

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FREDDIE BALISORO AND JORGIE DIONSON/DIONZON, ACCUSED, FREDDIE BALISORO, ACCUSED-APPELLANT.

G.R. No. 124980. May 12, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal interposed by Freddie Balisoro from the decision[1] dated June 1, 1995 of the Regional Trial Court of Surallah, South Cotabato, Branch 26 in Criminal Case No. 1418-N convicting him of murder.

At about 11:20 o'clock in the evening of April 25, 1993 during a benefit dance at Purok Daisy, Barangay Poblacion, Norala, South Cotabato, Glenn Catalan was shot at the back of his head with a handgun. Freddie Balisoro (Balisoro) was accused of shooting Catalan; his co-accused Jorgie Dionzon (Dionzon) was alleged to have stood at his left side and acted as guard during the shooting.

In the information[2] dated August 10, 1993, Freddie Balisoro and Jorgie Dionson/Dionzon were charged with the crime of murder committed as follows:

"That on or about the 25[th] day of April, 1993, at about 11:20 o'clock in the evening thereof, at Purok Daisy, Barangay Poblacion, Municipality of Norala, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously, and with intent to kill and treachery, attack, assault and shoot GLENN CATALAN in the following manner, to wit: that, while said victim, together with Rogelio S. Jordan, was resting at the back of the table occupied by the operator(s) of the sound system used during the dance benefit held thereat, accused Freddie Balisoro, who was then armed with an unlicensed handgun of still undetermined make and caliber, surreptitiously sneaked from behind said victim and with the use of said handgun shot said victim hitting and inflicting upon the latter a mortal gunshot wound at the back of his head and which directly caused the death of said victim shortly thereafter; while, accused Jorgie Dionson/Dionzon stood and acted as guard nearby.

CONTRARY TO LAW."

When arraigned, both accused entered a plea of "not guilty."

William Solomon, Rex Jordan and Vicente Catalan testified for the prosecution.

William Solomon (Solomon) testified[3] that he knew both accused whom he identified in court. In the evening of April 25, 1993 at around 11:00 o'clock he was attending a benefit dance at Purok Daisy, Poblacion, Norala, South Cotabato. He stayed at the back of the operator of the sound system where he saw the victim together with Rex Jordan and Rene Villegas[4] he saw Balisoro near the victim. He also saw Dionzon standing and holding his waist about three (3) meters away. He saw Balisoro approach Dionzon who handed him a short gun. After accepting the gun, Balisoro went towards the back of the victim.

Solomon went to a nearby fence, about 3 meters behind the sound system of the operator's place, in order to urinate. While facing the fence relieving himself, he heard one gunshot behind him and he immediately looked back. He saw the victim lying dead on the ground and Balisoro still pointing the gun (towards front pointing down) at the victim. Thereafter, Balisoro backtracked and immediately ran away. When Balisoro ran away, Dionzon just walked around the dance place.

Solomon ran towards the road and waited for a vehicle that will transport Catalan to a nearby hospital. At the Norala District Hospital, the victim was declared dead on arrival. Thereafter, Solomon went to his grandparents' house and narrated to his grandmother what he had just witnessed.

During the cross-examination,[5] Solomon stated that he knew of a previous misunderstanding caused by the killing of the brother of Dionzon by the brother of Villegas. He stated that at the time when he heard the gunshot he was urinating and he was three (3) meters away from Catalan when the latter was shot.

Rex Jordan (Rex) also testified[6] that he heard the gunshot. He narrated that he was also at the benefit dance on April 25, 1993 at 11:20 p.m. He was with the victim Catalan, Ronnie Benegas, Solomon, Rex Jordan and Rogelio Jordan and stayed at the back of the operator of the sound system. The victim was seated behind them, about two (2) meters from where he was standing. He heard one gunshot, immediately turned his head and saw the victim already lying down on his back with Balisoro still pointing a short handgun at the victim while Dionzon also with a gun was on guard. The place where the victim was shot was well lighted.

After the gunshot, there was a commotion and when both accused Balisoro and Dionzon fled away from the scene, his brother Rogelio chased them. Rogelio returned after an unsuccessful chase. He and his companions boarded the victim on a tricycle and brought him to the hospital where he died.

