

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO SAMUDIO Y LORESTO, GERRY LUCERO, SENEN REAZON, AND AUGUSTO BADORIA, ACCUSED.**

*G.R. No. 126168. March 07, 2001*

Ponente: DE LEON, JR., J.

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**DE LEON, JR., J.:**

Before us on appeal is the Decision[1] dated May 22, 1996 of the Regional Trial Court of Virac, Catanduanes, Branch 42, in Criminal Case No. 1845 finding accused-appellants Antonio L. Samudio, Gerry Lucero and Senen Reazon guilty beyond reasonable doubt of murder and sentencing them to suffer the penalty of reclusion perpetua and to pay jointly and severally the amounts of P40,245.00 as actual damages and P50,000.00 as civil indemnity to the heirs of the victim, Baldomero San Juan.

The information charging accused-appellants Antonio L. Samudio, Gerry Lucero, Senen Reazon and one Augusto Badoria with murder, defined and penalized under Article 248 of the Revised Penal Code, reads as follows:

That on or about the 20th day of July, 1991 at barangay San Isidro, municipality of San Andres, province of Catanduanes, Philippines, and within the jurisdiction of the Honorable Court the above named accused conspiring, confederating and mutually helping one another for a common purpose, that is to kill the herein victim, and with treachery, evident premeditation and use of superior strength, did then and there wilfully, unlawfully and feloniously attack and stab one Baldomero San Juan with a deadly weapons hitting him in the different parts of the body, which resulted to his instant death, to the damage and prejudice of his heirs.

That this offense is aggravated by disregard of the respect due to the offended party on account of his rank, being a barangay captain, and that he has not given any provocation.

ALL ACTS CONTRARY TO LAW.[2]

At the arraignment, accused-appellants Antonio L. Samudio, Gerry Lucero and Senen Reazon, with the assistance of counsel, pleaded not guilty to the crime charged.[3] Accused Augusto Badoria has remained at large.

Trial ensued with the testimonies of prosecution witnesses' Dr. Eduardo Ko,[4] a government physician at the San Andres Rural Health Unit; Benjamin Samudio,[5] uncle of accused-appellant Antonio Samudio; Juan Villegas, executive barangay tanod; Rogelio Monjardin,[6] barangay councilman of San Isidro, San Andres, Catanduanes; Ruben San Juan,[7] son of the victim, Baldomero San Juan; SPO2 Ramon Tugay,[8] a policeman stationed in Mayngaway, San Andres, Catanduanes; Josefina San Juan,[9] wife of the victim, Baldomero San Juan; and Honesto V. Morales,[10] MTC Judge of San Andres, Catanduanes who conducted the preliminary investigation of the criminal case.

The evidence for the prosecution shows that at around 4:30 in the afternoon of July 20, 1991 Benjamin Samudio, a resident of San Isidro, San Andres, Catanduanes, was on his way home after tending to his farm. He met along the way Juan Villegas, a barriomate, and together they walked home. When they passed by the house of

accused-appellant Antonio L. Samudio, who is Benjamin's nephew, they saw accused-appellant Antonio having a drinking spree with his three co-accused, Gerry Lucero, Senen Reazon, Augusto Badoria and a certain Marlon Balmaceda. Accused offered them one glass each of "tuba".[11] Thus, after drinking a glass or two (2) of "tuba", the two (2) asked permission to leave, and started for home. When they reached San Isidro, they parted ways.[12]

On his way home, Benjamin saw Baldomero San Juan, barangay captain of San Isidro, at the porch of the house of Remedios Lucero, a barangay council member. He talked with Baldomero for about 20 minutes regarding the note which Baldomero was supposed to issue authorizing Benjamin to cut down trees for lumber. After their conversation, Benjamin left for his house. He noticed that Baldomero walked behind him. When Baldomero was in front of the house of Ely Samudio, who is Benjamin's son, accused-appellant Senen Reazon whose group had moved their drinking session to Ely's house, invited Baldomero to join them. Baldomero went inside Ely's house while Benjamin went home.[13]

