

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEX OLIANO Y PUGONG AND GABRIEL CALIAG, ACCUSED, ALEX OLIANO Y PUGONG, ACCUSED-APPELLANT.

G.R. No. 119013. March 06, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Well-entrenched in our jurisprudence is the rule that findings of trial courts on the credibility of witnesses and their testimonies are binding on appellate courts, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misappreciated which, if considered, will affect the result of the case.

[The Case]

This is the doctrine applied by the Court in resolving this appeal from the Decision 1 of the Regional Trial Court of Bayombong, Nueva Vizcaya, Branch 30, finding Appellant Alex Oliano y Pugong guilty of murder and imposing upon him the penalty of reclusion perpetua.

Provincial Fiscal Celerino V. Jandoc filed an Information dated July 22, 1987 before the said court, accusing appellant, together with one Gabriel Caliang, of murder, allegedly committed as follows:

“That on or about the 16th day of March 1987, in the Municipality of Sta. Fe, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Alex P. Oliano and Gabriel C. Caliang, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously, by means of treachery and evident premeditation and with intent to kill, attack and assault the person of Benjamin Matias by then and there firing at him with the use of a gun, thereby inflicting upon him mortal gunshot wounds, which were the direct and immediate cause of his death and all to the damage and prejudice of his surviving heirs.

Contrary to law with the aggravating circumstance of having used illegally possessed firearm in committing the crime.”²

On August 12, 1987, both accused were arraigned in the Kalanguya dialect which they spoke and understood. Assisted by Counsel Rufino Lumase, both entered a plea of not guilty.³ In the course of the trial which ensued, Gabriel Caliang died.⁴ For this reason, the court a quo dismissed the case against him.⁵

On July 26, 1994, the lower court rendered its Decision,⁶ the dispositive portion of which reads:

“WHEREFORE, finding the accused ALEX OLIANO guilty of Murder defined and penalized under Art. 248 of the Revised Penal Code, he is hereby sentenced to suffer the penalty of reclusion perpetua; to pay the heirs of the victim Benjamin Matias the sum of P50,000.00; P10,000.00 as actual damages; and P30,000.00 as moral damages.”⁷

The appellant filed a motion for reconsideration,⁸ which however was denied by the trial court in its order dated September 15, 1994.⁹ Hence, this appeal.¹⁰

The Facts Version of the Prosecution

The prosecution presented six witnesses, namely: (1) Nancy Basatan,¹¹ a neighbor of the deceased; (2) Rosita Matias,¹² the widow; (3) PFCs Samuel Caramat¹³ and (4) Bernabe Flores,¹⁴ the investigating and arresting officers; (5) Myrna Matias,¹⁵ the daughter of the victim; and (6) Dra. Violeta Rumbaua,¹⁶ who conducted the autopsy. The antecedent facts, culled from the testimonies of the prosecution witnesses, were briefly summarized by the solicitor general as follows:

“On March 16, 1987, Benjamin Matias and his wife, Rosita, attended the wedding of Helen Nebres and Hilario Bugarin in the house of Hindok Nebres at Sitio Taktak, Barangay Atbo, Sta. Fe, Nueva Vizcaya. Among those who attended the wedding were accused Gabriel Caliang and Alex Oliano. While serving supper, Rosita heard Alex say ‘If it is Benjamin Matias who will give meat, I will not accept it.’ Benjamin Matias was then busy slicing meat for the guests. At about 11:45 that evening, Rosita and Benjamin went home. The distance of their house from that of the Nebres’ was about one-half kilometer. Benjamin walked ahead of Rosita. (x x x)

It happened that there were two boulders located on the left side of the road leading to the couple’s house. When they were only about a meter away from the boulders, somebody fired a gun at Benjamin hitting him at the back, the bullet exiting through his chest. Rosita then saw appellant Alex Oliano behind the boulders, holding a rifle. At that instance, Rosita uttered the following to appellant: ‘Why did you kill my husband when in fact, he did not commit any fault against you?’ Subsequently, appellant aimed his gun at her but it jammed. Rosita also saw the other accused Gabriel Caliang looking at her from behind a banana plant. Alex and Gabriel then ran away towards the mountain. Rosita went to her husband who was then lying face down on the ground and embraced him. The moon was bright that night, thus enabling Rosita to easily recognize appellant and his co-accused. Rosita is also familiar with appellant since he was 17 years old because they were neighbors. (x x x)

