

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTHUR DELA CRUZ, ACCUSED APPELLANT.*G.R. No. 130608. August 26, 1999*

Ponente: BELLOSILLO, J.

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ARTHUR DELA CRUZ was charged with murder before the Regional Trial Court of Kalibo, Aklan, for the death of Marbel Baptista on 24 October 1994 allegedly committed with treachery and evident premeditation.[1] On 19 June 1997 the trial court adjudged him guilty as charged but qualified only by treachery. Appreciating the mitigating circumstance of voluntary surrender, the trial court sentenced him to reclusion perpetua and ordered him to pay the heirs of the victim P50,000.00 as death indemnity and P35,000.00 as funeral and burial expenses, and to pay the costs.[2]

On 24 October 1994 Diego Pelonio planned an evening party to celebrate the birthday of his younger child. The party was to be held in his house in Brgy. Bay-ang, Batan, Aklan. Arthur dela Cruz, nephew of Diego, helped prepare the food. The guests started to arrive at around 7:30 in the evening. Among them were Arthur's father Felix and townmates Marbel Baptista, Romeo Bitamor, Jerry Paclibare, Felipe Bustamante, Nestor Prado and Pepito Dalipe. They drank tuba and beer. A few minutes past 8:00, Carlita dela Cruz, mother of Arthur, arrived to fetch her husband Felix, after which, the spouses proceeded home.

Before long, screams of a woman were heard from the national road. Diego and Jerry rushed to where the sound seemingly came from. Arthur followed. When Diego and Jerry returned, they told the other guests in the yard that Felix was boxed by somebody. Arthur thereafter reappeared and approached them clutching a knife. Without uttering a word he stabbed Marbel Baptista several times. Marbel was then sitting with his left leg raised on the bamboo bench and about to light a cigarette. Thus, with this position when stabbed, Marbel was unable to thwart the attack. Marbel fell lifeless on the ground. Arthur ran away. This startling occurrence was witnessed by Diego, Romeo, Jerry and some other guests. The autopsy conducted on the cadaver of Marbel disclosed these findings: (a) chopped wound, 4 x 4 inches, upper posterior left arm; (b) stab wound, 2 x 6 inches, left chest, directed medially along the posterior left axillary line; (c) stab wound, 2 - 1/2 x 3 inches, left lateral chest, below the tip of the left scapula; (d) stab wound, 1-1/2 x 6 inches, below wound No. 2, directed downwards and medially; (e) incised wound, 3 x 1/2 inches, 2 inches below the left ear; (f) stab wound, 2 x 6 inches, 2 inches below the midclavicle, left side, directed downwards; (g) stab wound, 1 x 4 inches, right chest along anterior right axillary line directed downwards; (h) chopped wound, right palm, cutting the right small and ring finger; (i) incised wound, 2 x 1/2 inches, mid forearm, right side; (j) incised wound, 1/2 x 3 inches, anterior right thigh; and, (k) stab wound, 1 x 3 inches, left costal arch directed upwards.[3] According to the examining physician, of the eleven (11) wounds inflicted on Marbel five (5) were mortal since they involved the heart, lungs and abdomen, and all the wounds could have been brought about by a knife or a sharp, bladed and pointed instrument.

Precy Baptista, widow of Marbel, testified that she spent P35,000.00 for the funeral and burial expenses of her husband.

Accused Arthur dela Cruz, on the other hand, claimed that while watching television in the house of his uncle Diego at the time of the incident he heard his mother shouting for help. Immediately, he ran towards the direction from where his mother's voice was coming. Some forty (40) meters away from the house of his uncle Arthur found his father lying on the ground being kicked by Marbel. Arthur told Marbel to stop but the latter replied, "Ikaw, maapin ka pa." [4] Simultaneously, Marbel drew a knife. Arthur ran. Marbel pursued him and lunged his knife at Arthur. While Arthur was able to foil the blow, Marbel slipped and fell down. Arthur, taking advantage of the situation, wrestled with Marbel for the possession of the latter's knife. Arthur succeeded and stabbed Marbel four (4) times. Marbel ran towards the house of Diego. Arthur chased him but desisted when several persons went to the rescue of Marbel upon reaching Diego's house. Arthur had to hide himself behind the bamboo grove until he went home. Later, Arthur surrendered to the Barangay Captain who accompanied him to the police station. Arthur admitted to the Barangay Captain and to the police that he stabbed Marbel but claimed he forgot where he placed the knife.

