

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VINCENT HENRY CHUA, APPELLANT.*G.R. No. 149538. July 26, 2004*

Ponente: CALLEJO, SR., J.

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Alegria Marie Antonette L. Luciano filed a petition with the Regional Trial Court in Angeles City, Pampanga for the confinement of her son, appellant Vincent Henry Chua, in a drug rehabilitation center for drug dependents. On May 20, 1994, the trial court issued an Order granting the petition and ordering the confinement of the dependent at the Gabay Diwa Drug Rehabilitation Center in Angeles City.[1] However, on June 18, 1994, the appellant escaped from the center. The trial court, thereafter, issued an Order recommitting him to the center on June 24, 1994,[2] but he again escaped.

On August 24, 1994, Magalang, Pampanga celebrated its town fiesta and there was a carnival in Barangay San Nicolas II, Magalang. A closed structure called “Wall of Danger”[3] was constructed inside the carnival grounds where stunts were performed.[4] The operator of the carnival, Alfonso Verances, had a tent inside the grounds where he and the following helpers slept: Francis Ryan Manabat, who was about twelve years old, Rodelio Santos, Michael (Vandolph) Santiago, Romeo Ignacio (Verances) and Jun Estanislao. Danilo Bondoc, who was then about eleven years old, would go to the carnival grounds and would even run errands for the helpers.

At about 1:00 a.m. on August 28, 1994, Manabat was awakened when he heard a woman shouting, “Magnanakaw! Magnanakaw!” Santiago, Ignacio and Estanislao were also roused from their sleep. They asked who the robber was and the woman replied that the culprit was a boy. Santiago, Estanislao and Ignacio found Bondoc hiding in the ticket booth. They tied his feet and hands with a rope and forced him to confess, but Bondoc did not relent.

Momentarily, the appellant arrived and brought Bondoc to a covered structure where he was kept hanging from the top of the ladder. He placed a live electric wire on Bondoc’s palms and forced the latter to confess to stealing from the woman. The boy still refused to confess. The appellant untied Bondoc and brought him to a booth where darts are thrown at balloons. He then ordered Ignacio, Santiago and Estanislao to guard Bondoc. The appellant then got a shovel and dug a knee-deep pit near the wall of their house which abutted the carnival grounds. Bondoc was able to flee, but stepped on a G.I. sheet which created noise. The appellant ran after him and brought the boy back to the covered structure. The appellant then repeatedly boxed the boy and hit the latter with a piece of wood (dos por dos) on the neck and jaw. Bondoc fell, barely conscious.

Santos, who by then, had also been awakened by the commotion, saw the appellant hitting Bondoc with the piece of wood. The appellant then brought the boy to the pit and buried him alive. The appellant then ordered Manabat, Ignacio, Santiago, Estanislao and Santos to disperse, and warned them not to divulge the incident to anyone; otherwise, they would be his next victim. The five helpers went back to sleep.

In the meantime, on August 29, 1994, the RTC issued an Order for the recommitment of the appellant to the

rehabilitation center.[5] A warrant for his arrest for robbery was also issued by the RTC in “People vs. Henry Chua,” Criminal Case No. 94-08-58.[6]

On September 1, 1994, Ignacio reported the death of Bondoc, at the hands of the appellant, to Jun Sia, a radio commentator and a reporter of the Central Luzon Times, and the latter’s co-worker, Bernie Chavit. He also reported the killing to the policemen of Police Station No. 1 in Angeles City. Sia, Chavit and SPO2 Celso de Castro and some policemen of the Magalang police station rushed to the carnival grounds and had the cadaver of Bondoc exhumed. Photographs of the exhumation and the cadaver were taken.[7] The policemen then arrested the appellant and brought him to the police station where Ignacio gave a sworn statement to SPO4 Leonardo C. de Leon identifying and pointing to the appellant as the assailant.[8]

Dr. Suzette Yalung, the Municipal Health Officer, performed an autopsy of the cadaver of Bondoc and signed her Report containing her findings, viz:

GENERAL APPEARANCE: Body in a state of decomposition.

HEENT: Caved-in fracture of (L) fronto-parietal area of the skull, caved-in fracture of left lower jaw (+) 6-inch curvilinear abrasion, (longitudinal) on (L) anterior neck, (+) fracture of cervical vertebrae.

