

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO B. AQUINO, ACCUSED-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

The Case

This is an Appeal[1] from the Judgment[2] dated June 26, 2008 of the Regional Trial Court (RTC), Branch 18, Cebu City in Criminal Case No. CBU-62576 finding accused-appellant Danilo B. Aquino guilty of homicide and sentencing him to an indeterminate penalty of imprisonment from ten years and eight months of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum, and ordering him to pay the heirs of the victim the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity.

The Facts

In an Information[3] dated March 14, 2002, accused-appellant Danilo B. Aquino was charged with the crime of Robbery with Homicide allegedly committed as follows:

“That on or about the 2[nd] day of January 2002, at about 1:00 o'clock in the afternoon, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then the driver of Richielda taxi with Plate No. GWA 826, armed with an unlicensed firearm of undetermined caliber, did then and there willfully, unlawfully and feloniously, with intent of [sic] gain and by means of violence against or intimidation of persons, take, steal and carry away from the person of one Emerita F. Magno, who was then his passenger, cash in the amount of P30,000.00, to the damage and prejudice of the latter in the aforesaid amount; that by reason and on the occasion of the said robbery, the herein accused did then and there willfully, unlawfully and feloniously, with intent to kill, treacherously attack, assault and use personal violence upon said Emerita F. Magno, by then and there shooting her several times with the use of the unlicensed firearm, hitting her on the different parts of her body, thereby inflicting upon her multiple mortal gunshot wounds as a consequence of which said Emerita F. Magno died few days thereafter.

CONTRARY TO LAW.”

During accused-appellant's arraignment[4] on April 19, 2005, he pleaded not guilty of the crime charged. Thereafter, trial on the merits followed.

The Version of the Prosecution[5]

On January 2, 2002, at about 10:00 o'clock in the morning, Evelyn Magno and her mother, the victim Emerita Magno, went to SM Department Store, Cebu City, to buy groceries for the birthday celebration of Mr. Magno. After buying groceries, at around 12:00 o'clock noon, Evelyn accompanied her mother to the taxi stand near Sheraton Hotel. Only Emerita boarded the taxi while Evelyn stayed behind to buy a gift for her father. Evelyn was certain that her mother was alone with the driver at the time the taxicab left.

After buying the gift for her father, Evelyn Magno went home to assist in preparing food for the party. Upon

arriving home, Evelyn's brother asked her where their mother was. Evelyn was surprised to find out that their mother had not arrived home yet. She told her brother that their mother went home right away after buying the groceries.

Meanwhile, at about 1:30 o'clock in the afternoon of even date, SPO1 Celso Gabunada, who was assigned at Police Station 11 in Mambaling Police Station, Cebu City, was having lunch when a motorcycle driver informed him that a woman covered with blood was dumped on a cliff near the Bagong Buhay Rehabilitation Center. Upon learning such information, SPO1 Gabunada immediately responded and proceeded to the place. Along the way, he met a Richielda taxi with body No. 72.

When SPO1 Gabunada reached the place as stated by the motorcycle driver, he saw a woman covered with blood holding on to a small tree. Upon inquiry, the victim told him that she was shot several times and was robbed by the driver of a Richielda taxi with body No. 72. The victim said that the taxi driver had curly hair and was sporting a beard.

The victim was brought to the Don Vicente Sotto Memorial Medical Center where she was taken to the emergency room. SPO1 Gabunada then called up the office of the Theft and Robbery Section in Camp Sotero Cabahug, Gorordo Avenue, Cebu City, and reported the incident.

A security guard of the Don Vicente Sotto Memorial Medical Center then called up Evelyn Magno to inform her of what had happened to her mother, Emerita Magno. Worried about her mother, Evelyn Magno hurriedly went to the said hospital. Upon reaching the hospital, Evelyn saw her mother covered with blood. However, she was able to talk to her mother, who told her that she was robbed by a taxi driver. Emerita further told her daughter that had she not pretended to be dead, the taxi driver might have killed her. Evelyn noticed the presence of policemen at the hospital but she did not pay attention to them.

