

**DOMINADOR MALANA AND RODEL TIAGA, PETITIONERS, VS.
PEOPLE OF THE PHILIPPINES, RESPONDENT.***G.R. No. 173612. March 26, 2008*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-173612/>**TINGA, J.:**

The petitioners Dominador Malana (Dominador) and Rodel Tiaga (Rodel), together with their acquitted co-accused Elenito Malana (Elenito), were charged with the crime of murder and multiple frustrated murder before the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 12. The charges[1] stemmed from an incident on 28 May 2000 that left Betty Capsa-Roxas (Betty) dead, and her daughter and granddaughter injured. The appellants pleaded not guilty during the arraignment.

The prosecution presented the two adult survivors of the ghastly crime, Vicente Roxas Jr., (Vicente) and his daughter Suzette Roxas (Suzette), as its main witnesses.

They testified as follows: In the evening of 28 May 2000, Vicente, his wife, Betty, Suzette, and the latter's infant daughter, Jenny Rose de la Cruz (Jenny), were asleep inside their house in San Jose del Monte, Bulacan. Their house is a single-storey structure with spaces apportioned for the living room, the kitchen, and one bedroom.[2] Vicente and Betty slept at the living room, while Suzette and Jenny occupied the bedroom. [3]

Vicente testified that at around 11:30 p.m., he was awakened by the sound of dogs barking. He saw the kitchen door of their house on fire. He tried to douse the flames with water, but the fire fuming of the smell of gasoline, spread out instead. Vicente woke Betty and told her to fetch help. As Betty opened the main door of their house, Dominador, Rodel, and a third man whom he identified as Ronnie Malana, suddenly appeared and entered the house.[4] Since these individuals had previously threatened to kill Vicente and his entire

family, Vicente, upon seeing them, ran through the burning kitchen door and out of the house to seek help from his brother-in-law, Roberto Oredero, whose house was merely 30 meters away.[5] After escaping several meters from his house, Vicente heard an explosion and saw the fire engulf his entire house.[6]

Meanwhile, Suzette, who was awakened by her parents' panicked reaction to the kitchen fire, cradled Jenny and saw the three men enter their house when her mother opened the main door. Dominador and Rodel were standing behind the third man.[7] She testified that the third man carried a round one-gallon container with a

wick of three to four inches in length. Rodel lit the wick with a match, and the third man threw the container into Suzette's bedroom. After that, the three men simultaneously ran away. Suzette saw the container burst into flames and explode.[8]

The explosion killed Betty instantly, blowing apart her legs and one of her arms. Her body, from the waist down, was burned. The explosion also shattered and exposed the bone of Suzette's left leg and knocked her front teeth out. The doctors could not save Suzette's

shattered left leg so the same was amputated from below the knee. Had it not been for the prompt medical attention she received, Suzette would have died from the injuries she had sustained from the explosion.[9] Jenny

survived the blast with barely any injury.

Vicente also testified that appellants had been threatening to liquidate him and his family, due to their belief that he was in the practice of witchcraft by which he had caused the deaths of Rodel's parents-in-law.[10]

Appellants proffered the defenses of denial and alibi. Dominador testified that on the date and time of the crime, he was working as a construction worker in Parian, Calamba, Laguna and that

he had been in Laguna since 11 May 2000 until the end of the month. He claimed that he was implicated by Vicente because the latter

thought that he had something to do with the elopement of Suzette.[11] He pointed to Salvador Villafuerte, Roman Villafuerte, Boyet Villafuerte, and Mondring Erederos as the perpetrators of the crime.[12] Rodel testified that he was recuperating from illness in Binahaan, Pagbilao, Quezon when the incident took place. He claimed that he was implicated because he helped Dominador in engaging the services of a counsel.[13] Elenito similarly gave the alibi that he was engaged as a construction worker together with Dominador in Laguna when the crime occurred. He also denied that his alias is "Ronnie," the name of the third perpetrator identified by Vicente.[14]

The RTC, in a Decision[15] dated 21 February 2003, found Dominador and Rodel guilty of two (2) separate crimes of murder and frustrated murder, and acquitted Elenito on the ground of reasonable doubt. The trial court gave credence to the eyewitness accounts of Vicente and Suzette who positively identified the appellants as two of the three perpetrators of the crime. However, the trial court acquitted Elenito as he was not positively identified by Suzette as the third man and his physical appearance does not fit the description of the tall fat man seen by Suzette.

