

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO TE-KIAT Y BAGUIO, ACCUSED-APPELLANT.

Ponente: SANTIAGO-LAGMAN, J.

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SANTIAGO-LAGMAN, J.:

Accused-appellant Francisco Te-Kiat y Baguio (“appellant”) appeals from the Decision[1] of the Regional Trial Court of Quezon City (Branch 219), dated November 20, 2003, in Criminal Case Nos. Q-01-104804 to Q-01-104805, convicting him of robbery with homicide and sentencing him to suffer the penalty of reclusion perpetua, to pay the heirs of the victim, Ming Chien Shien a.k.a. Richard Mon, Seventeen Thousand Pesos as actual damages, One Hundred Thousand Pesos (P100,000.00) as moral damages and Twenty Thousand Pesos as funeral expenses.

The Informations respectively charging appellant with murder and robbery read:

-CRIMINAL CASE NO. Q-01-104804-

“The undersigned accuses FRANCISCO TE-KIAT Y BAGUIO of the crime of MURDER, committed as follows:

That on or about the 11th day of October 2001 in Quezon City Philippines, the above-named accused conspiring and confederating with one other person whose true name and whereabouts is still unknown and mutually helping one another with intent to kill, with treachery and evident premeditation did then and there wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one MING CHIEN SHIEN a.k.a. RICHARD MON by then and there shooting him with a gun and hitting him on the trunk thereby inflicting upon him serious and grave wound which was the direct and immediate cause of his death to the damage and prejudice of the heirs of said Ming Chien Shien a.k.a. Richard Mon.

CONTRARY TO LAW.”[2] (emphasis, supplied)

-CRIMINAL CASE NO. Q-01-104805-

“The undersigned accuses FRANCISCO TE-KIAT Y BAGUIO of the crime of Robbery, committed as follows:

That on or about the 11th day of October 2001 in Quezon City, Philippines, the said accused, conspiring and confederating with one other person whose true name/whereabouts is still unknown and mutually helping one another with intent to gain, by means of force, violence and intimidation against person, did then and there wilfully, unlawfully and feloniously rob one Ming Chien Shien a.k.a. Richard Mon in the following manner, to wit: while Richard Mon with his commonlaw (sic) wife was on board a tricycle accused suddenly grabbed and thereafter took, robbed and carried away the following, to wit: one clutch bag containing P10, 000.00 cash and Nokia 3310 all valued at P10, 000.00 belonging to Ming Chien Shien a.k.a. Richard Mon to the damage and prejudice of the aforementioned complainant in the amount above-mentioned.

CONTRARY TO LAW.”[3] (emphasis, supplied)

When arraigned on October 25, 2001, appellant, assisted by counsel, entered a plea of “Not Guilty” to both crimes as charged.[4] Pre-trial was thus set on May 7, 2003.[5] After the termination of the pre-trial on December 4, 2001,[6] the case proceeded to trial.

The prosecution presented four witnesses, namely Medico-Legal Officer P/Supt. Joselito Rodrigo,[7] the victim's girlfriend Amelia Sales,[8] police investigator PO2 Joseph Dino,[9] and police officer PO3 Joselito Chantengco,[10] whose testimonies show the following facts:

On October 11, 2001, Amelia Sales (“Amelia”) was with his boyfriend Ming Chien Shien, a.k.a. Richard Mon (“Richard”), in their apartment located at 45-D Road 13, Pag-asa, Quezon City.[11] Around 7:00 o'clock to 7:30 that evening, as Amelia and Richard were preparing to go to the nearby Shoemart Department Store (“SM-West”), Amelia noticed from her window that a tricycle was parked in front of their apartment. The place where the tricycle was waiting being brightly lit by the street-post light and by the light coming from the apartment, Amelia saw that a man with mustache, who turned out to be appellant, was on board the driver's seat of the tricycle.[12]

Soon thereafter, Richard went down, followed by Amelia. The couple boarded the tricycle and told appellant to bring them to SM-West. Appellant nodded.[13]

