

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NONOY FELIX, ELISEO GOMEZ @ “ATING,” AND ROMEO SANA, ACCUSED.
ELISEO GOMEZ, ACCUSED-APPELLANT.**

G.R. No. 126914. October 01, 1998

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

For automatic review is the decision[1] of 15 May 1996 of the Regional Trial Court (RTC) of Davao City, Branch 11, in Criminal Case No. 35, 157-95, convicting accused-appellant ELISEO GOMEZ of the crime of murder and sentencing him to suffer the penalty of DEATH and to pay the heirs of the deceased Hector Ayala the amounts of P50,000 as indemnity and P10,000 as actual damages, plus costs of the suit.

On 3 April 1995, an information[2] was filed before the RTC of Davao City charging Nonoy Felix, Eliseo Gomez @ "Ating," and Romeo Sanao with murder committed as follows:

[O]n or about January 27, 1995, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating together and helping one another, with treachery and evident premeditation, armed with firearms, wilfully, unlawfully and feloniously shot one Hector Ayala, thereby inflicting upon the latter mortal wounds which caused his death.

Accused ELISEO GOMEZ was arrested on 19 May 1995[3]. His co-accused have remained at large.

Upon arraignment, GOMEZ entered a plea of not guilty.[4] Trial on the merits ensued with the prosecution presenting four witnesses, namely, Imelda Ayala, Dr. Danilo Ledesma, Luis Aleonar, and PO3 Ricarte Tirasol. The defense presented GOMEZ himself, Jaime Ronquillo, and SPO1 Alipio Roque Reston.

The evidence for the prosecution is summarized by the Office of the Solicitor General (OSG) in the Appellee's Brief, which we quote in full and adopt as our own for being fully supported by the transcript of the stenographic notes of the testimonies of witnesses:

At around 1:30 in the morning of January 27, 1995, Imelda Ayala and her husband Hector Ayala were awakened by the barking of their dogs outside the house. Suspicious, the couple went outside to check what the noise was all about. There they saw appellant Eliseo Gomez. When they asked appellant what he was doing in the vicinity, appellant got mad and, without warning, boxed Hector Ayala. A scuffle then ensued; after which, appellant scampered away dropping his shoulder bag in the process. As appellant was running away, Luis Aleonar, a neighbor and a friend of Hector Ayala, came into view. Since appellant was running in the direction where Luis Aleonar was, Hector Ayala shouted at the latter to get hold of appellant. But Luis Aleonar was not able to catch appellant because he was holding something.

A moment later, as the spouses Ayala and Luis Aleonar were talking about the incident, appellant returned with five companions, two of whom [were] Nonoy Felix and Romeo Sanao. Nonoy Felix had with him a handgun, while Sanao had a rifle. As they were approaching the group of Ayala, appellant pointed to Hector Ayala saying "Kini," which means "this one." Instantaneously, Nonoy Felix shot Hector Ayala at the head

hitting him in the left eye. After shooting Hector Ayala, appellant also pointed to Luis Aleonar. Again, Nonoy Felix fired his gun at Luis Aleonar hitting the latter at the back of the head, particularly the neck. Not satisfied, Nonoy Felix again shot the chest of Hector Ayala who was already lying prostrate on the ground. Afterwards all the culprits escaped.

The victim, Hector Ayala, was brought to the Davao Medical Mission Hospital Group but was pronounced dead on arrival by the attending physician.

Dr. Danilo Ledesma, Medico-Legal officer of the City Health Office, conducted the autopsy on the body of Hector Ayala and found the cause of the death as gunshot wounds.[5]

The house of the victim where the incident took place was located along Leon Garcia St., Davao City.[6]

The evidence for the defense is summarized in the Brief for the Accused-Appellant; thus:

The accused ELISEO GOMEZ testified that on January 27, 1995 at past 1:00 p.m., he was at Leon Garcia St., Davao City waiting for the garbage truck that would take him to work at the MAA Motorpool, Davao City. He was employed with the Department of Public Services as garbage collector. The brother of IMELDA AYALA, name(d) Jojo, came near him and hit him on the nose causing him to fall down. HECTOR AYALA came near them and took his bag. He asked Jojo why he hit him and when the latter did not answer, he went back to his house to report the matter to his parents. After reporting the incident to his parents, he went back to the place of the incident to get back his bag so that he could report for work. When he asked HECTOR AYALA about his bag, the latter pointed to his wife IMELDA AYALA. IMELDA AYALA asked him to forgive his brother Jojo because he was drunk. Suddenly, he heard three shots behind him and saw two persons running. Out of fear, he went home directly. At around 8:00 a.m. of January 27, 1995 he went to their office at Agdao, Davao City, and reported the incident to the Officer-in-charge EDGAR LIM. Thereafter, he got a medical certificate (Exhibit2) for the injuries he sustained. GOMEZ denied knowing his co-accused NONOY FELIX and ROMEO SANAO (TSN, January 11, 1996, Pages 6-15)

