

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ULYSSES M. CAWALING, ERNESTO TUMBAGAHAN, RICARDO DE LOS SANTOS, AND HILARIO CAJILO, ACCUSED-APPELLANTS.

G.R. No. 117970. July 28, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

It is axiomatic that once an accused-appellant admits killing the victim, he bears the burden of establishing the presence of any circumstance like self-defense, performance of a lawful duty or, for that matter, double jeopardy, which may relieve him of responsibility, or which may mitigate his criminal liability.[1] If he fails to discharge this burden, his conviction becomes inevitable. In this Decision, we also reiterate the following doctrines: (1) the regional trial court, not the Sandiganbayan, has jurisdiction over informations for murder committed by public officers, including a town mayor; (2) the assessment of trial courts on the credibility of witnesses and their testimonies deserve great respect; (3) the equipoise rule cannot be invoked where the evidence of the prosecution is overwhelming; (4) alibi cannot be believed in the face of credible testimony identifying the appellants; and (5) conspiracy may be proven by circumstantial evidence.

The Case

Before us is an appeal from the 34-page Decision[2] dated October 21, 1994, promulgated by the Regional Trial Court of Romblon in Criminal Case No. OD-269. Convicted of murder were former Mayor Ulysses M. Cawaling and Policemen Ernesto Tumbagahan,[3] Ricardo De los Santos and Hilario Cajilo.

Prior to the institution of the criminal case against all the appellants, an administrative case[4] had been filed before the National Police Commission, in which Policemen Ernesto Tumbagahan, Ricardo De los Santos, Hilario Cajilo (three of herein appellants) and Andres Fontamillas were charged by Nelson Ilisan[5] with the killing of his brother Ronie[6] Ilisan. On April 6, 1986, Adjudication Board No. 14[7] rendered its Decision which found Tumbagahan, De los Santos, Cajilo and Fontamillas guilty of grave misconduct and ordered their dismissal from the service with prejudice.[8] On June 26, 1986, the Board issued a resolution,[9] dismissing the respondents' motion for reconsideration for lack of merit.

Subsequently, on June 4, 1987, Second Assistant Provincial Fiscal Alexander Mortel filed, before the Regional Trial Court (RTC) of Odiongan, Romblon,[10] an Information for murder[11] against the appellants and Andres Fontamillas. The accusatory portion reads:

“That on or about the 4th day of December 1982, at around 9:00 o’clock in the evening, in the Poblacion, [M]unicipality of San Jose, [P]rovince of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, conspiring, confederating and mutually helping one another, did then and there, by means of treachery and with evident premeditation and taking advantage of their superior strenght [sic] willfully, unlawfully and feloniously attack, assault and shoot RONIE ILISAN, with the use of firearms, inflicting upon the latter multiple mortal injuries in different parts of his body which were the direct

and immediate cause of his death.”

Accused Tumbagahan, De los Santos, Cajilo and Fontamillas, with the assistance of their lawyers Atty. Abelardo V. Calsado and Juanito Dimaano, pleaded not guilty when arraigned on February 15, 1988;[12] while Accused Cawaling, assisted by Counsel Jovencio Q. Mayor, entered a plea of not guilty on March 16, 1988.[13]

After due trial,[14] the court a quo[15] rendered its Decision dated October 21, 1994,[16] the decretal portion of which reads:

“WHEREFORE, this Court finds the accused (1) ULYSSES M. CAWALING, (2) ERNESTO TUMBAGAHAN, (3) RICARDO DELOS SANTOS, (4) HILARIO CAJILLO, AND (5) ANDRES FONTAMILLAS GUILTY beyond reasonable doubt of the crime of MURDER under the Information, dated June 4, 1987, and sentences each of them to suffer the penalty of reclusion perpetua, with the accessory penalties of the law.

The accused, jointly and severally, are ORDERED to pay Nelson Elisan the sum of P6,000.00 as actual damages and the heirs of the deceased Ronie Elisan the sums of P116,666.66 by way of lost earnings and P50,000.00 as indemnity for death, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The bail bonds of all the accused are ORDERED CANCELLED and all said accused are ORDERED immediately confined in jail.

The slug (Exh. A); the .38 caliber revolver (with 3 empty shells and 3 live bullets) (Exh. G); and the slug of bullet (Exh. H) are confiscated in favor of the government.

After the judgment has become final, the Officer-in-Charge, Office of the Clerk of Court, this Court, is ordered to deliver and deposit the foregoing Exhibits A, F, G and H, inclusive, to the Provincial Director, PNP, of the Province of Romblon properly receipted. Thereafter, the receipt must be attached to the record of the case and shall form part of the record.

The period of preventive imprisonment the accused had undergone shall be credited in their favor to its full extent pursuant to Article 29 of the Revised Penal Code, as amended.

The case against co-accused ALEX BATUIGAS who is at large is ORDERED ARCHIVED pending his arrest.”[17]

Hence, this appeal.[18]

The Facts Version of the Prosecution

The trial court gives this summary of the facts as viewed by the prosecution witnesses:

“The killing occurred on December 4, 1982 at around 9:00 o’clock in the evening at the ricefield of Poblacion, San Jose, Romblon when the bright moon was already above the sea at an angle of about 45 degrees, or if it was daytime, it was about 9:00 o’clock in the morning (Imelda Elisan Tumbagahan, on direct examination, tsn, Jan. 17, 1989, p. 5, and on cross examination, tsn, April 18, 1989, p. 22).

On December 4, 1982, about 8:00 o’clock or 8:30 o’clock in the evening, Vicente Elisan and his elder brother Ronie Elisan, the victim, were drinking tuba at C & J-4 Kitchenette of co-accused Andres Fontamillas in Poblacion, San Jose, Romblon. When they stood up to go home, Luz Venus, the wife of Diosdado Venus, told them not to go out because the accused were watching them outside about three (3) meters from the restaurant. Diosdado Venus accompanied them upon their request and they went out and walked towards home. About a hundred meters from the restaurant, the six (6) accused, that is, Mayor Cawaling, the four (4) policemen, namely, Hilario Cajilo, Andres Fontamillas, Ernesto Tumbagahan and Ricardo delos Santos, and civilian Alex

Batuigas, the mayor's brother-in-law, flashlighted them and Diosdado Venus ran going back. The two (2) brothers also ran towards home to the house of their elder sister Imelda Elisan Tumbagahon. Co-accused Andres Fontamillas and Hilario Cajilo blocked them on the gate of the fence of their sister's house. Ronie Elisan ran towards the ricefield. The accused were chasing them. Vicente Elisan saw his brother Ronie fall down on the ricefield while he ran towards the bushes and lay on the ground. Ronie Elisan rose up by kneeling and raising his two (2) hands. All the six (6) accused approached him with their flashlights and shot him. Ronie fell down about twenty (20) meters from the bushes where Vicente Elisan hid behind the coconut tree. Co-accused Cawaling said ["]you left him, he is already dead.["] Mayor Cawaling was armed with .45 caliber, policemen Andres Fontamillas and Hilario Cajilo were both with armalites, Ernesto Tumbagahan and Ricardo delos Santos were both with .38 caliber and so with civilian Alex Batuigas. They left towards the house of Mayor Cawaling. After they were gone, Vicente Elisan ran towards the house of his older brother Nelson Elisan. Upon seeing him, Vicente told Nelson that Ronie was already dead. Nelson said nothing. While they were there, elder sister Imelda Elisan Tumbagahon, who was crying came. She said: "Manong, patay ron si Ronie." (Brother, Ronie is already dead). Nelson said ["]do not be noisy; they might come back and kill all of us.["] Imelda stopped crying.

