

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSMUNDO FUERTES @ “DODO”; AGUSTIN LUYONG @ “JACK” AND “JACKIE PANGALAN” (AT LARGE); EDGAR GIBONE; FRANCISCO SALVA @ “BOCHOY”; ...

G.R. Nos. 95891-92. February 28, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For gathering firewood and quenching their thirst with coconuts gathered from a tree inside a hacienda managed by Osmundo Fuertes, Napoleon Aldeguer, aged 14, and Mateo Aldeguer, aged 16, were bound, gagged, brutally hacked to death and thrown at the bottom of a dried creek.

Indicted for the dastardly deeds were Osmundo Fuertes @ "Dodo", Agustin Luyong @ "Jack" and "Jackie Pangalan", Edgar Gibone, Francisco Salva @ Buchoy, and Rolando Tano @ "Boy Negro" and "Brando" in two (2) Informations for Murder docketed as Criminal Case Nos. 1582 and 1583.

Criminal Case No. 1582 charges –

"That on or about November 1, 1986, in the Municipality of Mati, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with sharp bladed/pointed instruments (bolos) and with intent to kill, conspiring, confederating and mutually helping with one another, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault, hack and/or stab with said weapons one NAPOLEON ALDEGUER, thereby inflicting upon him mortal wounds which caused his death, and not contented with that, sliced the left leg of the lifeless body of said Napoleon Aldeguer.

That the commission of the crime was attended by the aggravating circumstances of (1) abuse of superior strength; (2) adding ignominy to the natural effects of the crime; and (3) that the crime was committed in consideration of a reward or promise.

CONTRARY TO LAW."

Criminal Case No. 1583 alleges –

"That on or about November 1, 1986, in the Municipality of Mati, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with sharp bladed/pointed instruments (bolos) and with intent to kill, with treachery and evident premeditation, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously attack, assault, hack and/or stab with said weapons one MATEO ALDEGUER, thereby inflicting upon the latter mortal wounds which caused his death, and not contented with that, stabbed the abdomen of the lifeless body of said Mateo Aldeguer.

That the commission of the crime was attended by the aggravating circumstances of (1) abuse of superior strength; (2) adding ignominy to the natural effects of the crime; and (3) that the crime was committed in consideration of a reward or promise.

CONTRARY TO LAW."

Accused Osmundo Fuertes @ "Dodo", Edgar Gibone, Francisco Salva @ "Butchoy" and Rolando Tano @ Boy Negro, upon arraignment, entered pleas of "not guilty" to both charges.[1] Trial thereafter proceeded against the four (4) accused because accused Agustin Luyong @ "Jack", and "Jackie Pangalan" was still at large.

Accused Francisco Salva was, upon motion of the prosecution,[2] discharged by the trial court in order to be utilized as a state witness. Joint trial of the two cases, upon motion of the prosecution without any objection from the defense,[3] thereafter ensued.

Subsequently, accused Agustin Luyong @ "Jack" was apprehended and committed to the Provincial Jail. On September 1, 1987, said accused assisted by counsel, entered a plea of "guilty" upon arraignment[4] in both cases.

On the basis, among others, of his extra-judicial confession,[5] executed in the presence of his defense counsel, narrating the incident and his participation therein as well as the post-mortem examination reports[6] made by Dr. Gil G. Mantilla, Assistant Provincial Health Officer, judgment[7] was thereafter rendered against accused Agustin Luyong @ "Jack", in a Decision dated September 14, 1987, the dispositive portion of which reads as follows:

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, in Crim. Case No. 1582, the Court finds the accused Agustin Luyong alias "Jack" guilty beyond reasonable doubt as principal of the crime of Murder for the killing of Napoleon Aldeguer, Jr., and hereby sentences him to suffer the penalty of reclusion perpetua (life imprisonment), with the accessory penalties provided for by law, to indemnify the legal heirs of the deceased Napoleon Aldeguer, Jr. in the sum of P30,000.00 without subsidiary imprisonment in case of insolvency, and Crim. Case No. 1583, the Court likewise finds the accused Agustin Luyong alias "Jack" guilty beyond reasonable doubt as principal of the crime of Murder for the killing of Mateo Aldeguer, and hereby sentences him to suffer the penalty of reclusion perpetua (life imprisonment), with the accessory penalties provided for by law, to indemnify the legal heirs of the victim, Mateo Aldeguer, in the sum of P30,000.00, without subsidiary imprisonment in case of insolvency; and to pay proportionate costs of these proceedings.

In the service of the above penalties, the rules provided in Art. 70 of the Revised Penal Code shall apply.

SO ORDERED."

After a joint trial, accused Rolando Tano, Edgar Gibone and appellant Osmundo Fuertes, were found guilty beyond reasonable doubt of the offenses charged in a judgment dated December 4, 1989,[8] the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing considerations:

(a) in Criminal Case No. 1582, the Court finds the accused Osmundo Fuertes alias "Dodo", Edgar Gibone and Rolando Tano alias "Boy Negro" GUILTY beyond reasonable doubt as principals of the crime of MURDER for the killing of Napoleon Aldeguer, and hereby sentences each of them to suffer the penalty of RECLUSION PERPETUA, with the accessory penalties provided for by law, to indemnify, jointly and severally, the heirs of the victim Napoleon Aldeguer, the sum of THIRTY THOUSAND PESOS (P30,000.00);

(b) in Criminal Case No. 1583, the Court finds the accused Osmundo Fuertes alias "Dodo", Edgar Gibone and Rolando Tano alias "Boy Negro" GUILTY as principals of the crime of MURDER for the killing of Mateo Aldeguer, and hereby sentences each of them to suffer the penalty of RECLUSION PERPETUA, with the accessory penalties provided for by law, to indemnify, jointly and severally, the heirs of the victim Mateo

Aldeguer the sum of THIRTY THOUSAND PESOS (P30,000.00), plus the costs of the proceedings.

The rules provided in Article 70 of the Revised Penal Code shall be observed in the service of the above sentences.

SO ORDERED."

Dissatisfied, accused Osmundo Fuertes @ Dodo interposed this appeal alleging –

- THAT THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO, AND RELYING HEAVILY ON, THE TESTIMONY OF PROSECUTION WITNESS FRANCISCO SALVA.

- THAT THE TRIAL COURT GRAVELY ERRED IN FINDING THAT A CONSPIRACY EXISTED AMONG THE ACCUSED.