On cross-examination, GOMEZ admitted that the place where he was supposed to wait for his ride was some seven meters from the house of IMELDA AYALA. He was near the latter's home at that time because he went to buy cigarettes from the store nearby owned by a certain Eva. Jojo, the brother of IMELDA AYALA, was standing by the store and without any provocation hit him. (Ibid Page 16-28)

JAIME RONQUILLO, an inspector of the Security Force Agency, testified that on January 27, 1995, at around 1:30 a.m. he was at the house of one Boy Froilan at Leon Garcia St., Davao City. They had just returned from an inspection of a ship of DOLE in Panabo, Davao del Norte. While they were drinking coffee, he heard a voice saying in the dialect: "Do not touch him because he is the brother of Felix." He opened the door near their table and he saw the accused GOMEZ running towards his house. He knew GOMEZ because the latter's brother is one of their security guards working with the ship. He closed the door and they continued drinking coffee. After some twenty (20) minutes, he heard two shots. He opened the door and saw two persons both holding firearms. A woman shouted and then he saw ELISEO GOMEZ running towards his house (TSN, February 15, 1996, Pages 4-6). [7]

In finding that GOMEZ was a co-conspirator and was therefore equally guilty as the triggerman, Nonoy Felix, the trial court took into account the following circumstances: (1) GOMEZ was with the group that arrived at the Ayala residence on 27 January 1995; (2) he was the one who pointed Hector Ayala to Nonoy Felix; and after this identification, Nonoy Felix shot Ayala twice; (3) GOMEZ was present and did not stop Felix from shooting Ayala; and (4) he left together with the group after the shooting incident.

The trial court appreciated the qualifying circumstance of treachery, since the attack was unexpected and the offenders used firearms to ensure the death of the victim without risk to themselves which might have arisen from any defense or retaliatory act on the part of Hector Ayala. It also considered evident premeditation in that there

was sufficient lapse of time after GOMEZ ran away from Hector Ayala and the time when he came back with the group of Nonoy Felix and Romeo Sanao; and that as soon as the group arrived, GOMEZ identified the deceased and Felix forthwith delivered the shots.

On 10 June 1996, GOMEZ filed a motion for the reconsideration[8] of the decision. Upon denial by the trial court of the motion[9] GOMEZ filed a notice of appeal,[10] which was not anymore necessary because a judgment imposing the death penalty is subject to automatic review by this Court.[11]

GOMEZ asserts that the trial court erred

I

" IN FINDING THAT TREACHERY AND EVIDENT PREMEDITATION WERE PRESENT AS TO QUALIFY THE CRIME TO MURDER;

II

" GIVING FULL FAITH AND CREDENCE TO THE MATERIALLY INCONSISTENT AND UNRELIABLE TESTIMONIES OF PROSECUTION WITNESSES IMELDA AYALA AND LUIS ALEONAR AND DISREGARDING THE EVIDENCE FOR THE DEFENSE;

III

" IN FINDING THAT PROSECUTION WITNESSES IMELDA AYALA AND LUIS ALEONAR HAD POSITIVELY IDENTIFIED THE ASSAILANTS OF THE VICTIM DESPITE THE EXISTENCE OF REASONABLE DOUBT TO THE CONTRARY;

IV

" IN FINDING THAT ACCUSED ELISEO GOMEZ WAS IN CONSPIRACY WITH NONOY FELIX AND ROMEO SANAO; and

V

" IN RULING THAT THE HEIR OF THE VICTIM IS ENTITLED TO ACTUAL DAMAGES OF TEN THOUSAND PESOS (10,000.00) DESPITE THE ABSENCE OF ANY DOCUMENTARY EVIDENCE TO PROVE THE SAME.

