Anatomy of Cruelty: Expanding the Scope of Cruelty as an Aggravating Circumstance

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I. INTRODUCTION

On 10 June 2009, the country was shocked with the news on Ruby Rose Barrameda Jimenez, the sister of actress and former beauty queen Rochelle Barrameda. Ruby Rose, who had been missing since 14 March 2007, was allegedly stuffed and cemented in a steel container and thrown into the waters off Navotas.[1] Murder charges have been filed against some of her in-laws, as her disappearance closely followed a bitter custody dispute with her estranged husband, Manuel Jimenez III, over their two young children.

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1. Marlon Ramos, Even cops shocked by Ruby Rose slay, *available at* http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20090613-210260/Even-cops-shocked-by-Ruby-Rose-slay (last accessed Sep. 25, 2009).

According to state witness Manuel Montero,[2] Ruby Rose was taken by armed men on her way to visit her daughters in the house of her husband. Her mouth was gagged with packaging tape while her hands were tied. With at least two men keeping watch on her, the victim was left in the vehicle until it was dark. Ruby Rose was strangled with a steel wire; thereafter, three men stuffed and cemented her body in a metal drum. To ensure that the body will not be recovered, the drum was enclosed and welded in a steel casing. It was brought to a fishing vessel and was thrown into the waters some one nautical mile (1.85 kilometers) away from the port.[3]

The case of Ruby Rose is appalling, but unfortunately, quite common in the Philippines. For instance, the body of publicist Salvador "Bubby" Dacer was burned after he was killed.[4] In another case, a three-year old child was gagged with stockings and dumped with his head downwards into a box. The box was covered with sacks and other boxes.[5] It seems that there are just some instances where taking one's life is no longer enough; when anger or passion attends the killing of a person, the slaying becomes torture, and the death of the victim becomes an occasion for the killer to draw pleasure from some other person's pain.

When cruel acts are present in the killing of a person, the Revised Penal Code[6] provides for methods through which the depravity of the offender can be addressed. Two particular aggravating circumstances — cruelty and ignominy, found in Article 14 of the law — are identified as generic aggravating circumstances and serve to increase the penalty to its maximum if not offset by mitigating circumstances.[7] These two circumstances address different manifestations of malice and brutality.

On the one hand, Paragraph 17 of Article 14 defines the specific aggravating circumstance of ignominy, and states that when "means be employed or circumstances brought about which add ignominy to the

2. Manuel Montero confessed to being one of the men who participated in the murder of Ruby Rose. He led the police to discover the body of the victim on June 10, 2009.

   Edu Pinay, DOJ starts probe of Ruby Rose case, *available at* http://www.philstar.com/Article.aspx?articleId=486532 (last accessed Sep. 25, 2009).

3. *Id.*

4. *See* Ramos, *supra* note 1.

5. People v. Lora, 113 SCRA 366 (1982).

6. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815 (1932).

7. *See* RUPERTO KAPUNAN, JR. & DONATO T. FAYLONA, CRIMINAL LAW 130 (1993).

natural effects of the act,"[8] the shame and humiliation brought to the offended party adds "insult to the injury"[9] and shows the greater depravity of the offender. It pertains, according to the Supreme Court, to the *moral order* of the accused, which adds disgrace and obloquy to the material injury caused by the crime.[10]

On the other hand, Paragraph 21 of the same Article provides that cruelty as an aggravating circumstance exists when "the wrong done in the commission of the crime [would be] deliberately augmented by causing other wrong not necessary for its commission."[11] The basis of cruelty lies in the *ways* employed in committing the crime,[12] when the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary *physical* pain in the consummation of the criminal act.[13] For both ignominy and cruelty, however, the wrong done must have been inflicted upon the victim while he or she was still alive.[14] Any wrong done must be positively proven to have been inflicted while the offended party was still alive.[15]

