

NOEL GUILLERMO Y BASILIANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 153287. June 30, 2008*

Ponente: BRION,J.

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For our review is the petition[1] filed by the petitioner Noel Guillermo y Basiliano (petitioner) against the decision[2] dated November 15, 2001 and the resolution[3] dated April 5, 2002 of the Court of Appeals (CA) in CA-G.R. CR No. 24181. The challenged decision[4] affirmed the decision of the Regional Trial Court (RTC), Branch 18, Roxas City convicting and penalizing the petitioner for the crime of homicide with an indeterminate sentence of six (6) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum. The assailed resolution, on the other hand, denied the petitioner's motion for reconsideration.

BACKGROUND

For the death of one Winnie Alon (Winnie), the prosecution charged Arnaldo Socias,[5] Joemar Palma, and the petitioner with the crime of homicide under an Information that states:

x x x

That at or about 5:40 o'clock in the afternoon, on or about July 21, 1996, at Brgy. Poblacion Takas, Municipality of Cuartero, Province of Capiz, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating[,] and mutually helping one another, armed with knives and with intent to kill, did then and there willfully, unlawfully and feloniously assault, attack and stab one WINNIE ALON y BILLANES, hitting the latter and inflicting multiple stab wounds on the different parts of his body, which injuries caused his death shortly thereafter.

That due to the untimely death of Winnie Alon y Billanes[,] his heirs are entitled to death indemnity in the amount of P50,000.00 and other damages pursuant to the provisions of the Civil Code of the Philippines.

ACTS CONTRARY TO LAW.[6]

The petitioner and his co-accused were arraigned and pleaded not guilty to the offense charged with the assistance of their counsel de parte. The prosecution presented Vicente Alon (Vicente) and Eddie Roque (Eddie) as witnesses in the trial that followed; Dr. Ricardo Betita, Jr. (Dr. Betita), Baby Lou Felipe (Baby Lou), and the three accused - the petitioner, Arnaldo Socias, and Joemar Palma - took the witness stand for the defense.

The material points in the testimony of Vicente were summarized by the trial court in its decision[7] as follows:

Vicente Alon averred that at 5:40 in the afternoon of July 21, 1996, Winnie Alon, Wilfredo Cabison, Eddie Roque, and him [sic] were at the public market of Cuartero, at [sic] the restaurant of Melecio Heyres to eat.[8] Noel Guillermo, Arnel Socias, and Joemar Palma were at the restaurant drinking beer. Noel Guillermo and Arnel Socias are known to him since childhood since they come from the same barangay.[9] Joemar Palma is known to him only recently in that incident.[10]

While sitting at the table inside the restaurant, an altercation between Arnel Socias and Winnie Alon regarding the cutting of wood by a chain saw [sic] transpired. Noel Guillermo suddenly took hold of Winnie Alon and stabbed the latter at the neck three (3) times.[11] Joemar Palma went to the kitchen and got a knife. Arnel Socias hit him with a bottle of beer by [sic] the head. He fell down and lost consciousness.[12] [Footnotes referring to the pertinent parts of the record supplied]

Significantly, Vicente admitted on cross-examination that he and Winnie were already drunk even before they went to the restaurant where the stabbing took place.[13]

Eddie corroborated the testimony of Vicente on material points, particularly on the state of their intoxication even before going to the scene of the stabbing. His testimony on what transpired at the restaurant was summarized in the RTC decision[14] as follows:

Eddie Roque alleged that at around 5:40 o'clock in the afternoon of July 21, 1996, he, together with Winnie Alon, Vicente Alon and Wilfredo Cabison, were [sic] inside the restaurant of Mrs. Heyres at Cuartero Public Market to leave their tools of the chain saw [sic] and to eat and drink.[15] Noel Guillermo, Arnel Socias, and Joemar Palma were ahead of them to [sic] the restaurant and were drinking beer. They invited them and they joined them.[16] Before each of them could fully consume a bottle served upon each of them, Winnie Alon and Arnel Socias argued about the cutting of wood by means of a chain saw [sic]. The argument was so heated that each of the protagonists stood up and Arnel Socias took 2 bottles which were thrown to Vicente Alon who was hit on the forehead.[17]

