PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PO3 ERNESTO D. LANGRES, ACCUSED-APPELLANT.

G.R. No. 128754. October 13, 1999

Ponente: PUNO, J.

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PUNO, J.:

Appellant PO3 Ernesto Langres of the Philippine National Police was convicted by the Regional Trial Court of Dapa, Surigao Del Norte, for the crime of Murder. He was sentenced to suffer the penalty of reclusion perpetua and to pay the legal heirs of the victim, Teodorico Sindo, Jr., the sum of fifty thousand pesos (P50,000.00) as indemnity, twenty thousand pesos (P20,000.00) for burial expenses and ten thousand pesos (P10,000.00) for moral and exemplary damages. He now seeks his acquittal on the ground that the killing was done in self-defense.

The crime[1] was allegedly committed as follows:

> "That on June 24, 1990, at about 1:10 o'clock early dawn in the poblacion of Dapa, Surigao Del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused in full freedom, intelligence and voluntariness, with no justifiable cause did then and there willfully, unlawfully and feloniously, with the use of a caliber 38 (sic) revolver, assault, attack and shoot TEODORICO V. SINDO, JR. hitting him on the head which caused his instantaneous death, with qualifying circumstance of superiority, the accused being armed, to the damage and prejudice of the heirs of the victim, actual and moral, in the amount of P100,000.00." (emphasis supplied)
>
> "CONTRARY TO ARTICLE 248 of the Revised Penal Code."

Upon arraignment, accused pled 'not guilty'. Trial ensued.

The prosecution evidence shows that in the evening of June 23, 1990, the victim, Teodorico Sindo, Jr., his brother, Restituto, and friends Orestes Concilles, Boboy Cubelo and Henry Tiu attended a dance at the municipal gymnasium of Dapa.[2] The dance ended at about midnight. The victim and his companions walked Tiu to his home. Thereafter, they proceeded to the house of Dondel Sindo, an elder brother of the victim and Restituto.

Dondel's house is situated at the corner of Lopez Jaena and Del Pilar Streets, about 22 kilometers from the house of Jaime Azarcon and 36 meters from the house of Adelindes Clave. The vicinity was illuminated by a light from a lamp post installed at the corner of the streets. It was already 1:00 a.m. of June 24, 1990. The

victim and his companions sat on a bench opposite Dondel's house. They conversed as they watched the Cubelo brothers having a heated argument a few meters away from them.

After a short while, appellant PO3 Ernesto Langres arrived at the scene, followed closely by Pablo Escobal and Ben Sollo.[3]

Restituto greeted the appellant, saying, "Maayong gabii, sir". Without a word, appellant punched Restituto on the lower jaw, causing the latter to tumble to the ground.[4] Restituto got up and did not say anything. Victim

Teodorico, Jr. then approached the appellant and asked the latter what Restituto's fault was.[5] Appellant took two (2) or three (3) steps backwards, drew his .38 caliber service revolver and aimed it at the victim. The gun's trigger went off, hitting the victim on the forehead.[6] The victim was lifted a few inches off the ground due to the gunshot's impact. When the victim landed on the ground, he was able to take a few steps before he collapsed.[7]

Restituto charged towards the appellant upon seeing his brother slump on the ground. Again, appellant aimed the gun at Restituto. Restituto desisted from assaulting the appellant and instead cuddled his brother. Restituto urged the victim to speak. He could not.

Patrolman Jose Inhaynes arrived and pacified the appellant. Shortly thereafter, Lt. Venias, a Commanding Officer of the defunct Philippine Constabulary, also came. Appellant surrendered to Lt. Venias. They carried the victim to the service patrol jeep of Lt. Venias. Appellant and Lt. Venias boarded the jeep and brought the victim to Siargao District Hospital.

The victim was declared dead on arrival at the district hospital. His death was due to "cardio-respiratory arrest secondary to massive hemorrhage due to gunshot wound frontal forehead".[8]

Teodorico Sindo, Sr., father of the victim, declared that he spent some twenty thousand pesos (P20,000.00) for the burial of his son and for other incidental expenses such as the nightly novena and the "katapusan".[9]

The defense had a different version of the shooting incident.

