

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE NUEVA Y SAMARO, ACCUSED-APPELLANT.

G.R. No. 173248. November 03, 2008

Ponente: BRION, J.

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BRION, J.:

We review the appeal by accused-appellant Dante Nueva y Samaro (appellant) from the April 27, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00727. The CA affirmed the November 12, 2004 Decision[2] of the Regional Trial Court (RTC), Branch 129, Caloocan City, finding the appellant guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

ANTECEDENT FACTS

The prosecution charged the appellant, Porpirio Maribuhok (Porpirio) and John Doe, one of the as yet unidentified assailants, before the RTC with the crime of murder under an Information that states:

x x x

That on or about the 29[th] day of December, 2000 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping with one another, without any justifiable cause, and with deliberate intent to kill with treachery, evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hit with a piece of wood on the head and stab at the back and chest one VIRGILIO REVOLLIDO, JR. Y ANTOLIN, with a bladed weapon, thereby inflicting upon the latter serious physical injuries, which eventually caused his death.

Contrary to law.[3]

Of the three accused, only the appellant was apprehended; the others remained at large. On arraignment, the appellant pleaded not guilty to the charge. The prosecution presented the following witnesses in the trial on the merits that followed: Virgilio Revollido, Sr. (Virgilio); Alfonso Bacar, Jr. (Alfonso); PO3 Jaime Basa (PO3 Basa); Dr. Ludivino G. Lagat (Dr. Lagat); PO2 Edilberto Safuentes (PO2 Safuentes); SPO1 Renato Aguilar (SPO1 Aguilar); and Mariadita Revollido-Baytan (Mariadita). The appellant took the witness stand for the defense.

Virgilio, the father of the victim, testified that her daughter, Annabelle Revollido, informed him in the morning of December 30, 2000 of his son's death.[4] At the time he died, his son was 31 years old[5] and was single; he received a monthly pay of about P5,000.00 as a machine operator in Vitan Industries.[6] He affirmed that he incurred more than P60,000.00 for the wake and burial of his son.[7]

Alfonso narrated that at around 10:00 in the evening of December 29, 2000, while he was standing outside the Great Taste Bakery located on 4th Avenue East, Caloocan City, he saw a person coming from M.H. Del Pilar Street being chased by another (John Doe). Upon reaching 4[th] Avenue, the person being chased passed in front

of the appellant and Porpirio who were then standing near the corner of 4th Avenue. At that point, the appellant held the victim's left hand and led him to the other side of the road. There, Porpirio took a piece of wood and hit the victim on the head, causing the latter to fall to his knees. The appellant continued to box the victim until John Doe came.[8] John Doe immediately stabbed the victim at the back. The appellant, who was then at the victim's front, then pulled out a knife and likewise stabbed the victim. Afterwards, the three accused ran towards M.H. Del Pilar Street. The victim stood up, but, after taking two (2) steps, fell to the ground. Thereafter, an unidentified person came and brought the victim to a hospital on board a van.[9]

Alfonso testified further that he was informed of the full name of the victim on January 19, 2001 by the latter's relatives after he gave his statement to the police authorities.[10]

On cross examination, he narrated that he was more or less 7 to 8 arms length away from the place of the incident, and that the place at that time was well-lighted.[11]

PO3 Basa, a police officer assigned at the Caloocan Police Headquarters, testified that on December 29, 2000, he received a verbal communication from the PNP Tactical Operation Center of a stabbing incident at M.H. Del Pilar Street. He went to the scene of the crime and was informed there by bystanders that the victim had been brought to the Chinese General Hospital. He proceeded to the emergency room of the hospital and saw the lifeless body of the victim who bore several stab wounds.[12]

Dr. Lagat, the Medico-Legal Officer of the National Bureau of Investigation, declared on the witness stand that he conducted an autopsy on the remains of the victim on December 30, 2000 and made the following findings:

x x x

Abrasions: 1.0 x 1.3 cm., shoulder, left 4.0 x 2.0 cm., back, left side, 4.0 x 1.0 cm., back, right side; 5.0 x 1.0 cm., antecubital area, left; 2 x 1.0 cm. right knee.