Shortly after reporting the robbery incident, SPO2 Edgardo Galado and SPO1 Elmo Rosales arrived at the hospital. SPO1 Gabunada informed them that the victim identified the driver of a Richielda taxi with body No. 72 as her assailant. After receiving such information, SPO2 Galado and SPO1 Rosales left the hospital and conducted a follow-up operation. They were able to trace the identity of the taxi driver as accused-appellant Danilo Aquino through Richard Cabucos, the owner of the Richielda taxi. Mr. Cabucos also gave the police officers a copy of accused-appellant's bio-data and the trip ticket for Richielda taxi with body No. 72, which accused-appellant signed on that day.

Forthwith, SPO2 Galado and SPO1 Rosales proceeded to Candarong, Pulangbato, Cebu City, the address indicated in accused-appellant's bio-data. When they reached the place, the wife of accused-appellant informed them that the latter left the house early in the morning and had not returned since then. They went back to the taxi company's office and requested the owner to contact accused-appellant. Accused-appellant replied and promised to be at the garage by 6:00 o'clock in the evening since he was still in Mandaue, reclamation area. However, accused-appellant never showed up at the garage.

Later that evening, SPO2 Galado and SPO1 Rosales gathered information from the taxicab owner that accused-appellant made a radio call that he was on his way to Waterfront Hotel to pick-up a passenger in Lahug. The police officers immediately proceeded to the place but before reaching the hotel, they found the Richielda taxi with body No. 72 abandoned in front of Camp Arcadio Maxilom, Salinas Drive, Lahug, Cebu City. After finding the taxi, they brought it to Camp Sotero Cabahug. They found bloodstains at the back of the driver's seat and saw three holes on the left side which they suspected to be bullet holes. The police officers also found two seat covers with bloodstains in the baggage compartment of the said taxicab. Thereafter, the police officers made a letter-request and submitted the taxi unit and the seat covers to the PNP Crime Laboratory for physical

examination.

The following day, the police officers learned that the victim was transferred to Perpetual Succor Hospital. They went to the hospital to show to the victim the picture of the taxi driver. The victim, who was still conscious at that time, positively identified the person in the picture as the one who robbed and shot her. Consequently, the police officers made a follow-up operation in different places where accused-appellant might probably be located but to no avail.

Four (4) days later or on January 6, 2002, the victim died at the Perpetual Succor Hospital due to complication of pulmonary-cardio arrest caused by the gunshot wounds.

Several days later, a criminal complaint was filed against accused-appellant Danilo Aquino. About two (2) years after the commission of the crime, accused-appellant was finally arrested somewhere in Bogo, Cebu, by police operatives of Mandaue City.

The evidence for the prosecution were the testimonies of the following: SPO1 Celso Gabunada, SPO1 Elmo Yanzon Rosales, SPO2 Edgardo Galado, Jude Daniel Mendoza and Richard Cabucos. The victim's daughter Maria Evelyn Magno was also presented as rebuttal witness.

Documentary evidence[6] included the following:

1. Exhibit A – Front page of Super Balita issue of January 4, 2002 showing the photographs of Danilo Aquino and the Richielda taxicab;
2. Exhibit B – the picture of the accused-appellant;
3. Exhibit C – Letter-request from the Chief of the Theft and Robbery Section (TRS), Cebu City Police Office;
4. Exhibit D – Medico-Legal Report No. S-038-2002;
5. Exhibit E – Seat cover of the Richielda taxi;
6. Exhibit F – another seat cover of the Richielda taxi;
7. Exhibit G – Bio-data of the accused-appellant on file with the management of Richielda taxi; and
8. Exhibit H - Richielda taxi remittance sheet.

The Version of the Accused-Appellant[7]

In his defense, accused-appellant Danilo Aquino denied the accusation against him. He claimed that on January 2, 2002, he was flagged down by two (2) passengers, a male and a female person at the vicinity of SM City Cebu. While inside his taxicab, the two (2) passengers were arguing about money. He overheard the male person pressing the female passenger for payment to their "boss."

