PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOBECHUKWU NICHOLAS Y MABENA, ACCUSED-APPELLANT.

G.R. No. 142044. November 23, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Serekwane Sethubelo alias "Atin", a Nigerian national, was fatally stabbed in the abdomen with a kitchen knife while he lay in a drunken stupor inside a rented room in Malate, Manila. His friend, Tobechukwu Nicholas y Mabena a.k.a. "Andy Mabena", also a Nigerian national, was indicted for Murder in an Information which alleged:

> That on or about February 20, 1999, in the City of Manila, Philippines, the said accused did and there willfully, unlawfully and feloniously with intent to kill, with treachery, evident premeditation and abuse of superior strength, attack, assault and use personal violence upon SEREKWANE JACOB SETHUBELO a.k.a. ATIN by then and there stabbing him on the lower left abdomen and different parts of the body with an improvised bladed weapon (kitchen knife), thereby inflicting upon said SEREKWANE JACOB SETHUBELO a.k.a. ATIN mortal stab wounds which were the direct and immediate cause of his death thereafter.
>
> CONTRARY TO LAW.[1]

After trial, the Regional Trial Court of Manila, Branch 18, rendered judgment as follows:

> WHEREFORE, the accused, Tobechukwu Nicholas Mabena (sic), is hereby convicted of the crime of murder under Article 248 of the Revised Penal Code and sentenced to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law and to pay the costs.
>
> On the civil liability of the accused, the accused is further sentenced to pay the legal heirs of the victim moral and nominal damages in the sums of P500,000.00 and P200,000.00 respectively and compensation for the loss of the life of the victim in the amount of P50,000.00 with interest at the legal rate of 6% per annum from this date until fully paid.
>
> SO ORDERED.[2]

Accused-appellant filed a motion for reconsideration,[3] on the grounds that he had proven all the elements of self-defense to justify the killing of the victim; and that, on the assumption that he is guilty, he could only be convicted of Homicide instead of Murder, considering that the qualifying circumstances of treachery and evident premeditation were not duly established.

The trial court denied the motion in an Order dated February 28, 2000.[4]

In his direct appeal to this Court, accused-appellant alleged that:

> I
>
> THE COURT A QUO GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE

TESTIMONIES OF THE PROSECUTION WITNESSES AND IN TOTALLY DISREGARDING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

II

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

III

THE COURT A QUO GRAVELY ERRED IN AWARDING MORAL AND NOMINAL DAMAGES IN THE AMOUNTS OF P500,000.00 AND P200,000.00 RESPECTIVELY AND IN ORDERING THE PAYMENT OF AN ADDITIONAL AMOUNT OF P50,000.00 AS COMPENSATION FOR THE LOSS OF THE LIFE OF THE VICTIM WITH AN INTEREST OF 6% PER ANNUM UNTIL FULLY PAID.

The pertinent facts:

On February 19, 1999, Leo Harris, another Nigerian national, visited accused-appellant at his rented room in a pension house located at 1857 Leon Guinto Street, Malate, Manila. Upon his arrival, Leo found two other Nigerians, named Jerry and Ralph. Later, the victim, Atin, arrived. Leo left and returned at about 8:30 p.m. He found accused-appellant, Atin, Jerry and Ralph drinking. Accused-appellant invited Leo and Atin to have dinner with him at Woods Restaurant on Mabini Street. They arrived at Woods Restaurant at 7:15 p.m., where they drank beer and were later joined by other Nigerians. They finished drinking at 3:00 a.m. of the following day, February 20, 1999. Atin was very drunk and could hardly stand, so accused-appellant let him sleep in his room while Leo went ahead in a taxi. Outside the restaurant, accused-appellant and Atin met two sex workers, Myrna Velasquez and Pamela Nachor. Accused-appellant asked Myrna to have sex with him, but the latter refused, saying that he did not pay her enough money the last time they had sex. Nevertheless, Myrna agreed to go with accused-appellant to the pension house because she liked Atin and wanted to have sex with him. Thus, accused-appellant, Atin, Myrna and Pamela took a taxi and went to the pension house.

The receptionist at the pension house did not allow the four of them to go to the room together because accused-appellant can only have two visitors at one time. Atin and Myrna proceeded to the room, while accused-appellant stayed behind to argue with the receptionist. Pamela decided to leave. Accused-appellant went up to his room and saw Atin and Myrna naked. Accused-appellant asked Atin, "Why do you take off your dress in front of my girlfriend?" Atin was too intoxicated to answer.

