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law and on the basis of the treatment plan proposed by the probation officer.

WHEREFORE, the trial court's order of December 5, 1978, denying probation and ordering the accused to serve his sentence, is set aside. It is directed to grant his application for probation. No costs.

SO ORDERED.

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

Santos and *Abad Santos, JJ.*, are abroad.

Guerrero, J., was designated to sit in the Second Division.

EN BANC

[G.R. No. L-31912. August 24, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff, vs.* **JOSE DUABAN** ***alias*** **Jose Waban** ***alias*** **Jessie Duaban,** *defendant whose death sentence is under review.*

SYLLABUS

1. CRIMINAL LAW; PENALTIES; DEATH PENALTY; WHEN IMPOSED IN CASE OF MURDER.— We hold that the death penalty was properly imposed considering that the accused is a quasi-recidivist. Under Article 160 of the Revised Penal Code, the penalty (*reclusion temporal* maximum to death) for the murder committed by him should be imposed in its maximum period. As correctly noted by the trial court, his plea of guilty was offset by the aggravating circumstance of dwelling.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEAS; EFFECT IN CASE OF PLEA OF GUILTY TO CAPITAL OFFENSE.—

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Long settled is the rule that "the proper and prudent course to follow where the accused enters a plea of 'guilty' to capital offenses specially where he is an ignorant person with little or no education, is to take testimony not only to satisfy the trial judge himself but to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea."

3. **ID.; ID.; ID.; ID.; IT IS *DE RIGUEUR* FOR THE TRIAL COURT TO RECEIVE EVIDENCE WHENEVER A PLEA OF GUILTY IS ENTERED IN A CAPITAL CASE.**— Generally, it is *de rigueur* for the trial court to receive evidence whenever a plea of guilty is entered in a capital case. "Judges are duty-bound to be extra solicitous in seeing to it that when an accused pleads guilty he understands fully the meaning of his plea and the import of an inevitable conviction."

4. **ID.; ID.; ID.; ID.; ID.; EXCEPTION.**— However, in simple and uncomplicated cases like the instant case, it lies within the sound discretion of the trial court to dispense with the taking of evidence if it is satisfied that the accused entered the plea of guilty with full knowledge of the meaning and consequences thereof.

5. **ID.; ID.; PROSECUTION OF OFFENSES; NOTICE OF ARRAIGNMENT AND TRIAL; REQUIRED IN CAPITAL OFFENSE.**— In a capital case, whenever the accused is to be arraigned, the notice to the prosecution and the accused should be a notice of *arraignment and trial*. The clerk of court should issue subpoenas for the appearance of the prosecution witnesses at the arraignment. Should the accused plead guilty and the imposable penalty be death, the trial court may then and there ask the prosecutor to present his evidence. The accused may present evidence to prove mitigating circumstances.

BARREDO, *J., concurring:*

REMEDIAL LAW; CRIMINAL PROCEDURE; PLEAS; PLEA OF GUILTY; STILL REQUIRES PRESENTATION OF EVIDENCE.— The Court should make it a definite rule to require, in spite of the plea of guilty of the accused, the presentation of evidence, including the testimony of the accused, albeit as

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to the latter, it is not really to constitute evidence against him but only to enable the court to be as certain as it is humanly possible to do so that he really is as guilty as he admits to be. I imagine that unless very carefully assisted by competent counsel, the feeling of remorse that seizes a person accused of a capital offense can prevent him from realizing that he is admitting and confessing to something more than he had actually committed. For instance, there are aggravating circumstances defined by the Revised Penal Code the full import of which may not be clear, even with the assistance of a lawyer, to a man of ordinary intelligence or common understanding, and much less, of course, to one who is illiterate or mentally retarded.

FERNANDO, *C.J., dissenting:*

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEAS; PLEA OF GUILTY; IMPROVIDENT EFFECT.— Well-settled is the doctrine that an improvident plea of guilty, as attested by a host of decisions of this Court, results in the conviction being reversible on the ground of denial of procedural due process.

2. ID.; ID.; ID.; ID.; WHEN VALID.— It is even more imperative that the trial court entrusted by the State with such a grave responsibility should, by the steps indicated in our above decisions, satisfy itself that there was a full realization of the fate that awaits the person on the dock, if there be an admission on his part that he indeed was responsible for the crime charged. Only then may a valid sentence be meted out. Only then is the law deemed complied with.

