

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERTO DANO Y JUGILON, ACCUSED-APPELLANT.

G.R. No. 117690. September 01, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision of the Regional Trial Court of San Miguel, Zamboanga del Sur, Branch 29, in Criminal Case No. 1579, promulgated on July 25, 1994, finding appellant Alberto Dano y Jugilon guilty beyond reasonable doubt of murder, for the death of his brother Emeterio Dano, and imposing upon him the penalty of reclusion perpetua.

The facts of this case are gleaned from the records.

On April 11, 1994, the Provincial Prosecutor of Zamboanga del Sur charged appellant with the crime of murder, as follows:

“That on or about March 16, 1994 at around 6:30 o’clock in the evening, more or less, at Tiguan, Margosatubig, Zamboanga del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously, assault, attack, hack and stab his brother Emeterio Dano inflicting several mortal wounds causing his instantaneous death.

“Contrary to law with qualifying aggravating circumstances of evident premeditation and treachery.”[1]

On May 3, 1994, appellant was arraigned and with the assistance of counsel de parte, pleaded not guilty to the charge. Trial on the merits then ensued.

The prosecution presented four witnesses: Wilfredo Tapian, a carpenter; Demosthenes Peralta, the barangay captain of Tiguan, Margosatubig, Zamboanga del Sur; SPO3 Jesus Reales of the Philippine National Police (PNP); and Teresita Dano, widow of the victim.

The prosecution’s evidence established the following:

On March 16, 1994, at around half past six o’clock in the evening, prosecution witness Wilfredo Tapian was resting in the house of a Neneng Miras in Tiguan, Margosatubig, when Teresita Dano arrived and asked for his help. Teresita told Wilfredo that her husband, Emeterio, attacked his brother Alberto, herein appellant, in the latter’s house.[2] Wilfredo immediately rushed to appellant’s house, which was some one hundred meters away.

On arriving at appellant’s house, Wilfredo saw the victim pacing back and forth in appellant’s front yard. The victim, armed with a scythe was shouting at appellant, who was looking out of the window, to come down so they could fight to the death. (“Kanaog diri kay magkamatay ta.”)[3] Wilfredo tried to pacify the victim who kept repeating his challenge while striking his scythe on the ground, but to no avail.[4] Appellant also advised his younger brother to go home, but the latter refused to listen. Suddenly, Emeterio leaped at appellant who was

standing with his head out of the window and slashed appellant with his scythe but missed.[5] Seeing that his efforts to stop the fraternal quarrel were of no use and fearful of being hit in the affray, Wilfredo left for home.

Between the hours of six and seven o'clock that same evening, Demosthenes Peralta, the barangay captain of Tiguan, was informed by Wilfredo and a certain Fernando Teves that the Dano brothers were quarreling.[6] Demosthenes went to appellant's home to investigate. On his way, he met appellant. The latter told Peralta he had killed Emeterio and voluntarily surrendered to him.[7] Demosthenes left appellant in Wilfredo's house and proceeded to appellant's residence where he saw the bloody corpse of the victim sprawled in the yard, near the stairs.[8] He noticed that the body bore several hacking and slashing wounds.[9] Demosthenes fetched appellant from Wilfredo's house and took him to the police station.

Early in the morning of the next day, Demosthenes fetched a doctor from the town proper of Margosatubig. The latter examined the victim's body, still lying in appellant's yard. At the request of the police station commander, Demosthenes took photos of the corpse, which he later turned over to the police.[10] He conducted a further examination of the crime scene and found a bloodstained scythe beneath appellant's house.[11] The scythe's wooden handle had the name "Alberto Dano" carved on it. He turned over the scythe to the police.

The necropsy report established that the cause of death was acute blood loss, secondary to multiple hacking wounds.[12]

When interrogated by the police, appellant, without assistance of counsel, admitted he killed his brother. The pertinent portion of his statement, contained in the police blotter, and read into the records without objection by the defense, reads:

"[S]ubject admitted of (sic) killing his younger brother as the latter was drunk and provoked him for (sic) a scythe duel right downstairs of his house that prompted him to get his scythe and come down from his house and allegedly boxed first his brother and subsequently hacked several times as he was already commanded by his evil thought(s)."[13]

The victim's widow admitted that the scythe, which her late husband carried on that fateful day, was returned to her by some people in their barangay.[14] She did not turn over the scythe to the police.[15]

The defense presented appellant and his spouse as its witness.