The prosecution's version of the incident as summed in the People's brief:

In the morning of November 1, 1986, Francsico Salva was riding on a horse and pasturing some cows and carabaos within the premises of Hacienda Ong located in Lumagaob, Barrio Sainz, Mati, Davao Oriental.[9]

Thereupon, he saw two boys gathering young coconuts.[10] Salva approached the two boys and asked them why they were gathering young coconuts and the two boys replied that "they were thirsty".[11]

Thereafter, Salva reported the matter to appellant (who was overseer of the Hacienda) and the latter promptly ordered Salva and some other persons including accused Edgar Gibone to board a jeep which he drove to the place where the two boys were gathering coconuts.[12] When they arrived at the place, the two boys were already on a hill, prompting appellant and his group to chase them, but they failed to catch them.[13]

Thereafter, appellant and his companions returned to appellant's house bringing with them two bundles of firewood allegedly gathered and left by the two boys. When they arrived at appellant's house, appellants and his companions "ate" and thereafter appellant sent somebody to fetch accused Rolando Tano and Jack.[14]

Later in the afternoon, Rolando Tano and Jack arrived at appellant's house. Thereupon, Salva and Edgar Gibone were summoned by appellant and were instructed to go with Rolando Tano and Jack to the place where the two boys were earlier seen gathering coconuts to apprehend them should they return.[15] Upon arriving at the place, they allegedly hid in the "Canyan tree" and after a while the two boys appeared. After a brief chase, they were able to catch the two boys. The two boys were "hand-tied" and brought to the house of Joaquin Reyes.[16]

Upon reaching the house of Joaquin Reyes, Jack ordered Salva and Gibone to hide.[17] Thereafter, Jack and Tano asked Felisa Reyes, the wife of Joaquin Reyes, for water to drink and also instructed the latter to fetch appellant at the latter's house.[18]

Felisa Reyes complied with the request and proceeded to appellant's house and informed the latter that two persons were waiting for him in her house. She described the two persons to appellant who, in turn, told her that said persons were Jack and Boy Negro.[19]

Thereafter, appellant instructed Felisa Reyes to go home as he and his companions "will just follow".[20] Felisa Reyes went back home and after a while appellant, together with two other persons arrived. Upon seeing the two boys, appellant allegedly started scolding them and called them thieves.[21]

After scolding the two boys, appellant and Jack had a conversation during which they allegedly agreed that the two boys be killed.[22] Thereafter, appellant and his two companions left. Jack then ordered Salva and Gibone to proceed to the "dead creek" which they promptly did.

Later on, Jack, Rolando Tano and the two boys also arrived at the "dead creek" followed by appellant.[23]

At the "dead creek", Jack removed the shirts of the two boys upon being ordered to do so by appellant.[24] Jack and Rolando Tano tore the shirts and with the torn shirts covered the mouths of the two boys.[25] Jack stabbed the smaller of the two boys, who was later identified as Napoleon Aldeguer, with a bolo at the latter's abdomen.[26] Upon being stabbed, Napoleon fell to the ground as Jack kept on stabbing him.[27]

Jack handed the bolo to Rolando Tano and the latter started stabbing the other boy who was later identified as Mateo Aldeguer.[28]

Rolando Tano handed the bolo to Edgar Gibone who was threatened by Jack that should he not stab Mateo Aldeguer, he will, in turn, be stabbed by Jack. Edgar Gibone complied by stabbing Mateo Aldeguer.[29]

Edgar Gibone was instructed by Jack to hand the bolo to Salva but the latter refused to accept the bolo prompting Jack to threaten him with death. Salva accepted the bolo and hacked the left thigh of Napoleon Aldeguer as instructed by Jack.[30]

Jack took the bolo from Salva and hacked the neck of Napoleon Aldeguer.[31]

After stabbing the Aldeguers, Jack and Rolando Tano left and "followed" the dead creek. Appellant Edgar Gibone and Salva left and proceeded to the house of one Nardo where appellant allegedly warned Gibone and Salva "not to reveal what happened.[32]

Later in the day, Rolando Tano and Jack allegedly arrived at the house of appellant and were met by the latter in his office where he gave each a small envelope.[33]

In the afternoon of November 2, 1986, the bodies of Napoleon and Mateo Aldeguer were found in Hacienda Ong.

The Postmortem Examination Reports[34] Issued By Dr, Gil Mantilla who examined the bodies of the victims contained the following findings:

NAME

:

MATEO ALDEGUER

SEX

:

Male

AGE

:

16 Years Old

ADDRESS

:

Mapantad, Mati, Davao Oriental

TIME EXAMINED

:

5:45 P.M.

PLACE EXAMINED

:

Padilla Funeral Parlor

Rizal Extension, Mati,

Davao Oriental

FINDING

1. Hacked Wound, Neck, Right Side, 2 Inches along the level of the Jaw;

2. Stabbed Wound, 1. 2 Inches Anterior Axillary Line below
The Clavicle.

2. ½ Inch below the Right Nipple, 2 Inches
Mid-Axillary 2 Inches along the 12[th] Rib;

3. 1 ¼ Epigastric Area;

4. 1 Inch Anterior Axillary from the Nipple (sic);

5. 1 ½ Inches located below the Nipple or the 6[th] Rib;

6. ½ Inch Middle Third, Left Arm;

7. 2 Inches, right Side, Posterior axillary line;

8. 2 Inches, Left Scapular Angle;

9. 1 ½ Inches along the Lumbar Vertebra;

RIGOR MORTIS - Present

POST MORTEM LIVIDITY - Present

CAUSE OF DEATH - Severe Hemorrhage,

Secondary to Stabbed

Wounds and Incised

Wounds.

SGD. GIL G. MANTILLA

Assistant Provincial Health Officer

POST MORTEM EXAMINATION REPORT

NAME

:

NAPOLEON C. ALDEGUER, JR.

SEX

:

Male

AGE

:

14 Years Old

ADDRESS

:

Mapantad, Mati, Davao Oriental

TIME EXAMINED

:

5:30 P.M.

PLACE EXAMINED

:

Padilla Funeral Parlor

Rizal Extension, Mati,

Davao Oriental

FINDINGS

1. Incised Wound, At the Level of Adam's Apple, 4 Inches Cutting the Trachea and Carotid Arteries;

2. Stabbed Wound,

1.

2 Inches, Mid-Clavicular Area, 1 Inch below the Clavicle;

2. ½ Inch below the Nipple, 5th Inter Costal Space;

3.

1 Inch at the Right Sternal Line, at the Level of the 4th Vertebral (sic), Right;

4. At the 8th Rib, Mid-Axillary Line, Right;

5.

2 Inches at the Mid-Scapular region, 2 inches at the Scapular Angle, Left;

6. 2 Inches at the 8th Posterior Rib, 1 Inch Left from the Mid-Spinal Column;

3. Incised Wound, Middle Third, Left Thigh, dorsal Side, 3 Inches by 4 inches.

RIGOR MORTIS - Present

POST MORTEM LIVIDITY - Present

CAUSE OF DEATH - Severe Hemorrhage, Secondary to Stabbed Wounds and Incised Wounds

SGD. GIL S. MANTILLA, M.D.

