

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMPIE TARAYA Y CANTUBA @ “BOYET,” ARLY CANTUBA Y DAIGO @ “BEGET” AND JONAR ESTRADA Y CANTUBA, ACCUSED-APPELLANTS.

G.R. No. 135551. October 27, 2000

Ponente: DAVIDE JR., J.

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DAVIDE JR., J.:

Accused-appellants appeal from the decision[1] in Criminal Case No. S-1898 of the Regional Trial Court, Branch 33 of Siniloan, Laguna, which found them guilty beyond reasonable doubt of the crime of murder and sentenced each of them to suffer the penalty of reclusion perpetua and pay P50,000 to the heirs of the victim, as well as the costs.

Accused-appellants are relatives. Ampie Taraya (hereafter AMPIE) and Jonar Estrada (hereafter JONAR) are cousins and the nephew of Arly Cantuba (hereafter ARLY). ARLY is the brother of the respective mothers of AMPIE and JONAR.

The accusatory portion of the information[2] which charged them with murder reads as follows:

That on or about 11:20 o'clock [sic] in the evening of September 24, 1995 at Sitio Bagong Silang, Barangay Batuhan, Municipality of Famy, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused while conveniently armed with deadly weapon (itakan), with intent to kill, with evident premeditation and treachery and with abuse of superior strength conspiring, confederating and mutually helping one another did then and there wilfully, unlawfully and feloniously attack, assault, hack and slash the throat of one Salvador Reyes by [sic] the said weapon thereby inflicting upon him hacking/slashing wound anterior neck, proximal end and directing backward and superiorly at the base of the mandible cutting half the circumference of the neck cutting the trachea, esophagus, neck vessels including jugular veins and carotid arteries on both sides sparing the cervical vertebrae and cord which directly caused his death to the damage and prejudice of the surviving heirs of the victim.

That the qualifying and aggravating circumstances of treachery, abuse of superior strength and evident premeditation attended the commission of the crime.

CONTRARY TO LAW.

Accused-appellants pleaded not guilty upon arraignment. Trial on the merits ensued.

The prosecution presented Mariano Adillo, David Angeles, Jr., Gregorio Reyes and Dr. Gloria Jamolin. The evidence for the prosecution established the following facts:

Mariano Adillo a co-worker of the victim Salvador Reyes in a sash factory, testified that he had known Salvador for two months. At about 10:00 p.m. of 24 September 1995, he, Salvador and three other companions were in a beer house in Famy, Laguna. Salvador drank his beer outside the pub and was in a conversation with a girl. Both

were within the view of Mariano. Later, Salvador was approached and surrounded by three men, one of them faced him while the two others positioned themselves behind him. Mariano hollered at the men, who immediately left.

Half an hour later Mariano went out, but Salvador was nowhere in sight. At about 11:00 p.m., Mariano and a boy searched for him up to a billiard hall which was about 200 meters away. They returned to the beer house and he instructed the boy to hail a tricycle for his ride home. When no tricycle could be found he and a companion walked home.[3] The following day he learned of Salvador's death.[4]

When asked in open court if he could identify the three persons who approached Salvador, Mariano pointed to AMPIE, JONAR and ARLY.

David Angeles, Jr. testified that accused-appellants were his neighbors in Famy, Laguna. ARLY, with whom AMPIE lived, was an adjacent neighbor, while JONAR lived some thirty feet away from his house. He had known JONAR for some ten years, ARLY for about five years and AMPIE for three years. He never had any misunderstanding with anyone of them.[5]

According to David, in the late evening of 24 September 1995, he was at home and could hardly sleep as he was suffering from a backache. He went out of the house to relieve himself. On the street he saw AMPIE brandishing a one-foot long bolo. Behind AMPIE were ARLY and JONAR. They were about five meters away from where David stood. AMPIE approached a man who seemed to be urinating. AMPIE then held up the head of the man and slashed his neck once while his companions ARLY and JONAR stood nearby ready to assist AMPIE. The victim was able to free himself and ran towards David until he dropped a few meters from the house. Immediately AMPIE, ARLY and JONAR ran to their respective homes. David later learned that the victim was Salvador Reyes.[6]

David was certain of whom he saw because the place was illuminated. He went back to the house and ten minutes later he saw people lurking outside with flashlights. He went out when he heard somebody ask why there were bloodstains around. He kept quiet as he was reluctant to divulge what he saw, and he feared the consequences should he be involved. A few days passed and since his conscience still bothered him, he decided to reveal what he had witnessed. He gave a sworn statement[7] to the police.

