

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO FRANCISCO Y CUPCUPIN, REYNALDO FRANCISCO Y CUPCUPIN, TEODORO FRANCISCO Y CUPCUPIN, ANTONIO SIOCO, ACCUSED-APPELLANTS.

G.R. Nos. 118573-74. May 31, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal interposed by accused Ricardo, Reynaldo, and Teodoro, all surnamed Francisco, and Antonio Sioco from the Joint Decision[1] dated November 7, 1994 of the Regional Trial Court (RTC) of Malabon, Metro Manila, Branch 170 in Criminal Cases Nos. 12196-MN & 12197-MN finding all the accused guilty beyond reasonable doubt of the crimes of murder and frustrated murder.

Two (2) Amended Informations[2] for Murder and Frustrated Murder were filed against accused Ricardo Francisco y Cupcupin, Reynaldo Francisco y Cupcupin, Teodoro Francisco y Cupcupin, Antonio Sioco, Cesar Nuestro[3], Efren Francisco, Jaime @ Daga[4] and John Doe @ Nonoy[5] as follows:

Amended Information for Murder

"That on or about the 27th day of October, 1992, in the Municipality of Malabon, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, conspiring, confederating together with all the other accused, who are all at large, with intent to kill, evidence (sic) premeditation and abuse of superior strength, did, then and there, willfully, unlawfully, and feloniously attack, assault and stab with the said weapon one SERAFIN MANGALI, JR., hitting the victim on the chest, thereby inflicting upon the victim stab wound which caused his immediate death."

Amended Information for Frustrated Murder

"That on or about the 27th day of October, 1992, in the Municipality of Navotas, Metro Manila, Philippines and within the jurisdiction of his Honorable Court, the above-named accused, armed with a bladed weapon, conspiring, confederating and helping with one another, together with all the accused who are all at large, with evidence premeditation and abuse of superior strength, did, then and there, willfully, unlawfully and feloniously attack, assault and stab with the said weapon one ARIEL DE DIOS y FRANCISCO, hitting the latter on his abdomen and left finger, thereby performing all the acts of execution which would produce the crime of Murder, but did not produce the same for reason of cause independent of the will of the accused, that is due to the timely and able medical attendance given to said victim which prevented his death."

Upon arraignment, accused Ricardo Francisco (RICARDO), Reynaldo Francisco (REYNALDO), Teodoro Francisco (TEODORO), Efren Francisco (EFREN)[6] and Antonio Sioco (ANTONIO)[7] with the assistance of counsel, individually entered a plea of not guilty.

EFREN underwent a psychiatric examination[8] and was diagnosed as suffering "from psychosis or insanity

classified as schizophrenia rendering him incompetent to stand court trial". The criminal cases filed against him were therefore suspended and he was ordered confined at the National Center for Mental Health in Mandaluyong for treatment.[9]

The RTC summarized the facts as culled from the testimonies of the witnesses presented by the prosecution and by the defense as follows:

"On October 27, 1992 at about midnight, Ariel De Dios and Serafin Mangali went to the house of Manny Pascual at Naval Street, Navotas. After a short talk at the gate, the three proceeded in a nearby store on board a jeep. They ordered San Miguel Pale Pilsen for each one of them, sat on a bench and continued their conversation. Shortly thereafter, a man identified as Efren Francisco, who was sitting on the right side of Ariel spat at the latter. Ariel asked Manny why said man was acting like that and whether he knew the man. Manny told Ariel not to mind the man. The three continued their conversation but Ariel got irked when the man spat at his right arm again. Ariel then told Manny that they better go home as he does not like what the man was doing. Ariel paid the bill and told Manny and Serafin to board the jeep. Ariel then talked with the man and asked the latter why he spat at him. The man did not answer and just kept on smiling. Ariel then hit the man on the nape and the latter ran away. With Serafin on the wheel, the three proceeded to Manny's house. After talking for about five minutes at the gate, Serafin and Ariel boarded on the jeep while Manny went inside the house.

Ariel De Dios narrated the incidents that took place thereafter as follows: that Serafin maneuvered the jeep along M. Naval on their way to Malabon; that upon passing by the gate of Manny's house, Ariel saw a man, who turned out to be accused Antonio Sioco, a few meters from the gate pointing at them and saying "Heto na sila, heto na sila" that immediately thereafter, the headlights of a coming jeep that was occupying the lane they were then traversing were turned on; that Serafin stepped on the brakes and their jeep went off at a distance of about two feet from the coming jeep; that there were about seven persons on board the other jeep, the driver, two were seated in front, one on the left front fender and two or three at the back that the one on the fender, who turned out to be Ricardo Francisco was the first to alight followed by the rest; that Ricardo went towards Serafin, grabbed the latter by the neck and said "Putang ina mo, bumaba ka diyan"; that Serafin held on the steering wheel; and resisted the pull; that another person who came from the jeep grabbed Serafin by the arm and tried to loosen Serafin's grip on the steering wheel; that another person, who turned out to be accused Teodoro Francisco came armed with a knife-like instrument and stabbed Serafin on the left armpit; that Ariel got stunned and was holding on the bar looking on what was happening when somebody, who turned out to be Reynaldo Francisco, suddenly pull his right arm and ordered him to get down; that when Ariel was in the act of alighting from the jeep, his right foot already out, Reynaldo stabbed him on the left part of the stomach; that Ariel asked Reynaldo why he stabbed him but the latter got stunned (napatanga) and did not answer; that Ariel then pushed Reynaldo, ran at the rear portion of the jeep and told Serafin to run ("Pare, takbo na tayo"); that at that instance, Serafin was being mauled beside the jeep; that Ariel ran towards Manny's gate, knocked twice and called Manny's name twice; that Teodoro and Efren chased Ariel and the latter proceeded on the pathway going to the garage at the back but after two or three steps in the pathway which was very dark, Ariel went back to the street where he came from and he saw Serafin sprawled on the ground; that Ariel also saw Teodoro, after which, he ran as fast as he can towards the back garage and called for Manny's father; that when no one was answering, Ariel scaled on the wall, went up the roof, knocked on the window and asked for help; that Manny's father went out together with his daughter and Ariel told them to help Serafin as he was being mauled; that Manny's father went out and returned after a while informing Ariel that Serafin was okay and was brought to the hospital by Manny and that Ariel was thereafter brought at the Manila Doctors Hospital.

