

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO SANTIAGO JAMIRO, ACCUSED-APPELLANT.

G.R. No. 117576. September 18, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The silence of eyewitnesses for a considerable length of time, if sufficiently explained, does not necessarily destroy their credibility. Neither do minor inconsistencies make their testimonies implausible. Rather, their narration of what transpired on that fateful night when the victim was slain should be weighed and compared with the other pieces of evidence presented, so that truth may be discovered and justice rendered.

Statement of the Case

Appellant Ernesto Jamiro, then a member of the Integrated National Police (now Philippine National Police or PNP) assigned to Bacoor, Cavite, was accused of killing a certain Eduardo (“Dado”) Mulingbayan. The President waived court martial jurisdiction over his case. Hence, Constabulary Judge Advocate Fortunato M. de Gracia, Jr. referred the case to the provincial prosecutor of Cavite City[1] for civil prosecution.

After conducting a preliminary investigation,[2] Asst. Provincial Prosecutor Diego C. Agustin filed before the Regional Trial Court of Bacoor, Cavite, Branch XIX,[3] an Information dated December 5, 1990 charging Appellant Jamiro of murder allegedly committed as follows:

That on or about the 19th day of December 1989, at Barangay Molino, Municipality of Bacoor, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, being then armed with a short firearm and with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously, shoot one Eduardo Mulingbayan, thereby causing his instantaneous death, to the damage and prejudice of his family.”[4]

With the assistance of counsel, accused-appellant entered a plea of not guilty at his arraignment on August 12, 1991, during which the information was translated to him “in Tagalog, which he speaks and understands.”[5]

After pre-trial and trial on the merits[6], the court a quo rendered the assailed Decision[7] dated November 15, 1993, the decretal portion of which reads:

WHEREFORE, the Court finds accused Ernesto Santiago Jamiro GUILTY BEYOND REASONABLE DOUBT of the crime of Murder penalized by Article 246 of the Revised Penal Code. He should suffer the prison term of Reclusion Perpetua with the accessory penalties provided by law. He should pay private complainant Felipe Mulingbayan, representing the Heirs of deceased-victim Eduardo Mulingbayan the following:

- a) P50,000.00 as death compensation
- b) P32,500.00 as reimbursements of funeral expenses

- c) P25,000.00 moral damages
- d) P10,000.00 exemplary damages
- e) P10,000.00 attorney's fees for private prosecutor

"The period of detention of the accused at the Bacoor Municipal Jail from August 5, 1991 to August 29, 1991 may be credited in his favor." [8]

During the pendency of the trial, the victim's father, Felipe Mulingbayan, initiated an administrative complaint [9] with the National Police Commission (NPC) against the accused. In its decision dated June 15, 1992, the NPC Adjudication Board found Jamiro guilty of grave misconduct and ordered his dismissal from the service. [10]

The Facts Version of the Prosecution

On the night of December 19, 1989, Dado Mulingbayan was shot by a lone assailant in Bacoor, Cavite. Prosecution Witnesses Eduardo Manaois, [11] Aries Fuentes, [12] and Edmond Allan Ortiz [13] testified to having seen appellant shoot Dado from behind while the latter was seated on a bench inside a store and drinking beer. [14] The deceased did not converse with, much less provoke, the appellant. [15]

Manaois narrated that around 10:30 p.m. of December 19, 1991, he was drinking beer with Lito Gabot and Inngo de los Santos [16] at a store owned by a certain Mang Buling. [17] While Dado Mulingbayan was seated on a bench inside the store, Jamiro arrived, drew his short firearm and, without saying a word, shot Dado. Thereafter, appellant told those who witnessed the incident to leave the place. [18]

On the other hand, Fuentes was on his way home on that fateful night. [19] Near the store of Mang Buling, [20] he saw appellant shoot Dado. He also heard appellant warn everyone against testifying on what happened. [21] He added that the victim was then carried to a tricycle. [22]

Ortiz testified that on December 19, 1989, between 10:00 p.m. and 10:30 p.m., he was with Dado, seated on a bench and drinking beer at Mang Buling's store. [23] Appellant suddenly appeared with a gun and forthwith shot Dado. [24]

The gunshot was fatal. Dado succumbed to death even before his arrival at the Cavinti Clinic in Moonwalk, Las Piñas, Metro Manila. [25] The Postmortem Findings of Medico-Legal Officer Roberto V. Garcia of the NBI reads:

Cyanosis, lips and nailbeds.

