

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO DIANOS, ACCUSED-APPELLANT.

G.R. No. 119311. October 07, 1998

Ponente: VITUG, J.

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VITUG, J.:

Romeo Dianos has taken an appeal to this Court questioning the decision of the Regional Trial Court of Baguio City, Branch 6, which has found him guilty beyond reasonable doubt of the crimes of Murder, Frustrated and Attempted Murder, after being indicted and tried in Criminal Cases Numbered 8524-R to 8528-R, inclusive. The five separate informations against him read:

Criminal Case No. 8524-R

"The undersigned accuses ROMEO DIANOS and 'JOHN DOE' of the crime of MURDER, committed as follows:

"That on or about the 31st day of December, 1990, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident premeditation, conspiring, confederating and mutually aiding with each other, did then and there wilfully, unlawfully and feloniously attack, assault and fire at TERESITA ORTIZ y PABLO, with an armalite rifle, causing upon the latter, acute respiratory failure due to a complete transection of the spinal cord at the level of the 2nd cervical vertebra due to a gunshot wound through the neck, which directly caused her death.

"ALL CONTRARY TO LAW, and with the aggravating circumstances of nighttime and use of motor vehicle."[1]

Criminal Case No. 8525-R

"The undersigned accuses ROMEO DIANOS and 'JOHN DOE' of the crime of ATTEMPTED MURDER, committed as follows:

"That on or about the 31st day of December, 1990, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident premeditation, conspiring, confederating and mutually aiding with each other, did then and there wilfully, unlawfully and feloniously attempt to kill ZALDY ORTIZ, by firing an armalite rifle, causing injuries on his right leg, thus commencing the commission of the crime directly by overt acts, but did not perform all the acts of execution which should have produced the crime of Murder, by reason of causes other than their own spontaneous desistance.

"ALL CONTRARY TO LAW, and with the aggravating circumstances of nighttime and use of motor vehicle."[2]

Criminal Case No. 8526-R

"The undersigned accuses ROMEO DIANOS and 'JOHN DOE' of the crime of ATTEMPTED MURDER,

committed as follows:

"That on or about the 31st day of December, 1990, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident premeditation, conspiring, confederating and mutually aiding with each other, did then and there wilfully, unlawfully and feloniously attempt to kill VIRGILIO ORTIZ Y PINLAC, by firing an armalite rifle, causing injuries on his thigh, thus commencing the commission of the crime directly by overt acts, but did not perform all the acts of execution which should have produced the crime of Murder, by reason of causes other than their own spontaneous desistance, that is, by the timely arrival of people from the neighborhood who extended assistance to the complainant.

"ALL CONTRARY TO LAW, and with the aggravating circumstances of nighttime and use of motor vehicle."[3]

Criminal Case No. 8527-R

"The undersigned accuses ROMEO DIANOS and 'JOHN DOE' of the crime of FRUSTRATED MURDER, committed as follows:

"That on or about the 31st day of December, 1990, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident premeditation, conspiring, confederating and mutually aiding with each other, did then and there wilfully, unlawfully and feloniously attack, assault and fire at LIZETTE ORTIZ, with an armalite rifle, thereby inflicting upon the latter, penetrating gunshot wound in her abdomen, which wound would have caused or led to the death of the said LIZETTE ORTIZ, were it not for the timely and able medical assistance extended to her, thus performing all the acts of execution which should have produced the crime of Murder as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely medical assistance rendered to said LIZETTE ORTIZ, which prevented her death.

"ALL CONTRARY TO LAW, and with the aggravating circumstances of nighttime and use of motor vehicle."[4]

Criminal Case No. 8528-R

"The undersigned accuses ROMEO DIANOS and 'JOHN DOE' of the crime of MURDER, committed as follows:

"That on or about the 31st day of December, 1990, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery and evident premeditation, conspiring, confederating and mutually aiding with each other, did then and there wilfully, unlawfully and feloniously attack, assault and fire at RICARDO PABLO y PALUA, with an armalite rifle, causing upon the latter, hypovolemic shock secondary to massive hemorrhage due to penetrating wounds of the heart, lungs, aorta and pulmonary vessels due to multiple gunshot wounds on the chest, which directly caused his death.