Emmanuel Pascual testified that after Serafin and Ariel left, he proceeded towards their main door; that he was still knocking at their door when he heard Ariel called his name twice; that he walked casually towards the gate and opened it; that he saw people in front of the gate and somebody pointed to the right; that upon looking to

the right, he saw Ariel's jeep and he walked faster towards the jeep; that he saw a body under the jeep and he ran; that while he was running, Teodoro who was a few feet away from the jeep told him "Pati lokoloko pinapatulan nila"; that there were other persons in the area but he was able to recognize only two, Boy and Tenok who turned out to be Ricardo and Reynaldo, respectively; that he saw Serafin full of blood; that he asked Serafin where Ariel was but Serafin did not answer; that he carried Serafin inside the jeep and brought him to Saint Joseph's Clinic; that there were no facilities in said clinic so he brought Serafin to Martinez Hospital; that he made a few phone calls after which, the doctor informed him that Serafin was already dead; and that he noticed that the two front teeth of Serafin were broken.

Dr. Ludivino J. Lagat, the NBI Medical Specialist who conducted an autopsy on the body of Serafin Mangali testified that the deceased sustained a linear abrasion on the right cheekbone and stab wound on the left side of the body below the armpit; that the stab wound was 2.0 cm big and 12 cm deep having one sharp and one blunt extremity directed backward medially and downward, entering the thoracic cavity and penetrating the lower lobe of the left lung and that 1600 cc of blood was recovered inside; that the stabwound could have been caused by one bladed sharp pointed instrument and is the cause of death of Serafin Mangali.

Serafin Mangali, Sr. testified that his son, the deceased Serafin Mangali, Jr. was an employee of the Department of Agrarian Reform during his lifetime with an annual income of P22,524.00 (Exhibit "E") that he spent P29,500.00 for the funeral services of his son (Exhibit "F") and the additional sum of P15,000.00 for miscellaneous expenses during the wake; and that he will pay P50,000 for his share in the legal services in these cases.

Dr. Joaquin Tan, a dentist at the Department of Agrarian Reform testified that on May 8, 1992, he made a thorough dental examination on the deceased Serafin Mangali Jr. and as per dental record of the latter, his upper and lower teeth were complete (Exhibit "G"); and that he issued a certification to that effect on March 16, 1994 (Exhibit "G-1").

Dr. Dominador Chansiopen of the Manila Doctors Hospital identified the Medical Record of Ariel De Dios (Exhibit "H") and testified that he attended to Ariel De Dios at 1:30 o'clock in the early morning of October 27, 1992; that the latter sustained wound at the mid clavicular line post gastric stomach, perforating the colon through and through, caused by a stab thrust, which required operation for gastric repair or gastrophyl, and repair of the transverse colon or transversocolonraphy; that the said wound if left untreated would have caused the patient's death; that he further noted lacerated wound in Ariel's finger, abrasion in the side of the abdomen and in the small area of the hand.

On the other hand, the defense witnesses confirmed the presence of the accused Antonio Sioco and the Francisco brothers at the scene of the crime.

Raul Sosa, a compadre of accused Teodoro and Ricardo Francisco claims to have witnessed the incident while he and Rogelio Pineda were waiting for a ride. He testified that Teodoro Francisco, upon alighting from the jeep heading for Navotas, immediately approached the driver of the jeep heading for Malabon, whom he came to know later to be Serafin Mangali, and pulled out the latter while Reynaldo Francisco approached the passenger, whom he came to know later to be Ariel De Dios, and thereupon stabbed the latter; that Ariel alighted and ran away; that Teodoro dropped off Serafin and chased Ariel but failed to overtake the latter who turned to the next street; that Teodoro returned together with Manny Pascual whom he met along the way; that there was a commotion on the jeep but his attention was focused on Teodoro and Ariel; that he did not see Efren Francisco during the incident; and that he saw Antonio Sioco on the way to the jeep.

Rogelio Pineda corroborated the testimony of Raul Sosa and further testified that while Teodoro was chasing Ariel, Serafin alighted and went at the back of the jeep where he met Ricardo; that the two had an argument and moments later, Ricardo stabbed Serafin; that when Serafin sprawled on the ground, Ricardo disappeared and the latter's companion scampered away; that during the stabbing, Efren was standing nearby while Antonio Sioco was in front of the jeep; and that Ricardo, Efren and Antonio left together.

For his part, accused Antonio Sioco testified that he was with Teodoro, Reynaldo, Ricardo and some other companions drinking beer in a store when Teodoro was informed by a saleslady that their brother Efren was kicked and hit at the nape by three persons who left on board a vehicle; that Teodoro thereupon talked into going after the said three persons to confront them why they did such thing; that the Franciscos and some of their companions hurriedly boarded a jeep while he was left behind; that upon hearing the skidding sound of the jeep coming to a halt, he followed his companions; that upon arrival at the scene, he saw Ariel De Dios standing beside the jeep in confrontation with Reynaldo and Ricardo while Serafin was still in the steering wheel in confrontation with Teodoro and two others; that when Ariel was about to hit Reynaldo, the latter stabbed the former; that Ariel who thereafter ran was chased by Teodoro; that Serafin alighted from the jeep and a commotion ensued and when Serafin went near Ricardo, the latter stabbed Serafin.

Ricardo Francisco claims that upon hearing the report that their brother Efren was ill-treated by three persons, Teodoro told him and their brother Reynaldo to stay behind and not to follow him as he will just talk to the persons concerned but he and Reynaldo insisted in going; that during the confrontation, Ariel was about to hit his brother Reynaldo with a black hard thing when Reynaldo stabbed Ariel; that Ariel who thereafter ran was chased by Teodoro; that Serafin alighted from the jeep and attacked him with a bottle of Coke which landed on his left shoulder; that when Serafin was about to draw something from his waist and uttered "I will kill you, I will kill you", he immediately stabbed him (Serafin); that he had a knife because he was peeling a mango during their drinking spree and he forgot to leave it.

