

EDGAR CRISOSTOMO, PETITIONER, VS. SANDIGANBAYAN, RESPONDENT.*G.R. NO. 152398. April 14, 2005*

Ponente: CARPIO, J.

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This is an appeal by certiorari under Rule 65 of the Revised Rules on Civil Procedure of the Sandiganbayan Resolutions promulgated on 17 September 2001 and 14 January 2002, denying the Motion for Reconsideration filed by petitioner SPO1 Edgar Crisostomo ("Crisostomo") assailing the court's Decision^[1] promulgated on 28 November 2000. The Decision found Crisostomo guilty of the crime of murder and sentenced him to suffer the indeterminate penalty of twelve (12) years, five (5) months and eleven (11) days of prision mayor as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal as maximum.

The Charge

On 19 October 1993, Crisostomo, a member of the Philippine National Police and a jail guard at the Solano Municipal Jail was charged with the murder of Renato Suba ("Renato"), a detention prisoner at the Solano Municipal Jail. The Information alleged that Crisostomo conspired with his co-accused, Dominador C. dela Cruz ("dela Cruz"), Efren M. Perez ("Perez"), Raki T. Anggo ("Anggo"), Randy A. Lumabo ("Lumabo"), Rolando M. Norberte ("Norberte") and Mario Calingayan ("Calingayan"), all inmates at the Solano Municipal Jail, in murdering Renato. The Information reads in full:

That on or about the 14th day of February 1989, in Solano, Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Pat. Edgar T. Crisostomo, a public officer, being then a member of the Philippine National Police (PNP) stationed at Solano Police Station and a jailer thereat, taking advantage of his public position and thus committing the offense in relation to his office, conspiring, confederating and conniving with his co-accused who are inmates of the Solano Municipal Jail, namely: Dominador C. dela Cruz, Efren M. Perez, Raki T. Anggo, Randy A. Lumabo, Rolando M. Norberte and Mario B. Calingayan, with intent to kill and with treachery, taking advantage of superior strength and with the aid of armed men or employing means to weaken the defense or of means or persons to insure or afford impunity, did then and there wilfully, unlawfully and feloniously attack and assault one Renato Suba, a detention prisoner, with the use of rough-surfaced instruments, including fist blows, inflicting upon him serious injuries causing his internal organs to be badly damaged such as his liver, messentery and stomach resulting to the death of said Renato Suba to the damage and prejudice of the heirs of the latter.

CONTRARY TO LAW.^[2]**Arraignment and Plea**

On 15 December 1993, Crisostomo assisted by counsel, pleaded not guilty to the crime charged.^[3] Thereafter,

trial ensued.

Version of the Prosecution

On 13 February 1989, Renato was detained at the municipal jail in Solano, Nueva Vizcaya for allegedly hitting the head of one Diosdado Lacangan. The following day, 14 February 1989, at 5:00 p.m., Renato's brother Rizalino Suba ("Rizalino") visited him at the municipal jail. Renato asked Rizalino to bring him blanket, toothbrush, clothes and food. Rizalino left the municipal jail that day at 5:20 p.m. At that time, Renato was in good physical condition and did not complain of any bodily pain. Renato was 26 years old, single, and was employed in a logging concession.

At 9:00 p.m., a barangay councilman informed Rizalino that policemen assigned at the Solano municipal jail wanted Rizalino to go to the municipal building. Rizalino arrived at the municipal jail at 9:10 p.m. and saw his brother Renato already dead on the floor outside his cell.

Renato was detained alone in the third cell, one of the four cells at the municipal jail. Although each of the four cells had an iron grill door equipped with a padlock, the doors were usually left open. The keys to the padlocks were with the jail guard. There was a common front door, which no one could enter but the jail guard. Only one jail guard at a time was assigned at the municipal jail. Crisostomo was the one on duty at the time of the death of Renato. At no time was Renato brought out of the cell during his detention on 13 February 1989 until his death in the evening of the following day. Crisostomo's position in relation to the cell where the victim was killed was such that Crisostomo as jail guard could have heard if not seen what was going on inside the cell at the time that Renato was killed.

There are unexplained discrepancies in the list of detainees/prisoners and police blotter. The list of detainees/prisoners dated 20 February 1989 shows that there were eight prisoners on 14 February 1989, including Renato, but after Renato's death, only six were turned over by Crisostomo to the incoming jail guard. On 15 February 1989, nine "prisoners/detainees" were on the list, including Renato who was already dead. However, the police blotter shows that only six prisoners were under custody. The persons who were detained with Renato at the time of his death were released without being investigated by the Solano police.

Renato did not commit suicide. His body bore extensive injuries that could have been inflicted by several persons. The exhumation and autopsy reports ruled out suicide as the cause of Renato's death. The deafening silence of the inmates and the jail guard, Crisostomo, point to a conspiracy. Crisostomo's guilt is made apparent when he jumped bail during trial.

Version of the Defense

The presentation of evidence for Crisostomo's defense was deemed waived for his failure to appear at the scheduled hearings despite notice.

Calingayan, Crisostomo's co-accused, was the sole witness for the defense. Calingayan was only 16 years old at the time that he was charged with the murder of Renato. Calingayan denied killing Renato.

Calingayan was detained at the Solano Municipal Jail on 12 February 1989 because his brother-in-law, Patrolman Feliciano Leal ("Leal"), also a jail guard, had him arrested for pawning some of the belongings of Leal. Leal told Calingayan that he had him detained for safekeeping to teach him a lesson.

Renato was detained on 13 February 1989. Calingayan learned that Renato was detained for hitting somebody's head.

There were four cells at the municipal jail. Calingayan was detained with five other inmates in the second cell. Renato was detained alone in the third cell. The four cells had their own separate doors with padlocks but each door was always open. It was up to the inmates to close the doors. A common door leading to the four cells was always padlocked and no one could enter the door without the jail guard's permission. The jail guard had the keys to the cells and the common door. Only one jail guard was assigned to guard the cells. Crisostomo was the jail guard on duty at the time that Renato died.

Calingayan was in jail for three days or until 15 February 1989. Calingayan last saw Renato alive between 5 to 6 p.m. of 14 February 1989. Just as Calingayan was about to take a bath after 6 p.m., he saw Renato lying down. One of the inmates asked for Renato's food because he did not like to eat his food. After taking a bath, Calingayan went back to his cell and played cards with his three cellmates whose names he could not recall. Calingayan did not leave his cell during the four hours that he played cards but one of his cellmates went out.

Calingayan discovered Renato's body on 14 February 1989 between 9:00 p.m. to 10:00 p.m. Calingayan went to the fourth cell, where the comfort room was located, to urinate. While urinating, Calingayan saw at the corner of the cell a shadow beside him. A bulb at the alley lighted the cell. Calingayan ran away and called the other inmates, telling them that the person in cell number four was in the dark place. The other inmates ran towards the place and shouted "si kuwan, si kuwan." Crisostomo was in the room at the left side from where Calingayan was detained, about fifteen meters away. Upon hearing the shouts, Crisostomo opened the main door. Once inside the cell, Crisostomo instructed the inmates to bring down Renato's body that was hanging from the iron bars of the window of the cell. At that time, Calingayan did not notice what was used in hanging Renato but when the body was brought outside, Calingayan saw that Renato had hanged himself with a thin blanket.

