

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICANOR LLANES Y LEBREA AND LEANDRO LLANES Y DALISAY, DEFENDANTS-APPELLANTS.

G.R. No. 116986. February 04, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

"The declaration of a dying person, made under a consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death." [1] The application of the said exception to the hearsay rule is the subject of the Court's scrutiny. Here, the victim allegedly made an ante mortem statement naming the appellants as his assailants and the trial court convicted the appellants solely on account of the said dying declaration.

Appellants Nicanor Llanes and Leandro Llanes were charged with the crime of murder before the Regional Trial Court of Siniloan, Laguna, Branch 33, in an information that reads:

That on or about 9:00 o'clock in the evening of June 13, 1991 at sitio Paang Bundok, Barangay Cambuja, Municipality of Santa Maria, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, while conveniently armed with deadly weapon (firearm) motivated by hate and anger, with intent to kill and with treachery and evident premeditation, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Julian de Silva with the said weapons, thereby inflicting upon the latter, gunshot wounds on the different vital parts of his body which directly and subsequently caused his death, to the damage and prejudice of his surviving heirs.

CONTRARY TO LAW.[2]

When arraigned, both pleaded not guilty to the crime charged.[3]

Thereafter, trial ensued.

Herein below is a full account of the evidence respectively submitted by the prosecution and by the defense.

Amado de Silva, brother of victim Julian de Silva, was the prosecution's first witness. Aside from confirming that the appellants are his relatives (Nicanor being a maternal uncle and Leandro, a first cousin), he told the Court that before his brother died, he informed them that he was shot by the "father and son" referring to herein appellants.[4] He theorized that revenge was the motive for the killing.[5] Finally, he testified that the family spent P20,000.00 for the death of his brother.[6] No receipts were presented in evidence.

Dr. Cynthia Silva Tamares, a rural health physician, testified that she conducted an autopsy of the victim's body. Her findings revealed the following:

- Gunshot wound, point of entry, 1.0 cm. in diameter, along the midaxillary line, lumbar area, right side

- Gunshot wound, point of entry, 1.0 cm. in diameter, 3.5 cm. parallel to gunshot wound number 1.
- Gunshot wound, point of exit, along the midaxillary line, lumbar area, left side
- Gunshot wound, point of exit, 3.5 c.m. parallel to gunshot wound number 3
- Gunshot wound, through and through middle part, left forearm
- Positive (+) alcoholic breath.[7]

She testified that the cause of death was shock and internal hemorrhage due to multiple gunshot wounds and that she accordingly issued a death certificate.[8]

On cross-examination, she declared that the wounds inflicted on the victim were fatal because they struck vital body organs. She opined that because of the fatality of the wounds, victim's speech could have been hindered.[9] On re-direct, she stated that it was also a possibility that the victim remained conscious.[10]

Vivencio Arevalo,[*] a barangay tanod at Cambuja, Sta. Maria, Laguna, testified that on June 13, 1991 at around nine o'clock in the evening, he, together with Doming Valenzuela and others whose names he did not know, was watching a Betamax tape at the house of one Gregorio Lindog; that while watching the tape, they heard four (4) successive shots; that about ten minutes after hearing the shots, Julian de Silva appeared at the yard of Lindog's house asking for help and then fell to the ground; that they went out of the house, approached the wounded de Silva and asked him who shot him; that the victim answered "Ago and his father;" that he (Arevalo) did not know "Ago's" full name; that after hearing the victim's declaration, he and Doming Valenzuela proceeded to the house of Pedro Bautista, their barangay captain, and reported the incident; that the three of them went back to see Julian de Silva but the latter was already taken by his relatives to the hospital; and that he knew of no misunderstanding between the appellants and the victim.[11]

On cross-examination, Arevalo testified that the situs of the crime, referring to NIA road, was dark; that when they went out of the house, he was accompanied by Gregorio Lindog, Doming Valenzuela and uncles of Julian de Silva whose names he did not know; that he was sure that appellant Leandro Llanes' nickname is Ago; that the nephews of Julian de Silva, children of one Armando de Silva, were present when the victim allegedly made his ante mortem statement; that when he, Arevalo and Bautista saw the tricycle bearing the victim, the victim was still alive and was struggling and kicking while on board the tricycle that brought him to the hospital.[12]