This Essay shall focus only on cruelty and leaves ignominy to be studied under the lenses of another author. Under the current doctrine for cruelty, the appalling scheme deployed in concealing the body of Ruby Rose would not be appreciated against the culprits if it is so proven that these were done when Ruby Rose was already dead. Considering that Ruby Rose is only one of the many who have been the subject of these horrendous acts, one must wonder whether there should be a change in the way that the Supreme Court has confronted the question of cruelty in order for penalty meted out to the offender to be proportionate to the wrong that he or she had done. What follows is an attempt to expand the application of cruelty onto acts that were done even *after* the death of the victim, and not only to those done while the victim was still alive. This shall be done by revisiting the theoretical rationale for cruelty, and seeing whether the uniform interpretation of the Supreme Court is consistent with the underlying philosophy of this aggravating circumstance. Thus, under the proposals submitted by the authors, regardless of evidence presented in the case of

8. REVISED PENAL CODE, art. 14, ¶ 17.

9. KAPUNAN, JR. & FAYLONA, *supra* note 7, at 177.

10. LUIS B. REYES, THE REVISED PENAL CODE, CRIMINAL LAW 446 (15th ed. 2001).

11. REVISED PENAL CODE, art. 14, ¶ 21.

12. REYES, *supra* note 10, at 457 (emphasis supplied).

13. People v. Dayug, 49 Phil. 423, 427 (1926) (emphasis supplied).

14. KAPUNAN, JR. & FAYLONA, *supra* note 7, at 177 & REYES, *supra* note 10, at 460.

15. REYES, *supra* note 10, at 460.

Ruby Rose that might show that she was cemented inside the steel drum after she had taken her last breath, cruelty under Paragraph 21 will still be appreciated against her killers.

II. CLASSICAL/POSITIVIST VIEWS

According to renowned commentator Luis B. Reyes, the Revised Penal Code is based on the principles of the old or classical school theory in criminal law. Some provisions of positivistic tendencies, however, have been incorporated as well, in the form of the provisions that prescribe penalties for impossible crimes, special treatment for children in conflict with the law, and the indeterminate sentence law.[16] A brief overview of each theory is presented below.

A. Classical Theory

The classical theory was articulated most prominently in the 18th century by the Italian Cesare Beccaria.[17] The classical school of thought was not based on empirical data, but was simply an attempt to explain and control criminality.[18] Under this theory, people chose a course of action because it yielded them pleasure.[19] Beccaria assumed that the individual had exercised his free will in making hedonistic calculations in the commission of the crime.[20] Also known as the "justice" model,[21] the basis of criminal liability is human free will and the purpose of the penalty is retribution.[22] Thus, the punishment of the offender should be proportionate to the seriousness of the offense, not the character of the offender,[23] as the crime committed is considered as a violation of a social contract that is undertaken in the rational pursuit of self-interest.[24] The three purposes for sentencing are the following:

1. Punishment of the wrongdoer;

16. *Id.* at 22.

17. Walter J. Dickey, *Sentencing, Parole, and Community Supervision*, *in* DISCRETION IN CRIMINAL JUSTICE 136 (Lloyd E. Ohlin & Frank J. Remington, eds., 1993).

18. ALEXANDER B. SMITH & LOUIS BERLIN, TREATING THE CRIMINAL OFFENDER 6 (3d ed. 1988).

19. *Id.*

20. *Id.*

21. *Id.*

22. REYES, *supra* note 10, at 22.

23. Dickey, *supra* note 17, at 136.

24. Paul Leighton, Instructor's Manual for Greg Barak's Integrating Criminologies, Chapter 8, Contributions from Law and Economics: "Reason and Rationality," *available at* http://www.paulsjusticepage.com/IntegratingCrim/IntegratingCrim-Ch8.pdf (last accessed Sep. 25, 2009).

