

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CHARLIE ALMOGUERRA AND DANTE ATON, APPELLANTS.

G.R. No. 121177. November 12, 2003

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PER CURIAM:

The crime involved in the instant case is despicable because innocent lives of three (3) young children were callously taken. This gruesome incident which occurred on the day of the barangay election last May 9, 1994 shocked the quiet barangay of Piña, San Jacinto, Masbate. The grieving folks of that barangay branded the killing of those children as the "Masbate Massacre."

For automatic review is the Decision[1] dated May 9, 1995 of the Regional Trial Court, Branch 50, San Jacinto, Masbate, in Criminal Case No. 561, declaring Charlie Almoguerra and Dante Aton, appellants, guilty beyond reasonable doubt of the special complex crime of robbery with homicide and sentencing them to suffer the supreme penalty of death. They were also adjudged to pay Florentino and Lily Julaton, parents of the victims, P150,000.00 as civil indemnity and P15,000.00, the amount taken.

The Information[2] dated June 29, 1994 against appellants is quoted as follows:

"That on or about May 9, 1994, in the morning thereof, at Sitio Nabarira, Barangay Piña, Municipality of San Jacinto, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping each other, with intent to gain by means of violence and/or intimidation of person, did then and there, willfully, unlawfully and feloniously rob the residence of spouses FLORENTINO JULATON and LILY AMOR located at the above-mentioned address by then and there taking away the amount of FIFTEEN THOUSAND PESOS (p15,000.00) in different denominations and coins without the consent of said spouses, to their damage and prejudice in the amount aforementioned and that on the occasion of said Robbery and pursuant to the same conspiracy, herein accused, with intent to kill, by means of treachery, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the persons of GINA JULATON Y AMOR, 14 years old, LYN JULATON, 8 years old, and REY JULATON Y AMOR, 7 years old, by then and there stabbing them with a bladed weapon (machete), hitting them on different parts of their bodies, thereby inflicting upon them serious and mortal wounds which were the direct and immediate cause of their untimely deaths.

"Committed with the aggravating circumstance that the crime is committed in the dwelling of the offended party.

"CONTRARY TO LAW."

Upon arraignment, appellants, with the assistance of counsel, pleaded not guilty.

During the trial, the prosecution presented the following witnesses: SPO2 Noli Bartolay, Dr. Rosario Mores, Jessie Genova, Jr., Jessie Genova, Sr., Lily Julaton, Lea Amor, Florentino Julaton, Regino Esparraguerra and Dr. Jesus Camposano. Their testimonies are summarized below.

On May 9, 1994, spouses Florentino and Lily Julaton went to the polling precinct at Barangay Piña, San Jacinto,

Masbate, to cast their votes in the barangay elections.[3] Before leaving, they instructed their three (3) children, namely: Gina, 14 years old, Lyn, 8 years old and Rey, 7 years old, to watch their store and prevent strangers from entering their house.[4]

At around 9:30 o'clock that same morning, Jessie Genova, Jr. was gathering "malunggay" leaves at their farm,[5] about thirty (30) meters away from the Julaton's house,[6] when he heard appellant Dante Aton shouting and inviting him to smoke cigarettes. [7] As he was approaching the house, he noticed that appellant Aton was hiding his right hand behind the door while his left hand was holding a cigarette.[8] Near the door were the bodies of two (2) dead children, Gina and Rey.[9] When appellant Aton uttered "ada na" (here he comes),[10] appellant Charlie Almoguerra immediately went down the stairs holding assorted coins at his right hand and a bladed knife or "machete" at his left hand.[11] Appellant Almoguerra then forced him (Jessie Genova, Jr.) to accept the loose coins.[12] Frightened, he received the coins, placed them inside his pocket and ran away.[13] At the moment, he heard them shouting "kon mamarita ka, papatyon ka namon hasta an iyo familya" (if you tell somebody, we will kill you and your family).[14] Upon reaching his house, he placed the loose coins inside the cabinet.[15] Meanwhile, he and his father, Jessie Genova, Sr., accompanied spouses Julaton in bringing the dead bodies to Ticao District Hospital at San Jacinto.[16] Upon their return to barangay Piña, he gave the loose coins amounting to P30.75 to his father and told him about the incident.[17] The next day, his father convinced him to report the incident to the police. He then executed a sworn statement.[18]

