

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGAPITO LOPEZ, ALFREDO DATU, JAZIEL DATU, NOEL DELA CRUZ AND PAUL RANGASA, ACCUSED-APPELLANTS. ALAN CLACIO AND VICENTE SADUES...

G.R. No. 112448. October 30, 1995

Ponente: PUNO, J.

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PUNO, J.:

Agapito Lopez, Alfredo Datu, Jaziel Datu, Noel Dela Cruz, Paul Rangasa, Alan Clacio and Vicente Sadueste were charged with MURDER for the death of Benson Ocampo y Liao.[1] The Information,[2] dated July 14, 1989, against the accused reads:

"That on or about 2:00 o'clock in the afternoon of May 6, 1989, at the market site, Barangay Basud, Municipality of Polangui, Albay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with intent to kill, all armed with bladed instruments and ipil-ipil firewood, with treachery, evident premeditation and superior strength, did then and there willfully, unlawfully and feloniously attack and stab one BENSON OCAMPO, inflicting upon the latter multiple stab wounds and injuries on the different parts of the body, which directly caused his death, to the damage and prejudice of the legal heirs of said BENSON OCAMPO.

"ACTS CONTRARY TO LAW."

Accused Noel dela Cruz, Paul Rangasa and Alfredo Datu were arraigned on August 4, 1989; Agapito Lopez, on September 28, 1989; and Jaziel Datu, on February 8, 1991. They pleaded 'not guilty.'[3] Their co-accused, Vicente Sadueste and Alan Clacio, have remained at large.

The facts:

The residents of Barangay Basud, Polangui, Albay, were jovially celebrating the barrio's feast day on May 6, 1989. On that day, however, tragedy befell the family of Benson Ocampo y Liao.

The evidence for the prosecution tried to establish that, at about 2:00 p.m., on May 6, 1989, the victim, Benson Ocampo, was playing basketball by himself at the market site in Polangui, Albay. His friends Oscar Infante, Elmer Garcia, and Samuel Marilag were sitting in a stall owned by Vencio General, some five (5) meters away from him.

Moments later, accused Alan Clacio and Noel dela Cruz approached Benson. Suddenly, Dela Cruz boxed Benson on the right cheek. Clacio and Dela Cruz immediately fled in opposite directions.[4]

Infante, Garcia, and Marilag asked Benson why he was boxed. Benson replied that it was nothing.[5] Benson's group then decided to hang around in one of the eateries at the market site.

Accused Clacio and Dela Cruz returned to the market site. This time, they were with their "barkadas", namely,

Jaziel Datu, Paul Rangasa, Agapito Lopez, and Vicente Sadueste. They were all armed. Clacio, Dela Cruz and Jaziel Datu were each carrying a piece of firewood. Rangasa had a piece of firewood and a pair of scissors. Lopez had a kitchen knife while Sadueste had a bladed weapon used in cutting firewood.[6]

Benson was undaunted. Closely followed by Infante, Garcia, and Marilag, he confronted Dela Cruz and Clacio. He asked them why Dela Cruz assaulted him. There was an ominous silence. Suddenly, fighting erupted. In unison, Clacio, Dela Cruz, Rangasa and Jaziel Datu ganged up on Benson, hitting the latter's forehead, right cheek and lower right cheek.[7]

Benson's friends were not spared by the accused. During the affray, Marilag and Garcia were clobbered by Dela Cruz and Clacio, respectively. Marilag and Garcia were thus forced to retreat.[8] Infante, on the other hand, was hit by Paul Rangasa with a piece of wood. Although hurt, Infante could not fight back nor run because Jaime Rangasa intervened and held his (Infante's) hands.[9] Jaime is the father of Paul Rangasa.

Alfredo Datu, a barangay tanod and the father of accused Jaziel Datu, also joined the melee. He bent Benson's elbows towards the latter's back. Benson was pinned in that defenseless position when accused Lopez stabbed him.[10] After the stabbing, the accused scampered away from the scene.

