

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY BALLABARE AND EDER BALLABARE, ACCUSED, GERRY BALLABARE, ACCUSED-APPELLANT.

G.R. No. 108871. November 19, 1996

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-108871/>

MENDOZA, J.:

This is an appeal brought by Gerry Ballabare from the Decision rendered on May 14, 1992 in two Criminal Cases (Nos. 9067 and 9071) by the Regional Trial Court, Branch 50, Palawan and Puerto Princesa City, the dispositive portion of which reads:

WHEREFORE AND IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered finding the accused Gerry Ballabare guilty beyond reasonable doubt as principal in Criminal Case No. 9067 for the murder of Juan and Leonardo both surnamed Tacadao, as the same is defined and penalized under the Revised Penal Code, sentencing said accused to suffer two penalties of reclusion perpetua as well as to pay the costs. He is furthermore ordered to indemnify the heirs of the two deceased victims the sum of One Hundred Thousand (P100,000.00) Pesos as and for their deaths and the further sum of One Hundred Pesos (P100,000.00) as and for moral damages.

Let the case against accused Eder Ballabare be as it is hereby ordered archived to be reinstated in the docket of the Court as soon as he shall have been arrested or surrendered himself to the jurisdiction of the Court.

In criminal Case No. 9071, judgment is hereby rendered finding said accused Gerry Ballabare guilty beyond reasonable doubt of the Violation of Presidential Decree 1866 sentencing said accused to suffer the penalty of life imprisonment as well as to pay the costs.

The case arose from the killing of two brothers, Juan Tacadao and Leonardo Tacadao, Jr., in the afternoon of September 16, 1990, at Sitio Isumbo, Barangay Pulot II, Municipality of Brooke's Point, Province of Palawan. Accused-appellant Gerry Ballabare and his brother, Eder Ballabare, were charged with double murder with the use of illegally possessed firearms. The information alleged -

That on or about the 16th day of September 1990, in the afternoon, at Sitio Isumbo, Barangay Pulot II, Municipality of Brooke's Point, Province of Palawan, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping one another, with evident premeditation and treachery, all armed with firearms and with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, assault and shoot with their firearms JUAN TACADAO and LEONARDO TACADAO, JR., hitting them in the vital parts of their bodies and inflicting upon them the following injuries, to wit: JUAN TACADAO sustained gunshot wound on his head penetrating his brain and LEONARDO TACADAO, JR. suffered gunshot wound on his chest penetrating his heart, all causing hemorrhage and shock which were the direct and immediate cause of the instantaneous death of LEONARDO TACADAO, JR. and JUAN TACADAO who died shortly thereafter at the Brooke's Point District Hospital, Brooke's Point, Palawan.

CONTRARY TO LAW and committed with aggravating circumstances to [sic] treachery, all the accused used their firearms, a means or form of executing the crime to insure its execution without risk to themselves from the defense the offended party may offer.

In a separate information, Gerry Ballabare was charged with violation of P.D. No. 1866, §1, par. 2. In both cases accused-appellant Gerry Ballabare pleaded not guilty and was thereafter tried. His brother Eder Ballabare has not been arrested and has remained at large.

Tessie Asenita was the sole eyewitness for the prosecution. She testified that on September 16, 1990, while she was in the kitchen, she heard a commotion outside.[1] When she stepped out to see what was going on, she saw Edito Ballabare boxing Moreto Miason, a farmhand of her father. Edito had companions, Antonio Ballabare, Henry Fabregas, a certain Wilson and one Butsoy.[2] Moreto Miason also had some companions with him namely, Juan and Leonardo Tacadao, who are brothers of this witness. Tessie Asenita said that when her brother Juan Tacadao tried to stop Edito Ballabare from beating up Miason, the group of Edito Ballabare ganged up on Juan Tacadao. Tessie's husband, Roque Asenita, came and his intervention enabled Juan and Leonardo to run inside Tessie's house. But Edito's group, by now numbering eleven (11),[3] including the accused Gerry Ballabare and Eder Ballabare, pursued the two brothers and started hurling stones at Tessie's house.[4] When they entered the yard of the witness' house and tried to attack Roque Asenita with a bolo, the two brothers ran towards the back of the house.[5] However, Eder Ballabare was able to catch up with Juan and shot him twice, the first bullet hitting him in the right ear and the second in the forehead.[6] On the other hand, Gerry Ballabare fired at Leonardo, hitting him on the upper left chest.[7] Accused-appellant and his companions then fled.