Abrasion, 1.0 x 0.4 cm., right hand, dorsum.

Wound, healing, 0.8 x 0.2 cm., right palm.

Gunshot wound, ENTRANCE: 0.7 X 0.9 cm., ovaloid, with an abrasion collar widest supero-anteriorly, right auricular region, 1.0 cm. In front and 1.0 cm. below the right external auditory meatus, directed slightly backward, slightly downward and from right to left, involving the soft tissues, fracturing the 2nd cervical vertebra, lacerating the spinal cord at this level, and finally the deformed bullet was lodged on the left side of the 2nd cervical vertebra where it was extracted.

Hematoma, scalp, left parietal region, supero-posterior aspect.

Hemorrhage, interstitial, about the 2nd cervical vertebra.

Visceral organs, congested.

Stomach, contains small amount of light brownish fluid material.

“CAUSE OF DEATH: - Gunshot wound lacerating Cervical spinal cord.

“REMARKS: - One (1) deformed bullet extracted from the deceased, submitted to the NBI Ballistics Section, for examination.”[26]

The slug extracted from the body of the victim was found to be “a deformed Caliber .38 copper-coated lead bullet. No determination could be made as to the type of firearm used due to lack of basis for identification.”[27]

Version of the Defense

For his defense, Appellant Jamiro denied authorship of the crime and set up alibi. According to him, on that tragic night he was assigned to the Zapote public market, where he reported for work at seven o'clock in the evening.[28] Pfc. Armando Dumali, chief of the operations department of his INP unit, even came to check on him and his colleagues[29] and found them at their outpost twice, first around 8:00 p.m. and second at 10:00 p.m. Dumali left the post later at 10:20 p.m. after drinking coffee.[30] Consequently, appellant said that it was impossible for him to have been at the crime scene in Queensrow Subdivision, also in Bacoar, Cavite, which was allegedly about 45 minutes away by car from their outpost in Zapote.[31]

Defense Witnesses Police Inspector Jose B. Salamante[32] and SPO1 Armando Dumali[33] substantially corroborated the alibi of appellant.[34]

The Trial Court's Ruling

The court a quo gave full faith and credit to the testimonies of Prosecution Witnesses Manaois, Fuentes and Ortiz. It found the three witnesses candid and straightforward, without any ill motive to testify falsely against the appellant.[35]

Further, the lower court dismissed the defense of alibi in this wise:

x x x The claim of the accused was that he was not at the scene of the crime as he was assigned at Zapote Public Market Police Outpost, Bacoar, Cavite. The accused and witnesses failed to amply prove the physical impossibility for accused to reach Queensrow Subdivision, Molino, Bacoar, that late fateful night of December 19, 1989 from his place of assignment at Zapote, Bacoar, Cavite. No less than defense witness SPO1 Armando Dumali contended that it would take one-half hour to reach the place of the incident using a private vehicle at night (tsn. October 20, 1992, pp. [sic] 14). It was the same defense witness SPO1 Armando Dumali who contended that accused was a member of the Patrol Division. Moreover, having been a policeman assigned at Bacoar, Police Station since August, 1989 (tsn. January 14, 14, 1993, p. 22). without doubt, he had gained experiences and friends. He could easily hire or secure a vehicle to reach the place of incident and to accomplish his dastard act. His claim that he owns no vehicle and rides on a public conveyance (tsn. id., 48) would not in any way be a deterrent from accomplishing his evil scheme.”[36]

The court a quo qualified the killing to murder, finding that there was treachery when Appellant Jamiro suddenly appeared from behind his unwary victim and shot the latter. It held: “The accused had consciously shot the right front ear of the victim to ensure the demise of the victim. It is stressed herein that the accused was unarmed, defenseless, unsuspecting and unaware of the impending assault done to him by the accused-policeman.”[37]

