

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNULFO BARRO, SR., ARNULFO BARRO, JR., BENIGNO BARRO, JUAN BARRO, JOEL BARRO, WILFREDO ARROYO, JOEY FLORIN, AND CRISTOBAL SAR...

G.R. No. 118098. August 17, 2000

Ponente: BUENA, J.

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BUENA, J.:

This is an appeal from the Decision dated April 11, 1994 rendered by the Regional Trial Court, Branch 30, San Jose, Camarines Sur, finding Benigno Barro, Joel Florin and Joel Barro guilty beyond reasonable doubt of the crime of murder. The dispositive portion of the decision reads:

“WHEREFORE, the accused Benigno Barro is hereby sentenced to suffer the penalty of reclusion perpetua with the inherent accessories provided by law; the accused Joel Florin to suffer an indeterminate penalty of imprisonment of six (6) years, eight (8) months and one (1) day of prision mayor, as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum; the accused Joel Barro to suffer the penalty of imprisonment of eight (8) years and eight (8) months of prision mayor, and the three (3) of them to indemnify, jointly and severally the heirs of the late Virgilio Saba the sum of Fifty Thousand Pesos (P50,000.00), the sum of Thirty Eight Thousand One Hundred Seventy Six Pesos (P38,176.00), as actual damages, and the sum of Ten Thousand Pesos (P10,000.00), all of Philippine Currency, as moral damages, which civil liability shall be enforced pursuant to Art. 110, RPC, and for each of them to pay the proportionate costs.

“The accused, Benigno Barro, is entitled to full credit of his preventive imprisonment upon proper showing that he agreed to abide with (sic) the rules imposed upon convicted persons, otherwise, he shall only be entitled to four-fifths (4/5) credit thereof. As to the accused, Joel Barro and Joel Florin, pursuant to Art. 197 of the Child and Youth Welfare Code, being Youthful offenders, both of them shall be credited in the service of their sentence with the full time they spent in actual confinement and detention.

“The case against the accused, Arnulfo Barro, Sr., Arnulfo Barro, Jr., Juan Barro, Wilfredo Arroyo and Cristobal Sarte is hereby ordered archived subject to reactivation as soon as the court acquires jurisdiction over them.

“SO ORDERED.”[1]

The facts of the case, as correctly summarized in the People’s Brief, are as follows:

“On June 29, 1989, around 6:00 o’clock in the evening, at Sitio Catduce, Turague, Sangay, Camarines Sur, while waiting for the drizzle to subside, the group of Virgilio Saba, Danilo Libang, Rufino Saba, Exequiel Dacuno and Hilario Cristo, opted to down a few bottles of ‘gin’ before going home. The group proceeded to a store owned by one Eli Credo where they ordered two bottles and some ‘polotan.’ Eli on his part allowed the group to use the kitchen of the said store where the group could enjoy their drink. (TSN, April 8, 1991; TSN, October 16, 1991, p. 3)

“At about the same time, Nimfa Saba, wife of Rufino also arrived to buy some viands for supper and kerosene. (TSN, October 16, 1991, p. 20) However, upon learning of Rufino’s presence, she decided to stay and wait for her husband. While waiting, she conversed with Edwina Credo, wife of Eli, who was attending the store at that time. (Ibid., p. 3)

“Outside the store was an awning where Juan Barro, Arnulfo Barro, Jr., Joel Florin, Joel Barro and Cristobal Arte (invariably referred to in the records as Cristobal Sarte) were playing cards known as ‘pusoy.’ (Ibid, pp. 4-5; pp. 20-21)

“At around 7:00 o’clock that evening, since the drizzle had stopped and considering that Hilario Cristo was already losing his normal dexterity due to excess alcohol intake, Virgilio’s group decided to wrap-up their drinking spree and went home instead. Since it was already dark, Nimfa who went along with them carried an improvised kerosene lamp known in the local dialect as ‘caraba.’ (TSN, August 14, 1991, p. 7; Ibid. p. 8)