Accused-appellant took off his clothes and made sexual advances on Myrna, but she refused and said she would rather sleep with Atin. Accused-appellant got infuriated. "Who have money have you. I'm the one who have money, this is my room so I have you." Accused-appellant then saw Atin caress Myrna, so he shouted at him, "Why do you like to fuck my girl in front of me? I buy you food and pay your drinks, this is my room and you would like to fuck my girlfriend." Again, Atin was too inebriated to respond. He just lay stretched out on the bed.

Sensing trouble, Myrna decided to leave and told Atin to go with her. As she was putting on her pants, accused-appellant cursed Atin and locked the door. Myrna tried to help Atin put on his pants but he was too drunk to stand up. Accused-appellant calmed down after a while and said the three of them can sleep together. Myrna lay down beside Atin, but accused-appellant pulled her away from him. After Atin fell asleep, accused-appellant told Myrna to go out and buy cigarettes. Myrna went out and returned ten minutes later. When she knocked on the door, accused-appellant opened the door slightly and took the cigarettes from her. Through the small opening, Myrna saw Atin lying sidewise and motionless. Accused-appellant did not let her in, so she decided to leave.

Later that morning, Leo was awakened by accused-appellant, who tearfully told him that Atin had stabbed himself

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inside his room. Leo asked accused-appellant why he did not take Atin to the hospital and report the matter to the police. Accused-appellant said he suffered from a mental block and he did not know what to do. Leo told accused-appellant to immediately go to the police and report the incident. Then, Leo rushed to the pension house of accused-appellant, which was only 100 meters away. Leo and the room boys tried to open the door of accused-appellant's room, but it was locked. Shortly thereafter, accused-appellant arrived and unlocked the door. Leo entered the room and saw the lifeless body of Atin lying on the bloodstained bed. Later, police officers arrived and brought accused-appellant and Leo to the Western Police District Headquarters along U.N. Avenue, Ermita, Manila, for investigation.

The body of Atin was subjected to autopsy. Dr. Emmanuel L. Aranas, Medico Legal Officer and Chief of the WPD Crime Laboratory, reported the following findings:

> Well nourished, well developed male cadaver, on rigor mortis, with postmortem lividity at the dependent portions of the body. Conjunctive are pale. Lips and nailbeds are cyanotic.
>
> TRUNK AND UPPER EXTREMETIES:
>
> (1)
>
> Stab wound, left iliac region, measuring 7 by 1.5 cm, 10 cm from the anterior midline, 8 cm deep, directed posteriorwards, downwards, and medialwards, transecting the left femoral artery and vein and immediate branches.
>
> (2)
>
> Stab wound, thru and thru, point of entry, right infrascapular region, measuring 5.5 by 1 cm, 18 cm from the posterior midline, directed medialwards and slightly downwards, thru the underlying soft tissues, making a point of exit at the right infrascapular region, measuring 1 by 0.5 cm, 11 cm from the posterior midline.
>
> (3)
>
> Incise wound, proximal 3[rd] of the right arm, measuring 4 by 1 cm, bisected by its posterior midline.
>
> (4)
>
> Incise wound, middle 3[rd] of the right arm, measuring 7 by 1 cm, bisected by its posterior midline.
>
> (5)
>
> Incise wound, dorsal aspect of the left thumb, measuring 0.8 by 0.5 cm.
>
> (6)
>
> Incise wound, dorsal aspect of the middle phalange of the left middle finger, measuring 1.5 by 0.3 cm.
>
> (7)
>
> Stomach contains scanty yellowish thick fluid.
>
> CONCLUSION:
>
> Cause of death is stab wound of the left lower abdomen.[5]

At his arraignment, accused-appellant pleaded "not guilty." He denied killing the victim, and maintained that the latter killed himself. However, after the prosecution rested its case, accused-appellant made a complete turn-around and admitted the killing of the victim due to self-defense.

