

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LARRY CONSEJERO Y PASCUA AND ROMMEL MALAPIT (AT LARGE), ACCUSED.

G.R. No. 118334. February 20, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the February 2, 1994 Decision[1] of the Regional Trial Court of Aparri, Cagayan, Branch 6, in Criminal Case No. VI-619, convicting accused-appellant Larry Consejero y Pascua of the crime of robbery with homicide.

The information against accused-appellant alleges:

That on or about May 25, 1989, in the municipality of Lal-lo, province of Cagayab (sic), and within the jurisdiction of this Honorable Court, the said accused LARRY CONSAJERO (sic) and ROMMEL MALAPIT, armed with an M-14, conspiring together and helping one another, with evident premeditation, with intent to gain, and by use of violence against and intimidation of persons, did then and there wilfully, unlawfully and feloniously take, steal and carry away against the will of the owner, Jaime Israel, one motor engine, Briggs and Straton, worth THREE THOUSAND SEVEN HUNDRED EIGHTY SIX (P3,786.00) PESOS, Philippine Currency; and that on the same occasion (sic) of the Robbery, and in furtherance of their criminal design, the said accused, LARRY CONSAJERO (sic) and ROMMEL MALAPIT, armed with an M-14 and a deadly weapon, conspiring together and helping one another with intent to kill and with treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stabbed one DESTO CASTILLO and one DIONISIO USIGAN inflicting upon them several injuries in the different parts of their bodies which caused their death.

That the crime was committed in an inhabited place.

CONTRARY TO LAW.[2]

Upon arraignment on April 30, 1991,[3] accused-appellant Larry Consejero entered a plea of not guilty. His co-accused, Rommel Malapit was not arraigned, being still at large. At the trial, the prosecution presented the following witnesses: Jaime Israel, Melchor Pulido, Romana Castillo, Zenaida Usigan and Dr. Cesar R. Real.

The facts are as follows:

In the morning of May 26, 1989, two dead bodies were discovered not far from the river bank of Barangay Jurisdicción, Lal-lo, Cagayan. Found lying on the ground, face down, drenched in his own blood with hands tied at the back, was the lifeless body of Modesto Castillo. Twenty meters away lay the dead body of Dionisio Usigan, who sustained thirty-one stab and hack wounds on the different parts of his body.[4]

According to prosecution witness Jaime Israel, the victims were last seen alive in the afternoon of May 25, 1989, when the two went out to fish at the Cagayan River using his motorized banca with Briggs and Straton engine.[5]

Another prosecution witness, Melchor Pulido,[6] a resident of Masingal, Lal-lo, Cagayan, testified that in the

afternoon of May 25, 1989, his neighbor, accused-appellant Larry Consejero, a CAFGU member, invited him to gather fish caught in the Cagayan River. Melchor Pulido agreed, and, together with accused-appellant, who was then carrying an M-14 armalite rifle, he rode a banca towards Barangay Jurisdicción, Lal-lo, Cagayan. That was between the hours of 8:00 o'clock and 9:00 o'clock in the evening of May 25, 1989. With them was accused Rommel Malapit, who was also armed with an M-14 armalite rifle.

After emptying the contents of the fishnets, they noticed at a distance a motorized banca carrying two persons. They paddled towards the motorized banca. When they got nearer, accused-appellant asked the two persons in the boat, "Were you not the ones who usually demand quota from Barangay Captain Bacuyan?" The two replied, "No." Then, accused-appellant asked the two if there was a nearby store. They answered in the affirmative, whereupon accused-appellant told them to accompany him and his companions to the said store. The two bancas then proceeded to the river bank. Upon reaching the bank, however, accused-appellant said that only one should accompany them. Thus, one of them, who turned out to be Dionisio Usigan, went with accused-appellant Larry Consejero and accused Rommel Malapit towards the northeast direction. Left behind were Melchor Pulido and Modesto Castillo. After ten (10) minutes, accused-appellant and accused Rommel Malapit returned holding an armalite rifle and a ten-inch bolo, respectively. Dionisio Usigan was not with them anymore.

Upon orders of accused-appellant, Rommel Malapit tied the hands of Modesto Castillo at his back using a portion of a fishnet and, thereafter, they brought him to the same northeast direction where Usigan was taken. Again, only Larry Consejero and Rommel Malapit came back; Modesto Castillo was no longer with them.

