

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANILO BALAMBAN Y ALCANTARA AND RUDY BALAMBAN, ACCUSED-APPELLANTS.

G.R. No. 119591. November 21, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is an appeal from the 22 December 1994 decision[1] of the Regional Trial Court of Virac, Catanduanes, Branch 43, in Criminal Case No. 1892, finding accused-appellants Danilo Balamban and Rudy Balamban guilty of the crime of murder and sentencing "both to suffer the penalty of reclusion perpetua; to indemnify the heirs of Sonny Solo in the amount of Fifty Thousand (P50,000.00) Pesos as moral damages and to pay the costs."

The Information, to which the accused-appellants entered a plea of not guilty upon arraignment,[2] reads as follows:

That on or about the 5th day of May, 1992 at around 11:30 o'clock [sic] in the morning in barangay Genetligan, municipality of Baras, province of Cantanduanes, Philippines, within the jurisdiction of the Honorable Court, the above named accused conspiring, confederating and mutually helping one another for a common purpose, did then and there, with malice aforethought, with evident premeditation, with cruelty and taking advantage of superior strength and with intent to take the life of SONNY SOLO, wilfully, unlawfully and feloniously attack and assault the latter with a knife and a piece of wood wounding him in different parts of his body, which wounds being necessity [sic] mortal, thereby causing the direct and immediate death of said Sonny Solo.[3]

At the trial on the merits, the prosecution presented as witnesses Nelly de los Reyes, SPO2 Venerando Tejada, SPO1 Rene Valeza, Dr. Loreto Rojas (Municipal Health Officer of Bato, Catanduanes), and Serafin Solo. The defense, on its part, presented the accused-appellants and Salvador Tawat as its witnesses.

The testimonies of the prosecution witnesses, save that of Rojas and Solo, were pieced together by the Office of the Solicitor General in its Brief for the Appellee, as follows:

In the morning of May 5, 1992, Sonny Solo was seated on one of the benches in the porch of the house of Nelly de los Reyes located at Barangay Genitligan, Municipality of Baras, Province of Catanduanes. He was then guarding the abaca hemp hanging on the clothesline in front of the De los Reyes house (pp. 9 and 28, tsn, De los Reyes, October 22, 1992).

At about 11:00 o'clock to 11:30 of that morning while Nelly and her sisters Josephine and Gloria were having lunch in their kitchen, appellants Danilo and Rudy Balamban, who were brothers, arrived and entered the De Los Reyes porch uninvited. They were drunk. Danilo sat on the bench facing Sonny Solo while Rudy sat on the right side of Sonny Solo. Danilo asked Sonny his name and place of origin. Sonny replied that he was from Manila and as a child he used to live in both Genitligan and Bato Catanduanes. (pp. 8-13, 15, 29-31, and 34-35, tsn, De los Reyes, October 22, 1992).

Apparently irked by Sonny Solo's answer, Danilo told him that he was a liar. Then, he challenged Sonny to a fight and ordered him to removed his wristwatch. Sonny Solo did not take up Danilo's challenge, telling the latter that he did not want to have enemies. Danilo stood up and struck Sonny thrice on the face with a twig. Rudy Balamban, for his part, punched Sonny on the jaw. (pp. 13-15, tsn, De los Reyes, October 22, 1992).

Sensing trouble, Nelly rushed out of the house towards the three and told them not to create trouble. She also held Danilo by his shirt in an attempt to pacify him. Danilo, however, pulled out a bolo and stabbed Nelly twice on the left arm. Because of this, Nelly released her hold on Danilo. (pp. 15-18 and 20, tsn, De los Reyes, October 22, 1992).

Sonny Solo ran for safety towards the sala of Nelly's house but he was caught and stabbed by Danilo. Though wounded, Sonny left the house and ran towards the road but appellants chased him there. (pp. 21-22, tsn, De los Reyes, October 22, 1992).