Accused-appellant's defense, as culled from his testimony, revolves around his suspicion that Atin and Myrna stole his passport, on which his extension of stay in the country had just been stamped by the Bureau of Immigration. Thus, he testified that after coming home from the Woods Restaurant, he followed Atin and Myrna to his room,[6] located on the third floor[7] of the pension house. Shortly after, he left the room[8] to take a shower for ten (10) to fifteen (15) minutes in a bathroom located two (2) to three (3) doors away.[9] Thereafter, he bought a bottle of Red Horse beer for Myrna upon Atin's request.[10] When he returned with the beer, Myrna was ready to leave. Accused-appellant asked Atin why he asked him to buy beer when the girl was leaving anyway.[11] The victim, who was then only clad in a bedsheet wrapped around his waist,[12] replied that it did not concern him if Myrna wanted to leave for she is free to go.[13]

Accused-appellant's suspicion was aroused, so he rushed to where he hung his trousers to see if his passport was still in his pants. He discovered that it was gone. He asked the victim where his passport was but the latter shouted, "What are you talking, what are you talking?"[14] Suspecting that Myrna took his passport with the connivance of Atin, accused-appellant then attempted to go after Myrna who was already out of the room,[15] but he was restrained by the victim.[16] Accused-appellant managed to break free from Atin's grip and pursued Myrna down the second floor of the building, but he was not able to catch up with her.[17]

Accused-appellant further alleged that after fruitlessly looking for Myrna for twelve to thirteen minutes on the second floor,[18] he returned to his room,[19] where he was confronted by an "annoyed"[20] Atin armed with a kitchen knife.[21] Atin tried to stab him but he held the right wrist of the victim and grappled with him.[22] As they struggled, they both fell down on the bed and it was then that "blood spilled all over including the door," because it was while they were struggling that the victim sustained the stab wounds.[23]

Upon seeing the bloodied victim, accused-appellant bolted out of his room and fled to the house of Leo Harris which was two streets away.[24] When he reached Harris's house, accused-appellant related to him what happened,[25] and was advised by Harris to flee.[26] However, instead of following Harris's suggestion, accused-appellant went back to the pension house to look for somebody who could help him.[27]

Back at the pension house, accused-appellant found Harris and another Nigerian in front of the locked door of his room.[28] Harris told accused-appellant to open the door, but the latter told him that the victim was not yet dead and that the door was open when he fled.[29] When the door was opened by a room boy, they saw the lifeless body of the victim lying on the bed.[30]

The tale of accused-appellant strains credulity. It is unusual for accused-appellant not to have immediately notified the employees of the pension house of the alleged theft of his passport. If indeed his passport was stolen by Myrna, he should have raised a commotion or called anyone within earshot to intercept the allegedly fleeing thief. Curiously, he did not. Furthermore, Leo Harris's house was a mere 100 to 200 meters away[31]from accused-appellant's place, yet it took him forty-five (45) minutes of "running" to reach it.

Verily, testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself.[32] The test to determine the value or credibility of testimony of a witness is whether or not such is in conformity with common knowledge and consistent with the experience of mankind.[33]

Prosecution witness Myrna Velasquez herself belies the claim of accused-appellant that the victim tried to stab him because Atin was too drunk that he could hardly stand.[34]

On cross-examination, Myrna Velasquez remained steadfast and unwavering about what transpired,[35] despite attempts of defense counsel to throw her off track. She consistently maintained that the victim was unable to have sexual intercourse with her because he was "dead drunk,"[36] and that he could hardly walk when they left the

Woods Restaurant before the incident happened.[37] There is no cogent reason to disbelieve Myrna's testimony. While concededly, accused-appellant charged Myrna of taking his passport, the accusation is clearly a mere afterthought undeserving of credence. When he was apprehended by the police, he informed them that Atin killed himself. There was, however, no mention of the purported theft.

Given the foregoing facts, the victim, who was in a drunken stupor, could not have committed unlawful aggression against the accused-appellant. Indeed, the victim was so drunk that he could not even remove his trousers to have sex with Myrna.[38] Suffice it to state that, absent such unlawful aggression, no self-defense may successfully be pleaded, whether complete or incomplete.[39] Self-defense to be successfully invoked must be established with certainty and proved with sufficient satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it. It may not be justifiably entertained when it is uncorroborated by separate competent evidence.[40]