Dominador Valenzuela,[*] also a barangay tanod at Cambuja, Sta. Maria, Laguna, corroborated Vivencio Arevalo's testimony and categorically declared that the victim's answer to the query as to who his assailants were was: "Ang sabi po niya binaril siya ng kanyang pinsang Alan at ng kanyang tiyong Nicandro Llanes." [13]

On cross-examination, he declared that when Julian de Silva shouted for help, his wife got nervous and lost consciousness so he had to bring her to their house which was about fifteen (15) meters away; that after leaving his wife under the care of her mother-in-law, he proceeded back to where Julian de Silva was and saw Vivencio Arevalo and Oggie de Silva beside the victim; that the victim repeated the same answer three times as to the question of who shot him; and that appellant Leandro Llanes is also known as "Alan." [14]

Pedro Bautista, barangay captain of Cambuja, Sta. Maria, Laguna, was the prosecution's last witness. He testified that at around eight o'clock that fateful night, the victim and his son, Alberto Bautista, came to his house bringing a bottle of gin; that in the course of drinking, the inebriated Julian revealed to him that his uncle Nicanor and cousin Leandro were mad at him for removing the basketball ring in their barangay and that Leandro poked a gun at him at a local dance; that de Silva left their house that same night and after a few minutes, he heard the dogs barking at Nicanor's house, then heard four (4) shots; that about four to five minutes after the shots were

fired, barangay tanods Vivencio Arevalo and Dominador Valenzuela came to his house and reported that Julian de Silva was gunned down; that when they proceeded to the house of Lindog to check on de Silva, they were told that de Silva was brought to the hospital for treatment; and that SPO1 Romeo Magtipon and SPO2 Jesus Balliaber investigated the incident.[15]

On cross-examination, he declared among other things that NIA Road, along which the fatal shooting transpired, was dark the night of the shooting so that he, Arevalo and Valenzuela, had to bring a flashlight to find their way.[16]

The appellants denied all complicity in the crime. They maintained that at the time of its commission, they were sleeping at their house.

Nicanor Llanes and Leandro Llanes were one in saying that they were sleeping in their house with family members Mamerta and Elizabeth at the time the murder was committed. They learned of the incident only when they were roused from their slumber by SPO1 Romeo Magtipon and SPO2 Jesus Balliaber who informed them that Leandro was a suspect in the murder. Leandro Llanes was then brought to the station for questioning. In the morning of the following day, Nicanor was, likewise, called in for questioning. Both he and his son were then brought to Sta. Cruz, Laguna for a paraffin test but the crime laboratory at the Provincial Headquarters in Sta. Cruz, Laguna was closed. They knew of no misunderstanding between them and the victim nor of any reason why they would want to kill him. The gun used in the killing was not found in their possession. In fact, it was never recovered. Both implicated Alberto "Abet" Bautista, son of barangay captain Pedro Bautista, as the author of the crime.[17]

Mamerta Dalisay, wife of Nicanor and mother of Leandro, corroborated the appellants' testimonies. She confirmed that her husband and son were indeed sleeping inside their house at the time of the murder.

Benedicto Llanes, a relative of both the victim and the appellants, testified that he was part of the group watching a tape at Gregorio Lindog's house; that he also heard four (4) shots; that a few minutes after the shots were fired, Julian de Silva shouted for help and arrived in front of Lindog's house wounded and bleeding; that he and a nephew (Oggie de Silva) went to the victim; that Oggie de Silva reached Julian first and asked him who shot him but he did not answer; that they got a tricycle to take him to the hospital; that while on board the tricycle, the victim was again asked who shot him but the latter could not answer anymore. He declared that he did not recall seeing Arevalo and Valenzuela at Lindog's house or anywhere near Julian de Silva.[18]

SPO1 Romeo Magtipon, SPO2 Jesus Balliaber and SPO2 Andres Octavio, who were presented by the defense as hostile witnesses, testified that they investigated the incident and took in the appellants for questioning. SPO2 Balliaber declared that the place of occurrence was dark and that there were no lights in the area.[19] SPO1 Magtipon and SPO2 Octavio declared that they brought the appellants to the crime laboratory at the Provincial Headquarters in Sta. Cruz, Laguna for a paraffin test but the office was closed so no test was done.

