

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RONNIE P. REYES AND NESTOR I. PAGAL, ACCUSED-APPELLANTS.

G.R. No. 120642. July 02, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the Decision of the Regional Trial Court of Santiago City, Branch 21, in Criminal Case No. 21-1432,[1] sentencing appellants Ronnie Reyes and Nestor Pagal to suffer penalty of reclusion perpetua for the special complex crime of robbery in band with homicide.

The conviction of the two appellants stemmed from an information reading as follows:

That on or about the 30th day of December, 1992, in the municipality of Cordon, province of Isabela, Philippines and within the jurisdiction of this Honorable Court, the said accused, together with John Doe, Peter Doe and Ricardo Doe, whose identities are still to be determined, conspiring, confederating together and helping one another, all armed with different kinds of firearms, did then and there, willfully, unlawfully and feloniously with intent to gain and by means of violence and intimidation against person, take, steal and carry away one (1) unit chainsaw valued at P20,000.00 and two (2) cavans of palay valued at P400.00 all with a total value of P20,400.00 and all belonging to Spouses Alfredo Macadaeg and Felicidad David against their will and consent to the damage and prejudice of the said owners in the aforesaid total amount of P20,400.00, that on the occasion of the said Robbery and for the purpose of enabling them to take, steal and carry away the said items, the herein accused, in pursuance of their conspiracy, did then and there willfully, unlawfully and feloniously, with intent to kill, assault, attack and shoot the said Alfredo Macadaeg, inflicting upon him a gunshot wound on the chest and on the left wrist which directly caused his death.

CONTRARY TO LAW.[2]

At their arraignment, appellants pleaded not guilty to the offense charged.[3] On the other hand, the appellants' three unidentified co-accused have remained at large. Trial on the merits ensued with the prosecution presenting three witnesses, namely: Felicidad David Macadaeg, Reynaldo Macadaeg and PO3 Jimmy Cabalo. The testimonies of said prosecution witnesses may be summed as follows:

At around 6 o'clock in the evening of December 30, 1992, Alfredo Macadaeg and his wife, Felicidad, were sitting in the kitchen at the first floor of their two-storey house in Wigan, Cordon, Isabela. Their children, 14-year-old[4] Reynaldo and his younger siblings named Juanito, Danilo and Marilyn, were at the second floor of their house. As Felicidad arose to prepare dinner, she heard gunfire and saw Alfredo fall to the ground. She rushed to embrace the bleeding Alfredo who then told her that he had been shot. Felicidad shouted for her children, then fainted.

Alarmed by the bursts of gunfire, the children rushed downstairs and saw their bloodied father lying on the floor beside their unconscious mother. Seconds later, Felicidad regained consciousness and told the children that their father was already dead.

Reynaldo was about to call for help when four men suddenly barged in. Felicidad recognized one of them as

appellant Ronnie Reyes while Reynaldo identified another as appellant Nestor Pagal. Reyes aimed his gun at Felicidad, who was still clutching her husband's lifeless body, while appellant Pagal pointed his gun at Reynaldo who was by the door about eight (8) meters away from his mother. The two other men asked for the chainsaw, and when she replied it was not in their house, they threatened to kill the family if they find it.

The two unidentified men then proceeded upstairs where they found the chainsaw. They passed it on to another companion who was outside the house serving as a lookout. They then ransacked the house and took the two sacks of palay below the stairs. The five men then left bringing with them the chainsaw and the two sacks of palay.

Certain that all the five men were gone, Felicidad instructed her son, Juanito, to seek help from Barangay Captain Jomer Hoggang (Huggang). Upon reaching the Macadaeg household, Hoggang saw the lifeless body of Alfredo on the ground. He promptly reported the incident to the police at Cordon, Isabela.[5]

PO3 Jimmy Cabalo, of the PNP, Cordon, Isabela, who received the report, immediately went with other policemen to the crime scene, arriving thereat at around 9:00 o'clock that same evening. They saw the victim sprawled on the kitchen floor. They interviewed the victim's family and learned that someone from the outside shot the victim; that two of the assailants entered the house and took a chainsaw and two cavans of palay. The Macadaegs, who all appeared frightened at that time, failed to identify the assailants that night.[6]

It was only thirteen days after the killing of her husband that Felicidad and her son went to the police station to execute sworn statements identifying Reyes and Pagal as the perpetrators of the crime. The corresponding complaint was filed before the municipal trial court. A warrant of arrest was subsequently issued and served on appellants Reyes and Pagal.