Incised wounds, 3.0 cm., forehead, right side; 3.0 cm., chest, right side, 5.0 cm., left supra scapular area; 6.0 cm., left hand, back; 3.0 cm., right ring finger.

Stab wounds, all elliptical; clean cut edges, with sharp and a blunt extremities.

- 1.0 cm., obliquely oriented, located at the lateral aspect of the neck; left side; 10.0 cm., from the anterior median line directed backward and medially involving the skin and soft tissue anteriorly.

- 3.5 cm., obliquely oriented; located at the anterior chest wall, left side 4.0 cm., from the anterior median line, level of the 4th intercostal; directed backward, downward and medially involving the skin underlying soft tissue; perforating the pericardial sac; penetrating the left ventricle of the heart, with a depth of 13.0 cms.

- 4.5 cms., obliquely oriented; located at the anterior chest wall, right side; 3.0 cms., from the anterior median line, level of the 5th intercostals; directed backward; downward and medially, involving the skin and underlying soft tissue; then penetrating the middle lobe of the right lobe with depth of 12.0 cms.

x x x

CAUSE OF DEATH: STAB WOUNDS, BODY.

x x x[13]

According to Dr. Lagat, the victim suffered three (3) stab wounds, eight (8) incise wounds, and several abrasions in different parts of his body. Of the three stab wounds, two (2) were fatal, both of them at the chest.[14]

PO2 Safuentes of the Mobile Patrol Division, Caloocan City Police, stated that he was one of the police officers

who apprehended the appellant. According to him, he and his five (5) companions went to Letre, Tonsuya, Malabon to serve the arrest warrant on the appellant who was not in his house at the time.[15] On their way out of Letre, they chanced upon the accused who, on seeing them, turned his back and ran. PO1 Chu[16] fired two (2) warning shots, causing the appellant to stop. PO2 Safuentes showed him (appellant) then the corresponding warrant of arrest and then brought him to the hospital for mandatory physical examination.[17]

SPO1 Aguilar was with the arresting team and essentially confirmed what PO2 Safuentes testified on.[18]

Mariadita, the victim's sister, confirmed that she identified and requested an autopsy of her brother's remains.[19]

The appellant had a different version of the events. His testimony was succinctly summarized by the RTC as follows:

x x x Dante Nueva y Samaro testified that on December 29, 2000, at around 10:00 o'clock in the evening, he was at work as bouncer at Yellow Submarine with one Wilmor that was from 10:00 p.m. to 3:00 a.m. He does not know of any untoward or stabbing incident in his working place.

He said he does not know of any reason why he is being charged with murder.[20]

He likewise narrated that he knows a person by the name of Porpirio Maribuhok, one of the accused in this case who is a customer at Yellow Submarine. He did not see Porpirio Maribuhok at the night of the incident.[21]

On cross by Pros. Susano, said accused testified that he knows for 3 months already [sic] Porpirio Maribuhok who is a customer of the Yellow Submarine near M.H. del Pilar St., which place is around 30/40 meters away from Great Taste Bakery.[22]

He said that yellow Submarine is owned by one Maring Rinos whom he knows for three (3) years already. He also knows one Edgar, Entoy, Val and Leo.[23] [Footnotes referring to the pertinent parts of the record supplied]

The RTC convicted the appellant in its decision of November 12, 2004. The dispositive portion of this decision reads:

WHEREFORE, accused Dante Nueva y Samaro, is hereby found Guilty, beyond reasonable doubt of Murder, qualified by treachery, and is sentenced to Reclusion Perpetua. Accused is ordered to pay the heirs of the victim, Virgilio Revollido, Jr., P50,000.00 as civil indemnity ex delicto; to pay the heirs of the victim, Fifty Six Thousand One Hundred Twelve (P56,112.00) Pesos as actual damages.

