

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GLENN DE LOS SANTOS, ACCUSED-APPELLANT.*G.R. No. 131588. March 27, 2001*

Ponente: DAVIDE JR., C.J.

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One may perhaps easily recall the gruesome and tragic event in Cagayan de Oro City, reported over print and broadcast media, which claimed the lives of several members of the Philippine National Police (PNP) who were undergoing an "endurance run" as part of the Special Counter Insurgency Operation Unit Training. Not much effort was spared for the search of the one responsible therefor, as herein accused-appellant Glenn de los Santos (hereafter GLENN) immediately surrendered to local authorities. GLENN was then charged with the crimes of Multiple Murder, Multiple Frustrated Murder, and Multiple Attempted Murder in an information filed with the Regional Trial Court of Cagayan de Oro City. The information reads as follows:

That on or about October 05, 1995, in the early morning, at Maitum Highway, within Barangay Puerto, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to kill, taking advantage of his driven motor vehicle, an Isuzu Elf, and with treachery, did then and there willfully, unlawfully and feloniously kill and inflict mortal wounds from ... behind in a sudden and unexpected manner with the use of said vehicle ... members of the Philippine National Police (PNP), undergoing a Special Training Course (Scout Class 07-95), wearing black T-shirts and black short pants, performing an "Endurance Run" of 35 kilometers coming from their camp in Manolo Fortich, Bukidnon, heading to Regional Training Headquarters in Camp Alagar, Cagayan de Oro City, running in a column of 3, with a distance of two feet, more or less, from one trainee to another, thus forming a [sic] three lines, with a length of more or less 50 meters from the 1st man to the last man, unable to defend themselves, because the accused ran or moved his driven vehicle on the direction of the backs of the PNP joggers in spite of the continuous warning signals made by six of the joggers, namely: PO1 Allan Tabacan Espana, Waldon Sinda Sacro, Lemuel Ybanez Pangca, Artemio Jamil Villaflor, Nardo Omasas Collantes and Joselito Buyser Escartin, who were at the rear echelon of said run, acting as guards, by continuously waving their hands at the accused for him to take the left lane of the highway, going to the City proper, from a distance of 100 meters away from the jogger's rear portion, but which accused failed and refused to heed; instead, he proceeded to operate his driven vehicle (an Isuzu Elf) on high speed directly towards the joggers, thus forcing the rear guard[s] to throw themselves to [a] nearby canal, to avoid injuries, then hitting, bumping, or ramming the first four (4) victims, causing the bodies to be thrown towards the windshields of said Isuzu Elf, breaking said windshield, and upon being aware that bodies of the victims flew on the windshield of his driven vehicle, instead of applying his brake, continued to travel on a high speed, this time putting off its headlights, thus hitting the succeeding joggers on said 1st line, as a result thereof the following were killed on the spot:

1. Vincent Labis Rosal 7. Antonio Flores Lasco
2. Allan Amoguis Abis 8. Igmedio Salinas Lituanas
3. Jose Arden M. Atisa 9. Roberto Cabussao Loren

4. Nathaniel Mugot Baculio 10. Raul Plaza Martinez
5. Romil Gosila Legrano 11. Jerry Pedrosa Pajo
6. Arnulfo Limbago Jacutin 12. Rolando Paremcio Pancito

While another trainee/victim, Antonio Palomino Mino, died few days after the incident, while the following eleven (11) other trainee/victims were seriously wounded, the accused thus performing all the acts of execution which would produce the crime of Murder as a consequence but nevertheless did not produce it by reason of some cause other than said accused's spontaneous desistance, that is, by the timely and able medical assistance rendered on the following victims which prevented their death, to wit:

1. Rey Go Boquis 7. Melchor Hinlo
2. Rene Tuako Calabria 8. Noel Ganzan Oclarit
3. Nonata Ibarra Erno 9. Charito Penza Gepala
4. Rey Tamayo Estofil 10. Victor Malicse Olavo
5. Joel Rey Migue Galendez 11. Bimbo Glabe Polboroza
6. Arman Neri Hernaiz

While the following Police Officers I (POI) sustained minor injuries, to wit:

1. Romanito Andrada 6. Romualdo Cotor Dacera
2. Richard Canoy Caday 7. Ramil Rivas Gaisano
3. Rey Cayusa 8. Dibangkita Magandang
4. Avelino Chua 9. Martin Olivero Pelarion
5. Henry Gadis Coubeta 10. Flordicante Martin Piligro

after which said accused thereafter escaped from the scene of the incident, leaving behind the victims afore-enumerated helpless.

