

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO GARCIA Y GARCERA, ACCUSED-APPELLANT.

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

At bench[1] is an Appeal[2] from the May 12, 2010 Decision[3] of the Regional Trial Court, Branch 55, Irosin, Sorsogon which adjudged the guilt of accused-appellant Romeo Garcia y Garcera for the felony of Homicide.

When arraigned with the assistance of counsel for the corresponding indictment,[4] the accused reiterated his plea of innocence to the charge.[5] After the pre-trial conference,[6] trial ensued.

THE PEOPLE'S VERSION

Per Carlos Garcera's narration, around 4:30 o'clock in the morning of May 24, 1998, he and Manuel Garais slept at a waiting shed near Ester Gatón's house after they attended a fiesta. Carlos was roused from slumber when he heard Manuel scream: "ayaw son singaki" ("don't do that cousin"). Carlos, who slept two arms length from Manuel, saw accused Romeo Garcia. He observed that there was blood on the victim's body, who was lying face up while the accused was standing beside him with a bloodied bladed weapon on his hand. Out of fear, Carlos was speechless. He hurriedly fled the place after appellant left and went to the victim's father to report what transpired.[7]

On cross-examination, he conceded that he did not see appellant actually stabbing the victim but emphasized that appellant was the only person standing alongside Manuel's foot with a stained bladed weapon.[8]

Later, the victim's cadaver was examined by Dra. Rosana Barlin Galeria[9] whose findings were reflected on her necropsy report:[10]

TO WHOM IT MAY CONCERN:

This is a POST-MORTEM EXAMINATION ON the remains of MANUEL GARAIS, 35 years old, male, single and a resident of Barangay Balocaue, Matnog, Sorsogon done in front of the Municipal Hall of Matnog, 10:15 a.m. of the 24th day of May 1998, Body is in the state of rigor mortis.

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PHYSICAL FINDINGS:

ABDOMEN: Stab wound, 2x1 cm, with 6 cm. depth, located above the umbilicus.

APPROXIMATE TIME OF DEATH: more than 6 hours.

PROBABLE CAUSE OF DEATH: Hypovolemic Shock from Internal Hemorrhage secondary to stab wound.

THE VERSION FROM THE DEFENSE

For its part, the defense, presented the testimonies of Venancio Gayon, Virginia Garra, Rebecca Garcia, and the accused.

Venancio Gayon testified that on May 24, 1998, the accused was in Virginia Garra's house in Barangay Sinibaran, Matnog, Sorsogon, which was more or less ten meters away from his house.[11] When cross-examined, Venancio confirmed that the accused usually goes home to Virginia's house. He recalled that at 5:00 o'clock in the morning of May 24, 1998, he did not see the accused outside of Virginia's house when he swept his yard. He first saw the accused at 6:00 o'clock in the morning of the same day and they shared a beetle nut (mama). At about 8:00 o'clock in the morning, Venancio was surprised when he saw that the accused was arrested by members of the PNP.[12]

Virginia Garra, a resident of Sinibaran, Matnog, Sorsogon and the aunt of the defendant's wife testified that the accused was temporarily staying in her house since the end of April, 1998 because his own house was devastated by a typhoon and his child was sick. Virginia was certain that the defendant was in her house on May 24, 1998 at 4:00 o'clock in the morning because he slept there the night before. According to Virginia, the accused woke at about 5:30 to 6:00 in the morning of May 24, 1998, chewed bettel nut, then left the house to go to her mother's house.[13] During her cross-examination, Virginia clarified that appellant's prior abode in Balocawe was more than 2 kilometers away from where she resides in Siniburan, Matnog, Sorsogon and could be reached for approximately more than an hour by foot.[14] Virginia, a banana vendor by trade, recounted that on May 23, 1998 she slept at about 7:00 in the evening because she prepared "puso" or rice wrapped in coconut leaves to be sold at the pier. On May 24, 1998 she stopped selling because she assisted the accused and his wife following the defendant's arrest. Virginia also recalled that when she was about to get some sleep on the night of May 23, 1998, she saw the accused and his family were already about to sleep.[15]

