

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELBERTO BASE, ACCUSED-APPELLANT.

G.R. No. 109773. March 30, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

In the early morning of February 8, 1990, a group of men arrived at the residence of Julianito Luna y Tagle, Barangay Captain of Namunga, Rosario, Batangas. One of two men who introduced themselves as policemen allegedly looking for a certain Hernandez suddenly shot Julianito in the head with a .45 caliber pistol and immediately after, they sped away in an owner-type jeep.

Accused-appellant Elberto Base was among those identified on board the jeep and, together with Conrado Guno, Frederick Lazaro and Eduardo Patrocinio, were indicted for Murder with Direct Assault Upon a Person in Authority in a Second Amended Information[1] alleging that -

That on or about the 8th day of February 1990, at about 7:00 o'clock in the morning, in Barangay Namunga, Municipality of Rosario, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, armed with a caliber .38 revolver and .45 caliber pistol, conspiring and confederating together, acting in common accord and mutually helping one another, with treachery and evident premeditation and by means of a motor vehicle which is a top down owner type jeep colored green with Plate No. UV-CFU-178, and without justifiable cause, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said .45 caliber pistol, suddenly and without warning, one Julianito Luna y Tagle known to them to be an elected Barangay Captain (Punong Barangay) of the said Municipality while in the performance of his official duties or on the occasion thereof, or in connection therewith, thereby inflicting upon the latter [a] gun shot wound, 1x1 cm., left temporal region, 2 cm. above the left ear, entry with contusion collar, inwards, upwards and backwards, with exit at right occipital region and with avulsion of brain, complete fracture of skull, which directly caused his death.

Contrary to law.

Upon arraignment, accused Elberto Base and Conrado Guno pleaded not guilty[2] to the crime charged. Frederick Lazaro and Eduardo Patrocinio have remained at large.

Trial thereafter ensued after which the court a quo rendered judgment, the dispositive portion of which reads as follows:

WHEREFORE, in view of the foregoing, the Court finds accused Elberto Base guilty beyond reasonable doubt of Murder, and he is hereby sentenced to suffer the penalty of reclusion perpetua; to indemnify the heirs of the deceased 50,000.00 for the death of Julianito Luna; the total sum of P40,000.00 as actual damages; and the amount of P100,000.00, by way of moral damages.

It appearing that accused Elberto Base is a detention prisoner, the preventive imprisonment he had undergone should be taken into consideration in the computation of his sentence.

And for failure on the part of the prosecution to prove the guilt of accused Conrado Guno beyond reasonable doubt of the charge against him in the Information, he is hereby ACQUITTED.

SO ORDERED.[3]

Dissatisfied, accused Elberto Base interposed this appeal alleging that -

I

THE COURT ERRED IN CONVICTING ACCUSED-APPELLANT ELBERTO BASE OF THE CRIME OF MURDER ON THE BASIS OF HIS ALLEGED EXTRA-JUDICIAL CONFESSION DESPITE ITS INADMISSIBILITY.

II

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF [THE] CRIME OF MURDER.

The prosecution's version of the incident adopted the trial court's factual narration of what transpired thus:

xxx around 7:00 o'clock in the morning of February 8, 1990 three men arrived in the residence of Julianito Luna in Namunga, Rosario, Batangas. One was identified to be called Apple who knocked at the door and the person who accompanied his two other companions. After Apple left, Julianito Luna who was the Barangay Captain of the place together with his wife and son Arvin went out and Julianito Luna talked with the two men who introduced themselves as policemen and were looking for one Hernandez.

Julianito told the two men that he did not know the man they were looking for and told Arvin to accompany the two men to one Ka Prado. At that juncture the man armed with a .45 pistol shot Julianito once hitting the latter on his head and Julianito sprawled on the ground.

After the shooting the two men ran towards their top down owner jeep colored green parked on the National Highway in front of the residence of Julianito Luna and thereafter sped away towards the direction of the Poblacion of Ibaan, Batangas.

Julianito Luna was rushed to a local hospital in Rosario, Batangas who was given first aid and at a time when he was about to be brought to Manila, he expired due to a gun shot wound, 1 x 1 cm. left temporal region, 2 cm. above the left ear, entry with contusion collar, inwards, upwards and backwards, with exit at right occipital region and with avulsion of brain complete fracture of skull, which directly caused his death.

Early reports having reached the 217th PC Co. in Masaya, Rosario, Batangas a team of PC and Police elements was immediately dispatched to track down the assassins of Julianito Luna and in due time the motor vehicle of the assassins was recovered in the premises of the house of Mrs. Amelia Quizon in Barangay Lodlod, Lipa City already parked but without the assassins.

The motor vehicle was brought to the camp of the 217th PC Co., but was immediately returned to the place based upon a notion that the assassins would come back to the place to recover the same vehicle.

As expected, not long thereafter Elberto Base one of the accused arrived in the premises of the house of Mrs. Amelia Quizon in order to recover the top down owner type jeep and it was then when he was collared by a team of PC soldiers who were all in civilian clothes and brought to the camp together with the motor vehicle.

In the camp in a line-up of several people Elberto Base was positively identified by Amelia Quizon as one of the passengers of the jeep who parked the jeep in her premises and also the person who tried to recover the jeep when he was finally collared by the PC soldiers. What made her so remember Base is the scar on the face of the latter.

It was also established that before the vehicle in question was brought to Lodlod, Lipa City by the assassins, the latter passed by the house of the brother of Leo Vale in San Jose, Batangas, and because the brother of Leo Vale was not there, Leo Vale was requested by the passengers of the jeep to accompany them to the house of the husband of Amelia Quizon in Lodlod, Lipa City, to which request Leo Vale acceded.

And in a line-up of several people Leo Vale positively identified accused Elberto Base as one of the passengers of the jeep whom he accompanied to Lodlod, Lipa City, and which identification he reiterated when he testified in Court. He also identified the subject vehicle, which the passengers boarded and left in the premises of the residence of Amelia Quizon.

The owner of the jeep involved with Plate No. UV-CPU-170 which the assassins used was established to be that of Loreto Angeles of Parañaque, Metro Manila. It was established that on February 7, 1990 accused Frederick Lazaro known to him as a policemen of Parañaque together with accused Eduardo Patrocinio borrowed from him the said vehicle telling him that he was going to Carmen, Pangasinan, to which request he acceded and promising him to return said jeep the following day.

While in the camp of the 217th PC Company Elberto Base executed a written Sworn Statement with the assistance and presence of Atty. Romeo Reyes of Rosario, Batangas, who testified in court, to the effect that he assisted the accused in the execution of his statement, by telling Elberto Base of his constitutional rights before said execution. He further testified that throughout the proceedings he was present and the accused read the contents of his statement before swearing to the truth of the same.

A perusal of the statement of Elberto Base shows that he was well aware of the intended plot to kill Julianito Luna, by admitting that a week before the killing he was with the assassins surveiling the residence of Julianito Luna.

He also admitted to be with accused Frederick Lazaro and Patrocinio when the jeep in question was borrowed by the two and was with accused Lazaro and Patrocinio when they left Kalayaan, Pasay City in proceeding to San Juan, Batangas that day when Julianito Luna was shot.