From the apartment, the usual route to SM-West was through Alley 14. Instead of turning left at the said alley, however, appellant went straight ahead to Road 8. When asked by Amelia, appellant retorted, “Traffic dun.” Again, when appellant was supposed to turn to Road 2 heading to SM-West, he sped off to Road 3 and proceeded straight to Road 1 Extension. Amelia noticed that appellant was driving faster and faster so he asked him why he drove past Road 2. Appellant answered, “Mas mabilis dito.”[14]

Suddenly, appellant stopped in front of a store along Road 1 Extension. As Amelia was asking why they suddenly stopped, a motorcycle arrived and its driver accosted and conversed with appellant. Amelia repeated her question but got no answer. At this point, Richard alighted from the tricycle but before he could go far from the tricycle, the driver of the motorcycle shot him on his back. Richard immediately fell flat on the ground.[15]

The driver of the motorcycle wasted no time in taking Richard's clutch bag,[16] which contained Ten Thousand Peso (P10,000.00) cash, and a 3310 cellphone worth Seven Thousand Pesos (P7,000.00).[17] Thereafter, the man ran towards his motorcycle, together with appellant, and the two fled on board the motorcycle.[18]

Amelia sought help, took a tricycle and brought Richard to a hospital in Bago Bantay, Quezon City, where the latter was pronounced dead.[19] The autopsy conducted by Medico-Legal Officer P/Supt. Joselito Rodrigo on the cadaver of Richard, showed the following findings:[20]

“x x x x x x x x

HEAD:

1. Abrasion, right zygomatic region measuring 1.5 x 1cm, 7-5cm from its anterior midline.
2. Lacerated wound, mandibular region measuring 3.8 x 0.5cm along its anterior midline.

TRUNK:

1. Gunshot wound, point of entry, vertebral region measuring 0.8 x 0.8cm along its posterior midline, 106cm from the right heel with area of tattooing (sic) measuring 8 x 5cm, 8cm right of its posterior midline directed anteriorwards, upwards and to the left fracturing the 8th vertebrae, 8th left rib, lacerating the lower and upper lobe of the left lung, 1st intercostal muscles and fracturing the left clavicle with deformed slug recovered thereat.

x x x x x x x x

CAUSE OF DEATH: Hemorrhagic Shock secondary to a Gunshot Wound of the Trunk. xxx”[21]

At the hospital, the security guard reported the incident to the police.[22] Amelia told police investigator PO2 Joseph Dino (“PO2 Dino”) that the tricycle of the suspect had either Body No. 427 or 247.[23] Amelia tried to remember the body number of the tricycle despite her confusion and nervousness. She recognized the importance of doing so, having been already a victim of a hold-up incident in a tricycle.[24]

Meanwhile, the police started looking for the suspect and the tricycle with the body numbers mentioned by Amelia. Subsequently, PO2 Dino learned that appellant and the owner of the tricycle, one Ernesto Reyes, were already at the Baler Police Station. Appellant and Ernesto Reyes were later brought to CID at Camp Karingal for identification by Amelia. Records show that two (2) tricycles were brought to Camp Karingal, the tricycle[25] owned by Ernesto Reyes, and driven by appellant, with Body No. 427 and another with Body No. 247, together with its driver.[26] When asked to identify the suspect, Amelia unhesitatingly pointed to appellant, whom she vividly remembered because of his face, his mustache and the manner he spoke.[27]

Appellant, for his part, interposed denial as his defense. He admitted having plied his route as a tricycle driver on October 11, 2001, from 6:00 am to 10:00 pm, but denied having Amelia and Richard as his passengers. He added that he had never know nor seen Amelia before, until she testified in court. He also denied talking to a motorcycle driver, who allegedly shot Richard. In sum, he denied having anything to do with the murder and robbery incidents. He also testified that he, accompanied by Ernesto Reyes, voluntarily surrendered himself at the Baler Police Station upon learning that he was being implicated in the said incidents.[28] Appellant's allegation of voluntary surrender was corroborated by Ernesto Reyes,[29] and the testimony of PO3 Joselito Chantengco to the effect that he did not arrest appellant.[30]

Appellant also presented his co-tricycle drivers, Leo Torres[31] and Ronaldo Franco,[32] who both testified, among others, that they plied their route as tricycle drivers from 8:00 am to 8:00 pm. on October 11, 2001; that they saw appellant at the tricycle terminal joining the queue every now and then that day and that appellant even played cara y cruz from 4:00 pm. to 5:00 pm. of the same day. Both, however, affirmed that they last saw appellant around 7:00 p.m. of that day.