“On their way home while traversing the National road going to Tiwi, Hilario who was drunk kept on hurling invectives and making oral challenges to anybody: ‘Siisay an maorag.’ (who is tough) (TSN, April 8, 1991, pp. 8-9; TSN, August 14, 1991; Ibid. p. 5)

“Without their knowledge, such oral invectives hurled by Hilario infuriated the group of Joel Barro who was then still playing pusoy at the store. And while they were about seventy (70) meters away from that store, Juan Barro confronted Hilario Cristo, followed immediately by Arnulfo Barro, Jr., Benigno Barro, Joel Barro, Joel Florin, Cristobal Arte and Wilfredo Arroyo. Exasperated, Juan Barro acrimoniously asked Hilario what he wanted. (TSN, October 16, 1991, pp. 5-6; August 14, 1991, p. 11)

“Suspecting that something untoward might happen, Virgilio, Rufino and Nimfa, confident that the irate group would do them no harm, since the latter were laborers of their father in his lemon plantation, tried to pacify the group telling them to brush aside and ignore Hilario and his importunities, since he was under the influence of liquor. (TSN, April 8, 1991, p. 8; TSN, October 16, 1991, p. 6) However, instead of mellowing down, their actuations all the more irked Benigno Barro, resulting in a heated confrontation between the latter and that of Virgilio. To calm down the almost tense situation and to avoid an imminent physical confrontation between the two groups, Danilo Libang pulled away Virgilio from Benigno. (TSN, August 14, 1991, p. 10)

“Believing that everything was already settled, Virgilio’s group continued headway to their respective houses. But to their great consternation and surprise, an enraged Arnulfo Barro, Sr. instantaneously alighted when the group passed by his house located along the National road and which was around fifty (50) meters from the place where they were first accosted. Arnulfo Sr., brandishing a bolo known as ‘dinalayap’ confronted Virgilio’s group fiercely uttering ‘Haen an mga hayop na iyan?’ (Where are those animals?) Immediately thereafter, sensing another trouble Virgilio embraced Arnulfo, Sr. telling the latter, ‘Wala ito Nol, wala pang nangyayari.’ (TSN, October 16, 1991, pp. 7-9; April 8, 1991, pp. 10-11)

“At this precise moment, Arnulfo, Sr.’s attention was diverted upon seeing Exequiel Dacuno who was then one of Virgilio’s companions. Thenceforth, he challenged the latter, ‘O, ano Exequiel, ano malaban ka?’ Exequiel, as if hearing nothing ignored the challenge and casually left the place thereby leaving the others. (TSN, April 8, 1991, p. 12; TSN, August 14, 1991, p. 9; October 16, 1991, p. 9)

“It was at this juncture that Wilfredo Arroyo, Benigno Barro, Juan Barro, Arnulfo Barro, Jr., Joel Barro, Joel Florin and Cristobal Arte spontaneously positioned themselves in front of Virgilio and without forewarning the latter, Wilfredo Arroyo suddenly struck Virgilio with a knife directly hitting him on the abdominal region. Thereafter, the Barros, Joel Florin and Cristobal Arte, all armed with bladed weapon briskly took turns in ganging-up mercilessly Virgilio Saba, hitting him all over his body several times. (TSN, October 16, 1991, pp. 10-11, TSN, April 8, 1991, pp. 12-13; TSN, August 8, 1991, p. 8)

“Nimfa, Rufino and Danilo were dumbfounded upon witnessing the gruesome crime happening right before

their very eyes. Trepidation overpowered Rufino such that unmindful of his wife, he ran away leaving behind Nimfa, Danilo and Virgilio who was still being mauled. Danilo on his part was about to extend some help but was prevented since Cristobal Arte and Juan Barro knowing that Danilo was about to aid Virgilio chased him, so he was left with no other alternative but to also run away. (TSN, October 16, 1991, p. 13; TSN, April 8, 1991, p. 15)

“Beleaguered though she was, Nimfa on her part was able to cry for help. But this was the most that she could do under this most compelling circumstances. Hence, while yelling ‘that’s enough’ she could just witness how Virgilio was being mauled to death by Barro’s group. She also witnessed how Virgilio, who was already severely wounded, was grappling to walk towards a coconut tree beside the road, approximately about three (3) meters from where the brutal slaying happened, where he subsequently fell down. (TSN, October 16, 1991, pp. 11-15)