Rosita called for help and her neighbor, Nancy Basatan came. The latter asked Rosita what happened. Rosita answered, ‘Alex Oliano shot my husband when we did not have any fault against him.’ Later, her children, namely Ricardo, Edgar, and Dencio arrived together with two Barangay Captains Day-an Celo and Peter. Her children wanted to retaliate against Alex but she calmed them down. Several policemen also arrived and she explained to them how the incident happened. Station Commander Mariano Amlos then formed two groups of policemen, whom he directed to go to the houses of appellant and Caliang. Moments later, Bay-an Basatan arrived and told Rosita to go to his house. Rosita went to his house and there saw both appellant and Gabriel Caliang. Upon seeing appellant, she grabbed his collar and said ‘You were the one who killed my husband.’ Appellant cried and replied, ‘You are even attending mass.’ Caliang, on the other hand, looked happy, and even played the guitar. Both of them were then brought to the police station in Sta. Fe, Nueva Vizcaya. (x x x)”¹⁷

The result of the post-mortem examination¹⁸ reads:

“I - EXTERNAL FINDINGS:

A - Head and Neck: No significant findings.

B - Chest: Gunshot wound, through and through

Point of Entry - 0.8 cm. diameter with charred edges at 7th Intercostal Space, Midscapular line, left.

Point of Exit - 2 cm. long with rugged edges 2.5 cm. medial to midclavicular, 5th Intercostalspace space, right.

C - Abdomen: { No significant findings.

D - Extremities: {

II - INTERNAL FINDINGS:

A - Head & Neck: No significant findings.

B - Chest: Gunshot wound, through and through directed anterosuperiorly and laterally traversing the 7th rib, middle lobe of left lung, plowing through the posterior wall of both atria, the medial aspect of the middle lobe of right lung and the 7th rib.

2 liters of blood in left thoracic cavity and 700 cc. in right thoracic cavity.

C - Abdomen: - no significant findings.

D - Extremities: - No significant findings.

III - CAUSE OF DEATH:

Cardiac Arrest due to Gunshot wound on the Heart.”¹⁹

[Version of the Defense]

The defense presented Accused Gabriel Caliang²⁰ and Appellant Alex Oliano²¹ as main witnesses. In his Brief dated November 29, 1995, appellant adopted the trial court’s summary of the testimony of the defense witnesses, viz.:

“x x x. On March 16, 1987 at 10:00 A.M., he was at Tactac, Sta. Fe, Nueva Vizcaya to deliver rattan to a buyer. Then he went to Ocao to attend the wedding celebration and stayed there for more than 5 hours. He left the wedding at about 11:00 in the evening together with his father, mother, sister and students of Kalahan Academy and proceeded to the house of his father Ramon Oliano at Mancate, which is about 1/2 kilometer from the wedding celebration and arrived thereat 11:30 in the evening, then he slept on a folding bed in the corner of the house. At 2:00 in the morning, he was awakened by the policemen of Sta. Fe. Sgt. Amlos removed his blanket and awakened him and he wanted to talk to him. When he woke up, he saw Petra, Delia Paraguas and his mother sitted [sic] on a bench. Sgt. Amlos told him about the death of Benjamin Matias at Mancate and asked him as to who are his companions in coming from the wedding celebration and he told the police that his companion is a person named Benito. The policemen invited him to go with them but he intended not to go but his father advised him to go with them, so they proceeded to the house of Pay-an Basatan about 600 meters away. Later on, Rosita Matias and some policemen arrived. Gabriel Caliang was also there sitted [sic] in a chair. Rosita Matias pointed to them as the killers of her husband. Later on, the two accused together with the policemen went to Sta. Fe and the accused were locked in jail for two hours. Then they were brought to the PNP Crime Laboratory, Echague, Isabela for paraffin examination. After the examination, the policemen returned them to Sta. Fe; that it is not true that they killed Benjamin Matias.

x x x.”

