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FIRST DIVISION

[G.R. No. L-48065. March 30, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEOPOLDO TRAYA** ***alias*** **"Dady",** *accused-appellant.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT; COURT OF APPEALS SHOULD RENDER JUDGMENT BUT SHOULD REFRAIN FROM ENTERING THE SAME IN AN APPEALED CRIMINAL CASE WHERE IN ITS OPINION THE PENALTY OF DEATH OR *RECLUSION PERPETUA* SHOULD BE IMPOSED. — Should the Court of Appeals be of the opinion that the penalty of death or *reclusion perpetua* should be imposed in a criminal case appealed to it where the penalty imposed by the trial court is less than *reclusion perpetua*, the said court, with a comprehensive written analysis of the evidence and discussion of law involved, should render judgment expressly and explicitly imposing the penalty of either death or *reclusion perpetua* as the circumstances warrant, refrain from entering judgment, and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.

D E C I S I O N

GUERRERO, *J.*:

This case was certified to Us by the Court of Appeals pursuant to Section 12, Rule 124 of the Rules of Court.

Appellant Leopoldo Traya, together with co-accused Octavio Traya, Wenceslao Verterra and Antonio Natulla Cinco were charged before the Circuit Criminal Court, 13th Judicial District, Tacloban City for the crime of murder in the fatal shooting of Dr. Pedro Alvero who was then the incumbent Vice-Mayor of Abuyog, Leyte. The offense was allegedly committed by means of treachery and with evident premeditation, and the aggravating circumstances of grave abuse of superior strength and disregard

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of the respect due the victim on account of his rank. For insufficiency of evidence to support the qualifying circumstances of treachery and evident premeditation, the trial court found conviction only for the lesser offense of homicide. Thus, Leopoldo Traya was sentenced to a minimum period of six (6) years and four (4) months of *prision mayor* to a period not exceeding thirteen (13) years and ten (10) months of *reclusion temporal* with all the accessory penalties of the law and to pay jointly and severally with his other co-accused the sum of ₱12,000.00 to the heirs of the victim, Dr. Pedro Alvero, by way of indemnification without subsidiary imprisonment in case of insolvency and to pay half of the costs.

The accused Wenceslao Verterra was sentenced to nineteen (19) years and eight (8) months of *reclusion temporal* in its maximum period and to share in the indemnity jointly and severally with Leopoldo Traya. Octavio Traya was acquitted. Antonio Natulla Cinco remained at large throughout the proceedings.

From the judgment, accused Leopoldo Traya appealed to the Court of Appeals. After making its findings of fact and evaluation of the evidence, particularly the testimonies of the eyewitnesses, the appellate court rendered an opinion disagreeing with the trial court that the crime committed was homicide, considering that the offense was proved satisfactorily to have been qualified with treachery. Believing that the penalty which should be imposed is *reclusion perpetua,* the Court of Appeals, in compliance with the Rules, refrained from rendering judgment and thus certified the case to the Supreme Court.

In the case of *People vs. Daniel,* L-40330, promulgated on November 20, 1978, this Court reviewed the procedure in the Court of Appeals outlined in the second paragraph of Section 12, Rule 124 of the Rules of Court. The pertinent rule provides:

xxx xxx xxx

"Whenever in any criminal case submitted to a division the said division should be of the opinion that the penalty of death or life imprisonment should be imposed, the said court shall refrain from entering judgment thereon and shall forthwith certify the case to the

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Supreme Court for final determination, as if the case had been brought before it on appeal."

The Court through Chief Justice Fred Ruiz Castro directed that: "x x x, henceforth, should the Court of Appeals be of the opinion that the penalty of death or *reclusion perpetua* (life imprisonment) should be imposed in any criminal case appealed to it where the penalty imposed by the trial court is less than *reclusion perpetua*, the said Court, with a comprehensive written analysis of the evidence and discussion of law involved, render judgment expressly and explicitly imposing the penalty of either death or *reclusion perpetua* as the circumstances warrant, refrain from entering judgment, and forthwith certify the case and elevate the entire record thereof to this Court for review."

WHEREFORE, in accordance with this new ruling and directive, this case is hereby remanded to the Court of Appeals for rendition of the proper judgment.

Makasiar, Fernandez, De Castro, and *Melencio Herrera, JJ.*, concur.

Teehankee, J., concurs in a separate opinion.

TEEHANKEE, *J., concurring:*

I hold the opposite view as per my vote concurring with the valedictory main opinion of Mme. Justice Palma in the cited 1978 case of *People vs. Daniel*[1] that under the theretofore consistent interpretation (*of over* forty years standing since the creation of the Court of Appeals) of the pertinent provisions of the Constitution and the law,[2] whenever the Court of Appeals in an appealed criminal case before it (where the penalty imposed by the trial court is *reclusion temporal* or a lesser penalty and which therefore falls under its exclusive appellate jurisdiction, for cases wherein the trial court imposed the penalty of death

[1] L-40330, November 20, 1978.

[2] Section 34 of the Judiciary Act and Rule 124, Section 12 of the Rules of Court.

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or *reclusion perpetua* are vested by the Constitution and Judiciary Act within the exclusive appellate jurisdiction of this Court[3]) is of the opinion that the penalty of death or life imprisonment should be imposed, it shall refrain from rendering (entering) judgment and shall forthwith certify the case to the Supreme Court for final determination as if the case had been brought before the Supreme Court on appeal.

However, since this Court by a majority vote in the said case of *Daniel* has overruled this long standing doctrine and would now require the Court of Appeals to "render judgment expressly and explicitly imposing the penalty of either death or *reclusion perpetua* as the circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to this Court for review" and such majority vote has prevailed to now, I am constrained to defer thereto and concur in the result.

FIRST DIVISION

[G.R. No. L-48192. March 30, 1979]

ARSENIO REYES, R. ZINGAPAN, E. SERRANO, P. SISON, L. MENDOZA, F. PEREZ, O. CRUZ, E. BAUTISTA, H. ANGCIANGCO, G. SANTOS, R. PINEDA, J. LLENAS, R. VALDEZEO, C. HERNAL, S. TRIPOLI, D. TRINE, P. MAGAT, N. NATAGOC, J. SASIS AND CRISPA-FLORO WORKERS' ASSN., *petitioners, vs.* **THE HONORABLE BLAS OPLE, CARMELO C. NORIEL and ROMEO A. YOUNG and NAFLU,** *respondents.*

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[3] Art. X, Sec. 5, sub-par. (2) (d), 1973 Constitution, Art. VIII, Sec. 2 (4) 1935 Constitution; and Section 17 of the Judiciary Act, (RA 296).