The four cells are not similar in area and size. The cell where Renato stayed is the smallest. The cells are separated by a partition made of hollow blocks as high as the ceiling. The four cells are in one line so that if you are in one cell you cannot see what is happening in the other cells. The inmates could go to any of the four cells in the prison but they could not get out of the main door without the permission of the jail guard. The comfort room is in the fourth cell, which is also open so that the inmates would not anymore ask for the key from the office of the jail guard.

The blanket that Renato used to hang himself was tied to the iron grills of the window of the cell. The window is small, only about two feet by one and one-half feet with eight iron bars. The window is nine feet from the floor.

No other person was admitted on 14 February 1989. Calingayan does not have a grudge against Renato. He could not recall if there was any untoward incident between Renato and the other inmates. The Solano police investigated Calingayan the next morning.

The Ruling of the Sandiganbayan

Only Crisostomo and Calingayan stood trial. The other accused, dela Cruz, Perez, Anggo, Lumabo and Norberte were at large. The Sandiganbayan found sufficient circumstantial evidence to convict Crisostomo and Calingayan of murder. The Sandiganbayan relied on the autopsy and exhumation reports in disregarding the defense theory that Renato committed suicide by hanging himself with a blanket. The Sandiganbayan thus held:

Premises considered, accused Edgar Crisostomo and Mario Calingayan are hereby found guilty of the crime of murder.

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There being no attending mitigating or aggravating circumstance in the case of accused Edgar Crisostomo, and

taking into consideration the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of imprisonment for the period from twelve (12) years, five (5) months and eleven (11) days of prison mayor, minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, maximum.

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As to the other accused, Dominador C. Dela Cruz, Efren M. Perez, Raki T. Anggo, Randy A. Lumabo and Rolando M. Norberte, considering they are still at-large up to the present time, let an alias warrant of arrest be issued against them. In the meantime, the cases against them are hereby ordered archived.

SO ORDERED.[4]

The Issues

Crisostomo continues to assail the Sandiganbayan's jurisdiction. He raises the following issues:

WHETHER THE SANDIGANBAYAN HAS JURISDICTION OVER THE CRIME OF MURDER CHARGED AGAINST CRISOSTOMO WHO IS A SENIOR POLICE OFFICER 1 (SPO1) AT THE TIME OF THE FILING OF THE INFORMATION AGAINST HIM.

EVEN ASSUMING ARGUENDO THAT THE RESPONDENT COURT HAS JURISDICTION, WHETHER THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT CRISOSTOMO IS GUILTY OF HAVING CONSPIRED IN THE MURDER OF RENATO DESPITE THE SANDIGANBAYAN'S ADMISSION IN ITS DECISION THAT THERE IS NO DIRECT EVIDENCE THAT WILL SHOW THE PARTICIPATION OF CRISOSTOMO IN THE DEATH OF THE VICTIM.[5]

The Court's Ruling

The Sandiganbayan had jurisdiction to try the case. However, the prosecution failed to prove Crisostomo and Calingayan's guilt beyond reasonable doubt. Thus, we acquit Crisostomo and Calingayan.

The Sandiganbayan had Jurisdiction to Try the Case

Crisostomo argues that the Sandiganbayan was without jurisdiction to try the case. Crisostomo points out that the crime of murder is not listed in Section 4 of Presidential Decree No. 1606 ("PD 1606") as one of the crimes that the Sandiganbayan can try. Crisostomo faults the Sandiganbayan for not applying the ruling in *Sanchez v. Demetriou*[6] to this case. In *Sanchez v. Demetriou*, the Court ruled that public office must be a constituent element of the crime as defined in the statute before the Sandiganbayan could acquire jurisdiction over a case. Crisostomo insists that there is no direct relation between the commission of murder and Crisostomo's public office. Crisostomo further contends that the mere allegation in the Information that the offense was committed in relation to Crisostomo's office is not sufficient to confer jurisdiction on the Sandiganbayan. Such allegation without the specific factual averments is merely a conclusion of law, not a factual averment that would show the close intimacy between the offense charged and the discharge of Crisostomo's official duties.

We are not convinced.

Since the crime was committed on 14 February 1989, the applicable provision of law is Section 4 of PD 1606, as amended by Presidential Decree No. 1861 ("PD 1861"), which took effect on 23 March 1983. The amended provision reads:

Sec. 4. Jurisdiction. The Sandiganbayan shall exercise:

(a) Exclusive original jurisdiction in all cases involving:

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(2) Other offenses or felonies committed by public officers and employees in relation to their office, including those employed in government-owned or controlled corporations, whether simple or complexed with other crimes, where the penalty prescribed by law is higher than prison correccional or imprisonment for six (6) years, or a fine of P6,000.00: PROVIDED, HOWEVER, that offenses or felonies mentioned in this paragraph where the penalty prescribed by law does not exceed prison correccional or imprisonment for six (6) years or a fine of P6,000.00 shall be tried by the proper Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court and Municipal Circuit Trial Court.

Crisostomo was charged with murder, the penalty for which is reclusion temporal in its maximum period to death, a penalty within the jurisdiction of the Sandiganbayan.

Crisostomo would have the Court believe that being a jail guard is a mere incidental circumstance that bears no close intimacy with the commission of murder. Crisostomo's theory would have been tenable if the murdered victim was not a prisoner under his custody as a jail guard. The function of a jail guard is to insure the safe custody and proper confinement of persons detained in the jail. In this case, the Information alleges that the victim was a detention prisoner when Crisostomo, the jail guard, conspired with the inmates to kill him.

Indeed, murder and homicide will never be the main function of any public office. No public office will ever be a constituent element of murder. When then would murder or homicide, committed by a public officer, fall within the exclusive and original jurisdiction of the Sandiganbayan? *People v. Montejo*[7] provides the answer. The Court explained that a public officer commits an offense in relation to his office if he perpetrates the offense while performing, though in an improper or irregular manner, his official functions and he cannot commit the offense without holding his public office. In such a case, there is an intimate connection between the offense and the office of the accused. If the information alleges the close connection between the offense charged and the office of the accused, the case falls within the jurisdiction of the Sandiganbayan. *People v. Montejo* is an exception that *Sanchez v. Demetriou* recognized.

Thus, the jurisdiction of the Sandiganbayan over this case will stand or fall on this test: Does the Information allege a close or intimate connection between the offense charged and Crisostomo's public office?

The Information passes the test.

The Information alleged that Crisostomo "a public officer, being then a member of the Philippine National Police (PNP) stationed at Solano Police Station and a jailer thereat, taking advantage of his public position and thus committing the offense in relation to his office" conspired, confederated and connived with his co-accused who are inmates of the Solano Municipal Jail to kill Renato, "a detention prisoner."

