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G.R. No. 241257 – People of the Philippines, *Plaintiff-Appellee,* v. Brendo P. Pagal a.k.a "Dindo," *Accused-Appellant.*

Date of Promulgation:

September 29, 2020

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DISSENTING OPINION

ZALAMEDA, J.:

> *"To ferret out the truth in the maze of the conflicting claims of opposing parties is the Herculean task of the courts, the path which must always be illuminated by reason and justice. Tribunals should always insist on having the truth and judging only upon satisfactory evidence of the truth. The quest for truth is their main responsibility. To judge by means of untruths is to debase the noblest function in the hands of humanity."*[1]

In this appeal, the *ponente* opines that accused-appellant should be acquitted despite his plea of guilty to the crime of murder. With all due respect, I am constrained to dissent. Litigation of criminal cases is not a zero-sum game, where the shortcomings of one party automatically results in the victory of another. Utmost sensitivity and a holistic consideration of the peculiar facts of the case must be made in order to ensure that case outcomes are based on truth, and that justice is fairly administered.

In this case, Selma Pagal (Selma) died in the presence of her family, and near her home, where she was supposed to feel secure. Terminating this case without any factual determination of accused-appellant's culpability, although ostensibly logical, hardly vindicates her death and the consequent disturbance of peace it has caused to her family and the community.

As will further be explained below, my vote to remand the case to the trial court should not be construed as an advocacy for or against accused-appellant, but rather a sincere submission to have the case re-evaluated to determine his supposed authorship of his sister-in-law's death.

This all the more becomes relevant in view of the allowance of the instant appeal[2] despite the wrong remedy availed of by accused-appellant in seeking his acquittal; accused-appellant filed a notice of appeal instead of an appeal by *certiorari* under Rule 45 of the Rules of Court, thus, rendering the

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[1] *Eduarte v. People*, G.R. No. 176566, 16 April 2009; 603 Phil. 504 (2009).

[2] *Ponencia*, pp. 7-8.

decision of the Court of Appeals to remand the case to the trial court for further proceedings final. As such, the Court's leniency and broader understanding should not only be accorded to accused-appellant, but likewise, must serve the interests of substantial justice for all, prosecution and defense alike.

The conviction of accused-appellant must be upheld

I dissent to dismiss the case and acquit accused-appellant for the following reasons:

First, it appears that the arraignment of accused-appellant was highly irregular. It has not been established that the trial court performed its duty under Sec. 3 of Rule 116 of the Rules of Court. Other than the statement in its Order dated 20 August 2009 that the Information was read to the accused in the Cebuano-Visayan dialect and that the consequences of his guilty plea were explained to him, there is nothing to establish that the trial judge sufficiently inquired into the voluntariness of such an action and accused-appellant's full understanding of the rights and liberty that he will forfeit with such admission of guilt.

Second, it is uncontested that the prosecution failed to present evidence establishing the elements of the crime and accused-appellant's guilt. As duly noted by the *ponente,* the prosecution failed to present its witnesses on four (4) hearing dates, *viz*: 17 November 2010, 22 February 2011, 11 May 2011 and 20 July 2011. However, looking closely at aforesaid dates, I hesitate to conclude that the prosecution was simply remiss in its duty, as to warrant the acquittal of accused-appellant. After all, even our procedural rules are cognizant that delays may occur in criminal prosecution. Rule 119 Section 3[3] provides for exclusions to the time limits set to

[3] Section 3. Exclusions. — The following periods of delay shall be excluded in computing the time within which trial must commence:

(a) Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following:

(1) Delay resulting from an examination of the physical and mental condition of the accused;
(2) Delay resulting from proceedings with respect to other criminal charges against the accused;
(3) Delay resulting from extraordinary remedies against interlocutory orders;
(4) Delay resulting from pre-trial proceedings; provided, that the delay does not exceed thirty (30) days;
(5) Delay resulting from orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts;

commence trial from the time of arraignment.

In *Cagang v. Sandiganbayan,*[4] this Court acknowledged the reality of institutional delays, and the burdensome work of our government prosecutors. In that case, this Court opined that institutional delay, in the proper context, should not be taken against the State. I believe that a similar approach should be adopted in the case at bar. There is no showing that the prosecution was given an opportunity to explain why it failed to present its evidence in support of its case. Similarly, there is no showing that the defense raised any prejudice caused by the prosecution's inaction during the trial proper, since it it also decided to forego presenting evidence to establish the accused's defense.