“DELBERT RICE, a Pastor of the Christian Kalahan Parish, testified that he had personally known the two accused for 25 years because they are his students in the Kalahan Academy; that he also knows the victim being a member of their congregation in Mancate and his compadre; that on March 16, 1987, he attended the wedding of Helen Nobres and Hilario Bugar at barangay Atbo with several other persons. The two accused were also there, so with victim; that he stayed there up to 4:00 P.M., then he went to Sta. Fe because he had visitors from Manila; that accused Gabriel Caliang is a Lay Pastor of Kalahan Parish serving in Mancate; that on the night of March 16, 1987, he went home at Imugan; early morning of the following day, he was informed that Benjamin Matias was shot dead and the two accused Gabriel Caliang and Alex Oliano were arrested. He was requested to bring the deceased to Bambang Hospital for autopsy examination and the accused were brought to PNP Crime Laboratory, Echague, Isabela for paraffin test. After a month, he happened to pass thru Echague, Isabela and dropped at the PC Crime Laboratory and received xerox copies of the request of Sta. Fe PNP for paraffin examination; receipt of the request and the report of the paraffin examination marked as Exhs. ‘1’, ‘1-B’ and ‘1-C’; that the paraffin examination gave negative results; that Gabriel Caliang has a visual

problem and he brought him to Dr. Tamesis, President of the Philippines Medical Society for medical examination and he found out that the retina of his eyes are defective; that said accused returned to Dr. Tamesis and secured a medical report (Exh. '2'); that Pastor Rice conducted ocular inspection of the place where the incident happened and he could hardly see a person behind the boulders; and that it was full moon when the crime was committed and the night was bright because of the light from the moon.

RAMON OLIANO, testified that he is 62 years old and a resident of Mancate, Villaflores, Sta. Fe, Nueva Viscaya; that on March 16, 1987, he attended the wedding at Atbo and arrived there at 10:00 A.M. and saw his son Alex Oliano at 3:00 P.M. in the wedding. He also saw Gabriel Caliang there. He left the wedding celebration and went home at about 11:00 in the evening with Delia Paraguas, Alex Oliano and several persons from Kalinga-Apayao. When they arrived at home, he slept. Later on, he was awakened by the policemen of Sta Fe because they wanted to talk to his son Alex Oliano. Alex was then sleeping at that time and Sgt. Amlos who was allowed to enter the house allegedly shook Alex and removed his blanket. The policemen took his son with them at the Police Station at Sta. Fe and he continued sleeping. On the following day, he followed his son at the Police Station; that he knows Gabriel Caliang who is a Pastor of the United Church of Christ of the Philippines and that he also knows the victim Benjamin Matias.

On cross-examination, he further testified that it was accused Gabriel Caliang who requested him as a witness in this case and not his son Alex; that he learned from Delia Paraguas that his visitors on that night are from Kalinga-Apayao; that he was awakened in his sleep when the policemen knocked at the door of his house but he didn't know what time it was; and that the policemen needed his son Alex because he is one of the suspects in the death of Benjamin Matias.” 22

To prove that he did not use a firearm during the commission of the crime, Oliano presented the result of a paraffin test showing that there was no gunpowder residue (nitrates) on his hands.²³

[Ruling of the Trial Court]

In convicting Oliano of murder, the trial court gave credence to the testimony of the widow, Rosita Matias, who positively identified Oliano as the perpetrator. It also held that she could not have been mistaken for the following reasons: first, there was light coming from the moon during the incident; second, the appellant had been her neighbor for a long time; lastly, there was no showing that the widow had a sinister motive to falsely accuse Oliano of a serious crime if it were not the truth. Moreover, the trial court held that her narration in court was corroborated by Basatan, as well as by PFCs Caramat and Flores. It also held that the killing was qualified by treachery.