According to Gregorio Reyes, his son Salvador Reyes died on 24 September 1995. At the time of his death Salvador was thirty-nine years old, separated from his wife and was earning an average of P200 a day. Salvador had confided to him that he had an altercation with ARLY. He mentioned this fact in his sworn statement.[8] The funeral expenses he incurred amounted to P18,000; however, he could not produce any receipt because some of the expenses were paid by his friends.[9]

Dr. Gloria Jamolin performed an autopsy on Salvador Reyes. She noted the presence of abrasions in the right temporal area and below the eyes and a hack wound at the neck which could have been caused by a sharp instrument such as a bolo. Judging from the nature and the location of the wound, the assailant was in front of the victim during the attack. The cause of death was cardio-respiratory arrest secondary to shock and hemorrhage due to the hack wound penetrating the esophagus.[10] She prepared a post mortem report.[11]

The defense had another version of the incident. The witnesses it presented were Armando Bilara, Domingo Decena, SPO2 Emmanuel Martinez, ARLY, JONAR and AMPIE.

Armando Bilara, a barangay tanod, claimed that he has known all accused-appellants for about three years. On 13 September 1995 he was on his way home for lunch when a commotion took place near his house. JONAR had a fistfight with Danilo Angeles, brother of prosecution witness David Angeles, Jr. Danilo was atop of and giving

blows to JONAR. Armando intervened and pacified both of them. He had no idea what caused the scuffle. David was among the spectators of the fight but he did not interfere.[12]

Domingo Decena was at home and watching a television show on the night of 24 September 1995 and until 2:00 a.m. of the following day. Thereafter, he left the house to go to his brother's place to sleep. While he was walking along the street, he saw another person who was also walking and holding an iron pipe about one and a half feet long. He later learned that the man was Salvador Reyes. He also saw AMPIE. When AMPIE came face to face with Salvador, the latter tried to hit AMPIE once with the pipe, but AMPIE was able to duck and avoid being hit by the pipe. AMPIE retaliated by hacking Salvador with a bolo. Salvador ran away, followed behind by AMPIE. Frightened with what he saw, Domingo rushed back to his house. Twenty-five minutes later he saw a commotion outside and learned that Salvador was found dead twenty meters away from AMPIE's house.[13]

On cross-examination Domingo admitted that he did not tell anyone in the house of what he had just witnessed. Neither did he inform the police because of fear. He also denied seeing David Angeles, Jr. that night. He was unable to reveal what he saw for one and a half years because he was busy with work and he had just learned that AMPIE was languishing in jail. It was AMPIE's wife who requested him to testify.[14]

SPO2 Emmanuel Martinez was among the policemen who arrived at the scene of the crime. The body of Salvador Reyes was found some ten yards from the house of David Angeles, Jr. Accused-appellants were implicated by an eyewitness to the death of Salvador. ARLY and JONAR were immediately incarcerated while AMPIE, accompanied by his sister, surrendered at the police station on 9 October 1997. He recorded in the police blotter the date and time of AMPIE's surrender. AMPIE admitted that he killed Salvador, but alleged that he did so in self-defense. Martinez then discontinued the investigation and advised AMPIE to avail of the services of a lawyer from the Public Attorney's Office.[15]

ARLY raised the defense of alibi. According to him, on 24 September 1995, he was at his place of work, a coprasan. He stayed there until 8:00 p.m. and he immediately proceeded home. He slept an hour later. At around 1:00 a.m. of the following day he was awakened by his wife, informing him that there were several people milling outside. He went out and he saw the dead body of Salvador Reyes, whom he knew by face. He returned home to sleep. He had not gone out of his house between the hours he slept and woke up. In the morning of 25 September 1995, the police came to question him. He was allowed to go home after the investigation.[16]

ARLY surmised that David Angeles, Jr. linked him to the crime because of the squabble he had with him on 13 September 1995, when his nephew JONAR was mauled by David and Bobby Angeles. He explained that Armando Bilara arrived late during the encounter, for which reason Armando failed to see that David was actually injured by JONAR.