"ALL CONTRARY TO LAW, and with the aggravating circumstances of nighttime and use of motor vehicle."[5]

At his arraignment, accused Dianos entered a plea of not guilty to all the charges. His co-accused remained at large.

The witnesses for the prosecution came up during the trial with accounts of the incidents brought up in the various accusations.

Involved in the unfortunate saga were all residents of Cypress Point Village, Irisan, in Baguio City. The otherwise

friendly relationship among them was marred by a transaction apparently gone awry between Teresita Ortiz (Teresita) and Josie Ortiz Santos (Josie), on the one hand, and accused Romeo Dianos, on the other hand, over a piece of land occupied by the latter. The ensuing "bad blood" led to the fatal denouement.

On 31 December 1990, at about five o'clock in the morning, Nancy Ortiz Dasudas (Nancy) saw the accused throw a hand grenade near the house of her parents. Josie, who was standing near the site of the explosion was hit with a shrapnel on the left leg. A grenade pin and several shrapnels were recovered from the scene.

Later that day, at around 9:30 in the evening, the accused, donned in military camouflage uniform and armed with an M-16 armalite rifle, was seen traversing the Cypress Point Road. Following closely behind was his passenger jeepney with three unidentified men on board.

Meanwhile, that same evening, Teresita, together with her husband, Virgilio Ortiz (Virgilio), her daughter, Corazon Ortiz Ihanda (Corazon), her brother, Ricardo Pablo (Ricardo), and her son, Zaldy Ortiz (Zaldy), were on the terrace of their new house waiting for the other Ortiz children to arrive in time for the New Year's eve celebration. The three men, Virgilio, Ricardo and Zaldy, momentarily left the terrace, Virgilio to relieve himself by the side of the house, Zaldy to repair home and Ricardo to go to the house of Nancy Ortiz Dasudas (Nancy) across the street. Ricardo met the accused near the waiting shed. Without any warning, the latter suddenly struck Ricardo on the face with the butt of an armalite causing him to fall to the ground. The accused then fired at Ricardo, hitting him on the chest and left arm. The accused then directed his armalite at Virgilio. The latter was hit on the buttocks. The accused thereupon fired indiscriminately at the house of Zaldy. Zaldy received a bullet injury in his right thigh, while his daughter, Lizette Ortiz (Lizette), was hit in her abdomen and wrist. The accused moved towards the direction of the new house and fired at the terrace. Teresita took a bullet wound on the neck from the volley of shots, while Corazon escaped unscathed.

The accused, right after the shooting, boarded his jeep and sped towards Baguio City.

In the aftermath, two were found dead, namely, Teresita and Ricardo, while three others, Virgilio, Zaldy and Lizette, sustained injuries. The latter were all rushed to the Baguio General Hospital where they were treated for gunshot wounds.

P/Sgt. Albert Gaydownen of Sub-station 1, upon receiving the report on the incident, immediately dispatched Pat. Ruben Forte (Pat. Forte), Pfc. Marianito Cosape (Pfc. Cosape) and Pat. Robert Credo (Pat. Credo) to the crime scene. Pfc. Cosape was able to gather several pieces of spent cartridges from the waiting shed and surrounding areas. At the police station, Sgt. Danilo Santos (Josie's husband) who tagged along with the investigating team from the crime scene, requested P/Sgt. Gaydownen to contact Camp Bado Dangwa to intercept the passenger jeepney of the accused. P/Sgt. Gaydownen was yet searching for the telephone number of Camp Dangwa when the accused's jeepney was seen near the sub-station coming in from Baguio City. It was promptly met with a burst of gunfire. Somehow, the accused was able to escape.

