

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERDY GAVINO Y ARORONG @ MCCOY, JEFFREY OLIVAR Y MERCADO @ JEFF AND VICTOR ALEJANDRIA Y MERCADEJAS @ DODONG, ACCUSED, ERDY GAVI...

CR No. 32686, June 23, 2010

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Court of Appeals

Before this Court is an appeal from the Decision[1] dated May 7, 2009 of the Regional Trial Court, National Capital Judicial Region Branch 114, Pasay City in Criminal Case No. 05-1194-CFM entitled "People of the Philippines, versus Erdy Gavino y Arorong @ McCoy, et al., Accused.", the dispositive portion of which reads:

"In light of the foregoing, the Court finds the three (3) accused namely: ERDY GAVINO Y AROROMG @ MCCOY, JEFFREY OLIVAR Y MERCADO @ JEFF AND VICTOR ALEJANDRIA Y MERCADEJAS @ DODONG, "Guilty" beyond reasonable doubt only of the crime of Homicide defined and penalized under Article 249 of the Revised Penal Code, as amended, and hereby sentences each of them to suffer the penalty of imprisonment of Twelve (12) years and One (1) day to Twenty (20) years of reclusion temporal and ordered to pay the heirs of the victim Eduardo Salvador y Raganit the following:

1. P75,000.00 as moral damages; and
2. P84,492.20 as actual damages.

SO ORDERED."

The facts are:

On August 1, 2005 an information[2] for Murder was filed against accused-appellant Erdy Gavino y Arorong @ McCoy ("Gavino" for brevity) and accused Jeffrey Olivar y Mercado @ Jeff ("Olivar" for brevity), Victor Alejandria y Mercadejas @ Dodong ("Alejandria" for brevity), John Doe, Peter Doe, Richard Doe, Allan Doe, Michael Doe, Alex Doe and Arnold Doe, the true names, real identities and present whereabouts of the last seven (7) accused are still unknown, the accusatory portion of which reads:

"That on or about the 30th day of July, 2005, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, armed with a deadly weapon, did then and there willfully, unlawfully and feloniously with intent to kill, treachery and abuse of superior strength, attack, assault and stab one Eduardo Salvador y Raganit, at the vital parts of his body, thereby inflicting upon the latter mortal wounds which caused his instantaneous death.

Contrary to Law."

On September 28, 2005, accused-appellant Gavino and accused Olivar and Alejandria, assisted by Counsel, pleaded[3] not guilty to the crime charged.

The identities of accused-appellant Gavino and accused Olivar and Alejandria were admitted by the defense who

made on stipulation during the preliminary conference[4] held on October 12, 2005. On October 19, 2005[5], the lower court adopted and considered the Preliminary Conference Report of the Branch Clerk of Court as part of the pre-trial conference of this case because it had substantially covered the matters involved in the pre-trial conference and it ordered the termination of the same.

Thereafter, trial ensued.

The prosecution presented Roldan Benhero, Roberto Villanueva, Jason Ibanes, Milagros R. Salvador, PO2 Carlo Daet, SPO1 Christian Marquez, Dr. Rolando C. Victoria and PO3 Alberto Sombilon, as witnesses.

Roldan Benhero ("Benhero" for brevity) testified[6] that: at about 12:30 o'clock in the morning of July 30, 2005, he was buying a cigarette from a store at Geronimo St. Malibay, Pasay City when he heard a woman shouting "tama na po" twice near the corner of San Diego Compound: he saw the victim, Salvador being chased by around eight (8) armed men as he went near the scene of the incident; accused-appellant Gavino approached and stabbed Salvador with a knife on the lower left chest, while the latter was being lifted by accused Alejandria and an unidentified assailants; the assailants ganged up (pinagtulungan) on Salvador as the latter fell down; he was able to recognize Salvador and the assailants because the place was well lighted; he thought of throwing stones at the assailants to drive them away, but he was not able to find stones at the scene of the incident; the assailants went after and threatened to stab some persons who tried to help Salvador; he does not know the assailants' names but he could recognize them if he would see them again; accused Oliva chased the persons who tried to stop the stabbing of Salvador with a knife; the assailants left when somebody shouted "patay 'na iyan" ; he approached Salvador (nilapitan ko si Eduardo Salvador) and brought the latter to the hospital who was already dead upon arrival thereat; Salvador sustained a lot of stab wounds; accused appellant Gavino and accused Olivar and Alejandria were immediately arrested by the police and he saw them at the police headquarters; he did not see any blood stains on the black garments worn by accused-appellant Gavino and accused Olivar and Alejandria nor in their hands and arms.