Noel Guillermo hugged or embraced Winnie Alon and stabbed him three times (3) on [sic] the neck with a Batangueño knife. Arnel Socias went around, then behind, and stabbed Winnie Alon once, on the left side of his body, just below his left armpit, with a pointed object, but he could not determine what weapon was used. Joemar Palma also helped in stabbing Winnie Alon once, hitting him at the right side of his body.[18]

Winnie Alon resisted trying to struggle [sic], but could not move because he was ganged up by the three.[19] [Footnotes referring to the pertinent parts of the record supplied]

Dr. Betita, rural health physician of Cuartero, Capiz, declared on the witness stand that he conducted on July 22, 1996 a postmortem examination on the body of Winnie[20] and made the following findings:

POSTMORTEM EXAMINATION

The postmortem examination is done on the remains of Winnie Alon, 31 years old, single, from Malagab-i, Cuartero, Capiz, was stab [sic] to death at about 5:40 P.M. at Pob. Takas, Public Market, Cuartero, Capiz sustaining the following injuries:

- Stab wound 1.5 x 3 cm with 6-8 cm depth [L]eft anterior chest at level of 5[th] rib mid clavicular area.
- Stab wound 2 x 3 cm with 5 cm depth anterior neck just above the sternum.
- Stab wound 2 x 3 cm with 3-5 cm depth at epigastric area.

The most probable cause of death was massive [H]emorrhage secondary to multiple stab wounds.[21]

According to Dr. Betita, the cause of death was massive hemorrhage due to multiple stab wounds.[22] He added that the three (3) stab wounds were probably caused by a sharp-bladed instrument like a knife.[23]

The petitioner gave a different version of the events, summarized in the RTC decision as follows:

Noel Guillermo testified that at 5:30 in the afternoon of July 21, 1996, he was in Cuartero at the restaurant of Melecio Heyres, husband of Gertrudes Heyres, together with Arnel Socias and Joemar Palma drinking beer, consuming only about half a bottle, when Winnie Alon, Eddie Roque, Vicente Alon, and Wilfredo Cabison

arrived and ordered beer from BabyLou Felipe. Winnie Alon came to him and requested to join them in their table which he affirmatively answered. Winnie Alon then had an altercation with Arnel Socias regarding "labtik" (string used in marking wood to be cut).[24]

Winnie Alon challenged Arnel Socias to a contest on clean or straight cutting of wood. Arnel declined the challenge claiming that he is only an assistant to his brother-in-law. Winnie Alon got angry and told him that he has long been in [the] chain saw [sic] business but "you're stupid" ("gago ka!"). Arnel responded: "If the wood is crooked and you would deviate from line, you're stupid." [25]

Winnie Alon suddenly stood up and said to Arnel: "Don't ever call me stupid," pointing his finger to Arnel. He told them to settle the matter peacefully as they are friend [sic], but Winnie Alon was so furious and grabbed Arnel Socias by the collar. Arnel tried to release the hold of Winnie from his collar. While he was pacifying the two telling them to settle the matter peacefully, Winnie Alon turned to him and said: "you also," then struck him with a beer bottle. He was hit at the right top of his head thrice. He stood up and boxed Winnie who again picked up a bottle break [sic] it against the wall, and struck him with the broken bottle. He stepped back, pulled his knife, and stabbed him three (3) times but cannot remember what part of his body was hit by his successive stabs.[26] x x x [Footnotes referring to the pertinent parts of the record supplied]

Baby Lou, a waitress at the restaurant of Melecio Heyres, narrated that in the afternoon of July 21, 1996, the petitioner, together with Arnaldo and Joemar, arrived at the restaurant and ordered beer.[27] A few minutes later, Vicente, Eddie, Winnie, and Wilfredo Cabison arrived and also ordered beer. She then saw the group of Winnie transfer to the table occupied by the petitioner and his companions. Thereafter, the group had a heated argument among themselves regarding "labtik." [28] In the course of the exchange, she saw Winnie strike the petitioner on the head with a bottle. Winnie and the petitioner then grappled with each other. At that point, she hid behind the refrigerator and did not see what happened next. Afterwards, she saw the bloodied body of Winnie lying outside the restaurant.[29] She likewise saw the petitioner outside the restaurant; his shirt was splattered with blood.[30]