Meanwhile, upon being informed of the incident by Sonny Amor, spouses Florentino and Lily Julaton immediately returned home.[19] Along the way, they saw appellant Almoguerra on the upper part of the hill near their house.[20] Arriving there, they found all their children dead.[21] They also found that their wooden chest or "baul" was forcibly opened and that their cash of P15,000.00 and some loose change were missing.[22]

SPO2 Noli "Socoy" Bartolay of the PNP of San Jacinto, Masbate conducted an investigation.[23] He saw the dead bodies of Gina and Rey inside the kitchen, while that of Lyn in the bedroom.[24] Lily Julaton informed him that their wooden chest or, "baul" was forcibly opened and the amount of P15,000.00 kept therein was missing. [25]

Dr. Rosario Mores examined the victims' bodies. While on the witness stand, she confirmed her three (3) separate Post-Mortem Reports,[26] reproduced below:

"x x x

"According to the hospital record, GINA A. JULATON of Piña, San Jacinto, Masbate was examined in the hospital on May 9, 1994 with the following findings:

1. Stabbed wound, 3 cm., anterior, neck.

"x x x."[27]

"According to the hospital record, LYN A. JULATON of Piña, San Jacinto, Masbate was examined in the hospital on May 9, 1994 with the following findings:

- Stabbed wound, neck, 5 cm.

- Stabbed wound, abdomen, 5 cm.

- Stabbed wound, 3.5 cm., hand, left, thru and thru.

- Stabbed wound, face, 1 cm., right.

"x x x."[28]

"According to the hospital record, REY A. JULATON of Piña, San Jacinto, Masbate was examined in the

hospital on May 9, 1994 with the following findings:

- Stabbed wound, chest, 5 cm.
- Stabbed wound, neck, 3 cm.

"x x x." [29]

Dr. Mores declared that all the stab wounds "were probably inflicted or caused by a sharp pointed or edged instrument." [30]

Lea Amor testified that when she visited her cousin, Efren Magdaraog, detained at the municipal building, she saw appellant Almoguerra, who was also detained. When she asked him why he killed the Julaton children, he answered that they refused to sell him cigarettes on credit. [31]

Appellant Aton merely denied the charge. He testified that on that particular date, he was in Barangay Piña to cast his vote in the barangay election but his name was not in the voters' list. So, he decided to go to his brother's residence at Barangay Bagahanglad that same day.

He also testified that he was investigated by the police [32] and was forced to execute an affidavit on May 12, 1994, [33] stating that he was with appellant Almoguerra and Efren Magdaraog when they committed the crime, thus:

"x x x

"That last 9 May 1994 at about 9:30 in the morning more or less, I was on the way to barangay Bagahanglad, San Jacinto, Masbate from sitio Guintariban, Piña, San Jacinto, Masbate;

"That during that time and date, I saw Charlie Almoguerra and Efren Magdaraog, both drunk, at the well at sitio Nabarira, Piña, San Jacinto, Masbate about fifty (50) meters away from the house of Florentino 'Tinoy' Julaton. Then Charlie Almoguerra told me to go with them to buy cigarette at the store of Florentino Julaton, and so I went with them and when we were already near the house of Florentino Julaton, I heard Efren Magdaraog saying, "May cuarta pa dide" which, in English means, "There is money here", referring to the house of Florentino Julaton. And then when we reached the house of the latter, immediately Charlie Almoguerra and Efren Magdaraog entered the house. Charlie Almoguerra went directly to a young girl about 14 years old and demanded for cigarette, while Efren Magdaraog started searching for the money;

"That because the young girl did not give cigarette to Charlie, he unsheated his machete and stabbed the girl causing her to fall down;

"That at this juncture, Jessie Genova, Jr. alias 'Pinoy' arrived and seeing the situation that there were two children dead, he ran away and so because I was already afraid, I also ran away, leaving behind Charlie Almoguerra and Efren Magdaraog.

x x x."