Accused-appellant then detached the engine of the motorized banca ridden by Usigan and Castillo, while Melchor Pulido was told to stand as look-out. After they loaded the engine in their banca, the three of them headed home. On the way, the two accused told Melchor Pulido that the persons they met were already dead. Accused-appellant threatened to kill Melchor Pulido and his family if Pulido reveals what he knew. After they alighted from the banca, Pulido went straight home while accused-appellant and Rommel Malapit brought the engine of the motorized banca to a cogonal area.

The following morning, May 26, 1989, the lifeless body of Modesto Castillo and Dionisio Usigan were found not far from the river bank of Barangay Jurisdicción, Lal-lo, Cagayan. The motorized banca ridden by the two deceased was nowhere to be found.[7]

The postmortem examination of the two deceased, conducted at around 12:00 noon of May 26, 1989 by Dr. Cesar R. Real, Municipal Health Officer of Lal-lo, Cagayan, disclosed that Modesto Castillo and Dionisio Usigan died approximately between 7:00 o'clock p.m. to 12:00 o'clock midnight of May 25, 1989. Modesto Castillo sustained eight (8) incised and stab wounds; while Dionisio Usigan sustained a total of thirty-one (31) hack, stab, and incised wounds on the different parts of his body.[8]

Melchor Pulido explained that he executed a sworn statement only on September 12, 1990, because he was afraid that accused-appellant would make good his threat to kill him and his family if he would reveal what he knew. In fact, they had to move to the house of his parents-in-law in order to avoid accused-appellant, who happened to be their neighbor. It was only when accused-appellant was no longer a member of the CAFGU that he gathered enough courage to report to the authorities.[9]

The defense relied mainly on denial and alibi. Accused-appellant testified that he became a CAFGU member sometime before May 25, 1989, and was accordingly issued an M-14 armalite rifle. He recounted that in the afternoon of May 25, 1989, on his own initiative, he went to the Office of SPO3 Rogelio Constantino, PNP, Lal-lo, Police Station to ask permission to go to the then 117th Philippine Constabulary Company at Barangay Punta, Aparri, Cagayan, to report the presence of some New People's Army members along the other side of the

Cagayan River at Sitio Sianig, Barangay Fabrica, Lal-lo, Cagayan. Accused-appellant left his M-14 armalite rifle with one Rey Conseja, another CAFGU member, before going to Aparri, Cagayan. He arrived there at around 3:00 o'clock in the afternoon of May 25, 1989, and immediately reported to SPO3 Edgardo Daniel.[10]

Accused-appellant further testified that on his way to get a ride home, he met two police officers in the person of SPO1 Porfirio Divina and SPO3 Amante Gorospe, who invited him to have a drinking spree inside the headquarters of the PNP of Aparri. They later transferred to the house of SPO1 Porfirio Divina where they resumed drinking. Accused-appellant spent the night in said house. The following morning, May 26, 1989, at around 6:00 o'clock, he left the house of SPO1 Divina, rode a passenger jeepney and went straight home.[11] Accused-appellant claimed that he ceased to be a member of the CAFGU and surrendered his M-14 armalite rifle on March 16, 1990. From then on, he stayed most of the time in Aparri, Cagayan, for fear of the NPAs who were allegedly after him.[12]

The version of accused-appellant was corroborated by the testimony of SPO1 Porfirio Divina, SPO3 Edgardo Daniel, SPO3 Rogelio Constantino and Patrolman Virgilio Camacam.

On February 2, 1994, the trial court rendered the judgment of conviction under review. The dispositive portion thereof reads:

"WHEREFORE, premises considered, this Court, in the interest of justice, after trial on the merits of this case, finds LARRY CONSEJERO y Pascua, one of the two (2) accused herein, Rommel Malapit, the other of the two (2) accused herein, being still at-large, GUILTY beyond reasonable doubt, as principal, of the crime of Robbery With Homicide, as defined and penalized under Article 293 and 294, No. 1 of the Revised Penal Code, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to indemnify the Heirs of DIONISIO USIGAN, one of the two (2) deceased victims herein, in the amount of FIFTY THOUSAND PESOS (P50,000.00), Philippine Currency, as well as the Heirs of MODESTO OR DESTO CASTILLO, the other of the two (2) deceased victims herein, in the amount of FIFTY THOUSAND PESOS (P50,000.00), Philippine Currency, and to pay the costs of suit.