Accused further insists that voluntary surrender should have been appreciated in his favor. With regard to voluntary surrender, three (3) requisites must be proven, namely: (1) the offender has not actually been arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary.[41] A surrender to be voluntary must be spontaneous, showing 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 necessarily incurred in his search and capture.[42] If none of these two reasons impelled the accused to surrender, because his surrender was obviously motivated more by an intention to insure his safety, his arrest being inevitable, the surrender is not spontaneous.[43] The word "spontaneous" emphasizes the idea of an inner impulse, acting without external stimulus. The conduct of the accused, not his intention alone, after the commission of the offense, determines the spontaneity of the surrender.[44]

Voluntary surrender does not simply mean non-flight. As a matter of law, it matters not if the accused never avoided arrest and never hid or fled. What the law considers as mitigating is the voluntary surrender of the accused before his arrest, showing either acknowledgment of his guilt or an intention to save the authorities from the trouble and expense that his arrest and capture would require.[45] The fact that the accused did not escape or go into hiding after the commission of the murder and in fact accompanied the chief of police to the scene of the crime, without however surrendering to him and admitting complicity in the killing, did not amount to voluntary surrender to the authorities, and this circumstance would not be extenuating in that case.[46] In other words, the accused must actually surrender his own person to the authorities, admitting to complicity in the crime.[47] His conduct after the commission of the crime must indicate a desire on his part to own responsibility for the crime.[48]

It becomes readily apparent vis-à-vis the foregoing yardstick that voluntary surrender cannot be appreciated in accused-appellant's favor. While the records show that accused-appellant willingly went with the police authorities, he did not acknowledge his guilt in the killing of the victim. On the contrary, he initially disclaimed having anything to do with the killing,[49] only to subsequently make a volte face by admitting to the slaying on the ground of self-defense. The records likewise disclose that accused-appellant did not actually surrender to the police but was, in fact, brought to the police station.[50] In the face of the foregoing facts, accused-appellant's pretenses at voluntary surrender should perforce fail.

Evidence is wanting of any motive or reason for the prosecution witnesses to falsely testify against accused-appellant for so serious a crime as murder. Well-entrenched in our jurisprudence is the rule that where there is no evidence that the principal witnesses of the prosecution were actuated by ill-motives, their testimony is entitled to full faith and credit.[51]

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All told, this Court finds no reason to reverse the ruling of the court a quo insofar as accused-appellant's authorship of the killing of Atin is concerned. Hence, what remains to be determined is the nature of the crime committed, and what penalty to impose on accused-appellant.

The Solicitor General points out that the trial court erroneously imposed the penalty of reclusion perpetua on accused-appellant because the aggravating circumstances of treachery and evident premeditation were not duly established in this case.

The observation is well-taken. Qualifying and aggravating circumstances which are taken into consideration for the purpose of increasing the degree of the penalty imposed must be proven with equal certainty as the commission of the act charged as a criminal offense.[52]

There is no treachery in this case. Treachery is considered present when: (1) there is employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means or method of execution was deliberately or consciously adopted by the culprit.[53] For treachery to be appreciated, it must be present and seen by the witness right at the inception of the attack.[54] Where no particulars are known as to how the killing began, its perpetration with treachery cannot merely be supposed.[55] These are absent in the case at bar.

There was no showing of how the attack was commenced or that the method of execution in the commission of the crime was consciously or deliberately adopted by the malefactor. To reiterate, alevosia must be based on positive or conclusive proof, not mere suppositions or speculations[56] and must be proved as clearly and as convincingly as the killing itself.[57]

Similarly, the elements of evident premeditation must be established with equal certainty as the criminal act itself before it can be appreciated as a qualifying circumstance.[58] These elements are: (1) the time when the accused determined to commit the crime; (2) an overt act manifestly indicating that they clung to their determination to commit the crime; and (3) a sufficient lapse of time between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of their act.[59] The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment.[60]

In the case at bar, there is no showing that the killing of Atin was the product of cool thought and reflection. There is absolutely no showing how and when the plan was hatched or how much time elapsed before the crime was carried out. On the contrary, what appears very much evident is that he was killed on the occasion of an altercation with accused-appellant in the latter's rented room. Suffice it to state that without such evidence, mere presumptions and inferences, no matter how logical and probable, will not suffice.[61] In other words, the evidence falls short of proving evident premeditation.

