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of desistance. The respondent insisted that the case be dismissed on the basis of Ruby's handwritten letter of December 2, 1974.

The Solicitor General recommends that the case be dismissed because the desistance of the complainants had rendered it difficult to investigate the charge and because there is no evidence to substantiate it.

Finding that recommendation to be well-taken, this case is dismissed and considered closed.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Concepcion Jr., and *Santos, JJ.*, concur.

EN BANC

[G.R. No. L-44680. January 11, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DOMINADOR MOLO,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WHEN TESTIMONY MAY BE IMPEACHED. — Where the alleged statement of the witness given to the police was neither offered as evidence nor shown to the witness in order to enable the latter to explain the discrepancies if any, in accordance with Section 16, Rule 132, of the Rules of Court, so that the proper basis was not laid to impeach the testimony on the basis of alleged inconsistent statements allegedly made by the witness before the police, said statement may not be admitted in evidence.

2. ID; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES IN THEIR TESTIMONIES. —

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Inconsistencies on minor details or on matters that are not of material consequence as to affect the guilt or the innocence of the accused do not detract from the credibility of the witnesses. The discordance in their testimonies on collateral matters heightens their credibility and shows that their testimonies were not coached or rehearsed. Far from being evidence of falsehood, they could justifiably be regarded as a demonstration of good faith.

3. **ID; ID.; HEARSAY RULE; DYING DECLARATION; REQUIRES CONSCIOUSNESS OF IMPENDING DEATH.** — Considering the nature and extent of the wounds, eight in all, the victim must have realize the seriousness of his condition and it can therefore be inferred that he made the incrimination under the consciousness of impending death, especially where death in fact supervened barely 4-1/2 hours after he was boloed.

4. **CRIMINAL LAW; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ELEMENTS.** — In order that voluntary surrender may be properly appreciated in favor of the accused, it must appear that (a) he had not been actually arrested; (b) he surrendered himself to a person in authority or his agent; and (c) his surrender is voluntary. Where appellant admitted that on the day after the killing, the police authorities surrounded his house and arrested him, the fact that he did not try to escape or did not resist arrest after he was taken into custody by the authorities, does not amount to voluntary surrender.

5. **ID.; PENALTIES; DEATH PENALTY; IMPOSITION THEREOF JUSTIFIED UPON AN INCORRIGIBLE CRIMINAL.** — Where the accused is an incorrigible criminal with clearly anti-social proclivities against which the community has the need, if not the right, to defend itself; where the reformative end of punishment seems to have failed in amending his criminal tendencies — the accused having been previously convicted of frustrated murder, murder, grave slander, less serious physical injuries, qualified trespass to dwelling, and robbery; and where society had given accused several chances, yet it would seem that compassion had not reformed him, but had instead made him a hardened criminal and a menace to his fellow men, the imposition of the supreme penalty is not only justified, but is required as a measure of social defense. To spare his life is to endanger the lives and properties of others.

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APPEARANCES OF COUNSEL

Pedro Q. Quadra (Counsel de Oficio) for appellant.

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Reynato S. Puno and Solicitor Romeo C. de la Cruz for appellee.

D E C I S I O N

PER CURIAM:

Automatic review of the death sentence with accessory penalties imposed on September 3, 1976 upon accused-appellant Dominador Molo by Hon. Job B. Mandayag of the Court of First Instance of Romblon, 11th Judicial District, in Criminal Case No. 571 for the murder of Venancio Gapisa on 9 April 1976 at Sitio Dacotan, Barrio Tambac, Romblon, Romblon.

The above-named accused was charged with murder in an Information filed by Asst. Provincial Fiscal Cesar M. Solis, on May 31, 1976, as follows:

"The undersigned Assistant Provincial Fiscal of Romblon accuses DOMINADOR MOLO of the crime of MURDER committed as follows:

That on or about the 9th day of April 1976, at around 8:00 o'clock in the evening, at sitio Dacotan, barrio of Tambac, municipality of Romblon, province of Romblon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with treachery and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack and assault one Venancio Gapisa, with the use of a bolo as a consequence of which he sustained mortal injuries that resulted in his death thereafter.

That the killing was attended with the following aggravating circumstances:

(A) Dwelling, for the crime was committed in the house of the offended party who has not given any provocation at all.

(B) Recidivism, in view of the fact that the accused has been charged for (1) Frustrated Murder before the Court of First

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Instance of Mindoro in Criminal Case V-642 entitled *People vs. Dominador Molo* and convicted thereof on September 2, 1950; and (2) Murder, before the Court of First Instance of Romblon in Criminal Case No. 862 entitled *People vs. Dominador Molo* and convicted thereof on July 27, 1961.

(C) Reiteration, since he has been charged and convicted before different courts in the following criminal cases:

(1) Grave Slander, before the Court of First Instance of Romblon in Criminal Case No. V-669 and convicted on June 5, 1957.

(2) Less Serious Physical Injuries, before the Municipal Court of Romblon, Romblon in Criminal Case No. 839 and convicted on October 9, 1959.