Benson was rushed to the hospital. He died immediately thereafter. His body was autopsied by Dr. Vivian Bustamante, Municipal Health Officer of Polangui, Albay. Her examination revealed that Benson sustained eight (8) injuries, most of which were inflicted on his head, including the fatal stab wound on the chest.[11] The cause of death was "shock secondary to hemorrhage, massive secondary to stab wound, anterior chest wall, right." [12]

At about 4:30 p.m., that tragic day, barangay tanods Alfredo Datu and Jaime Rangasa reported the incident to Pat. William Sergio. At that time, Pat. Sergio was attending to the traffic at the poblacion, a few meters away from the crime scene. Alfredo Datu and Jaime Rangasa surrendered the weapons used during the affray consisting of two (2) kitchen knives and a bolo. Pat. Sergio's initial investigation revealed that Dela Cruz' group was responsible for the incident. However, only the names of accused Clacio and Dela Cruz were entered in the police blotter as the main suspects.[13] The following day, however, the sworn statements of Infante, Marilag and Garcia were taken. They identified the other assailants as Agapito Lopez, Alfredo Datu, Jaziel Datu and Vicente Sadueste.

The defense gave a different version.

Three (3) of the accused, namely, Dela Cruz, Rangasa and Alfredo Datu, admitted their presence at the crime scene. Dela Cruz and Rangasa alleged that it was Benson and his friend, Garcia, who started the fight. On his part, Alfredo Datu denied any participation in the melee and insisted that when he arrived at the locus criminis the commotion was over.

Accused Lopez and Jaziel Datu claimed they were some place else at the material date and time.

In essence, NOEL DELA CRUZ testified that at about 2:00 p.m., on May 6, 1989, he and Alan Clacio were playing basketball at the market site in Polangui, Albay. Garcia came and accused him of stealing the ball they were playing with at that time. Unable to hold his temper, Garcia slapped him. He retaliated with a fist blow. They engaged in a fistfight.

Benson Ocampo then emerged from one of the eateries within the vicinity and rushed to Garcia's succor. Benson was armed with a knife. Clacio stepped in and tried to wrestle the knife from Benson. While they were grappling for the knife, Clacio fell flat on his back. Benson also fell on the ground and was struck by the knife he was holding as Clacio twisted his (Benson's) hands.

PAUL RANGASA claimed he was at his grandmother's eatery, also located at the market site, when the incident

happened. He saw the incident from a distance of about five (5) meters. When Dela Cruz was overpowered by Garcia, Clacio tried to box Garcia. Benson, however, suddenly appeared and lunged at Clacio. Turning around, Clacio saw the thrust coming. Clacio and Benson grappled. Clacio fell flat on the ground, but he was able to pull Benson. Benson fell on top of Alan and was pierced in the process by his own knife which was then pointed upwards.

ALFREDO DATU, the father of accused Jaziel Datu and a barangay tanod of Basud, Polangui, Albay, alleged that he was at the Philippine National Railways (PNR) station, near the market site, when the stabbing incident occurred. He was wearing his barangay tanod uniform. He was watching the games (palaro) when a small boy called his attention on the commotion at the market site. Alfredo Datu immediately proceeded to the basketball court which was only about 15 meters away from the PNR station. There, he found Benson lying prostrate on the pavement. He asked for help. Infante and Garcia responded and helped him carry Benson on board a "pedicab" (sidecar). The two brought Benson to the hospital while he was left at the crime scene. He recovered two (2) kitchen knives at the scene and surrendered them to the authorities.

JAZIEL DATU's defense was alibi. He claimed that on May 6, 1989, at about 1:00 p.m., he went to his brother's house in Guinobatan, Albay. He left Guinobatan at about 5:30 p.m. and arrived in Polangui at about 6:00 p.m. Jaziel denied any participation in the killing of Benson, claiming that he had no ill-feelings against Garcia, Infante and Marilag. He surmised that he was being implicated in the crime because he was a close friend of the other accused.

