

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMER BOLIVAR Y MOYCO, JAIME MALINAO Y GABUNA, ROLANDO MALINAO Y LLENAS, ACCUSED-APPELLANTS.

G.R. No. 130597. February 21, 2001

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

Appellants Elmer Bolivar y Moyco (hereafter ELMER), Rolando Malinao y Llenas (hereafter ROLANDO, SR.), and Jaime Malinao y Gabuna (hereafter JAIME) appeal their conviction for murder by the Regional Trial Court of Odiongan, Romblon, Branch 82, in a decision[1] dated 9 May 1997, the dispositive portion of which states:

WHEREFORE, this Court finds the accused (1) ELMER BOLIVAR Y MOYCO alias "TOTO", (2) ROLANDO MALINAO Y LLENAS alias "LANDO" and (3) JAIME MALINAO Y GABUNA guilty beyond reasonable doubt of the crime of MURDER and each is sentenced to suffer the penalty of reclusion perpetua, with all its accessory penalties, except co-accused JAIME MALINAO Y GABUNA who is sentenced to an indeterminate penalty of prision mayor, as minimum, to fifteen (15) years of reclusion temporal, as maximum, with all its accessory penalties, to pay solidarily (a) the heirs of the deceased Rudy de Juan the civil indemnity of P50,000.00, (b) the widow, Marilou de Juan, the total sum of P3,500.00 as actual damages, without subsidiary imprisonment in case of insolvency, and (c) the costs.

Co-accused JAIME MALINAO Y GABUNA may apply for bail pursuant to Section 5, Rule 114 of the Revised Rules of Criminal Procedure, as amended.

All the accused are entitled to credit the period of preventive imprisonment they have undergone pursuant to Article 29 of the Revised Penal Code.

The Information[2] against accused-appellants in Criminal Case No. OD-862 was filed on 19 September 1995. It alleges:

That on or about the 13th day of March, 1995, at around 1:00 o'clock in the morning, in sitio Kawit, barangay Camandag, municipality of Looc, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating and mutually helping each other, with intent to kill, did then and there by means of treachery, abuse of superior strength and with evident premeditation, wilfully, unlawfully and feloniously attack, assault and hack with a bolo and shot with an armalite rifle, one RUDY DE JUAN, inflicting upon the latter multiple mortal wounds in different parts of his body which caused his direct and immediate death.

Accused-appellants were arrested by virtue of warrants for their arrest issued by the trial court.

On 13 October 1995 accused-appellants filed a motion for bail,[3] which was opposed by the prosecution.[4]

On 6 November 1995 accused-appellants filed a motion to quash and to lift warrant of arrest,[5] which the prosecution opposed[6] and the trial court denied.[7]

At the arraignment and pre-trial on 5 December 1996, accused-appellant each entered a plea of not guilty and the pre-trial was declared terminated because of the refusal of the parties to enter into the same.[8] Trial on the merits was thereafter had on various dates.

The witnesses presented by the prosecution were Marilou de Juan, widow of the victim Rudy de Juan; Herminia Nazareno; SPO4 Rogelio Rutor; Dr. Leticia Formilleza; and Johnny Mariano.

Herminia testified that the victim, Rudy de Juan (hereafter Rudy), was killed on 13 March 1995 at around 1:00 a.m. after he attended a dance party at the dance hall of Sitio Kawit, Barangay Camandag, Looc, Romblon. Earlier at the dance hall, a certain Boyet de Juan, Rudy's first cousin, quarreled with Rolando, Jr. Herminia Nazareno, an aunt of Rolando, Jr., told the latter to go home. Herminia accompanied Rolando, Jr. only part of the way, because he returned to the dance hall.[9] Rudy and his wife Marilou were still at the dance hall. At about 12:00 o'clock midnight, they went home after Rudy paid for the lechon manok and beer. The group was walking on a pathway alongside ROLANDO SR.'s house. Rudy walked ahead of the group, followed one foot behind by Herminia with her 5-year old granddaughter Marilyn and, lastly, by Marilou. When Rudy's group was near the house, ROLANDO, SR. directed on them the light of a 1½ foot long flashlight from inside his fence. With ROLANDO, SR. were his two sons, JAIME and Rolando, Jr. and his son-in-law, ELMER. These three companions poked weapons at Rudy. JAIME used a gun and a "talibong" (bolo); Rolando, Jr. had a short gun, and ELMER, an armalite.

