

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BERNARDO SARA, APPELLANT.

G.R. No. 140618. December 10, 2003

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Appellant Bernardo "Berning" Sara was charged before the Regional Trial Court (RTC) of Iloilo City with Murder in an information dated March 7, 1988 reading:[1]

The undersigned Provincial Fiscal accuses BERNARDO SARA, [a]lias "BERNING," of the crime of MURDER committed as follows:

That on or about November 2, 1987, in the Municipality of Cabatuan, Province of Iloilo, Philippines and within the jurisdiction of this Court, the above-named accused, together with an unidentified person, conspiring and helping one another, armed with firearms of unknown caliber, with treachery and evident premeditation and deliberate intent and decided purpose to kill, did then and there willfully, unlawfully and feloniously shoot and hit one Paterno Morcillo on his chest which caused his death.

CONTRARY TO LAW.

Appellant was earlier charged for the same offense, along with Efren Robles, in a November 6, 1987 complaint.[2] In a December 17, 1987 Order, [3] however, Acting Municipal Circuit Trial Judge Simeonito A. Salarda of Cabatuan, Iloilo, who conducted the preliminary examination, found no probable cause to hale Robles into court.

Upon arraignment[4] on July 6, 1988, appellant, assisted by his counsel, entered a plea of not guilty.

From the evidence for the prosecution, the following version is established:

At around 7:30 p.m. of November 2, 1987, while Paterno Morcillo (the victim) and his wife-prosecution witness Virginia Morcillo were sitting at their balcony situated at the left side of their one storey house [5] in Barangay Acao, Cabatuan, Iloilo, the victim revealed to her that on account of his accusation against appellant and Efren Robles for killing his chicken, [6] the two had threatened to kill him on November 1, 1987.[7] Allaying any anxiety of the victim, his wife told him not to be bothered as it was already the second of November, and he should be thankful for being alive.[8]

Moments later, hearing the incessant barking of dogs, Virginia prodded the victim to transfer their carabao from the back portion of the house to the front.[9] Hearing that the victim, their father, was going to transfer the carabao, prosecution witnesses Felipe and Benjamin Morcillo curiously looked out of the window situated at the side of their house[10] to watch the transfer of the carabao.[11] Unknown to the victim who proceeded to the back of the house, appellant and one whom Felipe and Benjamin claim to be Efren Robles were squatting[12] beside a nearby coconut tree.[13] While the victim was at the right side of the house,[14] before he could reach the carabao, he was shot by appellant.[15]

Soon after hearing the sound of a gunshot, Virginia heard her husband-the victim moaning.[16]

Another shot was soon after fired by Efren Robles,[17] prompting Virginia to run downstairs where she saw her husband lying on the ground.[18] She then lifted him and placed him in her arms,[19] and as their children Felipe and Benjamin approached her, they told her "Nay, it was Tay Berning who killed Tatay."[20] When she turned her attention back to her husband, he was already dead.[21]

The postmortem examination conducted on the victim by Dr. Imelda P. Piz, resident physician at the Ramon Tabiana Memorial District Hospital in Cabatuan, Iloilo, showed that the victim died of cardiac tamponade secondary to rupture of the right ventricular heart and thoracic aorta due to multiple gunshot wounds on the chest.[22]

The examination conducted by Zenaida Sinfuego, a forensic chemist for the Integrated National Police in Camp Delgado, Iloilo City, showed that the left and right hands of both appellant and Efren Robles were positive for gunpowder residue (nitrates) as reflected in Chemistry Report No. C-045-87.[23]

Denying the accusation and proffering alibi, appellant claimed that on November 2, 1987, at around 7:00 p.m., he had dinner with his wife and children at their house in Barangay Acao, Cabatuan, Iloilo,[24] following which or at around 8:00 p.m., he went to sleep.[25]

Appellant's wife, Cleofas Sara, corroborated him.[26]