(3) Qualified Trespass to Dwelling, before the Municipal Court of Romblon, Romblon in Criminal Case No. 845 and convicted on February 25, 1960.

(4) Robbery, before the Court of First Instance of Davao in Criminal Case No. 9982 and convicted on March 1, 1967.

That as a consequence of the aforementioned criminal act committed by the accused, the heirs of the deceased are entitled to recover civil damages pursuant to the provisions of law.

CONTRARY TO LAW.

Romblon, Romblon, May 31, 1976.

(SGD.) CESAR M. SOLIS
Assistant Provincial Fiscal"

At the trial, the prosecution presented the testimonies of — (1) the victim's wife, Simeona Gapisa, an eyewitness to the alleged murder; (2) Alejandro Gapisa, a son of the victim who went to the rescue of his father after he was stabbed by accused-appellant and was able to talk with him before he succumbed to several bolo wounds; (3) Roman Mangaring, a neighbor of Alejandro; and (4) Dr. Victorio Benedicto, who performed the autopsy and accomplished the Autopsy Report, Exhibits "A" and "A-1". The accused, who offered *alibi* as a defense,

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presented his testimony and that of his wife. Barbara Mingo, and Police Patrolman Rodolfo Manunggay and Exhibits 1, a bolo and 1-a, scabbard.

The operative facts of the case and the circumstances surrounding the apprehension and investigation of the accused now appellant established by the evidence on record are as follows:

In the evening of April 9, 1976 at about 8:00 p.m., at Sitio Dacotan, Barrio Tambac, Municipality of Romblon, Venancio Gapisa and Simeona Rapa-Gapisa, husband and wife, retired to sleep. The couple lived in a typical hut made of bamboo flooring and dilapidated *buri* walling surrounded by fruit bearing banana plants. Venancio Gapisa immediately fell asleep because he was tired from clearing the fields, and besides, had drunk tuba on that day. He slept near the door lying on his right side.[1]

Not long after the couple had retired, Simeona, who had not yet fallen asleep, heard an indistinct sound of murmur and gnashing of teeth. Although she was seized by fear, she managed to peep through the dilapidated *buri* wall and saw accused Dominador Molo attired only in short pants. He was alone. Trembling, she immediately lighted a kerosene lamp and placed it on top of the trunk nearby. She tried to awaken her husband, but the latter did not respond.[2]

Meanwhile, the accused had already climbed up the house which was only a flight of two steps. The accused forcibly pushed the sliding door and barged into the house. He inquired from Simeona where Venancio was and she replied that he was asleep. Finding Venancio sleeping near the door, he immediately grabbed his left wrist and started hacking at the sleeping old man. Rudely awakened, Venancio quickly stood up and with his right hand reached for his bolo which was atop the table nearby; but he was not able to retaliate in as much as Dominador Molo was quick to hack at him again. Fearing

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[1] TSN, July 12, 1976, pp. 5, 38, 45 and 50.

[2] *Id.*, pp. 38-40, 47 and 57.

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for her own life, Simeona rushed out of the house through the door of the unfinished kitchen to summon help from her son, Alejandro Gapisa, who was at Roman Mangaring's house some 100 meters away. Trembling, she told him that his father was boloed by Boslo, the name by which accused-appellant was known in their locality.[3]

Upon being informed, Alejandro and Roman ran towards the house of Venancio, followed by Simeona. Upon arrival. they saw Venancio bleeding profusely and in weakened condition. He was sitting in the floor of the kitchen, defecating in his pants. When Alejandro took him in his arms, Venancio told him that he was boloed by Boslo. Roman Mangaring who was present also inquired from Venancio who his assailant was and elicited the answer, "Boslo."[4] Venancio was then rushed to the hospital and arrived there at about 1:50 a.m. He expired a few minutes after.[5]

An autopsy of the victim disclosed that he died of hemorrhage from multiple incised wounds. The wounds sustained were:

"1. Incised wound, 10 cms. in length, gaping about 4 cms., slanting in position with the lower portion located anteriorly, penetrating the bone, at the antero-lateral aspect of the distal 3rd of the left arm.

2. Incised wound, about 10 cms. in length, gaping, slanting in position, with the lower and located anteriorly, penetrating the bone, located 3 cms. below the wound mentioned above.

3. Incised wound, about 10 cms. in length, gaping slightly at the antero-lateral aspect of the neck, left side, slanting, with the lower and located anteriorly penetrating the muscle layer.

4. Incised wound, about 10 cms. gaping, slightly slanting with the lower end located anteriorly, located 3 cms. below the

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[3] *Id.*, pp. 3, 10, 13, 21, 26, 40-43, 50, 52, 56-57.

[4] *Id.*, pp. 3-6, 15-17, 23-24, 31-32.

[5] *Id.*, July 26, 1976, p. 61.

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3rd wound, fracturing the clavicle, the costo-chondral portion of the 2nd rib and the lateral portion of the sternum, left side.