If the victim were not a prisoner, the Information would have to state particularly the intimate relationship between the offense charged and the accused public officer's office to vest jurisdiction on the Sandiganbayan. This is not the case here. The law restrains the liberty of a prisoner and puts him under the custody and watchful eyes of his jail guard. Again, the two-fold duties of a jail guard are to insure the safe custody and proper confinement of persons detained in the jail. The law restricts access to a prisoner. However, because of the very nature of the work of a jail guard, he has access to the prisoner. Crisostomo, as the jail guard, could not have conspired with the inmates to murder the detention prisoner in his cell if Crisostomo were not a "jailer."

The Information accused Crisostomo of murdering a detention prisoner, a crime that collides directly with Crisostomo's office as a jail guard who has the duty to insure the safe custody of the prisoner. Crisostomo's purported act of killing a detention prisoner, while irregular and contrary to Crisostomo's duties, was committed while he was performing his official functions. The Information sufficiently apprised Crisostomo that he stood

accused of committing the crime in relation to his office, a case that is cognizable by the Sandiganbayan, not the Regional Trial Court. There was no prejudice to Crisostomo's substantive rights.

Assuming that the Information failed to allege that Crisostomo committed the crime in relation to his office, the Sandiganbayan still had jurisdiction to try the case. The Information was filed with the Sandiganbayan on 19 October 1993. *Deloso v. Domingo*,^[8] promulgated on 21 November 1990, did not require that the information should allege that the accused public officer committed the offense in relation to his office before the Sandiganbayan could assume jurisdiction over the case. The ruling in *Deloso v. Domingo* relied solely on PD 1606.

Aguinaldo v. Domagas,^[9] promulgated on 26 September 1991, modified *Deloso v. Domingo*. *Aguinaldo v. Domagas* clarified that offenses specified in Section 4(a)(2) of PD 1606, as amended by PD 1861, must be committed by public officers and employees in relation to their office and the information must allege this fact. The succeeding cases of *Sanchez v. Demetriou*^[10] and *Natividad v. Felix*,^[11] reiterated the *Aguinaldo v. Domagas* ruling.

However, despite the subsequent cases clarifying *Deloso v. Domingo*, the Court in *Republic v. Asuncion*,^[12] promulgated on 11 March 1994, applied the ruling in *Deloso v. Domingo*. Since the effects of the misapprehension of *Deloso v. Domingo* doctrine were still persistent, the Court set out the following directives in *Republic v. Asuncion*:

The dismissal then of Criminal Case No. Q-91-23224 solely on the basis of *Deloso vs. Domingo* was erroneous. In the light of *Aguinaldo* and *Sanchez*, and considering the absence of any allegation in the information that the offense was committed by private respondent in relation to his office, it would even appear that the RTC has exclusive jurisdiction over the case. However, it may yet be true that the crime of homicide charged therein was committed by the private respondent in relation to his office, which fact, however, was not alleged in the information probably because *Deloso vs. Domingo* did not require such an allegation. In view of this eventuality and the special circumstances of this case, and to avoid further delay, if not confusion, we shall direct the court a quo to conduct a preliminary hearing in this case to determine whether the crime charged in Criminal Case No. Q-91-23224 was committed by the private respondent in relation to his office. If it be determined in the affirmative, then it shall order the transfer of the case to the Sandiganbayan which shall forthwith docket and proceed with the case as if the same were originally filed with it. Otherwise, the court a quo shall set aside the challenged orders, proceed with the trial of the case, and render judgment thereon.

Republic v. Asuncion ordered the trial court to conduct a preliminary hearing to determine whether the accused public officer committed the crime charged while performing his office. If so, the trial court must order the transfer of the case to the Sandiganbayan as if the same were originally filed with the Sandiganbayan.

In the present case, the Information was filed with the Sandiganbayan upon the recommendation of the Office of the Deputy Ombudsman in a Resolution dated 30 June 1993. That Crisostomo committed the crime in relation to his office can be gleaned from the Deputy Ombudsman's resolution as it stated that: (1) Crisostomo was the jail guard on duty at the time that Renato was killed; (2) from the time that Crisostomo assumed his duty up to the discovery of Renato's body, no one had entered the jail and no one could enter the jail, as it was always locked, without the permission of the jail guard; (3) the key is always with the jail guard; (4) Renato sustained severe and multiple injuries inflicted by two or more persons indicating conspiracy; and (5) the relative position of the jail guard to the cell is in such a way that any activity inside the cell could be heard if not seen by the jail guard.

Based on the foregoing findings, as well as on the *Deloso v. Domingo* ruling and the Court's instructions in *Republic v. Asuncion*, the Sandiganbayan had every reason to assume jurisdiction over this case. Crisostomo waited until the very last stage of this case, the rendition of the verdict, before he questioned the Sandiganbayan's

jurisdiction. Crisostomo is already estopped from questioning the Sandiganbayan's jurisdiction.[13]Crisostomo's Guilt was not Proven Beyond Reasonable Doubt

In the exercise of the Court's judicial discretion, this petition for certiorari will be treated as an appeal from the decision of the Sandiganbayan to prevent the manifest miscarriage of justice[14] in a criminal case involving a capital offense. An appeal in a criminal case opens the entire case for review.[15] The reviewing tribunal can correct errors though unassigned in the appeal, or even reverse the lower court's decision on grounds other than those the parties raised as errors.[16]

In this case, the prosecution had the burden to prove first, the conspiracy to murder Renato, and second, Crisostomo's complicity in the conspiracy. The prosecution must prove that Renato's death was not the result of suicide but was produced by a deliberate intent to kill him with the attendant circumstances that would qualify the killing to murder. Since Crisostomo had no direct hand in the killing of Renato, the conviction could only be sustained if the murder was carried out through a conspiracy between Crisostomo and his co-accused, the inmates. It must be proven beyond reasonable doubt that Crisostomo's action and inaction were all part of a scheme to murder Renato.

Renato was Killed with Deliberate Intent

To prove that Renato's death is a case of homicide or murder, there must be incontrovertible evidence, direct or circumstantial, that he was deliberately killed.[17] Intent to kill can be deduced from the weapons used by the malefactors, the nature, location and number of wounds sustained by the victim and the words uttered by the malefactors before, at the time or immediately after the killing of the victim.[18] If the victim dies because of a deliberate act of the malefactor, intent to kill is conclusively presumed.[19]

The prosecution established that Renato did not commit suicide. Witnesses for the prosecution vouched that Renato was in good health prior to his death. Calingayan, the sole witness for the defense, did not point out that there was any thing wrong with Renato prior to his death. The autopsy and exhumation reports debunked the defense's theory that Renato hanged himself to death. Renato's injuries were so massive and grave that it would have been impossible for these injuries to have been self-inflicted by Renato.