CHEST/ABDOMEN: (+) discoloration & bloaching (sic) all over, body in a state of decomposition.

EXTREMITIES: No fracture, all extremities in flexed position.

CAUSE OF DEATH: Cardio-respiratory arrest due to asphyxiation and severe hemorrhage [Fracture of cervical vertebrae, (L) lower jaw & (L) fronto-parietal area of the skull.][9]

On September 8, 1994, an Information was filed with the Regional Trial Court of Pampanga, Branch 57, charging Chua with murder. The accusatory portion of the Information reads:

That on or about the 28[th] day of August 1994, in Brgy. San Nicolas II, Municipality of Magalang, Province of Pampanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, qualified by treachery, abuse of superior strength and cruelty, did then and there, willfully, unlawfully and feloniously assault, attack, box and hit with a piece of wood, a 12-year-old minor Danilo Bondoc y Ponay, without justifiable reason therefor and as a result of the continuous assault on the person of Danilo Bondoc y Ponay by the accused, said Danilo Bondoc y Ponay sustained fatal and serious physical injuries all over his body and accused, thereafter, threw the body of said Danilo Bondoc y Ponay into a hole dug by the accused and covered the same, resulting to the death of said Danilo Bondoc y Ponay shortly thereafter, to the damage and prejudice of the heirs of Danilo Bondoc y Ponay.

Contrary to law.[10]

The appellant, assisted by counsel, was duly arraigned and entered a plea of not guilty.

The Case for the Appellant

The appellant admitted to being at the scene of the crime, but claimed that Bondoc’s assailants were Ignacio, Santiago and Estanislao. He testified that at about past midnight of August 28, 1994, he was in the office of the manager at the carnival grounds at Marves Subdivision, where he and his parents and the Chief of Police of Magalang, resided. He was playing tongking with the helpers of the carnival. He left for a while and when he returned, saw his cousin, Jomar Basa, and Romeo Ignacio, inside the covered structure talking about Bondoc who was hanging at the top of the ladder. He wanted the boy released, but Ignacio refused and assured him that nothing would happen to the boy. Ignacio tied up Bondoc and brought him to the “dart balloon” booth. Ignacio also kicked Bondoc and ordered Santiago and Estanislao to tie up Bondoc. Santiago and Estanislao did as they

were told, and forced him to lie down on his stomach. When he remonstrated to Ignacio, the latter went out to the covered structure and took a .45 caliber gun. Ignacio warned him not to interfere with the carnival helpers. He told Santiago to give biscuits to the boy, but Estanislao objected and even warned him that he was a police officer.

The appellant then left, hearing Bondoc's cries as he walked away. When he returned to the place, he saw the boy being kicked on his feet and palms by Estanislao and Santiago. He asked that Bondoc be released, but his request went unheeded. On orders of Ignacio, Estanislao got a shovel, and dug a hole with Santiago's help, while Ignacio watched over Bondoc. Bondoc was able to run away, but stepped on a G.I. sheet which created noise and alerted the three. Ignacio, Santiago and Estanislao ran after the boy, collared him and brought him to the covered structure where he was electrocuted by Ignacio with a wire that Santiago produced. The appellant protested to this, but Ignacio told him that even if he protested, he would still be implicated anyway.

By this time, the commotion had attracted several bystanders, male and female. Ignacio covered Bondoc's mouth with a handkerchief which was supplied by Santiago. The boy was then brought to a hole where Ignacio hit him with a piece of wood. Bondoc fell into the hole, whereupon Ignacio buried him. On orders of Ignacio, Santiago and Estanislao placed garbage on top of the boy's grave. Ignacio warned the appellant that if he revealed the incident to others, he would be implicated. The appellant then went home and slept. He was awakened by his uncle, Jerry Luciano, who told him that policemen were looking for him. He was brought to the police station where he was detained and charged for the death of Bondoc.

Jomar Basa corroborated, in part, the appellant's testimony, but testified that the helpers in the carnival grounds, aside from Ignacio, Santiago and Estanislao, as well as Darwin David and Oliver Santos, witnessed the crime. He also saw Bondoc being tied and kicked. He asked Ignacio to turn over custody of Bondoc to him, but Ignacio refused. He left the carnival grounds along with Santos and David. When they returned, they saw Lovely Ignacio, Romeo Ignacio's wife, and asked where the boy's body was, and the latter replied that Bondoc had gone home already.