Appellant claimed that he acted in self-defense and in defense of his family. He narrated that he and his family were preparing to go to bed at around 6:30 p.m. March 16, 1994, when he heard somebody shout "Boy, come down and we will fight to death." ("Boy kanang diha kay magpatay ta")[16] At first, he tried to ignore the challenge, but when it was repeated several times, he looked out the window and saw his brother Emeterio outside, armed with a scythe. He told his brother to go home but the latter, who appeared disturbed, did not heed his words. Instead, he kept on hitting the ground with the scythe.[17] Without any provocation on his part, Emeterio suddenly leaped at him and attacked him with the scythe, which he evaded.[18] Emeterio then ascended the stairs to push open the bamboo door on the porch leading to their living room.[19] The door partially opened after Emeterio slammed it several times. Appellant's wife and children screamed and cried in fear.[20] Appellant held and twisted his brother's wrist to disarm him of the scythe.[21] They grappled for the scythe while in the porch, then tumbled down the stairs.[22] When they hit the ground, the victim was dead. Appellant did not know how many times he hit his brother or how many wounds he inflicted.[23] He said he was not in a normal state of mind. Seeing that he had killed his brother, appellant threw the scythe under his house and went to the barangay captain to surrender. His spouse largely corroborated appellant's version of the first round of the fratricidal affray.[24] She claimed, however, that she did not see how the victim was killed as they were inside the house and she, as well as her children, had their eyes closed in shock and fear.[25]

Appellant denied owning the scythe found by the barangay captain beneath his house.[26] He did not know why his name was engraved on the wooden handle of said scythe.[27] He was sure, however, that it was the same scythe that his brother was carrying during the incident.[28]

Appellant explained that he had a previous misunderstanding with the victim over the purchase of a horse from his cousin Doroteo Oliver on installment basis. Emeterio wanted to buy the horse, but appellant bought it ahead of him, which caused the former to resent him.[29]

The court below disbelieved appellant's version of the incident and decided as follows:

“WHEREFORE, judgment is hereby rendered finding the accused Alberto Dano y Jugilon guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, defined and penalized under Article 248 of the Revised Penal Code, and there being no proof of any modifying circumstances either to aggravate or mitigate the liability, hereby sentences said accused to suffer the penalty of reclusion perpetua; to pay the heirs of the deceased the sum of P50,000.00 by way of indemnity for the death of said victim; P3,000.00 as actual damages, compensatory damages of P2,000.00 by way of unrealized earnings and to pay the costs.

“SO ORDERED.”[30]

On August 2, 1994, appellant seasonably filed his notice of appeal. He assigns the following errors:

I

THE LOWER COURT ERRED IN MAKING A SWEEPING CONCLUSION THAT TREACHERY EXISTS IN THE CASE AT BAR.

II

THE LOWER COURT ERRED IN DISREGARDING, IF NOT TOTALLY IGNORING, THE ACCUSED'S CLAIM OF SELF-DEFENSE AND/OR DEFENSE OF RELATIVES, OR AT LEAST INCOMPLETE SELF-DEFENSE AND/OR DEFENSE OF RELATIVES.

III

THE LOWER COURT ERRED WHEN IT SAID THAT EXHIBIT “E” OF THE PROSECUTION WAS NOT OBJECTED TO BY THE DEFENSE.

IV

THE LOWER COURT ERRED IN RELYING TOO MUCH CREDENCE (sic) TO THE TESTIMONY OF TERESITA DANO WHO DECLARED THAT THE SCYTHER (EXHIBIT “D” FOR THE DEFENSE ON ONE HAND, WHILE EXHIBIT “4” FOR THE PROSECUTION) WAS OWNED BY THE ACCUSED AND NOT THAT OF THE VICTIM.

Simply stated, the pertinent issues for our consideration are:

(1)

Did the trial court err in admitting the extrajudicial confession of the accused?

(2)

Did the court a quo err in failing to appreciate appellant's defense of self-defense and/or defense of relatives, or at the least incomplete self-defense and/or defense of relatives?

(3)

Did it err in convicting appellant of murder qualified by treachery and imposing the penalty therefor?