The extent of Renato's injuries indicates the perpetrators' deliberate intent to kill him. Dr. Ruben M. Añgobung ("Dr. Añgobung"), the NBI Medico Legal Officer[20] who exhumed and re-autopsied Renato's body, stated in his affidavit[21] that Renato sustained several external and internal injuries, the most significant of which are the ruptured liver, torn messentery and torn stomach. The injuries caused massive intra-abdominal hemorrhage that ultimately caused Renato's death. Dr. Añgobung further declared that Renato's injuries could bring about death in a matter of minutes to a few hours from the time of infliction, if not promptly and properly attended to by a competent surgeon.

Renato's internal injuries were so severe that the injuries could not have been sustained prior to his detention at the Solano Municipal Jail. If this were so, Renato would have experienced continuous and severe body pains and he would have fallen into shock, which could have been obvious even to those who are not doctors. Dr. Añgobung also concluded that Renato's injuries could have been inflicted by the application of considerable force with the use of a hard and rough surface as well as hard smooth surface instruments, fist blows included.

While the blanket that was tied around Renato's neck caused abrasion and contusion on the neck area, these injuries, however, did not cause Renato's death because the blood vessels on his neck were still intact.[22] The Exhumation Report[23] and Exhumation Findings[24] stated that Renato died due to hemorrhagic shock, secondary to multiple internal organ injuries. These findings lead to the inevitable conclusion that Renato was

killed with deliberate intent and his body was hanged just to simulate suicide.

Prosecution Failed to Prove Crisostomo's Involvement in the Killing

No direct evidence linked Crisostomo to the killing of Renato. The prosecution relied on circumstantial evidence to prove that there was a conspiracy to kill Renato and Crisostomo participated in carrying out the conspiracy. Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience.[25] Section 4, Rule 133 of the Revised Rules of Evidence states that circumstantial evidence is sufficient if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

In convicting Crisostomo, the Sandiganbayan cited the following circumstantial evidence:

- The deceased, Renato Suba, was brought to the police station on the night of February 13, 1989 for investigation for allegedly hitting the head of a certain Diosdado Lacangan; and that after investigation, the deceased was brought to the detention cell (tsn, hearing of April 21, 1994, pp. 5-11).
- On the following day at 5:00 o'clock in the afternoon, the deceased was visited by his brother, Rizalino Suba; that the deceased asked his brother to bring him a blanket, toothbrush, clothes and foods (ibid, pp. 13-14).
- Rizalino Suba left the municipal jail on February 14, 1989, at almost 5:20 p.m., while his other brother, Rolando, brought the things to the deceased in jail; and that Rolando left their house at about 5:30 p.m. and came back at 6:00 o'clock in which Rizalino asked him (Rolando) if he (Renato Suba) was able to finish the food that he sent and he answered in the affirmative (ibid, pp. 16, 18-19).
- At that time, the deceased was in good health and in good condition and that he was not complaining anything about his body; and that the deceased was then 26 years old, single and had finished advance ROTC and worked in a logging concession (ibid, pp. 16-18).
- Accused Mario Calingayan saw the deceased still alive lying down after 6:00 p.m. when he was about to take a bath; and that after taking a bath, he (witness) went to his cell and played cards with his three (3) cellmates (whose names he could not recall) for about four (4) hours (tsn, hearing of April 4, 1995, pp. 16-17).
- At around 9:00 o'clock of the same day, Mr. Baldovino, a barangay councilman, informed them that they should go to the municipal building as per request of the policemen; that Rizalino Suba, first asked his uncle David Suba and Manuel Rollo, a barangay councilman, to accompany him; that they arrived at the municipal building at 9:10 p.m. and they saw that the deceased was already lying dead on the cement floor outside the cell 1 in the municipal building (tsn, hearing of April 21, 1994, pp. 20-22).
- Accused Mario Calingayan was detained with five (5) others at the second cell among four (4) cells in the jail; that the deceased, Renato Suba, was detained alone at the third cell (tsn, hearing of April 4, 1995, pp. 6-7).
- The four (4) cells, although having their own separate doors, made of iron grills and equipped each with a padlock, were always open; that it was up to them whether to close the doors; that the keys of the padlocks are held by the guard; and that any detention prisoner could go to any cell inside the prison (ibid, pp. 7-8, 21, 23).
- There was a common door located in front, leading inside to the cells which no one could enter because it is padlocked, except with the jail guard's permission; and that the comfort room is located in the 4[th] cell which is not equipped with a padlock so that if you want to go to the comfort room, you do not anymore need the key in the office of the jail guard (ibid, p. 22).
- There is only one guard assigned in the cells and accused Edgar Crisostomo was the one who was rendering duty at the time of the death of the victim (ibid, pp. 9, 13).

- There was no other person who was admitted on February 12, 13 and 14, 1989, and there was no instance when Suba was brought out of the prison cell from the time he was detained on February 14, 1989 (ibid, p. 29).
- The persons who were detained together with the deceased at the time of his death were released without any investigation having been conducted by the local police (tsn, hearing of April 21, 1994, pp. 28-29).
- The apparent inconsistency in the list of detainees/prisoners dated February 20, 1989 (Exhibit "I") and the police blotter (Exhibits "J" and "J-1") whereby in the former there were eight prisoners on February 14, 1989 including the victim but only six were turned over by accused Crisostomo to the incoming jail guard after the death of the victim; the list contains nine (9) detainees/prisoners on February 15, 1989 which includes the victim, who was then dead, while the police blotter shows that only six prisoners were under their custody. Why the apparent inconsistency?
- Accused Mario Calingayan's claim that he was detained on February 12, 1989, which is contrary to the master list of detainees showing that he was detained only on February 14, 1989 (tsn, hearing of April 4, 1995, p. 19).
- Accused Mario Calingayan's allegation that when Renato Suba was brought outside, he saw that he hanged himself with a thin blanket (tsn, hearing of April 4, 1995, pp. 12-13) which was what the policemen also told the brother of the victim (tsn, hearing of April 21, 1994, pp. 23-24).
- After the prosecution rested its case and after co-accused Mario Calingayan was finished with his testimony in court, accused Edgar Crisostomo jumped bail and up to this day had remained at large (Rollo, pp. 297-298, 305).
- The fact that accused Dominador C. Dela Cruz, Efren M. Perez, Raki T. Anggo, Randy A. Lumabo and Rolando M. Norberte are also still at-large.[26]

The Sandiganbayan also relied on the Memorandum Report[27] dated 22 October 1991 of Oscar Oida, then National Bureau of Investigation ("NBI") Regional Director for Region II, who evaluated the NBI's investigation of the case. The Sandiganbayan quoted the following portions of the report:

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- That when he [victim] was brought to the Solano Municipal Jail at around 12:00 midnight on 14 February 1989 (the same was corrected by witness Oscar Oida to be February 13, 1989 when he testified in open court), he was accompanied by his brother, Rizalino Suba, his cousin, Rodolfo Suba and Brgy. Councilman Manuel Rulloda in good physical condition with no injuries[;]
- That when Luis Suba, father of the victim, Renato Suba, visited him in jail at around 8:00 a.m., on February 14, 1989 and brought food for his breakfast, he was in good physical condition, and did not complain of any physical injury or pain. In fact, he was able to eat all the food[;]
- That when Rizalino Suba, brother of the victim, visited the latter at around 5:00 o'clock p.m. on 14 February 1989, victim was in good spirit and never complained of any injury or bodily pain. He was in good physical condition. He even requested that he be brought his clothes, beddings and food[;]
- That when Rolando Suba, another brother of victim, brought the clothes, bedding and food as requested by the latter at around 6:00 o'clock p.m. on 14 February 1989, he was in good physical condition and did not complain of any injury or body pain[;]
- That the good physical condition of victim, Renato Suba was even corroborated by his four co-inmates, namely, Arki Anggo, Randy A. Lumabo, Rolando M. Norberte and Mario B. Calingayan and by the jailer, Pat. Edgar T. Crisostomo, when he was placed under detention in the Solano Municipal Jail;

- That the jailer Pat. Edgar Crisostomo from the time he assumed his tour of duty from 4:00 o'clock p.m. on 14 February 1989, up to the time the victim was discovered allegedly dead and hanging inside the jail at 9:00 o'clock p.m. on that same day, nobody entered the jail and no one would enter said jail, as it was always locked, without the permission of the jailer. The key is always with the jailer;
- That the only companions of the victim at the time of the discovery of his death on 14 February 1989 at around 9:00 p.m. were his six (6) co-inmates namely: Dominador C. dela Cruz, Edren M. Perez, Raki T. Anggo, Randy A. Luma[b]o, Rolando M. Norbert[e] and Mario Calingayan;
- That definitely the cause of death was not suicide by hanging but due to several injuries sustained by the victim. The most significant and remarkable of which are the ruptured liver, torn messentery and a torn stomach which injuries resulted into massive intra-abdominal hemorrhage that ultimately caused the death of said victim per autopsy examination;
- That said injuries can bring about death in a matter of minutes to a few hours if not promptly and properly attended by a competent surgeon;
- That said injuries could not have been sustained by victim before he was detained at the Solano Municipal Jail as he could have been experiencing continuous severe pain which can easily be observed by the policemen who arrested him on 14 February 1989 at around 12:00 midnight and therefore should have been brought to the hospital and not confined in the detention cell;
- That the several injuries sustained by victim were caused by hard rough-surfaced as well as hard smooth surfaced instruments, fist blows included;
- That the multiple injuries and the gravity of the injuries sustained by victim indicate that they were inflicted by more than two persons;
- That the nature of the injuries sustained by victim were almost in one particular part of the body, shown by the fact that the internal organs badly damaged were the liver, messentery and stomach indicating that the victim was defenseless and helpless thus affording the assailants to pounce on continuously with impunity almost on one spot of the body of the victim. The victim could have been held by two or more assailants while the others were alternately or giving victim blows on his body with hard rough surfaced as well as hard smooth surfaced instruments, fist blows included;
- That with the location and gravity of the injuries sustained by victim, the persons who inflicted the injuries know fully well that victim will die and knew the consequences of their acts;
- That the motive was revenge, as victim before he was killed, hit in the head a certain Diosdado Lacangan with a wood causing serious injury. Lacangan was in serious condition at the time victim was killed[;]
- That the claims of the Solano police and the six (6) co-inmates of victim that the latter committed suicide by hanging is only a cover up to hide a heinous offense[;]
- That the extreme silence of the suspects regarding the death of victim is so deafening that it established only one thing, conspiracy. It is unusual for a person not to volunteer information as to who could be the author of the offense if he is not a participant to a heinous offense particularly in this case where the circumstances show that there can be no other person responsible for the death of the victim except the suspects in this instant case[;]
- That the victim was killed between 6:00 PM to 9:00 PM on 14 February 1989 inside the Solano Municipal Jail[;]

xxx

The relative position of the jailer to the cell where victim was killed was such that the jailer and the policemen present, could hear if not see what was going inside the cell at the time the victim was killed. The injuries sustained by victim could not be inflicted without victim shouting and crying for help. Even the assailants when they inflicted these injuries on victim could not avoid making loud noises that could attract the attention of the police officers present. Conspiracy to kill the victim among the inmates and the police officers was clearly established from the circumstances preceding and after the killing of victim.[28]

In sum, the Sandiganbayan believed that Crisostomo took part in the conspiracy to kill Renato because of these three circumstances: 1) Crisostomo as the jail guard on duty at the time of Renato's killing had in his possession the keys to the main door and the cells; (2) Crisostomo was in such a position that he could have seen or heard the killing of Renato; and (3) there are discrepancies between the list of detainees/prisoners and the police blotter. According to the Sandiganbayan, there is a prima facie case against Crisostomo.

Except for the extensive injuries that Renato's body bore, there is no other evidence that proves that there was a prior agreement between Crisostomo and the six inmates to kill Renato. In *People v. Corpuz*,[29] one of the inmates killed by the other inmates sustained stab wounds that were possibly inflicted by ten persons. The Court ruled that conspiracy could not be inferred from the manner that the accused inmates attacked their fellow inmate because there was no sufficient showing that all the accused inmates acted pursuant to a previous common accord. Each of the accused inmates was held liable for his individual act.

Although no formal agreement is necessary to establish conspiracy because conspiracy may be inferred from the circumstances attending the commission of the crime, yet conspiracy must be established by clear and convincing evidence.[30] Even if all the malefactors joined in the killing, such circumstance alone does not satisfy the requirement of conspiracy because the rule is that neither joint nor simultaneous action is per se sufficient proof of conspiracy.[31] Conspiracy must be shown to exist as clearly and convincingly as the commission of the offense itself.[32]

Thus, even assuming that Renato was simultaneously attacked, this does not prove conspiracy. The malefactors who inflicted the fatal injuries may have intended by their own separate acts to bring about the death of the victim.[33] No evidence was presented to show that Crisostomo and the inmates planned to kill Renato or that Crisostomo's overt acts or inaction facilitated the alleged plan to kill Renato. The prosecution had the burden to show Crisostomo's intentional participation to the furtherance of the common design and purpose.

The pieces of circumstantial evidence are not sufficient to create a prima facie case against Crisostomo. When the three circumstances are examined with the other evidence on record, it becomes all the more clear that these circumstances do not lead to a logical conclusion that Crisostomo lent support to an alleged conspiracy to murder Renato.