Accused Base also admitted that he was left on a shed in Ibaan, Batangas when Frederick Lazaro and Patrocinio returned to Rosario and when they came back, he was fetched and was with them in going to San Jose, Batangas in the house of one June Vale and later on in Barangay Lodlod, Lipa City where they left the jeep in the premises of the house of Amelia Quizon. And finally Base admitted in his statement that he was told to recover the jeep in Lodlod, Lipa City.

Accused-appellant denied having anything to do with the fatal shooting of the victim and alleges, in sum, that he was tortured to admit the crime. As culled from his testimony, at around 5:00 to 6:00 p.m. in the afternoon of February 8, 1990, he had just disembarked at the bus stop at Mataas na Lupa, Lipa City after visiting his uncle Mauro Espina, his sister-in-law Perla Ronquillo and Opring Espina in Maricaban, Pasay City.[4] From there, he intended to proceed on board a jeepney to the terminal near the market in Lipa City.[5] Xsc

However, he never reached his destination because he was picked up by three armed men in civilian clothes who told him to come along with them as they would ask him some questions.[6] He was brought to Lodlod, Lipa City at the house of Amelia Quizon.[7] Upon their arrival at Quizon's place, a gun was poked at accused-appellant and he was ordered to lie down facing the ground.[8] As he lay thus, he was trussed up at the neck, bound hand and foot with abaca rope with his hands tied behind his back.[9] He was then loaded on a top down jeep and brought to the 217th PC Company Detachment in Rosario, Batangas.[10]

Upon their arrival at the PC Detachment, accused-appellant was brought to the CAFGU barracks and there he was mauled, pounded with gun barrels and gun butts[11] by fifteen (15) persons[12] and forced to admit to the shooting of the victim.[13] As a result of the mauling, his lips bled and he broke a tooth.[14] To underscore just

how tightly his captors bound him, accused-appellant likewise showed the court a quo a scar on his left arm allegedly caused by the tying of the rope.[15]

As his lips bled because of the beating, accused wiped it across the leg of his trousers pointing to a dark stain on the left leg of his pants he was wearing in court[16] which was allegedly caused by brushing his bloodied lips thereon.[17] After wiping his bloodied mouth, the physical abuse continued despite accused's entreaties and protestations as to why he was being beaten up.[18] He even informed them that he was a Barangay Council member, to no avail.[19] After he was manhandled, he was interrogated by Sgt. Romulo Mercado who sat by a typewriter and took down his statements.[20]

Accused-appellant, however, claimed that although Sgt. Mercado asked him questions, the latter did not take down accused's real answers and instead the said investigator typed what he wanted to type therein.[21] Accused further testified that he was not given any opportunity to read in whole or in part the typewritten statement[22] and that it was only upon arraignment that he came to know that the written statement taken from him which he was forced to sign was actually a confession.[23]

With regard to the manner in which the custodial interrogation was conducted and the Sworn Statement[24] was executed, accused-appellant testified that his pleas to his interrogators that they observe his constitutional rights went unheeded.[25] He likewise claimed that although the sworn statement bore the attesting signature of Atty. Romeo Reyes, he neither knew nor saw Atty. Reyes at the 217th PC Detachment on February 8, 1990.[26] Accused-appellant denied that he knew his co-accused Conrado Guno, Frederick Lazaro and Eduardo Patrocinio.[27] He likewise denied knowing Leo Valle and Erlinda Angeles.[28]

The crux of accused-appellant's appeal hinges on the admissibility of the Sworn Statement dated February 8, 1990. In challenging its probative value, he insists in sum that the document is inadmissible in evidence because it was executed in violation of his constitutional rights, firstly his right to counsel of his own choice.

We disagree.

Section 12, Article III of the Constitution embodies the mandatory safeguards afforded a person under investigation for the commission of a crime and the concomitant duty of the State and its agencies to enforce such mandate. It declares that:

SEC. 12. (1). Any person under investigation for the commission of an offense shall have the right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(1)

No torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(2)

Any confession or admission obtained in violation of this or section 17 hereof shall be inadmissible in evidence against him.

(3)

The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and

rehabilitation of victims of torture or similar practices, and their families.

Numerous decisions[29] of this Court rule that for an extrajudicial confession to be admissible, it must be: 1.] voluntary; 2.] made with the assistance of competent and independent counsel; 3.] express; and 4.] in writing.[30]

The mantle of protection afforded by the above quoted constitutional provision covers the period from the time a person is taken into custody for the investigation of his possible participation in the commission of a crime or from the time he is singled out as a suspect in the commission of the offense although not yet in custody.[31] The exclusionary rule is premised on the presumption that the defendant is thrust into an unfamiliar atmosphere running through menacing police interrogation procedures where the potentiality for compulsion, physical or psychological is forcefully apparent.[32]

However, the rule is not intended as a deterrent to the accused from confessing guilt if he voluntarily and intelligently so desires but to protect the accused from admitting what he is coerced to admit although untrue.[33] It must be remembered in this regard that while the right to counsel is immutable, the option to secure the services of counsel de parte is not absolute.[34] Indeed -

The phrase "competent and independent" and "preferably of his own choice" were explicit details which were added upon the persistence of human rights lawyers in the 1986 Constitutional Commission who pointed out cases where, during the martial law period, the lawyers made available to the detainee would be one appointed by the military and therefore beholden to the military.[35]

XXX.....XXX.....XXX

Withal, the word "preferably" under Section 12 [1], Article 3 of the 1987 Constitution does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling his defense. If the rule were otherwise, then, the tempo of a custodial investigation will be solely in the hands of the accused who can impede, nay, obstruct the progress of the interrogation by simply selecting a lawyer who for one reason or another, is not available to protect his interest. This absurd scenario could not have been contemplated by the framers of the charter.

While the initial choice in cases where a person under custodial investigation cannot afford the services of a lawyer is naturally lodged in the police investigators, the accused really has the final choice as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused where he never raised any objection against the former's appointment during the course of the investigation and the accused thereafter subscribes to the veracity of his statement before the swearing officer.[36]

Verily, to be an effective counsel "[a] lawyer need not challenge all the questions being propounded to his client. The presence of a lawyer is not intended to stop an accused from saying anything which might incriminate him but, rather, it was adopted in our Constitution to preclude the slightest coercion as would lead the accused to admit something false.[37] The counsel, however, should never prevent an accused from freely and voluntarily telling the truth."[38]

A circumspect scrutiny of the records leaves this Court unconvinced of accused-appellant's claim that he was not adequately assisted by counsel during his custodial interrogation. Noteworthy are the following excerpts of the testimony of the interrogating officer, Sgt. Romulo Mercado:

ATTY. CRESCINI:

Q

Now, in connection with your investigation of the death of Julianito Luna, do you remember if you ever investigated a person, a certain person in the name of Elberto Base y Malasmas?

WITNESS:

A

Yes, sir.

Q

Now, do you recall if he gave a written statement ?

A

Yes, sir.

Q

Yes, but that written statement which the accused Elberto Base gave you, will you be able to recognize it ?

A

Yes, sir.

Q

I am showing you the original of a written statement consisting of four pages, and found in the possession of the public prosecutor, please go over this written statement and tell us if you recognize it ?

WITNESS:

A

I was the one who took this that is why I know the affidavit.