Tessie Asenita claimed that she saw the shooting because it took place at a place within her view two arms length away from her deceased brothers.[8]

Two other witnesses were presented by the prosecution, namely, Dr. Narciso B. Leoncio, Rural Health Physician, who conducted the post mortem examination on Leonardo Tacadao, Jr. and testified that the fatal wound sustained by deceased was that inflicted on his left chest,[9] and Aida Veloria Magsipoc, NBI forensic chemist, who testified that she examined the paraffin cast of both hands of accused-appellant Gerry Ballabare and found the left hand positive for gunpowder nitrates.[10] A certification[11] from the Firearms and Explosive Unit in Camp Crame to the effect that accused Gerry Ballabare was not authorized to carry a firearm was likewise submitted to the trial court.

Accused-appellant's defense was alibi. He testified that at the time of the incident, he was inside his yard playing basketball with some friends.[12] Evelyn Alcantara, a resident of another sitio, corroborated accused-appellant's claim.[13] In addition, the defense submitted to the court an Affidavit[14] for the withdrawal of the testimony of eyewitness Tessie Asenita and the Affidavit of Desistance[15] of Leonardo Tacadao, Sr., father of the victims. Roque Asenita, husband of Tessie Asenita and brother-in-law of the victims, identified the signatures on the affidavits and testified that accused-appellant had nothing to do with the crime because he was not allegedly present at the shooting.[16] He claimed that it was Eder Ballabare who shot the brothers, and that Gerry Ballabare was implicated only because the family of the deceased wanted to secure the conviction of two members of the Ballabare family to answer for the loss of two of its members.[17]

The trial court found the testimony of Tessie Asenita credible. It rejected accused-appellant's alibi and dismissed the Affidavit for the withdrawal of testimony of Tessie Asenita and the Affidavit of Desistance of the private complainant as mere attempts to escape liability for the crime. It found accused-appellant guilty of Illegal Possession of Firearm and two counts of murder. Hence, this appeal.

Accused-appellant alleges:

I. THE TRIAL COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT ACCORDING ACCUSED HIS CONSTITUTIONAL RIGHT TO BE PRESUMED INNOCENT AND TO AN IMPARTIAL TRIBUNAL.

II. THE TRIAL COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN PROCEEDING AGAINST ACCUSED FOR MURDER AND ILLEGAL POSSESSION OF FIREARM IN VIOLATION OF HIS CONSTITUTIONAL RIGHT AGAINST DOUBLE JEOPARDY.

The assignment of errors raise a number of issues which will be discussed in the course of this decision.

The so-called Recantation and the Affidavit of Desistance

In his first assignment of error, accused-appellant contends that the trial court erred in relying on the testimony of Tessie Asenita because the fact is that this witness subsequently executed an Affidavit withdrawing her testimony to which was attached an Affidavit of Desistance signed by Leonardo Tacadao, Sr., father of the deceased. He argues that on the basis of these affidavits he should have been acquitted.

The contention has no merit. To begin with, the Affidavit executed by eyewitness Tessie Asenita is not a recantation. To recant a prior statement is to renounce and withdraw it formally and publicly.[18] In her affidavit, Tessie Asenita did not really recant what she had said during the trial. She only said she wanted to withdraw her testimony because her father, Leonardo Tacadao, Sr., was no longer interested in prosecuting the case against accused-appellant. Thus her affidavit stated:

3. That in as much as my father, Leonardo Tacadao, Sr., the complainants therein, was no longer interested to prosecute the case as manifested in the Sworn Affidavit of Desistance before the Provincial Prosecutor, I do hereby WITHDRAW and/or REVOKE my testimony of record to confirm [sic] with my father's desire;

It is absurd to disregard a testimony that has undergone trial and scrutiny by the court and the parties simply because an affidavit withdrawing the testimony is subsequently presented by the defense. In the first place, any recantation must be tested in a public trial with sufficient opportunity given to the party adversely affected by it to cross-examine the recanting witness. In this case, Tessie Asenita was not recalled to the witness stand to testify on her affidavit. Her affidavit is thus hearsay. It was her husband, Roque Asenita, who was presented and the matters he testified to did not even bear on the substance of Tessie's affidavit. He testified that accused-appellant was not involved in the perpetration of the crime.