Abuse of superior strength, which was also alleged in the Information, cannot likewise be appreciated. In People v. Flores,[62] this Court pointed out that this aggravating circumstance necessitates the showing of the relative disparity in physical characteristics, usually translating into the age, gender, the physical sizes and the strength of the aggressor and the victim. There is no proof that accused-appellant utilized any notorious inequality to his advantage.[63] In other words, mere superiority in number is not enough to constitute superior strength.[64]

To be appreciated as a qualifying circumstance, what should be considered is not that there were three (3) or more assailants of one victim, but whether the aggressors purposely took advantage of their combined strength in order to consummate the offense.[65] In this case, the prosecution did not present any direct proof that there was a deliberate intent on the part of accused-appellant to take advantage of the obvious inequality of force between him

and the victim.

Absent any qualifying circumstance, the crime committed is not Murder but Homicide. Considering that there was neither mitigating nor aggravating circumstance, the imposable penalty as provided in Article 249, in conjunction with Article 64 (1) of the Revised Penal Code, is reclusion temporal in its medium period.[66] Applying the Indeterminate Sentence Law vis-à-vis the prevailing facts of this case, the proper penalty should be Ten (10) years of prision mayor, as minimum, to Seventeen (17) Years and Four (4) Months of reclusion temporal, as maximum.

The amount of damages awarded by the trial court needs some modification. The civil indemnity, which the trial court termed compensation for loss of life of the victim, was correctly fixed at P50,000.00.[67] However, the amount of moral damages should be reduced from P500,000.00 to P50,000.00, as pegged by controlling case law,[68] taking into consideration the pain and anguish of the victim's family[69] brought about by his death.[70]

For lack of factual or legal basis, the award of nominal damages is deleted.

WHEREFORE, the decision of the Regional Trial Court of Manila, Branch 18, in Criminal Case No. 99-171014, is MODIFIED as follows: Accused-appellant Tobechukwu Nicholas y Mabena is found GUILTY beyond reasonable doubt of the lesser crime of Homicide, and is sentenced to suffer an indeterminate penalty of imprisonment ranging from Ten (10) Years of prision mayor, as minimum, to Seventeen (17) Years and Four (4) Months of reclusion temporal, as maximum. Further, accused-appellant is ORDERED to pay the heirs of the victim Serekwane Sethubelo the amount of P50,000.00 as civil indemnity and P50,000.00 as moral damages.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Rollo, p. 6; Criminal Case No. 99-171014.

[2] Ibid., pp. 22-23; penned by Judge Perfecto A.S. Laguio, Jr.

[3] Record, pp. 126-128.

[4] Ibid., p. 136.

[5] Exhibits "F" and "G".

[6] Ibid., p. 43.

[7] Id., p. 50.

[8] Id., p. 43.

[9] Id., pp. 44-45.

[10] Id., pp. 45-46.

[11] Id., p. 46.

[12] Id., p. 47.

[13] Id., p. 46

[14] Id., pp. 46-47.

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[15] Id., p. 48.

[16] Id., p. 49.

[17] Id.

[18] Id., p. 52.

[19] Id., p. 51.

[20] Id., pp. 52-53.

[21] Id., p. 52.

[22] Id., pp. 53-54.

[23] Id., p. 54.

[24] Id., pp. 55, 56-57.

[25] Id., p. 57.

[26] Id., p. 58.

[27] Id.

[28] Id., pp. 58-60.

[29] Id, pp. 60-61.

[30] Id., p. 62.

[31] TSN, 29 June 1999, p. 14; 2 July 1999, pp. 51-52.

[32] People v. Cayabyab, 274 SCRA 387, 398 [1997]; People v. Obzunar, 265 SCRA 547, 567 [1996].

[33] People v. Zinampan, et al., 340 SCRA 189 [2000], 199, citing People v. Gazmen, 247 SCRA 414, 419 [1995].

[34] TSN, 25 August 1999, pp. 3-6.

[35] Ibid., pp. 9-11.

[36] Id., p. 9.

[37] Id., p. 10.

[38] TSN, 25 August 1999, p. 9.

[39] People v. Antonio, 303 SCRA 414 [1999].

[40] People v. Calabroso, et al., 340 SCRA 332 [2000], citing People v. Mercado, 159 SCRA 453 [1988].

[41] People v. Samudio, et al., G.R. No. 126168, 7 March 2001, citing People v. Cual, 327 SCRA 623 [2000].

[42] I Reyes, The Revised Penal Code, p. 295, 14[th] Ed. (1998), p. 295, citing People v. Lagrana, 147 SCRA 281, 285 [1987]; see also People v. Lingatong, 181 SCRA 424, 430 [1990].