Meanwhile, Zaldy and Virgilio were discharged from the hospital shortly after treatment. Having sustained lacerations on her liver and large intestines, as well as multiple pilferages on her small intestines, Lizette had to be confined. The doctors who attended to her testified that the gunshot wounds she had sustained were serious enough to cause her death had it not been for the immediate surgical and medical attention given to her. She also sustained a fractured wrist which would leave her left hand permanently disabled. She was treated for a total of thirty-three days in the hospital.

The post mortem report on the bodies of Teresita and Ricardo readily disclosed that their death were due to the gunshot wounds they had sustained. Teresita had gunshot wounds on her neck and right side of the face that

caused an acute respiratory failure. Ricardo sustained gunshot wounds on his left chest and left upper arm. He died from hypovolemic shock secondary to massive hemorrhage due to penetrating wounds in the heart, lungs, aorta and pulmonary vessels.

Anent the damages incurred by private complainants: Virgilio testified that he had spent P1,000 for medications for his thigh injury. A riprap contractor, he was not able to work for seven months depriving him of his monthly income of P2,000 for the period or the total amount of P14,000. He asserted that he had incurred P110,000.00 for funeral services for his wife Teresita. Nenita Pablo (Nenita) said in her testimony that she had spent P15,000.00 for the autopsy and coffin of Ricardo, P3,000.00, by way of doctor's fee and P8,000.00 for the wake. Zaldy testified that he had spent P500 for the treatment of his injury.

The accused proffered the jaded apologia of denial. He disclaimed any knowledge of, or participation in, the grenade throwing and shooting incidents. He recounted that while he was getting his passenger jeepney out from the carport, an unidentified man poked a gun at his back and instructed him to proceed to Cypress Point Road to fetch a companion. When they were near the waiting shed area, he saw the unidentified man's companion, a "military man," clad in military camouflage uniform and armed with an M-16 armalite rifle, altercation with Ricardo. Moments later, he saw the gun-wielding man shoot Ricardo and spray bullets at Zaldy's house and the "new" house before boarding the passenger jeepney. The accused was ordered to proceed to La Trinidad, Benguet, where the "military man" alighted from the vehicle. The other fellow got down from the vehicle in Puliwes Camp 7, Kennon Road. The accused proceeded to Sub-station 1 to report the incident but he was met with a burst of gunfire. Sustaining an injury in his thigh, he then drove to Sub-station 2 to seek police assistance. Sgt. Giovanni Gallardo (Sgt. Gallardo) and Pat. Edward Ayochok (Pat. Ayochok) took him to the St. Louis Hospital. On the way, the accused had the chance to narrate to the two police officers the shooting incident in Irisan.

The RTC rendered its decision on 10 May 1994 finding the accused guilty beyond reasonable doubt of the crimes with which he was charged; the trial court adjudged:

"WHEREFORE, Judgment is hereby rendered as follows:

"1. In Criminal case No. 8524-R, the Court finds accused Romeo Dianos Guilty beyond reasonable doubt of Murder defined and penalized under Article 248 of the Revised Penal Code and hereby sentences him to Reclusion Perpetua; to indemnify the heirs of deceased Teresita Ortiz the sum of P50,000.00 for her death and the sum of P110,000.00 as Actual Damages for expenses incurred for the wake, funeral and burial services, both indemnifications being without subsidiary imprisonment in case of insolvency and to pay the costs.

"The accused being a detention prisoner is entitled to a full credit of his preventive imprisonment in the service of his sentence.

"2. In Criminal case No. 8525-R, the Court finds accused Romeo Dianos guilty beyond reasonable doubt of Attempted Murder defined and penalized under Article 248 in relation to Article 6 and Article 51 of the Revised Penal Code and hereby sentences him, applying the Indeterminate Sentence Law, to an imprisonment of 1 Year 7 months and 11 days of prision correccional as Minimum to 6 years, 1 month and 11 days of prision mayor as Maximum, to indemnify Zaldy Ortiz the sum of P 5,000.00 as Moral Damages for the injuries sustained by him without subsidiary imprisonment in case of insolvency and to pay the costs.