Roberto Villanueva ("Roberto" for brevity) testified[7] that: in the evening of July 29, 2005, he attended his cousin Ruby Ana Villanueva's ("Ruby Ana" for brevity) birthday party at San Diego Compound; Ruby Ana's boyfriend Patrick and his friends also attended the party and were already drunk (nakainpm na rin po sila) when they arrived at about 10:00 o'clock in the evening; he occupied a table with Jason Ibañez ("Ibañez" for brevity) and David, while Patrick's group occupied another table; Patrick's group drank with Ibañez and David; accused-appellant Gavino and accused Olivar and Alejandria are Patrick's friends and were among the guests of Ruby Ana; Patrick called and talked to Jonjon David Natividad; Jonjon intimated to them about the trouble between Patrick's group and a certain Varete; Salvador was also called Varete, named after the former boxing champion Rolando Navarrete because of the former's bad boy reputation; Jonjon left the party and called for Salvador to settle their differences; somebody called Salvador and the latter went to the San Diego Compound alone; Salvador asked him, "sino ang kumukursunada sa barkada namin?" and said "kakausapin ka lang."; Dondon, a member of Patrick's group (kasama po nila), approached Salvador and said, "pare peace tayo ha, peace tayo?"; Dondon distanced (dumistansya) himself from Salvador after the latter asked the former who he was and Dondon, for no apparent reason, suddenly punched Salvador although they were not enemies; Patrick's group stood up and pulled out (nagbunutan po) bladed weapons; he was able to parry the attack (pasugod na po) of Patrick's group and ran away: accused-appellant Gavino was not hit by a stone and there was no stone throwing incident that ensued; accused-appellant Gavino and accused Oliver and Alejandria and Dondon were among the more than ten (10) persons who attended Ruby Ana's party and gave Salvador a chase while the latter was running away; he did not recognize the two (2) persons who chased him but he is familiar with the faces of the persons who chased Salvador; Patrick's group had no quarrel with his group and Salvador; and, he does not know who

stabbed Salvador.

Jason Ibañez testified[8] that: on July 29, 2005, he attended Ruby Ana's birthday party at San Diego Compound, where a drinking session was held, upon the invitation of Ruby Ana's sister Jessa; Jessa introduced him to the other guests, namely: accused-appellant Gavino, accused Oliver and Alejandria, Patrick, Don and a certain Tisoy; after Jonjon's conversation with Patrick, the former went back to their table and told them that he would be going to Salvador's place to patch up the differences between Patrick and Salvador; he followed Jonjon and saw him taking to Salvador in a house at Geronimo St.; Salvador went out of the house- and proceeded to San Diego Compound, while Jonjon was left behind; Salvador's brother, Toto, followed Salvador upon their cousin's instruction, and he was about seven (7) meters away from Salvador; upon his arrival at San Diego Compound, Patrick's group was already chasing Salvador; he did not see how the trouble started; Patrick's group ran passed him, brushed him aside (ako ay napatabi) and Dondon kept him at bay for a few seconds by poking a knife at him; Patrick's group prevented everyone from rescuing Salvador; Patrick's group also chased his four (4) companions; he told Dondon that he was just trying to pacify them and Dondon ran to rejoin Patrick's group and stabbed Salvador; accused-appellant Gavino and accused Oliver and Alejandria were among those who caught up, surrounded and stabbed Salvador with knives while the latter was in a stooping (nakayuko) position and later fell to the ground; he was among those who helped Salvador when the assailants scampered away twenty (20) minutes later; Salvador was carried by them up to the plaza and Salvador's brother rushed him to the Pasay City General Hospital; he was not able to talk to Salvador anymore; and, later the police arrived at the scene of the crime.

