

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SPO1 DANILO LOBITANIA, ACCUSED-APPELLANT.

G.R. No. 142380. September 05, 2002

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PER CURIAM:

On automatic appeal is the decision[1] of Regional Trial Court of Urdaneta City, Branch 48, Pangasinan, in Criminal Case No. U-10024, convicting accused-appellant SPO1 Danilo Lobitania of the crime of aggravated carnapping with murder and sentencing him to suffer the penalty of death. The dispositive portion of the decision reads: “WHEREFORE, JUDGMENT is hereby rendered CONVICTING SPO1 DANILO LOBITANIA beyond reasonable doubt of the crime of Aggravated Carnapping with Murder and the Court sentences him to suffer the penalty of DEATH to be implemented in the manner as provided for by law; Danilo Lobitania is likewise ordered to indemnify the heirs of the victim, Alexander de Guzman, the sum of P75,000.00 as moral damages and another sum of P25,000.00 as exemplary damages and to reimburse the heirs of Alexander de Guzman the sum of P60,000.00 spent for the funeral and other incidental expenses incurred in connection thereto. “The Branch Clerk of Court is hereby ordered to prepare the mittimus and to transmit the whole records of this case to the Honorable Supreme Court of the Philippines for automatic review, fifteen days from date of promulgation of this Decision.

“The Jail Warden, Bureau of Jail Management and Penology, Urdaneta District Jail, Urdaneta City, is hereby ordered to deliver the person of SPO1 Danilo Lobitania to the National Bilibid Prisons, Muntinlupa City, fifteen days from receipt of this Decision.

“Let copies of this Decision be furnished the Director General, PNP, Camp Crame, Quezon City and the Chief of Police, PNP, Navotas, Quezon City, for their information.

“SO ORDERED.” [2]

The amended information charging accused-appellant of carnapping with murder reads as follows:

“That on or about December 6, 1998, in the City of Urdaneta and within the jurisdiction of this Honorable Court, accused SPO1 Danilo Lobitania with grave abuse of authority being a member of the Navotas PNP-NPD Command, Navotas, Metro Manila, together with three still unidentified companions, armed with firearms by means of force and intimidation with intent to gain, conspiring with one another, did, then and there willfully, unlawfully, and feloniously take, steal and carry away one Yamaha motorized tricycle with Plate No. 2N-7910 owned by David Sarto and driven at the time by Alexander de Guzman against the latter’s will and without his consent, and on the occasion of the carnapping or by reason thereof, accused with intent to kill, treachery and taking advantage of superior strength conspiring with one another, did, then and there willfully, unlawfully and feloniously box, hogtie, shoot and push out of the moving tricycle which caused the instantaneous death of said Alexander de Guzman, to the damage and prejudice of his heirs.

“CONTRARY to R.A. 6539, as amended by Arts. 248, Revised Penal Code, as amended by R.A. 7659.” [3]

When arraigned on August 17, 1999, accused-appellant, assisted by counsel, pleaded not guilty.[4]

The facts of the case as culled from the testimonies of witnesses and records are as follows:

Prosecution witness Jolito Sanchez was a cargador at the Navotas Fishport. He first met accused-appellant, Danilo Lobitania, on December 4, 1998 outside a beerhouse at the fishport when the latter ordered fish from him. On December 5, 1998, after the delivery of the fish, accused-appellant offered him a job as a helper in an ice plant in Pangasinan. Sanchez agreed and, together with accused-appellant and his companions Montolo, Sidro, Daniel and Jr. Saburin, they boarded a bus bound for Urdaneta, Pangasinan at around nine o' clock in the evening.

At the instance of accused-appellant, the group alighted at Barangay Nancayasen and flagged down a tricycle driven by victim Alexander de Guzman. Daniel and Jr. Subarin rode at the back of the driver while accused-appellant, Montolo and Sidro were inside the tricycle with Sanchez in the sidecar. Following accused-appellant's instruction, the driver turned left at an alley and after traveling a short distance, the driver was shot at the right side of his chest below the armpit by Montolo. Sidro then grabbed the driver from his seat, tied his hands behind his back and then shoved him out of the tricycle. Sanchez and Jr. Saburin tried to help the driver but Montolo and accused-appellant poked their guns at them and threatened that the same thing would happen to them if they did not go with accused-appellant's group.

The group took the tricycle, now driven by Daniel and proceeded towards the direction of Manila. The tricycle driver, shouting "saklolo, saklolo," was left behind. Upon reaching a sugarcane plantation, Sanchez and Jr. Saburin, on orders of accused-appellant, detached the sidecar from the motorcycle and left them in separate places inside the plantation.

