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[G.R. No. L-29451. December 14, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BONIFACIO ALVARADO, ERNESTO ROBLES and JOHN DOE, alias MARIO VILLACAMPA, alias Boy Ravacal, alias Ben Tagalog, as principals, and WENCESLAO ALVARADO, as accomplice,** *accused.* **BONIFACIO ALVARADO and ERNESTO ROBLES,** *accused whose death sentences are under automatic review.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA OF GUILTY; PROPER COURSE TO FOLLOW WHERE THE ACCUSED ENTERS A PLEA OF GUILTY TO A CAPITAL OFFENSE; SUBSTANTIALLY COMPLIED IN CASE AT BAR.**— We hold that in this case there was substantial compliance with the long settled rule that "the proper and prudent course to follow where the accused enters a plea of guilty to capital offenses, specially where he is an ignorant person with little or no education, is to take testimony not only to satisfy the trial judge himself but to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea". In effect, that rule was observed by the trial court because after Robles and Bonifacio Alvarado had entered their plea of guilty, the death sentence was not rendered immediately. There was a trial as to their co-accused, Wenceslao Alvarado, who had pleaded not guilty.

2. **ID.; ID.; ID.; THE COURT MAY TAKE JUDICIAL NOTICE OF THE EVIDENCE PRESENTED AGAINST AN ACCUSED WHO PLEADED NOT GUILTY IN PROVING THE COMPLICITY OF THE OTHER ACCUSED WHO PLEADED GUILTY.**— It should further be recalled that the trial court imposed the death sentence on Robles and Bonifacio Alvarado after it had finished the trial of Wenceslao Alvarado and after it had rendered its

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separate judgment against him. Obviously, the trial court, in imposing the death sentence, took judicial notice of the evidence presented by the prosecution against Wenceslao Alvarado which was the same evidence proving the complicity of Robles and Bonifacio Alvarado in the crime imputed to him.

3. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; CANNOT BE CONSIDERED WHEN THERE IS NO WITNESS WHO TESTIFIED HOW THE VICTIM WAS KILLED.**— We find that treachery was not proven because no eyewitness testified as to how the victim, Erlinda Misa, was assaulted and killed by Villacampa (at large) and Bonifacio Alvarado.

Teehankee, *J.*, *separate opinion:*

REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA OF GUILTY; EVIDENCE PRESENTED IN THE SEPARATE TRIAL OF AN ACCUSED WHO PLEADED NOT GUILTY CANNOT BE TAKEN AGAINST THE ACCUSED WHO ENTERED A PLEA OF GUILTY.— The evidence presented in the separate trial of Wenceslao Alvarado (who had pleaded not guilty) cannot be taken against them without violating their fundamental rights to due process of law and confrontation of witnesses.

ABAD SANTOS, *J.*: *dissenting opinion:*

1. **REMEDIAL LAW; EVIDENCE; EVIDENCE AGAINST ONE CANNOT BE TAKEN AS EVIDENCE AGAINST THE OTHERS; CASE AT BAR.**— I do not believe that the presentation of evidence against Wenceslao Alvarado who went to trial on a plea of not guilty satisfies the rule for Robles and Bonifacio Alvarado were not present during the trial. Under such circumstance what was evidence against one cannot be taken as evidence against the others. That all three had the same lawyer is to me irrelevant and immaterial.

2. **ID.; COURTS; SUPREME COURT; POWERS; DISCIPLINARY POWERS OVER JUDGES OF INFERIOR COURTS.**— Considering that the Supreme Court has disciplinary power over judges of inferior courts and considering further that the misfeasance is a matter of record, I am of the opinion that where

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a capital case is remanded to a trial judge for reception of evidence, an appropriate penalty can simultaneously be imposed on the erring judge without the necessity of conducting formal administrative proceedings. *Res ipsa loquitur.*

APPEARANCES OF COUNSEL

Feria, Feria, Lugtu & Lao (Counsel de Oficio) for the accused.

Solicitor General Felix V. Makasiar, Assistant Solicitor General Antonio G. Ibarra and Solicitor Celso P. Ilagan for appellee.