In the absence of proof to prove loss of earning capacity, the same is disallowed.

x x x

Let alias warrant of arrest be issued against the accused Porpirio Maribuhok.

In the interim, the case against him is Archived, until his arrest.

SO ORDERED.[24] [Emphasis in the original]

The appellant appealed his conviction to the CA[25] whose decision of April 27, 2006 affirmed the RTC decision with modification. The CA ordered the appellant to additionally pay the victim's heirs the amounts of P50,000.00 and P25,000.00 as moral and exemplary damages, respectively.

In his brief,[26] the appellant argues that the lower court erred in finding him guilty of the crime charged despite the failure of the prosecution to establish his guilt beyond reasonable doubt. He posits that the prosecution merely

established that a person was killed, but failed to prove beyond reasonable doubt that it was he who killed the victim.

THE COURT'S RULING

After due consideration, we resolve to deny the appeal but modify the amount of the awarded indemnities.

Sufficiency of Prosecution Evidence

A distinguishing feature of this case is the presence of an eyewitness - Alfonso - who provided positive identification of the appellant in his July 31, 2001 testimony. To directly quote from the records:

FISCAL NEPHTHALI ALIPOSA:

Q:

Mr. Bacar, can you recall where were you on the evening of December 29, 2000, particularly at around 10:00 in the evening, more or less?

ALFONSO BACAR, JR.:

A:

Yes, sir.

Q:

Where were you?

A:

I was at Great Taste Bakery, sir.

Q:

This bakery, where is this located?

A:

At 4[th] Avenue East, Caloocan City.

Q:

Outside or inside Great Taste Bakery?

A:

Outside, sir.

Q:

While outside Great Taste Bakery, do you remember of any unusual incident that happened?

A:

Yes, sir.

Q:

What was that unusual incident?

A:

Somebody was chasing someone coming from M.H. Del Pilar St.

Q:

How many persons who [sic] were running after someone?

A:

One is chasing somebody, sir.

Q:

What happened to that pursuit of one man with another man?

A:

When the person being chased reached 4th Avenue coming from M.H. Del Pilar and facing in front of two persons standing near the corner, then Dante Nueva held the left arm of the one running.

Q:

What happened after Dante held the left arm of the man being pursued?

A:

Then they proceeded to the other corner or turned around to the other corner.

Q:

They turned around because Dante held the left arm of the person being pursued?

A:

Yes, sir.

Q:

When they reached the other side of the road, what happened?

A:

Porpirio took a piece of wood (dos por dos) and he hit the person being chased on the head.

Q:

When Porpirio hit the head of the person being pursued, what was Dante Nueva doing in relation to the victim, if any?

A:

Dante Nueva boxed first the person being chased until the person who was chasing arrived.

Q:

You said that the person being pursued was being hit by a piece of wood on the head, what happened to the person being hit on the head?

A:

The person being chased was hit on the head with a piece of wood fell on his knees.

Q:

While the victim who was hit on the head was on a kneeling position, what happened?

A:

While the person who was hit on the head fell on his knees, the person who was chasing him arrived.

Q:

What happened when the person chasing the victim arrived?

A:

Then that person stabbed the person being chased at the back who was then kneeling.

Q:

Where was Dante at that time when the victim was hit by that person pursuing at the back?

A:

Dante was there in front of the victim.

Q:

What happened after the victim was stabbed at the back, what did Dante do, if any?

A:

Dante pulled out a knife and stabbed the victim on the front portion of the body and at the same time the other person was stabbing the victim.

Q:

With what weapon did Dante use in stabbing the victim on the front part of the body?

A:

A fan knife, sir.

Q:

How about the other person who was pursuing the victim and who stabbed first the victim at the back, do you know what weapon was being used by this person?

A:

I don't know what weapon was that, because upon arrival of this person, he immediately stabbed the victim.

