

JOSE RIMANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 156567. November 27, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the December 16, 2002 decision[1] of the Court of Appeals in CA- G.R. CR No. 17838 which modified the penalty imposed on petitioner Jose Rimano for the crime of homicide in Criminal Case No. 3597 and frustrated homicide in Criminal Case No. 3595.[2]

Petitioner was originally charged in three separate informations for the crimes of homicide and two counts of frustrated homicide. Upon arraignment on September 7, 1992, he pleaded not guilty[3] to all the charges against him. After trial, the court a quo found him guilty beyond reasonable doubt of homicide in Criminal Case No. 3597 and of two counts of frustrated homicide in Criminal Case Nos. 3578 and 3595. On appeal to the Court of Appeals, the latter acquitted petitioner in Criminal Case No. 3578 for frustrated homicide and affirmed with modification his convictions in Criminal Case No. 3597 for homicide and in Criminal Case No. 3595 for frustrated homicide. Hence, the instant petition refers to his conviction insofar as Criminal Case No. 3597 and Criminal Case No. 3595 are concerned.

The information in Criminal Case No. 3597 for homicide, reads:

That on or about the 16th day of October 1991, in the evening, in ... Poblacion, Municipality of Malinao, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a deadly weapon, consisting of a knife, without justifiable cause and with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab one NESTOR IMPORTADO, thereby inflicting upon the latter physical injuries, to wit:

Stabbed Wounds:

(a)

Right chest with moderate hemathorax at two (02) points

(b)

Right upper quadrant, left wrist two (02) points, right back at one (01) point, neck

Cause of Death:

Massive Hemorrhage due to multiple wound with penetration at the liver, gall bladder, small intestine at many points, diaphragm right.

as per Post Operative Findings issued by Dr. Reynaldo P. Sucgang, Jr. M.D., Medical Specialist 1, of Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, attached hereto as annex "A" and made an integral

part of this information which injuries caused the death of said NESTOR IMPORTADO.

That as a consequence of the criminal acts of the accused, the heirs of the deceased NESTOR IMPORTADO suffered actual and compensatory damages in the amount of FIFTY THOUSAND PESOS (P50,000.00).

CONTRARY TO LAW.[4]

Criminal Case No. 3595 (frustrated homicide) -

That on or about the 16th day of October 1991, in the evening, in ... Poblacion, Municipality of Malinao, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a knife, with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and stab one ISAIAS IBARDOLASA,[5] JR., thereby inflicting upon the latter physical injury, to wit:

Stabbed wound left back with massive hemathorax left.

as per Medico-Legal Report on Physical Injuries issued by Dr. Reynaldo P. Sucgang, Medical Specialist I of the Dr. Rafael S. Tumbokon Memorial Hospital, Kalibo, Aklan, hereto attached and an integral part hereof, the accused having thus performed all the acts of execution which would have produced the crime of Homicide as a consequence, but which, nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, the timely and able medical assistance rendered to said ISAIAS IBARDOLASA, JR., which prevented his death.

That by reason of the criminal acts of the accused, ISAIAS IBARDOLASA, JR., suffered actual and compensatory damages in the amount of P20,000.00.

CONTRARY TO LAW.[6]

The facts as found by the Court of Appeals are as follows:

At around 8:30 in the evening of October 16, 1991, Nelson Importado, suddenly attacked petitioner with a knife in front of a billiard hall at the corner of Sto. Rosario Street and Roxas Avenue, Malinao, Aklan. The area was well illuminated by a fluorescent lamp. In the process of grappling for the possession of the knife, petitioner was able to get hold thereof and stabbed Nelson twice. The latter retreated to the billiard hall, 8 meters away from petitioner.[7] Thereafter, Nestor Importado, brother of Nelson, rushed towards the petitioner and boxed him, who retaliated by delivering successive stabbing blows which landed at the frontal portion of Nestor's body.[8] At this point, Isaias Ibardalosa, Jr., tried to separate the two. When Nestor turned his back, petitioner stabbed him. The former was able to flee while Isaias and the petitioner wrestled. Shortly thereafter, they fell on the ground with Isaias on top of the petitioner. Petitioner was facing up and pinned by Isaias on the shoulders. But since petitioner's hands were free, he was able to stab Isaias at the back. Then, petitioner scampered away towards Malinao Elementary School.[9] The stabbing of Nestor and Isaias was witnessed by Froilan Sucro from the window of his house, 5 meters away from the victims.[10]