Rolando, Jr. went outside the fence with his gun and confronted Rudy. He told Rudy "You were the one advancing." Rudy answered: "You pinpoint the one who has offended you, we have not quarreled Onyoc." Onyoc is the nickname of Rolando, Jr. Upon learning this Rolando, Jr. lowered his gun, but ELMER and JAIME started to fire their guns at Rudy. Both Rudy and Rolando Jr. were hit and fell to the ground. JAIME drew his "talibong" and stabbed Rudy.

Rolando, Jr. and Rudy died as a consequence.

Herminia was about one and a half feet from Rudy when the shooting started. She saw very clearly what happened as there was a full moon and the place was well lit. Herminia and Marilyn ran to the former's house. Marilou stayed with Rudy but later also went to Herminia's house. They narrated the incident to Pedro de Juan, Rudy's father, and later reported the shooting to the barangay captain and to the San Jose Police Station, San Jose, Romblon.[10]

Four policemen led by Sgt. Rogelio Rutor accompanied Herminia, Pedro de Juan and Marilou back to the scene of the incident. The body of Rudy lay on the spot where it had fallen. The policemen watched the area, and when morning came, took pictures of the body. Later, the body was brought to the house of Dr. Formilleza, where it was examined.[11]

Johnny Mariano, Rudy's brother-in-law, was also at the dance hall that evening. He witnessed the altercation between Rolando, Jr. and Boyet de Juan. Both of the men drew "balisongs" during the incident. Herminia then placed her arms over Rolando, Jr., brought him outside and told him to go home.

After the dance, while on his way home, Johnny Mariano saw Rudy on the pathway near the house of ROLANDO, SR. It was there that ROLANDO, SR. directed his flashlight on Rudy from inside the fence of his house. With ROLANDO, SR. were ELMER, JAIME and Rolando, Jr. When Rudy was near the fence, Rolando, Jr. went out and blocked his way. Johnny was fifteen arms' length away and was able to see clearly because of the flashlight being swung upon Rudy by ROLANDO, SR. and also because there was a bright moon and stars. After Rolando, Jr. blocked Rudy's way, ELMER and JAIME shot the latter with an armalite and a shotgun, respectively.

Johnny had often seen ELMER carrying the same armalite while guarding the fishpond belonging to a certain Dodong Javier and he had also often seen JAIME carrying the said shotgun while shooting "dakot" (wild duck) in the fishpond.

Johnny Mariano stated further that Herminia was only two arms' length away from Rudy when the shooting started.

Johnny Mariano hid in a rice paddy and saw Herminia and Marilou run away. He also saw JAIME hacking Rudy with a "talibong," after which JAIME and ELMER brought the body of Rolando, Jr. inside the house of ROLANDO, SR. He then ran away to the house of his father-in-law, Pedro de Juan, to tell him of the shooting. Johnny went home and told his wife of the incident. When day broke, he went back to the scene of the killing. There were now a number of police officers around taking pictures of Rudy's body and the surrounding area.[12]

Chief of Police Rogelio Rutor testified that in the early morning of 13 March 1995, he received a report of a killing at Sitio Kawit, Barangay Camandag, Looc. He immediately left with three companions to investigate. They went to ROLANDO, SR.'s house and saw Rudy's body lying on the ground with gunshot wounds and hack wounds. Sgt. Rutor found seven empty shells and a live shell of an armalite near the gate of ROLANDO, SR.'s house. He also found an empty shell of a 12-gauge shotgun and a blood-stained bolo near the door of ROLANDO, SR.'s house. Sgt. Rutor took pictures of the weapons and the shells, then had Rudy's body taken away.[13]

Dr. Leticia Formilleza, Municipal Health Officer of Looc, Romblon, conducted the autopsy on Rudy's body and found the victim to have suffered gaping hack wounds and a number of gunshot wounds.[14]

The defense had a different version of the events.

