PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORLITO TAN @ "NORLY" AND JOSE TAN, ACCUSED-APPELLANTS.

G.R. No. 132324. September 28, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

When an accused invokes self-defense, the burden of proof to show that the killing was justified shifts to him. Even if the prosecution evidence may be weak, it could not be disbelieved after his open admission owing authorship of the killing. However, to implicate a co-accused as a co-principal, conspiracy must be proven beyond reasonable doubt. In the absence of conspiracy, the responsibility of the two accused is individual, not collective.

The Case

Before us is an appeal of the Decision[1] of the Regional Trial Court of Pili, Camarines Sur, in Criminal Case No. P-2297, which convicted Norlito Tan of murder, and Jose Tan of being an accomplice in such crime.

On January 3, 1994, an Information[2] was filed against the appellants, the accusatory portion of which reads as follows:

> "That on or about the 6th day of September, 1993, in Barangay Gatbo, Municipality of Ocampo, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, conspiring, confederating together and mutually helping one another, did then and there, wilfully, unlawfully and feloniously attack, assault, stone and stab with a deadly weapon one Magdaleno Rudy Olos alias Modesto Olos, thereby inflicting upon the latter mortal wounds on the different parts of his body which caused his death, to the damage and prejudice of the heirs of the offended party in such amount as may be proven in court."[3]

On December 14, 1995, Jose Tan was arrested in Ocampo, Camarines Sur. Upon his arraignment on January 3, 1996, he entered a plea of not guilty.[4] Subsequently, Norlito Tan was arrested on April 1, 1996. When arraigned on May 23, 1996, he likewise pleaded not guilty.[5] Trial on the merits ensued. On July 2, 1997, the trial court rendered its assailed Decision, the decretal portion of which reads:

> "WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused NORLY alias NORLITO TAN guilty beyond reasonable doubt of the offense of MURDER and is hereby imposed the penalty of RECLUSION PERPETUA ranging from twenty (20) years and one (1) day to forty (40) years while the other accused JOSE TAN is also adjudged guilty as an accomplice to the offense of MURDER and is hereby imposed an indeterminate penalty of PRISION MAYOR in its medium period ranging from eight (8) years and one (1) day as minimum to ten years (10) as maximum, together with its accessory penalties. As civil liability, both accused are hereby ordered to pay the heirs of MODESTO OLOS, represented by his widow, Ofelia Nueca Olos, the sum of FIFTY THOUSAND PESOS (P50,000.00) Philippine currency with costs against them.
>
> "The accused Norly Tan and Jose Tan are credited with the full period of their preventive imprisonment if they

> agreed in writing to abide with all the terms and conditions of their provisional detention, otherwise, to only 4/5 thereof."[6]

The appellants lodged their appeal with the Court of Appeals which, in view of the penalty imposed, forwarded it to this Court.[7]

The Facts

Version of the Prosecution

In the People's Brief,[8] the Office of the Solicitor General presents the facts as viewed by the prosecution in this wise:

> "On September 6, 1993, at about 6:00 p.m., Ramon Nueca was weeding his ricefield located at Gatbo, Ocampo, Camarines Sur. At that time, there was still sunlight. (pp. 7-8, TSN, July 3, 1996).
>
> "At a distance of about twenty (20) meters, Ramon Nueca saw Magalino Olos, (who was also his brother-in-law), walking along the road going to Gatbo. At that time, appellant Jose Tan who was then sixteen (16) years old, was also walking infront of Olos. Appellant Norlito Tan, (brother of appellant Jose Tan), who was holding an eight-inch knife known as "gatab," suddenly emerged from the grassy portion at the right side of the road where the grasses [were] "higher than a person." Appellant Norlito Tan stabbed Olos three (3) times. Olos was hit twice at the upper portion of his back and once at his abdomen. Thereafter, appellant Jose Tan threw a stone at Olos, hitting him at his neck (pp. 9-16, 35-37, TSN, July 3, 1996).
>
> "Ramon Nueca decided to go to the place of the incident to pacify appellants. However, when appellants saw Ramon Nueca coming, they fled. Ramon Nueca and his brother, Simplicio, brought Olos to the Municipal Hall of Ocampo. From there, Olos was brought by an ambulance to the Bicol Regional Hospital in Naga City where he later died. (pp. 18-20, TSN, July 3, 1996).
>
> "Olos was examined and treated at the Bicol Regional Hospital by a certain Dr. Jullie Sy. However, at the time of the trial of this case, he was no longer connected with [the]Bicol Regional Hospital, hence, was not available to testify in this case. His findings as reflected in the medical certificate (Exhibit B) which he issued were interpreted by Dr. Thomas Gonzales, the incumbent Municipal Health Officer of Pili, Camarines Sur (p. 3, Annex A, Appellants' Brief).
>
> "Dr. Gonzales testified that the first finding in the medical certificate (Exhibit B) consists of a 1.4 centimeter-wound found at the left portion of the back side of the victim which would have been inflicted by a sharp-bladed instrument (pp. 11-12, TSN, August 14, 1996); the second finding consists of a 1.6 centimeter wound located "on the level of the 4th introspect asterior left side of the body of the victim below the level of the nipple or left front side of his body below the nipple" (p. 13, ibid.); the third finding consists of a fatal injury located "at the umbilical area left side of the liver of the victim with the intestine coming out." (pp. 13-15 ibid).

