

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JESUS TORIO, APPELLANT.

G.R. No. 122109. June 25, 2003

Ponente: AZCUNA, J.

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AZCUNA, J.:

For review is the decision[1] of the Regional Trial Court of Pangasinan, Branch 38, in Criminal Cases Nos. L-5188 and L-5189, finding herein appellant, Jesus Torio, alias "Tigno," guilty of murder and illegal possession of firearm and ammunition.

On October 25, 1994, two (2) informations against appellant were filed:

Criminal Case No. L-5188

That on or about the 12[th] day of August 1994 in the evening, in barangay Bolaoen, municipality of Bugallon, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a long firearm, with intent to kill and with treachery, did the[n] and there, willfully, unlawfully and feloniously attack, shoot and hit Brgy. Capt. Ramon Paulo, inflicting upon him the following injuries:

Gunshot wounds:

1. ENTRANCE: irregular, edges inverted, also modified by incision and fracture of the bone, occipital area, 17.0 cms. directed forwards, upwards and to the left, involving the skin and underlying soft tissues, fracturing the occipital bones into 2 halves, into the cranial cavity, ploughing through the occipital and parietal lobes of the left brain, shattering the temporo-parietal bone and subsequently making an EXIT; 20.0 cms. X 18.0 cms. irregular at the left side of the ear, where brain tissues also eviscerated.
2. ENTRANCE: 0.8 cms. X 0.6 cms. ovaloid, edges inverted, chest, posterior, level of the 2[nd] ICS, subscapular line, left, 34.0 cms. above the left heel and 13.0 cms. from the posterior median line, directed forwards and downwards, involving the skin and underlying soft tissues, into the left thoracic cavity, puncturing the upper lobe of the left lung, fracturing the 2[nd] rib, left and finally making an EXIT; 1.0 cm. x 1.0 cm. irregular, edges everted, at the anterior chest wall, left, level of the 2[nd] ICS, anterior axillary line, 129.0 cms. above the left heel and 13.0 cms. from the anterior median line.
3. ENTRANCE: 0.9 cms. X 0.5 cms. ovaloid, edges inverted, Chest, posterior, level of the 9[th] ICS, posterior axillary line, left, 133.0 cms. above the left heel, and 19.0 cms. from the posterior median line, directed forwards, downwards and medially, involving the skin and underlying soft tissues, into the left thoracic cavity, nicking the lower lobe of the left lung, bursting the diaphragm, into the abdominal cavity, lacerating the stomach and finally making an EXIT; 1.0 cm. x 1.0 cm. anterior abdominal wall, left, 103.0 cms. above the left heel and 17.0 cms. from the anterior median line.
4. ENTRANCE: 0.7 cms. X 0.6 cms. ovaloid, edges inverted, buttocks, left, 97.0 cms. above the left heel, and 15.0 cms. from the posterior median line, directed forward, involving the skin and underlying soft tissues, punching a hole thru the hip bone, left, into the abdominal cavity, nicking a part of the small intestine and finally making an EXIT; 1.0 cm. x 1.0 cm. lumbar area, left, 97.0 cms. above the left heel and 15.0 cms. from

the anterior median line.

5. ENTRANCE: 0.8 cm. x 0.6 cm., ovaloid, edges inverted, popliteal area, left, leg, directed forward, involving the skin and underlying soft tissues, fracturing the left tibia and finally making an EXIT; modified by incision just below the left knee.

6. ENTRANCE: posterior surface, lower leg, left, edges inverted, directed downward, involving the skin and underlying soft tissues and then making an EXIT; plantar surface, left foot.

COMMINUTED FRACTURE, left skull.

HOMOTHORAX, Moderate, left

CAUSE OF DEATH: Multiple gunshot wounds, head and trunk.

which injuries directly cause[d] his death, to the damage and prejudice of the heirs of the said Brgy. Capt. Ramon Paulo.

CONTRARY to Art. 248 of the Revised Penal Code.[2]

Criminal Case No. L-5189

That on or about the 12[th] day of August 1994 in the evening, in barangay Bolaoen, municipality of Bugallon, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control one (1) long firearm without first securing the necessary permit and or licensing from the lawful authorities to possess the same which he used in shooting to death Barangay Captain Ramon Paulo.