According to Felicidad, she and her son Reynaldo were familiar with the appellants because they would frequent the Macadaeg household whenever Alfredo operated their chainsaw. Appellant Reyes was also the godfather of Felicidad's youngest child, Marilyn. Reynaldo recalled that two days before his father was killed appellant Pagal went to their house to invite their father to a chainsaw operation.

Both accused interposed the defense of alibi.

Testifying in his own defense, appellant Reyes said that he resided at Wigan, Cordon, Isabela from 1983 up to 1989. He knew the Macadaeg spouses because he stood as godfather to their youngest child, Marilyn. For about six months, he frequented the Macadaeg's house every time Alfredo sought his help in operating their chainsaw. He, however, moved to San Benigno, Aglipay, Quirino where he had resided since 1989.

In the morning of December 30, 1992, appellant Reyes went to the house of Barangay Councilor Tirso Manganawi in San Benigno. He butchered and cooked a dog for the birthday celebration of Manganawi's son. They all had lunch at around 1:00 o'clock in the afternoon and started drinking liquor at 3 o'clock.[7]

Appellant Reyes denied having known appellant Pagal and claimed that they only met at the municipal jail of Cordon when they were both detained. He surmised that his past criminal record and the fact that he was also a chainsaw operator were the reasons why the Macadaegs implicated him in the killing of Alfredo.[8] Reyes presented Tirso Manganawi and Agustin Buya to corroborate his defense of alibi.

For his part, appellant Pagal testified that from 1985 to 1991, he and his family had resided in Wigan, Cordon, Isabela where he worked as a farmer. His house was about a kilometer away from the Macadaegs' residence. Sometime in 1991, in his desire to own a farm, he and his family relocated to Calimutoc, Nayon Lamut, Ifugao. From that time on, he never visited Wigan.[9]

Pagal claimed that at 2 o'clock in the afternoon of December 30, 1992, he was at the church in Calimutoc, Nayan attending the general rehearsal for a skit that was to be presented that evening. He was then with Peter Lunag, Alfredo de Guzman and Joseph Pagal. He attended mass at 7:30 in the evening and the Christmas program that started at 8 o'clock in the evening and ended at midnight.[10]

It was only on March 5, 1993, that he and his family returned to Wigan to harvest some produce from his farm. It was also on that day that he was arrested and implicated in the robbery with homicide case. He did not personally know appellant Reyes, although he had occasionally seen him when he (appellant Pagal) was still residing in Wigan. The next time they met again was at the municipal jail of Cordon.[11]

Agustin Lunag, the husband of the pastora of the Pentecostal Church in Calimutoc corroborated Pagal's alibi.[12]

On December 8, 1994, the trial court rendered the questioned Decision convicting appellants of the crime of robbery in band with homicide as follows:

WHEREFORE, in the light of the foregoing considerations the Court finds the accused Ronnie Reyes and Nestor Pagal GUILTY beyond reasonable doubt of the crime of robbery in band with homicide and hereby sentences each of them to the penalty of reclusion perpetua. They are also ordered to pay, jointly and severally, to the heirs of Alfredo Macadaeg the sums of Fifty Thousand Pesos (P50,000.00) representing death indemnity. Thirty Thousand Four Hundred Pesos (P30,400.00) as actual damages and Five Hundred Thousand Pesos (P500,000.00) as compensatory damages.

SO ORDERED.[13]

Thus the appeal before this Court, appellants raising the following assignment of errors:

I

THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES FELICIDAD MACADAEG AND REYNALDO MACADAEG AND IN DISREGARDING THE THEORY OF THE DEFENSE.

II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME OF ROBBERY IN BAND WITH HOMICIDE DESPITE THE INSUFFICIENCY OF THE EVIDENCE FOR THE PROSECUTION THAT WOULD WARRANT A CONVICTION BEYOND REASONABLE DOUBT.[14]

Considering the contradictory facts presented in evidence by the prosecution and the defense, the fundamental issue that must be addressed in this appeal is that of credibility of witnesses.

As this Court has invariably held, the opinion of the trial court as to which version of the commission of the crime should be believed is entitled to great respect. The oft-repeated rationale born of judicial experience is that the trial judge who heard the witnesses testify and had the occasion to observe their demeanor on the stand was in a vantage position to determine who of the witnesses deserve credence.[15] A close examination of the records reveals no justification to depart from the trial court's findings on the issue of credibility.

