

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO CARDEL Y DIZON, AND ARNOLD CALUMPANG Y VALERIO, ACCUSED-APPELLANTS.

G.R. No. 105582. July 19, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before Us on appeal is the Decision[1] of the Regional Trial Court of Valenzuela, Metro Manila, Branch 172 in Criminal Case No. 457-V-91, convicting herein appellants, Rolando Cardel y Dizon and Arnold Calumpang y Valerio, of the crime of murder.

On August 12, 1991 at around 8:00 o'clock in the evening, Noel Rioflorido, Jr. was stabbed to death in Bagong Nayon, Valenzuela, Metro Manila. Noel was on his way home to Paso de Blas, Valenzuela, Metro Manila after having visited his friends in Bagong Nayon when the incident happened. Upon investigation of the case by the police, two (2) eyewitnesses pinpointed Rolando Cardel and Arnold Calumpang, as responsible for the death of the victim.

On August 14, 1991, the appellants, Rolando Cardel and Arnold Calumpang, were charged in court with the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, as amended, in an information that reads:

That on or about the 12th day of August, 1991 in the Municipality of Valenzuela, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without any justifiable cause, with treachery and evident premeditation and with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and stab with a bladed weapon one Noel Rioflorido, Jr. y Garalza, thereby inflicting upon the latter serious physical injuries which caused the death of the said victim.

Contrary to law.

Upon being arraigned on August 28, 1991, both appellants, assisted by counsel, separately pleaded "Not guilty" to the information. Thereafter, trial on the merits ensued.

The evidence of the prosecution shows that on August 12, 1991 Willy Conde and Elmer Olesco were in front of the Aling Digna's Store in Bagong Nayon, Valenzuela, Metro Manila. Conde was buying some cigarettes while Olesco was sitting, drinking coke. At around 8:00 o'clock in the evening, Conde and Olesco noticed Noel Rioflorido, Jr. together with Rolando Cardel and Arnold Calumpang, who came close to two (2) arms length in front of Aling Digna's Store. Calumpang punched Rioflorido, Jr. on the right side of the face before he hurriedly left. Cardel held Rioflorido, Jr. in the nape and stabbed him at the back, on the left side of his body, before he, too, fled from the crime scene leaving Rioflorido, Jr. sprawling on the ground. Thereafter, Conde, Olesco and a certain Arnel carried Rioflorido, Jr. to a passenger jeep and brought him to the Jose Reyes Memorial Hospital in Sta. Cruz, Manila where he died.[2]

Fe G. Rioflorido identified the body of the victim at the morgue as that of her son, Noel Rioflorido, Jr.[3] She also signed the form for the request for examination of the dead body dated August 13, 1991.[4]

Dr. Maximo Reyes, M.D., medico-legal officer of the National Bureau of Investigation (NBI) conducted the post mortem examination on the body of Noel Rioflorido, Jr. on August 13, 1991.[5] His findings showed that the victim suffered two (2) stab wounds which were both caused by a three-sided weapon (*tres cantos*). Wound No. 1 measures 2.0 x 1.5 x 1.8 centimeters with an approximate depth of 11.0 centimeters. It was located on the left intrascapular area, just below the chest. It was directed slightly upward entering the posterior chest wall, severing the lower part of the upper lobe, left lung, and posterior aspect of the left ventricle of the heart. Wound No. 2 which involved the skin and soft tissues measures 2.0 x 1.8 x 2.0 centimeters. It was located over the right deltoid area. Wound No. 1, according to Dr. Reyes, was the fatal wound.[6]

Meanwhile, after learning that he was being implicated in the said stabbing incident in Bagong Nayon, Bagbaguin, Valenzuela on August 12, 1991, Rolando Cardel surrendered to the Paso de Blas Police Station in Valenzuela, Metro Manila on the same day. He was turned over to Patrolman Arnold Alabastro of the investigation section of the Valenzuela police for proper investigation.[7]

Subsequent investigation which was conducted by Patrolman Alabastro reveals that the victim Noel Rioflorido, Jr. was apprehended by Rolando Cardel and other concerned citizens in Bagong Nayon, Valenzuela, Metro Manila on August 12, 1991 at around 7:30 o'clock in the evening on the ground that he was a suspect in the robbery hold-up of a certain Arnold Calumpang. A commotion subsequently ensued in front of Aling Digna's Store in Bagong Nayon when Rioflorido, Jr. resisted arrest and attempted to escape. A certain Ronaldo Alborque admitted having punched Rioflorido, Jr. in the process. On the other hand, Rolando Cardel lost his temper so he held Rioflorido, Jr. in the nape, and stabbed him.[8]