"The accused being a detention prisoner is entitled to a full credit of his preventive imprisonment in the service of his sentence.

"3. In Criminal Case No. 8526-R, the Court finds accused Romeo Dianos guilty beyond reasonable doubt of Attempted Murder defined and penalized under Article 248 in relation to Articles 6 and 51 of the Revised Penal Code and hereby sentences him, applying the Indeterminate Sentence Law, to an imprisonment of one

year, 7 months and 11 days of prison correccional as Minimum to 6 years, 1 month and 11 days of prison mayor as Maximum, to indemnify Virgilio Ortiz the sum of P1,000.00 as actual damages for the expenses incurred for his medical treatment for the injuries sustained by him and the sum of P14,000.00 as unearned income for 7 months at P2,000.00 a month for being unable to work as riprap contractor during the treatment of his injuries and the sum of P5,000.00 as Moral Damages for the injuries sustained by him, both indemnifications being without subsidiary imprisonment in case of insolvency and to pay the costs.

"The accused being a detention prisoner is entitled to a full credit of his preventive imprisonment in the service of his sentence.

"4. In Criminal case No. 8527-R, the Court finds accused Romeo Dianos guilty beyond reasonable doubt of Frustrated Murder defined and penalized under Article 248 in relation to Articles 6 and 50 of the Revised Penal Code and hereby sentences him to an imprisonment ranging from 6 years, 1 month and 11 days of prison mayor as Minimum to 12 years, 5 months and 11 days of Reclusion Temporal as maximum, to indemnify Lizette Ortiz the sum of P20,000.00 as Moral Damages for the injuries sustained by her without subsidiary imprisonment in case of insolvency and to pay the costs.

"The accused being a detention prisoner is entitled to a full credit of the preventive imprisonment in the service of his sentence.

"5. In Criminal case No. 8528-R, the Court finds accused Romeo Dianos guilty beyond reasonable doubt of Murder defined and penalized under Article 248 of the Revised Penal Code and hereby sentences him to reclusion perpetua; to indemnify the heirs of deceased Ricardo Pablo the sum of P50,000.00 for his death and the sum of P23,000.00 as Actual Damages for expenses incurred for the wake, funeral and burial services, both indemnifications being without subsidiary imprisonment in case of insolvency and to pay the costs.

"The accused being a detention (prisoner) is entitled to a full credit of his preventive imprisonment in the service of his sentence."[6]

In the instant appeal, accused-appellant ascribes the following errors supposedly committed by the trial court:

"I

"... IN ITS CONCLUSION THAT 'IF REALLY ACCUSED HAD NOTHING TO DO WITH THE FIRINGS AND KILLINGS, THE ASSAILANTS COULD VERY WELL USED OTHER VEHICLES' INSTEAD OF THE ACCUSED'S VEHICLE;

"II

"... [IN NOT TAKING] INTO CONSIDERATION THE VITAL AND VERY IMPORTANT EVIDENCE FOR THE ACCUSED (not a single portion of the testimonies of Police Officers Gallardo and Ayochok, as well as those of the prosecution's witnesses showing his lack of motive to perpetrate the offenses charged, were mentioned nor passed upon in the decision) WHICH IF CONSIDERED IMPARTIALLY COULD HAVE RESULTED IN HIS ACQUITTAL;

"III

"... IN COMPLETELY IGNORING THE VERY CONVINCING EVIDENCE PRESENTED BY THE ACCUSED AS WELL AS THOSE OF THE OTHER PROSECUTION WITNESSES THAT HE HAD NO MOTIVE TO PERPETRATE SUCH A DASTARDLY ACT AGAINST THE VICTIMS SINCE WHATEVER DIFFERENCES HIS FAMILY HAD WITH THEM HAD LONG BEEN SETTLED AND FORGOTTEN ACCORDING TO NO LESS THAN VIRGILIO ORTIZ, THE FATHER OF JOSIE SANTOS AND HUSBAND OF THE LATE TERESITA ORTIZ;