2. Retribution by society for the offender's breach of the social contract; and

3. Deterrence of others from committing the same offense.[25]

Man is viewed as essentially a moral creature with an absolute free will to choose between good and evil; hence, more stress is placed upon the effect or the result of the felonious act than upon the criminal himself.[26] To prevent man from choosing to commit serious offenses, the punishment should be severe enough to outweigh the personal benefits that the individual might gain from committing the crime.[27] Thus, the punishment should be well-suited to the offense, with scant regard to the human element.[28]

In essence, therefore, the fundamental columns of the classical construction of penal law are the consideration of moral imputability and free will.[29] "No reproach is possible, nor any sanction, nor punishment, nor penalty, justified except only when a person consciously and voluntarily acting by virtue of his liberty and conscience, violates a legal precept."[30]

B. Positivist Theory

The other side of the coin is the positivist school of thought, which espouses that crime is essentially a social and natural phenomenon. As such, it cannot be treated and checked by application of abstract principles of law and jurisprudence or by imposition of a fixed and pre-determined penalty.[31] Created by the Ferri, Lombroso, and Garofalo, the positivist thought is a reaction to the rigidity of the classical view — from the crime, to the criminal; from the act to the personal character of the illicit act, to its subject.[32] Consequently, each case must be treated individually after a thorough and personal investigation conducted by a competent body of psychiatrists and social scientists.[33] As will be seen in the following paragraphs, one of the major changes introduced by the positivists is its focus on the personhood of the criminal.

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25. Dickey, *supra* note 17, at 136.

26. REYES, *supra* note 10, at 22.

27. Youngjae Lee, The Constitutional Right Against Excessive Punishment, *available at* http://lsr.nellco.org/cgi/viewcontent.cgi?article=1002&context=nyu_plltwp (last accessed Sep. 25, 2009).

28. REYES, *supra* note 10, at 23.

29. Lorenzo B. Padilla, *The History of Penal Law*, 40 ATENEO L.J. 109, 113 (1996).

30. *Id.*

31. REYES, *supra* note 10, at 23.

32. Padilla, *supra* note 29, at 119.

33. *Id.*

This theory argues that crimes may not always be committed voluntarily, and that inherited or environmental deficiencies caused individuals to commit the offense.[34] Consequently, the punishment meted out should not be based on the offender's crime but "upon his particular type of personality; the length of punishment depends upon his reaction to treatment; and the place and character of such punishment likewise depend upon his needs and his reaction to correctional treatment."[35] For Positivists, three elements are crucial for a rehabilitative penal system: probation, parole, and indeterminate sentence.[36] Walter J. Dickey describes the purpose for these three as:

> Probation (as substitute for custodial punishment) and parole (following custodial punishment) allowed a trained expert to assess the offender's needs; provide the education, training, and mental health assistance necessary to treat their particular problems; and monitor how well they adjusted to the demands of "straight society." An indeterminate judicial sentence was deemed necessary for the success of probation and parole, since it provided the state with a legal basis for surveillance and control of offenders until such time as they were properly adjusted.[37]

Reyes further explains that the positivist theory views man as one who is "occasionally subdued by a strange and morbid phenomenon which constrains him to do wrong, in spite of or contrary to his volition."[38] Contrary to the classical theory, the positivist school views the individual as one who may have been moved, not by his own free will, but by forces outside of the individual's control.[39]

Penalty also has a different basis under the positivist school of thought. Imprisonment is imposed for the protection of society and not for the punishment of the individual's criminal tendencies.[40] While the classical school bases imputability on the free will of the offender, the positivists determine penalty "solely on the basis of social responsibility, stating that a person should be responsible by the mere fact that he lives in society."[41] Criminal liability is based on the dangerous character that the criminal represents, given the anti-social effects of his actions.[42] A criminal should

34. Dickey, *supra* note 17, at 137.

35. *Id.*

36. *Id.*

37. *Id.*

38. REYES, *supra* note 10, at 23.

39. SMITH & BERLIN, *supra* note 18, at 7.

40. *Id.*

41. Padilla, *supra* note 29, at 120.

42. *Id.*

thus be the object of a social reaction (penalty or sanction) corresponding to the degree of his dangerous character.[43]