5. Incised wound, 8 cms. in length, gaping about 4 cms., slanting with the lower end located anteriorly, penetrating the bone, located at the lower end of the distal 3rd of the right arm, anterolateral portion.

6. Incised wound, 5 cms. in length, gaping slightly, slanting with the lower end located anteriorly, penetrating the bone, at the upper 3rd of the right forearm, antero-lateral aspect.

7. Incised wound, 4 cms., superficial, at the anterior portion of the neck.

8. Incised wound, 4 cms., superficial, right medial aspect, upper 3rd, right forearm.

Internal Findings:

Wound No. 4 penetrated the apex of the left lung inflicting a small wound, about 2-3 cms., causing minimal bleeding.

The Cause of Death: Hemorrhage from multiple incised wounds."[6]

The following morning an investigation of the fatal incident was conducted. Pat. Manuel Mariño in the presence of Patrolmen Montojo and Antonio Madali took the statement of Simeona Gapisa, who identified Dominador Molo as the assailant of her deceased husband.[7] Thereafter, PC soldiers and policemen were dispatched to the house of Dominador Molo some one and a half (1-½) kilometers away from the scene of the killing Dominador Molo was placed under arrest and brought by the arresting officers to the poblacion. Investigated at the PC barracks, Molo denied having committed any wrong and having gone to the place of Venancio Gapisa.[8]

On April 23, 1976, after additional statements of Alejandro Gapisa, Roman Mangaring and Florencio Guarte were secured,

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[6] Exhibit "A", Record, pp. 13-14.

[7] Records, pp. 9-13.

[8] TSN, July 12, 1976, p. 19; July 29, 1976, pp. 69-70; July 30, 1976, pp. 82-83, and 90.

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a criminal complaint was filed in the Municipal Court of Romblon.[9] The preliminary examination was conducted by Mayor Peter M. Montojo, for and in the absence of the municipal judge. Thereafter, he issued an order confirming the detention of accused who was then detained in the Municipal Jail of Romblon, there being ". . . reasonable ground to believe that the offense was committed and that the accused is probably guilty thereof."[10] The accused waived the second stage of the preliminary investigation.[11] On May 31, 1976, an information, as adverted to above, was filed against Molo accusing him of the crime of murder.[12]

After trial, the court *a quo* — relying on the testimony of Simeona Gapisa who was an eye-and ear-witness to the incident and the corroborating testimonies of Alejandro Gapisa and Roman Mangaring, who testified on the *ante-mortem* statements of the victim identifying accused as the assailant, discounting the defense of alibi put forth by the accused and his wife and appreciating the qualifying circumstance of treachery and the aggravating circumstances of dwelling, recidivism and reiteration alleged in the Information, and a mitigating circumstance, voluntary surrender — sentenced the accused on September 3, 1976, as follows:

"WHEREFORE, this Court renders judgment finding accused Dominador Molo guilty beyond reasonable doubt of the crime of murder, charged in the information and, same after off-setting the lone mitigating circumstance of voluntary surrender with the aggravating circumstance of either dwelling, recidivism or *reiteration* there remains two aggravating circumstances, sentencing him to suffer the supreme penalty of death. He is further adjudged to pay the heirs of the deceased Venancio Gapisa, the sum of Twelve Thousand Pesos (₱12,000), and to pay the cost.

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[9] Records, p. 5-6; 15-17.

[10] *Id.*, p. 18.

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

[12] *Id.*, p. 38.

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SO ORDERED."[13]

Accused-appellant thru Atty. Pedro Q. Quadra, counsel *de oficio* now seeks acquittal on the basis of two assigned errors, to wit —

1. Appellant was convicted upon proof not beyond reasonable doubt;

2. Identification of the appellant was not proven beyond reasonable doubt.[14]

1. In support of the first, he argues that while proof of motive is unnecessary if the evidence of identification is convincing — citing *People vs. Cunanan*, 19 SCRA 769; *People vs. Portugueza*, 20 SCRA 901; *People vs. Jamero*, 24 SCRA 206; and *People vs. Guardo*, 24 SCRA 851 — there is, he claims, a total want of motive on appellant's part, as admitted by the victim's wife, Simeona Gapisa, and son, Alejandro Gapisa.[15]

2. In support of the second assigned error, appellant contends that his identity as the assailant was not established beyond reasonable doubt, because of — (a) alleged inconsistencies and incredible assertions in Simeona's testimony; (b) physical conditions which rendered it impossible for her to recognized accused-appellant; (c) her alleged admission that she pointed to accused-appellant as the assailant because he was a hated criminal in their locality; and (d) that the so-called dying declarations should not have been accorded credence, because the victim could not have identified his assailant.[16]

Solicitor General Estelito P. Mendoza — who was assisted by Assistant Solicitor General Reynato Puno and Solicitors Romeo S. de la Cruz — after refuting the foregoing assignment of

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[13] *Rollo*, pp. 18-19.

[14] Brief, defendant-appellant, p. 4.

[15] *Id.*, *id.*, pp. 4-5.

