

## **PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ADRIANO CABRILLAS, ACCUSED, BENNY CABTALAN, APPELLANT.**

*G.R. No. 175980. February 15, 2012*

Ponente: DEL CASTILLO, J.

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### **DEL CASTILLO, J.:**

Minor inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of witnesses, as well as their positive identification of the accused as the perpetrators of the crime.

#### **Factual Antecedents**

For our review is the August 29, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00039 which affirmed with modifications the August 29, 2002 Decision[2] of the Regional Trial Court, Branch 33, Calbiga, Samar, in Criminal Case No. CC-2000-1310, finding appellant Benny Cabtalan (Benny) guilty beyond reasonable doubt of the crime of murder.

The Information[3] against Benny and his co-accused Adriano Cabrillas (Adriano) contains the following accusatory allegations:

That on or about the 11[th] day of July 1999, at nighttime which was purposely sought, in Barangay Laygayon, Municipality of Pinabacdao, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with deliberate intent to kill, with treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously, attack, assault, and stab one Jesus Cabujat with the use of long bolos (sundang), with which both accused have provided themselves for the purpose, thereby inflicting upon the victim multiple stab wounds, which wounds resulted to his instantaneous death.

CONTRARY TO LAW.[4]

Two years after the incident, Benny was arrested in Las Piñas City[5] while to date, Adriano remains at large. During his arraignment, Benny entered a plea of “not guilty”. [6] Trial thereafter ensued.

#### **Version of the Prosecution**

Prosecution witness Wilfredo Pacayra (Wilfredo) narrated that on July 11, 1999 at around 7:00 p.m., he went to the store of Susan Cabtalan (Susan) to buy salt. While thereat, Benny and Adriano asked him to join them in their drinking spree to which Wilfredo obliged. In the course of their drinking spree, Wilfredo noticed that Benny and Adriano had bolos, locally known as sundang, tucked on their waists. He also heard the two talking about their plan to assault someone that same night.[7] Sensing that something wrong would happen, Wilfredo left them and walked home.[8]

Upon reaching his house, Wilfredo soon noticed Benny and Adriano circling the house of Jesus Cabujat’s (Jesus) daughter, Elena Raypan (Elena), which is just about two arms length away from his house.[9] Thereafter, the duo

stood on a dark portion of the road.[10] Later on, he saw Jesus and his 9-year-old granddaughter Jonalyn C. Raypan (Jonalyn) walking towards the house of Jonalyn's mother, Elena. Jesus stopped and turned towards a grassy area to urinate when suddenly, Benny and Adriano emerged from their hiding place. They held Jesus by his shoulders and alternately stabbed him. At that moment, Jesus shouted "I am wounded, please help me because I was stabbed by Benny and Adriano." [11] Jesus then fell to the ground while Benny and Adriano immediately fled from the crime scene.[12]

For her part, prosecution witness Jonalyn narrated that on the night of the incident, she fetched her grandfather Jesus from her Ate Susan's house.[13] She and her grandfather walked side by side in going back to their house.[14] However, upon reaching the vicinity of their house, her grandfather went across the street to urinate. It was then that she saw Benny and Adriano on the same street.[15] She knew the two because Benny and her father are cousins while Adriano and her mother are also cousins.[16] She saw the two men take hold of her grandfather's arms, after which Benny stabbed her grandfather with a long bolo. She heard her grandfather say "Donie, help me, I am wounded." [17] After that, Jonalyn saw Benny go home.[18]

Elena also testified that when she heard her father shouting for help, she immediately went outside the house and saw Benny releasing her father. As she got nearer to Jesus, Benny and Adriano ran away.[19] When Elena asked her father as to who stabbed him, the latter replied that it was Benny and Adriano.[20]

Jesus was rushed to a hospital where he was pronounced dead due to multiple stab wounds.[21] His family spent P18,500.00 for his wake and burial. At the time of his death, Jesus was earning P1,000.00 a week as a farmer.