Contrary to Presidential Decree No. 1866.[3]

When arraigned on November 23, 1994, appellant pleaded not guilty to both informations.[4] Trial then ensued.

The first witness for the prosecution was Amalia (Alma) Paulo, the victim's daughter, who testified mainly on the aspect of damages.[5] Alma Paulo testified that the victim was forty-five years old at the time of his death, was the incumbent barangay captain of Barangay Bolaoen, Bagallan, Pangasinan and was a driver by occupation earning P1,000 per week, or P4,000 per month.

Alma Paulo also testified that, in connection with her father's death, the victim's heirs spent P16,000 for the eight days of vigil, P9,500 for funeral services, P2,600 for the tomb, P600 for the church rites and P7,000 for lompos.[6] In connection with the prosecution of the cases, the victim's heirs spent P1,000 for exhuming the victim's cadaver and P15,000 for obtaining the services of a private prosecutor, plus P500 per appearance fee.

In addition, Alma Paulo testified that the heirs suffered moral damages, which she quantified at P100,000.

The second witness for the prosecution was John Paulo, half-brother of the victim on his father's side.[7]

John Paulo testified that around 11:00 p.m. on August 12, 1994, he, together with Marlon Cagaoan, were on their way to the house of the victim. They had just come from a wake, attended also by the victim, who instructed them to spend the night at the latter's house, as they were supposed to erect electric posts along the barangay road the following morning. He narrated that while they were walking on top of a dike, fifty meters from the house of the victim, a motorcycle passed by headed in the same direction. Astride the motorcycle was the victim, riding in tandem with the driver, Alex Torio.

When the motorcycle was about six meters in front of them, John Paulo suddenly saw appellant stand up and shoot the victim from behind, using a long firearm. Thereafter, appellant ran towards the north. John Paulo also

described the scene stating that at the time of the shooting, appellant was on the left side of the dike about four meters in front of them and two meters behind the motorcycle. He was able to identify appellant because of the illumination coming from the headlight of the motorcycle.

After the shooting, John Paulo and Marlon Cagaoan immediately returned to the wake to inform everyone about the incident. However, John Paulo refrained from divulging the identity of the assailant because he was afraid of the relatives of appellant. He revealed the identity of the assailant the following day only to his father, who advised him to keep quiet. It was only on August 22, 1994, or ten days after the incident, did John Paulo, accompanied by his father, make a statement to the National Bureau of Investigation (NBI) implicating assailant.

The prosecution next presented SPO1 Bernardo Cerezo, the Philippine National Police investigator who conducted a spot investigation of the crime scene.[8]

Bernardo Cerezo testified that he was on duty on the night of August 12, 1995 when he received a report that Barangay Captain Ramon Paulo had been shot and killed. Upon receipt of the report, he and four other police officers proceeded to the crime scene. He described how he found the victim's body in a kneeling position on top of a fallen motorcycle and that he found six empty M-16 shells about two meters away from the body. He also identified several photographs taken at the crime scene showing the body of the victim and the empty shells.[9]

On cross-examination, Bernardo Cerezo admitted that their initial investigation yielded seven other suspects and that Alex Torio, the driver of the motorcycle, was questioned but did not identify the assailant. He also admitted having investigated John Paulo the day after the shooting but that the latter claimed not to know the assailant.

The fourth witness for the prosecution was Marlon Cagaoan, who corroborated the testimony of John Paulo.[10]

Marlon Cagaoan testified that in the evening of August 12, 1994, he and John Paulo were walking on top of the dike going westward. They had just come from a wake, attended also by the victim who told them to go ahead as he will be riding a motorcycle driven by Alex Torio. While walking, the victim and Alex Torio, on the motorcycle, eventually caught up with them. When they were side by side with the motorcycle, the headlight of the motorcycle revealed appellant in front holding a gun. Seeing this, Marlon Cagaoan and John Paulo quickly hid on the slope of the dike. From a distance of about six meters from the motorcycle, they saw appellant shoot the victim. The motorcycle, together with the victim, fell while Alex Torio was able to run away. After the shooting, appellant first approached the victim and then ran away towards the north.