Contrary to Article 248, in relation to Article 6 of the Revised Penal Code.

The evidence for the prosecution disclose that the Special Counter Insurgency Operation Unit Training held at Camp Damilag, Manolo Fortich, Bukidnon, started on 1 September 1995 and was to end on 15 October 1995. The last phase of the training was the "endurance run" from said Camp to Camp Alagar, Cagayan de Oro City. The run on 5 October 1995 started at 2:20 a.m. The PNP trainees were divided into three columns: the first and second of which had 22 trainees each, and the third had 21. The trainees were wearing black T-shirts, black short pants, and green and black combat shoes. At the start of the run, a Hummer vehicle tailed the jogging trainees. When they reached Alae, the driver of the Hummer vehicle was instructed to dispatch advanced security at strategic locations in Carmen Hill. Since the jogging trainees were occupying the right lane of the highway, two rear security guards were assigned to each rear column. Their duty was to jog backwards facing the oncoming vehicles and give hand signals for other vehicles to take the left lane.[1]

Prosecution witnesses Lemuel Y. Pangca and Weldon Sacro testified that they were assigned as rear guards of the first column. They recalled that from Alae to Maitum Highway, Puerto, Cagayan de Oro City, about 20 vehicles passed them, all of which slowed down and took the left portion of the road when signaled to do so.[2]

While they were negotiating Maitum Highway, they saw an Isuzu Elf truck coming at high speed towards them. The vehicle lights were in the high beam. At a distance of 100 meters, the rear security guards started waving their hands for the vehicle to take the other side of the road, but the vehicle just kept its speed, apparently ignoring their signals and coming closer and closer to them. Realizing that the vehicle would hit them, the rear guards told their co-trainees to "retract." The guards forthwith jumped in different directions. Lemuel and Weldon saw their co-trainees being hit by the said vehicle, falling like dominoes one after the other. Some were thrown, and others were overrun by the vehicle. The driver did not reduce his speed even after hitting the first and second columns. The guards then stopped oncoming vehicles to prevent their comrades from being hit again.[3]

The trial court judge, together with the City Prosecutor, GLENN and his counsel, conducted an ocular inspection of the place where the incident happened. They then proceeded to inspect the Isuzu Elf at the police station. The City Prosecutor manifested, thus:

The vehicle which we are now inspecting at the police station is the same vehicle which [was] involved in the October 5, 1995 incident, an Isuzu Elf vehicle colored light blue with strips painting along the side colored orange and yellow as well as in front. We further manifest that ... the windshield was totally damaged and 2/3 portion of the front just below the windshield was heavily dented as a consequence of the impact. The lower portion was likewise damaged more particularly in the radiator guard. The bumper of said vehicle was likewise heavily damaged in fact there is a cut of the plastic used as a bumper; that the right side of the headlight was likewise totally damaged. The front signal light, right side was likewise damaged. The side mirror was likewise totally damaged. The height of the truck from the ground to the lower portion of the windshield is 5 ft. and the height of the truck on the front level is 5 ft.[4]

PO3 Jose Cabugwas testified that he was assigned at the Investigation Division at Precinct 6, Cagayan de Oro City, and that at 4 a.m. of 5 October 1995, several members of the PNP came to their station and reported that they had been bumped by a certain vehicle. Immediately after receiving the report, he and two other policemen proceeded to the traffic scene to conduct an ocular inspection. Only bloodstains and broken particles of the hit-and-run vehicle remained on the highway. They did not see any brake marks on the highway, which led him to conclude that the brakes of the vehicle had not been applied. The policemen measured the bloodstains and found them to be 70 ft. long.[5]

GLENN's version of the events that transpired that evening is as follows:

At about 10:30 p.m. of 4 October 1995, he was asked by his friend Enting Galindez and the latter's fellow band members to provide them with transportation, if possible an Isuzu Forward, that would bring their band instruments, band utilities and band members from Macasandig and Corrales, Cagayan de Oro City, to Balingoan. From there, they were supposed to be taken to Mambajao, Camiguin, to participate in the San Miguel-sponsored "Sabado Nights" of the Lanzones Festival from 5-7 October 1995. It was the thirteenth time that Enting had asked such a favor from him.[6] Since the arrangement was to fetch Galindez and his group at 4:00 a.m. of 5 October 1995, GLENN immediately went to Cugman, Cagayan de Oro City, to get his Isuzu Elf truck. After which, he proceeded back to his house at Bugo, Cagayan de Oro City, and told his wife that he would go to Bukidnon to get his aunt's Isuzu Forward truck because the twenty band members and nine utilities and band instruments could not be accommodated in the Isuzu Elf truck. Three of his friends asked to go along, namely, Roldan Paltonag, Andot Peña, and a certain Akut.[7]

After leaving GLENN's house, the group decided to stop at Celebrity Plaza Restaurant. GLENN saw his "kumpare" Danilo Cosin and the latter's wife, and joined them at the table. GLENN finished three bottles of pale pilsen beer. When the Cosin spouses left, GLENN joined his travelling companions at their table. The group left at 12:00 midnight for Bukidnon. The environment was dark and foggy, with occasional rains. It took them

sometime looking for the Isuzu Forward truck. Finally, they saw the truck in Agusan Canyon. Much to their disappointment, the said truck had mechanical problems. Hence, GLENN decided to go back to Cagayan de Oro City to tell Enting that they would use the Isuzu Elf truck instead.[8]

GLENN drove slowly because the road was slippery. The vicinity was dark: there was no moon or star; neither were there lampposts. From the Alae junction, he and his companions used the national highway, traversing the right lane going to Cagayan de Oro City. At the vicinity of Mambatangan junction, as the Elf was negotiating a left curve going slightly downward, GLENN saw a very bright and glaring light coming from the opposite direction of the national highway. GLENN blinked his headlights as a signal for the other driver to switch his headlights from bright to dim. GLENN switched his own lights from bright to dim and reduced his speed from 80 to 60 kilometers per hour. It was only when the vehicles were at a distance of 10 to 15 meters from each other that the other car's headlights were switched from bright to dim. As a result, GLENN found it extremely hard to adjust from high brightness to sudden darkness.[9]

It was while the truck was still cruising at a speed of 60 km./hr., and immediately after passing the oncoming vehicle, that GLENN suddenly heard and felt bumping thuds. At the sound of the first bumping thuds, GLENN put his right foot on the brake pedal. But the impact was so sudden that he was astonished and afraid. He was trembling and could not see what were being bumped. At the succeeding bumping thuds, he was not able to pump the brake, nor did he notice that his foot was pushing the pedal. He returned to his senses only when one of his companions woke up and said to him: "Gard, it seems we bumped on something. Just relax, we might all die." Due to its momentum, the Elf continued on its track and was able to stop only when it was already very near the next curve.[10]

GLENN could not distinguish in the darkness what he had hit, especially since the right headlights of the truck had been busted upon the first bumping thuds. In his confusion and fear, he immediately proceeded home. GLENN did not report the incident to the Puerto Police Station because he was not aware of what exactly he had hit. It was only when he reached his house that he noticed that the grill of the truck was broken; the side mirror and round mirror, missing; and the windshield, splintered. Two hours later, he heard on Bombo Radyo that an accident had occurred, and he realized that it was the PNP group that he had hit. GLENN surrendered that same day to Governor Emano.[11]

The defense also presented Crescente Galindez, as well as Shirley Almazan of the PAG-ASA Office, Cagayan de Oro City. The former testified that when he went to GLENN's house at about 10:00 p.m. of 4 October 1995, there was heavy rain; and at 12:00 midnight, the rain was moderate. He corroborated GLENN's testimony that he (Crescente) went to GLENN's house that evening in order to hire a truck that would bring the band instruments, band utilities and band members from Cagayan de Oro to Camiguin for the Lanzones Festival.[12] Almazan, on the other hand, testified that based on an observed weather report within the vicinity of Cagayan de Oro City, there was rain from 8:00 p.m. of October 1995 to 2:00 a.m. the next day; and the sky was overcast from 11:00 p.m. of 4 October 1995 to 5:00 a.m. of 5 October 1995. What she meant by "overcast" is that there was no break in the sky; and, definitely, the moon and stars could not be seen.[13]

The prosecution presented rebuttal witness Danilo Olarita whose house was just 100 meters away from the place where the incident occurred. He testified that he was awakened on that fateful night by a series of loud thuds. Thereafter, a man came to his house and asked for a glass of water, claiming to have been hit by a vehicle. Danilo further stated that the weather at the time was fair, and that the soil was dry and not muddy.[14]

In its decision of 26 August 1997, the trial court convicted GLENN of the complex crime of multiple murder, multiple frustrated murder and multiple attempted murder, with the use of motor vehicle as the qualifying

circumstance. It sentenced him to suffer the penalty of death and ordered him to indemnify each group of the heirs of the deceased in the amount of P75,000; each of the victims of frustrated murder in the amount of P30,000; and each of the victims of attempted murder in the amount of P10,000.