At the scene of the crime, a wristwatch and a necklace were recovered and the same were later identified by Arnold Calumpang as among the personal belongings that were forcibly taken from him earlier by Rioflorido, Jr. and two (2) other persons. Patrolman Alabastro also recovered the improvised three-sided knife that was allegedly used in stabbing Rioflorido, Jr. in the house of Rolando Cardel. Said knife and the maong pair of pants and t-shirt of Cardel, together with a sando belonging to Ronaldo Alborque, which were all smeared with red substance, were forwarded by Patrolman Alabastro to the NBI in Manila for laboratory examination.[9]

The defense denied any liability of the appellants for the charge of murder in the information. Rolando Cardel, a construction worker, testified that he was in the hospital from 6:00 to 7:00 o'clock in the evening of August 12, 1991. His neighbor, a certain Anita Antipolo, had earlier requested for his assistance in bringing her sick child to the hospital for treatment. On his way home at around 7:30 o'clock in the evening, his attention was incidentally drawn to a group of people carrying a wounded person to be brought to the hospital. He was informed that the person, whose name he later learned as Noel Rioflorido, Jr., was stabbed after having been caught for snatching. Among the group of people, a certain Elmer handed to Cardel a wristwatch with an instruction to return the same to the nephew of a certain Cadiz in Bagong Nayon. Being a member[10] of the *bantay bayan* in Bagong Nayon, Valenzuela, Metro Manila, Cardel proceeded to the house of Cadiz. Cardel learned from Arnold Calumpang, whom he met for the first time in the house of Cadiz, that the wristwatch was among the personal belongings that were forcibly taken from him.[11]

Arnold Calumpang allegedly informed Rolando Cardel that three (3) persons blocked his path. One of them punched Calumpang before they divested him of his necklace, wristwatch and wallet containing P1,000.00 pesos. Cardel stated that the description of one of the three (3) persons which was provided him by Calumpang fitted that of Noel Rioflorido, Jr., who appeared thin and short. On the same evening, Rolando and other members of the

bantay bayan in Bagong Nayon were investigated by Patrolman Arnold Alabastro of the Valenzuela police. They informed Patrolman Alabastro that none of them witnessed the stabbing incident.[12]

Patrolman Alabastro requested Rolando Cardel to assist him locate the whereabouts of Arnold Calumpang so that the latter could give a statement to the police. It was Cardel who accompanied Arnold Calumpang to the police headquarters upon the request of his aunt. Upon arrival at the police headquarters in Valenzuela, Metro Manila, Cardel and Calumpang were pinpointed by alleged witnesses to the stabbing incident as responsible for the death of Noel Rioflorido, Jr..[13]

Rolando Cardel vehemently denied before the police any participation in the killing of Noel Rioflorido, Jr. claiming that the incident on August 12, 1991 was already finished when he returned to Bagong Nayon from the hospital at 7:30 o'clock in the evening. He also claimed that the two (2) prosecution witnesses, Willy Conde and Elmer Olesco, and the victim, Noel Rioflorido, Jr., were members of the AKHRO fraternity; and that the brother of prosecution witness Willy Conde, a certain Danilo Conde, who is also a member of the AKHRO fraternity, was apprehended previously by Rolando for allegedly snatching a shoulder bag.[14] In addition, Rolando repudiated authorship of the statement marked as Exhibit "D" of the prosecution. He claimed that the said Exhibit "D" of the prosecution was prepared by a bantay bayan member and that he signed without reading it beforehand.

For his defense, Arnold Calumpang testified that he is a native of Dumaguete City and had been staying in Muñoz, Quezon City for only more than two (2) months when the stabbing incident happened. Calumpang recalled that on August 12, 1991 he decided to visit his aunt in Bagong Nayon, Valenzuela, Metro Manila. After alighting from the jeep at around 6:00 o'clock in the evening, his path was blocked by three (3) unidentified persons. They held him and simultaneously took his necklace, wristwatch and wallet. Calumpang scampered toward the house of his aunt for fear of his life after one (1) of the persons pulled out a fan knife.[15]

Upon reaching the house, Arnold immediately informed his aunt that he was held up along the way by three (3) persons and took some of his personal belongings. His aunt went outside and returned at around 7:30 o'clock in the evening together with an alleged member of the bantay bayan who was introduced to him as Rolando Cardel. Cardel informed him that a policeman was waiting outside to take Calumpang's statement involving the stabbing incident. Upon arrival at the police headquarters in Valenzuela, certain alleged witnesses to the stabbing incident pointed to him and Rolando Cardel as responsible for the death of Noel Rioflorido, Jr.. Specifically, he was allegedly seen by the witnesses punched Rioflorido, Jr..[16]