Teodoro Francisco further corroborated the testimony that Reynaldo merely acted in self-defense when he stabbed Ariel. He likewise stated that he ran after Ariel in order to help the latter."^[10]

The RTC found the accused guilty beyond reasonable doubt of the crimes charged and rendered judgment on November 7, 1994, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused Teodoro, Reynaldo and Ricardo, all surnamed Francisco, as well as Antonio Sioco guilty beyond reasonable doubt of the crime of Frustrated Murder in Criminal Case No. 12196-MN and of Murder in Criminal Case No. 12197-MN, and hereby sentences each one of them as follows:

- In Criminal Case No. 12196-MN, to suffer an indeterminate penalty of eight (8) years and one (1) day of prison mayor as minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as maximum;
- In Criminal Case No. 12197-MN, to suffer the penalty of reclusion perpetua;
- To indemnify, jointly and severally, the heirs of Serafin Mangali, Jr. the sum of P44,500.00 as actual damages plus the further sum of P50,000.00 for the death of said Serafin Mangali, Jr. and the cost of suit.

Let the accused be credited with whatever preventive imprisonment they have undergone in connection with these cases.

Let the records of these cases be sent to the archives pending the trial of accused Efren Francisco and the arrest of all the other accused."^[11]

In so ruling, the court a quo found that there was a conspiracy as the accused acted pursuant to a common criminal design as the acts performed by them individually thereafter were concerted and were so connected as to unequivocally show the existence of a conspiracy; and that the accused took advantage of superior strength in executing their criminal design in that Teodoro sought the assistance of his companions and despite the superiority in number, the conspirators even armed themselves with knives.

Hence, the present appeal where the Francisco brothers RICARDO, REYNALDO and TEODORO, assign the following errors allegedly committed by the trial court:

"1. THE COURT A QUO ERRED IN RELYING ON 'POSITIVE IDENTIFICATION' OF THE ACCUSED-APPELLANTS AS THE PERPETRATORS OF THE CRIMES;

2. THE COURT A QUO ERRED IN GIVING FULL FAITH AND CREDIT TO TESTIMONIES OF PROSECUTION WITNESSES ARIEL DE DIOS AND EMMANUEL PASCUAL, DESPITE THEIR IMPROPER MOTIVES, BIASES AND INTERESTS IN TESTIFYING AGAINST THE ACCUSED-APPELLANTS;

3. THE COURT A QUO ERRED IN LENDING CREDENCE TO PROSECUTION'S VERSION RATHER THAN ON THE DEFENSE VERSION ON HOW DECEASED SERAFIN MANGALI, JR., WAS STABBED;

4. THE COURT A QUO ERRED IN IGNORING ACCUSED-APPELLANT RICARDO FRANCISCO'S JUDICIAL ADMISSION OF BEING THE ASSAILANT OF THE DECEASED SERAFIN MANGALI, JR.;

5. THE COURT A QUO ERRED IN FINDING ACCUSED-APPELLANT TEODORO FRANCISCO THE ASSAILANT OF DECEASED MANGALI, JR.;

6. THE COURT A QUO ERRED IN FINDING ACCUSED-APPELLANT REYNALDO FRANCISCO THE ASSAILANT OF ARIEL DE DIOS;

7. THE COURT A QUO ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANTS ON THE GROUND OF REASONABLE DOUBT;

AND ASSUMING IN GRATIA ARGUMENTI, THAT ACCUSED, OR SOME OF THEM, ARE GUILTY:

8. THE COURT A QUO ERRED IN FINDING CONSPIRACY AMONG THE ACCUSED-APPELLANTS;

9. THE COURT A QUO ERRED IN FINDING THAT THE QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH ATTENDED THE COMMISSION OF THE TWO OFFENSES;

10. THE COURT A QUO ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCE OF;

A. PHYSICAL DISABILITY;

B. LACK OF INTENT TO COMMIT SO GRAVE A WRONG;

C. OFFENDED PARTY'S PROVOCATION IMMEDIATELY PRECEDED THE ACT.

IN IMPOSING THE PROPER PENALTIES;

11. THE COURT A QUO ERRED IN FINDING COLLECTIVE CRIMINAL LIABILITY OF THE ACCUSED-APPELLANTS;

12. CONVICTING THE ACCUSED-APPELLANTS FOR FRUSTRATED MURDER IN CRIMINAL CASE NO. 12196-MN, DESPITE THE ABSENCE OF ALLEGATION OF INTENT TO KILL IN THE INFORMATION."^[12]

Accused-appellants Francisco brothers contend that the testimony of lone prosecution witness, Ariel De Dios (ARIEL) needs corroboration. They argue that his testimony is "erratic and unreliable" for being contrary to the evidence. Moreover, ARIEL was a biased, partial and ill-motivated witness for he was impelled to get even with the accused-appellants for the injuries he suffered.

Accused-appellants further point out that ARIEL'S identification of the accused-appellants cannot be characterized as positive for it was unreliable considering that it was made immediately after the warrantless arrest of TEODORO, RICARDO and REYNALDO who were brought to ARIEL's bedside at the Manila Doctor's

Hospital for identification, which was "pointedly suggestive" as the identities of the accused-appellants were "fed" by the police officers who arrested them. ARIEL was unfamiliar with the physical features of accused-appellants who being brothers, bear a striking resemblance with one another and it would be extremely probable that ARIEL could have mistaken one for the other in making his identification. Moreover, ARIEL's view was obstructed by SERAFIN's assailant since ARIEL was seated in the front passenger seat of the jeep at the moment he was being attacked and assaulted by two of the assailants. His attention was therefore focused on the latter and on his own safety and survival. In addition, accused-appellants claim that since the headlights of both jeeps were on, the sudden flash of glaring light from the headlights of the approaching vehicle would have caused temporary blindness on the passengers of the other vehicle thus making it highly improbable for ARIEL to see and identify the occupants of the other jeep.

Accused-appellants also attack the veracity of the testimony of Emmanuel Pascual (MANNY). They claim that MANNY lied when he testified that he did not know EFREN when, by his own admission, accused-appellants Francisco brothers were his neighbors since he "was a kid." The sudden decision to leave the eatery can be explained by the fact that MANNY may have warned and alerted ARIEL of the presence and possible retaliation from the Francisco brothers who were then drinking inside the eatery.