While resting at home, Benjamin heard a cry for help from Ely's wife.[14] Benjamin rushed to Ely's house, which was about twenty (20) meters away, and once inside, he saw accused-appellant Antonio twice stabbed Baldomero with a knife, locally known as "palas", which hit the upper left part of the chest and right portion of the belly of Baldomero. Baldomero was standing, trying to parry the blows of accused-appellant Antonio, while co-accused-appellants Gerry and Senen held the left and right shoulders, respectively, of Baldomero. Accused Augusto Badoria and Marlon Balmaceda remained seated on the bench. Benjamin tried to pacify the three (3) men by wrestling the knife from accused-appellant Antonio, but, instead, he was wounded on the right ring finger. Accused-appellant Antonio threatened him not to intervene. Baldomero staggered, weakened by his wounds, and fell on the kitchen floor.[15]

Subsequently, the four (4) accused and Marlon Balmaceda went out of Ely's house and passed by the store of Rogelio Monjardin, a barangay councilman of San Isidro, San Andres, Catanduanes. When accused-appellant Antonio saw Rogelio, the former said that he just killed "your good for nothing Barangay Captain". After accused-appellant Antonio's group left, Rogelio Monjardin told Ely to fetch the CAFGU's.\* [16]

Meanwhile, Ruben San Juan had just returned from Ilawod, Barangay San Isidro after getting the carabao that would be used to transport construction materials for the barangay hall. He was preparing the cart to be used to transport the construction materials when he heard a commotion from Ely's house. Anxious that his father might still be there, he dashed to Ely's house. On the way, he met accused-appellant Antonio who did not reply to Ruben's inquiry as to what happened in Ely's house. As Ruben passed by Rogelio Monjardin's store, Rogelio informed Ruben of what happened to his father. Ruben went home to tell her mother of the incident and consoled her. Upon learning of the death of her husband, Josefina wailed and then fainted. Juan Villegas heard a shout for help from Josefina's house where he learned of the death of Baldomero San Juan. Later, Ruben, along with Juan Villegas, went to Ely's house.[17]

At around 9:00 o'clock in the evening of the same day, accused-appellant Antonio suddenly barged into Ely's house, and shouted that they were the ones who killed Baldomero. Upon seeing Ruben, accused-appellant Antonio who was armed with a bolo and a "palas" asked the former if he would like to intervene for his father. Juan Villegas pleaded with accused-appellant Antonio not to harm Ruben because no one would bury Baldomero if Ruben is killed.[18] Accused-appellant Antonio then went outside and Juan Villegas followed him.[19] While in the yard, Juan Villegas asked accused-appellant Antonio why he killed Baldomero. Accused-appellant Antonio broke down, cried, and muttered that he did it because of Manoy Agust, referring to his co-accused Augusto Badoria.[20]

Thereafter, accused-appellant Antonio went to the house of Angeles Clopino and requested the latter to fetch

Barangay Captain Domingo Tarnate as he wanted to surrender to the authorities. When the CAFGU members arrived, he surrendered to them, and handed the knife that he used in stabbing Baldomero. The next day, accused-appellant Antonio was turned over to the San Andres Police Station.[21]

Dr. Eduardo Ko conducted the autopsy on the body of Baldomero San Juan. The post-mortem examination revealed that the body bore four (4) stab wounds and two (2) incised wounds.[22] He concluded that death was due to the injuries to the internal organs brought about by the penetration of a sharp bladed instrument into the thoracic cavity of the deceased.[23]

The version of the defense was opposite to that of the prosecution. Dr. Antonio M. Romano,[24] Edugives Villegas Lucero,[25] wife of accused-appellant Gerry Lucero, along with the accused-appellant Antonio L. Samudio,[26] Gerry Lucero[27] and Senen Reazon[28] testified for the defense.

Accused-appellant Antonio L. Samudio admitted sole responsibility for the killing of the victim, Baldomero San Juan, but he professed, in a bid to exculpate himself, that he did so in self-defense. He claimed that when Baldomero asked him why he was no longer working in the rehabilitation project, and he replied "how could I work there when you are not paying me", that Baldomero hit him on the left cheek and boxed him on the stomach; that he tried to run away but he was cornered; and at that very instant, he got hold of a "palas" and stabbed Baldomero.

On the other hand, accused-appellants Gerry Lucero and Senen Reazon denied participation in the killing of Baldomero and offered alibis. Both claimed that they left Ely's house before the killing of Baldomero.