The trial court accorded full credence to the testimonies of the prosecution witnesses, especially that of Arthur's uncle Diego Pelonio, regarding the manner of the attack on Marbel by Arthur and the place of its commission. On the other hand, it found Arthur's claim of self-defense to have been contrived since he failed to raise it when he surrendered to the authorities. Besides, he also failed to establish the elements of self-defense.

In this appeal, the question to be resolved is which version should be believed - that of the prosecution asserting that the victim was treacherously killed within the yard of the house of Diego Pelonio, or that of the defense contending that the killing was prompted by defense of one's self and the immediate vindication of a wrong done to the accused's father Felix dela Cruz?

Accused-appellant maintains that he was justified in stabbing Marbel since he only repelled the aggression of Marbel against Felix dela Cruz, his father. And because of the claimed unlawful aggression, he submits that the deceased was sufficiently forewarned and placed on guard thus destroying the theory of treachery in the killing. He also insists that the testimony of Diego Pelonio should be completely disregarded having failed to submit himself to cross-examination, while Romeo Bitamor should be considered a biased witness being a friend and compadre of the victim. He attacks the credibility of Jerry Paclibare as he gave contradictory narrations in court and in his affidavit regarding the identity of the person who shouted for help.

That accused-appellant is guilty for the death of Marbel stands on solid ground. The testimony of Romeo Bitamor is clear on this point. He was only three (3) meters away from accused-appellant and his victim and the place was adequately illumined by an electric light. Romeo was afforded the opportunity to view at close range the incident as it unfolded -

Q: And while you were drinking outside of the house of Diego Pelonio, and at around 8:30 that evening, did you hear any shout?

A: Yes, sir, at the road.

x x x x

Q: And how far is (sic) that from the house of Diego Pelonio?

A: About 80 meters away.

Q: And whose shout was that? Was that a shout of a man or that of a woman?

x x x x

A: The woman was shouting that her husband was boxed.

Q: At that time you heard that shout where was Marbel Baptista?

A: He was still sitting. We were together.

x x x x

Q: And when you heard that shout afterwards, did anything happen?

x x x x

A: Arthur dela Cruz arrived and immediately and successively stabbed Boy.

Q: You are referring to Boy or Marbel Baptista?

A: Yes, sir x x x x

Q: How were you able to recognize Arthur dela Cruz as the person who stabbed the victim because it was nighttime?

A: Because there was an electric light.

Q: Now, what weapon did Arthur dela Cruz use in stabbing Boy Baptista?

A: It is (sic) a knife.

Q:

And was there any exchange of words between Boy Baptista and the accused Arthur dela Cruz immediately prior to the stabbing?

A: They had not talked to each other.

Q: And how far were you from the victim Marbel Baptista when you saw Arthur dela Cruz stabbed (sic) the said victim?

A: About three meters away.

Q: And about how many times did the accused stab Boy Baptista?

A: About five times or more.

Q:

Now, can you tell the Honorable Court how the victim was seated on that bench immediately prior to the time that he was stabbed?

A:

His left foot was raised on the bench while he was about to light a cigarette.

Q: Was the victim able to fight back?

A: No, sir.

COURT TO THE WITNESS:

Q: Was he able to evade the first blow?

A: No, Your Honor.

Q: How about the successive blows?

A: No, your Honor.

Q: Why?

A: Because he was seated.

Q: So, he was not able to stand up?

A: Only when he fell to the ground x x x x

Q: After he fell down what did the accused do?

A: He ran away.

Q: How about the knife that he used what did he do with it?

A: He brought it with him.[5]

During the cross-examination Romeo clarified that -

Q: When you heard that shout(s) what were you and your companions doing?

A: Diego Pelonio went to the feeder road x x x x

Q: Nobody accompanied or went after Diego Pelonio after he left to go to that feeder road?

A: Jerry Paclibare x x x x

Q:

You also testified that after a while Diego Pelonio returned. When Diego Pelonio returned to the house after going to the road did he have any companions with him when he went back?

A: Yes, sir, Jerry Paclibare.

Q: And of course, you yourself asked Diego Pelonio what was happening on the road after he went back?

A:

Yes, sir.

Q: Did they tell you if who was boxed?

A: It was Felix de la Cruz who was boxed x x x x

Q:

And of course when Diego Pelonio and Jerry Paclibare told you that Felix dela Cruz was boxed what came to your mind was to ask them who boxed Felix dela Cruz, is it not?

