

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDISON ARELLANO, ACCUSED-APPELLANT.

G.R. No. 122477. June 30, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the Decision of the Regional Trial Court of Cauayan, Isabela, Branch 19, in Criminal Case No. 19-656,[1] sentencing appellant Edison Arellano to suffer the penalty of reclusion perpetua for the crime of murder.

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

The undersigned Provincial Prosecutor, accuses EDISON ARELLANO and ROMEO TINDENILLA, of the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, committed as follows:

That on or about the 25th day of July, 1993, in the municipality of Cabatuan, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating together and helping one another, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously, with intent to kill suddenly and unexpectedly and without giving him chance to defend himself, assault, attack and stab with a pointed bladed instrument one Andres Ventura inflicting upon him a stab wound of the right side of the body, which directly caused his death.

CONTRARY TO LAW.[2]

At their arraignment, both accused pleaded not guilty to the offense charged.[3] Trial on the merits ensued with the prosecution presenting three witnesses, namely: Roberto Morales, Antonio Cordova and Lilia Ventura. The testimonies of said prosecution witnesses may be summed as follows:

Roberto Morales, an auto mechanic at the Victory Rice Mill, testified that on July 25, 1993, at around 7:00 p.m., he was at a sari-sari store beside said rice mill at Cabatuan, Isabela. He was there drinking beer with Gaudencio Pagon, Romeo Tindenilla, rice mill security guard Arellano, Antonio Cordova, Rudy and the victim Andres Ventura. An hour later, the storeowner named Riza requested Andres to gather the empty bottles of beer. Romeo resented the act of Andres of getting the bottles in front of him, thus, a verbal tussle ensued. This heightened into a fistfight between Andres and Romeo. Because of the punches received from Andres, Romeo fell. Suddenly, Arellano approached Andres and stabbed the latter on the right side with a pointed double-bladed instrument. Andres then attempted to chase Arellano but failed as the latter was able to escape into the compound of the Victory Rice Mill. Andres sat down, held his side and shouted for help. Seeing Andres' serious wound, he (Morales) and the others brought him to the Bucag Hospital. It was there that Andres died an hour later.[4]

Antonio Cordova corroborated Morales' testimony. Also a laborer at the Victory Rice Mill, Cordova narrated that on the night of the alleged crime, he was at Riza's store with Roberto Morales, Rudy Senias, Gaudencio Pagon, Romeo Tindenilla alias Nonoy and Andres Ventura. They were there since 5:00 in the afternoon as they were

waiting for their wages. After they had each consumed a bottle of beer, the storeowner asked Andres to gather the empty bottles. While Andres was gathering the bottles, an argument broke out between Andres and Romeo. The two then started exchanging blows. As Romeo fell, Arellano emerged from the rear right side of Andres and stabbed Andres with a double-bladed weapon, hitting the latter below the right nipple. Andres then sat down, held the right side of his body and told people around that his body was painful. Arellano, on the other hand, fled to the rice mill.

Antonio reported the incident to the police. Together with Morales, Gaudencio and another person, he brought Andres to the Bucag hospital in Cauayan in a police car. It was Antonio who told the victim's mother about the incident.[5]

The prosecution also submitted in evidence the medical certificate issued by Dr. Eduardo Bucag. Despite the absence of a medico-legal testimony, the contents of the same were admitted by the defense without objection.[6] The medical certificate reveals that Ventura died as a result of a stab wound on the upper right side of his body:

This is to certify that Ventura Andres 18 y/o, male from Cabatuan, Isabela was admitted on 7-25-93 because of stab wound at the ® upper quadrant of the abdomen. On admission he was hypotensive & pale. Immediate resuscitation was done thru an emergency exploratory laparotomy that was performed. In the operative findings showed massive blood within the peritoneal cavity, stomach and small bowel. About 3-4 liters of blood was evacuated. There was transection of the hepatic artery and or postal vein, penetrating wound at the duodenum and pancreas. Intraoperatively he went into cardio respiratory failure and was revived. Around 30 minutes from the time he was out of the operating room he went into cardio respiratory arrest and was pronounced dead at 1:15 a.m. (7-26-93)[7]