On the first issue, appellant avers that it was error for the trial court to give weight to the admissions made by appellant during custodial investigation (Exhibit “E”). Appellant contends that his constitutional and statutory right to counsel during custodial investigation was violated when the police took his statements without a lawyer to assist him. He further argues that the trial court should have declared his statements before the police inadmissible when they were objected to during the trial.

A person under investigation for the commission of an offense is guaranteed the following rights by the Constitution: (1) the right to remain silent; (2) the right to have competent and independent counsel of his own choice, and to be provided one if he cannot afford the services of counsel; and (3) the right to be informed of these rights.[31] These rights “cannot be waived except in writing and in the presence of counsel.”[32] A confession to be admissible must satisfy the following requirements: (1) the confession must be voluntary; (2) the confession must be made with the assistance of competent and independent counsel; (3) the confession must be express; and (4) the confession must be in writing.[33] In convicting the accused of the offense charged, the trial court held:

“Accused’s testimony on the witness stand however, contradicts his version appearing on the police blotter of the police station of Margosatubig dated March 16, 1994, where he admitted the killing of his younger brother Emeterio Dano as ‘the latter was drunk and provoked him for (sic) a scythe duel right downstairs of his house that prompted him to get his scythe and come down from his house and allegedly boxed first his brother and subsequently hacked several times as he was already commanded by evil thoughts.’

“During the formal offer of evidence by the prosecution, defense counsel admitted the authenticity of the extract of above entry in the police blotter (Exhibit “B”, prosecution) containing the foregoing recital as testified to by SPO4 Jesus Reales. Such entry in the police blotter when not objected to, is presumed to have been accomplished in the regular performance of official duties by the police officer who made the entry, hence is entitled to full faith and credit. It having been entered at the time when the accused had just surrendered to the authorities in a remorseful attitude and in a spontaneous manner free of any extraneous influence and coaching of a lawyer, the same entry carries great weight and high probative value, in the absence of any proof of tampering or alteration thereof. This Court therefore considers the recital in said entry more credible and easy to believe, than the self-serving version of the accused given on the witness stand which is more a product of an after-thought and concocted story than an honest and truthful version of what actually happened.”[34]

We have carefully scrutinized the records including the List of Exhibits for the Prosecution[35] and the prosecution’s offer of evidence[36] and nowhere find mention of Exhibit “E.” What we find offered by the prosecution as evidence is the testimony of SPO3 Jesus Reales “on the authenticity of the entries on the police blotter.[37] The blotter recorded the incident immediately after the crime and another entry in the morning, recorded what was observed on the scene of the crime including a description of the prostrate body of the accused.”[38] We also noted in the records that the defense objected to the admission of the testimony of SPO3 Reales “because said witness is incompetent to testify as to the entry...having admitted...that he was not one who entered that (sic) events in the police blotter and...that he has no knowledge when the entries in the police blotter were made...”[39] Moreover, we noted that SPO3 Reales admitted that as an assistant investigator, he was familiar with investigation procedures.[40] Under cross-examination, he also admitted appellant was interrogated by the police regarding the incident,[41] but there was no showing whatsoever appellant was assisted by counsel during custodial investigation.[42]

Considering the foregoing circumstances, we find merit in appellant’s claim that his constitutional rights were violated. First, the trial court erred when it relied on the supposed extrajudicial confession of appellant in the police blotter. Extrajudicial confessions must conform to the requirements of the Constitution.[43] A suspect’s

confession, whether verbal or non-verbal, when taken without the assistance of counsel without a valid waiver of such assistance regardless of the absence of coercion or the fact that it had been voluntarily given,[44] is inadmissible in evidence,[45] even if appellant's confession were gospel truth.

We also find the court's reliance on the presumption that official duty has been regularly performed[46] misplaced. This presumption cannot by itself prevail over positive averments concerning violations of the constitutional rights of an accused.[47]

It was also error for the trial court to have considered and relied on the questioned entry in the police blotter, given the failure of the prosecution to offer it in evidence. Evidence which has not been formally offered cannot be considered by courts.[48] There is valid reason, therefore, to strike down the lower court's reliance on the assailed police blotter entry in convicting appellant.

All these, however, do not suffice to acquit appellant of the offense charged. Appellant admitted killing the victim before the barangay captain, who is neither a police officer nor a law enforcement agent. Such admission, even if done without the assistance of a lawyer, is not in violation of appellant's constitutional rights.[49] The constitutional requirements on custodial investigation do not apply to spontaneous statements made in a voluntary manner whereby appellant orally admitted authorship of the crime.[50] What the Constitution proscribes is the compulsory or coercive disclosure of incriminating facts.