On the basis of the foregoing evidence presented, the trial court found appellant guilty of robbery with homicide. On November 20, 2003, it promulgated a Decision[33] of even date, the dispositive portion of which reads:

“WHEREFORE, in Criminal Case No. Q-01-104804, the prosecution having failed to prove beyond reasonable doubt that MURDER was committed and that accused FRANCISCO TE-KIAT Y BAGUIO is guilty thereof beyond reasonable doubt, he is thereby ACQUITTED of the crime charged.

In Criminal Case No. Q-01-104805, finding the accused FRANCISCO TE-KIAT Y BAGUIO guilty beyond reasonable doubt of ROBBERY WITH HOMICIDE defined and penalized under Article 294 of the Revised Penal Code, the Court sentences him to suffer the penalty of reclusion perpetua, to pay the heirs of the victim Php 17,000.00 as actual damages, Php 100,000.00 as moral damages and Php 20,000.00 as funeral expenses.

Costs de officio.

SO ORDERED.”[34] (emphasis, supplied)

On December 1, 2003, appellant appealed from the Decision of the trial court both in Criminal Case No. Q-01-104804 and Criminal Case No. Q-01-104805, to wit:

“ACCUSED, thru counsel, to this Honorable Court, respectfully gives NOTICE that he is appealing the

Decision in the above-entitled cases dated November 20, 2003 which was promulgated on the same date, x x x.”[35] (emphasis, supplied)

In his Brief, appellant argued that:

“I- THE TRIAL COURT ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS MISTAKENLY IDENTIFIED;

II- THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT;

III- ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT IS CRIMINALLY LIABLE, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM OF THE SINGLE COMPLEX CRIME OF ROBBERY WITH HOMICIDE UNDER TWO (2) SEPARATE INFORMATIONS FOR MURDER AND ROBBERY.”[36]

Appellant contends that the prosecution failed to prove his guilt beyond reasonable doubt. He raises several points,[37] which according to him negate Amelia's claim of positive identification.

First, Amelia purportedly admitted that she never had the occasion to closely look at the face of the tricycle driver while she was on board the tricycle and that the only time she had a glimpse of his facial appearance was when she went out of the apartment and saw that a tricycle was already waiting outside of their gate. He adds that considering the distance from where Amelia saw the tricycle waiting for them and that the incident occurred in the evening, it could be possible that Amelia mistook one person for another. He also avers that Amelia was not previously familiar or acquainted with the tricycle driver, hence, the identification becomes less than certain.

Second, appellant insists that a switching of tricycles could have also occurred. Inasmuch as Amelia did not look at the face of the driver anymore after boarding the tricycle, the probability stands that Amelia and Richard could have boarded another one, not the tricycle she saw waiting outside the apartment.

Third, because of Amelia's apparent confusion in the body number of the tricycle involved, there is allegedly a possibility that the real culprit was anyone of the drivers of the tricycles bearing Body Nos. 472, 274, 742 or 724, but considering that only the drivers of the tricycles with Body Nos. 427 and 247 were invited by the police, Amelia might have purportedly resorted to the simple process of elimination that if it is not the one then it must be the other, although the latter did not bear any semblance with the real driver actually involved in the incident.

Fourth, appellant's defense of alibi was allegedly corroborated and confirmed by his co-tricycle drivers that, on the day of the incident, he was most of the time at the terminal's waiting line, hence, there was an apparent improbability for him to be involved in the alleged robbery and murder.

Fifth, there is allegedly no truth to Amelia's claim that appellant left his tricycle and fled with the gunman considering that said tricycle was never recovered at the scene of the incident but was with the appellant at the time he presented himself to the police.