"xxx xxx xxx"[9]

Version of the Defense

In their Brief,[10] Appellants Norlito Tan and Jose Tan claim self-defense and denial, respectively, alleging as follows:

> "B. Evidence for the Defense:
>
> "On September 6, 1993 in Bgy. Gatbo, Ocampo, Camarines Sur, at about 4:00 o'clock in the afternoon, Jose Tan was then watching a basketball game while his brother Norlito Tan was playing basketball. At about 5:30 o'clock PM, they left together to go home but on their way home, they passed the road and dropped by at the house of Wilfredo Bale to chew betel and betelnut. While they were in yard of Wilfredo Bale, the latter told

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> accused Norlito Tan to go home as Modesto Olos might chase him again. Heeding the advice of Wifredo, Norlito left to go home, while Jose remained on the yard of Wilfredo. While Norlito was on his was home, Modesto Olos who was then in the ricefield walked fast towards the road and met the former who evaded the latter by proceeding to the other side of the road as Modesto had been blocking his way and telling him that Norlito would be buried alive. Then Modesto drew a knife and stabbed Norlito who was able to parry the thrust and holds the former's hand holding the knife. Norly Tan immediately drew his knife from his boot and retaliated by stabbing Modesto who was hit and fell to the ground. Then Ramon Nueca arrived and embraced Norlito, and at this moment, Angel Paular who was holding a stone ran towards him but Norlito was able to extricate himself from the hold of Ramon and ran away.
>
> "When Modesto and Norlito were then fighting, Jose Tan was in front of the house of Wilfredo Bele. Then, when Norlito was fleeing and passing by the house of Wilfredo, Jose Tan also ran away.
>
> "At the time of said incident, Jose Tan was then below sixteen (16) years old as he was born on September 18, 1977 as per birth certificate submitted to the trial court.

The Trial Court's Ruling

In convicting Appellant Norlito Tan of murder, the trial court ruled that his claim of self-defense was "negated by the evidence on record." It added that when an accused pleads self-defense, the burden of proof shifts on him, a burden Norlito Tan failed to discharge. Jose Tan's denial was equally unavailing in view of the credible prosecution witnesses' identification of him.

The lower court held that treachery and evident premeditation accompanied the killing and, thus, the crime committed was murder. However, the court a quo dismissed the prosecution's claim of conspiracy and adjudged Jose Tan guilty merely as an accomplice.

The Assigned Errors

Appellants fault the trial court with the following errors:

> "1. The court a quo seriously erred in finding that accused Norlito Tan treacherously killed Modesto Olos and that accused Jose Tan helped his brother in the fatal stabbing of the victim.
>
> "2. The court a quo gravely erred in relying solely [on] and giving full credence [to] the testimonies of Ramon Nueca and Ofelia Olos and in disregarding the testimonies of both accused and their witnesses.
>
> "3. The court a quo seriously erred in finding that both accused eluded the apprehending authorities indicating that they are guilty of the crime charged.
>
> "4. The court a quo imposed an excessive penalty upon both accused granting but not admitting that accused Norlito Tan is guilty of the crime charged and accused Jose Tan being a minor below 16 years old is guilty as an accomplice;
>
> "5. The court a quo seriously erred in convicting accused Norlito Tan of the crime of murder and accused Jose Tan as an accomplice."[11]

To resolve the case, the Court believes that the following points should be discussed: (1) credibility of witnesses; (2) self-defense and burden of proof; and (3) characterization of the crime and the applicable penalty.

