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EN BANC

[G.R. No. L-32702. August 6, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DAVID ABEJUELA,** ***ET AL.,*** *defendants,* **RAMON ABEJUELA,** *defendant-appellant.*

SYLLABUS

1. ***REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES;*** **FINDINGS OF FACT BY TRIAL COURT MAY NOT BE OVERTURNED; EXCEPTION.**— This Court has continually ruled that the matter of assigning values to the testimony of witnesses is best performed by trial judges because they, unlike appellate judges, can weigh such testimony in the light of the demeanor, conduct, and attitude of the witnesses at the trial, and their findings of fact may not be overturned unless there is a showing that in making the factual findings, the trial court had overlooked or failed to consider certain facts of weight and importance that could have materially affected the conclusion reached in the case.

2. **CRIMINAL LAW; CONSIPRACY; WHEN PRESENT.**— The unity of purpose and community of design is apparent from the fact that Ramon Abejuela shot Blas Pacete while David Abejuela was holding Pacete's arm; that David Abejuela also shot Blas Pacete when the latter fell after being shot by Ramon Abejuela: and that they fled from the scene of the crime and hid in the mill of one Mr. Caluya and went together to Valencia the following morning to file a complaint against Blas Pacete and others.

3. **ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE, NOT A CASE OF.**— Conrado Nabaja, Juanito Mensalbas and Esequio Taghap categorically declared that Ramon Abejuela shot Blas Pacete from behind while David Abejuela was holding Pacete by the arm and Pacete was holding on to a post with his other hand. Moreover, the nature of the gunshot wound sustained by the deceased, which had its point of entry at the back of the knee cap and its point of exit at the front of the leg, fracturing the leg bones, with maceration of the skin, muscles, and

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protrusion of the tibia, belies the claim of David Abejuela that he shot Blas Pacete, in self-defense, while they were facing each other.

4. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; WHEN CONSIDERED.— Treachery was considered in this case as the qualifying circumstance and is evident from the fact that Blas Pacete was shot from behind by Ramon Abejuela while David Abejuela was holding Pacete's arm, pulling Pacete towards him, and Pacete was holding on to a post with his other hand. Blas Pacete was unarmed and the attack was sudden and unexpected and there was no risk at all to the assailant.

5. ID.; ID; EVIDENT PREMEDITATION; WHEN NOT CONSIDERED.— We agree with the appellant that there was no evident premeditation because their meeting with Blas Pacete was not sought after and no sufficient period of time intervened between the time the killing was conceived, up to the time of its perpetration for the accused to have made a cool and circumspect deliberation of the consequences of their intended act.

6. ID.; CRIMINAL LIABILITY; EXTENT.— The general rule is that "he who inflicts the injury is not relieved of responsibility if the wound inflicted is dangerous, that is, calculated to destroy or endanger life, even though the immediate cause of death was erroneous or unskillful medical or surgical treatment." The gravity of the wound inflicted is apparent from the fact that the leg bones were fractured and the skin and muscles macerated, and necessitated amputation of the leg.

7. ID.; MITIGATING CIRCUMSTANCES; LACK OF INTENTION TO COMMIT SO GRAVE A WRONG AS THAT COMMITTED; WHEN CONSIDERED.— The circumstances of the case show that Ramon Abejuela did not intend to kill Blas Pacete since the shot was directed towards the calf of the leg and not towards a vital part of the body. However, he is responsible for the consequences of his act, which is, the death of Blas Pacete. If he had not assaulted Blas Pacete in a treacherous manner, he would have been found guilty of homicide. But, since the act was committed with treachery, the defendant, although he did not intend to kill the deceased, is guilty of murder because of the qualifying circumstance of treachery. The lack of intention to commit so grave a wrong as that committed may only be considered as a mitigating circumstance.

