Supreme Court E-Library

EN BANC

[G.R. Nos. 137256-58. August 6, 2003]

THE PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RUFINO ERNAS *Y* VILLANUEVA,**** *appellant.*

SYNOPSIS

Appellant was charged with three counts of rape for sexually abusing his two daughters. Upon arraignment, he entered a separate plea of not guilty to each of the three charges. Subsequently, however, he withdrew his former plea of not guilty and voluntarily pleaded guilty to the three counts of rape. The trial court granted appellant's motion to withdraw his former plea and ordered his re-arraignment. With the plea of guilty entered by the appellant on the three counts of rape, the prosecution opted to dispense with the direct testimony of the complaining witnesses. Consequently, the trial court rendered a joint judgment and found appellant guilty of three counts of rape and sentenced him to the supreme penalty of death for each case.

The Supreme Court ruled that appellant has made an improvident plea of guilty. The questions propounded and the proceedings taken by the trial court were not sufficient to apprise appellant of the consequences of his plea of guilty. Under the 1985 Rules of Criminal Procedure, a conviction in capital offenses cannot rest alone on a plea of guilt. The prosecution evidence must be sufficient to sustain a judgment of conviction independently of the plea of guilt.

The Court likewise held that the trial court erred in allowing the prosecution to dispense with the testimonies of the complaining witnesses. Even if the trial court is satisfied that the plea of guilty was entered with full knowledge of its meaning and consequences, the introduction of evidence to establish

---

** Accused-appellant manifested that his correct name is Rufino Ernas *y* Villanueva and not Rufino Ernas *y* Florentino as it appears in the appealed decision; that Florentino is the middle name of his wife. This Court noted said Manifestation in a Resolution dated March 28, 2000, *Rollo*, p. 41. The corrected middle name is now reflected in this decision.

Supreme Court E-Library

the guilt and the degree of culpability of the accused is still required.

The Court set aside the judgment appealed from and ordered that the case be remanded for re-arraignment and if the accused enter a plea of "guilty," it ordered the trial court to receive the evidence of the prosecution and that of the defense.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARRAIGNMENT AND PLEA; PLEA OF GUILTY TO CAPITAL OFFENSE; PROCEDURE IS MANDATORY; RATIONALE.**— When an accused enters a plea of guilty to a capital offense, the requirements under Section 3 of Rule 116 of the 1985 Rules of Criminal Procedure must be strictly followed... Under the rule, three things are enjoined of the trial court after a plea of guilty to a capital offense has been entered by the accused: (1) To conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea; (2) To require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) To inquire from the accused if he desires to present evidence on his behalf and allow him to do so if he desires. This procedure is mandatory, and a judge who fails to observe it commits a grave abuse of discretion. The rationale behind the rule is that the courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty. The primordial purpose is to avoid improvident pleas of guilt on the part of an accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully understood the meaning, significance and consequence of his plea. Moreover, the requirement of taking further evidence would aid this Court on appellate review in determining the propriety or impropriety of the plea.

2. **ID.; ID.; ID.; ID.; GUIDING PRINCIPLES IN THE PROPER CONDUCT OF SEARCHING INQUIRY.**— To assist the trial judges in the proper conduct of "searching inquiry," the Court, in *People vs. Pastor*, collated the following guidelines which

Supreme Court E-Library

should be observed: "1. Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes. 2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty. 3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty. 4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment. 5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process. 6. All questions posed to the accused should be in a language known and understood by the latter. 7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details."

3. ID.; ID.; ID.; ID.; CONVICTION IN CAPITAL OFFENSES CANNOT REST ALONE ON A PLEA OF GUILT.— [U]nder the 1985 Rules of Criminal Procedure, a conviction in capital offenses cannot rest alone on a plea of guilt. The prosecution

Supreme Court E-Library

evidence must be sufficient to sustain a judgment of conviction independently of the plea of guilt.