Discrediting appellant's denial and alibi in favor of the positive and categorical testimony of Felipe and Benjamin that they saw appellant squatting and holding a short firearm several meters away from the victim, Branch 27 of the Iloilo City RTC convicted appellant of Murder by decision[27] of October 17, 1991 the dispositive portion of which is quoted verbatim:[28]

WHEREFORE, in view of the foregoing, the court hereby sentences the accused BERNARDO SARA to suffer the penalty of imprisonment of Seventeen (17) years, Four (4) months and One (1) day of Reclusion Temporal as minimum to Twenty Five (25) years, Nine (9) months and Eleven (11) days to Reclusion Perpetua as maximum; Directing said accused to indemnify the heirs of the deceased Paterno Morcillo the amount of Thirty Thousand (P30,000.00) Pesos; To pay attorney's fees in the amount of P5,000.00; Coffin and burial and actual expenses in the amount of P11,000.00; And costs.

On appeal to the Court of Appeals, appellant assailed the verdict of the trial court on four (4) grounds: [29] (a) the trial court erred in giving full faith and credence to the patently incredible, fabricated, unreliable, inconsistent if not contradictory testimonies of the prosecution witnesses; (b) the trial court erred in not disregarding the results of the paraffin test conducted on the person of the accused-appellant as the same was not conclusive; (c) the trial court erred in not giving evidentiary and exculpatory weight to the evidence adduced by the defenses; and (d) the trial court manifestly erred in rendering a verdict of conviction despite the fact that the guilt of accused- appellant was not proved beyond reasonable doubt.

Finding no reversible error in the factual findings of the trial court, the Court of Appeals, by Decision of September 8, 1995,[30] affirmed the conviction of appellant but modified the penalty imposed to reclusion perpetua. The dispositive portion of the appellate court's decision reads, quoted verbatim:[31]

WHEREFORE, the judgment appealed from is AFFIRMED with modifications as to penalty and civil indemnity. Accused-appellant Bernardo Sara is hereby sentenced to suffer the penalty of reclusion perpetua. The civil indemnity awarded to the heirs of deceased Paterno Morcillo is hereby increased to P50,000.00. (Emphasis, underscoring and italics in the original)

In an August 30, 1999 Resolution,[32] the appellate court certified the case to this Court for review in accordance

with Section 13, Rule 124, par. 2 of the Rules of Criminal Procedure.

This Court afforded appellant the opportunity to file an additional brief[33] in which he assigns the following errors:[34]

I.

THE COURT OF APPEALS ERRED IN NOT DISCARDING THE PATENTLY INCONSISTENT, NAY CONFLICTING STATEMENTS OF THE PROSECUTION WITNESSES ANENT THE SUBJECT INCIDENT WHICH WERE TOTALLY IGNORED BY THE TRIAL COURT.

II.

GRANTING FOR THE SAKE OF ARGUMENT THAT THE ACCUSED-APPELLANT IS GUILTY, NONETHELESS, THE TRIAL COURT ERRED IN CONVICTING HIM OF MURDER SINCE THE QUALIFYING CIRCUMSTANCE OF TREACHERY IS WANTING, HENCE, THE PENALTY IMPOSED UPON HIM MUST BE ACCORDINGLY REDUCED.

The resolution of the case hinges on (1) whether the evidence for the prosecution established the guilt of appellant beyond reasonable doubt; and (2) if in the affirmative, whether the proper penalty was correctly modified by the appellate court.

In affirming the conviction of appellant, the appellate court relied, as did the trial court, mainly on the testimony of Felipe and Benjamin, particularly their positive identification of appellant.