“Still confused, Nimfa was about to approach Virgilio after he fell down when she (was) tripped (off), throwing away the improvised lamp she was carrying. Hence, with no other option, she went back to look for another. Upon reaching the house of one Angeles Aquino, she was able to borrow one and while carrying the said lamp on her way back, Arnulfo Barro, Jr., carrying a knapsack and a pair of shoes passed by her. Since her attention was on the fate of Virgilio, she did not mind him. (TSN, October 16, 1991, pp. 15-16)

“Upon reaching the place where the killing happened, Nimfa already saw many people gathered including Eli Credo, her husband Rufino and Virgilio’s wife Tedia Saba. She and Tedia decided to board Virgilio to a jeep and brought him straight to St. John Hospital at Naga City. However, in the hospital, the attending physician of Virgilio pronounced him dead. (TSN, October 16, 1991, pp. 16-18)

“So, the late Virgilio Saba was brought back to Sangay, Camarines Sur, where Dr. Roger Atanacio conducted an autopsy on his cadaver (Exh. “A”).”[2]

In his report[3] Dr. Atanacio found out that Virgilio’s death was caused by massive hemorrhage, secondary to multiple stab wounds. (Exh. “A-2”) Per Medico-Legal Certificate, Virgilio suffered the following injuries:

- Wound stab non-penetrating, 2 cm in length, 3 cm in depth, mid axillary line, level of 7th rib.
- Wound stab non-penetrating, 2 cm in length, 3 cm in depth, posterior axillary line, level of 9th rib.
- Wound stab non-penetrating, 2 cm in length, 2 cm in depth, along the left nipple line, level of 8th rib.
- Wound stab penetrating, 2 cm in length, along the left nipple line, 5 cm above umbilicus, with omental evisceration.
- Wound stab penetrating, 2 cm in length, 3 cm above left paraumbilical area with omental evisceration.
- Wound stab penetrating, 2 cm in length, 5 cm below left paraumbilical area.
- Wound and avulsion, 2 x 1 cm subcutaneous depth 3 cm below right paraumbilical area.
- Wound, incised, 3.5 cm in length, 4 cm in depth left mid upper arm.
- Wound, incised, 3 cm in length, 4 cm depth, mid forearm left.
- Wound, incised, 3 cm in length, 4.5 cm depth, Distal 3rd left forearm.
- Wound, stab, penetrating 2 cm in length along right nipple line, 6 cm above umbilicus with omental evisceration.
- Wound, stab, non-penetrating 2 cm in length, 3 cm depth, located at right posterior axillary line, 3 cm above the level of umbilicus.

- Wound, stab, penetrating, 2 cm in length, right posterior axillary line, level of 9th rib with omental evisceration.
- Wound, hacked, 3 cm in length, 4 cm depth, upper thigh left.
- Wound hacked, 4 cm in length, bone depth, right parietal area.
- Wound, hacked, 5 cm in length, 4 cm depth, left outer lumbar area.
- Wound, stab, non-penetrating, 2 cm in length, 3 cm depth, level of T12 5 cm right para vertebral area (back).
- Wound, stab 2 cm, 6 cm depth, right upper outer quadrant buttocks.
- Abrasion, confluent 2 x 2 cm left knee.

“Internal Findings:

1. There is a perforating injury at the head of pancreas, apparently an extension of wound #4.
2. There is a thru and thru injury of the splenic flexure.
3. There is a thru and thru injury of the duodenum, severely damaged gastroepeploic artery.
4. The inferior mesenteric artery is severely damaged.

“CAUSE OF DEATH:

Massive Hemorrhage secondary to multiple stab wounds.”