Danilo overtook Sonny Solo and the two grappled for possession of the bolo. Simultaneously, Rudy boxed Sonny incessantly hitting him on different parts of the body. When Rudy hit Sonny's jaw, the latter fell down on the ground face up and unconscious. (pp. 6-9 and 13, tsn, Tejada, November 16, 1992; pp. 18-21, Valeza, February 10, 1993).

Seeing Sonny flat on the ground, Danilo hacked him on the neck. (pp. 9-11, tsn, Tejada, November 16, 1992; pp. 9-10, tsn, Tejada, February 10, 1993; p. 21, tsn, Valeza, February 10, 1993).

Policemen [S]PO2 Venerando Tejada and SPO1 Rene Valeza, who were assigned at the Gigmoto Police Station, were then on board a passenger jeepney escorting COMELEC officials on their trip back to Gigmoto from Virac. As they passed by Genitligan, they spotted the three men quarelling on the road. [S]PO2 Tejada stopped the vehicle and went near the men who were grappling for possession of a bolo. The policemen saw how Danilo Balamban, using both hands, hack Sonny Solo on the neck. The blow almost severed Sonny Solo's head. (pp. 3-11, tsn, Tejada, November 16, 1992; p. 4, tsn, Tejada, February 10, 1993; pp. 16 and 18-21, tsn, Valeza, February 10, 1993).

After identifying themselves, the policemen ordered Danilo to drop the bolo. SPO1 Valeza also fired a warning shot. Danilo dropped the bolo but this was picked up by his brother Rudy who hacked Sonny again on the neck. Thereafter, Rudy dropped the bolo. (p. 17, tsn, Tejada, November 16, 1992; p. 9, tsn, Tejada, February 10, 1993; pp. 22-25, 31-33 and 36, tsn, Valeza, February 10, 1993).

Appellants were arrested and brought to the Gigomoto Police Station. (pp. 18-19, tsn, Tejada, November 16, 1992; p. 11, tsn, Tejada, February 10, 1993).[4]

Dr. Rojas conducted the autopsy on the cadaver of the victim, Sonny Solo, and prepared an Autopsy Report[5] where he entered the following post-mortem findings of five wounds, viz.:

Chopped wound, cervical region, whole

Perforating wound, diagonal directed upwards and laterally measuring 1 inch in length with clean cut borders and sharp edges, 6 inches from the median line and 7 inches below nipple, left

Cut wounds, 3 inches in length with clean cut borders and sharpened [sic] edges, 1 inch below superior iliac spine, right.

Cut wound with clean cut borders, sharpened [sic] edges, 1 inch in length, 1 inch below inferior border of scapula, left

Superficial cut wound 2 inches in length 1 inch below cheek bone.

He determined the cause of the death of Sonny Solo to be "[h]emorrhage, massive secondary to perforating and

chopped wounds."[6]

Elaborating on the wounds, Dr. Rojas declared that the chopped wound (first wound) cut the whole neck, leaving uncut only two inches of skin;[7] the perforating wound (second wound), caused by a double-bladed sharp pointed weapon, reached and wounded the lungs;[8] the third and fourth wounds, both superficial, terminated at the hip bone[9] and penetrated the cellular tissue,[10] respectively; while the fifth wound was also superficial.[11] The second, third, fourth, and fifth wounds could have been caused by the same weapon.[12] Dr. Rojas further declared that the wound on the neck could have been caused by two blows because it was not a "clean cut" wound, but "staggered" or with "rough edges" or with "irregularities." [13]

Dr. Rojas also issued the death certificate of Sonny Solo.[14]

Serafin Solo, father of the victim Sonny Solo, declared that due to the death of the latter, he spent P1,200.00 for the embalment;[15] P1,000.00 for the tomb;[16] P2,000.00 for meals and drinks during the wake; P3,000.00 for the funeral, and P6,000.00 for the coffin.[17] For the last day of the 9-day novena, he further spent P2,000.00 for the pig; P2,050.00 for drinks; and P450.00 for rice. He prayed for P50,000.00 as actual damages for the death of his son; P50,000.00 for moral damages for his endless loneliness and mental anguish; and P10,000.00 for attorney's fees.[18]