Q:

What happened to the victim who was conspired upon by the 3 persons Dante Nueva, Porpirio and the person who stabbed the victim at the back?

ATTY. JIMMY EDMUND BATARA:

We object, Your Honor, conspire is already a conclusion.

COURT:

What is again the question?

STENOGRAPHER:

What happened to the victim who was conspired upon by the 3 persons, Dante Nueva, Porpirio and the person who stabbed the victim at the back?

COURT:

Successively attacked.

FISCAL NEPTHALI ALIPOSA:

Yes, Your Honor, successively attacked.

ALFONSO BACAR, JR.:

He was kneeling while he was being stabbed or while they were stabbing that victim all at the same time and that person being stabbed by the 3 persons also tried to parry the stabbing.

Q:

What happened to him?

A:

Then after that or after the stabbing of the victim, they ran away and went towards the direction of MH Del Pilar.

x x x x

Q:

These 3 persons who attacked the victim one on the head, one of them stabbed the victim at the back and the other in front, are they inside the Courtroom now?

A:

Only one is inside, sir.

Q:

Will you kindly point to the one who was or who is now inside this room?

A:

That person sir.

INTERPRETER:

Witness is pointing to a person who identified himself as Dante Nueva.[27] [Emphasis supplied]

Time and again, we have ruled that the credibility of witnesses is a matter best left to the determination of the trial court because it had the unique advantage of having personally observed the witnesses, their demeanor, conduct, and attitude. As a consequence, we have considered the the trial court's assessment of the credibility of witnesses to be binding except when the lower court had patently overlooked facts and circumstances of weight and influence that could alter the results of the case.[28]

We carefully scrutinized the records of this case and found no reason to disbelieve Alfonso's straightforward narration of the events surrounding the death of the victim. Nor did we see anything on record showing any improper motive that would lead Alfonso to testify as he did. In fact, in his testimony of July 31, 2001, he categorically stated that he had no misunderstanding with the appellant and his two (2) co-accused prior to the stabbing incident. Thus, we adhere to the established rule that in the absence of evidence showing any reason or motive for the prosecution witness to perjure himself or herself, we can conclude that no improper motive exists and his or her testimony is worthy of full faith and credit.[29] Moreover, Alfonso testified that he knew the appellant prior to the stabbing incident for more or less four (4) years already; hence there could not have been any doubt regarding his positive identification of the appellant as one of the assailants.

In his defense, the appellant claimed the defenses of denial and alibi. He denied knowing the victim and insisted that he was at the Yellow Submarine bar on 4[th] Avenue/Del Pilar St. on December 29, 2000; he was there working as a bouncer from 10:00 p.m. to 3:00 a.m. He explained that he failed to get a certification from Yellow Submarine to prove that he was working at that time because no one visited him.

To be believed, denial must be supported by strong evidence of non-culpability; otherwise, it is purely self-serving.[30] Alibi, on the other hand, is one of the weakest defenses in a criminal case and should be rejected when the identity of the accused is sufficiently and positively established by the prosecution.[31] For the appellant's defense of alibi to prosper, he should have proven that it was physically impossible for him to have been at the scene of the crime when it was committed. By physical impossibility we refer to the distance and the facility of access between the situs criminis and the place where he says he was when the crime was committed.[32]

The appellant fails this test as he insisted that he was at the Yellow Submarine working as a bouncer at the time of the stabbing incident. By his own admission, the Yellow Submarine is only 30 to 40 meters from the Great Taste Bakery. This short distance does not render it physically impossible for the appellant to have been at the place where the victim was attacked.

Aside from being inherently weak, the appellant's alibi cannot prevail over the positive identification made by Alfonso that the appellant was one of the victim's assailants. We particularly note that Alfonso categorically stated that he stabbed the victim from the front,[33] and note as well that the victim's two fatal wounds were his chest wounds.[34] Thus, of the three assailants, it was the appellant himself who delivered the fatal blows on the victim.