4. **ID.; ID.; ID.; ID.; INTRODUCTION OF EVIDENCE TO ESTABLISH THE GUILT AND THE DEGREE OF CULPABILITY OF THE ACCUSED IS REQUIRED.**— [E]ven if the trial court is satisfied that the plea of guilty was entered with full knowledge of its meaning and consequences, the introduction of evidence to establish the guilt and the degree of culpability of the accused is still required. Judges therefore must be cautioned, toward this end, against the demands of sheer speed in disposing of cases, for their mission after all, and as has been time and again put, is to see that justice is done.

APPEARANCES OF COUNSEL

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

DECISION

AUSTRIA-MARTINEZ, *J.*:

For automatic review is the joint judgment[1] dated January 14, 1999 of the Regional Trial Court of Calamba, Laguna (Branch 34) rendered in Criminal Cases Nos. 6178-98-C, 6179-98 and 6180-98-C convicting appellant Rufino Ernas *y* Villanueva of three counts of rape committed against his daughters Elsa and Celeste Ernas and sentencing him to suffer the penalty of death for each case. The dispositive portion of the decision reads:

ACCORDINGLY, by virtue of his voluntary plea of guilty, judgment is hereby rendered as follows:

In Criminal Case No. 6178-98-C, this Court finds accused Rufino Ernas y Florentino (*sic*) GUILTY beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of death.

---

[1] Penned by Judge Antonio M. Eugenio, Jr.

Supreme Court E-Library

Accused is further directed to indemnify the victim Elsa Ernas *y* Florentino the sum of FIFTY THOUSAND (₱50,000.00) PESOS as moral damages.

In Crim. Case No. 6179-98-C, this Court finds accused Rufino Ernas *y* Florentino(*sic*) GUILTY beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of death.

Accused is further directed to indemnify the victim Celeste Ernas *y* Florentino the sum of FIFTY THOUSAND (₱50,000.00) PESOS as moral damages.

In Crim. Case No. 6180-98-C, this Court finds accused Rufino Ernas *y* Florentino(*sic*) GUILTY beyond reasonable doubt of the crime of rape as defined and penalized under Article 335 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of death.

Accused is further directed to indemnify the victim Celeste Ernas *y* Florentino the sum of FIFTY THOUSAND (₱50,000.00) PESOS as moral damages.

With costs against the accused in all cases.

SO ORDERED.[2]

Three separate Informations[3] were filed with the trial court on October 27, 1998 charging appellant with the crime of rape, thus:

Crim. Case No. 6178-98-C

That on or about May 11, 1998, at Tramo, Brgy. Masile, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and thru force and intimidation and with intent to satisfy his lust, did then and there willfully, unlawfully and feloniously have carnal knowledge of his daughter ELSA ERNAS *y* FLORENTINO, 14 years old, against her will and consent.

CONTRARY TO LAW.[4]

---

[2] Records. Volume I. pp. 72–73; *Rollo*. pp. 61–62.

[3] Filed by Assistant Provincial Prosecutor Miguel Noel T. Ocampo.

[4] Records. Volume I. p. 7

Supreme Court E-Library

Crim. Case No. 6179-98-C

That on or about September 21, 1998, at Tramo, Brgy. Masile, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and thru force and intimidation and with intent to satisfy (*sic*) his lust, did then and there willfully, unlawfully and feloniously have carnal knowledge of his daughter CELESTE ERNAS *y* FLORENTINO, 15 years old, against her will and consent.

CONTRARY TO LAW.[5]

Crim. Case No. 6180-98-C

That on or about September 18, 1998, at Tramo, Brgy. Masile, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and thru force and intimidation and with intent to satisfy his lust, did then and there willfully, unlawfully and feloniously have carnal knowledge of his daughter CELESTE ERNAS *y* FLORENTINO, 15 years old, against her will and consent.

CONTRARY TO LAW.[6]

Upon his arraignment on November 13, 1998, appellant, duly assisted by his counsel, Atty. Rodel Paderayon, entered a separate plea of not guilty[7] to each of the three charges.

A joint pre-trial conference was conducted on December 9, 1998 where appellant maintained his innocence of the crimes charged against him.[8] The trial court then issued its joint pre-trial order[9] with the following stipulations of facts:

(1) the accused is the father of the complaining witness (*sic*);

(2) that the private complainants Elsa Emas and Celeste Ernas were both medically examined and the findings are reflected in the Medico-Legal Certificate;

---

[5] Records, Volume II, p. 5.