It was already around three o'clock in the morning when the group boarded a different tricycle which brought them to the fish market in Urdaneta. At the fish market, Sanchez and Jr. Saburin were told by accused-appellant to stay and wait. However, after two hours of waiting, Sanchez and Jr. Saburin decided to leave and head back for Manila.

After Sanchez' arrival at his house in Navotas, accused-appellant's companion, Daniel, arrived and warned him not to squeal lest something happened to him. Sanchez then went out to look for Jr. Saburin whom he later found out was at the Presidential Anti-Organized Task Force (PAOCTF) in Camp Crame. Sanchez decided to follow Jr. Saburin to Camp Crame and there they revealed to Major Danny Salvador (PAOCTF member) what they knew of the incident in Pangasinan.

Sanchez and Jr. Saburin were accompanied by Major Salvador and Police Officer Nolasco to the sugarcane plantation located in Barangay San Agustin, San Manuel, Tarlac where the sidecar^[5] and motorcycle ^[6] were left but they found only the chain and cover. They did not find the sidecar and motorcycle because these were already in the custody of the barangay captain of San Agustin, San Manuel, Tarlac who recovered the items on December 6, 1998. Thereafter, they went to the Urdaneta Police Station where Sanchez and Jr. Saburin gave their sworn statements regarding the theft of the tricycle and the killing of its driver whom they later identified as victim Alexander de Guzman.

The Urdaneta police received the report of the killing of de Guzman, the recovery of the sidecar on December 6, 1998 and of the tricycle on December 12, 1998 from the police authorities of San Manuel, Tarlac where these items were found. The owner, David Sarto, went to the San Manuel police station, identified the sidecar and motorcycle as his, and stated that the vehicle was regularly driven by victim de Guzman.

Based on the autopsy report of Dr. Ramon Gonzales, City Health Officer of Urdaneta City, driver de Guzman died due to "hypovolemic shock due to gunshot wound, lungs, right."^[7]

Accused-appellant assails the credibility of prosecution eyewitness Sanchez. He alleges that Sanchez is a member of the "Tirtir Gang," a syndicate led by Rizalito Galinato, alias Boy Muslim, who was arrested by

accused-appellant on November 4, 1998. Accused-appellant claims that Sanchez, on orders of Boy Muslim, concocted his testimony to avenge Boy Muslim's publicized arrest[8] by accused-appellant. According to accused-appellant, a multi-awarded policeman of seventeen years, the testimony of Sanchez, a mere "cargador" who had no permanent employment, should not be believed over his.

Accused-appellant likewise puts up the defense of denial and alibi. At the trial, he presented defense witness SPO1 Michael Legaspi, the leader of the SMART-SWAT Team to which accused-appellant belongs, who testified that accused-appellant reported for work on December 6 and 7, 1998, from eight o'clock in the morning until eight o'clock at night. Accused-appellant also presented his wife, Valeriana Lobitania, to corroborate his alibi that, on the night of the incident, he was at home in Commonwealth Avenue, Quezon City, from ten o'clock onwards.

On 21 December 1999, the trial court rendered a decision finding accused-appellant guilty beyond reasonable doubt of aggravated carnapping with murder and sentenced him to suffer the supreme penalty of death.

The accused-appellant raises the following errors in his brief:

I. THE LOWER COURT ERRED IN CONVICTING HIM WHEN THE EVIDENCE PRESENTED BY THE PROSECUTION WAS INSUFFICIENT TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II. THE LOWER COURT ERRED IN ORDERING THAT THE APPELLANT COMPENSATE THE PRIVATE COMPLAINANTS WITH DAMAGES.

We affirm the decision of the trial court.

After a thorough review of the records, we find that the prosecution was able to prove that accused-appellant's guilt beyond reasonable doubt. Based on the facts proven, the offense committed by accused-appellant is the special complex crime of qualified carnapping or carnapping in an aggravated form[9] under Section 14 of Republic Act No. 6539, the Anti-Carnapping Act of 1992, as amended by Section 20 of Republic Act No. 7659, the Death Penalty Law, which took effect on 31 December 1993.