The appellant moved for reconsideration[38] of the trial court's Decision, raising as issues the credibility of the prosecution witnesses and the appreciation of treachery, and reiterating his defense of alibi. The appellant also moved that the judge inhibit herself from resolving the motion for reconsideration and the pleadings filed in connection therewith.[39]

The trial court, however, dismissed both motions in its Orders dated June 1, 1994[40] and August 26, 1994.[41]

In dismissing the motion for inhibition, the trial judge declared:

The Court's observation referring to the candidness and straightforwardness of the testimonies of the prosecution witnesses did not limit itself to their demeanor at the witness stand but also the assessment of their testimonies, as a whole, as recorded in the transcripts of the stenographic notes that were taken when they testified. It is the firm stand of the undersigned judge that she could properly and amply evaluate, assess and look into not only on the demeanor of the witnesses at the witness stand, but also on their candor and manner of answering the questions posed at them during the conduct of their direct, cross, redirect and recross examinations, as duly recorded and reflected in the transcribed notes. She had patiently read, examined, appreciated and narrated the testimony of each of the witnesses, not only for the prosecution but that of the defense, at the 13-page challenged decision of this case. She could say with certainty that she made just findings and conclusions in the disputed decision based on the culled facts and circumstances from the evidence on record, subject, of course, to the evaluation of the same by the higher appellate courts. xxx"[42]

Assignment of Errors

Appellant Jamiro raises in his appeal brief[43] the following assignment of errors:

1. The trial court gravely abused its discretion in rejecting the SC ruling that the silence of the alleged prosecution witnesses for almost two years puts in doubt their credibility and renders unreliable their story.

"2. The trial court gravely abused its discretion in giving credence to alleged eyewitnesses who where (sic) contradi[c]tory on material points, were coached, rehearsed, and evasive, and who have motives to testify falsely against accused.

"3. The trial court gravely abused its discretion when it adjudged the guilt of the accused when in the face of the evidence presented, he should be acquitted for insufficiency of evidence, or at the least, reasonable doubt."[44]

In sum, his appeal hinges on the credibility of the prosecution witnesses and the sufficiency of evidence to convict the accused beyond reasonable doubt.

This Court's Ruling

The appeal is without merit.

Credibility of Prosecution Witnesses

We shall deal with the challenges posed by the appellant with respect to the credibility of the eyewitnesses, *seriatim*. First, Appellant Jamiro posits that the long silence (two years) of the eyewitnesses and their failure to report the incident to the authorities, to the family of the victim, or to anyone else, render their testimonies dubious; such silence shows that they acted contrary to normal human behavior.[45]

Time and again, this Court has ruled that, when confronted with startling occurrences, behavioral responses of witnesses are diverse.[46] Indeed, there is no uniform reaction or standard behavioral response to grisly events.[47] In numerous instances, we have declared that the reluctance of eyewitnesses to testify on a crime and to get involved in a criminal investigation are but normal and do not by themselves affect the witnesses' credibility.[48] The sealed lips of said witnesses are but a natural and spontaneous reaction. They may opt to remain silent rather than to imperil their own lives and those of their families.

In this case, fear stifled the witnesses from immediately voicing out their knowledge of the incident. Right after shooting the victim, the accused threatened them.[49] It is not difficult to understand that a person who can deliberately kill another in a public place has the ability to carry out such threat and, thus, to create disquietude in

the minds of the people who witnessed his felonious act. Moreover, Eyewitness Fuentes knew that appellant was a member of the Integrated National Police.[50] If a policeman threatens the citizens he is tasked by law to protect, such citizens cannot be expected to report with alacrity their supposed protector's felony.