As soon as appellant left, Marlon Cagaoan and John Paulo got up from the slope and went back to the wake where they informed everyone about the shooting. They, however, withheld the identity of the assailant. The following day Marlon Cagaoan disclosed the identity of the assailant only to Alma Paulo, who advised him to keep quiet while she reports the matter to the NBI. On August 24, 1994, or twelve days after the shooting, Marlon Cagaoan, accompanied by Alma Paulo, gave his statement to the NBI implicating appellant as the assailant.

Marlon Cagaoan further testified that several persons, namely: 1) Evelyn Fernandez, 2) Carlos Jimenez, an ex-barangay captain of barangay Balococ, Lingayen, Pangasinan, 3) Carlos Jimenez's wife, Carmen and 4) a certain Lilia paid him a visit in the house of his uncle and asked him not to testify against appellant. In consideration for his silence, he was given P250 and a half cavan of rice. Marlon Cagaoan took the money and the rice and went to Manila. However, his conscience bothered him and so he decided to testify.

Marlon Cagaoan also testified that sometime in October 1994, he met with Joel Torio, brother of appellant, at the Farmers Market in Cubao, Quezon City. In the meeting, he was offered P15,000 as consideration for not testifying against appellant. Marlon Cagaoan refused to accept the money, saying that he wanted to give justice to the victim.

Orlando Concepcion was the prosecution's fifth witness.[11] His testimony was offered to prove that appellant knows how to shoot a firearm. Orlando Concepcion testified that he had been accidentally shot in the leg by appellant on April 20, 1988, causing it to be amputated. However, he admitted not having filed a case against appellant.

The sixth witness for the prosecution was Daido Ferrer.[12] Daido Ferrer testified that he was a cell mate of appellant at the provincial jail and that, while in jail, appellant admitted to him that he killed the victim as an act of revenge against the Paulos for the killing of his father.

The seventh witness for the prosecution was Dr. Ronaldo Bandonill, the NBI medico-legal officer who exhumed the body of the victim and conducted an autopsy.[13] He testified that the victim suffered six gunshot wounds. The wounds were found at the back of the left side of the head, on the left side of the back, on the left side of the back near the waist, on the left buttock, on the back of the left leg and on the heel of the left leg. Dr. Ronaldo Bandonill stated that the entrances of the gunshot wounds indicated that the assailant was behind the victim and on the same ground level.

Appellant's defense is alibi and he presented four witnesses, including himself, to prove this defense.

The first witness was Carlos Jimenez who testified[14] that in the evening of August 12, 1994, he hosted a birthday party in his house for his 12-year-old daughter. His house is located in Barangay Balococ, Lingayen, Pangasinan, some seven kilometers from where the crime was committed. Among the guests in attendance was appellant, who was his neighbor. Furthermore, he stated that appellant does not own a motorcycle which could have been used to travel to barangay Bolaoen.

Carlos Jimenez testified that appellant arrived in his house at about 7:00 p.m. and left at around 11:45 p.m., and that while at the party, appellant played tong-its.[15] To substantiate his testimony, Carlos Jimenez presented photographs of appellant that were taken during the birthday party.[16]

The second witness for the defense was Bernardo Sabangan who testified that he was one of the invited guests who attended the birthday party of Carlos Jimenez's daughter on August 12, 1994.[17] He declared that he was in the house of Carlos Jimenez with appellant from 7:00 p.m. until 11:45 p.m. To prove his statements, he pointed himself out in some of the photographs taken during the birthday party.

The third witness for the defense was Marciana Nepacena, a neighbor of appellant.[18] She testified that she was in the house of appellant on the night of August 12, 1994 watching television and chatting with appellant's wife. She stated that appellant attended a birthday party in Carlos Jimenez's house and came back at around 11:50 p.m.

Appellant was presented as the fourth witness for the defense.[19] Appellant testified that he attended a birthday party in the house of Carlos Jimenez on August 12, 1994. He stayed there from 7:00 p.m. until 12:00 midnight. From the party, he went straight home. He identified himself in some of the photographs taken during the party. He denied having any participation in the killing of the victim and even stated that, on the day the victim was killed, he did not go to Barangay Bolaoen. He also denied having shot Orlando Concepcion and contended that the latter's injury was caused by a jeepney accident. He further denied having admitted killing the victim to Daido Ferrer and testified that does he know how to drive a motorcycle, much less own one.