Appellants assert that the trial court erroneously relied on the testimonies of Felicidad and Reynaldo Macadaeg and that the Macadaegs belated identification of the appellants as the malefactors casts doubt as to the veracity of their accusation.

This assertion is unmeritorious.

Failure to immediately reveal the identities of the perpetrators of a crime does not affect, much less impair, the credibility of witnesses, more so if such delay has been adequately explained.[16] In this case, Felicidad and Reynaldo Macadaeg satisfactorily explained why they were not able to disclose appellants' identities to the authorities on the night of the crime. Felicidad was still in shock when the barangay captain and the police arrived. Thus, on cross-examination, she testified as follows:

Q - Did you tell Captain Huggang the identity of the persons who entered your house?

A - No, sir.

Q - Are you sure of that?

A - Yes, sir.

Q - Did you also tell the policemen the identity of the persons when they came that evening of December 30, 1992?

A - I did not tell them yet because I cannot remember it, sir.

Q - What can you not remember, you cannot remember their names?

A - I don't know that I am telling about yet, sir.

Q - You did not know what you are talking about them (sic) because you are not sure of their identity?

A - I know their identity, sir.

Q - But then you forgot to tell the policemen did they not ask you?

A - They did not ask me yet, sir.

Q - Even the Barangay Captain Huggang did not inquire from you the identity of the persons who entered your house?

A - No, sir.

Q - Are you sure that the policemen did not ask you the identity of the persons who went to your house?

A - Yes, sir.[17] (Underscoring supplied).

In sizing up Felicidad as a witness, the trial court said that:

x x x [t]here are portions in the testimony of Felicidad Macadaeg which seem to give rise to the idea that she could not identify the accused. But those were the result of a misappreciation of the question. The Court observed that she could not easily grasp questions which were framed in a complicated way because she did

not seem very bright.[18]

Felicidad's state of mind and inability to answer directly the questions of the authorities after the commission of the crime was even observed by the investigating policeman, PO3 Jimmy Cabalo, who testified:

Q -

On the night when you conducted the investigation, did you come to know already the identity of the person who shot the victim?

A -

They were not able to tell us the identity of those persons who entered the house because they appeared to be frightened at that time, sir.

Q -

After that investigation you conducted right in the scene of the crime, what happened next in connection with his case?

A -

Not long after that they came to our office and told us that they will reveal the person who shot the victim.[19] TSN, December 3, 1993, pp. 8-9.19 (Underscoring supplied.)

The trial court noted Barangay Captain Hoggang's testimony that Felicidad was hysterical when he arrived at the crime scene, to wit:

x x x. With the shock caused by the killing of her husband and the threats to her life it is no wonder that Felicidad Macadaeg could not talk much about what happened and the police or Barangay Captain Hoggang or the people there certainly did not have the heart to interrogate her about what happened. Apparently the only question asked was who shot her husband to which she answered she does not know. This is true because she really does not know as she did not see because the shot came from outside while she and her husband were inside the house. It is therefore understandable why Felicidad Macadaeg did not identify the two accused immediately after the crime. She was in a state of shock, hysterical and frightened. x x x.[20]

Reynaldo Macadaeg was apparently also in shock as a result of the mortal assault on his father which explains why he was initially unable to reveal to the authorities the identity of appellants:

Q -

You stated that Barangay Captain Hoggang came to your house when he was called by your brother Juanito that your father was shot, is that correct?

A -

Yes, sir.

Q -

When Barangay Captain Hoggant (sic) came to your house, did you tell him that Nestor Pagal was one of the persons who entered your house?

A -

No, sir.

Q -

Why?

A -

I did not tell him because I was then crying that time, sir.[21] (Underscoring supplied.)

The emotional state of Reynaldo was not unnatural. Witnessing a crime is an unusual experience that elicits different reactions from witnesses for which no clear-cut standard form of behavior can be drawn.[22] A witness who is related to a victim is traumatized by the startling incident much more than it would a witness who is not bound by kinship with the victim.[23]

Appellants likewise contend that Reynaldo could not have been able to identify appellant Reyes because he was eight meters away from his mother. This claim is inutile in face of the fact that appellant Reyes was known to the Macadaeg family before the crime transpired. We stated in one case that "once a person has gained familiarity with one another, identification becomes quite an easy task even from a considerable distance." [24]

The Macadaeg's familiarity with appellant Reyes, who not only worked with the victim in his chainsaw operation but was the godfather the Macadaeg's youngest child, remains un rebutted.[25] On the part of appellant Pagal, while he was not as familiar to Felicidad as appellant Reyes, Reynaldo had known him for two years as he used to see appellant Pagal go to their house almost twice a month. Two days before the incident, appellant Pagal even invited Alfredo to a chainsaw operation.