Clarence Ray Jeffrey succinctly differentiates the two theories in this manner:

> The Classical defined crime in legal terms; the Positive School rejected the legal definition of crime. The Classical School focused attention on crime as a legal entity; the Positive School emphasized determinism. The Classical School theorized that punishment had a deterrent effect; the Positive School said that punishment should be replaced by a scientific treatment of criminals calculated to protect society.[44]

The table below[45] is a simplified comparison between these two major criminal law theories:

CLASSICAL SCHOOL	POSITIVIST SCHOOL
Legal Definition of Crime	Rejected legal definition of crime; substituted "natural crime"
Let the punishment fit the crime	Let the punishment fit the criminal
Free will	Determinism
Death penalty for some offenses	Abolition of death penalty
No empirical research	Empirical research; use of inductive method
Definite sentences	Indeterminate sentences

Based on these, it is submitted that Article 14 of the Revised Penal Code is based on the classical school of thought, as they are "based on the greater perversity of the offender manifested in the commission of the felony as shown by: 1) the motivating power itself, 2) the place of commission, 3) the means and ways employed, 4) the time, or 5) the personal circumstances of the offender, or the offended party."[46] Since the existence of any of the enumerated aggravating circumstances serves to increase the penalty imposed for a particular felony, this provision of the Revised Penal Code places emphasis on the offense or wrong done by the individual, without considering whether the offender is a victim of circumstance or other social phenomenon.

43. *Id.*

44. Clarence Ray Jeffrey, *The Historical Development of Criminology*, *in* PIONEERS IN CRIMINOLOGY 460 (Herman Manheim, ed., 1972).

45. SMITH & BERLIN, *supra* note 18, at 7.

46. REYES, *supra* note 10, at 317.

III. CRUELTY AS AN AGGRAVATING CIRCUMSTANCE IN JURISPRUDENCE

The Spanish Penal Code,[47] which is the basis of the Philippines' own system of penal laws, considers cruelty as one of the circumstances which aggravate the liability of the offender. Cruelty consists of "*la inhumana y cruel prolongacion del dolor.*" It refers to "*los males causados fria y reflexivamente, 'deliberadamante,' con el propositon de aumentar los sufrimientos de la victims. El criminal que despues de haber causado el ofendido heridas mortales de modo refinado y cruel prolonga sus sufrimientos, manifiestaba una especial perversidad y se revela un criminal sumamente peligroso.*"[48]

Article 14, Paragraph 21 of the Revised Penal Code has adopted such aggravating circumstance: "That the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commission."[49] The definition as offered by the Revised Penal Code presents two elements: first, that the wrong done in the commission be deliberately augmented by causing other wrong; second, that the other wrong be unnecessary in the commission of the crime. Cruelty is a specific aggravating circumstance in crimes against persons.[50]

The Supreme Court has added other descriptions to the provision. Cruelty necessarily exists when the "culprit enjoys and delights in making [the] victim suffer slowly and gradually, causing unnecessary moral and physical pain in the consummation of the criminal act [intended to be committed]."[51] In appreciating cruelty, the Court considers the sadism exhibited by the offender, which is indicative of a marked degree of malice and perversity.[52]

In order to be appreciated, the aggravating circumstance of cruelty must be alleged in the information.[53] In *People v. Delos Santos*,[54] the Supreme Court did not appreciate the existence of the aggravating circumstance of cruelty to modify the criminal liability of the accused, even when the lower court found such cruelty to exist in the act of butchering the victim until intestines spilled out of his stomach.[55] In *People v. Florendo*,[56] the Supreme

47. The Spanish Penal Code of 1880 was in force in the Philippines from 1886 to 1930.

48. 2 CUELLO CALON, CODIGO PENAL, 464-65 (10th ed.).