[43] Ibid., citing People v. Laurel, C.A. 59 O.G. 7618.

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[44] Id.

[45] Quial v. CA, 126 SCRA 28, 30 [1983]; People v. Radomes, 141 SCRA 548, 560 [1986].

[46] People v. Canoy, 90 Phil. 633 [1952]; People v. Rubinial, 110 Phil. 119 [1960].

[47] Reyes, The Revised Penal Code, supra, p. 285

[48] Ibid., citing People v. Flores, 21 CAR [2s]417, 424-425 [1976].

[49] TSN, 29 June 1999, pp. 21, 30-31.

[50] TSN, 29 June 1999, pp. 21-22; 2 July 1999, p. 61.

[51] People v. Albacin, 339 SCRA 249 [2000], citing People v. Milliam, 324 SCRA 155 [2000], citing People v. Leoterion, 264 SCRA 608 [1996].

[52] People v. Latupan, G.R. Nos. 112453-56, 28 June 2001, citing People v. Piamonte, 303 SCRA 577, 588 [1999].

[53] People v. Dumayan, G.R. No. 116280, 21 May 2001, citing People v. Serzo, Jr., 274 SCRA 553, 569 [1997] & People v. Mallari, 212 SCRA 777, 784 [1992]; People v. Magayac, 330 SCRA 767 [2000].

[54] People v. Sambulan, 289 SCRA 500, 515 [1998]; People v. Amanmangpang, 291 SCRA 638, 653 [1998]; People v. Bautista, 312 SCRA 214, 235 [1999]; People v. Sioc, 319 SCRA 12, 22 [1999]; People v. Maldo, 307 SCRA 424, 440-441 [1999].

[55] People v. Leal, G.R. No. 139313, 19 June 2001, citing People v. Borreros, 306 SCRA 680, 693 [1999]; People v. Silvestre, 307 SCRA 424, 440-441 [1999].

[56] People v. Tawas, 303 SCRA 86 [1999]; People v. Silva, 321 SCRA 647 [1999].

[57] People v. Aytalin, G.R. No. 134138, 21 June 2001, citing People v. Eribal, 305 SCRA 341 [1999].

[58] People v. Reyes, 287 SCRA 229 [1998].

[59] People v. Galvez, G.R. No. 136790, 26 March 2001, citing People v. Orculla, 335 SCRA 129 [2000]; People v. Torres, G.R. No. 138046, 8 December 2000; People v. Magno, 322 SCRA 494 [2000]; People v. Tan, 314 SCRA 413 [1999]; People v. Silvestre, supra; People v. Gatchalian, 300 SCRA 1 [1998]; People v. Villamor, 292 SCRA 384 [1998]; People v. Timblor, 285 SCRA 64 [1998].

[60] People v. Uganap, et al., G.R. No. 130605, 19 June 2001, citing People v. Bibat, 290 SCRA 27 [1998].

[61] People v. Mahinay, 304 SCRA 767 [1999].

[62] G.R. No. 138841, 4 April 2001.

[63] People v. Bustos, 51 Phil. 385 [1928]; People v. Diokno, 63 Phil. 601 [1936].

[64] People v. Tambis, 311 SCRA 430, 440 [1999]; People v. Rebamontan, 305 SCRA 609, 623 [1999].

[65] People v. Samudio, et al., G.R. No. 126168, 7 March 2001, citing People v. Buluran, 325 SCRA 476, 487-488, citing People v. Plantilla, 304 SCRA 339 [1999].

[66] ART. 249. Homicide. - Any person who, not falling within the provisions of article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and shall be punished by reclusion temporal.

ART. 64. Rules for 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:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period. xxx.

[67] People v. Concepcion, et al., G.R. No. 131477, 20 April 2001, citing People v. De Vera, 312 SCRA 640 [1999].

[68] People v. Pardua, et al., G.R. No. 110813, 28 June 2001, citing People v. Jabonero, G.R. No. 132247, 21 May 2001; People v. Ereneo, 326 SCRA 157 [2000].

[69] People v. Alba, et al., G.R. Nos. 130627 & 139477-78, 31 May 2001, citing People v. Ereneo, supra.

[70] People v. Langit, 337 SCRA 323 [2000]; People v. Mindanao, supra.

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