

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO PADLAN @ “MARCOS,” ROMEO MAGLEO @ “MOTMOT,” AND ALFREDO MAGLEO @ “BOY,” ACCUSED-APPELLANTS.

G.R. No. 111263. May 21, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated June 30, 1993, rendered by the Regional Trial Court, Branch 56 of San Carlos City, Pangasinan, in Criminal Case No. SCC-1960, finding accused-appellants Mario “Marcos” Padlan, Romeo “Motmot” Magleo, and Alfredo “Boy” Magleo guilty of two counts of murder and sentencing each of them

to suffer an imprisonment of:

- Reclusion perpetua, for the death of Rodolfo Manzon.

- Reclusion perpetua, for the death of Mateo Manzon.

and to indemnify the heirs of the deceased as follows:

- 1) P60,000.00 for the death of Rodolfo Manzon.
- 2) P50,000.00 for the death of Mateo Manzon
- 3) P100,000.00 for actual and temperate damages.
- 4) P200,000.00 as moral damages.
- 5) P5,000.00 as exemplary damages.

The information filed against accused-appellants charged That on or about the 15th day of November, 1992, at around 1:15 o'clock in the morning at Barangay Libas, San Carlos City in Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually aiding each other, with evident premeditation, treachery, and intent to kill, did then and there wilfully, unlawfully, and feloniously, with the use of high-powered long firearm, attack and shoot Rodolfo Manzon and Mateo Manzon, killing them instantaneously as a consequence, to the damage and prejudice of the heirs of the said victims in the amount of P _____.

Contrary to Article 248 of the Revised Penal Code.[2]

When arraigned on June 7, 1993, accused-appellants pleaded not guilty, whereupon trial was held. The prosecution's main witnesses were Carlito Manzon and Jordan Pagsolingan. Carlito Manzon is a nephew of the deceased Rodolfo Manzon, Carlito's father being the brother of Rodolfo Manzon. Jordan Pagsolingan is the son

of Carlito Manzon's sister, Flora Pagsolingan, and therefore is a grandnephew of the deceased Rodolfo Manzon.

Per their testimonies,[3] at around 11 p.m. of November 14, 1992, at a pre-wedding dance in Barangay Libas, San Carlos City, Rufo Manzon was beaten up by accused-appellant Mario Padlan and a certain Lito Fernandez. He was saved from further punishment by the timely intervention of Carlito Manzon and Jordan Pagsolingan who took him away and led him to the house of Flora Pagsolingan in Barangay Anando. Carlito Manzon and Jordan Pagsolingan then went to Barangay Payar to fetch Rufo's father, Rodolfo Manzon. Mateo, a brother of Rufo, came along in response.

At Sitio Caniogon of Barangay Libas, the four saw accused-appellants Mario Padlan, Romeo Magleo, and Alfredo Magleo. They tried to avoid them, but they were pursued by the three. Romeo Magleo ordered them to stop, shouting "Hoy!" at them. Carlito and Jordan saw that Mario Padlan was armed with a rifle. Jordan also saw that accused-appellant Alfredo Magleo had a knife.

Carlito and Jordan were young boys aged 16 and 15, respectively. Mario Padlan "went around" the two boys to get near Rodolfo Manzon and then shot the latter. Mario Padlan fired three times at Rodolfo Manzon,[4] as the other accused-appellants watched.[5]

Frightened, Jordan Pagsolingan and Carlito Manzon ran away. As they were fleeing, Jordan Pagsolingan said he heard two more shots fired.[6] He and Carlito went home to Barangay Anando to report the incident. Upon learning of the incident, Jordan's mother, Flora Pagsolingan, and Eling Manzon lost no time and went to the city proper to report the matter to the police.