Rebecca Garcia, the defendant's wife, claimed that they temporarily resided at Virginia's house in Brgy. Sinibaran because their child was sick and that she and the accused had planned to bring their ailing child to a "quack" doctor. Rebecca recounted that on May 23, 1998 at 6:00 o'clock in the evening, the accused reached Virginia's house and stayed home to take care of their sick child. On May 24, 1998, as Rebecca arrived from the poblacion, she was shocked to see the arrest of the accused.[16] When cross-examined, Rebecca revealed that she and the defendant slept at about 10:00 o'clock in the evening of May 23, 1998. She roused from slumber at 5:30 o'clock the following morning to prepare herself before going to the town proper of Matnog. She recalled that the defendant was already awake by the time she woke as he was taking care of their sick child.[17]

Romeo Garcia also sat on the witness stand and declared that in May, 1998, he had been residing for one month at Virginia's house in Brgy. Sinibaran. Per his approximation, the distance from Sinibaran to Balocawe, if one will pass the poblacion from Balocawe, was 2 kilometers and the distance from the poblacion to Sinibaran was another 2 kilometers; that in walking to Balocawe from Sinibaran, one will pass a hilly portion. He recounted that in the morning of May 23, 1998, he went to Brgy. Balocawe to attend to his carabao. In the evening, he slept at about 9:00 o'clock and woke at 6:00 o'clock in the morning of May 24, 1998. He remained in Brgy. Sinibaran with his family until May 24, 1998.[18] On cross-examination, the accused admitted that while he was residing in Virginia's house, he would sometimes also stay at his house located in the upper mountain part of Brgy. Balocawe because he had work in that place; that the distance from his house in Brgy. Balocawe was 1 ½ kilometers away from where the Manuel was stabbed; and that it would take him 5 hours by foot from Virginia's house in Brgy. Sinibaran to Brgy Balocawe if he will pass the hilly mountain.[19]

The accused further testified that on May 23, 1998, he left the house of Virginia at 7:00 o'clock in the morning

and reached the upper portion of Brgy. Balocawe at about 10:00 o'clock in the morning for his carabao. Later, he went to the center of Balocawe to buy cigarette. At about 12:00 o'clock in the afternoon, he also attended a fiesta celebration in Brgy. Calibag, Matnog, Sorsogon upon a friend's invitation. He left the party at about 3:00 o'clock in the afternoon to go home. He also passed by and ate at the residence of Ester Gatón, who, at the time, was celebrating her son's birthday. At about 5:00 o'clock in the afternoon he went home to Sinibaran aboard a tricycle. He arrived at Virginia's house in Sinibaran at past 6:00 o'clock in the evening.[20]

After trial on the merits, the court a quo rendered its decision, the dispositive portion of which disposition reads:[21]

“WHEREFORE, premises considered, accused ROMEO GARCIA having been found GUILTY beyond reasonable doubt of the offense of HOMICIDE defined and penalized in Article 249 of the Revised Penal Code as amended, absent any mitigating or aggravating circumstance, he is hereby sentenced to suffer the indeterminate penalty of Ten (10) years and One (1) day of Prison Mayor, as Minimum, to Seventeen (17) years and Four (4) months of Reclusion Temporal, as Maximum, and to indemnify the heirs of the deceased Manuel Garais in the amount of Php 7,500.00 as actual damages; another Php 50,000.00 as civil indemnity for his death, and also Php 50,000.00 as moral damages. And to pay costs. (Emphasis Supplied)

SO ORDERED.”

Appellant now interposed the present appeal where he invoked alibi as a defense.[22]

He argued that he was at home in Brgy. Sinibaran, which was two to three kilometers from the locus criminis in Brgy. Balocawe, at the time of the stabbing incident.[23] He likewise challenged the trial court's reliance on the testimony of Carlos given the delay in the execution of his sworn statement only in October, 1998 or some four months after the stabbing incident.[24] He also questioned Carlos' identification of him because: (1) the prosecution failed to prove if the place where the stabbing incident transpired was well-lighted, which fact was crucial considering that the incident occurred at around 4:30 o'clock in the morning; and (2) Carlos was intoxicated at the time of the incident which condition precluded identification of the person who stabbed Manuel.[25]

For the appellee, the Office of the Solicitor General (OSG) argued that appellant's guilt was proven beyond reasonable doubt and prayed for the affirmance in toto of the appellant's judgment of conviction.[26]

We can hardly agree with appellant's submissions on appeal.