A case for murder was accordingly filed against Benny and Adriano and a warrant was issued for their arrest which was, however, returned unserved since they could no longer be located. It appears that on July 13, 1999, at around noontime, Benny and Adriano escaped by ferryboat to Catbalogan, Samar.[22] Two years later, or on July 31, 2001, Benny was arrested in Las Piñas City by virtue of an alias warrant of arrest.[23]

#### Version of the Defense

Benny testified that he was in his mother's house in the morning of July 11, 1999 until lunchtime. He then proceeded to the store of Susan in Barangay Laygayon and saw Adriano and a certain Manuel Cabigayan drinking tuba. He accepted their invitation to join in their drinking spree and stayed there until 6:00 p.m. Thereafter, he went home to Barangay Pilaon which was about three kilometers away. He reached his destination after walking for nearly an hour and no longer went out. He learned from his neighbors of the death of Jesus only the following day.[24]

In the succeeding days, Benny went to Parañaque City after receiving a letter from his brother informing him of a job opportunity in the city as gardener.[25]

Benny's mother, Gertrudes, testified that on July 11, 1999, she was in her farm in Barangay Laygayon, Pinabacdao, Samar, together with her husband and Adriano's mother, Pacita Ocenar. At around 9:00 p.m., Adriano arrived and confided to her that he attacked and injured a person in said barangay. The following day Adriano departed and was never seen again.[26]

#### Ruling of the Regional Trial Court

On August 29, 2002, the trial court rendered a Decision[27] convicting Benny of the crime of murder. Discarding minor inconsistencies, relationship, and delay in testifying in court, it gave more credence to the testimonies of the prosecution's two eyewitnesses since their positive declarations that Benny and Adriano stabbed the helpless Jesus were never refuted. Besides, the ad mortem statement of Jesus that the two stabbed him "would serve to

cleanse any doubt on their responsibility.”[28] Also telling is the fact that Benny and Adriano immediately fled to Catbalogan, Samar after the incident.

The trial court appreciated the presence of the qualifying circumstance of treachery since the attack upon Jesus who was unarmed and unsuspecting was without any warning. It also found the existence of the aggravating circumstance of abuse of superior strength as both Benny and Adriano held, subdued and attacked the 69-year-old defenseless Jesus. The trial court further held that conspiracy was evident since Benny and Adriano had common criminal intent and were united in its execution.[29]

The dispositive portion of the trial court’s Decision reads:

WHEREFORE, the prosecution [having] clearly established the guilt of the accused, BENNY CABTALAN beyond reasonable doubt, he is found guilty of the crime of Murder, and is sentenced to suffer the penalty of Death by lethal injection, to pay the heirs of Jesus Cabujat the amount[s] of Php75,000.00 as civil liability; Php15,000.00 as exemplary damages, and Php10,000.00 in moral damages, to reimburse the amount of Php5,000.00 spent for the coffin; Php5,000.00 for the wake, although no receipts were presented for these last two expenses yet these are legitimate and reasonable amounts under the circumstances.

Let the case against co-accused Adriano Cabrillas be sent to the archives without prejudice, and issue another alias order for his arrest as soon as possible.

The Samar Provincial Jail Warden is ordered to proceed accordingly in so far as the continued detention of the herein accused and his eventual transfer to the National Penitentiary, and to inform this court in writing on the matter as soon as possible.

The Acting Branch Clerk of court is advised to proceed accordingly.

[SO ORDERED.][30]

The case was forwarded to this Court for automatic review, but same was later referred to the CA in accordance with the ruling in *People v. Mateo*. [31]

### Ruling of the Court of Appeals

The CA affirmed the trial court’s judgment of conviction through its August 29, 2006 Decision.[32] However, it did not anymore consider the aggravating circumstance of abuse of superior strength as the qualifying circumstance of treachery already absorbed it.[33] Thus, the CA modified the penalty imposed upon Benny by reducing it from death to reclusion perpetua. Likewise modified were the amounts of damages granted to the heirs of Jesus. It disposed of the case in the following manner:

WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court is hereby AFFIRMED with the modification that the penalty is Reclusion Perpetua, accused-appellant is ordered to pay the heirs of Jesus Cabujat Php50,000.00 as civil indemnity, Php50,000.00 as moral damages and Php25,000.00 as exemplary damages and to suffer accessory penalties attached to the offense committed.