[Assignment of Error]

Appellant imputes this sole error to the trial court:

“The trial court seriously erred in finding the Appellant Alex Oliano guilty beyond reasonable doubt for the crime of murder.”²⁴

The defense argues that Rosita Matias was a biased witness who was “preconditioned”²⁵ to name Appellant Oliano as the culprit. Appellant seeks to discredit Rosita's testimony under the rubric of “psychological predisposition,”²⁶ by which “past experiences or situations may act as stimuli that preconditions [sic] the mind and body to think and act in a particular way.”²⁷ In the present case, the stimuli were the remarks made by the appellant against her husband in the presence of other people, which she deemed insulting. Appellant then avers that “on [sic] that fateful moment of the shooting of Benjamin Matias, there was no name most convenient to recall but that of Alex Oliano, the same man who, hours before the incident, had slighted Rosita Matias' feelings and whose actuations remained fresh in her thoughts. In so doing, Rosita has consoled herself from the pain of death and vindicated the crime committed against her husband and her family.”²⁸

Appellant also maintains that the widow's testimony was incredible because she averred that, instead of rendering aid to her fallen husband or seeking refuge, she approached the killer. Appellant also questions the sufficiency of the illumination from the moon which allegedly enabled Mrs. Matias to identify the assailant.

[This Court's Ruling]

The appeal is not meritorious.

[Credibility of Witnesses]

The assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude. Findings of the trial court on such matters are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.²⁹ In the present case, the trial court gave credence to Rosita's testimony. Appellant failed to present any compelling reason – and we find none -- to overturn the findings of the court a quo.

[Improper Motive]

Shorn of its psychological jargon, appellant's main argument seeks to impute improper motive to the prosecution eyewitness. In simple language, appellant argues that this Court should not believe Rosita because she had a motive to testify falsely against appellant. We are not persuaded. The existence of an ill motive does not automatically render a testimony false or unbelievable. Moreover, the alleged motive -- to avenge the slight perpetrated against her husband – is too paltry a cause for any person to testify falsely against another and cause his incarceration for the most part of his life. Indeed, appellant failed to overcome the presumption that Rosita was not actuated by improper motive, and that her testimony was entitled to full faith and credence.³⁰

Additionally, the fact that Rosita was the wife of the deceased, far from rendering her testimony biased, makes it even more credible, for it is unnatural for a relative who is interested in vindicating the crime, to accuse somebody other than the real culprit. For her to do so is to let the guilty go free.³¹

Rosita testified as follows:

“Q While you were walking towards your house with your husband ahead of you, as you have just stated, what transpired next, if anything?

A While we were walking on the trail with my husband, I heard one gunshot, sir.

Q When you heard this gunshot, what transpired next, if anything?

A When I saw the big boulders, I saw ALEX OLIANO there, sir.

Q This gunshot which you heard, where did it come from?

A It came from the left, at the foot of the boulder, sir.

xxx xxx xxx

Q And when you heard the shot which according to you came from a big boulder stone, what did you do, if anything?

A Upon hearing the gunshot, I shouted and uttered the following, ‘WHY DID YOU KILL MY HUSBAND WHEN INFACT [sic] HE DID NOT COMMIT ANY FAULT AGAINST YOU’.

Q To whom did you direct those words?

A ALEX OLIANO, sir.

XXX XXX XXX

Q Please describe to the court what you saw?

A He was holding his gun in this position (Witness demonstrating).

XXX XXX XXX

Q After the 2 persons, GABRIEL CALIAG & ALEX OLIANO run [sic] away, what did you do next, if anything?

A What I did, I went and embraced my husband because he was then lying, facing the ground, sir.

Q What did you observe when you went to succor of your husband?

A When I carried him up or lifted him, incidentally, the portion which I touched of his body was then the very portion where he was wounded, sir.

Q Please point out where you saw the wound at your own body?

A What I saw the wound or bullet entered in this portion (witness indicating a portion of her left back) and exited here (Witness indicating a portion of her right forearms). sir.

XXX XXX XXX

Q Considering, Madam Witness, before I proceed further, considering that it was night time, will you please inform the court why you were able to see GABRIEL CALIAG and ALEX OLIANO on that night when your husband was shot?

A There was a moonlight, sir.