Appellants appealed from the trial court's decision to the Court of Appeals. The appellate court, in a Decision[16] dated 20 April 2006, affirmed the guilt of appellants but modified their sentences such that each of them is liable for the complex crime of murder with frustrated murder and attempted murder; hence, it sentenced each of the appellants to suffer the penalty prescribed for the most serious crime which is death. The Court of Appeals denied appellants' motion for reconsideration in a Resolution[17] dated 20 July 2006.

Hence, the present Petition[18] before this Court.

Except as to the penalty of death, now commuted to reclusion perpetua pursuant to Republic Act No. 9346,[19] we affirm appellants' conviction. There is no cogent reason to disturb the finding of guilt made by the trial court and affirmed by the appellate court. The issues raised by appellants involve weighing of evidence already passed upon by the trial court and the appellate court. Appellants question the credibility of the testimony of Vicente and Suzette and the weight given by the trial court to the testimony of the bomb specialist. The age-old rule is that the task of assigning values to the testimonies of witnesses in the stand and weighing their credibility is best left to the trial court which forms its first-hand impressions as a witness testifies before it. It is also axiomatic that positive testimony prevails over negative testimony.[20]

Vicente positively identified appellants as two of the three assailants who barged into his house and committed the heinous crime. He testified on direct examination as follows:

Q: When you saw your kitchen door of your house was on fire, what did you do then?

A: I tried to put off the fire by tossing it with container of water, sir.

Q: Were you able to stop the fire?

A: No, sir, because I smell[ed], it was a gasoline.

Q: when you were not able to stop the fire, what did you do?

A: Because my wife then was awake[d] I instructed her to sought [sic] for [sic] help, sir.

Q: Did she accede, as you directed?

A: Yes, sir. When my wife opened the door to ask for help Dominador Malana, Rodel Aliaga and Ronnie Malana suddenly appeared at the door.

Q: This Ronnie Malana is he present?

A:

he is not present inside the courtroom, sir.

Q: What about Dominador Malana?

A: Yes, sir.

Q: Point to him.

COURT:

Stand up. Witness pointed to Dominador Malana inside the courtroom.[21]

x x x

FISCAL:

Q: How about this other one Rodel Aliaga?

A: Yes, sir.

BRANCH CLERK OF COURT:

Witness pointed to Rodel Aliaga, the accused, inside the courtroom.[22]

x x x

FISCAL:

Q: Which door of your house did they enter?

A: The main door, sir.

Q: When they entered these three persons: Rodel, Dominador and Ronnie, what did they do inside your house?

A: When I saw them, because I received several threats from them, I immediately ran towards the kitchen door which was then burning, which was then on fire, sir.

x x x

Q: When you ran towards the burning kitchen door which was on fire, where was your wife, your grandchildren and your daughter?

A: They were inside our house in the living room, sir.

Q:

What happened when you ran towards the kitchen door which was burning?

A: After I ran out of the house, sir, I heard an explosion and when I looked back I saw that my house was on fire.[23] (Emphasis ours.)

Suzette testified on what occurred after her father ran out of their house to seek help leaving her and her mother to face the two appellants and a third person. She testified, thus:

Q: And after the bombing what transpired next if anything did transpire and your have carried your child?

A: My mother then ran towards the main door, sir.

Q: Was she able to reach the main door?

A: Yes, sir.

Q: So what if anything did happen when your mother reached the main door?

A: She opened the door, sir.

Q: And thereafter when she opened the door, what transpired next?

A: As soon as she opened the door, three (3) men entered our house, sir.

Court:

Thru that door?

A:

Yes, Your Honor.

Fiscal:

Q: Were you able to recognize these three (3) men?

A: I only recognize two of the three (3) men, sir.

Q: These two (2) whom you claimed you came to know, are they present before this courtroom?

A: Yes, sir.

Q: Will you point to them one by one?

A: The first one was Rodel Tiaga (witness pointing to the accused inside the courtroom) and the second one is Dominador Malana (witness pointing to the accused inside the courtroom)

Q: The other one whom you claimed entered the main door of your house after the same was opened by your mother, is also around, will you be able to recognize him?