In the evening of June 23, 1990, appellant was a part of the police team tasked to maintain peace and order at the dance being held at the municipal gymnasium in Dapa. At about midnight, a commotion erupted followed by a power failure. The dance was stopped upon the advice of the police.

After everything settled down, appellant decided to go home. Along the way, he heard a woman shouting for help. He headed towards the source of the shouting. He saw a crowd at Lopez Jaena and Del Pilar Streets and learned that the woman shouting for help was the mother of the Cubelo brothers. He noticed a bench, a table and some broken glasses in the vicinity.

Appellant introduced himself as a policeman and investigated. A drunken Restituto pointed a finger at him and said, "So what if you are a policeman." Appellant took a step backward but Restituto kept advancing towards him. He pushed Restituto and warned him, saying, "Do not go near me." Restituto staggered and fell down.

The victim then rushed towards the appellant. Wary of what the victim would do, appellant retreated and drew his gun. He pointed the gun at a 45-degree angle into the air and fired a warning shot. To his surprise, the victim was hit by the gunfire.

When Restituto saw his brother sprawl on the ground, he moved to assault the appellant. Instinctively, appellant aimed his revolver at Restituto. It was then that Pat. Inhaynes arrived at the scene. Appellant returned his revolver to its holster and requested Pat. Inhaynes to help him bring the victim to the hospital. A few minutes later, Lt. Venias came on board a patrol jeep. Appellant voluntarily surrendered to Lt. Venias.

Patrolman Jose Inhaynes testified that he heard a gunfire in the early dawn of June 24, 1990. He rushed to the scene and found the appellant pointing his gun at Restituto who was then embracing his wounded brother, Teodoro, Jr. Inhaynes shouted at appellant, saying, "Erning, don't!" Appellant retreated a bit and put the gun back in its holster. Soon after, Lt. Venias, the Commanding Officer of the Philippine Constabulary, arrived at the scene on board a patrol jeep. Appellant surrendered to Lt. Venias. They boarded the victim inside the jeep and drove him to Siargao District Hospital. Appellant was taken to the police headquarters.[10]

The trial court found the appellant guilty as charged. The dispositive portion of its Judgment, dated August 27,

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1996, reads:

> "WHEREFORE, in view of the foregoing, the Court finds PO3 ERNESTO D. LANGRES guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Art. 248 of the Revised Penal Code as amended by Sec. 6, Rep. Act No. 7659. Without any modifying circumstance for consideration, he is sentenced to an imprisonment of an Indeterminate Penalty of RECLUSION PERPETUA or specifically TWENTY-SIX (26) YEARS, EIGHT (8) MONTHS and ONE (1) DAY to THIRTY-THREE (33) YEARS, FOUR (4) MONTHS and ONE (1) DAY, the victim was killed with the qualifying circumstance of 'taking advantage of superior strength.'
>
> "He is likewise ordered to pay the heirs of the victim through the father, Teodorico Sindo, Sr., the following:
>
> "1. FIFTY THOUSAND (P50,000.00) PESOS as indemnification for the death of said victim;
>
> "2. TWENTY THOUSAND (P20,000.00) PESOS as reimbursement for burial and other necessary expenses; and
>
> "3. TEN THOUSAND (P10,000.00) PESOS for moral and exemplary damages;

but without subsidiary imprisonment in case of insolvency, to suffer the accessory penalties imposed by law and to pay the cost.

"The bonds posted for his temporary liberty are CANCELLED, and pertinent papers, if any, shall be returned to the bondsmen.

"SO ORDERED."

Hence, this appeal. Appellant now contends:

> "I. THE LOWER COURT ERRED IN IGNORING THE FACT THAT THE (APPELLANT) ACTED IN SELF-DEFENSE AND WITHOUT INTENT TO KILL.
>
> "II. THE LOWER COURT ERRED IN RULING THAT THE QUALIFYING CIRCUMSTANCE OF TAKING ADVANTAGE OF SUPERIOR STRENGTH WAS DULY PROVEN CONVINCINGLY AND SATISFACTORILY BY THE PROSECUTION TO AFFIRM THE CORRECTNESS OF THE MURDER CHARGE.
>
> "III. THE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER."

The appealed decision is affirmed with modification.