Appellant bewails, however, the brushing aside of his defense of alibi despite the existence, so he claims, of conflicting statements in the testimonies of the prosecution witnesses, he highlighting the following instances: Felipe's testimony during cross-examination that he saw appellant and Efren Robles in the balcony of the victim's house,[35] whereas on further cross-examination, he declared that he saw appellant and Robles at the tambi or back porch;[36] Felipe's testimony that his sister Lianisa was inside the house during the incident but he did not know what she was then doing,[37] whereas in his sworn statement, Felipe stated that Lianisa was urinating at the tambi or back porch;[38] Felipe's testimony that a short firearm was used in shooting his father,[39] whereas in his sworn statement he stated that he did not know the kind of firearm was used; [40] Felipe's testimony that there was a grudge between appellant and his father,[41] whereas in his sworn statement he stated that he did not know of any reason or motive behind his father's murder;[42] Benjamin's testimony during cross-examination that he was lying down, preparing to go to sleep when he heard the dogs barking,[43] whereas on further cross-examination, he declared that he and Felipe were playing and teasing each other;[44] Benjamin's testimony that he saw appellant at the side of a coconut tree when he shot the victim,[45] whereas in Felipe's testimony, he declared that he saw appellant and Efren Robles in the balcony of their house;[46] Benjamin's testimony that he did not know of any reason or motive for the killing of his father,[47] whereas in Felipe's testimony, he stated that there was a grudge between appellant and his deceased father; [48] Virginia's testimony that she and the victim were in the balcony talking with each other when the dogs started barking,[49] whereas in Felipe's[50] and Benjamin's[51] testimonies they declared that she was inside the house; and Virginia's testimony that Felipe and Benjamin told her that they saw another person aside from appellant but that they could not recognize him,[52] whereas both Felipe[53] and Benjamin[54] stated that Efren Robles was with appellant during the incident.

The appeal is bereft of merit.

Appellant was positively identified as the assailant by two credible eyewitnesses. The victim's son Felipe testified, thus:[55]

Q:

But do you know how did your father die?

A:

He was shot.

Q:

Do you [know] who shot your father?

A:

Yes, sir.

Q:

Can you inform the court who shot your father?

A:

Bernardo Sara.

Q:

If this Bernardo Sara is inside the courtroom, can you point him out?

A:

Yes, sir. (Witness pointing to a person inside the courtroom who, when asked, answered by the name of Bernardo Sara.)

Q:

Before your father died, how long have you known this Bernardo Sara?

A:

Everyday.

Q:

In other words, everyday, you met this Bernardo Sara?

A:

Yes, sir.

x x x

Q:

You said that your father was shot by Bernardo Sara. Can you inform the Court where were you when your father was shot by Bernardo Sara?

A:

On the window.

Q:

How far were you from the place where your father was at that time, when he was shot?

A:

About three arms length.

Q:

Now, when Bernardo Sara shot your father, what happened to him?

A:

He fell down.

Q:

How did you happen to recognize that time that it was Bernardo Sara who shot your father?

A:

I saw him.

Q:

How far were you from Bernardo when he shot your father?

A:

About 9 arms length. (Emphasis and underscoring supplied)

And the victim's other son, Benjamin, testified thus:[56]

Q:

When your father went downstairs, what did you do if you did anything?

A:

I looked out of the window.

Q:

When you looked out of the window, can you see the place where your father was at that time?

A:

Yes, sir.

Q:

What happened to your father?

A:

He was shot.

Q:

Were you able to recognize the person who shot your father?

A:

Yes, sir.

Q:

Please tell us who that person was.

A:

Bernardo Sara.

Q:

When you said Bernardo Sara, you are referring to the accused in this case?

A:

Yes, sir.

COURT :

Q:

If this Bernardo Sara is inside the courtroom, please point to him.

A:

(Witness points to a person inside the courtroom who when asked answered to the name of Bernardo Sara.)

Q:

Why do you know this Bernardo Sara?

A:

Because we are neighbors.

Q:

For how long have you known this Bernardo Sara?

A:

Since I reached the age of reason.

x x x

ATTY. CUADRAS:

Q:

Why do you say that it was Bernardo Sara who shot your father that evening of November 2, 1987?

A:

Because I saw him.

Q:

In relation to the place where you were at that time, how far were you from the place where Bernardo Sara was at the time when he shot your father?

A:

Around 12 arms length away.

Q:

Considering that this incident happened in the evening of November 2, 1987, how did you recognize or by what means did you identify that it was Bernardo Sara who shot your father?