XXX XXX XXX

Q You said that it was through the light of the moon you were able to recognize ALEX OLIANO & GABRIEL CALIAG, were you able to describe the moon during that night?

A Yes, sir, because during that night, I look[ed] up on the sky and it was clear and no clouds and the moon was bright, sir.

XXX XXX XXX”32

During cross-examination, the widow was even more specific in recounting the incident, as follows:

“Q And according to your testimony a while ago, your husband was ahead of you of about more than 6-feet, is it not?

A Yes, sir.

Q And because he was 6-feet ahead of you, so, he would already pass those boulders when the shot rang out?

A Yes, sir. He made 3 steps before he fell down.

XXX XXX XXX

Q And when you saw your husband staggered 3 steps forward of you, you did not immediately go to him or help him but rather you concentrate or focus your attention to where the shot came, is that correct, Madam Witness?

A Yes, sir.

Q So, at that moment and time, you were more interested where the shot came rather than go and assist your husband which is the natural thing for a wife to do at that moment?

A Yes, sir.

Q You did not care anymore whether your husband who was staggering forward and falling down needs assistance but rather you better look at the direction where the shot came from?

A Yes, sir.

Q That is rather unusual conduct on your part, Madam Witness, is it not?

A After I saw Alex Oliano, I attended to my husband.

Q Now, when the shot rang out, you turned to your left and then look at the boulder, is that correct?

A Yes, sir.

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Q Now, Madam Witness, when you look at the boulder, you mentioned that you saw Alex Oliano, is that correct?

A Yes, sir.

Q And from where you were standing, he is directly in front of you, correct?

A Yes, sir.

Q And when you first spotted him, he was not moving, is it not?

A He was looking at me.

Q He was not moving?

A No, sir.

Q And from where you were standing directly facing him and holding a gun, that gun was also directly pointed at you when you first saw him, correct?

A Yes, sir.

XXX XXX XXX

Q From your demonstration, what you can see from where you were standing were [sic] only the barrel of the gun, you cannot see anymore the size of the gun, is it not?

A I can see the whole because it was only a short firearm.

Q When you spotted this Alex Oliano, you said that he was ½ chin beside/behind the small boulder, is that correct?

A Yes, sir.

XXX XXX XXX

Q And you can only see him up to the chin. The rest of the body was hidden by the boulder, is it not?

A I [c]an see the whole body and he was seated.

Q And in front of Alex Oliano is a stone, is that correct?

A Yes, sir.

Q Therefore, the stone hides the lower portion of the body of the accused?

A No, sir. Because on the 2 boulders, one is bigger and the other one is smaller. He was sitting on that place and I intentionally looked at him, that is why I saw his entire body.

COURT:

Q You said before that the pathway which you were walking in going home is much lower than the base of the boulder you have been saying?

A Yes, sir.

Q And Alex Oliano was crawling behind one of the boulders?

A Yes, sir.

Q Now, you claimed that you saw the entire body of Alex Oliano?

A Yes, sir. Because I peeped at him. [Witness demonstrating by putting her two (2) hands on top of the enclosure of the witness stand.]

Q When you said you saw Alex Oliano, you approached him?

A Yes, sir. I approached him, then I shouted at him and asked him why he shot my husband when in fact he had no fault committed.

Q How near were you when you approached him?

A Near. From this place up to that place or 6-feet.

Q How wide is that boulder between you?

A It is appearing in the picture if you wish to see it.

Q When you approached him, your body was immediately being pointed or being touched by the back of the gun?

A No sir. Because when I approached him, I do this way. [Witness put her two (2) hands on top of the enclosure of the witness stand.) After which, I shouted at him and asked him why he shot my husband when he did not commit any fault on him.

Q Naturally, you went to climb to Alex Oliano because the stone aside from its elevated base is also quite high.

A I did not climb anymore because the elevation where the boulder was resting is only this high. [(Witness indicating the height.)] And so, I was able to see him.

xxx xxx xxx”33

The foregoing testimony clearly shows that Rosita was present at the locus of the crime, and that she was able to identify the appellant as the assailant. The details of the incident were narrated in such a simple, candid and straightforward manner,³⁴ that they could not have been fabricated or concocted.