First, while Crisostomo as jail guard had in his possession the keys to the main door and individual cells, there is no proof that Crisostomo allowed an outsider inside the prison. Calingayan, the sole witness for the defense, testified that no new detainee was admitted from 13 to 14 of February 1989.[34] The NBI Report[35] relied upon by the Sandiganbayan confirms Calingayan's testimony that nobody entered the jail and that Renato's only companions inside the jail were the six inmates.[36]

There is also no proof that Crisostomo purposely left the individual cells open to allow the inmates to attack Renato who was alone in the third cell. Calingayan, who was detained ahead of Renato,[37] testified that while each of the four cells had a padlock, the cells had always been kept open.[38] The inmates had always been allowed to enter the cells and it was up to the inmates to close the doors of the cells.[39] The inmates could freely go to the fourth cell, which was the inmates' comfort room so that they would no longer ask for the key from the

jail guard every time the inmates would use the comfort room.[40]

Second, the Sandiganbayan should not have absolutely relied on the NBI Report[41] stating that Crisostomo as jail guard was in such a position that he could have seen or heard the killing. The prosecution failed to establish that Crisostomo actually saw and heard the killing of Renato.

Based on Calingayan's testimony, it was not impossible for Crisostomo not to have actually seen and heard the killing of Renato. On cross-examination, Calingayan testified that all of the cells were in one line.[42] Crisostomo's office was at the left side of the cells about 15 meters away from cell number two, the cell where Calingayan was detained.[43] Hollow blocks from the floor to the ceiling separated each of the four cells.[44] With the partition, an inmate in one cell could not see what was happening in the other cells.[45] Calingayan further testified that Renato's body was in a dark place,[46] as it was lighted from outside only by a bulb "at the alley," "at the corridor." [47]

Since Renato's body was found in cell number four, this would make the distance between Crisostomo's office and the crime scene more than 15 meters. Crisostomo could not have had a full view of cell number four because of the distance between Crisostomo's office and cell number four, the partitions of the four cells and poor lighting in the jail.

Calingayan's description of the jail, the cells, the location of Renato's body and Crisostomo's actual position was not contradicted by the prosecution. There is no other evidence on record that describes the layout and conditions of the jail at the time of Renato's death.

The prosecution had the burden to present evidence that Crisostomo indeed saw and heard Renato's killing and Crisostomo consented to the killing as part of the plan to kill Renato. The absence of such evidence does not preclude the possibility that Renato was covertly killed and the sounds were muffled to conceal the crime from Crisostomo, the jail guard. Or Crisostomo as jail guard was simply negligent in securing the safety of the inmates under his custody. If Crisostomo were negligent, this would be incompatible with conspiracy because negligence denotes the absence of intent while conspiracy involves a meeting of the minds to commit a crime.[48] It was the prosecution's burden to limit the possibilities to only one: that Crisostomo conspired with the inmates to kill Renato. The prosecution failed to do so.

Third, the prosecution was not clear as to the implication of the discrepancies between the list of "detainees/prisoners" and police blotter to the conspiracy to murder Renato. The prosecution did not even pinpoint which of the two documents is the accurate document. The prosecution merely asked: why the apparent inconsistency?[49]

Courts must judge the guilt or innocence of the accused based on facts and not on mere conjectures, presumptions or suspicions.[50] The inconsistency between the two documents without anything more remains as merely that - an inconsistency. The inconsistency does not even have any bearing on the prosecution's conspiracy theory. The NBI Report and Calingayan's testimony stated that six inmates were with Renato inside the jail. This was also the same number of inmates turned over by Crisostomo to the incoming jail guard after Renato's death.[51]

The alleged motive for Renato's killing was to avenge the attack on Lacangan who was then in a serious condition because Renato hit him on the head with a piece of wood. No evidence was presented to link Crisostomo to Lacangan or to show what compelling motive made Crisostomo, a jail guard, abandon his duty and instead facilitate the killing of an inmate under his custody. Motive is generally held to be immaterial because it is not an element of the crime.[52] However, motive becomes important when the evidence on the commission of the crime is purely circumstantial or inconclusive.[53] Motive is thus vital in this case.

Clearly, the Sandiganbayan had no basis to convict Crisostomo because the prosecution failed to produce the evidence necessary to overturn the presumption of innocence. The insufficiency of evidence was the same reason why the National Police Commission dismissed the administrative case for grave misconduct (murder) against Crisostomo on 24 October 1990.[54] The circumstances in this case did not constitute an unbroken chain that would lead to a reasonable conclusion that Crisostomo played a role in the inmates' supposed preconceived effort to kill Renato. Thus, Crisostomo must be acquitted.

The "deafening silence" of all of the accused does not necessarily point to a conspiracy. In the first place, not all of the accused remained silent. Calingayan put himself on the witness stand. Calingayan further claimed that the Solano police investigated him and his handwritten statements were taken the morning following Renato's death.[55] Secondly, an accused has the constitutional right to remain silent and to be exempt from being compelled to be a witness against himself.[56]

A judgment of conviction must be predicated on the strength of the evidence for the prosecution and not on the weakness of the evidence for the defense.[57] The circumstantial evidence in this case is not sufficient to create a prima facie case to shift the burden of evidence to Crisostomo. Moreover, Calingayan's testimony inured to Crisostomo's favor. The supposed waiver of presentation of evidence did not work against Crisostomo because the prosecution failed to prove Crisostomo's guilt beyond reasonable doubt.

In *Salvatierra v. CA*,[58] upon ruling for the defendants' acquittal, the Court disregarded the issue of whether the defendants jumped bail for failing to attend trial and whether their absence should be considered as flight and as evidence of guilt. Even with this ruling in *Salvatierra v. CA*, which is applicable to this case, and Crisostomo's failure to question the violation of his right to procedural due process before the Court, we cannot simply ignore the Sandiganbayan's grave abuse of discretion.

The records show that the Sandiganbayan set the hearing of the defense's presentation of evidence on 21, 22 and 23 June 1995. The 21 June 1995 hearing was cancelled because of "lack of quorum in the regular membership" of the Sandiganbayan's Second Division and upon the agreement of the parties.[59] The hearing was reset the next day, 22 June 1995. Crisostomo and his counsel failed to attend the 22 June 1995 hearing. The Sandiganbayan, on the very same day, issued an order[60] directing the issuance of a warrant for the arrest of Crisostomo and ordering the confiscation of his surety bond. The order further declared that Crisostomo had waived his right to present evidence because of his non-appearance at "yesterday's and today's scheduled hearings." [61] The Sandiganbayan terminated the trial and gave the parties thirty days within which to file their memoranda, after which, with or without the memoranda, the case would still be deemed submitted for decision.

The Sandiganbayan's error is obvious. Strictly speaking, Crisostomo failed to appear only on the 22 June 1995 hearing. Crisostomo's appearance on the 21 June 1995 hearing would not have mattered because the hearing on this date was cancelled for lack of quorum of justices in the Sandiganbayan's Second Division.

Under Section 2(c), Rule 114 and Section 1(c), Rule 115 of the Rules of Court, Crisostomo's non-appearance during the 22 June 1995 trial was merely a waiver of his right to be present for trial on such date only and not for the succeeding trial dates.[62] Section 1(c) of Rule 115 clearly states that:

xxx The absence of the accused without any justifiable cause at the trial on a particular date of which he had notice shall be considered a waiver of his right to be present during that trial. When an accused under custody had been notified of the date of the trial and escapes, he shall be deemed to have waived his right to be present on said date and on all subsequent trial dates until custody is regained.