Accused-appellants maintain that SERAFIN was stabbed not while he was seated at the steering wheel but while he was standing beside the jeep and engaged in a heated argument with the accused-appellants after he alighted therefrom. According to them, the testimony of Raul Sosa[13] reveals that RICARDO, John Doe and TEODORO approached SERAFIN telling the latter to get off the jeep and angrily demanded an explanation why the latter's group maltreated EFREN. After SERAFIN alighted from the jeep, ARIEL ran away in an attempt to flee from the assault of RICARDO and John Doe. When RICARDO and John Doe stabbed SERAFIN, TEODORO was already in pursuit of the fleeing ARIEL. It is therefore improbable that TEODORO stabbed SERAFIN because he was then pursuing the fleeing ARIEL.

The theory of the defense is supported by RICARDO's testimony where RICARDO admitted having stabbed SERAFIN in open court which, under Section 4, Rule 129 of the Rules of Court is a judicial admission that does not require proof.

The above-mentioned theory is also alleged to be supported by the medico-legal findings as can be seen from the nature and location of the injury sustained by SERAFIN. The direction of the wound was "horizontal," "directed backward medially and downward" which indicates that the assailant is in a position higher than the victim. If the sharp portion was located "medially", it means that the assailant delivered the fatal thrust at a horizontal, swinging motion, from a slightly higher position going downward towards the left armpit of SERAFIN. Considering the nature and location of the stab wound of SERAFIN, the relative positions of TEODORO, RICARDO and John Doe, the only direction TEODORO could have delivered the fatal stab wound is sideways in an upward motion, in which case, the direction of the stab wound should have been upward and not downward as found by the medical report. Besides, TEODORO could not have inflicted the fatal stab wound as he was unarmed. Except for the lone testimony of ARIEL, witnesses ANTONIO and RICARDO were unanimous in stating that TEODORO was not holding a knife.

Accused-appellants further claim that the prosecution's theory of conspiracy does not find support in law and evidence. The mere fact that accused-appellants were companions in a drinking spree does not make them conspirators. There was no clear and convincing proof that their concerted acts were prompted by a common criminal design in the stabbing of the two victims. Accused-appellants never planned to kill the victims. The fact that they looked for the person who allegedly ill-treated EFREN is not indicative of the intention to kill the victims; rather, it is in full accord with the common experience of mankind and it was a natural reaction of

TEODORO, being the eldest of the Francisco brothers, to look for those who maltreated his brother.

Anent the qualifying circumstance of taking advantage of superior strength, numerical superiority is not the sole criterion. Even the sparse evidence established that there was only one knife used during the two stabbing incidents; this knife was the one RICARDO admitted he used in stabbing SERAFIN, the same knife he previously used to peel mangoes while the group of accused-appellants were drinking inside the eatery. There being no abuse of superior strength, the RTC should have made the conclusion that the killing was not murder but homicide and only the culprit who actually perpetrated the crime is liable.

The accused-appellants likewise claim that the RTC erred in not appreciating the mitigating circumstances of physical disability, lack of intent to commit so grave a wrong, and the offended party's provocation immediately preceding the act. RICARDO has a limp due to polio, which should be considered as a physical defect analogous to Article 13 (8) or (10) of the Revised Penal Code. Moreover, the fact that the perpetrators had no intention to kill anybody considering that the stabbing arose out of uncontrolled impulse rather than a deliberate design to take the victims' lives should also mitigate their liability. Finally, ARIEL's admission that he hit the nape of EFREN should be considered as constituting sufficient provocation that impelled the perpetrators to do what they did.

As regards the conviction of Frustrated Murder, the Information is defective in the absence of an allegation of intent to kill pursuant to Section 6, Rule 110; the allegations, and not the caption, in the indictment determine what offense is charged. In murder cases, the presence or absence of the allegation of "intent to kill" in the Information becomes decisive in determining the proper offense. The Joint Decision violates Section 14, Article III of the Constitution which is a basic right of the accused to be informed of the nature and cause of accusation in view of the conviction of accused-appellants for Frustrated Murder, in the absence of the allegation of intent to kill in the Information. Moreover, the stab wound sustained by ARIEL in his abdomen was insufficient to cause his death; in fact, he was still able to run and climb the roof of a house.[14]

Accused-appellant Antonio Sioco (ANTONIO) filed a separate appellant's brief raising a single assignment of error, to wit:

"THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT ANTONIO SIOCO GUILTY AS A CONSPIRATOR IN THE CRIME OF FRUSTRATED MURDER AND MURDER." [15]

ANTONIO strongly disagrees with the finding of the court a quo that there was conspiracy as all the accused acted pursuant to a common criminal design. He argues that TEODORO's plan was only to talk to the persons who "hit and kicked" their brother; that there was no agreement or common design because when TEODORO asked the group to go and look for the man who harmed their brother, he was addressing nobody in particular; and that appellant ANTONIO himself and two other members of their drinking group were left behind. On the conspiracy angle, ANTONIO further contends that the uncorroborated testimony of ARIEL that the former uttered the words "Heto na sila, heto na sila" or "yan na sila, ayan na sila" borders on physical impossibility aside from the fact that no other witness confirmed such fact. ANTONIO allegedly opted to be left behind in the store and followed the group only when both vehicles were already at the scene of the incident and the protagonists were already shouting at each other.[16]

On the other hand, the appellee, through the private prosecutor and the Office of the Solicitor General, maintain that the guilt of the accused-appellants has been proved beyond reasonable doubt. The appellee avers that ARIEL positively identified the accused-appellants as his and SERAFIN's assailants. ARIEL was able to identify the accused-appellants as the assailants since the street where the stabbing occurred was well lighted. His testimony is supported not only by the physical evidence but also by the medico-legal report. Contrary to accused-appellants' claim, the records disclose that ARIEL was not biased and not motivated to falsely testify against the

accused-appellants. On the contrary, ARIEL's testimony is convincing and trustworthy and is sufficient to convict herein accused-appellants. Likewise unworthy of any weight is RICARDO's admission that he stabbed SERAFIN because it was made not only to back up his claim of self-defense but also to absolve TEODORO from any responsibility for the death of SERAFIN. It cannot therefore be considered as an admission against interest. As regards accused ANTONIO, he is guilty as a conspirator in the commission of the crimes charged inasmuch as the testimonies of the prosecution witnesses show that the accused-appellants had a common design to kill SERAFIN and ARIEL.