ARLY further declared that he did not go to the beer house at any time on 24 September 1995.[17]

JONAR also offered the defense of alibi. He had known Salvador Reyes for about fifteen years and during that period he never had any misunderstanding with Salvador. He was at home in the evening of 24 September 1995. He slept at 8:00 p.m. and woke up at 5:00 a.m. the following day. He learned that Salvador was killed that morning and the police came to arrest him two weeks after. He had no involvement in Salvador's death, since he was asleep the whole night. He was not in the beer house as alleged by Mariano Adillo. He asserted that David Angeles, Jr. implicated him in the murder of Salvador because David is the brother of Danilo Angeles and he had a misunderstanding with Danilo's wife. The incident happened on 13 September 1995, when Danilo punched him and David joined in the fracas.[18]

AMPIE claimed self-defense. According to him in the early evening of 24 September 1995 he was in a beer

house. Then he proceeded to the nearby house of his friend Bebet, and stayed at the balcony. He was just a meter away from the beer house when Lorna, a waitress from the beer house, approached him and talked with him. During their conversation he noticed a man and his companions enter the beer house. Later the man approached him and Bebet. The man asked him what he was doing, and he replied that he was just listening to the music. The man also asked him if he had a relationship with Lorna and he answered "not yet." Not satisfied with his response, the man punched him and Lorna parted them away. The man left after warning him to wait as they would settle the matter. Lorna explained that the man was a former boyfriend. After the threat he went home to JONAR's house to sleep.[19]

However, AMPIE awoke at midnight and went outside the house to answer the call of nature. He armed himself with a bolo as he was suspicious and frightful that night. He then saw a man opposite the house of his neighbor Domeng, and the man, who was Salvador Reyes, attempted to hit him twice with an iron pipe. He was able to avoid the first blow but the second blow hit him. In retaliation AMPIE swung his bolo, dropped it and immediately went back to the house. The following morning he heard of the death of Salvador. He did not tell anyone of what transpired that night. Instead, he reported to work at the coprasan in Sta. Maria, Laguna and stayed there for three days. On the third day, he was fetched by his employer to buy duck eggs in Pateros. He was able to return briefly to Famy, Laguna, on 2 October but that same afternoon he left for Pasig City.[20]

On 8 October AMPIE asked from his employer permission to leave for Pagsanjan, Laguna. In Pagsanjan he was informed by his sister that the police was looking for him in connection with the death of Salvador Reyes. Thus, the following day he and his sister went to the police station, where he identified himself. He learned that his uncle ARLY and cousin JONAR were both in jail as they too were implicated in the death of Salvador. AMPIE denied the participation of ARLY and JONAR, and insisted that it was only he and Salvador who had an altercation. AMPIE was thereafter detained at the police station. He requested that he be allowed to contact his employer and consult with the lawyer provided by the latter.[21]

On cross-examination AMPIE claimed that he swung his bolo to parry the second attempt of Salvador to hit him with the pipe. He was unaware that he actually hit Salvador which result in the death of the latter.[22]

The trial court limited itself to the resolution of the following issues: (1) whether AMPIE acted in self-defense, (2) whether ARLY and JONAR participated in the killing of Salvador Reyes, and (3) whether AMPIE voluntarily surrendered to the police.

In its decision[23] of 6 February 1998, the trial court convicted accused-appellants and decreed, thus:

WHEREFORE, premises considered, judgment is hereby rendered finding all the accused AMPIE TARAYA y CANTUBA, ARLY CANTUBA y DAIGO and JONAR ESTRADA y CANTUBA, guilty beyond reasonable doubt for the crime of "MURDER", qualified by treachery, absent of any other mitigating or aggravating circumstances, hereby sentences them to Reclusion Perpetua. To pay the heirs of the victim for his death the amount of P50,000.00 and to pay the cost.

Accused Ampie Taraya y Cantuba, Arly Cantuba y Daigo and Jonar Estrada y Cantuba being detention prisoners, it is hereby ordered that they be credited with the full [length] of their preventive imprisonment if they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoner, otherwise, they shall be credited with 4/5 of the period they had undergone preventive imprisonment, in accordance with Art. 29 of the Revised Penal Code, as amended.

The trial court gave credence to the witnesses of the prosecution, particularly to its eyewitness who positively identified accused-appellants as the perpetrators of the crime. It rejected ARLY and JONAR's defense of alibi because of its weakness considering their positive identification and that their respective residences were only

some meters away from where the dead body of Salvador Reyes was found.