The court below found that the evidence submitted by the prosecution established the guilt of the appellants beyond reasonable doubt. On March 7, 1994, it rendered judgment, the decretal portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding accused NICANOR LLANES Y LEBREA and LEANDRO LLANES Y DALISAY, guilty beyond reasonable doubt as principals in the crime charged in the information of MURDER, QUALIFIED BY TREACHERY, absent of any modifying circumstance in the commission of the offense, this Court hereby imposed the penalty of RECLUSION PERPETUA, together with all the accessory penalties thereto appertaining. To indemnify the heirs of the victim: the sum of P50,000.00 due to the death of the victim, and the sum of P20,000 representing the expenses incurred in the wake and burial of the victim, without subsidiary imprisonment in case of insolvency; and, to

pay cost of the suit.

Considering the accused have been charged of the crime of Murder, and convicted as charged, the bailbond posted by the two accused for their provisional liberty is hereby ordered cancelled and accused shall be placed in confinement at the Bureau of Corrections at Muntinlupa, Metro Manila.

SO ORDERED.[20]

Hence, the instant appeal wherein appellants assign to the trial court the following errors, viz:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING MUCH WEIGHT AND CREDENCE TO THE EVIDENCE FOR THE PROSECUTION AND IN DISREGARDING THE EVIDENCE FOR THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANTS OF THE CRIME AS CHARGED IN THE INFORMATION BASED SOLELY ON THE ALLEGED DYING DECLARATION OF THE VICTIM JULIAN DE SILVA, THE TRUTHFULNESS OF ITS EXECUTION OF WHICH IS HIGHLY QUESTIONABLE.[21]

It is extant from the records that the entirety of the prosecution's case rests upon the identification of the appellants as the culprits made verbally to Vivencio Arevalo and Dominador Valenzuela by Julian de Silva shortly before he died from the gunshot wounds fatally inflicted upon him. Consequently, it is imperative to determine if the alleged ante mortem statement made by the victim was correctly received as a dying declaration in accordance with the Rules of Court and also, since said statement was testified to by Vivencio Arevalo and Dominador Valenzuela, to carefully consider the latter's testimony and ascertain whether credit should be accorded them, if at all.

The essential requisites for the admission of a dying declaration under Section 37 of Rule 130 of the Rules of Court are, viz: (a) the declaration must concern the cause and surrounding circumstances of the declarant's death; (b) at the time the declaration was made, the declarant was under the consciousness of an impending death; (c) the declarant was at that time competent as a witness; and (d) the declaration is offered in any case wherein the declarant's is the subject of inquiry.[22] All these requisites have been met in this case. First, Julian de Silva's statement to Vivencio Arevalo and Dominador Valenzuela concerns his death as the same refers to the identity of his assailants. Second, Julian de Silva was at that time competent to testify in court. Third, his dying declaration was offered in a criminal prosecution for murder where he was the victim. Fourth, the determining factor to entitlement of the rule is that the declaration be made under the consciousness of an impending death. Here, Julian de Silva made his ante mortem statement under the consciousness of an impending death considering the gravity of the wounds he suffered which in fact caused his death several hours later. Our ruling in *People vs. Hernandez*[23] is instructive, thus:

The decisive factor is that the declaration be made under the consciousness of impending death. It is this which imparts trustworthiness to the essentially hearsay character of the declaration-hearsay, because it is some person other than the deceased declarant (of course) who testifies to the same. A declaration made with awareness of imminent demise, it has often been said, is 'made in extremis, when the party is at the point of death and when every hope of this world is gone; when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth; a situation so solemn and awful is considered by the law as creating an obligation equal to that which is created by a positive oath administered in a court of justice.' The idea, more succinctly expressed, is "that truth sits on the lips of dying men." [24]