Calumpang denied the accusation against him for the reason that according to him, he did not go out of the house of his aunt from the time he arrived therein until 7:30 o'clock in the evening when the police and Rolando Cardel arrived to fetch him.[17]

After analyzing the evidence, the trial court found, as follows:

It is clear from the evidence presented that before the stabbing incident, subject of this case, the accused Arnold Calumpang was divested of his wristwatch and necklace by holduppers when he was on his way home. As the holduppers ran away with his belongings, he shouted for help. The accused Rolando Cardel who testified that he is a bantay bayan exhibiting his I.D. as such, and while drinking with friends, heard the shouts of Arnold, responded by chasing the holduppers and was able to collar one of them, the victim of this murder case Noel Rioflorido, (Jr.). With a certain Ronaldo Alborque, Rolando Cardel was able to drag the victim to Bagong Nayon, place of the stabbing incident where the victim was stabbed by Rolando Cardel after having been collared by Ronaldo Alborque and boxed by Arnold Calumpang. So this is a case of a mob action and revenge against a snatcher who was caught while running with the loot.

x x x

From the foregoing, both accused took the law into their own hands by practically executing Noel Rioflorido, (Jr.), alleged snatcher of accused Arnold's wristwatch and necklace, by grabbing him, boxing him, and stabbing him in conspiracy with each other.

x x x

When both accused held the victim Noel Rioflorido, (Jr.) and the latter was stabbed, superior strength was taken advantage of by both accused, and treachery was used because the said victim had no chance to defend himself.[18]

The dispositive portion of the decision of the trial court reads:

WHEREFORE, in view of the foregoing, the Court finds both accused guilty of murder beyond reasonable doubt acting in conspiracy with each other, and hereby sentences them to suffer the penalty of reclusion perpetua, to indemnify the heirs of Noel Rioflorido, (Jr.) y Garalza in the sum of P50,000.00 and to pay the costs of the suit.

SO ORDERED.[19]

In their appeal,[20] the appellants raise the following assignments of error:

I

THE TRIAL COURT ERRED IN CONVICTING BOTH ACCUSED FOR MURDER AND NOT FOR HOMICIDE ONLY CONSIDERING THAT THE QUALIFYING CIRCUMSTANCE OF TREACHERY AND/OR USE OF SUPERIOR STRENGTH WAS NOT DULY PROVED.

II

THE TRIAL COURT ERRED IN ALSO CONVICTING ARNOLD CALUMPANG FOR MURDER CONSIDERING THAT CONSPIRACY WAS NOT DULY ESTABLISHED.

III

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT ROLANDO CARDEL OR IN THE ASSUMPTION THAT HE IS GUILTY, IN NOT APPRECIATING IN HIS FAVOR THE PRIVELEGE MITITGATING CIRCUMSTANCE UNDER ARTICLE 69 OF THE REVISED PENAL CODE AND THE ORDINARY MITIGATING CIRCUMSTANCES OF VOLUNTARY SURRENDER AND LACK OF INTENTION TO COMMIT SO GRAVE A WRONG AS THAT COMMITTED.

IV

THE TRIAL COURT ERRED IN NOT APPLYING THE PROVISIONS OF THE INDETERMINATE SENTENCE LAW TO LOWER THE IMPOSABLE PENALTY.

Appellant Rolando Cardel claimed that the stabbing incident was already finished when he arrived in Bagong Nayon, Valenzuela, Metro Manila from the hospital at 7:30 o'clock in the evening on August 12, 1991. Appellant Arnold Calumpang also claimed that he was inside the house of his aunt in Bagong Nayon, after he was robbed of his personal belongings by three (3) persons at around 6:30 o'clock in the evening, and remained therein until 7:30 o'clock in the evening. In effect, the appellants seek refuge under the defense of alibi to escape responsibility for the killing of Noel Rioflorido, Jr..