In the second place, to accept the new evidence uncritically would be to make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses.[19] For even assuming that Tessie Asenita had made a retraction, this circumstance alone does not require the court to disregard her original testimony. A retraction does not necessarily negate an earlier declaration.[20] For this reason, courts look with disfavor upon retractions because they can easily be obtained from witnesses usually through intimidation or for monetary considerations.[21] Hence, when confronted with a situation where a witness recants his testimony, courts must not automatically exclude the original testimony solely on the basis of the recantation. They should determine which testimony should be given credence through a comparison of the original testimony and the new testimony, applying the general rules of evidence.[22] In this case we think the trial court correctly ruled:

The accused in his vain and desperate [sic] bid to secure exculpation presented Roque Asenita, husband of lone prosecution witness, Tessie Asenita. From the testimony of the former, it would appear that the latter executed an affidavit of desistance withdrawing her entire testimony given before the Court. He further testified that it was only Eder Ballabare who was the only one responsible for the killing of both the Tacadao brothers, Juan and Leonardo and that Gerry Ballabare had nothing to do with the killing specially of Leonardo Tacadao, Jr. It was further alleged that accused Gerry Ballabare was held responsible for the killing due to the fact that since 2 members of the Tacadaos were killed, it was decided in the family conference of the Tacadaos

that 2 members of the Ballabare should likewise be held responsible. This proffered excuse or justification can be dismissed outright as a desperate attempt to escape liability by Gerry Ballabare. There appeared to be no plausible motive why he should be singled out and identified by Tessie Asenita if he was not there and was in his yard all the time when his younger brother Editio who initially started the melee was not pointed to as the one responsible for the shooting of the two Tacadao brothers.

It should be added that the paraffin test by the NBI forensic chemist showed that accused-appellant's hand was positive for gunpowder.

Nor is the Affidavit of Desistance executed by Leonardo Tacadao, Sr. a basis for dismissing these cases. Like Tessie Asenita, whose Affidavit withdrawing her previous testimonies was presented, Leonardo Tacadao, Sr. was not presented in court. His affidavit merely stated that in the interest of neighborliness and for lack of interest, Leonardo Tacadao, Sr. was desisting from prosecuting the cases against accused-appellant. Thus:

That I am the father of the deceased victims, Leonardo Tacadao, Jr. and Juan Tacadao, and complainant against certain Jerry Ballabare and Eder Ballabare for "Double Murder" under Criminal Case No. 9067 in Branch 50 of the Regional Trial Court of Palawan, Puerto Princesa City;

That we are neighbors with the accused in Pulot II, Brooke's Point, Palawan, as such I would like to maintain our good relationship with them;

That in view of the foregoing, and all attributing circumstances not mentioned herein, I totally lost my interest in prosecuting the case in Court, and I therefore desist from prosecuting the same.

Accused-appellant quotes the following from our decision in *Gomez v. Intermediate Appellate Court*:^[23]

It is conceded that the State has the sovereign right to prosecute criminal offenses under the full control of the fiscal and that the dismissal of criminal cases by the execution of an affidavit of desistance by the complainant is not looked upon with favor. However, it is also true that an affidavit of desistance may create serious doubts as to the liability of the accused. At the very least, it calls for a second hard look at the records of the case and the basis for the judgment of conviction. Jurisprudence on the effect of desistance notwithstanding, the affidavit should not be peremptorily dismissed as a useless scrap of paper.