Appellants contend that it was erroneous for the trial court to rely on the ante mortem statement of Julian de Silva which he gave to Vivencio Arevalo and Dominador Valenzuela pointing to appellants as his assailants. They raise the following points for our consideration: (a) the place where the incident took place was dark; (b) the wounds sustained by the victim were fatal such that his speech faculty was affected and he was rendered unconscious; (c) the testimony of Benedicto Llanes to the effect that when the victim was asked by his nephew Oggie de Silva as to who shot him, the victim did not reply; and (d) while being brought to the medical clinic, the victim made no answer when asked by his relatives about the identity of his assailants.

The foregoing points for consideration are not without explanations.

While the place of occurrence was dark, it was not dark enough to prevent the victim from identifying his assailants, especially so that he was shot at close range. The precision of the shots betrays the proximity of the assailants from the victim when the shots were fired. Indeed, the assailants were close enough for the victim to get a good look at them and identify them.

Even if the wounds sustained by the victim were fatal, Dr. Cynthia Tamares testified that it was possible for the victim to have remained conscious after he was shot.[25] It is plausible, therefore, that the victim was able to recognize his assailants and reveal their identity to Arevalo and Valenzuela whom he knew to be barangay tanods before he lost consciousness.

Appellants would capitalize on the declaration of Benedicto Llanes that Oggie de Silva was the first to respond to the victim when the latter appeared at the yard of Lindog's house asking for help and when Oggie asked the victim who shot him, he did not answer. We quote Benedicto Llanes' testimony:

Q.

Will you please name the nephew who first came to the aide (sic) of Julian de Silva?

A.

Oggie de Silva, sir.

Q.

After Oggie de Silva held Julian de Silva what happen (sic) next if there was any?

A.

Oggie de Silva asked the victim who shot at him.

Q.

What was the reply if there was any by Julian de Silva?

A.

None, sir.

Q.

How many times do you heard (sic) Oggie de Silva asked (sic) Julian de Silva regarding the question?

A.

I heard only once.

Q.

After Julian de Silva failed to answer the question of Oggie de Silva, what happen (sic) next if there was any?

A.

I left and proceeded home.

xxx

Q.

Aside from Oggie do you know if there are (sic) other persons who approached Julian de Silva?

A.

None, sir.

Q.

It was only the nephew of the victim, Oggie de Silva who approached Julian de Silva?

A.

Its only he whom I saw because I left immediately.

Q.

How long did you stay in the place of the incident from the time that Julian de Silva arrived?

A.

Around half a minute.

Q.

You mean to say at about half a minute from the arrival of Julian de Silva you left the place to get a tricycle.

A.

Yes.[26]

The credibility of Benedicto Llanes is very much doubtful. Since, according to him, it was Oggie de Silva who asked the victim who shot him, it is Oggie who should have been presented to testify on what was the victim's response. No explanation was advanced why Oggie was not placed on the witness stand. On the other hand, it stands to reason that it was Vivencio Arevalo, being a tanod, who first asked the victim who shot him. Since the victim had already answered that appellants did it, it was superfluous for Oggie to have asked the same question, assuming that Oggie was really present at the scene. Besides, Benedicto Llanes, by his own admission, left the victim's side half a minute after the latter sought help so that Benedicto could not have heard what the victim told the two barangay tanods, Arevalo and Valenzuela, after he (Benedicto) left to get his tricycle.

Appellants' assignment of errors are basically anchored on the issue of credibility. But the time-honored rule of assigning values to declarations on the witness stand must again be stressed: the trial judge is the best and the most competent person who can weigh and evaluate the testimony of witnesses. His first hand look at the declarant's demeanor, conduct and attitude at the trial places him in a peculiar position to discriminate between the true and the false. Consequently, appellate courts will not disturb the trial court's findings save only in cases where arbitrariness has set in and disregard for the facts important to the case have been overlooked.[27] Here, we

find no compelling reason to depart from this rule.