"IV

"... IN COMPLETELY ADHERING TO THE RULE THAT POSITIVE IDENTIFICATION PREVAILS OVER EVIDENCE OF LACK OF MOTIVE DESPITE THE FACT THAT THOSE WHO TESTIFIED AS

HAVING POSITIVELY IDENTIFIED THE ACCUSED ARE BIASED, HOSTILE AND HIGHLY PREJUDICED TO HIM;

"V

"... IN HOLDING THAT THE PARAFFIN EXAMINATION RESULT IS NOT IMPORTANT BECAUSE THE ACCUSED MIGHT HAVE USED GLOVES OR KNOWS HOW TO REMOVE IT AND WASHED AWAY THE POWDER BURNS AND THAT `THE EXAMINATION WAS DONE ONLY ON JANUARY 2, 1991 OR TWO (2) DAYS AFTER THE INCIDENT; (AND)

"VI

"...IN HOLDING THAT IT IS `TOO MUCH TO BELIEVE' THAT ACCUSED WAS REALLY GOING TO REPORT THE INCIDENT WITH THE PNP SUBSTATION 1 OF BAGUIO CITY ALONG NAGUILIAN ROAD INSTEAD OF REPORTING THE SAME TO THE PNP HEADQUARTERS NEAR CITY HALL AND THAT SUCH ACT OF THE ACCUSED IS A MERE `PRETENSIONS' ON HIS PART."[7]

Accused-appellant, verily, faults the court a quo for giving full faith and credit to the testimony of the prosecution witnesses, on the one hand, and, on the other, for failing to accord any evidentiary value to the testimonies of Sgt. Gallardo and Pat. Ayochok to whom he narrated the Irisan incident, and for disregarding the negative results of the paraffin test on him.

It is doctrinally entrenched, at least in this jurisdiction, that the issue on the credibility of witnesses is a question mainly addressed to the trial court for it to gauge and to pass upon. Not only are its determination and findings accorded with great respect,[8] but also even often treated with finality. Accused-appellant belabors the fact that all, but one, of the prosecution witnesses are related to the victims. He asserts that such relationship taints their credibility. Mere relationship by a witness to the victim, however, does not necessarily impair credibility.[9] The annals of our criminal justice system could be filled with countless unresolved cases if courts were to hold otherwise. Not too infrequently, crimes are committed with just the relatives of the victim being around. Verily, too, it is natural for the immediate members of the family of the victim to have a strong urge to see the real culprit, not just anyone, penalized for a grave offense. Unless the Court is convinced that the witnesses are clearly impelled by ulterior motives, it will not discard their testimony. No such strong ill-motive has been shown here to make the Court conclude that the prosecution witness would thereby wish to have the wrong man callously sent to jail.

Accused-appellant argues that his "utterances" made in the presence of, and later testified to, by Sgt. Gallardo and Pat. Ayochok on their way to the hospital should have been deemed constitutive of the *res gestae* and given due evidentiary weight. Evidently, accused-appellant is under a misconception. *Res gestae* rules relate to the admissibility of evidence and not to its weight or sufficiency.[10] By *res gestae*, exclamations and statements made by either the participants, victims, or spectators to a crime, immediately before, during or immediately after the commission of the crime, when the circumstances are such that the statements constitute nothing but spontaneous reaction or utterance inspired by the excitement of the occasion there being no opportunity for the declarant to deliberate and to fabricate a false statement[11] become admissible in evidence against the otherwise hearsay rule of inadmissibility. In order to admit such hearsay statements as part of *res gestae*, there must be a confluence[12] of the following essential conditions: (1) that the principal act, the *res gestae*, is a startling occurrence; (2) the statements are made before the declarant had the time to contrive or devise a falsehood; and (3) that the statement must concern the occurrence in question and its immediate attending circumstances.

