

ROSIE QUIDET, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 170289. April 08, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Conspiracy must be proved as clearly and convincingly as the commission of the offense itself for it is a facile device by which an accused may be ensnared and kept within the penal fold. In case of reasonable doubt as to its existence, the balance tips in favor of the milder form of criminal liability as what is at stake is the accused's liberty. We apply these principles in this case.

This Petition for Review on Certiorari seeks to reverse and set aside the Court of Appeal's (CA) July 22, 2005 Decision[1] in CA-G.R. CR No. 23351 which affirmed with modifications the March 11, 1999 Decision[2] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 20 in Criminal Case Nos. 92-079 and 92-080.

Factual Antecedents

On January 13, 1992, petitioner Rosie Quidet (petitioner), Feliciano Taban, Jr. (Taban), and Aurelio Tubo (Tubo) were charged with homicide in Criminal Case No. 92-079 for the death of Jimmy Tagarda (Jimmy) allegedly committed as follows:

That on or about the 19[th] day of October 1991 at 8:00 o'clock in the evening, more or less, at Barangay Looc, Salay, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Feliciano Taban, Jr., Rosie Quidet and Aurelio Tubo, with intent to kill, conspiring, confederating, x x x and [sic] helping one another, taking advantage of the darkness of the night, in order to facilitate the commission of the offense with the use of sharp pointed x x x instruments which the accused conveniently provided themselves did then and there, willfully, unlawfully and feloniously attack, assault, stab one Jimmy Tagarda thus the victim sustained several wounds in different parts of his body and as a consequence of which the victim died immediately thereafter.

CONTRARY TO and in violation of Article 249 of the Revised Penal Code.[3]

On even date, the aforesaid accused were charged with frustrated homicide in Criminal Case No. 92-080 for the stab wounds sustained by Jimmy's cousin, Andrew Tagarda (Andrew), arising from the same incident, viz:

That on or about the 19[th] day of October 1991 at 8:00 o'clock in the evening, more or less, at Barangay Looc, Salay, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, and with the use of sharp pointed x x x instrument, and x x x conspiring, confederating and helping one another, and taking advantage of the night [in] order to facilitate the commission of the offense, did then and there, willfully, unlawfully and feloniously attack, assault, and stab one Andrew Tagarda thereby hitting his left chest and nose, the accused having performed all the acts of execution which would produce the crime of Homicide as a consequence except for reason or cause independent of the will of the accused that is, the stab was deflected by the victim.

CONTRARY TO and in violation of Article 249 in relation to Article 6 of the Revised Penal Code.[4]

Upon arraignment, all the accused entered a plea of not guilty in Criminal Case No. 92-080 (frustrated homicide). Meanwhile, in Criminal Case No. 92-079 (homicide), Taban entered a voluntary plea of guilt while petitioner and Tubo maintained their innocence. Accordingly, on June 24, 1992, the trial court rendered a partial judgment[5] sentencing Taban to imprisonment of six (6) years and one (1) day of prison mayor, as minimum, to twelve (12) years, two (2) months and one (1) day of reclusion temporal, as maximum, and ordering him to pay the heirs of Jimmy P50,000.00 as civil indemnity.[6] Thereafter, joint trial ensued.

Version of the Prosecution

On October 19, 1991, at around 8:00 o'clock in the evening, Jimmy, Andrew, Edwin Balani[7] (Balani), and Rolando Mabayo (Mabayo) visited a friend in Sitio Punta, Looc, Salay, Misamis Oriental. Along the way, they saw Taban, together with petitioner and Tubo, come out of the house of one Tomas Osep (Osep). Taban suddenly stabbed Andrew on the chest with a knife. Andrew retaliated by boxing Taban. Jimmy tried to pacify Andrew and Taban but the latter stabbed him in the abdomen. Taban then immediately fled.

Meanwhile, after Jimmy fell down, Tubo threw a drinking glass at Andrew's face while petitioner boxed Andrew's jaw. Tubo stabbed Jimmy who was then lying face down on the ground twice on the back with an ice pick after which he fled. Petitioner then boxed Jimmy's mouth. At this juncture, Balani rushed to Jimmy's aid and boxed petitioner who retaliated by punching Balani. Thereafter, petitioner left the scene. Mabayo was unable to help Jimmy or

Andrew because he was shocked by the incident.

