wished to adduce evidence on his behalf and allow him to do so if he wished. Accused-appellant contends that his plea of guilty to murder was improvidently made and prays that his arraignment for murder and all proceedings as well as the decision of the trial court convicting him of said crime and imposing on him the supreme penalty of death be nullified. He further prays for the remand of the case to the trial court for appropriate proceedings. For its part, the Office of the Solicitor General asserts that as gleaned from the decision of the trial court, it complied with fealty with the mandatory requirements of Section 3, Rule 116 of the 1985 Rules of Criminal Procedure, as amended. The OSG quotes the following portion of the trial court's decision:

> x x x On May 19, 1997, the accused was re-arraigned upon the information. He was assisted by his counsel and the information was read and translated to him in the *waray* dialect which he claims he understands and speaks. After thus reading and translating the information to him in the *waray* dialect, the accused entered a plea of guilt to murder.
>
> The Public Prosecutor, Hon. Feliciano Aguilar, gave his consent to this plea of guilt of the accused to murder, manifesting again to the Court that he has no direct evidence to establish rape. The complainant, Ponciano Onato who is the father of the victim Beverly Onato, after conferring with the Public Prosecutor, also gave his consent to this plea of the accused to the lesser offense of murder. The Court conducted searching and clarificatory questions to the accused to determine whether the latter understood his plea of guilt as well as realized the consequences thereof. He was informed by the court that as a result of his plea of guilt, he admitted all the facts alleged in the information which were already read and translated to him in the *waray* dialect during the re-arraignment; that the Court will no longer conduct any trial but would just impose upon him the penalty that is proper under the law; that the penalty provided for murder, a heinous crime under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659 is *Reclusion Perpetua* to death, and that either of these two indivisible penalties may be imposed upon him depending upon the circumstances which may ultimately be appreciated by the Court (see TSN dated May 19, 1997, pages 1-3; 4-5).

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He was asked whether he was earnest and sincere in his plea of guilt to murder, and he answered the Court in the affirmative. Furthermore, the Court asked him whether he was threatened, forced, coerced by anybody or somebody suggested to him to plea guilty to murder but he answered that he was not, and that his plea was all his own free will and volition. (see TSN dated May 22, 1997, pages 1-4).

The accused was asked by the Court how he killed the victim and he stated that he used a piece of rock about the size of his fist which was measured to have an approximate diameter of four inches and elongated in shape about seven inches long which he smashed on the victim, whereby he hit the victim on the chest, on the head, as well as other parts of her body.

Although after conducting searching and clarificatory questions as anteriorly already mentioned, the Court was without doubts that the accused was not improvident in his plea of guilt to murder and that he realized the consequences thereof, consistent with the rules and considering the fact that the crime of murder to which the accused pleaded guilty is a capital offense, the Court required the prosecution to present its evidence. Aside from the testimony of Dr. Renato M. Ortiz, M.D., the prosecution presented Ponciano Onato, the father of the victim, and Rufo Legape who is a *Barangay Kagawd* (*sic*) of Brgy. Ilo, Sto. Niño, Sámar.

(pp. 2-5, Decision)

Appellant's claimed absence of an inquiry by the trial court as to his interest to present evidence is of no moment.[18]

This Court agrees with accused-appellant. Section 3, Rule 116 of the Rules of Court cited by accused-appellant reads:

SEC. 3. *Plea of guilty to capital offense, reception of evidence.* — When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may also present evidence in his behalf.

The rule applies only where the accused pleads guilty to a capital offense charged in the Information or complaint or amended

[18] *Id.* at 106-109.

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Information or complaint. Section 4 of Rule 114 of the said rules defines a capital offense as that which under the law existing at the time of its commission may be punished with death. Irrefragably, murder punishable by *reclusion perpetua* to death is a capital offense because, with the presence of aggravating circumstances absent any mitigating circumstance, the death penalty may be imposed conformably with Article 63 of the Revised Penal Code. Under the Information, accused-appellant was charged with murder qualified by treachery. Although the Information does not specifically allege treachery as a qualifying circumstance in the commission of the crime, however, the Information alleges that the victim Beverly was four years old at the time of the killing. Such allegation is sufficient compliance with Section 6, Rule 110 of the Revised Rules of Criminal Procedure, as amended. Case law has it that killing a child by an adult constitutes treachery even if the mode of the attack by the assailant is not proved by prosecution because a child of tender years could not be expected to put up a defense and hence, at the mercy of his or her assailant.[19]