There is, of course, no hard and fast rule by which spontaneity may be determined although a number of factors have been considered, including, but not always confined to, (1) the time that has lapsed between the occurrence of the act or transaction and the making of the statement, (2) the place where the statement is made, (3) the

condition of the declarant when the utterance is given, (4) the presence or absence of intervening events between the occurrence and the statement relative thereto, and (5) the nature and the circumstances of the statement itself.[13] The Court, in *People vs. Manhuyod*,^[14] has explained the import of the first four factors; thus:

"x x x (C)ases are not uniform as to the interval of time that should separate the occurrence of the startling event and the making of the declaration. What is important is that the declarations were voluntarily and spontaneously made 'so nearly contemporaneous as to be in the presence of the transaction which they illustrate or explain, and were made under such circumstances as necessarily to exclude the ideas of design or deliberation.'

"As to the second factor, it may be stressed that 'a statement made, or an act done, at a place some distance from the place where the principal transaction occurred will not ordinarily possess such spontaneity as would render it admissible.'

"Anent the third factor, '[a] statement will ordinarily be deemed spontaneous if, at the time when it was made, the conditions of the declarant was such as to raise an inference that the effect of the occurrence on his mind still continued, as where he had just received a serious injury, was suffering severe pain, or was under intense excitement. Conversely, a lack of spontaneity may be inferred from the cool demeanor of declarant, his consciousness of the absence of all danger, his delay in making a statement until witnesses can be procured, or from the fact that he made a different statement prior to the one which is offered in evidence.'

"With regard to the fourth factor, what is to be considered is whether there intervened between the event or transaction and the making of the statement relative thereto, any circumstance calculated to divert the mind of the declarant which would thus restore his mental balance and afford opportunity for deliberation."

The startling occurrence of consequence to this case is not when accused-appellant was fired upon at police substation 1 but the shooting at the Cypress Point Village. If at all, what might be so considered as part of the *res gestae* would be the statements of appellant when he was shot at near the police station, but this incident is not at all the subject matter of the case against him. Clearly, the fourth element, i.e., that there is no intervening event between the startling occurrence concerned and the making of the statement relative thereto, is not here extant.

Accused-appellant capitalizes on the negative results of the paraffin test conducted on him. A paraffin test has never been considered to be foolproof. On the contrary, it has been held to be highly unreliable. In *People vs. Teehankee, Jr.*,^[15] this Court has held:

"Appellant cannot also capitalize on the paraffin test showing he was negative of nitrates. Scientific experts concur in the view that the paraffin test has 'x x x proved extremely unreliable in use. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand. It cannot be established from this test alone that the source of the nitrates or nitrites was the discharge of a firearm. The person may have handled one or more of a number of substances which give the same positive reaction for nitrates or nitrites, such as explosives, fireworks, fertilizers, pharmaceuticals, and leguminous plants such as peas, beans, and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco.' In numerous rulings, we have also recognized several factors which may bring about the absence of gunpowder nitrates on the hands of a gunman, viz: when the assailant washes his hands after firing the gun, wears gloves at the time of the shooting, or if the direction of a strong wind is against the gunman at the time of the firing."^[16]

Anent the actual damages, the uncorroborated testimonies of private complainants cannot suffice. Such damages to be recoverable must not only be capable of proof but must actually be proved with reasonable degree of certainty.^[17] In *Fuentes, Jr. vs. Court of Appeals*,^[18] the Court has ruled:

"Petitioner maintains that assuming that he committed the crime it is error to hold him answerable for

P8,300.00 as actual damages on the basis of the mere testimony of the victim's sister, Angelina Serrano, without any tangible document to support such claim. This is a valid point. In crimes and quasi-delicts, the defendant is liable for all damages which are the natural and probable consequences of the act or omission complained of. To seek recovery for actual damages it is essential that the injured party proves the actual amount of loss with reasonable degree of certainty premised upon competent proof and on the best evidence available. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages.