Q

It would appear from the face of this statement on page one and again on page 4 that Elberto Base was assisted by a lawyer in the person of Atty. Romeo T. Reyes, is that correct ?

A

Yes, sir.

xxx.....xxx.....xxx

ATTY. CRESCINI :

Q

All these statements appears to be in question and answer form, please tell the court who propounded those questions ?

WITNESS :

A

Yes, sir.

Q

and the answers appearing there, whose answers were those ?

A.

Those were the answers of Elberto Malasmas, (sic) sir.

XXX.....XXX.....XXX

Q

The questions and answer[s] appears to be in Filipino. Before you reduce[d] the statement in writing, did you explain or ascertain from him what language or dialect he was conversant most?

WITNESS

A

Yes, sir.

:Q

What language did he prefer to be asked of him ?

A

Tagalog, sir.

Q

Let me invite your attention to the question appearing on page 2, "Narito si Atty. Romeo T. Reyes na maari naming ibigay sa iyo. Nais mo ba na asistihna ka niya ?" Did you ask him that question ?

A

Yes, sir.

Q

And the aswer here appearing is "Opo." Who gave that answer ?

A

Elberto, sir.

XXX.....XXX.....XXX

ATTY. CRESCINI:

Q

The first page also purports to show that you have read and explain[ed] to the affiant Elberto Base y Malasmas his contitutional rights. Did you actually read that to him?

WITNESS:

A

Yes, sir.

Q

Now there appears on page 3 marked as Exhibit "B-2" this last question, the last question, "Nakahanda ka bang lagdaan at sumpaan ang salaysay na ito?" This is continued to page 4, did you really ask him that question ?

A

Yes, sir.

Q

And the answer is here is "Opo". Who gave that answer ?

A

Elberto Base, sir.

xxx.....xxx.....xxx

ATTY. CRESCINI :

Q

I will now address your attention to the signature appearing on page 1 above the typewritten name Elberto Base y Malasmas and below the information regarding his constitutional rights and second signature purports to be that of Elberto Base y Malasmas also on page 1 and after he was offered the services of Atty. Romeo t. Reyes and after he has also expressed his consent to be assisted by Atty. Reyes, whose signature[s] are those both legibly reading Elberto Base?

A

Those are the signatures of Elberto Base, sir.

xxx.....xxx.....xxx

ATTY. CRESCINI:

Q.

Why do you know that those signatures marked in evidence as Exhibits "V-6", "V-7" and "V-8" are the signatures of Elberto Base?

WITNESS:

A

I was present when he affixed his signatures, sir.

Q

During the entire investigation you were conducting of the witness Base, was Atty. Reyes whom you delegated to assist Elberto Base present?

WITNESS:

A

He was there, sir.

Q

I will invite your attention to the signature appearing on page one above the typewritten name Romeo T. Reyes, opposite that of Elberto Base, as well as another signature on the last page, below the phrase, "assisted by" and above the typewritten name Atty. Romeo T. Reyes. Whose signatures are those ?

A

Those are the signatures of Atty. Reyes.

Q

Why do you say so?

A

When he signed that, we were facing each other.

xxx.....xxx.....xxx

ATTY. CRESCINI:

Q

Before Elberto Base signed his statement marked as Exhibits "V" to "V-3" respectively, did you give him the opportunity to read the same?

WITNESS:

A

Yes, sir.

Q

And after reading it out, did he sign his statement?

A

He was in front of us, I and Atty. Reyes when he affixed his signature.

Q

Did he sign it voluntarily?

A

Yes, sir.

Q

This statement purports to have been subscribed and sworn to before Captain Edmon Zaide, Administering Officer on February 8, 1990. Do you know that as a fact?

A

I know that, sir.

Q

Why do you know that ?

A

Because Capt. Zaide was also there. We were facing each other."[39]

Sgt. Mercado remained steadfast and unwavering with regard to the regularity in the conduct of the investigation despite repeated attempts of defense counsel to throw him off track on cross examination:

Q

Now, Mr. Witness, you are the investigator who conducted an investigation on Elberto Base, is that correct?

A

Yes, sir.

Q

How long have you been an investigator?

A

More or less eight years, sir.

ATTY. HERMOSO :

Q

And approximately, before February 8, 1990, do you remember how many investigations have you conducted ?

WITNESS :

A

I cannot remember anymore, sir.

Q

About one hundred Mr. Witness ?

A

Less, sir.

Q

Now, in your investigation conducted Mr. Witness, would you agree with me that it is your procedure that before proceeding with the investigation, you usually reduced into writing the rights of the accused to be investigated ?

A

Yes, sir.

Q

And as a matter of fact, the right[s] were also reduced to into writing when you investigated Elberto Base, correct?

A

Yes, sir.

Q

Now, Mr. Witness, so you would agree with me that before you started to investigate Mr. Elberto Base, those rights of the accused were already reduced into writing?

A

No, sir.

Q

So when did you reduce that (sic) rights into writing ?

WITNESS :

A

When he was in front of me, sir.

Q

Now, Mr. Witness, I noticed that in your investigation conducted on Elberto Base, there is already a name of a certain Atty. Romeo T. Reyes. Do you know this Atty. Romeo T. Reyes? On the top portion of that investigation you conducted on Elberto Base ?

A

Yes, sir.

Q

How long have you known him?

A

More or less seven months, sir.

Q

And you know Atty. Reyes very well ?

A

Yes, sir.

Q

Now, Mr. Witness, I noticed that there is a superimposition of the name Romeo T. Reyes on the name printed as Conrado Reyes. Will you please explain the significance of that written name Romeo T. Reyes on the printed name Conrado T. Reyes?

WITNESS :

A

It was superimposed because I thought he was Atty. Conrado Reyes.

ATTY. HERMOSO :

Q

So you will admit that you do not know that well Atty. Romeo T. Reyes ?

A

I know him very well but I do not know his first name.

Q

Alright, I noticed that before you conducted the investigation on Elberto Base, the name Atty. Romeo T. Reyes was already typewritten on the top portion of your sworn statement. Is that correct ?

A

When he was in front of me and I was typing that investigation, that was the time I put the name Atty. Romeo T. Reyes.

Q

So you will agree with me that even before you started the investigation of Elberto Base, Atty. Reyes' name was already indicated at the start of the salaysay?

ATTY. CRESCINI :

Objection, Your Honor. Misleading. Already answered.

COURT :

Sustained.

ATTY. HERMOSO:

Q

You will agree with me that before you reduced the rights of the accused into writing, during the custodial investigation the name Romeo T. Reyes was already placed on the sworn statement?

ATTY. CRESCINI:

Same objection.

COURT:

Sustained.

ATTY. HERMOSO:

Q.....Now, Mr. Witness, I noticed that there were several signatures on this Exhibit "V" for the prosecution marked as Exhibits "V-6", "V-7", V-9" on page 1 and on Exhibit "V-3" submarkings "V-8", "V-10" and "V-11" and "V-12", now will you please see for yourself these markings. Now, these signatures marked as "V-5", "V-6", "V-7" and "V-9" and "V-10", "V-11" and "V-12" were affixed by the respective names appearing therein simultaneously ?

WITNESS:

A

Yes, sir.

Q

And these persons signed or affixed their signatures after this statement of Elberto base was typewritten, is it not, Mr. Witness?

A

Yes, sir.