Assistant Provincial Health Officer

Accused-appellant Osmundo Fuertes had a different story to tell. He declared that he had nothing to do with the twin killings.[35] He testified that as of November 1, 1986, he was the overseer of Hacienda Ong, having been employed in that capacity since 1972.[36] On that fateful day of November 1, 1986, he was at home.[37] The first thing he did in the morning was to take a bath.[38] Thereafter, he checked the daily time record and prepared the payroll.[39] At around 5:00 p.m., Francisco Salva who was watering the plants went upstairs and informed him that there were persons looking for him. Upon going downstairs he saw Bebing Aldeguer-Banudan who asked

him if he saw her brothers,[40] the two victims. He replied that he did not see them.[41] Thereafter, he together with his wife, two children --- namely, Osmundo Jr. and John-Ayster Tucayao, Allan Pisetos, Edgar Gibone, Mauricio Hornejas and Francsico Salva, Jr. had supper at 6:00 p.m.[42] While having supper, Barrio Captain Joel Valles arrived with some companions also looking for the Aldeguer boys.[43] He likewise told Valles that he did not see them.[44] Later at around 9:00 p.m. when they were already sleeping, they were roused by a shout from the gate.[45] When he went downstairs to verify who it was, he came upon P/Cpl. Merlin Cagucay, Bebing Aldeguer-Banudan and other companions who were still looking for the two victims.[46] He allowed the group to go to the playground of the house and upon the latter's request that they be permitted to search the bodega and the surrounding areas of the hacienda he gave them his permission and accompanied them going to the bodega. He even gave them a flashlight to use but they only saw copra, big baskets and a pail.[47]

Accused-appellant further declared that on November 2, 1986 at 6:00 a.m., he, his wife, his sons, Osmundo Jr. and John, Edgar Gibone, Francisco Salva and Ayster Tucayao went to the San Nicolas Tolentino church.[48] From there, they proceeded to the Madang public market to buy vegetables and at the same time to meet his children from Davao City, namely, Estella and Ana Grace.[49] From the public market, they proceeded back to the hacienda arriving at around 9:30 a.m.[50] While they were having breakfast, he heard someone calling outside. Upon peeping out of the window to verify who it was, he found out that the callers were policemen inquiring about the Aldeguer boys.[51] Again, he told the police that he did not see the victims. The policemen declined his offer to have breakfast settling for a drink of water instead, then left.[52] After lunch, at around 2:00 p.m. accused-appellant presided at a purok meeting being its president.[53] At around 4:00 p.m., while the meeting was still going on, a jeep with policemen on board arrived.[54] One of the policemen alighted and informed accused-appellant that the two Aldeguer boys had been found, that they were dead and that the bodies were already at the funeral parlor.[55] After informing accused-appellant of the whereabouts of the two victims, the police left and the purok meeting continued, ending at 4:30 p.m.[56] At around 5:00 p.m. while accused-appellant was at home, one Jun Talaboc, an ex-policeman came.[57] Upon apprising Talaboc about what transpired on that afternoon, particularly the discovery of the two dead bodies, Talaboc advised accused-appellant to transfer to the Mati poblacion warning him that it was dangerous to stay. Talaboc cited several violent incidents which resulted in the shooting of a policeman at Matiao; the killing of a father and son at Pomoanon and the slaying of an ex-councilman in Mapantad.[58]

Testifying that he feared for his safety and that of his family, accused-appellant ordered his wife to pack up everything and immediately proceeded to the place of Police Chief Cipriano Sefuentes at past 6:00 p.m.[59] Upon being advised by Sefuentes to check in at a hotel because his life was in danger, accused-appellant decided to proceed to the house of one Captain Serrano at Capitol Hill, Mati, Davao arriving therein at 8:00 p.m.[60] Accused-appellant and his family stayed at the Serrano residence up to the time of his arrest.[61]

Greta Fuertes, the wife of the accused-appellant corroborated her husband's story practically echoing the latter's account point by point. She testified that she and accused-appellant had four children, two of whom are in Davao City while the other two are living in Hacienda Ong.[62] On November 1, 1986, she and her husband were at home.[63] In the afternoon of the same day while her husband was playing with their two sons,[64] Francisco Salva @ Butsoy informed them that Bebing Aldeguer-Banudan was looking for her brothers.[65] Later, Barrio Captain Joel Valles arrived also looking for the Aldeguer boys.[66] At 9:00 p.m. of the same day, Pat. Merlin Cagucay, Bebing Aldeguer-Banudan and other companions arrived again looking for her brothers.[67] Her husband lent a flashlight to Napoleon Aguinaldo and together with the group, her husband went to the copra drier.[68]

She further testified that on November 2, 1986, they went to the Catholic church and attended the first mass at

6:00 a.m.[69] Thereafter, they proceeded to the public market to buy some things and to meet their two children from Davao City.[70] They returned to the hacienda at 9:30 a.m.[71] After lunch, they attended a purok meeting until 4:30 p.m. when policemen arrived and talked with her husband.[72] Later, retired policeman Talaboc informed her husband that their lives were in danger as a result of which they hastily left and proceeded to Captain Serrano's house at Capitol Hill with their four children where they slept.[73]

Accused-appellant, in sum, denies any participation in the commission of the crime claiming that he is being framed by P/Cpl. Merlin Cagucay and P/Maj. Cipriano Sefuentes who wanted to extort P50,000.00 from him. Accused-appellant also claims that Francisco Salva is a 'coached' witness whose credibility is suspect, hence, his guilt can not be predicated thereon. He likewise points out certain excerpts from the testimony of self-confessed killer Agustin Luyong allegedly clearing him of any participation in the crime charged. He concludes that "the passion and outrage which attended the commission of the crime should not blur the evidence" which points to his innocence.

We disagree.

While it is true, as pointed out by accused-appellant, that the challenged decision convicting him of the crime charged rests mainly on the testimony of Francisco Salva @ Butsoy who was initially accused together with appellant but was subsequently discharged and utilized as a state witness, a circumspect scrutiny of the record discloses that appellant's conviction is not predicated solely on Salva's testimony. Appellant's conviction is amply supported by the mass of the evidence on record. Particularly damaging to accused-appellant's pretensions at innocence is the following Sworn Statement[74] of Agustin Luyong who entered a plea of guilty and was convicted on the basis thereof,[75] viz:

Q4:

Of your own personal knowledge, do you know who killed the aforesaid minors?