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8. ID.; PENALTIES; DEATH; WHEN SHOULD NOT BE IMPOSED.— The court erred in imposing the death penalty upon the said accused in view of the presence of the mitigating circumstance of lack of intention to commit so grave a wrong as that committed which would offset the aggravating circumstance of recidivism. Under the circumstances, *reclusion perpetua* is the proper penalty to be imposed upon the accused Ramon Abejuela.

APPEARANCES OF COUNSEL

Solicitor General Felix Q. Antonio, Assistant Solicitor General Hector C. Fule and *Solicitor Jose F. Racela, Jr.* for plaintiff-appellee.

Virgilio C. Arboleda for defendant-appellant.

D E C I S I O N

CONCEPCION JR., *J.*:

MANDATORY REVIEW of the decision of the Court of First Instance of Bukidnon in Criminal Case No. 2076, entitled: "*The People of the Philippines,* plaintiff, *versus David Abejuela, et al.,* defendants," the dispositive portion of which reads, as follows:

"WHEREFORE, judgment is hereby rendered finding the accused DAVID ABEJUELA and RAMON ABEJUELA both GUILTY beyond reasonable doubt of the crime of MURDER, contrary to and in violation of Article 248 in relation to Article 14, paragraph 9 of the Revised Penal Code, with aggravating circumstances of recidivism which is nevertheless offset by the mitigating circumstance of voluntary surrender as far as David Abejuela is concerned, and said Ramon Abejuela is sentenced to suffer the penalty of DEATH and David Abejuela to be imprisoned for LIFE, both to indemnify the heirs of the deceased Blas Pacete in the sum of ₱12,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

"The accused David Abejuela shall, however, be credited with one-half the period the preventive confinement he has undergone."

David Abejuela did not appeal therefrom so that the decision is final as to him.

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The record shows that in the evening of November 6, 1968, a benefit dance was held in the cockpit at Barrio Sinabuagan, Valencia, Bukidnon, under the auspices of the barrio council of Lumbayao, Valencia, Bukidnon, headed by Barrio Captain Melanio Laindag. Blas Pacete, a rural policeman, was present to maintain peace and order.[1] The dance started at about 9:00 o'clock and was attended by about 80 persons.[2] Among those present were David Abejuela and Petronilo Lozano who came together.[3] After the "special piece" given in the honor of David Abejuela, Petronilo Lozano, and other persons, an intermission for refreshments was called, during which the sale of the flower boxes would be conducted, At this juncture, Blas Pacete left the dance hall to answer the call of nature. While he was urinating at the foot of a "*dinog*" tree near the gate of the cockpit, Ramon Abejuela and Angel Agbayani arrived, riding on a carabao. Ramon Abejuela told Angel Agbayani to tie the carabao to the "*dinog*" tree. Upon seeing the carabao tethered to the "*dinog*" tree, Blas Pacete told Angel to remove the carabao, saying that it is near the gate of the cockpit and the people might be gored by the carabao.[4] David Abejuela came out and told Blas Pacete that the carabao is his, and Blas countered: "So, that is yours," and Pacete returned to the dance hall. But, David Abejuela held him by the hand and pulled Pacete towards him, saying: "Are you the tough person here?"[5] Pacete held on to a post, with his other hand. At this juncture, Ramon Abejuela shot Pacete from behind with a "*paltik*" pistol using a "*de viente*" shotgun shell for ammunition, hitting Pacete's left leg.[6] David Abejuela then pushed Pacete who fell, exclaiming: "Agoy, help." David Abejuela pulled out a similar pistol and shot Pacete.

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[1] t.s.n., pp. 11-13, 24.

[2] *Id.*, p. 21.

[3] *Id.*, pp. 13, 32.

[4] *Id.*, p. 68.

[5] *Id.*, p. 79.

[6] *Id.*, p. 50.