The bail bond set for the provisional liberty of Larry Consejero, one of the two accused herein, is hereby cancelled and, immediately after the promulgation of this Decision, the Officer-In-Charge of the Provincial Jail of Cagayan at Aparri, Cagayan or his duly authorized representative, is hereby ordered to immediately transmit his person for confinement at the Provincial Jail of Cagayan at Tuguegarao, Cagayan, and, immediately thereafter, the Provincial Warden of Cagayan at Tuguegarao, Cagayan shall transmit his person to the National Penitentiary at Muntinlupa, Rizal.

SO ORDERED.[13]

Hence, accused-appellant is before this Court, contending that:

I

THE REGIONAL TRIAL COURT ERRED IN CONSIDERING THE EVENTS TESTIFIED TO BY MELCHOR PULIDO AS CONSTITUTING FACTS AND CIRCUMSTANCES FROM WHICH GUILT COULD BE INFERRED; AND, IN CONSIDERING SAID FACTS AND CIRCUMSTANCES TO HAVE BEEN CORROBORATED BY OTHER PROSECUTION EVIDENCE;

II

ASSUMING THAT THE REGIONAL TRIAL COURT DID NOT COMMIT THE FIRST ERROR, IT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF MELCHOR PULIDO AS SAID TESTIMONY IS FILLED WITH IMPROBABILITIES; AND, HE REVEALED TO THE AUTHORITIES HIS KNOWLEDGE OF THE ALLEGED CRIME ONLY AFTER MORE THAN A YEAR AND THREE

MONTHS FROM THE TIME OF THE ALLEGED COMMISSION OF THE CRIME.

III

THE REGIONAL TRIAL COURT ERRED IN REJECTING ACCUSED-APPELLANT'S DEFENSE OF ALIBI.[14]

The appeal is without merit.

Like a tapestry made up of strands which create a pattern when interwoven, the circumstances proved should constitute an unbroken chain which leads to one fair and reasonable conclusion, that the appellant is guilty beyond reasonable doubt. In other words, the circumstances or a combination thereof, should point to overt acts of the appellant that would logically usher to the conclusion and no other that he is guilty of the crime charged.[15] Thus, Rule 133, Section 4 of the Rules of Court, provides:

Sec. 4. Circumstantial evidence, when sufficient. - Circumstantial evidence is sufficient for conviction if:

- a) There is more than one circumstance;
- b) The facts from which the inferences are derived are proven; and
- c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

In the case at bar, the evidence presented by the prosecution established the following circumstances pointing to the fact that accused-appellant was the author of the killing of the two deceased and the unlawful taking of the engine of the motorized banca:

- 1) In the afternoon of May 25, 1989, the two deceased went out fishing at the Cagayan River using Jaime Israel's motorized banca with Briggs and Stratton engine.
- 2) Between the hours of 8:00 and 9:00 o'clock in the evening of May 25, 1989, prosecution witness Melchor Pulido together with accused-appellant and accused Rommel Malapit, who were both armed with M-14 armalite rifles, also went fishing at the Cagayan River, particularly in Barangay Jurisdicción, Lal-lo, Cagayan.
- 3) When the three were emptying the fish nets, they noticed a motorized banca carrying two persons who turned out to be the two deceased. Accused-appellant asked the two persons on board the motorized banca if they were the ones exacting quota from Barangay Captain Bacuyan, to which they replied, "No."
- 4) Accused-appellant requested the two deceased to accompany them to a nearby store. When they reached the river bank the two accused took along with them Dionisio Usigan and proceeded towards the northeast direction; while Modesto Castillo was left on the river bank.
- 5) After ten minutes, accused-appellant, who was holding his armalite rifle, and Rommel Malapit, who was clasping a 10-inch bolo in his hand, went back, but the deceased Dionisio Usigan was no longer with them.
- 6) Accused-appellant ordered Rommel Malapit to tie the hands of Modesto Castillo, which he obeyed using a portion of a fishnet. Thereafter, the two accused brought Modesto Castillo towards the same northeast direction. That was the last time Castillo was seen alive.
- 7) The two accused detached the engine of the motorized banca and loaded it in their own banca while Melchor Pulido was asked by accused-appellant to stand as look-out.
- 8) On their way home, the two accused told Melchor Pulido that the two persons they met were already dead. Accused-appellant also threatened to kill Melchor Pulido and his family if Melchor would reveal what he knew.
- 9) When they alighted from the banca, Melchor Pulido saw the two accused bring the engine to a cogonal area.

