

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RANIL DUETES (AT LARGE), BASILIO QUIJADA @ “KOKOY,” (AT LARGE), REYMAN FONCARDAS & RITCHIE DEQUI×?A (AT LARGE), ACCUSED,

G.R. No. 144598. February 06, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

From the Decision[1] of the Regional Trial Court, Branch 17, Davao City finding appellant Reyman Foncardas guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of Napoleon Erno (the victim) P50,000.00 as civil indemnity and P50,000.00 as moral damages, appellant comes to this Court on appeal.

Appellant, together with Ranil Duetes, Basilio Quijada alias “Kokoy” and Ritchie Dequi×;a, was indicted for murder under an information dated September 1, 1997 which reads:

The undersigned accuses the above named accused of the crime of Murder, under Art. 248 of the Revised Penal Code, as amended by R. A. 7659, committed as follows:

That on or about May 14, 1997, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating together and helping one another, with several unidentified companions, with treachery and evident premeditation, armed with a piece of wood, and with intent to kill, willfully, unlawfully and feloniously attacked, assaulted and struck with the piece of wood one Napoleon Erno, thereby inflicting upon the latter mortal wounds which caused his death.

CONTRARY TO LAW.[2]

As Duetes, Quijada and Dequi×;a remained at large, only appellant, assisted by his counsel, was arraigned. He entered a plea of not guilty,[3] whereupon trial commenced.

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

At around 12:00 midnight of May 14, 1997, after having a drinking spree at Romeo’s Videoke located at Trading Boulevard, Duetes, Quijada, Dequi×;a, Marco Mariaca (Mariaca) and appellant (the group) walked some 50 meters to the corner of Trading Boulevard, fronting Rizal Extension, where it stayed for five minutes. Realizing that it had run out of cigarettes, the group proceeded to Carol’s Store,[4] but returned to the corner of Trading Boulevard, fronting Rizal Extension, to sit, smoke and while the time away.

Soon after, the victim who had just purchased a bottle of Coke from Carol’s Store, repaired to the corner of Trading Boulevard, fronting Rizal Extension where he bought balut from a vendor. About 5 meters away from the group, the victim ate balut and drank the coke. Quijada then approached the victim, and the two started talking while Duetes, Dequi×;a, Mariaca, and appellant just watched and smoked.

Minutes later, Duetes approached the victim and Quijada and sat down behind the two. Not long after, Quijada

was heard shouting something in the Visayan dialect, allegedly angered by the victim's not acceding to his demands for money.

Without any warning, Duetes pulled the victim from behind, causing the latter to fall down on his back. Appellant and Dequi×ja rushed to join their companions Duetes and Quijada. Apparently, the victim was able to rise. Appellant, Quijada, Duetes and Dequi×ja, however, pummeled him with their fists while Mariaca looked on in shock and disbelief. The mauling of the victim continued even as Quijada left the scene momentarily. When Quijada returned bearing a piece of wood about two and half feet long, appellant and Duetes who were standing behind the victim, held the latter, rendering him helpless, as Quijada struck the victim's nape with the piece of wood. The victim fell down after being struck. Duetes then told Mariaca, who was merely looking at his companions, to run. Mariaca did as he was told and immediately ran away from the scene.

Seeing that a person was struck by a piece of wood, garbage collectors Quirino Cabag (Cabag), Ronil Viilano, Roman Tajo, and the driver of the garbage truck, who were 50 meters away, shouted at the assailants and approached them. Quijada thereupon told his companions to move away from the victim, who was already sprawled helplessly on the ground. Quijada continued to strike at the victim's head, however. When the garbage collectors were about 7 meters away, appellant, Duetes and Dequi×ja scampered away even as Quijada continued to assault the victim with the piece of wood. Before the garbage collectors could apprehend him, however, Quijada speedily left the scene of the crime.

Gathered from the postmortem examination conducted on the victim by Dr. Gene. L. Gulanes, a medico-legal officer at the Davao City Health Office, are the following:

POSTMORTEM FINDINGS

Pallor, marked generalized
Body in Rigor Mortis

Lacerated wound located at frontal area midline 2.5 x 1.3 cms; 3.5 x 1.3 cms, located at supraorbital area, left; 3.2 x 0.8 cms, located at left lateral canthus; 2.5 x 1.0 cms, located at right lateral canthus.