Accused-appellant Danilo Balamban, on the other hand, claimed self-defense, while accused-appellant Rudy Balamban relied on denial and alibi. The trial court summarized their version of the incident in this wise:

Danilo Balamban on the other hand testified that he was in Genitligan, Baras, Catanduanes on May 5, 1992 as he attended the wedding of his cousin Zenaida at about 11:00 in the morning of that day, he decided to fetch his friend Dominador de los Reyes from their house to get the fish trap that they put in the sea the day before. When he passed by the house of Nelly de los Reyes, she saw her and Sonny Solo seated on the bench. He greeted them both and he kept on walking. When he walked a few meters from the house of Nelly, he heard a whistle and when he turned, he signalled to Nelly and Sonny if he was the one being whistled at. Sonny Solo said yes and he returned to them. When he inquired why they wanted him near them, Sonny Solo asked for his earring that was clipped to his earlobe. He refused and stood up to leave but he was held by the shirt by Sonny Solo [who] stabbed him with a knife with jagged edge. He was hit on the left arm wrist but he was able to free himself from the hold of Sonny Solo but the latter rushed to him and stabbed him the second time hitting him on the right forearm. He stepped back towards the street and again Sonny stabbed him on the cheek. Nelly de los Reyes pacified Sonny Solo by embracing him but the latter was able to free himself and this time, Nelly ran to him and embraced him from behind at the same time signalling with her left arm for Sonny not to get near them. Sonny Solo got near them and stabbed him but he was able to evade the blow and instead hit the left arm of Nelly de los Reyes and the knife got stuck in the arm of Nelly. Sonny Solo who was now unarmed ran towards the house of Jesus Piano and he pulled out the knife from the arm of Nelly who was already weak and unconscious. When Sonny Solo emerged from the house of Jesus Piano he was already armed with a long bolo or "minasbad" and again rushed towards him and hacked him with that bolo but missed. He again stepped backward but again was hacked by Sonny hitting him on the head.

For the third time he was hacked again hitting him on his left ear. But this time he was able to embrace Sonny Solo and stabbed him several times and the knife also got stuck in his body. He was able to take hold of Sonny's hand with the bolo and tightened his grip on it and both of them fell to the ground and in that position he was able to slash the neck of Sonny Solo with the bolo. He dropped it near the body of Sonny Solo and sat on the ground five meters away from him. Nelly de los Reyes also at the other side of the road sitting on the ground. His brother Rudy arrived and helped him in getting up and luckily for them a jeep passed by with two policemen who were the witnesses for the prosecution and they were brought to the Gigmoto Police Station and to the hospital where he was treated for his wounds.

Rudy Balamban, one of the accused also testified that while he was at the wedding reception of his cousin Zenaida on May 5, 1992, at about 11:30 in the morning, he heard from among the guest that a certain Danilo Balamban was stabbed at Napo, Genitlilgan, Baras, Catanduanes. Thinking that there is nobody named Danilo Balamban in their place except his brother and co-accused, he ran towards Napo. While on his way, he met Salvador Tawat who informed him that his brother Danilo was stabbed in Napo and without delay, he rushed towards Napo. When he reached the place, he saw his brother Danilo wounded, a body of the dead man lying on the ground and Nelly de los Reyes sitting beside the road who appeared to be so weak. Seeing his brother wounded, he helped him in getting up and brought him at the center of the road. He flagged down the jeep and when Venerado Tejada, a policeman from Gigmoto alighted from the jeep, the policeman fired two warning shots. He then requested the policeman to help his brother who was wounded and they were told to ride in the jeep and brought them to Gigmoto Hospital where his brother was treated of his wounds. He was then brought to Gigmoto jail where he was detained. He denied having hacked Sonny Solo neither his presence at the crime scene when his brother Danilo hacked the neck of Sonny.[19]

Defense witness Salvador Tawat corroborated the material points of the accused-appellants' testimonies.

In its decision of 22 December 1994,[20] the trial court gave full faith and credence to the version of the prosecution because it found the testimonies of its witnesses "consistent and devoid of any inconsistencies," "clear and convincing," and "not motivated by any ill motive or grudge against both accused."