The ill-motive imputed by appellants upon Felicidad and Reynaldo for testifying against them hardly merits credence and further discussion. Suffice it to say that no person in his right mind would implicate another person in such a heinous crime as robbery with homicide simply because the accused had a criminal record or that he was operating a chainsaw that was the object of the robbery.[26] Neither would anyone accuse another person of a grave crime just because someone else, whose identity was not revealed, had told the former to point at the accused as the perpetrator of the crime.[27] There being no showing of improper motive on the part of Felicidad and Reynaldo for identifying the accused as the perpetrators of the crime, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.[28] It would not be amiss to add that it is unnatural for relatives of the victim, in this case witnesses Felicidad and Reynaldo, who are interested in vindicating the crime to accuse anyone other than the real culprits.[29]

The witnesses having possibly identified the appellants, the latter's defense of alibi cannot hold water. No jurisprudence in criminal cases is more settled than the rule that alibi is the weakest of all defenses, and the same should be rejected when the identity of the accused has been sufficiently and positively established by eyewitnesses to the crime.[30]

In a last ditch effort to exonerate themselves, appellants point to inconsistencies in Reynaldo's testimony. They stressed that while Reynaldo testified that he saw appellant Reyes point a gun at his mother,[31] in his affidavit, Reynaldo stated that it was Felicidad who identified appellant Reyes as one of the culprits.[32] In the same breath, appellants claim that Felicidad's testimony is inconsistent with that of Reynaldo. Felicidad testified that Reynaldo was near the door of the kitchen about eight meters away from her while Reynaldo declared that his mother was only a few feet away from him.[33]

We find the inconsistencies to be too trivial as to affect the credibility of Felicidad and Reynaldo. The

inconsistencies in fact indicate the truth. Slight contradictions even serve to strengthen the sincerity of witnesses and prove that their testimonies were not rehearsed.[34] In fact, the trial court observed that Felicidad and Reynaldo were confident in their identification of appellants.[35] With respect to the alleged inconsistencies between Reynaldo's testimony and his affidavit, this Court has held a number of times that affidavits are generally incomplete[36]and, having been taken ex-parte, are generally considered to be inferior to testimony given in open court.[37]

Pursuant to the information, the trial court found appellants guilty beyond reasonable doubt of "robbery in band with homicide". This, however, is an erroneous denomination of the crime committed by the appellants as there is no crime of robbery in band with homicide. In *People v. Apduhan, Jr.*, the Court held that if robbery with homicide is committed by a band, the indictable offense would still be denominated as "robbery with homicide" under Article 294(1) of the Revised Penal Code. The element of band[38] would be appreciated as an ordinary aggravating circumstance.[39]

More important, a careful examination of the evidence would reveal that the prosecution failed to establish the aggravating circumstance of band. Reynaldo testified that only two of the group, appellants Reyes and Pagal, were armed with guns. Thus:

ATTY. CHANGELE:

Four (4) persons and one of the four (4) persons poked a gun at you?

A - Yes, sir.

Q - Are you sure that you were embracing your father at the time when a gun was poked at you?

A - Yes, sir.

Q - At the time a gun was poked at you, your mother was also embracing your father?

A - Yes, sir.

Q - It was also while your mother was embracing your father that one of the persons poked a gun at her?

A - Yes, sir.

Q - So at the time the gun was poked at you and likewise a gun was poked at your mother you were only few feet from your mother?

A - Seven (7) feet, sir.[40]

Felicidad corroborated her son's testimony when she testified as follows:

Q - When these four (4) persons entered your house immediately after you heard an explosion and your husband uttered I was shot, how many persons were carrying guns?

A - There were two (2) sir.

Q - Can you recognize those two (2) persons who were carrying a gun that evening?

A - Yes, sir.

Q - Who were those?

A -

They are the same persons Ronnie Reyes and Nestor Pagal, sir.[41] (Underscoring supplied).

On cross-examination, Felicidad testified in this wise:

Q - Is it not a fact that you cannot recognize the two persons who actually took the chainsaw from your house?

A -

No, sir.

Q - In fact you don't also know if they are armed the persons who took your chainsaw?

A- I don't know if they were armed or not sir.