The prosecution having rested its case, counsel for the defense made an oral demurrer to evidence and moved for the dismissal of the case as far as accused Tindenilla was concerned on the ground that the prosecution failed to show complicity between the two accused persons.[8] The prosecution concurred in this motion. Hence, the trial court promulgated a partial decision acquitting accused Tindenilla of the crime charged on the grounds that the injury inflicted by appellant on the victim "was the product of his sole initiative" and that the prosecution failed to prove conspiracy between accused-appellant and Tindenilla. [9]

For his part, the appellant interposed alibi and denial as defenses. Witness Romeo Tindenilla testified that he arrived at Riza's store between 8:00 and 8:30 p.m. on July 25, 1993. Already there were Andres, Roberto, Antonio, Gaudencio and Rudy. Andres told Romeo that he would box him. Romeo asked Andres why, picked up the bottle of beer he was drinking, and turned his back with the intention of leaving. Andres nonetheless boxed Romeo on his back, causing the latter to fall down and lose consciousness. When Andres told Romeo that he would box him, Arellano was no longer around as he had gone to the compound of the rice mill. In fact, when Romeo arrived at the store, Arellano, who had gone from the store, was already entering said compound. They met each other on the road outside the store. Romeo was still "not fully conscious" when the police brought him to the headquarters. He only learned at dawn that Andres had been stabbed.[10]

Testifying for his own defense, Arellano swore that at 7:30 p.m. on July 25, 1993, he was in Calaocan, Cabatuan, Isabela to pay respect to the dead grandfather of his friend, Arthur Corpuz. He stayed there with Arthur for ten minutes. Riding on a motorcycle, he and Arthur returned to Cabatuan, arriving there at 8:00 p.m. Arellano went directly to the Victory Rice Mill. Upon alighting from the motorcycle, Roberto Morales, who was at the canteen three meters away from the gate of the rice mill, called him. Roberto offered him a bottle of beer. At the canteen were Gaudenio Pagon and Rudy Senias aside from Roberto. Andres Ventura was not there. Arellano stayed in the canteen for only ten minutes and then he proceeded to the Victory Rice Mill. On his way to the rice mill, Arellano met Romeo who was going out of the rice mill to go to the canteen. The security guard on duty at that time was

Mario Guillermo. Arellano was having his dinner when a laborer in the rice mill named Randy informed him that Romeo was mauled and that Andres was stabbed. Andres was shocked to learn from Randy that he (Arellano) had been pinpointed as the person who stabbed Andres. A few minutes later, the police arrested him. He and Tindenilla were transported to the police station in the same vehicle that brought the victim to the hospital.[11]

Mario Guillermo, the security guard on 24-hour duty at the rice mill, narrated that on the night of July 25, 1993, at around 8:30 in the evening, he was inside the Victory Rice Mill compound when he heard some people quarreling outside. He took a peek and, from a distance of about fifteen meters from the gate, he saw the victim saying, "Adda tamak, adda tamak," meaning "I am injured, I am injured." Initially, he testified that it was at that precise moment that he saw Arellano entering the Victory Rice Mill. Although later he changed his testimony and stated that around five minutes had elapsed after Arellano had entered the gate when he heard someone shouting outside. Guillermo had opened the small opening in the big gate after hearing Arellano knock at the gate three times.[12]

Based on the evidence presented, on November 23, 1994, the trial court rendered a decision finding Arellano guilty beyond reasonable doubt of the crime of murder. It found that Arellano's defense of alibi could not succeed considering his positive identification by credible witnesses as the author of the killing of Andres Ventura. It ruled out the qualifying circumstance of evident premeditation as there was no proof that the incident was planned. Neither was motive for the killing established. In concluding that treachery qualified the killing to murder, the trial court said:

xxx However, the Court believes that the crime was attended with treachery. The victim never know (sic) that he will be attacked by the accused. No previous altercation took place between them so as to warn the victim of any impending attack by the accused. The evidence clearly shows that the victim and Romeo Tindenilla were having a fist fight and when the latter was knocked down, the accused coming from behind suddenly and unexpectedly stabbed the victim without any warning or giving him a chance to defend himself. Then he (accused) cowardly ran inside the compound of the Rice Mill. The crime committed is, therefore, murder.[13]

The dispositive portion of the decision reads:

Wherefore, in view of the foregoing considerations and finding the accused guilty beyond reasonable doubt of the crime of murder, judgment is hereby rendered sentencing him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim in the amount of P100,000.00 as compensatory damages and P13,000.00 as medical and funeral expenses, and to pay the costs.