3. CRIMINAL LAW; PENALTIES; DEATH; WHEN IMPOSED IN CASE OF MURDER.— Under Article 160 of the (Revised Penal Code, the penalty (*reclusion temporal* maximum to death) for the murder committed by him should be imposed in its maximum period. As correctly noted by the trial court, his plea of guilty was offset by the aggravating circumstance of dwelling."

APPEARANCES OF COUNSEL

Solicitor General Felix Q. Antonio, Assistant Solicitor General Ricardo L. Pronove Jr. and *Trial Atty. Arturo G. Castro* for plaintiff.

Edilberto Barot for defendant.

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DECISION

AQUINO, *J.*:

This is a review *en consulta* of the death penalty imposed in a murder case. In an amended information filed on April 10, 1970 with the Circuit Criminal Court at Cebu City, a special counsel charged Jose Duaban, 20, with murder.

It was alleged therein that on October 15, 1969 Duaban treacherously stabbed Eleuterio Castillo, while the latter was asleep in his residence, inflicting upon him a wound which caused his death, and with the aggravating circumstance of dwelling "and the special aggravating circumstance of commission of a felony during the service of sentence (Art. 160, Revised Penal Code)."

At the arraignment, Duaban was assisted by counsel *de oficio*. He pleaded guilty. The prosecution was not required to present evidence.

On the basis of that plea of guilty, the trial court convicted Duaban of murder, sentenced him to death and required him to pay an indemnity of twelve thousand pesos to the heirs of the victim. The lower court in its two-page decision noted that the accused "freely and spontaneously" pleaded guilty. It observed that "the accused is an escapee after having been sentenced" by it "on February 14, 1969 for the crime of homicide" and that he had chosen "to become notorious and incorrigible."

In view of the meager data in the record as to the prior sentence imposed on the accused, this Court, upon motion of the counsel *de oficio*, former Solicitor General Edilberto Barot, and with the conformity of the Solicitor General, required the Director of Prisons to state the criminal case which caused his detention at the time he escaped from confinement on October 6, 1969, the offense of which he was convicted, the court that sentenced him and whether he was serving a sentence which was already executory or was merely a detention prisoner awaiting the disposition of his appeal.

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An administrative officer of the Bureau of Prisons informed this Court that Duaban was serving the final judgment in Criminal Case No. CCC-XIV-84 of the Circuit Criminal Court at Cebu City for homicide when he escaped from the New Bilibid Prison on October 6, 1969 and that he was recommitted to the National Penitentiary on May 18, 1970 or after he was convicted in this case.

The counsel *de oficio* in his brief dated August 14, 1970 candidly stated that the death sentence was properly imposed because the accused was a quasi-recidivist. He did not discuss whether the trial court followed the procedure laid down by this Court in cases where a plea of guilty is entered in capital offenses and whether the trial court should have required the fiscal to present evidence.

Solicitor General (now Justice) Felix Q. Antonio submitted a manifestation stating that, since in the brief filed by the counsel *de oficio* no assignment of error was made and, instead, said counsel urged the affirmance of the death penalty, he found it unnecessary to file an appellee's brief and he concurred in the prayer in the brief for the accused.

We hold that the death penalty was properly imposed considering that the accused is a quasi-recidivist. Under Article 160 of the Revised Penal Code, the penalty (*reclusion temporal* maximum to death) for the murder committed by him should be imposed in its maximum period. As correctly noted by the trial court, his plea of guilty was offset by the aggravating circumstance of dwelling.

The accused exhibited a high degree of perversity, dangerousness and criminality when he escaped from his confinement in the National Penitentiary at Muntinlupa, Rizal, proceeded to Cebu City and there killed the sleeping victim.

Considering that when he pleaded guilty to the murder charge he had already acquired some experience in the criminal proceeding for homicide, it is reasonable to assume that he understood fully the nature and gravity of the second offense which he had perpetrated. That could be the reason why the

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trial court (the same court that convicted him of homicide), in exercising its sound discretion, did not find it necessary to require the prosecution to present evidence.

The situation in this case is similar to that found in *People vs. Yamson and Romero*, 109 Phil. 793. In that case, Eutiquio Yamson and Primo Romero, while serving prison sentences in the New Bilibid Prison, killed their fellow prisoner, Maximo Reyes.