GOMEZ discusses jointly the first four assigned errors. He claims that treachery was not sufficiently established because on the basis of the evidence for the prosecution, the shooting was preceded by an altercation between him and the victim. Moreover, when he came back with Nonoy Felix and Romeo Sanao, who were armed with a short firearm and a long firearm, respectively, they were seen by the victim, Imelda Ayala, and Luis Aleonar. The victim was thus duly forewarned of the threat and danger to his life, and had "ample opportunity to act and to scamper for safety or to protect [himself]."[12]

GOMEZ insists that evident premeditation was not proved either. It was not shown that he had planned the killing and that the "offense was the result of a cool and serene deliberation, meditation, and reflection sometime before its commission." [13] The following environmental facts suggested strongly against a finding of premeditation: GOMEZ was unarmed; there was no appreciable length of time that elapsed between the altercation and his return; and his presence at the scene of the crime was for the purpose of retrieving his bag.

On the issue of inconsistency as to the positive identification of the accused, GOMEZ points to the entry in the police blotter[14] which states that at 1:50 a.m. of 27 January 1995 Imelda personally appeared at the precinct to report that at 1:30 a.m. that same morning, her husband HECTOR "was shot by an unidentified assailant believed to be their neighbor." Yet, in her sworn statement of 7 February 1995 Imelda positively identified the accused as the culprits. GOMEZ also impugns the positive identification made by Luis Aleonar in his sworn statement of 7 February 1995, considering the report of Imelda that the assailants were unidentified and the sworn statement was

made ten days after the incident. Since no explanation was given for the inconsistency, doubts were cast on the identification of the accused. GOMEZ also capitalizes on the fact that unlike his co-accused, he did not flee and became a fugitive from justice, thus manifesting his innocence.

On the issue of conspiracy, GOMEZ argues that conspiracy was not firmly determined, as there was no showing that prior to the violent death of the victim the accused met together in a group. Conspiracy cannot be reasonably presumed from the fact alone that he and his co-accused were neighbors and familiar with each other. His presence at the crime scene was passive. Moreover, the prosecution failed to ascertain the true identity of the assailants. He then suggests that the prosecution contrived the theory of conspiracy because the real culprit, Felix, has remained a fugitive.

Anent the last assigned error, GOMEZ alleges that the testimony of the victim's wife was insufficient to justify the award of P10,000 as actual damages. Actual damages must be proved with a certain degree of certainty and must "appear to have been genuinely [spent] in connection with the death of the victim." [15]

In the Brief for the Appellee, the OSG prays that this Court affirm in toto the judgment of the trial court. It contends that the accused were inspired by the same criminal impulse and acted in unison in the pursuit of a common objective. That GOMEZ did not flee along with his co-accused did not negate the existence of conspiracy. [16]

As to treachery, the OSG contends that the testimony of prosecution witness Luis Aleonar amply supported the finding that the assault was so sudden and unexpected. It was established by the prosecution that GOMEZ summoned the aid of five other men to effectively deprive the victim of an opportunity to evade the encounter or to fight squarely, and that the deceased was engaged in a conversation with Luis Aleonar at the time he was shot. The accused adopted a manner of attack that insured the consummation of their felonious objective without risk to themselves.

However, the OSG disagrees with the trial court on the presence of the qualifying circumstance of evident premeditation. It opines that the said circumstance was not sufficiently proved by the prosecution..

The OSG maintains that the credibility of the prosecution witnesses cannot be impaired or affected by the inconsistencies between (1) the entries in the police blotter that the assailant was "unidentified," and (2) the sworn statements and declaration in open court of the prosecution witnesses positively identifying the accused as the culprits. Testimonies given in open court carry more weight than the affidavits executed before the police authorities, [17] and entries in the police blotter are not evidence of the truth thereof but merely of the fact that the entries were made. [18]

Finally, the OSG argues that GOMEZ's denials cannot prevail over the candid testimonies of the prosecution witnesses. [19] Absent proof of ill motive to testify falsely against GOMEZ, the logical conclusion is that no such improper motive existed, and the testimonies of the prosecution witnesses were worthy of full faith and credit. [20]

The testimony of prosecution witness Imelda Ayala established how the crime was committed. On direct examination she declared:

Q

Now, last January 27, 1995, at around 1:30 in the morning, can you tell us where were you?

A

I was at home.

Q

Who was your companion in your residence at that time?

A

My husband and my children.

Q

Now, did anything take place on this date January 27, 1995, 1:30 dawn?

A

Yes, sir.

Q

Can you tell the court what was that incident about?

A

Yes, sir.