[16] *Id.*, *id.*, pp. 3, 6-16.

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errors submits the following conclusions as to the nature of the offense committed, the qualifying and aggravating circumstances that attended the commission thereof, and, that the accused is not entitled to the mitigating circumstance of voluntary surrender, thus —

x x x x x x x x x

"Since the attack was commenced while Venancio Gapisa was asleep and therefore he could not make a defense, the killing was attended with treachery. Treachery qualifies the killing into murder. (Article 248, Revised Penal Code).

Dwelling is an aggravating circumstance because the killing was done in the house of Venancio Gapisa who had not given provocation. (Art. 14 (3), Revised Penal Code).

Other aggravating circumstances are recidivism and reiteration. (Article 14, paragraphs 9 and 19, Revised Penal Code). Accused-appellant had been previously convicted of murder, frustrated murder, grave slander, less serious physical injuries, qualified trespass to dwelling and robbery. (pp 10-12, tsn., July 12, 1976).

Accused appellant is not entitled to the mitigating circumstance of voluntary surrender. He did not surrender to the authorities. As admitted by him, he was arrested by a combined force of policemen and Philippine Constabulary agents at his residence the day after the killing. (p. 6, tsn., July 29, 1976).

Since there are three aggravating circumstances and no mitigating circumstance, the penalty properly impossible upon accused-appellant is death."[17]

and recommends that the finding of guilt for the offense of murder and the death sentence imposed upon appellant be affirmed *in toto*.[18]

Now, to consider the merits of the alleged errors.

1. *Re the claim that there is no proof of motive on appellant's part*. This error may be subsumed under and/or

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[17] Brief, People, pp. 17-18.

[18] *Id., id.*, p. 18.

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discussed together with the second, since it admits that motive need not be shown where there is positive identification, which, as We shall explain later, happened in this case. However, by way of traverse, We find the following observations of the Solicitor General well-taken, and therefore well worth adopting.

x x x x x x x x x

"Appellee concedes that it has failed to show any motive of accused-appellant in killing Venancio Gapisa.

Both Simeona Gapisa and Alejandro Gapisa ventured robbery as the motive of accused-appellant (pp. 34, 44, tsn., July 12, 1976). They could not, however, state how much money was taken, from whom it was taken and how it was taken (pp. 34-38, 44-45, tsn., July 12, 1976).

Lest it be thought that Simeona Gapisa and Alejandro Gapisa gave false testimony, thus rendering themselves untrustworthy witnesses, it should be pointed out that when they mentioned robbery as the possible motive of accused-appellant, Alejandro Gapisa made it clear that that was only his "surmise" (p. 34, tsn,, July 12, 1976) while Simeona Gapisa qualified her assertion with the word "maybe" (p. 44, tsn., July 12, 1976). They were not committal or categorical about the matter.

Aside from robbery, there was no other possible motive of accused-appellant. Both Simeona Gapisa and Alejandro Gapisa admitted that accused-appellant had no grudge against Venancio Gapisa and his family and vice-versa (pp. 33-34, 53-54, tsn., July 12, 1976).

But even in the absence of proof of motive, the conviction of accused-appellant can stand inasmuch as he had been positively identified by Simeona Gapisa and by the deceased himself through his dying declaration. Motive need not be shown when there is positive identification. (*People vs. Feliciano*, 53 SCRA 383; *People vs. Dorico*, 54 SCRA 172).[19]

x x x x x x x x x

2. *Re the contention that his identity as assailant was not established beyond reasonable doubt.*

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[19] Brief, People, pp. 4-6.

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(a) *That there are inconsistencies and incredible assertions in Simeona's testimony.* Simeona Gapisa — who was present when accused-appellant attacked her husband Venancio with a bolo — testified on direct and re-direct examinations by Assistant Provincial Fiscal Cesar M. Solis and on cross and recross examinations by Atty. Alexander Mortel, counsel *de oficio* of accused, thus —

x x x x x x x x x

"Fiscal Solis:

Q By the way, when you first heard the unusual sound since you were still awake, what did you do?

A *I lighted a lamp. I first looked at him by peeping thru the wall of our house and once I had recognized his face as that of Dominador Molo I lighted a lamp.*

Q Was it only the face of Dominador Molo that you recognized outside?

A Yes, and he was alone.

Q What about his body, did you recognize that body belong to Dominador Molo?

A *I could see and that was the very body of his including his face because it was bright.*

Q What provides the brightness that allowed you to recognize him outside the house?

A The moon was bright.

Q Now, aside from the unusual murmuring sound, did you hear the sound of grinding teeth?

A In fact that was what he had done he was murmuring and at the same time sounding like grinding teeth.

Q Now, after you lighted a lamp what else did you do inside?

A I stood up and stepped back because he had come up into the house.

Q Did you not wake up your husband?

A I had but he did not notice.

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Q Now, what did you do with the lamp after you lighted it?

A I placed it on top of our trunk which was towards our head.

Q Now, how did you know that Dominador had gone up the house?