The guilt of herein appellants has been established beyond reasonable doubt.

The testimonies of Arevalo and Valenzuela as to Julian de Silva's dying declaration were both given in a categorical, convincing and straightforward manner. Besides, it does not appear that they were motivated by any ill-feeling or bad blood to falsely testify against appellants. Consequently, the said testimonies must be accorded the respect and credence due them.

Prosecution witness Vivencio Arevalo testified, thusly:

Q.

On June 13, 1991 at around 9:00 o'clock in the evening, will you please tell the Honorable Court Where (sic) you were?

A.

We were in the house of Gregorio Lindog.

Q.

Where is that house of Gregorio Lindog located?

A.

Also at Barangay Cambuja, Sta. Maria, Laguna.

Q.

What were you doing if any in the house of Gregorio Lindog?

A.

We were not doing anything except watching Beta Max show.

Q.

You said you were watching Beta Max, can you state the names of the persons who were watching Beta Max in the house of Gregorio Lindog?

A.

Doming Valenzuela, I and many others but I do not know the names of those other persons.

Q.

The house owners, this Gregorio Lindog, is also there at that time?

A.

Yes, sir.

Q.

While you together with other persons watching Beta Max show, do you remember of any thing unusual that transpired?

A.

Yes, there was.

Q.

What was that unusual incident that happened, Mr. Witness?

A.

We heard four (4) successive shots, sir.

Q.

What else happened after you heard four (4) shots?

A.

After a while Julian de Silva, the victim of the gun shots arrived, sir.

Q.

What happened next when Julian de Silva arrived?

A.

He fell to the ground near the house of Gregorio Lindog.

Q.

What did you do if you did anything when you saw Julian de Silva fell on the ground near the house of Gregorio Lindog?

A.

We went out of the house and approached Julian de Silva.

Q.

What else transpired after you approached Julian de Silva?

A.

He was wounded, sir.

Q.

What did you do if you did anything when you saw Julian de Silva wounded?

A.

We asked him, who shot him?

Q.

What was the answer of Julian de Silva if any?

A.

He told us that the one who shot him are Ago and his father.

Q.

If the (sic) said Ago and his father are now in Court, can you point to them?

Atty. Bellosillo:

Objection, your Honor, not established.

Court:

Answer.

Atty. Bellosillo:

It is big, your Honor, not established, your Honor.

Court:

Were they the one accused in this case?

Prosecutor Zayenis:

Do you know the complete name of this Ago?

A.

Yes, I know, sir.

Q.

What is his full name?

A.

I do not know his real name, I know him just for the name Ago.

Q.

But do you know the accused Nicanor and Leandro Llanes?

A.

Yes, sir.

Q.

What relation is that to this Ago?

A.

The same person, sir.

Q.

If these two persons are now in Court, can you point to them?

A.

Yes, sir.

Q.

Please do.

A.

That one is Ago (witness pointing to a person who when asked gave the name Leandor Llanes), and that one is Nicanor Llanes (witness pointing to a person who when asked gave the name Nicanor Llanes).[28]

On his part, Dominador Valenzuela testified as follows:

Q. And while watching the betamax in the house of Lindog, do you remember if there was any unusual incident that transpired?