It must be emphasized that aside from being inherently weak, the defense of alibi cannot prevail over the positive identification of the appellants by the prosecution witnesses.[21] Prosecution witness Willy Conde was buying some cigarettes at Aling Digna's Store in Bagong Nayon, Valenzuela, Metro Manila when Noel Rioflorido, Jr. was stabbed in front of the store just about two (2) arms length away. Prosecution witness Elmer Olesco was sitting in front of the said store, drinking coke, when the stabbing incident occurred. Both prosecution witnesses categorically declared that they saw Calumpang punched Rioflorido, Jr. on the right side of the face and that

thereafter, Rolando Cardel held the victim in the nape and stabbed him at the back, on the right side of his body. They saw the incident clearly for the reason that the premises was well-lighted by an electric bulb in front of Aling Digna's Store.[22]

The respective testimonies of the two (2) prosecution witnesses do not suffer from any serious and material contradictions that can detract from their credibility. The trial court gave full faith and credence to the respective testimonies of prosecution witnesses Willy Conde and Elmer Olesco as against those of the appellants. The defense did not dispute the presence of the said prosecution witnesses in front of Aling Digna's Store in Bagong Nayon, Valenzuela, Metro Manila when the stabbing incident occurred. The defense likewise failed to adduce adequate evidence to establish any improper motive that may have impelled the same witnesses to falsely testify against the appellants. The bare allegation of the defense that the prosecution witnesses, Willy Conde and Elmer Olesco, and the victim, Noel Rioflorido, Jr., were members of a fraternity is too shallow and does not deserve even a scant consideration. It is well-settled rule that the evaluation of the testimonies of witnesses by the trial court is received on appeal with the highest respect because such court has the direct opportunity to observe the witnesses on the stand and determine if they are telling the truth or not.[23]

However, this Court finds itself unable to agree with the trial court that conspiracy existed in this case. Under Article 8 of the Revised Penal Code, a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Likewise, there is conspiracy if at the time of the commission of the offense the appellants had the same purpose and were united in its execution.[24]

It appears that appellant Arnold Calumpang was divested of his wristwatch, necklace and wallet by three (3) unidentified persons while he was on his way to visit his aunt in Bagong Nayon, Valenzuela, Metro Manila. Subsequently, Noel Rioflorido, Jr. was apprehended by appellant Rolando Cardel and other concerned citizens in Bagong Nayon as suspect in the snatching of Calumpang's personal belongings. The prosecution failed to establish that appellants Cardel and Calumpang came to an agreement to kill Rioflorido, Jr., nor any such agreement may be deduced from the manner in which the offense was committed; or from the acts of the appellants before, during, and after the commission of the crime, indubitably pointing to and indicating a joint purpose, concert of action and a community of interest.[25]

The evidence shows that appellant Cardel and the concerned citizens were on their way to bring Noel Rioflorido, Jr. to the bantay bayan headquarters in Bagong Nayon, when the latter resisted arrest and attempted to escape. Prosecution witness Willy Conde testified on direct examination that when appellant Cardel stabbed Rioflorido, Jr., appellant Calumpang had already fled from the scene of the crime, to wit:

Fiscal:

At the time that Cardel stabbed Jun what was Arnold doing?

A:

He ran away, sir.

Q:

You mean he was not around when Cardel stabbed Noel?

A:

Yes, sir.

Q:

So you are saying that Arnold after boxing Jun had already left or immediately ran away?

A:

Yes and then Rolando stabbed him, sir.

Q:

So when Jun was stabbed only Rolando Cardel was there?

A:

Yes sir.[26]

There is no basis for the conclusion of the trial court “that both accused took the law into their own hands by practically executing Noel Rioflorido, Jr. xxx in conspiracy with each other”. It should be pointed out that appellant Calumpang could not have assented nor actively cooperated in the killing of the victim for the reason that he was no longer at the scene of the crime when appellant Cardel stabbed Rioflorido, Jr.. The existence of conspiracy is never presumed. It is axiomatic that the prosecution must establish conspiracy beyond reasonable doubt.[27] Hence, the appellants will be separately adjudged according to the extent of their individual participation in the commission of the crime charged in the information.

Article 248 of the Revised Penal Code, as amended, states:

“Article 248. Murder.- Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.”

We do not find sufficient evidence to hold appellant Arnold Calumpang liable for the killing of Noel Rioflorido, Jr.. Appellant Calumpang desisted from inflicting further blows, after punching Rioflorido, Jr. once on the right side of the face, and immediately fled from the scene of the crime. His actuation hardly suggests any intent to kill the victim. He merely vented his anger on Rioflorido, Jr. when the latter, who was allegedly one (1) of the three

(3) persons who earlier divested him of his personal belongings, resisted apprehension and attempted to escape. Dr. Maximo Reyes did not find any injury on the body of Rioflorido, Jr. that may have caused or contributed to his death as a result of the fist blow from appellant Calumpang. Accordingly, appellant Calumpang should be acquitted.