After evaluating the evidence adduced by the opposing parties, the trial court, in a Decision[29] dated May 22, 1996, convicted the accused-appellants for the crime of murder. The decretal portion of the decision reads:

WHEREFORE, in view of the foregoing and the rulings above-cited, the prosecution having proved the guilt of the accused Antonio Samudio, Gerry Lucero and Senen Reazon beyond reasonable doubt of the crime of murder as charged, defined and penalized under Article 248 of the Revised Penal Code, they are hereby sentenced to suffer the penalty of reclusion perpetua and to pay jointly and severally the heirs of Baldomero San Juan the sum of Forty Thousand Two Hundred Forty-five (P40,245.00) Pesos as actual damages, to indemnify the heirs of the victim the sum of Fifty Thousand (P50,000.00) Pesos and to suffer all the accessory penalties provided for by law.

The case as against accused Augusto Badoria who had eluded arrest and remains at-large is hereby ordered archived.

The period of detention of the three accused is hereby ordered counted in their favor.

SO ORDERED.

Accused-appellants Antonio L. Samudio, Gerry Lucero and Senen Reazon now appeal to this Court bewailing the said decision of the trial court convicting them of murder, arguing that nowhere in the record of the case could it be shown that they participated in the commission of the offense charged. They assert that there is no evidence that they conspired and mutually helped one another to pursue a common criminal design to make each of them principally liable for the crime charged. Accused-appellants Lucero and Reazon claimed that they harbored no hatred or ill-feeling against the victim, Baldomero San Juan, and that they had merely acted as spectators to the stabbing incident. In any event, the appellants pray for a lesser penalty contending that the victim, Baldomero San Juan, was not deliberately stabbed but was stabbed on an impetuous impulse by accused-appellant Antonio L. Samudio.

The appeal is partly meritorious.

There is no dispute that the victim, Baldomero San Juan, died at the hands of accused-appellant Antonio L. Samudio. Accused-appellant Antonio L. Samudio's claim of self-defense is seriously in doubt. When an accused claims self-defense, the burden of proof shifts to him to establish by clear and convincing evidence the elements thereof, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent and repel it; and, (c) lack of sufficient provocation on the part of the person defending himself. Among the three circumstances, unlawful aggression is the most important for without it, self-defense cannot exist.[30]

Accused-appellant Antonio L. Samudio failed to discharge this burden convincingly for he did not adequately support his allegation of self-defense. No one corroborated his testimony that the aggression was initiated by the victim, Baldomero San Juan. Thus, his testimony is self-serving. An accused who invokes self-defense has to rely on the strength of his evidence and not on the weakness of the prosecution's evidence, for, even if the latter were weak, it could not be disbelieved after his open admission of responsibility for the killing.[31]

The number of wounds (four (4) stabbed wounds and two (2) incised wounds) inflicted on the victim, Baldomero San Juan, contradicted accused-appellant Antonio L. Samudio's allegation of self-defense. For it has been held that the location and presence of several wounds on the body of the victim is physical evidence that eloquently refutes accused's allegation of self-defense.[32]

It is alleged in the Information that the killing was qualified by treachery, evident premeditation, abuse of superior strength and disregard of respect due to the offended party on account of his rank. However, the trial court failed to make a finding as to the existence of any of these qualifying circumstances.

Treachery cannot be presumed but must be proved by clear and convincing evidence as conclusively as the killing itself. To appreciate treachery, two (2) conditions must be present, namely, (a) the employment of means of execution that give the person attacked no opportunity to defend himself or retaliate, and (b) the means of execution were deliberately or consciously adopted.[33] This Court has also previously held that where treachery is alleged, the manner of attack must be proven. Where no particulars are shown as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed, treachery cannot be appreciated as a qualifying circumstance.[34] In the instant case, treachery cannot be appreciated considering that the only eyewitness to the actual stabbing, Benjamin Samudio, did not see the initial stage and particulars of the attack on the victim, Baldomero San Juan.

Similarly, the prosecution failed to establish the attendance of evident premeditation. There was no proof or showing of (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender had clung to his determination; and (3) a sufficient lapse of time between the determination to commit and the execution thereof, to allow the offender to reflect on the consequence of his act.[35] None of these elements of evident premeditation can be fairly inferred from the evidence adduced by the prosecution in the case at bar.

Neither can abuse of superior strength be appreciated. Mere superiority in number is not enough to constitute superior strength.[36] To be appreciated as a qualifying circumstance, what should be considered is not that there were three (3) or more assailants of one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense.[37] The prosecution did not present any direct proof that there was a deliberate intent on the part of the accused-appellants to take advantage of the obvious inequality of force between the victim and the accused-appellants.