Charged with murder, Yamson and Romero, with the assistance of counsel *de oficio,* pleaded guilty at their arraignment. The prosecution was not required to present evidence. The trial court sentenced them to death. The case was automatically elevated to this Court for review.

Their counsel *de oficio* in his brief discussed the alleged improvidence of the plea of guilty and made veiled insinuations that they were not fully informed of the consequences of their plea.

In resolving that issue, this Court held that the trial judge must have been fully satisfied that the accused entered the plea of guilty with full knowledge of the meaning and consequences of their plea. Hence, the death penalty was affirmed. Same holding in *People vs. Perete*, 111 Phil. 943 and *People vs. Yamson*, 111 Phil. 406.

What has been said above should not in anyway weaken the long settled rule that "the proper and prudent course to follow where the accused enters a plea of 'guilty' to capital offenses specially where he is an ignorant person with little or no education, is to take testimony not only to satisfy the trial judge himself but to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea" (*People vs. Bulalake,* 106 Phil. 767, 770. See *People vs. Baluyot,* L-32752-3, January 31, 1977, 75 SCRA 148).

Generally, it is *de rigueur* for the trial court to receive evidence whenever a plea of guilty is entered in a capital case. "Judges are duty-bound to be extra solicitous in seeing to it that when

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an accused pleads guilty he understands fully the meaning of his plea and the import of an inevitable conviction" (*People vs. Abduhan, Jr.*, L-19491, August 30, 1968, 24 SCRA 798, 817).

So, in a capital case, whenever the accused is to be arraigned, the notice to the prosecution and the accused should be a notice of *arraignment and trial.* The clerk of court should issue subpoenas for the appearance of the prosecution witnesses at the arraignment. Should the accused plead guilty and the imposable-penalty be death, the trial court may then and there ask the prosecutor to present his evidence. The accused may present evidence to prove mitigating circumstances.

However, in simple and uncomplicated cases like the instant case, it lies within the sound discretion of the trial court to dispense with the taking of evidence if it is satisfied that the accused entered the plea of guilty with full knowledge of the meaning and consequences thereof (*U.S. vs. Jamad,* 37 Phil. 305, 318).

The primary rule is found in Section 5, Rule 118 (formerly Rule 114) of the Rules of Court which provides that "where the defendant pleads guilty to a complaint or information, if the court accepts the plea and has discretion as to the punishment for the offense, it may hear witnesses to determine what punishment shall be imposed."

Section 5 was taken from Section 229 of the proposed Criminal Procedure of the American Law Institute. In American Jurisprudence the rule is that "a plea of guilty must be freely and understandingly made by one competent to know the consequences thereof" and that "the court should or must satisfy itself as to the voluntary character of a plea of guilty, especially where the accused is not represented by counsel, and is young and inexperienced" (22 C. J. S. 1176 and 1181).

The essence of a plea of guilty is that the accused admits his guilt freely, voluntarily and with full knowledge of the consequences and meaning of his act. If the accused does not clearly and fully understand the nature of the offense charged, if he is not advised as to the meaning and effect of the technical

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language so often used in complaints and informations in qualifying the acts constituting the offense, or if he does not clearly understand the consequences resulting from his admission of having committed the crime described in the precise technical manner and form in which it is charged, his plea of guilty should not be accepted, and, if accepted, it should not be held sufficient to sustain a conviction (*U.S. vs. Jamad,* 37 Phil. 305, 313-314). Justice Carson states the rationale of the rule in this manner:

"Our experience has taught us that it not infrequently happens that, upon arraignment, accused persons plead 'guilty' to the commission of the gravest offenses, qualified by marked aggravating circumstances, when in truth and in fact they intend merely to admit that they committed the act or acts charged in the complaint, and have no thought of admitting the technical charges of aggravating circumstances.

"It not infrequently happens that after a formal plea of 'guilty' it develops under the probe of the trial judge, or in the course of the statement of the accused made at the time of the entry of his plea, or upon the witness stand, that the accused, while admitting the commission of the acts charged in the information, believes or pretends to believe that these acts were committed under such circumstances as to exempt him in whole or in part from criminal liability. Clearly, a formal plea of guilty entered under such circumstances is not sufficient to sustain a conviction of the aggravated crime charged in the information" (*U. S. vs. Jamad*, 37 Phil. 305, 314).