Moreover, neither substantive nor procedural law requires any person witnessing a crime to immediately report the matter to the proper authorities or to give his or her statement thereon. Under the circumstances, this Court cannot impute fault to the eyewitnesses for not reporting the incident to anyone or for not executing a sworn statement. In *People vs. Reoveros*,[51] we declared that the lapse of a considerable length of time before a witness comes forward to reveal the identity of the assailant does not taint the credibility of the witness and his testimony where such delay is satisfactorily explained. Besides, once apprehension is overcome by a desire to speak the truth, the witness must be welcomed by the courts in order that truth may be ascertained and justice dispensed.[52]

Witness Fuentes explained his inaction in this wise:

Q

In so far and in connection with what you have witnessed you never reported the incident to any police authorities?

A

No Sir [sic], I was not able considering that I was thinking that the victim has a relative [sic] who can make reports to the authorities.

Q

And you did not also tell or report what you witnessed to any relatives of the victims [sic]?

A

No Sir, because I thought that even [if] the news will not come from he [sic], the other people will inform them what happened.

Q

And you did not also tell to any person what you have witnessed [sic] during that night?

A

No Sir, I did not considering the treat [sic] made by the accused and besides I am not a woman who is fond of gossips.”[53]

Ortiz, on the other hand, justified his failure to immediately report the incident in this manner:

Q

You did not give any statement to the police authorities despite the fact that you were the only companion of Dado Mulingbayan at the time of the incident?

A

Yes sir.

Q

And you will also agree with me that you did not report that happened to your friend?

A

Yes sir.

Q

And at the time of the incident did it not occur to you to report the incident?

A

When this thing happened I was feeling bothered but considering that we were given a threat I was then thinking of my family.

Q

When did you leave for Saudi Arabia for 1989?

A

December 29, 1989.

Q

When did you arrive in the Philippines?

A

November 15, 1991.”[54]

After they conquered their fear and broke their silence, the eyewitnesses positively identified the appellant as the perpetrator of the crime. Eyewitness Eduardo Manaois testified:

Q

You mentioned that Eduardo Mulingbayan is coming in, what happened next?

A

Somebody called for him and then he sat on a bench.

Q

While he was sitting at the bench, what happened next?

A

Boy Jamiro drew a short firearm.

Q

Then, when he drew his short firearm, what happened next?

A

He shot Eduardo Mulingbayan.”[55]

Eyewitness Fuentes, on the other hand, narrated:

Atty. Flores:

What did you see when you saw that Dado was shot?

A

I saw that Dado was shot and lying frustrate [sic].

Q

How far were you when you saw Dado shot?

A

I was about 10 to 12 meters away.

Q

Who shot Dado?

A

I[t] was Ernesto Boy Jamiro.”[56]

Eyewitness Ortiz, who was with Dado when the latter was shot, testified:

Q

While you were drinking beer with Dado was there any unusual incident that happened?

A

Yes sir, somebody came out with his gun and he shot Dado.

Q

What happened when that person came out?

A

He drew his gun and shot Dado.

Q

Did you recognize that person who shot Dado?

A

Yes sir.

Q

If he is here in Court, will you be able to point to him?

A

Yes sir.

Q

(Witness pointing to a male person who identified himself as Ernesto Jamiro.)

Q

Now what happened when this Dado Mulingbayan was shot?

A

He stumbled [sic] and died.”[57]

Such testimonies, being affirmative, have greater evidentiary weight than the denial and alibi of appellant. Unless substantiated by clear and convincing evidence, negative averments deserve no weight in law.[58]

Second, the defense alleges that the three eyewitnesses in fact were not present at the scene of the crime at the time of its commission. Appellant claims that said witnesses were never mentioned in the sworn statements of Noli Guevarra or Edwin Mulingbayan, or even in the police investigation report. Furthermore, said witnesses were not listed as such in the information filed by the prosecutor.[59]

We discard this argument as a desperate but nonetheless futile attempt to discredit the prosecution eyewitnesses. Ex parte affidavits are almost always incomplete and inaccurate, resulting from partial or inadequate suggestions which are necessary for eyewitnesses’ accurate recollection of all that pertains to the subject.[60] A sworn statement does not purport to contain a complete compendium of the details of the events narrated by the affiant.[61] Hence, the mere fact that the sworn statements failed to mention the names of Manaois, Fuentes and Ortiz as witnesses to the killing is not a conclusive proof that the said persons were not witnesses to the crime or that they were “afterthought witnesses.” Besides, Edwin Mulingbayan could not have pointed to Manaois, Fuentes and Ortiz as having witnessed the crime, for he himself was not present when the killing took place. The sworn statement of Guevarra, on the other hand, cannot be given probative value for he was not presented as a witness during the trial.