After the incident, Jimmy was brought to the clinic of Dr. Precioso Tacandang (Dr. Tacandang). Jimmy was then in critical condition, thus, Dr. Tacandang advised the relatives of Jimmy to bring him to the Northern Mindanao Regional Training Hospital. Upon arrival at the aforesaid hospital, Jimmy was declared dead by the attending physician, Dr. Cedric Dael (Dr. Dael). Jimmy sustained a vital or mortal stab wound at the epigastric area four centimeters below the cyphoid process and another stab wound on the left lumbar. Andrew, who sustained minor injuries, was treated by Dr. Dael.

Version of the Defense

On the night of the stabbing incident, Taban, Tubo and petitioner were drinking liquor in the house of Osep. Taban left the group to urinate on a nearby coconut tree. Outside Osep's house, he was suddenly boxed by Andrew and kicked by Jimmy causing him to fall near a fishing boat. There Taban found a fishing knife with which he stabbed Jimmy and Andrew in order to defend himself. After which, he fled for fear for his life. Meanwhile, petitioner went out to look for Taban. As he was stepping out of Osep's house, he was boxed by Balani. Petitioner fought back. Andrew tried to help Balani but petitioner was able to evade Andrew's attacks. Instead, petitioner was able to box Andrew. Petitioner then called out to Tubo to come out and run. When Tubo stepped out of the house, neither Taban nor petitioner was present but he saw a person being lifted by several people. Upon seeing this, Tubo, likewise, fled for fear for his life.

Ruling of the Regional Trial Court

On May 16, 1995, the RTC rendered a judgment finding petitioner and Tubo guilty of homicide[8] and all three accused (petitioner, Tubo and Taban) guilty of frustrated homicide, viz:

- 1) In Criminal Case No. 92-079, accused Rosie Quidet and Aurelio Tubo are hereby sentenced, there being no mitigating or aggravating circumstances present, to the penalty of EIGHT (8) YEARS AND ONE (1) DAY OF

PRISION MAYOR with its medium period as minimum under the Indeterminate Sentence Law to FOURTEEN (14) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY OF RECLUSION TEMPORAL in its medium period [as maximum] under the same law.

2) In Criminal Case No. 92-080 for Frustrated Homicide, there being no mitigating or aggravating circumstances present, this court hereby sentences all the accused [Feliciano Taban, Jr., Rosie Quidet and Aurelio Tubo] in this case to an Indeterminate Sentence [Law] of FOUR (4) YEARS OF PRISION CORRECCIONAL in its medium period as the minimum under the Indeterminate Sentence Law to TEN (10) YEARS OF PRISION MAYOR in its medium period as the maximum under the same law. With costs.

3) To pay jointly and severally the heirs of Jimmy Tagarda in the sum of P50,000.00 for Criminal Case No. 92-079;

4) And likewise to pay solidarily the heirs of the victim Andrew Tagarda the sum of P10,000.00 for committing the crime of Frustrated Homicide.[9]

The period of preventive imprisonment during which the accused were detained pending the trial of these cases shall be credited in full in favor of all the accused.

SO ORDERED.[10]

The trial court found that the stabbing of Jimmy and Andrew was previously planned by the accused. The active participation of all three accused proved conspiracy in the commission of the crimes. Furthermore, the positive identification of the accused by the prosecution witnesses cannot be offset by the defense of plain denial.

From this judgment, only petitioner appealed to the CA.

Ruling of the Court of Appeals

On July 22, 2005, the CA promulgated the assailed Decision, affirming with modifications, the judgment of the RTC, viz:

WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit. The assailed decision is hereby AFFIRMED with the following modifications: (a) That in Criminal Case No. 92-080 the crime is only Attempted Homicide; and (b) the civil indemnity in the amount of ten thousand (P10,000.00) pesos which was awarded to the heirs of Andrew Tagarda be deleted as the same has not been fully substantiated. No costs.