In a long line of cases, this Court has held that positive identification, made categorically and consistently, almost always prevails over alibi and denial. These defenses, if not substantiated by clear and convincing evidence, are negative and self-serving and are undeserving of weight in law.[35] We see no reason in this case to deviate from these established rules.

The crime committed

Article 248 of the Revised Penal Code defines the crime of murder as follows:

Article 248. Murder. - Any person who, not falling within the provision of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

x x x x

a. No treachery

In convicting the appellant of the crime of murder, the courts a quo appreciated the qualifying circumstance of treachery. According to the RTC, "the attack was sudden and not provoked, and was not preceded by any exchange of words, no altercation between the assailants and the victim, who was not aware that he would be killed by the accused. x x x [A]ccused stabbed the victim in succession even when he was already on the ground, wounded." [36] The CA concurred with this RTC finding of treachery without however offering any explanation for its concurrence.

We disagree with the lower courts in this conclusion as our review of the evidence points us to the conclusion that no treachery existed.

Treachery is not presumed. The circumstances surrounding the murder must be proved as indubitably as the crime itself. [37] There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to insure its execution, without risk to the offender, arising from the defense that the offended party might make. [38]

To constitute treachery, two conditions must concur: (1) the employment of means, methods or manner of execution that would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) the offender's deliberate or conscious choice of the means, method or manner of execution. [39]

We find it undisputed that prior to the killing, the victim was being chased by John Doe. Upon reaching 4th Avenue, he passed in front of the appellant and Porpirio who, at that time, were both standing near the corner of 4th Avenue. As the victim passed, the appellant held his left hand and led him towards the other side of the road. There, Porpirio struck the victim on the head with a *dos por dos* causing him to fall to his knees. The appellant thereafter boxed the victim until John Doe came. They then stabbed him, John Doe delivering the first blow from the back and the appellant doing it from the front.

Under these facts, we see no evidence indicating that the appellant and his co-accused made some preparation to kill the victim in such a manner as to ensure the execution of the crime or to make it impossible or hard for the victim to defend himself. [40] There was nothing in the record that shows that the three (3) assailants carefully considered the mode or method of attack to ensure the killing of the victim. While the intent to kill was patent, the manner of attack did not appear to have been deliberately adopted.

In *People v. Antonio*, [41] we held that it is not only the sudden attack that qualifies a killing into murder. There must be a conscious and deliberate adoption of the mode of attack for a specific purpose.

Likewise, in *People v. Catbagan*, [42] we ruled that treachery cannot be considered when there is no evidence that the accused had resolved to commit the crime prior to the moment of the killing, or that the death of the victim was the result of premeditation, calculation or reflection.

b. Abuse of superior strength

We agree, however, that abuse of superior strength attended the killing of the victim. To take advantage of superior strength means to use purposely excessive force, or force out of proportion to the means of defense available to the person attacked. The aggravating circumstance of abuse of superior strength depends on the age, size and strength of the parties. [43] It is present whenever there is inequality of forces between the victim and the aggressor so that the superiority of strength is notoriously advantageous for the latter who took advantage of this superiority in committing the crime. [44]

The records reveal that the lone and unarmed victim was held by the appellant by hand and led to the other side of

the road; struck on the head by Porpirio; boxed by the appellant; and then successively stabbed by John Doe and by the appellant. Clearly, the victim was in no position to defend himself; he was overwhelmed by the combined efforts of all three (3) assailants who did not only enjoy superiority in number, but also of weapons. This numerical and physical disparity was manifest in the victim's various abrasions on the shoulders and knees; incised wounds on the forehead, chest, hand and back; and stab wounds on the neck and chest. That the assailants took advantage of their superior number and combined strength as against the relatively defenseless victim can be clearly discerned from these circumstances.

c. Evident premeditation

While evident premeditation was alleged in the Information, the court a quo correctly concluded that this circumstance was not proven. For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused determined to commit the crime; (2) an overt act manifestly indicating that the accused has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect on the consequences of his act.[45] Significantly, the prosecution did not even attempt to prove the presence of these elements; Alfonso, the principal eyewitness, was not even aware of any prior incident or any possible reason that could have led the appellant and his co-accused to attack the victim.

