

## SECOND DIVISION

[ G.R. No. 110898, February 20, 1996 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. JUDGE ANTONIO C. EVANGELISTA, AS PRESIDING JUDGE OF BRANCH XXI, 10TH JUDICIAL REGION, RTC OF MISAMIS ORIENTAL, CAGAYAN DE ORO CITY, AND GRILDO S. TUGONON, RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

Private respondent Grildo S. Tugonan was charged with frustrated homicide in the Regional Trial Court of Misamis Oriental (Branch 21), the information against him alleging -

That on or about the 26th day of May, 1988, at more or less 9:00 o'clock in the evening at Barangay Poblacion, Municipality of Villanueva, Province of Misamis Oriental, Republic of the Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused with intent to kill and with the use of a knife, which he was then conveniently provided of, did then and there willfully, unlawfully and feloniously assault, attack and stab Roque T. Bade thereby inflicting upon him the following injuries, to wit:

Stab wound, right iliac area,  
0.5 cm. penetrating non  
perforating lacerating posterior  
peritoneum, 0.5 cm.

thus performing all the acts of execution which would produce the crime of Homicide as a consequence but which, nevertheless, did not produce it by reason of causes independent of the will of the accused, that is by timely medical attendance which prevented his death.

CONTRARY TO and in violation of Article 249 in relation to Article 6 of the Revised Penal Code.

After trial he was found guilty and sentenced to one year of *prision correccional* in its minimum period and ordered to pay to the offended party P5,000.00 for medical expense, without subsidiary imprisonment, and the costs. The RTC appreciated in his favor the privileged mitigating circumstances of incomplete self-defense and the mitigating circumstance of voluntary surrender.

On appeal the Court of Appeals affirmed private respondent's conviction but modified his sentence by imposing on him an indeterminate penalty of 2 months of *arresto mayor*, as minimum, to 2 years and 4 months of *prision correccional*, as maximum.<sup>[1]</sup>

On December 21., 1992, respondent Judge Antonio C. Evangelista of the RTC set the case for repromulgation of January 4, 1993.

On December 28, 1992, private respondent filed a petition for probation,<sup>[2]</sup> alleging that (1) he possessed all the qualifications and none of the disqualifications for probation under P.D. No. 968, as amended; (2) the Court of Appeals had in fact reduced the penalty imposed on him by the trial court; (3) in its resolution, the Court of Appeals took no action on a petition for probation which he had earlier filed with it so that the petition could be filed with the trial court; (4) in the trial court's decision, two mitigating circumstances of incomplete self-defense and voluntary surrender were appreciated in his favor; and (5) in *Santos To v. Paño*,<sup>[3]</sup> the Supreme Court upheld the right of the accused to probation notwithstanding the fact that he had appealed from his conviction by the trial court.

On February 2, 1993, the RTC ordered private respondent to report for interview to the Provincial Probation Officer. The Provincial Probation Officer on the other hand was required to submit his report with recommendation to the court within 60 days.<sup>[4]</sup>

On February 18, 1993, Chief Probation and Parole Officer Isias B. Valdehueza recommended denial of private respondent's application for probation on the ground that by appealing the sentence of the trial court, when he could have then applied for probation, private respondent waived the right to make his application. The Probation Officer thought the present case to be distinguishable from *Santos To v. Paño* in the sense that in this case the original sentence imposed on private respondent by the trial court (1 year of imprisonment) was probationable and there was no reason for private respondent not to have filed his application for probation then, whereas in *Santos To v. Paño* the penalty only became probationable after it had been reduced as a result of the appeal.

On April 16, 1993 Valdehueza reiterated<sup>[5]</sup> his "respectful recommendation that private respondent's application for probation be denied and that a warrant of arrest be issued for him to serve his sentence in jail."

The RTC set aside the Probation Officer's recommendation and granted private respondent's application for probation in its order of April 23, 1993.<sup>[6]</sup> Hence this petition by the prosecution.

The issue in this case is whether the RTC committed a grave abuse of its discretion by granting private respondent's application for probation despite the fact that he had appealed from the judgment of his conviction of the trial court.

The Court holds that it did.

Until its amendment by P.D. No. 1990 in 1986, it was possible under P.D. No. 986, otherwise known as the Probation Law, for the accused to take his chances on