Dr. Betita, this time testifying as defense witness, stated, among others, that the contusion hematoma suffered by the petitioner could have been caused by a hard object like a beer bottle, while the linear abrasion could have been caused by a fingernail.[31]

Arnaldo Socias testified that on July 21 1996, he, together with the petitioner and Joemar, was drinking beer at the restaurant of Melecio Heyres[32] when Winnie stood up and asked if they (Winnie's group) could join them at their table. Arnaldo and his companions agreed. Winnie's group then transferred to the table of Arnaldo's group.[33]

The discussion took a bad turn when the matter of cutting by chainsaw was raised. Winnie challenged Arnaldo to a contest to determine who could do the cleanest cut. He declined and claimed he does not know how to operate a chainsaw. To this, Winnie retorted, "You are already old in that business, but your finished product is still crooked. You are all dumb." He countered, "If the wood itself is crooked, you cannot have a straight lumber. You are dumb if you insist you can." At that point, Winnie stood up and grabbed him by the collar. The petitioner intervened and told them to settle their differences peacefully. Winnie then grabbed a bottle and struck the petitioner on the head three times.[34] Arnaldo added that he did not see who stabbed Winnie, because while the petitioner and Winnie were grappling, he was busy fighting with Vicente.[35]

Joemar Palma testified that in the afternoon of July 21, 1996, the petitioner, Arnaldo, and he were drinking beer at the restaurant of Mr. Heyres when four persons, who appeared to be drunk (later identified as Vicente, Eddie, Winnie, and Wilfredo Cabison), entered the restaurant and ordered beer.[36] After the latter group joined them at their table, Winnie and Arnaldo had a heated discussion regarding expertise in operating a chainsaw. Winnie grabbed the shirt collar of Arnaldo in the course of the heated exchange.[37] The petitioner advised them to calm

down, but Winnie struck him (petitioner) on the head with a beer bottle three times. Vicente also tried to strike Arnaldo, but the latter managed to duck and so he (Joemar) took the hit instead. Thereafter, he and Arnaldo engaged Vicente.[38]

The RTC, in its decision of January 8, 2000, convicted the petitioner of the crime of homicide, but acquitted Arnaldo and Joemar. The dispositive portion of the decision reads:

WHEREFORE, the evidence on record having established the guilt of Noel Guillermo as principal in the crime of homicide for stabbing three (3) times Winnie Alon which caused the latter's death, attended by a special or privileged mitigating circumstance of incomplete justification, and without any aggravating or mitigating circumstances attendant, he is imposed an indeterminate sentence of six (6) years of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum, with the corresponding accessory penalties, and to pay death indemnity of P50,000.00 to the heirs of Winnie Alon, in the service of his sentence he shall be credited the period that he undergone [sic] preventive imprisonment, conformably with Art. 29 of the Code.

Costs against the accused.

For insufficiency of evidence, the accused Arnaldo Socias and Joemar Palma are acquitted of the crime charged. The bail bond for their provisional liberty is CANCELLED AND DISCHARGED.

SO ORDERED.[39] [Emphasis in the original]

The petitioner appealed to the CA whose decision is now assailed in the present petition. The petitioner essentially claims that the RTC and the CA erred in failing to recognize the existence of all the elements of self-defense.

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

Plea of Self-Defense

We note at the outset that the petitioner does not deny that he killed Winnie. He expressly made this admission in his testimony of July 15, 1999:

ATTY. VILLAREAL:

Q:

And what did you do when he struck you with the bottle?

NOEL GUILLERMO:

A:

I was able to move backward and I realized that I have a knife on [sic] the back of my waist.

Q:

And what did you do with your knife?

A:

I then stabbed him.

Q:

How many times?

A:

About three times as far as I can remember.[40] [Emphasis supplied]

The petitioner justifies the stabbing as an act of self-defense.

As the lower courts did, we do not recognize that the petitioner fully acted in self-defense.