There is nothing in this excerpt which dictates a different conclusion from that reached by the trial court, much less which entitles accused-appellant to a finding of reasonable doubt. To the contrary it is the general rule rather than the exception regarding affidavits of desistance being looked with disfavor which applies in this case. As pointed out in *People v. Lim*,^[24] which is also cited by accused-appellant, an affidavit of desistance is merely an additional ground to buttress the accused's defenses, not the sole consideration that can result in acquittal. There must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses at the trial and accepted by the judge.^[25] Here, there are no such circumstances. For as already noted, the affidavit of desistance of the complainant, like the alleged affidavit of retraction by Tessie Asenita, is not a repudiation of the material points alleged in the information and proven at the trial, but a mere expression of the lack of interest of private complainant to pursue the case. Moreover, the trial court already had the opportunity of taking a hard look at the records of the case, as accused-appellant urges, when it resolved the motion for reconsideration filed by the appellant prior to the elevation of the case on appeal before this Court, but the trial court found no basis for altering its decision.

Evidence Against Accused-Appellant Overwhelming

This Court itself has carefully gone over the record of this case, particularly the transcript of stenographic notes of the testimony of Tessie Asenita, and after doing so finds no reason to reverse the decision of the trial court, especially considering the result of the paraffin test showing accused-appellant's left hand positive for

gunpowder.

Much is made by accused-appellant of Tessie Asenita's admission that from the kitchen, she could not see what was happening in front of her house. Thus:[26]

COURT

Q : From the place where you were could you see what was happening outside your house?

A : It can be seen if you will go upstairs.

Q : From the kitchen where you were as you said can you see what was happening in front of your house?

A : It cannot be seen if you are at the kitchen because our house consist [sic] of 2 doors.

This contention is misleading. Tessie Asenita testified that from the kitchen she could not see what was happening in front of her house. But she said this in reference to the mauling of Moreto Miason - not to the shooting of Juan and Leonardo Tacadao Jr. It was precisely because she could not see what was happening after she heard a commotion that she said she went "outside, at the road,"[27] where she saw Edito Ballabare's group attacking Moreto Miason and Juan Tacadao. The shooting took place later, "near the kitchen" - not in front of the house - in full view of this witness. As Tessie Asenita explained:[28]

COURT

Q : At the time that the alleged rushing of the Ballabare was made by them, is it your testimony that you went up the kitchen.

A : Yes sir.

Q : And that was the time that the firing occurred?

A : Yes sir.

Q : And you were up the kitchen?

A : I was up the kitchen.

Q : You did not therefore see the firing?

A : I saw sir. Because our house is also open and our yard is also clear as it is only planted with sweet camote.

Q : But you said you were up the kitchen?

A : But it can be seen. Because they fired their guns near our kitchen also.

Nor is the fact that there was only one witness who testified on the participation of the accused-appellant in the crime of any moment. It is settled that the testimony of even a single witness, if positive and credible, is sufficient for the purpose of obtaining a conviction.[29]

Accused-appellant insinuates that the prosecution presented false testimony to exact a "primitive kind of revenge" against appellant's family. He cites the testimony of Roque Asenita that accused-appellant was being prosecuted even though the latter did not take part in the commission of the crime in order to make his family answer for the

death of two members of the Tacadao family. As the trial court points out, however, it would have been more convenient for the prosecution to point to Edito Ballabare as the perpetrator because he was after all the one who started the melee and he was the most prominent protagonist.

Why Accused-Appellant's Alibi Cannot Save Him

As already stated, accused-appellant's defense is alibi. This defense cannot stand in view of his positive identification by Tessie Asenita that he was the one who had shot and killed Leonardo Tacadao, Jr. Considering that the appellant had been known to Tessie Asenita for years as a neighbor,[30] in addition to the fact that the incident occurred in the afternoon, in full view of said witness, we see no reason to doubt her identification of the accused-appellant.

Indeed, the defense of alibi cannot prevail over the positive identification of the accused by the prosecution witness.[31] Especially is this so, in view of accused-appellant's claim that the place where he allegedly was at the time of the incident is only 200 meters away (approximately three minutes walk) from the place of the incident.[32] The defense of alibi requires an accused to prove his presence in another place at the time of the perpetration of the offense and to demonstrate that it would thus be physically impossible for him to be at the scene of the crime.[33] Accused-appellant has not shown any of these elements in the case at bar.