COURT:

Q

Where was this statement taken?

A

In our headquarters, sir.

Q

Where was that?

A

At Barangay Masaya, Rosario, Batangas.

Q

And Atty. Reyes happened to be there?

A

We have him called (sic).

Q

Did you call Atty. Reyes before you investigated this Base ?

A

Yes, sir.

COURT:

Q

At the time that you inform[ed] the accused of his constitutional rights particularly his right to be assisted by counsel, did you personally inform him that before you investigate him, he has the right to be assisted by counsel of his choice ?

WITNESS :

A

Yes, sir.

Q

And did he inform you that he will be assisted by counsel ?

A

He told me he could not secure a services (sic) of a lawyer during that time.

Q

But did he inform you [of] the name of his lawyer whom he wanted to represent him?

A

No, sir.

Q

How did the name of Atty. Reyes come into the picture?

A

Because we know that said statement will not be acceptable in court if the accused is to be investigated and is not assisted by a lawyer, that is why we have Atty. Reyes called and presented him to the witness if he will accept Atty. Reyes.

COURT:

Q

And did the accused accept the services of Atty. Reyes when you told him that?

A

Yes, sir.

Q

Did Atty. Reyes first confer with the accused ?

A

Yes, sir.

Q

During all the time ?

A

Yes, sir.

Q

Was there an occasion when Atty. Reyes would advise the accused not to answer any question that you rofounded ?

A

I cannot remember, sir.

Q

Is there any occasion when the witness first ask[ed] the opinion of Atty. Reyes whether he should answer the question or not ?

A

Yes, sir.

COURT:

Proceed.

ATTY. HERMOSO:

Q

You will admit Mr. Witness that Atty. Reyes' name came into the picture because of your knowledge that this statement would not be acceptable to court (sic) if the accused is not assisted by counsel is it not ?

WITNESS :

A

Yes, sir. If he is a suspect.

Q

So, did I get you right Mr. Witness that the assistance of Atty. Romeo T. Reyes is through your insistence and not thru the request of the accused ?

ATTY. CRESCINI :

Objection, Your honor. There is no showing of insistence on the part of the witness. It assumes a fact not testified.

COURT :

Reform your question.

ATTY. HERMOSO :

Q

Do I get you right Mr. Witness that Atty. Romeo T. Reyes' name was brought to the 217th PC Company to assist the accused Elberto Base because of your knowledge that this statement is not acceptable to court if not assisted by [a] lawyer?

ATTY. CRESCINI :

Objection Your Honor. Already answered.

COURT :

Q

It was upon your initiative and not the accused that the services of Atty. Reyes [was secured] to assist him in your investigation?

WITNESS:

A

Yes, sir.

ATTY. HERMOSO :

Q

So it is not the accused, would you agree with me, it was you who requested ?

ATTY. CRESCINI:

Objection Your Honor. Already answered.

ATTY. HERMOSO :

This is only a follow-up question.

COURT :

Reform and make it clear.

ATTY. HERMOSO :

Q

According to you a while ago, it is upon your initiative that Atty. Romeo T. Reyes went to the 217th PC Company to assist the accused ?

WITNESS :

A

I called for him. I was not yet sure if he will assist the accused because he was not sure if the accused will commit and the accused consented.

Q

Did the accused consented (sic) ?

A

He consented.

Q

Now, Mr. Witness, what was the condition, body and mind of the accused at the time he was being investigated ?

A

He was in good condition, sir.

Q

Are you sure of that ?

A

Yes, sir.[40]

Even more revealing on the voluntariness in the taking of accused-appellant's statement is the following testimony of Atty. Romeo T. Reyes who was with the accused and assisted him during the taking thereof:

ATTY. CRESCINI :

Q

Now, on that date, sometime at about 8:00 in the evening, do you recall having been requested to assist to (sic) a person under custodial investigation?

A

Yes, sir.

Q

And can you recall the name of that person whom you assisted ?

A

I think Elberto Base.

Q

And if you see that person and having so requested, did you accommodate the request to assist him?

A

Yes, sir.

Q

Who in particular requested you to give assistance to Elberto Base?

A

I was made to understand that I was invited by the company commander of the 217th PC Company in Barangay Namunga, Rosario, Batangas and the invitation was extended by a policeman and two (2) PC soldiers whose name I can no longer recall.

Q

But you can recall the name of the company commander of the 217th PC Company?

A

Well, I understand he is no longer the executive officer who attended me and brought me to the place where Base was. I can't recall the name.

Q

Did you go to the 217th PC Company?

A

Yes, sir.

Q

Were you able to see that person, Elberto Base?

A

Yes, sir.

Q

Where in particular did you see him?

A

He was at the investigation room at the time I arrived.

Q

If you see him again, will you be able to identify him?

A

Yes, sir.

Q

Will you look inside this Courtroom and point to him if he is present?

A

Mr. Base is the one wearing a maong type shirt.

Q

About what time in the evening of February 8, 1990 did they go to you when you went to the headquarters to assist him?

A

The team that invited me arrived past 7:30 in the evening, after having our supper.

Q

Were you able to talk to him?

A

Yes, sir.

Q

What about?

A

Well, I told him about the gravity of the offense of which he is being investigated and also I informed him of his constitutional right.

Q

From whom in particular did you come to know about the matter and gravity of his offense?

A

The incident that took place was a public knowledge in Rosario and I was apprised of the facts and circumstances surrounding the commission of the offense and I informed Mr. Base that you are being investigated of a very grave offense.

Q

In what language did you confer with Mr. Base more particularly as far as advising him of his constitutional

right is concerned?

A

In Tagalog, sir. Manikan

Q

And after so advising him about the gravity of the offense for which he is being investigated as well as his constitutional right, what did Mr. Base tell you?

A

Well, he insists that he is willing to give a voluntary statement.

Q

And did he in fact give a statement?

A

Yes, sir.

Q

Were you present during the taking of his statement?

A

Yes, sir.

Q

Do you know if after the taking of the statement if Mr. Base is given the opportunity to read such written statement?

A

Yes, sir.

Q

I am showing to you the original of the statement that purports to be the written statement of Elberto Base consisting of four (4) pages, and may I invite your attention to a signature appearing above the typewritten name Atty. Romeo Reyes, do you recognize that signature?

A

Yes, sir.

Q

Whose signature is that?

A

That is my signature, sir.

ATTY. CRISCINI:

May I place on record that the witness has identified Exh. "B-9". May I also invite your attention to an initial

appearing on the left hand margin at the bottom of page 2. Whose initial is that?

A

That is my initial, sir.

Q

How about this initial on page 3 at the left bottom portion, whose initial is that?

A

That is my initial.

Q

And finally, I address your attention to the last page to the signature appearing above the typewritten name, Romeo Reyes, whose signature is that?

A

That is my signature.

Q

Do you know why you were required by the investigator to affix your signatures on each and all pages?

A

Yes, sir.

Q

Why?

A

Just to show that I was present when the statement on each and every page were taken.

Q

I address your attention to the signatures appearing on page 2 above the typewritten name Elberto Base marked as Exhibits "B-6" and "B-7", so you know whose signatures are those?

A

Yes, sir.

Q

Whose signatures are those?

A

Those are the signatures of Elberto Base.