The matter of what the trial court should do in case a plea of guilty is entered in a capital case has been discussed in several cases beginning with *U. S. vs. Talbanos*, 6 Phil. 541 decided in 1906. That case laid down the doctrine that "the Courts of First Instance may sentence defendants in criminal cases who plead guilty to the offense charged in the complaint, *without the necessity of taking testimony.* However, in all cases, and especially in cases where the punishment to be inflicted is severe, the court should be sure that the defendant fully understands the nature of the charges preferred against him and the character of the punishment to be imposed before sentencing him."

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It was further held in the *Talbanos* case that "while there is no law requiring it, yet in every case under the plea of guilty where the penalty may be death it is *advisable for the court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant. This, however, must be left to the discretion of the trial court.*"

It should be underscored that, as first formulated in the *Talbanos* case, the doctrine is ambivalent and dualistic in character. The trial court is directed in case a plea of guilty is made in a capital case to call witnesses so that it can be ascertained that the plea has not been improvidently entered. But at the same time it is implied that the calling of prosecution witnesses may be dispensed with if the trial court in the exercise of its sound discretion finds that it is not necessary to examine the prosecution witnesses.

The rule is articulated in that cautious and guarded manner in order to forestall a miscarriage of justice. An accused person should be sentenced to death only on the most indubitable proof. An accused who pleads guilty in a capital case and who should be sentenced to death for having admitted the aggravating circumstances alleged in the information may in reality deserve a lesser penalty because of the presence of mitigating circumstances not alleged in the information or he may be guilty not of a capital offense but of a lesser offense.

That may be established by requiring the prosecution witnesses to testify or by giving the accused an opportunity to present evidence after hearing the prosecution witnesses. At the arraignment, he may not be willing to testify and to present evidence but after hearing the version of the prosecution, he may change his mind and decide to present evidence which may throw light on the nature of the offense or mitigate the penalty.

"While it is true that a judgment convicting and sentencing a defendant may lawfully be pronounced upon a solemn plea of 'guilty' in open court and on arraignment, entered by the accused with full knowledge of the meaning and effect of his plea, nevertheless, where the complaint charges a capital offense,

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the possibility of misunderstanding or mistake in so grave a matter, justifies and in most instances requires the taking of such available evidence in support of the allegations of the information as the trial judge may deem necessary to remove all reasonable possibility that the accused might have entered his plea of 'guilty' improvidently, or without a clear and precise understanding of its meaning and effect" (*U. S. vs. Agcaoili,* 31 Phil. 91, 93-94).

In 1917, or eleven years after the announcement of the doctrine of the *Talbanos* case, this Court, at the specific request of the Attorney-General, clarified and strengthened that doctrine in *U. S. vs. Jamad*, 37 Phil. 305, 317-318 by enunciating the following guidelines as to what the trial judge should do in case a plea of guilty is made in a capital case:

"(1) The essence of the plea of guilty in a criminal trial is that the accused, on arraignment, admits his guilt freely, voluntarily, and with full knowledge of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime or crimes charged in the complaint or information.

"(2) Such a plea of guilty, when formally entered on arraignment, is sufficient to sustain a conviction of any offense charged in the information, even a capital offense, without the introduction of further evidence, the defendant having himself supplied the necessary proof.

"(3) There is nothing in the law in this jurisdiction which forbids the introduction of evidence as to the guilt of the accused, and the circumstances attendant upon the commission of the crime, after the entry of a plea of 'guilty.'

"(4) Having in mind the danger of the entry of improvident pleas of 'guilty' in criminal cases, the prudent and advisable course, especially in cases wherein grave crimes are charged, is to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime.

"(5) The better practice would indicate that, when practicable, such additional evidence should be sufficient to sustain a judgment of conviction independently of the plea of guilty, or at least to leave no room for reasonable doubt in the mind of either the trial or the appellate court as to the possibility of a misunderstanding on the

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part of the accused as to the precise nature of the charges to which he pleaded guilty.

"(6) Notwithstanding what has been said, it lies in *the sound judicial discretion of the trial judge* whether he will take evidence or not in any case wherein he is satisfied that a plea of 'guilty' has been entered by the accused, with full knowledge of the meaning and consequences of his act.