10) In the morning of May 26, 1989, the dead body of Modesto Castillo, which sustained several stab wounds and whose hands were tied at his back with a portion of a fishnet, was discovered not far from the river bank of Barangay Jurisdicción, Lal-lo, Cagayan. Twenty meters away was located the dead body of Dionisio Usigan with 31 stab wounds. The motorized banca of Jaime Israel was no longer recovered.

11) The result of the postmortem examination of the two deceased shows that the approximate time of death was between 7:00 o'clock p.m. to 12:00 midnight of May 25, 1989.

From the foregoing, it can be gleaned unerringly that an unbroken chain of circumstances proven by the prosecution clearly shows the guilt of accused-appellant. Unequivocally established is the fact that the two deceased were last seen alive in the company of accused-appellant Larry Consejero and accused Rommel Malapit. A combination of their concerted and complementary acts vividly manifest a common criminal intent to kill the victims and to take the engine of the motorized banca. Thus, their hostile approach towards the two deceased in inquiring if they were the ones exacting quota from the barangay captain, their treacherous and intimidating scheme in cajoling the two deceased to moor their banca, their strategic taking of the two deceased one after the other and the violent act of tying the hands of Modesto Castillo, not to mention the ten-inch bolo clasped in the hands of Rommel Malapit, all taken together with the circumstances that the dead bodies of the two deceased were found the next morning in the same place where they were last seen alive, usher to the inevitable conclusion of accused-appellant's liability for the death of the two deceased. Likewise, the fact that the motorized banca and the engine thereof were no longer found at the river bank where they were last seen, points the liability for the loss of the engine to accused-appellant who was seen to have loaded said engine in their banca on the night of May 25, 1989.

Similarly, in *People v. Bionat*,^[16] the Court, based on circumstantial evidence, meted a judgment of conviction on accused-appellant who, armed with a gun and together with others, tied the victim and took him away from his house. The victim was last seen alive under such circumstances and found dead the following day with stab wounds.

In the case at bar, the gamut of evidence upon which the trial court based its judgment of conviction is anchored mainly on the testimony of prosecution witness Melchor Pulido. Expectedly, attack on his credibility is proffered by the accused-appellant. The constant rule in our jurisdiction, however, is that the Court will accord great respect to the factual conclusions drawn by the trial court, particularly on the matter of credibility of a witnesses since the trial judge had the opportunity - which is denied to appellate courts - to observe the behavior and demeanor of witnesses while testifying. The trial judge is thus able to form at first hand a judgment as to whether particular witnesses are telling the truth or not.^[17]

Thus, the observation made by the trial court on the demeanor of Marcelo Pulido while testifying, comes to the fore, to wit -

This Court, after observing the demeanor of ... Melchor Pulido ... has come to the belief that the same was marked with spontaneity, clarity and candor, all of which were perceptible in the emphasis, gesture and inflection of their voices, frankness of their countenances, simplicity of their languages and total absence of artificiality in their whole manner. It has also come to the belief that, in conformity with day-to-day common knowledge, observation and experience of ordinary man, both ... [his] person[s] and ... [his] testimonies can undoubtedly pass the test of solidly and firmly set touchstones of credibility, for the reason that, aside from demonstrating characters of truthfulness, both in ... [his] person[s] and in ... [his] testimonies, ... Melchor Pulido ... [has] not been positively, clearly and convincingly proven by the defense beyond reasonable doubt, or in any manner whatsoever, to have been or to be nursing any bias or prejudice against the cause of the defense, particularly against that of each of the two accused herein, Larry Consejero and Rommel Malapit, who is still at-large, and, more particularly, against the former, and/or to have uttered prior or subsequent

statements, which are inconsistent with ... [his] testimonies in open court during the trial on the merits of this case, and/or to have failed to perceive the facts testified to by ... [him]. Indeed, the credibility of ... [his] person[s] and that of ... [his] testimonies ... [has] been greatly enhanced, inasmuch as the same ... [has] neither been competently impeached nor sufficiently rebutted, in any manner whatsoever, by the defense! [18]

As the trial court gave full faith and credit to the testimony of Melchor Pulido which this Court, after a careful scrutiny thereof, found to be credible and worthy of belief, the affirmance of the decision under review is in order.