Elements of Homicide Established

To reiterate, appellant was charged with, and convicted for Homicide under Article 249 of the Revised Penal Code:

Art. 249-Homicide- Any person, who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article shall be deemed guilty of homicide and be punished by reclusion temporal.

For a successful prosecution relative to homicide, it is crucial to establish:[27] (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.

All these elements are obtaining and duly established in this case.

First, it was established per Dra. Galeria's necropsy report[28] that Manuel was killed by a stab wound above his

umbilicus:[29]

Atty. Gojol:

Q:

On said date May 24, 1998, have you come across or examine (sic) a person by the name of Manuel Garais?

A:

I did not know the victim personally but the police rold (sic) me to examine the body of one called Manuel Garais.

Q:

Did you actually examine the body of Manuel Garias?

A:

Yes.

Q:

Attached to the record of this case particularly on page 17 thereof is a necropsy report issued by Dr. Rosanna Galeria, would you please look over the same and tell us if that is the necropsy report you prepared?

A:

Yes, this is my report.

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Q:

You said that the person you examined is Manuel Garais as told to you by the policemen. Could you describe to us the condition of that person now subject of this necropsy report at the time you came upon him for the purposed of examination?

A:

The body I saw at that time was in the state of rigor mortis with stab wound 2x1 cm. deep with 6 cm. depth located above the umbilicus.

Q:

Could you explain to us what is meant by in the state of rigor mortis?

A:

Rigor mortis is the state of the body when death have occurred more than 3-6 hours, when the body or muscles is rigid.

Q:

You mean to tell us that Manuel Garais is already dead?

A:

Yes.

Q:

And your physical findings states abdomen stab wound, 2x1 cm. 6 cm. depth, will you again explain in layman's parlance this finding?

A:

I examined the body with stab wound 2x1 cm horizontal, the depth is 6cm. located above the umbilicus. It means weapons that is narrow was used on the victim (sic) will cause the (sic) death . The 6 cm. depth which is around 2 ½ inches narrow and long.

Q:

What is the other term of umbilicus which is the location of the stab wound, what part of the body?

A:

If you divide the abdomen into four, it is near the center.

Q:

That is where the stab wound is located?

A:

Yes.

Q:

Based on this findings, what could have cause this stab wound, 2x1cm. with 6cm depth?

A:

It could be caused by a narrow and long sharp instrument.

Q:

Could it be a knife or a balisong in local parlance?

A:

May be.

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Q:

We would like to request that the physical findings be marked as Exh. A-2 and the portion of the necropsy report started after the finding from the words approximate time of death” “more than 6 hours” probable cause of death”, please explain in laymans (sic) terms this finding?

A:

Because of the wound in the abdomen there was a massive hemorrhage which cause the hypovolemic shock. Approximate time of death more than 6 hours. Probable cause of death- hypovolemic shock from internal hemorrhage secondary to stab wound.

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QUESTION BY THE COURT:

Q:

What could have caused that inadequate blood supply?

A:

May be puncturing of the intestines (sic) puncturing of the major arteries in the abdomen

Q:

When you said hypovolemic shock it can be likened to internal hemorrhage?

A:

It could be the cause of internal hemorrhage

Q:

This internal hemorrhage is the approximate result of the stab wound?

A:

Yes.

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The necropsy report also jibed with the recollection from Carlos insofar as specific details of the crime: the location of the stab wound, i.e. at the victim's umbilicus area, and the possible use of a balisong that could have caused the victim's wound. Per Carlo's recollection of the fatal incident, he described the commission of the felony:[30]

DIRECT EXAMINATION BY ATTY. GOJOL

Q:

Mr. witness, you said that you are a resident of Balocawe, Matnog. On May 24, 1998, were you already a resident of Balocawe?

A:

Yes.

Q:

On said date May 24, 1998 at around 4:30 a.m. do you remember where you were?

A:

We were then at the waiting shed.

Q:

That waiting shed where was it situated?

A:

Near the house of Ester Gaton.