After a while, brothers Nelson and Vicente Elisan went to the house of barangay captain Aldolfo Tumbagahon. The three (3) went to the townhall and called the police but there was none there. Going to the house of the Chief of Police Oscar Montero, they were told by his wife that Commander Montero was in the house of Mayor Cawaling. They proceeded to the place where Ronie Elisan was shot. The cadaver was brought to the house of Nelson Elisan. Vicente Elisan found an empty shell of a .45 caliber about three (3) arm's length from the body of the victim. They surrendered it to the Napolcom."^[19]

Dr. Blandino C. Flores described the gunshot wounds of the victim as follows:

"Gunshot Wounds:

1. Shoulder:

Gun shot wound $\frac{1}{2} \times \frac{1}{2}$ inch in diameter shoulder right 2 inches from the neck with contusion [sic] collar surrounding the wound.

2. Right Axilla:

Gun shot wound $\frac{1}{4} \times \frac{1}{4}$ inch in diameter, 2 inches below the right nipple with contusion [sic] collar surrounding the wound.

3. Left Axilla:

Exit of the gun shot wound from the right axilla, measuring $\frac{1}{2} \times \frac{1}{2}$ inch with edges everted, one inch below the axilla and one inch below the level of the nipple.

4. Back:

Gun shot wound measuring $\frac{1}{4} \times \frac{1}{4}$ inch, along the vertebral column, right at the level of the 10th ribs with contusion [sic] collar.

5. Leg, Left:

Gun shot wound measuring $\frac{1}{4} \times \frac{1}{4}$ anterior aspect upper third leg with contusion [sic] collar, with the exit $\frac{1}{2} \times \frac{1}{2}$ posterior aspect upper third leg, left."^[20]

Based on the death certificate (Exhibit E) issued by Dr. Flores, Ronie Elisan died of "severe hemorrhage and gunshot wounds."^[21]

Version of the Defense

Appellant Cawaling, in his 47-page Brief,^[22] presented his own narration of the incident as follows:

“At around 7:00 in the evening of December 4, 1982, Ulysses Cawaling, then the mayor of the [M]unicipality of San Jose in the [P]rovince of Romblon, arrived aboard a hired motorized boat from Manila in the seashore of San Jose. From the seashore, he immediately proceeded to his home. At around 7:30 in the evening, Cawaling went to the municipal hall to check on administrative matters that piled up in the course of his trip to Manila. He also went inside the police station (located inside the municipal building) to be apprised of any developments, after which he went out and joined Pfc. Tumbagahan and Pfc. Cajilo who were standing near the flagpole in front of the municipal building. The three engaged in a conversation. Cawaling learned that the two police officers were the ones assigned for patrol/alert for that night. The three of them went inside the INP office and there Cawaling informed the two policemen that he received information from reliable persons that certain persons were plotting to kill him and a member of the town’s police force. It is to be noted that this occurred at the height of the communist insurgency and political violence in the countryside in the early 80’s. Hence, such information was taken very seriously, having been relayed by sources independent of each other.

Cawaling, as town chief then empowered with supervisory authority over the local police, accompanied Pfc. Tumbagahan and Pfc. Cajilo in conducting patrol and surveillance operations around the small municipality. He usually did this as routine since Romblon was then plagued with political assassinations and armed conflict. On their way to the seashore, they passed by C & J-4 Kitchenette, and chanced upon Ronnie Ilisan and his brother Vicente Ilisan drinking liquor and discussing in very loud voices. They stopped right in the front of the restaurant and there they heard Ronnie Ilisan state in a every loud voice that he will kill a person that night. Inside the restaurant, without the knowledge then of Cawaling and the two police officers, witness Gil Palacio, who was buying cigarettes and Luz Venus, the cook/server of the restaurant, saw Ronnie Ilisan, very drunk, brandishing in the air a .38 caliber Smith and Wesson revolver with a protruding screw.

Initially dismissing Ronnie Ilisan’s statement as just another hollow swagger of an intoxicated person (“salitang lasing”), Cawaling and the two policemen proceeded on their way. After the patrol, they returned to the municipal building and stationed themselves in front. At around 8:30 in the evening, Ronnie Ilisan passed by the municipal hall walking towards the direction of the house of Nelson Ilisan, another brother, and shouted the challenge, “gawas ang maisog”, meaning THOSE WHO ARE BRAVE, COME OUT. Cawaling and the two police officers again brushed aside [the] challenge as just another foolish drunken revelry [o]n the part of Ronnie Ilisan, a well-known troublemaker in the small municipality.

A few moments later, after Ronie Ilisan had passed by, they distinctly heard a gunshot and hysterical female voices shouting, “pulis, tabang” meaning POLICE! HELP! four times. Impelled by the call of duty, Cawaling and the two policemen immediately ran in the direction of the gunshot and the desperate female voices until they reached the house of Nelson Ilisan in San Jose Street. At this point, they saw Ronnie Ilisan holding a .38 caliber revolver. They also saw Vicente Ilisan, Francisco Tesnado, Fe Ilisan, the wife of Nelson and Delma Ilisan, the wife of Vicente, the latter two being the same persons who cried “pulis, tabang” four times. Cawaling then told Ronnie to surrender his gun but the latter responded by pointing the gun at Cawaling and pulling the trigger.

At the precise moment that the gun fired, Cawaling warned the two policemen to drop to the ground by shouting “dapa”. Fortunately, Cawaling was not hit. Ronnie Ilisan then turned around and ran towards the church. The two policemen gave chase. Cawaling, still shaken and trembling after the mischance was initially left behind but followed shortly. When Ronnie Ilisan reached the church, he turned around and again fired at the pursuing Pfc. Cajilo. Fortunately, the gun misfired. When they finally reached the ricefield, Pfc. Cajilo fired two (2) warning shots in the air for Ronnie to surrender. Ronnie responded by firing once again at Pfc. Tumbagahan but failed to hit the latter. At that instance, Pfc. Cajilo counter-fired at Ronnie Ilisan hitting him. Pfc. Tumbagahan also fired his weapon in the heat of exchange and also hit Ronnie Ilisan. As a result of the gunshot wounds, Ronnie Ilisan later on succumbed.

Pfc. Tumbagahan picked up the gun still in the hand of the dead Ronnie Ilisan and gave it to Pfc. Cajilo. The three, Cawaling, who subsequently caught up with them after the incident, and the two police officers, then

proceeded to the police station located in the municipal building to formally report the incident in their station blotter.”[23]

The “Brief for All of the Accused-Appellants” filed by Atty. Napoleon U. Galit and the “Brief for Appellants Ernesto Tumbagahan and Hilario Cajilo” submitted by Atty. Joselito R. Enriquez merely repeated the facts as narrated by the trial court.

Ruling of the Trial Court

Finding the prosecution witnesses and their testimonies credible, the court a quo convicted the appellants. The killing was qualified to murder because of the aggravating circumstances of abuse of superior strength and treachery. The trial court ruled that there was a notorious inequality of forces between the victim and his assailants, as the latter were greater in number and armed with guns. It further ruled that abuse of superior strength absorbed treachery, as it ratiocinated:

“‘Certain cases,’ an authority wrote, ‘involving the killing of helpless victim by assailants superior to them in arms or numbers, or victims who were overpowered before being killed, were decided on the theory that the killing was treacherous, when perhaps the correct qualifying circumstance would be abuse of superiority. In these cases the attack was not sudden nor unexpected and the element of surprise was lacking.’ (Id., I Aquino, pp. 423-424). In the instant case, we earlier ruled that the qualifying treachery should be considered as an exception to the general rule on treachery because it was not present at the inception of the attack. The killing was not sudden nor unexpected and the element of surprise was lacking. It is for this reason that we hold that alevosia should be deemed absorbed or included in abuse of superiority. Even assuming ex-gratia argumenti that it should be the other way around, the situation will not be of help, penaltywise, to the accused.”[24]

The defenses raised by the appellants were dismissed and their witnesses declared unworthy of belief for the following reasons:

1. It was highly improbable that Defense Witness Tesnado would not tell his wife (Dory) and Bebelinia Ilisan Sacapaño about the incident he had allegedly witnessed; more so when Sacapaño was the victim’s first cousin.
2. The spot report prepared by Station Commander Oscar M. Montero, the testimonies of Cajilo and Tumbagahan and the medical findings of Dr. Flores contradicted one another on the following details: the caliber of the gun used in shooting the victim, the wounds inflicted and the whereabouts of Cawaling during the shoot-out.
3. Cawaling and his men, armed with guns, could have immediately disarmed the victim at the initial encounter. The court could not understand why the victim was able to fire his gun, run, then stop and again fire his gun, without being caught.
4. The positive identification made by the prosecution witnesses prevails over the alibi posed by De los Santos and Fontamillas, a defense that was not corroborated by any other witness.
5. The .38 caliber revolver, allegedly owned by the victim, was in fact owned and used by Alex Batuigas.
6. The defense presented a photo and a sketch to prove that Imelda Ilisan Tumabagahan had an obstructed view of the killing. The trial court ruled that such evidence was misleading, because the window, from where said witness allegedly saw the incident, was at the eastern side of her house, and thus afforded a clear view of the incident, while the window referred to by the defense was at the southern portion.
7. The questioned testimonies of Dr. Flores, Nelson Ilisan and Provincial Prosecutor Pedro Victoriano, Jr., though not formally offered as evidence, may be admitted because of the failure of the defense to object thereto at the time they were called to testify.

