

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PONCIANO AGLIPA, ACCUSED-APPELLANT.

G.R. No. 130941. August 03, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The burden of proof shifts to the person invoking self-defense, who, with clear and convincing evidence, must establish all the following requisites: (1) unlawful aggression on the part of the victim, (2) reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person claiming self-defense. Upon failure to establish these requisites, conviction is inevitable because the accused, by setting up self-defense, admits being the author of the killing.

The Case

Ponciano Aglipa appeals the July 29, 1996 Decision[1] of the Regional Trial Court of Cebu City (Branch 18), finding him guilty of murder and frustrated murder.

In an Information dated August 30, 1995, Asst. Provincial Prosecutor Benedicto C. Nazareno charged appellant with murder allegedly committed as follows:

“That on or about the 24th day of April, 1995, at about 7:00 o’clock in the evening, more or less, at Barangay Mindanao, Municipality of Malabuyoc, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, strike and hit Solano Macion with the use of an iron bar, thereby hitting the victim at the back of his head which caused his instantaneous death.”[2]

In another Information, bearing the same date and signed also by Prosecutor Nazareno, appellant was charged with frustrated murder as follows:

“That on or about the 24th day of April, 1995, at about 7:00 o’clock in the evening, more or less, at Barangay Mindanao, Municipality of Malabuyoc, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, strike and hit Severina Macion with the use of an iron bar, thereby hitting the victim on her hand and the back portion of her head, thus performing all the acts of execution which would have produced the crime of [m]urder, as a consequence, but nevertheless, did not produce it by reason of a cause independent of his will, that is: by the timely and able medical assistance rendered to the victim which prevented her death.”[3]

Assisted by Atty. Gines Abellana, appellant pleaded not guilty to both charges when arraigned on October 10, 1995.[4]

The two cases were tried jointly. In view of the claim of self-defense, the parties agreed that the defense would, as

it did, present its evidence ahead of the prosecution. After trial in due course, the court a quo rendered its 26-page Decision, the dispositive portion of which reads as follows:

“WHEREFORE, in view of all the foregoing considerations, JUDGMENT is hereby rendered convicting the accused Ponciano Aglipa of the crimes of [m]urder and [f]rustrated [m]urder and accordingly, he is hereby punished to suffer the penalty of RECLUSION PERPETUA for the crime of [m]urder and the penalty of six (6) years of prision correccional, as minimum to ten (10) years of prision mayor, as maximum in the crime of [f]rustrated [m]urder. The accused is further directed to indemnify private complainant in the sum of P50,000.00 for the death of Solano Macion and the sum of P2,000.00 for the injuries private complainant Severina Macion sustained.”[5]

Hence, this appeal.[6]

The Facts

Prosecution’s Version

In its Brief,[7] the Office of the Solicitor General presents the prosecution’s version of the facts in this wise:[8]

“In the early afternoon of April 24, 1995, Severina Macion was at home in Barangay Mindanao, Malabuyoc, Cebu, when her son, Erick, informed her that their goats had eaten the corn plants of the Aglipas. Severina told Erick that they would report the matter to the Barangay Captain as soon as his father would arrive (TSN, pp. 3-4, April 15, 1996).

“Later, at about 5:00 o’clock in the afternoon, Severina’s husband, Solano Macion, arrived. The couple went to the house of the Barangay Captain, Nemesio Pielago. When they arrived there, they found that the Barangay Captain was not at home. They, however, decided to wait for him for a while. As they waited for the Barangay Captain, appellant Ponciano Aglipa suddenly appeared and stood on the road in front of the Barangay Captain’s house. Appellant shouted at Solano challenging him to a ‘buno’ (fight to the death). Solano answered saying he was not afraid of him. Severina advised her husband not to mind appellant so as to avoid trouble. Solano ignored appellant’s challenge. Appellant, however, kept on shouting at Solano and challenging him to a fight. Severina confronted appellant asking him why he followed them, kept on challenging Solano to a fight, and looked for trouble. Appellant was pacified by the wife of the Barangay Captain who admonished him to leave. To avert any fight, Severina pulled Solano inside the house of the Barangay Captain. Appellant then went home (TSN, pp. 4-7, April 15, 1996; TSN, p. 8, February 5, 1996).