SO ORDERED.[34]

### Assignment of Errors

Benny attempts to secure his acquittal by assigning the following errors:

- THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION’S EVIDENCE.

- ASSUMING ARGUENDO THAT THE ACCUSED-APPELLANT IS ACCOUNTABLE FOR THE DEATH OF THE VICTIM, THE LOWER COURT ERRED IN HOLDING THAT TREACHERY QUALIFIED THE KILLING INTO MURDER.

X X X X[35]

Benny insists that the evidence adduced to establish his culpability is not sufficient and credible. He posits that Wilfredo is not a credible witness because it took him three years to come out and reveal the identities of the alleged perpetrators without any adequate explanation for the delay. He likewise impugns the credibility of the prosecution witnesses since Wilfredo is a relative of the victim's son-in-law while Jonalyn is a grandchild. In addition, Benny asserts that the prosecution's evidence is glaring with inconsistencies. According to him, Wilfredo's testimony that he and Adriano took turns in stabbing Jesus is diametrically opposed to Jonalyn's declaration that only he stabbed Jesus. Furthermore, the testimony of Elena that she inquired from Jesus who his assailants were is inconsistent with her own affidavit and that of her sister, Julita, as the affidavits indicated that it was Julita and not Elena who asked their father about the identity of his assailants.

Benny therefore concludes that the prosecution's evidence is weak and cannot prevail over his defense of alibi. Moreover, he asserts that the prosecution failed to prove that he killed Jesus in a treacherous manner, hence, he should not be held guilty of murder.

#### Our Ruling

The appeal lacks merit.

Treachery attended the killing of Jesus, hence, the crime committed is murder.

Murder is the unlawful killing by the accused of a person, which is not parricide or infanticide, committed with any of the attendant circumstances enumerated in Article 248[36] of the Revised Penal Code, among which is treachery.

There is no dispute that the killing of the victim in this case is neither parricide nor infanticide. The issue that must therefore be resolved is whether treachery attended the killing as to qualify the crime to murder.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the victim might make.[37] "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape." [38]

Based on the account of the prosecution's eyewitnesses, there is no doubt that treachery was present. It was established that Benny and Adriano were in the crime scene prior to the incident. They hid in a dark portion of the road and assaulted Jesus with their bolos while he was urinating with his back to them. They even held him by his shoulders to render him defenseless and unable to resist the attack on him by his assailants. Wilfredo testified viz:

Q.

What else did you observe while the dogs were barking?

A.

While the dogs were barking, I saw two (2) persons who were [circling] the house of Elena Raypan, they were walking back and forth in front of the house of Elena Raypan.

Q.

Were you able to recognize these two (2) persons walking back and forth near the house of Elena Raypan?

A.

Yes, sir.

Q.

Who were they?

A.

Benny Cabtalan and Adriano Cabrillas.

Q.

How did you recognize them?

A.

Because the house was lighted.

Q.

After they were going back and forth in front of the house of Elena Raypan, where did these persons go?

A.

They went to the dark portion of the road.

x x x x

Q.

After they went to the dark portion of the road, what did you observe next?

A.

They just stood by [there].

Q.

After that what happened next?

A.

I saw Jesus Cabujat walking towards the house of Elena Raypan.

Q.

Was he alone?

A.

He was accompanied by a child.

x x x x

Q.

When you saw Jesus Cabujat walking towards the house of Elena Raypan, what did Jesus Cabujat do before going to the house of Elena Raypan?

A.

When Jesus Cabujat reached the place where the two persons Benny [Cabtalan] and Adriano Cabrillas were standing, Jesus Cabujat urinated.

x x x x

Q.