The Proof is, however, Insufficient to Show Conspiracy

Accused-appellant's contention that there can be no finding of conspiracy in this case is well taken. As already stated, accused-appellant was found guilty as a direct participant in the shooting of Leonardo Tacadao, Jr. and as a conspirator in the shooting of Juan Tacadao by Eder Ballabare.

In the case of *People v. Arroyo*,[34] this Court held:

A conspiracy in the statutory language exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The objective then on the part of the conspirators is to perform an act or omission punishable by law. What is required is assent to the perpetration of such misdeed. That must be their intent. There is a need for concurrence of wills or unity of action or purpose, or common and joint purpose and design. At times, reference is made to previous concert of the criminal design. Its manifestation could be shown by united and concerted action. Thus, a conspiracy need not be proved by direct evidence. It may be deduced from the mode and manner in which the offense was perpetrated. The conditions attending its commission and the acts executed may be indicative of the common design to accomplish a criminal purpose and objective. If there is a chain of circumstances to that effect, then conspiracy has been established. If such be the case then, the act of one is the act of all the others involved and each is to be held to the same degree of liability as the others.

But although direct proof is not essential to establish conspiracy, the existence of conspiracy must nonetheless be established by positive and conclusive evidence.[35] Here, the trial court found conspiracy between accused-appellant and his brother, Eder Ballabare on the basis of the following:

From the narration of the events that occurred on that fateful afternoon as disclosed by the sole witness for the prosecution, it appeared that the participants to the killing in question numbering more or less 11 inclusive of the 2 herein accused were animated by a desire to achieve a common purpose which was to kill their quarry. This can very well be deduced from the fact that prior to their entry into the yard, Juan Tacadao was already being mauled for his intrusion in preventing the mauling of the native Palawano. Further, it may be stated that one of the group armed with a long firearm identified as Rolando Carandang positioned himself at or near the back of the house to prevent their exit. Although he did not fire a shot, nonetheless his participation showed a concurrence of will with his armed companions.

The foregoing findings are, in our opinion, insufficient to establish conspiracy. The lone prosecution witness,

Tessie Asenita, testified that accused-appellant and Eder Ballabare were not originally with Edito's group when they attacked Moreto Miason and Juan Tacadao. By her account accused-appellant and Eder Ballabare arrived only after the fight between Edito's group, on the one hand, and the Tacadao brothers, on the other, had begun. The accused-appellant may have simply joined in the melee without necessarily any previous agreement to assault Juan and Leonardo Tacadao, Jr. Even the trial court stated in its decision that it "is more disposed to believe that the encounter resulted in the accidental presence of the native Palawano, Moreto Miason, in front of the house of Tessie Asenita, who was mauled by the brother of Eder Ballabare regarding the disposal of almaciga gathered" and that "if the incident eventually involved the Tacadao brothers, it was more probable [that] the group of the accused resented the intervention of Juan Tacadao in preventing further mauling of the native Palawano who was their friend and companion." What was said in *People v. Dorico*[36] may, therefore, be said in the case at bar:

The meeting of the victim by the accused was purely casual. No other evidence was presented by the prosecution to show conspiracy, which, according to the settled rule, must be proved as clearly and as convincingly as the commission of the crime itself. In *People vs. Portuguesa*, this Court ruled that "although the defendants are relatives and had acted with some degree of simultaneity in attacking their victim, nevertheless, this fact alone does not prove conspiracy."

The same degree of proof necessary to prove crime is required to establish conspiracy. For lack of sufficient evidence showing conspiracy accused-appellant must be absolved from liability for the killing of Juan Tacadao and held liable only for the killing of Leonardo Tacadao, Jr.

Accused-appellant not guilty of Murder but only of Homicide

The trial court also erred in finding that the killing of Leonardo Tacadao, Jr. by the appellant was attended by treachery, thus, qualifying the offense to murder. For treachery to be appreciated, two conditions must concur: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate and (b) the means of execution employed was deliberately or consciously adopted.[37] In a number of cases,[38] we had occasion to discuss factual circumstances which negate the existence of treachery. In *People v. Nemeria*,[39] we noted the following: (a) that the incident occurred at about six o'clock in the late afternoon, when people could still be recognized at a distance; (b) that the victim was not totally unaware of the attack; and (c) that accused has committed the crime in the presence of other people who could have lent support to the victim.