On October 31, 1989, the Provincial Prosecutor of Camarines Sur filed an Information dated October 26, 1989 which reads:

“The undersigned 3rd Assistant Provincial Prosecutor accuses Arnulfo Barro, Sr., Arnulfo Barro, Jr., Benigno Barro, Juan Barro, Joel Barro, Wilfredo Arroyo, Joel Florin and Cristobal Arte with the crime of Murder defined and punished under Article 248 of the Revised Penal Code, committed as follows:

“That on or about the 29th day of June, 1989 at Sitio Catduce, Barangay Turague, Municipality of Sagnay, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable court, accused Joel Barro, who is a minor, 15 years of age, at the time of the commission of the offense and who acted with discernment with the seven (7) remaining accused who were still at large, with intent to kill, conspiring, confederating together and mutually helping one another, armed with sharp bladed instrument, with treachery and evident premeditation, with cruelty and abuse of superior strength, did then and there willfully, unlawfully and feloniously assault, attack and stab one after the other one Virgilio Saba y Libang thereby inflicting upon the latter multiple stab wounds on the different parts of his body which were the direct and immediate cause of his death.

“That as a consequence of the illegal acts of the accused, the heirs of said deceased suffered damages in the amount of P50,000.00 plus other forms of damages that may be proven in Court.

“ACTS CONTRARY TO LAW.”[4]

For their part, Benigno Barro and Joel Florin interposed the defense of alibi, claiming that they were in the house of Arnulfo Barro, Sr. in Catduce, Turague, Sangay, Camarines Sur, when the incident happened. Joel Barro failed to testify because he escaped from his confinement at the Tinangis Penal Farm, in a jailbreak.

As aforesated, on April 11, 1994, after trial on the merits, the trial court rendered the herein assailed Decision.

As Joel Barro escaped from his confinement during the trial, a notice of appeal was filed only by Benigno Barro

and Joel Florin through their counsel Atty. Briones. In a Resolution^[5] dated October 14, 1996, this Court granted appellant Joel Florin's motion to withdraw appeal. The sole appellant in the case at bar is Benigno Barro.

Appellant raises the following errors:

I

"The trial court erred in convicting the three (3) accused of the offense charged on the basis of the contradictory and irreconcilable testimonies of the two (2) prosecution witnesses Danilo Libang and Nimfa Saba, who are blood relatives of the victim, and on the basis of the wounds sustained by the latter.

II

"The trial court erred in holding that, with the nineteen (19) wounds inflicted on the body of the deceased, Virgilio Saba, conspiracy is established.

III

"The trial court erred in giving undue reliance on the medical findings of Dr. Roger Atanacio on the cause of death and the surrounding circumstances thereof notwithstanding the fact that said witness' relevant practical experiences, special knowledge and skill of the subject-matter about which he is to testify, did not qualify him as an expert; and in not disallowing hypothetical questions asked that tends to elicit conclusions as to the facts directly in issue."^[6]

After a careful study of the records of the case and the pleadings submitted by both parties, the Court finds the appeal to be without merit.

In support of the first assigned error, appellant faults the court a quo for its reliance on the testimonies of the vital prosecution witnesses, namely: Danilo Libang and Nimfa Saba. He contends that such testimonies are replete of contradictions and are diametrically opposed on such material points as to cast serious doubt on their integrity and credibility. Appellant alleges that there are irreconcilable variance in the testimony of prosecution witnesses, namely: Nimfa's claim that after the first confrontation was pacified, both groups parted ways which, allegedly, contravenes Danilo's testimony that after such mollification, Juan Barro's group followed them and tried to block their way; and the exact participation of Arnulfo Barro, Sr., for, according to Nimfa, the latter simply accosted them with a bolo, hurting nobody, while Danilo positively identified him as the one who inflicted injuries upon the body of the deceased Virgilio Saba.

Appellant's contention is not impressed with merit.

It has become a doctrinal rule for this Court to accord great respect to the factual conclusions drawn by the trial court, particularly on the matter of credibility of witnesses, since the trial judge had the opportunity to observe the behavior and demeanor of witnesses while testifying.^[7] We will not disturb the findings of trial courts with respect to the credibility of the witnesses unless there are facts, or circumstances, of weight and influence appearing in the record which have been overlooked, or the significance of which have been misapprehended or misinterpreted by the trial courts.^[8]

The alleged variance in the testimony of the prosecution's two eyewitnesses relate to inconsequential details. At any rate, herein appellant's participation in the slaying of Virgilio Saba is not being contested.