SO ORDERED. [11]

In upholding the conviction of the accused for homicide, the CA held that conspiracy was duly established as shown by the concerted acts of the accused in inflicting mortal wounds on Jimmy. Hence, all of the accused are guilty of homicide for the death of Jimmy.

The CA, however, disagreed with the trial court's finding that the accused are liable for frustrated homicide with respect to the injuries sustained by Andrew. According to the CA, the accused failed to inflict mortal wounds on Andrew because the latter successfully deflected the attack. Andrew suffered only minor injuries which could have healed within five to seven days even without medical treatment. The crime committed, therefore, is merely attempted homicide.

The CA also deleted the award of civil indemnity to the heirs of Andrew because the same was not fully substantiated.

Issue

Whether the Decision of the CA finding petitioner to have acted in conspiracy with the other accused (Taban and

Tubo) in the commission of the offenses charged is in accordance with law and/or jurisprudence.[12]

Petitioner's Arguments

Petitioner claims that the evidence merely established that: (1) Taban went out of Osep's store while petitioner and Tubo remained inside; (2) a commotion took place between Taban and Andrew; (3) after this altercation, petitioner and Tubo stepped out of Osep's store; and (4) petitioner's participation in the incident is limited to boxing Andrew after the latter had already been stabbed by Taban, and boxing Jimmy's mouth after the latter had been stabbed by Taban and Tubo in succession.

Petitioner insists that it cannot be said that he had the same criminal purpose and design as Taban and Tubo. His participation was not necessary to the completion of the criminal acts because by the time he boxed Andrew and Jimmy, the stabbing had already taken place. The evidence further established that the stabbing incident was purely accidental and that the accused had no grudge against the victims. Also, petitioner was unarmed negating his intent to kill.

Petitioner also cites *People v. Vistido* [13] where it was ruled that conspiracy was not established under facts similar to the present case. In *Vistido*, the accused was merely convicted of slight physical injuries.

Respondent's Arguments

Respondent contends that conspiracy was duly established. Petitioner was not merely present during the commission of the crime but he aided Taban and Tubo by inflicting blows on Andrew and Jimmy after the latter were stabbed. The simultaneous movement of the accused towards the victims and their successive escape from the crime scene clearly evince conspiracy. Respondent also stresses that the factual findings of the trial court should be accorded respect for it is in a better position to evaluate testimonial evidence.

Our Ruling

The petition is partly meritorious.

The existence of conspiracy was not proved beyond reasonable doubt. Thus, petitioner is criminally liable only for his individual acts.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[14] The essence of conspiracy is the unity of action and purpose.[15] Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt. When there is conspiracy, the act of one is the act of all.

Conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests.[16] However, in determining whether conspiracy exists, it is not sufficient that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants.[17] What is determinative is proof establishing that the accused were animated by one and the same purpose.[18]

As a general rule, factual findings of the trial court, which is in a better position to evaluate the testimonial evidence, are accorded respect by this Court. But where the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which can affect the result of the case, this Court is duty-bound to correct this palpable error for the right to liberty, which stands second only to life in the hierarchy

of constitutional rights, cannot be lightly taken away. In the instant case, we find that the prosecution failed to prove beyond reasonable doubt that petitioner conspired with Taban and Tubo in committing the crimes of homicide and attempted homicide.

Both the trial court and the CA ruled that the evidence duly established conspiracy. In particular, the CA noted:

[T]his Court HOLDS that there was conspiracy. x x x

With respect to Criminal Case No. 92-080 (for frustrated homicide), it was revealed that after Andrew's chest was stabbed by Taban, Tubo also threw a drinking glass at Andrew's face while [petitioner] boxed Andrew's jaws.

From the foregoing facts, it can be inferred that all the accused acted in solidum in trying to inflict injuries to Andrew. Had it been otherwise, Tubo and [petitioner] would have just left the scene of the crime.

With respect to Criminal Case No. 92-079 (for homicide), it was revealed that after Andrew was stabbed by Taban using a double-bladed knife, Taban subsequently stabbed Jimmy before fleeing from the crime scene. Moments later, while Andrew was recovering from fist and glass blows from [petitioner] and Tubo, Tubo [straddled] Jimmy and stabbed him twice with an icepick before [he] left. [Petitioner], on the other hand, delivered a fist blow to Jimmy's mouth notwithstanding the fact that Jimmy was already stabbed by Taban and Tubo.