"(7) But in the event that no evidence is taken, this court, if called upon to review the proceedings had in the court below, may reverse and send back for a new trial, if, on the whole record, a reasonable doubt arises as to whether the accused did in fact enter the plea of 'guilty' with full knowledge of the meaning and consequences of the act."

It may be noted that the said guidelines still retain the dichotomous character of the original doctrine. The guidelines require the trial court to receive evidence and to make sure that the accused understands his plea of guilty but at the same time they recognize and preserve the discretion of the trial court to convict the accused merely on his plea of guilty if the court is convinced that the taking of evidence is not necessary and that the accused understands the allegations of the indictment and the consequences of his plea of guilty.

The guidelines so circumspectly formulated in the *Jamad* case have been applied in subsequent cases. Thus, it was held that in view of the danger of improvident pleas of guilty the proper course in capital cases is to take evidence as to the guilt of the accused and the circumstances attending the commission of the crime which evidence is sufficient to sustain a conviction independently of the plea of guilty or, at least, to leave no doubt that the accused understood the precise nature of the charge (*People vs. Sabilul*, 93 Phil. 567).

In *People vs. Del Rosario*, L-33270, November 28, 1975, 68 SCRA 242, 250-2, more explicit directives were issued to trial courts. It was stated in that case that at the arraignment the counsel of the accused should be accorded the fullest opportunity to examine the record and to acquire all relevant information regarding the case. He should be given ample time

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to know the facts from the accused himself so that he may properly, intelligently and effectively represent the latter.

It was stressed in the *Del Rosario* case that the degree of the culpability of the accused should be established by means of the presentation of evidence and that all the proceedings during the arraignment and trial should be completely recorded.

On the other hand, it was held that a plea of guilty is sufficient to sustain in conviction for a capital offense, without the introduction of further evidence, if the trial court is satisfied that the plea was entered with full knowledge of its meaning and consequences (*People vs. Acosta,* 98 Phil. 642; *People vs. Santos and Vicente,* 105 Phil. 40; *People vs. Salazar,* 105 Phil. 1058; *People vs. Ala,* 109 Phil. 390).

Where the accused, assisted by counsel, pleaded guilty to an information for robbery in an uninhabited building and it appears that he was fully cognizant of the case because the information was read to him twice and he was aware that his co-defendants had previously pleaded guilty and were duly sentenced on the basis of their pleas, it was not necessary to take additional evidence before rendering judgment against the said accused (*People vs. Triompo,* 100 Phil. 83).

There is a dictum that it is not the trial court's duty to apprise the accused in a capital case as to the penalty that would be imposed upon him in case he pleaded guilty. Its duty is limited to informing the accused of the nature and cause of the accusation. The counsel for the accused should inform him of the nature and gravity of the charge so that the accused might fully realize the consequences of his plea of guilty (*People vs. Ama,* 111 Phil. 882).

In resumé, we hold that the instant capital case, where the trial court did not require the prosecution to present evidence after the accused pleaded guilty, is covered by the ruling that *"cuando un acusado admite libre y voluntariamente su delito con pleno conocimiento de la indole exacta del mismo, su admisión, o mejor dicho, su confesión, hecha en dichas circumstancias, es suficiente para justificar la imposición*

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de la pena que para dicho delito hay prescrita por la ley. Es discrecional en los juzgados permitir la presentación de pruebas adicionales después que el acusado haya confesado formalmente su delito. Tan sólo es prudente y necesario tal vez, requerir la presentación de otras pruebas además de las que el mismo acusado suministra mediante su confesión libre y voluntaria, cuando hay un ásomo de duda de que al hacerla, no la hace estando bien impuesto de los verdaderos hechos, y de las consequencias de su acto" (*People vs. Palupe*, 69 Phil. 703, 705).

That judicious and carefully worded ruling, which is similar to Section 5, Rule 118 already cited, was based on the comprehensive guidelines set forth in the *Jamad* case.

In view of the dissent of the Chief Justice, there are only nine votes for the affirmance of the death penalty. Hence, the same is commuted to *reclusion perpetua*. In other respects, the trial court's judgment is affirmed. Costs *de oficio*.

SO ORDERED.

Teehankee, Concepcion Jr., Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

Barredo, J., concurs in the conviction of appellant, but files separate opinion.

Makasiar, J., concurs because improvident plea of guilty was not raised by the accused.