Milagros R. Salvador, mother of the victim Salvador, testified[9] that: Salvador was her third child; she saw Salvador sprawled to the ground when she went out of their house; Salvador was twenty (20) years of age and was a sophomore[10] student at the Philippine College of Criminology at the time of his death; she paid P12, 247.74 for Salvador's tuition at PCCR; she gave Salvador a daily allowance of P150.00 for his school expenses; Salvador was a good son and a brother; "gusto po niyang iahon ako sa hiras pero pinatay lang siya"; Salvador seldom went out of the house; the untimely demise of Salvador is painful for he was her only hope and she could not help but cry when she sees his garments; her family incurred[11] around P40,000.00 for Salvador's wake, P45,000.00[12] for his coffin, P16,000.00[13] for his internet (pagpapahukay) and P1,200.00 for the epitaph[14], P10,000.00 as acceptance fee and P1,500.00 as per appearance fee, and P10,000.00 for the ten (10) jeepneys which were hired to transport the relatives and friends of Salvador from Pasay City to Manila Memorial Park for Salvador's interment.

PO2 Carlo Daet testified[15] that: he is stationed at Precinct 7 of the Pasay City Police Office in Malibay, Pasay, City; on July 30, 2005, at 12:35 o'clock in the morning, Bernardo Tolentino ("Tolentino" for brevity) called their office and sought police assistance with regard to the ensuing trouble at Geronimo St., Pasay City; Tolentino informed them that the persons involved in the trouble were armed with deadly weapons; they were dispatched by their right shift supervisor to the scene of the incident; he and his companions were cruising along C. Jose St., on board mobile patrol car 54122, when they chanced upon and immediately chased a group of individuals who were running towards the direction of Maricaban; some of the individuals in the group were carrying bladed weapons; the armed group scampered to different directions upon noticing their presence; he cornered and arrested accused-appellant Gavino who was hiding under a parked jeepney along Vitales St., and brought the latter to their office; accused Oliver and Alejandria were arrested by his companions SPO1 Dugan and SPO1 Marquez; upon their arrest, accused-appellant Gavino and accused Oliver and Alejandria were apprised to their constitutional rights, he was present when Adam Taroy, Mark Abool, Jenrick Sayo, John Carlo Sayo and Paulo Intad identified and pointed to accused-appellant Gavino and accused Oliver and Alejandria, at the police station, as the persons who ganged up on Salvador; and, they referred the matter to the Criminal Investigation Division.

The testimony of SPO1 Christian Marquez corroborated the testimonies of the other policemen who responded to

a call from Bernardo Tolentino seeking assistance relative to a trouble along Geronimo St., Pasay City, as well as their response, such as forming a team to respond, confiscation of the deadly weapons from the individuals who were seen running away and the arrest of accused-appellant Gavino, accused Alejandria and Olivar.