When an accused enters a plea of guilty to a capital offense, the trial court is mandated to do the following:

> x x x (1) conduct a searching inquiry into the voluntariness of the plea and the accused's full comprehension of the consequences thereof; (2) require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires. x x x[20]

The procedure in said rule is mandatory and a judge who fails to observe with fealty the said rule commits grave abuse of discretion.[21] This Court had cautioned trial judges to proceed with meticulous care whenever the imposable penalty for the crime charged is death:

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[19] *People v. Gonzales*, 311 SCRA 547 (1999); *People v. Lumandong*, 327 SCRA 650 (2000).

[20] *People v. Chua*, G.R. No. 137841, October 1, 2001.

[21] *Ibid.*

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x x x The execution of a death sentence is irrevocable and experience has shown that innocent persons have, at times, pleaded guilty. In capital offenses, the essence of judicial review is anchored on the principle that while society allows violent retribution for heinous crimes committed against it, it always must make certain that the blood of the innocent is not spilled, or that the guilty are not made to suffer more than their just measure of punishment and retribution. The prudent course to follow is to take testimony not only to satisfy the trial judge but also to aid the Supreme Court in determining whether the accused understood the significance and consequences of his plea. This is to preclude any room for reasonable doubt in the mind of the trial court, or this Court on review, as to the possibility that there might have been some misunderstanding by the accused of the nature of the charge to which he pleaded guilty, and to ascertain the circumstances attendant to the commission of the crime which justify or require the exercise of a greater or lesser degree of severity in the imposition of the prescribed penalties.[22]

This Court likewise outlined the duties of the trial court in conducting searching questions, thus:

x x x What is essential is that the judge should, first of all, consider the age, personality, educational background, socio-economic status and other personal circumstances of the accused confessing his guilt. The trial judge should determine whether the accused had been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent or avenging quarters, or by mistaken impressions given, wittingly or unwittingly, by authorities or parties; whether the accused had the assistance of competent counsel during the custodial and preliminary investigations; and whether he understood the charges against him. The court should inquire if the accused knows the crime with which he is charged and explain to him the elements of the crime and the corresponding penalty therefor. The court may require the accused to fully narrate the incident that spawned the charges against him, or make him reenact the manner in which he perpetrated the crime, or cause him to furnish and explain missing details of significance about his personal circumstances, about the commission of the crime and events during the custodial and preliminary investigation. In doing so, all questions posed by the judge to the accused should be in a language known and understood

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[22] *Id.* at 13-14.

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by the latter. Still, the inquiry need not stop with the accused. The court may also propound questions to accused's counsel to determine whether or not said counsel had conferred with, and completely explained to accused the meaning of a plea and its consequences. x x x[23]

The trial court is also required to probe thoroughly into the reasons as well as the facts and circumstances for the change of plea of the accused and his comprehension of his plea; explain to him the elements of the crime for which he is charged as well as the nature and effect of qualifying circumstances, generic aggravating circumstances and mitigating circumstances in the commission thereof; and inform him of the imposable penalty and his civil liabilities for the crime for which he would plead guilty to.

In this case, the Information was merely read and translated to accused-appellant in the "*waray*" dialect which he understood. The trial court informed accused-appellant that by pleading guilty, he admitted all the facts alleged in the Information and that the court would no longer conduct any trial but that it would impose on him the proper penalty for the crime of murder under Article 248 of the Revised Penal Code, a heinous crime under Republic Act 7659 punishable by two indivisible penalties, namely, *reclusion perpetua* to death and that either of said penalties may be imposed on him depending upon the circumstances which may ultimately be appreciated by the court. When asked by the trial court if he pleaded guilty on his own volition, and if nobody forced, threatened or coerced him into admitting having killed Beverly, accused-appellant answered that he admitted having killed Beverly on his own free will.

This Court is convinced that the trial court failed to comply with its duties under Section 3, Rule 116 of the Rules of Court. It bears stressing that accused-appellant did not even know how to read and write. In fact, he merely affixed his thumbmark on the Waiver of Right to a Preliminary Investigation.[24] The trial

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[23] *Id.* at 8-9.