Hematoma, 2.0 x 4.5 cms, periorbital area, right; 6.0 x 5.0 cms, periorbital area, left; 10.0 x 6.0 cms, zygomatic area, left.

Fracture, comminuted: FACIAL BONE EXCLUDING MANDIBULAR, frontal; parietal; temporal bone; left, occipital; base of the skull.

Hemorrhage, intracerebral, intracranial, meningeal, generalized.

Stomach 1/4 filled with partially digested food particles.

Other visceral organs pale

CAUSE OF DEATH: Severe Hemorrhage Secondary to skull fracture.[5]

Hence, appellant and his co-accused's indictment.

Denying the accusation, appellant claimed that although he was seated at a bench outside Carol's store, smoking, he did not participate in any manner in the mauling of the victim, as he was merely an innocent bystander.[6]

Discrediting appellant's denial in favor of the positive and categorical testimony of prosecution witnesses Cabag and Mariaca that they saw him as part of the group that mauled the victim and that he held the victim as Quijada struck the victim with the piece of wood, the trial court convicted him of murder by Decision[7] of May 12, 2000 the dispositive portion of which is quoted verbatim:

WHEREFORE, finding the evidence of the prosecution more than sufficient to prove the guilt of accused, Reyman Foncardas of the offense charged beyond reasonable doubt, without any aggravating circumstance proved by the prosecution, attendant in the commission of the offense charged of murder, with inherent attending circumstance of treachery and conspiracy among all his co-accused, on the resultant offense, accused, REYMAN FONCARDAS, is sentenced to suffer the penalty of RECLUSION PERPETUA, together with all accessory penalty as provided for by law.

Pursuant to Art. 100 in relation to Art. 104 of the Revised Penal Code, governing civil indemnity, accused Reyman Foncardas, is moreover ordered to pay the mother of the deceased, Fedelina Erno-Ignacio, the amount of P50,000.00 by way of civil indemnity and another P50,000.00 as moral damages, for all the sorrow and worries she suffered, as a result of the death of her son, Napoleon Erno.

On account of this judgment, issue warrant for the immediate arrest of the other accused, Ranil Duetes, Basilio Quijada and Ritchie Dequija, for their prosecution and immediate trial of the offense charged, after their arrest.

SO ORDERED.[8]

Hence, the present appeal which ascribes the following errors to the trial court:

I.

THE TRIAL COURT ERRED IN HOLDING THAT “THE ACCUSED REYMAN FONCARDAS WAS TOGETHER IN THE GROUP OF QUEJADA, DUETES AND DEQUIA.”

II.

THE TRIAL COURT ERRED IN HOLDING “THAT THERE IS NO EVIDENCE ON RECORD TO PROVE MARCO MARIACA WAS MOTIVATED WITH PERSONAL AND MALICIOUS INCLINATION IN TESTIFYING AGAINST ACCUSED REYMAN FONCARDAS.”

III.

THE TRIAL COURT ERRED IN HOLDING THAT THERE WAS CONSPIRACY AMONG THE ACCUSED WHICH INCLUDES REYMAN FONCARDAS [AND]

IV.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT.[9]

In his brief, appellant argues that the trial court erred in relying on the testimony of Mariaca upon a finding that there was no evidence on record to prove that Mariaca was motivated by malice in testifying against appellant just to avoid being himself implicated in the death of the victim.

Additionally, appellant argues that the testimony of Cabag should not be believed due to poor visibility in the locus criminis and the improbability that, as claimed by Cabag, the assailant stared at the garbage collectors for such length of time to enable Cabag to remember his face.

In bolstering his case, appellant highlights the inconsistency between the testimonies of Mariaca and Cabag as to the number of persons during the incident.

Once again, this Court is confronted with the issue of credibility of witnesses. The rule is well settled that the findings of fact and the assessment of the credibility of witnesses is a matter best left to the trial court.

The rationale for this doctrine as explained in *People vs. Cayabyab* is that the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt and innocence of the accused.