Third, accused-appellant maintained his plea of guilt throughout the reading of the allegations in the Information, and even after his counsel explained the consequences of his plea of guilt.[5] Although far from ideal, to completely disregard accused-appellant's resolute stance would be to unduly favor him while ignoring the interests of both the State and the victim's relatives in seeking justice for the death of Selma.

Fourth, there appears to be a good reason to hold accused-appellant

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(6) Delay resulting from a finding of the existence of a prejudicial question; and
(7) Delay reasonably attributable to any period, not exceed thirty (30) days, during which any proceeding which any proceeding concerning the accused is actually under advisement.

(b) Any period of delay resulting from the absence or unavailability of an essential witness.
For purposes of this subparagraph, an essential witness shall be considered absent when his whereabouts are unknown or his whereabouts cannot be determined by due diligence. He shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence.

(c) Any period of delay resulting from the mental incompetence or physical inability of the accused to stand trial.

(d) If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(e) A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or, as to whom the time for trial has not run and no motion for separate trial has been granted.

(f) Any period of delay resulting from a continuance granted by any court motu proprio, or on motion of either the accused or his counsel, or the prosecution, if the court granted the continuance on the basis of its findings set forth in the order that the ends of justice served by taking such action outweigh the best interest of the public and the accused in a speedy trial.

4 G.R. Nos. 206438, 206458 & 210141-42, 31 July 2018.

5 *Ponencia,* p. 20.

for trial. While our rules state that the record of the preliminary investigation does not form part of the record of the case in the trial court,[6] I was constrained to look into the proceedings before the investigating prosecutor given the lack of formally offered evidence during trial. In any case, I believe that this Court is not prohibited to look into the records of the preliminary investigation in order to make a judicious determination of the legal issues submitted before Us.[7]

During the preliminary investigation, all of the affiants[8] narrated that they saw the wounded victim, Selma, running away from accused-appellant, who was then carrying a bloodied *bolo*. One of them was even attacked by accused-appellant, but managed to run and evade the strike.[9] It is interesting to note that most of these affiants are related to accused-appellant. Private complainant, Angelito Pagal (Angelito), is accused-appellant's brother, while one of the witnesses, Cesar Jarden (Jarden), is Selma's brother, both of whom were not shown to have been impelled by improper motives in implicating accused-appellant. Indeed, if it is unnatural for a relative interested in vindicating a crime done to their family to accuse somebody other than the real culprit,[10] it is even more unlikely for a sibling to accuse his own brother if the latter was truly not involved in the crime. Evidently, the aforesaid circumstances are sufficient to engender a belief that accused-appellant was likely responsible for Selma's death and should be held for trial.

Given the relationship between accused-appellant and private complainant, one has to wonder whether the plea of guilt had affected the prosecution's presentation of its evidence. A reading of the case records reveals that the cause for the postponement of the prosecution's presentation of evidence was the absence of Selma's widower and private complainant, Angelito. It is not far-fetched to consider that Angelito's absences were based upon his reliance on his own brother's admission of guilt. He could have surmised that his testimony is inconsequential or unnecessary in view

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6 Sec. 8 (b) of the Rules on Criminal Procedure provides:

Section 8. (a) xxx

(b) Record of preliminary investigation. — The record of the preliminary investigation, whether conducted by a judge or a fiscal, shall not form part of the record of the case. **However, the court, on its own initiative or on motion of any party, may order the production of the record or any its part when necessary in the resolution of the case or any incident therein, or when it is to be introduced as an evidence in the case by the requesting party.** (Emphasis ours)

7 *Id., See* also *Uy v. Office of the Ombudsman*, G.R. Nos. 156399-400, 27 June 2008; 578 Phil. 635 (2008).

8 *Records*, pp. 2-7, Affidavits of Angelito Pagal, Cesar Jarden, and Jaimelito Canlupas.

9 *Id.* at 4-5, Affidavit of Cesar Jarden dated 08 January 2009.

10 *See People v. Reyes*, G.R. No. 178300, 17 March 2009; 600 Phil. 738 (2009).

of accused-appellant's plea.

In the same vein, it is equally possible that accused-appellant's plea of guilt was an acknowledgment of his authorship of the crime, and an attempt to give his family some type of closure. While I do not discount the possibility that accused-appellant might have failed to fully understand his plea, it may also be that he truly intended to be accountable for Selma's death. Unfortunately, this Court has to contend with the scarcity of records of the arraignment proceedings to make a nuanced approach.