The elementary rule is when a person admits having killed the victim but invokes self-defense, he assumes the burden of proof to establish his plea of self-defense by credible, clear and convincing evidence.[11] For self-defense to prosper, it must be shown that there was a previous unlawful and unprovoked attack that placed the life of the accused in danger and forced him to inflict more or less severe wounds upon his assailant, employing therefor reasonable means to resist said attack. Thus, three (3) elements must first be established before a person can invoke self-defense, to wit: (1) unlawful aggression, (2) reasonable necessity of the means employed to repel the aggression and (3) lack of sufficient provocation on the part of the person invoking self-defense. The presence of unlawful aggression is a condition sine qua non. There can be no self-defense to speak of, whether complete or incomplete, unless the victim has committed an unlawful aggression against the person defending himself.[12]

In the case at bar, the first element of unlawful aggression was not established by the appellant. Four (4) credible

witnesses for the prosecution belied appellant's claim that the victim unlawfully assaulted him prior to the shooting incident, thus:

RESTITUTO SINDO[13]

DIRECT-EXAMINATION

"(FISCAL LAGO)

"Q: On June 24, 1990 at 1:00 o'clock in the morning more or less, where were you?

"A: We were at the gym.

"Q: From the gym, where did you proceed?

"A: We went home together with Mr. Henry Tiu.

"Q: Besides Mr. Henry Tiu, who were your other companions?

"A: Boboy Cubelo, Orestes Concilles, Teodorico Sindo, Jr. and me, Restituto Sindo.

"Q: Where did you go?

"A: We were sitting outside opposite the house of our elder brother.

"Q: Where is the house of your brother located?

"A: At the corner of Del Pilar and Lopez Jaena Streets.

x x x x x x x x x

"Q: What were you doing then in that corner street?

"A: We conversed.

"Q: While conversing, what incident happened?

"A: They (sic) arrived, this Pat. Langres.

"Q: And when Pat. Langres arrived, what happened next?

"A: We gave our due respect.

"Q: What transpired after you have given him your respect?

"A: He boxed me.

"Q: Who boxed you?

"A: Pat. Ernesto Langres.

"Q: And what happened to you after boxing you?

"A: I fell backward to the ground.

"Q: And what did you do after that?

"A: I rose.

"Q: And after rising, what did you do or say?

"A: My elder brother inquired as to what wrong has my brother committed.

"Q: Who was that elder brother you are referring to?

"A: Teodorico Sindo, Jr.

"Q: And after Teodorico Sindo, Jr. inquired why Langres boxed you, what happened after that?

"A: He drew his weapon.

"Q: What was that weapon used?

"A: A .38 caliber revolver.

"Q: And what did he do with that weapon?

"A: He held it with his two (2) hands.

"Q: What did Langres do next?

"A: When it fired it hit my brother.

"Q: And after you brother was hit, what happened to your brother?

"A: He was lifted from the ground.

"Q: After being lifted from the ground, what happened next to him?

"A: He slumped to the ground.

"Q: On your part, what did you (do) upon seeing that your brother slumped to the ground?

"A: I cradled him in my arms.

"Q: After having cradled him, what happened next?

"A: Pat. Jose Inhaynes then arrived.

"Q: What did Pat. Inhaynes do after arrival?

"A: He was restrained by Pat. Inhaynes."

ORESTES CONCILLES[14]

DIRECT-EXAMINATION

(PROSECUTOR VICENTE):

"Q: Mr. Witness on June 24, 1990, at about 1:10 A.M. where were you?

"A: I was there sitting.

"Q: Where were you sitting?

"A: The corner of Lopez Jaena and Marcelo H. Del Pilar Sts.

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"Q: While you were sitting at the side of the road, do you remember who were your companions, if any?

"A: Yes ma'am, I remember.

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"Q: Mentioned (sic) their names?

"A: Boboy Cubelo, Restituto Sindo, Teodorico Sindo, Jr. and me.

"Q: While you were sitting at the place where you have just mentioned what extraordinary incident happened if any?

"A: While we were sitting, this Pat. Langres arrived and we greeted him "good evening sarge" – he immediately boxed Restituto.

"Q: By the way, did you clearly recognize Pat. Langres?

"A: Yes, ma'am.