A: They do not know who boxed Felix dela Cruz x x x x

Q:

You mean to tell us that all the while that there were shouts there on the road and after Diego Pelonio and Jerry Paclibare returned to the house Arthur dela Cruz was watching TV in the house of Diego Pelonio?

A:

When the shout was heard Arthur dela Cruz went down the house of Diego Pelonio and followed Diego Pelonio x x x x[6]

Equally able to fix his eyes on the incident was Jerry and his narrations were as graphic -

Q: How about Marbel Boy Baptista have you seen him that evening of October 24, 1994?

A:

Yes, sir.

Q: Where did you see him?

A: Also at Diego Pelonio's house.

Q: When you arrived there in the house of Diego Pelonio was he already there?

A: Yes, sir x x x x

Q: x x x x Have you observed anything at about 8:30 that evening?

A: I overheard somebody shouting.

Q: And this shout that you heard was (that) the voice of a male or a female?

A: A female.

x x x x

Q: Did you hear exactly what were those shouts?

A: I overheard it clearly. It is a shout for help x x x x

Q: You said that Diego Pelonio went to the place where the shouts (originated ?) after hearing the same, was there any person who accompanied him to the place?

Q: Arthur dela Cruz also went with him.

A: And afterwards was he able to return, I am referring to Diego Pelonio?

Q: Yes, sir.

A: How about Arthur dela Cruz?

A: Not yet.

Q: Now, after Diego Pelonio had arrived coming from that road where the shout came from did anything happen?

A: When Arthur dela Cruz went back and stabbed Marbel Baptista.

Q: What was the position of Marbel Baptista when he was stabbed by the accused Arthur dela Cruz?

A: He was sitting on the bench with his left leg resting on the bench.

Q: And how far was the accused Arthur dela Cruz when you first saw him, how far was he from Marbel Boy Baptista?

A: He went straight to Marbel Baptista and stabbed him.

Q: Did he say any word to Marbel Baptista before he stabbed him?

A: No, sir.

Q: How about Boy Baptista did he say any word to the accused Arthur dela Cruz before the stabbing?

A: No, sir.

Q: How was the stabbing done?

A: (Witness demonstrated that Arthur dela Cruz stabbed Marbel Baptista with the forward thrust coming from the side with his right hand.)

Q: For how many times did Arthur dela Cruz stab the victim?

A: To what I have seen five times or more.

Q: And do you know where was the victim hit with those stab blows?

A: Yes, sir. (Witness pointing to the upper left chest and also at the lower chest.)

Q: How about at the back do you know if the victim suffered a wound at the back?

A: Yes, sir.

Q: How come that he suffered that wound at the back?

A: Because when Marbel Baptista was about to run he was followed with a stabbing blow by Arthur dela Cruz.

Q: And after that stab blow at the back of Marbel Baptista what happened to him?

A: He fell down.

Q: What was his position when he fell down.

A: He fell down on his side.

COURT: Which side? left or right?

A: Left.

x x x x

ATTY. ILIGAN:

Q: What did Arthur dela Cruz do after he delivered that last stab blow?

A: He ran away.

Q: What kind of weapon did Arthur dela Cruz use in stabbing the victim?

A: It was a knife.

Q: How were you able to identify or know that it was the accused Arthur dela Cruz who stabbed the victim that evening?

A: Because there was a light.

Q: What kind of light was that?

A: It was an electric light.

Q: When the accused ran away did he bring with him that weapon used?

A: Yes, sir.[7]

Jerry clarified during the cross-examination that -

Q: Before you heard that shout of a woman coming from a road, was Marbel Baptista present in the house of Diego Pelonio?

A: Yes, sir x x x x

Q: Aside from Arthur dela Cruz, were there other persons who followed going towards the direction where the voice came from?

A: Myself.

Q: Afterwards when you arrived there at the place where the voice came from, did you observe anything there?

A:

When I arrived at the place where the shout came from, Arthur and Diego Pelonio were not there anymore. I only met them on the way and they told me that Felix dela Cruz was boxed and Arthur remained on the road x x x [8]