On the other hand, it has been sufficiently established that appellant Rolando Cardel was the one who inflicted the stab wound at the back, on the right side of the body of Noel Rioflorido, Jr. which, according to Dr. Maximo Reyes, was the wound that caused the death of the victim. Prosecution witnesses Willy Conde and Elmer Olesco testified that appellant Cardel stabbed Rioflorido, Jr. and left the scene of the crime only after the body of Rioflorido, Jr. was already sprawling on the ground.

The evidence, however, failed to establish the existence of the qualifying circumstance of treachery. The requisites for appreciating treachery (alevosia) in the commission of the crime are: 1) at the time of the attack, the victim was not in a position to defend himself; 2) appellant consciously and deliberately adopted the particular means, methods or forms of the attack employed by him.[28] As correctly observed by the Office of the Solicitor General, when appellant Cardel stabbed Noel Rioflorido, Jr. the latter was resisting and was even attempting to escape. Treachery cannot be appreciated when the evidence shows that at the time of the attack, the victim was not rendered totally helpless and defenseless.[29]

The fact that the victim had a stab wound at the back is not, in itself, indicative of treachery.[30] Where treachery is alleged, the manner of attack must be proven. It cannot be presumed or concluded merely on the basis of the resulting crime.[31] Also, it does not appear that appellant Cardel consciously adopted the mode of attack to facilitate the killing of Rioflorido, Jr. without risk to himself. The stabbing of the victim by appellant Cardel was the result of a rash and impetuous impulse of the moment, rather than from a deliberate act of will[32] thus, negating the existence of treachery. Based on the investigation that he conducted relative to the stabbing incident, Patrolman Arnold Alabastro testified, as follows:

Atty. Domingo:

Q:

Mr. witness, based on your investigation, what precipitated the stabbing incident?

A:

The snatching incident, sir.

Q:

Specifically, what?

A:

The resistance put up by Rioflorido, (Jr.) when he was arrested, sir. May I be allowed to elaborate on my answer?

Q:

Please do.

A:

When the victim Noel Rioflorido, (Jr.) is a suspect in the snatching incident, then he was nabbed by Rolando Cardel together with the concerned citizens. He was arrested and was brought along with the Bantay Bayan, concerned citizens together with the victim in the snatching incident and on their way to the Bantay Bayan Noel Rioflorido, (Jr.) resisted and that precipitated the stabbing incident. (sic)

Court:

Q:

Who resisted?

A:

Noel Rioflorido, (Jr.) ma'am and that brought the stabbing incident.[33]

Likewise, abuse of superior strength may not be appreciated to qualify the killing to the crime of murder for the reason that the same is not alleged in the information. It has been the rule that qualifying circumstances must be properly pleaded in the indictment. If the same are not pleaded but proved, they shall be considered only as aggravating circumstances.[34]

In any event, the trial court grievously erred when it ruled the existence of abuse of superior strength in the case at bench. To appreciate the attendant circumstance of abuse of superior strength, what should be considered is whether the aggressors took advantage of their combined strength in order to consummate the offense. It is considered whenever there is a notorious inequality of forces between the victim and the aggressor, possessing a superiority of strength notoriously advantageous to the aggressor which is selected or taken advantage of by him in the commission of the crime.[35] There is no evidence in the case at bar to show that appellants Rolando Cardel and Arnold Calumpang took advantage of their combined strength in order to consummate the offense. It should be pointed out that appellant Calumpang immediately fled from the scene of the crime after punching Noel Rioflorido, Jr., leaving behind appellant Cardel who stabbed the victim subsequently.

On the other hand, appellant Rolando Cardel cannot be considered as acting in the fulfillment of a duty or in the lawful exercise of a right or office so as to justify his act of stabbing to death Noel Rioflorido, Jr. under Article 11(5) of the Revised Penal Code. It appears from the evidence that effective July 2, 1991, appellant Cardel was not anymore a member of the bantay bayan of Bagong Nayon, Valenzuela, Metro Manila.[36]

The ordinary mitigating circumstance of lack of intent to commit so grave a wrong under Article 13(3) of the Revised Penal Code is also unavailing in this case. This mitigating circumstance addresses itself to the intention of the offender at the particular moment when he executes or commits the criminal act.[37] Noel Rioflorido, Jr. suffered two (2) serious stab wounds in his body. One (1) was located in the right deltoid area while the other was aimed by appellant Cardel at the back of the victim, on the left side of the body, severing the lower part of the upper lobe, left lung, and posterior aspect of the left ventricle of the heart. The number, location and nature of the said stab wounds belie the appellant's claim of lack of intention to commit so grave a wrong against his victim.