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Pacete, however, was not hit as he rolled away.[7] As the people scampered for safety, Petronilo Lozano entered the arena and fired at the people indiscriminately. His shot hit Elpidio Capio. Juanito Mensalbas saw his brother-in-law hit and pulled Elpidio Capio towards a post. Upon seeing Mensalbas dragging Capio, David Abejuela fired at him, but hit instead, Petronilo Lozano at the back who shouted. "Agoy, why is it that you shot me?" David Abejuela went to Lozano and mollified him,[8] and then they fled from the dance hall and hid in the mill of one Mr. Caluya, where they found Ramon Abejuela and Angel Agbayani also hiding thereat.[9]

After the shooting stopped, Conrado Nabaja, Serafin Verde and others came out of their hiding places and helped Blas Pacete. They put a tourniquet around his left leg above the knee to stanch the flow of blood and brought him to the house of Ananias Pacete where his wound was washed with soap and warm water. Blas Pacete was also given a penicillin tablet. The next day, he was brought to the Bukidnon Provincial Hospital where he was examined and his wound treated.[10] On December 6, 1968, however, Blas Pacete died due to his injuries. A medical certificate[11] was issued, stating, in part, as follows:

"FINDINGS:

1. Multiple Gunshot wounds:

   POEn: Popliteal region, about 4 inches in length.

   POEx: Anterior tibia with maceration of skin, muscles and protusion of the tibia, about 6 inches in length.

2. Compound fracture of the tibia, fibula, leg, left.

Patient died on December 6, 1968 at 12:30 A.M. for

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[7] *Id.*, p. 69.

[8] *Id.*, p. 70.

[9] *Id.*, pp. 167-168; 202.

[10] *Id.*, pp. 16-18.

[11] Exhibit A, p. 11, Orig. Record.

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Shock Irreversible due to Hemorrhage external due to Compound fracture, left leg, secondary to Gunshot wound."

As a result, an information was filed against David Abejuela and Ramon Abejuela charging them with the crime of Murder committed, as follows:

"That on or about the 6th day of November 1968, in the evening, at barrio Sinabuagan, municipality of Valencia, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring together and mutually helping one another and by means of treachery and evident premeditation and abuse of superior strength, with the use of firearms with which they were conveniently provided, did then and there wilfully, unlawfully and criminally fired and shot one Blas Pacete, inflicting on the person of the latter the following wounds, to wit:

"1. Multiple Gunshot wounds:

POEn: Popliteal region, about 4 inches in length.

POEX: Anterior tibia, with maceration of the skin, muscles and protusion of the tibia, about 6 inches in length.

"2. Compound Fracture of the Tibia, fibula, leg, left.

which caused the death of the offended party.

Both accused are recidivist having been previously convicted by final judgment, of the crime of Serious Physical Injuries in Criminal Case No. 949, on July 5, 1962, by the Court of First Instance of Bukidnon."[12]

Ramon Abejuela denied having shot Blas Pacete. He stated that he arrived at the cockpit of Sinabuagan at about 10:00 o'clock in the evening, together with Angel Agbayani, riding on a carabao. He was met by his brother David Abejuela outside the cockpit.[13] While they were talking, he heard Angel call that their carabao was kicked by a man. David went to Angel and talked with the person who kicked the carabao, later identified

[12] p. 38. Original Record.

[13] t.s.n., p. 188.

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as Blas Pacete. Although he was worried about the carabao that was kicked by Pacete, he did not move from where he was standing. He could not hear the conversation. Not long thereafter, he saw David grappling with Pacete near the gate of the cockpit. He demonstrated by holding the court interpreter, representing Blas Pacete, "with his left hand holding the right hand of Blas Pacete near the elbow and his right hand holding Blas Pacete at the left wrist and pulling said Blas Pacete." Then, he heard an explosion which he believed came from his brother. Because of worry and fear, he ran away with Angel Agbayani towards the road going to Valencia. While running, he heard gunshots coming from the direction of the cockpit. They hid in the mill of one Mr. Caluya and not long thereafter, David and Petronilo Lozano arrived. The following morning they went to Valencia.[14]