D E C I S I O N

AQUINO, *J.*:

Bonifacio Alvarado, Ernesto Robles and Mario Villacampa, as principals, and Wenceslao Alvarado (Bonifacio's brother), as an accomplice, were charged in the Court of First Instance of Cebu with robbery with homicide for having robbed in the evening of July 3, 1966 the house of Erlinda N. Misa located at Hippodromo, Cebu City, taking from her at gunpoint the sum of one hundred pesos and killing her on the occasion of the robbery.

Treachery, nocturnity, disregard of sex, use of a motor vehicle and abuse of superiority were alleged as aggravating circumstances. Wenceslao Alvarado was charged as an accomplice for having opened the side-gate of the Misa residence to enable the three malefactors to enter the house.

It was further alleged in the information that Erlinda sustained an entrance gunshot wound in the chest, a gunshot wound of exit in the back, injuries in the blood vessels at the base of her neck and injuries in the lungs and that there was a twenty-nine centimeter-long fetus in her uterus.

Bonifacio, Wenceslao and Ernesto were arrested on July 19, 1966. Villacampa was not arrested. When arraigned on the

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original information, wherein five aggravating circumstances were alleged, Ernesto and Bonifacio, with the assistance of counsel, pleaded guilty. Wenceslao pleaded not guilty.

Later, the counsel of Bonifacio and Ernesto moved that the plea of guilty be withdrawn. He manifested that he would ask the fiscal to reinvestigate the case with respect to the aggravating circumstances. The trial court allowed the withdrawal of the plea of guilty.

The fiscal amended the information by eliminating the aggravating circumstances of disregard of sex and use of a motor vehicle. Ernesto and Bonifacio were re-arraigned on August 27, 1966. They were assisted by their counsel. The amended information was translated to them in the Cebuano dialect. Again, they pleaded guilty.

Their counsel moved that they be given the benefit of the mitigating circumstances of poverty, lack of instruction and lack of intent to commit so grave a wrong. The fiscal objected to the motion.

Thereafter, the following proceedings took place:

"Court (to accused Robles and Alvarado): I believe your lawyer must have explained to you the nature of the crime charged. As a matter of fact when this was arraigned two weeks ago you pleaded guilty.

"But when you were reminded of the seriousness of this case, your lawyer asked that your plea of guilty be withdrawn so that he could study the case, now the fiscal has fled an amended information. This is the one just read to you so that with the assistance of your lawyer you pleaded guilty.

"Do you realize that this crime is serious, that you will be punished in accordance with law and what the court wants is that you will be punished in accordance with the law because you admit that you are guilty.

"Accused Alvarado: I plead guilty but I do not realize the gravity of the penalty because this is the first time that I have been involved in crime.

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"Court: I am telling you that this is a serious crime and the penalty may be life imprisonment or death, it depends upon the mitigating circumstances that the court will appreciate.

"Accused Alvarado: I ask that since this is the first time I have committed a crime that the penalty be imposed in the minimum because I have a family.

Court: Your lawyer has invoked all the mitigating circumstances but if it is not also allowed by law, we cannot also consider those circumstances, the court will only follow the law. So you already understand the consequences?

"Alvarado: Yes, I understand.

"Court: And you insist on your plea of guilty?

"Alvarado: I will just plead guilty, sir, because it is true that I have committed the crime.

"Court: You Ernesto Robles, you also plead guilty?

"Robles: Yes, sir.

"Court: Alright, just wait for the promulgation of the decision."

No decision was rendered right away by the trial court. Counsel for the accused submitted a memorandum in support of his contention that the said three mitigating circumstances should be appreciated in their favor.

A trial was held as to Wenceslao Alvarado, who as already stated, was charged as an accomplice and who had pleaded not guilty. At that trial, Conchita Serdoncillo and Carmen N. Rosal (the sister of the victim, Erlinda Misa), both of whom lived with Erlinda in her residence, testified as to how the robbery with homicide was committed by Robles, Bonifacio Alvarado and Villacampa and how Wenceslao Alvarado cooperated with the three malefactors in perpetrating that crime.