[6] Records, Volume III, p. 3.

[7] Records, Volume I, p. 11; Records, Volume II, p. 7; Records, Volume III, p. 5.

[8] Records, Volume I, p. 19.

[9] *Id.* at pp. 41–43.

Supreme Court E-Library

(3) the existence of the Medico-Legal Certificate;

(4) the identity of the accused; and

(5) the existence of the Sworn Statements.

No admissions were made by the prosecution.

At the initial hearing held on January 13, 1999, Atty. Eloida Capuno, counsel for the appellant, manifested the intention of her client to withdraw his former plea of not guilty. The Court then inquired from appellant whether he confirms the manifestation of his counsel, as follows:

COURT:

> Do You confirm the statement of your counsel that you are withdrawing your former plea of not guilty and enter a voluntary plea of guilty to the three counts of rape filed against you.

A: Yes, your honor.[10]

Thereafter, the Court granted the motion to withdraw his former plea and ordered the re-arraignment of appellant. The three Informations were again read to him in Tagalog, a language spoken, read and understood by him, who, with the assistance of Atty. Capuno, voluntarily pleaded guilty to the three counts of rape. The Court then propounded additional questions to appellant, as follows:

COURT:

Q : Rufino Ernas *y* Florentino (*sic*) are you fully aware of the consequences of your voluntary plea of guilty to these three (3) counts of rape'

A : Yes, your honor.

Q : You have not been threatened, intimidated or coerced into withdrawing your former plea of not guilty and in lieu thereof enter a plea of guilty to these three (3) counts of rape?

---

[10] TSN dated January 13, 1999, p. 2.

Supreme Court E-Library

A : No, your honor.

Q : You are fully aware and advised by your counsel that despite your plea of guilty you will still be meted the maximum penalty of death?

A : Yes, your honor.

Q : You fully admit that on or about May 11, 1998 at Tramo, Brgy. Masili,[11] Municipality of Calamba, Province of Laguna, you had carnal knowledge of your daughter Elsa Ernas *y* Florentino, 14 years old, against her will and consent?

A : Yes, your honor,

Q : You fully admit that on September 21, 1998 at Tramo, Brgy. Masili, Municipality of Calamba, Province of Laguna, you had carnal knowledge of your daughter Celeste Ernas *y* Florentino, 15 years old, against her will and consent?

A : Yes, sir.

Q : You also fully admit that on or about September 18, 1998 at Tramo, Brgy. Masili, Municipality of Calamba, Province of Laguna, you had carnal knowledge of your daughter Celeste Ernas *y* Florentino, 15 years old, against her will and consent?

A : Yes, your honor.[12]

With the plea of guilty entered by the appellant on the three counts of rape, the prosecution opted to dispense with the direct testimony of the complaining witnesses and formally offered the following exhibits:

Crim. Case No. 6178-98-C

Exhibit "A" — Complaint filed with the Municipal Trial Court of Calamba, Laguna by complainant Elsa Ernas;

Exhibit "B" — Sworn Statement of complainant Elsa Ernas;

Exhibit "B-1" — Sworn Statement of Ester Ernas;

---

[11] Spelled Masile in the Informations.

[12] TSN dated January 13, 1999, pp. 3–4.

Supreme Court E-Library

Exhibit "B-2" — Sworn Statement of Rosemarie Usi; and

Exhibit "C" — Medico-Legal Certificate.

Crim. Case No. 6179-98-C and 6180-98-C

Exhibit "A" — Complaint filed with the Municipal Trial Court of Calamba, Laguna by complainant Celeste Ernas;

Exhibit "A-1" — Sworn Statement of complainant Celeste Ernas; and

Exhibit "B" — Medico-Legal Certificate.[13]

On January 14, 1999, the trial court rendered its joint judgment finding appellant guilty of three counts of rape and sentenced him to the supreme penalty of death for each case.