Q

Please narrate to the Honorable Court?

A

On the dawn of January 27, 1995 we were awakened because of the noise created by our dogs outside the house.

Q

You said you were awakened, who was the other person who was awakened?

A

My husband, the two of us.

Q

What is the name of your husband?

A

Hector Ayala.

Q

And when you and your husband woke up, what took place, if any?

A

We saw Eliseo Gomez outside the house and when we asked what was he doing outside our house, he got mad and boxed my husband.

Q

After Eliseo Gomez boxed your husband, what next happened, if any?

A

He ran away and when he returned he had five companions with him.

Q

Now, these five companions of Gomez when Gomez returned, do you know these people?

A

Yes, sir.

Q

Who were these people?

A

Eliseo Gomez, Nonoy Felix, Romy Sanao.

Q

How about the other two?

A

The other two I do not know.

.....

Q

Your husband was boxed by the accused Gomez and after that Gomez returned with five other companions, my question is, how long before Gomez left your place wherein he boxed your husband that he returned together with other five companions?

A

Very short time.

Q

Now, when they returned, when the accused returned with five other companions, what took place, if any?

A

When Eliseo arrived with five companions because this Gomez was ahead with the others, this Nonoy Felix was bringing a small arm, Romy Sanao was bringing a long arm and then when they arrived Eliseo Gomez pointed to my husband and Luis Aleonar, saying this one, "kini"

Q

After the accused Gomez pointed to your husband and Luis Aleonar, after that what happened?

A

Nonoy Felix shot my husband and he was hit on the left eye and after Nonoy Felix shot my husband, Eliseo Gomez also pointed to Luis Aleonar and he was shot also by Nonoy Felix.

Q

Now, after Nonoy Felix shot Aleonar, what did Nonoy Felix do, if any?

A

He again shot my husband who was already lying on the ground.

Q

After shooting your husband twice, what did Nonoy Felix do and his companions?

A

They all ran away.

Q

The accused Gomez was with them when they ran away?

A

Yes, sir.[21]

On cross examination, Imelda further revealed that Hector tried to hold GOMEZ when the latter started to run away after boxing Hector. Then GOMEZ's bag fell to the ground and was left behind.[22]

On direct examination, prosecution witness Luis Aleonar corroborated Imelda's testimony; thus:

Q

When this incident, when you were on your way home, what have you observed, if any?

A

When I was on my way home, when I entered the vicinity of our place, I heard my Compare shouting.

Q

What is the name of your Compare?

A

Hector Ayala.

Q

Now, after you heard Hector Ayala shouting, what else did you observe, if any?

A

He told me, "You hold it, Pare."

Q

When he said, "You hold it, Pare", what does he mean that he wanted you to hold?

A

My Compare was referring to a person named Ating.

PROSECUTOR

Q

Is Ating in the courtroom?

A

Yes, sir.

Q

Do you know the true name of Alias Ating?

A

Eliseo Gomez

Q

Now, when your compare told you to hold the accused Eliseo Gomez, what did you do, if any?

A

I was not able to hold him because I was carrying something.

Q

And do you know where did Eliseo Gomez go after that?

A

He went to the outside portion of the place.

Q

After Eliseo Gomez went out, what did you do, if any?

A

I went home in order to place the things that I was holding in our house.

Q

After arrival at your house, what did you do next after that?

A

I left the thing I was carrying in the house and after that I went downstairs and asked my compare what happened.

Q

And what was the reply of your compare?

A

My compare told me that he suspected Eliseo Gomez because he was standing near his house.

Q

Now, when you were talking with Hector Ayala, what happened next, if any?

A

After a few minutes, they returned, they were many.

Q

Who returned?

A

Eliseo Gomez, Romeo Sanao, Nonoy Felix and three others whom I do not know.

PROSECUTOR

Q

Now, when these Eliseo Gomez, Romeo Sanao and Nonoy Felix arrived, what took place, if any?

A

Eliseo Gomez pointed to us saying they are the ones.

Q

Now, after Eliseo Gomez pointed, we reform the question. When Eliseo Gomez and his five other companions arrived, what have you observed in them?

A

When they arrived and I looked at them, I saw they had a gun. Nonoy Felix shot Hector Ayala. I turned my head backwards and saw them.

Q

Now, after Nonoy Felix shot Hector Ayala and you, what happened?