The appellant presented Rodolfo La Madrid, Geoffrey Alegre, Oliver Santos, Macario Paulino, Jocelyn Roberto and Rufino Ang, to corroborate his testimony and fortify his defense.

After trial, the court rendered judgment convicting the appellant of the crime charged. The court declared that the appellant was a minor when the crime was committed; hence, was entitled to the privileged mitigating circumstance of minority under Article 68 of the Revised Penal Code. The decretal portion of the decision reads:

WHEREFORE, finding the accused Vincent Henry Chua guilty beyond reasonable doubt of the crime of Murder, the Court hereby sentences him to suffer the penalty of 17 YEARS, 4 MONTHS and 1 DAY OF RECLUSION TEMPORAL, as minimum, to RECLUSION PERPETUA, as maximum, with full credit of his preventive imprisonment.

As to the civil liability, the accused will indemnify the family of the victim as follows:

- Actual damages in the amount of FIFTY THOUSAND PESOS (P50,000.00);
- Moral damages in the amount of FIFTY THOUSAND PESOS (P50,000.00);
- Exemplary damages under Art. 2230 of the Civil Code of an appropriate amount of TWENTY THOUSAND PESOS (P20,000.00); and
- Attorney's fees in the amount of FIFTEEN THOUSAND PESOS (P15,000.00).[11]

On appeal, the Court of Appeals rendered judgment affirming the judgment of the trial court, but applied Article 63 of the Revised Penal Code and increased the penalty to reclusion perpetua. The appellate court considered the

minority of the appellant merely as a generic mitigating circumstance, and concluded that such minority could not be considered a generic and a privileged mitigating circumstance at the same time. The appellate court certified the case to this Court for review, conformably to Rule 124, Section 13 of the Revised Rules of Criminal Procedure.

The Present Appeal

The appellant did not file any supplemental brief with this Court; neither did the appellee.

In his brief with the Court of Appeals, the appellant averred as follows:

I

THE TRIAL COURT ERRED IN DISREGARDING THE FACT THAT THERE WAS A COVER-UP DONE BY THE POLICE AUTHORITIES OF MAGALANG, PAMPANGA, AS TO THE REAL IDENTITIES OF THE CULPRITS.

II

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE VERSION OF THE PROSECUTION AS TO THE ALLEGED INCIDENT IS REplete WITH IMPROBABILITIES AND CONTRARY TO HUMAN EXPERIENCE.

III

THE TRIAL COURT ERRED IN NOT HOLDING THAT THE PROSECUTION EYEWITNESSES ARE ACTUATED WITH BAD MOTIVE IN IMPLICATING THE ACCUSED-APPELLANT AS THE PERPETRATOR OF THE CRIME AND IN NOT DISCREDITING THE EYEWITNESSES OF THE COMMISSION OF THE CRIME.

IV

THE TRIAL COURT ERRED IN DISREGARDING THE TESTIMONY OF DEFENSE WITNESS RODOLFO LA MADRID.

V

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER.

VI

THE TRIAL COURT ERRED IN NOT CONSIDERING THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER IN FAVOR OF THE ACCUSED-APPELLANT.

VII

THE COURT A QUO ERRED IN ORDERING THE ACCUSED-APPELLANT TO PAY P50,000.00 AS ACTUAL DAMAGES, P50,000.00 AS MORAL DAMAGES, P20,000.00 AS EXEMPLARY DAMAGES AND P15,000.00 AS ATTORNEY'S FEES.[12]

The appellant asserts that the testimonies of Manabat and Sia are incredible. He contends that he was only seventeen years old when the crime was committed and, as such, he could not have committed the crime alone. He insists that there must have been others who assisted him in electrocuting the victim and in digging a knee-deep hole in which the victim was buried. He laments that the trial court even ignored the fact that Ignacio was convicted of carnapping.[13]

The appellant also avers that he could not have committed the crime in the presence of onlookers, and in a place which was only a few meters away from the police station. The appellant claims that police officers Remigio Layug and Leonardo C. de Leon “covered-up” the investigation because despite reports that Ignacio, Santiago and Estanislao were involved in the crime, they were not investigated nor included in the charge of murder against the appellant. The police officers were even administratively sanctioned for their misconduct.