A: Yes, sir.

Q: So what happened when three (3) men including that person who is not around together with these two (2) persons that you have just pointed out entered your house?

A: One of them was carrying a gallon container with dynamite inside and he threw it inside the house, sir.

Q: Who in particular was carrying that content with dynamite?

A: A fat tall man with dark complexion, sir.

Q: You mean the one who is not present before this courtroom?

A:

Yes, sir.

Q: What about these two (2) persons that you have just pointed out? What did they do immediately after they entered the house?

A: They were the ones holding the matchstick and the matchbox, sir.

Q: When you say they were the one holding the match, you mean both of them?

A: No, sir.

Q: Who was the one holding the match?

A: Rodel, sir.

Q: What about the other one, what was he doing?

A: I did not notice anymore because that happened too fast, sir.

Q: Were you able to know what did Rodel do with the match?

A:

He lit it, sir.

Q: With what? What was the that he lit?

A: The dynamite, sir, inside the container.

Q: How did you come to know that that was a dynamite?

A: The one gallon container with a wick, sir.[24]

x x x

FISCAL:

Q: Immediately after the wick was lighted according to you by Rodel, what happened next?

A: He then threw it, sir.

Q: In what direction he threw it?

A: In my room, sir.

x x x

Fiscal:

Q: And after they threw this Exh. "E", what transpired next?

A: I saw the gallon burst into flame, sir. (nagliyab)

Court:

Q: When you said they threw that gallon container to your room, did they do that together, the three (3) of them?

A: The tall fat man only who threw it towards my room, sir.

Fiscal:

Q: At that precise time that tall fat man threw that Exh. "E" to your room, where were the other two (2), Rodel and Dominador?

A: They were behind him, sir.

Q: What were they doing?

A:

I did not notice anymore, sir.

Q: And after they threw that Exh. "E" to your room, what did they do after the burning?

A: I did not see anymore, sir, because there was an explosion.

Q: Explosion of what?

A: the dynamite they threw, sir.

Q: So when that dynamite marked as Exh. "E" which you drew exploded, what happened next?

A: I then saw my mother beside me burned and with her legs both cut off and half of her body burned and one of her arm also cut off, and her body from waist down she was burned. Also my left leg was also cut off and my front teeth were missing and both arms of my baby were slightly burned.

COURT:

Make it of record that the witness has her left leg also amputated or cut off up to the -above the knee and it was wrapped with bandage and she has scratches with her.[25] (Emphasis ours.)

The Court agrees with the appellate court's following observations:

We have no doubt in Suzette's testimony as she would not have lightly accused the herein accused-appellants if they were not the true malefactors of the crime committed. Indeed, as a direct victim, who lost her left leg to the crime; as mother, who had to bear the sight of her eight-month old baby injured by burns; and as a daughter, who witnessed her own mother burn to death, Suzette could never have just pinpointed to anyone to the crime.

Under her circumstances, surely, there could have been no other overriding reason for Suzette's damning testimony against the accused-appellants save for the purpose of making sure that justice was done and the culprits of the crime be held accountable and meted their proper punishment for their dastardly deed. Suzette's relationship to the victim of this case, including her personal injury, in accord with human nature, ensured that she would have the most interest in telling the truth, rather than prevaricate and send innocent men to rot in jail.

On the other hand, while Vicente did not actually see the accused-appellants perpetrate the crime, Vicente's testimony lends credence to the fact that the accused-appellants were present in the place, time, and date of the crime. The previous life threats made by the accused-appellants on Vicente and his family, and the exploding of the Roxas residence following Vicente's escape from his house, served to corroborate and shed light to

Suzette's account of the crime.[26]

There is no merit in appellants' assiduous assertion that they should be acquitted under the equipoise rule in view of what to them are doubts as to their guilt. This rule provides that where the evidence of the parties in a criminal case is evenly balanced, the constitutional presumption of innocence should tilt the scales in favor of the accused. There is, therefore, no equipoise if the evidence is not evenly balanced.[27] Said rule is not applicable in the case before us because the evidence here presented is not equally weighty. The equipoise rule cannot be invoked where the evidence of the prosecution is overwhelming.