To what direction was he facing?

A.

He was facing towards the grassy area.

Q.

What happened while Jesus Cabujat was urinating as you said?

A.

That's the time when Jesus Cabujat was held on his shoulder.

x x x x

Q.

Who held the left shoulder of Jesus Cabujat?

A.

Benny Cabtalan.

x x x x

Q.

[H]ow about Adriano Cabrillas, what did he do?

x x x x

A.

He also stabbed the victim.

Q.

Were you able to see the weapon used by Benny Cabtalan?

A.

Yes, sir.

Q.

What was the weapon used?

INTERPRETER:

The witness demonstrated that it was more or less 14 ½ inches.

Q.

That includes the handle?

A.

Yes, sir.

x x x x

Q.

How many times did Benny Cabtalan stab the victim?

A.

Three (3) times.

Q.

How about Adriano Cabrillas?

A.

Three (3) times also.

Q.

From the first blow of Benny Cabtalan to the first blow of Adriano Cabrillas, how long did it take?

A.

It just happened so quickly; as the first one delivered his stab blow the other one also delivered his stab blow, alternately stabbing the victim.

Q.

So, what happened to Jesus Cabujat?

A.

He asked for help and said: "I am wounded, please help me because (I) was stabbed by Benny Cabtalan and Adriano Cabrillas."

Q.

After he shouted what happened to him.

A.

After that he fell down.

Q.

How about Benny Cabtalan and Adriano Cabrillas, what did they do when Jesus Cabujat fell down?

A.

When Jesus Cabujat shouted for help, that was the time the two (2) culprits [fled].

Q.

To what direction?

A.

To the route going to a farm.[39]

Jonalyn corroborated the testimony of Wilfredo on relevant details as follows:

Q.

When you x x x [reached] your house, what did your lolo do?

A.

He went across the street and urinated there and saw Benny also on the street.

Q.

Was Benny alone?

A.

[There] were two (2) of them.

Q.

Do you recognize the other one?

A.

Yes, sir.

Q.

Who?

A.

It was Adriano.

Q.

Do you know the surname of Benny?

A.

Cabtalan.

Q.

How about Adriano, do you know the surname of Adriano?

A.

I cannot remember.

Q.

Why do you know the surname of Benny Cabtalan?

A.

Because my father and his father are cousins. Benny and my father are cousins.

x x x x

Q.

You saw them also in the street while your lolo was urinating so, what did Benny and Adriano do at that time?

A.

They held both arms of my grandfather.

x x x x

Q.

And after holding x x x your grandfather, what did Benny do if any?

A.

They suddenly stabbed my lolo.

Q.

With what?

A.

It was a long bolo.[40]

All told, Jesus was unaware of the imminent peril to his life and was rendered incapable of defending himself. From the suddenness of the attack upon Jesus and the manner it was committed, there is no doubt that treachery indeed attended his killing.

The trial court's assessment of the credibility of witnesses usually remains undisturbed.

The trial and appellate courts reached the same conclusion that the testimonies of eyewitnesses Wilfredo and Jonalyn deserve credence as both narrated in a straightforward manner the details of Benny and Adriano's attack upon Jesus. Benny, however, still disputes the credibility of these witnesses by pointing out that Wilfredo's testimony that he and Adriano took turns in stabbing Jesus differs from that of Jonalyn who stated that while the two assailants attacked Jesus in unison, it was only Benny who inflicted the mortal wounds. The Court, however, finds this inconsistency to pertain merely to the manner the fatal stab wounds were inflicted on Jesus. The materiality of the assailants' exact position during their attack on the victim is a trivial and insignificant detail which cannot defeat the witnesses' positive identification of Benny as one of the assailants. Besides, "[i]t is perfectly natural for different witnesses testifying on the occurrence of a crime to give varying details as there may be some details which one witness may notice while the other may not observe or remember. In fact, jurisprudence even warns against a perfect dovetailing of narration by different witnesses as it could mean that their testimonies were [fabricated] and rehearsed." [41]