Moreover, the existence of conspiracy was proven by the prosecution. Where conspiracy is adequately shown, the precise modality or extent of participation of each individual conspirator becomes secondary, the applicable rule being that the act of one conspirator is the act of all of them.^[9] What is important in this case is that the herein appellant Benigno Barro was positively identified by the vital prosecution witnesses in a straight-forward,

categorical and candid manner to have participated in the overt act before and during the killing of Virgilio Saba. The alleged inconsistencies do not in any way refute the positive identification made by the two eyewitnesses that it was Benigno Barro, Joel Barro and Joel Florin, among others, who killed the victim.

Witnesses are not expected to remember every single detail of an incident with perfect or total recall.[10] It bears emphasis that witnesses testifying on the same event do not have to be consistent in every detail as differences in recollections, viewpoints, or impressions are inevitable.[11] Even the most candid witness oftentimes make mistakes and fall into confused and inconsistent statements but such honest lapses do not necessarily affect their credibility.[12]

As to the appellant's allegation that the witnesses were allegedly interested blood relatives of the deceased victim, and thus the trial court erred in relying on Danilo Libang and Nimfa Saba's testimonies, suffice it to say that no law disqualifies relatives of the victims of a crime from testifying about the facts and circumstances of the crime. Relationship per se of a witness to the victim, whether by consanguinity or affinity, is no indicator of an impaired credibility of a witness, nor would it affect his positive and clear testimony and render it unworthy.[13] The defense did not even present evidence to indicate that the said prosecution witnesses were moved by improper motives. Thus, the presumption is that they were not so moved and their testimonies are thus entitled to full faith and credit.[14]

With regard to the second assigned error, appellant claims that the trial court erred in holding them guilty of conspiracy for the murder of Virgilio Saba on the basis of the nineteen (19) wounds inflicted on the deceased. According to them, the evidence on record is bereft of proof to establish facts and circumstances that could lead to a reasonable and logical inference that the three accused agreed to kill the victim and actually decided to commit it.

The Court is not persuaded.

Conspiracy need not be shown by direct proof of an agreement by the parties to commit the crime. The conduct of the malefactors before, during or after the commission of the crime is sufficient to prove their conspiracy.[15]

The following telling circumstances attending the instant case all point out unequivocally to the existence of conspiracy: the prosecution witnesses were able to categorically identify the accused as among those present in the store of Eli Credo playing "pusoy" during that fateful night; they were the companions of Juan Barro when the latter tried to accost an unruly Hilario Cristo; they were all there, present, and armed with bladed weapons, during the precise moment when Arnulfo Barro, Sr., brandishing a bolo, ferociously confronted the group of the deceased; and their active participation in the mauling, stabbing and killing of the helpless victim.

In *People vs. Datun*[16] this Court ruled that conspiracy was shown to exist when the appellants and their companions surrounded the victim and, without a word, hacked and stabbed him to death. The same thing could be said in this case, considering the following testimony of Danilo Libang on cross-examination:

"Atty. Orino: When Virgilio Saba was then being assaulted by the group of the Barros namely Arnulfo Barro, Sr., Arnulfo Barro, Jr., Benigno Barro, Juan Barro, Joel Barro, Alfredo (sic) Arroyo, Josel (sic) Florin and Cristobal Arte, some of them were behind Virgilio Saba, correct?

A While he was still stepping backwards the group was in front of him but when the group caught up with him that was the time when they ganged-up with (sic) him and was surrounding him.

Q And the others were stabbing the back of Virgilio Saba?

A Yes, sir.

Q How many did you see stabbing the back of Virgilio Saba?

A The group was encircling Virgilio Saba.

Q So you want to impress this Honorable Court that all of them stabbed the back of Virgilio Saba?