Later, appellant Aton retracted the above affidavit on the ground that it was obtained involuntarily and that he was not assisted by his counsel. [34] Hence, appellant Almoguerra and Magdaraog were released from detention. [35]

Subsequently, or on May 20, 1994, he executed another affidavit [36] with the assistance of his counsel, imputing the commission of the crime only to appellant Almoguerra. Appellant Aton, in the same affidavit, also stated that he was with appellant Almoguerra during the incident; that the latter then intended to buy a cigarette; that he prevented Almoguerra from stabbing the first victim; that Almoguerra also stabbed another girl; and that he (Aton) because of fear ran away. His affidavit is partly reproduced below:

"Last 9 May 1994 at about 9:30 in the morning more or less, I was at sitio Nabarira, Piña, San Jacinto, Masbate. That during that time and date, I saw Charlie Almoguerra at the well about 50 meters away from the house of Florentino 'Tinoy' Julaton, and he told me to go with him to buy a cigarette, and when we arrived at the said house, Charlie Almoguerra proceeded inside the house and went directly to a young girl about 14 years old and demanded for a cigarette, and because the girl did not give a cigarette to Charlie Almoguerra, the latter unsheathed a machete and held the arm of the young girl, and then I glanced at the window and prevented him but he did not obey instead he stabbed the young girl causing her to fall down, then he went to another small girl who was crying and then stabbed her again then I went near the door and this time Jessie Genova, Jr. arrived and when he saw that there were two children already dead, he ran away as fast as he could, then because of fear, I also ran away."

Later, appellant Aton attempted to retract the above affidavit by asserting that he was merely forced and tortured by SPO2 Noli "Socoy" Bartolay to execute and sign it.[37]

Upon rebuttal, the prosecution presented Dr. Jesus Camposano who testified that appellant Aton could not have been maltreated or tortured by the police; and that when physically examined, he was found to be mentally fit with no signs of apparent injuries on his body.[38]

For his part, appellant Charlie Almoguerra, together with his mother Josefina and his sister Rodelyn, have a different story to tell.

On May 9, 1994, the day of the incident, at around 7:00 o'clock in the morning, Josefina Almoguerra left her house at Bagabansalan, Bartolabac, San Jacinto and went to the polling precinct at Barangay Piña to cast her vote in the barangay election.[39] At that time, her husband, Bienvenido, and her children, appellant Charlie, Jerry, Darwin, and Rodelyn, were still asleep.[40] After casting her vote at about 10:00 o'clock that same morning, she heard that Florentino Julaton's children were killed.[41] She then proceeded to their residence and stayed there until 11:00 o'clock noon. She saw the dead bodies.[42] After informing her family and children about the incident,[43] her husband and their son, appellant Charlie, went to the Julaton's house where they stayed for only thirty (30) minutes because the latter had a fever[44] caused by a boil at his left armpit. On May 12, 1994, at around 8:00 o'clock in the evening, appellant was investigated by the police.[45] On July 4, 1994,[46] he was arrested and detained. He admitted that while he was in detention at the Matiporon provincial jail, he escaped with a certain Donggoy and thereafter committed another crime of robbery in Aroroy, Masbate."[47]

On May 9, 1995, the trial court rendered a Decision, the dispositive portion of which, reads:

"WHEREFORE, premises considered by proof beyond reasonable doubt, this Court hereby convicts the accused Charlie Almoguerra and Dante Aton for the crime of Robbery with Homicide defined and punished under Article 294 of the Revised Penal Code, as amended by Sec. 9 of R.A. No. 7659, with the presence of aggravating circumstances of treachery and dwelling. Charlie Almoguerra and Dante Aton are both sentenced to suffer the maximum penalty of death and to pay the heirs of the three (3) children the amount of FIFTY THOUSAND (P50,000.00) PESOS each or the total amount of ONE HUNDRED FIFTY THOUSAND (P150,000.00) PESOS and to return the amount of FIFTEEN THOUSAND (P15,000.00) PESOS taken from the spouses Florentino and Lily Julaton.