Against the direct, positive and convincing evidence for the prosecution, appellants could only offer denials and uncorroborated alibi. It is elementary that alibi and denial are outweighed by positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitness testifying on the matter. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[28] The prosecution witnesses positively identified appellants as two of the perpetrators of the crime. It is incumbent upon appellants to prove that they were at another place when the felony was committed, and that it was physically impossible for them to have been at the scene of the crime at the time it was committed.[29] This they failed to prove.

Appellants tried to sow reasonable doubt on their guilt by harping on minor factual matters and engaging in semantics. Their effort is futile. This Court cannot be led to a different result. The Court of Appeals correctly resolved all the issues raised by the appellants.

The appellate court correctly found appellants guilty of the complex crime of murder[30] with frustrated murder and attempted murder under Article 48[31] of the Revised Penal Code. The explosion killed Betty instantly,[32] while Suzette's left leg was amputated from below the knee[33] and she would have died from the injuries she sustained had it not been for the prompt medical attention she received.[34] Appellants' intent to kill is apparent when they threw the explosive device towards the direction of the victims. The killing of Betty by means of an explosive device qualifies the crime to murder under Article 248(3) of the Revised Penal Code. With respect to Suzette, appellants are guilty of frustrated murder inasmuch as all the acts necessary that would consummate the crime of murder were complete but she nevertheless survived due to causes independent of appellants' will.[35] Jenny survived the blast with barely any injury. However, this is not to say that the crime committed against her was merely slight physical injuries because the appellants were motivated by the same intent to kill when they lobbed the explosive device inside Vicente's house. Since the injuries inflicted are not fatal, the crime committed is merely attempted murder.

The case before us is clearly governed by the first clause of Article 48 because by a single act, that of lobbing an explosive device inside Vicente's house, appellants committed three grave felonies, namely, (1) murder, of which Betty was the victim; (2) frustrated murder, of which Suzette was the injured party; and (3) attempted murder, of which Jenny was the injured party. A complex crime is committed when a single act constitutes two or more grave or less grave felonies. Appellants' single act of detonating an explosive device may quantitatively constitute a cluster of several separate and distinct offenses, yet these component criminal offenses should be considered only as a single crime in law on which a single penalty is imposed because the offenders were impelled by a single criminal impulse which shows their lesser degree of perversity.[36]

Under the aforecited article, when a single act constitutes two or more grave or less grave felonies the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period irrespective of the presence of modifying circumstances. Applying the aforesaid provision of law, the maximum penalty for the most serious crime (murder) is death.[37] However, pursuant to Republic Act No. 9346,[38] the penalty of death

properly imposed on the appellants by the Court of Appeals is hereby reduced to reclusion perpetua.

To recapitulate the three acts done by appellants in tandem with a third man loom large in the prosecution evidence, namely: first, their dousing of Vicente's kitchen door with gasoline and setting it ablaze;^[39] second, their subsequent entry to the house when Betty opened the main door to seek help; and thence, third, their lobbing an explosive device inside the house, followed by their escape. The trial court and the appellate court did not anymore address the treacherous manner by which the crime was committed, as alleged in the Information. We reiterate our holding in *People v. Comadre*^[40] that:

Coming now to Antonio's liability, we find that the trial court correctly ruled that treachery attended the commission of the crime. For treachery to be appreciated two conditions must concur: (1) the means, method and form of execution employed gave the

person attacked no opportunity to defend himself or retaliate; and (2) such means, methods and form of execution was deliberately and consciously adopted by the accused. Its essence lies in the adoption of ways to minimize or neutralize any resistance, which may be put up by the offended party.

Appellant lobbed a grenade which fell on the roof of the terrace where the unsuspecting victims were having a drinking spree. The suddenness of the attack coupled with the instantaneous combustion and the tremendous impact of the explosion did not afford the victims sufficient time to scamper for safety, much less defend themselves; thus insuring the execution of the crime without risk of reprisal or resistance on their part. Treachery therefore attended the commission of the crime.

It is significant to note that aside from treachery, the information also alleges the "use of an explosive" as an aggravating circumstance. Since both attendant circumstances can qualify the killing to murder under Article 248 of the Revised Penal Code, we should determine which of the two circumstances will qualify the killing in this case.