That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insistent assertion; or the sudden pallor of a discovered lie; or the tremulous mutter of a reluctant answer; or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion, or looked down in confession, or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.[10] (citations omitted)

Such settled rule aside, a close scrutiny of the testimonies of both prosecution witnesses reveals that appellant was categorically and positively identified as one of the perpetrators of the crime. Mariaca testified thus:

Q: And what did this actually (sic) Foncardas and Dequiña do when they approached Napoleon Erno?

A: They helped one another in mauling him.

Q: Now, for how long more or less was the mauling?

A: About 5 minutes because he fell down and he was able to stand-up again.

Q: What happened next to Napoleon Erno?

A: He was held and again Duetes mauled him.

Q: How about Foncardas, what else did he do?

A: He also helped in mauling Napoleon Erno.

Q: After that what did Foncardas do if any?

A: Napoleon Erno became dizzy or he was groggy, it appear to me he held on to a table.

Q: What did Foncardas do?

A: They again approached him at the back of Erno, and they held both hands of Erno.

Q: Who held the hands of Napoleon Erno?

A: Duetes and Foncardas.

Q: And after that what did Foncardas do?

A: At that instance Cocoy arrived.

Q: Who is this Cocoy?

A: Quijada.

Q: You are referring to Cocoy who is one of the accused in this case, but he is at large?

A: Yes, sir.

Q: Where did Cocoy come from?

A: I don't know because all of a sudden he appeared.

Q: When he appeared did he join the group?

A: He was already carrying a piece of wood.

Q: You are referring to Quijada?

A: Yes, sir.[11]

x x x

Q: With that wood, what did Quijada do?

A: He struck Erno with that wood. [12]

x x x

Q: While accused Quijada struck Napoleon Erno with this piece of wood, what was accused Foncardas doing at that time?

A: The two of them, Foncardas and Duetes, held both hands of Napoleon Erno.[13] (Emphasis supplied)

And Cabag testified thus:

Q: On the part of the assailant you said that you saw them when they attacked the victim, Napoleon Erno. Would you be able to identify all of them or any one of them if they are in court?

A: Yes, sir.

Q: Please do so, please point at him?

A: That one sir (witness pointing to a person Reyman Foncardas).

Q: If the other persons whom you saw helped with (sic) each other, would be here next time, could (sic) you be able to identify them?

A: Yes, sir, I can identify if they will be present sir.

Q: You pointed out the accused Reyman Foncardas as one of those who participated in the commission of the charge (sic) in the incident involving the death of Napoleon Erno, now tell the court, what was the participation of this accused in that incident?

A: He was one of those who mauled the victim, sir.

Q: Now tell the court, can you still recall who was the accused who used that piece of wood next time?

A: I can point him when I see him by face, sir.

Q: If I show you a picture of that person who used that piece of wood while that person in killing (sic) that victim, what was this Reyman Foncardas using (sic)?

A: He was at the back of the victim holding the victim, sir. [14]

x x x

Q: At what distance were you were from the group mauling the victim when you shouted at them?

A: About 50 meters, sir.

Q: And that (sic) at that very incident you shouted at the group, three of them immediately run (sic) away?

A: Not yet, sir.

Q: So on what incident and at what distance that (sic) these three or four alleged maulers ran (sic) away when you shouted?

A: Three three (sic) ran away only at that time when we were reaching towards (sic) them, sir.

Q: At that (sic) distance of (sic) these three scampered (sic) away, about 30 meters?

A: We were already near them because we were already in the middle of the road, sir.

Q: Could it be 20 meters more or less?

A: Very near already, sir.

Q: Or 10 meters?

A: I think 7 meters away, sir.[15]

x x x

Q: And then when they scampered away, the only thing that you saw among the three were only their backs?

A: Actually, before they ran away, they stared at us before they ran way, sir.[16] (Emphasis supplied)

For personal motives on the part of a witness to testify against the accused to be appreciated as showing bias, its presence should be supported by satisfactory proof.[17] The records do not yield any satisfactory proof, however, of any such motives on the part of Mariaca. His alleged ill motives against appellant have been correctly assessed and brushed aside by the trial court, which had ample opportunity to observe him. An examination of the transcript of stenographic notes of Mariaca's testimony shows that even under rigorous cross-examination, he remained steadfast in his testimony. And such testimony was corroborated on material points by Cabag, who was also an eyewitness.