A:

Yes, sir. They were killed by me and Boy Negro in the presence of Francisco Salva and Edgar Gibone at a dried creek (logot) outside the Ong Hacienda at Sitio Lomogaob, Barangay Sainz, Mati, Davao Oriental.

Q5:

Will you please narrate to me in brief the circumstances which led to the killing of Napoleon and Mateo Aldeguer?

A:

In the afternoon of November 1, 1986, at about 3:00 o'clock, more or less, while I was in the house of the grandparents of Boy Negro at Mapantad, Barangay Sainz, Mati, Davao Oriental, the Manager of Ong Hacienda, arrived and then and there requested Boy Negro and myself to go to Ong Hacienda and help him apprehend the two boys, should they come back, who at about 10:00 o'clock that morning were seen eating stolen young coconuts inside the (sic) who according to Osmundo "Dodo" Fuertes, they chased but failed to catch because they (young boys) run fast. Because of the request of Boy Negro and myself went to the Ong Hacienda at past 3:00 o'clock that afternoon of November 1, 1986. At about 4:00 o'clock, more or less, two young boys who at that time I do not know, but were identified by Francisco Salva alias "Buchoy" and Edgar Gibone, as the persons whom they chased in the morning but escaped, appeared. Then and there Boy Negro, Francisco Salva, and Edgar Gibone including myself chased and caught the two minors and immediately brought them to the house of Joaquin Reyes near the Ong Hacienda. Shortly after we arrived the house of Joaquin Reyes, I requested Mrs. Reyes to go and informed Dodo Fuertes that we already caught the two boys.

Mrs. Reyes left and not long afterwards, Dodo Fuertes with companions arrived, investigated the two boys and later signal me to go to inside the sala of the house of Joaquin Reyes and there hired me to kill these two boys at and for a price of P5,000.00 of which he immediately give me P200.00 as down payment with the assurance and promise to pay the full balance of P4,800.00 after I shall have accomplished the job because according to Dodo Fuertes, he will get the money from Mr. Bernardo Ong, the owner of the Ong Hacienda.

Q6:

After your short conversation with Dodo Fuertes, as stated above, what happened next, if any?

A:

Immediately after coming out from the sala, Boy Negro and myself hogtied one of the boys while Dodo Fuertes hogtied the other one.

Q7:

After that, what happened next?

A:

Dodo Fuertes left with his companion, and at about 6:00 o'clock that evening, Boy Negro, Francisco Salva, Edgar Gibone and myself brought the two boys to the dried creek (logot) and there, despite of the pleadings of the two young boys for us not to kill them, Boy Negro and myself took turns in stabbing them to death, after which I let Francisco Salva and Edgar Gibone stab the deceased also so they will not reveal the incident to anyone.

Q8:

Before Dodo Fuertes left the house of Joaquin Reyes, did he not have any conversation with the two boys?

A:

There was sir. The two young boys as a matter of fact, pleaded and asked forgiveness saying, "PASAYLOA INTAWON KAMI NONG, DUHA RA BITAO KADTO KA BUTONG. AMO LANG BAYARAN." Which in English means, "Sir, forgive us for the two young coconuts that we got, we will just pay them", to which Dodo Fuertes got mad and said, "DILI KANA MAHIMO, ANG ORDER KANAKO NI MR. ONG MAO NGA PATYON ANG SI BISAN KINSANG MADAKPAN NGA MANGAWAT SA SULOD SA HACIENDA." Which in English means, "No, that cannot be done because the order to me by Mr. Ong is, whoever is caught stealing anything inside the hacienda must be killed."

Q9:

By the way, when did you come to know Dodo Fuertes for the first time?

A:

It was in the month of April, 1986 when while passing inside the Ong Hacienda with Boy Negro, Dodo Fuertes called us to his house where we ate cooked banana[s].

Q10:

After you and your group killed the two young boys, where did you go?

A:

I went home to the house of my parents-in-law at Magsaysay Beach, Mati, Davao Oriental, there I went into hiding.

x x x x x x x x

Q15:

Can you still pictured (sic) the face of the person whom you know the person who induces (sic) and hired you to kill the two minor victims? (At this juncture, Agustin Luyong was brought yo (sic) the Mati Provincial Jail to pinpoint the person whom (sic) really knows to be Osmundo "Dodo" Fuertes).

Q16:

Now, we are at the Mati, Provincial Jail, Mati, Davao Or. Can you pinpoint to me where is Dodo Fuertes?

A:

Yes, sir. That person, and I positively identified him as the person who induces and hired me to kill the two minor victims. (Investigator observed that Agustin D. Luyong is pointing to the person of Osmundo "Dodo" Fuertes from among several prisoners at Mati Provincial Jail).

Q17:

Were you able and (sic) questioned fairly and enough so that you were states (sic) or say what you wanted to say in this investigation?

A:

Yes, sir. I would like to inform you that I would like to add [to] this statement I have.

Q18:

What else can you say?

A:

For the information of the proper government authorities, I really admitted that I am the one who killed the two minor victims, I did that because of the assurance given to me by Dodo Fuertes [that he would pay me] the price of P5,000.00 which in return he fails (sic) to give me, and I ask this through my defense counsel of my own choice that if ever I will be punished of the crime committed I am willing to suffer it so long as also Dodo Fuertes would also suffer for the consequences he does. That's all I can say.

Equally damaging to the cause of accused-appellant is the Sworn Statement of Edgar Gibone[76] which reads:

Q12:

What was the action made by the manager upon receiving the report of Francisco Salva, alias Buchoy, if you know?

A:

Mr. Osmundo Fuertes got his Air Rifle and called myself, Buchoy, Allan Posidas, Ayster Tucayao, Ernesto Conejos to go with him to apprehend the two boys, but before we could reach them, they fled away and our group tried to chase the two but [they] were able to escape and Dodo Fuertes was mad and angry because we failed to catch the two boys.

Q13:

What transpired, more if any?

A:

Dodo Fuertes called us and said "lets go home" and ordered us to load the two bundles of coconut palms (dried) left behind by the two boys into his service jeep and we bring (sic) it to the compound.

Q14:

In the afternoon of the same day, can you recall where were you?

A:

I was in the house of [t]he manager inside the Hacienda Compound? (sic)

Q15:

What time was that?

A:

At about 3:30 o'clock, more or less.

Q16:

While you were in the house of Dodo Fuertes, do you know if there is any unusual incident that transpired?

A:

Osmundo Fuertes hired alias Jack and alias Brando to kill the two boys if they will come back inside the Hacienda.

Q17:

How do you know that Osmundo Fuertes alias Dodo hired alias Jack and alias Brando to kill the two boys?

A:

Because I was present when Osmundo Fuertes and alias Jack were having a conversations (sic) while alias Brando was waiting outside the house.