When the killing is perpetrated with treachery and by means of explosives, the latter shall be considered as a qualifying circumstance. Not only does jurisprudence^[41] support this view but also, since the use of explosives is the principal mode of attack, reason dictates that this attendant circumstance should qualify the offense instead of treachery which will then be relegated merely as a generic aggravating circumstance.^{[42][43]}

x x x

Under the aforecited article, when a single act constitutes two or more grave or less grave felonies the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period irrespective of the presence of modifying circumstances, including the generic aggravating circumstance of treachery in this case.^[44] Applying the aforesaid provision of law, the maximum penalty for the most serious crime (murder) is death. The trial court, therefore, correctly imposed the death penalty.^[45]

Regarding damages, we affirm the monetary award granted by the Court of Appeals. Appellants judicially admitted the actual loss of the victims' house and their appliances and implements contained therein, subject to the court's consideration of depreciation value, amounting to P300,000.00; and of the victims' medical and burial expenses amounting to P15,340.15 and P9,610.00, respectively. Appellants are ordered to pay the heirs of Betty Capsa-Roxas civil indemnity in the amount of P50,000.00 and moral damages in the amount of P50,000.00.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00138 is AFFIRMED with the MODIFICATION that appellants are sentenced to suffer the penalty of reclusion perpetua without possibility of parole.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Chico-Nazario, and Velasco, Jr., concur.

[1] The accusatory portion of the Information reads:

That on or about the 28[th] day of May 2000, in the municipality of San Jose del Monte, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with explosives and with intent to kill, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously with evident premeditation, abuse of superior strength and treachery, attack, assault and throw explosives inside the house of Vicente Roxas Jr. which exploded thereby causing serious physical injuries on Betty Capsa-Roxas which directly caused her death and also causing serious physical injuries to Suzette Roxas and Jenny Rose de la Cruz which required the amputation of the left leg of said Suzette Roxas and medical attendance for more than 30 days with respect to Jenny Rose de la Cruz, which ordinarily would have caused the death of the said Suzette Roxas and Jenny Rose de la Cruz, thus performing all the acts of execution which should have produced the crime of murder as consequence, but nevertheless did not produce it by reason of causes independent of their will, that is, by the timely and able medical assistance rendered to said Suzette Roxas and Jenny Rose de la Cruz which prevented their deaths.

CONTRARY TO LAW. (Records, pp. 1-2.)

[2] TSN, 30 January 2001, pp. 10-11.

[3] TSN, 18 May 2001, p. 2.

[4] TSN, 7 December 2000, pp. 3-4.

[5] Id. at 5.

[6] Id. at 6.

[7] TSN, 6 July 2001, pp. 5-6.

[8] Id. at 7-10.

[9] TSN, 16 November 2000, pp. 4-5.

[10] TSN, 7 December 2000, p. 5.

[11] TSN, 25 April 2002, pp. 2-8.

[12] TSN, 6 June 2002, pp. 2-5.

[13] TSN, 11 July 2002, pp. 2-5.

[14] TSN, 6 June 2002, pp. 8-9.

[15] CA rollo, pp. 30-39. Penned by Judge Crisanto Concepcion. The dispositive portion of the decision reads:

WHEREFORE, finding accused DOMINADOR MALANA y MACADAT and RODEL (Aliaga) TIAGA y ETCUBAÑAS both guilty as principals beyond reasonable doubt of the crime of murder and frustrated murder as charged, there being no other circumstance, aggravating or mitigating, found attendant in the commission thereof, each of these two accused is hereby sentenced to suffer the penalty of reclusion perpetua for the crime of murder, and an indeterminate penalty of imprisonment ranging from 8 months and 1 day of prision mayor, as minimum, to

14 years, 8 months and 1 day of reclusion temporal, as maximum, for the crime of frustrated murder, to indemnify jointly and severally the heirs of victim Betty Capsa Roxas in the amount of P796,200.15 a actual damages, and the further sum of P400,000.00 as moral damages subject to the corresponding filing fees as first lien, and also to pay jointly and severally the costs of the proceedings.

In the service of their sentence, each of the two named accused who are detention prisoners, shall be credited with the full time during which he had undergone preventive imprisonment, pursuant to Art. 29 of the Revised Penal Code.