We culled from the combined testimonies of Romeo Bitamor and Jerry Paclibare that when they arrived in the house of Diego at around 7:30 in the evening, Marbel was seated outside while Arthur was watching television. At around 8:30, Romeo and Jerry heard shouts of a woman coming from the road. Diego and Jerry went to the apparent source of the sound, followed by Arthur. When Diego and Jerry returned they informed the guests that Felix was boxed by somebody. A few minutes thereafter, Arthur also returned and immediately stabbed Marbel. As thus narrated, however, there was a hiatus between the time when Arthur proceeded to the source of the screams and when he suddenly stabbed Marbel. Such lapse in the continuity of the witnesses' accounts is decisive in determining the crime committed by Arthur and the commensurate penalty therefor. We find it unnatural for Arthur to have been suddenly infuriated upon his return to the house of Diego with Marbel as the target of his furor, to the exclusion of the other guests of Diego. It should be recalled that during the drinking session, Arthur was watching television. When he heard the shouts of a woman, he proceeded to the direction where the sound came from. His parents Felix and Carlita must have then disclosed to him the identity of Marbel as the one who boxed Felix, that is why he directed his stab blows solely at Marbel upon his return to the house of Diego. We draw this inference from a consideration of the other portions of the testimony of Romeo manifesting that indeed it was Marbel who physically assaulted Felix on the road. Otherwise, it would be very unnatural for Arthur to stab Marbel for no reason at all. It may be recalled that Arthur was in the house of Diego helping the latter prepare the food for his guests.

Jurisprudence recognizes that victims of criminal violence have a penchant for seeing the faces and features of their attackers and remembering them.[9] In the present case, Marbel was known to Felix, both being residents of Batan, Aklan. Felix must have acquiesced to the infliction by his son Arthur of the injuries Marbel sustained as may be gathered from the testimony of prosecution witness Romeo Bitamor, the fishpond operator and resident of Bay-ang, Batan -

Q: By the way, after Arthur dela Cruz had already stabbed the victim do you know if his father did anything x
x x x

A: He came later.

ATTY. ILIGAN:

Q: And what did he say if he said anything?

A: He asked persons there who among them is (sic) aggrieved.[10]

A portion of the testimony of Jerry Paclibare was of the same tenor -

Q:

After he (appellant) had run away (victim having fallen lifeless to the ground) what else happened?

A:

After Arthur dela Cruz ran away the father Felix dela Cruz came back with a bolo on his hand saying, who was

still sympathizing with Marbel?[11]

In other words, if the one who boxed Felix was a person other than Marbel, Felix could have remonstrated then and there against the attack by Arthur on Marbel. Consequently, we find it difficult to sustain the testimony of Romeo and Jerry that when they heard the shouts Marbel was still sitting on the bench. We seriously doubt this particular narration of Romeo and Jerry. The test to determine the value of the testimony of a witness is whether or not such is in conformity with human knowledge and consistent with the experience of mankind.[12] Aside from subjecting the testimony of a witness under the most careful scrutiny, of equal importance is getting the complete picture of the events the witness is narrating.[13] What is more in accord with the ordinary course of events was that Marbel boxed Felix on the road then returned to the house of Diego, perhaps unaware that Arthur was there. But Arthur must have learned that it was Marbel who boxed his father Felix, so that in immediate vindication of a wrong done to his father, Arthur stabbed Marbel.

The rule that the factual findings and assessment of credibility of a witness generally binds the court cannot be strictly applied in this case. Significant facts and circumstances were overlooked and disregarded by the trial court which when properly considered affected the result of the case. There were strong and cogent reasons that justified departure from the trial court's finding.[14] At any rate, only that aspect of the testimonies of Romeo and Jerry is not sustainable. Even where a witness has been found to have deliberately falsified the truth in some particulars, it is not required that the whole of his testimony be rejected.[15] The testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case.[16]

We thus appreciate the mitigating circumstance of vindication of a grave offense under Art. 13, par. 5, of the Revised Penal Code,[17] or as a circumstance similar in nature or analogous to it, pursuant to Art. 13, Art. 10, of the same code. The circumstance that Felix, Arthur's father, was boxed by Marbel was serious enough to perturb Arthur's mind and diminish the voluntariness of his action.

Having invoked the justifying circumstance of self-defense, the burden of proof was thereupon shifted to accused-appellant 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 or repel it; and, (c) lack of sufficient provocation on the part of the person defending himself.[18] Unlawful aggression is an indispensable element, whether in complete or incomplete self-defense.[19] We note that while accused-appellant clings to self-defense, his argument indeed deviates therefrom and relates instead to defense of a relative. To be specific, he argues that Marbel was an unlawful aggressor when he boxed and kicked Felix and that it was this aggression which he repelled. But this argument of accused-appellant should have been concerned with the alleged unlawful aggression committed against him; and even granting this were so, and we accept his version to the contrary, i.e., Marbel chased him and lunged a knife at him, still the trial court correctly relegated it to insignificance -