The appellant contends that the claims of Manabat and Santos, that they refrained from reporting the crime because they were afraid of the appellant, are incredible. He avers that the prosecution presented Manabat and Sia as surrebuttal witnesses when Ignacio and Estanislao failed to appear during the preliminary investigation in the Municipal Trial Court and during the trial in the RTC. Manabat’s testimony that he was from Barangay Camias, San Miguel, Bulacan, was belied by Barangay Captain Macario Paulino and his certification that Manabat and his family were not residents of the said barangay.

The Ruling of the Court

The contention of the appellant has no merit.

First. The trial court gave credence and full probative weight to the testimony of the prosecution witnesses, Manabat and Santos, viz:

The revelation of Manabat and Santos were confirmed by Dr. Suzette Yalung, the one who made the autopsy on the cadaver of victim Danilo Bondoc, who testified that the cause of death of the victim was cardio-respiratory arrest and asphyxiation, severe hemorrhage, fracture of cervical vertebrae and left lower jaw and fracture on the left parietal area of the skull, the very injuries testified to by Manabat and Santos were the ones found by Dr. Yalung on the body of the victim confirming the authenticity of the former’s testimony.

The evidence also disclosed that victim Danilo Bondoc was tortured by the accused when he ran a 110-voltage electric wire in the palm and feet of the victim and that the victim was also mauled causing severe hemorrhage in his body.

Viewing the entire testimony of the witnesses for the prosecution, the Court finds the same to be consistent and corroborated one another, leading this Court to believe the same.

The Court also noted that Francis Ryan Manabat and Rodelito Santos did not waver but stood pat during their cross-examinations.

The Court did not find any motive for Manabat and Santos to pinpoint the accused as the culprit. There is no animosity nor bad blood between Manabat and Santos, on one hand, and the accused, on the other hand. In fact, Manabat and Santos are afraid of the accused because Vincent Henry Chua is a “siga” and “matapang” as per testimony of Rodelito Santos considering the fact that the family of the accused is the owner of the lot where the peryahan is located.[14]

The Court of Appeals affirmed the findings of the trial court. The well-settled rule is that the findings of facts of the trial court, especially when affirmed by the Court of Appeals, are conclusive on this Court unless the trial court ignored, overlooked or misconstrued facts and circumstances which if considered warrants a revision or reversal of the outcome of the case.[15] We have reviewed the records and find no justification to deviate from the trial court’s findings.

Second. The appellant failed to prove with clear and convincing evidence the physical impossibility of digging a knee-deep hole in the ground alone, with the use of a shovel. There is no evidence that the soil where the appellant dug was hard or even strong. At such a youthful age of seventeen years, the appellant had the physical strength and stamina to dig a knee-deep hole all by himself.

Third. It is futile for the appellant to argue that it was unnatural of him to have committed the crime in full view of onlookers. Crimes are known to have been brazenly committed by perpetrators undeterred by the presence of onlookers or even of peace officers, completely impervious of the inevitability of criminal prosecution and conviction. In this case, the appellant was a drug dependent, an escapee from the rehabilitation center and had an outstanding warrant for his arrest for robbery, and an Order for his recommitment to a rehabilitation center.

The appellant's bare denials cannot prevail over the positive, straightforward and unwavering identification made by Santos and Manabat, that the appellant was the sole perpetrator of the crime. Thus, we agree with the findings and disquisitions of the Court of Appeals, viz:

Accused-appellant further denies having inflicted any injuries on the victim. He claims it was impossible for him to beat the boy to death and at the same time dig the small grave where the victim's body was buried.

The evidence on record does not refute in any manner the capability of the accused to commit such acts of violence. On the contrary, appellant's destructive behavior does not run counter to his psychological profile brought about by his drug dependency at the time of the incident. The record shows that accused-appellant's own mother Ma. Antoinette L. Luciano had filed with the Regional Trial Court in Angeles City, a petition for the voluntary commitment of the accused-appellant in a drug rehabilitation center. ...

...

