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respondent's leave of absence is too brief as to justify the delay of the resolution of the ejectment cases.

WHEREFORE, the respondent is hereby reprimanded and admonished to be more conscientious in the performance of his duties.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. L-31013. February 10, 1986]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUBEN EBORA Y FELICIANO and ILDEFONSO DE LOS REYES Y EBORA,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT OVERCOME THE DYING DECLARATION OF THE VICTIM AND THE POSITIVE TESTIMONIES OF WITNESSES.—** The alibis of the accused cannot overcome the dying declaration of the victim and the testimonies of eyewitnesses Juana E. Saguros and Librado S. Enriquez.

2. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN APPRECIATED.—** The crime is murder because of the presence of treachery. The sudden and unexpected stabbing of Ebora while being held by Balbastro, insured the killing without any risk to the assailants.

3. **ID.; CONSPIRACY; WHEN APPRECIATED.—** Conspiracy may be implied from the concerted action of the assailants in confronting the victim. As to De los Reyes, there being no

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circumstances modifying his liability the judgment against him should be affirmed.

4. ID.; MITIGATING CIRCUMSTANCES; MINORITY; EFFECT ON THE IMPOSITION OF PENALTY.— But as to Ebora, the penalty has to be reduced. When he testified on *June 13, 1969* he declared that he was 20 years old. The *1965* blotter of the Tanauan police reveals that he was 16 years old. Giving him the benefit of the doubt, it would appear that he was below 18 years of age when he committed the offense on *August 14, 1965* (Exh. 2). He is entitled to a one-degree reduction of the penalty under article 68 of the Revised Penal Code (*People vs. Sanchez*, G.R. No. 56769, September 21, 1984, 132 SCRA 103).

APPERANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Magno T. Bueser for accused-appellants.

DECISION

AQUINO, *C.J.*:

Ruben Ebora and Ildefonso de los Reyes y Ebora appealed from the decision of the Circuit Criminal Court of Batangas, finding them guilty of murder, sentencing them to *reclusion perpetua* and ordering them to pay the heirs of Rodolfo Saguros an indemnity of P12,000.

The evidence for the prosecution shows that at about nine o'clock in the evening of August 14, 1965, Ruben Ebora, Ildefonso de los Reyes, Camilo Balbastro and an unidentified person went to the house of Rodolfo Saguros, 29, located near the national road at Barrio Palahanan Segundo, San Juan, Batangas and invited him to "smoke for a while".

As soon as Saguros approached the group, De los Reyes pushed him towards Ebora. Balbastro grabbed his hand and, while being thus held, Ebora stabbed him. Saguros shouted to his sister that he had been stabbed. The group fled.

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Saguros was taken to a doctor's clinic. While there, a patrolman took his dying declaration in Tagalog to which he affixed his right-hand thumbmark. It was witnessed by the barrio captain. Saguros stated in his antemortem statement that he was wounded by Ebora with a knife or a dagger and that he was going to die because of the wound. (Exh. A).

The doctor certified that Saguros had a serious stab wound on the left side of his abdomen (Exh. B). He was brought to a hospital in Lipa City where he died an hour after admission (Exh. C).

The deputy chief of police on August 17, 1965 filed a complaint for murder against Ebora and De los Reyes, 21. They were arrested only in 1969. Balbastro was not arrested.

At the trial, Ebora said that he was in Tanauan, Batangas at the time of the stabbing of Saguros as shown by the blotter of the police, Exhibit 2. The trial court noted that the entry in the police blotter does not indicate when Ebora was detained. The chief of police testified that the entry was irregularly made.

De los Reyes testified that when the stabbing incident happened he was in Barrio Putingkahoy, Rosario, Batangas. Judge Ramon V. Jabson did not believè the alibis of the appellants.

In this appeal, they contend that the trial court erred in not giving credence to their alibis, in finding that they were the ones who killed Saguros, in declaring that they eluded arrest for more than three years and in holding that the killing was murder.

These contentions were sufficiently refuted by the Solicitor General in his brief. The alibis of the accused cannot overcome the dying declaration of the victim and the testimonies of eyewitnesses Juana E. Saguros and Librado S. Enriquez. Their evasion of arrest for more than three years is an indication of guilt. Their credibility was impaired by their conviction in 1969 of the crime of using a fictitious name and concealing true name. (Exh. D).

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We hold that the guilt of the accused was established beyond reasonable doubt, The crime is murder because of the presence of treachery. The sudden and unexpected stabbing of Ebora while being held by Balbastro, insured the killing without any risk to the assailants.

Conspiracy may be implied from the concerted action of the assailants in confronting the victim. As to De los Reyes, there being no circumstances modifying his liability the judgment against him should be affirmed.

But as to Ebora, the penalty has to be reduced. When he testified on *June 13, 1969* he declared that he was 20 years old. The *1965* blotter of the Tanauan police reveals that he was 16 years old. Giving him the benefit of the doubt, it would appear that he was below 18 years of age when he committed the offense on *August 14, 1965* (Exh. 2). He is entitled to a one-degree reduction of the penalty under article 68 of the Revised Penal Code (*People vs. Sanchez*, G.R. No. 56769, September 21, 1984, 132 SCRA 103).

WHEREFORE, the penalty of *reclusion perpetua* imposed by the trial court on appellant Ildefonso de los Reyes is affirmed. Appellant Ebora is sentenced to an indeterminate penalty of ten (10) years of *prision mayor* medium to fourteen (14) years of *reclusion temporal* minimum. Both appellants are ordered to pay solidary indemnity of P30,000 to the victim's heirs. They should be given full credit for their preventive imprisonment, Costs *de oficio*.

SO ORDERED.

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