A *Because I saw him going up into our house.*

Q When he went up the house, what did he do?

A Once up the house he held my husband by the arm and suddenly pulled out his bolo from his back and hacked him."[20]

x x x x x x x x x

Q How long have you known him?

A Since he was a boy and until he grew up.

Q By the way, by what affiliation (sic, should be appellation or name) is he known in your locality?

A Boslo.

Q *If that Dominador Molo the accused in this case known as Boslo is present in the court room will you be able to point him out in the court?*

A *He is here he is the one sitting.*

Q Could you not be mistaken?

A That is true, it was his very appearance who is looking up in the ceiling."[21]

x x x x x x x x x

"Atty. Mortel:

Q Nevertheless, because the moon was a quarter moon only that night April 9 the illumination to any object that could be seen is quite pale not so bright as if there was an alladin lamp, correct?

A Yes.

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[20] TSN, July 12, 1976, pp. 39-41, direct.

[21] *Id.*, pp. 43-44, *id.*

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Q And as a matter of fact when this person whom you said was making murmuring sounds when you peeped through your window he was being illuminated by the beam of the light of the moon and his face seems to be a yellowish and as clear as if there is an alladin lamp, correct?

A *But I know that he was the very one I recognized his face and he is far from the banana plantation and the moon lights very well on him.*

Q When the moon lighted very well on him his color was yellowish was it not?

A It was indeed his appearance that I saw and that is exactly how he looked.

Q And when you looked at him the first time that night he looked like Dominador Molo?

A *It was his very own appearance*, his appearance never changed.

Q And when you saw him you lighted a lamp, is that right?

A I lighted a lamp because he was already there and I was afraid of what he had done to us.

Q You mean from the very first time that you saw him he was making murmuring sounds you were already afraid that he would do something bad against you and your husband?

A Yes, I was already afraid and my skin seemed to shiver."[22]

x x x x x x x x x

Q And so when your husband was or rather when your house that night of April 19 was entered into by a person making murmuring sounds outside and boloed to death your husband there was no other conclusion that you made but that it must be Boslo the killer?

A *Yes, in fact he was the very one it was his very looks.*"[23]

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[22] *Id.*, pp. 46-48, Cross.

[23] *Id.*, p. 54, *id.*

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"Fiscal Solis:

Q And who pushed open that door of yours, was it Dominador Molo or a witch?

A *He was Dominador Molo, it was his very looks of the same person who pushed the shutter of the door.*

Q What made you sure that the looks of that person was the one who pushed open the door and went inside and hacked your husband?

A He was the one it was his very looks and I saw that it is his looks.

x x x x x x x x x

Q Now, what is this basis for positively telling us that is Dominador Molo who killed your husband was it because of rumor circulating in the locality of Cogon and that the assailant as to be Dominador Molo because he has killed or because you saw then Dominador Molo committing the act against your husband?

A *Not only what was given to me by way of information from other people out because of what I actually saw with my eyes.*"[24]

x x x x x x x x x

"Atty. Mortel:

Q Now, according to you when the door was pushed open the person entered and he has the looks of that fellow whom you are pointing to as Dominador Molo, is that correct?

A *He is the very one.*

Q And not only that person who entered the looks of that Dominador Molo the accused in this case but he also has the height that looks like the height of Dominador Molo, is that correct?

A Yes and he had his shirt off and shorts on.

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[24] *Id.*, pp. 56-57; re direct.

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Q And he has that looks and built of Dominador Molo, is that correct?

A *Yes, that is his very appearance and could not be altered anymore.*"[25]

x x x x x x x x x

Appellant contends that inconsistencies exist between Simeona's statement given to the police and her foregoing testimony in court, relative to — 1) the precise moment when Simeona recognized the accused,[26] and 2) whether there was a conversation between Simeona and the accused.[27]

The records show, however, that the alleged statement given to the police was neither offered as evidence nor shown to witness in order to enable her to explain the discrepancies if any in accordance to Section 16, Rule 132 of the Rules of Court. The proper basis was, therefore, not laid to impeach Simeona's testimony on the basis of alleged inconsistent statements which she allegedly made before the police.[28]

At any rate, We find the alleged inconsistencies inconsequential. Inconsistencies on minor details or on matters that are not of material consequence as to affect the guilt or the innocence of the accused do not detract from the credibility of the witnesses.[29] The discordance in their testimonies on collateral matters heightens their credibility and shows that their testimonies were not coached or rehearsed.[30] Far from being evidence of falsehood,

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[25] *Id.*, p. 57; re-cross.

[26] Brief, defendant-appellant, pp. 8-9.

[27] *Id.*, *id.*, pp. 13-14.

[28] *People v. Escosura*, L-1291, Nov. 2, 1948, 82 Phil. 41; *Juan Ysmael & Co. v. Hashim & Jorayeb*, No. 26247, March 18, 1927; *United States v. Baluyot*, No. 14476, Nov. 6, 1919, 40 Phil. 385.