Moreover, Crisostomo's absence on the 22 June 1995 hearing should not have been deemed as a waiver of his right to present evidence. While constitutional rights may be waived, such waiver must be clear and must be

coupled with an actual intention to relinquish the right.[63] Crisostomo did not voluntarily waive in person or even through his counsel the right to present evidence. The Sandiganbayan imposed the waiver due to the agreement of the prosecution, Calingayan, and Calingayan's counsel.

In criminal cases where the imposable penalty may be death, as in the present case, the court is called upon to see to it that the accused is personally made aware of the consequences of a waiver of the right to present evidence.[64] In fact, it is not enough that the accused is simply warned of the consequences of another failure to attend the succeeding hearings.[65] The court must first explain to the accused personally in clear terms the exact nature and consequences of a waiver.[66] Crisostomo was not even forewarned. The Sandiganbayan simply went ahead to deprive Crisostomo of his right to present evidence without even allowing Crisostomo to explain his absence on the 22 June 1995 hearing.

Clearly, the waiver of the right to present evidence in a criminal case involving a grave penalty is not assumed and taken lightly. The presence of the accused and his counsel is indispensable so that the court could personally conduct a searching inquiry into the waiver.[67] Moreover, the searching inquiry must conform to the procedure recently reiterated in *People v. Beriber*,[68] to wit:

- The trial court shall hear both the prosecution and the accused with their respective counsel on the desire or manifestation of the accused to waive the right to present evidence and be heard.
- The trial court shall ensure the attendance of the prosecution and especially the accused with their respective counsel in the hearing which must be recorded. Their presence must be duly entered in the minutes of the proceedings.
- During the hearing, it shall be the task of the trial court to-
 - ask the defense counsel a series of question[s] to determine whether he had conferred with and completely explained to the accused that he had the right to present evidence and be heard as well as its meaning and consequences, together with the significance and outcome of the waiver of such right. If the lawyer for the accused has not done so, the trial court shall give the latter enough time to fulfill this professional obligation.
 - inquire from the defense counsel with conformity of the accused whether he wants to present evidence or submit a memorandum elucidating on the contradictions and insufficiency of the prosecution evidence, if any or in default thereof, file a demurrer to evidence with prior leave of court, if he so believes that the prosecution evidence is so weak that it need not even be rebutted. If there is a desire to do so, the trial court shall give the defense enough time for this purpose.
 - elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed waiver.
 - all questions posed to the accused should be in a language known and understood by the latter, hence, the record must state the language used for this purpose as well as reflect the corresponding translation thereof in English.

If no waiver of the right to present evidence could be presumed from Crisostomo's failure to attend the 22 June 1995 hearing, with more reason that flight could not be logically inferred from Crisostomo's absence at that hearing. Crisostomo's absence did not even justify the forfeiture of his bail bond. A bail bond may be forfeited only in instances where the presence of the accused is specifically required by the court or the Rules of Court and, despite due notice to the bondsmen to produce him before the court on a given date, the accused fails to appear in person as so required.[69] Crisostomo was not specifically required by the Sandiganbayan or the Rules of Court to appear on the 22 June 1995 hearing. Thus, there was no basis for the Sandiganbayan to order the confiscation of

Crisostomo's surety bond and assume that Crisostomo had jumped bail.

Prior to his absence on the 22 June 1995 hearing, Crisostomo had regularly attended the hearings of the case. When it was Crisostomo's turn to present his evidence, Atty. Anecio R. Guades ("Atty. Guades"), Crisostomo's former counsel, instructed Crisostomo to wait for the notice of hearing from him and the Sandiganbayan. Crisostomo did not receive any notice from the Sandiganbayan or from Atty. Guades who disappeared without informing Crisostomo of his new office address. Upon notification of the promulgation of the case scheduled on 28 November 2000, Crisostomo voluntarily appeared before the Sandiganbayan. Crisostomo then terminated the services of Atty. Guades and engaged the services of another counsel. In the omnibus motion for new trial filed by Crisostomo's new counsel, Crisostomo denied that he went into hiding. If given the chance, Crisostomo would have presented his pay slips and certificates of attendance to prove that he had been reporting for work at the Police Station in Solano, Nueva Vizcaya.[70]

We could not absolutely fault the Sandiganbayan for not correcting its 22 June 1995 Order. The Sandiganbayan lost the opportunity to review the order when Crisostomo's new counsel changed his legal strategy by withdrawing the omnibus motion for new trial and instead sought the nullification of the Sandiganbayan's decision for lack of jurisdiction over the case.

However, the withdrawal of the omnibus motion could not erase the Sandiganbayan's violation of Crisostomo's right to procedural due process and Atty. Guades' gross negligence. Atty. Guades failed to protect his client's interest when he did not notify Crisostomo of the scheduled hearings and just vanished without informing Crisostomo and the Sandiganbayan of his new office address. The 22 June 1995 Order was served on Atty. Guades but he did not even comply with the directive in the Order to explain in writing his absence at the 21 and 22 June 1995 hearings. Atty. Guades did not file the memorandum in Crisostomo's behalf required by the same Order. Atty. Guades did not also question the violation of Crisostomo's right to procedural due process. The subsequent notices of hearing and promulgation were not served on Atty. Guades as he could not be located in the building where his office was located.[71]

Clearly, Atty. Guades's negligence was so gross that it should not prejudice Crisostomo's constitutional right to be heard,[72] especially in this case when the imposable penalty may be death. At any rate, the remand of the case is no longer necessary.[73] The prosecution's evidence failed to overturn the constitutional presumption of innocence warranting Crisostomo's acquittal.

The Sandiganbayan imposed an indeterminate sentence on Crisostomo. The Indeterminate Sentence Law ("ISL") is not applicable to persons convicted of offenses punished with the death penalty or reclusion perpetua.[74] Since Crisostomo was accused of murder, the penalty for which is reclusion temporal in its maximum period to death, the Sandiganbayan should have imposed the penalty in its medium period since it found no aggravating circumstance.[75] The medium period of the penalty is reclusion perpetua.

Calingayan must be also Acquitted

The Sandiganbayan cited only two circumstances as evidence of Calingayan's guilt. The Sandiganbayan held that Calingayan's claim that he was detained on 12 February 1989 is contrary to the master list of detainees showing that Calingayan was detained on 14 February 1989.[76] Second is Calingayan's allegation that "when Renato Suba was brought outside, he saw that he hanged himself with a thin blanket, which was what the policemen also told the brother of the victim." [77] The Sandiganbayan did not elaborate on this circumstance. The Sandiganbayan was apparently suspicious of Renato's knowledge of the material that was used to hang Renato.