In the course of his cross-examination,[7] Rex admitted that he had not actually seen Balisoro fire the gun at the victim; that after the incident he did not bother to go to the police to report what had just transpired; that he was not even invited by any policeman to give his statement; that he was only asked by the father of the victim to testify in their favor; and that a day before he testified, he was able to talk to the private prosecutor regarding his testimony.

Vicente Catalan, Jr., father of the victim, narrated in court that when his son was brought to the hospital the victim was declared dead on arrival[8] and that relative to his son's death he had spent P31,500.00,[9] as shown in Exhibits "A-A-1".[10]

Freddie Balisoro raised the defense of alibi.[11] According to him, at about 11:20 p.m. in the evening of April 25, 1993 he was at his home in Barangay Aquino, Norala, South Cotabato. He was accompanied by his parents and by a certain Jr. Matias who stayed in their house overnight in order to pay a debt owed from his father. Jr. Matias came from Bagumbayan, Sultan Kudarat. He also said that on that same evening, he went to sleep at 8:30 p.m. and woke up at 5:00 o'clock the following morning. He admitted that he and Dionzon were first cousins, but he denied that they were together that evening. He denied that he killed the victim; it was only at the time when he was arrested on April 26, 1993 that he came to know that the victim was already dead.

Balisoro further testified that the distance from his house in Barangay Aquino to Purok Daisy where the benefit dance was held is about 3 kilometers but with the use of his bike he could reach Purok Daisy in Norala within fifteen (15) minutes.

Balisoro declared that it has been a long time ago since he last went to Purok Daisy. He testified that he did not know Rex and Solomon. He also did not know why these persons pointed to him as the one who carried a gun that evening. Although he admitted to have known Alvin Veñegas and Ronnie Veñegas, he said that he did not know

that Ronnie and Alvin are cousins of Solomon.

Balisoro presented Jorgie Dionzon (Dionzon), Arnie Pacheco (Pacheco) and Celestino Matias, Jr. as his witnesses.

Dionzon testified^[12] that he arrived at the benefit dance at about 9:00 o'clock in the evening of April 25, 1993. He was with Pacheco, his brother-in-law. He stood at the back of the operator of the sound system looking at the persons who were dancing. He said that at the time the victim was with Rogelio Jordan, Ronnie Veñegas, Solomon, and Rex. They were about seven (7) meters away from him. He declared that although he treats the victim as a friend, he did not try to approach the victim's group because he was angry at Rogelio Jordan and Ronnie Veñegas because they were the ones who killed his brother, Efren Dionzon. He admitted that he told Pacheco that "the relatives who killed his brother are here so, don't trust."

Dionzon narrated that before the gunshot was heard he also saw the victim together with Rogelio Jordan and Ronnie Veñegas at the back of the sound system operator, and that aside from them there were also other persons present whom he did not know who stayed at the back of the sound system. He was situated about fifteen (15) meters in front of the sound system.

Dionzon said that he and Pacheco stayed there until past 11:00 o'clock in the evening and until the time when a gunshot was heard. However, when he heard the gunshot he was not sure where it came from. At first he thought it came from the front of the place where he was standing but later on he learned from other persons present that the gunshot came from the back of the stage. He found out later that it was also the place where the victim was found dead, which was about fifteen (15) meters from where he was standing. It was only on the following day that he learned of the death of the victim. He declared that he happened to know the victim because he is the relative of his neighbor and the victim often visited them, and that he and the victim had no misunderstanding even before April 25, 1993.

In the course of his testimony, Dionzon admitted that he knows Rogelio Jordan. He also admitted that he saw Rogelio Jordan at the dance hall but he did not see him dance. As for his part, although he danced twice that evening there was never a time that he went to the table where the sound system was located. He said that Balisoro was not at the dance place because he did not see him there. They were implicated in the crime because the relatives of Veñegas and Jordan had grudges against them due to the death of his brother who was stabbed by Alvin Veñegas.

Arnie Pacheco testified^[13] that a day before the incident, he and his wife stayed at Dionzon's place in order to attend the fiesta celebration there. His house is 40 kilometers away from Dionzon's place. He also testified that he was at the dance hall on April 25, 1993 at about 9:00 o'clock in the evening together with Dionzon. He knew Balisoro because the latter is the first cousin of Dionzon. Jorgie Dionzon is the brother of his wife. But he declared that he and Dionzon had not seen Balisoro at the dance.