The qualifying circumstance of "disregard of respect due to the offended party on account of his rank, being a barangay captain" alleged in the information is likewise unavailing. The prosecution failed to establish proof of the specific facts demonstrating that the accused-appellant Antonio L. Samudio's act of killing Baldomero San

Juan was deliberately intended to disregard or insult the respect due him on account of his rank as a barangay captain. It is essential that the deliberate intent to offend or insult the rank of the victim must be shown.[38] The aggravating circumstance of with insult or in disregard due to rank is appreciated against an accused only when there is proof of fact of disregard and deliberate intent to insult the rank of the victim.[39]

Absent any of the qualifying circumstances of treachery, evident premeditation, abuse of superior strength and disregard of respect due to the offended party on account of his rank, which must be clearly established as the killing itself, the crime committed is not murder, but only homicide under Article 249 of the Revised Penal Code which is punishable by reclusion temporal.

It appears, however, that the mitigating circumstance of voluntary surrender should be appreciated in accused-appellant Antonio L. Samudio's favor. To be thus considered, three (3) requisites must be proven, namely, (a) the offender had not actually been arrested; (b) the offender surrender himself to a person in authority; and (c) the surrender was voluntary.[40] From the record, it is evident that accused-appellant Antonio L. Samudio's surrender satisfied the requisites. When accused-appellant Antonio L. Samudio went to the house of Angeles Clopino following his outburst before Ruben San Juan in Ely's house, he requested Clopino to fetch Barangay Captain Domingo Tarnate as he wanted to surrender to the authorities, and when the CAFGU members arrived, he voluntarily surrendered to them and handed the knife he used in stabbing the victim, Baldomero San Juan.[41] SPO2 Ramon Tugay, a witness for the prosecution, confirmed accused-appellant's testimony on his voluntary surrender.[42]

There being one mitigating circumstance and no aggravating circumstance, the maximum penalty to be imposed should be reclusion temporal in its minimum period.[43] Applying the Indeterminate Sentence Law, the imposable penalty for accused-appellant Antonio L. Samudio is a prison term of eight (8) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum.

As to the complicity of accused-appellants Gerry Lucero and Senen Reazon to the crime, this Court notes that notwithstanding a lengthy discourse on the utter insufficiency of accused-appellant Antonio L. Samudio's claim of self-defense, conspiracy was not adequately discussed.

In ruling on the participation of accused-appellants Gerry Lucero and Senen Reazon in the crime, the trial court declared that it was not physically impossible for the accused to be at the scene of the crime, and gave more weight to the honest and straightforward declaration on the witness stand of Benjamin Samudio. Benjamin Samudio pointed to the complicity of accused-appellants Gerry Lucero and Senen Reazon in this wise:

PROS. MENDOZA

Q By whom was the barangay captain being stabbed?

A By Antonio Samudio, sir.

Q Aside from Antonio Samudio and the barangay captain, did you see any other person inside?

A I saw Senen Reazon, Augusto, Marlon and Gerry, sir.

Q

Do you remember what these other persons were doing, particularly Gerry Lucero, when you saw the barangay captain being stabbed by Antonio Samudio?

A

Gerry Lucero was holding the left shoulder of the barangay captain, sir. And Senen Reazon was holding the

right shoulder of the barangay captain.

xxx xxx xxx

Q

What was the position of the barangay captain while he was being stabbed, his shoulders being held by Gerry and Senen?

A He was in standing position, sir.

Q What was the barangay captain doing?

A He was trying to defend himself, sir.

Q

What did you do when you arrived there?

A

I tried to pacify them but they even threatened to kill me, sir.[44]

The existence of conspiracy cannot be presumed. Similar to the physical act constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. Mere presence at the scene of the incident, knowledge of the plan or acquiescence thereto are not sufficient grounds to hold a person liable as a conspirator.[45] The mere fact that the accused had prior knowledge of the criminal design of the principal perpetrator and aided the latter in consummating the crime likewise does not automatically make him a co-conspirator. Both knowledge of and participation in the criminal act are also inherent elements of an accomplice.[46] As such, conspiracy must be established as any element of the crime and evidence of conspiracy must be beyond reasonable doubt.