Appellant raises a single assignment of error:

THE TRIAL COURT ERRED IN NOT REQUIRING THE PROSECUTION TO PROVE THE GUILT OF ACCUSED DESPITE THE PLEA OF GUILTY TO A CAPITAL OFFENSE.[14]

Appellant claims that aside from conducting a searching inquiry into the voluntariness and full comprehension of the consequences of his pleas, the trial court should have also required the prosecution to prove his guilt to determine the precise degree of his culpability as mandated under Section 3 of Rule 116 of the Revised Rules of Court.

The Solicitor General filed his Manifestation and Motion, in lieu of appellee's brief fully concurring with appellant's arguments and prays for the remand of the case to the trial court for the presentation of evidence.

We agree.

When an accused enters a plea of guilty to a capital offense, the requirements under Section 3 of Rule 116 of the 1985 Rules of Criminal Procedure must be strictly followed, to wit:

---

[13] Records, Volume I, pp. 61–62.

[14] *Rollo*, p. 47.

Supreme Court E-Library

"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 shall require the prosecution to prove his guilt and the precise degree of his culpability. The accused may present evidence in his behalf."

Under the rule, three things are enjoined of the trial court after a plea of guilty to a capital offense has been entered by the accused: (1) To conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea; (2) To require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and (3) To inquire from the accused if he desires to present evidence on his behalf and allow him to do so if he desires.[15] This procedure is mandatory, and a judge who fails to observe it commits a grave abuse of discretion.[16] The rationale behind the rule is that the courts must proceed with more care where the possible punishment is in its severest form, namely death, for the reason that the execution of such a sentence is irrevocable and experience has shown that innocent persons have at times pleaded guilty.[17] The primordial purpose is to avoid improvident pleas of guilt on the part of an accused where grave crimes are involved since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully understood the meaning, significance and consequence of his plea.[18] Moreover, the requirement of taking further evidence would aid this Court on appellate review in determining the propriety or impropriety of the plea.[19]

---

[15] *People vs. Nadera, Jr.*, 324 SCRA 490 (2000); *People vs. Camay*, 152 SCRA 401 (1987); *People vs. de Luna*, 174 SCRA 204 (1989).

[16] *People vs. Dayot*, 187 SCRA 637 (1990), citing *People vs. Camay, supra, People vs. de Luna, supra.*

[17] *People vs. Pastor*, 379 SCRA 181, 189–190 (2002).

[18] *People vs. Olarte*, 365 SCRA 635 (2001) citing *People vs. Samontañez, supra*; *People vs. Albert*, 251 SCRA 136 (1995).

[19] *People vs. Albert, supra.*

Supreme Court E-Library

To assist the trial judges in the proper conduct of "searching inquiry," the Court, in *People vs. Pastor*,[20] collated the following guidelines which should be observed:

1. Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters[21] or simply because of the judge's intimidating robes.[22]

2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.[23]

3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.[24]

4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.[25]

---

[20] *People vs. Pastor, supra* note 17.

[21] *People vs. Aranzado*, 365 SCRA 649, 661 (2001); *People vs. Estomaca*, 256 SCRA 421, 437 (1996).

[22] *People vs. Pastor, supra* note 17 at p. 189.

[23] *Estomaca* case, *supra*.

[24] *People vs. Bello*, 316 SCRA 804, 814 (1999); *People vs. Alicando*, 251 SCRA 293, 307 (1995).

[25] *People vs. Dayot*, 187 SCRA 637, 642 (1990).

Supreme Court E-Library

5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment.[26] Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.[27]

6. All questions posed to the accused should be in a language known and understood by the latter.[28]

7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[29]

Tested with the above guidelines which were enunciated in earlier cases prior to the date of rendition of new assailed decision of the trial court, the questions propounded and the proceedings taken by the trial court were not sufficient to apprise appellant of the consequences of his plea of guilty.

Appellant has made an improvident plea of guilty.

First, there was no effort on the part of the presiding judge to comply with the guidelines enumerated above. While Atty. Capuno manifested to the trial court that appellant intimated to her the latter's intention to withdraw his former plea of not guilty, the trial court did not inquire from Atty. Capuno whether she had conferred and explained to appellant the meaning and consequences of the latter's plea of guilt. Further, the records do not show the age, socio-economic status as well as the educational attainment of the appellant to assist the court *a quo* as well as this Court in determining if appellant has full understanding and capacity to give a free and informed plea of guilty.