While passing the North Reclamation Area heading for Mandaue City, the male passenger kept grabbing the bag of the female passenger, who refused to let go of the same. All of a sudden, accused-appellant heard gunshots being fired inside the taxicab. Immediately, he applied the brakes and saw through the taxicab's rear view mirror the female passenger already slumped to her side. Subsequently, the male passenger poked his firearm at the accused-appellant and ordered him to turn off the radio communication of the taxicab and to lock the doors. Out of fear for his life, accused-appellant obliged and proceeded to Kalunasan, Cebu City per instruction from the male passenger. Upon arriving at a hilly portion of Kalunasan, accused-appellant was instructed to park the taxicab alongside a cliff, whereupon the male passenger kicked the woman out and the latter fell down the cliff.

The male passenger then instructed the accused-appellant to proceed to the gasoline station at the corner of Banawa and Guadalupe, where the former disembarked. Such male passenger also warned the accused-appellant not to report what he had just witnessed to the police authorities, lest something bad will happen to him. He was also instructed to act as if he had not seen or heard anything about the incident.

Once the accused-appellant was alone, he drove aimlessly, until he reached the vicinity of the Redemptorist Church where he drank water and calmed his nerves. He continued driving and upon reaching Mandaue City, another driver from the same taxicab company informed him that all units were called back to the company's premises because of an emergency. The other taxicab driver also asked accused-appellant whether his radio was not functioning as he was the only one who did not respond to the call. Thus, accused-appellant called up their base and was informed by the owner that a woman was looking for him. He drove back to the company's office; however, he dropped by his mother's house, where he was informed that his grandmother in Butuan died and that they were to go there the following day. Such news made him even more confused as to what to do.

While proceeding to the company's office, he heard from the radio that a woman was robbed by a taxi driver and that he was the principal suspect of the crime. Shocked, accused-appellant stopped near the vicinity of Waterfront Hotel in Lahug and thought about the woman who was allegedly looking for him at the company's garage. It occurred to him that this woman might be a companion of his earlier passengers, whom he believed to be members of a syndicate. He was filled with fear for his life as he was the only witness to the killing incident. Thus, accused-appellant decided to abandon his taxicab and immediately went home. He then travelled to Butuan the following day for his grandmother's burial. It was in Butuan that he stayed out of fear, as he was already a wanted person.

While attending the burial of a friend's relative in Kawit, Medellin, Cebu, accused-appellant was arrested by the police and brought to the Bagong Buhay Rehabilitation Center (BBRC) in Cebu City.

After a few weeks inside the jail facility, he met an inmate who appeared to be strikingly similar to the male passenger who shot the victim. He confronted the inmate and learned that indeed he was his male passenger who shot Emerita Magno on that fateful day of January 2, 2002.

After several days, the male passenger whose real name was Reynaldo Palma, spoke with the accused-appellant regarding his disturbed conscience and then offered to help the latter in whatever way he could to clear accused-appellant's name.

Due to this circumstance, the defense filed an Urgent Motion for Reinvestigation with the trial court.[8] In an Order[9] dated November 30, 2004, the case was remanded to the Office of the City Prosecutor for reinvestigation and the latter was also required to submit a report within thirty (30) days from notice. In the Reinvestigation Report,[10] the assigned prosecutor posited that the matter is part of the accused-appellant's defense which is subject to the court's appraisal and determination. The role of the Office of the City Prosecutor was only to determine the existence of probable cause, which was present in this particular case.

During the course of the proceedings before the lower court, Reynaldo Palma was presented as witness by the defense. In open court, he confessed committing the crime imputed against the accused-appellant because he was bothered by his conscience.

The evidence for the defense were the testimonies of accused-appellant Danilo Aquino and that of the self-confessed perpetrator Reynaldo Palma. Their documentary evidence[11] was only Exhibit 1 – Joint Affidavit of the police officers.

The Ruling of the Regional Trial Court

In a Judgment[12] dated June 26, 2008, the Regional Trial Court, Seventh (7th) Judicial Region, Branch 18, Cebu City found no basis for the crime of robbery against the accused-appellant, as no witness corroborated the victim's claim that she had cash in her possession and it was taken by herein accused-appellant. However, the lower court found the said accused-appellant guilty beyond reasonable doubt of the crime of homicide. The decretal portion of the judgment reads:

“WHEREFORE, on the basis of the foregoing considerations, accused is hereby adjudged GUILTY of the crime of Homicide and in the absence of any aggravating and mitigating circumstances sentences him to an indeterminate penalty of from [sic] ten years and eight months of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum.