Flora Pagsolingan corroborated the testimonies of her son Jordan and her brother Carlito Manzon.[7] She testified that the incident was entered in the blotter of the police.[8]

SPO4 Alberto Castro of the Philippine National Police in San Carlos City also testified.[9] He said that upon receipt of Flora Pagsolingan's report, at 3:20 a.m. of November 15, 1992, a team of policemen went to the scene of the crime and afterwards to the residence of Mario Padlan in Barangay Libas, but was told by the latter's wife that he did not go home that night. The police finally found him at about 7 a.m., in the house of his father-in-law, Alejandro Magleo. Magleo, a former barangay captain, surrendered Mario Padlan to the police. SPO4 Castro said that the report mentioning the participation of the two other accused-appellants, Romeo and Alfredo Magleo, came only at about 5 in the morning.[10]

SPO Virgilio G. Cardínoza, who was a member of the team, testified that they recovered from the scene of the crime four empty shells fired from an armalite rifle.[11] Rodolfo Manzon had a short bolo which the police found to be in its scabbard,[12] while Mateo Manzon had a slingshot with darts.[13] Near the feet of Rodolfo Manzon the police found a knife.[14] SPO Cardínoza said he interviewed Jordan Pagsolingan and was told that Mario Padlan fired at them and that with Padlan were Romeo and Alfredo Magleo.[15] SPO Cardínoza said that he and his companions after sometime found Mario Padlan in the house of his father-in-law, but they were unable to locate the other accused-appellants Romeo and Alfredo Magleo in their residences.[16]

Lolita Manzon, the wife and mother of the victims, testified[17] that prior to their death, Rodolfo Manzon worked as a tenant farmer on land that produced eight cavans a year, while her son Mateo, 15 years of age, was a high school sophomore who helped his father farm the land. She bought coffins but could not remember how much she paid for them because of her shock and grief. The deaths of her husband and son were for her "very painful because there were two of them." [18]

Dr. Juan I. Pizarro, who conducted the postmortem examination of the bodies of the victims, found Rodolfo Manzon to have suffered the following wounds:

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Lacerated wound, anterior surface of left forearm, 3 inches from the elbow, measuring 1 1/2 by 1 1/2 inch.

-

Incised wound rectangular in shape 1/2 inch by 1/2 inch, 3/4 inch deep located 1/2 inch just below wound No. 1.

-

Gunshot wound with point of entrance, circular in shape, 10 mm. in diameter, located at the left epigastric area along anterior axillary line 3 inches below the costal line with irregular borders penetrating the abdominal cavity with portion of the intestine protruding outside through this wound.

Point of Exit - None.[19] Dr. Pizarro testified that wound no. 1 could have been caused by a pointed instrument and wound no. 2 by a sharp-bladed instrument. Wound no. 3 was the fatal wound, which caused massive internal hemorrhage.[20]

Dr. Pizarro found Mateo Manzon to have suffered a “[g]aping incised wound 2 1/2 inches long and 1 1/2 inches wide and 5/8 inches deep horizontally across the anterior chest wall just below the medial end of the right clavicle lacerating the right first rib and right portion of the sternum, directed posteriorly to the left lacerating the lungs and the heart.”[21] According to Dr. Pizarro, the wound, which was caused by a sharp-pointed instrument, was fatal.[22]

Accused-appellant Alfredo Magleo admitted[23] that he was at the pre-wedding party in Barangay Libas in the evening of November 14, 1992. He claimed, however, that he and accused-appellant Mario Padlan and others did not leave the place until 4 a.m. of the following day, November 15, 1992. Alfredo said that from the party he went home to Barangay Anando, and that in the morning, while the police officers went to the house of his father and arrested his brother-in-law, accused-appellant Mario Padlan, they did not arrest him (Alfredo Magleo) despite the fact that his house was only 15 meters away.

Accused-appellants Mario Padlan and Romeo Magleo also interposed the defense of alibi. Padlan claimed[24] that they were in the house of Aniceto de la Cruz for the pre-wedding party for the latter’s daughter, Evangeline de la Cruz, and Roly Domingo which lasted from 7 p.m. of November 14, 1992 up to 4 a.m. of November 15, 1992; and that after the party, accused-appellant Romeo Magleo stayed behind, as he had been asked by Aniceto de la Cruz to help prepare the food for the guests on the day of the wedding.