Even if the Court were to give importance to the pretense of the accused that the victim chased him with a knife (and) when the (victim) slipped and fell to the ground he wrestled for the possession of the knife and then repeatedly stabbed the victim (TSN, May 16, 1996, p. 4) still unlawful aggression cannot be considered. After the accused was able to take possession of the weapon, at that point in time, the unlawful aggression against him, if any, had effectively ceased (People vs. Ganzagan, G.R. No. 113793, August 11, 1995). Clearly, there was no more threat to the life and limb of the accused (Andal vs. Sandiganbayan, G.R. No. 60159, November 6, 1989).[20]

Neither was the second element of self-defense present. The nature, location and number of wounds inflicted on the victim belie and negate the claim of self-defense. If accused-appellant stabbed the victim merely to defend

himself, it certainly defies reason why he had to inflict a total of eleven (11) wounds in different vital parts of the body of the victim,[21] such as his heart, lungs and abdomen. The gravity of those wounds is indicative of a determined effort to kill and not just to defend.[22] With the foregoing discussion, it is no longer necessary to dwell on the third element, i.e., lack of sufficient provocation on the part of the person defending himself.

As it is, Arthur's version of the incident was scripted way below the level of satisfaction. It has imperfections as to some significant segments so much so that, preliminarily treated in isolation from the prosecution's evidence, it failed to pass the test of credibility. Accused-appellant claimed to have wrestled with Marbel for the possession of the knife after Marbel slipped and fell on the ground, yet he did not have the slightest scratch on his body. The physician opined that the victim could not have traversed a distance of forty (40) meters before falling down considering that his heart was hit. The physician elaborated on this aspect -

Q:

You stated doctor that a person hit by a bladed weapon like a knife on his body piercing the heart you stated that you don't think he can still run a distance of 40 meters, is that correct?

A:

Yes, sir.

Q:

But there is a possibility, doctor, that the victim can still run?

A:

Could still run but not that distance.

Q:

If the victim doctor is strong and robust he could still run that distance of 40 meters, is that correct?

A:

I don't think so because the heart was hit there is an abrupt leakage of blood.

Q:

Because of abrupt leakage of blood the victim could not run at (sic) a distance of 40 meters but if the victim could stop the leakage of the blood by putting his hand on the wound it is possible that the leakage of blood could be stopped and he could run?

A:

The bleeding could not be stopped by pressing the heart or by putting pressure to the heart because the bleeding is not external but internal.[23]

Further, no bloodstain was found at the place indicated by accused-appellant as the scene of the crime, not even on the road leading to Diego's house. Further still, he must have discarded the knife and not simply forgot where he placed it, which can only mean that he naturally did not want to produce the evidence that could convict him.[24] With more reason did accused-appellant's version of the incident fall to pieces when pitted against the testimonies of Romeo Bitamor and Jerry Paclibare.

Apart from those already mentioned, there exists plausible reason to believe, as did the trial court, that the claim of self-defense was contrived because Arthur failed to raise that defense when he surrendered to the Barangay Captain and the police. He simply admitted that he stabbed Marbel. Such failure is fatal to his defense.[25]

However, we agree with accused-appellant that the trial court should not have relied on the testimony of Diego Pelonio because he was not cross-examined. After his direct examination, the defense counsel moved for continuance as he was committed to appear before another Branch of the trial court.[26] In the subsequent hearing, the defense counsel manifested that Diego was not available for cross-examination since he was suffering from severe stomach pain. Diego failed to attend the rest of the hearings. To give weight to his testimony is to gravely violate the constitutional right of accused-appellant to meet the witnesses face-to-face and to subject the source of the information to the rigid test of cross-examination, the only effective means to test their truthfulness, memory and intelligence.[27] This notwithstanding, the rejection of Diego's testimony does not produce a crippling effect on the prosecution because the testimony of Romeo as corroborated by Jerry adequately established the guilt of accused-appellant.