[29] *People v. Palencia*, L-38957, April 30, 1976, 71 SCRA 679; *People v. Reyes*, L-33154, Feb. 27, 1976, 69 SCRA 474; *People v. Pajenado*, L-26458, Jan. 30, 1976, 69 SCRA 172.

[30] *People v. Estocada*, L-31024, Feb. 28, 1977, 75 SCRA 295; *People v. Doria*, L-26188-90, Jan. 31, 1974, 55 SCRA 435.

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they could justifiably be regarded as a demonstration of good faith.[31]

It is also contended that the testimony of Simeona contains inconsistent averments. According to accused-appellant Simeona claimed that she was able to identify him because of the lamp which was then lighted but that she also declared that the light was put out when the door was opened because of the sudden gust of wind.[32] To support this contention, he quoted Simeona's testimony:

"Q And when the door was pushed open there was a sudden gust of wind that entered the house, correct?

A There was a consequence of the sudden entry.

Q And with that sudden entry and gust of wind carried by this fellow the light was snuffed out, correct?

A Yes." (p. 51, tsn., July 12, 1976).

A review of the transcript of the testimony shows that the foregoing is an inaccurate representation of Simeona's testimony. For she clarified that her husband was already boloed before the light was snuffed out. Thus, she testified on cross-examination:

"Atty. Mortel:

Q And with that sudden entry and gust of wind carried by that fellow the light was snuffed out, correct?

A Yes.

Q And in the darkness inside this fellow who entered the house began stabbing and boloing your husband, correct?

A *My husband was already boloed when the light was put out because upon entrance he instantly took hold of my husband's arm and started hacking him all over.*"[33]

x x x x x x x x x

[31] *People v. Estocada, supra*; *People v. Alcantara*, L-26867, 33 SCRA 813; *People v. Cabiltes*, L-18010, Sept. 25, 1968, 25 SCRA 112.

[32] Brief, defendant-appellant, pp. 11-12.

[33] TSN., July 12, 1976, p. 52.

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On re-direct examination, she declared —

"Fiscal Solis:

Q Now, you admitted on cross examination that the lamp was put out now how were you able to know that your husband had attempted to hold his bolo with his right hand and while in that position he was hacked twice by a bolo by the accused Dominador Molo?

A *That stage occurred when the light was still on so it was still bright.*"[34]

Appellant also alleges that her testimony contains incredible assertions, *i.e.* that it was very unusual that she remained silent while witnessing the attack on her husband.[35]

But the transcripts show that appellant's own counsel below, Atty. Alexander Mortel, during the cross-examination, provided the answer to this misgiving:

x x x x x x x x x

"Q When the door was pushed open did you not shout?

A No, because I was afraid.

Q Afraid of what?

A I was afraid because I did not shout for fear that he might bolo me.

Q You were tongue-tied?

A Yes.

Q Because of fear?

A Yes.

Q Terrible fear?

A *Yes, it was terrible fear because my body trembled.*

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[34] *Id.*, p. 56.

[35] Brief, defendant-appellant, p. 14.

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Q To such extent that you were shocked?

A Yes."[36]

Appellant also argues that Simeona's account is contrary to physical facts. He claims that if, as she testified, the victim was lying down when attacked, he would sustain stab, not incised wounds. He explains that the natural tendency of a person attacking another who is lying down with a bolo would be to thrust the bolo towards the body and not hack him.[37] This claim is without merit. The Solicitor General's explanation on this point is well-taken. To simply thrust a bolo at a lying person is not as forceful as to hack him with it. The first is an awkward if not difficult movement, but the second is natural and can be done with facility.[38]

(b) *That conditions rendered it impossible for Simeona to recognize accused-appellant.* It is contended that Simeona could not have recognized accused-appellant while he was at the foot of the stairs because the banana plants obstructed the light cast by the moon.[39]

This, again, is without merit. Simeona testified that the banana plants did not obstruct the light cast by the moon and the defense did not disprove this fact:

x x x x x x x x x

"Atty. Mortel:

Q And because of the banana plantation that is covering your yard this quarter moon, the illumination thereof is obstructing a little by this banana plantation?

A *But the bananas are not directly obstructing the door of our house because they are standing towards the footpath the part of our house was not obstructed of the light cast by the moon.*

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[36] TSN., p. 51.

[37] Brief, defendant-appellant, p. 15.

[38] *Id.*, People, p. 13.

[39] *Id.*, defendant-appellant, pp. 10-11.

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Q Except by the footpath and the surrounding premises of the east side of the house is shaded because the banana plantation are there to obstruct the illumination of the moon, correct?

A *No the light coming from the moon could not be obstructed anymore by that plantation because the main door of our house is fronting a yard.*

Q Nevertheless, because the moon was a quarter moon only that night April 9 the illumination to any object that could be seen is quite pale not so bright as if there was an alladin lamp, correct?

A Yes.

Q And as a matter of fact when this person who you said was making murmuring sounds when you peeped through your window he was being illuminated by the beam of the light of the moon and his face seems to be a yellowish and as clear as if there is an alladin lamp, correct?