Padlan claimed that from the party, he went to the house of his father-in-law Alejandro Magleo because his wife was there. It was there that the police found him and “invited” him to go with them to the police station for questioning. He said he denied involvement in the killing and even asked to be given a paraffin test by the National Bureau of Investigation, but that although he was taken to the NBI, he could not be tested because of lack of equipment. Padlan also testified that he had no misunderstanding with the Pagsolingan family.

For his part, Romeo Magleo testified[25] that before he left the house of Aniceto de la Cruz (where the party was held) at 8:30 a.m. of November 15, 1992, Flora Pagsolingan arrived with some policemen and asked if any untoward incident had happened during the celebration, to which Romeo Magleo said he answered in the negative; and that he (Romeo Magleo) was not apprehended by the police officers.

Aniceto de la Cruz, in whose house the party was held, testified that none of the accused-appellants had left the

party before it ended at 4 a.m. of November 15, 1992.[26]

The defense also presented as witnesses three farmers, Rodolfo Lavarias, Tomas Lavarias, and Ernesto Lavarias, all of whom were residents of Barangay Anando. Ernesto Lavarias testified[27] that at around midnight of November 14, 1992, he heard cries coming from the house of Flora Pagsolingan less than 30 meters away. For this reason, he said, he fetched his brother Tomas and the two of them then went to Flora's house. There they learned that Rufo Manzon had been beaten up. Rufo was brought to the house of Flora. According to Ernesto Lavarias, Flora Pagsolingan sent her son Jordan Pagsolingan and Carlito Manzon to fetch Rufo's parents. In no time, Jordan and Lito were back with news that Rufo's parents were coming.

On rebuttal, Flora Pagsolingan testified[28] that actually Ernesto and Tomas Lavarias went to her house only at about 1:15 in the morning of November 15, 1992, and that was because of the news that Rodolfo Manzon had been shot.

The trial court found accused-appellants guilty as charged in its decision, the dispositive portion of which was quoted earlier herein. Hence, this appeal. Accused-appellants contend:

I.

THE LOWER COURT ERRED IN NOT FINDING THE EVIDENCE OF THE PROSECUTION SUBSTANTIALLY INSUFFICIENT TO ESTABLISH THE GUILT OF THE HEREIN ACCUSED-APPELLANTS BEYOND REASONABLE DOUBT IN THE CASE AT BAR.

II.

THE LOWER COURT ERRED IN NOT GIVING WEIGHT TO THE EVIDENCE OF THE HEREIN ACCUSED-APPELLANTS.

The contentions are without merit.

First. Accused-appellants were positively identified by prosecution witnesses Jordan Pagsolingan and Carlito Manzon as the ones who had stopped them on the way on the day of the incident. While accused-appellants claimed they were in the house of Aniceto de la Cruz attending a pre-wedding party, their alibi cannot prevail over the testimonies of the prosecution witnesses positively identifying them as the assailants. The place where accused-appellants were at the time of the killing is in Barangay Libas where the crime also took place. It was not at all physically impossible for them to have committed the crime.[29] Each of the accused-appellants claimed he had no quarrel with the deceased or the prosecution's main witnesses. Their identification, however, makes it irrelevant that there is no proof of ill motive on their part to commit the crime. Motive assumes significance only where there is no showing of who the perpetrators of the crimes were.[30]

It is contended that the testimonies of the two prosecution eyewitnesses, Carlito Manzon and Jordan Pagsolingan, are at odds with the entry in the police blotter. Accused-appellants Romeo and Alfredo Magleo contend that entry in the police blotter does not name them as among those involved in the killing of Rodolfo Manzon and his son Mateo.

The entry reads:

FIRST, SECOND & THIRD SHIFT: 0800h-0800h 14-15 NOVEMBER 1992.