It rejected the testimonies of the accused-appellants and Salvador Tawat for being "marred with inconsistencies." It also found itself unable to accept their version in light of the absence of any ill-motive as to why Nelly de los Reyes, SPO2 tejada, and SPO1 Valeza would falsely testify against them.

The trial court ruled that the crime committed was murder because of the qualifying circumstance of treachery, since they attacked Sonny Solo while the latter was sitting with no inkling whatsoever that he would be attacked.[21]

Unsatisfied, the accused-appellants appealed to us. In their Appellants' Brief, they urge us to acquit them because the trial court committed the following errors:

- I. IN SWEEPINGLY REJECTING THE VERSION OF THE ACCUSED-APPELLANTS;
- II. IN REJECTING THE TESTIMONIES OF THE ACCUSED-APPELLANTS AND THEIR WITNESSES SALVADOR TAWAT AND MEDICAL CERTIFICATE ISSUED BY DR. RICARDO S. LOSANO, SR.;
- III. IN FINDING THAT THE ACCUSED-APPELLANTS ACTED IN CONSPIRACY OR IN CONCERT IN THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE;
- IV. IN CONVICTING THE ACCUSED-APPELLANTS OF MURDER;
- V. IN NOT FINDING THAT THE GUILT OF THE ACCUSED-APPELLANTS HAS BEEN PROVED [sic] BEYOND REASONABLE DOUBT.

In the first and second assigned errors which are jointly discussed, the accused-appellants vehemently disagree with the trial court's finding that their version of the incident was marred by inconsistencies. They maintain that the deceased Sonny Solo was the unlawful aggressor and that Danilo Balamban did not provide sufficient provocation. Accused-appellant Rudy Balamban also claims that it was absolutely untrue that he likewise hacked Sonny Solo. Finally, they contend that the testimonies of policemen Valeza and Tejada on the role of Rudy are "at war with each other," with Tejada's testimony as "more in keeping with the truth and natural course of things as it would be inconceivable for Rudy to still pick up bolo when there were two policemen already."

The third assigned error is premised on the accused-appellants' insistence that Rudy Balamban did not hack the

victim. Accordingly, the prosecution's theory -- that he hacked the victim after picking up the bolo Danilo had dropped -- is untenable in light of Venerando Tejada's testimony that Rudy "kept distance" when Danilo hacked Sonny Solo and that the latter suffered only one hack wound on the neck. Moreover, Rudy went to the scene of the crime only after having been informed by Salvador Tawat that Danilo was stabbed.

As to the fourth and fifth assigned errors which they discuss together, the accused-appellants have nothing substantial to add except to reiterate their claim that their evidence is more credible and should be given full faith. At bottom, they want this Court to believe that Danilo acted in complete self-defense and that Rudy was not present during the incident.

The Office of the Solicitor General is not persuaded. In its Brief for the Appellee, it characterizes as "bereft of merit," "specious," and "devoid of merit," respectively, the accused-appellants' arguments in support of the first and second assigned errors, the third assigned error as to the claim that the deceased sustained only one wound, and of the fourth and fifth assigned errors. It submits that the judgment appealed from is in accordance with law and the evidence and prays for its affirmance in toto.

The accused-appellants did not file a Reply Brief.

In essence, at issue is the credibility of the witnesses of the parties. On this score, it is doctrinally settled that appellate courts will generally not disturb the findings of the trial court because of the latter's distinct advantage of having heard the witnesses themselves and observed their deportment and manner of testifying or conduct and behavior during the trial.[22] The recognized exceptions to this rule are where the record shows that facts and circumstances of weight and influence have been overlooked, misunderstood or misapplied by the trial court which, if considered, would have affected the result of the case;[23] and when such findings are arbitrary.[24] We find no room to apply any of the exceptions.

The issues raised before us are no longer formidable in view of the admission of accused-appellant Danilo Balamban that he killed Sonny Solo in complete self-defense and the defense of alibi by accused-appellant Rudy Balamban.