The prosecution presented three rebuttal witnesses, namely: Orlando Concepcion, Antonio Villanta and Alma Paulo.

Orlando Concepcion maintained[20] that, contrary to the testimony of appellant, his injury was a gunshot wound caused by appellant. To prove his allegation, Orlando Concepcion presented a medical certificate showing that his

injury was a gunshot wound.

Antonio Villanta testified[21] that he was also shot by appellant because the latter suspected that he was the one who killed his father. He also testified that appellant knows how to drive a motorcycle and, in fact, owns one.

Alma Paulo returned to the witness stand to refute appellant's declaration that he did not go to Barangay Bolaoen on August 12, 1994.[22] She stated that she had seen appellant twice that day, first at 9:00 a.m. and later at 4:00 p.m., riding a motorcycle in front of the house of kagawad Rodolfo Garcia in Barangay Bolaoen.

On sur-rebuttal, appellant took the witness stand[23] and denied having shot either Antonio Villanta or Orlando Concepcion. He further declared that, in fact, he was never investigated by the police for those incidents.

After assessing all the evidence adduced by the prosecution and the defense, the trial court rendered a decision finding appellant guilty as charged under both informations. The dispositive portion of the decision reads:

Wherefore, in the light of all the foregoing considerations, the court hereby renders judgment in the above-entitled case[s] as follows:

In Criminal Case No. L-5188, the court finds the accused Jesus Torio alias Tigno, guilty beyond reasonable doubt of the crime of Murder as charged in the information and pursuant to law, hereby sentences said accused to suffer the penalty of Reclusion Perpetua and to pay the costs of the proceedings.

The court further orders the accused to indemnify the heirs of the deceased Ramon Paulo, the sum of P40,700.00 as actual damages; P50,000.00 as death indemnity and P540,000.00 as loss of the earning capacity of the late Ramon Paulo without subsidiary imprisonment in case of insolvency.

In Criminal Case No. L-5189, the court likewise finds and holds the accused Jesus Torio alias Tigno guilty beyond reasonable doubt of the crime of Illegal Possession of Firearm and Ammunition penalized under the provisions of Presidential Decree No. 1866 as amended, and conformable thereto, pursuant to law, hereby sentences said accused to suffer the indeterminate prison term of twelve (12) years of prison mayor as minimum to eighteen (18) years and ten (10) months of reclusion temporal as maximum and to pay the costs of the proceedings.

SO ORDERED.

Hence, this appeal.

In his brief, appellant submits two errors allegedly committed by the trial court:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN DISREGARDING THE EVIDENCE PRESENTED BY THE ACCUSED.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT JESUS TORIO ALIAS "TIGNO" GUILTY OF MURDER AND ILLEGAL POSSESSION OF FIREARM AND AMMUNITION DESPITE THE INSUFFICIENCY OF THE PROSECUTION EVIDENCE THAT WOULD WARRANT A CONVICTION UPON REASONABLE DOUBT.

The assigned errors are interrelated and shall be considered together.

Appellant initially attacks the identification made against him by prosecution witnesses John Paulo and Marlon Cagaoan. He first maintains that it is unbelievable that these witnesses would be walking on top of the dike at an

unholy hour of 11:45 p.m. going to the victim's house when they have their respective houses.[24]

The Court does not find this to be the case. The presence of the witnesses on top of the dike at 11:45 p.m. is fully explained by the fact that they had just come from a wake and were on their way to the victim's house upon instructions of the victim himself. They were told to spend the night there because they were supposed to erect electric posts along the barangay road the following day.

Appellant takes issue with the finding that the two witnesses were able to see appellant shoot the victim because of the light coming from the motorcycle's headlight, contending that Alex Torio, who was right behind the headlight, could not identify the assailant.[25]

Alex Torio's failure to identify appellant does not make a case for acquittal. The failure by one, who was present at the scene, to reveal the identity of the assailant is not equivalent to a negative identification.[26] Alex Torio simply stated to the investigators that he could not identify the assailant. He never said that appellant is not the assailant and this non-assertion simply cannot prevail over the positive identification of the other witnesses.