As a rule, the prosecution bears the burden of establishing the guilt of the accused beyond reasonable doubt. However, when the accused admits the killing and, by way of justification, pleads self-defense, the burden of evidence shifts; he must then show by clear and convincing evidence that he indeed acted in self-defense. For that purpose, he must rely on the strength of his own evidence and not on the weakness of the prosecution's evidence.[41]

The elements that the accused must establish by clear and convincing evidence to successfully plead self-defense are enumerated under Article 11(1) of the Revised Penal Code:

ART. 11. Justifying circumstances. - The following do not incur any criminal liability:

- Anyone who acts in defense of his person or rights, provided that the following circumstances concur;

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

As a justifying circumstance, self-defense may be complete or incomplete. It is complete when all the three essential requisites are present; it is incomplete when the mandatory element of unlawful aggression by the victim is present, plus any one of the two essential requisites.[42]

In the present case, we find it beyond dispute that the victim Winnie started the fight that ended in his death; he struck the petitioner on the head when the latter intervened to pacify the quarrel between Winnie and Arnaldo. In short, the victim was the unlawful aggressor while the petitioner was in the lawful act of pacifying the quarreling parties; thus, the latter has in his favor the element of unlawful aggression by the victim.

We consider it also established that the petitioner did not provoke the fight that ensued; he was a third party to the quarrel between the original protagonists - Winnie and Arnaldo - and did not at all initiate any provocation to ignite the quarrel. Thus, the petitioner also has the element of lack of sufficient provocation in his favor.

The third element - the reasonableness of the means to repel the aggression - is the critical element that the lower courts found lacking in the petitioner's case. Generally, reasonableness is a function of the nature or severity of the attack or aggression confronting the accused, the means employed to repel this attack, the surrounding circumstances of the attack such as its place and occasion, the weapons used, and the physical condition of the parties - which, when viewed as material considerations, must show rational equivalence between the attack and the defense.[43] In *People v. Escarlos*,[44] this Court held that the means employed by a person invoking self-defense must be reasonably commensurate to the nature and the extent of the attack sought to be averted. In *Sienes v. People*,[45] we considered the nature and number of wounds inflicted on the victim as important indicia material to a plea for self-defense.

In the present case, the attack on the petitioner came as he intervened in a quarrel between the victim and another party. As we concluded above, we deem it established that the victim was the unlawful aggressor who attacked the petitioner. Physical evidence shows that indeed the petitioner suffered the following injuries:

- Contusion Hematoma 2 x 3 left parital area just above the left ear.
- Linear abrasion 3 - 4 cm left hand medial side.
- Linear abrasion 2 - 3 cm left head ulnar side.[46]

The weapons that caused these injuries were a beer bottle and, quite possibly, fingernails as the victim and the appellant grappled with each other.[47] In contrast, the victim suffered three stab wounds: at the neck, at the abdomen and in the chest. The weapon used was a Batangas knife that admittedly belonged to the petitioner. Thus, the physical evidence in the case stands.

The petitioner claims self-defense on the position that Winnie, after hitting him on the head three times with an empty bottle, grabbed another bottle, broke it against the wall, and thrust it towards him. It was at this point that the petitioner used his knife to inflict Winnie's fatal wounds. Clearly, the petitioner wants to impress upon us that his response to Winnie's attack was reasonable; he used a knife to repel an attacker armed with a broken beer bottle.

Several reasons militate against our acceptance of the petitioner's version and interpretation of events.

First, there is intrinsic disproportion between a Batangas knife and a broken beer bottle. Although this disproportion is not conclusive and may yield a contrary conclusion depending on the circumstances, we mention this disproportionality because we do not believe that the circumstances of the case dictate a contrary conclusion.

Second, physical evidence shows that the petitioner suffered only one contusion hematoma at the parietal area above the left ear. Unless the three (3) beer bottle blows that the petitioner alleged all landed on the same site - a situation that could have incapacitated the petitioner - the more plausible conclusion from the physical evidence is that the petitioner received only one blow, not three as he claimed. Contrary to what the petitioner wishes to imply, he could not have been a defender reeling from successive head blows inflicted by the victim.

Third, the victim, Vicente, and Eddie, were already drunk when they arrived at the restaurant before the fatal fight. This state of intoxication, while not critically material to the stabbing that transpired, is still material for purposes of defining its surrounding circumstances, particularly the fact that a broken beer bottle might not have been a potent weapon in the hands of a drunk wielder.