Dr. Rolando C. Victoria, National Bureau of investigation Medico-Legal Officer, testified[16] that: on July 30, 2005, he conducted a post-mortem examination[17] on the victim Salvador's body; Salvador sustained two (2) stab wounds on the chest, nine (9) stab wounds at the back and one (1) stab wound on the thigh; Salvador sustained six (6) fatal wounds and six (6) non-fatal wounds; the fatal stab wounds on the front and back of Salvador's chest affected his left and right lungs and heart; contused abrasion and breaks in the skin were present at the left hand and right upper extremity of Salvador; contused abrasion could be caused by contact with hard rough object; the assailant could either be facing behind or at the side of the victim as long as the victim was within the assailant's reach; the stab wounds could be inflicted by either one or more assailants for as long as the weapons used have the same characteristics; the assailant used a sharp pointed sharp edged instrument with the widest width of not more than three (3) centimeters; the weapon used could be a fan knife (balisong) or kitchen knife but not an ice pick; the wounds measured two and a half (2.5) up to three (3) centimeters wide; the stab wounds could not be possibly inflicted at the time Salvador was already dead because the stab wounds could be only inflicted within a minute and Salvador could have died twenty (20) up to thirty (30) minutes later; Salvador sustained an incise wound on the occipital area at the back of the head caused by a bladed weapon; Salvador did not sustain a wound on the neck; he did not find any stab wound on Salvador's shoulder, face and head; blood does not necessarily spurt when a person is stabbed; the blood fills in the cavity housing the heart and the lungs before it oozes out of the root; the spurting of blood would depend upon the blood vessel that was hit; the twelve (12) stab wounds inflicted on Salvador could possibly stain the assailant's hands; and it is possible that the back of Salvador was hit while on a lying position.

PO3 Alberto Sombilon testified[18] that: on July 30, 2005, the elements of the Pasay City Police Precinct 7 turned over to him the persons of accused-appellant Gavino and accused Olivar and Alejandria, a fan knife and a Philips screwdriver confiscated from the accused; the screwdriver confiscated from accused Alejandria was marked "VNA"; accused-appellant Gavino and accused Olivar and Alejandria refused to sign the booking sheet and arrest report[19] prepared and executed by him; he took down the sworn statements of witnesses Benhero and Villanueva and reduced them into writing; Benhero mentioned to him that two (2) persons bodily lifted Salvador and told him to include it in his statement; he admits that he omitted that portion of witness Benhero's statement in the course of the preparation of the sworn statement, but he did not intent to extend favor to any of the accused because he does not personally know them.

On the other hand, Joan Villanueva, accused Olivar, accused Alejandria, accused-appellant Gavino and Jessa Villanueva were presented as defense witnesses.

Joan Villanueva testified[20] that: Ruby Ana, Jessa and Roberto Villanueva are her cousins; she invited her friend, accused Olivar, to Ruby Ana's birthday party; she had known Salvador since childhood; accused-appellant Gavino and accused Olivar and Alejandria had no misunderstanding or quarrel with the victim Salvador because the former did not know the latter; Salvador arrived at the party at 12:00 o'clock midnight with his brother Toto and another companion, Paulo, looking for Patrick while they were drinking and having fun; Salvador and Patrick did not know each other; Roberto approached and stood near Salvador but did not talk to the latter; Dondon also approached Salvador and asked the latter not to create trouble since they were just newcomers in the place; Salvador shouted invectives at Dondon and told him that he should not meddle with what was happening (putang ina mo, gago ka wala kang pakialam); when Patrick went out of the house, Salvador asked him if he was Patrick; she heard no reply from Patrick; somebody threw stones from behind as she and Jessa tried to appease Salvador

and asked the latter not to barge in, and after Dondon hit Roberto on the face; Dondon later on apologized; accused-appellant Gavino and accused Olivar and Alejandria were still eating during the confrontation between her and Salvador; she told her brother Jaime Villanueva to go inside the house while she was at the side of her aunt's stone; the guests ran away from the compound going towards Geronimo St. during the stone throwing incident; a stone hit accused-appellant Gavino's head causing him to faint and fell to the ground; she saw Salvador bloodied and prostrated on the street near Salvador's house while she, Ruby Ana and Jessa were helping accused-appellant Gavino leave the compound until they reached Geronimo St.; and, no one among them was able to ascertain the cause of the commotion.