49. REVISED PENAL CODE, art. 14, ¶ 21.

50. ANTONIO L. GREGORIO, FUNDAMENTALS OF CRIMINAL LAW REVIEW 199 (1997).

51. *Dayug*, 49 Phil. at 427.

52. GREGORIO, *supra* note 50, at 196.

53. 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 110, § 8.

54. People v. Delos Santos, 403 SCRA 153 (2003).

55. *Id.* at 158.

Court said: "[E]ven if cruelty is proved, it cannot be appreciated against appellant to raise the penalty to death as this was not alleged in the Information."[57] In addition to this, it has also been ruled that cruelty cannot be presumed or inferred from the wounds or the condition in which the victim's body was found; it must be proven to exist as certainly as the crime itself.[58]

One of the first instances of cruelty being appreciated as an aggravating circumstance was in *U.S. v. Mendoza*,[59] where the felony of illegal detention was found to be acted upon with cruelty because an 11 year old boy's hands and feet were tied to a post for eight hours without any justified reason. The Supreme Court recognized that the maltreatment was unnecessary and that cruelty was present.[60]

In *People v. Bersabal*,[61] the victim's hands and feet were cut by a bolo after the accused killed him with the same weapon. The Supreme Court found that cruelty did not exist because the acts of increasing the pain of the victim were not proven to have occurred while the victim was still alive.[62]

The Supreme Court has also recognized that torture is a form of cruelty in *People v. Adlawan*.[63] Here, the accused "deliberately augmented the wrong by being unnecessarily cruel to captured guerrilla suspects, subjecting them to barbarous forms of torture and finally putting them to death."[64]

In *People v. Ingalla*,[65] punching, kicking, and trampling the victim, as well as lighting the victim's private parts, and putting the victim in a sack before stabbing him with a bayonet were considered acts of cruelty.[66] The Supreme Court said: "[T]he savagery which characterized the inhuman punishment inflicted by the accused on those suspected of being in the resistance movement was beyond even that required for the accomplishment of his traitorous acts."[67]

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56. People v. Florendo, 413 SCRA 132 (2003).

57. *Id.* at 142.

58. *See* GREGORIO, *supra* note 50, at 196.

59. U.S. v. Mendoza, 3 Phil. 468 (1903).

60. *Id.* at 472.

61. People v. Bersabal, 48 Phil. 439 (1925).

62. *Id.* at 441.

63. People v. Adlawan, 83 Phil. 194 (1949).

64. *Id.* at 204.

65. People v. Ingalla, 83 Phil. 239 (1949).

66. *Id.* at 242.

67. *Id.* at 241.

In *People v. Develos*,[68] cruelty was deemed to be present "when the accused did not merely kill the victim but augmented his sufferings by strangulating him with a rope and setting him on fire after having struck him twice on the head."[69]

In *People v. Perez*,[70] the Supreme Court found cruelty in the way the act of hacking with a bolo was done. The accused hacked one of the victims "on her head and right cheeks, the blow splitting the latter's head into two," and also shot the victim after.[71]

The case of *People v. Dizon*[72] exemplifies which acts are considered as acts of cruelty. In the case, the accused made the victim

> fondle and put his foul-smelling penis in her mouth, forc[ed] her to admire his bolitas, and demand[ed] that she assume embarrassing and indelicate positions. Furthermore, he viciously slammed her head against the hood of the taxi, banged her head against the wall, and slapped her hard in the face whenever she failed to answer any of his questions.[73]

The Supreme Court recognized that "these wrongs were no longer necessary insofar as the accused's purpose of raping [the victim] was concerned. By subjecting her to these unwarranted physical and moral abuses on top of raping her, [the accused] deliberately and inhumanly augmented her pain and sufferings, thus, committing cruelty."[74]

In other cases, the Supreme Court refused to impose cruelty as an aggravating circumstance. Consistently, the Supreme Court has held that the number of wounds or blows is not suggestive of the presence of cruelty.[75] In one case, the Supreme Court held that causing 21 stab wounds was not considered to be classified under cruelty.[76] In another case, the Court said that where there were many wounds because there were many assailants, "the number of wounds alone is not sufficient to show that the killing was committed for the purpose of deliberately and inhumanely augmenting the

68. People v. Develos, 16 SCRA 46 (1966).

69. *Id.* at 52.