The Court's Ruling

The trial court correctly convicted the appellants, but erred in imposing the proper penalty.

First Issue:

Credibility of Witnesses

Well-rooted is the rule that factual findings of the trial judge who tried the case and heard the witnesses are not to

be disturbed on appeal, unless there are circumstances of weight and substance which have been overlooked and which, if properly considered, might affect the result of the case.[12] Because the trial court is in a better position to examine the demeanor and conduct of the witnesses while testifying on the stand, its conclusions and findings on their credibility are entitled to great weight on appeal and should not be changed except for strong and valid reasons.[13]

Alleged Irregularities

Appellants contend that the trial court erred in giving credence to the testimonies of Prosecution Witnesses Ramon Nueca and Ofelia Olos, considering that the defense was not able to cross-examine Nueca thoroughly. With regard to Olos, appellants claim that her presentation as a rebuttal witness was irregular and, as such, should not have been allowed by the court a quo.

There is no merit to appellants' assertion of procedural prejudice. True, Ramon Nueca did not return to court to finish his cross-examination; however, this does not mean that his testimony should be expunged, as appellants insists. It must be noted that his failure to appear before the court was not the fault of prosecution. More important, the defense had the opportunity to cross-examine him, as in fact he was actually subjected to cross-examination by the appellants' counsel, Atty. Crispo Q. Borja Jr.[14] The cross-examination touched on the material points elicited from Nueca during his direct examination – his eyewitness description of Norly and Jose Tan's participation in the killing.

Neither can the presentation of Ofelia Olos as a rebuttal witness be deemed irregular. Considering that the appellants claimed self-defense only after the prosecution had rested its case, the latter, after being allowed by the trial court, exercised its prerogative to present Olos, so that she could testify that the attack on her husband was sudden and unexpected. Furthermore, it is within the sound discretion of a trial judge to allow a party that has rested its case to introduce rebuttal evidence.[15]

Alleged Inconsistencies

Appellants insist that the testimonies of Nueca and Olos were tainted with contradictions and inconsistencies, viz.:

> "The vital and material points of the testimony of Ramon Nueca which require careful considerations are as follows, to wit:
>
> "1. He saw [his] brother-in-law Modesto Olos stabbed thrice by Norlito Tan, hitting him twice at the back and once in front of the body, (pp. 12 & 14, tsn, 7-3-96), contrary to the testimony of Dr. Gonzales who testified that the victim suffered injuries at the left portion of the backside body (intercostal post line), at the left front side below the nipple, and on his abdomen. (pp. 11, 12 & 14, tsn, 8-14-96).
>
> "2. The reason why both accused killed his brother-in-law was that they were apprehended by the victim in the house of Flores per information given to him by said victim (p. 21, tsn, 7-3-96), while in his sworn statement marked Exh. 1, he stated that he [did] not know of any motive why accused Norlito stabbed and Jose stoned him.
>
> "3. Norlito hid and emerged from the "talahib" grass and immediately stabbed his brother-in-law (pp. 13, 15 & 40, tsn, 7-3-96), while in exhibit 1, he stated that while he was walking on the road going to Gatbo, he was approached by Norlito and Jose, and then Modesto was stabbed by Norlito.
>
> xxx xxx xxx
>
> "With respect to the vital and material; points/parts of the testimony of Ofelia Olos which likewise require careful consideration are as follows:

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> "1. That before the stabbing incident, she saw Norlito suddenly emerged from the "talahib" grass and immediately stabbed her husband -- this is contrary to her statement given during the preliminary inquiry conducted by the presiding judge of MTC, Ocampo, Camarines Sur, which statement is part of the record of this case. In said statement, she said that when she was out of her house after cooking, she saw her husband being stabbed by Norlito and before her husband was stabbed, he was standing on the road and about to pick up a stone when attacked by both accused. She did not mention any "talahib" grass in said statement.
>
> "2. That while Norlito was stabbing her husband, Jose shouted at his brother to stop; - These allegations of Ofelia are contrary to human experience for the simple reason that if accused Jose really shouted at his brother to stop stabbing Modesto Olos, he would not throw stones at the latter.
>
> "3. That her house is six (6) meters away from the road and in between her house and the road, there are irrigation canal, ricefield, and a vacant lot (Pp. 16-17, tsn – 3-10-97); This is contrary to the testimony of her brother-in-law as according to him, the house of Ofelia is thirty (30) meters away from the road, and between the road and the house of Olos, there are two (2) irrigation canals and a ricefield in between said canals (P.30, tsn – 7-3-96). Thus, it is improbable that the house of Ofelia is only 6 meters away from the road, and she could not see the person on the other side of the "talahib" grass from her house as the grass is higher than the height of a person and the distance from the house is 30 meters to the road as testified by Ramon Nueca (Pp. 34-36, tsn – 7-3-96).
>
> "4. That her husband was twice stabbed at the back on the left side back shoulder (P. 24. Tsn 3-10-97). – This is [contrary] to the testimony of Dr. Tomas Gonzales as already mention in the foregoing.
>
> "Considering the foregoing testimony of Ofelia Olos, it is indubitable that she was telling lies when she testified in court and was not an eye-witness to the incident. Taking into consideration both testimonies of Ramon Nueca whose testimony on cross-examination was not finished for his failure to return to court and of Ofelia Olos on rebuttal stage whose testimony is improper for consideration for reason already aforestated, we contend that the trial court gravely erred in relying solely and giving full credence to the testimonies of said prosecution witnesses and in finding that accused Norlito Tan treacherously killed Modesto Olos and finding also that Jose [T]an helped his brother in the fatal stabbing of the victim.

These arguments do not persuade. The prosecution witnesses clearly placed the appellants at the scene of the crime and established that Norly Tan stabbed Olos. These facts were admitted by Norly Tan, who claimed self-defense. True, there are some apparent minor inconsistencies in the testimonies of Nueca and Olos, but they do not detract from the clarity, the cohesiveness or the consistency of their testimonies on how Norly Tan killed the victim. Nueca testified thus:

> "Q Now, were you able to see the persons responsible for the stabbing of Rudy Olos?
>
> xxx xxx xxx
> A Yes, sir, there were two (2) persons.
>
> Q Were you able to recognize them?
>
> A Yes, sir.
>
> Q Can you tell the Honorable Court their names?
>
> A Yes, sir, Norly Tan and Jose Tan.
>
> Q How is this Norly Tan related to the Norlito Tan impleaded in this case who stabbed Magdalino Rudy Olos?
>
> A The same person, sir.
>
> Q And please tell the Honorable Court...what did Norly Tan do?

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A Norlito Tan stabbed Magdalino Rudy Olos.

Q Were you able to see the instrument which was used by Norly Tan in stabbing Magdalino Rudy Olos?

A Yes, sir, a kind of knife which is known in our dialect as “tabak,” or “gatab.”

Q Will you please describe to the Honorable Court the weapon otherwise called as “gatab” in your locality?

A Somewhat small knife which is about eight (8) inches long.

Q Was that eight inches long including the handle?

A Yes, sir.

Q Now, was Magdalino Rudy Olos hit by the thrusts of Norly Tan?

A Yes, sir.

Q In what part of the body of Magdalino rudy Olos was hit by Norly tan?

A At the back, sir.

COURT

Q Which part of the back?

A Upper portion of his back, Your Honor. At this juncture, witness is pointing the upper right portion of his back.

xxx xxx xxx
FISCAL RAMOS

Q By the way, what was Magdalino Rudy Olos doing in the road when he was actually assaulted by Norly Tan?

A He was on his way home, sir.

Q Now, in relation to the victim Magdalino Rudy Olos, where was Norly Tan when he stabbed Olos?

A He was on the left side of Magdalino Olos, sir.

Q And where did Norly Tan emerge or where did he come from before he stabbed Magdalino Olos?

A He came from the “talahib.”

COURT

Q How many times did he stab the victim?

A Three (3) times your honor.

xxx xxx xxx
FISCAL RAMOS

Q And what injury sustained by victim Magdalino Rudy Olos at his back [--] was that the injury resulting from his death or which of the stabbing blows made by Norly Tan xxx [h]it him?

A They all hit him, sir.

Q How about the stabbing blow for the second time?

A Still at the back, sir.

Q How about the third time?

A He was hit on the abdomen.

Q Now, you mentioned earlier that Norly Tan emerged from the grassy portion, will you please tell the Honorable Court how tall [was the] grassy portion where Norly Tan emerged?