Dr. Victor Sta. Maria, who interpreted the Post Operative Findings on the deceased Nestor Importado, testified that the latter sustained six wounds, [11] thus -

- (a) right chest with moderate hemathorax at two (2) points;
- (b) right upper quadrant, left wrist two (02) points, right back at one (01) point, neck.[12]

On the other hand, the Medico Legal Report states that Isaias Ibardalosa, Jr. sustained a single "stabbed wound left back." [13]

Invoking self-defense, petitioner testified that at around 8:30 p.m. of October 16, 1991, he and some of his

students went to the police station of Malinao, Aklan, to report an assault on one of his baseball players.[14] On their way back to their sleeping quarters at Malinao Elementary School, they passed by a group having a drinking spree in front of a billiard hall. Petitioner's students were walking about 8 meters ahead of him.[15] He proceeded and saw a man standing in the middle of the road, whom he later learned was the deceased Nestor Importado. Petitioner greeted Nestor, "Good evening, let us go to sleep now." [16] The latter did not answer. He noticed a knife in Nestor's right hand. The latter suddenly rushed towards him and tried to stab him. Petitioner, using both his hands, grabbed Nestor's right hand and placed Nestor's arms on his shoulder with his back facing him.[17] While they were wrestling for the possession of the knife, Nelson Importado, [18] brother of Nestor, came and boxed petitioner in the face.[19] Nelson delivered another fist blow but he was accidentally stabbed by the knife which was still in the hands of Nestor. Nelson fell but was able to stagger towards the billiard hall.[20] As petitioner and Nestor struggled for the possession of the knife, Isaias Ibardalosa, Nestor's compadre,[21] boxed petitioner on the right eye. At this instant, petitioner got hold of the knife and swung it 2 or 3 times hitting Nestor who was behind him and pulled his collar.[22] However, the knife was thrown away from his hand by Isaias. Petitioner kicked Isaias but somebody hit him causing him to fall to the ground face up. [23] Isaias immediately pinned him down,[24] holding his two arms.[25] While they were in that position, Nelson[26] came back and delivered 2 stabbing blows. The first thrust hit Isaias who was on top of petitioner and the other one hit the ground. Petitioner was able to free himself and he ran towards the Malinao Elementary School.[27] The next day, he presented himself to the authorities at Camp Pastor Martelino in Kalibo, Aklan.[28]

After trial on the merits, the trial court rendered a decision on November 23, 1994, the dispositive portion thereof, reads:

WHEREFORE, the accused Jose Rimano is hereby sentenced in Criminal Case No. 3597 to suffer the penalty of imprisonment for eight (8) YEARS and ONE day of prision mayor as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal as maximum, and to indemnify the heirs of the victim Nestor Importado FIFTY THOUSAND PESOS (P50,000.00), and to pay the costs.

The accused Jose Rimano is hereby sentenced in Criminal Case No. 3595 to suffer the penalty of imprisonment for TWO (2) YEARS, FOUR MONTHS and ONE (1) DAY of prision correccional as minimum, to EIGHT (8) YEARS and ONE (1) DAY of prision mayor as maximum, and to pay the victim Isaias Ibardalosa, Jr., ... actual damage[s] in the amount of TWENTY-TWO THOUSAND, EIGHTY-EIGHT PESOS & TWENTY-EIGHT CENTAVOS (P22, 088.28), and to pay the costs.

The accused Jose Rimano is hereby sentenced in Criminal Case No. 3578 to suffer the penalty of imprisonment for TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum, to EIGHT (8) YEARS and ONE (1) DAY of prision mayor as maximum, and to pay the costs.