8. The defense failed to prove that the prosecution witnesses had any ill motive to testify falsely against the appellant.

9. Appellants had a motive to kill the victim. Nelson Ilisan testified that his brother Ronie (the victim) had witnessed Bonifacio Buenaventura (a former chief commander of the San Jose Police Force) kill a certain Ruben Ventura. Cawaling, who was Buenaventura's first cousin, wanted Ronie dead, because the latter had not followed his instruction to leave town to prevent him from testifying in said case.

Assignment of Errors

The appellants, through their common counsel, Atty. Napoleon Galit, assign the following errors to the lower court:

- “1. The trial court gravely erred in sustaining prosecutor's theory of conspiracy and thus renders nugatory or has totally forgotten that policemen when in actual call of duty normally operate in group but not necessarily in conspiracy.
2. The trial court gravely erred in believing the theory of the prosecution that accused-appellant Ulysses Cawaling was one of the alleged co-conspirators in the killing of the deceased Ronnie Elisan.
3. The trial court gravely erred in not believing the defense of accused-appellant Ulysses Cawaling that he has nothing to do with the shooting incident except to shout to arrest the accused[,] which prompted his co-accused policemen to chase the accused and sho[o]t him when he resisted, after he fired at Mayor Cawaling.
4. The trial court gravely erred in not giving weight to accused-appellant policemen['s] testimonies which carry the presumption of regularity.
5. The trial court gravely erred in not acquitting all the accused-appellants by applying 'the equipoise rule' thereby resulting [i]n reasonable doubts on the guilt.”[25]

In their joint brief,[26] Appellants Tumbagahan and Cajilo cite these other errors:

- “1. The trial court gravely erred in relying on the theory of the prosecution that accused-appellants Ernesto Tumbagahan and Hilario Cajilo were alleged co-conspirators in the killing of the victim, Ronie Ilisan.
2. The trial court gravely erred in not believing the defense that herein accused-appellants merely did a lawful duty when the shooting incident happened which led to the death of Ronnie Ilisan.
3. The trial court gravely erred in not acquitting herein accused-appellants by applying the equipoise rule, thereby resulting in reasonable doubt on their guilt.
4. Prescinding from the foregoing, herein accused-appellants do press and hold, that the lower court committed grave, serious and reversible error in appreciating the qualifying circumstance of treachery (alevosia).
5. The lower court committed grave, serious and reversible error in convicting both accused-appellants of murder, instead merely of homicide, defined and penalized under the Revised Penal Code.
6. The lower court committed grave, serious and reversible error in appreciating the qualifying circumstance of taking advantage of superior strength.
7. The consummated crime being merely homicide, the mitigating circumstance of voluntary surrender should be considered to lower the penalty of homicide.
8. The lower court committed error in not considering double jeopardy.
9. The lower court committed error in not dismissing the case for want of jurisdiction.”[27]

Appellant Cawaling imputes these additional errors to the court a quo:

- “1. The trial court gravely erred in not acquitting herein accused-appellant, Ulysses M. Cawaling, considering that he had no part in the killing and the prosecution failed to prove his guilt beyond reasonable doubt;
2. The trial court gravely erred in not finding the shooting incident a result of hot pursuit and shoot-out between the deceased Ronnie Ilisan and the police officers in the performance of their duty and self-defense, and in sustaining the prosecution’s conspiracy theory;
3. The trial court gravely erred in not acquitting Accused-Appellant Ulysses M. Cawaling considering that there was blatant absence of due process in the proceedings tantamount to mistrial.”[28]

This Court’s Ruling

We affirm the conviction of the appellants. In so ruling, we will resolve the following issues: (1) jurisdiction of the trial court, (2) double jeopardy, (3) credibility of prosecution witnesses and their testimonies, (4) self-defense, (5) performance of lawful duty, (6) alibi, (7) conspiracy, (8) rule on equipoise, (9) qualifying circumstances, (10) damages and (11) attending circumstances as they affect the penalty.

We shall address the first two issues as important preliminary questions and discuss the merits of the remaining ones, which we have culled from the errors cited by the appellants in their aforementioned briefs.

First Issue: Jurisdiction of the Trial Court

Appellants Tumbagahan and Cajilo argue that the trial court erred when it assumed jurisdiction over the criminal case. They insist that the Sandiganbayan, not the regular courts, had jurisdiction to try and hear the case against the appellants, as they were public officers at the time of the killing which was allegedly committed by reason of or in relation to their office.

We do not agree.

The jurisdiction of a court to try a criminal case is determined by the law in force at the time of the institution of the action. Once the court acquires jurisdiction, it may not be ousted from the case by any subsequent events, such as a new legislation placing such proceedings under the jurisdiction of another tribunal. The only recognized exceptions to the rule, which find no application in the case at bar, arise when: (1) there is an express provision in the statute, or (2) the statute is clearly intended to apply to actions pending before its enactment.[29]

The statutes pertinent to the issue are PD 1606, as amended;[30] and PD 1850, as amended by PD 1952 and BP 129.

Section 4 of PD 1606[31] reads:

“Sec. 4. Jurisdiction. -- The Sandiganbayan shall exercise:

(a) Exclusive original jurisdiction in all cases involving:

x x x x x x x x

(2) Other offenses or felonies committed by public officers and employees in relation to their office, including those employed in government-owned or controlled corporations, whether simple or complexed with other crimes, where the penalty prescribed by law is higher than prision correccional or imprisonment for six (6) years, or a fine of P6,000.00: PROVIDED, HOWEVER, that offenses or felonies mentioned in this paragraph where the penalty prescribed by law does not exceed prision correccional or imprisonment for six (6) years or a fine of P6,000.00 shall be tried by the proper Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court and Municipal Circuit Trial Court.

x x x x x x x x”

However, former President Ferdinand Marcos issued two presidential decrees placing the members of the Integrated National Police under the jurisdiction of courts-martial. Section 1 of PD 1952,[32] amending Section 1 of PD 1850, reads:

“SECTION 1. Court Martial Jurisdiction over Integrated National Police and Members of the Armed Forces. Any provision of law to the contrary notwithstanding -- (a) uniformed members of the Integrated National Police who commit any crime or offense cognizable by the civil courts shall henceforth be exclusively tried by courts-martial pursuant to and in accordance with Commonwealth Act No. 408, as amended, otherwise known as the Articles of War; (b) all persons subjects to military law under Article 2 of the aforesaid Articles of War who commit any crime or offense shall be exclusively tried by courts-martial or their case disposed of under the said Articles of War; Provided, that, in either of the aforementioned situations, the case shall be disposed of or tried by the proper civil or judicial authorities when court-martial jurisdiction over the offense has prescribed under Article 38 of Commonwealth Act Numbered 408, as amended, or court-martial jurisdiction over the person of the accused military or Integrated National Police personnel can no longer be exercised by virtue of their separation from the active service without jurisdiction having duly attached beforehand unless otherwise provided by law:

PROVIDED FURTHER, THAT THE PRESIDENT MAY, IN THE INTEREST OF JUSTICE, ORDER OR DIRECT, AT ANY TIME BEFORE ARRAIGNMENT, THAT A PARTICULAR CASE BE TRIED BY THE APPROPRIATE CIVIL COURT.