Another point raised by appellant is that John Paulo and Marlon Cagaoan did not immediately point to him as the assailant. John Paulo only identified appellant when he gave his statement to the NBI ten days after the incident, while it took Marlon Cagaoan twelve days after the incident to give his own statement to the NBI.[27]

Again, appellant's argument fails to convince the Court. The reliability of the identification made by the witnesses depends on their credibility,[28] and it is well-settled that the assessment of credibility of witnesses is primarily the province of the trial court which has the opportunity to observe the witnesses and their demeanor during their testimonies.[29]

In the case at bar, the trial court did not deem the delay sufficient to destroy the veracity of the two witnesses as it had been satisfactorily explained. It found that the delay was due to the witnesses' fear of appellant, who was then still free to roam around.[30] It may also be added that the initial reluctance of witnesses and their willingness to be involved in criminal investigations are common and have been judicially declared not to affect credibility.[31] To discredit a witness merely for his understandable procrastination is to forever seal the lips of any reluctant and fearful witness.[32] Besides, one of the witnesses, John Paulo, is a half-brother of the victim and such relationship only strengthens his credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit.[33]

Appellant also questions the alleged motive of appellant as claimed by John Paulo and Marlon Cagaoan, i.e., that the victim was suspected to have killed the father of appellant.[34] Suffice it to say that this argument has no real significance to the case, as motive is not an element of a crime and need not be proven to produce a conviction.[35]

Appellant next tries to focus attention on several other people whom the police investigators initially regarded as suspects to the killing, including the suspects charged by Alma Paulo with the NBI.[36]

Appellant is here clutching at straws. While admittedly there were other suspects to the crime, this fact does not detract from the guilt of appellant in light of the credible testimonies of the eyewitnesses. One simply does not become less guilty once other people have been investigated. It is common knowledge that criminal investigations initially begin with a number of possible suspects, most of whom are later cleared. Therefore, to use this reality as a means to obtain reasonable doubt is totally amiss.

Neither does Alma Paula's sworn statement to the NBI that Alexander Mata and Rodolfo Garcia may have had a hand in the killing of the victim exonerate appellant. The same statement had clearly pointed to appellant as a

suspect in the killing of her father. Alexander Mata and Rodolfo Garcia were included as possible additional suspects only because Alexander Mata had challenged the victim on July 24, 1994, while Rodolfo Garcia was a close friend of Alexander Mata and was seen together with appellant at around 4:00 p.m. of August 12, 1994. In short, mentioning two other suspects is not inconsistent with the accusation that appellant was the victim's assailant.

Appellant further avers that the complaint sheet and sworn statement of Alma Paulo to the NBI were not offered in evidence. Citing *People v. Regalario*,^[37] he argues that suppression of testimony of a witness, without any explanation, creates the inference that her testimony would have been adverse.^[38]

The argument is not tenable. First, the complaint sheet and sworn statement were part of the documents submitted to the trial court by the investigating prosecutor and, although not considered as part of the records of the case, were readily available to the trial court for its perusal. Second, the cited case is inapplicable since it refers to the suppression of a testimony of a witness and not to the failure to offer documents in evidence. Third, assuming that the doctrine is applicable, it is qualified by the rule that the prosecution has the discretion to decide on who to call as witness during the trial and its failure to do so does not give rise to the presumption that "evidence willfully suppressed would be adverse if produced" since the evidence was at the disposal of both parties.^[39]

The Court finds it unnecessary to consider appellant's arguments concerning the credibility of prosecution witnesses Orlando Concepcion and Daido Ferrer^[40] since it does not appear in the assailed decision that their testimonies were considered by the trial court in convicting appellant. The trial court leaned heavily on the candid and straightforward testimony of the eyewitnesses John Paulo and Marlon Cagaoan, which is enough to sustain a judgment of conviction. For, indeed, the testimony of a single witness, if positive and credible, is sufficient to convict, even in a murder charge.^[41]

Appellant tried to establish his alibi with testimonies from witnesses and through photographic evidence. He assails the trial court's disregard of said evidence.