In repudiating AMPIE's claim of self-defense, the trial court noted the weak evidence proffered by him. He failed to show any physical injury he could have sustained when Salvador allegedly hit him with the iron pipe. The pipe was not presented, and none was found at the scene of the crime; and even assuming there was indeed a pipe, AMPIE failed to establish the reasonable necessity of the means employed to prevent the alleged unlawful aggression on the part of Salvador Reyes. It ruled that all the elements of self-defense were not present. Hence, the killing of Salvador was not at all justified.

The trial court ruled that the killing of Salvador Reyes was attended with treachery. The attack was sudden and accused-appellants deliberately employed means to ensure the success of their plan without risk to themselves. Besides, their victim was without means to defend himself. Although it found the presence of the aggravating circumstance of abuse of superior strength, it declared that the same was absorbed in the qualifying circumstance of treachery. It found no factual basis for the qualifying circumstance of evident premeditation.

The trial court ruled that AMPIE could not benefit from the mitigating circumstance of voluntary surrender. Salvador Reyes was killed on 24 September 1995. The complaint for murder was filed on the third day of the following month, October, and a warrant of arrest was issued the day after. He admitted the killing under claim of self-defense, it cannot be believed that he was unaware of the filing of the case. The trial court concluded that the purpose of AMPIE's visit to the police station on 9 October 1995, accompanied by his sister, was not to surrender but to verify the charge filed against him.

Finally, the trial court considered AMPIE's flight as an indication of guilt. He fled after the incident under the pretext that his work required him to be away for several days.

Undaunted, accused-appellants AMPIE, ARLY and JONAR appealed to us from the judgment of conviction. They anchor their appeal on the following alleged errors of the trial court:

- ... IN FINDING THAT THERE WAS CONSPIRACY TO KILL AMONG THE THREE ACCUSED;
- ... IN FINDING THAT CO-ACCUSED ARLY AND JONAR PARTICIPATED IN THE KILLING OF THE VICTIM; AND
- ... IN FINDING THAT THE CRIME OF MURDER WAS COMMITTED BY ACCUSED AMPIE WHEN THE CRIME WAS ONLY HOMICIDE.

On the first and second assigned errors, they assert that ARLY and JONAR were not co-conspirators in the killing of Salvador Reyes. They were implicated by David Angeles, Jr. who claimed to have seen them behind AMPIE, allegedly ready to render assistance to AMPIE when the latter hacked the neck of Salvador. They emphasize, however, that there is no evidence that they actually helped AMPIE, and no overt act of killing could be attributed to them. Thus, they deserve an acquittal.

Anent the third assigned error, accused-appellants assail the finding of treachery and contend that AMPIE could only be guilty of homicide and not murder. AMPIE hacked the victim only once and he immediately fled thereafter. He did not even seek the help of ARLY and JONAR in killing the victim. He was the lone assailant. For treachery to be appreciated, it must be proved by strong and convincing evidence. The prosecution failed to do so.

Accused-appellants pray that ARLY and JONAR be acquitted of the crime charged because of reasonable doubt, and that AMPIE be found guilty of homicide only, not murder.

The Office of the Solicitor General refutes the arguments raised in the Appellants' Brief. On the first and second

grounds, it counters that conspiracy can be inferred from the conduct of ARLY and JONAR. David Angeles, Jr. unequivocally testified that both ARLY and JONAR were behind AMPIE, who was armed with a bolo and with it approached Salvador Reyes, held his head up and hacked his neck. At that time ARLY and JONAR's actions were described as "nakaalalay" and "anyong tutulong." [24] Said actions establish a common design to attack Salvador. In a conspiracy to commit murder it is not necessary that all the conspirators actually kill the victim. Besides, their action after the killing, that is scampering away instead of rendering assistance to the victim, affirmed their criminal intent.

Anent the last argument, the Office of the Solicitor General maintains that the trial court properly appreciated the qualifying circumstance of treachery. The means used directly and specifically insured the death of Salvador without risk to accused-appellants. Salvador was alone and unarmed, unsuspecting of what was to befall him. He had no opportunity to defend himself.

In their Reply Brief, accused-appellants insist on the exculpation of ARLY and JONAR, arguing that their mere presence in the scene of the crime cannot constitute conspiracy. They assert that David Angeles, Jr. had a wrong impression of what actually transpired. Moreover, there can be no treachery since AMPIE was the lone perpetrator.