Pacheco testified that Dionzon told him that members of the Veñegas family were within the vicinity of the dance hall and that he should prepare himself for whatever eventuality that may occur due to the bad blood between the Veñegas family and the family of his in-laws because of the death of his brother-in-law who was killed by a member of the Veñegas family. With regard to the gunshot, he declared that the gunshot came from the right side of the dance place near the amplifier, about fifteen (15) meters away from where he and Dionzon were standing. Dionzon was at his left side when it happened. He only learned about the death of Catalan when accused Balisoro and Dionzon were arrested a few days after April 25, 1993. He and his wife left the place of Dionzon on April 26, 1993 at 7:00 o'clock in the morning. But the night before they left, he and Dionzon never talked about the incident that took place at the dance hall. He did not also mention anything about the gunshot to his wife the following day.

Balisoro's last witness was Celestino Matias, who was presented to corroborate the defense of alibi but he failed to testify on his presence in the house of Balisoro on the date of the shooting.[14]

In its decision of June 1, 1995, the trial court convicted accused Freddie Balisoro of murder, with the qualifying circumstance of treachery; the dispositive portion of the decision reads:

"WHEREFORE, the Court finds the accused Freddie Balisoro guilty beyond reasonable doubt of the murder of Glenn Catalan and hereby sentences him to the penalty of reclusion perpetua and to indemnify the heirs of the victim the sum of P50,000.00 for the victim's death and P31,000.00 for actual expenses incurred by reason of said death.

The accused Jorgie Dionson/Dionzon is hereby acquitted for insufficient evidence.

SO ORDERED."[15]

The court gave credence to the testimonies of the prosecution's witnesses which were given in a spontaneous and in a simple manner. It found that said witnesses had no ill-motive in pointing to the accused Balisoro as the gunman who was seen still pointing a gun at the fallen victim immediately after the gunshot. The trial court also opined that it was not physically impossible for the accused-appellant to be at Purok Daisy at the time of the commission of the offense. It took into consideration the fact that accused-appellant's house is only about three (3) kilometers away from Daisy which distance could be reached in seven minutes on a jeep or fifteen (15) minutes on a bicycle.

The trial court ruled that the conspiracy between Balisoro and Jorgie Dionson/Dionzon was not proven. Dionzon's presence at the dance was not proved by the prosecution to have been arranged in order to help Balisoro in killing the victim.

On June 29, 1995, herein accused-appellant Freddie Balisoro interposed this present appeal before this Court with the following assignment of errors:

I

THE TRIAL COURT HAS COMMITTED AN ERROR IN NOT ACQUITTING THE ACCUSED-APPELLANT OF THE CRIME OF MURDER.

II

THE TRIAL COURT GRAVELY ERRED IN MEETING OUT (FOR) THE ACCUSED-APPELLANT A PENALTY OF RECLUSION PERPETUA DISREGARDING THE FACT THAT DURING THE ALLEGED TIME OF THE SHOOTING THE CAPITAL PUNISHMENT (DEATH PENALTY) WAS NOT ENFORCED.
(sic)

Accused-appellant Balisoro pleads in exculpation that his constitutional right to presumption of innocence remains because there is reasonable doubt that calls for his acquittal.

Accused-appellant Balisoro argues that his testimony "that he was resting and sleeping in their house in Barangay Aquino, Norala, South Cotabato which is three (3) kilometers away from the crime scene" was fully corroborated by the testimonies and declarations made by his witnesses Jorgie Dionzon and Arnie Pacheco.

He also contends that the testimony of William Solomon regarding the real identity of the culprit is not credible for the reason that when he was relieving himself then or at that moment when the single gunfire was heard, he was not facing anyone, more especially the victim (Catalan) when the latter was shot and killed. This is likewise true with respect to the testimony of Rex Jordan since he did not actually see the firing of the gun or the shooting

of the victim.

Furthermore, accused-appellant Balisoro claims that the trial court based its decision on "guesswork or conjecture" when it opined that "it was not impossible for him (accused-appellant) to be at Daisy at the time of the commission of the offense." He contends that his defense of alibi should not at once be looked upon with disfavor.

We find the appeal unmeritorious.