A It is higher than a person, sir.

Q How far is that grassy portion where Magdalino Olos came from?

A Just beside the road, sir.

Q Will you please tell the Honorable Court of your own knowledge or observation, was Olos able to see Norly Tan before the latter emerged from the grassy portion?

A He could not have seen Norly Tan because Magdalino Olos already passed when Norlito Tan emerged from the grassy portion of the field.

Q Now, for how long had time elapsed when Norly Tan emerged from the grassy portion of the field and stabbed Olos?

A Around one (1) second, sir.

Q When the victim Olos was stabbed by Norly Tan for the first time at his back, what did Olos do, if any?

A When he faced Norly tan, Norly Tan stabbed him in his abdomen?

COURT

Q So the second stab was also in the abdomen of the victim?

A No, your honor, the two (2) stabs hit his back and the third stab hit his abdomen.

xxx xxx xxx
FISCAL RAMOS

Q Now, how about Jose Tan, do you know where he was at the time his brother Norly Tan emerged from the “talahib”?

A Yes, sir.

Q Where was he?

A He was at the middle of the road.

Q Now, in relation to where Magdalino Rudy Olos was walking at the middle of the road where was Jose Tan at that time?

A In front of Olos.

Q How far was Jose Tan at that time?

A About five (5) meters.

COURT

Q So they saw each other?

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A yes, your Honor.

xxx xxx xxx
FISCAL RAMOS

Q What if any, did Jose Tan do?

A He stoned Olos.

Q At what moment did Jose Tan throw [stones at] Magdalino Rudy Olos[?]

A After his brother Norly Tan stabbed Olos, sir.

Q And was Olos hit by the stone of Jose Tan?

A Yes, sir.

Q In what part of his body was he hit was Jose Tan?

A In his neck.

Q How many times did he stone Magdalino Rudy Olos?

A Only one (1) sir.

Q How about you, what did you do while Norly Tan was stabbing the victim, Magdalino Olos?

A I was about to run away to them in order to pacify them, but when the two (2) brothers saw me, they fled.

Q Towards what direction [did] they [flee?].

A Towards the direction of their uncle's house."[16]

The above-quoted testimony jibes with that of Ofelia Olos as to how the incident happened,[17] and with that of Dr. Gonzales as to the number of wounds sustained by the victim.

The inconsistencies pointed out by the appellants refer to their alleged motive for killing the victim, the distance of the witnesses from the locus criminis and the location of the wounds inflicted. However, motive is not important when there is no doubt about the identity of the perpetrator of the crime,[18] as in the present case. True, there was variance in the witnesses' testimonies as to their distance from stabbing incident. However, the sketch presented in court showed that they had a clear view of the scene.[19] And although they could not pinpoint precise locations, they were able to give the correct number of wounds sustained by the victim. their perception as to where the victim was struck was likewise correct.

In any case, the inconsistencies cited by the appellants are not substantial enough to impair the credibility of these witnesses. Rather, such minor lapses manifest truthfulness and candor and erase suspicion of a rehearsed testimony.[20]

In all, we cannot fault the trial court for upholding the relevant portions of the prosecution witnesses' testimonies.
Second Issue:
Self-Defense
When the accused invoke self-defense, the burden of proof is shifted to them to prove that the killing was justified and that they incurred no criminal liability therefor. They must rely on the strength of their own evidence and not on the weakness of that of the prosecution, for even if the latter is weak, it could not be disbelieved after their open admission of responsibility for the killing.[21]

In the present case, it is incumbent upon Appellant Norly Tan to prove self-defense. Thus, he must prove that there was unlawful aggression on the part of the victim, that the means employed to prevent it were reasonable, and that there was lack of sufficient provocation o his part. However, he failed to discharge this burden.