A

When I saw that I was to be shot, I ran towards my house and when I ran I was shot already. My wife went downstairs and shouted that Hector Ayala was already brought to the hospital.[23]

The testimony of Imelda and Luis is the measure of GOMEZ's participation in the killing of Hector. It is clear therefrom that the gunman was accused Nonoy Felix. GOMEZ's criminal liability for Hector's death would then depend on a finding of conspiracy between GOMEZ and Nonoy.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[24] Conspiracy does not require an agreement for an appreciable period prior to the occurrence; it exists if at the time of the commission of the offense the accused had the same purpose and were united in its execution. Direct proof of previous agreement to commit the crime is not necessary. It may be deduced from the mode and manner in which the offense was perpetrated, or inferred from acts of the accused themselves when such point to a joint purpose and design, concerted action, and community of interest.[25]

The following facts and events show beyond doubt that GOMEZ and his co-accused had one motive and purpose -- to kill Hector Ayala -- and were united in the execution of the evil deed:

a) When confronted by Hector Ayala why Gomez was near the former's house, the latter got mad and boxed the former.

b) GOMEZ ran away toward his house; shortly thereafter, GOMEZ, accompanied by his co-accused Nonoy Felix and Romeo Sanao and three others, returned to the place where he boxed Hector.

- c) Upon arriving near the place where Hector was, GOMEZ pointed to Hector saying, "this one." Nonoy Felix immediately shot Hector, while accused Romeo Sanao aimed his gun toward Luis Aleonar.
- d) After having shot Hector, Nonoy Felix shot at the fleeing Luis Aleonar.
- e) Thereupon, GOMEZ and his co-accused ran away.

From the foregoing, it can be reasonably inferred that GOMEZ had kept a grudge against Hector. He ran away not to avoid any retaliation from Hector who attempted to hold him, but to get the assistance of his friends. He then reported to his friends what happened to him and Hector. GOMEZ must have exaggerated his version of the incident, or his friends might have miscomprehended the report and thought that Hector committed a serious offense against GOMEZ, prompting Nonoy Felix and Romeo Sanao to arm themselves and get rid of Hector. GOMEZ then returned with Nonoy, and Romeo, and three others, and mutually agreed to execute a common plan and accomplish a common objective - to kill Hector.

However, we do not share the view of the trial court that the killing of Hector was attended by treachery and evident premeditation.

There is treachery when the offender commits any of the crimes against persons employing means, methods, or forms of attack which tend directly and specially to insure the execution of the crime without risk to himself arising from the defense which the offended party might make.[26] It cannot be presumed; it must be proved by clear and convincing evidence or as conclusively as the killing itself. For treachery to exist, two essential elements must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (b) the said means of execution was deliberately or consciously adopted.[27]

In this case, just a few minutes before Hector was shot, he and GOMEZ figured in an incident where GOMEZ boxed Hector; and when the latter tried to hold the former, GOMEZ ran away leaving behind his bag. Hector was therefore duly forewarned that GOMEZ might come back at any time either to recover his bag or do something more against his (Hector's) person, especially considering the fact that Hector even requested his kumpadre Luis Aleonar to hold the fleeing GOMEZ. In short, Hector knew that the incident between him and GOMEZ had not yet ended. When GOMEZ came back with his co-accused and others, Hector saw them; and it was only after GOMEZ pointed to Hector that accused Nonoy Felix shot Hector. Clearly, it cannot be said that GOMEZ and his co-accused employed means of execution which gave Hector and Luis no opportunity to defend themselves.

Neither can we appreciate evident premeditation. Three requisites must be established before evident premeditation may be appreciated, to wit: (1) the time the accused determined to commit the crime; (2) an act manifestly indicating that the accused has clung to his determination; and (3) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[28] In *U.S. v. Gil*[29] we ruled that to justify the inference of deliberate premeditation, there must be a period sufficient in a judicial sense to afford full opportunity for meditation and reflection and to allow the conscience of the actor to overcome the resolution of his will if he desires to hearken to its warning. In the present case, GOMEZ ran away, but after "a very short time"[30] or a "few minutes"[31] he came back with his co-accused. There was, therefore, no sufficient lapse of time between GOMEZ's determination to commit the crime and the execution thereof to allow him to reflect upon the consequences of his act.