Sixth, appellant contends that his non-flight and voluntary surrender strongly indicated his innocent conscience.

Appellant's arguments all boil down to the issue of credibility of prosecution's main witness, Amelia.

It is well-settled that when the issue is on the credibility of witnesses, appellate courts will generally not disturb the findings of the trial court on the ground that the latter had the advantage of having observed closely the demeanor and conduct of the witnesses.[38] Unless it is clearly shown that the trial court had arbitrarily overlooked or disregarded the facts and circumstances of significance in the case, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses.[39] After thoroughly

reviewing the records of this case, We find no cogent reason to deviate from this general rule.

Amelia positively identified appellant as the companion of the gunman. She testified that she saw appellant on the tricycle waiting outside of the apartment. While on board the same tricycle, she talked with appellant and was able to have a glimpse of his face. Thus, she recognized him because of his face, his mustache and the manner he spoke.[40] Amelia was firm and certain when she first identified appellant in Camp Karingal. She was also unwavering when she identified appellant in open court.

The argument that Amelia may have mistaken appellant for another person lacks proper basis. Amelia was positive about the identity of appellant not only because she remembered him by face but also because of the manner he spoke. It is noteworthy that Amelia spoke with appellant while she was on board the tricycle. She likewise had a glimpse of appellant when the latter ran towards the motorcycle and fled with the gunman. Besides, as stated by her, it had become her habit to commit the face of each driver to memory every time she boards a tricycle, a lesson she learned from a previous experience wherein she was also held-up in a tricycle. Amelia also categorically testified that the tricycle involved in this case had either Body No. 427 or 247. She was, however, certain that the last number of the said number was 7. Significantly, when the drivers of these two tricycles were presented to her for identification, she readily recognized appellant as the driver of the tricycle involved in the incident. Corollarily, appellant's theory that there could have been a switching of tricycles so that Amelia and Richard might have boarded a tricycle different from the one waiting outside the apartment, is a mere conjecture and is unsupported by evidence.

Furthermore, We are inclined to believe the testimony of Amelia on the pretext that it would be unnatural for a relative, or a common-law spouse in this case, who is interested in vindicating the crime to accuse somebody other than the real culprit.[41] Besides, appellant failed to prove any ill-motive on the part of Amelia to falsely implicate him in a serious crime like robbery and murder. Absent any showing of ill-motive, the logical conclusion is that no such improper motive exists and that Amelia's testimony deserves full faith and credit.[42]

Appellant's defense of alibi likewise rests on shallow ground. No jurisprudence in criminal cases is more settled than that alibi is the weakest of all defenses because it is easily fabricated, for which reason it should be rejected, especially in this case where the identity of the accused is sufficiently and positively established by a credible eyewitness to the crime.[43] Furthermore, for alibi to prosper, two elements must concur: a) the accused was in another place at the time the crime was committed and b) it would be physically impossible for him to be at the scene of the crime at the time it was committed.[44] In this case however, the second element was never substantiated by the defense. We take note that although both defense witnesses Leo Torres and Ronaldo Franco corroborated appellant's statement that he was most of the time seen queuing at the waiting line of the terminal, both also declared that appellant was last seen thereat at 7:00 o'clock in the evening of October 11, 2001. Appellant's defense of alibi therefore becomes unavailing, the incidents of killing and robbery having occurred about 7:00 o'clock to 7:30 in the evening of that day.

As regards appellant's assertion that his non-flight was proof of his innocence, the time-tested jurisprudence is that while flight may be an indicium of guilt, there is no case law holding non-flight to be conclusive proof of innocence.[45] Appellant's voluntary surrender, as corroborated by the testimonies of Ernesto Reyes[46] and PO3 Joselito Chantengco[47] may, however, be considered in his favor as a mitigating circumstance pursuant to Paragraph 7, Article 13 of the Revised Penal Code.[48]