The prosecution should have sought the provisional dismissal of the case

While I do not regard the prosecution's actions to warrant the acquittal of the accused, I find that the prosecution was misguided in allowing the case to be submitted for decision without its witnesses' testimonies. The State should have instead moved that the case be provisionally dismissed.

Provisional dismissal is a halfway measure which allows the prosecution to maintain a case, which is at a standstill due to the absence or unavailability of the complainant, and temporarily relieves the accused of the burdens of the trial.[11] It is a mechanism to balance the sovereign right of the State to prosecute crimes with the inherent right of the accused to be protected from the unnecessary burdens of criminal litigation.[12]

Courts in the United States also acknowledge difficulties in prosecution and similarly allow the State to seek dismissal of criminal cases, without prejudice.

In the early case of *State v. Crawford,*[13] the accused was discharged from a second indictment of murder based on a rule authorizing permanent dismissal if the accused has not been tried after three (3) regular court terms "unless the failure to try him was caused by his insanity; or by the witnesses for the State being enticed or kept away, or prevented from attending by sickness or inevitable accident; or by a continuance granted on the motion of

[11] *See* Dissenting Opinion, J. Puno, *People v. Lacson*, G.R. No. 149453, 01 April 2003; 448 Phil. 317 (2003).
[12] *Id.*
[13] 98 S.E. 615 (1919).

the accused; or by reason of his escaping from jail, or failing to appear according to his recognizance, or of the inability of the jury to agree in their verdict."

The same principle was applied in *People v. Allen*,[14] where the Illinois Supreme Court declared the defendant immune from another prosecution for the offense of involuntary slaughter because his former indictment thereon was dismissed due to delay in prosecution beyond the statutory period.

In *State of Kansas v. Ransom*,[15] the Supreme Court of Kansas ruled that the State can move for dismissal of a criminal case and refile the same within the statutory period, in case of justified absences of witnesses. In that case, the complaint against the defendant for aggravated kidnapping, rape, aggravated battery, and aggravated robbery was initially dismissed upon the State's motion due to the unavailability of its principal witnesses. The doctors, who were supposed to testify on the process and results of their examination of the rape victim, were unable to attend the scheduled trial dates because one had to take a medical board examination, while the other had professional commitments in another state. The Kansas Supreme Court surmised that a dismissal without prejudice may be preferable for the State, as opposed to moving for continuance, if the witness' testimony is vital to the case. The court opined that although trial may proceed and an absent witness may later on be declared in contempt, a crucial testimony not presented during trial can fundamentally cripple the prosecution's case.

The prosecution's primary authority in the dismissal and refiling of criminal cases has been echoed in recent cases. In *United States v. Oliver*,[16] the US Court of Appeals for the Eighth Circuit upheld the second indictment of the defendant for the same offense of conspiracy to distribute cocaine. Citing Federal Rule of Criminal Procedure 48(a),[17] the appellate court explained that the dismissal of a criminal complaint at the request of the Government under Rule 48 does not bar subsequent prosecution for criminal acts described in that indictment.

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[14] 14 N.E.2d 397 (III. October 22, 1937)

[15] 673 P.2d 1101 (1983); reiterated in *State v. Cadle*, 2015 Kan. App. Unpub. LEXIS 530 (Kan. Ct. App. June 26, 2015).

[16] *United States v. Oliver,* 950 F.3d 556 (8th Cir. Minn. February 19, 2020).

[17] Rule 48. Dismissal

(a) By the Government. The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent.

In the case at bar, the trial was postponed several times because of Angelito's absence; thus, it would have been more prudent for the prosecution, upon the consent of accused-appellant, to have the case provisionally dismissed.

Verily, prosecutors differ from other legal practitioners in that they advocate for the interests of the State aggrieved by the commission of crime. Representing the State, however, does not grant them boundless powers to arbitrarily persecute people, nor justify a lackadaisical approach in case of occupational difficulties. Ultimately, prosecutors aid the court in its mandate to dispense justice,[18] even to the accused. In this case, instead of nonchalantly submitting the case for decision on the basis of accused-appellant's plea of guilt, the prosecution should have at least sought provisional dismissal of the case as full and equal recognition of the interests of both the State and accused-appellant.