On the other hand, the investigation report was prepared by the police investigators merely to determine whether appellant could be held liable for the death of Eduardo Mulingbayan.[62] It was not intended to present a complete brief for the prosecution or to identify all the eyewitnesses to the incident. The non-inclusion of some of the names of the eyewitnesses in the information filed before the RTC does not preclude the prosecutor from presenting them during the trial. The selection and the subsequent presentation of witnesses are prerogatives of the prosecution.[63] The latter has the liberty to present such other witnesses or evidence in order to carry out his duty to establish the guilt of the accused beyond doubt. The enumeration of witnesses in the information is not necessarily exhaustive; it is not meant to absolutely limit or lessen the prerogative of the prosecutor.

Third, appellant maintains that the testimonies of the eyewitnesses were inconsistent with the findings of the expert witness for the prosecution.[64] When asked about the possible position of the killer in relation to the location of the wound inflicted upon the deceased, Dr. Garcia opined that the assailant was “standing on the same level or direction with the right side of the deceased.”[65] However, in the post-mortem findings, the trajectory of the bullet was “slightly backward, slightly downward and from right to left.”[66] Eyewitness Manaois, meanwhile, testified that the accused was “slightly sidewise” when the latter shot Dado who was seated.[67] Fuentes and Ortiz also declared that Dado was seated when shot.[68]

We find no material inconsistency in the above declarations of the prosecution witnesses. Dr. Garcia merely stated that the shooter and the victim were on “the same level.” It is difficult to discern how this can discredit the statement of the eyewitnesses that the victim was seated when he was shot. In any event, this alleged contradiction pertains to an insignificant matter; it cannot discredit the eyewitness accounts that appellant shot the victim.

Lastly, appellant avers that the prosecution witnesses did not actually see the shooting, based on the alleged variance in their testimonies regarding what Appellant Jamiro uttered right after he shot Dado.[69] Eyewitness Manaois testified that the accused told the witnesses to leave the place.[70] Eyewitness Fuentes declared under

oath that the appellant threatened to kill anyone who would testify about the incident.[71] Eyewitness Ortiz, on the other hand, told the court that Appellant Jamiro pointed his gun at the people who saw the incident and told them not to report to any police authority what happened.[72]

Because they refer only to minor details, such inconsequential differences do not impair the credibility of the prosecution eyewitnesses' testimonies.[73] Forthright witnesses are not immune from committing minor inaccuracies and making some inconsistent statements.[74]

The appellant also imputes ill motive to the prosecution witnesses, alleging that the latter were members of a gang to which the victim also belonged. The accused was in "a hot pursuit against these persons. By testifying falsely, the gang members will ward off the barrier to their illegal activities." [75]

We rule that the allegation of ill motive on the part of the prosecution witnesses is not sufficiently established by clear, substantial and convincing evidence. The defense presented certifications issued by Clerk of Court Catalino B. Cuevas[76] showing that Dado Mulingbayan[77] was charged with various offenses.[78] Appellant Jamiro also testified that prior to the death of Dado, the latter and his friends were charged with murder as a result of the former's relentless efforts at pursuing the said group.[79] However, the foregoing testimonial and documentary evidence do not conclusively establish that the prosecution witnesses, in testifying against the appellant, were moved by a desire to retaliate against the policeman's actions. In the absence of sufficient proof of improper motive, the presumption is that said witnesses were not so moved and their testimonies are thus entitled to full faith and credit.[80]

Furthermore, relatives of a victim (like his brother Edwin) would not implicate a person other than the real culprit. They are expected to be motivated by no other reason than to seek justice for the death of a loved one.[81]