Thus, appealing before this Court, appellant raises the following assignment of errors:

A

THE DECISION WAS PURELY BASED ON THE SPECULATION THAT DEFENSE WITNESS MARIO GUILLERMO MUST HAVE LIED.

B

THE DECISION OVERLOOKED IF NOT TOTALLY IGNORED THE TESTIMONY OF DEFENSE WITNESS ROMEO TINDENILLA.

C

THERE WAS MORE THAN ENOUGH DOUBT AS TO THE GUILT OF THE ACCUSED-APPELLANT.

D

THE TESTIMONIES OF THE PROSECUTION WITNESSES ARE NOT FREE FROM DOUBT.

The above errors raised by the appellant boil down to the issue of the credibility of witnesses.

The prosecution and the defense presented contradictory accounts of the events leading to the death of Andres

Ventura. And 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.[14] A close examination of the records reveals no justification to depart from the trial court's findings on the issue of credibility.

Appellant asserts that the testimonies of prosecution witnesses are "not free from doubt." He stresses that Roberto Morales and Antonio Cordova had been drinking beer for two and a half hours and, therefore, their "observation of the event could have been faulty or mistaken." [15] The credibility of said witnesses could have been adversely affected had there been proof as to how drunk they were. However, appellant failed to show that intoxication had so debilitated their senses to the point of negating their claim of having seen Andres' attacker, [16] hence, the credibility of said witnesses remain untarnished.

Appellant, likewise, failed to show any ill-motive on the part of witnesses Roberto Morales and Antonio Cordova for testifying against him. There being no showing of improper motive on the part of Roberto and Antonio for identifying the accused as the perpetrator of the crime, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit. [17]

Both prosecution witnesses clearly identified accused-appellant as the person who stabbed the victim. Both Roberto Morales and Antonio Cordova worked at the Victory Rice Mill where appellant was a security guard, hence, they were familiar with each other. Both were categorical in their declaration that it was appellant who stabbed Andres Ventura. Roberto Morales testified, thus:

Q What was the cause of the altercation between Romeo Tindenilla and Andres Ventura, if you know?

A Because Romeo resented the act of Andres in getting the bottles in front of Romeo and a verbal hustle (sic) followed, sir.

Q After that what happened next?

A They had a fist fight and Romeo Tindenilla fell down, sir.

Q When Romeo Tindenilla fell down, do you know what happened?

A Then immediately Arellano came near them and stabbed Andres Ventura at his side of his body, sir. (Witness pointing at his right side of his body parallel to the arm just above the waist).

Q Who is this Arellano whom you referred who immediately got near Andres Ventura and stabbed him at his right side?

A The security guard, sir.

Q Is he the same person whom you pointed earlier as Edison Arellano?

A Yes, sir.

xxx.[18]

Q And only one fist blow was given by Tindenilla to Ventura, is that what you mean?

A Yes, sir.

Q And when Ventura retaliated that blow was the one which felled (sic) Tindenilla, is that what you mean?

A Yes, sir.

Q And before Andres Ventura was stabbed where was Edison Arellano?

A He was behind the victim, sir

COURT:

Proceed.

ATTY. FORONDA:

Q If you say that Andres Ventura was stabbed by Edison Arellano, did you actually see Edison Arellano stabbed (sic) Andres Ventura?

A Yes, sir.

Q What hand did Arellano use, right or left in stabbing Andres Ventura?

A Right hand, sir (Witness swinging his right hand from his side going to the direction of the left).

Q Where did the weapon came (sic) from?

A I do not know, sir, when I saw him he (w)as already holding the weapon.[19]

Corroborating Morales' testimony, Antonio Cordova testified on cross-examination as follows:

Q You said that Edison Arellano stabbed Andres Ventura, at what point after Romeo Tindenilla was struck down did the stabbing occur?