It is true that both prosecution witnesses William Solomon and Rex Jordan did not actually see accused-appellant Balisoro at the precise moment when he shot Catalan. But their testimonies are useful to establish what transpired immediately before and immediately after the time when the single gunshot was heard. The positive identification of herein accused-appellant Balisoro by Solomon who saw him with a handgun approach the victim from the back and who immediately or seconds after a gunshot was heard, saw the victim lying on the ground and herein accused-appellant Balisoro still holding a gun pointed at the victim leads to no other logical conclusion but that the accused-appellant has killed the victim.[16] Accused-appellant Balisoro was also identified by witnesses Rex Jordan who immediately after he heard the gunshot saw herein accused-appellant Balisoro still holding and pointing a gun at the sprawled body of the victim. Accused-appellant Balisoro failed to show that the witnesses for the prosecution were prompted by any ill-motive to testify falsely or for them to wrongly accused him of so grave a crime as murder. No other fair and reasonable conclusion can be made other than that herein accused-appellant Balisoro was responsible for the death of the victim. The visibility of the crime scene was made possible by the fluorescent light used in the sound system. The sound system behind which the victim was seated was just 3 meters away from where William Solomon urinated. Rex Jordan, who was then standing at the back of the sound system, was also just 2 meters away from the victim when the gunshot was heard and when he was herein accused-appellant Balisoro still pointing the gun at the victim.[17]

The absence of any witness to the actual shooting does not preclude conviction, as the totality of the circumstantial evidence is sufficient to produce a moral certainty about the culpability of herein accused-appellant Balisoro.

The following pieces of evidence pointing to herein accused-appellant Balisoro as the author of the crime concur: 1) defense witness Arnie Pacheco was warned by co-accused Dionzon that something may happen in the dance hall because of the presence of the members of the Veñegas family;[18] 2) accused-appellant Balisoro was seen by William Solomon going towards the back of the victim carrying the gun immediately before he heard a gunshot;[19] 3) immediately or seconds after a gunshot rang out, accused-appellant Balisoro was again positively identified by William Solomon[20] and Rex Jordan[21] standing near the victim and still pointing a gun at the victim sprawled on the ground; and 4) accused-appellant Balisoro immediately fled[22] from the scene after the shooting.

The evidence clearly yields a fair and reasonable conclusion pointing to herein accused-appellant Balisoro, to the exclusion of all others, as the perpetrator of the crime.[23]

At the trial, the court a quo noted the "spontaneous and simple manner" in which the testimonies of the witnesses for the prosecution narrated their own individual accounts of the incident and found these two witnesses reliable and credible. Indeed, their testimonies were consistent in their material points and indubitably established the identity of the triggerman as herein accused-appellant Balisoro. William Solomon, one of the prosecution's witnesses, declared, viz.:

"x x x x x x x x

Q.

While you were behind the operator, who were the persons whom you notice nearby if any Mr. Witness?

A. Glenn Catalan, Rex Jordan and Rene Villegas.

Q. Does the operator was provided with a table? (sic)

A. Yes sir.

Q.

The sound system was also illuminated?

A. Yes sir.

Q. What was the source of the light?

A. Flourescent.

Q. While viewing the dance going on while behind the operator, what if anything happened?

A.

I was just witnessing the dance.

Q.

Then what did you do next?

A. I urinated.

Q. Where did you intend to urinate?

A. Near the fence.

Q. The fence where was it located or situated?

A. Behind the operator of the sound system.

Q. That fence is how far from the operator of the sound system?

A. About 3 meters.

Q.

And you turn your back while you were urinating?

A. Yes sir.

Q. Now when you turn your back while urinating what if any incident did you see Mr. witness?

A. I heard gun report.

Q. Prior to the gun report if any, what did you see?

A. I saw Glenn Catalan lying dead.

x x x x x x x x

ATTY. LEDDA:

Few questions, your Honor.

Q. You said you heard gun report Mr. Witness, from what direction did you hear that gun report?

A.

Behind me.

Q. At that precise moment what did you do?

A. Interrupted....

Court:

He faced the fence, he heard gun report.

ATTY. LEDDA:

Q. Before the gun report, do you know who fired that gun report?

ATTY. BALAYON:

Your Honor, already answered.

COURT:

Answer.

A. Freddie Balisoro.

ATTY. LEDDA:

Q. During that occasion prior to that gun report, did you ever see Freddie Balisoro?

A.