From the foregoing facts, it can be inferred that all the accused in Criminal Case No. 92-079 confederated and mutually helped each other to insure the killing of Jimmy Tagarda. Hence, conspiracy was present in the cases at bar.[19]

We disagree. To determine if petitioner conspired with Taban and Tubo, the focus of the inquiry should necessarily be the overt acts of petitioner before, during and after the stabbing incident. From this viewpoint, we find several facts of substance which militate against the finding that petitioner conspired with Taban and Tubo.

First, there is no evidence that petitioner, Taban or Tubo had any grudge or enmity against Jimmy or Andrew. The prosecution eyewitnesses (Andrew and Balani) as well as the three accused were one in testifying that there was no misunderstanding between the two groups prior to the stabbing incident. During the testimony of prosecution witness Balani, the trial court itself grappled with the issue of motive:

COURT: (to the witness)

Q-

[W]hen you saw Feliciano Taban and Tubo stabbing Jimmy Tagarda, you mean to tell this court that they were enemies?

A-

No sir.

x x x x

Q-

Now, was there any information that you received that the reason why the accused Taban and Tubo stabbed Jimmy Tagarda and Andrew Tagarda was x x x of some previous misunderstanding?

A-

No, I did not know.

Q-

Until now, you cannot tell this court the reason why the stabbing took place except the fact that the group of the accused were having [a] drinking session and your group also had a [prior] drinking session somewhere?

A-

Yes, sir.[20]

Second, the stabbing incident appears to have arisen from a purely accidental encounter between Taban's and Andrew's groups with both having had a drinking session. On direct examination, prosecution witness Andrew testified that Taban, Tubo and petitioner successively went out of Osep's house to engage their group. This version of the events made it appear that the three accused laid in wait to carry out the crimes. However, on cross-examination, Andrew contradicted himself when he stated that it was only Taban who their group initially saw with a knife outside Osep's house and who suddenly stabbed Andrew. After he was stabbed, Andrew stated that he retaliated by boxing Taban and it was only then when he (Andrew) saw Tubo and petitioner come out of Osep's house.[21] The records of the preliminary investigation of this case confirm this latter version of the events when Andrew stated that it was only after the commotion between him and Taban that Tubo and petitioner stepped out of Osep's store to help Taban defend himself in the ensuing fight.[22] Significantly, when the defense on cross-examination confronted Andrew with this inconsistency between his statements on direct examination and the preliminary investigation, Andrew answered that at the time of the incident it was only Taban that he saw.[23] The same observation can be made on the testimony of the prosecution's second eyewitness, Balani. While on direct examination Balani claimed that the three accused successively came out of Osep's house, on cross-examination, he modified his stance by stating that it was only Taban who initially accosted their group and that petitioner and Tubo were inside Osep's house prior to the commotion.[24] This material inconsistency in the testimonies of the prosecution's eyewitnesses belies the prosecution's theory that the three accused had a pre-conceived plan to kill Jimmy and Andrew.

Third, unlike Taban and Tubo, petitioner was unarmed during the incident, thus, negating his intent to kill the victims. By the prosecution witnesses' account, petitioner's participation was limited to boxing Andrew and Jimmy after Taban and Tubo had stabbed the victims. His acts were neither necessary nor indispensable to the commission of the crimes as they were done after the stabbing. Thus, petitioner's act of boxing the victims can be interpreted as a mere show of sympathy to or camaraderie with his two co-accused.