On ground of reasonable doubt, accused Elenito (Ronnie) Malana y dela Cruz is hereby acquitted and this case against him dismissed. Unless for some valid cause or reason he should be further detained, his immediate release from his detention in this case is hereby ordered effected by the Provincial Jail Warden.

SO ORDERED.

[16] Id. at 173-199. Penned by Associate Justice Andres Reyes Jr., and concurred by Associate Justices Rosmari Carandang and Japar Dimaampao. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, the appealed decision is hereby AFFIRMED with the MODIFICATION that the accused-appellants, Dominador Malana and Rodel Tiaga are hereby found guilty of the complex crime of murder with frustrated murder and attempted murder and sentenced to DEATH. The accused-appellants are further ordered to pay the heirs of Betty Capsa-Roxas the amount of P324,950.15 as actual damages (P9,610.00 as funeral expenses, P15,340.15 as medical expenses and P300,000.00 as reasonable compensation for the lost of the house and appliances), P 50,000.00 as civil indemnity and another P 50,000.00 as moral damages.

SO ORDERED.

[17] Id. at 231.

[18] Rollo, pp. 3-61.

[19] People v. Pioquinto, G.R. No. 168326, 11 April 2007, 520 SCRA 712, 724; People v. Tubongbanua y Pahilanga, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 741-742.

[20] People v. Gerry Sarabia, 21 January 1997, G.R. No. 124076, 266 SCRA 471, 485.

[21] TSN, 7 December 2000, p. 3.

[22] Id. at 4.

[23] Id. at 5-6.

[24] TSN, 6 July 2001, pp. 5-8.

[25] TSN, 6 July 2001, pp. 9-11.

[26] Rollo, pp. 76-77.

[27] People v. Alexander "Alex" Benemerito, et al., G.R. No. 120389, 21 November 1996, 264 SCRA 677, 690.

[28] People v. Ulysses Cawaling, et al., G.R. No. 117970, 28 July 1998, 293 SCRA 267, 305-306. Citing People v. Dinglasan, 267 SCRA 26, 43, January 28, 1997 and People v. Obzunar, 265 SCRA 547, 569, 16 December 1996.

[29] Id.

[30] Art. 248. Murder.- Any person who, not falling within the provisions 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:

1. 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 [ensure] or afford impunity;

x x x

3.By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

x x x

5. With evident premeditation;

[31] Art. 48. Penalty for complex crimes.--When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means of committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

[32] Records, p. 121. The necropsy report states the cause of death is "hemorrhage secondary to multiple explosives injuries, trunk, lower extremities and right upper extremity.

[33] Id. at 105.

Partial Thickness burn, 30%, 2[o] to blast injury:

(L) Forearm, (L) Abdomen, (L) Thigh, (R) Leg

[34] TSN, 16 November 2000, p. 5.

[35] ART. 6. Consummated, frustrated, and attempted felonies.- Consummated felonies, as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

Tissue avulsion, anterior aspect of (L) leg with bone exposure

Tissue avulsion, posterior aspect, D/ 3[rd] (L) leg.

[36] People v. Comadre, G.R. No. 153559, 8 June 2004, 431 SCRA 366, 384. Citing People v. Sakam, 61 Phil. 27; People v. Manantan, 94 Phil. 831.

[37] Id.

[38] SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of reclusion perpetua, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Pursuant to the same law, appellant shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law.

[39] TSN, 7 December 2000, p. 3. The prosecution did not include this act in the Information. Neither did it file a separate information for arson.

[40] Supra.

[41] People v. Tayo, G.R. No. L-52798, 19 February 1986, 141 SCRA 393, citing People v. Guillen, 85 Phil. 307; People v. Gallego and Soriano, 82 Phil. 335; People v. Agcaoili, 86 Phil. 549; People v. Francisco, 94 Phil. 975.

[42] People, v. Tintero, G.R. No. L-30435, 15 February 1982, 111 SCRA 704; People v. Asibar, G.R. No. L-37255, 23 October 1982, 117 SCRA 856.

[43] Supra, pp. 377-379.

[44] People v. Guillen, G.R. No. L-1477, 18 January 1950.

[45] Supra, p. 384.

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