Q18:

Can you tell us what was that conversations (sic) about?

A:

I heard Dodo Fuertes telling alias Jack that he will not allow anybody to enter the hacienda compound as ordered by the owner. He ordered alias Jack to kill the two boys and to kill the thieves who ever [may be] seen inside the Hacienda Ong.

Q19:

What was the answer of alias Jack in response to the order of Dodo Fuertes to kill the two boys, if you know?

A:

Alias Jack assured to kill the two boys and to kill the thieves who ever [they may be] seen inside the Hacienda Ong.

Q20:

After their conversation, what more that (sic) transpired?

A:

Dodo Fuertes handed an airmail envelope containing money to alias Jack and told alias Jack to proceed to the place where the two boys filed the two bundles of dried coconut palms and told me to guide or accompany alias Jack and alias Brando with Buchoy because he is very certain that the two boys will go back to get the dried coconut palms.

Q21:

Where did Dodo Fuertes get the airmail envelopes, If you know?

A:

I saw the two airmail envelopes placed on the table where Dodo Fuertes and alias Jack were having conversation and after their conversation, Dodo Fuertes handed the envelop[es] to alias Jack and alias Brando, respectively.

Q22:

How do you know that the said airmail envelopes contained money?

A:

I saw money because the envelop was half opened.

Q23:

Do you know if how much [was] the money that was put inside the two envelops (sic)?

A:

I do not know, sir.

Q24:

After Dodo Fuertes gave an envelope to alias Jack and alias Brando, what did the two do?

A:

Alias Jack, alias Brando, Buchoy and myself proceeded to the place where the two boys were gathering dried coconut palms and stealing young coconut[s] (butong).

Q25:

Please tell us if (sic) what happened when you arrived at the said place together with alias Jack, alias Brando and Buchoy?

A:

When we arrived at the said place, we saw the two boys inside the hacienda and they managed to run but finally we caught and apprehended them outside [the] fence of the Hacienda Ong.

Q26:

Do you know the names of the two boys before they were apprehended?

A:

I do not know their names but when they were apprehended they identified themselves as Mateo Aldeguer and Napoleon Aldeguer.

Q27:

After you had caught the two boys, what happened?

A:

Boy Brando ordered me to hogtie Mateo Aldeguer and Napoleon Aldeguer with the use of the nylon ropes.

Q28:

From the place where you had abducted the boys, where did you go?

A:

We brought the two boys leading to the Dacalos Coconut plantation, and passed by the house of Samuel Baay employee of Dr. Dacalos.

Q29:

What was your purpose in passing the house of Samuel Baay?

A:

Alias Jack and Boy Negro passed by the house of Samuel Baay and asked water.

Q30:

From there where did you go?

A:

We proceeded to the house of Juaquin Reyes.

Q31:

What happened when you reached the house of Juaquin Reyes?

A:

I was told to hide at the back of the house of Juaquin Reyes with Francisco Salva and they removed the nylon rope that were (sic) used in tying Mateo Aldeguer and Napoleon Aldeguer.

Q32:

When you hide (sic) at the house of Juaquin Reyes, where did alias Jack and alias Boy Negro go?

A:

They proceeded to the house of Juaquin Reyes with the two boys already untied.

Q33:

When alias Jack and alias Boy Brando were in the house of Juaquin Reyes, can you recall if there was another unusual (sic) incident that transpired?

A:

There was, we saw one Felisa Reyes going to the Hacienda Ong.

Q34:

Do you know where did Felisa go?

A:

We came to know later on that Felisa Reyes went to the house of Dodo Fuertes as requested by Alias Jack and Alias Boy Negro to inform Dodo Fuertes that they are waiting for him in their house.

Q35:

Did Dodo Fuertes go to the house of Juakin Reyes?

A:

Yes, Sir.

Q36:

Who were the companions of Dodo Fuertes in going to the house of Juakin Reyes, if there is (sic) any?

A:

Samuel Arceno and Antonio Gibone.

Q37:

Did Dodo Fuertes meet Alias Jack and Alias Boy Negro at the house of Juakin Reyes?

A:

Yes, Sir.

Q38:

From the house of Juakin Reyes where did you go?

A:

After Dodo Fuertes had left the house of Juakin Reyes we brought Mateo Aldeguer and Napoleon Aldeguer loading to the deep creek or ravine between two hills, a distance of 150 meters more or less from the house of Juakin Reyes.

Q39:

While on your way, was there any unusual incident that transpired?

A:

The mouths of Napoleon Aldeguer and Mateo Aldeguer were covered/wrapped by their own clothes by Alias Jack and Alias Boy Negro, respectively and we proceeded to the place where they were being killed (sic).

Q40:

You said that Napoleon Aldeguer and Mateo Aldeguer were being killed (sic) where was this two boys killed?

A:

At the deep clip (sic) between two hills.

Q41:

Who killed Napoleon Aldeguer?

A:

Alias Jack stabbed him with the use of the sharp and pointed bolo.

Q42:

How many times did Alias Jack stabbed (sic) Napoleon Aldeguer?

A:

I cannot exactly remember but many times.

Q43:

How did Alias Jack stabbed (sic) or killed (sic) Napoleon Aldeguer?

A:

Alias Jack stabbed Napoleon Aldeguer on his stomach and at the back.

Q44:

It appearing in the dead body of Napoleon Aldeguer that the neck was cut or sliced, who sliced the neck?

A:

Alias Jack Sir.

Q45:

At what time was the killing incident done?

A:

At about 6:00 o'clock in the evening, because it was already dark.

Q46:

Showing to you this picture of the dead wearing short pants without dress, the breast is lying flat on the ground, do you know or recognize this picture?

A:

Yes, Sir, I recognized it as the picture of Napoleon Aldeguer that was stabbed or killed by Alias Jack. (The picture of the dead body of Napoleon Aldeguer was positively identified by the affiant to be the same picture of Napoleon Aldeguer that was killed by Alias Jack).

Q47:

It appearing on the picture that portion of the flesh of the left leg of Napoleon Aldeguer as you have recognized, was sliced, and who sliced the flesh?

A:

Francisco Salva alias Buchoy upon order of Alias Jack.

Q48:

What was your participation in the stabbing or killing, if any?

A:

I have stabbed Mateo Aldeguer once upon order of Jack, and I have no participation in killing Napoleon Aldeguer.

Q49:

What was the participation of Boy Negro in the killing?

A:

He was the one who killed Mateo Aldeguer and who stabbed him with the use of the bolo, the same bolo used in the killing of Napoleon Aldeguer.

Q50:

Victim Mateo Aldeguer sustained a cut or sliced wound on the neck, who sliced or cut the neck?