Yes sir.

Q.

Were did you see him?

A. He was near Glenn Catalan.

x x x x x x x x

Q. When you saw this Jorge Dionson, what was he doing specifically if you can recall mr. witness? (sic)

A.

He was standing.

Q. Aside from standing was he doing anything?

A. He was holding his waist (Witness touched his right front portion of his waist.)

Q. What else if any was he doing?

A. I saw that Freddie Balisoro went near him.

Q. You are referring to Jorge Dionson?

A. Yes, sir.

Q. When they were near each other what transpired if any Mr. Witness?

A. He handed the gun.

Q. Who handed the gun?

A.

Jorge Dionson.

Q. To whom did Jorge Dionson hand(ed) the gun? (sic)

A. Freddie Balisoro.

Q. What kind of gun was handed to Freddie Balisoro long or short gun?

A. Short gun?

Q. After Jorge Dionson handed the gun to Freddie Balisoro, did Freddie Balisoro accept(ed) the gun? (sic)

A.

Yes, sir.

Q. After accepting the gun what did Freddie Balisoro do next if any?

A. He went towards the back of Glenn Catalan.

Q. And what happened next if any?

A. Then gun report was heard.

Q. How far were the gun from Jeorge Dionson when you saw he handed a gun to Freddie Balisoro?

A. About 1 meter.

Q. From the place of Glenn Catalan where Jeorge Dionson and Freddie Balisoro handed the gun is how far?

A. 2 1/2 meters.

Q. You said you heard gun report upon hearing that gun report what happened next?

A. Then I saw Glenn Catalan lying down.

x x x x x x x x

Q.

What was Freddie Balisoro doing?

A. I still saw him pointing the gun. (witness raised his hand towards front pointing down.)

Q. Towards whom he pointing the gun?

A. Glenn Catalan.

x x x x x x x x"[24]

The foregoing narration of what transpired at the dance hall was corroborated by the testimony of another prosecution witness. Rex Jordan, who was also at the benefit dance with the victim Glenn Catalan. Jordan testified as follows:

"x x x x x x x x

Q. In the evening of of April 25, 1993, specifically at 11:20 thereof, where were you, Mr. Witness? (sic)

A. I was in the back of the operator.

x x x x x x x x

Q. Mr. Witness, what was your position while you were in the back of the operator of the sound system during the benefit dance? (sic)

A. I was standing.

Q. And the operator was sitting?

A. Yes sir.

Q.

How about Glenn Catalan, where was he situated at that time?

A. In the back.

Q. Whose back?

A.

At our back.

Q. Was he standing or sitting?

A. Seated.

Q. How far was Glenn Catalan from you while you were standing and he was at your back?

A. About two (2) meters.

Q. While you were there in the back of the operator of the sound system, did you hear any unusual incident?
(sic)

A. Yes sir.

Q. What was that?

A. A gunreport.

Q. How many gun report did you hear?

A. One (1).

Q. And when you heard that gunreport, what did you do?

A. When I turned my head towards where the gunreport emanated I saw Glenn Catalan already lying down on his back.

Q. What else did you see?

A. I saw Freddie Balisoro still pointing a gun to Glenn Catalan and Jorgie Dionzon still on guard.

Q. What was pointed at by Freddie Balisoro?

A. A short gun.

x x x x x x x x"[25]

Herein accused-appellant Balisoro's claim that William Solomon's testimony is doubtful as to whether he was

indeed with the group of the victim before he urinated is unfounded. Herein accused-appellant himself admitted in his Brief[26] that Solomon was present at the dance that very night. An admission made in the pleadings cannot be controverted by the party making such admission and is conclusive as to him.[27] Moreover, his co-accused Jorgie Dionzon[28] identified William Solomon and Rex Jordan as the companions of the victim, Glenn Catalan, prior to the time he was killed. This fact is also confirmed by Rex Jordan who testified on cross-examination that before the gunshot was heard William Solomon asked permission from him and his companions that he would just urinate, and that Solomon returned when they brought the body of the victim to the hospital.[29]