The delay of almost sixteen months before Melchor Pulido executed a sworn statement does not in any way diminish the value of his testimony. As adequately explained by him, the threat on his life and that of his family's cowed him to silence. It was only when accused-appellant was no longer a CAFGU member, and hence, no longer armed, that he gained the courage to reveal what he knew. Verily, delay or vacillation in reporting a crime does not negate the credibility of a witness, especially when the delay is satisfactorily explained. [19]

The alleged improbabilities pointed out by accused-appellant are too inconsequential to merit attention. As correctly argued by the Solicitor General, they refer merely to trivial matters which do not alter the substance of Melchor Pulido's testimony positively identifying accused-appellant as one of the culprits. Moreover, accused-appellant cannot successfully make an issue on the two deceased's alleged improbable obedience to the orders of accused-appellant as well as their failure to put up resistance. The same is true with respect to the failure of Melchor Pulido to help the two deceased. Suffice it to say, Melchor Pulido as well as the two deceased were understandably afraid to antagonize the accused-appellant who was then a CAFGU member and armed with an M-14 armalite rifle. Besides, no standard form of behavior may be expected of Melchor Pulido and the victims. Persons do not necessarily react uniformly to a given situation, given that what may be natural to one may be strange to another. [20]

Anent the defense of alibi theorized by accused-appellant, the Court is of the opinion, and so holds, that the same cannot prevail over the positive identification of accused-appellant by Melchor Pulido as one of the culprits. According to accused-appellant, he was in Aparri, Cagayan at around 3:00 o'clock in the afternoon of May 25, 1989, until the following morning. As testified, however, by Jaime Israel, he in fact met accused-appellant at around 4:30 in the afternoon of May 25, 1989, on his way home from the Bureau of Posts of Lal-lo, Cagayan. [21] What is more, accused-appellant failed to prove the physical impossibility of his presence at the scene of the crime at the time of the commission thereof. Settled is the rule that for alibi to prosper it is not enough to prove that the accused was somewhere else when the crime was committed, but he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. [22]

The trial court found that the geographical distance between Barangay Minanga, Aparri, Cagayan, and Barangay Jurisdicción, Lal-lo, Cagayan is only twenty (20) kilometers, more or less, which could be reached by traveling along the national highway by a motor vehicle for twenty-five (25) to thirty (30) minutes more or less, or by motorized banca for one and a half (1 1/2) hours. [23] Thus, even assuming that accused-appellant was indeed in Aparri, Cagayan, at around 3:00 o'clock in the afternoon of May 25, 1989, the probability of his traveling back to Lal-lo, Cagayan, and his presence at the locus criminis at the time of the commission of the crime, is not at all precluded. Hence, his defense of alibi must fail.

The crime committed by accused-appellant, however, could not be "robbery with homicide." The elements of said crime are as follows: a) the taking of personal property with the use of violence or intimidation against a person; b) the property thus taken belongs to another; c) the taking is characterized by intent to gain or animus lucrandi; and d) on the occasion of the robbery or by reason thereof, the crime of homicide, which is therein used in a generic sense, was committed. [24]

In *People v. Amania*,^[25] the Court had occasion to rule that in robbery with homicide, the killing must have been directly connected with the robbery. It is necessary that there must have been an intent on the part of the offenders to commit robbery from the outset and, on occasion or by reason thereof a killing takes place. The original design must have been robbery, and the homicide, even if it precedes or is subsequent to the robbery, must have a direct relation to, or must be perpetrated with a view to consummate the robbery. The taking of the property should not be merely an afterthought which arose subsequent to the killing.