Presented in evidence at that trial were the necropsy report on the injuries suffered by Erlinda Misa (Exh. G), the affidavits of Robles and the Alvarado brothers (Exh. H, I and J), the hats of Robles, Villacampa and Bonifacio Alvarado and the

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adhesive tape and pieces of twine (Exh. A to F) found at the scene of the crime and used in the commission thereof.

The trial court convicted Wenceslao Alvarado as an accomplice in its decision of December 23, 1966. He did not appeal. In a separate decision dated December 24, 1966, the lower court convicted Robles and Bonifacio Alvarado as principals in the robbery with homicide. sentenced them to death and ordered them to pay solidarily to the heirs of Erlinda Misa an indemnity of four thousand eight hundred pesos plus eighty pesos "as their share" of the stolen money. It further held the two subsidiarily liable for the sums of one thousand two hundred pesos and twenty pesos which represent the shares or quotas of their accomplice in the indemnities of ₱6,000 and ₱100 (Criminal Case No. V-12013).

Robles and Bonifacio Alvarado did not appeal. The record was elevated to this Court for the review of the death sentence imposed upon them.

Their counsel *de oficio* contends that the trial court erred in not taking additional evidence for the purpose of ascertaining the circumstances attending the commission of the crime and in imposing the death penalty.

We hold that in this case there was substantial compliance with the long settled rule that "the proper and prudent course to follow where the accused enters a plea of guilty to capital offenses, specially where he is an ignorant person with little or no education, is to take testimony not only to satisfy the trial judge himself but to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea" (*People vs. Bulalake*, 106 Phil. 767, 770).

In effect, that rule was observed by the trial court because after Robles and Bonifacio Alvarado had entered their plea of guilty, the death sentence was not rendered immediately. There was a trial as to their co-accused, Wenceslao Alvarado, who had pleaded not guilty.

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At that trial, the prosecution presented its evidence to prove that robbery with homicide was committed by Robles and Bonifacio Alvarado, as co-principals, and by Wenceslao Alvarado as an accomplice. Wenceslao was represented at that trial by the *same lawyer* who represented Robles and Bonifacio Alvarado at their arraignment.

What the trial court should have done was to require Robles and Bonifacio Alvarado to be present at the trial of Wenceslao Alvarado. Its failure to do so should not be a ground for setting aside the death sentence or for remanding the case (at this late day or thirteen years after their arraignment) for the purpose of presenting the prosecution's evidence against them.

It should further be recalled that the trial court imposed the death sentence on Robles and Bonifacio Alvarado after it had finished the trial of Wenceslao Alvarado and after it had rendered its separate judgment against him.

Obviously, the trial court, in imposing the death sentence, took judicial notice of the evidence presented by the prosecution against Wenceslao Alvarado which was the same evidence proving the complicity of Robles and Bonifacio Alvarado in the crime imputed to him.

It may be argued that because Robles and Bonifacio Alvarado were not present at that trial (their counsel attended the trial as Wenceslao Alvarado's counsel), the prosecution's evidence therein is *res inter alios acta* as to them (Sec. 25, Rule 130, Rules of Court).

Considering the singular facts of this case, as above-recited, the rule of *res inter alios acta* should not be strictly applied herein because Robles and Bonifacio Alvarado were themselves the co-accused of Wenceslao Alvarado and were not strangers to the case wherein the trial was held.

Using the decision against Wenceslao Alvarado as a basis for ascertaining whether the aggravating circumstances alleged in the information should be appreciated against his co-accused, Robles and Bonifacio Alvarado, we find that treachery was

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not proven because on eyewitness testified as to how the victim, Erlinda Misa, was assaulted and killed by Villacampa (at large) and Bonifacio Alvarado.

But abuse of superiority, nocturnity and dwelling are aggravating. Plea of guilty is the only mitigating circumstance that may be appreciated in favor of Robles and Bonifacio Alvarado. Lack of instruction and lack of intent to commit so grave a wrong cannot be considered extenuating in this case.