The circumstance that Romeo was the victim's friend and compadre does not automatically impair his credibility nor render his testimony less worthy of credence since no improper motive has been ascribed to him for testifying against accused-appellant.[28] On the other hand, whether the woman who was shouting was unidentified, as declared by Jerry in court, or the voice of the woman was that of accused-appellant's mother, as stated in Jerry's affidavit, refers to a trivial matter which cannot in any manner serve to discredit him.[29] Besides, whenever there is an inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight because the affidavit is almost invariably incomplete and oftentimes inaccurate.[30]

Thus, we hold that accused-appellant Arthur dela Cruz is guilty of homicide, not murder.[31] Taking into account the mitigating circumstances of voluntary surrender and immediate vindication of a wrong amounting to a crime, the penalty of reclusion temporal imposable on accused-appellant is reduced to prision mayor,[32] the range of which is six (6) years and one (1) day to twelve (12) years. Applying the Indeterminate Sentence Law, the maximum of the penalty shall be taken from the medium period of prision mayor the range of which is eight (8) years and one (1) day to ten (10) years, while the minimum shall be taken from the penalty next lower in degree which is prision correccional the range of which is six (6) months and one (1) day to six (6) years. The Court deems it proper to impose upon accused-appellant a prison term of two (2) years and four (4) months of prision correccional minimum as minimum, to eight (8) years and two (2) months of prision mayor medium as maximum. The expenses incurred for the burial and funeral of Marbel amounting to P35,000.00 were adequately proved by his widow.

WHEREFORE, the decision appealed from finding accused-appellant Arthur dela Cruz guilty of murder is MODIFIED. This Court finds him guilty instead of homicide punishable by reclusion temporal. Appreciating the mitigating circumstances of (a) voluntary surrender and (b) immediate vindication of a grave offense under par. 5, Art. 13, of the Revised Penal Code, the Court imposes upon accused-appellant Arthur dela Cruz a prison term of two (2) years and four (4) months of prision correccional minimum as minimum, to eight (8) years and two (2)

months of prison mayor medium as maximum, and orders him to indemnify the heirs of the deceased Marbel Baptista the amount of P50,000.00 as indemnity for death and P35,000.00 for funeral and burial expenses. Costs de oficio.

SO ORDERED.

Mendoza, Quisumbing, and Buena, JJ., concur.

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- [1] Information dated 18 January 1995; Records, pp. 1-3.
- [2] Decision penned by Judge Niovy M. Marin, RTC-Br. 5, Kalibo, Aklan; Rollo, p. 74.
- [3] Post Mortem Examination Report of Dr. Cosme J. Abella, Rural Health Physician of Batan, Aklan, Exh. "B;" Original Records, p. 4.
- [4] In English it means, "You, you will still side (with your father!)"
- [5] TSN, 6 July 1995, pp. 4-8.
- [6] TSN, 25 August 1995, pp. 7-11.
- [7] TSN, 25 August 1995, pp. 16-21.
- [8] TSN, 28 November 1995, pp. 3-6.
- [9] *People v. Tagolimot*, G. R. No. 124128, 18 November 1997, 282 SCRA 231.
- [10] TSN, 6 July 1995, pp. 10-11.
- [11] TSN, 25 August 1995, p. 21.
- [12] *People v. Parazo*, G. R. No. 121176, 14 May 1997, 272 SCRA 512.
- [13] See Note 9.
- [14] *People v. Ortiz*, G. R. No. 111713, 27 January 1997, 266 SCRA 641.
- [15] *People v. Sotto*, G. R. No. 106099, 8 July 1997, 275 SCRA 191.
- [16] *People v. Julian*, G.R. Nos. 113692-93, 4 April 1997, 270 SCRA 733.
- [17] Art. 13. Mitigating circumstances. - x x x x 5. That the act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters or relatives by affinity within the same degrees.
- [18] *People v. Cahindo*, G.R. No. 121178, 22 January 1997, 266 SCRA 554.
- [19] *People v. Lascota*, G.R. No. 113257, 17 July 1997, 275 SCRA 591.
- [20] Rollo, pp. 67-68.
- [21] *People v. Unarce*, G.R. No. 120549, 4 April 1997, 270 SCRA 756.
- [22] *People v. Baniel*, G.R. No. 108492, 15 July 1997, 275 SCRA 472.
- [23] TSN, 12 September 1996, p. 5.

[24] Ingles v. Court of Appeals, G. R. No. 117161, 3 March 1997, 269 SCRA 122.

[25] Ibid.

[26] TSN, 18 May 1995, p. 10.26

[27] People v. Parungao, G.R. No. 125812, 28 November 1996, 265 SCRA 140.

[28] People v. Letigio, G.R. No. 112968, 13 February 1997, 268 SCRA 227.

[29] People v. Calegan, G.R. No. 93846, 30 June 1994, 233 SCRA 537.

[30] People v. Castro, G.R. No. 119068, 31 July 1997, 276 SCRA 572.

[31] Art. 249, The Revised Penal Code.

[32] Art. 64, par. 5, and Art. 65, id.

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