On the second issue, appellant pleads self-defense and/or defense of relatives. When an accused invokes self-defense, the onus probandi to show that the killing was justified shifts to him.[51]

Even if the prosecution evidence were weak, it could not be readily dismissed after the accused had openly admitted his responsibility for the killing. Self-defense, like alibi, is inherently a weak defense, which can easily be concocted.[52]

For self-defense to prosper, appellant must prove by clear and convincing evidence the following elements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[53]

In order that defense of a relative may be appreciated, the following requisites must concur: (1) unlawful aggression by the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part therein.[54]

Appellant faults the trial court when it concluded that unlawful aggression was absent at the time of the killing. He insists that the killing of and the attack by the victim were nearly simultaneous, without appreciable interval of time. Assuming that the number of wounds sustained by the deceased negated self-defense and/or defense of relative, according to appellant, the trial court erred in not appreciating incomplete self-defense, given the fact that the other elements of the justifying circumstances involved were present, namely, unlawful aggression on the part of the victim and lack of sufficient provocation on appellant's part.

The Solicitor General counters that appellant's defenses cannot be appreciated since the victim was already unarmed when killed. There was no more danger to the life and limb of appellant or to the members of his family. Unlawful aggression was absent at the time of the killing. Furthermore, the appellant was unscathed in the tumult, while he was able to inflict twelve (12) hacking wounds on the victim. This fact belies appellant's theory and reveal an intent to kill the victim. Inasmuch as appellant failed to prove there was no unlawful aggression, there cannot be any self-defense, complete or incomplete, according to the Solicitor General.

For self-defense or defense of a relative, whether complete or incomplete, to be appreciated, the element of

unlawful aggression is indispensable.[55] If there is no unlawful aggression, there is nothing to prevent or repel.[56] For unlawful aggression to be appreciated, there must be a positively strong act of real aggression, and not merely a threat or an intimidating stance. Thus, the accused who claims self-defense or defense of relative must positively establish that there was an actual, sudden, and unexpected attack or imminent danger thereof, on the part of the victim.

In the instant case, the trial court found:

“...Despite the long scuffle over the possession of the scythe with his deceased brother which started from the porch of their house up to the ground near the stairway, accused has (sic) never sustained a single wound on his body, not even a scratch or a bruise. In contrast, the deceased sustained twelve (12) multiple hacking wounds all over his body...He admitted that from the time he gained control and possession of the scythe from his brother, the deceased was already armless (sic) and there was no more danger to himself coming from his brother.”[57]

The question of whether appellant acted in self-defense is essentially a question of fact.[58] In the instant case, the trial court found that appellant was able to disarm the victim before the killing. It was also established that, despite appellant’s assertion that he engaged in a life or death struggle for the possession of the weapon during which the combatants fell from the porch to ground, he incredibly sustained nary a scratch or injury. By contrast, the victim suffered twelve (12) ghastly wounds, some of which were at his back. In view of these findings, the evidence for the defense cannot be characterized as clear and convincing. The deceased and appellant were allegedly wrestling all over the crime scene for possession of the weapon, yet the victim sustained wounds in the back. The number, location, and gravity of the wounds that the victim sustained do not support the claim of unlawful aggression on his part at the time he was killed. If appellant were merely defending himself, he did not have to hack the deceased a dozen times. Moreover, appellant’s inability to explain why he came out of the fierce struggle unscathed seriously and hopelessly damages his credibility. Thus, in the absence of any showing that the factual findings were reached arbitrarily or without sufficient basis, appellate courts accord the highest respect and even finality to findings of fact by trial courts.[59]

We share the view that appellant was able to disarm his assailant before the latter was killed. Then there was no longer any real peril to the life or safety of the appellant or his family when the victim lost his weapon. When unlawful aggression which has begun earlier no longer exists, the one making the defense has no right to kill or even wound the former aggressor.[60] To successfully invoke self-defense and defense of relative, appellant must prove by evidence most satisfactory, the concurrence of all the elements of self-defense and/or defense of a relative, the most important of which is unlawful aggression on the victim’s part. Absent unlawful aggression, there can be no self-defense or defense of a relative, complete or incomplete, and conviction of appellant must follow.[61]

On the third issue. Appellant submits the qualifying element of treachery is absent in the instant case. He relies on *People v. Butler*, 120 SCRA 281(1983) where we held that treachery is not present where accused and victim grappled with each other and *People v. Maguddatu*, 124 SCRA 594 (1983), where we ruled that treachery cannot be appreciated where the killing was made on the spur of the moment.