David Abejuela claimed that it was he who shot Blas Pacete. He declared that he arrived at the dance hall at about 9:00 o'clock in the evening and just watched the dancers. At about 10:00 o'clock, his elder brother, Ramon Abejuela, and Angel Agbayani arrived, riding on a carabao. He went outside the dance hall to meet his brother. Angel Agbayani tethered the carabao to a "*dinog*" tree and saw a person kick the carabao. Angel reported the incident to him, saying: "What is this Nong, our carabao was kicked?" He immediately confronted that person and asked him why he kicked his carabao when it was tied to a "*dinog*" tree and there was nothing which may be destroyed by it. The man, later identified as Blas Pacete, did not answer, and just mumbled: "*Linte, linte*, why did you tie your carabao on this dinog tree where there are plants that are destroyed." He looked around and saw no plants, but only cogon grasses. Then, Pacete "held me and tried to pull me inside the cockpit and because I did not know him I was worried and so I tried my best to get free and then I pushed him. And then I saw him get something from his waist which was surely a weapon." He immediately pulled out his "*de veinte*" "*paltik*" pistol and shot Pacete and then sought cover behind the "*dinog*" tree. He

[14] *Id.*, pp. 189, 192, 193, 195, 202.

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heard several shots fired, about twenty, after which he noticed his companion, Petronilo Lozano, moaning, saying that he was shot. So, he brought Lozano to the mill of one Mr. Caluya, where he found Ramon and Angel Agbayani. The next morning, they went to Valencia to file a complaint against Blas Pacete and others. He denied that his brother Ramon Abejuela shot Blas Pacete while he and Pacete were grappling near the gate of the cockpit because if it were so, he would have also sustained some gunshot wounds since "this 20 gauge firearm uses the ammunition of a shotgun and it has many pellets. Besides, I have not noticed him carry a firearm and I have no knowledge if he has any firearm."[15]

The trial court, however, did not believe the defendants, saying:

"A careful scrutiny and evaluation of the evidence presented by the state leads the court to the conclusion that both of the accused are responsible criminally for the killing of the victim Blas Pacete. The circumstances surrounding the crime show that they cooperated with each other in the aggression which was unprovoked. David Abejuela cooperated in the execution of the crime not only by provoking the deceased whom he tried to drag outside the cockpit, but also by shooting him with his own gun after said victim was felled by the shot of Ramon and missed only because the deceased rolled on the ground. The shooting of the victim from behind by the accused Ramon Abejuela as he was resisting the effort of the other accused David Abejuela to drag him outside the cockpit was clearly characterized by treachery. The position of his wound which entered behind his left kneecap and went out in front leaves no room for doubt that the deceased was shot from the rear. This circumstance demolishes completely David Abejuela's claim of shooting him in self-defense as they confronted each other. Ramon Abejuela's mere denial cannot prevail over the positive testimonies of the witnesses for the prosecution who saw him deliver the fatal shot at the victim. The testimonies of Angel Agbayani and Melanio Laindag in support of the theory of the defense cannot be given credence because both of them appeared clearly biased especially Laindag who gave an entirely different version of the incident in his sworn statement to the municipal judge of Valencia when he was investigated on Dec. 19, 1968.

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[15] *Id.*, pp. 175-181.

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"The killing that was qualified by treachery is aggravated by recidivism on the part of the accused who were both sentenced by this Court of the crime of Serious Physical Injuries on July 5, 1962 and have already served their sentence. David Abejuela's voluntary surrender entitles him to a mitigation of his offense."

Ramon Abejuela insists that David Abejuela alone is accountable for the death of Blas Pacete and assails the trial court for believing the witnesses for the prosecution. The appellant more particularly impugns the testimony of Juanito Mensalbas and Conrado Nabaja as unworthy of credence, the former because of his relationship with the deceased and his inconsistent statement, and the latter for the contradictions in his testimony.