In assessing the testimonies of prosecution witnesses who saw appellant at the scene of the crime and defense witnesses who claim to have been with appellant in another place at the time of the commission of the crime, the Court defers to the findings of the trial court. The evaluation of the testimonial evidence by the trial court is accorded great respect because the trial court is in the advantageous position of personally observing the demeanor of witnesses.^[42] Only when the trial court has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case, will its findings with respect to the credibility of the witnesses be overturned.^[43] Here, the Court finds no compelling reason to divert from the rule and disregard the positive identification made by the prosecution witnesses.

In any event, *People v. Arcamo*^[44] held that where the court is satisfied as to credibility of a prosecution witness who positively identified appellants as the perpetrators of the crime, there is no reason still to dwell on the issue of credibility of the defense witnesses and the validity of defendants' alibi. For settled is the rule that the defense of alibi cannot prevail over the positive identification of the accused as the author of the crime by credible witnesses.

The photographs submitted by the defense do not support the alibi of appellant. For alibi to be believed it must be shown that (a) the accused was in another place at the time of the commission of the offense, and (b) that it was physically impossible for him to be at the crime scene.^[45]

According to defense witness Carlos Jimenez, the pictures were taken at 10:00 p.m.^[46] The distance between the place where the crime was committed and the house of Carlos Jimenez is only seven kilometers. Said distance could easily be covered in less than thirty minutes by vehicle.^[47] Clearly, there was plenty of time for appellant

to leave the birthday party and proceed to the scene of the crime in order to get there by 11:45 p.m. Therefore, it was not physically impossible for him to be present at the scene of the crime when it was committed.

However, there is merit in appellant's contention that he should not be convicted of the separate crime of illegal possession of firearm and ammunition. Republic Act No. 8294, which took effect on July 7, 1997, amended Presidential Decree No. 1866 and now considers the use of unlicensed firearm as a special aggravating circumstance in murder and homicide and not as a special offense.[48]

Furthermore, Sections 8 and 9 of Rule 110 of the Revised Rules on Criminal Procedure, which took effect on December 1, 2000, now require that qualifying as well as aggravating circumstances be expressly alleged in the complaint or information, otherwise the same will not be considered by the court even if proven during trial.[49] Considering that the information in Criminal Case No. L-5188 did not allege that appellant shot the victim with an unlicensed firearm, the same cannot be appreciated in imposing the proper penalty.

Be that as it may, the information in Criminal Case No. L-5188 alleged that the crime was committed with treachery. The Court finds that treachery was satisfactorily proven by the prosecution. The essence of treachery is the unexpected and sudden attack on the victim which renders the latter unable and unprepared to defend himself by reason of the suddenness and severity of the attack.[50] In the case at bar, the nature of the entrance wounds and the testimonies of eyewitnesses sufficiently establish that, first, at the time of attack, the victim was not in a position to defend himself, as he was shot from behind while on top of a motorcycle; and second, appellant consciously adopted the particular means of attack, as he was at the crime scene prior to the attack, armed and waiting for the victim to pass by.

The civil liability imposed by the trial court requires modification.

Alma Paulo testified that the victim's heirs spent P16,000 for the vigil, P9,500 for funeral services, P2,600 for the tomb, P600 for the church rites, P7,000 for lompas, P1,000 for exhuming the victim's cadaver and P15,000 for obtaining the services of a private prosecutor. In all, the actual damages she testified to amounted to P51,700, including attorney's fees. Only the sum of P9,500 for funeral services was supported with a receipt.

Ordinarily, receipts should support claims of actual damages, but where the defense does not contest the claim, it should be granted.[51] Accordingly, there being no objection raised by the defense on Alma Paulo's lack of receipts to support her other claims, all the amounts testified to are accepted.

We also re-compute the loss of earning capacity using the formula provided in *People v. Garcia, et al.*[52] as follows:

Age of Victim

=

46 years old

Life Expectancy

=

$\frac{2}{3}$ (80 - age of victim at the time of his death)

=

22.67

Gross Annual Income

=

P48,000

Living Expenses

=

50% of Gross Annual Income

=

P24,000

Loss of Earning

=

Life Expectancy x (Gross Annual Capacity Income - Living Expenses)

=

22.67 x P24,000

=

P544,080

In line with current jurisprudence, we also award moral and exemplary damages to the heirs of the victim in the amount of P50,000 and P25,000 respectively.[53] The award by the trial court of P50,000 as civil indemnity for death is affirmed.