"The award by the court a quo of P8,300.00 as actual damages is not supported by the evidence on record. We have only the testimony of the victim's elder sister stating that she incurred expenses of P8,300.00 in connection with the death of Malaspina. However, no proof of the actual damages was ever presented in court. Of the expenses alleged to have been incurred, the Court can only give credence to those supported by receipts and which appear to have been genuinely expended in connection with the death of the victim. Since the actual amount was not substantiated, the same cannot be granted." [19]

There is, however, no doubt that injury was sustained by private complainants due to appellant's actions. In the absence of competent proof on the specific amounts of actual damages suffered, private complainants are entitled to nominal damages.[20] The Court deems the amounts of P15,000.00 in Criminal Case Nos. 8524-R and 8528-R, P10,000.00 in Criminal Case No. 8527-R, and P5,000.00 in Criminal Case Nos. 8525-R and 8526-R to be reasonable given the circumstances.

Finally, in accordance with prevailing jurisprudence relative to Article 2206[21] of the Civil Code, the award of P50,000.00 indemnity for each of the death of Teresita Ortiz and Ricardo Pablo must be affirmed. Moral damages, in addition to the awards made by the trial court in favor of the injured victims, are also recoverable under paragraph (3) of Article 2206, in relation to Article 2217[22] and paragraph (1) of Article 2219,[23] of the Civil Code, which the Court hereby fixes at P30,000.00 for each of the two deceased victims payable to their respective heirs.

On this score, the Court finds it opportune to clarify certain notions dealing on the recovery of these various damages.

There is a significant distinction, in the context of Book IV, Title XVIII, of the Civil Code on "Damages," between the terms "damages" and "damage." Damages refer to the sum of money which the law awards or imposes as pecuniary compensation, recompense, or satisfaction for an injury done or a wrong sustained as a consequence of either a breach of a contractual obligation or a tortuous or illegal act, while damage pertains to the actionable loss, hurt or harm which results from the unlawful act, omission or negligence of another.[24] In fine, damages are the amounts recoverable or that which can be awarded for the damage done or sustained.

An award of actual or compensatory damages requires actual proof of pecuniary loss. An exception from the rule, pursuant to Article 2206 of the Civil Code, are "damages for death caused by a crime or quasi-delict" which can be awarded forthwith to the heirs of the victim by proof alone of such fact of death. No proof of pecuniary loss is likewise necessary in order that moral, nominal, temperate, liquidated or exemplary damages may be adjudicated,[25] and it is quite enough that proof of damage or injury is adduced. Being incapable of exact pecuniary estimation, the assessment of such damages, except for liquidated damages which the parties themselves fix, is left to the sound discretion of the court.

Akin to, but not exactly in the same category as actual or compensatory damages, is the civil indemnity *ex delicto* particularly so referred to in paragraph 3 of Article 104, in relation to Article 100, of the Revised Penal Code as "indemnification for consequential damages." [26] These two species of damages differ basically in that civil indemnity *ex delicto* can be awarded without need of further proof than the fact of commission of the felony itself

while actual or compensatory damages to be recoverable must additionally be established with reasonable degree of certainty (except, as aforesaid, in the case of the indemnity for death under Article 2206[27] of the Civil Code). In fine, the first species merely requires proof of damage or injury (similar to that needed in an award of moral damages) to be recoverable; the second kind requires, in addition, proof of damages or pecuniary loss in order to warrant recovery.

WHEREFORE, the assailed decision is AFFIRMED with modifications in that the actual damages awarded to Virgilio Ortiz, Nenita Pablo and Zaldy Ortiz are deleted and in lieu thereof nominal damages in the following amounts are hereby awarded: P15,000.00 in Criminal Case No. 8524-R and No. 8528-R; P10,000.00 in Criminal Case No. 8527-R; and P5,000.00 in Criminal Case No. 8525-R and No. 8526-R. Moral damages in the amount of P30,000.00 are also hereby awarded to the heirs of each of the two deceased victims.