Renato could have been killed by two or more inmates or possibly even by all of the inmates. However, since no

conspiracy was proven to exist in this case, the perpetrators of the crime needed to be identified and their independent acts had to be proven.[78] The two circumstances that were held against Calingayan are not sufficient proof that Calingayan was one of the inmates who killed Renato. Thus, Calingayan must be also acquitted.

Section 11(a) of Rule 122 of the Rules of Court provides that "[a]n appeal taken by one or more [of] several accused shall not affect those who did not appeal, except insofar as the judgment of the appellant court is favorable and applicable to the latter." In this case, only Crisostomo questioned the jurisdiction and decision of the Sandiganbayan. However, the evidence against Crisostomo and Calingayan are inextricably linked as their conviction hinged on the prosecution's unproven theory of conspiracy. Thus, Crisostomo's acquittal, which is favorable and applicable to Calingayan, should benefit Calingayan.[79]

WHEREFORE, the Decision of the Sandiganbayan in Criminal Case No. 19780 convicting appellant EDGAR CRISOSTOMO and co-accused MARIO B. CALINGAYAN is hereby REVERSED. EDGAR CRISOSTOMO and co-accused MARIO B. CALINGAYAN are ACQUITTED of the crime of murder and ordered immediately released from prison, unless held for another lawful cause. The Director of Prisons is directed to report to this Court compliance within five (5) days from receipt of this Decision. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago and Azcuna, JJ., concur.

[1] Penned by Associate Justice Ma. Cristina Cortez-Estrada with Associate Justices (now Associate Justice of this Court) Minita V. Chico-Nazario and Anacleto D. Badoy Jr., concurring.

[2] Records, Vol. 1, pp. 1-2.

[3] Ibid., p. 43.

[4] Rollo, pp. 77-78.

[5] Ibid., p. 10.

[6] G.R. Nos. 111771-77, 9 November 1993, 227 SCRA 627.

[7] 108 Phil. 613 (1960). Reported as *People v. Hon. Montejo, etc., et al.*

[8] G.R. No. 90591, 21 November 1990, 191 SCRA 545.

[9] G.R. No. 98452, en banc Resolution, 26 September 1991. Cited in *Republic v. Asuncion*, G.R. No. 108208, 11 March 1994, 231 SCRA 211.

[10] *Supra* note 6.

[11] G.R. No. 111616, 4 February 1994, 229 SCRA 680.

[12] G.R. No. 108208, 11 March 1994, 231 SCRA 211.

[13] See *Antiporda, Jr. v. Hon. Garchitorena*, 378 Phil. 1166 (1999).

[14] *Escudero v. Dulay*, G.R. No. 60578, 23 February 1988, 158 SCRA 69.

[15] *People v. Saludes*, G.R. No. 144157, 10 June 2003, 403 SCRA 590; *People v. Jubail*, G.R. No. 143718, 19 May 2004, 428 SCRA 478.

- [16] Ibid.
- [17] *People v. Delim*, G.R. No. 142773, 28 January 2003, 396 SCRA 386.
- [18] Ibid.
- [19] Ibid.
- [20] NBI Cagayan Valley Regional Office, Ilagan, Isabela.
- [21] Memorandum Report, Exhibit "C."
- [22] Exhibit "B-1," Exhumation Findings.
- [23] Exhibit "B."
- [24] Exhibit "B-1."
- [25] See *People v. Delim*, supra note 17.
- [26] Rollo, pp. 69-70.
- [27] Exhibit "C."
- [28] Rollo, pp. 73-75.
- [29] G.R. No. 36234, 10 February 1981, 102 SCRA 675.
- [30] *People v. Agda, et al.*, 197 Phil. 306 (1982).
- [31] *People v. Dorico*, 153 Phil. 458 (1973).
- [32] Ibid.
- [33] Ibid.
- [34] TSN, 4 April 1995, p. 29.
- [35] Rollo, pp. 73-75.
- [36] TSN, 4 April 1995, pp. 6-7.
- [37] Ibid., pp. 8-9.
- [38] Ibid., pp. 7-8.
- [39] Ibid., p. 8.
- [40] Ibid., pp. 22-23.
- [41] Rollo, pp. 73-75.
- [42] TSN, 4 April 1995, p. 20.
- [43] Ibid., p. 25.
- [44] Ibid., p. 20.
- [45] Ibid., p. 20.
- [46] Ibid., p. 12.

- [47] Ibid., p. 24.
- [48] ANTONIO L. GREGORIO, FUNDAMENTALS OF CRIMINAL LAW REVIEW, 1997, 9[th] Ed., p. 45.
- [49] Rollo, p. 70.
- [50] See *People v. Legaspi*, 387 Phil. 108 (2000).
- [51] Rollo, p. 70.
- [52] *People v. Flores*, 389 Phil. 532 (2000).
- [53] Ibid.
- [54] Records, Vol. 1, pp. 26-29.
- [55] TSN, 4 April 1995, p. 28.
- [56] Section 12 (1) and Section 17, Article III of the 1987 Constitution.
- [57] *People v. Legaspi*, supra note 50.
- [58] 389 Phil. 66 (2000).
- [59] Records, Vol. I, p. 296.
- [60] Issued by Associate Justices Romeo M. Escareal (Chairman), Cipriano A. Del Rosario, and Roberto M. Lagman.
- [61] Records, Vol. 1, p. 297.
- [62] *Marcos v. Ruiz*, G.R. Nos. 70746-47, 1 September 1992, 213 SCRA 177.
- [63] Ibid.
- [64] *People v. Macarang*, G.R. Nos. 151249-50, 26 February 2004, 424 SCRA 18.
- [65] Ibid.
- [66] *Marcos v. Ruiz*, supra note 62.
- [67] See *People v. Beriber*, G. R. No. 151198, 8 June 2004, 431 SCRA 332; *People v. Diaz*, 370 Phil. 607 (1999).
- [68] Ibid., citing *People v. Bodoso*, 446 Phil. 838 (2003).
- [69] *Marcos v. Ruiz*, supra note 62.
- [70] Records, Vol. I, pp. 370-377.
- [71] Records, Vol. I, pp. 314 and 320.
- [72] See *Reyes v. Court of Appeals*, G.R. No. 111682, 6 February 1997, 267 SCRA 543.
- [73] *Salvatierra v. CA*, supra note 58.
- [74] *People v. Saberola*, 358 Phil. 387 (1998).
- [75] Art. 64 of the Revised Penal Code provides:
- Art. 64. Rules for the application of penalties which contain three periods. In cases in which the penalties

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

- When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.
- When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.
- When only an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.
- When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.
- When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.
- Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.
- Within the limits of each period, the courts shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser extent of the evil produced by the crime.

[76] Rollo, p. 70.

[77] Ibid.

[78] *People v. Dela Cruz*, 383 Phil. 213 (2000); *People v. Corpuz*, supra note 29.

[79] See *Salvatierra v. CA*, supra note 58; *People v. Rodriguez*, G.R. No. 129211, 2 October 2000, 341 SCRA 645.

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