A. Yes, sir.

Q. What was that unusual incident that transpired according to you?

A. I heard gun shots.

Q. How many gunshots did you hear?

A. Four (4).

Q. What happened next if any after you heard that four gun shots?

A. After three minutes, we heard somebody shouting.

Q. Who was that somebody whom you heard shouting?

A. Jose de Silva.

Q. Where was this Jose de Silva at the time you heard him shouting?

A. He was by the road.

Q. How far more or less this Jose de Silva from the place where you were on the time you heard him shouting?

A. More or less 20 meters away from me.

Q. That was the first time that Julian de Silva shouted, how many times did Julian de Silva shouted?

A. Three (3) times.

Q. And what was he shouting?

A. He was shouting for help.

Q. What did you do when you heard Julian de Silva shouting for help?

A. Venancio Arevalo and I being barangay Tanod went outside the house.

Q. Is this Julian de Silva and the victim is Julian de Silva the victim in this case?

A. Yes, sir.

Q. What transpired next after you and Venancio Arevalo went outside of the place of Gregorio Lindog?

A. We approached Julian de Silva.

Q. And what happened next after you were able to approach Julian de Silva?

A. We asked how the person who shoot at him?

Q. What was the answer of Julian de Silva if any?

A. He told us that he was shut (sic) by his cousin Alan and his Uncle Nicandro.

Prosecution:

We would like to quote the answer in Tagalog. "Ang sabi po niya binaril siya ng kanyang pinsang Alan at ng kanyang tiyong Nicandro Llanes."

Q. And you know the full name of this Alan?

A. Leandro Llanes.

Q. One of the accused in this case?

A. Yes, sir.

Q. What else were told to you if any by the victim Julian de Silva aside from what you have stated?

A. We asked him three times the person responsible for shooting him because we could not believe that those persons are responsible for shooting him are the herein accused because they are his relative.[29]

Perusing the above testimonies, appellants contend that there is an inconsistency with respect to the identity of appellant Leandro Llanes. They claim that considering that witnesses Arevalo and Valenzuela approached the victim at the same time, why was it that Arevalo declared that the victim was shot by "Ago and Ago's father" while Valenzuela testified that the victim said that he was shot by "his cousin Alan and uncle Nicandro."

We find no merit in appellants' contention. What is important is that Arevalo was able to establish that Ago and Leandro are one and the same person. It was, likewise, firmly shown that the nickname of Leandro is Alan.[30] It may also be stressed that when prosecution witness Valenzuela was asked to identify both appellants in open court, he pointed to appellants Leandro and Nicanor Llanes. Llanes stood up and gave his name as Nicanor Llanes.

It is a well-settled rule that different witnesses testifying on the circumstances of a criminal event would naturally differ in various details.[31] The fact that witnesses Arevalo and Valenzuela gave varying testimonies as to the dying declaration of the victim does not indicate that they are lying. A truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and the treachery of human memory.[32] In fact, these inaccuracies even suggest that the witnesses are telling the truth and have not been rehearsed. Besides, a witness testifying on the dying declaration of the deceased need not reproduce exactly the words of the latter as long as he is able to give its substance.[33]

The foregoing evidence unequivocally identifying herein appellants as the culprits in the crime charged belies their defense that on the date and time of the incident, they were just at home sleeping. It is settled that alibi is an inherently weak defense, easy to fabricate and highly unreliable.[34] For said defense to prosper, the accused must prove not only that he was at some other place at the time the crime was committed but that it was, likewise, physically impossible for him to be at the locus criminis at the time of the alleged crime.[35] Here, the appellants failed to establish physical impossibility of their presence at the scene of the crime at the time of its commission because their house (where they claim to have been at that time) is just a few meters therefrom.

The Solicitor General, while agreeing that appellants are guilty of the killing of Julian de Silva, nevertheless contends that the crime committed is not murder but homicide. He contends that the manner of attack was not established as there were no eyewitnesses to the incident that is why the trial court relied on the dying declaration of the victim.

We agree.

In order to qualify a killing to murder, the circumstances invoked therefor must be proven as indubitably as the killing itself and cannot be deduced from mere inference.[36] The essence of treachery is the sudden and unexpected attack by an assailant without the slightest provocation on the part of the victim. Absent any particulars on the manner in which the aggression was commenced or how the act which resulted in the death of the victim unfolded, treachery cannot be reasonably appreciated to qualify the killing to murder.[37] In this case where the witnesses had not actually seen the shooting of the victim because the center of the prosecution's evidence is the victim's dying declaration, it could not be assumed that appellants had deliberately adopted treacherous means to take the victim's life. Mere suppositions that the killing was perpetrated by treachery have no place in the appreciation of evidence. Hence, where the manner of attack was not proven as in the case at bar, the appellants should be merited the benefit of the doubt and the crime be considered only as homicide defined and penalized under Article 249 of the Revised Penal Code. Said article prescribes the penalty of reclusion temporal for homicide. There being no mitigating nor aggravating circumstance that can properly be appreciated, the penalty shall be imposed in its medium period, the range of which is from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Applying the Indeterminate Sentence Law, the range of the penalty that can be imposed is within the range of prision mayor, the next lower degree than reclusion temporal, from six (6) years and one (1) day to twelve (12) years as minimum, to reclusion temporal in its medium period of from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, as maximum.