Section 2 of R. A. 6536 as amended, defines the crime of carnapping as the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things. It becomes qualified when in the course of the commission or on occasion of the carnapping, the owner, driver or occupant of the carnapped vehicle is killed or raped.[10] When the carnapping is qualified, the penalty imposable is reclusion perpetua to death.[11] In the case at bar, all the elements were duly proven by the prosecution. Based on the testimony of Sanchez,[12] accused-appellant and his companions shot the driver of the tricycle, abandoned him and took possession of the vehicle.[13] The testimony of Sanchez that the driver was unknown to the group clearly establishes the fact that the motive of accused-appellant was to steal the tricycle and that the killing of the driver was incidental thereto.

"COURT:

"Q: You know if the driver of the tricycle was known to Lobitania when he was flagged down?

"A: No, sir.

"xxx xxx xxx

"Q: Was Montolo known to the driver?

"A: No, sir." [14]

Accused-appellant assails the credibility of the lone eyewitness, Jolito Sanchez. We do not share his doubts. The

defense was unable to prove that prosecution witness Sanchez was impelled by an improper motive - allegedly to avenge his supposed gang leader's (Boy Muslim) arrest - in testifying against accused-appellant. No evidence was adduced to show that Sanchez was a member of the Tirtir Gang and that his testimony was a vengeful fabrication. Furthermore, the defense failed to prove that Sanchez was not present at the scene of the crime. The witness' testimony thus leaves no other conclusion but that he, indeed, witnessed the killing of victim de Guzman and the taking of his tricycle. Sanchez' testimony was clear, categorical and consistent despite exhaustive cross-examination:

"ATTY. BINCE:

"Q: How long have you traveled the alley when you heard the gunshot?

"A: I do not know, sir.

"Q: Have you traveled already a long distance when you heard the gunshot?

"A: No when there was a gun fired the tricycle stopped.

"Q: When the driver stopped after you heard the gunshot did you see who fired the gun?

"A: Yes, sir.

"Q: After you saw Montolo fired the shot Sidro pulled the tricycle driver pushed into the sidecar of the tricycle?

"A: Sidro pulled the driver from the seat.

"Q: After Sidro pulled the driver from his seat where was the driver pulled?

"A: He pulled and pushed him inside the tricycle.

"Q: After he was pulled into the sidecar of the tricycle according to you he was pushed outside by the tricycle by Sidro?

"A: Not yet he was tied.

"Q: What was tied?

"A: Witness demonstrating the hands at the back then tied.

"Q: And the person who did this was Sidro is that correct?

"A: Yes, sir.

"Q: And after the driver's hands were tied by Sidro what happened next if any?

"A: Montolo went outside the sidecar and pushed the driver on the road.

"Q: And what happened to the driver when he was pushed by Montolo into the road?

"A: The driver told 'SAKLOLO, SAKLOLO.'

"Q: In your testimony you said that you were about to help him when Danilo Lobitania allegedly pointed a gun at you is that correct?

"A: Yes, sir.

"Q: Montolo and Danilo Lobitania told you 'come with us if you do not want to be involved' is that correct?

“A: Yes, sir.

“Q: In other words you are telling the court that Danilo Lobitania acted only after Montolo fired at the driver after Sidor tied him after Montol pushed him outside the tricycle that is what really happened is it not?

“A: Yes, sir.” [15]

Besides, well-settled is the rule that the assessment of the witnesses’ credibility and their testimonies is a matter best undertaken by the trial court.[16] Thus, appellate courts will not usually interfere with the judgment of trial courts on the credibility of witnesses unless there appears in the record some fact or circumstance of weight and influence which the trial court has overlooked or the significance of which it has misapprehended or misinterpreted.[17] In the present case, the findings of the trial court are amply supported by the evidence.

The fact that Sanchez failed to mention Eligio “Jr.” Saburin in his sworn statement is not a material error to warrant his impeachment as a credible witness. On re-direct examination, he adequately explained why he did not mention Jr. Saburin in his sworn statement:

“PROS. BINCE (sic):

“Q: Why did you not mention in your statement the name of Jr. Saburin as one of your companion (sic) when you went to Pangasinan on December 5, 1998?

“A: Because we were two when they took our statement I thought they included them there.

“Q: You have been testifying about you and Jr. Saburin in going to Pangasinan is that correct?

“A: Yes, sir.

“Q: In your statement here you said you did not mention the name Jr. Saburin as one of your companion (sic) here in going to Pangasinan?

“A: I did not mention.

“Q: Why did you not mention Jr. Saburin in your statement?