We affirm the conviction of accused-appellant AMPIE but only for homicide; and because of reasonable doubt as to their guilt, we ACQUIT accused-appellants ARLY and JONAR.

The first and second issues shall be jointly discussed since they question the trial court's finding of conspiracy, which resulted in the complicity of ARLY and JONAR.

The trial court relied heavily on the testimonies of Mariano Adillo and David Angeles, Jr. Mariano Adillo testified that Salvador, prior to his death, was accosted by accused-appellants outside the beerhouse where he was engaged in a conversation with a woman when accused-appellants arrived. One of the accused-appellants directly faced Salvador, while the two others positioned themselves just behind the first. Sensing danger, Mariano immediately bellowed at accused-appellants who immediately left together. David Angeles, Jr., declared that he saw accused-appellants together at the time Salvador was assaulted. ARLY and JONAR appeared to him to be ready to give assistance to AMPIE. Pertinent portion of his testimony reads as follows:

xxx

Q

What else did you notice when if any when according to you saw B Taraya?

A

I saw B Taraya approaching a man who when I looked on that man as if urinating.

Q

Where were Jonar Estrada and Arly Cantuba at the time according to you B Taraya slashed the neck of the victim?

A

They were near each other. In fact, Arly Cantuba and Jonar Estrada were ready to help B Taraya.

xxx

Q

How about these three accused, what did they do if they did anything after the victim Salvador Reyes was able to free himself and able to run away from them?

A

B Taraya and Arly Cantuba slowly entered their house and Jonar Estrada run [sic] towards his house.

xxx

Q

And you stated that the two (2) other accused in this case Arly Cantuba and Jonar Estrada were also in the scene of the crime?

A

Yes, sir. "Nandoon din po sila nakaalalay."

Q

How far were the two other accused from the victim Salvador Reyes?

A

They were side by side, sir.

Q

How far?

A

Maybe this distance. Interpreter: Witness demonstrated by his two hands the distance of about 1 & ½ feet.

Q

I would like to direct your attention to your Sworn Statement which was already marked in evidence as Exh. "B" particularly question 10 and your answer in said question and I will quote: "[A]no naman ang palagay mo na naging partisipasyon nitong si Arly Cantuba and Jonar Estrada? Answer: "Sa tingin ko po ay pagtutulung-tulungan itong namatay na si Salvador Reyes dahil nakaalalay silang dalawa kay Boyet Taraya." Do you remember having given those [sic] answer when asked by the Police Officer during the investigation?

A

Yes, sir.

xxx

Q

Why did you say that these two (2) accused Arly Cantuba and Jonar Estrada were "nakaalalay"?

A

Because when Ampie Taraya slashed the neck of Salvador Reyes, the two (2) Jonar Estrada and Arly Cantuba, were beside them and appears [sic] to be about [sic] to help, "anyang tutulong".

Q

Why did you say that Mr. Witness? What did you conclude in the actuation of Arly Cantuba and Jonar Estrada that you conclude that they were about to help?

A

Because while Ampie Taraya was on the act of slashing the neck of Salvador Reyes, Jonar Estrada and Arly Cantuba were approaching them ("papalapit sila").

Q

So you are basing your conclusion that the other two (2) accused Arly Cantuba and Jonar Estrada were about to help because you said while Boyet Taraya was approaching the victim Salvador Reyes, the two other accused, I am referring to Arly Cantuba and Jonar Estrada, were also approaching, that is why you said that they were "nakaalalay"?

A

Yes, sir.

Q

And aside from that Mr. [W]itness, you claimed that Arly Cantuba and Jonar Estrada were also approaching, there was no other actuation or assistance made by these two (2) aside from the fact that they were also there and approaching the victim while Boyet Taraya whom you said slashed the neck of Salvador Reyes?