As used herein, the term uniformed members of the Integrated National Police shall refer to police officers, policemen, firemen, and jail guards.”

On the other hand, the jurisdiction of regular courts over civil and criminal cases was laid down in BP 129, the relevant portion of which is quoted hereunder:

“Sec. 20. Jurisdiction in Criminal Cases. -- Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter.”[33]

In relation to the above, Section 4-a-2 of PD 1606, as amended by PD 1861, quoted earlier, lists two requisites that must concur before the Sandiganbayan may exercise exclusive and original jurisdiction over a case: (a) the offense was committed by the accused public officer in relation to his office; and (b) the penalty prescribed by law is higher than prison correccional or imprisonment for six (6) years, or higher than a fine of six thousand pesos (P6,000).[34] Sanchez vs. Demetriou[35] clarified that murder or homicide may be committed both by public officers and by private citizens, and that public office is not a constitutive element of said crime, viz.:

“The relation between the crime and the office contemplated by the Constitution is, in our opinion, direct and not accidental. To fall into the intent of the Constitution, the relation has to be such that, in the legal sense, the offense cannot exist without the office. In other words, the office must be a constituent element of the crime as defined in the statute, such as, for instance, the crimes defined and punished in Chapter Two to Six, Title Seven, of the Revised Penal Code.

Public office is not the essence of murder. The taking of human life is either murder or homicide whether done by a private citizen or public servant, and the penalty is the same except when the perpetrator, being a public functionary, took advantage of his office, as alleged in this case, in which event the penalty is increased.

But the use or abuse of office does not adhere to the crime as an element; and even as an aggravating circumstance, its materiality arises, not from the allegations but on the proof, not from the fact that the

criminals are public officials but from the manner of the commission of the crime.”

Furthermore, the Information filed against the appellants contains no allegation that appellants were public officers who committed the crime in relation to their office. The charge was for murder, a felony punishable under Article 248 of the Revised Penal Code. As clarified in *Aguinaldo, et al. vs. Domagas, et al.*,^[36] “[I]n the absence of such essential allegation, and since the present case does not involve charges of violation of R.A. No. 3019 (the Anti-Graft etc. Act), the Sandiganbayan does not have jurisdiction over the present case. (*Bartolome vs. People*, 142 SCRA 459 [1986] Even before considering the penalty prescribed by law for the offense charged, it is thus essential to determine whether that offense was committed or alleged to have been committed by the public officers and employees in relation to their offices.”

Jurisdiction is determined by the allegations in the complaint or information.^[37] In the absence of any allegation that the offense was committed in relation to the office of appellants or was necessarily connected with the discharge of their functions, the regional trial court, not the Sandiganbayan, has jurisdiction to hear and decide the case.^[38]

Second Issue:

Double Jeopardy

In seeking their acquittal, Appellants Tumbagahan and Cajilo also invoke their right against double jeopardy. They argue that the first jeopardy attached when a criminal case for murder was filed before the Judge Advocate General’s Office (JAGO), which was allegedly dismissed after several hearings had been conducted.^[39] We are not persuaded.

There is double jeopardy when the following requisites are present: (1) a first jeopardy has attached prior to the second; (2) the first jeopardy has been validly terminated; and, (3) a second jeopardy is for the same offense as that in the first. And the first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.^[40]

For a better appreciation of appellants’ argument, we must consider PD 39^[41] and its implementing rules,^[42] which prescribe the procedure before a military commission. A summary preliminary investigation shall be conducted before trial for the purpose of determining whether there is prima facie evidence to pursue trial before a military commission. The investigation report shall contain a summary of the evidence, the acts constituting the offense or offenses committed, and the findings and recommendations of the investigating officer. Thereafter, the report shall be forwarded to the judge advocate general, who shall determine for either the defense secretary or for the AFP chief of staff whether the case shall be referred for trial to a military commission.^[43] Where a prima facie case is found against the accused, formal charges shall be signed by a commissioned officer designated by the judge advocate general.^[44] The accused shall then be arraigned, during which the charge and specification shall be read and the accused shall enter his plea.^[45] After hearings, a record of the trial shall be forwarded to the AFP chief of staff for proper action.^[46]

In the present case, the appellants have presented no sufficient and conclusive evidence to show that they were charged, arraigned and acquitted in a military commission, or that the case was dismissed therein without their consent. The defense merely offered as evidence certain disposition forms^[47] and a letter,^[48] dated March 8, 1983, recommending that the case against Appellants Tumbagahan, Cajilo and De los Santos be dropped and considered closed.^[49] No charge sheet and record of arraignment and trial were presented to establish the first jeopardy.

As pointed out by the solicitor general, “appellants were never arraigned, they never pleaded before the Judge Advocate General’s Office, there was no trial, and no judgment on the merits had been rendered.”[50]

Third Issue: Credibility of Witnesses

As a general rule, the factual findings of trial courts deserve respect and are not disturbed on appeal, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted, and would otherwise materially affect the disposition of the case.[51] This rule, however, does not apply when the judge who penned the decision was not the same one who had heard the prosecution witnesses testify,[52] as in the present case. Nonetheless, we have carefully perused and considered the voluminous records of this case, and we find no reason to alter the findings of the court a quo in regard to the credibility of the prosecution witnesses and their testimonies.

Vicente Ilisan, the victim’s brother, narrated before the trial court the circumstances relevant to the crime:

Q.

In the evening of December 4, 1982, at about 8:00 or 8:30, where were you?

A.

I was inside the restaurant of Andres Fontamillas.

x x x x x x x x

Q.

What were you doing there?

A.

I was drinking tuba.

Q.

When you were about to finish drinking tuba, what did you do?

A.

I stood up preparing to go home.

Q.

Were you able to leave that restaurant actually?

A.

No, sir.

Q.

Why?

A.

Luz Venus told us not to go out when [I] stood up to go home.

Q.

Do you know why you were advise[d] not to go out?

A.

Yes, sir.

Q.

Why?

A.

Because we were being watched by Mayor Cawaling, Andres Fontamillas, Hilario Cajilo and Alex Bat[ui]gas.

x x x x x x x x

Q.

When you were informed by Luz Venus that you should not go out because Mayor Cawaling and the persons you mentioned were outside watching for you, what did you do?

A.

We did not go out.

Q.

Since you remained inside, what did you do?

A.

I also viewed thru the window.

Q.

Did you see them?

A.

Yes, sir.

Q.

How far were they from the restaurant?

A.

About three meters.

Q.

What were they doing outside the restaurant?

A.

They were also viewing us.

Q.

For how long did they remain there viewing you?

A.

Just a short time.

Q.

And later on, do you know where did they go? [sic]

A.

No, sir. I went out from the restaurant and when I went out, I did not see them anymore.

Q.

Before you went out of the restaurant, what did you do?

A.

Diosdado Venus accompanied us.

Q.

Why did you ask Diosdado Venus to accompany you?

A.

Yes, sir. Because we were aware that we were being watched from outside so we asked to be accompanied by Diosdado Venus.

Q.

From the restaurant accompanied by Diosdado Venus, what did you do?

A.

Towards home.

Q.

Were you able to reach home?

A.

No, sir.

Q.

Why, what happened on the way?

A.

Diosdado Venus ran going back because we were lighted by a flashlight.

Q.

How many flashlight[s] were trimed [sic] to you?

A.

Six.

Q.

Did you come to know who trimed [sic] the flashlight towards you?

A.

Yes, sir.

Q.

Who were they?

A.

Mayor Cawaling, Andres Fontamillas, Hilario Cajilo, Ernesto Tumbagahan, Ricardo delos Santos and Alex Batuigas.

Q.

How were you able to recognize them when that was night time?

A.

Because the flashlight[s] were bright.

Q.