Q

May I also invite your attention to the signature appearing on the fourth page marked as Exh. "B-8" above the typewritten name Elberto Base, whose signature is that?

A

That is the signature of Elberto Base.

Q

Why do you know that Exhibits "B-6", "B-7" and "B-8" are the signatures of the accused?

A

I was present when those signatures were affixed by Elberto Base.

Q

It also appears that this statement was sworn to on February 8, 1990 before Capt. Eduardo Zayde, were you present when this was sworn to?

A

Yes, sir.

Q

Now, let us go back to the taking of the statement. How did Elberto Base give this statement?

A

He gave it in the vernacular.

Q

And the manner in which he gave this statement?

A

Casual manner.

Q

Was it voluntary?

A

Voluntary.

Q

The very first portion of this statement, Exh. "B", started with a narration by the investigator for some of the constitutional rights of Elberto Base. Were you present when this was done?

A

Yes, sir.

Q

And all the answers, was in the vernacular, were these given by Elberto?

A

Yes, sir.

ATTY. CRISCINI:

That will be all, Your Honor, just two additional questions.

Q

Testifying before this Honorable Court in his defense, the accused Elberto Base alleged not only that he was not assisted by lawyer, that no lawyer was presented and he also manifested that he was in the investigation room and even in the course thereof he was maltreated and that his lips were wounded, he had a broken tooth and a broken bone at the back. Now, in the course of your staying at the 217th PC Company, he said you arrived at around 7:00 until the conclusion of his statement, did you notice any maltreatment of this accused Elberto Base?

A

I don't (sic) notice anything.

Q

Up to what time did you stay there Atty. Reyes at the headquarters of the PC?

A

I stayed there past 12:00 o'clock.

Q

From that time of your arrival sometime at 7:20 in the evening until your departure at past 12:00 o'clock did you notice any force exerted or applied on the person of Elberto Base in the course of the investigation?

A

There is no force exerted against Base.

Q

Did you notice any injury in (sic) his person?

A

I did not notice any injury, sir.[41]

Like Sgt. Mercado, Atty. Reyes remained constant and steadfast despite intense grilling by defense counsel on cross-examination:

ATTY. HERMOSO :

Q

Alright, you said on February 8, 1990 at around 7:30 p.m. a team from the 217th PC Company came to your house, is that correct ?

A

Yes, sir.

Q

How many persons came to your house then?

A

I think more than five (5).

Q

You cannot say even the number of these persons who came to your house ?

A

I cannot because 7:30 was dark and it was a black out during that time they arrived.

Q

And these persons who came to your house, did you allow them to enter your house ?

A

Yes, sir.

Q

How many persons ?

A

I think three (3).

Q

Do you know these persons who entered your house ?

A

I can no longer remember the name, but I am very sure there was one (1) policeman who was with them.

xxx.....xxx.....xxx

Q

Now, the moment these three (3) persons entered your house, what was their purpose in going to your house, did they inform you what was their purpose in going to your house?

A

Yes, sir.

Q

What ?

A

They extended to me an invitation to go to the camp of the 217th PC Co. in Barangay Namunga, Rosario, Batangas.

Q

So, the three policemen, what do you mean by extended to you an invitation?

A

I was told that the company commander is requesting my presence.

Q

Now, before this incident happened, before you were invited to the 217th PC Co. do you already know this incident?

A

Yes, sir, they informed me.

Q

Before you were informed by these policemen who came to your house are you aware already of this incident of the killing of Julianito Luna?

A

Yes, sir.

Q

Since when have you been aware of this incident, Mr. Witness?

A

Since the very morning, that was the news already in town.

xxx.....xxx.....xxx

ATTY. HERMOSO:

Q

You went with them to the 217th PC Company?

A

Yes, sir.

Q

What vehicle did you use going to that headquarters?

A

P.C. vehicle

.xxx.....xxx.....xxx

ATTY. HERMOSO :

Q

Now, what happened when you arrived at the 217th PC Company?

A

I was introduced to Elberto Base.

Q

What happened after the introduction?

A

Well, I was told, that Elberto Base will give a voluntary statement. I asked the investigating officer in the person of Captain Zayde, if I can be allowed to talk to Elberto Base before the actual taking of his statement.

Q

So, Mr. Witness, when you said that you be allowed to talk with Mr. Base before the actual taking of the statement, when you arrived there, there was no statement yet taken?

A

No statement yet.

Q

Now, Mr. Witness, who introduced you to Mr. Elberto Base?

A

The company commander, whose name I forgot and Capt. Zayde the investigating officer.

Q

And where was that introduction made?

A

In the investigation room.

Q

Who were present in the investigation room?

A

.Mr. Base, Capt. Zayde and a PC officer also who is in front of the typewriter.

Q

What was that person doing in front of the typewriter?

A

Well, he was then ready to take the statement of Mr. Base.

Q

Do you know this person who is in front of the typewriter?

A

Ya, yes.

Q

What is the name, Mr. Witness?

A

A certain Sgt. Mercado.

Q

How about you, do you know if he knows you, this Sgt. Mercado?

A

Before the incident, I don't think so.

Q

Now, this Sgt. Mercado, is not included in the person who fetched you in your house?

A

I could not remember.

Q

Now, when you requested that you first talk with Mr. Elberto Base, were your request granted?

A

Yes, sir.

Q

Where did you talk with Mr. Elberto Base?

A

Well, inside the investigation room also.

Q

And inside the investigation room aside from you and Mr. Elberto Base while you were talking thereat, was there any person inside?

A

Capt. Zayde was out in the room.

Q

How about the person who was typing?

A

He was still there.

Q

Aside from the person who was in front of the typewriter, was there another person inside the investigation room?

A

There was none.

Q

And the accused while he was in the investigation room not in handcuffs?

A

He was not handcuff (sic).

Q

Now, you said that you arrived there at 8:30 in the evening of February 8, 1990, and according to you the investigation officer have (sic) not yet taken the statement of Elberto Base, is that correct?

A

Actually there were papers already in the typewriter and I requested him to start all over again.

Q

And who was that person you informed to start all over again?

A

Sgt. Mercado.

Q

And did he start all over again?

A

Yes, sir, after I have conferred with Mr. Elberto Base.

Q

I am showing to you this alleged Extra-Judicial Statement which was taken on February 8, 1990, at 217th PC Company at around 8:00 p.m. in the presence of Atty. Romeo Reyes. Would you kindly tell this Honorable Court if your statement a while ago that your request from Sgt. Mercado to start all over again was followed?

A

Yes, sir.

Q

So, actually the start of the giving of the statement of the accused Elberto Base commenced after 8:30?

ATTY. CRESCINI:

Objection, if your Honor, please, the witness did not fix the period at exactly 8:30, he said around 8:30. So it's in that neighborhood. It would be or should be around 8:30.

COURT:

To the best of your recollection, at about what time did the investigator I am referring to Sgt. Mercado, start taking down the written statement of Elberto Base?

A

Sir, in my presence?

Q

In your presence?

A

It was past 8:00 o'clock already, sir.

Q

Can you not give a more specific time considering your previous testimony that you arrived in the camp at around 8:30 in the evening?

A

Maybe past 8:30, Your Honor.

Q

You are not certain?

A

I am not very sure of the time, Your Honor.