Aquino, J., has signed this decision as *ponente*.

Fernando, C.J., dissents in a separate opinion.

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

BARREDO, *J., concurring*:

I concur in the conviction of appellant but I would like to express my views regarding the issue of whether or not presentation of evidence is necessary after an accused enters a plea of guilty to a capital offense.

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Indeed, it is time that the Court clarified just how much discretion a trial judge can exercise in dispensing with the presentation of evidence in capital offenses where the accused pleads guilty at the arraignment. Going over Our decisions in cases involving such situations, particularly those of more recent vintage, like Apduhan, cited in the main opinion, one is liable to get the impression that the rule is that it is the inescapable duty of the trial judge to actually receive evidence of how the offense has been committed before sentencing the accused, even in those cases wherein the judge is convinced that the accused has fully understood the meaning of his plea including the inevitable consequences thereof. Thus, more often than not, trial judges have opted to order presentation of evidence, hardly minding if the plea of guilty of the accused, entered with the assistance of counsel, was made providently or not.

Justice Aquino points out with formidable authority that the correct procedure is that, as a general rule, the court should receive evidence "not only to satisfy (the judge) but to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning, full significance and consequences of his plea," (citing Bulalake, 106 Phil. 767) but this does not mean that "the Courts of First Instance may [not] sentence defendants in criminal cases who plead guilty to the offense charged in the complaint without the necessity of taking testimony" when the "court (is) sure that the defendant fully understands the nature of the charges preferred against him and the character of the punishment to be imposed before sentencing him." (citing Talbanos, 6 Phil. 541). In other words, even when the offense charged is a capital one, the trial court need not receive evidence as long as the judge is amply satisfied that the accused has fully understood that the plea means that he admits that he has in fact committed the offense charged precisely in the manner alleged in the information or complaint and that he is ready and willing to accept the prescribed penalty therefor, knowing what said penalty is. However, in the latter case, for the purposes of the automatic appeal to the Supreme Court, the record must clearly show the steps and measures taken by the judge to ascertain that fact.

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To my mind, it is in this last aspect of the procedure where the real problem lies in actual practice. It is not unusual that the Court or, at least, a number of justices without whom conviction cannot be had (the required number of the affirmance of a judgment imposing the death penalty being ten and in other cases eight) disagrees with the trial judge as to the adequacy of the inquiry made by the latter in ascertaining the real understanding of the accused of his plea. Time and again We have had to return the case to the trial court, even when the record showed that the judge had made inquiries in a manner satisfactory to him, so much so that perhaps, the accused himself knew that he was fully aware of the meaning and consequences of his plea, as in fact he did reiterate the same later, thereby delaying the imposition of the penalty sometimes for years.

Of course, imposing a death penalty is such a matter of grave responsibility that every possibility of error must be eliminated before it is done. But truth to tell, in instances where I felt We were being over prudent, I could not help making the remark that perhaps the Court might be making it more difficult to convict an accused who pleads guilty than one who does not, which to me sounds absurd.

As I see it, in the last analysis, under the procedure explained in the main opinion, the trial judge does not only have to satisfy himself. The steps taken by him must more importantly satisfy at least ten member of this Court. And my more than ten years of experience as a member of this Court teaches me that it is rather difficult to achieve that criterion, considering how some of us can be inclined to be very strict in imposing the death penalty and would try to avoid it whenever there is any discernible excuse not to do it.

In the light of the foregoing considerations, I believe that to avoid recurrence of instances wherein We had to return cases to the trial courts on the ground of improvidence of the plea of guilty entered by the accused, the Court should make it a definite rule to require, in spite of the plea of guilty of the accused, the presentation of evidence, including the testimony of the accused, albeit as to the latter, it is not really to constitute

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evidence against him but only to enable the court to be as certain as it is humanly possible to do so that he really is as guilty as he admits to be. I imagine that unless very carefully assisted by competent counsel, the feeling of remorse that seizes a person accused of a capital offense can prevent him from realizing that he is admitting and confessing to something more than he had actually committed. For instance, there are aggravating circumstances defined by the Revised Penal Code the full import of which may not be clear, even with the assistance of a lawyer, to a man of ordinary intelligence or common understanding, and much less, of course, to one who is illiterate or mentally retarded.