“Becoming impatient of waiting for the Barangay Captain, Severina told Solano that they better go home and come back later. While walking home along the road, Solano and Severina dropped by the sari-sari store of Honorata Cedeño and bought biscuits for their children. About 20 meters away, appellant shouted from his house challenging Solano to a fight. Appellant’s parents, Daniel Aglipa and Anecita Aglipa, and his brother, who were also in their house, joined appellant in challenging and demanding from the Macion couple payment for the Aglipa’s damaged corn plants. Anecita shouted at the Macions that they be paid their damaged corn plants immediately, while appellant and his father challenged Solano to a ‘buno’ (fight to the death) (TSN, pp. 9-11, February 5, 1996; TSN, pp. 7-9, April 15, 1996).

“Sensing danger, Solano advised Severina to go ahead and take their children inside their house because he would still urinate. As it was already dark, Severina got a kerosene lamp and went back to her husband, who stood [a] few meters away from the door of Honorata’s house. While Solano was urinating, Severina stood behind him holding the kerosene lamp. Momentarily, appellant, who came from nowhere, suddenly appeared passing behind Honorata’s house. Without saying a word, appellant hit Solano with an iron bar at the back of his head. Solano slumped with his face down. Daniel Aglipa and Anecita Aglipa, who were in their yard, shouted at their son and urged him by saying: “Patya na! Patya na!” (kill him, kill him). Appellant hit Solano repeatedly with a crowbar which caused Solano’s instantaneous death. Severina rushed to the aid of her

husband but she too was hit by Ponciano at the back of her head. Severina instinctively turned around to face appellant and attempted to wrest the crowbar from him but appellant hit her on the hand holding the kerosene lamp. Bloodied and feeling dazed, Severina shouted at Honorata for help. When appellant was about to strike again at Severina, Honorata picked up a stone and hurled it at appellant. Hit by the stone hurled by Honorata, appellant scampered away bringing with him the crowbar (TSN, pp. 11-20, February 5, 1996; TSN, pp. 9-15, April 15, 1996).

“Because of the blows Severina sustained, she became unconscious. Honorata pulled Severina inside her (Honorata’s) house. When the Barangay Captain arrived, he accompanied Honorata and several barangay tanods in taking Severina to the hospital. The cadaver of Solano Macion was left behind watched by other barangay tanods. Severina was admitted at the Mariano Jesus Cuenco Memorial Hospital in Malabuyoc, Cebu. The Barangay Captain and the Barangay Tanods proceeded to the nearby Police Station to report the crimes (TSN, pp. 20-25, February 5, 1996; TSN, pp. 15-16, April 15, 1996).

“Dr. Neal Anthony Singco, medical officer of the Mariano Jesus Cuenco Memorial Hospital, attended to Severina Macion (TSN, pp. 24-27, March 28, 1996). Dr. Singco issued a Living Case Report (Exh. ‘F’, p. 193, Record) which showed that the following injuries were sustained by Severina:

‘FINDINGS:

- 1) Laceration 2 cm. (R) parietal area.
- 2) Laceration 3 cm. occipital area.
- 3) Incision – 2 cm. Forehead.
- 4) Laceration (R) thumb.
- 5) Incision wound 1 cm. (L) hand.’

“Dr. Elvira L. Grengia, Municipal Health Officer of Alegria, Cebu, conducted the autopsy on the cadaver of Solano Macion (TSN, pp. 4-5, March 28, 1996). The Medico-Legal Certificate (Exh. ‘D’, p. 155, Record) she issued, indicated the following injuries sustained by him, to wit:

‘FINDINGS:

- 1) Lacerated wound measuring 5 inches in length at the occipital area of the head.
- 2) Lacerated wound 4 inches in length, at the right side of the forehead.
- 3) Lacerated wound, 4 inches in length, right eyebrow.
- 4) Lacerated wound, 1.5 cms. right upper eyelids.
- 5) Fracture of the skull at the left parieto-occipital area, measuring about 6 inches in length, 4 inches in diameter exposing the brain tissue.’

