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specifically asked therein for damages arising from the issuance of a writ of preliminary injunction in Civil Case No. C-878 of the Court of First Instance of Rizal, Caloocan City Branch.[13]

WHEREFORE, the petition should be, as it is hereby DISMISSED. The writ of preliminary injunction heretofore issued is hereby lifted. With costs against the respondent Restituto H. Samson, Jr.

Barredo (Chairman), Santos, and *Abad Santos, JJ.*, concur.

Antonio and *Aquino, JJ.*, concur in the result.

EN BANC

[G.R. Nos. L-32571-72. December 27, 1979]

PEOPLE OF THE PHILIPPINES, *plaintiff, vs.* **JUANITO PAJARILLO and ALMARIO RODRIGUEZ,** *accused.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; IT WAS MANIFEST ERROR FOR THE TRIAL COURT TO APPLY ARTICLE 60 THEREOF THERE BEING NO ALLEGATIONS IN THE INFORMATION THAT THE ACCUSED WAS PREVIOUSLY CONVICTED BY FINAL JUDGMENT NOR EVIDENCE THEREOF ADDUCED.— It was a manifest error, as contended correctly by counsel *de oficio*, who should be commended for his zeal and industry in handling these cases for appellants, for the court *a quo* to have applied Art. 160 of the Revised Penal Code, there being no allegation in the informations that

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[13] *Rollo*, p. 46.

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the appellants were previously "convicted by final judgment" nor evidence thereof adduced. The application of this provision would call for the imposition of the death penalty, which is the maximum of the penalty for the new felony committed while the appellants were in the penitentiary. For, indeed prisoners therein are not all serving final sentences; they may be merely detention prisoners. The Solicitor General readily conceded that the trial court erred in this specific instance.

2. **ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY AND ABUSE OF SUPERIOR STRENGTH; WHEN NOT CONSIDERED.**— We find that abuse of superior strength and treachery do not exist, as correctly contended by counsel *de oficio*, and again concurred in by the Solicitor General. Although alleged in the informations these circumstances are not borne out by the Report of Intelligence and Investigation, nor by the medical reports which do not mention the location of the wounds as possible clue for the character of the attack, whether frontal or from behind. On the other hand, in the statement of appellant Pajarillo, he admitted stabbing his victim in the abdomen three times, suggesting a frontal assault. Likewise, abuse of superior strength is not convincingly disclosed by the prison report, it being merely evident therefrom that the members of the rival gangs are virtually equal in number which is given as 9 or 10 on the side of the appellants' gang, while on the rival gang, 2 were killed, 6 wounded, which could possibly mean a greater number of members than just the eight (8) members, killed and wounded. Moreover, mere superiority in number does not necessarily mean the existence of the qualifying or aggravating circumstance of abuse of superior strength.

3. **CIVIL LAW; DAMAGES; MORAL AND EXEMPLARY; AWARD THEREOF IS PROPER IN CASE AT BAR.**— We agree with the Solicitor General in its refutation of appellants' contention that "every person criminally liable for a felony is also civilly liable" (Art. 100, Revised Penal Code), and that "no proof of pecuniary loss is necessary in order that moral x x x or exemplary damages may be adjudicated," for the assessment of such damages is left to the discretion of the court, according to the circumstance of each case (Art. 2216, New Civil Code). The circumstances are, as alleged in the informations, to which appellants pleaded guilty and, therefore, are deemed admitted, except as modified by the findings of this Court upon a review of the entire records of these cases.

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MAKASIAR, *J.*: *dissenting opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEAS; WHEN THE ACCUSED MADE AN IMPROVIDENT PLEA OF GUILTY, THE RECORDS SHOULD BE REMANDED FOR APPROPRIATE PROCEEDINGS.— This case should be remanded for appropriate proceedings because the appellants made an improvident plea of guilty.