A:

Alias Boy Negro, Sir.

Q51:

Showing you this picture of the dead without dress with stab wounds on the body with blood stain, do you know or recognized him?

A:

That is the picture of the dead body of Mateo Aldeguer, the one stabbed or killed by alias Boy Negro.

Q52:

Do you know if who cut or sliced the neck of Mateo Aldeguer, please tell us if you know?

A:

Alias Boy Negro, Sir.

Q53:

What did they do (Jack and Boy Negro), after killing Napoleon and Mateo Aldeguer?

A:

Their dead bodies were transferred to the other side of the hills and I asked permission from Jack and Negro that I will go ahead to pasture carabaos and cows.

Q54:

Did they permit you to go ahead?

A:

Yes, Sir, because they know my work.

Q55:

From that place where the two dead bodies were transferred, do you know if what did they do with the dead bodies, please tell us if you know?

A:

I have learned that the dead bodies were dragged to the dead creek by alias Jack and alias Boy Negro.

The foregoing statements of Luyong and Gibone were executed separately in the presence of lawyers personally chosen by them and after they were informed of their constitutional rights to remain silent and to counsel. It also appears that the above statements were not merely subscribed and sworn to before Fiscals Salvador M. Bijis and Nino A. Batingana, respectively, but they also bear certifications that show clearly that the statements of Luyong and Gibone were given freely and intelligently. Writing finis to any further pretensions of innocence by the accused-appellant are the following excerpts from the testimony of Felisa Reyes:

Q:

Now, on November 1, 1986, at about 4:00 o'clock in the afternoon, more or less, can you tell the Honorable Court where were you?

A:

I was in our residence.

Q:

Now, during said time and date while you were in your house, can you recall of any incident that happened.

A:

Yes.

ATTY. VALENTEROS, JR:

Q:

Can you tell the Honorable Court, what that incident was?

A:

There were two boys who arrived in our house, one is white and other is black, and their ages were from 16 to 19 years old, respectively, if I am not mistaken and together with them were two young boys, male.

x x x x x x x x

Q:

Now, when Dodo Fuertes arrived in your house with Antonio Gibone and Samuel Arceño, can you tell the Court what did Dodo Fuertes do?

A:

When Dodo Fuertes arrived in our house, he went upstairs and upon seeing the two boys, he said, now you were already caught and you are picking things in the hacienda, you are thieves.

Q:

Now, what else did Dodo Fuertes do while he was in your house?

A:

After scolding the two boys, Jack called him to our kitchen.

Q:

Did he go, when Jack called him?

A:

Yes, together with Jack.

ATTY. MANIWANG:

It was Jack who called Dodo.

ATTY. VALENTEROS, JR.:

Q:

What did he do there?

A:

They have (sic) a secret conversation, which we can not hear.

Q:

How long did they talk with each other?

A:

If I am not mistaken, about five minutes.

Q:

Now, after their conversation, can you tell the Court, what happened?

A:

After that secret conversation, they went back to the balcony and then Jack called Dodo Fuertes, what to do, and according to Dodo Fuertes 'I am entrusting them to you, take care of them'." [77]

As a crime, murder is looked upon as "[o]ne of the instances when man descends to a level lower than that of a beast, for it is non-instinctive killing, a deliberate destruction of a member of the same species for reasons other than survival." [78] Nowhere is it more evident than in this case.

From the above-quoted testimonies of Luyong and Gibone on how the crimes were committed, there is no doubt that conspiracy attended the commission of the crime. "[C]onspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The agreement may be deduced from the manner in which the offense was committed; [79] or from the acts of the accused before, during and after the commission of the crime indubitably pointing to and indicating a joint purpose, a concert of action and a community of interest." [80] It is not essential that there be proof of the previous agreement to commit the crime. It is sufficient that the form and manner in which the attack was accomplished clearly indicate unity of action and purpose. [81]

Conspiracy is undoubtedly present in the case at bar since all the accused performed concerted acts in pursuit of a joint purpose: they lay in wait for the two (2) victims, captured, hog-tied and gagged them and finally took turns in stabbing and hacking them to death with bolos – at the instigation of herein accused-appellant who promised and, in fact, paid Agustin Luyong @ Jack and Rolando Tano @ Brando/Boy Negro sums of money enclosed in small envelopes. [82] Parenthetically, the records show that accused-appellant even took active part in trussing up the victims before they were brought to the place where they were killed. [83] Conspiracy having been established,

'[a]ll the conspirators are liable as co-principals regardless of the manner and extent of their participation since in the contemplation of law, the act of one is the act of all.'[84]

Treachery, likewise, attended the killing of the two (2) victims. There is treachery when the offender commits the crime employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make.[85] For treachery to be appreciated, it must be shown that: 1.] the means of execution employed gave the person attacked no opportunity to defend himself or retaliate; and 2.] the means of execution was deliberately or consciously adopted.[86]

In this case, the means, method and form of execution employed gave the victims no opportunity to defend themselves or to retaliate; they, likewise, were deliberately adopted by the malefactors to ensure that their persons would not be endangered[87] considering that the victims' hands were tied behind their backs with nylon ropes and their mouths were gagged with their shirts before the accused commenced taking turns in hacking them with bolos.[88] The obvious helplessness of the victims when they were killed and even as they pleaded for their lives need not be overemphasized.

The aggravating circumstance of abuse of superior strength, although alleged, is absorbed in treachery and can no longer be appreciated separately.[89] In this connection, it bears stressing that when treachery qualifies the crime to murder, the generic aggravating circumstance of abuse of superior strength is necessarily included in the former.[90] Stated differently, when treachery qualifies the crime to murder, it absorbs abuse of superior strength and the latter can not be appreciated even as a generic aggravating circumstance.[91]

Evident premeditation must likewise be appreciated in the commission of the offenses. Evident premeditation can be presumed where, as in this case, conspiracy is directly established.[92] The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[93] Its requisites are: 1.] the time the accused determined to commit the crime; 2.] an act manifestly indicating that the accused has clung to his determination; 3.] a sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.[94]

In this case, when accused-appellant was informed by Francisco Salva in the morning of that fateful day of November 1, 1986 that he saw the two (2) victims gathering young coconuts at the hacienda grounds, appellant promptly ordered Salva and some others, including Edgar Gibone, to board a jeep which he drove to the place where the victims were seen gathering coconuts[95] with the intention of pursuing them. Although they gave chase, appellant and his group failed to catch the two (2) boys who were already on the crest of a hill at the time.[96] The chase was then called off and the pursuers returned to appellant's house where he sent somebody to fetch Agustin Luyong @ Jack and Rolando Tano @ Boy Negro/Brando.[97]