70. People v. Perez, 263 SCRA 206 (1996).

71. *Id.* at 210.

72. People v. Dizon, 368 SCRA 383 (2001).

73. *Id.* at 396.

74. *Id.*

75. People v. Aguinaldo, 55 Phil. 610 (1931); People v. Jumauan, 98 Phil. 1 (1955); People v. Manzano, 58 SCRA 250 (1974); People v. Artieda, 90 SCRA 144 (1979); People v. Vasquez, 113 SCRA 772 (1982); People v. Solamillo, 404 SCRA 211 (2003); People v. Domantay, 307 SCRA 1 (1999); People v. Delmo, 390 SCRA 395 (2002).

76. *Solamillo*, 404 SCRA at 225-26.

suffering of the victim."[77] Consequently, despite the plurality of wounds, it must still be shown that such were inflicted to prolong the suffering of the victim before the fatal wound was dealt.[78]

In *People v. Aguinaldo*, the Supreme Court held that no cruelty is appreciated when the deliberate and inhuman increase of suffering of the victim was not shown, even when five bolo wounds were inflicted on the victim.[79] The same reasoning was used by the Supreme Court in *People v. Jumauan* because the facts did not show that the accused deliberately increased the suffering of the victim, even when 13 bolo wounds were found on the victim.[80] The Supreme Court also has refused to appreciate the aggravating circumstance of cruelty when there is no showing that the accused prolonged the suffering of the victim.[81] In *People v. Luna*,[82] the offender threw the victim off a boat, and stabbed the victim when he tried to hold on. The Supreme Court did not appreciate the existence of cruelty and said: "[I]n in order that cruelty or vindictiveness may be appreciated, the evidence should show that the sadistic culprit, for his pleasure and satisfaction, caused the victim to suffer slowly and gradually and inflicted on him unnecessary moral and physical pain."[83]

It must be emphasized that the infliction of suffering must have been done for the pleasure and satisfaction of the malefactor. In *People v. Fernandez*,[84] where the victim was shot three times, and hacked with a bolo until death, the Supreme Court said: "For cruelty to exist, it must be shown that the accused enjoyed and delighted in making the victim suffer slowly and gradually causing him unnecessary physical or moral pain in the consummation of the act."[85] The Supreme Court added that,

> [w]hile the victim was shot three times and hacked several times until he died, the infliction of the wounds was continuous rather than slow and gradual. Inflicting various successive wounds upon a person to cause his death without appreciable time intervening between the infliction of one

77. *Vasquez*, 113 SCRA at 776.

78. *Artieda*, 90 SCRA at 156.

79. *Aguinaldo*, 55 Phil. at 615.

80. *Jumauan*, 98 Phil. at 4.

81. People v. Curiano, 9 SCRA 323 (1963). *See also* People v. Lumandong, 327 SCRA 650 (2000); People v. Cortes, 361 SCRA 80 (2001).

82. People v. Luna, 58 SCRA 198 (1974).

83. *Id.* at 209.

84. People v. Fernandez, 154 SCRA 30 (1987).

85. *Id.* at 39 (citing People v. Gatcho, 103 SCRA 207 (1981)).