“PO2 Mario Paler, a PNP member of Malabuyoc, Cebu was instructed by his Chief of Police to arrest one Ponciano Aglipa, a suspect in a murder in Barangay Mindanao, Malabuyoc, Cebu. PO2 Paler was informed that the suspect was about to board an ABC Bus Liner. PO2 Paler, accompanied by the Chief of Police, immediately proceeded to the house of appellant’s friend in Barangay Montañeza to look for appellant there. They were, however, told that appellant had escaped. They proceeded towards the school building nearby. While they were resting there, an ABC Liner bus passed by and stopped at a grassy portion of the road. Suspecting that appellant had boarded the bus, they proceeded towards the bus. True enough, they found appellant on board the ABC Liner bus and arrested him. They brought appellant to the police station for investigation (TSN, pp. 2-13, February 19, 1996).”

Defense’s Version

Invoking self-defense, appellant narrated the facts in this manner:[9]

“The accused and his parent testified that Solano Macion challenged them by shouting at the yard of the house of Honorata Cedeño. Since Solano Macion called for the accused, the latter went down from their house and approached them and when Solano Macion saw the accused, he pulled out his gun and fired but the accused evaded by docking and in defense of himself he picked a coco lumber and without hesitation struck the hand of Solano Macion that held the gun but it was at this moment that Macion crouched and his head was hit by the wooden lumber instead. He fell to the ground hitting his head on a stone with sharp edges.

“Then, the wife of Solano Macion, Severina, picked the gun which was released by Solano Macion. In anticipation that she [would] use it against the accused, the latter also struck her hand with the same lumber. Since he was standing and she was crouching in her attempt to pick-up the gun, the back of her head was also hit which [was] injured.

“The barangay [captain] was presented by the accused only to prove that he knew that Solano Macion owned a gun.”

Trial Court’s Ruling

Rejecting the claim of self-defense, the trial court ruled as follows:

“It is evident from the record that victims Solano Macion and Severina Macion did not commit any act of aggression against the accused. It was Ponciano Aglipa who was the aggressor for he challenged Solano Macion to a fight to death (buno) at the house of Barangay Captain Nemesio Pialago where spouses Solano Macion and Severina Macion went to ascertain the extent of the damage caused by their goats on the corn plants of Daniel Aglipa, father of the accused. It was Ponciano Aglipa who attacked and assaulted the victims while Solano Macion was urinating near the house of Honorata Cedeño and Severina Macion holding a lamp. While their backs were towards the place where Ponciano Aglipa came from, both victims were attacked and assaulted by Ponciano Aglipa. Honorata Cedeño belied the claim of Ponciano Aglipa that at that time Solano Macion had carried a firearm in his hand.”[10]

The Issues

Appellant faults the court a quo with the following alleged errors:

“1. The court below erred in finding x x x the accused guilty of the crime of murder in [the] killing of Solano Macion and of frustrated murder in [the] wounding of Severina Macion.

“2. The court below erred in not appreciating the x x x self-defense interposed by the accused.”[11]

In the main, the Court will resolve the following questions: (1) tenability of self-defense and (2) presence of treachery. In addition, the Court will also discuss the proper penalty.

The Court’s Ruling

The appeal has no merit. The Decision, however, should be modified in respect to the penalty for frustrated murder.

First Issue:

Self-Defense

One who invokes self-defense admits responsibility for the killing. Accordingly, the burden of proof shifts to the accused who must then prove the justifying circumstance. With clear and convincing evidence, all the following requisites must be established: (1) unlawful aggression on the part of the victim, (2) reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person claiming self-defense.[12]

In the present case, Appellant Aglipa claims that the victim Solano Marion had challenged him to a fight on several occasions. The former alleges that while he was inside his house that fateful day, he heard the latter calling on him to come down from his house. When Aglipa did so, Solano suddenly fired his gun at him. The former then picked up a piece of wood and struck the latter's right hand which was holding the gun. When the victim attempted to pick up the weapon, appellant hit him again, this time at the back of the head. When Solano's wife, Severina, attempted to retrieve the firearm, Aglipa shifted his attention to her, hitting her also on the head.