The trial judge should have issued a bench warrant

Courts are empowered by our procedural rules with tools to ensure the full and orderly determination of the merits of the case. Upon the failure of a witness to attend court hearings, judges have the power to issue a bench warrant to compel the witness' attendance. A bench warrant is a writ issued directly by a judge to a law-enforcement officer, especially for the arrest of a person who has been held in contempt, has disobeyed a subpoena, or has to appear for a hearing or trial.[19] Jurisprudence dictates that the primary requisite for a bench warrant to be issued is that the absent-party was duly informed of the hearing date but unjustifiably failed to attend so.[20]

Here, the records of the case reveal that Angelito duly received the subpoena issued by the trial court. [21] Unfortunately, despite his authority to issue a bench warrant, Judge Abando allowed the trial to terminate without any witness presented by the prosecution and defense.

Under similar circumstances, this Court, in *Office of the Court Administrator v. Lorenzo*,[22] reminded judges to be conscientious in the

[18] *See De Lima v. Reyes*, G.R. No. 209330, 11 January 2016; 776 Phil. 623 (2016).
[19] *Magleo v. De Juan-Quinagoran*, A.M. No. RTJ-12-2336, 12 November 2014.
[20] *Id.*
[21] *Records*, p. 48, Order dated 11 May 2011.
[22] A.M. Nos. RTJ-05-1911 & RTJ-05-1913, 23 December 2008; 595 Phil. 618 (2008).

conduct of their judicial duties. In that case, the judge allowed the accused to post bail because of the non-appearance of key prosecution witnesses for three (3) bail hearings despite the issuance of a proper subpoena. Upon investigation, this Court discovered that the witnesses failed to attend because one is on official mission abroad, while the other did not receive the subpoena from the trial court. Finding the judge administratively liable, the Court explained that given the materiality and relevance of the witnesses' testimony, the judge should have first inquired into the reasons for their absences before ordering the release of the accused on bail.

The same rationale applies in the case at bench. Contrary to the *ponente*'s opinion that determination of the reasons for the delay is unnecessary, it is my humble opinion that the trial judge should have been more discerning and pro-active by assisting the prosecution in securing its witnesses' attendance before hastily terminating the trial, and convicting the accused. As discussed above, there could be a myriad of reasons for the witness' non-appearance that are not necessarily related to the diligence of the State in prosecuting the case. It is also useful to remember that there are cases[23] where this Court ordered remand and/or continuation of the criminal proceedings despite the delay in the prosecution's presentation of evidence.

It is in view of these realities of public litigation that I referred to this Court's opinion in *Cagang v. Sandiganbayan*. I believe that it is worthwhile to be cognizant of these difficulties so that the courts and litigants can minimize lapses and ensure that trial is conducted properly. Being part of the five (5) pillars of the criminal justice system,[24] the prosecution and the court's cooperation and harmonious interaction is vital to the orderly administration of justice. Necessarily, courts, within ethical limits, should afford the prosecution a real opportunity to ventilate its accusations through the use of authorized court processes to compel production of evidence. After all, the State is also entitled to due process in criminal cases, that is, a fair opportunity to prosecute and convict.[25]

The remand of the case to the trial court serves the interests of both the defense and the prosecution

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[23] *Tan v. People,* G.R. No. 173637, 21 April 2009; 604 Phil. 68 (2009); *Valencia v. Sandiganbayan*, G.R. No. 165996, 17 October 2005; 510 Phil. 70 (2005).

[24] *See Pagdilao, Jr. v. Angeles,* A.M. No. RTJ-99-1467, 05 August 1999; 370 Phil. 780 (1999).

[25] *Valencia v. Sandiganbayan, supra.*

Considering the foregoing reasons, the remand to the trial court is proper. **Indeed, it has been held that where the plea of guilt to a capital offense has adversely influenced or impaired the presentation of the prosecution's case, the remand of the case to the trial court for further proceedings is imperative.**[26] Compared to the acquittal of accused-appellant, further proceedings would ensure that the interests of the both the prosecution and defense are duly considered and weighed. Allowing the accused-appellant to re-plead, with a definite showing that measures were undertaken to ensure that he understood the charge and the possible consequences of his plea, would also allow the trial court to determine if the accused-appellant had factual basis for his admission of guilt.