Entry Nr-496

Date: 11-15-92

Time: 0320H = Flora Pagsolingan y Manzon, 39 years old, widow, housekeeper, high school graduate, and

resident of Brgy. Anando, this city came and reported to this office that Rodolfo Manzon and Mateo Manzon, Carlito Manzon and Jordan Pagsolingan were fired upon by Marcos Pagsolingan in company w/ two other whom they do not know their names. Reportee further reported that they do not know whether Mateo Manzon and Rodolfo Manzon were hit. Incident happened at about 1:15 A.M. today November 15, 1992 at Brgy. Libas, this city per her signature appear herein.

SGD: Flora Pagsolingan

SPO4 Albert Castro, SPO4 A. Patayan PO3 Viduya, PO3 Cardinoza, SPO2 Tamayo and PO3 Lazaro were dispatched to investigate.

SGD: SPO4 ANDRES G. ELERTA Desk Officer[31]

Flora Pagsolingan explained that at the time she made the report, she was “in [a] state of shock ... confused, and did not know what [she] was doing.”[32] She must have been in such a state of agitation that even the police investigator, who took down her statement, identified accused-appellant Mario “Marcos” Padlan as “Marcos Pagsolingan,” although Flora maintains she never said the assailant was “Marcos” Pagsolingan. As she testified:

COURT:

Q

Now, in this police blotter, it was entered by the police, which you also confirmed, that it was Marcos Pagsolingan who fired his gun?

A What I said was Marcos Padlan, sir.

Q So, in other words, this entry in this police blotter is not accurate?

A I said Marcos Padlan, your Honor, and I did not put so much attention on the two because my mind was confused.

Q

In other words, you confirmed the fact that your son Jordan Pagsolingan and this Carlito Manzon told you that it was Marcos Padlan who fired his gun at Rodolfo Manzon and Mateo Manzon?

A It was what they were telling me, sir.[33]

Accused-appellants contend that Flora’s son, Jordan, and Carlito Manzon could have corrected her or otherwise helped her since the two boys were with her when she gave her statement to the police. But the two boys said they were themselves agitated if not in shock as well as in fear[34] and so possibly could not have corrected Flora’s mistakes.

Accused-appellants cite the testimony of SPO4 Alberto Castro which allegedly corroborates the blotter entry naming accused-appellant Mario Padlan as the only assailant. That is not so. SPO4 Castro’s testimony is as follows:

Q

Aside from Marcos Padlan, did [Jordan Pagsolingan] also mention others?

A

Actually, at the crime scene when we conducted an investigation, Flora Pagsolingan and her son were only mentioning Marcos Padlan, sir.

Q

Now, what time did you receive that report from Flora Pagsolingan on November 15, 1992?

A If I am not mistaken, before 5:00 o'clock, sir.

Q 5:00 o'clock in the morning?

A Yes, sir.

Q

And you immediately formed a team and investigated the veracity of the report, can you tell us further what time more or less did you go to the place of the incident?

A 3:20 o'clock in the morning of November 15, sir.

Q

So that, do we understand from you senior police officer that the report was made at 5:00 o'clock in the morning of November 15?

A

No, sir, what I mean, I am referring to the other accused that if I am not mistaken, there were three (3) accused in this particular case. We received a report only at about 5:00 o'clock in the morning mentioning the two (2) accused.

Q Who were the two (2) accused?

A Magleo brothers, sir.

Q In what manner are they accused of?

A In the first place, this Flora Pagsolingan and her son only mentioned Marcos Padlan, so, we concentrated on Marcos Padlan, we invited him to the police station, sir.[35]

Thus what SPO4 Castro said was that while in the beginning only accused-appellant Mario Padlan was named by Flora Pagsolingan and her son Jordan, the police later received a report at 5 a.m. that accused-appellants Romeo Magleo and Alfredo (Boy) Magleo were also involved in the killing of Rodolfo Manzon and his son Mateo. In fact, according to the police blotter, Rodolfo Manzon, his son Mateo, Carlito Manzon, and Jordan Pagsolingan were fired at by Mario "Marcos" Padlan (erroneously identified therein as "Marcos Pagsolingan") and two unidentified men. Another member of the police team, SPO Virgilio G. Cardinoza, also testified that, during their investigation at the scene of the crime, Jordan Pagsolingan named the two Magleos as the companions of Mario Padlan.[36]

It is not surprising that attention should focus on Mario Padlan because he was the one seen by Jordan Pagsolingan and Carlito Manzon shooting Rodolfo Manzon. In the process, the participation of the other two as coconspirators was obscured. But when it came to their turn to make their sworn statements and later to testify in court, Jordan Pagsolingan and Carlito Manzon categorically stated that the Magleo brothers were present at the shooting.