This version is not convincing. First, it is not supported by the postmortem examination conducted by Dr. Elvira Grengia on the body of the victim. The Medico-Legal Report indicates that he sustained the following wounds:

- “1. Lacerated wound measuring 5 inches in length at the occipital area of the head.
2. Lacerated wound 4 inches in length, at the right side of the forehead.
3. Lacerated wound, 4 inches in length, right eyebrow.
4. Lacerated wound, 1.5 cms. right upper eyelids.
5. Fracture of the skull at the left parieto-occipital area, measuring about 6 inches in length, 4 inches in diameter exposing the brain tissue.”[13]

Significantly, all the wounds were located on the head. No injury was found on the victim's right hand, which appellant had allegedly hit first. Moreover, contrary to Aglipa's claim that he had hit Solano's head only once, the autopsy report clearly indicated that five wounds had been inflicted on the victim.

Second, in the testimony of appellant, there were lapses which indubitably cast suspicion on the veracity of his account. He lied when he narrated that the victim had challenged and provoked him several times before the incident. This was clear from Aglipa's testimony on cross-examination, pertinent portions of which are reproduced hereunder:

“Court:

Q

So, what then is the truth?

A

The truth is, he only challenged [me] on April 24, 1995.

xxx xxx xxx

Fiscal Dalawampu:

Q

So, your statements regarding the shouts of “buno” allegedly made by Solano Macion before April 24, 1995 were not true?

A

[They were] not true, Ma'am.

Q

Why did you tell a lie?

Atty. Abellana:

What is there to explain? I don't think that is proper.

Fiscal Dalawampu:

Why?

Atty. Abellana:

What is there to explain?

Court:

Q

Why did you say that there were many times x x x such challenge [had been made] prior to April 24, 1995?

Answer.

A

I cannot answer.”[14]

The veracity of the entire claim of appellant was further weakened by his flip-flop regarding what he had done after the incident. In his direct testimony, he claimed that he had surrendered at the police station around 3:00 a.m. the following day.[15] On cross-examination, however, he admitted that he had not actually surrendered.[16] In fact, the second version was corroborated by PO2 Mario Paler, who testified that he and SPO4 Cesar Guerrero had arrested the appellant while the latter was inside a bus.

Indeed, appellant's version was contradicted by the prosecution witnesses, who testified that he was the aggressor.

Honorata Cedeño, an eyewitness, testified that while Solano was urinating, Aglipa sneaked behind and hit him on the head with a crowbar. While the victim was slumped on the ground, appellant struck him on the head two more times. Cedeño testified as follows:

"Q

Now, [o]n the afternoon of April 24, 1995, at about 5:30, where were you?

A

I was in my house, I saw Solano Macion together with his wife going to the house of the barangay captain.

xxx xxx xxx

Q

Aside from the wife of Solano Macion, who were his other companions, if any?

A

Their four (4) children

xxx xxx xxx

Q

Minutes after Severina Macion and her husband, Solano Macion, together with their children, passed by your house towards the house of the barangay captain, what did you hear, if any?

A

I heard Ponciano Aglipa shouting.

Q

What were the shouts of Ponciano Aglipa?

A

He want[ed] to finish them off. He challenged Solano Macion to go down because they would finish ('magtiwas') [their quarrel].

xxx xxx xx

Q

How was the manner . . . [What] did you observe [in] Ponciano Aglipa [when he made] that challenge of finishing their quarrel; was [he] in [a] sober mood, or [was he] very angry?

A

He was angry.

xxx xxx xx

Q

Okay. Now, at that time that Solano [--] Ponciano shouted that challenge, where was, at what particular place was Solano?

A

[At] the entrance of my house; right at the door of my house.

Q

Where was Severina?

A

Same place.

Q

Okay. Now, after ... Where was Ponciano when he shouted the challenge?

A

Ponciano Aglipa, together with his father and his mother, were shouting together.

Q

What did Daniel Aglipa shout?

A

Daniel Aglipa shouted that he wanted killings ('buno').

Q

What did Anecita Aglipa shout?

A

Anecita Aglipa was also shouting by saying that she did not want that payment of their corn eaten by the goats be made the following day, that she wanted immediate payment.

Q

What did Solano Macion say, if any?

A

Solano Macion wanted to pay but the Aglipas were shout[ing] because they wanted payment immediately.

Q

Where was Daniel Aglipa at the time that he shouted 'buno', 'patay'?

A

At their yard.

Q

Where was Anecita Aglipa when she shouted that she did not want payment to be made the following day but she wanted the damage caused by the goats to be made immediately, that evening; where was she?

A

Also at their house, lower portion of their house.

Q

Where was Ponciano at the time he also shouted 'magtiwas' ta', let us finish; where was he?