AGAPITO LOPEZ admitted he was in Polangui, Albay in the morning of May 6, 1989. Allegedly, he acted as a proxy for his brother, Eric Lopez, during the baptism of Pardo's son. He went there alone. At around noon, he left Polangui, Albay, and reported for work at H.M. Laguno Philcraft located in Bagumbayan, Daraga, Albay. His testimony was corroborated by his employer, Mrs. Aniceta Roa Laguno.

After trial, the lower court convicted the accused. The dispositive portion of the impugned Judgment, dated March 26, 1993, reads:

"WHEREFORE, the Court finds the accused AGAPITO LOPEZ, ALFREDO DATU, JAZIEL DATU, NOEL DELA CRUZ and PAUL RANGASA, guilty beyond reasonable doubt of the crime of Murder penalized under Article 248 of the Revised Penal Code and accordingly sentences AGAPITO LOPEZ, ALFREDO DATU and JAZIEL DATU to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law. NOEL DELA CRUZ and PAUL RANGASA, who at the time of the commission of the offense were below 18 years old, are sentenced to suffer an indeterminate penalty of imprisonment ranging from eight (8) years of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum with all accessory penalties provided by law. All the accused shall likewise jointly and severally, indemnify the heirs of Benson Ocampo the sum of P50,000.00 and to pay the costs.

"SO ORDERED."

Hence, the present appeal.

In their brief, accused-appellants fault the trial court for giving greater credence to the version of the prosecution. They claim that their guilt had not been established beyond reasonable doubt.

We reviewed the transcript of stenographic notes of this case with greater caution inasmuch as the ponente[14] of the assailed decision was not the one who originally presided over the case when the prosecution and the defense presented their evidence.[15] After examining the diametrical position taken by the parties, we are convinced that the testimonies of eyewitnesses Oscar Infante and Samuel Marilag evince truthfulness and sincerity. They mentioned in detail how they and the victim were assaulted by accused-appellants. Their version of the incident

jibed in all relevant and material aspects.

The extensive cross-examination of these prosecution witnesses by the defense counsels failed to destroy the prosecution's theory that accused-appellants acted in unison in hitting the victim's head, and while his elbows were being held at the back by accused-appellant Alfredo Datu, he was stabbed by Agapito Lopez.

Notably, accused-appellants could not pinpoint any material discrepancy in the testimonies of eyewitnesses Infante and Marilag. The incident occurred on May 6, 1989. Infante and Marilag testified on February 15, 1990, and February 16, 1990, respectively. After Jaziel Datu's arraignment on February 8, 1991, Infante and Marilag were recalled to the witness stand. They testified on March 6, 1991 and March 7, 1991, respectively. Despite the lapse of time between the stabbing incident and the dates they testified in court, their account of the incident remained consistent. As observed by the trial court:

"The testimon(ies) of prosecution witnesses, notably Oscar Infante and Samuel Marilag, (are) credible and positive. As the Court observed, there was no cogent reason at all for them to concoct or fabricate their statements. When recalled to the witness stand during the separate trial of accused Jaziel Datu, the narration of facts given by them were substantially unchanged. Having witnessed the slaying of Benson Ocampo, Oscar Infante and Samuel Marilag pinpointed to Agapito Lopez, Alfredo Datu, Jaziel Datu, Paul Rangasa and Noel dela Cruz, (as the persons) responsible for the death of the victim. The identity of the culprits was established by the prosecution through clear, positive and precise evidence. On the other hand, the defense's version of the incident is too unnatural and too improbable to be believed at all, particularly anent the claim that Benson Ocampo was hit by his own knife when he allegedly fell down with Alan Clacio when the two were grappling with each other."

Indeed, the testimonies of Infante and Marilag have all the earmarks of truth.

First. The presence of Infante and Marilag at the locus criminis was confirmed by accused-appellant Dela Cruz who admitted that said eyewitnesses were only about five (5) meters away from the basketball court when the incident occurred. Considering their proximity at the scene of the crime, we are convinced that Infante and Marilag accurately saw the assault, properly identified the assailants, and truthfully related their respective participation in the crime.