However, accused-appellant escaped from the Gabay Diwa Rehabilitation Center, thereby causing Ronald P. Balatbat, a psychologist of the said center, to recommend to the Angeles City Regional Trial Court the recommitment of accused-appellant. Acting on said recommendation, said court in its Order dated June 24, 1994, ordered the recommitment of accused-appellant for continuous treatment. But, again, accused escaped for the second time, thereby giving rise to another Recommitment Order dated August 29, 1994. ...

...

Clearly, on the day of the fatal incident, accused-appellant was a second-time escapee from the drug dependency rehabilitation program he was sentenced to undergo. This is indicative of accused-appellant's unwillingness to be rehabilitated from his dependency to drugs. Undoubtedly, accused-appellant's drug dependency was responsible for his violent behavior towards the victim.

Accused-appellant's drug dependency and troublesome behavior was no surprise to the "perumahan" workers. They were aware that the carnival grounds belonged to the family of accused-appellant who resides some fifty (50) meters away from the "perumahan." The proximity of the carnival grounds to the house of accused-appellant made it easy for him to frequent the place during daytime and nighttime as well. The "perumahan" workers observed accused-appellant as one that displayed a behavior characterized by them as a "bully" or "siga." Accused-appellant's drug dependency, reputation and influence deterred the "perumahan" workers, who were mere transients in Magalang, from intervening while accused-appellant was committing the crime. This was further bolstered when accused-appellant, who, after burying the victim, threatened the "perumahan" workers with harm if they would report what had just transpired to the police authorities. This explains why prosecution witnesses Romeo Ignacio and Jaime Estanislao were reluctant in divulging any information relative to the fatal incident while they were still in Magalang, and why they waited until they were relocated to Angeles before going to the police authorities to report the incident.

Prosecution witnesses Francisco Manabat and Rodelito Santos have positively identified accused-appellant as the one who inflicted upon the young victim such bodily harm. Manabat vividly recounted the entire incident from the time the victim was apprehended by the "perumahan" boys at the instance of a woman vendor to the time the accused-appellant took custody of the victim and started beating him which led to his untimely death. Santos who witnessed the accused-appellant struck and hit the victim with a piece of wood on the neck and jaw, causing the victim to fall down, materially corroborated this. The rule is the detailed testimony of a

witness in a murder or homicide case acquires greater weight and credibility if it corresponds with the autopsy report.[16]

Fourth. The appellant is not entitled to an acquittal simply because the police investigators did not include Ignacio, Santiago and Estanislao in their investigation, nor charge them, in tandem with the petitioner, for the death of Bondoc. The evidence on record shows that the involvement of Ignacio, Santiago and Estanislao was confined only to the tying of Bondoc's hands and feet, on suspicion for robbery. When the appellant arrived at the scene, he took sole charge, tortured the victim and buried him alive. The policemen found no basis for charging the other helpers for the death of the victim. In fine, the appellant cannot invoke as basis for his acquittal the minor and inconsequential involvement of the helpers. We affirm the findings and disquisitions of the Court of Appeals on this matter, viz:

Anent the first assignment of error, appellant contends that the trial court erred when it totally disregarded and ignored the March 15, 1995 Decision of the Regional Director of the Philippine National Police Command III (PNP RECOM 3) in the administrative case filed by the appellant's mother, Ma. Antoinette Luciano, against P/Insp. Romeo Layug and SPO4 Leonardo de Leon of the Magalang Police Station, wherein it found as haphazard and irregular the investigation conducted by the aforementioned officers involving the death of Danilo Bondoc.

We do not subscribe to accused-appellant's urgings. Precisely, in due course of this case, accused-appellant had moved for a reinvestigation in order "to determine who are the real culprits who killed the 12-yr.-old boy," which the trial court granted without objection from the prosecution. During the reinvestigation, the statements of the accused-appellant, together with those of his witnesses, namely, Joemar (sic) Basa and Oliver Santos, were all re-evaluated. Thereafter, 1st Assistant Provincial Prosecutor Jesus Y. Manarang stood pat on his finding that a prima facie case for murder exists only with respect to accused-appellant, and recommended that the Information dated September 2, 1994 filed against the accused ought to be maintained.[17]

Fifth. The credibility of the testimonies of Manabat and Santos and the probative weight thereof were not affected by their failure to report the terrifying crime they witnessed, nor by the prosecution's failure to present Ignacio as witness. As the Court of Appeals declared:

The facts reveal that the "peryahan" workers were the only witnesses who positively identified the accused-appellant as the one responsible for inflicting the fatal wounds on the victim. The notorious behavior and influential family background of the accused-appellant were among the reasons, which prevented these witnesses from reporting the incident to the police authorities in Magalang. Since they were all transients, they opted to keep their silence until they were able to transfer to Angeles City where the authorities there were informed of the incident. SPO2 Celso de Castro of the Angeles Police even testified that when the case was to be turned over to the Magalang Police, Romeo Ignacio was afraid of accompanying them to the Magalang police station. On the other hand, reporter Jun Sia of the Central Luzon Times testified that when he asked Romeo Ignacio why he reported the incident to the Angeles Police instead of the Magalang Police, the latter replied that accused-appellant was influential in Magalang, Pampanga.

What is more apparent is the fact that Romeo Ignacio and Jaime Estanislao were so afraid to appear at the preliminary investigation after having identified accused-appellant and given their respective statements on September 1, 1994. Nevertheless, the prosecution was able to present other witnesses in the persons of Francis Manabat and Rodelito Santos who initially refused to testify against the accused-appellant because they too were afraid of him. Then again, the two finally changed their minds and thereafter testified as a consequence of their desire to give justice to the victim.

A witness' unwillingness to volunteer information regarding a particular crime due to fear of reprisal is common enough that it has been judicially declared as not affecting a witness' credibility. Neither substantive nor procedural law requires any person witnessing a crime to immediately report the matter to the proper

authorities or to give his statement thereon. Furthermore, the delay in reporting what a witness knows about a crime does not by itself render his testimony unworthy of belief if such delay has been adequately explained. It has, likewise, been held that a witness' failure to volunteer information to law enforcement officers does not necessarily impair a witness' credibility, and part of the reason for this is the reticence and fear of some people of getting involved in a criminal case.

Accused-appellant asserts that the trial court's acquiescence of both the testimonies of Francis Manabat and Rodelito Santos which it later found credible as against that of defense witness Rodolfo La Madrid's rejected testimony was unfair since both testimonies were belatedly given.

The threats to the lives of Francis Manabat and Rodelito Santos were apparent because their "kubols" were constructed on the land owned by the family of the accused-appellant whose place of residence was just a few meters away from the fence of the carnival grounds. On the other hand, Rodolfo La Madrid was not actually threatened by anyone from testifying, not even Romeo Ignacio, who, less than a week after the incident, left for Angeles City with his other fellow "peryahan" workers. By reason thereof, this Court agrees with the lower court when it found no cogent reason to give credibility to the belated testimony of Rodolfo La Madrid.

This Court finds no credence in accused-appellant's argument that witnesses Francis Manabat and Rodelito Santos, who are related in some manner with Jaime Estanislao and Romeo Ignacio, were actuated by improper motive in testifying against appellant.

It would be very difficult to accept the averment of the defense that prosecution witnesses Francisco Manabat and Rodelito Santos, who were only 14 and 19 years old, respectively, when they testified, maliciously pointed to accused-appellant as the perpetrator of such a serious crime. Being of tender age, these two could not have survived a gruelling direct and cross-examination without being detected or exposed, had they decided to use their imagination in trying to render a detailed account of a murder. Not only did their testimonies stand the ultimate test of cross-examination but were also in consonance with the other evidence of the prosecution. It has been repeatedly held that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court. It is clear that the two had no other motive but to render justice to the victim and that of his family.[18]

In sum, we find the decision of the Court of Appeals finding the appellant guilty beyond reasonable doubt for the death of Danilo Bondoc to be in accord with the evidence on record and current jurisprudence.

The trial court convicted the appellant of murder without stating the qualifying circumstance attendant to the crime. The trial court also appreciated in favor of the appellant the mitigating circumstance of voluntary surrender and considered such minority as a mere mitigating circumstance. We shall then modify the decision of the trial court and the appellate court.