“A: We were two when we were investigated. I thought Jr. Saburin has already stated.”[18]

His explanation on re-direct is bolstered by his use of the pronoun “we” in his sworn statement. When asked to relate the incident, he started his narration by saying “we were offered job (sic) as a ice plant helper by SPO1 Danilo Lobitania PNP member of the Navotas Police Office xxx.”[19] It is clear from his testimony on re-direct as well as his sworn statement that he was assuming the investigating officers understood his narration to already include Jr. Saburin. The fact that Sanchez failed to point out the omission of Jr. Saburin’s name when Prosecutor Ambrosio later read his statement to him did not weaken his testimony inasmuch as this was still consistent with his assumption that the officers understood the inclusion of Jr. Saburin’s name in his narration. This Court has repeatedly ruled that inconsistencies between the sworn statements and direct testimony given in open court do not necessarily discredit the witness since affidavits are oftentimes incomplete and are generally inferior to the testimony of the witness in open court.[20]

The categorical testimony of Sanchez positively identifying accused-appellant as the perpetrator of the crime prevails over the accused-appellants’ defense of denial and alibi.[21] This Court has repeatedly ruled that the defense of alibi is always considered with suspicion or caution, not only because it is inherently weak and unreliable but also because it can be fabricated easily to suit the ends of those who propound it.[22] Denial and alibi, if not substantiated by clear and convincing evidence, are negative and self-serving evidence and bear no weight in law.[23]

The only witness who corroborated his alibi that he was at home the night of the incident was his wife, Valeriana. Although mere relationship of a party does not militate against the credibility of a witness,[24] this Court has long ruled that alibi becomes less plausible as a defense when it is corroborated by relatives whose motives are suspect, for it must receive credible corroboration from disinterested witnesses.[25]

Also, for alibi to prosper, it must be shown that it was physically impossible for the accused-appellant to have been at the scene of the crime at the time of its commission.[26] The fact that accused-appellant reported for work in Navotas, Metro Manila at eight o'clock in the morning on December 6, 1998, several hours after the incident, did not at all negate the possibility that he could have been in Pangasinan at two o'clock[27] in the morning perpetrating the carnapping and killing of de Guzman. Accused-appellant's wife Valeriana testified that her husband left their house in Commonwealth, Quezon City at six thirty o'clock in the morning of December 6, 1998, the day of the incident. The distance from Urdaneta, Pangasinan (where accused-appellant boarded a bus to Manila[28] around three o'clock in the morning) to Commonwealth Avenue (where accused-appellant lived) is approximately 200 kilometers, a distance that can easily be covered in three-and-a-half (3 1/2) hours, especially in the wee hours of the morning when traffic is extremely light.

We further affirm the finding of the trial court that conspiracy was present in the commission of the crime. The unity in purpose and design was evident in the execution of the crime: the tricycle driver was ordered to turn left at an alley from the highway by accused-appellant; Montolo fired at the driver; Sidro grabbed the driver, tied his hands and pushed him out of the tricycle; Daniel and accused-appellant both poked their guns at prosecution witness Sanchez and Jr. Saburin and threatened them; Daniel drove the tricycle after the driver was left on the road. Long-settled is the rule that in conspiracy, the act of one is the act of all. All are deemed guilty of the crime committed regardless of who fired the fatal shot.[29]

Now for the proper imposable penalty. As the crime was committed on December 6, 1998, R. A. 7659 applies to the case at bar. Under the amendatory law, the penalty of reclusion perpetua to death is imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on occasion thereof. In imposing the penalty for a crime punishable by two indivisible penalties, Article 63 of the Revised Penal Code provides that when there is no mitigating or aggravating circumstance, the lesser penalty should be applied.[30] In the present case, however, we find that there was one aggravating circumstance: abuse of superior strength. We thus uphold the penalty of death imposed by the trial court but not for the reasons stated by the court below.

In imposing the death penalty, the trial court considered three aggravating circumstances against the accused-appellant: the use of unlicensed firearms, grave abuse of authority and treachery. We agree with the penalty; we do not with the justification.

The use of unlicensed firearms was not alleged in the information and cannot therefore be taken against accused-appellant. Grave abuse of authority also cannot be appreciated inasmuch as it was not proven that accused-appellant took advantage of the prestige or ascendancy of his position as a police officer.[31] Treachery cannot likewise serve to aggravate the crime inasmuch as it only applies to crimes against persons.[32] Accused-appellant is found guilty of qualified carnapping or carnapping in an aggravated form, a special complex crime, which is essentially a crime against property. The Court's ruling in *People vs. Tan*,[33] penned by Chief Justice Hilario G. Davide, Jr., is clear on this matter:

"There is no arguing that the anti-carnapping law is a special law, different from the crime of robbery and theft included in the Revised Penal Code. It particularly addresses the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things. But a careful comparison of this special law with the crimes of robbery and theft

readily reveals their common features and characteristics, to wit: unlawful taking, intent to gain, and that personal property belonging to another is taken without the latter's consent. However, the anti-carnapping law particularly deals with the theft and robbery of motor vehicles. Hence a motor vehicle is said to have been carnapped when it has been taken, with intent to gain, without the owner's consent, whether the taking was done with or without the use of force upon things. Without the anti-carnapping law, such unlawful taking of a motor vehicle would fall within the purview of either theft or robbery which was certainly the case before the enactment of said statute."