A:

Because the moon was bright. (Emphasis and underscoring supplied)

Both Felipe and Benjamin testified that there was ample illumination from the moon to enable them to see the face of their father's assailant. That the light from the stars,[57] or the moon,[58] or flames from an oven, [59] or a wick lamp or gasera[60] can give ample illumination to enable a person to identify or recognize another, this Court has had occasions to appreciate. There was thus no possibility for both witnesses to be mistaken in identifying their father's assailant, especially considering that they have known appellant, their neighbor, for a long time.

There being no indication that Felipe and Benjamin were actuated by any improper motive to falsely testify against appellant, their relationship with the victim notwithstanding, there is no reason to doubt the veracity of their testimonies. Relationship could in fact even strengthen the witnesses' credibility, it being unnatural for aggrieved relatives to falsely accuse someone other than the actual culprit, for their natural interest in securing the conviction of the guilty would deter them from implicating any other. [61]

That appellant's hands were found positive for gunpowder nitrates corroborates the evidence of his guilt. [62]

With respect to the then 10-year old Felipe's inconsistent testimony on where appellant was at the time of the incident, that could reasonably be attributed to his tender age and his failure to understand the questions of defense counsel.[63] For to young witnesses who, much more than adults, would naturally be gripped with tension due to the novelty of the experience of testifying before a court, ample margin of error and understanding must be accorded.[64] In any event, upon clarification by the trial court, it was sufficiently established that Felipe

saw appellant and Robles outside of his house.[65]

While, admittedly, there were contradictions between the prosecution witnesses' testimonies in open court and their sworn statements, discrepancies do not necessarily impair their credibility, for affidavits, being taken ex parte, are almost always incomplete and often inaccurate[66] for lack of searching inquiries by the investigating officer[67] or due to partial suggestions,[68] and are thus generally considered to be inferior to the testimony given in open court.

A Sinumpaang Salaysay or a sworn statement is merely a short narrative subscribed to by the complainant in question and answer form. Thus, it is only to be expected that it is not as exhaustive as one's testimony in open court. The contradictions, if any, may be explained by the fact that an affidavit can not possibly disclose the details in their entirety, and may inaccurately describe, without deponent detecting it, some of the occurrences narrated. Being taken ex-parte, an affidavit is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries. It has thus been held that affidavits are generally subordinated in importance to open court declarations because the former are often executed when an affiant's mental faculties are not in such a state as to afford her a fair opportunity of narrating in full the incident which has transpired. Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to her.[69]

As for the other alleged inconsistencies in the testimonies of the prosecution witnesses, they refer to minor and collateral matters, not to an essential element of the crime,[70] and do not have any bearing on the essential fact testified to, that is, the killing of the victim. Moreover, minor contradictions among several witnesses of a particular incident and aspect thereof which do not relate to the gravamen of the crime charged are to be expected in view of their differences in impressions, memory, vantage points and other related factors.[71] In fact, they bolster rather than weaken their credibility as they erase any suspicion that their testimonies have been rehearsed.[72] What is important is that both Felipe and Benjamin were consistent in positively identifying appellant as the person who shot their father.

Appellant's alibi thus fails vis-à-vis the positive and categorical assertion of the prosecution witnesses.[73] Such defense is worthless, considered with suspicion and always received with caution not only because it is inherently weak and unreliable but also because it is easily fabricated and concocted.[74] Being negative in nature and self-serving, it cannot secure worthiness more than that placed upon the testimonies of prosecution witnesses who testify on clear and positive evidence.[75]

At all events, for the defense of alibi to prosper, it is not enough to show that the accused was somewhere else when the crime was committed. He must further demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of the commission thereof.[76] Appellant glaringly failed in this regard. For by his claim, he was at the time the crime was perpetrated at his residence which was only about 200 to 300 meters away from the locus criminis.[77]

As for the presence of treachery in the killing, the Court of Appeals correctly appreciated the same. The essence of treachery is that the attack is deliberate and without warning done in a swift and unexpected manner of execution, affording the hapless and unsuspecting victim no chance to resist or escape.[78] In the case at bar, the victim was caught defenseless when appellant, who was squatting beside a tree, suddenly shot him as he was on his way to the back portion of his house to transfer a carabao. The attack being swift and unexpected, the victim who was unarmed could not have resisted. Whereas, on the other hand, appellant was not thereby exposed to any danger.