True, he alleges that it was the victim, Magdalino Olos, who was the aggressor who had started the fracas:

> "Q
>
> When Modesto Olos met you on the left side of the road, what else did he do?
>
> A
>
> When we were on the left side of the road, Modesto Olos asked me why I was there and then I told him that I was a resident and then he told me that he will bury me alive and at the same time he thrust his bladed weapon and stabbed me.
>
> COURT
>
> Q
>
> Did he hit you?
>
> A
>
> I was able to parry the thrust and [hold] his arm with the weapon. When I was able to hold his hand with the bolo, I was also able to draw my own bladed weapon and I was able to stab him.
>
> Q
>
> From where did you draw that weapon which you used in stabbing Modesto Olos?
>
> A
>
> I drew it from inside my boot.
>
> xxx xxx xxx"[22]

The above-quoted testimony, however, shows some inherent contradictions. If it was the victim who had attacked Norly Tan, then why did the former suffer three stab wounds and the latter none? Likewise, the Court finds it hard to believe that Norly Tan was able to subdue the victim with one hand and at the same time get his weapon from his boot. Clearly then, his self-serving allegation would not suffice. It pales in comparison with the positive and categorical declaration of the prosecution witnesses that the attack on the victim was sudden an unprovoked.

Third Issue:
Crime and Its Punishment
The trial court correctly ruled that the killing was attended by treachery; hence, the crime was murder.

The essence of treachery is the sudden and unexpected attack, without the slightest provocation on the part of the person attacked.[23] Treachery is present when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof, which tend directly and especially to insure its execution, without risk arising from the defense which the offended party might make.[24] In the case at bar, the attack on Magdalino Olos was treacherous, because he was caught off guard and was therefore unable to defend himself, as testified to by the prosecution witnesses and as indicated by the wounds inflicted on him.

Culpability of Jose Tan

We agree with the court a quo that the prosecution was not able to establish conspiracy in the killing of the victim; thus, Appellant Jose Tan is guilty only as an accomplice. Worth quoting is the trial court's disquisition on the matter:

> "However, the evidence of the prosecution regarding the participation of the other accused, Jose Tan is not so satisfactory specially regarding its theory of conspiracy. In fact, according to the widow Ofelio Olos, she even heard Jose Tan telling and pleading with his brother to stop his attack and stabbing of the victim. the most therefore that said accused could be liable for is merely that of an accomplice, who, not being a principal cooperated in the execution of the offense by previous and simultaneous acts, that in this case, by his stoning the victim Modesto Olos and hitting him on the neck. However, the accused Jose Tan's act of stoning was not a direct participation nor indispensable to the killing of the victim. also, as held by the Supreme court, when doubt exists whether an accused acted as principal or accomplice, the court should favor the lesser or milder identity (People vs. Irenea, G.R. No. 44410, August 5, 1988)."[25]

The above-quoted ruling follows legal and jurisprudential precepts. The Revised Penal Code defines accomplices as "those persons who, not being included in article 17,[26] cooperate in the execution of the offense by previous or simultaneous acts."[27]

In the present case, the prosecution was not able to prove that Jose Tan conspired with his brother to commit the murder. Neither was it shown that he had prior knowledge of the latter's criminal intent. Absent a conspiracy, the responsibility of the accused is individual, not collective, and each is to be punished only for his separate acts.

The penalty of Appellant Jose Tan as an accomplice is one degree lower than that of the principal, which in murder cases is reclusion temporal, in its maximum period, to death. Considering that he is entitled to the privileged mitigating circumstance of minority,[28] because he was only sixteen years old when the crime was committed,[29] the trial court should have lowered his penalty by two degrees, i.e. prision correccional maximum to prision mayor medium. Likewise, he is entitled to the benefits of the Indeterminate Sentence Law.

Since no aggravating or mitigating circumstance was proven, the imposable penalty on Norlito Tan is reclusion perpetua.

WHEREFORE, the assailed Decision is AFFIRMED, with the MODIFICATION that Appellant Norlito Tan, as principal, is sentenced to reclusion perpetua; while Appellant Jose Tan, as an accomplice and a minor, is sentenced to an indeterminate prison term of one (1) year and five (5) months of prision correccional as minimum, to seven (7) years of prision mayor as maximum.

SO ORDERED.

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

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[1] Penned by Judge Martin P. Badong Jr.

[2] Dated December 17, 1993 and signed by Asst. Provincial Prosecutor Antonio V. Ramos; records, p. 1.

[3] Rollo, p. 19.

[4] He was assisted by Atty. A. Obias. Records, p. 52.

[5] He was assisted by Atty. Crispo Q. Borja Jr.; records, p. 78.

[6] RTC Decision, p. 10; rollo, p. 38.

[7] The case was deemed submitted for decision on June 14, 1999, when this Court received the Appellee's Brief. The Brief for the Appellants was received earlier on February 12, 1999. The filing of a reply brief was deemed waived, as none was filed within the reglementary period.

