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I dissent as to the penalty imposed. While the intoxication seemed to be unintentional and, therefore, it should be mitigating, nevertheless, it is offset by the aggravating circumstance of dwelling.

Dwelling is aggravating because the killing took place at the foot of the stairs of the victim's house which were an integral part of his dwelling (Decision of January 8, 1884 of the Supreme Court of Spain cited in *People vs. Alcala*, 46 Phil. 738, 744; *People vs. Uday*, 85 Phil. 498, 504; *People vs. Madedis Sali*, 91 Phil. 911).

Hence, the proper penalty is *reclusion perpetua*, the medium period of *reclusion temporal* maximum to death.

Even if the penalty should be imposed in the minimum period, the appropriate indeterminate sentence (considering the perversity of the accused) should be seventeen years of *reclusion temporal* medium, as minimum, to twenty years of *reclusion temporal* maximum, as maximum.

EN BANC

[G.R. No. L-45387. November 7, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **WALDO CASIGURAN, WALLY CASIGURAN and JUANITO CASIGURAN**, *accused-appellants*.

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SYLLABUS

1. **CRIMINAL LAW; HOMICIDE; COMMITTED IN CASE AT BAR.**— The killing was homicide aggravated by abuse of superior strength. Since conspiracy to kill was not proven, only Waldo Casiguran should be held liable as a principal. It is deducible from the evidence that the Casiguran brothers and their confederate, Adriatico, intended to castigate Bato, but it was not proven that they intended to kill him outright. They were not armed with deadly or bladed weapons. They just carried stones. The ice pick used by Waldo in the killing belonged to the victim (13 tsn August 30, 1976). The stabbing was impelled by a momentary impulse.

2. **ID.; EXECUTION AND SERVICE OF PENALTIES; ACCUSED WHO IS NO LONGER A MINOR AT THE TIME OF TRIAL OR CONVICTION IS NOT ENTITLED TO A SUSPENDED SENTENCE.**— Presidential Decree No. 1179, which took effect on August 15, 1977, lowered the age limit to eighteen years (the same age limit provided for in Article 80 of the Revised Penal Code before it was amended by Republic Act No. 47). ... The purpose of Articles 189 and 192 of the Child and Youth Welfare Code is the same as that of Article 80 and that is to avoid a situation where juvenile offenders would commingle with ordinary criminals in prison. So, instead of imposing a condemnatory sentence on them, they are confined in a beneficent institution for their care, correction and education (*People vs. Estefa*, 86 Phil. 104,110). Article 192 should be interpreted in the same manner as Article 80. Under the original provisions of Article 80 (before it was amended by Republic Act No. 47 which reduced the age of eighteen years to sixteen years), it was held that if at the time the crime was committed the accused was below eighteen years but at the time of the trial or conviction he was no longer a minor, he is not entitled anymore to a suspended sentence because he is not a juvenile offender but already an adult. The reason for the suspended sentence does not apply to him (*People vs. Celespara*, 82 Phil. 399; *People vs. Nuñez*, 85 Phil. 448; *People vs. Estefa*, *supra*; *People vs. Lingcuan*, 93 Phil. 9; *People vs. Doria*, L-26189 and two other cases, January 31, 1974, 55 SCRA 435, 450; *People vs. Pedro*, L-18997, January 31, 1966, 16 SCRA 57, 67).

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APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Consuelo S. Florendo for accused-appellants.

D E C I S I O N

AQUINO, *J.*:

Ismael Bato, a forty-three-year-old driver of a sand and gravel truck, was assaulted at around three o'clock in the afternoon of June 27, 1976 near his house in the compound at Barrio Malanday, San Mateo, Rizal.

He sustained a mortal wound in the chest which affected his lungs and heart, an incised wound in his right earlobe, lacerated wounds on his head and face, and contusions and abrasions on his head, chest and left forearm. He died upon arrival at the hospital.

This case, like its congeners, poses the ever-recurring question as to whether the killing was murder, as held by the trial court which imposed the death penalty, or justifiable homicide, as contended by the accused-appellants.

Waldo Casiguran, a twenty-four-year-old helper in a trucking business and a neighbor of Bato, the victim, admitted that he inflicted the fatal wound. In his nebulous and hazy testimony he invoked self-defense and defense of a stranger as the justification for wounding Bato.