"SO ORDERED." [48]

In convicting both appellants, the trial court held:

"The defense evidence consist of denials and alibis which are all considered the weakest of all defenses. Aton's testimony was that he allegedly went to barangay Bagahanglad after he failed to see his name in the list of registered voters in Barangay Piña, while Charlie Almoguerra alleged to have been at home not far away from the scene of the crime allegedly being sick and asleep.

"Their allegations did not help them at all. It is of judicial notice that Barangay Bagahanglad where Aton claims to be, and Sitio Bagabansalan, Barangay Bartolabac where Charlie claims he was, are neighboring barangays of barangay Piña where both places could be reached in a matter of minutes. Moreover, Aton claims to be in Barangay Piña in the morning of May 9, 1994 while the mother of Charlie was even in Barangay Piña on that fateful morning to cast her vote. Thus, their defense of alibi cannot be considered as it is not far-fetched that it was indeed easy to commit the crime then hide in the safety of their homes considering the proximity of the scene of the crime to their respective alleged whereabouts.

"The alibi offered by the accused is unavailing. It is well-settled that in order for alibi to prosper, the evidence to support it must be clear and convincing so as to preclude the possibility of the accused' presence at the scene of the crime while the evidences to his identification must be weak and insufficient (People vs. Damos, G.R. No. 108599, Oct. 7, 1994). As narrated above, it is not impossible for the two accused to have been at the situs of the crime then escape to the safety of their homes/hideouts.

"x x x

"It is axiomatic that a person's guilt may be established not only by direct evidence but also by circumstantial evidence which is sufficient to convict as long as: (a) there is more than one circumstance; (b) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt (People vs. Ballesteros and Avestro, G.R. No. 110289, Oct. 7, 1994). The circumstances narrated borne-out by the records indubitably point to the accused as the culprits.

"This Court agrees with the prosecution that the circumstance of killing was aggravated by treachery and dwelling. The mere fact of killing a child already constitutes treachery. The three (3) innocent children were all hacked to death without anyone defending for them all because of the evil minds of the accused. Killing a child is characterized as treachery even if the manner of the assault is not shown because the weakness of the victims due to their tender age results in the absence of any danger to the accused (People vs. Cabarrubias, 223 SCRA 363).

"Dwelling is likewise present in this case as aggravating circumstance because robbery could not be committed without the necessity of transgressing the sanctity of the home (People vs. Gapasin, 145 SCRA 181)."[49]

Appellant Almoguerra, in his brief, ascribed to the trial court the following errors:

"I

THE TRIAL COURT GRAVELY ERRED AND ABUSED ITS DISCRETION IN FINDING THE ACCUSED-APPELLANT CHARLIE ALMOGUERRA GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE BY GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES WHICH ARE REplete WITH IMPROBABILITIES.

"II

THE TRIAL COURT ERRED IN ORDERING ACCUSED-APPELLANT CHARLIE ALMOGUERRA TO PAY THE HEIRS OF THE THREE CHILDREN THE AMOUNT OF FIFTY THOUSAND PESOS (P50,000.00) EACH OR TO THE TOTAL AMOUNT OF ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) AND TO RETURN THE AMOUNT OF FIFTEEN THOUSAND PESOS (P15,000.00) TAKEN FROM THE SPOUSES FLORENTINO AND LILY JULATON."

For his part, appellant Aton raised in his brief the following assignments of error:

"I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT DANTE ATON GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ROBBERY WITH HOMICIDE.

"II

"THE COURT A QUO ERRED IN ORDERING ACCUSED- APPELLANT DANTE ATON TO PAY THE HEIRS OF THE THREE CHILDREN THE AMOUNT OF FIFTY THOUSAND PESOS (P50,000.00) EACH OR A TOTAL AMOUNT OF ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) AND TO RETURN THE AMOUNT OF FIFTEEN THOUSAND PESOS (P15,000.00) TAKEN FROM THE SPOUSES FLORENTINO AND LILY JULATON."