When Diosdado Venus ran back to his restaurant, what did your brother Ronie Elisan and you do?

A.

We also ran towards home.

Q.

To whose house?

A.

That of my older sister Imelda [E]lisan.

Q.

Were you able to reach that house?

A.

No, sir.

Q.

Why, what happened when you ran away?

A.

Andres Fontamillas and Hilario Cajilo were blocking us on the gate of the fence of my sister's house.

Q.

Since your way was blocked, where did Ronie Elisan go?

A.

We ran towards the ricefield.

Q.

When you ran, what did Mayor Cawaling do?

A.

They were chasing us.

Q.

What about Alex Batuigas, what did he do?

A.

He also followed helping chasing us. [sic]

Q.

What about the four policemen, what did they do?

A.

The same. They were also chasing us.

Q.

About how far is that restaurant [from] the spot where you were first lighted by the flashlight of the accused?

A.

About one hundred meters.

Q.

Now, according to you, you ran towards the ricefield, what happened while you were running towards the ricefield?

A.

I saw my brother fell [sic] down.

Q.

Fell down where?

A.

On the ricefield.

Q.

What about you, where were you when your brother fell down in the ricefield?

A.

I ran towards the bushes.

Q.

What did you do upon reaching the bushes?

A.

I la[y] on the ground with my belly touch[ing] on the ground behind the coconut tree.

Q.

When your brother according to you had fallen on the ricefield, what did he do thereafter?

A.

He rose up, [raised] his hands and surrender[ed] to them.

Q

In rising, what was his position?

A.

He was rising like this. (Witness demonstrating by kneeling [and] raising his two hands).

Q.

While Ronie Elisan was kneeling and raising both of his hands, what happened?

A.

Mayor Cawaling approached him together with the four policemen and his brother-in-law and they shot him.

Q.

Do you know what weapon[s] were used in shooting your brother?

A.

Yes, sir.

Q.

What weapon were used?

A.

The weapon of Mayor Cawaling is .45 caliber and that of Andres Fontamillas and Hilario Cajilo were both armalite and that of Ernesto Tumbagahan, Alex Batuigas and Ricardo delos Santos were .38 caliber.

Q.

How were you able to identify their weapons?

A.

Because the flashlight[s] were bright.

Q.

Now, what happened to your brother when he was fired upon by the accused in this case?

A.

He fell down.

Q.

And how far is that spot where your elder brother had fallen down to the spot where Diosdado Venus left you when he returned to the restaurant?

A.

To my estimate it is about 300 meters.

Q.

After your brother had fallen down, what did the accused do?

A.

Mayor Cawaling said, [“]you left him, he is already dead.[“]

Q.

Where did they go?

A.

They went towards the house of Mayor Cawaling.”[53]

Imelda Tumbagahan was at home feeding her child when she heard her brother Ronie shouting for help. After getting a flashlight and looking through the window of her house, she saw Cawaling and Alex Batuigas chasing Ronie who was running towards her house. Tumbagahan and De los Santos prevented Ronie from entering the fence of her house, as a result of which, her brother ran towards a rice field nearby. There, on bended knees and with hands raised, Ronie was shot by Cawaling and his men.[54]

Nelson Ilisan also heard his younger brother Ronie shouting for help while being chased by the group of Cawaling. As Cajilo and Fontamillas blocked Ronie from entering the gate of Imelda’s house, the victim ran towards a rice field. Nelson stopped Cawaling and asked, “Nong, basi guinalagas ninyo ang acon hali? (Nong, why do you chase my brother?)” But the mayor merely continued chasing Ronie. Thereafter, Nelson saw his brother, on his knees with both hands raised, shot by appellants.[55]

The three aforementioned witnesses narrated in detail the assault against their brother Ronie and positively identified the appellants as the perpetrators. The trial court cannot be faulted for relying on their testimonies and accepting them as true,[56] especially when the defense failed, to prove any ill motive on their part.[57] In addition, family members who have witnessed the killing of their loved one usually strive to remember the faces of the assailants.[58] Thus, the relationship per se of witnesses with the victim does not necessarily mean that the former are biased. On the contrary, it is precisely such relationship that would impel them to seek justice and put the real culprit behind bars, rather than impute the offense to the innocent.[59]

Appellant Cawaling submits that the prosecution witnesses tampered with the evidence by cleaning the cadaver before an autopsy could be done. “Such irregular washing of the cadaver by a close relative of the deceased, who is educated and who presumably knew perfectly well the need to preserve it in its original state for the medico-legal examination[,] is highly suspicious. It points to the fact that the relatives of the deceased wanted to hide, or erase something that would bolster and assist the defense (that is, state of drunkenness, powder burns or lack thereof, indicating the firing of a weapon or the proximity of the weapon used on the deceased, etc.).”[60]

Such contention is unavailing. First, Bebelinia Sacapaño merely cleaned the cadaver and made no further examination. Second, appellants had an opportunity to have the body examined again to determine or prove important matters, such as whether Ronie was drunk, if he fired a gun, how many and what caliber of guns were used in shooting him; they did not, however, avail themselves of this opportunity. As public officers, appellants knew that it was within their power to request or secure from the court, or any other competent authority, an order for another autopsy[61] or any such evidence as may affirm their innocence. Third, their conviction lies in the

strong and convincing testimonial evidence of the prosecution, not in the corroborative testimony of Bebelinia Sacapaño.

Relying on the testimonies of Luz Venus and Gil Palacio, Appellant Cawaling also pointed out that “[t]he power of observation of alleged eyewitness Vicente was severely affected by his intoxication. It may be inferred that an intoxicated person’s sense[s] of sight and hearing and of touch are less acute than those of a sober person and that his observation are inexact as to what actually occurred.”[62]

This argument is not persuasive. The evidence presented fails to show that Vicente was so intoxicated that night as to affect his powers of observation and retrospection. Defense Witness Palacio merely saw the witness drinking tuba on the night of the killing.[63] Meanwhile the whole testimony of Luz on the matter mainly reveals that Ronie was the person she was referring to as drunk, as shown by this portion:[64]

“Q When Ronie and Vicente both surnamed Ilisan entered the C & J-4 kitchenette what if any did you observe?

A I saw them so dr[u]nk (Nakita ko sila lasing na lasing).

Q Who was lasing na lasing or so dr[u]nk?

A Ronie Ilisan sir.”

Granting that Vicente was drunk, the conviction of the appellants is still inevitable in view of the positive declarations of Witnesses Nelson and Imelda, who unequivocally identified appellants as perpetrators of the senseless killing of their brother Ronie.

Appellant Cawaling also questions the trial court’s reliance on the testimonies of Dr. Blandino Flores,[65] Nelson Ilisan[66] and Prosecutor Pedro Victoriano, Jr.,[67] for failure of the prosecution to offer them as evidence. In *People vs. Java*,[68] this Court ruled that the testimony of a witness, although not formally offered in evidence, may still be admitted by the courts, if the other party does not object to its presentation. The Court explained: “Section 36 of [Rule 132] requires that an objection in the course of the oral examination of a witness should be made as soon as the grounds therefor shall become reasonably apparent. Since no objection to the admissibility of evidence was made in the court below, an objection raised for the first time on appeal will not be considered.” In the present case, a cursory reading of the stenographic notes reveals that the counsel for the appellants did not raise any objection when said witnesses testified on the matters now being impugned. Moreover, they repeatedly cross-examined the witnesses, which shows that they had waived their objections to the said testimonies of such witnesses.