A There were those who were in front, there were those who were on the side, there were those who were at the back. "[17]

Taking into consideration the foregoing testimony of prosecution witness Danilo Libang, conspiracy may be inferred therefrom as it is clear that the acts of the accused were characterized by unity of purpose, intent and design in order to effect a common unlawful objective – to kill the victim Virgilio Saba.

The above quoted testimony also serves to negate appellant's allegation that the aggravating circumstance of treachery is not attendant in this case. Appellant cites the principle that for treachery to be appreciated, the offender employs means, methods, or forms in the execution of the crime which tend directly and specially to insure its execution without risk to himself, arising from the defense which the offended party might make, which means that no opportunity was given to the latter to do so.

This was precisely what the appellant and his co-accused did to the victim Virgilio Saba. The accused, all armed with bladed weapons, surrounded the accused, who was not armed, and together, attacked the victim thereby insuring the execution of the crime without risk to themselves, and giving the victim no opportunity to defend himself nor harm his attackers. Thus, the trial court did not err in ruling that treachery is attendant in this case.

On the third assigned error, appellant assails the trial court for according credence to the medical findings of Dr. Roger Atanacio as to the cause of death and other surrounding circumstances of Virgilio Saba, notwithstanding that said witness' relevant and practical experience, and special knowledge do not qualify him as an expert witness.

This contention is misplaced.

The testimony of an expert witness is not indispensable to a successful prosecution for murder. While the autopsy report of a medico legal expert in cases of murder, or homicide, is preferably accepted to show the extent of the injuries suffered by the victim, it is not the only competent evidence to prove the injuries and the fact of death. The testimonies of credible witnesses are equally admissible regarding such injuries and the surrounding circumstances thereof.[18]

Hence, granting that Dr. Atanacio's opinions as to the instrument used in the killing of Virgilio, and the cause of death should be expunged from the record as he might not qualify as an expert witness, conviction of herein accused is still in order. Dr. Atanacio's opinion on the matter was merely corroborative, as he was presented merely as an ordinary witness, and, under the laws of evidence, corroborative evidence is necessary only when there are reasons to warrant the suspicion that the witness is prevaricating or that his observations were inaccurate.[19] In the case at bar, since credibility of prosecution witnesses was established and these witnesses were able to positively identify the three accused to be among those who brutally slew Virgilio with bladed instruments, resort to, and reliance on Dr. Atanacio's testimony were mere surplusage.

We now discuss the penalties imposed on the appellants.

As heretofore stated, the circumstances recited indicate the attendance of conspiracy among the appellants. In such case, the act of one becomes the act of all, and each of the accused will thereby be deemed equally guilty of the crime committed.[20]

However, mitigating circumstances are personal to an accused in whose favor they are determined to exist and

cannot be enjoyed by his co-conspirators or co-accused.[21]

The trial court correctly ruled that:

“The court, however, believes that the accused, Joel Barro being then 14 years old, eleven (11) months and twenty-two (22) days, who acted with discernment at the time of the commission of the offense as alleged in the information and therefore, a fact deemed admitted by the prosecution, said accused is entitled to a privileged mitigating circumstance of minority, and pursuant to Art. 68, par. (1), Revised Penal Code, he is entitled to a discretionary penalty which is lower by two (2) degrees from that provided by the law for the crime which he committed. And with respect to accused Joel Florin, then 17 years old at the time of the commission of the offense he is entitled to the penalty next lower to that prescribed by law shall be imposed to him but always in the proper period.

“As to accused, Benigno Barro neither is their (sic) aggravating nor mitigating circumstance is attendant in the commission of the offense, the penalty to be imposed shall, therefore, be in the medium period. As such, the indeterminate sentence law is not applicable as regards the said accused. But, as regards the accused, Joel Barro, who escaped from jail during the pendency of this case, he is disqualified from the benefits of the indeterminate sentence law (People vs. Manabat, L-8904, December 28, 1956 O.G. 6090 cited in 78 SCRA 57). However, as regards the accused Joel Florin the indeterminate (sentence) law is applicable to him and the penalty imposable shall be within the range of a penalty next lower to that prescribed by the code for the offense, and the maximum shall be that, which after taking into account the circumstance attending the commission of the offense shall be properly imposed under the rules of the code.”[22]