Moreover, said testimony was corroborated on material points by the testimonies of other witnesses. Prosecution

Witness Nancy Basatan averred that she heard a gunshot, followed by the cries of Rosita Matias.

She and her husband then rushed to the succor of Rosita and the victim. She further testified that Rosita, while inside their house immediately thereafter, told them that Oliano was the felon. PFCs Samuel Caramat and Bernabe Flores also supported Rosita's testimony; just after the incident, they heard Rosita's insistent declarations that Oliano was the killer.

Furthermore, credence should be given to Rosita's account because the medical findings support it.³⁵ Rosita testified that their assailant fired at them from an elevated position. On the witness stand, Dr. Violeta Rumbaua concurred:

"FISCAL:

Q What could have been the probable position of the victim Benjamin Matias at the time of the infliction of the wounds?

A The victim might have been positioned in front and slightly to the right of the assailant, sir.

Q What could have been the probable position of the gunman to the victim?

A The back of the victim is towards the assailant, sir.

FISCAL:

Q Now doctor, based on your findings, what could have been the probable position of the assailant when he shot the victim?

A The assailant might have been in the position which is higher in elevation than the victim, sir.

Q What do you mean higher in elevation?

A What I mean is that, the assailant is positioned slightly in ligher [sic] portion than the victim, sir.

xxx xxx xxx

COURT:

Q How did you arrive to [sic] that conclusion doctor?

A I based it on the trajectory of the bullets, sir."³⁶

[Testimony of Rosita Matias Credible]

Appellant asserts that it was incredible that Rosita, who was just shot at and whose companion was dying on the ground, would approach the assailant instead of seeking refuge. It has been held that persons confronted with a strange, startling, or frightful experience have no standard behavioral response.³⁷ Different people react differently to a particular event. What may not seem normal to a person in one circumstance may be perfectly normal to another confronted with the same startling incident.³⁸ Hence, the fact that Rosita's reaction does not seem natural to some does not destroy her credibility.

[Lack of Sufficient Illumination]

Appellant also argues that Rosita could not have seen the killer because the crime was committed at nighttime. He also discredits the testimony that the moon was full on March 16, 1987 when the crime was committed, stating that the calendar presented during the trial showed that the full moon fell on March 15, 1987.

It is scarcely necessary to address this puerile argument. Rosita testified that she was able to identify the appellant

because of the illumination from the moon. Nancy Basatan,³⁹ Samuel Caramat,⁴⁰ Delbert Rice⁴¹ and Gabriel Callag⁴² also affirmed that the moon was bright that night. In *People vs. Gamboa*⁴³ and *People vs. Pueblos*,⁴⁴ this Court ruled that illumination from the moon is sufficient for a person to identify another.⁴⁵ We find pointless appellant's disquisition on whether the moon was full that night. Indeed, this argument is immaterial. Visibility at nighttime is possible not only at the exact minute and date when the moon is full as indicated in the calendar. In the same way, the nocturnal vision of a person is not necessarily impaired just because the full moon is one day early or late.

[Negative Result of the Paraffin Test]

The results of the paraffin test do not exculpate appellant. It has been held that the negative findings of the said test do not conclusively show that he did not discharge a firearm at the time the crime was committed. The absence of nitrates is possible if a person discharged a firearm with gloves on, or if he thoroughly washed his hands thereafter.⁴⁶

[Denial and Alibi Unacceptable]

Appellant denied any participation in the killing of Matias, contending that he was, at the time, sleeping in the house of his father. This is bereft of merit. For alibi to prosper, it must be shown that it was physically impossible for the appellant to have been at the scene of the crime at the time of its commission. In this case, the locus of the crime was only a half kilometer away from the house of appellant's father. In any event, we cannot accord credence to this defense in the face of the credible and positive identification made by Rosita Matias.

[Treachery]

We agree with the trial court that the killing was qualified by treachery. The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim.⁴⁷ In this case, the victim, totally unaware of his impending death, was walking with his wife when he was shot. He had no weapon with which to defend himself. He had not provoked the appellant; he had no previous altercation or serious misunderstanding with him. These constitute *alevosia* or treachery⁴⁸ qualifying the killing to murder.