Withal, there are times when the accused make confessions under a misconception of the extent of their own guilty. In this connection, I recall a case wherein the accused, a black American charged with having robbed and killed his "common-law" mother-in-law who was over eighty years old and blind, continuously and repeatedly addressed personally the court — repudiating the appearance of counsel *de oficio* and refusing any such assistance in the process — and insisted that he knew he was guilty and was willing to be punished accordingly, to the extent that the judge had to literally compel him to take the witness stand, after just the same receiving all the evidence of the prosecution cared to present, only to contend in the course of his testimony given upon questioning of the court that he did not intend to commit such a grave a wrong as killing the old woman because all that he did was to push her when she tried to resist, but when she fell her body hit a trunk with hard edges, by reason of which she suffered hemorrhage and died.

It is true that the rule I am proposing could be time-consuming, but it is to me quite plain that more time could be consumed by returning the case to the trial court for another proceeding. In any event, considering the value of human life, no effort on the part of the state is too much to make in trying to avoid error in taking it away as a legal sanction for an offense against it.

I might add before closing that I am not taking the above position because I do not trust or have confidence that our trial

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judges can exercise sound and proper discretion in the situations contemplated. Rather, my apprehension is that because some members of the Court quite often disagree, rightly or wrongly, with the extent of the inquiry made by the trial judge, the final disposition of cases where the accused pleads guilty and is thereby entitled to an earlier termination of his ordeal may be unnecessarily delayed.

FERNANDO, *C.J., dissenting*:

It is with deep regret that I dissent from the well-written and exhaustive opinion of Justice Aquino. I am unable to concur in the light of the compulsion exerted by the well-settled doctrine that an improvident plea of guilty, as attested by a host of decisions of this Court, results in the conviction being reversible on the ground of denial of procedural due process. It does not suffice, in my view, to quote from the opinion of the Court, that "in the brief filed by the counsel *de oficio* no assignment of error was made and, instead, said counsel urged the affirmance of the death penalty. ***."[1] The then Solicitor General, now Justice Felix Q. Antonio, did not see any necessity to submit any brief, a manifestation sufficing. Under the circumstances, I cannot subscribe to the holding "that the death penalty was properly imposed considering that the accused is a quasi-recidivist. Under Article 160 of the (Revised Penal Code, the penalty (reclusion temporal maximum to death) for the murder committed by him should be imposed in its maximum period. As correctly noted by the trial court, his plea of guilty was offset by the aggravating circumstance of dwelling."[2]

This pronouncement in *People v. Espina*[3] is, to my mind, controlling: "It only remains to be added that as of 1934, when the [former] Constitution was drafted, it was already a settled principle of law that where a plea of guilty is entered in a case

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[1] Opinion of Justice Aquino, 3.

[2] *Ibid.*

[3] L-33208, June 30, 1972, 45 SCRA 614.

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that may result in the imposition of the death penalty, it must be 'made under the conditions indicated, that is to say on arraignment, freely and voluntarily, as an express admission of the guilt of the accused of the offense with which be is charged, and with full knowledge of the consequences and the meaning of his act. A mere formal plea of "guilty" made under compulsion, or under any condition other than those just indicated will not suffice.' Such an opinion by Justice Carson goes back to a 1907 decision, with the same jurist as *ponente*, where he would require 'the taking of testimony' to justify accepting a plea of guilty as 'the proper and prudent course.' He was much more definite in *United States v. Agcaoili,* decided in 1915. As made clear in such decision: 'Where the offense charged then is capital, "the possibility of misunderstanding or mistake in so grave a matter, justifies and in most instances requires the taking of such available evidences in support of the allegation of the information as the trial judge may deem necessary to remove all reasonable possibility that the accused might have entered his plea of 'guilty' improvidently, or without a clear and precise understanding of its meaning and effect."' It does not admit of doubt, therefore, that the due process clause as known to the [1935] Constitution at the time of its being framed would not be satisfied without the lower court taking all the necessary steps to satisfy itself as to such a plea being made under conditions that would demonstrate that the accused is fully cognizant of the dire consequences that would ensue by such an admission."[4]

The Espina decision goes on to state: "It is undisputed that with a plea of guilt in a prosecution for capital offense, freely and understandingly made, with full awareness that one's life hangs in the balance, no due process question arises. To all intents and purposes, there was a hearing before condemnation, a proceeding upon lawful inquiry, with the ensuring judgment being the necessary consequence. Under such circumstances the imposition even of the extreme penalty is not attended by

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[4] *Ibid.* 619-620. The first citation comes from *United States v. Jamad,* 37 Phil. 306. 313 (1917). The 1907 decision referred to is *United States v. Rota*, 9 Phil. 426; *United States v. Agcaoili* is reported in 31 Phil 91 (1915).