2. ID.; ID.; ID.; ID.; REASONS THEREFOR; CASE AT BAR.— The trial judge merely stressed to the appellants before pleading guilty that the penalty for the crime charged despite their plea of guilty, would still be death, without explaining to them the meaning of the essential allegations in the information, like the qualifying and modifying circumstances. It is further aggravated by the fact that the prosecution did not present evidence as required in Our rulings in specific cases; especially when the crime charged is a capital offense. The main opinion agrees with the Solicitor General that there is no evidence of record of the qualifying and aggravating circumstances of treachery and abuse of superior strength, which are specifically alleged in the information. This patently shows that the appellant did not understand the meaning of those terms when they pleaded guilty to the information. The main opinion likewise states that the qualifying circumstance of evident premeditation could be appreciated only in the case of appellant Pajarillo as the same is established by the record; but the said qualifying circumstance could not be taken against appellant Rodriguez who stabbed the victims on a sudden impulse. These findings as affirmed in the main opinion, are not compatible with the conclusion that the plea of guilty was properly made.

AQUINO, *J.*, *dissenting opinion*:

REMEDIAL LAW; CRIMINAL PROCEDURE; PLEAS; WHEN THE ACCUSED PLEADED GUILTY, ONLY THE INFORMATION TO WHICH THEY PLEADED GUILTY SHOULD BE TAKEN INTO ACCOUNT.— In convicting the accused, only the informations, to which they pleaded guilty, should be taken into account and not any other document in the record not formally presented in evidence.

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DECISION

DE CASTRO, *J.*:

For automatic review by this Court are two decisions of the Circuit Criminal Court of Rizal, imposing two death penalties on accused Juanito Pajarillo and Almario Rodriguez one for the murder of Roque Danao, and the other for the murder of Reynaldo Guevarra, and ordering each of said accused to indemnify the respective heirs of the deceased in the amount of ₱12,000.00, to pay the amount of ₱5,000.00 as moral damages and ₱5,000.00 as exemplary damages, and to pay proportionate costs.

It appears that two separate informations were filed against the two herein appellants, in the Circuit Criminal Court of Rizal, one for the murder of Roque Danao (CCC-VII-467-Rizal), and the other, also for the murder of Reynaldo Guevarra (CCC-VII-468-Rizal).

Upon being arraigned on September 14, 1970, with the assistance of Atty. Jose Galvan, as counsel *de oficio*, both accused entered pleas of not guilty. However, at the first day of trial which was set for September 16 and 17, 1970, the two accused, through their *de oficio* counsel, Atty. Galvan manifested to the court that they are withdrawing their former plea of not guilty, and requested to be re-arraigned so that they could enter a plea of guilty.[1] With this manifestation, the trial court informed the accused that by changing their plea of not guilty to one of guilty, they will be sentenced to death as provided by law. Atty. Galvan, nevertheless, reiterated that accused "are withdrawing their former plea of not guilty to that of guilty in the two cases."[2] Whereupon, the interpreter was ordered to read to the accused the two informations, and on being asked if they admit guilt, both accused gave affirmative answers. Forthwith, the trial court promulgated the corresponding sentence of death to both accused under each of the two separate informations.

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[1] Page 3, t.s.n., September 16, 1970.

[2] p. 4, t.s.n., *Id.*

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The plea of guilty had the effect of admitting all the material allegation of the information under which herein appellants were arraigned.[3] The first information is quoted hereunder as follows:

"That on or about the 6th day of December, 1969, in the municipality of Muntinlupa, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, prisoners confined at the New Bilibid Prisons, Muntinlupa, Rizal, and members of the BRM (Bicol Region Masbate) gang, conspiring and confederating together with seven (7) other John Does, also prisoners in said prison whose true identities are still unknown and all of them mutually helping and aiding one another, with intent to kill, evident premeditation and treachery, did, then and there willfully, unlawfully and feloniously attack, assault and stab with deadly weapons prisoner Roque Danao, a member of a rival gang, the "Sigue-Sigue Sputnik," as a result of which, the said Roque Danao sustained stab wounds on the different parts of his body which directly caused his death.

"Contrary to law, and with the aggravating circumstance of taking advantage of superior strength present in the commission of the crime." (p. 5, *Rollo*).

The other information is also quoted as follows:

"That on or about the 6th day of December, 1969, in the municipality of Muntinlupa, province of Rizal, Philippines and within the jurisdiction of this Honorable Court the above-named accused, prisoners confined at the New Bilibid Prisons, Muntinlupa, Rizal, and members of the BRM (Bicol Regions Masbate) gang, conspiring and confederating together with seven (7) other John Does also prisoners of said prison whose true identities are still unknown and all of them mutually helping and aiding one another, with intent to kill, evident premeditation and treachery, did, then and there willfully, unlawfully and feloniously attack, assault and stab with deadly weapons Prisoner Reynaldo Guevarra, a member of a rival gang, the "Sigue-Sigue Sputnik," as a result of which, the said Reynaldo Guevarra sustained stab wounds on the different parts of his body which directly caused his death."