Taken together, the evidence of the prosecution does not meet the test of moral certainty in order to establish that petitioner conspired with Taban and Tubo to commit the crimes of homicide and attempted homicide. We agree with petitioner that this case is similar to *People v. Vistido* [25] and the ruling there applies with equal force here. In *Vistido*, we held thus -

There is no question that "a person may be convicted for the criminal act of another where, between them, there has been conspiracy or unity of purpose and intention in the commission of the crime charged." It is, likewise, settled that "to establish conspiracy, it is not necessary to prove previous agreement to commit a crime, if there is proof that the malefactors have acted in consort and in pursuance of the same objective." Nevertheless, "the evidence to prove the same must be positive and convincing. As a facile device by which an accused may be ensnared and kept within the penal fold, conspiracy requires conclusive proof if we are to maintain in full strength the substance of the time-honored principle in criminal law requiring proof beyond reasonable doubt before conviction."

In the case at bar, the evidence for the prosecution does not comply with this basic requirement. To begin with, there is no evidence that appellant and his co-accused had any enmity or grudge against the deceased. On the contrary, the cousin of the deceased, Reynaldo Pagtakhan, testified that prior to the stabbing incident, they did

not have any quarrel with them. In the absence of strong motives on their part to kill the deceased, it can not safely be concluded that they conspired to commit the crime involved herein.

Neither could it be assumed that when the appellant and his co-accused were together drinking wine, at the time and place of the incident, they were there purposely to wait for and to kill the deceased. For, they could not have surmised beforehand that between 3:00 and 4:00 o'clock in the morning of November 1, 1969, the deceased and his cousin -- after coming home from their work at the cemetery -- would go to the Marzan Restaurant, and thereafter, would take a taxi for home, and then, alight at M. Francisco Street. The meeting between the appellant's group and the deceased appears to be purely accidental which negates the existence of conspiracy between the appellant and his co-accused.

Besides, the appellant was unarmed; only his two companions (Pepito Montaña and one John Doe) were armed with daggers. If he (appellant) had really conspired with his co-accused to kill the deceased, he could have provided himself with a weapon. But he did not. Again, this fact belies the prosecution's theory that the appellant had entered into a conspiracy with his co-accused to kill the deceased.

Moreover, although the appellant and his co-accused acted with some degree of simultaneity in attacking the deceased, nevertheless, the same is insufficient to prove conspiracy. The rule is well-settled that "simultaneousness does not of itself demonstrate the concurrence of will nor the unity of action and purpose which are the basis of the responsibility of two or more individuals." To establish common responsibility it is not sufficient that the attack be joint and simultaneous; it is necessary that the assailants be animated by one and the same purpose. In the case at bar, the appellant Raymundo Vistido and the accused Pepito Montaña, did not act pursuant to the same objective. Thus, the purpose of the latter was to kill as shown by the fact that he inflicted a mortal wound below the abdomen of the deceased which caused his death. On the other hand, the act of the appellant in giving the deceased one fist blow after the latter was stabbed by the accused Pepito Montaña -- an act which is certainly unnecessary and not indispensable for the consummation of the criminal assault -- does not indicate a purpose to kill the deceased, but merely to "show off" or express his sympathy or feeling of camaraderie with the accused Pepito Montaña. Thus, in *People vs. Portuguese*, this Court held that:

"Although the appellants are relatives and had acted with some degree of simultaneity in attacking their victim, nevertheless, this fact alone does not prove conspiracy. (*People vs. Caayao*, 48 Off. Gaz. 637). On the contrary, from the nature and gravity of the wounds inflicted on the deceased, it can be said that the appellant and the other defendant did not act pursuant to the same objective. Florentino Gapole's purpose was to kill the deceased, as shown by the fact that he inflicted a mortal wound which almost severed the left arm. The injury inflicted by the appellant, merely scratching the subcutaneous tissues, does not indicate a purpose to kill the victim. It is not enough that appellant had participated in the assault made by his co-defendant in order to consider him a co-principal in the crime charged. He must have also made the criminal resolution of his co-accused his own. x x x."

and, in *People vs. Vicente*, this Court likewise held:

"In regard to appellant Ernesto Escorpizo, there seems to be no dispute that he stabbed Soriano several times with a small knife only after the latter had fallen to the ground seriously wounded, if not already dead. There is no showing that this accused had knowledge of the criminal intent of Jose Vicente against the deceased. In all likelihood, Escorpizo's act in stabbing the fallen Soriano with a small knife was not in furtherance of Vicente's aim, which is to kill, but merely to 'show off' or express his sympathy or feeling of camaraderie with Vicente. x x x."