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arbitrariness or unfairness. What is done is neither capricious nor oppressive. The accused must be deemed to have yielded only to the promptings of the truth. His acknowledgment of guilt is not tainted by any infirmity. Before that stage is reached, however, the civilized standards of justice do require that he must have reflected on the action he would take with the assistance of counsel, who could inform him of what is in store for him if he decides to admit his culpability. The trial judge, on the other hand, is called upon to ascertain, invariably through the taking of evidence, what actually did transpire so that the resulting verdict cannot in any wise be stigmatized as deficient in terms of what is proper, reasonable, and just. There would thus be the need for the parties being required by the Court to submit proof on the attendant circumstances, whether aggravating or mitigating, especially so in the case of the latter as necessarily the information does not refer to them at all. Unless such a standard is met, due process is not observed, and the decision cannot be upheld. So we have held before; we do so again."[5]

An excerpt from *People v. Ramos*[6] is likewise relevant. Thus: "As was set forth in the recent case of *People v. Andaya*: 'Apduhan and the twenty-one cases thereafter decided in accordance with its categorical requirement that there be due observance of the fundamental requirements of due process before a plea of guilty is accorded acceptance speak too plainly for the message to be misread. We pay due heed to what they say.' Less than six months later, in *People v. Bacong*, it was stated in the opinion: 'In *People v. Andaya,* promulgated in July of this year, twenty-one other decisions of a similar character since Apduhan were noted. The last three cases in point, *People v. Pohong, People v. Duque,* and *People v. Saligan* are of even more recent date, the *ponente* in each of them being Justice Castro. How else could this Court dispose of such lower

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[5] *Ibid*, 620-621. Cf. *People v. Martinez*, L-35353, April 30, 1973, 50 SCRA 509; *People v. Andaya*, L-29644, July 25, 1973, 52 SCRA 137; *People v. Bacong*, L-36161, Dec. 19, 1973, 54 SCRA 288; *People v. Lacson*, L-33060, Feb. 25, 1964, 55 SCRA 589.

[6] L-32265, July 25, 1974, 58 SCRA 112.

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court decisions suffering from the corrosion of a grave substantial error of constitutional dimension?' To complete the picture, it must be noted that two more decisions to the same effect have been rendered in March of this year, *People v. Villafuerte* and *People v. Daquioag*. What is undeniable, therefore, is that from Apduhan on, this Court has spoken in words too plain to be misinterpreted. It could not be otherwise. The constitutional rights of an accused as well as the accepted conons of procedure so require. The dire consequence of a plea of guilty is such that there must be a showing of a full understanding of what is entailed before there can be automatic acceptance of such a declaration. It is not enough, a circumstance not shown here, that counsel *de oficio* had performed his work diligently and well. It is even more imperative that the trial court entrusted by the State with such a grave responsibility should, by the steps indicated in our above decisions, satisfy itself that there was a full realization of the fate that awaits the person on the dock, if there be an admission on his part that he indeed was responsible for the crime charged. Only then may a valid sentence be meted out. Only then is the law deemed complied with. Since this element is lacking in the case of movant Gaborne, we have to grant him a new trial."[7]

It is my considered opinion then that the case should be remanded to the trial court which should proceed in accordance with the procedure laid down by us in the above cases. Hence this dissenting opinion.

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[7] *Ibid*, 114-115. Cf. *People v. Roa*, L-35284, January 17, 1975, 62 SCRA 51. Andaya was cited in a previous footnote. So was *Bacong. Pohong*, L-32332, August 15, 1973, is reported in 52 SCRA 287; *Duque*, L-33267-A, Sept. 27, 1973, in 52 SCRA 132; and *Saligan*, L-35792, Nov. 29, 1973 in 54 SCRA 190. *People v. Villafuerte*, L-32037, March 28, 1974, is reported in 56 SCRA 219 and *Daquioag*, L-33709-10, March 28, 1974 in 56 SCRA 226.