In the case at bar, the fatal incident occurred at four in the afternoon, in broad daylight. The victims could not have been taken by surprise as the attack was preceded by stone-throwing and they had the opportunity of arming themselves, as they were inside their sister's house and one of them in fact had injured one of the attackers (Henry Fabregas). Considering the rule that treachery cannot be inferred but must be proven as fully and convincingly as the crime itself,[40] any doubt as to the existence of treachery in this case must be resolved in favor of the accused-appellant.

The trial court also found that the aggravating circumstance of abuse of superior strength had attended the commission of the offense by accused-appellant. The trial court correctly appreciated this aggravating circumstance. The group of accused-appellant did not only enjoy superiority of number but also of arms consisting of firearms, bolos, stones and pieces of wood. The group of Moreto Miason, which included the two victims, were only 4 and were clearly no match for the group of Eder Ballabare which, including accused-appellant, were 11 in all.[41] That accused-appellant's group took advantage of their superiority in number and arms to perpetrate the offense charged is clear.

However, this aggravating circumstance cannot be considered as a qualifying circumstance so as to make the killing murder. This circumstance was not specifically alleged in the information and therefore it can only be

considered a generic aggravating circumstance for the purpose of increasing the penalty. A qualifying circumstance, like abuse of superior strength, which is not alleged, cannot be used to qualify the offense but may only be appreciated as a generic aggravating circumstance.[42]

In Addition, Accused-Appellant is liable for
Illegal Possession of Firearm

In his second assignment of error, accused-appellant contends that the trial court gravely abused its discretion in finding him guilty of murder and illegal possession of firearm. He points out that both offenses arose out of a single incident and that as a result of the decision finding him guilty of separate crimes, he was placed in double jeopardy. He cites the case of *Lazaro v. People*,[43] in which it was held that conviction of Illegal Possession of Unlicensed Firearm is a bar to another prosecution for Parricide committed with the use of the unlicensed firearm under the rule on double jeopardy.

The argument has no merit. In the case of *People v. Deunida*,[44] the Court declared *Lazaro v. People* "no longer controlling in view of our decisions in *People v. Tac-an*, [182 SCRA 601 (1991)], *People v. Tiozon*, [198 SCRA 368 (1991)], and *People v. Caling* [208 SCRA 821 (1992)]" and held that Illegal Possession of Firearms and Ammunition does not absorb the crime of homicide or murder under the Revised Penal Code and therefore does not bar the simultaneous or subsequent prosecution for the latter crime. It is true that in the later case of *People v. Barros*,[45] this Court again ruled that a person who commits homicide or murder through the use of an illegally possessed firearm, is liable solely for the aggravated form of illegal possession of a firearm as defined in P.D. No. 1866, §1, par. 2. This decision, however, has since been overruled by the Court en banc in *People v. Quijada*[46] in which it was held that one who kills another with the use of an unlicensed firearm is guilty of two separate offenses of (1) either homicide or murder under the Revised Penal Code and (2) aggravated illegal possession of firearm under P.D. No. 1866, §1, par. 2.

Other Errors in the Decision of the Trial Court

Furthermore, we hold that the trial court erred in imposing in this case the penalty of life imprisonment for accused-appellant's violation of P.D. No. 1866, §1. par. 2. The crime of illegal possession of firearm in its aggravated form is punished by the penalty of death. Since the offense was committed on September 16, 1990, at a time when the imposition of the death penalty was prohibited, the penalty next lower in degree, i.e., reclusion perpetua, should instead be imposed. This is not the equivalent of the penalty of life imprisonment, as our cases have time and again explained.

While "life imprisonment" may appear to be the English translation of reclusion perpetua, in reality, it goes deeper than that. First, "life imprisonment" is invariably imposed for serious offenses penalized by special laws, while reclusion perpetua is prescribed under The Revised Penal Code. Second, "life imprisonment," unlike reclusion perpetua, does not carry with it accessory penalty. Third, "life imprisonment" does not appear to have any definite extent or duration, while reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon, although the maximum period thereof shall in no case exceed forty (40) years.[47]

Finally, the trial court erred in ordering accused-appellant to pay moral damages because no evidence, testimonial or otherwise, was presented by the prosecution to support such a finding.