He is likewise ordered to pay the heirs of the victim the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity.

SO ORDERED.”[13]

Aggrieved with the judgment, accused-appellant Danilo Aquino interposed this appeal and assigned the following errors, to wit:

I.

THE LOWER COURT ERRED IN CONCLUDING FOR A FACT THAT HEREIN ACCUSED-APPELLANT WAS THE PERPETRATOR OF THE CRIME.

II.

THE LOWER COURT ERRED IN APPRECIATING CIRCUMSTANTIAL EVIDENCE TO CONVICT HEREIN ACCUSED-APPELLANT.

III.

THE LOWER COURT ERRED IN APPLYING THE RULE ON "RES GESTAE" IN CONVICTING THE ACCUSED-APPELLANT.

IV.

THE LOWER COURT ERRED IN NOT APPRECIATING THE OPEN COURT ADMISSION OF REYNALDO PALMA AS THE PERPETRATOR OF THE CRIME.

V.

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT AS THERE IS MORE THAN REASONABLE DOUBT THAT HE HAD COMMITTED THE CRIME.

A synthesis of the foregoing errors require Us to look into the issues of whether or not the trial court correctly ruled: (1) in refusing to give weight to the admission of self-confessed killer Reynaldo Palma; and (2) in convicting accused-appellant based on circumstantial evidence and res gestae.

The Ruling of this Court

The appeal is without merit.

We discuss the issues ad seriatim.

Accused-appellant puts forward Reynaldo Palma's confession in which the latter owned up the commission of the crime. Accused-appellant posited that Reynaldo Palma's voluntary and open-court confession casted more than

just reasonable doubt on his guilt as the victim's killer.

Unfortunately, We find Reynaldo Palma's confession to be without any persuasive value.

In the case of *People v. Valdemoro*,^[14] it was held that a confession must inspire credibility in order for it to serve as a basis for the acquittal of another. It must not be improbable nor excite disbelief and must be one which the normal experience of mankind can accept as within the realm of probability.^[15] Reynaldo Palma's confession noticeably fell short of these exacting criteria. We readily noticed the inconsistencies that marred his testimony and this alerted Us to cautiously determine the trustworthiness of his confession.

Reynaldo Palma could not even be certain on the number of times he shot the victim. He testified on February 6, 2007 that he accidentally pulled the trigger of his gun thrice.^[16] However on August 2, 2007, he said that he was "sure" that he squeezed the trigger of his firearm four times.^[17] As to where he directed the taxi driver to bring him and the victim, Reynaldo Palma stated on February 6, 2007 that he told the driver to proceed to Mandaue and pass by the reclamation area.^[18] However, in contrast to this statement, Reynaldo Palma testified on August 1, 2007 that when the taxi driver asked where to go, he said he wanted to go to Guadalupe.^[19] Reynaldo Palma was also inconsistent with the reason why he shot the victim. On August 1, 2007, he said that the woman wanted to go out from the taxi so he squeezed the trigger of his firearm;^[20] but on August 2, 2007, he said that he shot the victim because the two of them were wrestling for the possession of the victim's bag.^[21]

Reynaldo Palma also gave a strikingly confusing testimony regarding his supposed revelation to anyone about the crime. His testimony thereon is quoted, to wit:

FISCAL LABORTE:

xxx xxx xxx

Q:

xxx Now did you tell anybody that actually you were the one who committed the offense?

A:

No, sir except my boss or my employer because he asked me the amount because he was thinking that I was able to collect the amount and that was the reason that I shot him.

Q:

I thought you said that your boss was already dead precisely you were detained at the BBRC and now you claimed that the person whom you had informed about what you allegedly did was your boss?

A:

After the incident[,] my boss asked me the money that he wanted to be collected from that woman and he did not believe that I was not able to collect and he insisted to get the money from me, so I also insisted that I have not collected that amount. So my boss pulled his firearm and to protect myself I also pulled my firearm and that was the time that I shot him.

FISCAL LABORTE:

Q:

When was it Mr. Palma that the alleged shooting of your boss happened?