Second, the records show that during the pre-trial conference, appellant disputed the ages of the victims. The trial judge should

---

[26] *People vs. Alberto Chua*, 366 SCRA 283, 294 (2001).

[27] *People vs. Pastor, supra* note 17.

[28] *People vs. Alicando*, 251 SCRA 293 (1995).

[29] *People vs. Albert*, 251 SCRA 136 (1995).

Supreme Court E-Library

have pointed this out to appellant when he was re-arraigned. The trial judge should have required the prosecution to present its evidence on this matter considering that the true age of the victims would determine the nature of the crimes of rape and the proper imposition of the corresponding penalty. Although both qualifying circumstances of relationship and minority were alleged in the Informations, they must be proved during the trial just as the crime of rape.

Third, appellant was not even asked why he had a change of heart and decided to plead guilty to the charges. The judge did not explain to him that in case of incestuous rape of a minor child, the penalty is death under the law and his plea of guilt would not under any circumstance affect or reduce his sentence.

Fourth, the Judge should have asked appellant to recount what he exactly did to show that he fully understood the nature of the crimes filed against him. Moreover, as already stated, the trial judge failed to require the prosecution to present its evidence. We have consistently held that the taking of the testimony is the prudent and proper course to follow for the purpose of establishing not only the guilt but also the precise degree of culpability of the accused taking into account the presence of other possible aggravating or mitigating circumstances — and thereafter, to make the accused present his own evidence, if he is so minded, for the same purpose.[30] A trial is meant to be a safeguard against putting an innocent man in prison, and at the same time a guaranty that the guilty obtains his just due, thus:

> . . . the presentation of evidence should be required in order to preclude any room for reasonable doubt in the mind of the trial court, or the Supreme Court on review, as to the possibility that there might have been some misunderstanding on the part of the accused as to 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.[31]

---

[30] *People vs. Dayot, supra.*

[31] *Ibid.*

Supreme Court E-Library

It must be stressed that under the 1985 Rules of Criminal Procedure, a conviction in capital offenses cannot rest alone on a plea of guilt. The prosecution evidence must be sufficient to sustain a judgment of conviction independently of the plea of guilt.[32]

We, therefore, cannot accept as valid the plea of guilty entered by the appellant to the three charges of rape. His re-arraignments as to the three charges are fatally flawed. The trial court erred in believing that the questions propounded to the appellant and the latter's answers as well as the documentary exhibits offered by the People would aid it in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea.

It likewise erred in allowing the prosecution to dispense with the testimonies of the complaining witnesses. As we have ruled, even if the trial court is satisfied that the plea of guilty was entered with full knowledge of its meaning and consequences, the introduction of evidence to establish the guilt and the degree of culpability of the accused is still required. Judges therefore must be cautioned, toward this end, against the demands of sheer speed in disposing of cases, for their mission after all, and as has been time and again put, is to see that justice is done.[33]

Finally, we note that the decision of the trial court failed to express the facts of the case as mandated under Section 14, Art VIII of the Constitution which provides:

> Sec. 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

WHEREFORE, the judgment appealed from is hereby *SET ASIDE*. The case is *REMANDED* for re-arraignment and thereafter, should the accused enter a plea of "guilty," the

---

[32] *People vs. Pastor, supra*, note 17, at p. 196.

[33] *People vs. Dayot, supra.*

Supreme Court E-Library

Regional Trial Court (Branch 34), Calamba, Laguna, is directed, with reasonable dispatch, to receive the evidence for the prosecution as well as that of the defense, if appellant opts to do so.

Presiding Judge Antonio M. Eugenio, Jr. is admonished not only to comply with the guidelines of this Court in the conduct of "searching inquiry," but also with the entire provision of Section 3, Rule 116 of the Rules of Court and with the provisions of Section 14, Article VIII of the Constitution.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Azcuna, and *Tinga, JJ.*, concur.

Callejo, Sr., J., on leave.

---

[32] *People vs. Pastor, supra*, note 17, at p. 196.

[33] *People vs. Dayot, supra.*