A

That is only what I saw, that they were on the act of helping, "anyang tutulong".

xxx

Their reaction was just about to help Boyet Taraya, they did not do anything against Salvador Reyes.[25] A conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.[26] It does not require that such agreement occurred for an appreciable period prior to the commission of the crime; it is sufficient that at the time of the execution thereof, all accused had the same purpose

and were united therein. Conspiracy may be deduced from the mode and manner in which the crime was committed, or inferred from the acts of all accused which denote a joint purpose and design, concerted action and community of interest.[27] In establishing conspiracy direct proof of a previous agreement is unnecessary. And, when it is proven, the act of one is the act of all.[28]

Our meticulous evaluation of the prosecution's evidence fails to convince us of its sufficiency to prove with moral certainty that there was conspiracy among accused-appellants to kill Salvador so as to hold ARLY and JONAR equally liable as AMPIE for the death of Salvador.

There is at all no intimation that there was bad blood between Salvador and AMPIE or ARLY or JONAR before the beerhouse incident. The accused-appellants may have come to the beerhouse to enjoy together but not to look for Salvador. Neither is there evidence that the girl with whom Salvador was conversing was AMPIE's girlfriend or was being courted by him and he felt jealous when he saw Salvador conversing with her.

The testimony of David Angeles, Jr. is not persuasive as to their participation in the crime. ARLY and JONAR were both unarmed and they remained behind AMPIE. The only overt act attributed to them was that they appeared ready to assist. There was no certainty as to their action to show a deliberate and concerted cooperation on their part as to likewise render them liable for the killing of Salvador.

We even have doubts on the testimony of David Angeles, Jr. If indeed Salvador was in the act of urinating when AMPIE suddenly came up from behind him, held the head and slashed the neck of Salvador, then there must have been no prior physical confrontation between the two. Yet, the post-mortem report (Exh. "A") of Dr. Jamolin records that the latter found the following injuries on the body of Salvador:

- Abrasions, circular, 1 inch, right temporal area.
- Abrasions, circular, 1 inch, lateral portion, infra-ocular area, right eye.[29]

These injuries prove that Salvador and AMPIE must have had a fight. The incident at the beerhouse could be the proximate cause thereof.

Then, too, David could not be an absolutely impartial witness. He had an axe to grind against JONAR who, only a few days earlier, or specifically on 13 September 1995, had a fight with Danilo Angeles, a brother of David. The latter was present during that incident.

It follows then that no credible third party witnessed how AMPIE attacked and slashed Salvador's neck with a bolo. There being no positive and direct evidence to show that the attack was sudden and unexpected, treachery as a circumstance to qualify the killing to murder cannot be appreciated against AMPIE.

There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[30] Treachery as a qualifying circumstance requires that the offender deliberately employs means of execution which deprives the person attacked no opportunity to defend or retaliate.[31] It must be proved by clear and convincing evidence or as conclusively as the killing itself.[32] The particulars as to how the aggression was made, or how the act which resulted in the death of the victim began and developed must be established.[33]

AMPIE then could only be liable for homicide.

An issue to be resolved, too, is whether AMPIE is entitled to the mitigating circumstance of voluntary surrender. The following are the requisites of voluntary surrender: (1) the offender had not been actually arrested; (2) the offender surrendered himself to a person in authority or to the latter's agent; (3) the surrender was voluntary; and

(4) there is no pending warrant of arrest or information filed.[34] For a surrender to be voluntary, it must be spontaneous and must also show the intent of the accused to submit himself unconditionally to the authorities, either because he acknowledges his guilt or he wishes to save them the trouble and expense incidental to his search and capture.[35]

It cannot be denied that when AMPIE learned that the police authorities were looking for him in connection with the death of Salvador Reyes, he immediately went to the police station on 9 October 1995. It was there where he confessed to killing Salvador in self-defense. This is bolstered by the testimony of the investigating officer SPO2 Emmanuel Martinez, who even entered in the police blotter that AMPIE voluntarily surrendered to the police. However, the said surrender does not constitute one which would classify as a mitigating circumstance. It must be emphasized that at the time of his surrender, AMPIE already had a pending warrant of arrest[36] which was issued on 4 October 1995, or five days before his surrender. His arrest by that time was imminent. We cannot then appreciate in favor of AMPIE the mitigating circumstance of voluntary surrender.

The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. AMPIE, however, is entitled to the benefits of the Indeterminate Sentence Law. He can then be sentenced to an indeterminate penalty whose minimum shall be within the range of the penalty next lower in degree, which is prision mayor, and whose maximum shall be that prescribed by law taking into account the modifying circumstances. Since no modifying circumstances has been proven in this case, the maximum of the penalty shall be the medium period of reclusion temporal. Thus, AMPIE can be sentenced to an indeterminate imprisonment penalty ranging from ten (10) years of prision mayor medium as minimum to seventeen (17) years and four (4) months of reclusion temporal medium as maximum.