Benny's assertion that Wilfredo is not a credible witness since he surfaced three years after the incident to testify for the prosecution also fails to impress. It is worthy to mention that the proceedings in this case was suspended

for two years because Benny and Adriano left Pinabacdao, Samar and the warrant for their arrest could not be served on them. Also, deference or reluctance in reporting a crime does not destroy the truth of the charge nor is it an indication of deceit. Delay in reporting a crime or an unusual incident in a rural area is well-known.[42] It is common for a witness to prefer momentary silence for fear of reprisal from the accused.[43] The fact remains that Wilfredo fulfilled his duty as a good member of society by aiding the family of Jesus when they were seeking justice. In the absence of other circumstances that would show that the charge was a mere concoction and that Wilfredo was impelled by some evil motives, delay in testifying is insufficient to discredit his testimony.

The fact that Wilfredo and Jonalyn are related to the victim also does not diminish their credibility. While admittedly, Wilfredo is a relative of the husband of Julita, who is the daughter of Jesus, and Jonalyn is Jesus's granddaughter, relationship per se does not evince ulterior motive nor does it ipso facto tarnish the credibility of witnesses.[44] "Mere relationship to a party cannot militate against the credibility of witnesses or be taken as destructive of the witnesses' credibility." [45] What matters is that Wilfredo and Jonalyn positively identified Benny and Adriano as the assailants of Jesus and that they testified in a straightforward manner. These indicate that the two are telling the truth.

As to the inconsistencies in Elena's testimony and in her affidavit as to who asked her father the identity of the assailants, the same deserves scant consideration. It is settled that "affidavits or statements taken ex parte are generally considered incomplete and inaccurate. Thus, by nature, they are inferior to testimony given in court, and whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight." [46] The trial court therefore did not err in affording more credence to Elena's testimony given in open court despite her having previously executed an affidavit which was inconsistent with her testimony. To stress, "appellate courts do not disturb the findings of the trial courts with regard to the assessment of credibility of witnesses. The reason for this is that trial courts have the unique opportunity to observe the witnesses first hand and note their demeanor, conduct, and attitude under grilling examination." [47]

Benny's defense of alibi was properly rejected.

"Alibi is the weakest of all defenses since it is easy to concoct and difficult to disprove." [48] For this defense to prosper, proof that the accused was in a different place at the time the crime was committed is insufficient. There must be evidence that it was physically impossible for him to be within the immediate vicinity of the crime during its commission. [49]

Here, Benny did not satisfactorily demonstrate that it was physically impossible for him to be at the locus criminis at the night of its commission. While he denies being at the scene of the crime when it happened, he claims to be within a reasonably near area which is his residence in Barangay Pilaon. [50] The murder of Jesus occurred in Barangay Laygayon, which is more or less 3½ kilometers away from the place where Benny claimed he was in. [51] Benny testified that the distance between these two barangays can be covered in an hour's walk. [52] Thus, even if he traveled by foot to another barangay, it was still not too far away to render it physically impossible for him to be at the crime scene at the time of its commission. Furthermore, Benny's alibi is uncorroborated. "Courts may give credence to alibi only if there are credible eyewitnesses who can corroborate the alibi of accused." [53] In contrast, alibi becomes weaker in the face of the positive identification made by the witnesses for the prosecution, as in this case. [54]

Benny cannot escape liability by imputing the crime to Adriano.

Benny's assertion that Adriano was solely responsible for the murder of Jesus is likewise undeserving of

consideration. Such a claim is common among conspirators in their veiled attempt to escape complicity. It is a desperate strategy to compensate for a weak defense. We are not readily influenced by such a proposition since its obvious motive is to distort the truth and frustrate the ends of justice.[55]

Besides, it is the victim himself who pointed to Benny as one of his assailants. Such statement of Jesus before his death is a dying declaration that is admissible in evidence against Benny.[56] “A dying declaration is an evidence of the highest order; it is entitled to the utmost credence on the premise that no x x x person who knows of his impending death would make a careless and false accusation. At the brink of death, all thoughts on concocting lies disappear.”[57]

All told, the Court finds no reason to depart from the judgment of conviction rendered against Benny by the trial court and affirmed by the CA.