Fourth, and as the CA aptly observed as well, the knife wounds were all aimed at vital parts of the body, thus pointing against a conclusion that the petitioner was simply warding off broken beer bottle thrusts and used his knife as a means commensurate to the thrusts he avoided. To be precise, the petitioner inflicted on the victim: one stab wound at the chest, 6-8 cms. deep, at the 5[th] rib clavicular area, or in plainer terms, in the area of the victim's heart; another was at the neck, 5 cms. deep, just above the breastbone; and a last one was in the abdominal area, 3-5 cms. deep. The depth of these wounds shows the force exerted in the petitioner's thrusts while the locations are indicative that the thrusts were all meant to kill, not merely to disable the victim and thereby avoid his drunken thrusts.

Fifth, in appreciating the facts, the RTC and the CA were one in the conclusion to disbelieve the petitioner's allegation of complete self-defense, as reflected in the CA's further cogent observations that:

- (b) If, indeed the deceased picked up another bottle of beer, hit the same against the wall, resulting in the breakage of the bottle, and with it, hit the Appellant anew, it behooved the Appellant to have rushed posthaste to the police station and report the stabbing, with the request that a policeman be dispatched to the locus criminis and confirm the presence of broken pieces of beer bottle in the restaurant. The Appellant did not. He and his companions, Arnaldo and Joemar, fled from the scene, via the back door, and escaped on board a motorcycle.

(c) Neither Arnaldo, Joemar, or Babylou corroborated the claim of the Appellant that, after the Appellant boxed Winnie, who lost his hold of the bottle of beer, he picked up another bottle and struck the bottle of beer against the wall and hit the Appellant with the bottle. The appellant relied solely on his own testimony to buttress his defense.

(d) The Municipal Trial Court conducted a preliminary investigation of the "Criminal Complaint" filed against the Appellant, Arnaldo, and Joemar. However, the Appellant did not submit any "Counter-Affidavit" claiming that he was impelled to stab Winnie three (3) successive times on mortal parts of his body and killing [sic] him because Winnie picked up a bottle, hit the same against a wall and hit the Appellant anew with the broken bottle.[48] [Underscoring in the original]

We see no reason to disturb these findings as they are based on existing evidence, and the conclusions drawn therefrom are patently reasonable. We have time and again held that the findings of facts of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on these factual findings are to be given the highest respect; the trial court enjoys the unique advantage of being able to observe, at close range, the conduct and deportment of witnesses as they testify. These factual findings, when adopted and confirmed by the CA, are final and conclusive and need not be reviewed on the appeal to us. We are not a trier of facts; as a rule, we do not weigh anew the evidence already passed on by the trial court and affirmed by the CA.[49] Only after a showing that the courts below ignored, overlooked, misinterpreted, or misconstrued cogent facts and circumstances of substance that would alter the outcome of the case, are we justified in undertaking a factual review. No such exceptional grounds obtain in this case.

In sum, we rule that there was no rational equivalence between the means of the attack and the means of defense sufficient to characterize the latter as reasonable.

The Proper Penalty

The impossible penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal in its full range.[50] Article 69 of the Code however provides that:

ART. 69. Penalty to be imposed when the crime committed is not wholly excusable. – A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in Articles 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.

Since the petitioner's plea of self-defense lacks only the element of "reasonable means," the petitioner is, therefore, entitled to the privileged mitigating circumstance of incomplete self-defense. Consequently, the penalty for homicide may be lowered by one or two degrees, at the discretion of the court.

The penalty which the RTC imposed and which the CA affirmed lowered the penalty of reclusion temporal by one degree, which yields the penalty of prision mayor. From this penalty, the maximum of the indeterminate penalty is determined by taking into account the attendant modifying circumstances, applying Article 64 of the Revised Penal Code.[51] Since no aggravating nor mitigating circumstance intervened, the maximum of the indeterminate penalty shall be prision mayor in its medium period whose range is from 8 years and 1 day to 10 years.

To determine the minimum of the indeterminate penalty, prision mayor has to be reduced by one degree without taking into account the attendant modifying circumstances. The penalty lower by one degree is prision correccional whose range is from 6 months and 1 day to 6 years. The trial court is given the widest discretion to fix the minimum of the indeterminate penalty provided that such penalty is within the range of prision

correccional.