Later in the afternoon, Jack and Boy Negro/Brando arrived at appellant's house where the latter ordered them to catch the victims and to kill them[98] should they return.[99] The two boys indeed returned and were caught by Jack and Boy Negro/Brando who "hand-tied" them and brought them to the house of Joaquin Reyes.[100] Appellant was then fetched from his house upon the capture of the victims,[101] where, after castigating the two boys and calling them thieves,[102] ordered Jack and Boy Negro/Brando to kill them.[103]

Evident premeditation indicates deliberate planning and preparation.[104] The foregoing facts show too clearly that the killing of the victims were calculated and premeditated. In this case, accused-appellant had more than ample time to coolly reflect upon the consequences of his act when the victims were able to escape the first time they were pursued by appellant and his group. Instead, appellant had Jack and Boy Negro/Brando summoned and

ordered them to catch the victims and kill them if they returned. Appellant was afforded even more time to contemplate on the repercussions of his deed when Jack and Boy Negro/Brando set out to do his bidding. However, instead, of desisting from his murderous inclinations, accused-appellant clung to his resolve when Jack and Boy Negro/Brando returned with the two victims and ordered them killed.

Likewise, there can be no question that the crimes were committed in consideration of a price promise or reward (*precio promesa o recompensa*) considering that Agustin Luyong @ Jack was hired by accused-appellant for a price of P5,000.00 to kill the two (2) victims and in fact received P200.00 contained in an airmail envelope as down payment with the assurance that the balance would be paid after the job.[105] However while this circumstance is qualifying in murder, it would merely be generic aggravating if it concurs with other qualifying circumstances like treachery,[106] as in this case.

The aggravating circumstance of ignominy (*ignominia*), although alleged can not be appreciated in this case. Ignominy is a circumstance pertaining to the moral order which adds disgrace and obloquy to the material injury caused by the crime.[107] The clause "Which add ignominy to the natural effects of the act" contemplates a situation where the means employed or the circumstances tend to make the effects of the crime more humiliating or to put the offended party to shame.[108] In this case, there is no showing that the offenses were perpetrated in a manner which tended to make its effects more humiliating to the victims.

Neither can the act of slicing the left leg of Napoleon Aldeguer's lifeless body nor the stabbing of Mateo Aldeguer's corpse in the stomach be considered indications of ignominia because what is required is that the crime be committed in a manner that tends to make its effects more humiliating to the victim, that is, add to his moral suffering.[109] Thus, it was held that the fact that the accused sliced and took the flesh from the thighs, legs and shoulders of the victim with a knife after killing the victim did not add ignominy to the natural effects of the act.[110]

Before its amendment by R. A. No. 7659, Article 248 of the Revised Penal Code reads:

"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 temporal in its maximum period 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 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."

Considering the presence of several aggravating circumstances with no mitigating circumstance the penalty in its maximum period which is death[111] would be imposable under Article 64 of the Revised Penal Code. Fortunately for accused-appellant, since the crimes were committed during the suspension of the imposition of the

death penalty and prior to its reimposition under Republic Act No. 7659, the imposable penalty is reclusion perpetua.[112] This penalty is single and indivisible, thus, it shall be imposed regardless of any attending aggravating or mitigating circumstances.[113]

The civil indemnity which is awarded without need of further proof other than the death of the victim is affirmed.[114] Conformably, however, with controlling jurisprudence, the civil indemnity should be increased to P50,000.00.[115]

The trial court, in sentencing the accused-appellant, erroneously equated reclusion perpetua to life imprisonment. This Court once again reiterates that the penalties of life imprisonment and reclusion perpetua are not the same.

"While 'life imprisonment' may appear to be the English translation of reclusion perpetua, in reality, it goes deeper than that. First, 'life imprisonment' is invariably imposed for serious offenses penalized by special laws, while reclusion perpetua is prescribed under the Revised Penal Code. Second, 'life imprisonment', unlike reclusion perpetua, does not carry with it any accessory penalty. Third, 'life imprisonment' does not appear to have any definite extent or duration, while reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon, although the maximum period thereof shall in no case exceed forty (40) years." [116]

WHEREFORE, with the sole modification that the civil indemnity for the heirs of the victims be increased to Fifty Thousand Pesos (P50,000.00), the Decision appealed from is hereby **AFFIRMED** in all other respects.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Record, pp. 223, 234, 238.

[2] Ibid., pp. 297-299.

[3] TSN, 20 May 1987, pp. 9-10.

[4] TSN, 1 September 1987, pp. 8-11.

[5] Exhibit A.

[6] Exhibits B and D.

[7] Record, pp. 521-535.

[8] Record, pp. 1388-1389; RTC Decision, pp. 29-30.

[9] TSN, 02 August 1988, p. 7.

[10] Ibid., p. 8.

[11] Ibid., p. 9.

[12] Ibid., p. 10.

[13] Ibid., pp. 10-11.

[14] Ibid., p. 12.

[15] Ibid., p. 15, Exh. E-2.

- [16] Ibid., p. 16.
- [17] Ibid., p. 17.
- [18] TSN, 26 January 1988, pp. 11-22.
- [19] Ibid., p. 13.
- [20] Ibid.
- [21] Ibid., p. 16.
- [22] TSN, 02 August 1988, p. 23.
- [23] Ibid., p. 24.
- [24] Ibid.
- [25] Ibid., pp. 24-25.
- [26] Ibid., p. 25.
- [27] Ibid.
- [28] Ibid., pp. 25-26.
- [29] Ibid., pp. 26-27.
- [30] Ibid., pp. 27-28.
- [31] Ibid., p. 28.
- [32] Ibid., p. 29.
- [33] Ibid., p. 32.
- [34] Exhibits U and V.
- [35] TSN, 6 April 1989, p. 23.
- [36] Ibid., pp. 6-7.
- [37] Ibid.
- [38] Id., p. 7.
- [39] Id.
- [40] Id., pp. 7-8.
- [41] Id., p. 8.
- [42] Id., pp. 8-9.
- [43] Id., p. 9.
- [44] Id.
- [45] Id., pp. 9-10.
- [46] Id., p. 10.

- [47] Id.
- [48] Id., pp. 11-12.
- [49] Id., p. 12.
- [50] Id., pp. 12-13.
- [51] Id., pp. 13-14.
- [52] Id.
- [53] Id., pp. 14-15.
- [54] Id., p. 9.
- [55] Id.
- [56] Id., pp. 69-70.
- [57] Id., p. 71.
- [58] Id.
- [59] Id., pp. 71-72.
- [60] Id., pp. 20, 72.
- [61] Id., pp. 73-74.
- [62] TSN, 21 February 1989, pp. 5-6.
- [63] Ibid., p. 7.
- [64] Id., pp. 7-8.
- [65] Id., pp. 8-9.
- [66] Id., p. 11.
- [67] Id., pp. 12-13.
- [68] Id., pp. 13-16.
- [69] Id., pp. 16-17.
- [70] Id., p. 17.
- [71] Id., pp. 17-18.
- [72] Id., pp. 18-20, 37.
- [73] Id., pp. 20-22, 36-39.
- [74] Exhibit A.
- [75] Record, pp. 53-67.
- [76] Exhibit G.
- [77] TSN, 26 January 1988, pp. 10-17; italics supplied.