In the case at bar, as testified to by Benjamin Samudio, when he came into the scene, it was accused-appellant Antonio L. Samudio who inflicted the stab wounds on the victim. The participation of accused-appellants Lucero and Reazon to the crime apparently was limited to holding the shoulders of the victim. The acts of Antonio L. Samudio vis-a-vis those of his co-accused failed to establish beyond reasonable doubt the presence of conspiracy. Since Benjamin Samudio, the sole prosecution witness to the actual killing, did not see its inception and the details as to how it progressed, the prosecution failed to adduce sufficient evidence to completely establish the existence of conspiracy among the accused. It bears stressing that conspiracy must be proved as convincingly and indubitably as the crime itself.[47]

Nonetheless, the failure of the prosecution to prove the existence of conspiracy does not eliminate any criminal liability on the part of accused-appellants Gerry Lucero and Senen Reazon. Although they could not be convicted as a co-principal, they are liable as accomplices. This Court has held that where the quantum of proof required to establish conspiracy is lacking, the doubt created as to whether accused acted as principal or accomplice will always be resolved in favor of the milder form of criminal liability, that of a mere accomplice.[48]

It may be argued that accused-appellant Gerry Lucero and Senen Reazon apparently have no prior knowledge of the intended assault by accused-appellant Antonio L. Samudio until the victim was actually stabbed. The thrust could have been made at the spur of the moment, totally unexpected by accused-appellants Lucero and Reazon. However, it is worth noting that the victim in the case at bar suffered not just a single stab wound but four (4) stab wounds and two (2) incised wounds. By holding the shoulders of the victim when the successive wounds were inflicted, accused-appellants Lucero and Reazon merely assisted the principal accused, appellant Antonio L.

Samudio, in the ultimate killing of the victim.

The actions of accused-appellants Lucero and Reazon concurrent to and following the stabbing of the victim belie their claim of innocence. Instead of warding off the successive assaults on the victim, Baldomero San Juan, and assisting Benjamin Samudio when the latter tried to stop accused-appellant Antonio L. Samudio from further inflicting stab wounds on the victim, or even giving aid to the victim when he was bleeding profusely on the kitchen floor, accused-appellants Lucero and Reazon apparently did nothing. In fact, they even denied being at the scene of the crime and offered a simple alibi which is the weakest of all defenses. When weighed against positive testimony, negative assertions must fail. Bare denial amounts to nothing more than negative and self-serving evidence undeserving of weight in law.[49]

Further, the record is bereft of any evidence that prosecution witness Benjamin Samudio who saw accused-appellants at the scene of the crime had improper or ill motives to testify falsely against them, especially against accused-appellant Antonio L. Samudio who is his nephew. Neither could any ill motive be attributed to prosecution witness Rogelio Monjardin who saw accused-appellants after the stabbing incident when the latter's group chanced upon him and accused-appellant Antonio L. Samudio shouted that he had just killed the victim, Baldomero San Juan. Absent evidence showing any reason or motive for a prosecution witness to perjure, the logical conclusion is that no such improper motive exists, and his testimony is thus worthy of full faith and credit.

Since accused-appellants Gerry Lucero and Senen Reazon are only accomplices to the crime, the imposable penalty on them is one degree lower than that imposable on the principal, i.e., prision mayor.[50] There being neither aggravating nor mitigating circumstances, insofar as those two (2) appellants are concerned, the imposable penalty shall be in its medium period.[51] Applying the Indeterminate Sentence Law, the imposable penalty for accused-appellants Gerry Lucero and Senen Reazon is a prison term of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.

Concerning damages, the award of P40,245.00 as actual damages should be deleted, there being no credible proof thereof, inasmuch as courts should recognize only substantiated expenses, which have been genuinely incurred in connection with the death, wake or burial of the victim.[52] The receipts offered here are not in the name of the victim's wife, Josefina San Juan, or any other immediate family member of the victim. The date of said receipts is more than a year after the death of the victim. Thus, the said receipts are not acceptable and have no evidentiary value in the case at bar.

WHEREFORE, the appealed Decision dated May 22, 1996 of the Regional Trial Court of Catanduanes, Branch 42 in Criminal Case No. 1845 is hereby MODIFIED as follows:

- Appellant ANTONIO L. SAMUDIO is convicted only of the crime of HOMICIDE and is hereby sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum.
- Appellants GERRY LUCERO and SENEN REAZON are convicted as ACCOMPLICES in the crime of HOMICIDE and are hereby sentenced to an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.

Appellants Antonio L. Samudio, Gerry Lucero and Senen Reazon are further ordered to pay, jointly and severally, the heirs of the victim, Baldomero San Juan, the amount of P50,000.00 as civil indemnity. The award of P40,245.00 as actual damages is deleted for lack of credible proof.