The retaking of the accused-appellant's plea is necessary since arraignment is a formal procedure in a criminal prosecution "to afford an accused due process." An arraignment is the means of implementing the constitutional right of an accused to be informed of the nature and cause of the accusation against him. Actual arraignment is an element of due process, and is imperative for the accused to be fully aware of possible loss of freedom. Procedural due process requires that the accused be arraigned so that he may be informed as to why he was indicted and what penal offense he has to face, to be convicted only on a showing that his guilt is shown beyond reasonable doubt with full opportunity to disprove the evidence against him.[27]

Likewise, as recognized in the *ponencia,* Philippine jurisprudence has been consistent in remanding the case to the trial courts for further proceedings should the appellate courts find that the conviction was predicated solely on an improvident plea.[28] A cursory reading of US cases[29] would also reveal that convictions are vacated and remand is ordered whenever the accused is found to have improvidently pleaded guilty to a capital offense. Here, where it appears that accused-appellant may have entered an improvident plea, among others, should not be treated as an exception.

Guidelines in the conduct of arraignment where the accused-

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[26] *People v. Besonia,* G.R. Nos. 151284-85, 05 February 2004; 466 Phil. 822 (2004).

[27] *People v. Nuelan,* G.R. No. 123075, 08 October 2001; 419 Phil. 160 (2001).

[28] *Ponencia,* p. 26.

[29] *Class v. United States*, 138 S. Ct. 798 (2018), *Lee v. United States*, 137 S. Ct. 1958 (2017), <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3772&context=bclr> (visited 29 September 2020); *Mccarthy v. United States,* 394 U.S. 459 (1969), <https://www.leagle.com/decision/1969853394us4591800> (visited 29 September 2020).

appellant manifests an intention to plead guilty to a capital offense

In order to avoid confusion among trial judges, this Court's pronouncement in *People v. Gambao*[30] stating the guidelines to be observed by the trial court in conducting a "searching inquiry" should be incorporated in our rules on criminal procedure, to wit:

> 1. Ascertain from the accused himself:
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> (a) how he was brought into the custody of the law;
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> (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and
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> (c) under what conditions he was detained and interrogated during the investigations. This is intended to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent quarters or simply because of the judge's intimidating robes.
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> 2. Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.
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> 3. Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.
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> 4. Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. For not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to ensure that the accused does not labor under these mistaken impressions because a plea of guilty carries with it not only the admission of authorship of the crime proper but also of the aggravating circumstances attending it, that increase punishment.
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> 5. Inquire if the accused knows the crime with which he is charged and fully explain to him the elements of the crime which is the basis of his indictment. Failure of the court to do so would constitute a violation of his fundamental right to be informed of the precise nature of the accusation against him and a denial of his right to due process.

[30] G.R. No. 172707, 01 October 2013; 718 Phil. 507 (2013).

> 6. All questions posed to the accused should be in a language known and understood by the latter.
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> 7. The trial judge must satisfy himself that the accused, in pleading guilty, is truly guilty. The accused must be required to narrate the tragedy or reenact the crime or furnish its missing details.[31]

Proposed amendments on trial procedure in case of a valid and voluntary plea of guilt

Justice Lazaro-Javier suggested that this Court re-evaluate the evidentiary weight courts accord to pleas of guilt. She proposed relieving the prosecution of the burden to prove the guilt of an accused who already declared his guilt of the offense, and merely requiring trial for determination of the accused's precise degree of culpability. [32]

I share the opinion of Justice Lazaro-Javier. Regular trial to establish the facts and elements of the crime, in a case where an accused who had been already extensively examined on his plea of guilt, is both redundant and inefficient. In *Brady v. United States,*[33] the Supreme Court of the United States recognized the benefits of valid and voluntary pleas of guilt to the interests of the State. In that case, the Court opined that "the more prompt punishment is imposed after an admission of guilt, the more effective the State attains its objective of punishment; and with the avoidance of trial, scarce judicial and prosecutorial resources are conserved for those cases in which there is a substantial issue of the defendant's guilt or in which there is substantial doubt that the State can sustain its burden of proof."[34]

The instant case presents the Court an opportunity to delve into the implications of entering a plea of guilt. Once a valid plea of guilt is entered, the prosecution and the defense remain an active participant only insofar as the proper sentencing of the accused is concerned. As aptly observed by Justice Lopez, this is because the ascertainment of the appropriate penalty is both for the benefit of the accused and the State.[35]

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31 *Id.*
32 *See* Reflections, p. 4, J. Lazaro-Javier.
33 397 U.S. 742.
34 *Id.*
35 *See* Reflections, p. 1, J. Lopez.