SO ORDERED.[29]

On appeal, the Court of Appeals acquitted petitioner of frustrated homicide in Criminal No. 3578, after finding that he acted in legitimate self-defense when he stabbed Nelson Importado. His convictions in Criminal Case No. 3597 for homicide and in Criminal Case No. 3595 for frustrated homicide were, however, affirmed with modification. The decretal portion thereof states:

WHEREFORE, foregoing premises considered and pursuant to applicable laws and jurisprudence on the matter and evidence on hand, the instant appeal is hereby partly granted. The assailed judgment is hereby modified as follows:

In Criminal No. 3578, accused-appellant is hereby acquitted of the crime charged.

In Criminal Case No. 3595, accused-appellant Jose Rimano's prison term is reduced to six (6) MONTHS of

arresto mayor as minimum to TWO (2) years, FOUR (4) months and ONE (1) DAY of prision correccional as maximum.

In Criminal Case No. 3597, appellant's prison term is reduced to TWO (2) years, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to EIGHT (8) years and ONE (1) day of prision mayor as maximum.

All other aspects of the decision are AFFIRMED. No Costs.

SO ORDERED.[30]

Hence, the instant petition based on the following assignment of errors:

A. FOR CRIMINAL CASE NO. 3597, THE COURT OF APPEALS COMMITTED A PALPABLE ERROR AND GRAVE MISAPPREHENSION OF FACTS IN NOT LIKEWISE ACQUITTING PETITIONER OF THE CHARGE OF HOMICIDE BECAUSE CONTRARY TO ITS FINDING, PETITIONER EMPLOYED REASONABLE MEANS TO REPEL THE UNPROVOKED ATTACK AND UNLAWFUL AGGRESSION OF NESTOR IMPORTADO WHO WAS ARMED WITH A BLADED WEAPON.

B. FOR CRIMINAL CASE NO. 3595, THE COURT OF APPEALS COMMITTED A PALPABLE ERROR AND GRAVE MISAPPREHENSION OF FACTS IN NOT LIKEWISE ACQUITTING PETITIONER OF THE CHARGE OF FRUSTRATED HOMICIDE BECAUSE CONTRARY TO ITS FINDING, PETITIONER EMPLOYED REASONABLE MEANS TO REPEL THE UNPROVOKED ATTACK OF ISAIAS IBARDALOZA, JR. WHO JOINED THE UNRELENTING AND VICIOUS ATTACK INITIATED BY THE IMPORTADO BROTHERS.

C. ONLY ASSUMING ARGUENDO THAT PETITIONER MAY BE CREDITED WITH THE PRIVILEGED MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE FOR CRIMINAL CASE NO. 3597, THE COURT OF APPEALS COMMITTED A PALPABLE ERROR IN NOT REDUCING AND/OR LOWERING THE PENALTY BY TWO DEGREES PURSUANT TO THE HONORABLE COURT'S RULING IN TORRES VS. SANDIGANBAYAN, 143 SCRA 139, 145 [1986] WHICH IS APPLICABLE TO PETITIONER.

D. ONLY ASSUMING ARGUENDO THAT PETITIONER MAY BE CREDITED WITH THE PRIVILEGED MITIGATING CIRCUMSTANCE OF INCOMPLETE SELF-DEFENSE FOR CRIMINAL CASE NO. 3595, THE COURT OF APPEALS COMMITTED A PALPABLE ERROR IN NOT REDUCING AND/OR LOWERING THE PENALTY BY TWO DEGREES PURSUANT TO THE HONORABLE COURT'S RULING IN TORRES VS. SANDIGANBAYAN, 143 SCRA 139, 145 [1986] WHICH IS APPLICABLE TO PETITIONER. [31]

When an accused pleads self-defense, he thereby admits authorship of the crime. Consequently, the burden of proving his guilt, which lies upon the prosecution, is shifted to him. He must prove by clear and convincing evidence the elements of self-defense, to wit: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (3) lack of sufficient provocation on the part of the person defending himself.[32] Unlawful aggression is a condition sine qua non for upholding the justifying circumstance of self-defense. Unless the victim has committed unlawful aggression against the other, there can be no self-defense, complete or incomplete, on the part of the latter. If there is nothing to prevent or repel, the other two requisites of self-defense will have no basis.[33]