The CA affirmed the indeterminate penalty of six (6) years prision correccional, as minimum, to ten (10) years of prision mayor, as maximum, as imposed by the RTC on petitioner. We affirm this to be the legally correct and proper penalty to be imposed upon petitioner.

We also affirm the P50,000.00 death indemnity awarded to Winnie's heirs, in accordance with prevailing jurisprudence.[52]

We add that moral damages should be awarded as they are mandatory in murder and homicide cases without need of allegation and proof other than the death of the victim.[53] The award of P50,000.00 as moral damages is, therefore, in order.

WHEREFORE, in light of all the foregoing, we DENY the petition. The assailed decision and resolution of the CA dated November 15, 2001 and April 5, 2002, respectively, in CA-G.R. CR No. 24181 are AFFIRMED with the MODIFICATION that the petitioner is ordered to pay the heirs of Winnie Alon the amount of P50,000.00 as moral damages. Costs against the petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court.

[2] Penned by Associate Justice (now retired Supreme Court Justice) Romeo J. Callejo, Sr. and concurred in by Associate Justice Remedios Salazar-Fernando and Associate Justice Josefina Guevarra-Salonga; rollo, pp. 21-30.

[3] Id., p. 54.

[4] Penned by Judge Charlito F. Fantilanan; id., pp. 31-46.

[5] In some parts of the record, he is also referred to as Arnold or Arnel Socias.

[6] CA rollo, p. 17.

[7] Dated January 8, 2000; rollo, pp. 31-46.

[8] TSN, June 23, 1998, p. 3.

[9] Id., p. 4.

[10] Id., p. 5.

[11] Id., pp. 5-6.

[12] Id., pp. 7-8.

[13] Id., pp. 11-12.

[14] Rollo, p. 32.

[15] TSN, July 27, 1998, p. 3.

[16] Id., p. 4.

[17] Id., p. 5.

- [18] *Id.*, pp. 5-6.
- [19] *Id.*, p. 8.
- [20] TSN, January 26, 1999, p. 4.
- [21] Records, p. 216.
- [22] *Supra*, note 20, p. 6.
- [23] *Id.*, pp. 9-10.
- [24] TSN, July 15, 1999, pp. 3-4.
- [25] *Id.*, pp. 4-5.
- [26] *Id.*, pp. 5-6.
- [27] TSN, March 23, 1999, p. 4.
- [28] *Id.*, p. 5.
- [29] *Id.*, p. 6.
- [30] *Id.*, p. 7.
- [31] *Id.*, p. 15.
- [32] TSN, April 6, 1999, pp. 5-6.
- [33] *Id.*, p. 7.
- [34] *Id.*, pp. 7-9.
- [35] *Id.*, p. 10.
- [36] TSN, April 13, 1999, p. 3.
- [37] *Id.*, p. 4.
- [38] *Id.*, pp. 4-5.
- [39] *Supra*, note 14, pp. 15-16.
- [40] *Supra*, note 24, p. 6.
- [41] *People v. Santillana*, G.R. No. 127815, June 9, 1999, 308 SCRA 104.
- [42] *Senoja v. People*, G.R. No. 160341, October 19, 2004, 440 SCRA 695, 703.
- [43] See *People v. Encomienda*, G.R. No. L-26750, August 18, 1972, 46 SCRA 522; *Eslabon v. People*, G.R. No. L-66202, February 24, 1984, 127 SCRA 785.
- [44] G.R. No. 148912, September 10, 2003, 410 SCRA 463.
- [45] G.R. No. 132925, December 13, 2006, 511 SCRA 13.
- [46] Exhibit "1," records, p. 347.
- [47] *Supra*, note 31.

[48] Annex "A," rollo, p. 29.

[49] *Chua v. People*, G.R. Nos. 150926 and 30, March 6, 2006, 484 SCRA 161, 167.

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

[51] Article 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 courts 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.

[52] See *People v. Tabuelog*, G.R. No. 178059, January 22, 2008; *Licyayo v. People*, G.R. No. 169425, March 4, 2008.

[53] *People v. Rodas*, G.R. No. 175881, August 28, 2007, 531 SCRA 554, 573, citing *People v. Bajar*, 414 SCRA 494, 510 (2003).

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