Lastly, Appellant Mayor Cawaling questions the motive of Prosecutor Pedro Victoriano Jr. This contention is likewise bereft of merit. Unlike judges who are mandated to display cold neutrality in hearing cases,[69] prosecutors are not required to divest themselves of their personal convictions and refrain from exhibiting partiality. In this case, there is reasonable ground for Prosecutor Victoriano to believe that an offense has been committed and that the accused was probably guilty thereof.[70] Under the circumstance, it is his sworn duty to see that justice is served.[71] Thus, “[h]e may prosecute with earnestness and vigor - - indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.”[72] Further,

“Under the prevailing criminal procedure, the fiscal’s sphere of action is quite extensive, for he has very direct and active intervention in the trial, assuming as the Government’s representative the defense of society, which has been disturbed by the crime, and taking public action as though he were the injured party, for the purpose of

securing the offender's punishment, whenever the crime has been proved and the guilt of the accused as the undoubted perpetrator thereof established.”[73]

Fourth Issue:Self-Defense

To escape criminal liability, the appellants also invoke the justifying circumstances of self-defense and lawful performance of duty.[74] Allegedly, Ronie was firing his gun and shouting “Guwa ang maisog! (Come out who is brave!).” Then the mayor and the policemen arrived at the scene to pacify him. Ronie fired at them, which forced them to chase him and return fire.

We find this scenario bereft of plausibility.

Unlawful aggression on the part of the victim is a condition sine qua non for the successful invocation of self-defense.[75] As factually found by the trial court, unlawful aggression did not start with the victim, but rather with the appellants. Cawaling and his men proceeded to the C & J-4 Kitchenette and waited for Ronie to come out. When the victim did, they chased and shot him without giving him any opportunity to defend himself.

Granting arguendo the veracity of the defense's factual version, it is important to note that appellants admitted that Ronie was running away from them when they chased and shot him. Thus, unlawful aggression -- assuming it was initially present -- had ceased, and the appellants no longer had any right to pursue the offender. Basic is the rule that when unlawful aggression ceases, the defender no longer has the right to kill or even wound the former aggressor. Upon the cessation of the unlawful aggression and the danger or risk to life and limb, there should be a corresponding cessation of hostilities on the part of the person defending himself.[76]

Furthermore, the means employed to ward off the attack was unreasonably excessive. Being armed, the appellants could have easily ordered the victim to surrender. Even the first shot at his shoulder would have been sufficient to immobilize him, yet they fired a succession of shots at him while he was in no position to put up a defense.

Jurisprudence teaches that when an accused admits having committed the crime but invokes self-defense to escape criminal liability, the burden of proof is reversed and shifted to him. He must then prove the elements of self-defense.[77] It necessarily follows that he must now rely on the strength of his own evidence and not on the weakness of that of the prosecution; for even if the latter evidence were weak, it could not be disbelieved after the accused has admitted the killing.[78] Thus, appellants must establish with clear and convincing evidence that the killing was justified, and that they incurred no criminal liability therefor.[79] They failed to do so, and their conviction thus becomes inevitable.[80]

Fifth Issue:Lawful Performance of Duties

Appellants contend that the killing of Ronie resulted from the lawful performance of their duties as police officers. However, such justifying circumstance may be invoked only after the defense successfully proves that (1) the accused acted in the performance of a duty, and (2) the injury or offense committed is the necessary consequence of the due performance or lawful exercise of such duty.[81] These two requisites are wanting in this case.

The appellants, except Mayor Cawaling, were men in uniform who happened to be on duty when they killed Ronie. The victim was not committing any offense at the time. Killing the victim under the circumstances of this case cannot in any wise be considered a valid performance of a lawful duty by men who had sworn to maintain peace and order and to protect the lives of the people. As aptly held in *People vs. De la Cruz*,[82] “Performance of duties does not include murder.” That Ronie was a troublemaker in their town is not an excuse; as the Court declared in the same case of *People vs. De la Cruz*, “Murder is never justified, regardless of the victim.”

Sixth Issue:

Alibi

We likewise brush aside the defenses of alibi and denial raised by Appellant De los Santos. Prosecution witnesses positively identified him and Fontamillas as part of the group which chased and shot Ronie Ilisan. It is elementary that alibi and denial are outweighed by positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitness testifying on the matter. Alibi and denial, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[83]

In fact, De los Santos failed to establish with clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime during its commission.[84] The evidence he had presented demonstrated only that, at the time, he was sleeping in his house, which was near the locus criminis.

Alibi is always considered with suspicion and received with caution, not only because it is inherently weak and unreliable, but also because it is easily fabricated and concocted.[85] It is therefore incumbent upon the appellant to prove that he was at another place when the felony was committed, and that it was physically impossible for him to have been at the scene of the crime at the time it was committed.[86] This he failed to prove.

Seventh Issue:

Conspiracy

The trial court correctly appreciated the presence of conspiracy. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of conspiracy is rarely found, for criminals do not write down their lawless plans and plots. The agreement to commit a crime, however, may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of intent.[87] It does not matter who inflicted the mortal wound, as the act of one is the act of all, and each incurs the same criminal liability.[88] We concur with the trial court's elucidation:

“All of the accused chased the victim and his brother; four (4) of whom blocked their ways, first, to their elder brother Nelson Elisan's house and, second, to their elder sister Imelda Elisan Tumbagahon's house. Having changed course by proceeding to the ricefield in their desperate attempt to evade the accused, all the six (6) armed accused continued their pursuit. Their victim, having fallen on the rice paddy, and rising and kneeling on it with raised hands, all the said accused with their flashlights beamed on their victim, in a united and concerted manner, shot him. After Ronie Elisan had fallen down, co-accused Mayor Cawaling was even heard as saying '(Y)ou left [sic] him, he is already dead.' x x x.”[89]

Eighth Issue: Equipose Rule

We reject appellants' position that the equipose rule should apply to this case.[90] In *People vs. Lagnas*,[91] the Court through Mr. Justice Florenz D. Regalado described this rule, as follows:

“Once again, albeit in effect a supportive and cumulative consideration in view of the preceding disquisition, the equipose rule finds application in this case, that is, if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty, and is not sufficient to support a conviction.”

In this case, the inculpatory facts point to only one conclusion: appellants are guilty. As amplified in the discussion above, the Court agrees with the trial court that the guilt of the appellants was proven beyond reasonable doubt.

Ninth Issue:

Murder or Homicide?

The Information alleges three qualifying circumstances: treachery, evident premeditation and taking advantage of superior strength. If appreciated, any one of these will qualify the killing to murder. However, Appellants Tumbagahan and Cajilo posit that there was no treachery, reasoning that Ronie was not an unsuspecting victim, as he had been forewarned by Diosdado Venus of the presence of the appellants inside the restaurant and there had been a chase prior to the killing. Further, they contend that abuse of superior strength is deemed absorbed in treachery, and that “the addition of abuse of superior strength to qualify the case to murder is nothing more than mere repetition - a legal chicanery, so to say. Similarly, where treachery is not proved, there can be no abuse of superior strength, vice-versa.”[92]

We partly agree.

Treachery exists when the malefactors employ means and methods that tend directly and especially to insure their execution without risk to themselves arising from the defense which the victims might make. The essence of treachery is the sudden and unexpected attack without the slightest provocation on the part of the person attacked.[93] While we do not disregard the fact that the victim, together with his brother Vicente, was able to run towards a rice field, we still believe that treachery attended the killing.

In *People vs. Landicho*,[94] we ruled that treachery might still be appreciated even when the victim was warned of danger to his person, for “what is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.”

The appellants waited for Ronie to come out of the restaurant. All of them chased the victim and prevented him from seeking refuge either in the house of his sister Imelda or that of his brother Nelson. All of them carried firearms and flashlights. They fired their guns at the victim while he was on his knees with arms raised, manifesting his intention not to fight back.

We cannot appreciate the aggravating circumstance of abuse of superior strength, however, as we have consistently ruled that it is deemed absorbed in treachery.[95]

We also affirm the finding of the trial court that the prosecution failed to prove the attending circumstance of evident premeditation. To prove this aggravating circumstance, the prosecution must show the following: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender clung to his determination; and (3) a lapse of time, between the determination to commit the crime and the execution thereof, sufficient to allow the offender to reflect upon the consequences of his act.[96] Nothing in the records shows how and when the plan to kill was hatched, or how much time had elapsed before it was carried out.