This Court has continually ruled that the matter of assigning values to the testimony of witnesses is best performed by trial judges because they, unlike appellate judges, can weigh such testimony in the light of the demeanor, conduct, and attitude of the witnesses at the trial, and their findings of fact may not be overturned unless there is a showing that in making the factual findings, the trial court had overlooked or failed to consider certain facts of weight and importance that could have materially affected the conclusion reached in the case.[16] The fact that Juanito Mensalbas is related to the deceased does not disqualify him from testifying; nor does it render his testimony utterly devoid of belief, in the absence of an improper motive actuating him to testify falsely against the accused. The contradictions and inconsistencies in the testimony of the witnesses, pointed out by the appellant, refer to minor details and are not of such magnitude and character as to lead one to believe that these witnesses were coached or tutored.

Besides, the claim that David Abejuela alone is responsible for the death of Blas Pacete and that Ramon Abejuela did not participate in the commission of the crime is not consistent with the truth and the physical facts of the case. Conrado Nabaja, Juanito Mensalbas and Esequio Taghap categorically declared

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[16] *People vs. Sales*, L-29340, April 27, 1972, 44 SCRA 489, and cases cited therein.

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that Ramon Abejuela shot Blas Pacete from behind while David Abejuela was holding Pacete by the arm and Pacete was holding on to a post with his other hand. Moreover, the nature of the gunshot wound sustained by the deceased, which had its point of entry at the back of the knee cap and its point of exit at the front of the leg, fracturing the leg bones, with maceration of the skin, muscles, and protrusion of the tibia, belies the claim of David Abejuela that he shot Blas Pacete, in self-defense, *while they were facing each other.*

The appellant also claims that the trial court erred in appreciating treachery as an aggravating circumstance. The contention is without merit. Treachery was considered in this case as the qualifying circumstance and is evident from the fact that Blas Pacete was shot from behind by Ramon Abejuela while David Abejuela was holding Pacete's arm, pulling Pacete towards him, and Pacete was holding on to a post with his other hand. Blas Pacete was unarmed and the attack was sudden and unexpected and there was no risk at all to the assailant.

The appellant claims that there is no conspiracy and evident premeditation in the commission of the crime. The unity of purpose and community of design is apparent from the fact that Ramon Abejuela shot Blas Pacete while David Abejuela was holding Pacete's arm; that David Abejuela also shot Blas Pacete when the latter fell after being shot by Ramon Abejuela: and that they fled from the scene of the crime and hid in the mill of one Mr. Caluya and went together to Valencia the following morning to file a complaint against Blas Pacete and others. But, We agree with the appellant that there was no evident premeditation because their meeting with Blas Pacete was not sought after and no sufficient period of time intervened between the time the killing was conceived, up to the time of its perpetration for the accused to have made a cool and circumspect deliberation of the consequences of their intended act.

The appellant further contends that the lower court erred in not appreciating the negligence of the doctor of the Bukidnon Hospital which helped in the early death of the victim. The contention is without merit. The general rule is that "he who

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inflicts the injury is not relieved of responsibility if the wound inflicted is dangerous, that is, calculated to destroy or endanger life, even though the immediate cause of death was erroneous or unskillful medical or surgical treatment."[17] The gravity of the wound inflicted is apparent from the fact that the leg bones were fractured and the skin and muscles macerated, and necessitated amputation of the leg.