Hence, this automatic review, wherein GLENN contends that the trial court erred (a) in finding that he caused the Isuzu Elf truck to hit the trainees even after seeing the rear guards waving and the PNP trainees jogging; (b) in finding that he caused the truck to run even faster after noticing the first thuds; and (c) in finding that he could still have avoided the accident from a distance of 150 meters, despite the bright and glaring light from the oncoming vehicle.

In convicting GLENN, the trial court found that "the accused out of mischief and dare-devilness [sic], in the exhilaration of the night breeze and having dr[u]nk at least three bottles of beer earlier, merely wanted to scare the rear guard[s] and see them scamper away as they saw him and his vehicle coming at them to ram them down." [15]

Likewise, the OSG posits that "the evil motive of the appellant in injuring the jogging trainees was probably brought by the fact that he had dr[u]nk a total of three (3) bottles of beer earlier before the incident." [16]

Not to be outdone, the defense also advances another speculation, i.e., "the possibility that [GLENN] could have fallen asleep out of sheer fatigue in that unholy hour of 3:30 in the early morning, and thus was not able to stop his Isuzu Elf truck when the bumping thuds were occurring in rapid succession; and after he was able to wake up upon hearing the shout of his companions, it was already too late, as the bumping thuds had already occurred." [17]

Considering that death penalty is involved, the trial court should have been more scrupulous in weighing the evidence. If we are to subscribe to the trial court's finding that GLENN must have merely wanted to scare the rear guards, then intent to kill was wanting. In the absence of a criminal intent, he cannot be held liable for an intentional felony. All reasonable doubt intended to demonstrate negligence, and not criminal intent, should be indulged. [18]

From the convergence of circumstances, we are inclined to believe that the tragic event was more a product of reckless imprudence than of a malicious intent on GLENN's part.

First, as testified to by prosecution rebuttal witness Danilo Olarita, the place of the incident was "very dark," as there was no moon. And according to PAG-ASA's observed weather report within the vicinity of Cagayan de Oro City covering a radius of 50 kilometers, at the time the event took place, the sky was overcast, i.e., there was absolutely no break in the thick clouds covering the celestial dome globe; hence, there was no way for the moon and stars to be seen. Neither were there lampposts that illuminated the highway.

Second, the jogging trainees and the rear guards were all wearing black T-shirts, black short pants, and black and green combat shoes, which made them hard to make out on that dark and cloudy night. The rear guards had neither reflectorized vests or gloves nor flashlights in giving hand signals.

Third, GLENN was driving on the proper side of the road, the right lane. On the other hand, the jogging trainees were occupying the wrong lane, the same lane as GLENN's vehicle was traversing. Worse, they were facing the same direction as GLENN's truck such that their backs were turned towards the oncoming vehicles from behind.

Fourth, no convincing evidence was presented to rebut GLENN's testimony that he had been momentarily blinded by the very bright and glaring lights of the oncoming vehicle at the opposite direction as his truck rounded the curve. He must have been still reeling from the blinding effect of the lights coming from the other vehicle when he plowed into the group of police trainees.

Indeed, as pointed out by appellant, instinct tells one "to stop or swerve to a safe place the moment he sees a cow, dog, or cat on the road, in order to avoid bumping or killing the same"; and more so if the one on the road is a person. It would therefore be inconceivable for GLENN, then a young college graduate with a pregnant wife and three very young children who were dependent on him for support, to have deliberately hit the group with his truck.

The conclusion of the trial court and the OSG that GLENN intentionally rammed and hit the jogging trainees was premised on the assumption that despite the first bumping thuds, he continued to accelerate his vehicle instead of applying his brakes, as shown by the absence of brake marks or skid marks along the traffic scene.