It is further contended by the appellee that the accused-appellants were properly convicted of murder. The RTC correctly appreciated the qualifying circumstance of abuse of superior strength, which attended the commission of the crimes. The accused-appellants not only relied on their numerical superiority but the two, RICARDO and TEODORO, were also armed with deadly weapons when they attacked SERAFIN and ARIEL.

Finally, the accused-appellants' claim that the RTC should have considered physical disability, lack of intent to commit so grave a wrong and provocation as mitigating circumstances deserves scant consideration. First, there was no showing that RICARDO's physical defect i.e. he had a limp caused by polio, restricted his means of defense or action or communication with his fellow beings. Second, lack of intent to commit so grave a wrong cannot be appreciated when the wounds inflicted are serious enough to cause and in fact caused the crime charged. Thirdly, the murder and frustrated murder committed by the accused-appellants is in great disparity with the provocation made by SERAFIN and ARIEL. Moreover, ample time had lapsed from the time of the provocation to the time of the killing. Besides, the provocation did not originate from ARIEL and SERAFIN but from EFREN, the brother of three of the accused-appellants.[17]

After a careful and meticulous review of the evidence on record, we find no cogent reason to depart from the RTC's judgment convicting RICARDO, REYNALDO and TEODORO.

In their first assigned error, the accused-appellants assail ARIEL's identification of them and claim that his identification was not positive.

We are not persuaded.

Accused-appellants' allegation that the police induced ARIEL's identification of the accused-appellants at the hospital is belied by the transcripts which read:

"Q: What did the police say when they brought to you the suspect?

A: The police did not say anything just the doctor, sir.

Q: What did he say?

A: If I can recognize or what. He asked me how many where they. My name and where I live, sir.

Q: After that?

A: After that the police brought in the suspects which I positively identified, sir.

Q: In what manner did you make your identification?

A: I pointed at them, sir.

Q: Told them what?

A: I pointed my finger, sir (witness pointing his finger)

Q: To whom?

A: First the one in yellow shirt then the two other guys, sir.

Q: After pointing your finger to the one in yellow shirt did you say anything?

A: No. The policeman said "do you know this guy?" "Where they the ones who assaulted you?," and I said "Yes" and I pointed the three of them, sir.

Q: But during that time and day you never identified anyone among the three who stabbed you?

A: I did. I pointed the one in yellow shirt. I recognized him because he was the one who stabbed me, sir.

Q: That day the rest are all involved in the assault against you?

A: Yes, sir."[18]

The fact that ARIEL was in the hospital when he identified the accused-appellants will not affect his identification of them for there is no law, which requires a police line-up as essential to a proper identification provided that the identification was not suggested to the witness by the police.[19] As seen from the above, there is nothing in the testimony of ARIEL that shows that the police suggested that the suspects presented to him were his assailants. The police merely asked him whether he could recognize any of them and whether any of them were his assailants. He answered positively by pointing his finger at them. He could not have been mistaken in the identification of the accused-appellants considering that the street where he and SERAFIN were assaulted was well lit.[20] His identification of the accused-appellants was corroborated by the testimony of MANNY who identified the accused-appellants as being present in the vicinity where the crimes were committed.[21] Significantly, ARIEL also positively identified each of the accused-appellants in court.[22]

In their second to sixth assigned errors, the accused-appellants attack the veracity of the testimony of ARIEL and claim that he was not a credible witness. They also fault the RTC for not believing the witnesses for the defense.

We have carefully gone over the records and find nothing in his account of the events that would show that his testimony suffers from incredibility. ARIEL testified as follows:

"ATTY. NARVASA:

Q: Where you able to identify or see how many people were in the jeep?

A: Inside the jeep? (asking)

Q: (Atty. Narvasa) Yes.

A: Seven or maybe more because there were three in front – the driver, two persons in the passenger seat, one was seated on the fender outside and maybe two or three more, sir.

Q: Again.

A: 'repeating' two in front, excluding the driver, one at the fender, and maybe two to three more at the back of the jeep sir.

Q: When you said there was person on the fender, what fender is this? Whose jeep?

A: Theirs, sir

Q: The jeep that blocked your path?

A: Yes, sir.

Q: Left side of the fender, right side, front or back?

A: Left side of the front fender, sir.

Q: When this jeep blocked your way, what happened to your jeep?

A: It stopped. Serafin stepped on the brakes and the engine went off, sir.

Q: Then what happened?

A: Thereafter, the occupants of the jeep started coming out and the person who was seated on the fender was the first one to come towards Serafin, sir.

Q: Who was driving at this time?

A: Serafin, sir.

Q: You are saying the one who was seated outside the jeep?

A: He was the first one who came towards Serafin sir.

Q: What happened?

A: The persons inside the jeep immediately followed the one seated along the fender grabbed Serafin by the neck sir. He grabbed Serafin by the neck then he uttered "Putang Ina mo, bumaba ka diyan, Putang ina mo Bumaba ka diyan."

Q: You said this person who was seated on the fender was the first who came towards Serafin and grabbed Serafin by the neck. Did you know him at that time?

A: No, sir.

Q: But if you see him, would you be able to identify him?

A: Yes, sir.

Q: If you look around the courtroom, is he present in court?

A: Yes, sir.

Q: Will you point to him.

A: (witness pointing to a man whom when asked his name answered Ricardo Francisco)

Q: You said he grabbed him (Serafin) by the neck. Could you demonstrate to us how he grabbed him (Serafin) by the neck.

A: (the interpreter acting as Serafin-witness put his right hand on the nape and then the left hand was on the left shoulder of the interpreter) Then he pulled Serafin towards him, sir.

ATTY. CALALANG:

Your honor, I think what was being demonstrated is grabbing at the base of the neck, it is not at the neck but grabbing more on the shoulder portion at the base near the neck.

ATTY. NARVASA:

The witness is probably the best person.

ATTY. CALALANG

We have seen the demonstration.

COURT:

Counsel's observation is that the demonstration – he touched the shoulder not at the neck. You make the correct demonstration.

WITNESS:

(repeating the demonstration)

ATTY. NARVASA:

I would like to point out that the portion of the hand, small finger, was placed closed at the neck.

ATTY. CALALANG:

Base of the neck the greater part is laid on the shoulder portion, Your Honor.