Second. It will be recalled that accused-appellants Dela Cruz and Rangasa blamed Garcia and the victim for the incident. Garcia allegedly slapped accused-appellant Dela Cruz while the victim lunged at accused Clacio with a kitchen knife. Clacio and the victim grappled until both of them fell on the ground and, in the process, the victim was pierced by his own knife. Accused-appellant Dela Cruz peddled the story that nobody assaulted the victim.[16] He could not, however, explain why and how the victim sustained several injuries, six (6) in particular, on his head. The nature, location and number of injuries inflicted on the victim belie their stance that the victim and Garcia were the aggressors. Equally unbelievable is the allegation of accused-appellant Rangasa that the victim sustained injuries while he was being carried to the pedicab. Parenthetically, accused-appellants Dela Cruz and Alfredo Datu did not corroborate Rangasa's allegation. Neither did accused-appellants present evidence that they sustained injuries due to the alleged wrongdoings of the victim and Garcia.

Third. The testimony of accused-appellants Dela Cruz, Rangasa, Lopez and Alfredo Datu are inconsistent with each other. Accused-appellant Dela Cruz claimed he was playing basketball with Clacio before the incident.[17] In contrast, accused-appellant Rangasa said he did not see anybody play basketball at that time. Rangasa was categorical in declaring that Dela Cruz was talking to some girls near the basketball court while Clacio was reading "comics" some ten (10) meters away from Dela Cruz.[18] On his part, accused-appellant Lopez averred he went to the baptismal party alone. This was contradicted by Dela Cruz who claimed that he was with Lopez at the said party.

We reject the argument of accused-appellants that they were implicated in the case at bar, a serious one, due to their close association with each other. The rule is that in the absence of proof that a witness is moved by improper motive, the presumption is that he was not so moved and, therefore, his testimony is entitled to full faith and credit.[19] In this case, no ill-motives were attributed to eyewitnesses Infante and Marilag when they identified accused-appellants as the culprits.[20] Indeed, their presence at the crime scene is given.

Accused-appellants Rangasa and Dela Cruz also capitalize in their minority to bolster their innocence. Rangasa was born on April 1, 1974,[21] Dela Cruz on August 31, 1972.[22]

Minority is not exculpating. Neither is it credibility enhancing. Accused-appellants Rangasa and Dela Cruz cannot escape liability in view of their positive identification by the eyewitnesses. If at all, their minority would only serve as a privileged mitigating circumstance pursuant to Article 13 of the Revised Penal Code.[23]

We are not also convinced by the denial and alibi of accused-appellants Agapito Lopez and Jaziel Datu. Trite is the jurisprudence that denial and alibi cannot prevail over the positive identification by eyewitnesses who have no untoward motive to falsely testify.[24] For alibi to prosper, it must be shown that it was physically impossible for the accused to be at the scene of the crime or its immediate vicinity at the time the crime was committed.[25]

The trial court correctly rejected their alibi since it was not physically impossible for both accused-appellants to be at the scene of the crime at the time of its commission. Even if it was established that accused-appellant Lopez was in Daraga, Albay, said place is only about forty minutes from Polangui, Albay, via ordinary means of land transportation. Buses and jeepneys regularly ply the route.

Likewise, the trial court was justified in not believing accused-appellant Jaziel Datu's claim that he was in Guinobatan, Albay, since it is geographically nearer to Polangui, Albay. It would take less than thirty minutes for a person to travel from Guinobatan to Polangui, and vice versa, as only two (2) municipalities, Oas and Ligao, separate them.