Q:

In what brgy. is that house of Ester Gaton?

A:

Balocawe.

Q:

When you said we, who was your companion or companions at that time?

A:

Manuel Garais.

Q:

What were you and Manuel Garais doing if any on the said time and date at 4:30 a.m. of May 24, 1998?

A:

We were sleeping there at the waiting shed because previous to that we attended fiesta.

Q:

While you and your companion Manuel Garais were sleeping in that waiting shed on May 24, 1998, do you recall of any unusual incident that took place?

A:

Yes, I remember one.

Q:

Tell us what is that incident

A:

While I was sleeping I heard a shout “ayaw son singaki” “dont do that cousin”

Atty. Gojar:

I would like to to request that the answer given by the witness “ayaw son singaki” be given the proper interpretation by the court interpreter.

Interpreter:

“dont do that cousin.”

Q:

After you heard the shout “ayaw son singaki,” what did you do if any?

A:

After I was awoken (sic) I saw Romeo Garcia carrying (sic) bladed weapon.

Q:

From whom is that shout?

A:

Manuel Garais.

Q:

In relation to the place where you were sleeping that time (sic) early morning of May 24, 1998 around 4:30 a.m. where was or where did Manuel Garais position himself?

A:

We were sleeping on the opposite bench (witness indicating the distance of only one meter from the witness chair.)

Q:

Will point to us again Mr. witness your relative position to Manuel Garais when you said you were then sleeping at the waiting shed at that early morning particularly when you heard him shout “ayaw son singaki?”

A:

(witness pointed the distance about two arms length more or less.)

Q:

You said that upon hearing the shout “ayaw son singaki” you saw Romeo Garcia with a weapon. Indicate to us or tell us the relative position of Romeo Garcia when you saw him with the weapon upon hearing the shout of Manuel Garais “ayaw son singaki?”

A:

He was standing beside the foot of Manuel Garais.

Q:

What was the position of Manuel Garais when you heard the shout “ayaw son singaki” and when you saw Romeo Garcia standing at the foot of Manuel Garais?

A:

He was lying face up.

Q:

What if any did you observe in the body of Manuel Garais?

A:

What I observed there was blood in his body.

Q:

You said you saw Romeo Garcia with the weapon what kind of weapon did he hold?

A:

The weapon that I saw is like a balisong.

Q:

After you were awoken (sic) and saw Romeo Garais on that situation you pictured to us, what happened next, if any?

A:

What I did when Romeo Garcia left (sic) I also left because I was afraid.

Q:

If this Romeo Garcia, you mentioned to us is around in court, would you be able to point at him?

A:

Yes.

Q:

Kindly do so Mr. Witness?

A:

(As pointed to by the witness and when asked of his name answered to the name of Romeo Garcia)

Q:

You said that after Romeo Garcia left you also left, where did you proceed?

A:

I told the parents of Manuel Garais what happened to their son.

Q:

Who in particular among the parents of ... were you able to see or met any of the parents of Manuel Garais?

A:

Yes.

Q:

Who among the parents of Manuel Garais?

A:

Delfin Garais.

Q:

Upon seeing or meeting the father of Manuel Garais, what happened next or what did you tell him?

A:

I told the father of Manuel Garais that his son was stabbed at the waiting shed. We went there.

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Q:

Apart from your testimony that you saw Romeo Garcia on the date of the incident, do you know Romeo Garcia before the incident?

A:

I know him because we were first cousins.

Q:

Before you left scene did you verify in what part of the body was Manuel Garais hit?

A:

Umbilical cord there was blood oozing from that part toward the left.

Q:

You said you heard Manuel Garais shouted “ayaw son singaki”, do you know who was that person who was shouting at “ayaw son singaki?”

A:

It was directed to Romeo Garcia we were cousins.