By and large, the evidence for the prosecution failed to show the existence of conspiracy which, according to the settled rule, must be shown to exist as clearly and convincingly as the crime itself. In the absence of conspiracy, the liability of the defendants is separate and individual, each is liable for his own acts, the damage caused thereby, and the consequences thereof. While the evidence shows that the appellant boxed the deceased, it is,

however, silent as to the extent of the injuries, in which case, the appellant should be held liable only for slight physical injuries.[26]

We reach the same conclusion here. For failure of the prosecution to prove conspiracy beyond reasonable doubt, petitioner's liability is separate and individual. Considering that it was duly established that petitioner boxed Jimmy and Andrew and absent proof of the extent of the injuries sustained by the latter from these acts, petitioner should only be made liable for two counts of slight physical injuries. In addition, he should pay P5,000.00 as moral damages to the heirs of Jimmy and another P5,000.00 as moral damages to Andrew.[27] Actual damages arising from said acts cannot, however, be awarded for failure to prove the same.

Anent the penalty imposed on Taban and Tubo, in Criminal Case No. 92-080, the CA correctly modified the same. The crime committed was attempted homicide and not frustrated homicide because the stab wounds that Andrew sustained were not life-threatening.[28] Although Taban and Tubo did not appeal their conviction, this part of the appellate court's judgment is favorable to them, thus, they are entitled to a reduction of their prison terms.[29] The rule is that an appeal taken by one or more of several accused shall not affect those who did not appeal except insofar as the judgment of the appellate court is favorable and applicable to the latter.[30]

Anent the award of damages for which Taban and Tubo should be made solidarily liable, in Criminal Case No. 92-079, the trial court properly awarded civil indemnity in the amount of P50,000.00 to the heirs of Jimmy. Civil indemnity is automatically granted to the heirs of the deceased victim without need of further evidence other than the fact of the commission of the crime.[31] In addition, the trial court should have awarded moral damages in the sum of P50,000.00 in consonance with current jurisprudence.[32] As to actual damages, the prosecution was able to prove burial-related expenses with supporting receipt[33] only to the extent of P5,000.00. In *People v. Villanueva*,[34] we held that when actual damages proven by receipts during the trial amount to less than P25,000.00, the award of temperate damages for P25,000.00 is justified in lieu of actual damages for a lesser amount. We explained that it was anomalous and unfair that

the heirs of the victim who tried but succeeded in proving actual damages amounting to less than P25,000.00 would be in a worse situation than those who might have presented no receipts at all but would be entitled to P25,000.00 temperate damages.[35] Accordingly, an award of P25,000.00 as temperate damages in lieu of actual damages is proper under the premises. As to loss of earning capacity, the same cannot be awarded due to lack of proof other than the self-serving testimony of Jimmy's mother. In Criminal Case No. 92-080, the CA correctly ruled that Andrew is not entitled to an award of actual damages for failure to substantiate the same. However, he is entitled to moral damages in the amount of P30,000.00 for the pain, trauma and suffering arising from the stabbing incident.[36] It may be noted that the afore-discussed higher indemnities are not favorable to Taban and Tubo who did not appeal, but in line with our ruling in *People v. Pacaña*,[37] they shall be held solidarily liable therefor since these amounts are not in the form of a penalty.[38]

Finally, the records indicate that the three accused were placed under preventive imprisonment prior to and during the trial of this case. This can be surmised from the motion to grant bail filed by petitioner which was subsequently granted[39] by the trial court. It is not clear, however, for how long and under what conditions they were put in preventive imprisonment. The trial court should, thus, determine the length and conditions of the preventive imprisonment so this may be credited, if proper, in favor of the accused as provided in Article 29[40] of the Revised Penal Code.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The July 22, 2005 Decision of the Court of Appeal's in CA-G.R. CR No. 23351 is **AFFIRMED** with the following **MODIFICATIONS**:

1)

In Criminal Case No. 92-079, Rosie Quidet is found guilty beyond reasonable doubt of slight physical injuries and is meted the sentence of fifteen (15) days of arresto menor. He is ordered to pay the heirs of Jimmy Tagarda P5,0000.00 as moral damages. Feliciano Taban, Jr. and Aurelio Tubo are ordered to solidarily pay the heirs of Jimmy Tagarda P50,0000 as civil indemnity, P50,000.00 as moral damages and P25,000.00 as temperate damages.