A *But I know that he was the very one I recognized his face and he is far from the banana plantation and the moon lights very well on him.*

Q When the moon lighted very well on him his color was yellowish was it not?

A It was indeed his appearance that I saw and that is exactly how he looked.

Q And when you looked at him the first time that night he looked like Dominador Molo?

A It was his very own appearance his appearance never changed."[40]

Indeed, Simeona had no difficulty in recognizing the accused, considering that their house was only elevated by two steps and at the time she saw him through the dilapidated *buri* wall he was already at the foot of the stairs.[41]

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[40] TSN., July 12, 1976, pp. 46-47.

[41] *Id.*, pp. 41-45.

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(c) *That Simeona pointed to the accused as the killer because he was a hated criminal in the locality.*[42] Appellant contends that Simeona pointed to him as the assailant because he was a hated criminal in the locality — not because he was properly identified as the one who attacked the victim. This claim has no basis in the records. For the testimony of Simeona shows that she was certain of accused-appellant's identity as assailant and that at one point accused-appellant even inquired from her where her husband was, thus —

x x x x x x x x x

"Fiscal Solis:

Q And who pushed open that door of yours, it was Dominador Molo or a witch?

A He was Dominador Molo, it was his very looks of the same person who pushed the shutter of the door.

Q What made you sure that the looks of that person was the one who pushed open the door and went inside and hacked your husband?

A He was the one it was his very looks and I saw that it is his looks."

x x x x x x x x x

"Q *Now, what is this basis for positively telling us that it is Dominador Molo who killed your husband was it because of rumor circulating in the locality of Cogon and that the assailant as to be Dominador Molo because he has killed or because you saw then Dominador Molo committing the act against your husband?*

A *Not only what was given to me by way of information from other people but because of what I actually saw with my eyes.*"

x x x x x x x x x

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[42] Brief, defendant-appellant, pp. 3, 5-6.

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"Atty. Mortel:

Q Now, according to you when the door was pushed open the person entered and he has the looks of that fellow whom you are pointing to as Dominador Molo, is that correct?

A He is the very one.

Q And not only that person who entered has the looks of Dominador Molo he accused in this case but he also has the height that looks like the height of Dominador Molo, is that correct?

A Yes and he had his shirt off and shorts on.

Q And he has that looks and built of Dominador Molo, is that correct?

A *Yes, that is his very appearance and could not be altered anymore.*

x x x x x x x x x

"Court: In your entire testimony you did not mention of any conversation of Dominador Molo as soon as he went up the house, did you not talk to him, did you not converse with him?

A No, because he suddenly rushed our house.

Q *And did he not ask you where is your husband and answered there he is?*

A *That was it he was also asking as he entered.*

Q *So it is clear that you had a conversation with him?*

A *Yes.*

Q And that is what you stated in the police?

A Yes, sir."[43]

(d) *Re the dying declarations.* Appellant claims that the same should not be accorded credence because the victim could not have recognized his assailant, since as testified by Simeona

[43] TSN., July 12, 1976, pp. 56-58.

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he was asleep when attacked.[44] Again this is inaccurate. It was only at the initial stage of the attack when the victim was asleep, because he was awakened by the first blows and stood up to defend himself. Simeona declared:

x x x x x x x x x

"Fiscal Solis:

Q How many times did you see Dominador bolo your husband on the left arm?

A I saw him boloed my husband twice on the left arm *and when my husband noticed that he was being hacked he reached for his bolo with his right arm to which instance Dominador Molo noticing that he was going to use a bolo Dominador hacked him again on the right arm.*

Q Was your husband able to take hold of his bolo?

A He was able to take hold of the handle only because at this instance he was hacked by Dominador and so the bolo fell from his hands.

Q What hand did your husband use in taking hold of his bolo?

A Right arm (sic: should be *hand*).

x x x x x x x x x

Q But was your husband able to rise from where he was lying to get that bolo?

A He was able to rise but he was already weak because his left arm was ready wounded."[45]

The statements of Venancio identifying Dominador Molo as his assailant to Alejandro, his son, and Roman, his neighbor are dying declarations. Alejandro Gapisa testified:

x x x x x x x x x

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[44] Brief, defendant-appellant, pp. 15-16.

[45] TSN., July 12, 1976, p. 42.

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"Q What was the position when you found him there?

A He was sitting.

Q What else if any did you observe of your father?

A When I came up he said, "*Ando I have wounds because I was boloed by Boslo.*"

Q What was his actual physical situation when he uttered these words?

A He was already weak, his body was weak.

Q How did you observe that he was already very weak, that he was already weak physically?

A Because his wounds are big and many.

Q Was it bleeding?

A *It was bleeding but the flow of the blood had declined since they had been drained of blood.*

Q In your observation was he dying or not?

A *He was about to die.*

Q Now, since he had wounds what did you do with the injuries?

A Upon arrival I tied his wounds.

Q Which injuries did you bind, what did you tie?

A The wounds in the arm because it was dangling.

Q Which arm the left or the right?