For its part, the defense attributed the continuous movement of GLENN's vehicle to the confluence of the following factors:

- The Isuzu Elf truck, a huge vehicle, was moving fast that even if the brakes were applied the truck would have still proceeded further on account of its momentum, albeit at a reduced speed, and would have stopped only after a certain distance.
- The national highway, from Alae to Puerto, Cagayan de Oro City, was made of fine and smooth asphalt, free from obstructions on the road such as potholes or excavations. Moreover, the highway was going a little bit downward, more particularly from the first curve to the place of incident. Hence, it was easier and faster to traverse a distance of "20 to 25 meters which was the approximate aggregate distance" from the first elements up to the 22nd or 23rd elements of the columns.
- The weight of each of the trainees (the average of which could be 50 kilograms only) could hardly make an impact on the 3,900 kilograms truck, which was moving at a speed ranging from 60 to 70 kilometers per hour.
- Considering that the width of the truck from the right to the left tires was wide and the under chassis was elevated, the truck could just pass over two persons lying flat on the ground without its rubber tires running over the bodies. Thus, GLENN would not notice any destabilization of the rubber tires.
- Since the police trainees were jogging in the same direction as the truck was proceeding, the forward movements constituted a force parallel to the momentum of the forward-moving truck such that there was even much lesser force resisting the said ongoing momentum.

It is a well-entrenched rule that if the inculpatory facts are capable of two or more explanations -- one consistent with the innocence or lesser degree of liability of the accused, and the other consistent with his guilt or graver responsibility -- the Court should adopt the explanation which is more favorable to the accused.[19]

We are convinced that the incident, tragic though it was in light of the number of persons killed and seriously injured, was an accident and not an intentional felony. It is significant to note that there is no shred of evidence that GLENN had an axe to grind against the police trainees that would drive him into deliberately hitting them with intent to kill.

Although proof of motive is not indispensable to a conviction especially where the assailant is positively identified, such proof is, nonetheless, important in determining which of two conflicting theories of the incident is more likely to be true.[20] Thus, in *People v. Godinez*, [21] this Court said that the existence of a motive on the part of the accused becomes decisive in determining the probability or credibility of his version that the shooting was purely accidental.

Neither is there any showing of "a political angle of a leftist-sponsored massacre of police elements disguised in a vehicular accident." [22] Even if there be such evidence, i.e., that the motive of the killing was in furtherance of a rebellion movement, GLENN cannot be convicted because if such were the case, the proper charge would be

rebellion, and not murder.[23]

GLENN's offense is in failing to apply the brakes, or to swerve his vehicle to the left or to a safe place the moment he heard and felt the first bumping thuds. Had he done so, many trainees would have been spared.

We have once said:

A man must use common sense, and exercise due reflection in all his acts; it is his duty to be cautious, careful, and prudent, if not from instinct, then through fear of incurring punishment. He is responsible for such results as anyone might foresee and for acts which no one would have performed except through culpable abandon. Otherwise his own person, rights and property, and those of his fellow-beings, would ever be exposed to all manner of danger and injury.[24]

The test for determining whether a person is negligent in doing an act whereby injury or damage results to the person or property of another is this: Could a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course actually pursued? If so, the law imposes a duty on the actor to refrain from that course or to take precautions to guard against its mischievous results, and the failure to do so constitutes negligence. Reasonable foresight of harm, followed by the ignoring of the admonition born of this prevision, is always necessary before negligence can be held to exist.[25]

GLENN showed an inexcusable lack of precaution. Article 365 of the Revised Penal Code states that reckless imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration (1) his employment or occupation; (2) his degree of intelligence; (4) his physical condition; and (3) other circumstances regarding persons, time and place.

GLENN, being then a young college graduate and an experienced driver, should have known to apply the brakes or swerve to a safe place immediately upon hearing the first bumping thuds to avoid further hitting the other trainees. By his own testimony, it was established that the road was slippery and slightly going downward; and, worse, the place of the incident was foggy and dark. He should have observed due care in accordance with the conduct of a reasonably prudent man, such as by slackening his speed, applying his brakes, or turning to the left side even if it would mean entering the opposite lane (there being no evidence that a vehicle was coming from the opposite direction). It is highly probable that he was driving at high speed at the time. And even if he was driving within the speed limits, this did not mean that he was exercising due care under the existing circumstances and conditions at the time.