[24] Original Records, p. 16.

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court failed to explain to accused-appellant (a) the nature of murder and the elements thereof; (b) that killing Beverly, a four-year old girl, constituted treachery, a qualifying circumstance; accused being unlettered could not be presumed to understand the requisites of treachery, a highly technical legal term;[25] (c) the nature and effect of a qualifying aggravating circumstance in the killing of Beverly and its effect on the penalty that may be imposed on him; (d) what heinous crimes are and the meaning and import of indivisible penalties; e) the specific circumstances which may be considered by the court in the imposition of *reclusion perpetua* or death penalty; (f) whether his plea of guilty after the prosecution had commenced presenting its evidence may still be considered by the trial court as a mitigating circumstance;[26] (g) the nature of civil liabilities that he may be ordered to pay and the amounts thereof. The trial court even failed to probe into the reasons for accused-appellant's change of plea from "not guilty" of rape with homicide to "guilty" of murder and for his failure to adduce evidence during the reinvestigation of the case despite having been granted the right to do so by the trial court. The trial court did not even bother inquiring from accused-appellant whether he sought the advice of his counsel before pleading guilty to murder and whether he wanted to adduce evidence in his behalf to prove any mitigating circumstances in the commission of the crime to warrant the imposition of the lesser penalty of *reclusion perpetua*.[27]

Notwithstanding the improvident plea of guilty of accused-appellant, this Court finds it unnecessary to remand the case to the trial court. This is so because independent of accused-appellant's plea of guilty and his testimony admitting liability for Beverly's death, the evidence adduced by the prosecution, albeit circumstantial, established the guilt of accused-appellant for murder beyond reasonable doubt. As this Court held in *People v. Jabien*:

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[25] *People v. Derilo*, 271 SCRA 633 (1997).

[26] *People v. Bello*, 316 SCRA 804 (1999).

[27] *People v. Albert*, 251 SCRA 136 (1995).

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To be sure, accused-appellant did not only give an informed plea of guilt. His guilt was proved by the evidence presented by the prosecution. In *People vs. Derilo* we held:

> 'While it may be argued that appellant entered an improvident plea of guilty when re-arraigned, we find no need, however, to remand the case to the lower court for further reception of evidence. As a rule, this Court has set aside convictions based on pleas of guilty in capital offenses because of improvidence thereof and when such plea is the sole basis of the condemnatory judgment. However, *where the trial court receives evidence to determine precisely whether or not the accused has erred in admitting his guilt, the manner on which the plea of guilty is made (improvidently or not) loses legal significance, for the simple reason that the conviction is based on evidence proving the commission by the accused of the offense charged.*
>
> *'Thus, even without considering the plea of guilty of appellant, he may still be convicted if there is adequate evidence on record on which to predicate his conviction.* As already observed, the prosecution had already rested when appellant decided to change his plea. The prosecution then had all the opportunity to verify the material allegations in the information . . . (Italics supplied)

In *People vs. Tahop* we also ruled that 'even if [the] accused['s] x x x plea was improvidently made, if the evidence presented thereafter by the prosecution is sufficient to prove his guilt beyond reasonable doubt, the court's verdict of guilt based solely on the hard evidence presented can be sustained. At this point then, the improvidence of the plea of guilt is irrelevant.[28]

On the second assignment of error, the trial court convicted accused-appellant of murder on its finding that the killing of Beverly was qualified by evident premeditation. While we agree with the ruling of the trial court that accused-appellant is guilty of murder, however, the appropriate qualifying circumstance in the commission of the crime is treachery, not evident premeditation. Treachery was alleged in the Information and duly proved. On the other hand, evident premeditation was not alleged in the Information. An accused cannot be convicted of

[28] 332 SCRA 702 (2000)

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murder where a qualified circumstance is not alleged in the Information, otherwise the accused would be deprived of his right to be informed of the nature of the offense with which he is charged. In *People v. Gallarde*,[29] we held that:

> x x x In rape with homicide, in order to be convicted of murder in case the evidence fails to support the charge of rape, the qualifying circumstance must be sufficiently alleged and proved. Otherwise, it would be a denial of the right of the accused to be informed of the nature of the offense with which he is charged. It is fundamental that every element of the offense must be alleged in the complaint or information. The main purpose of requiring the various elements of a crime to be set out in an information is to enable the accused to suitably prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense.
>
> In the absence then in the information of an allegation of any qualifying circumstance, GALLARDE cannot be convicted of murder. An accused cannot be convicted of an offense higher than that with which he is charged in the complaint or information under which he is tried. It matters not how conclusive and convincing the evidence of guilt may be, but an accused cannot be convicted of any offense, unless it is charged in the complaint or information for which he is tried, or is necessarily included in that which he is charged. He has a right to be informed of the nature of the offense with which he is charged before he is put on trial. To convict an accused of a higher offense than that charged in the complaint or information under which he is tried would be an unauthorized denial of that right.

Moreover, evident premeditation was not proved by the prosecution. There is no evidence to prove when accused-appellant decided to kill Beverly and that he clung to his determination to kill her and a sufficient lapse of time between his determination and the actual killing of Beverly.[30]

On the third assignment of error, the trial court likewise erred in appreciating nighttime, *despoblado* and abuse of confidence as generic aggravating circumstances in the commission of the crime. The prosecution failed to prove that accused-appellant

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[29] 325 SCRA 835 (2000).

[30] *People v. Suelto*, 325 SCRA 41 (2000).

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purposely sought or took advantage of nighttime in killing Beverly.[31] There is no evidence that accused-appellant sought or took advantage of the solitude of the situs criminis in committing the crime.[32] Abuse of confidence could not be appreciated as generic aggravating circumstance because the prosecution failed to prove that (a) accused-appellant enjoyed the trust and confidence of Beverly or her parents; (b) and that even if accused-appellant enjoyed said confidence, he took advantage of said trust or confidence to kill Beverly.[33] The barefaced fact that the accused-appellant and Ponciano were co-workers does not constitute evidence that the latter reposed trust and confidence in accused-appellant. In the absence of any generic aggravating or mitigating circumstances in the commission of the crime, the accused-appellant is meted the penalty of *reclusion perpetua* conformably with Article 63 of the Revised Penal Code.

The trial court ordered the accused-appellant to pay to the heirs of the victim the amount of ₱50,000.00 by way of civil indemnity. However, the trial court failed to order accused-appellant to pay the amount of ₱50,000.00 by way of moral damages.[34] The decision of the trial court shall be modified accordingly.

IN LIGHT OF ALL THE FOREGOING, the decision of the Regional Trial Court of Calbayog City, Branch 32 is hereby *AFFIRMED WITH MODIFICATION*. Accused-appellant is found guilty of murder defined in Article 248 of the Revised Penal Code as amended by Republic Act 7659 and there being no modifying circumstances in the commission of the crime is hereby meted the penalty of *reclusion perpetua*. He is also ordered to pay the heirs of the victim Beverly Onato the amount of ₱50,000.00 by way of civil indemnity and the amount of ₱50,000.00 by way of moral damages.

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[31] *People v. Beltran*, 260 SCRA 141 (1996).

[32] *People v. Cabiles*, 248 SCRA 207 (1995).

[33] *People v. Crumb*, 46 O.G. 6162 (1949); *People v. Gelera*, 277 SCRA 450 (1997).

[34] *People v. Latupsan*, 360 SCRA 60 (2001).

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Costs *de oficio*.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Mendoza, Panganiban, Quisumbing, Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, and *Azcuna, JJ.*, concur.

Vitug, J., concurs; believes that the attendance of the qualifying circumstance of treachery should warrant the grant of exemplary damages.

Ynares-Santiago, J., on leave.

SECOND DIVISION

[Adm. Case No. 4801. February 27, 2003]

MENA U. GERONA, *complainant, vs.* **ATTY. ALFREDO DATINGALING,** *respondent.*

SYNOPSIS

Complainant filed an administrative complaint for disbarment against the respondent for allegedly falsifying a document entitled "Consent to Quarry" and notarizing it afterwards. Complainant contended that despite knowledge of the falsity of the document, respondent notarized it. Complainant further alleged that she, together with her siblings, did not appear before the respondent on July 2, 1997 and did not sign each and every page of the document as stated by the respondent in his acknowledgment. Respondent denied the allegations against him and insisted that he had no participation in the transaction. He claimed that he merely notarized the document on the representation of the persons who appeared before him.