A:

On September 24 or 28, that was the coming fiesta of Pasil.

Q:

That was also the time when you informed your boss of what you allegedly did to the victim of this case?

A:

I did not tell my boss that I killed the woman but I only tell him that I was not able to collect the money.

Q:

So when I ask you who was the person with whom you confided that you supposedly killed and robbed the victim in this case[,] you told the Court that it was your boss. So when was it that you told your boss that you supposedly killed and robbed the victim in this case?

A:

At the time when we met at carrerahan at Pasil.

Q:

When was that?

A:

At the very incident, sir.

Q:

On January 2, 2002?

A:

On September 2, 2002.[22]

Reynaldo Palma recalled that he told his boss about the crime when the latter asked for the money that was supposed to be collected from the victim. He claimed that this happened on the very day of the incident; however, when the Prosecutor confirmed from him if that date was January 2, 2002, Reynaldo Palma said it was on September 2, 2002. The events narrated by Reynaldo Palma could not be put together. It was not believable that he only spoke to his boss eight months after the incident, especially since he already said that the conversation with his boss happened on the very date of the incident. Yet, We do not wonder if Reynaldo Palma could not remember all the details of his account as obviously, his confession was contrived. A witness who prevaricates will find it hard to stick to his story and will find himself eventually entangled in the web of lies he has woven.[23]

We also observe that the circumstances of accused-appellant's discovery of the real killer being in jail and the killer's confession to the crime are simply incredulous. Accused-appellant claimed that as early as two weeks after he was incarcerated, he saw Reynaldo Palma inside the jail and when the two of them talked, accused-appellant was able to confirm that Reynaldo Palma was indeed the passenger who rode on his taxi together with the victim and who killed the victim on that fateful day.[24] Notably, accused-appellant was committed to prison on June 23, 2004.[25] If he met Reynaldo Palma two weeks thereafter, accused-appellant already knew by July 2004 that the killer was with him inside the jail facility. However, in the application for bail he filed on September 10, 2004, accused-appellant stated that:

1. The accused is a lowly taxi driver, presently languishing in jail for a heinous crime he is falsely accused of,

while the real felon is free as a bee;[26]

If indeed accused-appellant already conversed with Reynaldo Palma and confirmed that the latter was the real killer, We are, thus, perplexed with the statement in his bail application. Why would accused-appellant plead on September 2004 that the real felon was still free as a bee when he knew as early as July 2004 that they were together in jail? We also find it disturbing that accused-appellant just meekly accepted Reynaldo Palma's admission and he neither expressed outrage nor manifested physical violence after Reynaldo Palma confirmed that he was the real killer. We are even more baffled, in fact, amazed that it was Reynaldo Palma who approached accused-appellant few days after their conversation to ask what he could do to help because he was bothered by his conscience.[27]

Considering the untrustworthiness of Reynaldo Palma's confession, We, cannot consider it as a factor that would engender a reasonable doubt on accused-appellant's guilt.

Going now to the second issue, We find no error in the trial court's conviction of accused-appellant on the basis of circumstantial evidence and *res gestae*.

Under the Rules on Evidence, circumstantial evidence is sufficient for conviction if: (a) There is more than one circumstance; (b) The facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[28]

In this case, the records bear out the following circumstances: the victim's daughter testified that she sent off her mother on board a taxi alone; when SPO1 Gabunada found the victim dumped on a cliff and holding on to a tree, the latter told the police officer that she was robbed and shot by the driver of Richielda taxi with body number 72; on the date of the incident, accused-appellant signed a trip ticket for the aforementioned taxi; while the victim was at the Don Vicente Sotto Memorial Medical Center, she told her daughter that she was robbed by the taxi driver; accused-appellant did not show up in the taxi company despite the repeated requests of his employer for him to report to their garage; accused-appellant, instead, abandoned the taxi; police officers found bloodstains at the back of the driver's seat and bullet holes on the left side of the taxi, as well as blood-stained seatcovers in the baggage of the abandoned taxi; the victim positively identified accused-appellant as her assailant through the picture in the bio-data obtained by the investigators from the taxi company; after the incident, accused-appellant fled and remained in Butuan; and accused-appellant attempted to flee when he was to be arrested after about two years since the incident. The bundle of circumstantial evidence sufficiently established accused-appellant as the malefactor, destroyed the presumption of his innocence and fulfilled the standard of moral certainty to sustain his conviction.