Accused Olivar testified[21] that: Joan invited him to Ruby Ana's birthday party; he, accused Alejandria, Ruby Ana and Joan assisted and intended to take accused-appellant Gavino to a medical clinic, but they were not able to do so; and the pedicab driver asked him, accused-appellant Gavino and accused Olivar to alight from the pedicab because the police mobile patrol car was in front of them.

Accused Alejandria testified[22] that: he and accused-appellant Gavino arrived at Ruby Ana's birthday party at 10:30 o'clock in the evening; he had no motive to kill the victim Salvador because he did not know the latter; he saw Salvador for the first time when the latter was already prostrated on the ground; accused-appellant Gavino, accused Olivar and he did not stop and help Salvador because they were scared and the latter was bloodied; accused-appellant Gavino, accused Olivar and he boarded a pedicab because accused-appellant Gavino was dizzy at that time; the pedicab driver asked them to alight while they were on their way to accused-appellant Gavino's house because the police were following them; they scampered to different directions for fear that they would be implicated in the killing of Salvador; he denies that the 8 1/2 inch screwdriver confiscated by the police and allegedly tucked to his waist belongs to him, but he did not contest its inclusion in the police exhibits; he was with accused-appellant Gavino when the latter boarded and hid inside a parked jeepney; and he did not invite accused-appellant Gavino to join him in seeking refuge at his aunt's house in Vitales St. for fear that the police might easily track them down and he was thinking about his own safety.

Accused-appellant Gavino testified[23] that: he had nothing to do with the killing of Salvador because the place where the party was held is around fifty (50) and sixty (60) meters away from the place where the incident happened; upon the invitation of his friend Ruby Ana, he and accused Alejandria attended her birthday party; it was his first time to go to Geronimo St. and it was his childhood friend, accused Alejandria, who is familiar with the place; he did not know accused Olivar; Patrick was introduced to him at the party and from what he knew, Patrick lives in Maricaban; a group of men who were looking for Aries and Patrick arrived at the party; the said group hurled invectives at Aries, and Patrick who stood up and had an altercation; Ruby Ana, Jessa and Joan Villanueva tried, but were not able to pacify the group of men; Ruby Ana's cousins prevented the group of men from entering Ruby Ana's house; the group of men began hurling stones and bottles causing the people who were mostly guests to scamper; he was hit by a stone, sustained an injury on his left eye and a contusion on his head, experienced dizziness, but did not become unconscious, and fell and slumped on the ground; he was not confined at the Pasay City General Hospital; accused Olivar and Alejandria were not injured; he and accused Olivar and Alejandria did not retaliate by throwing stones and bottles; Ruby Ana, her sister, and her cousin approached him and accused Olivar and Alejandria, asked them to go home to avoid injury and being implicated in the trouble and accompanied them in going out of the Place; he noticed that Salvador, who was unknown to him at that time, was bloodied and slumped on the ground while he was being led by Ruby Ana to the corner of Geronimo St.; he and accused Olivar and Alejandria were not able to reach home; the driver of the pedicab that they had boarded asked them to alight because a group of people who started the trouble was running after them; he and accused Olivar and Alejandria parted ways; on his way home, two (2) motorcycle riding men in civilian clothes, introduced themselves as police officers, and blocked his path when he was walking on the side of C. Jose St.; he denies that

he was cornered and arrested by Mobile Patrol Car No. S-4127 driven by PO2 Daet while he was hiding under a parked passenger jeepney along the dimly lit portion of Vitales St. in Malibay, Pasay City; the police said to him, "huwag ka nang magtanong, sumama ka na lang sa amin."; he was brought to the police station in Malibay, Pasay City and was implicated in the crime; at the police station, no witnesses pointed to him as the perpetrator of the crime; he was not investigated at the police station; he and accused Olivar and Alejandria were presented for inquest before the Assistant City Prosecutor after their arrest; he did not know Salvador and he only came to know the latter's name when he was already detained; he did not know who stabbed and killed Salvador; he did not file any case against anybody because he did not know the persons who inflicted the injury on him and he could no longer attend to it by reason of his detention; and he contested his arrest but he did not file a case against the police with regard to the manner of his arrest and the fact that the Joint Affidavit of Arrest does not truthfully narrate what really transpired at the time he was arrested.