Tenth Issue: Damages

The trial court awarded the following: (a) P50,000.00, as civil indemnity; (b) P6,000.00, as actual damages; and (c) P116,666.66, for lost earnings. In computing the latter, the trial court used the following formula:

$$\begin{aligned}\text{“Total annual net income} &= 10\% \times \text{total annual gross income} \\ &= .10 \times \text{P25,000.00} \\ &= \text{P2,500.00}\end{aligned}$$

xxx xxx xxx

$$\text{Loss of earning capacity of Ronie Elisan} = \frac{2}{3} (90-20) \times \text{P2,500.00} = \text{P116,666.66.”}[97]$$

Consistent with jurisprudence, we affirm the ruling of the trial court awarding the amount of P50,000 as civil indemnity to the heirs of the victim.[98]

We cannot do the same to the award of actual damages and lost earnings, however. The award of actual damages has no basis, as no receipts were presented to substantiate the expenses allegedly incurred. An alleged pecuniary loss must be established by credible evidence before actual damages may be awarded.[99] Similarly erroneous is the award for loss of earning capacity, which should be computed as follows:[100]

“ $\frac{2}{3} \times [80 - \text{age of victim at the time of death}] \times [\text{reasonable portion of the annual net income which would have been received as support by heirs}]$ ”

As testified to by Nelson Ilisan, the deceased had been earning an average of P100 daily or P3,000 monthly.[101] From this monthly income must be deducted the reasonable amount of P1,000 representing the living and other necessary expenses of the deceased. Hence, the lost earnings of the deceased should be computed as follows:

$$= \frac{2}{3} \times [80 - 22] \times [P24,000]$$

$$= \frac{2}{3} \times [58] \times [P24,000]$$

$$= \frac{2[P\ 1,392,000]}{3}$$

$$3$$

$$= \frac{P2,784,000}{3}$$

$$3$$

$$= P928,000.$$

Eleventh Issue: Aggravating and Mitigating Circumstances

Prior to the amendment of Section 248 of the Revised Penal Code,[102] the imposable penalty for murder was reclusion temporal in its maximum period to death. In their Brief, Appellants Cajilo and Tumbagahan argue for the imposition of the lower penalty of reclusion temporal, contending that their filing of bail bonds/property bonds, before the order for their arrest was issued, should be treated as voluntary surrender.[103]

We cannot accept this contention. In the first place, it has no factual basis. The warrant for the arrest of herein appellants was issued on August 18, 1987,[104] but appellants' counsel filed the Urgent Motion for Bail only thereafter, on September 2, 1987.[105] In the second place, appellants failed to prove the requisites for voluntary surrender, which are: (1) the offender has not been actually arrested; (2) the offender surrenders himself to a person in authority or to the latter's agent; and (3) the surrender is voluntary.[106] The records reveal that a warrant of arrest was actually served on Tumbagahan and Cajilo[107] on September 2, 1987 and that they were in fact detained.[108]

In view of the absence of any other aggravating or mitigating circumstance, the trial court correctly imposed reclusion perpetua.

WHEREFORE, the appeal is hereby DENIED and the assailed Decision is AFFIRMED with the following MODIFICATIONS: (1) the award of P6,000 as actual damages is DELETED, and (2) the award for loss of earning capacity is INCREASED to P928,000. Costs against appellant.

SO ORDERED.

Daivde, Jr., (Chairman), Bellosillo, Vitug, and Quisumbing, JJ., concur.

[1] People vs. Bautista, 254 SCRA 621, 626, March 12, 1996.

[2] Penned by Judge Placido C. Marquez; records, Vol. II, pp. 389-422.

- [3] Sometimes spelled “Tumbagahon” in the TSN.
- [4] With docket number 85-0419.
- [5] Sometimes spelled “Elisan” in the records and the TSN.
- [6] Sometimes spelled “Ronnie.”
- [7] Composed of Amelia L. Cube as chairman; Artemio B. Cana, representative of the then Ministry of Justice; and Francisco A. Bautista, representative of the Philippine Constabulary.
- [8] See Records of Exhibit, pp. 6-14.
- [9] Records, Vol. I, p. 73.
- [10] Presided by Judge Cezar R. Maravilla.
- [11] Rollo, p. 17.
- [12] Records, Vol. I, p. 215.
- [13] Records, Vol. I, p. 241.
- [14] The trial court issued an Order dated October 28, 1994 dismissing the case against Andres Fontamillas, when the latter died of congestive heart failure before final judgment could be rendered. (See death certificate in records, Vol. II, p. 388.)
- [15] Acting on the request of Nelson Ilisan to inhibit Judge Cezar R. Maravilla from further hearing the case, this Court issued a Resolution dated September 13, 1990, designating Judge Placido C. Marquez in lieu of Judge Maravilla. (See Records, Vol. I, p. 510.)
- [16] Promulgated on October 28, 1994. (See Records, Vol. II, p. 423.)
- [17] Decision, pp. 33-34; Rollo, pp. 87-88.
- [18] The case was deemed submitted for resolution on December 2, 1996, when the Court received a copy of the Brief for Appellee. The filing of a reply brief was deemed waived, as none was filed within the reglementary period.
- [19] Decision, pp. 3-4; rollo, pp. 57-58.
- [20] Records of Exhibit, p. 2.
- [21] Records of Exhibit, p. 4.
- [22] Rollo, pp. 318 et seq.
- [23] Brief for Appellant Cawaling, pp. 2-5; rollo, pp. 319-322.
- [24] Decision, p. 21; rollo, p. 75.
- [25] “Brief for all the Appellants,” pp. 16-17; rollo, pp. 179-180.
- [26] Filed by their counsel, Joselito R. Enriquez; rollo, pp. 252-279.
- [27] Brief for Appellants Ernesto Tumbagahan and Hilario Cajilo, pp. 15-44; rollo, pp. 252-279.
- [28] Brief for Appellant Ulysses Cawaling, signed by Atty. Daniel C. Gutierrez, p. 10; rollo, p. 327.

[29] *People vs. Velasco*, 252 SCRA 135, 147, January 23, 1996. See also *Aruego, Jr. vs. Court of Appeals*, 254 SCRA 711, 719-720, March 13, 1996.

[30] By PDs 1629, 1860, and 1861, BP 129, and EOs 101 and 184. Although inapplicable to this case because it was approved only on February 5, 1997, RA 8249 limits the jurisdiction of the Sandiganbayan to public officers occupying positions corresponding to salary grade 27 or higher and to police officers occupying the position of provincial director and those holding the rank of senior superintendent or higher.

[31] The original § 4 of PD 1606 was amended by PDs 1860 and 1861.

[32] Re: “Amending Section One of Presidential Decree No. 1850, entitled, ‘Providing for the Trial by Courts-Martial of Members of the Integrated National Police and Further Defining the Jurisdiction of Courts-Martial Over Members of the Armed Forces of the Philippines.’”

[33] BP 129. Corollary to § 33 thereof, the RTC shall have jurisdiction over all offenses punishable with imprisonment exceeding four years and two months or a fine of more than P4,000 or both such fine and imprisonment.

[34] *Natividad vs. Felix*, 229 SCRA 680, 686-687, February 4, 1994.

[35] 227 SCRA 627, 645, November 9, 1993, per Cruz, J., citing *Montilla vs. Hilario* (90 Phil 49).

[36] En Banc Resolution, GR No. 98452, September 26, 1991.

[37] *Lim vs. Court of Appeals*, 251 SCRA 408, 418, December 19, 1995.

[38] *People vs. Magallanes*, 249 SCRA 212, 222-223, October 11, 1995.

[39] Brief for Appellants Tumbagahan and Cajilo, pp. 43-44; rollo, pp. 278-279.

[40] *Guerrero vs. Court of Appeals*, 257 SCRA 703, 712-713, June 28, 1996 and *People vs. Leviste*, 255 SCRA 238, 249, March 28, 1996.

[41] “Governing the Creation, Composition, Jurisdiction, Procedure, and Other Matters Relevant to Military Tribunals.”

[42] “Governing the Creation, Composition, Jurisdiction, Procedure, and Other [Matters Relevant to Military] Tribunals.”

[43] *Ibid.*, Rule 4, par. a-1.