WHEREFORE, the decision of the trial court is MODIFIED by finding accused-appellant guilty of (1) homicide with one aggravating circumstance and no mitigating circumstance and sentencing him to an indeterminate term of 12 years of prision mayor, as minimum, to 20 years of reclusion temporal, as maximum and (2) violation of P.D. No. 1866 and sentencing him to reclusion perpetua; and by ordering him to pay the heirs of the deceased Leonardo Tacadao, Jr. in the amount of P50,000.00 as indemnity.

SO ORDERED.

Romero, Puno, and Torres, Jr., JJ., concur.

Regalado, J. (Chairman), See concurring & dissenting opinion.

[1] Testimony of Tessie Asenita, TSN, April 12, 1991, p. 17.

[2] Id., p. 10.

[3] Id., p. 33.

[4] Id., p. 28.

[5] Id., p. 30.

[6] TSN, April 10, 1991, p. 33.

[7] Ibid.

[8] Ibid.

[9] Id. 4-7; Cf. Exh. A; Rollo, p. 57.

[10] Exh. F; Rollo, p. 63.

[11] Exh. J; Rollo, p. 50.

[12] TSN, Aug. 30, 1991, pp. 2-10.

[13] Id, pp. 3-5.

[14] Exh. 1; Rollo, p. 82.

[15] Exh. 2; Rollo, p. 83.

[16] TSN, Sept. 27, 1991, pp. 15-16.

[17] Ibid.

[18] 36 WORDS AND PHRASES 683, citing *Pradlik v. State*, 41 A 2nd 906, 907.

[19] *De Guzman v. Intermediate Appellate Court*, 184 SCRA 128, 134 (1990), citing *People v. Morales*, 113 SCRA 683 (1982).

[20] *People v. Davatos*, 229 SCRA 647 (1994).

[21] *People v. Clamor*, 198 SCRA 642 (1991).

[22] *Reano v. Court of Appeals*, 165 SCRA 525 (1988).

[23] 135 SCRA 620, 631 (1985).

[24] 190 SCRA 706, (1990).

[25] *People v. Pimentel*, 118 SCRA 695 (1982), citing *People v. Manigbas*, 109 Phil. 469 (1960).

[26] TSN, April 12, 1991, p. 17-18.

[27] Id., p. 18.

[28] Id., p. 32.

[29] People vs. Torres, 232 SCRA 32 (1994).

[30] TSN, April 12, 1991, p. 13.

[31] People v. Alban, 245 SCRA 549, 558 (1995).

[32] TSN, Aug. 30, 1991, p. 12.

[33] People v. Panillos, 205 SCRA 546 (1992); People v. Cinco, 194 SCRA 535 (1991).

[34] 201 SCRA 616, 629 (1991), citing People v. Taaca, 178 SCRA 56 (1989).

[35] People v. Vda. de Quijano, 220 SCRA 66, 72 (1993).

[36] 54 SCRA 172, 187 (1973).

[37] People v. Verchez, 233 SCRA 174 (1994).

[38] See People v. Pajarit, 214 SCRA 678 (1992); People v. Amaguin, 229 SCRA 166 (1994); People v. Cascalla, 240 SCRA 482 (1995); People v. Tiongco, 236 SCRA 458 (1994); People v. Arroyo, 201 SCRA 616 (1991).

[39] 242 SCRA 448, 454 (1995).

[40] People v. Sarense, 214 SCRA 780 (1992).

[41] See People v. De la Cruz, 242 SCRA 129 (1995).

[42] People v. Vergara, 221 SCRA 611 (1993); People v. Ruelan, 231 SCRA 650 (1994); People v. Cobarrubias, 223 SCRA 363 (1993).

[43] 112 SCRA 430 (1982).

[44] 231 SCRA 520, 530 (1994).

[45] 245 SCRA 312 (1995).

[46] G.R. Nos. 115008-09, July 24, 1996.

[47] People v. Retuta, 234 SCRA 645, 657 (1994). Accord, People v. Sangil, 208 SCRA 696 (1992).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.