Considering that the incident was not a product of a malicious intent but rather the result of a single act of reckless driving, GLENN should be held guilty of the complex crime of reckless imprudence resulting in multiple homicide with serious physical injuries and less serious physical injuries.

Article 48 of the Revised Penal Code provides that when the single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. Since Article 48 speaks of felonies, it is applicable to crimes through negligence in view of the definition of felonies in Article 3 as "acts or omissions punishable by law" committed either by means of deceit (*dolo*) or fault (*culpa*).[26] In *Reodica v. Court of Appeals*,[27] we ruled that if a reckless, imprudent, or negligent act results in two or more grave or less grave felonies, a complex crime is committed. Thus, in *Lapuz v. Court of Appeals*,[28] the accused was convicted, in conformity with Article 48 of the Revised Penal Code, of the complex crime of "homicide with serious physical injuries and damage to property through reckless imprudence," and was sentenced to a single penalty of imprisonment, instead of the two penalties imposed by the trial court. Also, in *Soriano v. Court of Appeals*,[29] the

accused was convicted of the complex crime of "multiple homicide with damage to property through reckless imprudence" for causing a motor boat to capsize, thereby drowning to death its twenty-eight passengers.

The slight physical injuries caused by GLENN to the ten other victims through reckless imprudence, would, had they been intentional, have constituted light felonies. Being light felonies, which are not covered by Article 48, they should be treated and punished as separate offenses. Separate informations should have, therefore, been filed.

It must be noted that only one information (for multiple murder, multiple frustrated murder and multiple attempted murder) was filed with the trial court. However, nothing appears in the record that GLENN objected to the multiplicity of the information in a motion to quash before his arraignment. Hence, he is deemed to have waived such defect.[30] Under Section 3, Rule 120 of the Rules of Court, when two or more offenses are charged in a single complaint or information and the accused fails to object to it before trial, the court may convict the accused of as many offenses as are charged and proved, and impose on him the penalty for each of them.

Now, we come to the penalty. Under Article 365 of the Revised Penal Code, any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony shall suffer the penalty of *arresto mayor* in its maximum period to *prision correccional* in its medium period; and if it would have constituted a light felony, the penalty of *arresto menor* in its maximum period shall be imposed. The last paragraph thereof provides that the penalty next higher in degree shall be imposed upon the offender who fails to lend on the spot to the injured parties such help as may be in his hand to give. This failure to render assistance to the victim, therefore, constitutes a qualifying circumstance because the presence thereof raises the penalty by one degree.[31] Moreover, the fifth paragraph thereof provides that in the imposition of the penalty, the court shall exercise its sound discretion without regard to the rules prescribed in Article 64. Elsewise stated, in felonies through imprudence or negligence, modifying circumstances need not be considered in the imposition of the penalty.[32]

In the case at bar, it has been alleged in the information and proved during the trial that GLENN "escaped from the scene of the incident, leaving behind the victims." It being crystal clear that GLENN failed to render aid to the victims, the penalty provided for under Article 365 shall be raised by one degree. Hence, for reckless imprudence resulting in multiple homicide with serious physical injuries and less serious physical injuries, the penalty would be *prision correccional* in its maximum period to *prision mayor* in its medium period. Applying Article 48, the maximum of said penalty, which is *prision mayor* in its medium period, should be imposed. For the separate offenses of reckless imprudence resulting in slight physical injuries, GLENN may be sentenced to suffer, for each count, the penalty of *arresto mayor* in its minimum period.

Although it was established through the testimonies of prosecution witness Lemuel Pangca[33] and of GLENN that the latter surrendered to Governor Emano of Misamis Oriental, such mitigating circumstance need not be considered pursuant to the aforestated fifth paragraph of Article 365.

Under the Indeterminate Sentence Law, GLENN may be sentenced to suffer an indeterminate penalty whose minimum is within the range of the penalty next lower in degree to that prescribed for the offense, and whose maximum is that which could properly be imposed taking into account the modifying circumstances. Hence, for the complex crime of reckless imprudence resulting in multiple homicide with serious physical injuries and less serious physical injuries, qualified by his failure to render assistance to the victims, he may be sentenced to suffer an indeterminate penalty ranging from *arresto mayor* in its maximum period to *prision correccional* in its medium period, as minimum, to *prision mayor* in its medium period, as maximum. As to the crimes of reckless imprudence resulting in slight physical injuries, since the maximum term for each count is only two months the Indeterminate Sentence Law will not apply.