In the case at bar, we find no error in the findings of the Court of Appeals that unlawful aggression existed and that the same came from the Importado brothers and Isaias Ibardalosa, Jr. Evidence shows that Nelson Importado was the first to attack petitioner with a knife and that the latter was able to get hold of said weapon which he used to repel the unlawful aggression of Nelson, Nestor and Isaias, who attacked him one after the other. The assaults

were not simultaneous, but successive, enabling petitioner to separately and effectively repel the aggression of his unarmed attackers. The question, therefore, lies in the presence or absence of the second and third requisites of self defense, i.e., the reasonable necessity of the means employed by petitioner to protect his life and whether there was sufficient provocation on his part.

In Criminal Case No. 3597, for homicide, while the aggression came from Nestor Importado, the second attacker, there was no necessity for petitioner to stab him 6 times, especially considering that the latter was unarmed. Moreover, the stab wound at the back of the deceased which was delivered by petitioner after the former already sustained wounds on his chest and abdomen cannot certainly be considered as reasonably necessary. When Nestor turned his back, there was no more need to stab him because the danger he posed had ceased.

As to the third requisite that the provocation must be sufficient, it should be proportionate to the aggression and adequate to stir the aggressor to its commission.[34] To be entitled to self-defense, however, the one defending himself must not have given cause for the aggression by his unjust conduct or by inciting or provoking the aggressor.[35]

In the instant case, petitioner's act of stabbing Nelson cannot be considered as sufficient provocation for Nestor to avenge his brother's injuries. We note that in Criminal Case No. 3578, for frustrated homicide, petitioner was acquitted by the Court of Appeals for stabbing Nelson because he was found to have acted in legitimate self-defense. Under the contemplation of law, while petitioner's act may indeed stir Nestor to commit violence, the former should still be credited with the benefit of the third requisite because the cause he gave arose from a just act to protect his life.

In Criminal Case No. 3595, for frustrated homicide, we sustain the finding of the court below that it was petitioner and not Nelson Importado, as claimed by the defense, who stabbed Isaias Ibardalosa, Jr. This is supported by the testimony of Froilan Sucro, whose declaration is entitled to full faith and credit inasmuch as he was not shown to have been impelled by ill motive to perjure himself.[36] It cannot be denied, however, that the unlawful aggression came from Isaias who, after intervening between Nestor and petitioner, wrestled with the latter. As previously stated, Isaias pinned petitioner to the ground face up while holding petitioner's shoulders. While in this position, petitioner was able to free himself by delivering a single stabbing blow at the back of Isaias. Under the circumstances, it is reasonable to conclude that petitioner did not use unnecessary means to repel an ongoing attack. It would not be proper and reasonable to require petitioner to flee or use a less deadly weapon or defense, because in the situation in which he was placed, it was natural for him to use the weapon he was holding to defend himself. In the natural order of things, following the instinct of self preservation, he was compelled to resort to the available defense.[37] In emergencies of this kind, human nature does not act upon processes of formal reason but in obedience to the instinct of self- preservation; and when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to sanction that act or to mitigate his liability.[38]

Anent the third requisite, we find that petitioner gave sufficient provocation for Isaias Ibardalosa, Jr. to assault him. Contradistinguished to his act of stabbing Nelson Importado, which was justified and hence cannot be considered as sufficient provocation insofar as his brother, Nestor, is concerned, petitioner's act of stabbing Nestor 6 times can no longer be considered justified or a legitimate self-defense because of the unreasonable necessity of the means he employed. Inflicting 5 stab wounds at the frontal portion of Nestor's body and another one at the back before the latter fled can be considered as sufficient provocation to cause Nestor's friend, Isaias Ibardalosa, Jr., to intervene and thereafter wrestle with petitioner. Hence, self-defense cannot successfully be raised to justify petitioner's act of stabbing Isaias Ibardalosa, Jr., because he gave the latter sufficient provocation to assault him. At the most, he could be credited with the privileged mitigating circumstance of incomplete self-defense.