The crime was qualified by treachery. The victim, who was barely thirteen years old, was helpless and unable to defend himself. His feet and hands were tied while the appellant mauled and kicked him, and hit him with a piece of wood.[19] The appellant was so depraved that he even electrocuted the victim by placing a live wire on the latter's palms and burying him alive. This is borne by the autopsy report of Dr. Suzette Yalung, which indicates that the victim died because of cardiac arrest due to asphyxiation. By his detestable acts, the appellant intended to exacerbate the suffering of the victim. Hence, cruelty was attendant to the commission of the crime.[20] However, cruelty is absorbed by treachery.

The trial court and appellate court also erred in appreciating the mitigating circumstance of voluntary surrender in favor of the appellant. He was arrested by the policemen not only for his involvement in the killing of the victim but also because of the warrant for his arrest for robbery, and the recommitment order issued by the RTC for escaping from the rehabilitation center.

The appellate court erred, likewise, in appreciating the minority of the appellant merely as a generic mitigating circumstance. While under Article 13, paragraph 2 of the Revised Penal Code, minority is a mitigating circumstance, this provision must be construed in relation to Article 68[21] thereof, which provides that minority is a privileged mitigating circumstance warranting the reduction of the imposable penalty by one or two degrees, depending upon the age of the accused. The minority of the accused is not merely a generic mitigating circumstance but is a privileged mitigating circumstance. Furthermore, in determining the penalty to be meted on the accused, the trial court must first consider any modifying circumstance attendant to the crime.

In this case, the appellant was seventeen years old when he committed the crime. Hence, the imposable penalty must be reduced by one degree, conformably to Article 68 of the Revised Penal Code. The imposable penalty for murder is reclusion perpetua to death under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659. One degree lower than reclusion perpetua to death is reclusion temporal, conformably to paragraph 2, Article 61,[22] in relation to Article 25 of the Revised Penal Code.

To determine the minimum of the indeterminate penalty, reclusion temporal should be reduced by one degree, prision mayor, which has a range of from six (6) years and one (1) day to twelve (12) years. There being no modifying circumstances attendant to the crime, the maximum of the indeterminate penalty should be imposed in its medium period. The minimum of the indeterminate penalty should be taken from the full range of prision mayor.

IN LIGHT OF ALL THE FOREGOING, the petition is **PARTIALLY GRANTED**. The Decision of the Court of Appeals affirming the Decision of the Regional Trial Court of Angeles City, Pampanga, Branch 57, convicting the appellant Vincent Henry Chua of murder under Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659, is **AFFIRMED** with **MODIFICATIONS**. Taking into account the minority of the appellant and the absence of any other modifying circumstance attendant to the crime, he is sentenced to suffer an indeterminate penalty of from ten (10) years and one (1) day of prision mayor in its maximum period, as minimum, to fifteen (15) years of reclusion temporal in its medium period, as maximum. The appellant is **ORDERED** to pay the heirs of the victim, Danilo Bondoc, Fifty Thousand Pesos (P50,000) as civil indemnity; Fifty Thousand Pesos (P50,000) as moral damages; and Twenty Five Thousand Pesos (P25,000) as exemplary damages,[23] conformably to current jurisprudence. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Exhibit “H.”

[2] Exhibit “I.”

[3] This was referred to by the prosecution witnesses as “Wall of Death.”

[4] Exhibit “1- C.”

[5] Exhibit “J.”

[6] Exhibit “K.”

[7] Exhibits “D” to “D-4.”

[8] Exhibit “B.”

[9] Exhibit "C."

[10] Records, p. 1.

[11] CA Rollo, pp. 66-67.

[12] Id. at 14.

[13] Exhibit "12."

[14] CA Rollo, p. 62.

[15] *People of the Philippines v. Jerryvie Gumayao y Dahao*, G.R. No. 138933, October 28, 2003.

[16] CA Rollo, pp. 169-171.

[17] Id. at 167-168.

[18] Id. at 174-176.

[19] *People vs. Lucena*, 356 SCRA 90 (2001).

[20] *People vs. Valdez*, 350 SCRA 189 (2001).

[21] ART. 68. Penalty to be imposed upon a person under eighteen years of age. – When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

- Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.
- Upon a person over fifteen and under eighteen years of age, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

[22] ART. 61. Rules for graduating penalties.— For the purpose of graduating the penalties which, according to the provisions of articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

...

- When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

[23] *People vs. Delim*, 396 SCRA 386 (2003).

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