As far as the award of damages is concerned, we find a necessity to modify the same. Conformably with current jurisprudence,[34] we reduce the trial court's award of death indemnity from P75,000 to P50,000 for each group of heirs of the trainees killed. Likewise, for lack of factual basis, we delete the awards of P30,000 to each of those who suffered serious physical injuries and of P10,000 to each of those who suffered minor physical injuries.

WHEREFORE, the decision of the Regional Trial Court, Branch 38, Cagayan de Oro City, is hereby SET ASIDE, and another one is rendered holding herein accused-appellant GLENN DE LOS SANTOS guilty beyond reasonable doubt of (1) the complex crime of reckless imprudence resulting in multiple homicide with serious physical injuries and less serious physical injuries, and sentencing him to suffer an indeterminate penalty of four (4) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum; and (2) ten (10) counts of reckless imprudence resulting in slight physical injuries and sentencing him, for each count, to the penalty of two (2) months of arresto mayor. Furthermore, the awards of death indemnity for each group of heirs of the trainees killed are reduced to P50,000; and the awards in favor of the other victims are deleted. Costs against accused-appellant.

SO ORDERED.

Bellosillo, Melo, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Puno, J., abroad on official business.

[1] TSN, 19 March 1996, 5-15; 20 March 1996, 83-89.

[2] TSN, 19 March 1996, 10-16; 20 March 1996, 87-90.

[3] Id., 16-23; Id., 91-96.

[4] Rollo, 26.

[5] TSN, 27 March 1996, 6-16.

[6] TSN, 15 July 1996, 12-16, 20; 17 July 1996, 124-125.

[7] TSN, 15 July 2001, 15-19.

[8] TSN, 15 July 2001, 19-28.

[9] Id., 29-30; TSN, 16 July 1996, 80-83, 114.

[10] TSN, 15 July 2001, 30-32, 64-66; TSN, 16 July 1996, 83-87, 108-109.

[11] TSN, 15 July 1996, 32-36.

[12] TSN, 17 July 1996, 125-128.

[13] Id., 132-144.

[14] TSN, 19 August 1996, 11-13.

[15] Decision, 20; Rollo 40.

[16] Brief for the Appellee, 12; Rollo, 205.

[17] Appellant's Brief, 53; Rollo, 150.

[18] *People v. Pacana*, 47 Phil. 48, 57 [1924].

[19] *People v. Santos*, 85 SCRA 630, 639 [1978].

[20] *People v. Zamora de Cortez*, 59 Phil. 568, 569 [1934]; *People v. Modesto*, 25 SCRA 36, 50-51 [1968]; *People v. Boholst-Caballero*, 61 SCRA 180, 191 [1974]; *People v. Tabije*, 113 SCRA 191, 197 [1982].

[21] 106 Phil. 597, 606 [1959].

[22] Appellant's Brief, 54; Rollo, 151.

[23] *People v. Modesto*, supra note 20, citing *People v. Hernandez*, 99 Phil. 515 [1956] and *People v. Yuzon*, 101 Phil. 871 [1957].

[24] *U.S. v. Meleza*, 14 Phil. 468, 470 [1909], cited in *People v. Pugay*, 167 SCRA 439, 448 [1988].

[25] *Picart v. Smith*, 37 Phil. 809, 813 [1918].

[26] 1 LUIS B. REYES, THE REVISED PENAL CODE 661-662 (1993), citing *People v. Castro*, 40 O.G., Supp. 12, 83.

[27] 292 SCRA 87, 102 [1998].

[28] 94 Phil. 710 [1954], cited in *People v. Malabanan*, 2 SCRA 1185 [1961], and *People v. Cuyos*, 160 SCRA 302 [1988].

[29] 175 SCRA 518 [1989].

[30] *Reodica v. Court of Appeals*, supra note 27, at 103.

[31] *Ibabao v. People*, 132 SCRA 216, 221 [1984].

[32] See also *People v. Agito*, 103 Phil. 526, 529-530 [1958]; *People v. Medroso*, 62 SCRA 245, 249 [1975].

[33] TSN, 19 March 1996, 25.

[34] *People v. Enguito*, supra note 28; *People v. Bautista*, G.R. No. 131840, 27 April 2000.

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