Illuminada Gabuna Malinao testified that she was roused from sleep on 12 March 1995 by a large explosion near the family home in Sitio Kawit, Saraugay, Mamandag, Looc, Romblon. She woke up her son Rolando, Jr. to see what was happening. Rolando, Jr. opened the door and he was fired upon. Unhurt, he went to get a "talibong." Illuminada recognized the shooter as Rudy de Juan, who was accompanied by Diosdado de Juan, Edgar de Juan, Marilou de Juan, Jeffrey de Juan and Herminia Gabuna Nazareno, Illuminada's sister.

After Rolando, Jr. went to get a "talibong," he and Rudy grappled with each other. During the scuffle, Edgar de Juan and Diosdado de Juan fired at Rolando, Jr. -- hitting him and Rudy. Edgar was armed with shotgun, while Diosdado had an armalite.[15]

Rudy fell and Jeffrey ran towards Rolando, Jr. and stabbed him. Rolando, Jr. cried out for help.[16]

Illuminada knew Rudy de Juan, as he was the son-in-law of her sister Herminia. Earlier that evening her son Rolando, Jr. had gone to a dance but had come home at 10:00 o'clock because Rudy and his cousin Boyet de Juan threatened to stab him. It was not the first time that Rudy had tried to harm her family. In 1995, Rudy had hit her other son JAIME with a bolo and, on another occasion, Rudy had advanced upon her family with hostility near the fishpond.[17]

At the time of the incident, ROLANDO, SR., JAIME and ELMER were at the fishpond of Herminigildo Javier, where they were hired as guards. ROLANDO, SR. heard the sound of shots from shotguns and rushed back to his house, where he saw Rudy de Juan already dead and Jeffrey, Diosdado, Edgar, Herminia and Marilou running away. Rolando, Jr. was lying by the door and, when asked by his father who attacked him, answered that Jeffrey de Juan stabbed him and Edgar de Juan shot him.

ROLANDO, SR. and a neighbor, Joseph Potohin, carried Rolando, Jr. on a banca to take him to a hospital, but he died thereafter.[18]

The trial court rejected accused-appellants' version of the incident and convicted them of murder. However, it credited JAIME with the privileged mitigating circumstance of minority under the second paragraph of Article 68 of the Revised Penal Code, i.e., he was below eighteen (18) years of age when the crime was committed.

Accused appellants seasonably appealed to this Court from the judgment. In their Appellants' Brief, accused-appellants allege that the trial court erred:

- . . . IN HOLDING THAT THE GUILT OF THE ACCUSED HAD BEEN PROVEN BEYOND REASONABLE DOUBT;
- . . . IN FINDING THAT APPELLANTS WERE GUILTY OF CONSPIRACY TO MURDER RUDY; AND
- . . . IN APPRECIATING TREACHERY AS A QUALIFYING CIRCUMSTANCE

The appeal is without merit.

Accused-appellants maintain that the testimonies of the prosecution witnesses should not have been given credence by the trial court.

We do not agree. Prosecution witnesses Herminia Gabuna, Marilou de Juan, and Johnny Mariano were able to positively identify accused-appellants as the persons who killed Rudy. Herminia and Marilou were with Rudy on their way home from the dance hall when the shooting and stabbing incidents happened. Herminia Gabuna testified thus:

Q After paying and taken [sic] what he had bought for, where did Rudy de Juan and his wife go?

A We went home.

Q Who was ahead in going home?

A Rudy de Juan.

Q Who was following Rudy de Juan?

A Myself and my grand-daughter.

Q What about Marilou de Juan?

A She was following my grand-daughter.

COURT:

So, Marilou de Juan was following your grand-daughter in going home?

A Yes, sir.

FISCAL VICTORIANO:

Q Were you able to go directly home that evening?

A No, sir.

Q Do you know the house of Rolando Malinao, Jr.?

A Yes, sir.

Q How far is the house of Rolando Malinao, Jr. to the nearest spot on your way home?

A About four meters.

Q When you were nearing the house of Rolando Malinao, Sr., what happened?

A He flashlighted us.

Q Where does Rolando Malinao, Jr. live at that time?

A In their house?

Q Whose house?

A In the house of Rolando Malinao, Sr.

Q When Rolando Malinao Sr. flashlighted his flashlight with you that evening who were with him?

A Elmer Bolivar, Jaime Malinao and Rolando Malinao, Jr.

Q Where were they when you first saw them?

A Inside the fence.

Q When you were nearing that fence already, what did Rolando Malinao, Jr. do?