Conspiracy

A conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. Proof of the agreement need not rest on direct evidence as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out. It may be deduced from the mode and manner by which the offense was perpetrated or inferred from the acts of the accused showing a joint or common purpose and design, concerted action and community of interest.[46]

In the present case, no evidence exists showing that the three (3) assailants previously met and came to an agreement to attack the victim. However, from the evidence presented, it was clear that they aimed their acts towards the accomplishment of the same unlawful object. Each did an act that, though apparently independent, was in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment.

To the point of being repetitive, we restate what Alfonso, the principal witness, positively narrated in court: the appellant held the hand of the victim and led him towards the other side of the road; Porpirio hit the victim on the head with a piece of wood causing the latter to fall to his knees; the appellant boxed the victim until John Doe came and stabbed him at the back; then the appellant, who was at the victim's front, stabbed him in the chest.

In our view, these joint actions sufficiently point to a common design to end the life of the victim. Thus, the act of one acting pursuant to this design is deemed the act of all.[47]

The proper penalty

The crime of murder qualified by abuse of superior strength is penalized under Article 248 of the Revised Penal Code (as amended by Republic Act No. 7659) with reclusion perpetua to death.

While treachery and evident premeditation were alleged in the Information, these circumstances were not adequately proven. In the absence of mitigating and aggravating circumstances in the commission of the felony, the courts a quo correctly sentenced the appellant to reclusion perpetua, conformably with Article 63(2)[48] of the

Revised Penal Code.

Civil Liability

The RTC awarded the amount of P56,112.00 to the victim's heirs as actual damages. It appears that out of the said amount, only P55,438.00 was duly supported by receipts. To be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party.[49]

We also award indemnity for loss of earning capacity to the victim's heirs, as documentary evidence (Exh. "D")[50] was presented to substantiate this claim. Indemnity for loss of earning capacity is determinable under established jurisprudence based on the net earning capacity of the murder victim computed under the formula:

Net Earning Capacity = $\frac{2}{3} \times (80 \text{ less the age of the victim at the time of death}) \times (\text{Gross Annual Income less the Reasonable and Necessary Living Expenses})$ [51]

The records show that the victim's annual gross income was P61,245.60 computed from his weekly rate of P1,275.95 (or P5,103.80 per month). His reasonable and necessary living expenses are estimated at 50% of this gross income, leaving a balance of P30,622.80. His life expectancy, on the other hand, is assumed to be $\frac{2}{3}$ of age 80 less 31, his age at the time of death. Applied to the above formula, these data yield the net earning capacity loss of P1,010,552.40.

We affirm the awards of P50,000.00 as civil indemnity[52] and P50,000 as moral damages[53] pursuant to current jurisprudence.

The heirs of the victim are likewise entitled to exemplary damages since the qualifying circumstance of abuse of superior strength was firmly established. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of P25,000.00[54] as exemplary damages is justified under Article 2230 of the New Civil Code.

WHEREFORE, in light of all the foregoing, we hereby AFFIRM the April 27, 2006 Decision of the CA in CA-G.R. CR-HC No. 00727 with the following MODIFICATIONS:

(1)

actual damages is REDUCED to P55,438.00; and

(2)

the appellant is ORDERED to pay the heirs of the victim P1,010,552.40 as indemnity for loss of earning capacity.

Costs against appellant Dante Nueva.

SO ORDERED.

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

[1] Penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justice Jose C. Reyes, Jr. and Associate Justice Arturo G. Tayag; rollo, pp. 2-11.