Appellant calls attention to the delay in Mariaca's volunteering to testify which, so he contends, betrays Mariaca's ulterior motives. Appellant's contention is untenable. This Court has repeatedly noted that witnessing a crime is an unusual experience that elicits different reactions from witnesses for which no clear-cut standard of behavior can be drawn. Different people react differently to a given situation, for there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.[18] The reluctance of eyewitnesses to testify on a crime and to get involved in a criminal investigation is but normal and does not by itself affect the witnesses' credibility.[19]

That Cabag saw appellant only once before he testified in court[20] should not detract from his ability to recall appellant's face. Experience dictates that precisely because of the unusual acts of violence committed right before witnesses' eyes that they remember with a high degree of reliability the identity of criminals at any given time.[21]

Appellant goes on to assail Cabag's testimonial claim of having had a good look at appellant's face since, so he explained, appellant stared at the garbage collectors. Appellant contends that such is contrary to human experience since it is not the normal reaction of a person who had just committed a crime to stare at the witnesses, the normal reaction being to hide or conceal his identity. Appellant's contention fails to impress. As priorly stated, this Court has long recognized that different people react differently to a given situation. The reaction of a malefactor who is caught in flagrante delicto may be aggression, flight or even indifference. In this case, appellant was with three other young men, one of whom was armed with a piece of wood, while the garbage collectors

including Cabag were unarmed. It is possible that appellant and the other accused were staring at the garbage collectors as the latter were approaching them in order to assess their chances in engaging them in a fight.

While the incident took place at around 2:00 a.m., it is not disputed that there was a lighted electric post nearby.[22] Light from the stars[23] or the moon,[24] it has been held, can give ample illumination to enable a person to identify or recognize another. A fortiori, this Court is convinced that the illumination from the electric post sufficed for Cabag, who was near the locus criminis, to enable him to recognize appellant.

Appellant further draws attention to alleged inconsistencies, conflicting and contradictory testimonies of prosecution witnesses, he highlighting that of Cabag that he saw four people (appellant, Quijada, Duetes, and Dequi×ja), and that Mariaca testified that there were five (himself, appellant, Quijada, Duetes, Dequi×ja) in the vicinity. Such inconsistency does not affect the credibility of either witness. Minor contradictions among several witnesses of a particular incident which do not relate to the gravamen of the offense charged are to be expected in view of their differences in impressions, memory, vantage points and other related factors.[25] In fact, minor inconsistencies in the testimonies of witnesses bolster rather than weaken their credibility as they erase any suspicion that they have been rehearsed.[26]

In the case at bar, any inconsistency refers to minor and collateral matters which do not affect the substance, veracity or weight of the witnesses' testimony as it does not refer to an essential element of the crime[27] and does not have any bearing on the essential fact testified to, that is, the killing of the victim. What is important is that both Cabag and Mariaca were consistent in positively identifying appellant as one of the persons who participated in the mauling of the victim.

As for appellant's reliance on defense witness Roman Tajo's testimony that he (appellant) was not part of the group which mauled the victim, the same is misplaced, for Tajo admitted that he did not see the faces of the assailants:

Q: You said, you cannot remember really the persons?

A: As far as their faces are concerned, we cannot identify them but as to their height, we can estimate.

Q: The mother and the wife of accused, tell you that the accused is taller and so he was not among those whom you saw?

A: The wife of the accused and his mother told me, that I should tell the truth, as I was really there at the time of the incident.

Q: And the truth that you would like to convey because the accused whom you saw is taller and not among those whom you saw.

A: I did not really see him during that time of the incident.

Q: You did not see him because you cannot really see the faces of those?

A: I saw the heights and because he is tall, he is not among those three.

Q: You said, that you did not see the faces of those three?

A:

Yes, your Honor.[28] (Emphasis supplied)

At all events, appellant submits that there is no evidence of conspiracy between him and his co-accused.

Conspiracy exists when two or more persons come to an agreement to commit an unlawful act. There is, however, no need to prove a previous agreement to commit the crime if by their overt acts, it is clear that all the accused acted in concert in the pursuit of their unlawful design. It may even be inferred from the conduct of the accused before, during and after the commission of the crime.[29]

In conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim. What is important is that the participants performed specific acts with such closeness and coordination as unmistakably to indicate a common purpose or design in bringing about the death of the victim.