> wound and that of another, as in the present case, does not constitute cruelty.[86]

This was also the decision in *People v. Llabres*[87] where the Supreme Court said that the accused "did not deliberately prolong the physical suffering of his victim; on the contrary, his repeated blows show that he intended to kill [the victim] as soon as he could."[88] This was reiterated in *People v. Rabanal,*[89] where the Court held that "the mere fact of inflicting several wounds successively upon a person to cause his death, with no appreciable time intervening between the infliction of said injuries to show that the malefactor wanted to prolong the suffering of the victim, is not sufficient to prove the existence of [cruelty]."[90] "Cruelty cannot be appreciated in the absence of any showing that appellants, for their pleasure and satisfaction, caused the victim to suffer slowly and painfully and inflicted on him unnecessary physical and moral pain."[91]

In giving importance to the pain and suffering inflicted by offenders, the Supreme Court has also based its imposition on the time of the commission of the alleged cruel acts. The Supreme Court has refused to recognize cruelty when there was "no showing that the other wounds found on the bodies of the victims were inflicted unnecessarily while they were still alive in order to prolong their physical suffering."[92] In *People v. Gatcho,* the Supreme Court said: "Cruelty refers to physical suffering of the victim purposely intended by the offender. Hence, the wrong done must be performed *while the victim is still alive*."[93] In *People v. Guerrero,*[94] the act of cutting off the victim's penis and putting it on the victim's abdomen after the victim's head was decapitated was not appreciated by the Supreme Court as cruel because the death preceded the act of cruelty.[95] There must be positive proof that the wounds found on the body of the victim were

86. *Id.* at 154 SCRA at 39 (citing People v. Ang, 139 SCRA 115 (1985)).

87. People v. Llabres, 225 SCRA 86 (1993).

88. *Id.* at 92.

89. People v. Rabanal, 387 SCRA 685 (2002).

90. *Id.* at 697.

91. People v. Pelopero, 413 SCRA 397, 416 (2003) (citing People v. Alban, 245 SCRA 549 (1995)); *Curiano*, 9 SCRA at 347-48.

92. *Curiano*, 9 SCRA at 348.

93. *Gatcho*, 103 SCRA at 221. In this case, the offender threw a baby out the window (emphasis supplied).

94. People v. Guerrero, 389 SCRA 389 (2002).

95. *Id.* at 410.

inflicted while he was still alive in order to unnecessarily prolong physical suffering.[96]

It can be seen that the Court has been consistent with its rulings with regard to cruelty. Culled from this survey of jurisprudence are these following doctrines as to when the presence of cruelty is put in issue:

1. the acts committed must be unnecessary for the commission of the crime;
2. accused must have prolonged the suffering of the victim through the cruel acts;
3. the accused must have committed the acts for his own sadistic pleasure and satisfaction; and,
4. the acts must have been done while the victim was still alive.

The Supreme Court has not yet wavered from these pronouncements.

IV. CRUELTY IN PENAL THEORY

Based on jurisprudential interpretation, the law only considers those acts which have caused unnecessary physical pain as aggravating through cruelty. The Supreme Court has come to define cruelty based on the presence of suffering of the victim, as the acts considered by the Court are only those which were inflicted upon the victim while he or she was alive, without considering the "greater perversity of the offender." Thus, according to current jurisprudence, cruelty is based on the amount of suffering that he or she inflicts upon his victim. The law does not consider the criminal to be cruel even if he delights in vandalizing the lifeless body of his or her helpless prey or in using such hateful acts in the commission of the felony.

By limiting the reach of cruelty to these specific acts, the Supreme Court has, whether wittingly or unwittingly, narrowed the scope of the application of cruelty, contrary to its underlying philosophy. If the rationale behind the imposition of aggravating circumstance is the classical school of thought, which espouses that the penalty to be meted out must be commensurate to the *offense* committed by the offender, then basing the existence of cruelty upon the pain experienced by the victim is erroneous at best and faulty at worst. Making the time of the commission of the cruel act an issue in determining its existence misses the point, as the greater perversity of the offender is not addressed. The foundation for cruelty becomes the suffering of the victim and not the criminal mind of the offender.

The status quo interpretation allows depraved offenders, who take pleasure from the suffering of lifeless corpses, to escape the harsh and expansive reaches of criminal law. The sadistic killer who delights in the

96. People v. Pacris, 194 SCRA 654, 663 (1991).

physical torment of those who are still breathing is just as wicked as the criminal who relishes in vandalizing the *corpus delicti*. In both instances, the authors posit that the *raison d'être* for aggravating circumstances must be observed, such that cruelty committed, regardless of when these acts were done to the victim, should be appreciated against the offender.