ATTY. ABELLANA:

Already answered, Your Honor: in his house.

COURT:

Q

Do you confirm defense counsel's statement that Ponciano Aglipa was at his house at the time he made the challenge about killings?

A

He was initially in his house, but he went around not later than five (5) minutes, and because he was downstairs, he even went around my house and he passed by me.

FISCAL DALAWAMPU:

Q

When you saw ... How many times did Ponciano Aglipa make that challenge?

A

Two (2) times in their house, and he was [in front]. Later, I saw him passing [in front] of me carrying a crowbar.

xxx xxx xxx

FISCAL DALAWAMPU:

Q

Okay. You said that you saw Ponciano Aglipa [pass] by you. Where were you then at that time?

A

I was sitting on the stone at the front yard of my house facing the door of our house.

xxx xxx xxx

Q

If the crowbar is presented to you, can you tell this Honorable Court, can you identify that crowbar?

A

This is the one.

xxx xxx xxx

Q

Now, when Ponciano Aglipa passed by you while you were sitting on a stone fronting your door, what was the position of Solano Macion?

A

Solano Macion [--] his back was towards me because he was urinating and he was facing the house of the Aglipas with his back towards me.

xxx xxx xxx

Q

How many times [did] Ponciano Aglipa [strike] Solano with the crowbar?

A

Three (3) times.

Q

Where was Solano Macion hit for the first time?

INTERPRETER:

Witness pointing to the back portion of her head, and his brain even came out. [sic]

xxx xxx xxx

Q

How about the second and the third striking[s], where did those strikings land?

A

He was already slumped to the ground.

COURT:

Q

In what portion of his body was [he] hit by the second and third striking[s] while he was already in that position?

A

The same: Solano Macion was hit on his head.

Q

So, the three (3) strikings landed on his head?

A

Yes, Your Honor.

xxx xxx xxx

Q

What did Severina Macion do, [while] standing by near your door?

A

Severina Macion attempted to hold the hand of her husband, Solano Macion, but she was also struck by Ponciano Aglipa on her head once and then followed by another striking on her hand. As a matter of fact, one of the fingers of her right hand was [almost] severed but still hanging.”

Significantly, the trial court rejected Aglipa’s claim and gave credence to the testimonies of the prosecution witnesses. Time and again, this Court has pronounced that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe them firsthand and to note their demeanor, conduct and attitude. Unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted, the trial court’s assessment is accorded respect, even finality.[17]

Appellant assails the testimony of Cedeño for being contrary to human experience. According to her, Aglipa surreptitiously approached the victim by using the path at the back of her house. He maintains, however, that this alleged path was impassable because it was planted with huge and thorny cactus plants which also served as a fence. This argument is bereft of merit. Cedeño testified that those plants were still small and newly planted at the time of the incident.[18]

Verily, appellant failed to show sufficient reason to justify the reversal of the trial court’s findings of facts. He did not show any motive for Cedeño to testify falsely against him. Indeed, we find no reason to reject the trial court’s assessment of the credibility of this witness.

Second Issue:

Treachery

The qualifying circumstance of treachery is present when the accused deliberately adopts such means, methods and forms of execution that give the victim no opportunity for self-defense or retaliation.[19] The essence of treachery is swift and unexpected attack on an unarmed victim.[20]

Appellant maintains that treachery was not sufficiently proven. He denies that he attacked the victim from behind, claiming that “if the assailant is in front of the victim while striking any part of the back of the victim, especially when it is the head, the back portion of the head will be wounded.”[21]

The argument is unacceptable. Speculative at best, it is bereft of any evidentiary basis. In any event, the wounds of Solano were found not only at the back of his head, but also on the right upper eyebrow and the right upper eyelids.

Furthermore, Cedeño’s eyewitness account clearly showed that Aglipa had sneaked behind Solano, who was urinating at the side of the road, and struck him on the head with a crowbar. Not content with doing that, appellant

also hit the victim's equally defenseless wife on the head, almost killing her. Verily, he carried out his attack in a swift manner with no risk to himself from any defense which the victims might put up. Clearly, there was treachery.

Hence, the trial court did not err in finding him guilty of murder for the death of Solano Macion and frustrated murder for the wounding of Severina Macion.