Moreover, it should not be forgotten that entries in police blotters, though regularly done in the course of the performance of official duty, are not conclusive proof of the truth stated in such entries and should not be given undue significance or probative value because they are usually incomplete and inaccurate. Sometimes they are based on partial suggestion or inaccurate reporting and hearsay, untested in the crucible of a trial on the merits.[37] But an indication of the guilt of the Magleos is the fact that shortly after the killing they went into hiding. They could not be found in their respective residences for which reason an alias warrant had to be issued by the trial court for their arrest. Flight has been held to be evidence of guilt.[38]

Second. Accused-appellants focus on the credibility of the prosecution witnesses. Accused-appellants point out a discrepancy between Jordan Pagsolingan and Carlito Manzon's testimonies to the effect that they were with Rufo Manzon when the latter was attacked by Mario Padlan and Lito Fernandez and their affidavits[39] in which they stated that they were on their way to the pre-wedding dance party when they came upon Rufo Manzon being beaten up. There really appears to be a discrepancy concerning this matter. However, it is not denied that Rufo Manzon had been beaten up by Mario Padlan and Lito Fernandez, and this was the reason his father, the deceased Rodolfo Manzon, was summoned. Whether Rufo Manzon was with Carlito Manzon and Jordan Pagsolingan when he was set upon or whether he was then alone is therefore of little moment.

Accused-appellants point out other "discrepancies" in the evidence of the prosecution. Accused-appellants cite Jordan Pagsolingan's testimony that accused-appellant Mario Padlan fired three times at Rodolfo Manzon and that, as he and Carlito Manzon were fleeing, he heard two more gunshots, so that in all accused-appellant fired at the victims five times. Accused-appellants say that this is contrary to the evidence that Rodolfo Manzon sustained only one gunshot wound.

The number of wounds does not have to be equal to the number of shots, because some of the shots may have missed their mark. It is also possible that in the excitement of the moment, Jordan Pagsolingan may have made a mistake as to the number of shots he heard. What is important is that although Rodolfo Manzon suffered only one gunshot wound, the fact is that the police recovered four empty shells from the scene of the crime. This confirms the statement of Jordan Pagsolingan that several gunshots had been fired by accused-appellant Mario Padlan.

Accused-appellants claim that had it been their intention to kill the victims, they could easily have ambushed the victims instead of openly confronting them, considering that they are known to the witnesses and the victims. This assumes that accused-appellants knew that the Manzons were going to pass the place where they were so as to enable them to waylay their victims. The fact, however, is that it was the Manzons who saw accused-appellants at a distance and who tried to run away from them, but accused-appellants, using a shortcut, were able to overtake the Manzons.

Accused-appellants doubt whether the prosecution witnesses really recognized them. Accused-appellants argue that if Mario Padlan trained his flashlight on the group of the eyewitnesses and the Manzons, the prosecution witnesses would not have recognized accused-appellants. As Jordan Pagsolingan explained, however, it was quite bright that early morning because there was a moon and accused-appellants were known to them because "we usually joke together." [40] Carlito Manzon also testified that the moon was bright at that time.[41]

Finally, accused-appellants brand the prosecution evidence as fabricated because of the close relationship of the

prosecution's main witnesses to the victims. In the absence of proof of improper motive, the mere relationship of the prosecution witnesses to the victims is not a ground for doubting their truthfulness. On the contrary, their natural interest to secure the conviction of the real culprits could have deterred them from implicating otherwise innocent persons, for then the real culprits would go scot free.[42] In this case, there is additional reason for rejecting accused-appellants' contention that because of their relationship to the deceased the prosecution witnesses concocted stories to lay the blame for the killing on accused-appellants: accused-appellants admitted that they had no quarrel or misunderstanding with the Pagsolingan family which could make Jordan Pagsolingan and Carlito Manzon testify falsely against them.