In essence, appellants contend that the trial court erred in finding them guilty of the crime of robbery with homicide considering that the May 11, 1994 affidavit of prosecution witness Jessie Genova, Jr. does not mention the name of appellant Almoguerra as one of the assailants; and that appellant Aton's May 20, 1994 affidavit stating that he was with Almoguerra when the latter committed the crime was obtained through force and maltreatment.

Articles 293 and 294(1) of the Revised Penal Code, as amended by RA 7659, Section 9, provides:

"ART. 293. Who are guilty of robbery. - Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

"ART. 294. Robbery with violence against or intimidations of persons - Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson."

Direct evidence of the commission of the crime charged is not the only matrix wherefrom a court may draw its conclusions and findings of guilt. The rules on evidence and case law sustain the conviction of appellants through circumstantial evidence.[50]

Under Section 4, Rule 133 of the Revised Rules of Court on circumstantial evidence, the following requisites must concur:

(1) there must be more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt of the guilt of the accused.

In the case at bar, the following circumstances cited by the trial court led us to the inevitable conclusion that the prosecution proved by evidence beyond reasonable doubt all the elements of robbery with homicide and that appellants conspired to commit the crime, thus:

- Appellants knew very well that May 9, 1994 was a barangay election day and that most of the registered voters of San Jacinto, Masbate, including Florentino and Lily Julaton, would go to the polling precincts to cast their votes;
- That same morning, only the Julaton children were left to watch their house and store;
- Prosecution witness Jessie Genova, Jr. testified that on that particular day and time, he saw appellant Aton at the Julaton's house and the latter, in a loud voice, asked him to smoke;
- When Jessie Genova, Jr. was approaching the house, he saw appellant Aton hiding his right arm behind the door while his left hand was holding a cigarette. At that instance, he also saw the two (2) dead bodies of the Julaton children;

- And after he heard appellant Aton utter "ada na" (here he comes - referring to Jessie Genova, Jr.), appellant Almoguerra went down the stairs holding a "machete" or bladed knife at his left hand and loose coins at his right hand;
- Appellant Almoguerra then forced Jessie Genova, Jr. to accept the loose coins. The latter placed them inside his pocket and immediately ran away;
- While running away, he heard the appellants shouting "kon mamarita ka, papatyon ka namon hasta an iyo familia" (if you tell somebody, we will kill you and your family);
- Police investigation established that the dead bodies of Gina and Rey Julaton were found inside the kitchen while that of Lyn Julaton was inside the bedroom. The amount of P15,000.00 was missing from spouses Julaton's wooden chest or "baul" that was forcibly opened;
- Physical examination of the victims showed that the stab wounds inflicted upon them were caused by a sharp pointed or edged instrument;
- Appellant Aton's two (2) affidavits state that on the date of the commission of the crime, he was with appellant Almoguerra who wanted to buy cigarette at the Julaton's store; and that he stabbed the victims;
- Appellant Aton's affidavit of May 12, 1994 reveals his and his companions' intent to rob the house of spouses Julaton. In this affidavit, appellant stated that while on their way to the Julaton's residence, Edren Magdaraog said, "may cuarta pa dide" (there is money here);
- Dr. Jesus Camposano who examined appellant Aton found that the latter was physically and mentally fit with no apparent signs of injuries. Hence, his affidavits deserve credence; and
- Appellant Almoguerra escaped while he was detained at the provincial jail. Worse, he even committed another crime (robbery) in another barangay.

The foregoing circumstances when viewed in their entirety are as convincing as direct evidence and as such, negate the innocence of the appellants. Otherwise stated, the prosecution established beyond a shadow of a doubt, through circumstantial evidence, that both appellants conspired to commit the complex crime of robbery with homicide. The elements of this crime are: (a) the taking of personal property is perpetrated by means of violence or intimidation against a person; (b) the property taken belongs to another; (c) the taking is characterized by intent to gain or animus lucrandi; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, here used in its generic sense, is committed.[51]

From the circumstantial evidence offered by the prosecution, it is clear that both appellants, acting in conspiracy, took P15,000.00 from the Julatons by means of violence against the three (3) children. For why should appellants kill them were it not for their intent and determination to take the money?