The Court orders that copies of this decision be furnished the Department of Justice and the Department of Interior and Local Governments which agencies are enjoined to take the lead in apprehending and bringing to justice the other accused who have remained at large.

SO ORDERED.

Regalado, acting C.J., Davide, Jr., Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, and Purisima, JJ., concur.
Narvasa, C.J., on leave.

[1] Rollo, p. 19.

[2] Ibid., p. 21.

[3] Ibid., p. 23.

[4] Ibid., p. 25.

[5] Ibid., p. 27.

[6] Rollo, pp. 103-105.

[7] Rollo, pp. 135-136.

[8] People vs. So, 247 SCRA 708; People vs. Godoy, 250 SCRA 676.

[9] People vs. Alban, 245 SCRA 549; People vs. So, 247 SCRA 708; People vs. Patamama, 250 SCRA 603.

[10] Pantranco North Express, Inc. vs. Court of Appeals, 224 SCRA 477.

[11] People vs. Sanchez, 213 SCRA 70.

[12] People vs. Manhuyod, Jr., G. R. No. 124676, 20 May 1998.

[13] Ibid.,

[14] Ibid.,

[15] 249 SCRA 54.

[16] At p. 103.

[17] *Del Mundo vs. Court of Appeals*, 240 SCRA 348.

[18] 253 SCRA 430.

[19] At pp. 438-439.

[20] *Sumalpong vs. Court of Appeals*, 268 SCRA 764.

Art. 2222, New Civil Code. The court may award nominal damages in every obligation arising from any source enumerated in Article 1157, x x x.

Art. 1157, New Civil Code. Obligations arise from: (1) Law; (2) Contracts; (3) Quasi-contracts; (4) Acts or omissions punished by law; and (5) Quasi-delicts.

And not to temperate or nominal damages since this kind of damages may be allowed only in certain classes of cases, without proof of actual or special damages, where the wrong done must in fact have caused actual damages to the plaintiff, though from the nature of the case, he cannot furnish independent, distinct proof thereof (15 Am Jue. 400). As provided in Art. 2224 of the Civil Code, temperate or moderate damages, which are more but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be provided with certainty. For instance, injury to one's commercial credit or to the goodwill of the business firm is often hard to show in terms of money (*Araneta vs. Bank of America*, 40 SCRA 144, 152).

In *People vs. Mario Padlan @ "Marcos," Romeo Magleo @ "Motmot," and Alfredo Magleo @ "Boy,"* G. R. No. 111263, 21 May (1998), the Court held: "[t]he award of P 100,00.00 for actual and temperate damages cannot be allowed. Damages cannot be both actual and temperate. Temperate or moderate damages are allowed because, while some pecuniary loss has been suffered, from the nature of the case its amount cannot be proved with certainty. This is not the case here. The trial court awarded the P 100,000.00 as temperate damages apparently because the prosecution failed to adduce proof of expenses in connection with the death, wake, or burial of Rodolfo and Mateo Manzon but not because from the nature of the case it was not possible to show with certainty the amount of the damage done. For the same reason, no award of actual damages can be made."

[21] Art. 2206, New Civil Code. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the accused was obliged to give support according to the provisions of article 291, the recipient who is not an heir called to the decedent's inheritance by law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

[22] Art. 2217, New Civil Code. Moral damages include physical suffering, mental anguish, fright, serious

anxiety besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

[23] Art. 2219, New Civil Code. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in article 309;
- (10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brother and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[24] See *Manzanares vs. Moreta*, 38 Phil. 829; 22 Am Jur 2d §2, p. 33.

[25] Art. 2216. No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case.

[26] ART. 100. Civil liability of a person guilty of felony. - Every person criminally liable for a felony is also civilly liable.

ART. 104. What is included in civil liability. - The civil liability established in article 100, 101, 102 and 103 of this Code includes:

1. Restitution;
2. Reparation of the damage caused;
3. Indemnification for consequential damages.

[27] Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

- (1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid., to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

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