The various criticisms made by accused-appellants against the testimonies of Jordan Pagsolingan and Carlito Manzon boil down to a question of their credibility. The trial court, which was in the unique position to hear the witnesses and observe their deportment and manner of testifying, believed their testimonies.[43] We have considered the contrary view of accused-appellants which we find to be without merit. Accused-appellants have not shown that, in the evaluation of the testimonies of the witnesses for both parties, the trial court overlooked matters of substance and weight justifying reversal of the findings of the trial court.[44] Accordingly, we give its findings full faith and credit.

Third. Accused-appellants claim that even if all of them were present at the scene of the crime, no inference of conspiracy can be drawn since the two prosecution eyewitnesses did not see Romeo and Alfredo Magleo attack the victims. Several circumstances indicate, however, that there was a conspiracy to kill Rodolfo Manzon and his son, Mateo, in addition to the fact that all of accused-appellants were at the scene of the crime, to wit: (1) accused-appellant Romeo Magleo shouted "Hoy!" at the Manzons to make them stop as the latter were running away; (2) accused-appellants pursued the Manzons when the latter tried to flee from them; and (3) accused-appellant Alfredo Magleo was seen by Jordan Pagsolingan with a knife, which fits the description of the weapon used in wounding Rodolfo Manzon and Mateo Manzon: "pointed" and "sharp-bladed." [45]

Nevertheless, we do not think that the crime committed was murder. The qualifying circumstances of evident premeditation and treachery have not been shown in this case. Proof of conspiracy does not imply the existence of evident premeditation. Evident premeditation can be presumed only where conspiracy is directly established, not where, as in this case, conspiracy is only implied.[46] Nor was treachery established with certainty.[47] The prosecution has not shown that there was that swift and unexpected attack of an unarmed victim, which is the essence of treachery.[48] First, the victims were not defenseless, since they too were armed. Rodolfo had a bolo, while Mateo had a slingshot with darts. Second, the sight of accused-appellants at a distance must have sufficiently warned the Manzons of accused-appellants and their intentions; that was why they tried to evade them. Thus, an important condition for the existence of treachery under Art. 14(16) of the Revised Penal Code has not been proven: that the means of execution employed was deliberately and consciously adopted so as to give the person attacked no opportunity to defend himself or to retaliate. Accordingly, the killing of Rodolfo Manzon and his son Mateo constitutes not murder but only homicide.

The trial court found that the killing was attended by the aggravating circumstances of (1) abuse of superior strength, (2) aid of armed men, and (3) nocturnity. Indeed, there was abuse of superior strength in this case. Whatever superiority in number the victims had over accused-appellants (four to three) was more than offset by the fact that the latter group was composed of adult males in their physical prime. Accused-appellant Mario Padlan was 28,[49] while accused-appellants Romeo and Alfredo Magleo were 26[50] and 32,[51] respectively. In contrast, the former group, with the sole exception of Rodolfo Manzon, who was 43,[52] was composed of youths barely in their early teens. Mateo Manzon and Jordan Pagsolingan were both 15 years old,[53] while Carlito Manzon was 16 years of age.[54] More importantly, the group of accused-appellants had a firearm and a

knife which gave them a clear advantage over the bolo and slingshot of the victims.

But we do not think the aggravating circumstance of nocturnity can be appreciated as nocturnity was not shown to have been purposely sought by accused-appellants the better to commit the crime.[55] Nor can the aggravating circumstance of “aid of armed men” be appreciated, considering that accused-appellants, as coconspirators, acted under the same plan and for the same purpose.[56]

Under Art. 249 of the Revised Penal Code the penalty for homicide is reclusion temporal. As there was one aggravating circumstance (abuse of superior strength), the penalty should be fixed in its maximum period, the duration of which is from 17 years, 4 months, and 1 day to 20 years. Under the Indeterminate Sentence Law, the minimum of the penalty is prision mayor, which is from 6 years and 1 day to 12 years, as the penalty next lower in degree to reclusion temporal.