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[3] *People vs. Boyles*, 11 SCRA 88; *People vs. Mongado*, 28 SCRA 642; *People vs. Apduhan, Jr.*, 24 SCRA 798; *People vs. Pujinio*, 27 SCRA 1185.

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The following facts, as recited in the People's brief, may thus be considered undisputed:

"At about 9:00 in the morning of December 6, 1969, a melee took place between two groups of prison inmates at the Muntinlupa Penintentiary, Muntinlupa, Rizal, namely, the Bicol Region Masbate (BRM) and the *Sigui-Sigui Sputnik*, lasting for several minutes. After the prison's custodial force and the PC broke up the riot with tear gas, prisoners Romeo Danao and Reynaldo Guevarra were found dead from stab wounds and six other prisoners were wounded (pp. 51-52, Rec.).

"Before the riot, accused Rodriguez was in his quarter ("*brigada*"). Hearing a commotion outside, he went down armed with a knife and upon seeing another prison inmate, a *Sputnik* member, whose name he did not know, fatally stabbed him in the chest, after which he returned to his quarters. Accused Pajarillo also stabbed the victim (pp. 44-46, Rec.). During the same occasion, both accused, likewise, stabbed another prisoner fatally three times (pp. 47-48, Rec.).

"In his postmortem examination of the victims Dr. Ricardo Ibarrola, prison physician, found the cause of death as due to 'multiple stab wounds of the body' (pp. 49-50, Rec.)."

The first question that naturally comes to the mind of the Court is whether the trial court acted properly in accepting the plea of guilty and forthwith pronouncing judgment imposing the death penalty without requiring evidence to be adduced both as to the guilt of the accused, and as to the circumstances attendant to the commission of the crime[4] to avoid improvident pleas of guilty.

We agree with the Solicitor General[5] in his observation that "in the instant cases, x x x appellants' pleas of guilty could not have been improvidently made. They were apprised by the trial

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[4] *U.S. vs. Jamad*, 37 Phil. 305; *People vs. Apduhan, Jr.*, 24 SCRA 798; *People vs. Bulalake, et al.*, 106 Phil. 767; *People vs. Baluyot, et al.*, 75 SCRA 148.

[5] The Solicitor General, Hon. Felix Antonio, is now a member of this Court.

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court of the consequences of their pleas. The record shows that they pleaded guilty with assistance of counsel, Atty. Galvan, who was on hand at all times, and that the presumption of regularity and faithfulness in the performance of official function on his part has not been overcome (pp. 1-4, t.s.n., September 16, 1970)."[6]

Appellants' counsel *de oficio* in this appeal, Atty. Manuel Tomacruz, himself observed, by way of justifying the trial court's conduct of the trial, that the said court "before accepting the change pleas of guilty took pains to explain that the only possible penalties in these cases would be that of capital punishment." Counsel *de oficio* then states that "we would rather review the independently qualifying and aggravating circumstances."[7]

As will presently be seen the plea of guilty was well-advised, without it being followed by the presentation of evidence by the prosecution. Counsel *de oficio* promptly seized the opportunity to assail the judgment appealed from, as infected by the evident errors committed by the trial court. Thus, it was a manifest error, as contended correctly by counsel *de oficio*, who should be commended for his zeal and industry in handling these cases for appellants, for the court *a quo* to have applied Art. 160 of the Revised Penal Code, there being no allegation in the informations that the appellants were previously "convicted by final judgment" nor evidence thereof adduced. The application of this provision would call for the imposition of the death penalty, which is the maximum of the penalty for the new felony committed while the appellants were in the penitentiary. For, indeed prisoners therein are not all serving final sentences; they may be merely detention prisoners. The Solicitor General readily conceded that the trial court erred in this specific instance.

The Solicitor General also concurred with the view of counsel *de oficio* that the pleas of guilty, which in themselves are mitigating, as in the cases at bar, cover both crimes as well as

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[6] Page 5, Appellee's Brief, p. 114; *Rollo*, L-32571.