Doubtless, appellant is guilty of murder. The crime was committed before the effectivity of Republic Act No.

7659.[79] At the time, Article 248 of the Revised Penal Code penalized murder with reclusion temporal in its maximum period to death. There being neither mitigating nor aggravating circumstance, reclusion perpetua, the medium period of the penalty, was correctly imposed by the Court of Appeals, pursuant to Article 64 (1) of the Revised Penal Code.[80]

As to the civil aspect of the case, the Court of Appeals correctly too increased the award of indemnity to the heirs of the victim from P30,000.00 to P50,000.00 in line with prevailing jurisprudence, which award needs no proof other than the fact that a crime was committed resulting in the death of the victim and that the accused was responsible therefor.[81]

As for the award of P11,000.00 representing "[c]offin and burial and actual expenses," the same appears to have been based on the testimonial claim of the victim's wife that the family incurred funeral expenses in the amount of P20,000.00.[82] No official receipts were, however, presented to substantiate the claim. Her testimony cannot thus be considered as competent proof and cannot replace the probative value of official receipts to justify the award of actual damages, for jurisprudence instructs that the same must be duly substantiated by receipts.[83] Moreover, Article 2199 of the Civil Code explicitly requires that, except as provided by law or stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. In other words, only substantiated and proven expenses, or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized in court.[84]

Nonetheless, where no sufficient proof of actual damages is presented in the trial court (or when the actual damages proven is less than P25,000.00), this Court generally awards the amount of P25,000.00 as temperate damages,[85] it being reasonable to presume that when death occurs, the family of the victim necessarily incurs expenses for the wake and funeral.[86]

In the case at bar, however, the victim's wife testified, as earlier noted, that the amount of P20,000.00 was incurred for funeral expenses. This Court thus awards temperate damages in the said amount.[87]

Under Article 2206 of the Civil Code, the heirs of the victim are entitled to indemnity for loss of earning capacity. Ordinarily, documentary evidence is necessary for the purpose. By way of exception, testimonial evidence may suffice if the victim was either (1) self-employed, earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws.[88] In the case at bar, however, while the victim's wife testified that the victim earned P200.00 every market day[89] as well as 120 sacks a year from cultivating a 2-hectare piece of land,[90] she did not indicate the number of market days in a year nor identify the crops which her husband harvested or give the value thereof. Indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven[91] by competent proof and the best obtainable evidence thereof.[92]

Finally, in accordance with Article 2230 of the Civil Code, the qualifying circumstance of treachery being present, exemplary damages in the amount of P25,000.00 must be awarded.[93] It is on account of the award of exemplary damages that the award of award attorney's fees in the amount of P5,000.00 is affirmed.[94]

WHEREFORE, the decision of the Court of Appeals, finding appellant BERNARDO SARA guilty beyond reasonable doubt of Murder and sentencing him to suffer the penalty of reclusion perpetua is hereby AFFIRMED. The civil aspect of the case is MODIFIED to read as follows: Appellant is hereby ORDERED to pay the heirs of Paterno Morcillo the amounts of P50,000.00 as civil indemnity for his death, P20,000.00 as temperate damages, P25,000.00 as exemplary damages, and P5,000.00 as attorney's fees.

SO ORDERED.

Vitug, (Chairman), Sandoval-Gutierrez, and Corona, JJ., concur.