Waldo testified that on that afternoon, when he saw Bato stabbing Dario Adriatico, he (Waldo) approached them and tried to pacify them. When Bato turned towards him and was going to stab him with an ice pick, he grabbed the weapon and stabbed Bato (15 tsn August 31, 1976). Waldo said that his brothers, Juanito (Doming), 43, and Wally, 20 were not in the vicinity when he stabbed Bato.

The trial court rejected Waldo's plea of self-defense and alleged defense of Adriatico. It reasoned out that if Waldo

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tried to defend Adriatico, then he should have presented the latter as a witness. Adriatico is at large or is in hiding.

On the other hand, the lower court gave credence to the version of the prosecution that while Bato was fixing his chicken coop near his house, Adriatico and the three Casiguran brothers, each carrying stones (there is a gravel pit near the scene of the crime) suddenly assaulted Bato.

Waldo stabbed Bato with an ice pick owned by the latter. The victim's wife, Trinidad, placed herself on top of her fallen husband and implored the assailants to stop the assault but they ignored her supplication. They pulled her and kicked her.

Pablo Santos, a neighbor, tried to take Bato to the hospital but the assailants stoned him and foiled his efforts. The record does not show the motive for the killing.

The Casiguran brothers were charged with murder. Treachery and evident premeditation were alleged as aggravating circumstances. At the trial, Bato's wife and his two neighbors, Santos and Lilia Zaragosa, testified on the assault perpetrated by the accused.

The defense presented as witnesses Waldo Casiguran and Juanito Casiguran. Wally Casiguran, the third accused, did not take the witness stand. A doctor testified that he treated at the hospital the wound in the neck sustained by Wally and the wound in the head sustained by Waldo. However, there is no clear evidence as to how those wounds were inflicted upon them, who inflicted the same and the motive which impelled the infliction thereof.

The trial court did not give credence to the defense of Juanito Casiguran, a *compadre* of the victim, that he had no complicity in the killing, that Bato assaulted him without any known motive, that he and his brother Wally were pursued by the companions of Bato, and that he and his brother fled to the river.

The trial court convicted the Casiguran brothers of murder and, as already noted, sentenced them to death but suspended the execution of the death sentence as to Wally Casiguran,

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who was assumed to be nineteen years old at the time the crime was committed, and ordered his confinement at the Camp Sampaguita Youth Rehabilitation Center in the New Bilibid Prison, Muntinlupa, Metro Manila.

The accused were further ordered to pay solidarily to the heirs of Ismael Bato a total indemnity of twenty-two thousand pesos (Criminal Case No. 1671).

The Casiguran brothers appealed. Their counsel *de oficio* assailed the credibility of the prosecution witnesses and argued that the accused should be acquitted.

We hold that the trial court did not err in giving credence to the testimonies of the prosecution witnesses. Appellants Waldo Casiguran and Juanito Casiguran did not testify in a coherent, candid and straight-forward manner. Their disjointed declarations do not disclose what transpired exactly on the occasion when Bato was mortally wounded by Waldo.

Alevosia was not present in the killing of Bato. Before he was attacked, he saw the four malefactors approaching and he said to them, "Do not come near because I am not going to fight." ("*Huag kayong lalapit. Hindi ako lalaban.*") According to the victim's wife, before the four assailants commenced the assault, Bato asked them what they wanted. He was face-to-face with them. The assault was not sudden nor unexpected.

There was abuse of superiority but this aggravating circumstance was not alleged in the information. It is not qualifying; it is only generic aggravating in this case. Evident premeditation was alleged but that circumstance cannot be considered as aggravating because the evidence does not show that the accused planned the killing and that there was sufficient time to allow their conscience to overcome the resolution of their will if they desired to hearken to its warnings. (*U.S. vs. Gil*, 13 Phil. 530, 547).

The killing was homicide aggravated by abuse of superior strength. Since conspiracy to kill was not proven, only Waldo

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Casiguran should be held liable as a principal. It is deducible from the evidence that the Casiguran brothers and their confederate, Adriatico, intended to castigate Bato, but it was not proven that they intended to kill him outright. They were not armed with deadly or bladed weapons. They just carried stones. The ice pick used by Waldo in the killing belonged to the victim (13 tsn August 30, 1976). The stabbing was impelled by a momentary impulse.