Joel Barro, below 15 years old at the time of the commission of the offense, is entitled to the privileged mitigating circumstance of minority pursuant to Article 68, par. 1[23] of the Revised Penal Code. The penalty for murder is reclusion temporal in its maximum period to death.[24] Two degrees lower is prision correccional maximum to prision mayor medium. Joel Barro escaped from jail, hence, he is disqualified[25] from the benefits of the Indeterminate Sentence Law. He should, therefore, be meted the straight penalty of eight years which is within the medium period (6 years 1 month and 11 days to 8 years and 20 days) of the said penalty. The trial court erred in imposing the penalty of imprisonment of 8 years and 8 months because it is outside the range of said penalty. The records show that Joel Barro did not appeal. However, where the penalty imposed on the co-accused who did not appeal was a nullity because it was never authorized by law, that penalty imposed on the accused who did not appeal can be corrected to make it conform to the penalty prescribed by law, the reason being that, said penalty can never become final and executory and it is within the duty and inherent power of the Court to have it conformable with law.[26]

Joel Florin, 17 years old at the time of the commission of the offense is entitled to the privileged mitigating circumstance of minority pursuant to Art. 68, par. 2[27] of the Revised Penal Code. One degree lower than the penalty imposed by law is prision mayor in its maximum period, to reclusion temporal in its medium period. The maximum of the indeterminate penalty should be imposed in its medium period (12 years, 5 months and 11 days to 14 years, 10 months and 20 days). The minimum of the indeterminate penalty is anywhere within the range of the penalty next lower, which is prision correccional maximum to prision mayor medium (4 years, 2 months and 1 day to 10 years). As to Joel Florin, the trial court correctly imposed the indeterminate penalty of imprisonment of six (6) years, eight (8) months and one (1) day of prision mayor, as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.

As to accused-appellant Benigno Barro, there being no mitigating nor aggravating circumstance, the trial court correctly imposed the penalty of reclusion perpetua, which is the medium period of the penalty for murder.

WHEREFORE, the decision appealed from is hereby AFFIRMED with the MODIFICATION that accused Joel

Barro is sentenced to suffer the penalty of imprisonment of eight (8) years of prision mayor.

SO ORDERED.

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

- [1] RTC Decision, Original Records, pp. 391-400.
- [2] Appellee's Brief, pp. 3-11, Rollo, pp. 150-158.
- [3] Exhibit "A," Original Records, pp. 3-4.
- [4] Information, Original Records, p. 34.
- [5] Resolution, Rollo, p. 188.
- [6] Appellant's Brief, pp. 1-2, Rollo, pp. 94-95.
- [7] People vs. Cabel, 282 SCRA 410.
- [8] People vs. Carpio, 282 SCRA 23.
- [9] People vs. Mercado, 275 SCRA 581.
- [10] People vs. Alas, 274 SCRA 310.
- [11] People vs. Alas, 274 SCRA 310; People vs. Alolod, 266 SCRA 154.
- [12] People vs. Mendoza, 236 SCRA 666.
- [13] People vs. Baniel, 275 SCRA 472.
- [14] People vs. Perciano, 233 SCRA 393.
- [15] People vs. Hayahay, 279 SCRA 567.

[16] 272 SCRA 380.

- [17] TSN, August 14, 1991, p. 11.
- [18] People vs. Baybayon, 184 SCRA 13.
- [19] People vs. Comia, 236 SCRA 185.
- [20] People v. Sanchez, et al., 308 SCRA 264 [1999].
- [21] People vs. Qutorio, 285 SCRA 196 [1998].
- [22] RTC Decision, pp. 9-10, Rollo, pp. 24-25.
- [23] Art. 68. Penalty to be imposed upon a person under eighteen years of age. - When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of Article 80 of this Code, the following rules shall be observed:
 - 1. Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.

2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

[24] Article 248, Revised Penal Code.

[25] Section 1, Indeterminate Sentence Law.

[26] *People vs. Gatward, et al.*, 267 SCRA 785 [1997].

[27] See footnote No. 23.

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