- [1] Records at 1.
- [2] Id. at 3.
- [3] Id. at 16.
- [4] Id. at 50.
- [5] TSN, September 13, 1989 at 5.
- [6] Ibid.
- [7] Id. at 1, 5 and 6.
- [8] Id. at 1.
- [9] Id. at 2.
- [10] TSN, February 8, 1989 at 6.
- [11] TSN, April 20, 1989 at 6.
- [12] TSN, February 8, 1989 at 18; TSN, April 20, 1989 at 6.
- [13] TSN, April 20, 1989 at 8.
- [14] TSN, September 13, 1989 at 2.
- [15] TSN, February 8, 1989 at 4 and 7; TSN, April 20, 1989 at 2, 6, and 9.
- [16] TSN, September 13, 1989 at 2.
- [17] TSN, February 8, 1989 at 7; TSN, April 20, 1989 at 6-7.
- [18] TSN, September 13, 1989 at 2.
- [19] Ibid.
- [20] Ibid.
- [21] Ibid.
- [22] Exhibit "A," Records at 4.
- [23] Exhibit "D," Records at 5.
- [24] TSN, June 8, 1990 at 2.
- [25] Id. at 3.
- [26] Id. at 13.
- [27] Records at 166-171.
- [28] Id. at 171.

- [29] CA Rollo at 43.
- [30] Id. at 86-93.
- [31] Id. at 93.
- [32] Id. at 97-99.
- [33] Rollo at 20.
- [34] Id. at 22.
- [35] TSN, February 8, 1989 at 12.
- [36] Id. at 13.
- [37] Id. at 10.
- [38] Exhibit "1-B," Records at 15.
- [39] TSN, February 8, 1989 at 15.
- [40] Exhibit "1-C," Records at 15.
- [41] TSN, February 8, 1989 at 20-21.
- [42] Exhibit "B," Records at 13.
- [43] TSN, April 20, 1989 at 3.
- [44] Ibid.
- [45] Id. at 8.
- [46] TSN, February 8, 1989 at 12.
- [47] TSN, April 20, 1989 at 9.
- [48] TSN, February 8, 1989 at 20-21.
- [49] TSN, September 13, 1989 at 1.
- [50] TSN, February 8, 1989 at 12-13.
- [51] TSN, April 20, 1989 at 4.
- [52] TSN, September 13, 1989 at 7.
- [53] TSN, February 8, 1989 at 7.
- [54] TSN, April 20, 1989 at 5.
- [55] TSN, February 8, 1989 at 4-5.
- [56] TSN, April 20, 1989 at 2.
- [57] *People v. Vacal*, 27 SCRA 24, 28 (1969).
- [58] *People v. Pueblos*, 127 SCRA 746, 754 (1984).
- [59] *People v. Dela Cruz*, 147 SCRA 359, 376-377 (1987).

[60] *People v. Aboga*, 147 SCRA 404, 412 (1987).

[61] *People v. Ave*, G.R. Nos. 137274-75, October 18, 2002.

[62] *People v. Paracale*, G.R. No. 141800, December 9, 2002; *People v. Manijas*, G.R. No. 148699, November 15, 2002; *Maandal v. People*, 360 SCRA 209, 228 (2001).

[63] TSN, February 8, 1989 at 20.

[64] *People v. Lawa*, G.R. Nos. 126147 & 143925-26, January 28, 2003; *People v. De la Cruz*, 276 SCRA 352, 357 (1997).

[65] TSN, February 8, 1989 at 20.

[66] *People v. Dizon*, G.R. No. 133237, July 11, 2003; *People v. Montemayor*, G.R. No. 125305, June 18, 2003; *People v. Pagalasan*, G.R. Nos. 131926 & 138991, June 18, 2003; *People v. Corial*, G.R. No. 143125, June 10, 2003; *People v. Avergonzado*, G.R. No. 127152, February 12, 2003.

[67] *People v. Balleno*, G.R. No. 149075, August 7, 2003.

[68] *People v. Cueto*, G.R. No. 147764, January 16, 2003.

[69] *People v. Garcia*, G.R. No. 145505, March 14, 2003.