A He went outside the fence and he poked a gun to Rudy de Juan.

Q What else did Rolando Malinao, Jr. do?

A They conversed and he told Rudy, "You were the one advancing."

Q And what was the answer of Rudy?

A Rudy de Juan answered. "You pinpoint the one who has offended you, we have not quarreled, Onyoc".

Q To whom does he refer to as "Onyoc"?

A He refers to Rolando Malinao, Jr.

Q

When Rudy de Juan told Rolando Malinao, Jr., that they did not quarrel, what did Rolando Malinao, Jr. do which was poked to Rudy de Juan?

A He lowered the gun down.

Q Now, when Rolando Malinao, Jr. lowered his hands holding the gun, what happened?

A Elmer Bolivar shot Rudy de Juan.

Q

When Rolando Malinao, Jr., rather how long was the gun which Rolando Malinao, Jr. used in poking at Rudy de Juan?

A About this length. (Witness demonstrating a distance of about a foot long)

Q What about Elmer Bolivar, how long was the gun which he used in shooting Rudy de Juan?

A Long firearm. (Witness demonstrating by spreading her two hands with a distance over one meter)

Q Now, when Elmer Bolivar shot your son-in-law Rudy de Juan, what did you do?

A I ran away.

Q Where did you go running away?

A In my house.[19]

Marilou de Juan also corroborated Herminia's testimony, thus:

Q Who was immediately following Rudy de Juan?

A Herminia Nazareno.

Q With whom?

A Her grandchild and myself.

Q You were behind your grandchild?

A Yes, sir.

Q When Rolando Malinao, Sr., flashed his flashlight do you know if he had companions?

A

Yes, sir.

Q Who were his companion [sic]?

A Rolando Malinao, Jr., Elmer Bolivar and Jaime Malinao.

Q Where were they when you first saw them?

A Inside the fence.

Q

How far were they from the house of Rolando Malinao, Sr.?

A

Near.

Q

How near where they from the house of Rolando Malinao, Sr.?

A About four (4) arms length.

Q

Now, after Rolando Malinao, Sr. has finished his flashlight towards Rudy de Juan, what if any did Rolando Malinao, do?

A Rolando went out of the gate.

Q Where did Rolando Malinao, Jr. go?

A Toward Rudy de Juan.

Q And what did Rolando Malinao, Jr. do upon reaching near Rudy de Juan?

A

He poked his gun.

Q Aside from poking his gun towards Rudy de Juan, what else did Rolando Malinao, Jr. do?

A They were the one suddenly advancing (gasad).

Q What did Rudy de Juan do when he saw the ones suddenly advancing?

A Rudy de Juan pleaded.

Q What did Rudy de Juan say?

A "Onyoc, pinpoint only the one who was at fault. We did not fight".

Q

When Rudy de Juan told Rolando Malinao, Jr. that way, what did Rolando Malinao, Jr. do with the gun poked to Rudy de Juan?

A He lowered down his gun.

Q After that gun was lowered down, what did Rudy de Juan do while on your way home with you?

A We advanced.

Q When you advanced on your way home, what did Rolando Malinao, Jr. say if any?

A Rolando Malinao said, "sorry Rudy, I got mistaken."

Q While Rudy de Juan was advancing, what suddenly happened?

A We went straight going home.

Q Were all of your where able to go home?

A No, sir.

Q Why, what happen when you were on your way home?

A We were blocked.

Q Now, when you were blocked, what happened to Rudy de Juan?

A He was shot.

Q By whom?

A Elmer Bolivar.

Q Where was Jaime Malinao when Elmer Bolivar shot your husband?

A Inside the fence.

Q What weapon was used by Elmer Bolivar in shooting your husband?

A Long firearm.

Q

You claimed to have seen Jaime Malinao when Elmer Bolivar shot about your husband, what did Jaime Malinao do?

A He also shot Rudy de Juan.

Q What weapon was used in shooting your husband?

A Also long firearm.

Q

Aside from the gun held by Jaime Malinao in shooting your husband, what else have you seen in him that evening?

A A bolo.

xxx

Q When your husband was fired upon, what happen [sic] to him?

A He fell down.

Q What happen also to Rolando Malinao, Jr., who was there?

A He fell down also.