Notwithstanding, however, that there is enough evidence on record to sustain a conviction for robbery with homicide, We are constrained to convict appellant only for robbery in Criminal Case No. Q-01-104805. Verily, appellant was not properly charged with the offense of robbery with homicide in any of the two Informations filed

against him. Records show that the prosecution filed two (2) separate informations, one for murder and another for robbery. It appears that the trial court based its decision on a combination of the allegations contained in these two (2) separate Informations. To repeat, however, there was no Information charging appellant of the special complex crime of robbery with homicide and to hold him liable for this offense, notwithstanding the absence of the proper information would be a violation of his constitutional right “to be informed of the nature and cause of the accusation against him” as provided under Paragraph 2, Section 14, Article III of the 1987 Constitution. Said the Supreme Court in *People vs. Manalili*:^[49]

“Their conviction can only be limited to the crime alleged or necessarily included in the allegations in the separate informations. What controls is the description of the offense as alleged in the information. While the trial court can hold a joint trial of two or more criminal cases and can render a consolidated decision, it can not convict the accused of a complex crime constitutive of the various crimes alleged in the two informations. Thus, the accused were deprived of their constitutional right to be informed of the nature and cause of the accusation against them.”

Simple robbery is penalized under Paragraph 5, Article 294 of the Revised Penal Code with prision correccional in its maximum period to prision mayor in its medium period. Taking into account appellant's voluntary surrender which is to be credited in his favor as a mitigating circumstance and there being no aggravating circumstance alleged in the Information,^[50] appellant should be sentenced to an indeterminate penalty of four (4) years and two (2) months of prision correccional medium as MINIMUM to six (6) years one (1) month and ten (10) days of prision mayor minimum^[51] as MAXIMUM.

But although the trial court erred in its legal conclusion of combining the killing of Richard and the robbery as one complex crime and in thereby acquitting appellant of the separate crime of murder, the trial court did find that appellant was in conspiracy with the gunman in killing the victim.

Indeed, the fact that appellant conspired in the killing was convincingly shown by his active participation in bringing the victim to the scene of the crime and in fleeing with the gunman after the latter shot Richard. In a conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim.^[52] Appellant's acts though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.^[53]

Basic is the rule that when there is conspiracy, the act of one is the act of all the conspirators, and a conspirator may be held as a principal even if he did not participate in the actual commission of every act constituting the offense. In conspiracy, all those who in one way or another helped and cooperated in the consummation of the crime are considered co-principals since the degree or character of the the individual participation of each conspirator in the commission of the crime becomes immaterial.^[54]

A careful evaluation of the facts herein shows that the killing was done independently of the intention to rob the victim. We note that appellant's companion shot Richard and only thereafter did he grab Richard's clutch bag containing the valuables, and fled together with appellant. Moreover, there is no clear evidence that appellant and the gunman killed Richard for the purpose of perpetrating the robbery.

Corollarily, We cannot consider the qualifying circumstances of treachery and evident premeditation. The settled rule is that treachery cannot be presumed but must be proved by clear and convincing evidence, that is, as conclusively as the killing itself.^[55] The presence of treachery may not be simply assumed from the mere suddenness of the attack^[56] or the fact that the fatal wound was found at the back of the deceased.^[57] Also, evident premeditation cannot be appreciated in the absence of proof of the planning and preparation to kill or when the plan was conceived.^[58]

Settled is the rule that when an accused appeals, he stands for a new trial of the whole case.[59] An appeal in a criminal case throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from whether they are made the subject of assignments of errors or not.[60] In this case, We reiterate that appellant appealed both criminal cases subject of the trial court's November 20, 2003 Decision.[61]

Premises considered, We find that, in Criminal Case No. Q-01-104804, the appellant is guilty beyond reasonable doubt of homicide, punishable by reclusion temporal under Article 249 of the Revised Penal Code. Taking into account the mitigating circumstance of voluntary surrender in favor of the appellant pursuant to Paragraph 7, Article 13 of the Revised Penal Code, and the absence of any qualifying or aggravating circumstance, the imposable penalty is ten (10) years of prision mayor medium as MINIMUM to fourteen (14) years and eight (8) months of reclusion temporal minimum as MAXIMUM.