Q

When the investigation started taking down the statement of Elberto Base in your presence, you did not consult your watch to determine what time the investigation started?

A

I did not, Your Honor, but I am very sure now that because of my conference that I have with Elberto Base the actual taking of the statement took place about 8:30 to 9:00 o'clock in the evening.

COURT:

So you are not certain as to the exact time?

A

I am very certain, Your Honor.

Q

And that was per your previous declaration 8:30 in the evening?.....

A

Yes, sir.

Q

After arriving in the camp you hate (sic) to talk with the commanding officer and Capt. Zayde?

A

Yes, sir.

Q

And only after such conference were you introduced with accused Elberto Base?

A

Conference with himself.

Q

With Capt. Zayde and the commanding officer?

A

I have no conference with Capt. Zayde with Elberto Base, only.

Q

.By conference, I meant that you talk (sic) with the commanding officer and Capt. Zayde before you had your conference with the accused?

A

Yes, sir.

Q

And for how long did your conference with the accused last?

A

About 20 minutes, sir.

Q

It was only after the conference with the accused that his statement was taken again?

A

Yes, sir.

ATTY. HERMOSO:

Now, Mr. Witness, you said you were able to talk with Mr. Base after he was introduced to you?

A

Yes, sir.

Q

And the first thing you utter (sic) when he was introduced to you, is that, I am Atty. Reyes?

A

Yes, sir, I introduced myself.

Q

That you were requested by Capt. Zayde to help you in the investigation?

A

That's not exactly (sic).

Q

You said, that is not exactly, what was the exact words? (sic)

A

I could not recall exactly the words that I used but I told him that I was requested to assist you in the conduct of the investigation.

COURT:

What else did you tell him?

A

And I told him if he has a counsel of his own. And he said, none. I further asked him if he is willing to be assisted by counsel in the giving of his statement consider (sic) the gravity of the offense for which he is being investigated.

Q

Any further statement that you gave?

A

After saying that he is willing to make use of my assistance, I informed him of his constitutional rights and after I have informed him I asked him if he is still willing to give a free and voluntary statement.

Q

You said that you informed him of his constitutional rights, what constitutional rights did you inform the accused?

A.

That he is still presumed to be innocent, that he is entitled to a lawyer of his own choice and that it is his right to remain silent.

Q

The rights that you told him you explained to him?

A

.Yes, sir.

Q

Are those the rights that you explained to him?

A

And that his statement that will be given will be used against him. That is all that I informed the accused, Your Honor.

xxx.....xxx.....xxx

Q

Now, I noticed in this alleged Extra-Judicial investigation, Mr. Witness, that there was an erasure in the name Conrado Reyes, do you have a hand in the changing of your name in the first name, Mr. Witness?

A

Yes, sir, this is my correction.

Q

You requested correction of your name after it was already typewritten?

A

Yes, sir.

ATTY. HERMOSO:

I think that would be all for the witness, Your Honor.

COURT:

You said that you informed the accused of his right to remain silent, will you demonstrate to the Court how you explained that right of the accused to Elberto Base?

A

Yes, sir, I told him in the vernacular that, "Ikaw ay puedeng huwag magsalita at sumagot sa mga katanungang (sic) ng investigador dito sa imbistigasyong ito hanggang sa ikaw ay huwag na (sic) magbigay ng salaysay sapagkat ito ay maaring gamitin laban sa iyo."

Q

That's how you explained to the accused?

A

Yes, Your Honor, on that particular right to remain silent.

Q

For how many minutes did the investigation last?

A

I think it's almost three (3) hours.

Q

In the course of the investigation, when a particular question is asked to the accused, you, as a counsel, during that proceedings, did you at any particular moment advise your client not to answer that question because it will be very detrimental to him?

A

There are times before the actual taking of the statement, I interviewed Mr. Base and after narrating to me the incident I told him if that will be the substance of his testimony to be given to the investigator and he told me, yes. And on the basis of that assurance, will (sic) I allow him to answer questions within the context of the narration that he gave to me, although there are times when I have to caution him during our conference that this is dangerous. There are statements that are dangerous and I cautioned him to beware.

Q

You have not yet answered my question. Repeat the question.

Q

In the course of the investigation, when a particular question is asked to the accused, you, as a counsel, during that proceedings, did you at any particular moment advise your client not to answer that question because it will be very detrimental to him?

A

I cautioned him to think first before he answer (sic).

Q

But your observation was not included in the investigation conducted by the investigator?

A

It was not included.

Q

You did not request that this advice to the accused be given to the accused?

A

I did not, Your Honor.

Q

After the statement of the accused was taken then by the investigator, you and the accused together read the statement again?

A

Yes, Your Honor.

Q

Read the statement for the first time?

A

Yes, Your Honor.

Q

And did you discuss this written statement to the accused before he signed it?

A

Yes, sir.

Q

And you advise him not to sign the statement?

A

Well, I told him if he is still willing to sign the statement.

Q

You did not answer the question of the court?

A

I did not advise him to sign.[42]

The foregoing testimonial excerpts vividly shows that Atty. Reyes' participation during the custodial investigation of accused was anything but perfunctory. Much less could it be argued that he was remiss in his duties to assist the accused. On the contrary, they in fact underscore his active participation in the proceedings.

To support his claim that his sworn statement was irregularly taken, accused-appellant further insists that the same was obtained through force and paints a graphic picture of torture at the hands of fifteen persons who repeatedly beat him up with gun barrels and butts[43] as a result of which he allegedly lost a tooth and sustained contusions, a busted mouth and broken bones at his back.[44]

We remain unpersuaded.

For all accused-appellant's protestations to the contrary, his tale of coercion and torture in the hands of his interrogators taxes credulity vis-à-vis his testimonial declarations that despite supposedly being severely mauled and sustaining injuries as a result thereof he did not: 1.] complain to the senior officer of his interrogators about how he was treated during his custodial investigation;[45] 2.] tell his wife of his injuries when she arrived the next day nor did he ask her to take him to a hospital for treatment;[46] 3.] inform his lawyer of the alleged injuries he sustained at the hands of his interrogators although he had several opportunities to do so;[47] 4.] inform his lawyer that he was forced to sign the sworn statement;[48] 5.] present any medical certificate to prove the existence of his alleged injuries. Topping accused-appellant's incredible tale of torture is his almost two-year silence on the incident which only came to light when he testified in court.[49] Accused-appellant explains away these lapses as the products of his 'fear' of his interrogators.[50] However, his failure to speak up and disclose his fear at the earliest opportunity subjects to serious doubt the reality and substance of that supposed fear.[51] Along the same vein, accused-appellant's unsupported claims of physical abuse in the hands of his interrogators simply ring hollow in the absence of other proof to corroborate them. Indeed - Sccalr

"... bare assertions of maltreatment by the police authorities in extracting confessions from the accused are not sufficient in view of the standing rule enunciated in the cases of *People v. Mada-I Santalani*;^[52] *People v. Balane*;^[53] and *People v. Villanueva*,^[54] that where the defendants did not present evidence of compulsion, or duress nor violence on their person; where they failed to complain to the officer who administered their oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies; and where they did not have themselves examined by a reputable physician to buttress their claim, all these were considered by this Court as factors indicating voluntariness."^[55]