So, essentially, carnapping is the robbery or theft of a motorized vehicle and it becomes qualified or aggravated when, in the course of the commission or on the occasion of the carnapping, the owner, driver or occupant is killed or raped. As we have ruled in *People vs. Mejia*: [34]

"the killing or the rape merely qualifies the crime of carnapping xxx and no distinction must be made between homicide and murder. Whether it is one or the other which is committed 'in the course of carnapping or on the occasion thereof' makes no difference insofar as the penalty is concerned."

It is similar to the special complex crime of robbery with homicide and in *People vs. Bariquit*,[35] , we ruled that:

"In the present case, the accused-appellants were charged with, tried, and convicted for the crime of robbery with homicide. In our jurisdiction, this special complex crime is primarily classified as a crime against property and not against persons, homicide being a mere incident of the robbery with the latter being the main purpose and object of the criminal. Under Article 14 of the Revised Penal Code, treachery is applicable only to crime against persons. Accordingly, inasmuch as robbery with homicide is a crime against property and not against persons, treachery cannot be validly considered in the present case."

The separate opinion of Justice Jose C. Vitug in *People vs. Cando*[36] is also very enlightening:

"Robbery with homicide is a special complex crime where homicide is committed 'by reason or on occasion' of robbery. In the same way that alevosia will not result in qualifying the offense to murder, where the original and real intent of the accused is robbery, so, also, must treachery be ignored in aggravating this special crime. Robbery with homicide is an offense against property under Title Ten, Book Two, of the Revised Penal Code, and treachery is an aggravating circumstance obviously applicable only to crimes against persons under Title Eight, Book Two, of the same Code."

In sum, therefore, since qualified carnapping is a crime against property, the trial court erred in appreciating treachery inasmuch as the latter can only be considered in crimes against persons.

This provides no comfort to accused-appellant, however, because we find that the crime was aggravated by the abuse of superior strength, a circumstance alleged in the information and duly proven by the prosecution. We have ruled that this aggravating circumstance is present not only when the offenders enjoy numerical superiority, or when there is a notorious inequality of forces between the victims and the aggressors, but also when the offenders use powerful weapons out of proportion to the defenses available to the offended party.[37] These were all present in the case at bar. The six perpetrators, two of whom were armed, deliberately used their combined strength and weapons to wrest control of the tricycle driven by the unarmed, 5'4" tall and 120-pound[38] victim de Guzman.

On this score, let this case serve as a warning to the officers of the law who choose to betray society. We extend no sympathy or mercy to accused-appellant, notwithstanding his supposedly sterling record of 17 years in the police force. This one act of unforgivable atrocity by one who has sworn to uphold the law and be the protector of the people is enough to wipe out whatever good deeds he might have done in the past.

With regard to the accused-appellant's civil liabilities, this Court awards seventy-five thousand pesos

(P75,000.00) as civil indemnity to the heirs of the victim.[39] We reduce the award of moral damages to fifty thousand pesos (P50,000.00) in the light of current jurisprudence on the matter.[40] The award of exemplary damages on the basis of the fact that one aggravating circumstance attended the commission of the crime, is affirmed.[41] No actual damages can be awarded inasmuch as no receipts were presented by the victim's family regarding funeral expenses or by the owner of the carnapped tricycle regarding repair expenses. We have time and again ruled that only substantiated and proven expenses will be recognized to justify an award for actual damages.[42]

Three members of the Court maintain their position that Republic Act No. 7659, insofar as it prescribes the death penalty, is unconstitutional; nevertheless they submit to the ruling of the Court, by majority vote, that the law is constitutional and the death penalty should be accordingly imposed.