The aggravating circumstance of abuse of superior strength[32] must, however, be appreciated because the group of the accused enjoyed superiority not only of number but also of arms consisting of a handgun and a rifle.[33]

Absent the qualifying circumstances of treachery and evident premeditation, the crime committed could only be homicide, defined in Article 249 of the Revised Penal Code and penalized with reclusion temporal. In view of the

presence of the generic aggravating circumstance of taking advantage of superior strength, the penalty should be imposed in its maximum period.[34] Accused-appellant GOMEZ is, however, entitled to the benefits of the Indeterminate Sentence Law; hence, he could be sentenced to suffer an indeterminate penalty whose minimum would be within the range of prision mayor (the penalty next lower than that prescribed in Article 249) and whose maximum shall be within the range of reclusion temporal in its maximum period.

The award of actual damages in the amount of P10,000 representing burial expenses was proper. This was based on the testimony of Imelda Ayala.[35]

WHEREFORE, the challenged decision of Branch 11 of the Regional Trial Court (RTC) of Davao City, in Criminal Case No. 35, 157-95, is hereby MODIFIED. As modified, accused-appellant ELISEO GOMEZ is hereby found guilty beyond reasonable doubt, as principal, of the crime of homicide as defined and penalized under Article 249 of the Revised Penal Code. Applying the Indeterminate Sentence Law, we hereby sentence him to suffer an indeterminate penalty of imprisonment ranging from ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months, and one (1) day of reclusion temporal as maximum, and to pay the heirs of HECTOR AYALA the amounts of P50,000 as civil indemnity for the death of the victim and P10,000 as actual damages.

In the service of sentence accused-appellant shall be credited with the period of his preventive imprisonment, subject to the provisions of Article 29 of the Revised Penal Code, as amended.

No pronouncements as to costs.

SO ORDERED.

Regalado, (Acting Chief Justice), Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Martinez, Quisumbing and Purisima, JJ., concur.
Narvasa, C.J., and Mendoza, J., on official leave.

[1] Original Record (OR), 52-59; Rollo, 14-21. Per Judge Virginia Hofileña-Europa.

[2] OR, 1-2.

[3] Id., 11.

[4] Id., 13.

[5] Rollo, 103-105.

[6] TSN, 21 August 1995, 2.

[7] Rollo, 50-52.

[8] OR, 60-70.

[9] Id., 87-93.

[10] Id., 94.

[11] Article 47, Revised Penal Code, as amended by R.A. No. 7659.

[12] Page 11 of Brief for Accused-Appellant, Rollo, 55.

[13] Id., 58.

[14] Exhibit "1," List/Record of Exhibits, 4.

[15] Citing *Del Mundo v. Court of Appeals*, 240 SCRA 348 [1995].

[16] Citing *People v. Layno*, 264 SCRA 558 [1996].

[17] Citing *People v. Malazarte*, 261 SCRA 482 [1996].

[18] Citing *People v. Ledesma*, 250 SCRA 166 [1995].

[19] Citing *People v. Ortaleza*, 258 SCRA 201 [1996].

[20] Citing *People v. Malazarte*, *supra* note 17.

[21] TSN, 21 August 1995, 3-5.

[22] TSN, 21 August 1995, 8.

[23] TSN, 2 October 1995, 5-7.

[24] Article 8, Revised Penal Code.

[25] *People v. Martinado*, 214 SCRA 712, 732 [1992]; *People v. Canillo*, 236 SCRA 22, 41-42 [1994]; *People v. Sequiño*, 264 SCRA 79, 101- 102 [1996]; *People v. Bergante*, G.R. Nos. 120369-70, 27 February 1998.

[26] Article 14(16), Revised Penal Code.

[27] *People v. De la Cruz*, 207 SCRA 632, 650 [1992]; *People v. Garcia*, 209 SCRA 164, 178 [1992]; *People v. Ybeas*, 213 SCRA 793, 805 [1992].

[28] *People v. Narit*, 197 SCRA 334, 349 [1991]; *People v. Barba*, 203 SCRA 436, 458 [1991]; *People v. Buka*, 205 SCRA 567, 587 [1992]; *People v. Boniao*, 217 SCRA 653, 672 [1993]; *People v. Cordova*, 224 SCRA 319, 347-348 [1993].

[29] 13 Phil. 530 [1909], cited in *People v. Barba*, *supra* note 32.

[30] TSN, 21 August 1995, 4.

[31] TSN, 2 October 1995, 6.

[32] Article 14(15), Revised Penal Code.

[33] See *People v. Ballabare*, 264 SCRA 350 [1996].

[34] Article 64(3), Revised Penal Code.

[35] TSN, 21 August 1995, 5.

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