In criticizing the circumstantial evidence relied upon for his conviction, accused-appellant pointed out that: the victim's daughter did not testify that her mother rode on a Richielda taxi with Body No. 72 and driven by one who looked like the accused-appellant; and SPO1 Gabunada did not testify that the driver was alone or if somebody else was in the taxi when the police officer met it on his way to the cliff.

Accused-appellant's attacks fail. The chain of events, possibly insignificant when taken separately and independently, could, nevertheless, produce the effect of conviction beyond reasonable doubt when considered cumulatively. A judgment of conviction based on circumstantial evidence can be upheld if the circumstances established would lead to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as being the author of the crime.[29] Besides, the requirement of proof beyond reasonable doubt in criminal cases does not entail absolute certainty of the fact that the accused committed the crime. Neither does it exclude the possibility of error. What is required is moral certainty — that degree of proof that produces conviction in an unprejudiced mind[30] or such certainty that convinces and satisfies the reason and the conscience of those who

are to act upon it.[31] We find this requirement satisfied in this case.

Moreover, accused-appellant's flight was an evident badge of his guilt. From the time of the incident and until two years thereafter, he consciously evaded arrest. Immediately on the day following the incident, he fled to Butuan and stayed there for two years even if he knew that he was already wanted by the police. Then, when he was to be arrested, he also attempted to escape that it required the apprehending policeman to shoot him in the leg to prevent him from fleeing.[32] Flight indicates guilt when it is done to escape from the authorities or to evade prosecution.[33]

Anent the trial court's consideration of the victim's statement that accused-appellant was her assailant as forming part of *res gestae*, We find the same proper. A declaration made spontaneously after a startling occurrence is deemed as part of the *res gestae* when (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements concern the occurrence in question and its immediately attending circumstances.[34] The elements were duly satisfied. First, the infliction on the victim of gunshot wounds qualifies, by any standard, as a startling occurrence. Second, the victim made the statements to SPO1 Gabunada and her daughter immediately upon getting in contact with them; and third, the victim's statement identifying her assailant is a material and vital information that concerns the startling occurrence.

Accused-appellant argued that questions loomed on whether the victim indeed utter statements to SPO1 Gabunada at the crime scene. It could be that the said police officer was not actually there when the victim was found at the cliff, or he only caught up with the news in the hospital or at police airwaves. In short, SPO1 Gabunada's testimony was doubtful.

Accused-appellant's attempt to discredit SPO1 Gabunada's testimony will not hold water. It is well settled that the determination of credibility of witnesses is properly within the domain of the trial court as it is in the best position to observe their demeanor and bodily movements.[35] We find no reason to revoke the credit given by the trial court to the credibility of SPO1 Gabunada and his testimony, there being no indication that the same was arbitrary; and especially since SPO1 Gabunada's testimony was corroborated by SPO1 Elmo Rosales, one of the officers who responded to the robbery alarm. SPO1 Rosales testified, thus:

Q:

While you and the other personnel of the TRS were at your office, what happened?

A:

We received the monitor thru the Base Control Radio regarding a victim of robbery alarm who was brought to the Don Vicente Sotto Memorial Medical Center, sir.

Q:

And what did you do upon receipt of that message?

A:

I and the rest of the members of the team proceeded to the hospital above-mentioned, sir. And upon arriving at the hospital we were met by PO3 Celso Gabunada.

Q:

And did you have a talked [sic] with PO3 Celso Gabunada when you arrived a ttthe hospital where the victim was brought?

A:

Yes, sir.

Q:

What if any did PO3 Celso Gabunada tell you when you arrived at the hospital?