Treachery

The essence of treachery is that the attack, carried out swiftly, deliberately and unexpectedly, rendered the unarmed and unsuspecting victim without opportunity to flee or defend himself.[82] The prosecution must conclusively show that the offender deliberately employed means, method or manner of attack which tended directly and specially to insure the execution of his felonious design without risk to himself arising from the defense which his victim might make.[83]

Deceased Dado Mulingbayan was sitting and drinking beer when Appellant Jamiro suddenly appeared from behind and shot him.[84] No conversation took place between the assailant and his victim.[85] The assailant purposely approached his victim with no design other than to kill him. Unarmed and unaware of the impending danger, the victim could not have defended himself against the attack from his rear. This, to our mind, constitutes treachery.

Damages

The trial court ruled:

Aside from the compensatory damages of P50,000.00 to be paid to private complainant and father of the deceased-victim, Felipe Mulingbayan, herein accused should also reimburse the latter the unchallenged list of expenses[86] spent due to the death of the victim in the total sum of P32,500.00 minus the attorney's fees and acceptance fee mentioned thereat. (Exh, I, Rollo, p. 118-C; tsn, January 13, 1992, pp. 3-5). The private prosecutor of this case will only be awarded the reasonable sum of P10,000.00 as indicated hereinbelow.

"It cannot be denied that the parents of the deceased-victim had suffered mental anguish and anxiety. They are entitled to moral damages and exemplary damages in the sums of P25,000.00 and P10,000.00, respectively.

“However, this Court is not inclined to grant the loss of earning capacity to deceased-victim, who appears to have been charged with Murder and Serious Physical Injuries - as per the Certification of the Clerk of Court of Bacoor Municipal Trial Court (Exh. 6, Rollo, p. 169), and charges of Qualified Theft, Theft and Robbery as per the Certification of the same Clerk of Court (Exh. 7, id., p. 170).”⁸⁷ Decision, p. 12; records, p. 198.[⁸⁷]

We previously ruled that it is necessary for a party seeking actual damages to produce competent proof or the best evidence obtainable, such as receipts, to justify an award therefor. Only substantiated and proven expenses, or those which appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the courts. The courts will not rely merely on suppositions or conjectures.[⁸⁸] We scoured the records but failed to find competent proof to support the list drawn by the victim’s father. We cannot, therefore, affirm such award.

On the other hand, Felipe Mulingbayan declared in court that his family endured “physical sufferings, mental anguish, sleepless nights and depression” when Dado died. [⁸⁹] Finding sufficient basis,[⁹⁰] we affirm the award of P25,000.00 as moral damages in favor of the heirs of Dado Mulingbayan.

WHEREFORE, the appeal is hereby DENIED and the appealed Decision is AFFIRMED with MODIFICATION as to the award of damages. Appellant is hereby ORDERED to pay P50,000.00 as civil indemnity plus P25,000.00 as moral damages. The other damages awarded by the trial court are deleted for lack of adequate factual basis. Costs de oficio.
SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Melo and Francisco, JJ., concur.

[1] Letter dated August 9, 1990; records, p. 10.

[2] Resolution dated December 5, 1990; records, pp. 3-9.

[3] Presided by Judge Novato T. Cajigal and subsequently by Judge Edelwina C. Pastoral.

[4] Records, p. 1; rollo p. 4.

[5] Records, p. 44.

[6] In Criminal Case No. B-91-74.

[7] Penned by Judge Edelwina C. Pastoral; rollo, pp. 18-30.

[8] Decision, pp. 12-13; rollo, pp. 198-199.

[9] Docketed as Administrative Case No. 91-0540.

[10] Records, pp. 160-162. It reads in part:

“Careful evaluation of the evidence adduced by both parties show clear, substantial and sufficient evidence to support the allegation of the complainant, that respondent was responsible for the death of his son Eduardo ‘Dado’ Mulingbayan. The positive testimony of complainant’s witness Wilbur Cordial that he saw respondent shot the deceased on the head is more than sufficient to establish the guilt of the respondent.