Accused-appellants underscore the failure of the authorities to reflect the names of Agapito Lopez, Alfredo Datu, Jaziel Datu, and Vicente Saduesta in the police blotter when the stabbing incident was reported by Garcia and Marilag barely two (2) hours after the incident.[26] The omission was due to the fault of the investigator and not the eyewitness, Marilag. Marilag explained that the investigating officer directed him and Garcia to return the following morning for the execution of their sworn statements as the regular investigator was not around. Marilag testified:[27]

"ATTY. ROA:

"Q:

There is here a certification which has been marked as Exhibit "F" for the prosecution and Exhibit "1" for the defense which reads: 'On or about 2:00 P.M. May 6, 1989, stabbing incident occurred inside the market site, Barangay Basud, Polangui, Albay. Victim identified as Benson Ocampo y Liao, alias "Nong" who suffered stab wounds on the body and (the) same was rushed to Isip Hospital for medical treatment. Suspects were identified as a certain Noel dela Cruz of Magurang, Polangui, Albay, and alleged Alan Clacio of Basud, Polangui, Albay, per information from witnesses, namely: (1) Elmer Garcia y Diaz, ... and (2) Samuel Marilag y Ibarreta ...' Are you the same Samuel Marilag who is stated in this certification or mentioned in this certification?

(SAMUEL MARILAG):

"A:

I am the one, Ma'am.

"Q:

And the entry was numbered 10859, dated May 6, 1989, and the time is 1640 hours. So you reported the incident at about 4:40 in the afternoon?

"A:

Yes, Ma'am.

x x x x x x x x

"Q:

After giving this report, you did not report anymore to the policemen as to who the other suspects were, is that right? Except the two (2) persons you named, namely: Noel dela Cruz and Alan Clacio?

"A:

We were asked to come back the following morning.

"Q:

You were asked to comeback the following morning and you already mentioned the names of the other accused?

"A:

Yes, Ma'am.

"Q:

Why did you not mention them right away when you reported the incident to the police?

"A:

Because we were asked by the policeman who started the trouble and then I answered Alan Clacio and Noel dela Cruz.

x x x x x x x x

"COURT:

"Q:

If your statement is correct, you were asked at 4:30 in the afternoon of that day who was the cause of the trouble, is that correct?

"WITNESS:

"A:

Yes, your Honor.

"Q:

Now, considering that at 4:30 (p.m.) the incident was already over and you said you saw Agapito Lopez stabbed (sic) Benson Ocampo, now, the question is why did you not volunteer to the police the name of Agapito Lopez as the one who stabbed Benson Ocampo?

"A:

Because, your Honor, we were asked to go back the following morning because the person investigating us was not the regular investigator.

"Q:

Were you told that the one investigating was not the regular investigator?

"A:

Yes, your Honor.

"ATTY. ROA:

"Q:

But when you reported the incident to the police at 4:30 in the afternoon of May 6, you were asked by the policeman who were the suspects, is that right?

"WITNESS:

"A:

No, we were not asked.

"Q:

How was the policeman able to record the names of Noel dela Cruz and Alan Clacio?

"A:

Because we were asked who was the cause of the trouble and we were asked to return for the regular investigator.

x x x x x x x x

"Q:

When you said that you saw Agapito Lopez stabbed (sic) Benson and you reported the stabbing incident to the police, why did you not tell the policeman that it was Agapito Lopez who stabbed Benson Ocampo on May 6, 1989, at 4:30 in the afternoon?

"WITNESS:

"A:

I told them but I was asked to come back the following morning because the other investigator was not around.
(Italics supplied)

The next issue is whether the prosecution proved the existence of conspiracy. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[28] In *People vs. Regalario*,[29] we held: "(a)n indicium of conspiracy is when the acts of the accused are aimed at the same object, one performing one part and another performing another part so as to complete it with a view to the attainment of the same object, and their acts, though apparently independent were in fact cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments." In a conspiracy, the act of one is the act of all.[30]

We hold that accused-appellants conspired with each other. Their concerted actions reveal their common criminal intent to harm the victim, if not cause him death. The prosecution established that accused-appellants Dela Cruz, Rangasa, and Jaziel Datu were each armed with a piece of firewood while Lopez had a kitchen knife when they approached the victim. They simultaneously attacked the victim and his friends Infante, Garcia and Marilag. Lopez delivered the coup d' grace when he stabbed the victim while Alfredo Datu held the arms of the victim.