Going by accused-appellant's account, the Court likewise finds it odd for accused-appellant's interrogators who picked him up for questioning as he disembarked from a bus at Mataas na Lupa, Lipa City^[56] to take a detour by first bringing him to Lodlod, Lipa City at the house of Amelia Quizon^[57] where he was bound hand and foot at gun point,^[58] loaded on a top down jeep and then brought to the 217th PC Detachment in Rosario, Batangas^[59] instead of being forthwith taken to the PC Camp for questioning after being apprehended at the bus stop. Settled is the rule that evidence, to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself.^[60] Suffice it to state in this regard that such circumstances narrated by accused-appellant only tends to underscore the incongruity of his tale of torture. Calrsc

A circumspect scrutiny of accused-appellant's Sinumpaang Salaysay^[61] clearly shows how he and his co-accused planned the killing of the deceased as well as the sequence of events before and after the occurrence of the

incident. These events could not have been supplied either any of those interviewed by the peace officers or by the peace officers themselves because the said statement is replete with details which only one who has an intricate knowledge thereof can supply.[62] Verily -

"It remains only to note that the extrajudicial statements of Romeo Jabil and Rufo Llenarasas are replete with details and they corroborate and complement each other so substantially that it is very difficult to suppose that the statements had been merely derived from the creative imagination of the police officers involved. The confessions, in other words, have the ring of truth about them."[63]

When, as in this case, "[a]n extrajudicial statement satisfies the requirements of the Constitution, it constitutes evidence of a high order because of the strong presumption that no person of normal mind would deliberately and knowingly confess to a crime unless prompted by truth and conscience.[64] The defense has the burden of proving that it was extracted by means of force, duress, promise or reward."[65] Unfortunately for accused-appellant, he failed to overcome the overwhelming prosecution evidence to the contrary.

Section 3, Rule 133 of the Rules of Court provides that "[a]n extrajudicial confession made by an accused shall not be sufficient ground for conviction, unless corroborated by evidence of corpus delicti." In this case the prosecution presented other evidence to prove the two elements of corpus delicti, to wit: a.] a certain result has been proven, i.e. a man has died; and 2.] some person is criminally responsible.[66]

In this case, it is indubitable that a crime has been committed and that the other pieces of prosecution evidence clearly show that accused-appellant had conspired with the other accused to commit the crime.[67] In fact, he was seen by the prosecution witnesses in the company of his other co-accused. Furthermore, Atty. Romeo T. Reyes and the interrogator, Sgt. Romulo Mercado, testified to the voluntariness of his confession. In this regard, it must be stressed that the aforementioned rule merely requires that there should be some other evidence "tending to show the commission of the crime apart from the confession." [68]

All told, an overall scrutiny of the records of this case leads us to no other conclusion but the correctness of the trial court in holding that the accused-appellant and his co-accused committed murder. What remains to be determined is whether the elements of the crime have been established.

Conspiracy is alleged in the information charging the accused-appellant of the crime. Conspiracy -

"... exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof is not essential, for conspiracy may be inferred from the acts of the accused prior to, during or subsequent to the incident. Such acts must point to a joint purpose, concert of action or community of interest. Hence, the victim need not be actually hit by each of the conspirators for the act of one of them is deemed the act of all." [69]

A perusal of the Sinumpaang Salaysay [70] would readily show accused-appellant's complicity in the slaying of the victim. In the sworn statement, he narrated that a week before the killing, he was with the assassins in conducting a surveillance of the victim's residence. [71] He also declared that he was with Frederick Lazaro and Eduardo Patrocinio when the jeep with Plate Number CFU-178 was borrowed by the two accused [72] and that he was with them when they left Pasay City bound for San Juan, Batangas, the day the victim was shot. [73] He likewise averred that he was left on a shed in Ibaan, Batangas when Lazaro and Patrocinio returned to Rosario, Batangas and that he was with them when they went to the house of Jun Vale at San Jose, Batangas; [74] from there they proceeded to Lodlod, Lipa City where they left the jeep in the premises of Amelia Quizon's house. [75] Finally, accused-appellant admitted that he was told to recover the jeep in Lodlod, Lipa City on the day he was arrested. [76]

The one-week interval when accused-appellant and his co-conspirators first cased the victim's house up to the

actual date of the killing underscores the presence of evident premeditation. For this aggravating circumstance to be considered, there must be proof of the following elements thereof, i.e., 1.] the time the offenders determined to commit the crime; 2.] an act manifestly indicating that they clung to their determination; and 3.] a sufficient lapse of time between determination and execution to allow reflection upon the consequences of the act.[77]

Treachery is also alleged in the information indicting the accused. There is treachery "[w]hen the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make." [78] The essence of *alevosia* is the swift and unexpected attack on the unarmed victim without the slightest provocation on the victim's part. [79] The fact that treachery may be shown if the victim is attacked from behind does not mean it can not also be appreciated if the attack is frontally launched. [80] Even a frontal attack can be treacherous when it is sudden and the victim is unarmed. [81] In this case, the suddenness of the shooting without the slightest provocation from the victim who was unarmed and had no opportunity to defend himself, clearly qualified the crime with treachery. [82]

At the time the crime was committed on February 8, 1990, murder was punishable by reclusion temporal in its maximum period to death. Considering the presence of two aggravating circumstances with no mitigating circumstance, the maximum penalty of death would be imposable under Article 63 of the Revised Penal Code. However, since the offense was committed during the suspension of the imposition of the death penalty and prior to its reimposition under Republic Act No. 7659, [83] the imposable penalty is reclusion perpetua. [84] This penalty is single and indivisible, thus, it shall be imposed regardless of any attending aggravating or mitigating circumstances. [85]

The sum of Fifty Thousand (P50,000.00) Pesos awarded by the court *a quo* as civil indemnity *ex delicto*, without further need of proof of damage, is proper as it follows prevailing jurisprudence and is in line with the policy of the Court. [86] With regard to actual damages, the trial court found that the wife of the victim spent Twenty Five Thousand (P25,000.00) Pesos for food and drinks during the deceased's ten-day wake; Ten Thousand (P10,000.00) Pesos for funeral services and transportation expenses of Five Thousand (P5,000.00) Pesos. [87] Since accused-appellant does not question this finding of the trial court, he is liable to private complainants in the said amount as actual damages. [88]

This Court, however, can not sustain the award of moral damages in the absence of sufficient evidence to support it. [89] It is elementary that for moral damages to be properly adjudicated in criminal offenses resulting in physical injuries, there must be a factual basis for the award thereof. [90]

WHEREFORE, with the sole MODIFICATION that the award of One Hundred Thousand (P100,000.00) Pesos by way of moral damages be DELETED, the Decision appealed from is hereby AFFIRMED in all other respects.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Record, pp. 105-106.

[2] *Ibid.*, pp. 60-61.

[3] *Id.*, p. 223.

[4] TSN, 12 August 1991, pp. 10-12.