A The left.

Q What about the right arm?

A It had also many wounds.

Q What was your father doing there, in that kitchen?

A He was sitting.

Q Was he doing anything else from sitting?

A I think he was defecating as a result of the pain.

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Q Did he have his pants on?

A Yes."[46]

And Roman Mangaring declared:

x x x x x x x x x

"A *I was talking to him as to who boloed him.*

Q *And his answer to you was Boslo?*

A *Yes.*

Q He called his assailant as Boslo?

A Yes."[47]

Considering the nature and extent of the wounds, eight in all, Venancio must have realized the seriousness of his condition and it can therefore be inferred that he made the incrimination under the consciousness of impending death,[48] which, in fact, supervened barely 4-1/2 hours after he was boloed.

In resume then the credible and unimpeached testimonies of the victim's widow, Simeona Gapisa, who was an eye-witness to the fatal incident, and that of Alejandro Gapisa, the victim's son, and Roman Mangaring, a neighbor, who both testified on the *ante-mortem* statements of the victim, establish the guilt of accused-appellant beyond reasonable doubt of the crime of murder qualified by treachery, and aggravated by circumstances of dwelling, recidivism and reiteration, it appearing that accused has been convicted by final judgment of murder, frustrated murder, grave slander, less serious physical injuries, qualified trespass to dwelling a robbery, and, had served sentences for said crimes.

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[46] *Id.*, pp. 23-24.

[47] *Id.*, p. 16.

[48] See *People v. Brioso, et al.*, G.R. No. L-28482, Jan. 30, 1971, 37 SCRA 336; *People v. Beraces, et al.*, G.R. No. 25016, March 27, 1971, 38 SCRA 127.

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We agree with the Solicitor General that appellant is not entitled to the mitigating circumstance of voluntary surrender. For in order that the same may be properly appreciated in favor of the accused, it must appear that — a) he had not been actually arrested; b) he surrendered himself to a person in authority or his agent; and c) his surrender is voluntary, which circumstances are not present in this case.[49] For appellant admitted that on the day after the killing, police authorities surrounded his house and arrested him. The fact that he did not try to escape or did not resist arrest after he was taken into custody by the authorities, does not amount to voluntary surrender.[50]

A word about the penalty. It appears that accused-appellant is an incorrigible criminal with clearly anti-social proclivities against which the community has *the need*, if not *the right*, to defend itself. Where, as in this case, the reformative end of punishment seems to have failed in amending his criminal tendencies — he was convicted for frustrated murder in Criminal Case V-542, Mindoro on September 2, 1950; murder in Criminal Case No. 862, Romblon on July 27, 1961; grave slander in Criminal Case No. V-669, Romblon, on June 5, 1957; less serious physical injuries, before the Municipal Court of Romblon, Romblon in Criminal Case No. 839 on October 9, 1959; qualified by trespass to dwelling, before the Municipal Court of Romblon, Romblon in Criminal Case No. 845 on February 25, 1960 and robbery, before the Court of First Instance of Davao in Criminal Case No. 9982 on March 1, 1967 — the imposition of the supreme penalty, *is not only justified* by the facts of this case, *but is required* as a measure of social defense. Society had given accused-appellant several chances. It would seem that compassion had not reformed him, but had instead made him a hardened criminal and a menace to his fellow men. To spare his life is to endanger the lives and properties of others.

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[49] *People v. Hanasan*, L-25989, 29 SCRA 534.

[50] *People v. Reyes*, L-33154, Feb. 27, 1976, 69 SCRA 474, citing *People v. Dimdiman*, L-12622, Oct. 28, 1959, 106 Phil. 391.

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WHEREFORE, judgment is hereby affirmed *IN TOTO*, without pronouncement as to costs.

SO ORDERED.

Barredo, Makasiar, Antonio, Aquino, Concepcion Jr., Santos, Fernandez, and *Guerrero, JJ.*, concur.

Castro, C.J., Fernando, and *Teehankee, JJ.*, concur in the result.

EN BANC

[A.M. No. P-1551. January 15, 1979]

JUANITO BENAOJAN, *complainant*, *vs.* **MARIANO LACSON**, *respondent.*

SYLLABUS

1. **ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; COMMITTED IN CASE OF FALSIFICATION OF PERSONAL DATA SHEET.** — The making of untruthful statements and misrepresentation in a personal data sheet by a court employee showing that he finished Pre-Law, 4th year Law and first year in Customs Administration when in fact he was only a high school graduate, which personal data sheet was submitted to the Supreme Court for the purpose of updating his 201 file is a betrayal of public trust and a serious violation of Art. XIII of the 1973 Constitution, because whatever qualification respondent labels himself in his information sheet would be of much influence in the determination of his retention and/or promotion in the service. And the fact that said employee repeated the same act of dishonesty shows a decided purpose to deceive and mislead his superiors.

2. **ID; ID.; REQUIRED TO SERVE WITH THE HIGHEST DECREE OF RESPONSIBILITY.** — Article XIII of the present