"Q: Was the place lighted?

"A: Yes, ma'am.

"Q: When Pat. Langres as you have said boxed Restituto Sindo, what happened after that?

"A: Teodorico Sindo, Jr. inquired why -- what was the fault of his brother – why he was boxed.

"Q: How is Teodorico Sindo, Jr. related to Restituto, if you know?

"A: They are brothers.

"Q: Now, after Restituto (sic) Sindo asked Pat. Langres why he boxed his brother, what happened?

"A: He immediately drew his pistol and it fired.

"Q: Where did he point his pistol?

"A: To Teodorico Sindo, Jr.

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"Q: Was Teodorico Sindo, Jr. hit by the bullet of Pat. Lagres?

"A: He was hit.

"Q: On what part of the body of Teodorico Sindo, Jr.?

"A: At the right side of the forehead (witness pointed to the right side of his forehead).

"Q: What happened to Teodorico Sindo, Jr. after he was shot at the head?

"A: He fell to the ground.

"Q: What did Pat. Langres do after Teodorico Sindo, Jr. was hit?

"A: He moved backward.

"Q: What do you mean by backward?

"A: He retreated because Pfc. Inhaynes arrived, and he was pacified.

"Q: What did Pat. Langres do?

"A: He rode on the police service jeep."

ADELINDES CLAVE[15]

DIRECT-EXAMINATION

"(PROSECUTOR POSPIA):

“Q: At around 1:00 o’clock in the early morning of June 24, 1990, you remember where were you at 1:00 A.M.?

“A: I was in the house.

“Q: What were you doing at your house?

“A: I was sitting at the window because I was looking opposite of our house as there was an argument between the Cubelo Brothers.

“Q: How far was this incident relative to the Cubelo Brothers (from) your house?

“A: More or less, 20 meters.

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“Q: While you were at your window sitting there looking at the Cubelo Brothers, what happened next?

“A: There was an incident opposite from the right side opposite our house.

“Q: Can you tell the Honorable Court what was that incident about at the right side opposite your house?

“A: An incident happened which causes the death of Restituto . . . Teodorico Sindo, Jr.

“Q: Do you know what caused the death of the deceased Teodorico Sindo, Jr.?

“A: He was shot and killed.

“Q: By whom?

“A: By Pat. Langres.

“Q: Do you know this Pat. Langres personally?

“A: Yes, sir.

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“Q: How far was the incident towards your house?

“A: More or less, 36-meters distance.

“Q: Is it in front of your house or adjacent to your house?

“A: It is slanting.

“Q: Do you know what was the cause why the deceased was shot to death?

“A: I do not know because there was no agreement (sic) happened.

“Q: What invited your attention relative to the shooting? How did you know there was a shooting?

“A: This Pat. Ernesto Langres, I have seen him pointing towards Teodorico Sindo, Jr.

“Q: What was he pointed (sic)?

“A: A revolver.

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“Q: After pointing of the weapon what happened next?

“A: He shot Teodorico Sindo, Jr.

“Q: Did you actually see the shooting?

“A: Yes.

“Q: Can you tell the Court as to what part of the body was hit on the deceased?

“A: He was hit on his forehead.

“Q: Aside from the deceased and Pat. Langres can you tell the Court if there were other persons in the premises?

“A: Before the shooting, sir, the victim and his friends were sitting opposite of the house of Dondel Sindo.”

JAIME AZARCON[16]

DIRECT EXAMINATION

"PROSECUTOR LAGO:

“Q: What time did you wake up at the dawn of June 24, 1990?

“A: I was able to wake up at 1:00 (a.m).

“Q: After waking up at 1:00 (a.m), what have you observed?

“A: I observed, there was a disturbance outside between the Cubelo Brothers.

x x x x x x x x x

“Q: Beside the Cubelo Brothers were there also other persons present at that time when you observed?

“A: There were.

“Q: Who were they?

“A: They were Orestes Congreso (sic), Boboy Cubelo, Restituto Sindo and Teodorico Sindo, Jr.

“Q: After observing then what transpired next?

“A: These 4 people were at the corner of Del Pilar and Lopez Jaena Sts. talking pleasantries.

“Q: After observing them talking pleasantries what happened thereafter?