Manuel's death was likewise corroborated by the submission of his death certificate[31] in court and its subsequent identification by Jorge Garrido, an employee of the Local Civil Registrar of Matnog, Sorsogon.[32]

Second, Carlos positively identified appellant as the person who, in the early morning of May 24, 1998, stood beside Manuel's foot with what looked like a bloodied balisong on his hand.[33] Carlos recognized appellant because appellant was standing beside the foot of Manuel, who was sleeping about two arms length from Carlos when he heard the victim shout: “ayaw son singaki,”[34] amidst the light from Ester Gaton's house, which was two arms length from the locus criminis.[35] Moreover, appellant was known to him because, like Manuel, they were first cousins.[36]

Although Carlos did not witness the actual killing, pieces of circumstantial evidence[37] led to the logical

conclusion that it was appellant who committed the offense:

1.

Carlos testified that on May 24, 1998 at 4:30 o'clock in the morning, he and Manuel slept at the waiting shed after they attended a fiesta;

2.

While asleep, Carlos suddenly heard Manuel shout "ayaw son singaki" ("don't do that cousin");

3.

When he woke from slumber, Carlos saw Romeo Garcia carrying a bloodied bladed weapon and standing beside Manuel's foot;

4.

He saw blood oozing from the left side of Manuel's stomach; and

5.

Upon seeing Romeo leave, Carlos also left the place out of fear and proceeded to report the incident to Manuel's parents.

Contrary to appellant's stance, there was no cogent reason to deviate from the trial court's reliance on the eyewitness testimony of Carlos sans clear and concrete evidence rebutting the trial court's assessment and evaluation of Carlos' credibility as a witness. Well-settled is the rule that "the testimony of a lone prosecution witness, as long as positive and clear and not a result of improper motive to impute a serious offense against the accused, deserves full faith and credit." It is sufficient to prove the guilt of the accused beyond reasonable doubt.[38]

Withal, it was not established that Carlos was motivated by ill-will to falsely testify against appellant, who, like the victim, was his first-cousin and, which relationship aptly explained the 5-month interval it took Carlos in executing a sworn statement which underscored appellant as the perpetrator of the crime.[39] In any case, there is no rule that the suspect in a crime should be hurriedly named by a witness.[40]

Lastly, appellant's intent to kill can be presumed from the victim's death[41] and there were neither justifying circumstances[42] nor any of the qualifying circumstances for murder, parricide, and infanticide that attended the victim's killing.

Regarding appellant's alibi and denial, these exculpations were far from persuasive. It is well-entrenched that alibi and denial are inherently weak and have always been viewed with disfavor by the courts due to the facility with which they can be concocted. Alibi, the plea of having been elsewhere from the scene of the crime at the time of the commission of the felony, is a plausible excuse for the accused. Let there be no mistake about it. Contrary to the common notion, alibi is, in fact, a good defense. But, to be valid for purposes of exoneration from a criminal charge, the defense of alibi must be such that it would have been physically impossible for the person

charged with the crime to be at the locus criminis at the time of its commission, the reason being that no person can be in two places at the same time. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused's presence at the crime scene, the alibi will not hold water.[43]

However, the record did not disclose that it was physically impossible for appellant to be at the locus criminis when the crime occurred. In his appeal brief, appellant declared that at the time the crime was committed, he was at home in Brgy. Sinibaran, which was 2 to 3 kilometers away from the locus criminis in Brgy Balocawe[44] and, which distance, per his direct testimony can be negotiated by walking thusly:[45]

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Q:

From Brgy Sinibaran before you reach Brgy Balocawe you have to ride a banca or you can reach Balocawe by walking?

A:

It could be reached by walking but you will be passing hilly portion.

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Moreover, in his cross examination, appellant testified that the distance from Brgy. Balocawe to Brgy. Sinabalan can be quickly navigated by taking a shortcut and riding a tricycle:[46]

Cross-examination by Pros. Diaz:

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Q:

How many minutes you took by foot from Sinibaran in the house of Virginia Garra to the place of the incident that took place in the waiting shed?

A:

Maybe 5 hours.

Q:

Are you sure it will take you 5 hours?

A:

It is only my estimate.

xxx

Q:

You said that the distance of Virginia Garra's residence to Balocawe it could be reached by how many hours, 5 hours or 1 hour?

A:

Maybe 5 hours by passing the mountain portion.

Q:

On this May 23, 1998, you took a tricycle in going to Sinibaran and it only took you how many minutes when you left at the house of Ester Gatton at Balocawe?

A:

Maybe less than an hour.