Clearly, by his own account, appellant Aton placed himself squarely at the crime scene when the killing occurred on the occasion of the robbery. However, he vigorously contends that he cannot be held liable for robbery with homicide because he neither took the money nor killed the victims. In fact, he prevented appellant Almoguerra from killing the first victim.

It bears stressing that appellant Aton admitted not only once but twice in his own affidavits that he was with appellant Almoguerra before, during, and after the commission of the crime charged. And he even confirmed the veracity of his statements on the witness stand.

Appellant Aton's contention that he intervened when appellant Almoguerra attacked the first victim and that

thereafter, he ran away out of fear does not deserve credence. If this were so, why did he leave only after he saw prosecution witness Jessie Genova, Jr.?

On the whole, appellant Aton's conduct affirms the fact that he consciously concurred with appellant Almoguerra in committing the crime.

The proof of conspiracy is perhaps most frequently made by evidence of a chain of circumstances.[52] The series of events in this case clearly show that appellants were of one mind, not only in taking the money of spouses Julaton, but also in the manner they committed the crime. Clearly, their concerted actions are indications of a criminal conspiracy.

Appellants, to exculpate themselves, merely denied the commission of the crime and interposed the defense of alibi. For this defense to stand, it must be shown that not only were appellants somewhere else when the crime was committed but also that it was physically impossible for them to have been at the scene of the crime at the time it was committed.[53]

On this point, the trial court held:

"x x x. Aton's testimony was that he allegedly went to barangay Bagahanglad after he failed to see his name in the list of registered voters in Barangay Piña while Charlie Almoguerra alleged to have been at home not far away from the scene of the crime allegedly being sick and asleep.

"Their allegations did not help them at all. It is of judicial notice that Barangay Bagahanglad where Aton claims to be, and Sitio Bagabansalan, Barangay Bartolabac where Charlie claims he was, are neighboring barangays of barangay Piña where both places could be reached in a matter of minutes. Moreover, Aton claims to be in Barangay Piña in the morning of May 9, 1994 while the mother of Charlie was even in Barangay Piña on that fateful morning to cast her vote. Thus, their defense of alibi cannot be considered as it is not far-fetched that it was indeed easy to commit the crime then hide in the safety of their homes considering the proximity of the scene of the crime to their respective alleged whereabouts."

We are in accord with the trial court's finding that considering the distance between the scene of the crime and the places where both appellants claimed they were, it was physically possible for them to have been in the crime scene at the time it was committed.

In sum, we find appellants' defenses of denial and alibi unavailing. Alibi is inherently weak and unreliable, unless corroborated by disinterested witnesses. Since appellants were unable to substantiate their alibi with the testimony of a credible witness, it is reduced to self-serving evidence undeserving of any weight in law.[54]

Appellant Almoguerra's defense is further weakened by his escape from the provincial jail. Flight per se cannot prove his guilt. But considered in the light of other circumstances, it may be deemed a strong indication of guilt.[55]

In fine, the trial court correctly held that the circumstances taken together point to the fair and logical conclusion that both appellants are guilty of the crime of robbery with homicide. The only remaining question is whether the crime was attended by aggravating circumstances.

The aggravating circumstances of treachery and dwelling have been alleged in the Information and proved by the prosecution by strong and convincing evidence.

In *People vs. Escote*,[56] we held that "treachery is a generic aggravating circumstance when the victim of homicide is killed with treachery." The killing of minor children who, by reason of their tender years, could not be expected to put up a defense is considered attended with treachery even if the manner of attack was not

shown.[57] Considering that the victims in this case of robbery with homicide are young children, aged 7, 8 and 14, the killing was aggravated by treachery.

Likewise, the aggravating circumstance of dwelling is present here. Appellants' deliberate intrusion in the privacy of the Julaton's domicile shows perversity.

In *People vs. Feliciano*,[58] "dwelling is considered aggravating in robbery with homicide because this kind of robbery cannot be committed without the necessity of transgressing the sanctity of the house."