- [5] Ibid., p. 12.
- [6] Id., pp. 12-13.
- [7] Id., p. 13.
- [8] Id.
- [9] Id., p. 14.
- [10] Id., pp. 36 , 53.
- [11] Id., pp. 19, 23.
- [12] Id.
- [13] Id., pp. 14-16.
- [14] Id., pp. 16-18.
- [15] Id., p. 16.
- [16] Exhibit 4.
- [17] TSN, 12 August 1991, pp. 16-18.
- [18] Ibid., p. 19.
- [19] Id., p. 36.
- [20] Id., pp. 19-20, 35, 47.
- [21] Id., pp. 43, 51.
- [22] Id., pp. 50-51, 21-22.
- [23] Id., p.50, 52.
- [24] Exhibit V and series.
- [25] TSN, 12 August 1991, p. 49.
- [26] Ibid., p. 21.
- [27] Id., p. 28.
- [28] Id.
- [29] *People v. Mantes*, 299 SCRA 562 (1998); *People v. Deniega*, 251 SCRA 626 (1995); *People v. Espanola*, 271 SCRA 689 (1997); *People v. Cabiles*, 284 SCRA 199 (1998); *People v. Tan* 286 SCRA 207 (1998)
- [30] *People v. Bernardino Domantay @ Junior Otot*, 130612, 11 May 1999, p. 12.
- [31] *People v. Andan*, 269 SCRA 95 (1997); Bernas, *The Constitution of the Republic of the Philippines: A Commentary*, 1996 ed., p. 412, citing *People v. Mara*, 236 SCRA 565 (1994)
- [32] *People v. Andan*, supra, citing Bernas, *The Constitution of the Republic of the Philippines*, supra and *Miranda v. Arizona*, 384 U.S. 436, 16 Led. 2d 694 (1966)
- [33] *People v. Benito Bravo*, G.R. No. 135562, 22 November 1999, p. 9, citing *People v. Deniega*, supra.

- [34] *People v. Serzo, Jr.*, 274 SCRA 553 (1997)
- [35] Citing I Record of the Constitutional Commission 731-734; I Bernas, *The Constitution of the Republic of the Philippines*, 1987 1st ed., p. 347.
- [36] *People v. Suarez*, 267 SCRA 119 (1997), citing *People v. Parojinog*, 203 SCRA 673 (1991)
- [37] *People v. Layuso*, 175 SCRA 47(1989)
- [38] *People v. Suarez*, *supra*, citing *People v. Aquino*, 186 SCRA 851 (1990)
- [39] TSN, 8 July 1991, pp. 27-34; italics supplied.
- [40] TSN, 10 July 1991, pp. 17-27; italics supplied.
- [41] TSN, 26 August 1991, pp. 6-15; italics supplied.
- [42] TSN, 26 August 1991, pp. 18-36; italics supplied.
- [43] TSN, 12 August 1991, pp. 23, 38.
- [44] *Ibid.*, pp.16-18; 39.
- [45] *Id.*, p. 39.
- [46] *Id.*, p. 40.
- [47] *Id.*, pp. 40-41.
- [48] *Id.*, p. 52.
- [49] *Id.*, p. 53.
- [50] *Id.*, pp. 39, 53.
- [51] *People v. Logronio*, 214 SCRA 519 (1992)
- [52] 93 SCRA 317 (1979)**
- [53] 123 SCRA 614 (1983)**
- [54] 128 SCRA 488 (1983)**
- [55] *People v. Damaso*, 190 SCRA 595 (1990; italics supplied.
- [56] TSN, 12 August 1991, pp. 10-13.
- [57] *Ibid.*, p. 13.
- [58] *Id.*, pp. 13-14.
- [59] *Id.*, pp. 36, 53.
- [60] *People v. Leonardo K. Joyno*, G.R. No. 123982, 15 March 1999, 304 SCRA 655, citing *People v. Cayabyab*, 274 SCRA 387 (1997); *People v. Salazar*, 272 SCRA 481 (1997); *People v. Salvatierra*, 257 SCRA 489 (1996); *People v. Lian*, 255 SCRA 532 (1996)
- [61] Exhibit V and series.

- [62] *People v. Ribadajo*, 142 SCRA 637 (1986)
- [63] *People v. Llenaresas*, 248 SCRA 629 (1995)
- [64] *People v. Montiero*, 246 SCRA 786 (1995); *People v. Alvarez*, 201 SCRA 364 (1991)
- [65] *People v. Edwin De Vera y Garcia, et al.*, G.R. No. 128966, 18 August 1999, p. 31, citing *People v. Dasig*, 221 SCRA 549 (1993)
- [66] *People v. Lorenzo*, 240 SCRA 624, (1995)
- [67] Exhibit V, pp. 2-3.
- [68] *People v. Edwin De Vera y Garcia*, *supra*, citing *People v. Lorenzo*, *supra*.
- [69] *People v. Eleuterio Costelo, et al.*, G.R. No. 134311, 13 October 1999, p. 21, citing *People v. Maldo* G.R. No. 131347, 19 May 1999; italics supplied.
- [70] Exhibit V and series.
- [71] Exhibit V, pp. 2-3.
- [72] *Ibid.*, p. 2.
- [73] *Id.*
- [74] *Id.*, p. 3.
- [75] *Id.*
- [76] *Id.*
- [77] *People v. Pedro Academia, Jr. y Baldado*, G.R. No. 129251, 18 May 1999, p. 7, citing *People v. Baydo*, 273 SCRA 526 (1997)
- [78] Article 14, par. 16, Revised Penal Code.
- [79] *People v. Romeo Belaro*, G.R. No. 99869, 26 May 1999, citing *People v. Lascota*, 275 SCRA 591 (1997); *People v. Quinao*, 269 SCRA 495 (1997) and *People v. Ombrog*, 268 SCRA 93 (1997)
- [80] *People v. Guillermo*, G.R. No. 113787, 28 January 1999, 301 SCRA 257.
- [81] *People v. Chavez*, 278 SCRA 230 (1997); *People v. Dansal*, 275 SCRA 549 (1997); *People v. Tampon*, 258 SCRA 115 (1996)
- [82] *People v. Jose Binas @ Nestor Binas*, G.R. No. 121630, 8 December 1999, p. 37, citing *People v. Rodolfo Atrejenio y Libanan*, G.R. No. 120160, 13 July 1999, citing *People v. Taclan*, G.R. No. 123109, 17 June 1999.
- [83] Took effect on December 31, 1993.
- [84] *People v. Pulusan*, 290 SCRA 353 (1998)
- [85] *People v. Abdul*, G.R. No. 128074, 13 July 1999; *People v. Demetrio Nunez y Dubduban*, G.R. No. 128875, 8 July 1999; Article 63, Revised Penal Code.
- [86] *People v. Virgilio Borreros*, G.R. No. 125185, 5 May 1999, citing *People v. Espanola*, 271 SCRA 689 (1997); *People v. Gregorio*, 255 SCRA 380 (1996); citing *People v. Sison*, 189 SCRA 643 (1990); *People v. Solis*, 291 SCRA 529 (1998)

[87] RTC Decision, p. 10; Rollo, p. 99.

[88] *Dionisia Artajos v. Court of Appeals and People of the Philippines*, G.R. No. 131113, 21 April 1999, p. 11.

[89] *People v. Antonio Eribal*, G.R. No. 127662, 25 March 1999, p. 10.

[90] *People v. Pacifico Barellano @ "Junior"*, G.R. No. 121204, 2 December 1999, p. 26, citing *People v. Loreto Noay*, 296 SCRA 292 (1998), citing *People v. alas*, 274 SCRA 310 (1997)

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