[44] *Ibid.*, Rule 4, par. a-2.

[45] *Ibid.*, Rule 4, par. b-3-b.

[46] *Ibid.*, Rule 4, par. c-1.

[47] Exhibits 6, 7, 7-A, 8 and 8-A.

[48] Exhibit 6-A.

[49] The last form with a later date is merely a pretrial advice.

[50] Brief for the Appellee, pp. 23-24; rollo, p. [456].

[51] *People vs. Cogonon*, 262 SCRA 693, 704, October 4, 1996.

[52] *People vs. Reyes*, GR No. 91262, January 28, 1998.

[53] TSN, March 16, 1988, pp. 7-14.

[54] TSN, January 17, 1989, pp. 3-59 and January 18, 1989, pp. 2-23.

[55] TSN, August 28, 1989, pp. 26-41 and February 27, 1990, pp. 2-47.

[56] See *People vs. Monterey*, 261 SCRA 357, 372, September 3, 1996 and *People vs. Bongadillo*, 234 SCRA 233, 243, July 20, 1994.

[57] *People vs. Pano*, 257 SCRA 274, 283, June 5, 1996 and *People vs. Prado*, 254 SCRA 531, 538, March 8, 1996.

[58] *People vs. Ramos*, 260 SCRA 402, 410, August 7, 1996.

[59] *People vs. Juan*, 254 SCRA 478, 487, March 7, 1996 and *People vs. Fabrigas*, 261 SCRA 436, 446-447, September 5, 1996.

[60] Brief for Appellant Cawaling, p. 22; rollo, p. 338.

[61] PD 856 (Re: Code on Sanitation) states:

“SEC. 95. Autopsy and Dissection of Remains - The autopsy and dissection of remains are subject to the following requirements:

x x x x x x x x

b. Autopsies shall be performed in the following cases:

1. Whenever required by special laws;
2. Upon orders of a competent court, a mayor and a provincial or city fiscal;
3. Upon written request of police authorities;
4. Whenever the Solicitor General, provincial or city fiscal as authorized by existing laws, shall deem it necessary to disinter and take possession of remains for examination to determine the cause of death; and
5. Whenever the nearest kin shall request in writing the authorities concerned to ascertain the cause of death.”

[62] Brief for Appellant Cawaling, p. 15; rollo, p. 331.

[63] TSN, June 14, 1993, p. 52.

[64] *Ibid.*, p. 23.

[65] TSN, August 28, 1989, pp. 1-26.

[66] *Ibid.*, pp. 26-41.

[67] TSN, March 27, 1990, pp. 2-29.

[68] 227 SCRA 668, 679-680, November 10, 1993, per Nocon, J. See also *People vs. Cadocio*, 228 SCRA 02, 609-610, December 17, 1993.

[69] Paragraph 2, § 14, Article III of the 1987 Constitution.

[70] See § 1, Rule 112 of the Rules of Court.

[71] Ibid., § 4, Rule 110.

[72] Suarez vs. Platon, 69 Phil 556, 564-565, February 7, 1940, per Laurel, J.

[73] United States vs. Casipong and Hongoy, 20 Phil. 178, 181-182, September 5, 1911, Torres, J.

[74] Art. 11 of the Revised Penal Code states:

“ART. 11. Justifying circumstances. - The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression.

Second. Reasonable necessity of the means employed to prevent or repel it.

Third. Lack of sufficient provocation on the part of the person defending himself.

x x x x x x x x

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.”

[75] People vs. Balamban, 264 SCRA 619, 631, November 21, 1996; People vs. De Gracia, 264 SCRA 200, 207, November 14, 1996; and, People vs. Deopante, 263 SCRA 691, 706, October 30, 1996.

[76] People vs. Babor, 262 SCRA 359, 365, September 24, 1996. See also People vs. Capoquian, 236 SCRA 655, September 22, 1994.

[77] See § 1, Rule 131 of the Rules of Court.

[78] People vs. Vallador, 257 SCRA 515, 524, June 20, 1996. See also People vs. Tampon, 258 SCRA 115, 124, July 5, 1996; People vs. Nuestro, 240 SCRA 221, 227, January 18, 1995;

[79] People vs. Balamban, 264 SCRA 619, 630, November 21, 1996; People vs. Patotoy, 261 SCRA 37, 42-43, August 26, 1996; People vs. Morin, 241 SCRA 709, 714, February 24, 1995; People vs. Adonis, 240 SCRA 773, 776, January 31, 1995; People vs. Daquipil, 240 SCRA 314, 329, January 20, 1995.

[80] People vs. Baniel, GR No. 108492, July 15, 1997; People vs. Viernes, 262 SCRA 641, 651, October 3, 1996; People vs. Ganzagan, Jr., 247 SCRA 220, 233, August 11, 1995.

[81] People vs. Pinto, Jr., 204 SCRA 9, 27, November 21, 1991.

[82] 227 SCRA 278, 285, October 18, 1993, per Cruz, J.

[83] People vs. Dinglasan, 267 SCRA 26, 43, January 28, 1997 and People vs. Obzunar, 265 SCRA 547, 569, December 16, 1996.

[84] People vs. Pareja, 265 SCRA 429, 440, December 9, 1996.

[85] People vs. Castillo, 273 SCRA 22, 32-33, June 2, 1997.

[86] People vs. Sancholes, 271 SCRA 527, 541, April 18, 1997.

[87] People vs. Sequiño, 264 SCRA 79, 101-102, November 13, 1996 and People vs. Jubila, Jr., 252 SCRA 471, 480, January 29, 1996.

[88] People vs. Salison, Jr., 253 SCRA 758, 770, February 20, 1996,

[89] Decision, pp. 17-18; rollo, pp. 71-72.

[90] Brief for Appellants Tumbagahan and Cajilo, p. 34; rollo, p. 269.

[91] 222 SCRA 745, 762, May 28, 1993. See also *People vs. Maongco*, 230 SCRA 562, 572, March 1, 1994; *People vs. Ramilla*, 227 SCRA 583, 587, November 8, 1993; and *People vs. Libag*, 184 SCRA 707, 719, April 27, 1990.

[92] Brief for Appellants Tumbagahan and Cajilo, pp. 42; rollo, p. 277.

[93] *People vs. Cogonon*, 262 SCRA 693, 704-705, October 4, 1996.

[94] 258 SCRA 1, 28 July 3, 1996, per Davide, J. See also *People vs. Babor*, 262 SCRA 359, 366, September 24, 1996.

[95] *People vs. Broncano*, 260 SCRA 724, 738, August 22, 1996; *People vs. Torrefiel*, 256 SCRA 369, 379, April 18, 1996; and *People vs. Patrolla, Jr.*, 254 SCRA 467, 476, March 7, 1996.

[96] *People vs. Magsombol*, 252 SCRA 187, 200-201, January 24, 1996 and *People vs. Compendio, Jr.*, 258 SCRA 254, 264, July 5, 1996.

[97] Decision, p. 30; rollo, p. 84.

[98] *People vs. Trilles*, 254 SCRA 633, 643, March 12, 1996 and *People vs. Dones*, 254 SCRA 696, 710, March 13, 1996.

[99] *People vs. Sol*, 272 SCRA 392, 407, May 7, 1997.

[100] *People vs. Villamor*, GR No. 111313-14, January 16, 1998. *People vs. Marollano*, GR No. 105004, July 24, 1997.

[101] TSN, August 29, 1989, p. 14-15.

[102] § 6 of RA 7659, which took effect only on December 31, 1993, amended § 248 of the Revised Penal Code.

[103] Brief for Appellants Tumbagahan and Cajilo, p. 43; rollo, p. 278.

[104] Records, Vol. I, p. 44.

[105] *Ibid.*, pp. 47-48.

[106] *People vs. Sion and Bisu*, GR No. 109617, August 11, 1997.

[107] See warrant of arrest in records, Vol. I, p. 43. Note the signatures of the above-named appellants at the back of the warrant.

[108] See Records, Vol. I, p. 45.

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