Q:

So in other words just very near of Ester Gatton's house where you were living in the house (sic) of Virginia Garra at Sinibaran is just very near (sic) particularly in the house of Ester Gatton

A:

No sir, it is far.

Q:

But you stated a while ago, Mr. Witness, the house of Virginia Garra where you were staying and the house of Ester Gatton at Balocawe can only be reached less than an hour, which is now correct your statement a while ago or your statement now?

A:

If you will be passing thru the mountain it is far but if you will be riding a tricycle passing the road at Sinibaran from Balocawe (sic)

Q:

In your ordinary walk in going to the house of Virginia Garra it is near if you short cut?

A:

Yes, sir.

Q:

In fact on May 23, 1998 you choice (sic) the short cut (sic) the easiest way in returning to the house of Virginia Garra at Sinibaran from Balocawe, correct?

A:

Yes, sir because during that time my son was sick.

If in *People v. Barona et.al*[47], a distance of about five kilometers between the scene of the crime and the whereabouts of the accused was not considered as to negate physical presence at the scene of the crime, then appellant's assertion that his residence was 2 or 3 kilometers from the locus criminis,[48] which distance can be negotiated by walking[49] or by passing a short cut road aboard a tricycle,[50] can negate his defense of alibi.

THE PENALTY

Under Section 1 of the Indeterminate Sentence Law, the court, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, is mandated to prescribe an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code, and the minimum term shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense.[51] The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal.[52]

Sans any aggravating and mitigating circumstance, the penalty shall be imposed in its medium period,[53] which has a range of 14 years, 8 months and 1 day to 17 years and 4 months. The minimum term to be imposed on the appellant shall be taken within the range of the penalty next lower than that provided by the Revised Penal Code, which is prision mayor, the range of which is from 6 years and 1 day to 12 years.

Thus, for the crime of homicide as penalized under Article 249 of the Revised Penal Code in Criminal Case No. 1316 appellant shall suffer the indeterminate sentence of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum.

Lastly, for the victim's death resulting from the crime, the heirs are entitled to the following awards: (1) civil indemnity ex delicto for the death of the victim; (2) moral damages; and (3) actual or compensatory damages.

In cases of murder and homicide, civil indemnity of P75,000.00 and moral damages of P50,000.00 are awarded automatically. Indeed, such awards are mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of murder or homicide.[54]

The victim's heirs should likewise be awarded actual damages. To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts.[55] As per receipts submitted by the victim's father,[56] the victim's heirs are entitled to the amount of P7,500.00 representing actual expenses for the services rendered by RC Labalan Memorial Homes.[57]

WHEREFORE, premises considered, the appealed Decision of the Regional Trial Court (RTC), Branch 55, Irosin, Sorsogon in Criminal Case No. 1316 is hereby **AFFIRMED** with the **MODIFICATION** for the accused- appellant to pay the heirs of Manuel Garais the following sums:

(1)

P75,000.00 as indemnity for the death of Manuel Garais;

(2)

P7,500.00 as actual damages; and

(3)

P50,000.00 as moral damages.

SO ORDERED.

De Leon, (Chairperson) and Cruz, JJ., concur.

[1] Initially raffled to Justice Tolentino on May 9, 2012 and re-raffled to Justice Peralta, Jr. on June 4, 2013. The Office received the Rollo on October 23, 2013, back of p. 103.

[2] Notice of Appeal dated May 31, 2010, Record, page 259.

[3] Rollo, pp. 46-65.

[4] Record, page.1

“That on or about the 24[th] day of May, 1998, at about 4:30 in the morning, at Barangay Balocawe, Municipality of Matnog, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a fan knife (Balisong) with intent to kill, did then and there willfully, unlawfully and feloniously, attack, assault and stab one Manuel Garais thereby inflicting upon him (sic) mortal wound on his abdomen which directly caused his death, to the damage and prejudice of his legal heirs contrary to law.”

[5] Per Order dated July 15 1999, Record, page 56.

[6] Pre-trial Order dated December 9, 1999, Record, page 73.

[7] Record, TSN, May 18, 2000, pp. 6-7.

[8] Record, TSN, May 18, 2000, pp. 6, 11-12.