From the testimonies of Mariaca and Cabag, it is clear that the trial court did not err in appreciating the presence of conspiracy. Mariaca's and Cabag's testimonies disclose that appellant was one of those who restrained the victim while Quijada struck him on the nape with a piece of wood, resulting in the latter's falling to the ground.

That appellant conspired in the commission of the crime charged was sufficiently and convincingly shown by his active participation in holding the victim to render him immobile, thus enabling Quijada to consummate the killing.[30]

Regardless of the extent and character of his participation then, conspiracy renders appellant liable as a co-principal because in contemplation of law, the act of one conspirator is the act of all.[31] Having joined in the criminal conspiracy, appellant in effect adopted as his own the criminal design of his co-conspirators. Appellant is, therefore, liable for the killing of the victim.

As for treachery in the killing, the trial court correctly appreciated its presence. 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.[32] From Mariaca's and Cabag's testimony that appellant and Duetes held the victim while Quijada struck the nape of the victim, the victim was rendered defenseless. There can be no mistaking then that the manner by which the victim was restrained and assaulted was deliberately and consciously adopted by his assailants to ensure his demise.

The attendance of evident premeditation in the commission of the crime, though alleged in the information, is not supported by evidence, as there is no showing as to when appellant and his co-accused determined to kill the victim.

Although Mariaca testified that appellant and his co-accused had been drinking before the mauling of the victim,[33] that does not suffice to aggravate or mitigate appellant's criminal liability.[34] The trial court could not have appreciated intoxication — appellant's drinking beer — as an aggravating circumstance, therefore, as the same was not alleged in the information.

Section 9 of Rule 110 of the 2000 Revised Rules of Criminal Procedure requires that qualifying and aggravating circumstances be alleged in the information.[35] Although the crime was committed before the effectivity of the said Rule, the same should be applied retroactively as it would be favorable to appellant.[36] But, even assuming that the aggravating circumstance of intoxication was alleged, appellant's degree of intoxication was not proven with certainty.[37] Moreover, in the absence of clear and positive proof that appellant's intoxication was habitual or subsequent to the plan to commit the crime, it is improper to consider the same as an aggravating circumstance. [38]

Neither could appellant's alleged intoxication be appreciated as a mitigating circumstance. To be mitigating, it is necessary that appellant present proof of having taken a quantity of alcoholic beverage prior to the commission of the crime sufficient to produce the effect of obfuscating reason. At the same time, he must prove that he is not a habitual drinker and that he did not take the alcoholic drink purposely to reinforce his resolve to commit the crime.[39] In the absence then of clear and positive proof as to appellant's state of intoxication, this Court cannot consider appellant's drinking beer as a mitigating circumstance.

In fine, appellant is indeed guilty of murder, penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7569. There being neither mitigating nor aggravating circumstance, the lesser penalty of reclusion perpetua was correctly imposed by the trial court, pursuant to Article 63(2) of the Revised Penal Code.[40]

As to the civil aspect of the case, in line with prevailing jurisprudence, the award of indemnity to the heirs of the victim in the amount of P50,000.00 is affirmed, it being awarded without need of proof other than the fact that a crime was committed resulting in the death of the victim and that the accused was responsible therefor.[41]

As for the award by the trial court of moral damages to the heirs of the victim in the amount of P50,000.00, the same must be deleted, there being no evidence, testimonial or otherwise, presented to support it.[42]

Exemplary damages must, however, be awarded in accordance with Article 2230 of the Civil Code, at least one aggravating circumstance -treachery - which, in this case, qualifies the offense, being present.[43]

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.[44] In the case at bar, however, no witness was called to testify as to the victim's income.

WHEREFORE, the decision of the Regional Trial Court of Davao, finding appellant REYMAN FONCARDAS 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 the victim, Napoleon Erno, the amounts of P50,000.00 as civil indemnity for his death and P25,000.00 as exemplary damages.

SO ORDERED.

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

[1] Records at 190-218.

[2] Id. at 1.

[3] Id. at 24-25.