[2] Penned by Presiding Judge Thelma Canlas Trinidad-Pe Aguirre; CA rollo, pp. 53-68.

- [3] Records, p. 2.
- [4]TSN, July 11, 2001, p. 4.
- [5] Id., p. 9.
- [6]Id., p. 7.
- [7]Id., pp. 5-6.
- [8]TSN, July 31, 2001, pp. 3-5.
- [9]Id., pp. 6-7.
- [10] Id., p. 8.
- [11] Id., pp. 15-16.
- [12]TSN, August 28, 2001, pp. 4-5.
- [13] Records, p. 72.
- [14]TSN, September 13, 2001, p. 7.
- [15] TSN, October 16, 2001, pp. 3-6.
- [16] In some parts of the records, his name appears as PO1 Tiu.
- [17] TSN, October 16, 2001, pp. 7-9.
- [18] TSN, December 12, 2001, pp. 5-13.
- [19] TSN, January 21, 2002, p. 4.
- [20] TSN, October 6, 2004, pp. 6-8.
- [21] Id., pp. 8-9.
- [22] Id., pp. 11-14.
- [23] Id., pp. 14-16.
- [24] CA rollo, pp. 34-35.
- [25] Docketed as CA-G.R. CR-HC No. 00727.
- [26] CA rollo, pp. 42-52.
- [27] TSN, July 31, 2001, pp. 3-7, 11.
- [28] People v. Dee, G.R. Nos. 115251-52, October 5, 2000, 342 SCRA 115.
- [29]People v. Rada, G.R. No. 128181, June 10, 1999, 308 SCRA 191.
- [30] Velasco v. People, G.R. No. 166479, February 28, 2006, 483 SCRA 649.
- [31] People v. Dee, supra, at p. 126.
- [32] People v. Visperas, Jr., G.R. No. 147315, January 13, 2003, 395 SCRA 128.
- [33] TSN, July 31, 2001, p. 6.

- [34] TSN, September 31, 2001, p. 7.
- [35] See *People v. Zamora*, G.R. No. 101829, August 21, 1997, 278 SCRA 60.
- [36] RTC decision, CA rollo, p. 33.
- [37] *People v. Ilo*, G.R. No. 140731, November 21, 2002, 392 SCRA 326, 331.
- [38] ART. 14, par. 16 of the Revised Penal Code.
- [39] *People v. Garcia*, G.R. No. 174479, June 17, 2008.
- [40] *People v. Nitcha*, G.R. No. 113517, January 19, 1995, 240 SCRA 283.
- [41] G.R. No. 128900, July 14, 2000, 335 SCRA 646.
- [42] G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 565.
- [43] *People v. Barcelon, Jr.*, G.R. No. 144308, September 24, 2002, 389 SCRA 556.
- [44] *People v. Riglos*, G.R. No. 134763, September 4, 2000, 339 SCRA 562, citing *People v. Asis*, 286 SCRA 64, 74 (1998).
- [45] *People v. Rodas*, G.R. No. 175881, August 28, 2007, 531 SCRA 554.
- [46] *People v. Francisco*, G.R. Nos. 118573-74, May 31, 2000, 332 SCRA 305.
- [47] *People v. Delmo*, G.R. Nos. 130078-82, October 4, 2002, 390 SCRA 395, 434.
- [48] ART. 63. Rules for the application of indivisible penalties. x x x
- In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following shall be observed in the application thereof:
- x x x
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- [49] *People v. Delos Santos*, G.R. No. 135919, May 9, 2003. 403 SCRA 153.
- [50] Pay Envelope and Advice Slip.
- [51] *People v. Batin*, G.R. No. 177223, November 28, 2007, 539 SCRA 272, 294.
- [52] *People v. Villa, Jr.*, G.R. No. 179278, March 28, 2008.
- [53] *People v. Eling*, G.R. No. 178546, April 30, 2008.
- [54] See *People v. Tolentino*, G.R. No. 176385, February 26, 2008.

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