“A: 5 minutes after when I was peeping at the window there came the 3 people.

“Q: Who were these 3 people who arrived?

“A: The three were Pablo Escobal, Benben Sollo and Pat. Ernesto Langres.

“Q: When these 3 people arrived what transpired thereafter?

“A: Restituto Sindo had greeted the policeman.

“Q: How did Restituto Sindo greet the policeman?

“A: He said, “Maayong gabii, (sic) sir.” Good morning, sir.

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"Q: What was the answer of the policeman?

"A: The answer of the policeman, he boxed the lower jaw of Restituto Sindo.

"Q: What happened to Restituto Sindo after he was hit?

"A: He fell down to the ground.

"Q: What happened after Restituto Sindo fell down to the ground?

"A: He walked (sic) up and the elder brother Teodorico Sindo Jr. had showed up and asked, "Lumon, uno may saya nan ako manghud?

Relative, what fault has my younger brother (done)?

"Q: What did Pat. Langres do after hearing this?

"A: Pat. Ernesto Langres had moved backward to two or three (3) steps and drew his sidearm.

"Q: To where did he draw his sidearm?

"A: He aimed it to (sic) Teodorico Sindo, Jr.

"Q: What happened?

"A: I only noticed after the fire was seen at the barrel of the sidearm.

"Q: What happened now. Who was hit?

"A: Teodorico Sindo, Jr.

"Q: Why do you say that he was hit?

"A: Because Teodorico Sindo, Jr. was lifted, more or less, half foot from the ground and xxx when he walked, more or less from four to six steps, he fell to the ground.

"Q: What did Pat. Langres do after that?

"A: Pat. Langres had tried for his defense. Because there were people and the brother was there.

"Q: How about the brother of Teodorico Sindo, Jr., what did he do?

"A: He tried to go nearer with (sic) Pat. Langres.

"Q: What was done to Teodorico Sindo, Jr. after he was hit?

"A: He was disregarded for the meantime not until the policemen arrived in the vicinity.

"Q: How did the policemen arrive?

"A: There were 2 policemen arrived in the vicinity by walking.

"Q: What did the 2 policemen do?

"A: They stopped Pat. Langres and later on when Pat. Langres was already on the defensive side, the INP service arrived in the area.

"Q: What did the PNP men do with the victim?

"A: Teodorico Sindo Jr. was already taken by the younger brother and was hauled to the hospital.

x x x x x x x x x

"Q: Was the place lighted?

"A: It was lighted with 100 volts (bulb).

"Q: How far were you from the very incident?

"A: More or less from 15 to 20-meters."

It is crystal clear from the foregoing testimonies that appellant was the aggressor and not the victim nor the victim's brother. The prosecution witnesses' testimonies are worthy of belief. Their accounts of the incident dovetailed in all material points-- that the victim and his companions were sitting on a bench and sharing light moments with each other when appellant came; that Restituto greeted the appellant; that appellant gave a fist blow on Restituto without provocation from the latter; that the victim merely intervened to ask what his brother's fault was; that appellant drew his gun and aimed it at the victim; that appellant pressed the gun's trigger and a bullet hit the victim on the forehead.

At best, the victim's brother was discourteous to appellant. Even then, such behavior could not be taken as an unlawful aggression to justify the shooting of the victim. The unlawful aggression contemplated under the law must come from the victim himself.

Appellant contends that when the victim darted towards him, he sensed an attack. He panicked, drew his gun and aimed it towards his alleged aggressor. The excuse is lame. Our jurisprudence teaches that mere belief of an impending attack is not sufficient. Neither is an intimidating or threatening attitude. Even a mere push or shove not followed by other acts placing in real peril the life or personal safety of the accused is not unlawful aggression.[17]

In the case at bar, it is noteworthy that the Sindo brothers were unarmed. They were young men having a jovial, innocuous conversation when appellant passed by. Appellant's claim that his life was endangered was unreal. He was a policeman, armed with a gun and trained to use his gun. He was facing unarmed youngsters who could not have posed any threat to his life. It is a settled rule in our jurisprudence that to constitute aggression, the person attacked must face a real threat on his life and the peril sought to be avoided is imminent and actual, not imaginary.[18] Without such imminent threat on his life, the person invoking self-defense has nothing to repel.