Q- You don't also know the identity of the persons who is outside the house?

A-

Yes, sir.

Q- You don't also know if he was armed or not, is that correct?

A-

Yes, sir.[42]

These revealing testimonies prove that only two members of the group, the appellants, were armed and, therefore, under the law, there could not have been a band to aggravate the commission of the crime.[43]

Appellants are, therefore, guilty of the special complex crime of robbery with homicide because the homicide was perpetrated by reason of or on the occasion of the robbery.[44]

The fact that Felicidad did not see who among the malefactors shot her husband, does not absolve appellants from

liability therefrom. The concerted manner by which appellants and their companions perpetrated the crime showed beyond reasonable doubt the presence of conspiracy. Where conspiracy is established, it matters not who among the accused actually shot and killed the victim.[45] The consistent doctrinal rule is that when a homicide takes place by reason or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery with homicide whether or not they actually participated in the killing, unless there is proof that they had endeavored to prevent the killing.[46]

While treachery was not alleged in the information, it was proven by evidence. Treachery attended the commission of the crime because the assault was sudden and unexpected under circumstances that rendered the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack. However, the presence of treachery will not qualify the killing into murder as treachery is merely a generic aggravating circumstance in robbery with homicide. The presence of an aggravating circumstance would ordinarily warrant the imposition of the death penalty[47] for the crime that under Article 294 (1) of the Revised Penal Code is penalized by reclusion perpetua to death. As the crime was committed when the death penalty was still constitutionally proscribed, appellants shall instead suffer the penalty of reclusion perpetua.

As regards the monetary award, the trial court correctly imposed the indemnity of P50,000 for the death of Alfredo. We, likewise, agree with the award of P30,400 as actual damages for the cost of the chainsaw, the two caskets of palay and the burial expenses.[48]

As it is in accordance with Article 2206 of the Civil Code,[49] we agree with the trial court's award of compensatory damages representing Alfredo's loss of earning capacity. However, we find that the trial court incorrectly determined the amount of compensatory damages.

In *People vs. Daniel*,[50] this Court ruled that the amount of loss of earning capacity is based mainly on two factors. These are (1) the number of years of which the damages shall be computed; and (2) the rate at which the losses sustained by the respondent should be fixed. Factor number one in this ruling shall be computed by using the formula based on the American Expectancy Table of Mortality or $2/3 \times [80 - \text{age of the victim at the time of death}] = \text{life expectancy in terms of years}$. Applying this formula, Alfredo's life expectancy is $2/3 \times (80 - 37) = 28.66$.

Factor number two is arrived at by multiplying the life expectancy (28.66 years) by the earning of the deceased. There is, however, divergence of opinion as to what constituted such earnings. In the recent case of *People v. Jerez*,[51] the earnings of the deceased was arrived at by multiplying life expectancy by his gross earnings. On the other hand, *People v. Villamor*,[52] *People v. Suintos*[53], and *Dangwa Transportation, Inc. vs. Court of Appeals*,[54] the computation of the rate of loss of earnings was based on the net earnings. We are inclined to follow the latter basis for computation as this has been the prevailing view as early as 1970 when, in *Villa Rey Transit, Inc. v. Court of Appeals*,[55] the Court said:

In the determination of the losses or damages sustained by the private respondents as dependents and intestate heirs of the deceased, and that said damages consist, not of the full amount of earnings, but of the support they received or would have received from him had he not died in consequence of the negligence of defendant. In fixing the amount of that support, the necessary expenses of deceased of his own living should be deducted from his earnings. Thus, it has been consistently held that earning capacity, as an element of damages to one's estate for his death by wrongful act is necessarily his net earning capacity or his capacity to acquire money than the necessary expense for his own living. Stated otherwise, the amount recoverable is not the loss of the entire earning, but rather the loss of that portion of the earnings which the beneficiary would have received. In other words, only net earnings, not gross earnings, are to be considered, that is, the total of the earning less expenses necessary in the creation of such earnings or income and less living and other incidental expenses.

In such cases as this, where the personal, living and incidental expenses of the deceased have not been proven, the Court exercises the discretion in ascertaining and fixing the same.