[4] In the April 28, 2000 Ocular Inspection Report (Records at 181-183), the trial court found that the store with the signboard Che-Che Store is actually owned by a certain Carol, so that the so-called Carol Store and Che-Che Store is one and the same.

[5] Exhibit "A," Records at 78.

- [6] Transcript of Stenographic Notes (TSN), October 8, 1999 at 12-20.
- [7] Records at 190-216.
- [8] Id. at 216.
- [9] Rollo at 55.
- [10] People v. Lachica, G.R. No. 131915, September 3, 2003.
- [11] TSN, April 30, 1998 at 11-12.
- [12] Id. at 13.
- [13] Id. at 13-14.
- [14] TSN, April 3, 1998 at 10-11.
- [15] Id. at 15-16.
- [16] Id. at 16.
- [17] People v. Baltazar, 352 SCRA 678, 686 (2001).
- [18] People v. Labitad, G.R. No. 132793, May 7, 2002.
- [19] People v. Pacapac, 248 SCRA 77, 91 (1995); People v. Aurella, 231 SCRA 394, 401 (1994); People v. Israel, 231 SCRA 155, 164 (1994).
- [20] TSN, April 3, 1998 at 21-22.
- [21] People v. Gallego, G.R. No. 127489, July 11, 2003; People v. Pidoy, G.R. No. 146696, July 3, 2003; People v. Porras, 361 SCRA 246, 269 (2001).
- [22] TSN, April 3, 1998 at 5, 21 and 26-27.
- [23] People v. Vacal, 27 SCRA 24, 28 (1969).
- [24] People v. Pueblos, 127 SCRA 746, 754 (1984).
- [25] People v. Castilano, Sr., G.R. No. 139412, April 2, 2003.
- [26] People v. Melendres, Jr., G.R. No. 134940, April 30, 2003; People v. Bustamante, G.R. Nos. 140724-26, February 12, 2003.
- [27] People v. Cañete, G.R. No. 138366, September 11, 2003; People v. Melendres, Jr., supra; People v. Appegu, 379 SCRA 703, 711 (2002); People v. Parba, 364 SCRA 488, 497 (2001); People v. Monieva, 333 SCRA 244, 252 (2000).
- [28] TSN, March 10, 2000 at 28-29.
- [29] People v. Llanes, 340 SCRA 564, 584 (2000).
- [30] Vide People v. Bacunawa, 356 SCRA 482, 489 (2001); People v. Llanes, supra; People v. Pirame, 327 SCRA 552, 566 (2000); People v. Quijon, 325 SCRA 453, 463 (2000); People v. Alib, 322 SCRA 93, 101-102 (2000); People v. Perez, 313 SCRA 544, 561 (1999); People v. Azugue, 268 SCRA 711, 725 (1997); People v. Dinglasan, 267 SCRA 26, 45 (1997).

[31] *People v. Sanchez*, 313 SCRA 254, 270 (1999).

[32] *People v. Alcodia*, G. R. No. 134121, March 6, 2003.

[33] TSN, April 30, 1998 at 18-19.

[34] Art. 15. Their concept. — Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and other conditions attending its commission. They are relationship, intoxication and the degree of instruction and education of the offender.

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The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance.

[35] Sec. 9. Cause of accusation. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

[36] *People v. Lachica*, supra; *People v. Caabay*, G.R. Nos. 129961-62, August 25, 2003; *People v. Prieto*, G.R. No. 141259, July 18, 2003; *People v. Dela Cruz*, G.R. Nos. 138931-932, July 17, 2003; *People v. Luna*, G.R. No. 135241, January 22, 2003.

[37] Vide *People v. Inggo*, G.R. No. 140872, June 23, 2003.

[38] *People v. Bajar*, G.R. No. 143817, October 27, 2003.

[39] *People v. Cortes*, 361 SCRA 80, 86 (2001).

[40] Art. 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 shall be observed in the application thereof:

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

[41] *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.

[42] Vide *People v. Gialolo*, G.R. No. 152135, October 23, 2003; *People v. Escarlos*, G.R. No. 148912, September 10, 2003; *People v. Villanueva*, G.R. No. 139177, August 11, 2003; *People v. Ibañez*, G.R. Nos. 133923-24, July 30, 2003.

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

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

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