WHEREFORE, all things considered, the decision with respect to Criminal Case No. L-5188 is hereby AFFIRMED, with modification as to the damages awarded. Appellant is ordered to pay the heirs of the victim P51,700 as actual damages, P50,000 as civil indemnity, P544,080 as indemnity for loss of earning capacity, P50,000 as moral damages and P25,000 as exemplary damages.

Criminal Case No. L-5189 involving Presidential Decree No. 1866 is hereby DISMISSED.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Ynares-Santiago, and Carpio, JJ., concur.

[1] Rollo, pp. 24-37.

[2] Rollo, pp. 8-10.

[3] Id., pp. 11-12.

[4] Pre-trial Order, Records, p. 48; Certificate of Arraignment, Records, p. 49.

[5] TSN, January 11, 1995, pp. 3-8.

[6] A customary 9-day vigil for the deceased after the burial.

[7] TSN, January 23, 1995 a.m., pp. 4-35.

[8] TSN, January 25, 1995 a.m., pp. 3-34.

[9] Exhibits D to D-6, Records, pp. 83-101.

[10] TSN, January 27, 1995 a.m., pp. 5-56.

[11] TSN, February 27, 1995 a.m., pp. 3-6.

[12] Id., pp. 8-14.

[13] TSN, March 6, 1995 p.m., pp. 6-23.

[14] TSN, March 6, 1995 a.m., pp. 5-22

[15] A local card game.

[16] Exhibits 2 to 2-H, Records, pp. 135-143.

[17] TSN, March 13, 1995 a.m., pp. 3-5.

[18] TSN, March 13, 1995 a.m., pp. 16-17.

[19] TSN, March 13, 1995 p.m., pp. 3-10.

[20] TSN, April 5, 1995, pp. 3-4.

[21] Id., pp. 7-11.

[22] TSN, June 5, 1995, pp. 3-4.

[23] TSN, June 6, 1995 a.m., pp. 3-5.

[24] Appellant's brief, Rollo, p. 107.

[25] Id., p. 108.

[26] *People v. Gondora*, 265 SCRA 408 (1996).

- [27] Appellant's brief, Rollo, p. 108.
- [28] *People v. Aquino*, 329 SCRA 247 (2000).
- [29] *People v. Elamparo*, 329 SCRA 404 (2000).
- [30] Decision, Rollo, p. 33.
- [31] *People v. Competente*, 207 SCRA 591 (1992).
- [32] *People v. Lozada*, 334 SCRA 602 (2000).
- [33] *People v. Rendoque*, 322 SCRA 622 (2000).
- [34] Appellant's brief, Rollo, p. 109.
- [35] *People v. Berzuela*, 341 SCRA 46 (2000).
- [36] Appellant's brief, Rollo, pp. 116-119.

[37] 220 SCRA 368 (1993).

- [38] Appellant's brief, Rollo, p. 119.
- [39] *People vs. Andal*, 279 SCRA 474 (1997).
- [40] Appellant's brief, Rollo, pp. 120-124.
- [41] *People v. Batidor*, 303 SCRA 335 (1999)
- [42] *People v. Cabigting*, 344 SCRA 86 (2000).
- [43] *People v. Ballinas, et al.*, 202 SCRA 516 (1991).

[44] 105 SCRA 707 (1981).

- [45] *People v. Reanazares*, 334 SCRA 624 (2000).
- [46] TSN, March 6, 1995, p. 19.
- [47] Ibid.
- [48] *People v. Costales, et al.*, G.R. No. 141154, January 15, 2002.
- [49] *People v. Casitas*, G.R. No. 137404, February 14, 2003.
- [50] *People v. Alfon*, G.R. No. 126028, March 14, 2003.
- [51] *People v. Arellano*, 334 SCRA 775 (2000).
- [52] G.R. No. 145505, March 14, 2003.
- [53] *People v. Rubiso*, G.R. No. 128871, March 18, 2003; *People v. Garcia*, *supra*.

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