[7] Page 7, Appellants' Brief, p. 67; *Rollo*, *Id.*

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the attendant circumstances qualifying and/or aggravating the crime;[8] and that such pleas are enough "to sustain a conviction even for capital offense without the introduction of further evidence (*People vs. Parete, et. al.*, L-15515, April 26, 1961)."[9] Appellants, indeed, confessed readily to the crime with which they were charged. And introduction of further evidence after the plea of guilty could have proved more prejudicial to the appellants for whose benefit the introduction of such evidence is intended, as insurance against improvident pleas of guilty. Evidence to show that appellants have been "convicted by final judgment" when they committed the new crime might have been presented and thereby call for the imposition of the death penalty.

Examining the entire records of these cases which may be explored for the purpose of arriving at a correct conclusion, as an appeal in criminal cases throws the whole case open for review, it being the duty of the appellate court to correct such error as may be found in the judgment appealed from,[10] We find that abuse of superior strength and treachery do not exist, as correctly contended by counsel *de oficio*,[11] and again concurred in by the Solicitor General.[12] Although alleged in the informations these circumstances are not borne out by the Report of Intelligence and Investigation,[13] nor by the medical reports which do not mention the location of the wounds as possible clue for the character of the attack, whether frontal or from behind. On the other hand, in the statement of appellant Pajarillo,[14] he admitted stabbing his victim in the abdomen three times, suggesting a frontal assault.

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[8] *People vs. Boyles, et. al.*, L-15308, May 29, 1964, 11 SCRA 88.

[9] Page 6, Appellants' Brief.

[10] *People vs. Villaruel*, 51 O.G. 242.

[11] Pages 7-9, Appellants' Brief.

[12] Page 6, Appellee's Brief.

[13] Pages 51-52, Record.

[14] Submitted to this Court on motion of de oficio counsel which has granted, together with prison report and medical report.

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Likewise, abuse of superior strength is not convincingly disclosed by the prison report, it being merely evident therefrom that the members of the rival gangs are virtually equal in number which is given as 9 or 10 on the side of the appellants' gang, while on the rival gang, 2 were killed, 6 wounded, which could possibly mean a greater number of members than just the eight (8) members, killed and wounded. Moreover, mere superiority in number does not necessarily mean the existence of the qualifying or aggravating circumstance of abuse of superior strength.[15]

As to the qualifying circumstance of evident premeditation, We find the Solicitor General again agreeing with counsel *de oficio* that only in the case of appellant Pajarillo is this circumstance present, as admitted by counsel *de oficio*[16] As to appellant Rodriguez, even as the appellee recited the facts in its brief, it would seem that Rodriguez stabbed the victims only on a sudden impulse, negating evident premeditation.

Appellants and appellees are also in agreement on the existence of two mitigating circumstances, plea of guilty and that of voluntary surrender in appellants' favor. We give our imprimatur to their common submission, the same being in accordance with law and the evidence.

It would result that appellant Almario Rodriguez is guilty only of two crimes of homicide, with two mitigating and no aggravating circumstances. Appellant Juanito Pajarillo's liability, however, would be for two crimes of murder, qualified by evident premeditation, with two mitigating circumstances and no aggravating circumstance. Accordingly, the penalty to be imposed on appellant Rodriguez should be one degree lower than that prescribed for the crimes committed (Art. 64, par. 3, Revised Penal Code) which would be *prision mayor*, or from 6 years and 1 day to 12 years. For appellant Pajarillo, the penalty would be *prision mayor* in its maximum period, to *reclusion temporal* in its medium period.

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[15] *People vs. Elizaga, et al.*, 86 Phil. 364; *U.S. vs. Devela, et al.*, 3 Phil. 625.

[16] Page 9, Appellants' Brief.

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Appellants, however, question the award of moral and exemplary damages, as civil liabilities, no evidence having been presented, with respect thereto, nor finding made in the decision, except their award. We agree with the Solicitor General in its refutation of appellants' contention that "every person criminally liable for a felony is also civilly liable" (Art. 100, Revised Penal Code), and that "no proof of pecuniary loss is necessary in order that moral x x x or exemplary damages may be adjudicated," for the assessment of such damages is left to the discretion of the court, according to the circumstance of each case (Art. 2216, New Civil Code). The circumstances are, as alleged in the informations, to which appellants pleaded guilty and, therefore, are deemed admitted, except as modified by the findings of this Court upon a review of the entire records of these cases.