This Court has been unbending in its rule that where the accused admits to the killing of the victim but invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that he indeed acted in defense of himself. As the burden of the evidence is thus shifted to him, he must rely on the strength of his evidence and not on the weakness of that of the prosecution, for even if the latter were weak, it would not be disbelieved after his open admission of responsibility for the killing.[25] The evidence required of him must prove with certainty the elements of self-defense and must exclude any vestige of criminal aggression on his part.[26]

The elements or requisites of self-defense as a justifying circumstance are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[27] Accused-appellant Danilo Balamban miserably failed to prove these elements. On the contrary, the overwhelming evidence provided by the testimonies of Nelly de los Reyes and police officers Tejada and Valeza, which the trial court gave full credence to, established that the accused-appellants were the aggressors. Strengthening further this finding is the physical evidence consisting of the number and nature of the injuries sustained by Sonny Solo as against the superficial injuries sustained by Danilo, which were most likely inflicted when the deceased grappled for possession of Danilo's bolo; and the absolute absence of any improper or ulterior motive which could have induced the said witnesses to testify falsely against the accused-appellants.[28]

Unlawful aggression on the part of Sonny Solo being absent, the plea of self-defense, complete or incomplete,

cannot prosper. Unlawful aggression is a condition sine qua non to a successful invocation of self-defense.[29]

The defense of alibi interposed by accused-appellant Rudy Balamban must also fail. He was positively identified by prosecution witnesses Nelly de los Reyes and police officers Tejada and Valeza. His presence from the commencement to the end of the incident and the details of his personal acts were convincingly testified to by De los Reyes and Valeza. It is settled that alibi is the weakest of all defenses for it is easy to fabricate and difficult to disprove; it cannot prevail and is worthless in the face of the positive identification of the accused by credible witnesses that the accused committed the crime.[30] Moreover, he failed to show that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[31]

We are not persuaded by the contention of accused-appellant Rudy Balamban that it was "inconceivable" that he picked up the bolo then hacked Sonny Solo's neck, since only one wound was found on the neck of the latter. What is clear is that nothing could have prevented him from picking up the bolo; moreover, the series of previous acts committed by him and Danilo showed a manifest intent to kill Sonny Solo.

Neither is there merit to the claim of the alleged inconsistency between the testimonies of police officers Tejada and Valeza as to Rudy Balamban picking up the bolo. This claim is based on the accused-appellants' perception that contrary to Valeza's positive testimony on this point, Tejada did not so testify. The assertion is baseless. At no time did Tejada categorically declare that Rudy did not pick up the bolo and hack the neck of Sonny Solo with it. Tejada was in no position to see what Rudy did after Danilo dropped the bolo because Tejada immediately faced the onlookers to prevent them from coming near, with his face toward Sonny Solo and the accused-appellants. It was at that precise moment when Rudy suddenly picked up the bolo and it was Valeza who witnessed it, not Tejada.

The testimony of Dr. Rojas belies the claim of the accused-appellants that only one wound was inflicted on Sonny Solo's neck. Dr. Rojas declared that the "chopped wound, cervical region, whole," or the wound on the neck, was actually caused by two blows. This is unmistakably borne out from his answers to the questions of the trial court, thus:

COURT:

Q

By the way, that particular wound on the neck of the victim, was it by single blow of bladed instrument?

A

Staggered because it was not a so clean cut.

Q

There are some rough edges?

A

Yes, sir.

Q

So it was possible that it's more than one blow to inflict the neck?

A

Yes, sir.

Q

About how many blows?

A

Possible two (2).[32]

And on re-direct, thus:

ATTY. ATENCIA:

Q

But there could have been only one blow?

A

It is hardly possible.[33]

x x x

Q

I am asking you one question, to hit the neck exactly the same wound with two blows would it be possible?

A

That is why there was irregularity.[34]

Counsel for the accused, who earlier admitted the competence of Dr. Rojas,[35] only helped strengthen the above testimony of Dr. Rojas when, after the latter had answered the trial court that two blows could have caused the chopped wound, Atty. Concepcion ended his cross-examination of Dr. Rojas with the following exchange.