Jessa Villanueva testified[24] that: Ruby Ana is her younger sister; on July 29, 2005, she attended to Ruby Ana's visitors, around ten (10) of them, during the latter's birthday party; Ruby Ana invited accused-appellant Gavino and accused Olivar and Alejandria to her birthday party who occupied one of the two (2) tables placed outside their house; she does not know the visitors who occupied the other table outside their house; she did not invite anyone to the party, a commotion suddenly ensued in front of their house and it lasted for more than an hour; she does not know the identities of the ten (10) persons who were involved in the commotion; accused-appellant Gavino and accused Olivar and Alejandria were not involved in the commotion (hindi sila Kasali); someone in Salvador's group threw a stone at the roof of their house, it passed through a hole in the roof and accused-appellant Gavino's head; after a stone hit him, accused-appellant Gavino become dizzy, fell down and they helped him stand up; Ruby Ana pulled accused-appellant Gavino while she pulled accused Olivar and Alejandria towards their house during the commotion; they did not hide accused-appellant Gavino and accused Olivar and Alejandria in the house overnight for fear that the members of Salvador's group, who were the enemies of accused-appellant Gavino and accused Olivar and Alejandria, might also attack them; they ran, walked and led accused-appellant Gavino and accused Olivar and Alejandria outside their house at the corner of Geronimo St. after the commotion; she went home after accused-appellant Gavino and accused Olivar and Alejandria boarded a pedicab along Geronimo St.; when she went out of her house she saw Salvador bloodied, lifeless and lying on the ground along Geronimo St.; had a reputation of lording over their community (parang hari-harian po sa aming lugar) and vexing anyone who would go to their place (kada may nagpupunta sa aming hindi tagaroon, kung hindi po niya pagtitripan babastusin po niya); and accused-appellant Gavino and accused Olivar and Alejandria had no involvement in the killing of Salvador because they were inside their house and she never saw them leave during the commotion.

On May 7, 2009, the lower court rendered the assailed decision convicting accused-appellant Gavino and accused Olivar and Alejandria of the crime of Homicide.

Hence, this appeal by accused-appellant Gavino based on a sole assignment of error:

"The lower Court a quo committed a grave error in convicting accused-appellant Erdy Gavino y Arorong for the crime he never committed.:

The appeal is bereft of merit.

It is physically possible for accused-appellant Gavino to be present in the spot where the lifeless body of Salvador was found lying, considering the fact that Ruby Ana's house, where he claims to present, is around fifty (50) to sixty (60) meters away from the crime scene.

Benhero and Ibañez were able to identify accused-appellant Gavino as among those who inflicted mortal stab

wounds on Salvador. Roberto may not have seen the person who stabbed Salvador, but he saw accused-appellant Gavino as among those who gave Salvador a chase.

It is dogmatic that the positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.

For alibi to prosper, it is not enough for the accused to prove that he was elsewhere when the crime was committed, but he must also demonstrate that it would be physically impossible for him to be at the scene of the crime at the time of its commission. Further, it must be supported by the most convincing evidence since it is an inherently weak defense which can be easily fabricated.

The lower court's calibration of the credibility of witnesses should not be disturbed on appeal since the said court is in a better position to decide the question, having itself heard and observed the demeanor of the witnesses on the stand, unless it has plainly overlooked certain facts of substance and value, which, if considered, could alter and affect the result of the case.

Accused Alejandria and Olivar contradicted accused-appellant Gavino's claim when the former testified that they alighted from the pedicab when the driver told them to do so and scampered to different directions because it was the police, rather than the initiators of the trouble as alleged by accused-appellant Gavino, who were going after them. Accused-appellant Gavino was found hiding under a parked jeepney along Vitales St., Pasay City at the time of his arrest.