In addition, we find errors committed by the trial court in awarding damages for the death of Rodolfo Manzon and his son Mateo. The indemnity for death as currently fixed[57] is P50,000.00 so the trial court’s award of P60,000.00 for the death of Rodolfo Manzon should be reduced accordingly.

The award of P100,000.00 for actual and temperate damages cannot be allowed. Damages cannot be both actual and temperate. Temperate or moderate damages are allowed because, while some pecuniary loss has been suffered, from the nature of the case its amount cannot be proved with certainty.[58] This is not the case here. The trial court awarded the P100,000.00 as temperate damages apparently because the prosecution failed to adduce proof of expenses in connection with the death, wake, or burial of Rodolfo and Mateo Manzon but not because from the nature of the case it was not possible to show with certainty the amount of the damage done. For the same reason, no award of actual damages can be made.[59]

The award of P200,000.00 for moral damages is excessive. As moral damages are not intended to enrich the prevailing party,[60] an award of P50,000.00 would be in keeping with this purpose of the law.

The award of exemplary damages is warranted under Art. 2230 of the Civil Code in view of the presence of the aggravating circumstance of abuse of superior strength. Imposition of exemplary damages is also justified under Art. 2229 of the Civil Code in order to set an example for the public good. For this purpose, we believe that the amount of P20,000.00 can be appropriately awarded.[61]

In reviewing the records of this case, we noticed a variance between the allegation in the information and the evidence presented regarding the manner in which Mateo Manzon was killed. The information alleged that he and his father Rodolfo Manzon were killed “with the use of high-powered long firearm,” but the medical certificate indicates that while Rodolfo Manzon suffered both incised and lacerated wounds as well as a gunshot wound, his son Mateo suffered only a “[g]aping incised wound 21/2 inches long and 11/2 inches wide and 51/2 inches deep horizontally across the anterior chest wall just below the medial end of the right clavicle lacerating the right first rib and right portion of the sternum, directed posteriorly to the left lacerating the lungs and the heart.” The variance, however, is not an obstacle to finding the accused-appellants liable for double homicide. The variance does not affect or change the nature of the crime charged, namely, murder, which in view of our finding is actually homicide. The variance concerns merely the manner of execution of the crime. The defense could have objected to the presentation of the evidence, in which event the court could have ordered the amendment of the information so as to make the allegation conform to the evidence presented and the accused-appellants would be none the worse for it. Accordingly, we hold that accused-appellants are liable for two counts of homicide.

WHEREFORE, the decision of the Regional Trial Court is **AFFIRMED** with the **MODIFICATION** that the accused-appellants are found guilty of two counts of homicide and each one is sentenced to two prison terms of

12 years of prision mayor, as minimum, to 20 years of reclusion temporal, as maximum, and to pay to the heirs of the victims P50,000.00 as indemnity for the death of Rodolfo Manzon, P50,000.00 as indemnity for the death of Mateo Manzon, P50,000.00 as moral damages, and P20,000.00 as exemplary damages.

SO ORDERED

Regalado, (Chairman), Melo, Puno, and Martinez, JJ., concur.