WHEREFORE, the decision dated 21 December 1999 of the Regional Trial Court of Urdaneta City, Branch 46, in Criminal Case No. U-10024 finding accused appellant guilty beyond reasonable doubt of qualified carnapping (or carnapping in an aggravated form) is **AFFIRMED** with **MODIFICATIONS**. Accused-appellant is sentenced to suffer the penalty of **DEATH** and is ordered to pay the heirs of the victim Alexander de Guzman the sum of P75,000 as civil indemnity, P50,000 as moral damages and P25,000 as exemplary damages.

In accordance with Section 25 of Republic Act No. 7659, amending Article 83 of the Revised Penal Code, upon finality of this decision, let certified copies hereof, as well as the records of this case, be forwarded without delay to the Office of the President for the possible exercise of executive clemency.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, and Corona, JJ., concur.

Sandoval-Gutierrez, J., on leave.

Carpio-Morales and Callejo, Sr., JJ., no part.

[1] Penned by Judge Modesto C. Juanson.

[2] Rollo, p. 75.

[3] Records, p. 178.

[4] Records, p. 185.

[5] Exhibit "E."

[6] Exhibit "F."

[7] Records, p. 245.

[8] Exhibit 8, news clipping of the arrest published in the tabloid REMATE, November 7, 1998.

[9] In *People vs. Mejia* [275 SCRA 127, 153 (1997)], the Court ruled that the amendments to the Anti-Carnapping Law made clear the intention to make the offense a special complex crime, by way of analogy vis-à-vis paragraphs 1 to 4 of Article 294 of the Revised Penal Code on robbery with violence against or intimidation of persons.

[10] Section 14, R.A. 6438 as amended by R.A. 7659.

[11] Ibid.

[12] TSN, September 22, 1999, pp. 8-11.

[13] In *Izon vs. People* [107 SCRA 118, 123 (1981)], the Court has ruled that a tricycle is considered a motor vehicle and is covered by the Anti-Carnapping Law.

[14] TSN, September 22, 1999, p. 16-17.

[15] TSN, September 23, 1999, pp. 19-20.

[16] *People vs. Brigildo*, 323 SCRA 631 (2000); *People vs. Magpantay*, 284 SCRA 96 (1998).

[17] *People vs. Alao*, 322 SCRA 380 (2000); *People vs. Agbayani*, 284 SCRA 315 (1998).

[18] TSN, September 23, 1999, p. 32.

[19] Records, p. 17.

[20] *People vs. Silvestre*, 307 SCRA 68 (1999); *People vs. Jaberto*, 307 SCRA 93 (1999).

[21] *People vs. Yambot*, 343 SCRA 20 (2000); *People vs. Ravaness*, 284 SCRA 634 (1998).

[22] *People vs. Emoy*, 341 SCRA 178 (2000); *People vs. Cantere* 304 SCRA 127 (1999).

[23] *People vs. Baltazar*, 343 SCRA 250 (1999).

[24] *People vs. Hernandez*, 328 SCRA 201 (2000).

[25] *People vs. Bato*, 325 SCRA 671 (2000); *People vs. Sanchez*, G.R. No. 121039-45, October 18, 2001.

[26] *People vs. Oliano*, 287 SCRA 158 (1998); *People vs. Albacin*, 340 SCRA 249 (2000).

[27] Records, Exh. "G," p.17.

[28] TSN, September 22, 1999, p. 16.

[29] *People vs. Sumalpong*, 284 SCRA 464 (1998).

[30] Article 63. Rules for the application of indivisible penalties. ---

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In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules should be observed in the application thereof:

xxx

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

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[31] *People vs. Magayac*, 330 SCRA 767 (2000); *People vs. PO3 Villamor and Maghilom*, G.R. 141908-09, January 15, 2002.

[32] Article 14, Revised Penal Code; *People vs. Alfeche*, 294 SCRA 352 (1998).

[33] 323 SCRA 30, 39 (2000).

[34] Supra note 13.

[35] 341 SCRA 600, 625 (2000).

[36] 344 SCRA 330, 344-345 (2000).

[37] People vs. Heredia, 311 SCRA 353, 366 (1999), citing People vs. Siccuan, 271 SCRA 168 (1997).

[38] TSN, September 23, 1999, pp. 11-12.

[39] People vs. Bancado, 346 SCRA 189 (2000).

[40] People vs. Clarino, G.R. 134634, July 31, 2001; People vs. Cortez, G.R. 131924, December 26, 2000.

[41] People vs. Sagatsat, 308 SCRA 340 (1999).

[42] People vs. Rosauro Sia, et al., G.R. No. 137457, 21 November 2001, citing People vs. Dulay, G.R. No. 127842, 15 December 2000.

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