ATTY. NARVASA:

It is for the appreciation of the Hon. Court.

Q: Would you tell us what was Serafin doing at that time?

A: He was resisting, sir.

Q: Would you tell us what was his position?

A: He was holding the wheel, both hands, because he was resisting the pull, sir.

Q: What happened?

A: Then another person came from the jeep and he grabbed Serafin by the arm, sir.

Q: What arm?

A: Left arm, sir. He was trying to loosen Serafin's grip on the steering wheel, sir.

Q: Then what happened?

A: There was another one who came, who was then armed with a thing which looked like knife and stabbed Serafin below the armpit, sir.

Q: You said somebody came and was trying to get Serafin's grip off the steering wheel?

A: Yes, sir.

Q: Do you know that person?

A: No, sir.

Q: If you see him, would you be able to identify him?

A: Yes, sir.

Q: Would you look around the courtroom and see if he is present.

A: He is not around right now, sir.

Q: You said a person came and pulled out a knife and suddenly stabbed Serafin. Do you know that person

then?

A: No, sir.

Q: If you see him, would you be able to identify him?

A: Yes, sir.

Q: Would you tell us if he is present here?

A: Yes, sir.

Q: Will you point at him.

A: He is the one, sir. (pointing to a person whom when asked his name answered Teodoro Francisco).

Q: While this was happening, what were you doing?

A: I was stunned because I was holding on the bar and I was looking what was going on, sir.

Q: Then what happened?

A: Then somebody just suddenly pulled my right arm and ordered me to get down from the vehicle, sir.

Q: And what happened then?

A: After he pulled me my right foot was out of the jeep, then he stabbed me sir.

Q: Where did he stab you?

A: Here at the left part of my stomach, sir.

Q: Then what happened?

A: After stabbing me, I asked him why did he stab me, sir.

Q: Did he answer?

A: He did not answer, sir. He got stunned "napatanga", got shock, that is why I was able to push him away, sir.

Q: Then what happened?

A: I was looking for Serafin, sir. I saw Serafin because I was looking for him to find out what happened to him, sir.

Q: You said that this person who stabbed you, did you know him then?

A: No, sir.

Q: If you see him again, would you be able to identify him?

A: Yes, sir.

Q: Look around the courtroom and see if this person is present in court.

A: Yes, sir. He is the one (pointing to a person whom when asked his name answered Reynaldo Francisco)

Q: After you said he stabbed you and you were able to push him away, where did you go?

A: At the place near the rear of the jeep which we were then driving, sir.

Q: You mean you alighted from the jeep?

A: Yes, sir.

Q: While you were on that position, what happened? What did you see? What did you notice?

A: I looked at Serafin and told him, "Pare, takbo na tayo, sir.

Q: And were you able to see Serafin?

A: Yes, sir.

Q: What was happening to Serafin?

A: He was standing beside the jeep being mauled and I even heard him say "Tama na, tama na", sir.

Q: After you heard him said "Tama na, tama na", what happened?

A: Somebody answered from those persons who were mauling him by saying "Anong tama na, anong tama na", sir.

Q: Then what happened?

A: I ran towards Manny's jeep, sir.

Q: Why did you run towards Manny's jeep?

A: It was the nearest place where I could go, sir.

I knocked twice, sir.

Q: Did you reach Manny's place?

A: Yes, sir.

Q: Why did you have to run?

A: Because somebody was chasing me, sir.

Q: Chasing you?

A: Yes, sir.

Q: How many were chasing you?

A: I think there were two of them, sir.

Q: Who were chasing you?

A: One came from side of Serafin, sir.

Q: Who was this guy?

A: The guy who stabbed Serafin, sir.

Q: And who was the other guy who was chasing after you?

A: He was the one right behind the guy who stabbed me, sir.

Q: Earlier when you were inside the jeep?

A: Yes, sir.

Q: Who was this guy?

A: The person who was at the store spitting, sir."[23]

ARIEL's testimony, as found by the RTC, was straightforward, categorical and free from self-contradiction.[24] This Court has ruled on countless occasions that the trial court is in the best position to determine facts and to assess the credibility of witnesses as it is in a unique position to observe the witnesses' deportment while testifying which opportunity the appellate court is denied on appeal; this Court will respect the findings and conclusions of the trial court provided that they are supported by substantial evidence on record.[25] In the case at bar, we find no cogent reason to disturb the trial court's appreciation of the evidence and find no basis therein to rule that ARIEL's testimony was not credible. Besides, the appellant has failed to prove any improper motive on the part of ARIEL to falsely impute such a terrible crime to herein accused-appellants. The testimony of a single witness, when credible and trustworthy, is sufficient to convict and must be given full faith and credence when no reason to falsely testify is shown.[26] The mere fact that the principal witness was the victim of the crime does not make him a biased witness and does not make his testimony incredible. It would be unnatural and illogical for him to impute the crime to an innocent person and let the culprit escape prosecution.[27]

At any rate, ARIEL's testimony is corroborated by the autopsy report the findings of which are as follows:

"POSTMORTEM FINDINGS

Pallor, generalized.

Abrasion, linear, 2.3 cms. Right cheek.

STAB WOUND, 2.0 cms. Elliptical, clean-cut edges, almost horizontally, sharp medial and blunt lateral extremity, located at the left mid-axillary line, level of the 7th intercostal space, 18.5 cms. From the anterior median line, directed backwards, downward and medially, entering the left thoracic cavity, then penetrating the lower lobe of the left lung, through and through, then to the left spinuous process of the 8th thoracic vertebrae, with an approximate depth of 12.0 cms.

Brain and visceral organs, pale.

Hemathorax, left, 1,600 c.c.

Stomach, full of rice and other food particles."[28]

ARIEL stated that SERAFIN was seated in the driver's seat with his hands on the steering wheel when he was stabbed. The location of the stab wound sustained by SERAFIN therefore corresponds to ARIEL's testimony for in such position, most of the left portion of his body, including the portion under his arm, was exposed to anyone situated beside the driver's door of the jeep.

In their eighth and eleventh assigned errors, the accused-appellants argue that the prosecution did not duly prove the existence of a conspiracy among them and should not have found them collectively criminally liable.