To this the Solicitor General agrees. The Solicitor General points out that treachery cannot be appreciated because the evidence on the record is bereft of any showing of the precise manner in which the killing was done. He cites *People v. Timple*, 237 SCRA 52 (1994). Relying on *People v. Cedenio*, 233 SCRA 356 (1994), he argues that treachery cannot be presumed but must be proved by evidence as convincing and conclusive as the killing itself. Thus, he concludes that appellant should only be convicted of the crime of homicide.

Treachery occurs when the accused employs means, methods, or forms in the execution thereof without risk to

himself arising from the defense which the offended party might make.[62] There is treachery where the accused's attack was so sudden and launched from behind that the victim was caught off guard without an opportunity to defend himself.[63]

The trial court's findings with respect to the presence of treachery cannot be sustained. For treachery to be appreciated, the following must be proven: (1) the employment of means of execution which give the person assaulted no opportunity to defend himself or retaliate; and (2) the deliberate or conscious adoption of such means adopted by the assailant.[64] In this case, there was no showing whatsoever by the prosecution that appellant deliberately adopted the means of attack used to kill the victim. Note that it has been established that there was, initially, unlawful aggression on the part of the deceased. Appellant in defending himself from the deadly assault was able to grab the weapon of the victim, disarm him, and kill him. The circumstances of the assault show that appellant did not have the luxury of time to deliberate and contemplate the manner or method of killing the victim. Moreover, the deceased had deliberately provoked and attacked appellant. For treachery to be appreciated there must not be even the slightest provocation on the part of the victim.[65]

Absent the qualifying circumstance of treachery, the offense committed is not murder but only homicide under Article 249 of the Revised Penal Code.[66]

Lastly, we find that the trial court failed to appreciate two mitigating circumstances in appellant's favor, namely: (1) that sufficient provocation or threat on the part of the offended party immediately preceded the killing, and (2) that appellant voluntarily surrendered himself to a person in authority or his agents. The record is categorical that appellant surrendered to the barangay captain of Tiguan after the incident. A barangay leader is a person in authority.[67]

The penalty for homicide is reclusion temporal. Where there are two mitigating circumstances and no aggravating circumstances present, the court shall "impose the penalty next lower to that prescribed by law in the period that it may deem applicable." [68] The penalty next lower is prision mayor. Applying the Indeterminate Sentence Law, the maximum penalty to be imposed shall be taken from the medium period of the imposable penalty which is prision mayor, while the minimum shall be taken from the penalty next lower in degree which is prision correccional in any of its periods. Prision mayor in its medium period is eight (8) years and one (1) day to ten (10) years. Prision correccional in its maximum period is four (4) years, two (2) months, and one (1) day to six (6) years.

WHEREFORE, the decision appealed from is hereby MODIFIED. Appellant Alberto Dano y Jugilon is found GUILTY of the crime of HOMICIDE and consequently, sentenced to suffer an indeterminate prison term of four (4) years, two (2) months, and one (1) day of prision correccional as minimum to eight (8) years and twenty (20) days of prision mayor as maximum, and to pay the heirs of Emeterio Dano P50,000.00 as indemnity for his death and P3,000.00 for burial expenses.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Records, p. 1.

[2] TSN, June 9, 1994, pp. 29-30.

[3] Id. at 32.

[4] Id. at 35.

[5] Id. at 54-55.

[6] Id. at 5.

[7] Id. at 7-8.

[8] Id. at 12.

[9] Id. at 11.

[10] Id. at 15-18.

[11] Id. at 20.

[12] Supra Note 1, at 3.

[13] Supra Note 1, at 43.

[14] TSN, June 17, 1994, p. 14.

[15] Id. at 15.

[16] TSN, July 6, 1994, p. 6. See also p. 10.

[17] Ibid.

[18] Supra Note 16, pp. 10-12.

[19] Id. at 13-14.

[20] Id. at 15.