It is a sage observation that the flight of an accused from scene of the crime and his act of hiding himself until he is arrested are circumstances highly indicative of guilt. For, as wisely said, the "wicked flee even when no man pursueth but the righteous are as bold as a lion."

The defense presented and offered[25] testimonial evidence and no documentary exhibits during the trial and it was only on appeal that accused-appellant Gavino presented a Medico-Legal Slip²⁶ showing that he was treated at the Pasay City General Hospital on July 30, 2005 for the alleged head injury sustained by him during the commotion at the San Diego Compound.

It is basic that evidence not formally offered before the court below cannot be considered on appeal. Thus, such documents cannot be admitted, much less given probative value, in this appeal. To do so would be repugnant to the demands of justice and fair play.

The private complainant Milagros R. Salvador formally offered[27] in evidence Pilipinas Makro, Inc. receipts showing P3,282.40 and P1,117.15 as amounts paid for various grocery items, M.P.S. Food and Beverage Distributor delivery receipt showing P870.00 and P825.00 as total amounts paid for forty (40) boxes of fruit juice drinks, Rizal Funeral Homes, Inc. service contract showing the amount of P45,000.00, Manila Memorial Park Cemetery, Inc. provisional receipts showing the amounts of P16,000.00 as interment fee and P1,200.00 as marker fee and handwritten lists of expenses incurred for the flowers, transportation and food amounting to P17,061.40. Total receipted expenses amounted to P85,355.95.

When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity ex delicto for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages, when the crime was committed with one or more aggravating circumstances; and (5) temperate damages.

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the

commission of the crime. Under prevailing jurisprudence, the award of P50,000.00 to the heirs of the victim as civil indemnity is in order.

The award of temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved.

Anent moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. The award of P50,000.00 as moral damages is in order.[28]

WHEREFORE, premises considered, the appealed Decision dated May 7, 2009 of the RTC, Branch 114, Pasay City in Criminal Case No. 05-1194-CFM is hereby **AFFIRMED WITH MODIFICATION**. Accused-appellant Erdy Gavino y Arorong @ McCoy and accused Jeffrey Olivar y Mercado @ Jeff and Victor Alejandria y Mercadejas @ Dodong are **ORDERED** to pay the heirs of Eduardo Salvador y Raganit the amount of P50,000.00 as civil indemnity, P50,000.00 as moral damages and P85,355.95 as actual damages. The rest of the decision **STANDS**.

SO ORDERED.

Librea-Leagogo and Elbinias, JJ., concur.

[1] Records pp. 705-716.

[2] Records, p. 1-2.

[3] Records, pp. 30-33.

[4] Records, pp. 38-40.

[5] Records, p. 42.

[6] TSN dated November 23, 2005, December 7, 2005 and January 3, 2006.

[7] TSN dated January 12, 2006.

[8] TSN dated March 1, 2006 and April 18, 2006.

[9] TSN dated October 11, 2006 and November 8, 2006.

[10] Exhibits, pp. 10-12.

[11] Exhibits, pp. 13-16.

[12] Exhibits, p. 17.

[13] Exhibits, p. 18.

[14] Exhibits, p. 19.

[15] TSN dated November 8, 2006.

[16] TSN dated November 29, 2006.

[17] Exhibits, pp. 6 and 24.

- [18] TSN dated December 13, 2006.
- [19] Exhibits, pp. 25-27.
- [20] TSN dated June 7, 2007 and June 28, 2007.
- [21] TSN dated November 8, 2007.
- [22] TSN dated December 13, 2007 and January 30, 2008.
- [23] TSN dated April 2, 2008 and April 29, 2008.
- [24] TSN dated August 6, 2008.
- [25] Records, p. 692.
- [26] Rollo, p. 58.
- [27] Records, pp. 399-406.
- [28] People vs. Rodas, G.R. No. 175881, August 28, 2007.

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