We disagree.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.[29] 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.[30] It may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.[31]

The circumstances leading to the stabbing of SERAFIN and ARIEL clearly and convincingly establishes that a conspiracy existed between the accused-appellants. When SERAFIN refused to get down from the jeep after

RICARDO grabbed his neck and attempted to pull him out, John Doe[32] attempted to loosen SERAFIN's grip on the steering wheel. TEODORO who was armed with a knife-like instrument then stabbed SERAFIN. At the same time, REYNALDO pulled the arm of ARIEL and ordered ARIEL to get down from the jeep. While he was getting down, REYNALDO suddenly stabbed him. ARIEL pushed REYNALDO then ran towards MANNY's gate. TEODORO ran after him but was not able to catch him. Clearly, each of the accused-appellants performed distinct but simultaneous acts which when pieced together show unity of purpose and design. It therefore becomes irrelevant as to whom amongst them actually stabbed SERAFIN since in a conspiracy, the act of one is the act of all.[33]

Accused-appellants claim that it was RICARDO who stabbed SERAFIN and not TEODORO in an attempt to discredit the testimony of ARIEL is unconvincing and is merely a futile attempt to get TEODORO "off the hook". But even assuming that ARIEL was mistaken and it was in fact RICARDO who stabbed SERAFIN, TEODORO is still criminally liable for a conspiracy existed among them.

We however disagree with the finding of the RTC that the accused-appellant ANTONIO was also part of the conspiracy. "In order to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the conspiracy. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime, or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy." [34] In the case at bench, ANTONIO's participation in the stabbing incident was limited to his shouting from a distance the words "Heto na sila, heto na sila". In a case involving the phrase "andiyang na" which has a similar import to the phrase involved herein, this Court ruled that said phrase does not have conclusive conspiratorial meaning for the supposedly damning utterances are susceptible of varied interpretations.[35] We similarly find that the facts as established by the evidence do not prove beyond reasonable doubt that he uttered those words in order to give moral assistance to the Francisco brothers in the absence of any other concrete evidence to prove his complicity.

In their ninth assigned error, the accused-appellants claim that the qualifying circumstance of abuse of superior strength was not attendant in the commission of the crime.

We rule that the RTC properly appreciated the qualifying circumstance of abuse of superior strength and correctly convicted the accused-appellants of murder. Clearly, the accused-appellants took advantage of their numerical superiority and the fact that two of them were armed with bladed weapons when they attacked SERAFIN and ARIEL.[36] SERAFIN and ARIEL, who were unarmed and were seated inside the jeep without any means of defending themselves, were no match to their four assailants who overpowered them.

In their tenth assigned error, the accused-appellants fault the RTC for not appreciating as mitigating circumstances accused RICARDO's physical disability, the accused-appellant's lack of intent to commit so grave a wrong and the victim's provocation, which preceded the act. After a careful assessment of the established facts, we find that these circumstances cannot be appreciated in their favor. The limp allegedly suffered by RICARDO has not been shown to restrict his means of action, defense or communication with his fellow beings as required by Article 13(8) of the Revised Penal Code as no evidence was presented in relation thereto other than the bare allegation that he suffered from such a physical defect. Neither can the circumstance of lack of intent to commit so grave a wrong be appreciated considering that SERAFIN was stabbed on his torso while ARIEL was stabbed in his stomach with the use of a bladed weapon. The location of the stab wounds manifest accused-appellants' intention to kill and belies their claim that they did not intend to commit so grave a wrong as that committed.[37] Finally, the mitigating circumstance of sufficient provocation on the part of the offended party cannot be considered absent proof that the same immediately preceded the act and that it was adequate to excite a person to commit a

wrong, which must accordingly be proportionate in gravity.[38] While ARIEL's act of hitting or kicking EFREN may have provoked the accused-appellants, we find that the retaliation of the accused-appellants was grossly disproportionate to the provocation made by ARIEL. At any rate, evidence reveals that if there was in fact any provocation, it was EFREN who started it when he spat at ARIEL several times.

Finally, in their twelfth assigned error, the accused-appellants aver that they cannot be convicted of frustrated murder in the absence of the allegation of intent to kill in the information for said charge. We hold that the fact that the information for frustrated murder failed to allege "intent to kill" did not make the information insufficient. An information is sufficient if it states "xxx the designation of the offense by statute." [39] The information should, whenever possible, state the designation of the offense by statute besides the statement of the acts or omissions constituting the same and if there is no such designation, reference should be made to the section or subsection of the statute punishing it [40] In the case at bench, the information for frustrated murder clearly states that the accused-appellants "armed with a bladed weapon, conspiring, confederating and helping with one another, together with all the accused who are all at large, with evident premeditation and abuse of superior strength, did, then and there, willfully, unlawfully and feloniously attack, assault and stab with the said weapon one ARIEL DE DIOS y FRANCISCO, hitting the latter on his abdomen and left finger, thereby performing all the acts of execution which would produce the crime of Murder, but did not produce the same for reason of cause independent of the will of the accused, that is due to the timely and able medical attendance given to said victim which prevented his death." The information more than substantially satisfies the requirement of designating the offense of frustrated murder considering that it contains the acts constituting the felony, the name of the crime by statute and the stage (frustrated) of the commission of the crime by definition. Besides the absence of the averment of intent to kill may be inferred from the allegation that the stab wound would have caused the death (in this case murder) of the victim. [41]

A felony 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. [42] Since Dr. Dominador Chansiopen's testimony [43] that the wound sustained by ARIEL as a result of the stabbing was sufficient to cause his death had the wound been left untreated was not rebutted by the defense, we sustain the ruling of the RTC that the accused-appellants are also guilty of frustrated murder. [44]

For the death of SERAFIN, RICARDO, REYNALDO and TEODORO are liable for P50,000.00 as moral damages [45] and P50,000.00 as death indemnity [46] to the heirs of SERAFIN as this is in accord with current jurisprudence. RICARDO, REYNALDO and TEODORO are also liable to the heirs of SERAFIN for funeral expenses amounting to P29,000.00 as actual damages which were supported by a receipt. [47] Finally, RICARDO, REYNALDO and TEODORO are also liable to the heirs of SERAFIN for loss of earning capacity. It was established during trial that SERAFIN was twenty-nine (29) years old [48] at the time he was killed and that he was earning P22, 534.00 per annum [49]. Loss of earning capacity is computed based on the following formula: [50]