Q

Because of the rough edges of the wound on the neck?

A

Yes, sir.[36]

Besides, even if it be granted for the sake of argument that accused-appellant Rudy Balamban did not hack nor chop the neck of Sonny Solo, he would still be equally liable with accused-appellant Danilo Balamban because of conspiracy which the evidence for the prosecution established with moral certainty. Uninvited, both came to the porch of the house of Nelly de los Reyes. Both attacked Sonny, with Danilo striking the face of the latter with a twig, and Rudy punching Sonny on the jaw. When Sonny ran for safety toward the road after he was stabbed by Danilo in the sala of Nelly's house, both accused-appellants, with Danilo armed with a bolo, chased Sonny. When they overtook Sonny and the latter grappled for the bolo, Rudy punched Sonny, knocking him to the ground, unconscious. With the bolo, Danilo hacked Sonny on the neck. All these acts shows beyond cavil a common plan, purpose or design to commit a crime; coupled with the fact that both accused-appellants stayed together from the commencement to the end of the incident and their simultaneous performance of separate acts, evinced a unity of mind to consummate the crime planned to be committed. The accused-appellants then cannot escape the full force of the rule that where conspiracy is established, the act of one is the act of all.[37]

Upon the evidence, our minds are free from any doubt that the accused-appellants killed Sonny Solo and that the killing was committed with treachery; hence, they are guilty of murder as charged.

The critical point of inquiry to sustain a finding of treachery is not the initial attack or assault, which the trial court utilized as basis, but the final phase, i.e., when the accused-appellants overtook Sonny Solo after he fled for safety. The victim grappled for the bolo of accused-appellant Danilo Balamban when accused-appellant Rudy Balamban punched Sonny on the jaw which knocked Sonny to the ground, unconscious. As the latter lay on the ground, accused-appellant Danilo Balamban hacked the neck of Sonny with his bolo. Policemen Tejada and Valeza, who happened to pass by, witnessed this incident. After identifying themselves as policemen, Tejada ordered Danilo to drop his bolo, which he did. But then, while Tejada was facing a group of onlookers with his back toward the victim and Danilo, accused-appellant Rudy Balamban picked up the bolo, and with it, hacked the neck of Sonny Solo. Indisputably, Danilo and Rudy attacked Sonny with treachery because the latter, then unconscious and lying on the ground and armless, was in no position to offer any defense to ward off the attack nor provide a semblance of risk to the life or limb of the attackers. In short, the accused-appellants employed means or methods in the execution of the crime which tended directly and specially to insure its execution without risk to themselves arising from the defense which the offended party might make. All the requisites of treachery as defined in paragraph 16, Article 14 of the Revised Penal Code were thus present.

The penalty imposed for murder at that time was reclusion temporal in its maximum period to death.[38] Since neither mitigating nor aggravating circumstances were proved, the imposable penalty should be the medium period of the prescribed penalty,[39] which, in this case, is reclusion perpetua. The trial court was then correct in imposing the penalty. It erred, however, in awarding indemnity of P50,000.00 as "moral damages." Current jurisprudence fixes P50,000.00 as indemnity for the death of the victim, and not as moral damages. The indemnity is covered by Article 2206 of the Civil Code under the Chapter on "Actual and Compensatory Damages,"[40] while moral damages fall under the Chapter on "Other Damages"[41] of the Civil Code. The award of moral damages in criminal cases is governed by Article 2219 in relation to Article 2217[42] and Article 2206(3) of said Code.

Since in this case there was, in fact, proof of moral damages on the basis of the testimony of Serafin Solo, the father of the victim, a separate award for moral damages, which is hereby fixed at P10,000.00, is warranted.

There is a preponderance of un rebutted evidence that Serafin Solo incurred the aggregate sum of P15,700.00 for the embalment of the cadaver of Sonny Solo, for the tomb, coffin, funeral, food and drinks during the wake and the last day of the novena; as well as P10,000.00 as attorney's fees paid to the private prosecutor. The accused-appellants should be made to reimburse these.