Q Seeing two (2) people falling down, what did you do?

A I ran away.

Q In running away where did you go?

A I evaded by following another route.

Q Where did you go?

A In the house of Herminia Nazarino.[20]

Johnny likewise saw the killing of Rudy from his hiding place in the rice paddy.

Well-entrenched in our jurisprudence is the doctrine that the assessment of the credibility of witnesses lies within the province and competence of trial courts. Said doctrine is based on the time-honored rule that the matter of assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in the light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between truth and falsehood. Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses, unless it be clearly shown that the lower court had overlooked or disregarded arbitrarily the facts and circumstances of significance in the case.[21]

Accused-appellants also claim that the trial court should have given credence to their defense of alibi because the same was proven by their testimonies and the testimonies of their witnesses. They allege that they were at the fishpond of their employer, Herminigildo Javier, at Sitio Cawit, when the killing took place. However, their positive identification by the prosecution witnesses renders their defense of alibi and denial unworthy of credit.[22] For alibi to prosper the accused must: (1) prove his presence at another place at the time of the perpetration of the crime; and (2) demonstrate that it would be physically impossible for him be at the scene of the crime at the time it was committed.[23] Accused-appellants failed to establish the second requisite. Since the distance of the fishpond was only 500 meters from the place where Rudy was killed, it was not impossible for accused-appellants to be at the scene of the crime at the time of its commission.[24]

Moreover, since accused-appellants' alibi was established only by themselves, their relatives and friends, their denial of guilt should be treated with the strictest scrutiny.[25]

The Court finds that treachery qualified the killing to murder. There is treachery when the offender commits any of the crimes against persons, 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] The means of execution must also be deliberately and consciously adopted.[27]

As the Office of the Solicitor General correctly pointed out in the Appellee's Brief, the attack employed by accused-appellants was sudden and unexpected. Rudy de Juan was helpless from the very start and had no chance to defend himself or retaliate. His attackers are all armed waiting for him. ELMER and JAIME initially shot Rudy with their armalite and shotgun. As a consequence, Rudy fell on the ground. Already sprawled on the ground, Rudy was stabbed by JAIME with his bolo or "talibong." Second, the means of execution was deliberately and consciously adopted. Accused-appellants resorted to a mode of attack, that is, by simultaneously shooting Rudy and when the latter had fallen on the ground, by stabbing him with a bolo, which would facilitate the killing without risk to themselves from a defense which Rudy might offer.[28]

We agree with the trial court's finding that conspiracy was evident from the circumstances surrounding the killing of Rudy. Conspiracy may be inferred from the acts of the accused-appellants before, during, and after the commission of the crime which are indicative of a joint purpose, concerted action, and concurrence of sentiments.[29] Thus, it was clear that when ROLANDO, SR., ELMER, JAIME and Rolando, Jr. gathered at the fence waiting for Rudy to pass by, three of them armed, they all had a common purpose: to inflict bodily harm on Rudy. ROLANDO, SR. first targeted Rudy by directing his flashlight upon him and the other three poked their respective weapons at him. Then, ELMER and JAIME shot him and the latter stabbed him with his bolo. Conspiracy having been established, the act of one was the act of all and each is equally guilty of the crime of murder.[30]

As to the appreciation in favor of JAIME of the privileged mitigating circumstance of minority under the second paragraph of Article 68[31] of the Revised Penal Code, the trial court justified it by its finding that when JAIME testified on 17 March 1997, he gave his age as "18"; hence, it can be safely assumed that he was 16 years old when the crime was committed. When there is doubt as to whether an accused is over or under 18 years of age at the time the crime was committed, the doubt may be resolved in his favor.[32] We agree with the trial court in this regard. However, there is error in the penalty it imposed on JAIME, which is "prision mayor, as minimum, to fifteen (15) years of reclusion temporal, as maximum, ..."