[9] Record, TSN, March 2, 2000, page 4.

[10] Record, page 17, marked as Exhibits A, A-2 and A-1.

[11] Record, TSN, August 31, 2006, page 3.

[12] Record, TSN, August 31, 2006, pp. 4-7.

[13] Record, TSN, July 26, 2007, pp. 2-4.

[14] Record, TSN, July 26, 2007, pp. 6-7.

[15] Record, TSN, July 26, 2007, pp. 8-10.

[16] Record, TSN, August 28, 2008, pp. 3-4.

[17] Record, TSN, August 28, 2008, pp. 9-10.

[18] Record, TSN, November 29, 2007, pp. 3-4.

[19] Record, TSN, November 29, 2007, pp. 5-7, 12.

[20] Record, TSN, November 29, 2007, pp. 8-12.

[21] Rollo, page 65.

[22] Rollo, page 41.

[23] Rollo, page 40.

[24] Rollo, page 41.

[25] Rollo, pp. 43-44.

[26] Rollo, pp. 91-95.

[27] *Nerpio v. People*, G.R. No. 155153, July 24, 2007.

[28] Record, page 17.

[29] Record, TSN, March 2, 2000, pp. 4-6; pp. 8-9.

[30] Record, TSN May 18, 2000, pp. 5-8.

[31] Record, page 168.

[32] Record, TSN, May 18, 2000, pp. 2-4.

[33] Record, TSN, May, 18, 2000, pp. 6-7, 12.

[34] Record, TSN, May 18, 2000, page 6.

[35] Record, TSN, May 18, 2000, page 10

[36] Record, TSN, May 18, 2000, page 8.

[37] Rule 133, Section 4, Revised Rules on Evidence:

SEC. 4. Circumstantial evidence, when sufficient:

- Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstances;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all circumstances is such as to produce a conviction beyond reasonable doubt.

[38] *People v. Pambid*, G.R. No. 192237, January 26, 2011.

[39] Record, TSN, May 18, 2000, page 14; *People v. Hilot and Bihag, Jr.*, G.R. No. 129532, October 5, 2000, “delay of a witness in reporting the crime to police authorities, when adequately explained, does not impair the witness’ credibility nor render his testimony biased or destroy its probative value. Fear of reprisal, death threats, the resulting mental shock or disturbance as a result of having experienced or witnessed a violent crime, and even a natural reluctance not to be involved in a criminal case have been accepted as adequate explanations for the delay in reporting crimes.”

[40] *People v. Hilot and Bihag, Jr.*, G.R. No. 129532, October 5, 2000.

[41] *People v. Gemoya, et. al*, G.R. No. 132633, October 4, 2000 “The intent to kill is likewise presumed from the fact of death, unless the accused proves by convincing evidence that any of the justifying circumstances in Article 11 or any of the exempting circumstances in Article 12, both of the Revised Penal Code, is present.”

[42] *People v. Gemoya, et. al.*, G.R. No. 132633, October 4, 2000.

[43] *People v. Florentino Bracamonte et.,al*, G.R. No. 95939, June 17, 1996.

[44] Rollo, page 40.

[45] Record, TSN, November 29, 2007, page 3.

[46] Record, TSN. November 29, 2007, pp. 7, 12-13

[47] G.R. No. 119595. January 25, 2000.

[48] Appellant's Brief, Rollo, page 40.

[49] Record, TSN, November 29, 2007, page 3.

[50] Record, TSN, November 29, 2007, pp. 12-13.

[51] Talampas v. People, G.R. No. 180219, November 23, 2011.

[52] Art. 249. Homicide - Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[53] People v. Beduya, et.,al, G.R. No. 175315, August 9, 2010, "Since there are no mitigating or aggravating circumstances, the penalty should be fixed in its medium period." See also Revised Penal Code, Article 64 (1):

Art. 64. Rules for the application of penalties which contain three periods.- In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.
2. xxx

[54] People v. Lucero, G.R. No. 179044, December 6, 2010.

[55] BF Metal v. (Corporation) v. Spouses Lomotan and Rico Umuyon, G.R. No.170813, April 16, 2008.

[56] Record, pp. 107-108.

[57] Record, page 167.

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