Proper Penalty

Article 248 of the Revised Penal Code, as amended by RA 7659, provides that the penalty for murder is reclusion perpetua to death. Considering that no other aggravating circumstance was established in this case, the trial court was correct in imposing on appellant the penalty of reclusion perpetua for the death of Solano Macion.

The trial court erred, however, in imposing on appellant the penalty of six years of prision correccional as minimum to ten years of prision mayor as maximum for the frustrated murder of Severina Macion. This penalty, according to the court a quo, was two degrees lower than that for consummated murder.[22]

Article 50 of the Revised Penal Code states: "The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony." Moreover, Article 61 (2) of the same Code provides that "[w]hen the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scales."

As earlier stated, the penalty for murder is reclusion perpetua to death. Hence, the penalty for frustrated murder, which is one degree lower, is reclusion temporal. Under the Indeterminate Sentence Law,[23] the proper penalty for the frustrated murder in this case should be ten years of prision mayor to seventeen years and four months of reclusion temporal.

WHEREFORE, the appeal is hereby DENIED and the assailed Decision of the Regional Trial Court AFFIRMED, with the modification that the penalty for the frustrated murder should be ten years of prision mayor to seventeen years and four months of reclusion temporal. Costs against appellant.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Written by Judge Galicano C. Arriesgado.

[2] Records, p. 3.

[3] Records, p. 1.

[4] Records, p. 59.

[5] Decision, p. 26; rollo, p. 64.

[6] The case was deemed submitted for resolution on June 7, 2000, upon receipt by this Court of the Appellee's Brief. The filing of a reply brief was deemed waived, as none had been submitted within the reglementary period.

[7] Signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Mariano M. Martinez and Solicitor Raul J. Mandin.

[8] Appellee's Brief, pp. 4-8; rollo, pp. 167-171.

[9] Appellant's Brief, pp. 2-3; rollo, pp. 104-105. The Brief was signed by Atty. Gines N. Abellana.

[10] Decision, p. 23; rollo, p. 61.

[11] Appellant's Brief, p. 8; rollo, p. 110.

[12] Art. 11 (1), Revised Penal Code. See also *People v. Janairo*, 311 SCRA 58, July 22, 1999; *People v. De la Cruz*, 291 SCRA 164, 180, June 26, 1998; *People v. Borreros*, 306 SCRA 680, May 5, 1999; *People v. Dorado*, 303 SCRA 61, February 11, 1999; *People v. Vermudez*, 302 SCRA 276, January 28, 1999.

[13] Records, p. 155.

[14] TSN, January 8, 1996, pp. 30-32.

[15] TSN, December 27, 1995, pp. 8-9.

[16] The TSN reveals the following: "Q So in effect, therefore, you did not actually surrender because you were confused on that day and you found only on the following day that you were already x x x inside the jail? A That's true." (TSN, January 26, 1996, p. 26.)

[17] *People v. Sumbillo*, 271 SCRA 428, April 18, 1997; *People v. Quinao*, 269 SCRA 495, March 13, 1997; *People v. Nuestro*, 240 SCRA 221, January 18, 1995; *People v. Jimenez*, 302 SCRA 607, February 4, 1999; *People v. Angeles*, 275 SCRA 19, July 1 1997; *People v. Atuel*, 261 SCRA 339, September 3, 1996; *People v. Cura*, 240 SCRA 234, January 18, 1995; and *People v. Malunes*, 247 SCRA 317, August 14, 1995.

[18] TSN, April 19, 1996, pp. 22-23.

[19] *People v. de La Cruz*, 291 SCRA 164, June 26, 1998; *People v. Cawaling*, 293 SCRA 267, July 28, 1998; *People v. Sabalones*, 294 SCRA 751, August 31, 1998; *People v. Sumalpong*, 284 SCRA 464, January 20, 1998.

[20] *People v. Oliano*, 287 SCRA 158, March 6, 1998; *People v. Villamor*, 284 SCRA 184, January 16, 1998; *People v. Andres*, 296 SCRA 318, September 25, 1998; *People v. Navarro*, 297 SCRA 331, October 7, 1998.

[21] Appellant's Brief, p. 10; rollo, p. 112.

[22] Decision, p. 26; rollo, p. 64.

[23] Section 1 of the law provides that "in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; x x x."

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