Insofar as accused Augusto Badoria is concerned, this case is archived until the said accused shall have been arrested.

**SO ORDERED.**

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

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\* At Large.

\* CAFGU Civilian Armed Forces Geographical Unit.

[1] Penned by Judge Nilo B. Barsaga; Rollo, pp. 51-73.

[2] Original Records, p. 1.

[3] Original Records, p. 95.

[4] TSN, May 4, 1992, pp. 2-7.

[5] TSN, June 5, 1992, pp. 2-11.

[6] TSN, July 28, 1992.

[7] TSN, July 28, 1992.

[8] TSN, November 16, 1992, pp. 4-16.

[9] TSN, February 9, 1992.

[10] TSN, March 5, 1993.

[11] A local type of coconut wine.

[12] TSN, June 5, 1992, pp. 3-4, 13, 16.

[13] TSN, June 5, 1992, pp. 4-6, 10, 16-17.

[14] TSN, June 5, 1992, p. 18.

[15] TSN, June 5, 1992, pp. 7-10, 24-26.

[16] TSN, July 28, 1992; RTC Decision, p. 5.

[17] TSN, July 28, 1992; RTC Decision, p. 6.

[18] TSN, October 22, 1992, pp. 6-8.

[19] TSN, October 22, 1992, pp. 6-8.

[20] TSN, June 19, 1992, pp. 11-12.

[21] TSN, November 16, 1992, pp. 4-16; TSN, June 28, 1995, pp. 24-26.

[22] Exhibit "A".

[23] TSN, May 4, 1992, pp. 6-7.

[24] TSN, April 28, 1994.

[25] TSN, May 19, 1994.

[26] TSN, June 28, 1995.

- [27] TSN, September 16, 1994.
- [28] TSN, December 15, 1995.
- [29] Rollo, pp. 22-23.
- [30] *People v. Lazarte*, G.R. No. 130711, June 28, 2000, p. 13.
- [31] *People v. Aquino*, G.R. No. 130613, October 5, 2000, p. 5.
- [32] *People v. Saragina*, G.R. No. 128281, May 30, 2000, p. 21.
- [33] *People v. Albacin*, G.R. No. 133918, September 13, 2000, p. 16.
- [34] *People v. Torre*, G.R. No. 130655, August 9, 2000, p. 13; *People v. Orcula*, G.R. No. 132350, July 5, 2000, p. 14; *People v. Flores*, G.R. No. 116794, June 23, 2000, p. 7.
- [35] *People v. Jariolne*, G.R. No. 127571, May 11, 2000, p. 11; *People v. Pascual*, G.R. No. 127761, April 28, 2000.
- [36] *People v. Tambis*, 311 SCRA 430, 440 [1999]; *People v. Rebamontan*, 305 SCRA 609, 623 [1999].
- [37] *People v. Buluran*, G.R. No. 113940, February 15, 2000, pp. 10-11.
- [38] *People v. Peña*, 291 SCRA 606, 616 [1998]; *People v. Verchez* 233 SCRA 174.
- [39] *People v. Basao*, 310 SCRA 743, 781 [1999].
- [40] *People v. Cual*, G.R. No. 131925, March 9, 2000, p. 20.
- [41] TSN, June 28, 1995, pp. 24-26.
- [42] TSN, November 16, 1992, pp. 10-16.
- [43] Article 64 (2), Revised Penal Code.
- Art. 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contained three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of article 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:
- x x x
- When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.
- [44] TSN dated June 5, 1992, pp. 8-9 (Underscoring supplied).
- [45] *People v. Santiago*, G.R. No. 129371, October 4, 2000.
- [46] *Garcia v. Court of Appeals*, G.R. No. 134730, September 18, 2000.
- [47] *People v. Santiago*, *supra*.
- [48] *Garcia v. Court of Appeals*, *supra*.
- [49] *People v. Gallarde*, G.R. No. 133025, February 17, 2000, p. 13.

[50] Article 52, Revised Penal Code.

Art. 52. Penalty to be imposed upon accomplices in a consummated crime. - The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the accomplices in the commission of a consummated felony.

[51] Article 64 (1), Revised Penal Code.

Art. 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contained three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of article 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

- When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

[52] People v. Bihag, G.R. No. 129532, October 5, 2000, p.11; People v. Rios, G.R. No. 132632, June 19, 2000, p. 15; People v. Ereño, G.R. No. 124706, February 22, 2000, p. 10.

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