In this case, Alfredo Macadaeg was thirty-seven years of age at the time of his death with a life expectancy of 29 years. He earned five thousand pesos (P5,000) in 2,3, 4, or 5 days" "sometimes four (4) times" a month as chainsaw operator but there is no proof as to his earnings as a farmer who tilled his parents' rice land. His earnings of P5,000, should however, be considered as earned at least twice a month as it was dependent on the availability of people who would employ him as a chainsaw operator. Hence, he should be deemed to have earned only P10,000 a month or P120,000 a year. Consistent with our rulings,[56] one half of this amount or P60,000 would constitute his necessary living expenses. Accordingly, Alfredo Macadaegs' loss of earnings should be computed by multiplying his life expectancy with his gross annual earnings less necessary living expenses. Thus:

$28.66 \text{ years} \times (\text{P } 120,000 - 60,000) = \text{P } 1,719,600.00$

WHEREFORE, the herein appealed decision is hereby AFFIRMED with MODIFICATION that the appellants shall be solidarily liable for actual damages in the amount of P20,400.00 and compensatory damages of P1,719,600.00.

Cost de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, Pardo, and Ynares-Santiago, JJ., concur.

[1] Presided by Judge Fe Albano Madrid.

[2] Records, p. 1.

[3] Id., at 67.

[4] TSN, September 8, 1993. p. 3.

[5] TSN, August 27, 1993, pp. 4-16; September 8, 1993, pp. 3-9.

[6] TSN, December 3, 1993, pp. 6-8.

[7] Ibid.

[8] TSN, February 7, 1994, p. 10.

[9] TSN, August 10, 1994.

[10] Ibid.

[11] Ibid.

[12] TSN, July 5, 1994.

[13] Rollo, p. 35

[14]

[15] *People v. Paredes*, 332 Phil. 633, 639 (1996).

[16] *People v. Garcia*, 327 Phil. 1056, 1066 (1996).

- [17] TSN. September 1, 1993, pp. 20-21.
- [18] TSN. September 1, 1993, pp. 20-21.
- [19] Rollo, p. 31.
- [20] Rollo, p. 33.
- [21] TSN, September 8, 1993, p. 14.
- [22] *People v. Rubio*, 327 Phil. 316, 324 (1996).
- [23] *People v. Castillo*, 330 Phil. 205, 214 (1996).
- [24] *People v. Castillo*, *supra*, at 214.
- [25] TSN, September 1, 1993, pp. 16-17.
- [26] *Id.*, February 7, 1994, p. 10.
- [27] *Id.*, August 10, 1994, p. 10.
- [28] *People v. Tabaco*, 270 SCRA 32, 54 (1991).
- [29] *People v. Letigio*, 268 SCRA 227, 243 (1997).
- [30] *People v. Caraig*, 202 SCRA 357, 368 citing *People v. Magdahong*, 176 SCRA 282 (1989).
- [31] TSN, September 8, 1993, p. 15.
- [32] Appellants Brief, pp. 20-21.
- [33] *Id.*, at 21-23.
- [34] *People v. Letigio*, *supra*, at p. 242.
- [35] Rollo, p. 31.
- [36] *People v. Sgt. Bayani*, 331 Phil. 169, p. 193.
- [37] *People v. Castillo*, *supra*. 213-214.
- [38] Article 14(6) of the Revised Penal Code provides that "(w)henever more than three armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a band."
- [39] 133 Phil. 786, 794 (1968).
- [40] TSN, September 8, 1993, p. 10.
- [41] *Id.*, August 27, 1993, p. 19.
- [42] *Id.*, September 1, 1993, pp. 24-25
- [43] See *People v. Piandong* 268 SCRA 555, where the appellants who were found guilty of the crime of robbery with homicide were meted the death penalty on account of the presence of the aggravating circumstance of band.
- [44] Art. 294(1), REVISED PENAL CODE.
- [45] *People v. Sequiño*, 332 Phil. 90, 108 (1996).

[46] *People v. Magdamit*, 279 SCRA 423, p. 433 (1997).

[47] *People v. Dinglasan* 267 SCRA 26, 29 (1997)

[48] TSN, August 27, 1993, p. 13.

[49] Article 2206 xxx

(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 and physical disability not caused by the defendant, had no earning capacity at the time of his death.

[50] 136 SCRA 92 (1985).

[51] 285 SCRA 393 (1998).

[52] *Supra*

[53] 220 SCRA 419 (1993).

[54] 202 SCRA 574 (1991).

[55] 31 SCRA 511 (1970).

[56] *Negros Navigation Co., Inc. v. Court of Appeals, et al.*; *Metro Manila Transit Corporation v. Court of Appeals, et al.* and *Fortune Express, Inc. v. Court of Appeals, et al.*, 281 SCRA 534.

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