WHEREFORE, finding the appealed judgment of conviction in Criminal Case No. 1892 of the Regional Trial Court of Virac, Catanduanes, Branch 43, to be in accordance with the facts and applicable law and jurisprudence, the same is hereby AFFIRMED, subject to the following modifications: (a) the award of P50,000.00 shall be deemed as indemnity only for the death of Sonny Solo; and (b) the accused-appellants are further ordered to pay, jointly and severally, the heirs of Sonny Solo the sums of P15,700.00 as actual damages incurred in connection with the death of Sonny Solo, the sum of P10,000.00 as moral damages, and the sum of P10,000.00 as attorney's fees.

Cost against the accused-appellants.

SO ORDERED.

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

[1] Original Record (OR), 185-197; Rollo, 14-26. Per Judge Nilo B. Barsaga.

[2] Rollo, 34.

[3] OR, 1.

[4] Brief for the Plaintiff-Appellee, 3-7; Rollo, 83.

[5] Exhibit "B"; Rollo, 8.

[6] Id.

[7] TSN, 17 August 1992, 8-9.

[8] Id., 11.

[9] Id., 12.

[10] Id., 13.

[11] Id., 15.

[12] Id.

[13] Id., 19-22.

[14] Exhibit "A"; OR, 7.

[15] Exhibit "H."

[16] Exhibit "I."

[17] Exhibit "K."

[18] Exhibits "J," "J-1" to "J-7," inclusive.

[19] OR, 185-197; Rollo, 14-26.

[20] Supra note 1.

[21] OR, 196; Rollo, 25, citing *People vs. Lao*, 204 SCRA 337 [1991].

[22] *People vs. Kyamko*, 222 SCRA 183, 190-191 [1993]; *People vs. Marcelo*, 223 SCRA 24, 33 [1993].

[23] *People vs. Pascual*, 208 SCRA 393, 399 [1992]; *People vs. Florida*, 214 SCRA 227, 236 [1992].

[24] *People vs. Quejada*, 223 SCRA 77, 86 [1993].

[25] *People vs. Boniao*, 217 SCRA 653, 665-666 [1993]; *People vs. Gomez*, 235 SCRA 444, 451 [1994].

[26] *People vs. Ybeas*, 213 SCRA 793, 801 [1992].

[27] Article 11(1), Revised Penal Code; *People vs. Boniao*, supra note 25; *People vs. Gomez*, supra note 25; *People vs. Ybeas*, supra note 26.

[28] It is settled that where there is no evidence and nothing to indicate that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit (*People vs. Simon*, 209 SCRA 148, 159 [1992]; *People vs. Pama*, 216 SCRA 385, 399-400 [1992]; *People vs. Taneo*, 218 SCRA 494, 509 [1993]).

[29] *People vs. Boniao*, supra note 25, 668-669.

[30] *People vs. Lee*, 204 SCRA 900, 910 [1991]; *People vs. Buka*, 205 SCRA 567, 584 [1992]; *People vs. Devaras*, 205 SCRA 676, 692 [1992].

[31] *People vs. Penillos*, 205 SCRA 546, 560 [1992]; *People vs. Casinillo*, 213 SCRA 777, 791 [1992]; *People vs. Florida*, *supra* note 23, 239.

[32] TSN, 17 August 1992, 19.

[33] *Id.*, 21.

[34] TSN, 17 August 1992, 22.

[35] *Id.*, 4.

[36] *Id.*, 20.

[37] *People vs. Pama*, *supra* note 28, 401; *People vs. Rostata*, 218 SCRA 657, 678 [1993]; *People vs. Canillo*, 236 SCRA 22, 41-42 [1994].

[38] Article 248, Revised Penal Code. The death penalty could not, however, be imposed in view of the constitutional prohibition provided for in Section 19(1), Article III of the Constitution. The death penalty was re-imposed by R.A. No. 7659, which took effect on 31 December 1993.

[39] Article 64(1), Revised Penal Code.

[40] Chapter 2, Title XVIII, Book IV, Civil Code.

[41] Chapter 3, Section 1, *Id.*

[42] It pertinently provides:

ART. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury"

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