Under Article 294 of the Revised Penal Code, as amended by Section 9 of R.A. No. 7659, the prescribed penalty for robbery with homicide is composed of two indivisible penalties, reclusion perpetua to death. Considering that in the present case, there is the aggravating circumstance of dwelling that attended the commission of the crime, we impose upon the appellants the supreme penalty of death.

Regarding damages, the trial court correctly awarded P150,000.00 as civil indemnity to the victims' heirs. When death occurs as a result of a crime, each appellant should be ordered to pay the heirs of each victim P50,000.00 as civil indemnity, without need of any evidence or proof of damages.[59]

As to Lily Julaton's claim that the sum of P25,000.00 was spent for her children's funeral expenses, we find the same unsubstantiated. In *People vs. Solamillo*,[60] we ruled that to be entitled to the award of actual damages, "it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable to the injured party." While the prosecution failed to present any receipt to prove the claim for actual damages, we are aware that the same were indeed incurred by the family of the deceased.

Temperate damages, in lieu of actual damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot be proved with certainty.[61] In *People vs. Abrazaldo*,[62] we computed temperate damages at P25,000.00. We award the same in this case.

As to moral damages, we, in similar cases,[63] awarded the victims' heirs the amount of P50,000.00 as moral damages. For verily, moral damages are not intended to enrich the victims' heirs; rather they are awarded to allow them to obtain means for diversion that could serve to alleviate their moral and psychological sufferings.[64] Here, Lily Julaton, mother of the victims, equivocally described how she and her husband suffered untold wounded feelings for the loss of their children.

Anent the award for exemplary damages, Article 2230 of the Civil Code provides that in criminal offenses, exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances. Considering that the aggravating circumstance of dwelling is present here, P25,000.00[65] exemplary damages may be awarded to spouses Julaton.

On the assigned error that the trial court erred in ordering the appellants to return the P15,000.00 they took from the spouses Julaton, suffice it to say that "the restitution of the thing itself" or the return of the P15,000.00 cash stolen by appellants, is proper under Article 105 of the Revised Penal Code.

Three (3) members of the Court, although maintaining their adherence to the separate opinions expressed in *People vs. Echagaray* that R.A. No. 7659, insofar as it prescribes the penalty of death is unconstitutional, nevertheless submit to the ruling of the majority that the law is constitutional and that the death penalty should accordingly be imposed.

WHEREFORE, the assailed Decision dated May 9, 1995 of the Regional Trial Court, Branch 50, San Jacinto, Masbate, in Criminal Case No. 561, is hereby **AFFIRMED** with **MODIFICATION** in the sense that appellants

CHARLIE ALMOGUERRA and DANTE ATON are sentenced to suffer the penalty of DEATH and individually ordered to pay the victims' heirs (a) P150,000.00 as civil indemnity; (b) P25,000.00 as temperate damages; (c) P50,000.00 as moral damages; and (d) P25,000.00 as exemplary damages.

Let the records of this case, upon finality of this Decision, be forwarded to the Office of the President for the possible exercise of her pardoning power pursuant to Article 83 of the Revised Penal Code, as amended by Section 25 of R.A. 7659.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares- Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

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- [1] Penned by Judge Manuel S. Pecson, Rollo at 20-32.
- [2] Rollo at 6.
- [3] Transcript of Stenographic Notes (TSN) dated February 7, 1995 at 3; Records at 387.
- [4] Exhibit "A", Records at 82.
- [5] TSN dated September 13, 1994 at 4; Records at 195.
- [6] Id. at 5 and 18; Records at 196 and 209.
- [7] Id. at 21-22; Records at 212-213.
- [8] Id. at 7; Records at 198.
- [9] Id. at 6; Records at 197.
- [10] Id. at 5; Records at 196.
- [11] Id. at 7; Records at 198.
- [12] Id.
- [13] Id. at 8; Records at 199.
- [14] Id. at 9; Records at 200.
- [15] Id. at 10; Records at 201.
- [16] TSN dated September 13, 1994, supra at 11; records at 202.
- [17] Id. at 10-12; TSN dated October 21, 1994 at 6-7; Records at 201-203 and 239-240.
- [18] Exhibits "B" and "G", Records at 7 and 26.
- [19] TSN dated February 7, 1995 at 3-4; Records at 387-388.
- [20] Id. at 5; Records at 389.
- [21] TSN dated September 13, 1994, supra at 46; Records at 227.