It is true that the current interpretation of cruelty is one that favors the accused. It is hypothesized, however, that the interpretation of the law should not focus on the consequence of the act, but rather, on the acts of cruelty themselves. This reading of cruelty is more consistent with the classical theory, the basis for the imposition of aggravating circumstances.

Assuming *arguendo* that aggravating circumstances can fall under the positivist school of thought which advocates that the penalty be for the development of the actor and social responsibility, such acts must still cause the *offender* to be the subject of reformation, whether through a higher penalty or to more difficult parole conditions. Since positivism considers the dangerous character of the criminal in imposing the penalty, then the suffering of the victim should not come into play when the circumstance of cruelty is considered. Indeed, the dangerous character of the offender manifests itself not only through inhumane acts committed to the augment the victim's suffering, but also through the brutality performed after the death of his or her prey.

Focusing on the result of the cruel act — specifically, the pain and suffering felt by the victim — leaves out a certain gap: the law fails to address the sadistic mental state of the criminal. Thus, acts which do not cause pain and suffering, but still reeks of the brutal nature of the accused are left unpunished and unreformed. In a way, the State forgives the accused for committing vile and loathsome acts, just because such acts were done upon a lifeless body.

Based on the classical view, such despicable acts must be addressed in order to:

1. punish the malefactor;
2. provide for retribution for society; and,
3. deter other similar acts from recurring again.

Leaving acts committed to spoil the dead body of the victim unpunished sends a message to society that the law does not condemn these deeds. This gap gives the atrocious inclinations of the criminal some sort of devil's playground; a haven wherein it is "safe" to commit horrific actions; a tempting opportunity to display disfigured tendencies of the criminal mind. Under the Supreme Court's present interpretation of cruelty, the law will turn a blind eye to the merciless burials of Ruby Rose and Bubby Dacer,

and the debt that these criminals had incurred by killing these innocents will not be properly paid.[97]

In line with the this reasoning, it is also submitted that multiple stabbing and multiple shooting of victims, or mutilation even after death, must be recognized as abhorrent acts and must not go unpunished, considering that these acts are also very much indicative of the cruel nature of the offender, even absent any showing that such acts did not prolong the pain and suffering of the victim. Such acts fall under the strict wording of the law, that the wrong done in the commission of the crime is deliberately augmented by causing other wrongs not necessary for its commission. Even if these acts do not cause prolonged pain and suffering — elements for cruelty to be appreciated amassed from jurisprudence — such acts are repulsive still to the values of our country and must be properly dealt with.

V. POST-SCRIPT

The Supreme Court should revisit its rulings for cruelty and expand its scope to acts done by the criminal even after the death of the victim for it to be more properly aligned with the classical school of thought. Decisions regarding other congruous acts, such as multiple stabbing or shooting, and postmortem mutilation, must also be revisited. The wrong done by the killer should be considered over the suffering of the victim, consistently not only with the classical theory, but also with the text of the Revised Penal Code itself: "That the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commission." There is nothing within the text of the Code which intimates the intention that the cruelty should be appreciated from the victim's point of view. On the contrary, emphasis is placed on the actions of the killer. The Code also does not indicate that the time when such cruel act was done be appreciated; all Paragraph 21 of Article 14 suggests is that the offender do another act which is not necessary for the consummation of his evil designs. Arguably, deeds and misdeeds both before *and* after the victim's death would fall under the codal definition of cruelty.

97. Classical theorists posit, under the Doctrine of Social Contract, that the penalty imposed upon the offender is neither more or less than the guaranty of social contract. This means that any wrong done against the community constitutes a violation of that contract, and the penalty is a guarantee against the violation of such contract. Padilla, *supra* note 29, at 116.