However, the mitigating circumstance of voluntary surrender should be credited in favor of appellant Rolando Cardel. For voluntary surrender to be appreciated as a mitigating circumstance, the following requisites must concur: (1) the offender has not been actually arrested; (2) the offender surrenders himself to a person in authority; and (3) his surrender was voluntary.[38] It appears that Cardel was never arrested in connection with the killing of Noel Rioflorido, Jr.. He voluntarily surrendered to the Paseo de Blas Police Station in Valenzuela, Metro Manila on the same day the stabbing incident happened on August 12, 1991.

Considering the absence of any qualifying circumstance in the case at bar, appellant Rolando Cardel is liable for the crime of homicide only. While there is one (1) attendant mitigating circumstance of voluntary surrender, there is no aggravating circumstance.

WHEREFORE, the Decision of the Regional Trial Court of Valenzuela, Metro Manila, Branch 172, in Criminal Case No. 457-V-91, is MODIFIED. Appellant Arnold Calumpang y Valerio is hereby ACQUITTED of the crime of murder on the ground of reasonable doubt. Appellant Rolando Cardel y Dizon is hereby found GUILTY beyond reasonable doubt of the crime of homicide, and there being one mitigating circumstance of voluntary surrender and no aggravating circumstance in offset, he is hereby sentenced to suffer the indeterminate penalty of ten (10) years of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum; and to pay the heirs of the victim the amount of P50,000.00 by way of civil indemnity ex delicto.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Judge Teresita Dizon-Capulong. Rollo, pp. 23-30.

[2] TSN dated September 2, 1991, pp. 5-11; TSN dated September 16, 1991, pp. 5-6; TSN dated September 20, 1991, pp. 2-6.

[3] Exhibit "H".

[4] Exhibit "G".

[5] Exhibits "J" and "K".

[6] TSN dated December 2, 1991, pp. 11-13.

[7] TSN dated September 30, 1991, p. 5.

[8] TSN dated October 23, 1991, pp. 6-8.

[9] TSN dated October 23, 1991, pp. 5-6.

[10] Exhibit "1".

[11] TSN dated February 24, 1992, pp. 5-14.

[12] TSN dated February 24, 1992, pp. 14-17; TSN dated March 6, 1992, pp. 3-5.

[13] TSN dated March 6, 1992, pp. 6-8.

[14] TSN dated March 6, 1992, pp. 8-10.

[15] TSN dated March 23, 1992, pp. 4-7.

[16] TSN dated March 23, 1992, pp. 7-10.

[17] TSN dated March 23, 1992, pp. 10-11.

[18] Rollo, pp. 29-30.

[19] Rollo, p. 30.

[20] Rollo, pp. 106-129.

- [21] People vs. Aquino, 284 SCRA 369, 375 (1998); People vs. Tenorio, 284 SCRA 420, 432 (1998).
- [22] TSN dated September 2, 1991, p. 11.
- [23] People vs. Baccay, 284 SCRA 296, 304 (1998).
- [24] People vs. Bergante, 286 SCRA 629, 642 (1998).
- [25] People vs. Perez, et al., G.R. No. 130501, September 2, 1999.
- [26] TSN dated September 2, 1991, p. 11.
- [27] People vs. Hilario, 284 SCRA 344, 354 (1998); People vs. Lising, 285 SCRA 595, 643 (1998); People vs. de Vera, et al., G.R. No. 128966, August 18, 1999.
- [28] People vs. Reyes, 287 SCRA 229, 238 (1998).
- [29] People vs. Carpio, 191 SCRA 108, 118 (1990).
- [30] People vs. Germina, 290 SCRA 146, 151 (1998).
- [31] People vs. Asis, 286 SCRA 64, 74 (1998).
- [32] People vs. Tugbo, Jr., 196 SCRA 133, 139 (1991).
- [33] TSN dated October 28, 1991, pp. 9-10.
- [34] People vs. Medina, 300 SCRA 98, 117 (1998).
- [35] People vs. Aquino, G.R. No. 126047, September 16, 1999.
- [36] TSN dated December 23, 1991, p. 8; Exhibit "M".
- [37] People vs. Abueg, 145 SCRA 622, 634 (1986).
- [38] People vs. Timblor, 285 SCRA 64, 79 (1998).

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