On the other hand, respondent failed to present witnesses to corroborate his defense that he was not at the scene of the crime. He could have easily produced policemen as witnesses who were on the same tour of duty as him and who can confirm his defense of alibi. Regrettably not one of them volunteered to testify for the respondent.

“Clearly, the version of the respondent was concocted and fabricated and the same cannot prevail over the positive identification by the complainant’s witness Wilbur Cordial that respondent was the assailant. The act of respondent in shooting the deceased on the head constitutes Grave Misconduct.

“WHEREFORE, PREMISES CONSIDERED, the Board finds respondent PAT. ERNESTO JAMIRO guilty of the charge and he is hereby ordered DISMISSED from the service.”

[11] TSN, October, 23, 1991, pp. 1-12.

[12] TSN, November 28, 1991, pp. 1-14.

[13] TSN, December 4, 1991, pp. 1-14. In the transcripts, his name was spelled “Ortis.”

[14] TSN, October 23, 1991, pp. 3-4, 8; November 28, 1991, pp. 3-5, 8; December 4, 1991, pp.4-5, 12-13.

[15] TSN, October 23, 1991, pp. 4,8; December 4, 1991, pp. 5, 12.

[16] TSN, October 23, 1991, p. 7.

[17] Ibid., p. 2.

[18] Ibid., p. 3.

[19] TSN, November 28, 1991, p. 2.

[20] Ibid., pp. 2-3.

[21] Ibid., pp. 3-4.

[22] Ibid., p. 8.

[23] TSN, December 4, 1991, p. 3

[24] Ibid., pp. 3-4.

[25] Police Blotter Entry No. 1456, dated December 20, 1989; records, p. 62.

[26] Records, p. 62.

[27] FIS Report prepared by Senior Ballistician Apolinario O. Calix of the Criminalistics Division of the Firearms Investigation Section of the NBI, dated February 12, 1990; records, p. 107.

[28] TSN, January 14, 1993, p. 23.

[29] SPO1 Armando Dumali, witness for the defense, testified that Appellant Jamiro and a certain Pat. Bermejo were posted at the Zapote public market. TSN, October 20, 1992, pp. 8 and 12.

[30] TSN, January 14, 1993, p. 26-28, 42,46-47.

[31] TSN, October 20, 1992, pp. 14-15.

[32] Deputy Station Commander for Operations at the Bacoar Police Station.

[33] Officer-in-Charge of the Patrol Division of Bacoar Police.

[34] TSN, September 7, 1992, pp. 1-19; October 20, 1992, pp. 1-21.

[35] Assailed Decision, p. 7; records, p. 193.

[36] Assailed Decision, p. 8; rollo, p. 25.

[37] Decision, p. 10; records, p. 196.

[38] Records, pp. 206-226-G. This Motion for Reconsideration was filed by Atty. Elpidio F. Barzaga, Jr. A Supplemental Motion for Reconsideration and Motion for Inhibition were subsequently filed by a new counsel for the Appellant, Atty. Marlon P. Ontal. (Records, pp.245-277; 280-285)

[39] Records, pp. 280-282. Also filed were an Opposition thereto, a Supplemental Motion for Reconsideration and Reply to Opposition.

[40] Records, pp. 286-290.

[41] Records, pp. 291-297.

[42] Assailed Order, dated June 1, 1994, pp. 1-2; records, pp. 286-287.

[43] Rollo, pp. 35-77.

[44] Appellant's Brief, pp. 10-11; rollo, pp. 46-47.

[45] Ibid., pp. 12, 15-16; rollo, pp. 48, 51-52.

[46] People vs. Castillo, G.R. No. 116749, pp. 7-8, June 2, 1997; People vs. Pano, 257 SCRA 274, 280, June 5, 1996; People vs. Paragua, 257 SCRA 118, 123, May 24, 1996.

[47] People vs. Rubio, 257 SCRA 530, 534, June 29, 1996.

[48] People vs. Pacapac, 248 SCRA 77,91, September 7, 1995; People vs. Israel, 231 SCRA 155, 164, March 11, 1994; and, People vs. Aurella, 231 SCRA 394, 401, March 23,1994.