Justices Antonio, Aquino, Concepcion Jr., G. S. Santos, Guerrero, De Castro and Herrera, or seven justices, voted for the affirmance of the death penalty. Justices Teehankee and Barredo voted for the imposition of *reclusion perpetua*. The Chief Justice concurred in the dissent of Justice Abad Santos, except as to the last paragraph thereof. Justice Fernandez concurred in the dissent of Justice Abad Santos.

WHEREFORE, the trial court's judgment of conviction is affirmed but, for lack of necessary votes, the death penalty is commuted to *reclusion perpetua*. The indemnity of four thousand eight hundred pesos is increases to twelve thousand pesos. The two accused are solidarily liable for that indemnity. Costs *de oficio*.

SO ORDERED.

Antonio, Concepcion Jr., Santos, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

Teehankee, J., votes for the imposition of *reclusion perpetua* in a separate opinion.

Barredo, J., concurs in the conviction of the accused but votes for the imposition of life imprisonment in view of their long detention after the judgment of the trial court.

Abad Santos. J., see dissent.

Fernandez, J., concurs in the dissent of Mr. Justice Vicente Abad Santos.

Makasiar, J., took no part.

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CONCURRING AND DISSENTING OPINION

TEEHANKEE, *J.*:

I vote for imposition of the lesser penalty of *reclusion perpetua* since the State failed to adduce evidence of the alleged aggravating circumstances that would warrant the capital penalty. The two accused (namely Bonifacio Alvarado and Ernesto Robles, particularly the former), in entering a guilty plea, had pleaded that " since this is the first time I have committed a crime, that the penalty be imposed in the minimum because I have a family." The evidence presented in the trial of Wenceslao Alvarado (who had pleaded not guilty) cannot be taken against them without violating their fundamental rights to due process of law and confrontation of witnesses.

DISSENTING OPINION

ABAD SANTOS, *J.*:

I dissent. I am of the opinion that the trial court failed to comply with the rule that where the accused enters a plea of guilty to a capital offense, it should receive evidence to support the imposition of the death penalty not only to satisfy itself that the plea was freely and comprehendingly made but also to enable the Supreme Court to discharge its task of automatic review. For absent any evidence in the record there would be nothing to review.

I do not believe that the presentation of evidence against Wenceslao Alvarado who went to trial on a plea of not guilty satisfies the rule for Robles and Bonifacio Alvarado were not present during the trial. Under such circumstance what was evidence against one cannot be taken as evidence against the others. That all three had the same lawyer is to me irrelevant and immaterial.

It is said, in effect, that thirteen years after their arraignment, it is now too late to set aside the death sentence and remand the case for the purpose of receiving appropriate evidence. I say that it is never too late to do justice. Moreover, the two

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accused should not be made to suffer for the delay in the disposition of their case especially when there is no showing that they contributed to such delay.

The rule that trial courts should receive evidence in capital cases notwithstanding a plea of guilty is both old and well-settled. Time and again this Court has remanded cases to trial courts for compliance with the rule. It passes understanding why some trial courts still persist in ignoring the rule. Considering that the Supreme Court has disciplinary power over judges of inferior courts and considering further that the misfeasance is a matter of record, I am of the opinion that where a capital case is remanded to a trial judge for reception of evidence, an appropriate penalty can simultaneously be imposed on the erring judge without the necessity of conducting formal administrative proceedings. *Res ipsa loquitur.*

EN BANC

[G.R. No. L-29980. December 14, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SANTIAGO ANG, MAXIMINIO SUNGCADOS, LEONILO HANGINON, LUIS DE GUZMAN, RICARDO TIBAY and CESAR ORIAS,** *defendants-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CONFESSION; ORAL CONFESSION IS ADMISSIBLE; CASE AT BAR.**— The oral confession of accused Ang, Sungcados and Hanginon were reduced into writing, but for reasons only known to them, they refused to sign the same. These oral confessions were established through the testimonies of Sgts. Victor Lascuña and Luis Gonzaga. Oral confessions are admissible, for it is