#### The Penalty and Award of Damages

“When the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter.”[58] Hence, the trial court should have no longer considered the aggravating circumstance of abuse of superior strength. And there being no aggravating or mitigating circumstance in this case, the proper penalty therefore is reclusion perpetua, it being the lesser penalty between the two indivisible penalties for the crime of murder which is reclusion perpetua to death.[59] Hence, we agree with the CA when it imposed upon Benny the penalty of reclusion perpetua. In addition, Section 3 of Republic Act No. 9346[60] provides:

Section 3. Persons convicted of offenses punishable with reclusion perpetua or whose sentences will be reduced to reclusion perpetua by reason of this Act, shall not be eligible for parole under Act No. 4103 otherwise known as the Indeterminate Sentence Law, as amended.

Pursuant to the above provision, Benny is therefore not eligible for parole.

As to the award of damages, the heirs are entitled to the following awards when death occurs due to a crime: “(1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and, (5) temperate damages.”[61]

Civil indemnity in the amount of P75,000.00 is mandatory and is granted without need of evidence other than the commission of the crime.[62] Hence, the Court modifies the civil indemnity awarded by the CA from P50,000.00 to P75,000.00. We likewise increase the award for moral damages from P25,000.00 to P50,000.00 in accordance with the latest jurisprudence on the matter. Moral damages in the sum of P50,000.00 shall be awarded despite the absence of proof of mental and emotional suffering of the victim’s heirs.[63] “As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim’s family.”[64] Moreover and with the finding of the qualifying circumstance of treachery, exemplary damages is correctly awarded but only in the amount of P30,000.00 in line with current jurisprudence.[65]

As regards actual damages, Jesus’s daughter Julita testified that they spent P18,500.00 for burial and funeral expenses, though she was unable to present receipts to substantiate her claim. Where the amount of actual damages for funeral expenses cannot be ascertained due to the absence of receipts to prove them, temperate damages in the sum of P25,000.00 may be granted, as it is hereby granted, in lieu thereof.[66] “This award is adjudicated so that a right which has been violated may be recognized or vindicated, and not for the purpose of indemnification.”[67]

The trial court and the appellate court are unanimous in not awarding loss of earning capacity to the heirs of Jesus for lack of basis. There was no error on their part since there was no documentary evidence to substantiate this claim. The testimony that Jesus earned P1,000.00 a week can be used as basis for granting such an award only if

he is either “(1) self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in [his] line of work no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws.”[68] Here, the prosecution did not offer proof that would determine whether Jesus was self-employed or a daily-wage earner. Thus, the exceptions to the rule cannot be applied in this case.[69]

The heirs of Jesus are also entitled to an interest on all the awards of damages at the legal rate of 6% per annum from the finality of this judgment until fully paid.[70]

WHEREFORE, the Decision dated August 29, 2006 of the Court of Appeals in CA-G.R. CR-HC No. 00039 that affirmed with modifications the Decision of the Regional Trial Court of Calbiga, Samar, Branch 33, is **AFFIRMED** with further modifications. Appellant Benny Cabtalan is found **GUILTY** beyond reasonable doubt of the crime of Murder and sentenced to suffer the penalty of reclusion perpetua without eligibility for parole. He is ordered to indemnify the heirs of Jesus Cabujat the following: (1) P75,000.00 as civil indemnity; (2) P50,000.00 as moral damages; (3) P 30,000.00 as exemplary damages; (4) P 25,000.00 as temperate damages; and (5) interest on all damages awarded at the legal rate of 6% per annum from the finality of this judgment until fully paid.

**SO ORDERED.**

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

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[1] CA rollo, pp. 134-139; penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla.