- [78] *People v. Stephen Santillana*, G.R. No. 127815, 9 June 1999, citing *People v. Tuason*, 261 SCRA 711 [1996].
- [79] *People v. Cawaling*, 293 SCRA 267 [1998]; see also *People v. Andres*, 296 SCRA 318 [1998]; *People v. Sumalpong*, 284 SCRA 464 [1998].
- [80] *People v. Isabelo Perez y Halog, et al.*, G.R. No. 130501, 2 September 1999, p. 21, citing *People v. Magallano*, 266 SCRA 305 [1997]; *People v. Albao*, 287 SCRA 129 [1998]; *People v. Obelllo*, 284 SCRA 79 [1998]; *People v. Sumalpong*, *supra*.
- [81] *People v. Jose Apelado y Palmores, et al.*, G.R. No. 114937, 11 October 1999, p. 9, citing *People v. Berganio*, 110 Phil. 322 [1960].
- [82] TSN, 02 August 1988, p. 32.
- [83] See Question 6 and Answer; Exhibit A, p. 2; Folder of Exhibits, p. 33; Record, p. 569.
- [84] *People v. Eduardo Altabano y Ellorin, et al.*, G.R. No. 121344, 29 October 1999, p. 8, citing *People v. Salvatierra*, 257 SCRA 489 [1996], citing *People v. Apawan*, 235 SCRA 355 [1994].
- [85] *People v. Rolando Gaspar, et al.*, G.R. No. 131479, 19 November 1999, citing *People v. De la Cruz*, 207 SCRA 632 [1992]; *People v. Garcia*, 209 SCRA 164 [1992]; *People v. Tampon*, 258 SCRA 115 [1996]; *People v. Bionat*, 278 SCRA 454 [1997]; *People v. Tumaob*, 291 SCRA 133 [1998]; *People v. Leonardo Francisco @ Yoling*, G.R. No. 110873, 23 September 1999, p. 9 citing *People v. Tanedo*, 266 SCRA 34 [1997].
- [86] *People v. Eduardo Villablanca, et al.*, G.R. No. 89662, 1 October 1999, p. 8, citing *People v. Azugue*, 268 SCRA 711 [1997]; *People v. Valles*, 267 SCRA 103 [1997].
- [87] *People v. Castillo*, 289 SCRA 213 [1998]; *People v. Cawaling*, 293 SCRA 267 [1998]; *People v. Molina*, 292 SCRA 742 [1998]; *People v. Pallarco*, 288 SCRA 151 [1998]; *People v. Sabalones*, 294 SCRA 751 [1998].
- [88] See *People v. Saqing*, 30 SCRA 845 [1969] and *People v. Gapasin*, 145 SCRA 178 [1986] where the victims were bound before they were killed.
- [89] *People v. Leonardo Francisco*, *supra*.
- [90] *People v. Francisco Villablanca, et al.*, *supra*, citing *People v. Violin*, 266 SCRA 224 [1997].
- [91] *People v. Sancholes*, 271 SCRA 527 [1997].
- [92] *People v. Padlan*, 290 SCRA 388 [1998].
- [93] *People v. Bibat*, 290 SCRA 27 [1998]; *People v. Bautista*, 278 SCRA 613 [1997].
- [94] *People v. Raul Sesbreno*, G.R. No. 121764, 9 September 1999.
- [95] TSN, 2 August 1988, pp. 8-10.
- [96] *Ibid.*, pp. 10-11.
- [97] *Id.*, p. 12.
- [98] Exh. G, p. 4, see Q-16 and Answer; Folder of Exhibits, p. 15.
- [99] *Id.*, p. 15 ; Exh. E-2.
- [100] *Id.*, p. 16.

[101] TSN, 26 January 1988, pp. 11-12.

[102] Ibid., p. 16.

[103] TSN, 2 August 1988, p.23.

[104] People v. Dominador Padama, Jr., G.R. No. 132137, 1 October 1999, p. 8, citing People v. Magsombol, 252 SCRA 187 [1996] and People v. Narit, 197 SCRA 334 [1991].

[105] See Exh. A, Question 5 and Answer, p. 2; Record, p. 569; Folder of Exhibits, p. 33.

[106] Aquino, Revised Penal Code, Vol. I, 1997 Ed., p. 356, citing U.S. v. Gamponia, 36 Phil. 817 [1917].

[107] Reyes, Revised Penal Code, Book I, 14[th] Ed. [1998], p. 443, citing U.S. v. Abaigar, 2 Phil. 417 [1903], and People v. Acaya, 163 SCRA 768 [1988]; Aquino, Revised Penal Code, supra, p. 444.

[108] Reyes, Revised Penal Code, supra., p. 444.

[109] People v. Carmina, 193 SCRA 429 [1991].

[110] People v. Balondo, 30 SCRA 155 [1969]; People v. Ferrera, 151 SCRA 113 [1987].

[111] Article 64, par. 3.

[112] People v. Jose Binas @ Nestor Binas, G.R. No.121630, 8 December 1999, p. 40, citing People v. Pulusan 290 SCRA 353 [1998]; People v. Nestor O. Juachon, G.R. No. 111630, 6 December 1999, p. 15.

[113] People v. Rodrigo Mangahas, G.R. No. 118777, 28 July 1999, p. 23, citing People v. Espanola, 271 SCRA 689 [1997].

[114] People v. Rogelie Floro, 7 October 1999, p. 12, citing People v. Suplito, G.R. No. 104944, 16 September 1999; People v. Bautista, G.R. No. 96092, 17 August 1999, and People v. Panida, G.R. Nos. 127125 & 138952, 6 July 1999.

[115] People v. Moroy "Sonny" Gallo, G.R. Bo. 128361, 16 November 1999, p. 11, citing People v. Verde, G.R. No. 119077, 10 February 1999; People v. Jeronico M. Lobino @ Hapon, G.R. No. 123071, 28 October 1999, p. 14.

[116] People v. Balasa, GR Nos. 106357, 108601-02, 3 September 1998, 295 SCRA 49, citing People v. Ballabare, 264 SCRA 350 [1996], citing People v. Retuta, 234 SCRA 645 [1994].

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