[21] Id. at 16-17.

[22] Id. at 17.

[23] Id. at 34.

[24] TSN, June 17, 1994, pp. 42-45, 47-49, 64-65.

[25] Id. at 51-52.

[26] Supra Note 16, at 8, 31.

[27] Id. at 33.

[28] Id. at 18, 32.

[29] Id. at 20-26.

[30] Supra Note 1, at 80.

[31] CONST. art. III, sec. 12 (1).

[32] Id.

[33] *People v. Gallardo*, G.R. No. 113684, January 25, 2000, p. 12 citing *People v. Deniega*, 251 SCRA 628, 637 (1995).

[34] Supra Note 1, at 73-74.

[35] Rollo, p. 7.

[36] Supra Note 24, at 33-36.

[37] See Records, pp. 43-44.

[38] Supra Note 36, at 35-36.

[39] Id. at 37.

[40] Id. at 23.

[41] Id. at 28-29.

[42] Id. at 29.

[43] CONST. art. III, sec. 12(3).

[44] People v. Agustin, 240 SCRA 541, 556-557 (1995).

[45] People v. Bonola, 274 SCRA 238, 249 (1997).

[46] RULES OF COURT, Rule 131, Sec. 3(m).

[47] People v. Doria, et al., 301 SCRA 668, 698 (1999) citing Tambasen v. People, 246 SCRA 184 (1995); People v. Rigodon, 238 SCRA 27, 35 (1994); People v. Cruz, 231 SCRA 759, 771 (1994).

[48] RULES OF COURT, Rule 132, Sec. 34; People v. Peralta, 237 SCRA 218, 226 (1994).

[49] People v. Andan, 269 SCRA 95, 109-110 (1997).

[50] Aballe v. People, 183 SCRA 196, 205 (1990); People v. Dy, 158 SCRA 111, 123-124 (1988); People v. Taylaran, 108 SCRA 378-379 (1981).

[51] People v. Tan, G.R. No. 132324, September 28, 1999, p. 19

[52] People v. Mier, G.R. No. 130598, February 3, 2000, p. 13 citing People v. Ocsimar, 253 SCRA 689, 695 (1996).

[53] People v. Dela Cruz, G.R. No. 130608, August 26, 1999 citing People v. Cahindo, 266 SCRA 554 (1997).

[54] People v. Bausing, 199 SCRA 355, 361 (1991).

[55] De Luna v. Court of Appeals, 244 SCRA 758, 763 (1995) citing People v. Agapinay, 186 SCRA 812 (1990); People v. Delgado, 182 SCRA 343, 352 (1990); People v. Cañete, 175 SCRA 111, 116 (1989), and US v. Carrero, 9 Phil. 544, 546 (1908).

[56] People v. Ignacio, 270 SCRA 445, 451 (1997).

[57] Supra Note 1, at 67-68.

[58] Jacobo v. Court of Appeals, 270 SCRA 270, 287 (1997) citing People v. Sazon, 189 SCRA 700, 711 (1990).

[59] People v. Tulop, 289 SCRA 316, 326 (1998).

[60] People v. Cawaling, 293 SCRA 267 (1998); People v. Sambulan, 289 SCRA 500, 513 (1998).

[61] *People v. Mendoza*, G.R. No. 133382, March 9, 2000, p. 2.

[62] *People v. Galido*, G.R. No. 128883, February 22, 2000, p. 9 citing *People v. Gungon*, 287 SCRA 618 (1998); *People v. Ignacio*, G.R. No. 134568, February 10, 2000 citing *People v. Cortez*, 286 SCRA 295 (1998); *People v. Aranjuez*, 285 SCRA 466 (1998), *People v. Aquino*, 284 SCRA 369 (1998).

[63] *People v. Flores*, G.R. No. 129284, March 17, 2000, p.12 citing *People v. Carpio*, 282 SCRA 23 (1997).

[64] *People v. Sesbreño*, G.R. No. 121764, September 9, 1999, p. 26 citing *People v. Piamonte*, 303 SCRA 577 (1999).

[65] *People v. Sesbreño*, supra citing *People v. Vermudez*, 302 SCRA 276 (1999).

[66] “ART. 249. Homicide. - Any person who, not falling within the provisions of article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.”

[67] REV. PEN. CODE, art. 152.

[68] REV. PEN. CODE, art. 64 (5).

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