Given the foregoing, and similar to the United States' Federal Rules of Criminal Procedure,[36] I propose that for valid pleas of guilt, the prosecutor must be required to summarize its case and identify in writing the crime or offense committed by accused-appellant for the trial court to consider in sentencing. The prosecution must also provide any information relevant to sentencing, such as the law and jurisprudence applicable, the presence of any mitigating or aggravating circumstances, including any previous conviction of the accused, statement on the effect of the crime or offense committed to the victims or their heirs, among others. In the same vein, the trial court must likewise afford the accused an opportunity to be sentenced based on the facts as agreed by both the prosecution and the defense, or in the absence of such an agreement, if the accused wants to be sentenced on the basis of different facts proposed by the prosecution. The accused must also be allowed to introduce any evidence relevant to sentencing.

The trial court, after it is satisfied that the guilt of the accused is established beyond reasonable doubt, may now convict the accused of the appropriate crime or offense and pass the appropriate sentence. Likewise, the trial court must explain to the accused the factual and legal basis for the sentence, as well as its implications. Should the trial court find that the guilt of the accused has not been proven beyond reasonable doubt, it shall enter a judgment of acquittal instead.

In outline form, I thus propose the following be integrated in our Rules on Criminal Procedure in cases of valid plea of guilt:

> *Plea of guilty to a capital offense; sentencing procedure-* When the accused pleads guilty to a capital offense or those crimes punishable by *reclusion perpetua* and life imprisonment, and only if the court is satisfied of the voluntariness, comprehension and factual basis of the plea, the court shall:
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> 1. require the prosecutor to-
>   a) summarize the prosecution's case;
>   b) identify in writing any offense that the prosecutor proposes should be taken into consideration in sentencing;
>   c) provide information relevant to sentence, including—
>   i. any previous conviction of the accused, and the circumstances where relevant,
>   ii. any statement of the effect of the offense on the victim, the victim's family or others; and

[36] https://www.justia.com/criminal/docs/frcrimp/rule11/ (visited 29 September 2020); *See* also https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_guiltypleas_blk/ (visited 29 September 2020).

d) identify any other matter relevant to sentence, including—
   i. the legislation applicable,
   ii. any sentencing guidelines, or case law applicable,
   iii. aggravating and mitigating circumstances affecting the accused's culpability.

2. Clarify from the accused the factual basis of the plea, specifically whether:
   a) the accused wants to be sentenced on the basis of the facts agreed with the prosecutor; or
   b) in the absence of such agreement, the accused wants to be sentenced on the basis of different facts to those proposed by the prosecution.

3. Before passing sentence, the court must give the accused an opportunity to introduce evidence relevant to sentence.

4. Should the court be satisfied that the guilt of the accused be established by proof beyond reasonable doubt, the trial court shall convict him of the appropriate offense. Otherwise, the court shall enter a judgment of acquittal.

5. When the court has taken into account all the evidence, information and any report available, the court shall sentence the accused, and must-
   a) explain the factual and legal basis for the sentence;
   b) explain to the accused its effect, and the consequences of failing to comply with any order or payment of civil liability.

Plea of guilty to non-capital offense; reception of evidence, discretionary. — When the accused pleads guilty to a non-capital offense, the court may receive evidence from the parties to determine the penalty to be imposed.

The court may require the prosecution to:

a) summarize the prosecution's case;
b) identify any offense to be taken into consideration in sentencing;
c) provide information relevant to sentence, including any statement of the effect of the offense on the victim, the victim's family or others; and
d) where it is likely to assist the court, identify any other matter relevant to sentence, including—
   i. the legislation applicable,
   ii. any sentencing guidelines, or case law applicable,
   iii. aggravating and mitigating circumstances affecting the accused's culpability.

Record of proceedings. — A verbatim record of the proceedings of arraignment should be made and preserved.

Arguably, the specificity in the conduct of searching inquiry may entail prolonged arraignment proceedings. Likewise, the proposed rule on immediate sentencing may demand more effort from the parties' counsels. Nonetheless, I am optimistic that my proposal would be mutually beneficial to the accused and the State if implemented properly. Under these proposed rules, the accused is given the benefit of mitigation of punishment, while lengthy trials are also avoided. Although trial is summary in nature, the accused does not lose protections currently guaranteed to him by the Constitution and the laws. Courts are still fully empowered to order acquittal should the prosecution fail to prove its accusations with moral certainty.

Accordingly, I register my dissent and vote for the denial of the instant petition.

RODIL V. ZALAMEDA
Associate Justice