Accused-appellant's contention that the trial court based its decision on "guesswork or conjecture" when it failed to appreciate his defense of alibi is without merit. Accused-appellant Balisoro's reliance on the ruling of this Court in *People v. Santos*[30] is misplaced. Although this Court held therein that "the defense of alibi should not at once be looked with disfavor," this is so because the other evidence on record might be sufficient to acquit him. In the case at bar, such other evidence is wanting. It is not enough to prove that herein accused-appellant Balisoro was somewhere else when the offense was committed. It must likewise be shown that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of the commission.[31] As found by the trial court, herein accused-appellant himself admitted that his place is just 3 kilometers away from Purok Daisy where the dance benefit was being held and the same can be reached by jeep within seven (7) minutes and by his own bike within 15 minutes. Accordingly, it was not physically impossible for accused-appellant Balisoro to leave and, after killing the victim, to return to his house without his companions noticing his temporary absence. Moreover, alibi cannot prevail over the positive identification of the accused by eyewitnesses.[32]

We have thoroughly reviewed the records of this case and no evidence would support herein accused-appellant Balisoro's denial of the charge against him other than his self-serving claim that it was impossible for him to have committed the offense as he was at home. The denial is self-serving and cannot prevail in the light of the testimony of those present.

It should be underscored that treachery qualified the crime to murder because in this case when herein accused-appellant Balisoro stealthily situated himself at the back of the unarmed victim, the latter, not having any inkling whatsoever of the impending danger that lurked from behind him, was rendered totally defenseless against his aggressor when accused-appellant Balisoro suddenly shot him in the head from behind. This attack by herein accused-appellant Balisoro came without warning and without the slightest provocation on the part of the victim, and was deliberate and unexpected, affording the hapless, unarmed and unsuspecting victim no chance to resist or to escape. We are convinced of the treacherous nature of the assault.[33] It has been held that when the assailant consciously employed means of execution that gave the person attacked no opportunity to defend himself, much less retaliate which tended directly and specially to insure his plan to kill the victim,[34] the crime is qualified to murder.

The penalty for murder under Article 248 of the Revised Penal Code is:

"Article 248. Murder. - Any person who not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:

- With treachery, x x x x ;
- x x x x x;
- x x x x x;

- x x x x;

- x x x x;

- x x x x."

Herein accused-appellant Balisoro claims that since the crime was committed during the suspension of the imposition of death penalty as mandated by the 1987 Constitution and prior to the effectivity of RA 7659 re-imposing the same, he should only be meted out the penalty of reclusion temporal in its maximum period or 17 years, 4 months and 1 day. This contention has already been rejected by this Court in *People vs. Muñoz*,^[35] as affirmed in several succeeding cases,^[36] which held that:

"x x x Article III. Section 19(1) does not change the periods of the penalty prescribed by Article 248 of the Revised Penal Code except only insofar as it prohibits the imposition of the death penalty and reduces it to reclusion perpetua. The range of the medium and minimum penalties remains unchanged.

The Court realizes that this interpretation may lead to certain inequities that would not have arisen under Article 248 of the Revised Penal Code before its modification. Thus, a person originally subject to the death penalty and another who committed the murder without the attendance of any modifying circumstance will now be both punishable with the same medium period although the former is concededly more guilty than the latter. True enough. But that is the will not of this Court but of the Constitution. That is a question of wisdom, not construction. Of some relevance perhaps is the parable in the Bible of the workman who was paid the stipulated daily wage of one penny although he had worked longer than others hired later in the day also paid the same amount. When he complained because he felt unjustly treated by the householder, the latter replied: "Friend, I do you no wrong. Did you not agree with me for a penny?"

Coming back to the case at bar, we find that there being no generic aggravating or mitigating circumstance attending the commission of the offenses, the applicable sentence is the medium period of the penalty prescribed by Article 248 of the Revised Penal Code which, conformably to the new doctrine here adopted and announced, is still reclusion perpetua. " (Emphasis supplied)

As regards the civil liability, the award of P31,000.00 for actual expenses should be modified: only the amount of P15,000.00 is supported by a receipt (Exhibit A). The balance is based on a handwritten enumeration of the supposed expenses incurred (Exhibit A-1) and the award cannot be made on that basis alone. There must be competent proof that actual or compensatory damages have been suffered and evidence of the actual amount thereof.^[37]

WHEREFORE, the questioned Decision convicting accused-appellant Freddie Balisoro of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim the sum of P50,000.00 for the victim's death is hereby **AFFIRMED**; the award of actual damages is reduced to P15,000.00. Cost against the appellant.