A Less than one minute, sir.

Q When Romeo Tindenilla was being helped to his feet, was Andres Ventura already been stabbed?

A Yes, sir.

COURT:

Q Where did the security guard Edison Arellano come from before he stabbed Andres Ventura?

A From the rear, sir, of Andres Ventura.

Q Who were Andres Ventura facing when he was stabbed by the security guard Arellano?

A Berting, I and Gaudencio, sir.

Q And in relation to Ventura, where was the fallen body of Nonoy?

A In front of Andres, sir.

COURT:

Proceed.

ATTY. FORONDA:

Q Did you actually see Edison Arellano stab Andres Ventura?

A Yes, sir.

Q You said that the assailant "biglang sumulpot" or suddenly appeared, you mean to say you did not see the assailant prior to his sudden appearance?

A I saw him, sir.

Q What do you mean by "biglang sumulpot"?

A He immediately attacked, sir, the victim (biglang sumugod).[20]

Positive identification, where categorical and consistent without any showing of ill-motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[21]

The witnesses having positively identified the appellant, 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.[22]

Appellant, however, insists that Guillermo was a credible witness, hence, the trial court should have given more weight to his testimony. After a careful examination of Guillermo's testimony, we fail to see how the same, even if we were to give it full weight and credit, can rebut the prosecution's version as to the killing of Andres. In fact, said testimony is consistent with the narration of the prosecution witness Morales that after stabbing Ventura, Arellano escaped into the rice mill and that Ventura tried to catch him but failed due to the injury sustained:

ATTY. FORONDA:

Q What did you do when you heard people quarreling outside?

A I peeped from the place where I was on duty, sir.

Q When (sic) did you see when you peeped?

A I saw the victim saying, "Adda tamak, adda tamak," (meaning, "I am injured, I am injured"), sir.

COURT:

Q Why, was the place where the victim was shouting lighted?

A It was dark, your Honor.

How far is the place where he was shouting from the place where you peeped?

A About fifteen meters, your Honor.

COURT:

Proceed.

ATTY. FORONDA:

Q When you saw this person shouting, "Adda tamak," meaning, "I am injured," do you know where Edison Arellano was at that point in time?

A He was already inside the Victory Rice Mill, sir.

PROSECUTOR CACATIAN:

May we please spread (sic) on record the Ilocano words used by the witness, your Honor.

COURT:

All right, you quote the Ilocano words "Sumbrek idin idia Victory Rice Mill," meaning, he was already entering the Victory Rice Mill." [23]

As corrected by the trial court, the translation of Guillermo's Ilocano testimony that accused-appellant was entering the rice mill when Guillermo heard the victim's remark that he was injured, only implies that the interval of time between that remark and accused-appellant's entering the compound of the rice mill was immediate. That translation supports the prosecution's theory that, after stabbing the victim, accused-appellant ran to the rice mill.

Neither does Tindenilla's testimony create any doubt as to the culpability of the appellant. Appellant harps on the trial court's failure to appreciate Romeo Tindenilla's testimony that appellant was no longer at the sari-sari store when the fist fight started:

Q: When Andres Ventura told you that he will box you until the time he actually boxed you, was Edison Arellano within the vicinity of the sari-sari store?

A: He was no longer there, sir.

Q: Where was he then, if you know?

A: He went inside the compound, sir

Q: How do you know that he was already inside the compound?

A: Because when I arrived at the store, I saw him entering the compound of the Victory Rice Mill, sir. [24]

However, it must be remembered that at the time Ventura was stabbed, Tindenilla, as he himself admits, was already unconscious. His testimony that Arellano had already gone to the rice mill is of no moment. Considering the short distance between the rice mill and the sari-sari store, Arellano could have easily shuttled between the two places. In fact, this is consistent with witness Cordova's statement that when the fistfight ensued between Tindenilla and Ventura, the appellant was not in the vicinity, and it was only when Tindenilla fell to the ground that appellant appeared from nowhere and stabbed Ventura.

All told, this Court is of the opinion that the prosecution was able to establish appellant's culpability for the death of Ventura.