While the information charged that the killing was also aggravated by evident premeditation and use of illegally possessed firearms, the trial court judge did not appreciate these circumstances. The records support his stance. The prosecution failed to adduce sufficient evidence to prove that the killing was attended by these circumstances. Likewise, we cannot appreciate the generic aggravating circumstance of nighttime; while the crime was committed at night, the prosecution failed to show that the appellant sought this circumstance to facilitate the criminal design.⁴⁹

The penalty for murder under Article 248 of the Revised Penal Code⁵⁰ is reclusion temporal in its maximum period to death. There being no attendant aggravating or mitigating circumstances clearly established during the trial, the mid-range penalty of reclusion perpetua should be imposed upon the appellant.

[Damages]

The lower court ordered Oliano to pay the heirs of Benjamin Matias the following amounts: P50,000.00 (stating no reason for the award); P10,000.00 as actual damages and P30,000.00 as moral damages.

Consistent with prevailing jurisprudence, we award P50,000.00 to the heirs of Benjamin Matias as indemnity for his untimely demise.⁵¹

We cannot, however, sustain the award of actual damages. To seek recovery of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the

best evidence obtainable by the injured party.⁵² In this case, we find no such proof to sustain the award of actual damages. The prosecution merely presented a bond paper containing a list of the expenses allegedly incurred from the killing to the burial of Benjamin Matias. They did not present any receipt or other evidence to support the claim.⁵³ Nonetheless, appellant should pay the heirs of the deceased temperate damages in the amount of P10,000. Under Article 2224 of the Civil Code, temperate damages “may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.”

Moral damages may be awarded if there is proof of “physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury.”⁵⁴ The prosecution witnesses failed to present proof of any of these circumstances. Hence, we cannot affirm such award by the trial court.

WHEREFORE, the assailed Decision is AFFIRMED but the award of actual and moral damages is DELETED. Appellant is ORDERED to pay the heirs of the deceased P50,000 as civil indemnity and P10,000 as temperate damages. Costs against appellant.

SO ORDERED.

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

1 Penned by Executive Judge Vincent Eden C. Panay.

2 Rollo, p. 4.

3 Records, p. 102.

4 The Death Certificate showed that the cause of death were as follows:

"B. Antecedent cause: b. Cardio respiratory arrest

C. Underlying cause: c. Trypanosomiasis"

Records, p.372.

5 Order dated March 4, 1994; records, p. 373.

6 Rollo, pp. 40-53.

7 Decision, p. 14; Rollo, p. 53.

8 Records, pp. 391-394.

9 Ibid., p. 395.

10 This case was deemed submitted for resolution on May 15, 1996 upon receipt by this Court of the Appellee's Brief. The filing of the Reply Brief was deemed waived.

11 TSN, September 17, 1987, pp. 3-21; November 4, 1987, pp. 2-29; November 5, 1987, pp. 2-12; December 10, 1987, pp. 2-10.

12 TSN, January 26, 1988, pp. 3-20; February 29, 1988, pp. 2-14; March 1, 1988, pp. 2-17; March 24, 1988, pp. 4-30; May 11, 1988, pp. 2-20; June 20, 1988, pp. 2-16; June 21, 1988, pp. 2-29; August 1, 1988, pp. 2-8; August 2, 1988, pp. 2-7; March 23, 1992, pp. 2-7.