Under Article 69[39] of the Revised Penal Code, in order to avail of the privileged mitigating circumstance of incomplete self-defense which at the discretion of the court, reduces the penalty by one or two degrees, than that prescribed by law, appellant must prove the existence of a majority of the requisites for self- defense.

In the case at bar, a majority of the requisites of the justifying circumstance of self-defense, including the indispensable requisite of unlawful aggression on the part of the victims, are present in Criminal Cases Nos. 3597 and 3595. Petitioner, a public elementary school teacher, was unsuspectingly walking along with his students without the slightest inkling of an impending harm that would radically change the rest of his life. While it is true that he may have over-reacted to the assault and in the process provoked another attack, the fact remains that it was the unlawful aggression of the victims which set into motion the series of events which brought upon themselves the injuries complained of. Under the circumstances, we deem it proper to modify the penalties imposed by the Court of Appeals by lowering them by two degrees than that prescribed by law.[40]

Article 249 of the Revised Penal Code provides that the penalty for homicide is reclusion temporal. Considering that the requisites of unlawful aggression and lack of sufficient provocation on the part of petitioner are present in Criminal Case No. 3597, he is entitled to a penalty two degrees lower than reclusion temporal, that is, prision correccional. There being no modifying circumstances attendant in the present case, the proper impossible penalty is prision correccional in its medium period.[41] Applying the indeterminate sentence law, petitioner is entitled to an indeterminate penalty the minimum of which shall be within the range of arresto mayor, and the maximum of which shall be within the range of prision correccional medium.

Pursuant to Article 50[42] of the Revised Penal Code, the penalty for a frustrated crime is one degree lower than that prescribed by law for the consummated felony; thus, frustrated homicide is punishable by prision mayor. Since a majority of the requisites of self defense - unlawful aggression and reasonable necessity of the means employed - are attendant in Criminal Case No. 3595 for frustrated homicide, petitioner is also entitled to a penalty two degrees lower.[43] The impossible penalty on petitioner would therefore be arresto mayor. The same shall be imposed in its medium period as there are no attendant modifying circumstances.[44] Since the maximum term of imprisonment does not exceed one year, the Indeterminate Sentence Law does not apply.[45]

As regards his civil liability in Criminal Case No. 3597 for homicide, petitioner, in addition to the civil indemnity of P50,000.00, should be further ordered to pay the heirs of the deceased Nestor Importado, moral damages in the amount of P50,000.00 and temperate damages of P25,000.00 in lieu of actual damages. As testified by Merly Importado, the widow of the deceased, she was shocked and mentally tortured by the death of her husband.[46] Hence, the award of moral damages, which current jurisprudence set at P50,000.00, is proper.[47] To justify an award of actual damages, on the other hand, there must be competent proof of the actual amount of loss. Credence can only be given to those that are supported by receipts and appear to have been genuinely incurred in connection with the death, wake and burial of the victim.[48] Considering that the receipts presented by the prosecution do not show that the expenses stated therein were really incurred in connection with the death and burial of the victim, the claim for actual damages cannot be allowed. However, since it cannot be denied that the victim's heirs suffered pecuniary loss but the amount of which cannot be proved with certainty, temperate damages in the amount of P25,000.00 may be awarded.[49]

In Criminal Case No. 3595, for frustrated homicide the award of P22,888.28 as actual damages is affirmed considering that it was supported by receipts.

WHEREFORE, in view of all the foregoing, the December 16, 2002 decision of the Court of Appeals in CA-G.R. CR No. 17838 finding petitioner Jose Rimano guilty beyond reasonable doubt of homicide in Criminal Case No. 3597, and of frustrated homicide in Criminal Case No. 3595, is **AFFIRMED** with the following

MODIFICATIONS: In Criminal Case No. 3597, petitioner is sentenced to suffer the indeterminate penalty of two (2) months and one (1) day of arresto mayor, as minimum, to two (2) years, four (4) months and one (1) day of prision correccional, as maximum. In addition to the civil indemnity of P50,000.00, petitioner is further ordered to pay the heirs of the deceased Nestor Importado, the amount of P50,000.00 as moral damages and P25,000.00 as temperate damages. In Criminal Case No. 3595, petitioner is sentenced to suffer the penalty of 4 months of arresto mayor and to pay the victim, Isaias Ibardalosa, Jr., the amount of P22,888.28 as actual damages.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Carpio and Azcuna, JJ., concur.