However, we agree with the recommendation of the Solicitor General that accused-appellant should be convicted of the crime of homicide, not murder, as the qualifying circumstance of treachery had not been established. The Solicitor General points out that "appellant's decision to stab the victim was done on an impulse when he saw Tindenilla knocked down unconscious" and that "appellant was probably trying to retaliate for the serious harm done to Tindenilla or he could be trying to protect Tindenilla from further injury." As appellant did not consciously adopt the means of attack, treachery cannot be appreciated.

While it is true that the essence of treachery is the suddenness and unexpectedness of the assault without the slightest provocation on the part of the person attacked, [25] the conditions set by law for the appreciation of treachery do not concur. These conditions are: (1) the means, method and form of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and (2) such means, method or form of execution was deliberately and consciously adopted by the accused. [26] By swiftly attacking the victim from behind when he was engaged in a fight with another person, accused-appellant certainly did not give the victim an opportunity to defend himself or to retaliate. The victim least expected the assault upon his person as his attention was focused on the fallen Tindenilla with whom he had exchanged fist blows.

However, the subjective element of treachery, i.e., the deliberate choice of the method of assault with the special

view of accomplishing the act without risk to the assailant from any defense that the party assailed might have made,[27] was not established by the prosecution. For treachery to be appreciated as aggravating circumstance, there must be proof that the accused consciously adopted a mode of attack to facilitate the perpetration of the killing without risk to himself.[28] By the facts established in this case, accused-appellant could not have committed the crime without the risk that he could be physically harmed as a consequence thereof. The victim was not alone and, hence, the probability of his co-workers and drinking buddies pouncing upon accused-appellant was not remote. Neither was there proof that accused-appellant made some preparations to kill the victim in such a manner as to ensure the execution of the crime or to make it impossible or hard for the person attacked to defend himself.[29] What appears on record is that accused-appellant, upon seeing Tindenilla fallen, decided at the spur of the moment to act impulsively. A killing done at the spur of the moment is not treacherous.[30]

In the absence of any qualifying circumstance, the crime committed is homicide which is penalized with reclusion temporal under Article 249 of the Revised Penal Code. Inasmuch as no mitigating or aggravating circumstance attended the commission of the crime, the penalty should be imposed in its medium period.[31] Applying the Indeterminate Sentence Law, accused-appellant should serve the penalty of seventeen (17) years and four (4) months of reclusion temporal medium, as maximum penalty.

As regards the monetary award, the trial court failed to explain the basis of its award of P100,000.00 as civil indemnity. While the heirs of the victim did not expressly claim an amount representing the deceased's loss of earning capacity nor present evidence thereon, such failure does not necessarily prevent recovery of damages considering that there is sufficient basis on record upon which the court may determine a reasonable and fair estimate of such damages.[32] In accordance with Article 2206 of the Civil Code,[33] an award of compensatory damages representing Alfredo's loss of earning capacity is due the heirs of the victim.

The amount of loss of earning capacity is based mainly on two factors.[34] 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 $\frac{2}{3} \times [80 - \text{age of the victim at the time of death}] = \text{life expectancy in terms of years}$. Applying this formula, Andres' life expectancy is $\frac{2}{3} \times (80 - 18) = 41.33$.

Factor number two is arrived at by multiplying the life expectancy by the earning of the deceased. As has been settled in the case of *Villa Rey Transit, Inc. v. Court of Appeals*,[35] and a long list of cases[36] the computation of the rate of loss of earnings should be based on the net earnings.

In this case, Andres Ventura was eighteen years of age at the time of his death with a life expectancy of 41 years. The undisputed claim of the victim's mother was that Andres was "employed" as a laborer at the Victory Rice Mill at the rate of P100.00 a day,[37] which was, likewise, admitted by the defense.[38] The crime was committed on a Sunday after the victim and his co-workers had finished their work for the day.[39] The victim should, therefore, be presumed to have worked everyday including Sundays or rest days, special days and regular holidays. As such, under the "1999 Handbook on Workers' Statutory Monetary Benefits" outlining the minimum legal requirements concerning workers' monetary and non-monetary benefits that was approved by DOLE Secretary Bienvenido E. Laguesma on December 14, 1999, the victim is deemed to have worked a total of 391.50 days a year[40] with total wages in the amount of P39,150.00 per annum (P100/day x 391.50 days). One half of this amount would be considered as his necessary living expenses. The victim's loss of earning capacity should, therefore, be computed as follows:

$$41.33 \times \text{P}19,575.00 = \text{P}809,034.75$$

Likewise, civil indemnity in the amount of P50,000.00 is automatically granted to the heirs of the victim without need of any evidence other than the fact of the commission of the crime.[41] The heirs of the victim should also be awarded actual damages in the total amount of P13,000.00 as the defense admitted that the victim's family incurred funeral expenses of P6,000.00 and medical expenses of P7,000.00.[42] Ordinarily, receipts should support claims of actual damages. However, since the defense did not contest that claim, it should be granted.

WHEREFORE, the herein appealed decision is hereby **AFFIRMED** with the following modifications:

1. Appellant Edison Arellano is, hereby, convicted for the crime of homicide and is to suffer the indeterminate sentence of ten (10) years and one (1) day of prision mayor to seventeen (17) years and four (4) months of reclusion temporal, and
2. Appellant is, hereby, liable to pay the heirs of the victim civil indemnity of P50,000.00, actual damages of P13,000.00, and damages representing the victim's loss of earning capacity of P809,034.75.

SO ORDERED.

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

[1] Presided by Judge Artemio R. Alivia.

[2] Records, p. 27.

[3] Id., at 50.

[4] TSN, March 10, 1994, pp. 9-17.

[5] Id., at 29-42.

[6] TSN, March 10, 1994, pp. 2-4.

[7] Rollo, p. 76.

[8] TSN, March 10, 1994, p. 45.

[9] Records, pp. 56-59.

[10] TSN, March 10, 1994, pp. 4-11.

[11] TSN, June 3, 1994, pp. 4-9, 15.

[12] TSN, September 12, 1994, pp. 4-19.

[13] Rollo, pp. 74-80.

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

[15] Accused-Appellant's Brief, Rollo, p. 75.

[16] *People v. Reduca*, 301 SCRA 516, 529 (1999)

[17] *People v. Hernandez*, 304 SCRA 186, 194 (1999); *People v. Tabaco*, 270 SCRA 32, 54 (1991)

[18] TSN, March 10, 1994, pp. 13-14.

[19] Id., at 22.

[20] *Id.*, at 40-41. Underscoring ours.

[21] *People v. Amania*, 318 Phil. 579, 588 (1995)

[22] *People v. Caraig*, 202 SCRA 357, 368 (1991) citing *People v. Magdahong*, 176 SCRA 282 (1989)

[23] TSN, September 12, 1994, pp. 6-7. Underscoring ours.

[24] TSN, March 10, 1994, p. 5.

[25] *People v. Sumalpong*, 348 Phil. 501, 520 (1998)

[26] *Id.*, at 519-520.

[27] AQUINO, THE REVISED PENAL CODE, Vol. I, 1987 ed., p. 399.

[28] *People v. Quitlong*, 292 SCRA 360, 382 (1998)

[29] *People v. Salvador*, 344 Phil. 580, 596 (1997)

[30] *Ibid.*

[31] Art. 63, REVISED PENAL CODE.

[32] *People v. Gutierrez, Jr.*, 302 SCRA 643, 667 (1999)

[33] 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.

[34] *People vs. Daniel*, 136 SCRA 92 (1985)

[35] 31 SCRA 511 (1970)

[36] *People v. Reyes*, 309 SCRA 622 (1999), *People v. Suitos*, 220 SCRA 419 (1993), and *Dangwa Transportation, Inc. vs. Court of Appeals*, 202 SCRA 574 (1991)

[37] *Id.*, at 5-7.

[38] *Id.*, at 6.

[39] TSN, March 10, 1994, pp. 29-30.

[40] FOZ, THE LABOR CODE OF THE PHILIPPINES AND ITS IMPLEMENTING RULES AND REGULATIONS, 2000 ed., pp. 532, 544-545.

[41] *People v. Apolinar Dando*, G.R. No. 120646, February 14, 2000.

[42] TSN, March 10, 1994, p. 7.

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