For all the foregoing, We hereby affirm the two judgments of conviction, but modify the penalty imposed as follows:

(a) For appellant Juanito Pajarillo, who is hereby pronounced guilty of murder, as found by the trial court, with two mitigating circumstances of plea of guilty and voluntary surrender, and no aggravating circumstances, an indeterminate sentence of from 6 years and 1 day of *prision mayor*, as minimum, to 17 years and 1 day of *reclusion temporal*, as maximum, each in the two cases, Criminal Case Nos. CCC-VII-467 and CCC-VII-468, Rizal, instead of DEATH as imposed by the court *a quo*.

(b) For appellant Almario Rodriguez, who is hereby found guilty of homicide in each of the two cases, with the same two mitigating circumstances and no aggravating circumstance, an indeterminate penalty of from 4 years, 2 months and 1 day of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum, each in the two cases, instead of DEATH as imposed by the trial court.

WHEREFORE, modified as above indicated, the judgments appealed from are affirmed in all other respects, with costs.

SO ORDERED.

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

Makasiar and *Aquino, JJ.*, dissent with dissenting opinions.

Fernando (Chairman), C.J., concurs with the dissent of Justice Makasiar as to the plea of guilty having been independently made.

Barredo, J., votes with Justice Aquino.

Antonio, J., took no part.

DISSENTING OPINION

MAKASIAR, *J.*:

This case should be remanded for appropriate proceedings because the appellants made an improvident plea of guilty.

The trial judge merely stressed to the appellants before pleading guilty that the penalty for the crime charged despite their plea of guilty, would still be death, without explaining to them the meaning of the essential allegations in the information, like the qualifying and modifying circumstances. It is further aggravated by the fact that the prosecution did not present evidence as required in Our rulings in specific cases; especially when the crime charged is a capital offense. The main opinion agrees with the Solicitor General that there is no evidence of record of the qualifying and aggravating circumstances of treachery and abuse of superior strength, which are specifically alleged in the information. This patently shows that the appellant did not understand the meaning of those terms when they pleaded guilty to the information. The main opinion likewise states that the qualifying circumstance of evident premeditation could be appreciated only in the case of appellant Pajarillo as the same is established by the record; but the said qualifying circumstance could not be taken against appellant Rodriguez who stabbed the victims on a sudden impulse. These findings as affirmed in the main opinion, are not compatible with the conclusion that the plea of guilty was properly made.

If, as the main opinion stated, that the plea of guilty was properly made, then, to be consistent, appellant should be

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convicted of two murders as charged, not merely of homicide. Justice Ramon C. Aquino opines in his dissent, that appellants should be convicted of two murders which are alleged in the information, instead of just homicide.

The finding that, notwithstanding the *unqualified* plea of guilty, the qualifying circumstance of evident premeditation and aggravating circumstances of treachery and abuse of superior strength are not present and therefore the imposable penalty is less than capital, justifies adherence to Our previous ruling that in case of improvident plea of guilty, the records should be remanded for appropriate proceedings.

DISSENTING OPINION

AQUINO, *J.*:

I dissent. On the basis of their pleas of guilty, the two accused should be convicted of two separate murders (qualified by treachery, as alleged in the information) and sentenced to two *reclusion perpetuas* because the penalty for murder should be imposed in its medium degree.

The crimes committed by the accused, Almario Rodriguez cannot be categorized as homicide. He pleaded guilty to the two informations alleging murder, not homicide.

In convicting the accused, only the informations, to which they pleaded guilty, should be taken into account and not any other document in the record not formally presented in evidence.

The generic aggravating circumstance of evident premeditation is offset by the mitigating circumstance of plea of guilty. Voluntary surrender to the authorities cannot be appreciated in favor of the accused because it was not proven by any oral or documentary evidence.

For that same reason, quasi-recidivism cannot be taken into account, although the two accused are presumably and indisputably quasi-recidivists covered by Article 160 of the Revised Penal Code, because that circumstance was not alleged in the information.