Net
Earning
Capacity (x) =
[2/3 (80-age at
death)]/td>
x Gross
Annual
Income

(GAI) - living expenses

(50% of GAI)

x = 2 (80-29)

3 x 22,534.00 - 11,267.00

x = 34 x 11,267.00 - 11,267.00

Net Earning Capacity = P 383,078.00

Prior to the effectivity of R.A. No. 7659, murder under Article 248 of the Revised Penal Code was punishable by reclusion temporal maximum to death. Pursuant to paragraph 1 of Article 64 of the Revised Penal Code, RICARDO, REYNALDO and TEODORO should suffer the penalty of reclusion perpetua, the medium period of the imposable penalty.[51]

The penalty for frustrated murder is the penalty next lower in degree than that prescribed by law for the consummated felony which in this case is prision mayor maximum to reclusion temporal medium.[52] Applying the Indeterminate Sentence Law and in the absence of any modifying circumstance, the penalty for frustrated murder should be eight (8) years of prision mayor minimum as minimum to fourteen (14) years and eight months of reclusion temporal minimum as maximum.[53]

ACCORDINGLY, the Decision of the Regional Trial Court of Malabon, Metro Manila finding the accused-appellants Ricardo Francisco y Cupcupin, Reynaldo Franciso y Cupcupin and Teodoro Francisco y Cupcupin guilty beyond reasonable doubt of the crime of MURDER and FRUSTRATED MURDER is hereby MODIFIED. For the crime of murder, they are sentenced to suffer the penalty of reclusion perpetua. For the crime of frustrated murder, they are sentenced to suffer the indeterminate penalty ranging from eight (8) years of prision mayor minimum as minimum to fourteen (14) years and eight months of reclusion temporal minimum as maximum. They are also ordered to pay the heirs of Serafin Mangali, Jr. P50,000.00 as moral damages, P50,000.00 as death indemnity, P29,000.00 as actual damages and P383,078.00 for loss of earning capacity.

Accused-appellant Antonio Sioco is ACQUITTED of the crimes charged based on reasonable doubt and is ordered released immediately from confinement unless he is held for some other lawful cause.

SO ORDERED.

Melo, (Chairman), Vitug, and Purisima, JJ., concur.

Panganiban, J., on leave.

[1] Penned by Judge Benjamin T. Antonio.

[2] Rollo, pp. 3-6.

[3] At large.

[4] At large.

[5] At large.

[6] Order of July 13, 1993; Record, p. 69.

[7] Order of September 14, 1993; Record, p. 115.

[8] Record, pp. 218-219.

[9] Order of November 3, 1994; Record, p. 292. The Order states:

"In view of the findings of Dr. Norma M. Lazaro of the National Center for Mental Health that accused Efren

Francisco was suffering from psychosis or insanity classified as schizophrenia rendering him incompetent to stand court trial, the proceedings had in these cases are hereby set aside insofar as said accused is concerned.

The Jail Warden of the Navotas Municipal Jail is hereby ordered to bring the said accused to the National Center for Mental Health for confinement and treatment.

Meanwhile, the trial with respect to said accused is hereby suspended until such time that he regains mental fitness for such purpose.

The Director for Mental Health is directed to submit to this Court a periodic report on the progress of treatment of said accused."

- [10] Decision, pp. 2-6.
- [11] Decision, pp. 8-9; Rollo, pp. 39-40.
- [12] Appellant's Brief, pp. 1-3; Rollo, pp. 61-63.
- [13] T.S.N., May 26, 1994 at p. 9.
- [14] Appellant's Brief, pp. 21-155; Rollo, pp. 80-215.
- [15] Brief for Appellant Antonio Sioco, p. 1; Rollo, p. 237.
- [16] Brief for Appellant Antonio Sioco, pp. 9-27; Rollo, pp. 246-263.
- [17] Appellee's Brief, pp. 11-44; Rollo, pp. 386-420.
- [18] T. S. N., November 16, 1993, pp. 20-21.
- [19] People vs. Silvestre, 307 SCRA 68 at p. 82 [1999].
- [20] T. S. N., September 7, 1993, p. 16.
- [21] T.S.N., November 18, 1993, pp. 8-11.
- [22] T.S.N., September 7, 1993, pp. 9 and 11.
- [23] T. S. N., September 7, 1993, pp. 8-12.
- [24] Decision, p. 7.
- [25] People vs. Silvestre, Supra.
- [26] People vs. Silvestre Supra at p. 83.
- [27] People vs. Siguin, 299 SCRA 124 at p. 134 [1998].
- [28] Record, p. 110.
- [29] Article 8, Revised Penal Code.
- [30] People vs. Sanchez, G.R. No. 118423, June 16, 1999 at p. 18.
- [31] People vs. Andales, G.R. No. 130637, August 19, 1999 at p. 11.
- [32] Still at large.
- [33] People vs. Abdul, G.R. No. 128074, July 13, 1999 at p. 21.
- [34] People vs. Berroya, 283 SCRA 111 at pp. 129-130 [1997].
- [35] People vs. Cruz, 191 SCRA 377 at p. 384 [1990].
- [36] People vs. Felix, 297 SCRA 12 at p. 28 [1998].
- [37] People vs. Nepomuceno, Jr., 298 SCRA 450 at p. 461 [1998].
- [38] Pepito vs. Court of Appeals, G.R. No. 119942, July 8, 1999 at pp. 16-17.
- [39] § 6, Rule 110, Rules of Court.
- [40] § 8, Rule 110, Rules of Court.
- [41] People vs. Pilpa, 79 SCRA 81 at p. 86 [1977].
- [42] Article 6, Revised Penal Code.
- [43] T.S.N., April 21, 1994, p. 5.
- [44] People vs. Sabalones, 294 SCRA 751 at p. 799 [1998].
- [45] People vs. Andales, Supra at p. 12.

[46] People vs. Sanchez, Supra at p. 23.

[47] Ibid.

[48] See Exhibit D. Record, p. 205.

[49] See Exhibit E. Record, p. 206.

[50] People vs. Silvestre, Supra at pp. 24-25.

[51] People vs. Andales, Supra.

[52] People vs. Ravanes, 284 SCRA 634 at p. 641 [1998].

[53] People vs. Sabalones, Supra at p. 800.

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