[49] TSN, November 28, 1991, pp. 4 and 9; TSN, December 4, 1991, p. 11.

[50] TSN, November 27, 1991, p. 5.

[51] 247 SCRA 628, 632-633, August 23, 1995. See also People vs. Ompad, Jr., 233 SCRA 62, 66, June 10, 1994 and People vs. Rosario, 134 SCRA 497, 509, February 25, 1985.

[52] People vs. Baduya, 182 SCRA 57, 64, February 7, 1990.

[53] TSN, November 27, 1991, pp. 8-9.

[54] TSN, December 4, 1991, pp. 10-11.

[55] TSN, October 23, 1991, p. 3.

[56] TSN, November 27, 1991, p. 4.

[57] TSN, December 4, 1991, p. 4.

[58] People vs. Castillo, G.R. No. 116749, p. 10, June 2, 1997.

[59] Appellant's Brief, p. 15; rollo, p. 51.

[60] People vs. Loveria, 187 SCRA 47, 59, July 2, 1990.

[61] People vs. Lazaro, 249 SCRA 234, 241, October 12, 1995.

[62] Investigation Report, p. 1; records, p. 11.

[63] People vs. Pinto, 230 SCRA 847, 857, March 9, 1994.

- [64] Appellant's Brief, p. 20; rollo, p. 56.
- [65] TSN, September 25, 1991, p.8.
- [66] Records, p. 61.
- [67] TSN, October 23, 1991, p.4.
- [68] TSN, November 27, 1991, p. 5; December 4, 1991, pp.5, 12.
- [69] Appellant's Brief, p. 24; rollo, p. 60.
- [70] TSN, October 23, 1991, p. 3.
- [71] TSN, November 27, 1991, p. 4.
- [72] TSN, December 4, 1991, p. 5.
- [73] People vs. Pacapac, 248 SCRA 77, 88, September 7, 1995.
- [74] People vs. Pano, 257 SCRA 274, 285, June 5, 1996.
- [75] Appellant's Brief, pp. 27-29; rollo, 63-64.
- [76] Municipal Trial Court of Bacoor.
- [77] Along with others but the names were not written.
- [78] Marked as Exhibits 6 and 7; records, p. 153 and 154.
- [79] TSN, January 14, 1993, pp. 35-37.
- [80] People vs. Panganiban, 241 SCRA 91, 100, February 6, 1995.
- [81] People vs. Layno, G.R. No. 110833, p. 16, November 21, 1996.
- [82] People vs. Isleta, G.R. No. 114971, November 19, 1996, pp. 11-12.
- [83] People vs. Cogonon, G.R. No. 94548, October 4, 1996, pp. 18-19.
- [84] TSN, October 23, 1991, pp.4 and 8; December 4, 1991, pp. 12-13.
- [85] TSN, October 23, 1991, p.4; December 4, 1991, p. 5.
- [86] Exhibit I of the prosecution is a list prepared by Felipe Mulingbayan reproduced hereunder:
- “Expenses I incurred in relation to the case (murder) of my son, Dada (sic):
- 1) P10,000.- funeral services
 - 2) P 2,500.- during the wake, 5 days
 - 3) P 6,500.- 9th day
 - 4) P 7,000.- “babang luksa”
 - 5) P10,000.- attorney's fee, hearings at Napolcom
 - 6) P15,000.- attorney's fee, RTC
 - 7) P 3,000.- loss in income in terms of salary and comm ..

8) P 3,500.- misc. like transportation, etc.

P57,500.-" (Records, p. 110)

[87] Decision, p. 12; records, p. 198.

[88] People vs. Cayabyab, G.R. No. 123073, June 19, 1997, p. 22. See also People vs. Rosario, 246 SCRA 658, 671, July 18, 1995. and People vs. Degoma, 209 SCRA 266, pp. 273-274, May 22, 1992.

[89] TSN, January 13, 1992, p. 3.

[90] Taken in relation to Article 2217 of the Civil Code which states:

"Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act for omission."

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