We are not convinced by accused-appellant Alfredo Datu's proposition that he could not be held liable as a conspirator. To prove conspiracy, the prosecution need not establish that all the parties thereto agreed to every detail in the execution of the crime or that they were actually together at all stages of the conspiracy.[31] It is enough that from the individual acts of each accused, it may reasonably be deduced that they had a common plan to commit the felony.[32]

Accused-appellant Alfredo Datu is a co-conspirator and a principal by indispensable cooperation although he was not with the group of accused-appellant Dela Cruz at the initial stage of the assault. Undeniably, he joined the fracas and helped accused-appellants in their fight against the victim and his friends. His participation was not minimal. It was his act of holding the arms of the victim which prevented the victim from defending himself and gave accused-appellant Lopez the opportunity to deliver the fatal blow.

We now tackle the issue of whether treachery, abuse of superior strength, and evident premeditation attended the commission of the crime.

We hold that treachery was not employed in the killing of the victim. There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[33] Alevosia or treachery presumes an attack that is deliberate and unexpected. There is no treachery when the victim is placed on guard, as when a heated argument preceded the attack, especially when the victim was standing face to face with his assailants, and the initial assault could not have been unforeseen.[34]

In the case at bar; the victim was aware of the danger on his life. He was boxed by accused-appellant Dela Cruz without any provocation. He was warned by his friends that the reinforced group of accused-appellant Dela Cruz had returned. Yet, despite the odds, the victim approached the well-armed accused-appellants and demanded for an explanation why Dela Cruz assaulted him.[35] The victim could not have missed the fact that accused-appellants were already around, ready and raring for a deadly fight.[36] He chose to be courageous, instead of being cautious. He courted obvious danger, and when it came, it cannot be defined as sudden, unexpected and unforeseen.

The trial court also correctly disregarded the circumstance of evident premeditation.[37] The following elements of evident premeditation must be established by clear and convincing proof: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender had clung to his determination; and (3) the lapse of an interval of time between the determination to commit the crime and the execution thereof, sufficient to allow the offender to reflect upon the consequences of his act. Evident premeditation requires a showing that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[38] The prosecution evidence simply showed that after accused-appellant Dela Cruz boxed the victim, he and Clacio left. A few minutes later, they returned with the other accused-appellants and assaulted the victim. From these circumstances, we cannot deduce with certainty that accused-appellants had "sufficient time" to reflect with coolness and reflection on the consequences of their acts.

Be that as it may, accused-appellants are still liable for murder in view of the presence of the qualifying circumstance of superior strength. Abuse of superior strength is evident from the notorious disparity between the relative strength of the victim and the six (6) armed assailants. The manner in which they attacked the victim before the fatal stab wound was inflicted on him clearly proves that they took advantage of their physical and numerical superiority.[39]

Finally, the penalty. Accused-appellants are guilty beyond reasonable doubt of Murder for the death of Benson Ocampo. In the absence of any mitigating or aggravating circumstance, accused-appellants Agapito Lopez, Alfredo Datu, and Jaziel Datu should suffer the penalty of reclusion perpetua. Accused-appellants Noel dela Cruz and Paul Rangasa are entitled to the privileged mitigating circumstance of minority, thus, pursuant to Article 68 (2) of the Revised Penal Code their penalty shall be within the range of prision mayor in its medium period to reclusion temporal in its minimum period.

IN VIEW WHEREOF, accused-appellants Agapito Lopez, Alfredo Datu, and Jaziel Datu, are sentenced to suffer the penalty of RECLUSION PERPETUA. Accused-appellants Noel Dela Cruz and Paul Rangasa shall suffer indeterminate sentence ranging from 8 years and 1 day of prision mayor as minimum to 14 years and 8 months of reclusion temporal as maximum.[40] Further, accused-appellants are jointly and severally liable to pay the legal heirs of the victim, Benson Ocampo, in the amount of fifty thousand pesos (P50,000.00), as civil indemnity. Costs against accused-appellants.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Mendoza, and Francisco, JJ., concur.