[8] The Appellee's Brief was signed by Sol. General Ricardo P. Galvez, Asst. Sol. Gen. Amparo Cabotaje-Tang and Sol. Demosthenes D.C. Dimayacyac.

[9] Appellee's Brief, pp. 5-8; rollo, pp. 95-98.

[10] Dated January 25, 1999 and signed by Atty. Crispo Q. Borja, Jr.

[11] Appellant's Brief, p. 1; rollo, p. 52.

[12] People v. Meneses, 288 SCRA 95, March 26, 1998; People v. Lagao, 286 SCRA 610, February 27, 1998; People v. Gil, 284 SCRA 563, January 22, 1998.

[13] 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.

[14] See TSN, July 3, 1996, pp. 23-43.

[15] Ricardo J. Francisco, Criminal Procedure, 3rd ed., 1996, p. 411.

[16] TSN, July 3, 1996, pp. 10-18.

[17] TSN, March, 10, 1997, pp. 9-12.

"Fiscal Ramos:

Q At the time of the incident of stabbing on September 6, 1993 where were you at that time?

A I was at home.

Q And where was your husband at that time?

A he was at the house of my father and was about to go home.

Q And when he was about to go home near the house of your father, what happened?

A He was stabbed.

Q Did you see the stabbing of your husband?

A Yes, sir.

Q Can you tell us what was the relative position of your husband when the accused stabbed him?

A It was Norlito Tan who collared my husband and continued stabbing him, while Jose Tan told Norly Tan to stop and I also shouted for help, because Jose Tan was just infront of Norly Tan.

COURT:

Q You are sure of that?

A Yes, Your Honor.

Fiscal Ramos:

Q You are certain that Jose Tan told Norly Tan to stop?

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A Yes, sir.

Q And what was Jose Tan doing when Norly Tan [was] continuously stabbing your husband aside from shouting?

A Jose Tan also stoned my husband.

Q When [did] the stoning [take] place [--] before or after the shouting?

A it happened simultaneously, Your Honor.

COURT:

Fiscal Ramos:

Q Was your husband hit when Jose Tan stoned your husband?

A He was hit on his neck.

Q Particularly where?

A At the right side of his neck, Your Honor.

COURT:

Fiscal Ramos:

Q Immedaitely before the stabbing incident took place[,] where was Norly Tan at that time?

A I only saw him when he suddenly emerged from the shrubs or “talahiban.”

Q Where was Norly Tan when he just suddenly appeared from the shrubs or “talahiban” in relation to your husband?

A From the left side of my husband.”

[18] People v. Canceran, 229 SCRA 581, January 31, 1994; People v. Pinto, 230 SCRA 847, March 9, 1994; People v. Bongadillo, 234 SCRA 233, July 20, 1994.

[19] RTC Records, p. 138.

[20] People v. Llaguno, 285 SCRA 124, January 28, 1998; People v. Obello, 284 SCRA 79, January 14, 1998; People v. Salazar, 277 SCRA 67, August 11, 1997; People v. Alas, 274 SCRA 310, June 19, 1997; People v. Dinglasan, 267 SCRA 26, January 28, 1997.

[21] People v. Angeles, 275 SCRA 19, July 1, 1997; People v. Sol, 272 SCRA 392, May 7, 1997; People v. Obzunar, 265 SCRA 547, December 16, 1996; People v. Isleta, 264 SCRA 374, November 19, 1996; People v. Ocsimar, 253 SCRA 689, February 20, 1996.

[22] TSN, October 2, 1996, pp. 10-11.

[23] People v. Cawaling, GR No. 117970, July 28, 1998.

[24] Article 14, par. 16, Revised Penal Code.

[25] Ibid, p. 9; rollo, p. 37.

[26] Article 17 of the Revised Penal Code reads:

"ART. 17. Principals. – The following are considered principals:

1. Those who take a direct part in the execution of the act;

2. Those who directly force or induce others to commit it;

3. Those who cooperate in the commission of the offense by another act without which it would not have been a ccomplished."

[27] Article 18, Revised Penal Code.

[28] Art. 68, Revised Penal Code, provides in part:

"xxx xxx xxx

"2. Upon a person over fifteen and under eighteen years of age, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period."

[29] RTC Records, p. 59. The birth certificate of Jose Tan shows that he was born on September 18, 1977.

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