WHEREFORE, the judgment of the trial court convicting appellants NICANOR LLANES and LEANDRO LLANES for the killing of Julian de Silva is MODIFIED. Appellants are hereby found guilty of homicide, instead of murder, under Article 249 of the Revised Penal Code, and they are, accordingly, sentenced to an indeterminate imprisonment term of from nine (9) years and four (4) months of prision mayor as minimum to sixteen (16) years, five (5) months and nine (9) days of reclusion temporal as maximum.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] Section 37, Rule 130 of the Rules of Court.

[2] Records, p. 147.

[3] Id., at 156.

[4] TSN, April 6, 1992, p. 8.

[5] Id., at 9.

[6] Id.

[7] Exhibit "C," Records, p. 4.

[8] TSN, June 4, 1992, p. 5; Exhibit "C-2," Records, p. 2.

[9] Id., at 7.

[10] Id., at 8.

[*] Referred to as Venancio Arevalo by Dominador Valenzuela in his testimony.

[11] TSN, June 8, 1992, pp. 3-12.

[12] Id., at 13-26.

[*] Referred to as Domingo Valenzuela in the Sworn Statement he executed and in the prosecution's list of witnesses.

[13] TSN, August 4, 1992, pp. 3-20.

[14] Id., at 23-27.

[15] TSN, August 26, 1992, pp. 3-17.

[16] TSN, November 11, 1992, pp. 10, 15.

[17] TSN, August 14, 1993, pp. 3-10; October 11, 1993, pp. 3-21; October 18, 1993, pp. 2-14.

[18] TSN, April 19, 1993, pp. 2-20.

[19] TSN, June 8, 1993, p. 4.

[20] Records, pp. 284-285.

[21] Rollo, p. 63.

[22] See also *People v. Alvin Nialda*, G.R. No. 115946, April 24, 1998; *People v. Rex Bergante*, G.R. Nos. 120369-70, February 27, 1998; *People v. Viovicente*, G.R. No. 118707, February 2, 1998.

[23] 205 SCRA 213 (1992).

[24] Id., at 221.

[25] See Notes 8 and 10.

[26] TSN, April 19, 1993, pp. 7-14.

[27] *People vs. Gatchalian*, 300 SCRA I (1998); *People vs. Lapay*, 298 SCRA 62 (1998); *People vs. Daraman*, 294 SCRA 27 (1998).

[28] TSN, June 8, 1992, pp. 4-7.

[29] TSN, August 4, 1992, pp. 7-10.

[30] TSN, November 4, 1993, p. 3.

[31] *People vs. Andres*, 296 SCRA 318 (1998); *People vs. Sta. Ana*, 291 SCRA 188 (1998); *People vs. Ranido*, 288 SCRA 369 (1998).

[32] *People vs. Ebrada*, 296 SCRA 353 (1998); *People vs. Paule*, 261 SCRA 649 (1996).

[33] *People vs. Garma*, 271 SCRA 517 (1997).

[34] *People vs. Viovicente*, *supra*.

[35] *People vs. Pagal*, 272 SCRA 443 (1997); *People vs. Mariñas*, 248 SCRA 165 (1995).

[36] *People vs. Solis*, 291 SCRA 529 (1998).

[37] *People vs. Nialda*, *supra*; *People vs. Nalangan*, 270 SCRA 234 (1997); *People vs. Alcartado*, 261 SCRA 291 (1996).

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