[1] Rollo, p. 10; penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Portia Alino-Hormachuelos and Amelita G. Tolentino.

[2] Decision dated 23 November 1994; penned by Judge Maria Carillo Zaldivar.

[3] Criminal Case No. 3597, Records, p. 18; Criminal Case No. 3595, Records, p. 20; Criminal Case No. 3578, Records, p. 26.

[4] Criminal Case No. 3597, Records, p. 1.

[5] Sometimes spelled as "Ibardaloza" in the records.

[6] Criminal Case No. 3595, Records, p. 1.

[7] TSN, 13 November 1992, p. 4.

[8] Id., pp. 3-4.

[9] TSN, 13 November 1992, pp. 5-6; 4 January 1994, pp. 5-8; 23 July 1993, pp. 11-13.

[10] TSN, 4 January 1994, p. 5.

[11] TSN, 21 June 1993, pp. 4-6.

[12] Exhibit "G", Post Operative Findings.

[13] Exhibit "F".

[14] Id., pp. 140-141; 144-145.

[15] Id., pp. 146-147.

[16] Id., p. 148.

[17] Id., pp. 148-151.

[18] TSN, 30 August 1994, p. 28.

[19] TSN, 29 August 1994, p. 153.

[20] Id., pp. 153-154.

[21] TSN, 23 July 1993, p. 4.

[22] TSN, 29 August 1994, pp. 154-157.

[23] TSN, 30 August 1994, pp. 2-3.

[24] Id., p. 29.

[25] Id., p. 4.

[26] Id., p. 29.

[27] Id., pp. 4-6.

[28] Id., pp. 30-31.

[29] Rollo, p. 93.

[30] Rollo, pp. 69-70.

[31] Rollo, pp. 38-40.

[32] *People v. Hugo*, G.R. No. 134604, 28 August 2003.

[33] *People v. Escarlos*, G.R. No. 148912, 10 September 2003, citing *People v. Camacho*, 411 Phil. 715 (2001); *People v. Flores*, G.R. No. 138841, 4 April 2001, 356 SCRA 332; *People v. Court of Appeals*, G.R. No. 103613, 23 February 2001, 352 SCRA 599; *Calim v. Court of Appeals*, G.R. No. 140065, 13 February 2001, 351 SCRA 599.

[34] *People v. Alconga*, 78 Phil. 366 (1947), cited in Reyes, *The Revised Penal Code*, Vol. I, 1998 Edition, p. 180.

[35] Reyes, *The Revised Penal Code*, Vol. I, 1998 Edition, p. 179.

[36] *People v. Garillo*, G.R. No. 146189, 24 February 2003.

[37] *People v. Paras*, 9 Phil. 367, 369-370 (1907).

[38] *People v. Viernes*, 331 Phil. 146, 162 (1996), citing *People of the Philippines v. Encomienda*, G.R. No. L-26750, 18 August 1972, 26 SCRA 522, 534; *People v. Lara*, 48 Phil. 153 (1925).

[39] 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 Article 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.

[40] *People v. Bergaño*, 52 Phil. 313 (1928).

[41] Article 64 (1), Revised Penal Code.

[42] Art. 50. Penalty to be imposed upon principals of a frustrated crime. -- The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony.

[43] Article 69, Revised Penal Code.

[44] Article 64 (1), Revised Penal Code.

[45] Act No. 4103, Sec. 2, as amended.

[46] TSN, November 29, 1993, p. 23.

[47] People v. Escarlos, G.R. No. 148912, 10 September 2003, citing People v. Villanueva, G.R. No. 139177, 11 August 2003; People v. Ibañez, G.R. Nos. 133923-24, 30 July 2003.

[48] People v. Reyes, G.R. No. 142467, 10 June 2003.

[49] People v. Abrazaldo, G.R. No. 124392, 7 February 2003.

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