The penalty for murder under Article 248 of the Revised Penal Code, as amended by R.A. No. 7659, is reclusion perpetua to death. Being entitled to the afore-mentioned privileged mitigating circumstance, the prescribed penalty then would be that which is one degree lower than "reclusion perpetua to death," which is reclusion temporal pursuant to the second paragraph of Article 61 of the Revised Penal Code. No modifying circumstance having been proven, the penalty may be imposed in its medium period. JAIME is entitled to the benefit of the Indeterminate Sentence Law. Hence, he could be sentenced to an indeterminate penalty whose minimum shall be within the range of the penalty next lower to reclusion temporal, which is prision mayor. Accordingly, JAIME should be sentenced to suffer an imprisonment penalty of ten (10) years of prision mayor medium as minimum, to seventeen (17) years and four (4) months of reclusion temporal medium, as maximum.

Lastly, the Court awards moral damages in the amount of P50,000 to the heirs of Rudy de Juan, in addition to the amount of P50,000 originally awarded by the trial court as indemnity,[33] pursuant to the provision of Article 2219(1) in relation to Art. 2206 of the Civil Code, as the prosecution was able to prove that the victim's death caused his family grief and emotional suffering. The widow, Marilou de Juan, testified that since her husband's death, she has been lonely and sad.[34]

WHEREFORE, the decision of the Regional Trial Court of Romblon, Branch 82, in Criminal Case No. OD-862 finding accused-appellants ELMER BOLIVAR y MOYCO, ROLANDO MALINAO y LLENAS, and JAIME MALINAO y GABUNA guilty of the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, as amended, is hereby AFFIRMED, with the modification that accused-appellants are further ordered to pay the heirs of Rudy de Juan the amount of P50,000 as moral damages, and that the penalty of JAIME MALINAO should be an indeterminate penalty of imprisonment ranging from ten (10) years of prision mayor medium as minimum, to seventeen (17) years and four (4) months of reclusion temporal medium, as maximum, with all the accessory penalties appertaining thereto. The penalty of reclusion perpetua imposed on each of accused-appellants, ELMER BOLIVAR Y MOYCO and ROLANDO MALINAO Y LLENAS, with all the accessory penalties thereof, stands.

SO ORDERED.

Puno, Kapunan, Pardo, and Santiago, JJ., concur.

[1] Per Judge Placido C. Marquez, Original Record (OR), 98-108.

[2] OR, 1.

[3] Id., 8.

[4] Id., 23.

[5] Id., 25.

[6] Id., 29.

[7] Id., 30-32.

[8] Id., 60-61.

[9] TSN, 24 January 1997, 5-6.

[10] TSN, 24 January 1997, 6-13, 20-22; TSN, 29 January 1997, 9-13; TSN, 30 January 1997, 6-9.

[11] TSN, 24 January 1997, 10-12.

[12] TSN, 30 January 1997, 5-12.

[13] TSN, 27 January 1997, 4-17.

[14] TSN, 31 January 1997, 3-7.

[15] TSN, 27 February 1997, 6-7.

[16] Id., 10-12.

[17] Id., 20-23.

[18] TSN, 24 February 1997, 5-10.

[19] TSN, 24 January 1997, 6-9.

[20] TSN, 29 January 1992, 8-13.

[21] *People v. Rosario*, GR 122769, 3 August 2000.

[22] *People v. Herbieto*, 269 SCRA 472, 481 [1997].

[23] *People v. Magpantay*, 284 SCRA 96, 101 [1998]; *People v. Taneo*, 284 SCRA 251, 271 [1998].

[24] *People v. Castillo*, 273 SCRA 22, 34 [1997].

[25] *People v. Jerez*, 285 SCRA 393, 402 [1998].

[26] Article 14, Revised Penal Code.

[27] *People v. Estrellanes, Jr.*, 239 SCRA 235, 249-250 [1994].

[28] Appellee's Brief, 12- 13.

[29] *People v. De Leon*, 245 SCRA 538, 547 [1995].

[30] *People v. Pama*, 216 SCRA 385 [1992]; *People v. Canillo*, 236 SCRA 22 [1994].

[31] Article 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:

x x x

- 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.

[32] Citing *People v. Regalario*, 220 SCRA 368, 385-386 [1993].

[33] *People v. Lopez*, 312 SCRA 684 [1999]; *People v. Verde*, 302 SCRA 707 [1999]; *People v. Gutierrez, Jr.*, 302 SCRA 643 [1999].

[34] TSN, 29 January 1997, 18-19. See *People v. Fedigero*, G.R. No. 113446, 6 August 2000; *People v. Cosingal*, G.R. No. 132219, 1 August 2000.

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