A:

PO3 Gabunada told me that he was able to talk with the victim which [sic] was conscious at that time and that the victim told him that the one who robbed and shot her is a driver of Richielda taxi with Body No. 72.[36]

SPO1 Elmo Rosales further testified that after receiving the information from SPO1 Gabunada, they made a follow-up operation and went to the office of Richielda taxi where they were furnished by the owner of the taxi company with the bio-data of accused-appellant. SPO1 Elmo Rosales' narrations can be tied up to SPO1 Gabunada's testimony. We find no trace of fabrication in the claim of SPO1 Gabunada that the victim told him of the identity of the criminal, especially since the conduct of the immediate follow-up operation that resulted from such information was never disputed by the defense.

In the light of all the foregoing discussions, accused-appellant's conviction is sustained. We observe, however, that the dispositive portion of the appealed decision, specifically on the penalty imposed, apparently lacked the word "imprisonment" in between the words "of" and "from". Such clerical error is accordingly corrected and the same would now read, as follows:

“WHEREFORE, on the basis of the foregoing considerations, accused is hereby adjudged GUILTY of the crime of Homicide and in the absence of any aggravating and mitigating circumstances sentences him to an indeterminate penalty of imprisonment from ten years and eight months of prison mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum.

He is likewise ordered to pay the heirs of the victim the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity.

SO ORDERED.”

WHEREFORE, the Judgment of the Regional Trial Court, Branch 18, Cebu City in Criminal Case No. CBU-62576 dated June 26, 2008 is hereby AFFIRMED with the addition of the word imprisonment in the dispositive portion thereof.

SO ORDERED.

Ingles,[*] and Azcarraga-Jacob, JJ., concur.

[*] Acting Chairperson in lieu of J. Ramon Paul L. Hernando, per Office Order No. 19-14-GTI dated July 7, 2014.

[1] Rollo, pp. 36-77.

[2] Rollo, pp. 66-77; Records, pp. 234-245.

[3] Records, p. 1.

[4] See Certificate of Arraignment, records, p. 66.

[5] See Brief for the Appellee, Counter-Statement of Facts, rollo, pp. 142-146. (footnotes omitted) Portions are

culled therefrom.

[6] Refer to the Formal Offer of Exhibits and Manifestation, records, pp. 126-134.

[7] Refer to the Appellant's Brief, Statement of the Case and of the Facts, rollo, pp. 41-46. Portions are culled therefrom.

[8] Records, pp. 51-53.

[9] Records, p. 56.

[10] Records, p. 59.

[11] Refer to the Minutes of Session dated October 4, 2007, records, p. 184.

[12] Rollo, pp. 66-77; Records, pp. 234-245.

[13] Rollo, p. 77; Records, p. 245.

[14] See *People v. Valdemoro*, G.R. No. L-51367. January 22, 1981.

[15] See *People v. Valdemoro*, G.R. No. L-51367. January 22, 1981.

[16] TSN dated February 6, 2007, p. 7.

[17] TSN dated August 2, 2007, p. 11.

[18] TSN dated February 6, 2007, p. 6.

[19] TSN dated August 1, 2007, p. 10.

[20] TSN dated August 1, 2007, p. 11.

[21] TSN dated August 2, 2007, p. 10.

[22] TSN dated August 2, 2007, pp. 15-17.

[23] See *People of the Philippines v. Capitle*, G.R. No. 137046. February 26, 2001.

[24] See TSN dated September 12, 2006, pp. 13-14.

[25] See Commitment Sheet, record, p. 24.

[26] Record, p. 44.

[27] TSN dated September 12, 2006, p. 14.

[28] *People v. Rubio*, G.R. No. 179748, October 2, 2009, citing Section 4, Rule 133 of the Revised Rules on Evidence.

[29] See *People of the Philippines v. Velasco*, G.R. No. 128089. February 13, 2001.

[30] See *People of the Philippines v. Bautista*, G.R. No. 117685. June 21, 1999.

[31] See *Dizon v. People of the Philippines*, G.R. No. 144026. June 15, 2006.

[32] See p. 11 of the Decision of the trial court, rollo, p. 76.

[33] See *People of the Philippines v. Cario*, G.R. No. 123325. March 31, 1998.

[34] See *People of the Philippines v. Peña*, G.R. No. 133964. February 13, 2002.

[35] See *Dela Cruz v. Court of Appeals*, G.R. No. 139150. July 20, 2001.

[36] See TSN dated June 28, 2005, p. 4.

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