- [1] Per Judge Victor T. Llamas, Jr., Rollo, pp. 17-25.
- [2] Id., p. 4.
- [3] TSN, pp. 3-8, June 11, 1993; TSN, pp. 2-8, 14, June 23, 1993.
- [4] TSN, p. 16, June 23, 1993.
- [5] Id., p. 17.
- [6] Id., p.16.
- [7] TSN, pp. 23-26, June 23, 1993.
- [8] Entry No. 496 in the police blotter. Exhs. E & E-1, Records, p. 19.
- [9] TSN, pp. 5-8, 13, Dec. 28, 1992.
- [10] Id., p. 5.
- [11] Exhs. H & H-3 (retained by the trial court). The shells were found four meters from the bodies of the victims. TSN, p. 36, June 24, 1993.
- [12] Exh. I (retained by the trial court).
- [13] Exhs. K to K-6 (retained by the trial court).
- [14] Exh. J (retained by the trial court).
- [15] TSN, pp. 39, 41, June 24, 1993.
- [16] Id., pp. 39-40.
- [17] TSN, pp. 29, 31, June 23, 1993.
- [18] Id., p. 30.
- [19] Exh. C, Records, p. 99.
- [20] TSN, p. 19, June 23, 1993.
- [21] Exh. D, Records, p. 103.
- [22] TSN, p. 19, June 23, 1993.
- [23] TSN, pp. 13-15, June 25, 1993 (transcribed by Stenographer Erlinda C. Dispo).
- [24] TSN, pp. 11-16, June 25, 1993 (transcribed by Stenographer Cornelio P. Cerezo).
- [25] Id., pp. 16-19.

- [26] TSN, p. 51, June 24, 1993.
- [27] *Id.*, pp. 58, 68.
- [28] TSN, pp. 20-21, June 25, 1993 (transcribed by Stenographer Erlinda C. Dispo).
- [29] *People v. Obzunar*, 265 SCRA 547 (1996); *People v. Perez*, 265 SCRA 506 (1996).
- [30] *People v. Yip Wai Ming*, 264 SCRA 224 (1996); *People v. Mallari*, 241 SCRA 113 (1995); *People v. Gamiao*, 240 SCRA 254 (1995).
- [31] Exh. E, Records, p. 19 (emphasis added).
- [32] TSN, p. 25, June 23, 1993.
- [33] *Ibid.*
- [34] TSN, p. 8, June 11, 1993; TSN, p. 6, June 14, 1993.
- [35] TSN, pp. 4-5, Dec. 28, 1992 (emphasis added).
- [36] TSN, p. 39, June 24, 1993.
- [37] *People v. Paragua*, 257 SCRA 118 (1996).
- [38] *People v. Alberca*, 257 SCRA 613 (1996).
- [39] Exhs. A and B, Records, pp. 7-12.
- [40] TSN, p. 13, June 23, 1993.
- [41] TSN, p. 5, June 14, 1993.
- [42] *People v. De Mesa*, 188 SCRA 48 (1990).
- [43] E.g., *People v. Naredo*, G.R. No. 107802, July 31, 1997; *People v. Balamban*, 264 SCRA 619 (1996); *People v. Sumaoy*, 263 SCRA 460 (1996).
- [44] *People v. Supremo*, 244 SCRA 677 (1995).
- [45] TSN, pp. 18-19, June 23, 1992.
- [46] *People v. Herbias*, 265 SCRA 571 (1996).
- [47] *People v. Barros*, 245 SCRA 312 (1995); *People v. Rivera*, 221 SCRA 647 (1993).
- [48] *People v. Bautista*, 254 SCRA 621 (1996).
- [49] TSN, p. 11, June 25, 1993 (transcribed by Stenographer Cornelio P. Cerezo).
- [50] *Id.*, p. 16.
- [51] *Id.*, p. 13.
- [52] TSN, p. 29, June 23, 1993.
- [53] *Id.*, pp. 2, 29; TSN, p. 11, June 14, 1993.
- [54] TSN, p. 2, June 11, 1993.

[55] People v. Rosario, 246 SCRA 658 (1995).

[56] People v. Candado, 84 SCRA 508 (1978).

[57] People v. Cayabyab, G.R. No. 123073, June 19, 1997.

[58] Civil Code, Art. 2224.

[59] People v. Rosario, 246 SCRA 658 (1995).

[60] People v. Wenceslao, 212 SCRA 560 (1992); People v. Quilatan, 205 SCRA 279 (1992).

[61] People v. Abrera, G.R. No. 109169, Dec. 12, 1997.

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