2)

In Criminal Case No. 92-080, Feliciano Taban, Jr. and Aurelio Tubo are found guilty beyond reasonable doubt of attempted homicide and are meted the sentence of four (4) months of arresto mayor in its medium period as minimum to four (4) years of prision correccional in its medium period as maximum. They are ordered to solidarily pay Andrew Tagarda P30,000.00 as moral damages. Rosie Quidet is found guilty beyond reasonable doubt of slight physical injuries and is meted the sentence of fifteen (15) days of arresto menor. He is ordered to pay Andrew Tagrda P5,000.00 as moral damages

3)

The period of preventive imprisonment of Feliciano Taban, Jr., Aurelio Tubo and Rosie Quidet shall be credited in their favor in accordance with Article 29 of the Revised Penal Code.

4)

The bail bond of Rosie Quidet is cancelled.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Mendoza[*], JJ., concur.

[*] In lieu of Justice Roberta A. Abad, per Special Order No 832 dated March 30, 2010.

[1] Rollo, pp. 7-17; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Arturo G. Tayag and Rodrigo F. Lim, Jr.

[2] Id. at 47-52; penned by Judge Alejandro M. Velez.

[3] Records, p. 1.

[4] Id. at 7.

[5] Id. at 153-154.

[6] Id at 154.

[7] Also referred to as "Balane" in other parts of the records.

[8] Taban was no longer included in the sentencing for homicide because, as stated earlier, he was already sentenced by the trial court after he entered a plea of guilty in Criminal Case No. 92-079.

[9] Should be payable only to Andrew Tagarda, not to his heirs.

[10] Rollo, pp. 51-52.

[11] Id. at 17.

[12] Id. at 27.

- [13] 169 Phil. 599 (1977).
- [14] REVISED PENAL CODE, Article 8.
- [15] *People v. Pudpud*, 148-A Phil. 550, 558 (1971).
- [16] *People v. Cadevida*, G.R. No. 94528, March 1, 1993, 219 SCRA 218, 228.
- [17] *People v. Vistido*, supra note 12 at 606.
- [18] *Id.*
- [19] *Rollo*, pp. 13-14.
- [20] TSN, February 26, 1993, pp. 80-83.
- [21] TSN, October 22, 1992, p. 45.
- [22] *Records*, p. 373.
- [23] TSN, October 30, 1992, pp. 43-45.
- [24] TSN, February 26, 1993, p. 45.
- [25] *Supra* note 12.
- [26] *Id.* at 604-607.
- [27] *People v. Loreto*, 446 Phil. 592, 614 (2003).
- [28] TSN, November 24, 1992, p. 42; TSN, February 24, 1993, p. 51.
- [29] *People v. Pacaña*, 398 Phil. 869, 884 (2000).
- [30] RULES OF COURT, RULE 122, SECTION 11(a).
- [31] *Arcona v. Court of Appeals*, 442 Phil. 7, 15 (2002).
- [32] *Id.* at 15-16.
- [33] Exhibit "G," records, p. 291.
- [34] 456 Phil. 14 (2003).
- [35] *Id.* at 29-30.
- [36] See *People v. Bermudez*, 368 Phil. 426, 443 (1999).
- [37] *Supra* note 28.
- [38] *Id.* at 885.
- [39] *Records*, p. 25.
- [40] ARTICLE 29. Period of Preventive Imprisonment Deducted from Term of Imprisonment. -- Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment, if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:

- When they are recidivists, or have been convicted previously twice or more times of any crime;
- When upon being summoned for the execution of their sentence they have failed to surrender voluntarily;

If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment.

Whenever an accused has undergone preventive imprisonment for a period equal to or more than the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. In case the maximum penalty to which the accused may be sentenced is destierro, he shall be released after thirty (30) days of preventive imprisonment.

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