But Wally and Juanito, in joining their brother in stoning Bato and in preventing the victim's wife and neighbor from giving succor to him, cooperated in the commission of the killing. Since that cooperation was not indispensable, they should be regarded as accomplices (*People vs. Tamayo*, 44 Phil. 38; *People vs. Cortes*, 55 Phil. 143; *People vs. Babiera*, 52 Phil. 97; *People vs. Azcona*, 59 Phil. 580; *People vs. Templonuevo*, 106 Phil. 1003; *U.S. vs. Domingo*, 1st, 37 Phil. 446).

The trial court's assumption that Wally Casiguran was nineteen years old at the time the crime was committed is not substantiated by the record. Exhibit 1 of the defense, the medical certificate as to Wally's wound in the neck, shows that he was twenty years old (5 tsn September 10, 1976). He would be *twenty-three years old now*. Hence, he is not entitled to a suspended sentence.

Originally, the Child and Youth Welfare Code, which took effect six months after December 10, 1974 or on June 8, 1975 and which repealed Article 80 of the Revised Penal Code, considered as a youthful offender a person over nine years but under *twenty-one years of age at the time of the commission of the offense* (Art. 189).

Presidential Decree No. 1179, which took effect on August 15, 1977, lowered the age limit to eighteen years (the same age limit provided for in Article 80 of the Revised Penal Code before it was amended by Republic Act No. 47).

Article 192 of the Child and Youth Welfare Code (before it was amended) provides that "if after hearing the evidence in the proper proceedings, the court should find that the youthful

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offender has committed the acts charged against him, the court shall determine the imposable penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit such minor to the custody or care of the Department of Social Welfare, or to any training institution operated by the government, or duly licensed agencies or any other responsible person, until he shall have reached twenty-one years of age or, for a shorter period as the court may deem proper, after considering the reports and recommendations of the Department of Social Welfare or the agency or responsible individual under whose care he has been committed."

Under Presidential Decrees Nos. 1179 and 1210, the youthful offender *should apply for a suspended sentence.*

The purpose of Articles 189 and 192 of the Child and Youth Welfare Code is the same as that of Article 80 and that is to avoid a situation where juvenile offenders would commingle with ordinary criminals in prison. So, instead of imposing a condemnatory sentence on them, they are confined in a beneficent institution for their care, correction and education (*People vs. Estefa*, 86 Phil. 104,110).

Article 192 should be interpreted in the same manner as Article 80. Under the original provisions of article 80 (before it was amended by Republic Act No. 47 which reduced the age of eighteen years to sixteen years), it was held that if at the time the crime was committed the accused was below eighteen years but at the time of the trial or conviction he was no longer a minor, he is not entitled anymore to a suspended sentence because he is not a juvenile offender but already an adult. The reason for the suspended sentence does not apply to him (*People vs. Celespara*, 82 Phil. 399; *People vs. Nuñez*, 85 Phil. 448; *People vs. Estefa, supra*; *People vs. Lingcuan*, 93 Phil. 9; *People vs. Doria*, L-26189 and two other cases, January 31, 1974, 55 SCRA 435, 450; *People vs. Pedro*, L-18997, January 31, 1966, 16 SCRA 57, 67).

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WHEREFORE, Waldo Casiguran is guilty as principal in homicide. He is sentenced to an indeterminate penalty of twelve years of *prision mayor* as minimum to eighteen years of *reclusion temporal* as maximum and to indemnify the heirs of Ismael Bato in the sum of twenty-two thousand pesos.

Wally Casiguran and Juanito Casiguran are guilty as accomplices in the same homicide. They are each sentenced to an indeterminate penalty of six years of *prision correccional* as minimum to ten years and one day of *prision mayor* as maximum and to pay solidarily to the heirs of the victim an indemnity of three thousand pesos.

This judgment supersedes the trial court's judgment which is hereby set aside. Costs against the appellants.

SO ORDERED.

Fernando (C.J.), Teehankee, Barredo, Makasiar, Antonio, Concepcion Jr., Santos, Fernandez, Guerrero, Abad Santos, De Castro, and *Melencio-Herrera, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-49711. November 7, 1979]

ZAMBALES CHROMITE MINING CO., GONZALO P. NAVA, VIOLA S. NAVA, FEDERICO S. NAVA, PERLA NAVA, HONORATO P. NAVA, ALEJANDRO S. NAVA, PURIFICACION SISON, A. TORDESILLAS, GUIDO ADVINCULA, PEDRO ANGULO and TOMAS MARAMBA, *petitioners-appellants, vs.* **COURT OF APPEALS, SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, DIRECTOR OF MINES, GREGORIO E. MARTINEZ, ALEJANDRO MENDEZ, NICANOR**