- [22] Id. at 49; Records at 230.
- [23] TSN dated July 13, 1994 at 7; Records at 132.
- [24] Id. at 8; Records at 133.
- [25] Id. at 13; Records at 138.
- [26] Exhibits "D", "E" and "F", Records at 83-85.
- [27] Exhibit "D", Records at 84.
- [28] Exhibit "E", Records at 83.
- [29] Exhibit "F", Records at 85.
- [30] TSN dated July 13, 1994, supra at 32; Records at 157.
- [31] TSN dated November 16, 1994 at 2-3; Records at 266-267.
- [32] TSN dated December 14, 1994 at 3-4; Records at 290-291.
- [33] Annex "E", Records at 9.
- [34] TSN dated December 14, 1994, supra at 4; Records at 291.
- [35] Exhibit "5"; Records at 16.
- [36] Exhibit "C", Records at 28.
- [37] TSN dated December 14, 1994, supra at 17; Records at 304.
- [38] TSN dated March 1, 1995 at 5-6; Records at 414-415.
- [39] TSN dated December 14, 1994, supra at 19-20; Records at 306-307.
- [40] Id.
- [41] TSN dated December 14, 1994, supra at 20; Records at 307.
- [42] Id. at 21; Records at 308.
- [43] Id.
- [44] Id. at 22 and TSN dated January 5, 1995 at 10-12; Records at 309 and 346-348.
- [45] TSN dated January 5, 1995, id at 13; Records at 349.
- [46] Id. at 18-19; Records at 354-355.
- [47] Id. at 32-33; Records at 368-369.
- [48] Decision, Rollo at 32.
- [49] Id. at 30-32.
- [50] *People vs. Edralin Taboga*, G.R. Nos. 144086-87, February 6, 2002, 376 SCRA 500, citing *People vs. Fegidero* 337 SCRA 274, 282 (2000).
- [51] *People vs. Ricardo Napalit Y Paral*, G.R. Nos. 142919 and 143876, February 4, 2003.

[52] *People vs. Visaya*, G.R. No. 136967, February 26, 2001, 352 SCRA 713, 720-721.

[53] *People vs. Avendaño*, G.R. No. 137407, January 28, 2003.

[54] *Id.*

[55] *People vs. Solamillo*, G.R. No. 126131. June 17, 2003, citing *People vs. Rabanal*, 349 SCRA 655 (2201); *People vs. Suits*, 329 SCRA 440 (2000).

[56] G.R. No. 140756, April 4, 2003. Decided by the majority en banc.

[57] *People vs. Abuyen*, G.R. No. 77285, September 4, 1992, 213 SCRR 569, citing *People vs. Limaco*, 88 Phil. 35(1951); *People vs. Mabilangan*, 111 SCRA 398 (1982); *People vs. Lora*, 113 SCRA 366 (1982); *People vs. Valerio, Jr.*, 112 SCRA 208 (1982).

[58] 256 SCRA 706 (1996).

[59] *People vs. Joey Manlansing y Ambrosio and Mario Manlansing y Ambrosio*, G.R. Nos. 131736-37, March 11, 2002.

[60] *Supra* at 55, citing *People vs. Abrazaldo*, G.R. No. 124392, February 7, 2003.

[61] *Id.* at 23, citing *People vs. De la Tongga*, 336 SCRA 687, 700 (2000).

[62] G.R. No. 124392, February 7, 2003.

[63] *People vs. Solamillo*, *supra*, citing *People vs. Marquez*, G.R. No. 136736, April 11, 2002; *People vs. Yatco*, G.R. No. 138388, March 19, 2002; *People vs. Matic*, G.R. No. 133650, February 19, 2002.

[64] *People vs. Pacina*, 338 SCRA 195, 215-216 (2000).

[65] *People vs. Nicolas*, G.R. No. 137782, April 1, 2003.

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