[2] Records, pp. 104-118; penned by Presiding Judge Carmelita T. Cuares.

[3] Id. at 1-2.

[4] Id. at 1.

[5] Id. at 30.

[6] Id. at 38.

[7] TSN, October 10, 2001, pp. 5-6.

[8] Id. at 6.

[9] Id. at 8.

[10] Id. at 9.

[11] Id. at 13.

[12] Id. at 14.

[13] TSN dated November 15, 2001, p. 10

[14] Id. at 12.

[15] Id.

[16] Id. at 12-13.

[17] Id. at 14.

[18] Id. at 16.

[19] TSN dated December 12, 2001, pp. 9-10

[20] Id. at 11.

[21] Records, p. 10.

[22] TSN, June 11, 2002, pp. 4-9.

[23] Id. at 30.

[24] TSN, May 20, 2002, pp. 3-9.

[25] Id. at 5.

[26] TSN, May 13, 2002, pp. 4-6.

[27] Supra note 2.

[28] Records, p. 115.

[29] Id. at 115-116.

[30] Id. at 118.

[31] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[32] Supra note 1.

[33] CA rollo, p. 137

[34] Id. at 138.

[35] Id. at 59.

[36] 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 insure or afford impunity;
2. In consideration of a price, reward, or promise;
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;
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[37] Revised Penal Code, Article 14(16).

[38] *People v. Dela Cruz*, G.R. No. 188353, February 16, 2010, 612 SCRA 738, 747; *People v. Amazan*, 402 Phil. 247, 264 (2001).

[39] TSN, October 10, 2001, pp. 9-14.

[40] TSN, November 15, 2001, pp. 12-14.

[41] *People v. Lacbayan*, 393 Phil. 800, 807 (2000).

[42] *Gorospe v. People*, 466 Phil. 206, 215 (2004) citing *People v. Belon*, G.R. No. 87759, February 26, 1991, 194 SCRA 447, 457.

[43] *Id.*, citing *People v. Catubig*, G.R. No. 89732, January 31, 1992, 205 SCRA 643, 655.

[44] *People v. Vicente*, 423 Phil. 1065, 1075 (2001).

[45] *People v. Salazar*, G.R. No. 84391, April 7, 1993, 221 SCRA 170, 177.

[46] *People v. Antonio*, 390 Phil. 989, 1007. (2000).

[47] *People v. Cias*, G.R. No. 194379, June 1, 2011.

[48] *People v. De Guzman*, G.R. No. 173477, February 4, 2009, 578 SCRA 54, 64-65.

[49] *Id.*

[50] TSN, May 20, 2002, pp. 6-9.

[51] *Id.* at 8.

[52] *Id.*

[53] *People v. Sumalinog, Jr.*, 466 Phil. 637, 650 (2004).

[54] *People v. Bonifacio*, 426 Phil. 511, 521 (2002).

[55] *People v. Macaliag*, 392 Phil. 284, 299 (2000).

[56] Rules of Court, Rule 130, Section 37 provides:

Sec. 37. Dying declaration. – The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.

[57] *People v. Sanchez*, G.R. No. 188610, June 29, 2010, 622 SCRA 548, 561.

[58] *People v. Rebucan*, G.R. No. 182551, July 27, 2011.

[59] 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 rules shall be observed in the application thereof:

x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

x x x x

[60] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Took effect on June 24, 2006.

[61] *People v. Asis*, G.R. No. 177573, July 7, 2010, 624 SCRA 509, 530.

[62] *Id.*

[63] *Id.*

[64] *Id.* at 530-531.

[65] *People v. Abaño*, G.R. No. 188323, February 21, 2011.

[66] *People v. Asis*, *supra* note 61 at 531.

[67] *People v. Beduya*, G.R. No. 175315, August 9, 2010, 627 SCRA 275, 289.

[68] *People v. Asis*, *supra* note 61 at 532, citing *People v. Mallari*, 452 Phil. 210, 225. (2003).

[69] *Id.*

[70] *Id.*

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