WHEREFORE, judgment is hereby rendered (1) AFFIRMING, insofar as accused-appellant Ampie Taraya is concerned, the decision of 6 February 1998 of the Regional Trial Court of Siniloan, Laguna, Branch 33, in Criminal Case No. 4324, with the modification that he is found guilty beyond reasonable doubt as principal of the crime of homicide only and is hereby sentenced to suffer an indeterminate penalty of imprisonment ranging from Ten (10) years and One (1) day of prision mayor medium as minimum to Seventeen (17) years and Four (4) months of reclusion temporal medium as maximum, with all the accessory penalties thereof, and to indemnify the heirs of Salvador Reyes in the sum of P50,000 as civil indemnity for his death; (2) ACQUITTING on ground of reasonable doubt accused-appellants ARLY CANTUBA and JONAR ESTRADA and ordering their immediate release from confinement, unless their further detention is justified for any other lawful cause. The Director of the Bureau of Corrections shall submit a report of their release within five (5) days from receipt of notice of this decision.

Costs de oficio.

SO ORDERED.

Puno, Pardo, and Ynares-Santiago, JJ., concur. Kapunan, J., on leave.

[1] Original Record (OR), 129-149. Per Judge Venancio M. Tarriela.

[2] OR, 26-27.

[3] TSN, 13 August 1996, 1-4; TSN, 1 October 1996, 3, 4, 5, 7.

[4] TSN, 13 August 1996, 2-4.

- [5] TSN, 6 March 1996, 2-3, 5-6.
- [6] Id., 3-5; TSN, 24 July 1996, 12-13.
- [7] Exhibit "B"; OR, 3.
- [8] Exhibit "C"; OR, 2.
- [9] TSN, 20 February 1996, 3-4; TSN, 24 October 1996, 3-5.
- [10] TSN, 28 February 1996, 2-5.
- [11] Exhibit "A"; OR, 4.
- [12] TSN, 9 January 1997, 3-5.
- [13] TSN, 19 February 1997, 3-5, 10-11.
- [14] Id., 8-9, 11-13.
- [15] TSN, 24 September 1997, 3-8.
- [16] Id., 7-9, 14-15.
- [17] Id., 10-12, 13.
- [18] TSN, 23 January 1997, 4-10.
- [19] TSN, 4 March 1997, 3-5; TSN, 16 April 1997, 3, 4.
- [20] Id., 5-6; TSN 12 March 1997, 2-4, 5.
- [21] TSN, 12 March 1997, 4-7.
- [22] TSN, 16 April 1997, 6, 10.
- [23] Supra note 1.
- [24] TSN, 24 July 1996, 5, 6, 7. Translated, "in the act of assisting" and "appearing to help."
- [25] TSN, 6 March 1996, 3-5; TSN, 24 July 1996, 5-6, 7-9
- [26] Article 8, Revised Penal Code.
- [27] People v. Hubilla, Jr., 252 SCRA 471, 480 [1996]; People v. Galapin, 293 SCRA 474, 490 [1998]; People v. Felix, 297 SCRA 12, 25 [1998].
- [28] People v. Hubilla, Jr., supra note 27, at 481; People v. Sequiño, 264 SCRA 79, 102, [1996]; People v. Bermudez, 309 SCRA 124, 137 [1999].
- [29] OR, 4.**
- [30] Paragraph 16, Article 14, Revised Penal Code.
- [31] People v. Albarico, 238 SCRA 203, 214 [1994]; People v. Villegas, 262 SCRA 314, 323 [1996]; People v. Dorado, 303 SCRA 61, 71 [1999].
- [32] People v. Simon, 209 SCRA 148 [1992].

[33] *People v. Castor*, 216 SCRA 410 [1992].

[34] See *People v. Sion*, 277 SCRA 127, 154, 155 [1997]; *People v. Rabanillo*, 307 SCRA 613, 626 [1999]; *People v. Aquino*, G.R. No. 128887, 20 January 2000.

[35] *People v. Tabag*, 268 SCRA 115, 132 [1997]; *People v. Sion*, *Ibid.*, at 154; *People v. Rabanillo*, *Ibid.*, 33.

[36] OR, 11.

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