As a consequence of the victim's death, We sustain the trial court's award of moral damages. The same must, nevertheless, be reduced from One Hundred Thousand Pesos (P100,000.00) to Fifty Thousand Pesos (P50,000.00). The current case law is that in homicide or murder cases, moral damages which is now fixed in the amount of Fifty Thousand Pesos (P50,000.00) should be automatically awarded to the family of the victim.[62]

We likewise deem it proper to award civil indemnity of Fifty Thousand Pesos (P50,000.00) in favor of the heirs of the victim, this amount being in accord with prevailing and recent jurisprudence[63] and for which, no other proof is necessary other than the fact of death of the victim and the culpability of the appellant.[64] Although the alleged funeral expenses were not substantiated by sufficient proof, temperate damages of Twenty-Five Thousand Pesos (P25,000.00), instead of the Twenty Thousand Pesos awarded by the trial court, should be given the heirs of the victim. Prevailing jurisprudence generally awards this amount as temperate damages, it being reasonable to presume that when death occurs, the family of the victim necessarily incurs expenses for the consequent wake and funeral.[65]

WHEREFORE, the Decision of the Regional Trial Court of Quezon City (Branch 219), dated November 20, 2003, is MODIFIED as follows:

1) In Criminal Case No. Q-01-104805, appellant Francisco Te-Kiat y Baguio is found GUILTY beyond reasonable doubt of simple robbery under Paragraph 5, Article 294 of the Revised Penal Code. He is hereby sentenced to an indeterminate penalty of four (4) years and two (2) months of prision correccional medium as MINIMUM to six (6) years one (1) month and ten (10) days of prision mayor minimum as MAXIMUM. He is furthermore ORDERED to pay the heirs of the victim, Ming Chien Shien a.k.a. Richard Mon, the amount of Seventeen Thousand Pesos (P17,000.00) by way of restitution for the money and cellular phone taken by him.

1) In Criminal Case No. Q-01-104804, said appellant is found GUILTY beyond reasonable doubt of homicide pursuant to Article 249 of the Revised Penal Code and is sentenced to ten (10) years of prision mayor medium as MINIMUM to fourteen (14) years and eight (8) months of reclusion temporal minimum as MAXIMUM. He is also ORDERED to pay the heirs of the victim, Ming Chien Shien a.k.a. Richard Mon, moral damages of Fifty Thousand Pesos (P50,000.00), civil indemnity of Fifty Thousand Pesos (P50,000.00), and temperate damages of Twenty-Five Thousand Pesos (P25,000.00).

No costs.

SO ORDERED. Guevara-Salonga, (Chairman) and Pizarro, JJ., concur.

[1] Record, pp.105-119; Rollo, pp. 20-34.

- [2] Record, p. 2.
- [3] Record, p. 4.
- [4] Certificate of Arraignment dated October 25, 2001, id., p. 21.
- [5] Order dated May 6, 2003, id., p. 23.
- [6] Order dated December 4, 2001, id., p. 27.
- [7] TSN, February 14, 2002.
- [8] TSN, May 27, 2002 and June 3, 2002.
- [9] TSN, June 17, 2002.
- [10] TSN, August 26, 2002.
- [11] TSN, May 27, 2002, p. 8.
- [12] Id., pp. 8-10.
- [13] Id., p. 10.
- [14] Id., pp. 11-15; Exhibits “G”-”G-8” (Sketch of the road from the apartment of the victim to SM-West), Record, p. 58.
- [15] TSN, May 27, 2002, pp. 15-18; TSN, February 14, 2002, p. 17.
- [16] Id., p. 18.
- [17] Id., pp. 29-31.
- [18] Id., p. 18.
- [19] Id., pp. 19-20; Exhibit “E” (Death Certificate), Record, p. 41.
- [20] Exhibit “C” (Autopsy/Medico-Legal Report No. M-499-01); Record, p. 36; TSN, February 14, 2002.
- [21] Page 1 and 2 of Exhibit “C,” supra.
- [22] TSN, May 27, 2002, p. 20.
- [23] Id., p. 22.
- [24] Id., p. 21.
- [25] Exhibits “K” - “K-2” (pictures of the tricycle driven by appellant), Record, p. 15.
- [26] TSN, June 17, 2002, p. 10.
- [27] Id., p. 12; TSN May 27, 2002, p. 24; TSN, June 3, 2002, p. 19.
- [28] TSN, March 25, 2003.
- [29] TSN, December 10, 2002.
- [30] TSN, August 26, 2002, p. 7.
- [31] TSN, February 3, 2003.