- 13 TSN, December 15, 1988, pp. 2-18; July 11, 1988, pp. 3-19; August 28, 1989, pp. 2-12.
- 14 TSN, September 28, 1989, pp. 2-7.
- 15 TSN, November 14, 1989, pp. 2-5.
- 16 TSN, August 28, 1989, pp. 12-16.
- 17 Appellee's Brief, pp. 3-5; Rollo, 134.
- 18 Conducted by Dr. Violeta M. Rumbaua of Magsaysay District Hospital, Bambang, Nueva Vizcaya.
- 19 Records, p. 4.
- 20 TSN, December 4, 1990, pp. 2-7; February 20, 1991, pp. 2-27; June 26, 1991, pp. 3-10; December 3, 1990, pp. 5-22.
- 21 TSN, June 9, 1992, pp. 2-9; August 4, 1992, pp. 2-5; August 5, 1992, pp. 2-12; September 7, 1992, pp. 3-11; September 8, 1992, pp. 2-7.
- 22 Decision, pp. 10-11; Rollo, pp. 49-50.
- 23 Prepared on March 18, 1987 by Capt. Benjamin V. Rubio of the Chemistry Section of the Crime Laboratory Service, Regional Unit 2, Integrated National Police. (Records, p. 346)
- 24 Appellant's Brief, p. 9; Rollo, p. 77.
- 25 Appellant's Brief, p. 15, Rollo, p. 83.
- 26 Ibid., p. 11; rollo, p. 79.
- 27 Ibid.
- 28 Ibid., p. 16; rollo, p. 84.
- 29 People vs. Pontilar, Jr., G.R. No. 104865, pp. 8-9, July 11, 1997, People vs. Rubio, 257 SCRA 528, 533, June 20, 1996; and, People vs. Del Prado, 253 SCRA 731, 738, February 20, 1996.
- 30 People vs. Garcia, 258 SCRA 411, 419, July 5, 1996; People vs. Prado, 254 SCRA 531, 538, March 8, 1996; People vs. Hubilla, Jr., 252 SCRA 471, 478-479, January 29, 1996.
- 31 People vs. Escoto, 244 SCRA 87, 95, May 11, 1995. See also People vs. Castillo, 261 SCRA 493, 502, September 6, 1996.
- 32 TSN, March 1, 1988, pp. 2-12.
- 33 TSN, June 21, 1988, pp. 15-26.
- 34 People vs. Florida, 214 SCRA 227, September 24, 1992; People vs. Molina, 213 SCRA 52, 69, August 28, 1992 and People vs. Encipido, 146 SCRA 478, 490, December 29, 1986.
- 35 TSN, August 28, 1989, pp. 15-16.
- 36 TSN, August 28, 1989, pp. 15-16.
- 37 People vs. Layaguin, 262 SCRA 207, 213, September 20, 1996; People vs. Gomez, 251 SCRA 455, 468, December 19, 1995; People vs. Halili, 245 SCRA 340, 348, June 27, 1995 People vs. Acob, 246 SCRA 715, 721, July 20, 1995.

38 People vs. Atuel, 261 SCRA 339, 352, September 3, 1996 and People vs. Rubio, 257 SCRA 528, 534, June 20, 1996.

39 TSN, December 10, 1987, pp. 6-7.

40 TSN, August 28, 1989, p. 2.

41 TSN, August 20, 1991, pp. 11-12.

42 TSN, December 3, 1990, p. 11.

43 145 SCRA 289, 299, October 28, 1986.

44 127 SCRA 746, 754, February 24, 1984.

45 See also People vs. Villaruel, 261 SCRA 386, 395, September 4, 1996

46 People vs. Hubilo, 220 SCRA 389, 399, March 23, 1993; People vs. Manalo, 219 SCRA 656, 663, March 8, 1993; People vs. Pasillao, 215 SCRA 163, 173, October 26, 1992; People vs. Talingdan, 191 SCRA 333, 345, November 9, 1990; People vs. Roallos, 113 SCRA 584, 597-598, April 20, 1982.

47 People vs. Abrenica (252 SCRA 54, 62, January 18, 1996) and People vs. Vallado (257 SCRA 515, 527, June 20, 1996)

48 Paragraph 16 of Article 14 of the Revised Penal Code states: "There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution whereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."

49 People vs. Berbal, 176 SCRA 202, August 10, 1989.

50 Prior to RA 7659, which made murder punishable by reclusion perpetua to death.

51 People vs. Cayabyab, G.R. No. 123073, June 19, 1997, p. 22 and People vs. Sol, G.R. No. 11850, May 7, 1997, pp. 18-19.

52 People vs. Degoma, 209 SCRA 266, May 22, 1992.

53 TSN, November 14, 1989, pp. 3-4.

54 Article 2217 of the Civil Code.

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