[1] Docketed as Criminal Case No. 2654, Regional Trial Court (Branch XIV) of Ligao, Albay.

[2] Rollo, p. 13.

[3] Original Records, pp. 69, 114, 283.

[4] TSN, February 15, 1990, pp. 4-6; TSN, February 16, 1990, Samuel Marilag, pp. 9-10, 13.

[5] Ibid., at pp. 4-7.

[6] Ibid., at p. 7.

[7] TSN, February 15, 1990, pp. 15-16.

[8] TSN, February 15, 1990, pp. 7-8, 20-21, 23; TSN, February 16, 1990, pp. 27-28.

[9] TSN, March 6, 1991, p. 12.

[10] TSN, February 15, 1990, p. 9; TSN, February 16, 1990, p. 15.

[11] The victim sustained lacerated wound on the forehead, right side; abrasions above the eyebrow, right jaw, on the cheek bone line, and the face; incised wound between the thumb and index finger; and stab wound on the chest.

[12] Exhibit "A-2"; Original Records, p. 476.

[13] Exhibit "F".

[14] Judge Romulo SG. Villanueva.

- [15] The hearing of the case was originally presided by Judge Protacio C. Santo Tomas and, thereafter, by Judge Jose S. Sanes. Judge Villanueva presided the case during the presentation of prosecution's rebuttal evidence.
- [16] TSN, November 22, 1990, p. 30.
- [17] TSN, November 22, 1990, p. 5.
- [18] TSN, October 24, 1990, pp. 15-17.
- [19] *People vs. Panganiban*, G.R. No. 97969, February 6, 1995, 241 SCRA 91, 100.
- [20] TSN, October 24, 1990, p. 13; TSN, September 26, 1991, p. 7.
- [21] Original Records, p. 32.
- [22] TSN, November 22, 1990, pp. 11-12; cf. Exhibit "3"; Original Records, p. 25.
- [23] *People v. Villagrancia*, G.R. No. 94311, September 14, 1993, 226 SCRA 374, 381.
- [24] *People vs. Morales*, G.R. No. 104994, February 13, 1995, 241 SCRA 267, 275.
- [25] *People vs. Morales*, *supra*.
- [26] Original Records, p. 481-a.
- [27] TSN, March 7, 1991, pp. 14-16, 19.
- [28] Article 8 of the Revised Penal Code.
- [29] Penned by Associate Justice Florenz D. Regalado; G.R. No. 101451, March 23, 1993, 220 SCRA 368.
- [30] *People vs. dela Cruz*, G.R. Nos. 101000-01, October 18, 1993, 227 SCRA 278, 284.
- [31] *People vs. Regalario*, *supra*.
- [32] *People vs. Lorenzo*, G.R. 89376, August 5, 1991, 200 SCRA 207, 217.
- [33] Article 14 (16), Revised Penal Code; Two (2) requisites must concur before treachery can be appreciated, viz: (1) that at the time of the attack, the victim was not in a position to defend himself; and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.
- [34] *People vs. Gasper, et al.*, G.R. No. 103303, August 5, 1993, 225 SCRA 189.
- [35] TSN, February 15, 1990, pp. 15-16.
- [36] *People vs. Buela, et al.*, G.R. No. 92536, November 8, 1993.
- [37] Article 14 (13), Revised Penal Code.
- [38] *People vs. Danque*, G.R. No. 107978, November 19, 1993, 228 SCRA 83, 91; *People vs. Rivera*, G.R. 101798, May 10, 1993, 221 SCRA 647, 656.
- [39] *People vs. Regalario*, *supra*.
- [40] *People v. Daquipil*, G.R. Nos. 86305-06, January 20, 1995, 240 SCRA 314, 334; *People v. Regalario*, G.R. No. 101451, March 23, 1993, 220 SCRA 368, 388.

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