In the present case, it does not appear that the primary purpose of accused-appellant in accosting the two deceased was to rob the engine of the motorized banca. From all indications, accused-appellant, a CAFGU member, was primarily interested in taking the life of the two deceased whom he suspected of exacting quota from the Barangay captain, and the taking of the subject engine was merely an afterthought that arose subsequent to the killing of the victims.

Clearly therefore, the criminal acts of accused-appellant constitute not a complex crime of robbery with homicide, but three separate offenses: two crimes for the killing of the two deceased, and one for the taking of the Briggs and Straton engine of Jaime Israel.

With respect to Dionisio Usigan, the crime committed is homicide because the qualifying circumstance of treachery alleged in the information cannot affect the liability of accused-appellant. 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.^[26] Considering that no evidence on record showed that accused-appellant consciously and purposely adopted means and methods that would make sure that the killing of Dionisio Usigan would not cause any risk to himself, the crime committed is only homicide.

In the case of Modesto Castillo, the taking of his life was undoubtedly attended by the qualifying circumstance of treachery. In tying Modesto Castillo's hand at his back, accused-appellant obviously adopted a method that would insure the absence of any risk to himself which might arise from the defense that may possibly be put up by Modesto Castillo. Hence, the crime committed by accused-appellant is murder.

In taking the Briggs and Straton engine of the motorized banca, the crime perpetrated was theft. In *People v. Basao*,^[27] the Court ruled that where the taking of the personal property was merely an afterthought and was done after the culprit has successfully carried out his primary criminal intent to kill the victim, and hence, the use of violence or force is no longer necessary, the crime committed is theft. Conformably, since the taking of the engine in the present case was merely an afterthought, and was perpetrated after accused-appellant had already accomplished his original criminal purpose of killing the two deceased, the felony committed is theft.

Then too, the aggravating circumstance of evident premeditation in the unlawful taking of the engine cannot be considered here. Though alleged in the information, the prosecution failed to substantiate the attendance of the elements^[28] thereof in the unlawful taking of the engine.

The penalty for homicide is reclusion temporal. There being neither mitigating nor aggravating circumstances, the appropriate penalty is reclusion temporal in its medium period.^[29] Applying the Indeterminate Sentence Law, accused-appellant is entitled to an indeterminate penalty of eight (8) years 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.

At the time accused-appellant perpetrated the crime of murder, the same was punishable by reclusion temporal in its maximum period to death. Since there was neither aggravating nor mitigating circumstance attendant in its commission, the proper penalty is reclusion perpetua.^[30]

As shown by the receipt presented by Jaime Israel, he purchased the Briggs and Stratton engine for P3,786.00.[31] Under Article 309, paragraph 3, of the Revised Penal Code, theft is punishable by prison correccional in its minimum and medium periods if the value of the property stolen is more than P200.00 but does not exceed P6,000.00. Absent aggravating and mitigating circumstances in the unlawful taking of the engine, the penalty for theft must be imposed in its medium period.[32] With the application of the Indeterminate Sentence Law, the proper penalty, as reparation for the unrecovered Briggs and Stratton engine, is four (4) months and twenty-one (21) days of arresto mayor, as minimum, to one (1) year, eight (8) months and twenty-one (21) days of prison correccional, as maximum.

WHEREFORE, the decision of the Regional Trial Court of Aparri, Cagayan, Branch 86, in Criminal Case No. VI-619, is SET ASIDE and another one is rendered, finding accused-appellant Larry Consejero y Pascua, GUILTY beyond reasonable doubt of the following crimes -

- 1) Murder, for the killing of Modesto Castillo, for which he is sentenced to suffer the penalty of reclusion perpetua;
- 2) Homicide, for the death of Dionisio Usigan, for which he is sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of prison mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.
- 3) Theft, for the unlawful taking of the Briggs and Stratton engine of the motorized banca owned by Jaime Israel, for which he is sentenced to suffer an indeterminate penalty of four (4) months and twenty-one (21) days of arresto mayor, as minimum, to one (1) year, eight (8) months and twenty-one (21) days of prison correccional, as maximum.

Accused-appellant is further ordered to indemnify the heirs of Modesto Castillo and Dionisio Usigan the amount of Fifty Thousand Pesos (P50,000.00) each as indemnity ex delicto.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and Pardo, JJ., concur.