Finally, the appellant claims that the lower court did not take cognizance of the caliber of the guns used by Ramon and David Abejuela in the shooting incident. The appellant argues, thusly:

"On pages 69, 89, 90 of the notes, during the direct and cross-examination of Juanito Mensalbas, witness for the prosecution the latter testified the gun used in the shooting was a '*de viente*' — caliber-gun using the bullet of a shotgun which is of the pellet type. If Ramon shot Blas Pacete while the latter was grappling with David Abejuela, the distance being only 'about one meter, p. 69,' David could have suffered gunshot wounds too. But, if the shot that inflicted the wounds was made by David, 'David Abejuela used that pistol of his in shooting Blas Pacete but Blas Pacete was able to avoid that, p. 69,' it is natural that the pellet would not spread due to the closeness of the actor and the victim. This latter assumption would tally with the confession of David Abejuela that he shot the victim, p. 177 of the notes."[18]

The caliber of the guns used in the shooting and wounding of the victim which resulted in his ultimate death is immaterial in view of the positive testimony of the prosecution witnesses that Ramon Abejuela shot Blas Pacete. Besides, the appellant did not present a ballistics expert to sustain his claim that with the type of ammunition he used in shooting Blas Pacete, which incidentally shattered the leg bones, thus precluding a finding that the type of shotgun shell used contained only tiny pellets, David Abejuela, standing about a meter away from the victim, would have also sustained gunshot wounds.

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[17] *People vs. Moldes*, 61 Phil. 1, 3.

[18] Appellant's Brief, p. 11.

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Counsel for the appellant "advances the theory that had Ramon Abejuela really shot Blas Pacete, considering the weapon used, the part of the body injured, the injury inflicted and the manner it was inflicted negated the crime of 'Murder,' for Ramon showed no intent to kill Blas Pacete."[19]

Indeed, the circumstances of the case show that Ramon Abejuela did not intend to kill Blas Pacete since the shot was directed towards the calf of the leg and not towards a vital part of the body. However, he is responsible for the consequences of his act, which is, the death of Blas Pacete. If he had not assaulted Blas Pacete in a treacherous manner, he would have been found guilty of homicide. But, since the act was committed with treachery, the defendant, although he did not intend to kill the deceased, is guilty of murder because of the qualifying circumstance of treachery.[20] The lack of intention to commit so grave a wrong as that committed may only be considered as a mitigating circumstance.[21]

The trial court, therefore, correctly found the accused Ramon Abejuela guilty of the crime of Murder, qualified by treachery, and attended by the aggravating circumstance of recidivism. But, the court erred in imposing the death penalty upon the said accused in view of the presence of the mitigating circumstance of lack of intention to commit so grave a wrong as that committed which would offset the aggravating circumstance of recidivism. Under the circumstances, *reclusion perpetua* is the proper penalty to be imposed upon the accused Ramon Abejuela.

WHEREFORE, the judgment of the trial court is hereby affirmed, with the modification that the accused Ramon Abejuela should suffer the penalty of *reclusion perpetua.* With costs against the accused Ramon Abejuela in this instance.

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[19] *Id.*, p. 5.

[20] *People vs. Cagoco*, 58 Phil. 524.

[21] Art. 13, No. 3, Revised Penal Code.

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SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Aquino, Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.,* concur.

Antonio,[*] *Abad Santos* and *Santos, JJ.,* took no part.

EN BANC

[G.R. No. L-33132. August 6, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DARWIN VELOSO *Y* MILITANTE,** *defendant-appellant.*

SYLLABUS

1 CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; *NIGHTTIME; WHEN NOT CONSIDERED.*— Although the crime was committed at nighttime, nocturnity cannot be considered as an aggravating circumstance in this case because it is not shown that the accused and his companions purposely sought the cover of the darkness of the night to consummate their evil designs. The record shows that the accused and his companions were on their way to rob the owner of a ricemill ("molino") when they met by accident Jesus Diez who asked them where they came from. The meeting of the accused and the victim was thus accidental and the attack was made on the impulse of the moment as a sequence of the unexpected turn of events.

2. *ID.; ID.; RECIDIVISM; NOT APPRECIATED AS AGGRAVATING* IF NOT ALLEGED IN THE INFORMATION.— Recidivism, as

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[*] Mr. Justice Felix Q. Antonio took no part being the Solicitor General at the time.