[70] *People v. Cañete*, G.R. No. 138366, September 11, 2003; *People v. Melendres, Jr.*, G.R. No. 134940, April 30, 2003; *People v. Appegu*, 379 SCRA 703, 711 (2002); *People v. Parba*, 364 SCRA 488, 497 (2001); *People v. Monieva*, 333 SCRA 244, 252 (2000).

[71] *People v. Castellano, Sr.*, G.R. No. 139412, April 2, 2003.

[72] *People v. Melendres, Jr.*, *supra*; *People v. Bustamante*, G.R. Nos. 140724-26, February 12, 2003.

[73] *People v. Liwanag*, 363 SCRA 62, 83 (2001).

[74] *People v. Castillo*, 273 SCRA 22, 32-33 (1997).

[75] *People v. Alib*, 322 SCRA 93, 100 (2000).

[76] *People v. Peralta*, G.R. No. 133267, August 8, 2002.

[77] TSN, June 8, 1990 at 8.

[78] *People v. Caritativo*, G.R. Nos. 145452-53, June 10, 2003; *People v. Caballero*, G.R. Nos. 149028-30, April 2, 2003; *People v. Alcodia*, G. R. No. 134121, March 6, 2003.

[79] Republic Act No. 7659 was approved on December 13, 1993, whereas the crime was committed on November 2, 1987. With the enactment of Republic Act No. 7659, the penalty for murder was amended from reclusion temporal in its maximum period to death to reclusion perpetua to death.

[80] Art. 64. Rules for the application of penalties which contain three periods.

In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

- When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by

law in its medium period.

[81] *People v. Gomez*, G.R. No. 128378, April 30, 2003; *People v. Astudillo*, G.R. No. 141518, April 29, 2003; *People v. Aliben*, G.R. No. 140404, February 27, 2003; *People v. Acosta, Sr.*, G.R. No. 140402, January 28, 2003; *People v. Diaz*, G.R. No. 133737, January 13, 2003.

[82] TSN, September 13, 1989 at 3.

[83] *Hugo v. Court of Appeals and People*, G.R. No. 126752, September 6, 2002.

[84] *People v. Bonifacio*, 376 SCRA 134, 142 (2002).

[85] *People v. Magallanes*, G.R. No. 136299, August 29, 2003; *People v. Villanueva*, G.R. No. 139177, August 11, 2003; *People v. Lee*, G.R. No. 116326, April 30, 2003; *People v. Astudillo*, *supra*; *People v. Sube*, G.R. No. 146034, April 9, 2003; *People v. Buayaban*, G.R. No. 112459, March 28, 2003; *People v. Alfon*, G.R. No. 126028, March 14, 2003; *People v. Manguera*, G.R. No. 139906, March 5, 2003; *People v. Abrazaldo*, G.R. No. 124392, February 7, 2003.

[86] *People v. Caritativo*, *supra*; *People v. Buayaban*, *supra*.

[87] *Vide People v. Lachica*, G.R. No. 131915, September 3, 2003.

[88] *People v. Mallari*, G.R. No. 145993, June 17, 2003; *People v. Caraig*, G.R. Nos. 116224-27, March 28, 2003.

[89] TSN, September 13, 1989 at 3.

[90] *Ibid.*

[91] *People v. Panabang*, 373 SCRA 560, 575 (2002); *People v. De Vera*, 312 SCRA 640, 670 (1999).

[92] *Chan v. Maceda, Jr.*, G.R. No. 142591, April 30, 2003; *Citytrust Banking Corporation v. Villanueva*, 361 SCRA 446, 456 (2001); *Manufacturers Building, Inc. v. Court of Appeals*, 354 SCRA 521, 532-533 (2001); *Development Bank of the Philippines v. Court of Appeals*, 284 SCRA 14, 29-30 (1998).

[93] *People v. Montemayor*, G.R. Nos. 124474 & 139972-78, January 28, 2003; *People v. Hamton*, G.R. Nos. 134823-25, January 14, 2003; *People v. Catubig*, 363 SCRA 621, 635 (2001).

[94] Civil Code, art. 2208 (1); *People v. Langit*, 337 SCRA 323, 346 (2000).

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