[1] Penned by Judge Benedicto A. Paz.

[2] Rollo, p. 10

[3] Records, p. 95.

[4] TSN, January 15, 1992, pp. 4-7; June 18, 1991, pp. 5-9; and Decision, Rollo, p. 33.

[5] Decision, Rollo, pp. 32-33.

[6] TSN, June 11, 1991, pp. 8-28.

[7] Decision, Rollo, p.33.

[8] Exhibit "E", Records, p. 122 and Exhibit "F", Records, p. 123.

[9] TSN, June 11, 1991, pp. 27-29, 46-47.

[10] Decision, Rollo, pp. 41-43.

[11] Decision, Rollo, pp. 43-44.

[12] TSN, January 29, 1992, pp. 3-6 and 30.

[13] Rollo, pp. 82-83.

[14] Appellant's Brief, Rollo, pp. 124-125

[15] *People v. Juachon*, 319 SCRA 761, 771 [1999]; citing *People v. Flores*, 186 SCRA 303, 314 and VI, *Moran*, *Comments on the Rules of Court*, p. 65 (1980 ed.).

[16] 278 SCRA 454, 467 [1997].

[17] *People v. Sobreano*, 244 SCRA 467, 476 [1995]; citing *People v. Roldan*, 224 SCRA 536 [1993]; *People v. Gerones*, 193 SCRA 263 [1991]; *People v. Natan*, 193 SCRA 355 [1991]; *People v. Umali*, 193 SCRA 493 [1991]; *Concepcion v. Court of Appeals*, 193 SCRA 586 [1991]; *People v. Martinada*, 194 SCRA 36 [1991]; and *People v. Arenas*, 198 SCRA 172 [1991].

[18] Decision, Rollo, p. 53.

[19] *People v. De la Peña*, 232 SCRA 72, 80 [1994]; citing *People v. Conciller*, 206 SCRA 827 [1992] and *People v. Dominguez*, 217 SCRA 170, 177 [1993]; citing *People v. Bustarde, et al.*, 182 SCRA 554 [1990].

[20] *People v. Maguad*, 287 SCRA 535, 544 [1998]; citing *People v. Queliza*, 279 SCRA 145; *People v. Cabrera*, 241 SCRA 28 [1995]; *People v. Paguntalan*, 242 SCRA 753 [1995]; *People v. Halili*, 245 SCRA 312 [1995] and *People v. Espinoza*, 247 SCRA 66 [1995].

[21] TSN, February 17, 1993, pp. 3-4.

[22] *People v. Alfeche*, 294 SCRA 352, 376 [1998]; citing *People v. Penillos*, 205 SCRA 546, 560 [1992]; *People v. Buka*, 205 SCRA 567, 584 [1992]; *People v. Casinillo*, 213 SCRA 777, 791 [1992]; *People v. Florida*, 214 SCRA 227, 239 [1992].

[23] Decision, Rollo, p. 50.

[24] *People v. Nang*, 289 SCRA 16, 28 [1998]; citing *People v. Gavina*, 264 SCRA 450, 455 [1996]; and *People v. Esperraguerra*, 318 Phil. 250 [1995].

[25] 220 SCRA 347, 356-357 [1993]; citing *People v. Verdad*, 122 SCRA 239 [1983]; *People v. Elizaga, et al.*, 86 Phil. 364 [1950]; and *People v. Aquino, et al.*, 124 SCRA 835 [1983].

[26] Revised Penal Code, Article 14, paragraph 16.

[27] 310 SCRA 743, 785 [1999].

[28] 1) the time when the offender has determined to commit the crime; 2) an act manifestly indicating that the culprit has clung to his determination; and 3) an interval of time between the determination and the execution of the crime enough to allow him to reflect upon the consequences of his act (*People v. Adrales*, 322 SCRA 424, 437 [2000]).

[29] Article 249 of the Revised Penal Code in relation to Article 64, paragraph 1.

[30] See Articles 248, before its amendment by R.A. No. 7695, and 64 (1) of the Revised Penal Code.

[31] Exhibit "A," p. 5.

[32] Article 64 (1) of the Revised Penal Code.

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