[32] TSN, March 11, 2003.

[33] Supra.

[34] Pages 14-15 of the appealed Decision, Record, pp. 118-119; Rollo, pp. 33-34.

[35] Notice of Appeal dated November 28, 2003 and filed on December 1, 2003, Record, p. 123.

[36] Page 1 of the Appellant's Brief, Rollo, p. 50.

[37] Pages 14-17 of the Appellant's Brief, id., pp. 58-61.

[38] *People v. Invencion*, 398 SCRA 592, 599 (2003).

[39] *People vs. Simbulan*, 214 SCRA 537 (1992).

[40] Id., p. 12; TSN May 27, 2002, p. 24; TSN, June 3, 2002, p. 19.

[41] *People vs. Javier*, 269 SCRA 181 (1997); *People vs. Sion*, 277 SCRA 127 (1997); *People vs. Montero, Jr.*, 277 SCRA 194 (1997).

[42] *People vs. Letigio*, 268 SCRA 227 (1997); *People vs. Tabaco*, 270 SCRA 32 (1997).

[43] *People vs. Magpantay*, 284 SCRA 96 (1998); *People vs. Cabiles*, 284 SCRA 199 (1998).

[44] *People vs. Ravaness*, 284 SCRA 634 (1998).

[45] *People vs. Diaz*, 395 SCRA 52 (2003); *People vs. Plurad*, 393 SCRA 306 (2002); *People vs. Palma*, 308 SCRA 466 (1999).

[46] TSN, December 10, 2002.

[47] TSN, August 26, 2002, p. 7.

[48] "Art. 13. Mitigating circumstances.--The following are mitigating circumstances: x x x (7) That the offender had voluntarily surrendered himself to a person in authority or his agents, x x x."

[49] 294 SCRA 220, 253 (1998), citing *People vs. Legaspi*, 246 SCRA 206, 213 (1995).

[50] "Under Rule 110, Section 8 (and 9) of the 2000 Revised Rules of Criminal Procedure, an aggravating circumstance must be alleged in the Information." (*People vs. Dagpin*, 431 SCRA 643, 659 (2004); *People vs. Caabay*, 409 SCRA 486, 513 (2003).

[51] Revised Penal Code, "ARTICLE 64. Rules for application of penalties which contain three periods.-- x x x (2) When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period; x x x"

[52] *People vs. Dinglasan*, 267 SCRA 26 (1997).

[53] *People vs. Sunpongco*, 163 SCRA 222 (1988); *People vs. Sarino*, 221 SCRA 234 (1993).

[54] *People vs. Dela Cruz*, 183 SCRA 763 (1990); *People vs. Camaddo*, 217 SCRA 162 (1993).

[55] *People vs. Garma*, 271 SCRA 517 (1997); *People vs. Gelera*, 277 SCRA 450 (1997).

[56] *People vs. Magallanes*, 275 SCRA 222 (1997).

[57] *People vs. Garma*, supra.

[58] People vs. Costales, 373 SCRA 269 (2002).

[59] People vs. Manalili, *supra.*; People vs. Llaguno, 285 SCRA 124 (1998).

[60] Tabuena vs. Sandiganbayan, 268 SCRA 332 (1997).

[61] See appellant's Notice of Appeal, Record, p. 123.

[62] People vs. Samson, 377 SCRA 25 (2002).

[63] People vs. Pedrigal, G.R. No. 133440, June 7, 2004; People vs. Cagadas, G.R. No. 147196, June 4, 2004.

[64] People vs. Dela Cruz, 335 SCRA 620, 644 (2000); People vs. Cabacan, 387 SCRA 582, 589 (2002).

[65] People vs. Sara, 417 SCRA 431 (2003).

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