SO ORDERED.

Romero, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Penned by Judge Cristeto D. Dinopol; Rollo, pp. 31-38.

[2] Record, p. 1.

[3] Tsn, January 28, 1994, pp. 5-11.

- [4] Sometimes referred in the Transcript as Ronnie Benegas/Veñegas, Rene Villegas.
- [5] Tsn, January 28, 1994, pp. 12-14.
- [6] Tsn, August 9, 1994, pp. 4-6.
- [7] Ibid., pp. 8-9, 12-13.
- [8] Dr. Ronnie B. Jariol, the Medical Officer IV of Norala District Hospital issued a Medico-Legal Certificate with the following findings, to wit:
- "Gunshot Wound: Point of entrance approx. 0.5 cm x 1 cm right posterior parietal region with brain evisceration and powder burns directed downwards anteriorly. No point of exit
- x x x x x x x x x x x x x x x x x x x x x x
Condition of patient on date attended: Patient was dead on arrival." (Original record, p. 11)
- [9] Tsn, July 18, 1994, pp. 4-5
- [10] Separate Folder of Exhibits, pp. 1-2.
- [11] Tsn., February 7, 1995, pp. 3-8
- [12] Tsn., January 18, 1995, pp. 3-14
- [13] Tsn., March 1, 1995, pp. 4-10, 12-16.
- [14] Tsn., March 20, 1995, pp. 3-4
- [15] See Note 1, Rollo, pp. 37-38.
- [16] See People vs. Salveron, 228 SCRA 92, 97 [1993]; People vs. Agunias, 279 SCRA 52, 60-66.
- [17] Tsn., August 9, 1994, pp. 4-5
- [18] Tsn., March 1, 1995, pp. 12-13.
- [19] Tsn., January 28, 1994, p. 9
- [20] Tsn., January 28, 1994, pp. 9-10.
- [21] Tsn., August 9, 1994, pp. 8-9
- [22] Tsn, January 28, 1994, p. 10, Tsn, August 9, 1994, p. 6
- [23] See People vs. Ramon Caparas, Jr. y Temporales, et al., G.R. Nos. 121811-12, May 14, 1998 citing People vs. Malimit, 264 SCRA 167 [1996]
- [24] Tsn., January 28, 1994, pp. 6-9.
- [25] Tsn., August 9, 1994, pp. 4-5
- [26] Appellant's Brief, p. 8, Rollo, p. 74
- [27] Santiago vs. De los Santos, 61 SCRA 146, Cunanan vs. Amparo, 45 O.G. 3796; Sta. Ana vs. Maliwat, 24 SCRA 1018, Philippine American General Insurance, Inc. vs. Sweet Lines, Inc., 212 SCRA 194.
- [28] Tsn., January 18, 1995, pp. 9-10

[29] Tsn., August 9, 1994, pp. 10-11

[30] 139 SCRA 554, 587

[31] People vs. Mariano Verde, G.R. No. 119077, February 10, 1999 citing People vs. Añonuevo, 262 SCRA 22, 36 (1996); People vs. Supremo, 244 SCRA 548, 553 [1995]

[32] People vs. De Guia, supra., People vs. Diaz, 271 SCRA 504; People vs. Diaz, 271 SCRA 504; People vs. Morales, 241 SCRA 267 [1995]

[33] See People vs. Lacosta, 275 SCRA 591; People vs. Zamora, 278 SCRA 60; People vs. Agunias, 279 SCRA 52; People vs. Jagolingay, 280 SCRA 768; People vs. Turingan, 282 SCRA 424; People vs. Isleta, 264 SCRA 374.

[34] People vs. Cayabyab, 274 SCRA 387; People vs. Berzo, Jr., 274 SCRA 553; People vs. Baydo, 273 SCRA 526; People vs. Israel, 272 SCRA 95

[35] 170 SCRA 107, 124 [February 1989].

[36] People vs. Artiaga, 274 SCRA 685; People vs. Amigo, 252 SCRA 43; People vs. Dela Cruz, 216 SCRA 476; People vs. Parojinog, 203 SCRA 673.

[37] Del Rosario vs. Court of Appeals, 267 SCRA 158, Lufthansa German Airlines vs. Court of Appeals, 243 SCRA 600

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