In a dire attempt to escape liability, appellant claims that the killing was an accident. Allegedly, he merely fired a warning shot into the air when he pressed the gun's trigger. The records show the falsity of his claim. In her Sworn Statement,[19] eyewitness Adelindes Clave gave a detailed account on what actually transpired that fateful day, thus:

"7. Q: How did it happen that Teodorico Sindo, Jr. was being (sic) killed by Pat. Ernesto Langres?

A: Before the incident took place, I was already on our window looking for the Cubelo brothers who were arguing and nearly fought with each other. On the bench sitting opposite the rented house of Dondel Sindo were Boboy Cubelo, Orestes Concilles, Restituto Sindo and the victim, Teodorico Sindo, Jr. I proceeded to the bathroom for a few minutes. When I came back, Pat. Ernesto Langres appeared in civilian attire holding his cal. 38 revolver on (sic) both hands and pointed towards the head of Teodorico Sindo, Jr. What (sic) I believed was just a jest being (sic) there was no provocation. The police officer counted from one up to three then a burst of a gun followed which (sic) I know Teodorico Sindo, Jr. received a direct hit on the forehead. I was so frightened when the peace officer fired his gun against the deceased when the latter did not show any resistance if the police officer was in the performance of official duty. xxx."

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Appellant was correctly charged with the crime of Murder as the killing was qualified by abuse of superior strength. Abuse of superior strength requires, at base, a deliberate intent on the part of the malefactor to take advantage thereof. Besides the inequality of comparative force between the victim and the aggressor, there must be a situation of strength notoriously selected and made use of by the offender in the commission of the crime before abuse of superior strength can be appreciated against the offender.[20]

In the case at bar, appellant's deliberate intent to take advantage of superior strength is clear. He was armed with a powerful weapon that is manifestly out of proportion to the defense available to the offended party. His victim was young and unarmed. It was unnecessary for appellant to shoot the victim when the latter approached him for throwing a punch at Restituto. In People vs. Padilla, we held:[21]

"Abuse of superior strength is present not only when the offenders enjoy numerical superiority, or there is a notorious inequality of forces between the victim and the aggressor, but also when the offender uses a powerful weapon which is out of proportion to the defense available to the offended party."

We now review the penalty imposed on appellant. As rightly observed by the Solicitor General, the trial court erroneously applied the provisions of Republic Act No. 7569 when it imposed the penalty of reclusion perpetua. When the offense was committed on June 24, 1990, the penalty for murder was reclusion temporal maximum to death.[22] R.A. 7659 took effect on December 31, 1993 and increased the penalty for murder to reclusion perpetua to death. Being unfavorable to the appellant, R.A. 7659 can not be given retroactive effect.[23]

Moreover, in imposing the proper penalty, the mitigating circumstance of voluntary surrender was not considered by the trial court in appellant's favor. The facts show that he unconditionally surrendered to the authorities immediately after the shooting incident. Applying the Indeterminate Sentence Law and appreciating the mitigating circumstance of voluntary surrender which is not offset by any aggravating circumstance, appellant's minimum penalty should be within the range of prision mayor maximum to reclusion temporal medium,[24] while the maximum penalty should be reclusion temporal maximum.[25]

Lastly, we go to the civil liability of appellant. We note that the trial court ordered the appellant to pay the sum of ten thousand pesos (P10,000.00) for moral and exemplary damages. Moral damages are recoverable for the mental anguish or emotional distress suffered by the heirs of the victim. Exemplary damages, on the other hand, are awarded to provide an example or correction for the public good. Moral damages cannot be awarded as the prosecution did not present evidence to justify its award. Also, the prosecution failed to prove any aggravating circumstance to justify the award of exemplary damages. For lack of legal basis, the awards for moral and exemplary damages cannot be sustained.

IN VIEW OF THE FOREGOING, the Decision, dated August 27, 1996, of the Regional Trial Court of Surigao del Norte (Branch XXXI) in Criminal Case No. 842, finding appellant PO3 ERNESTO LANGRES guilty beyond reasonable doubt of Murder, is AFFIRMED, with the modification that appellant is sentenced to an indeterminate prison term of ten (10) years and one (1) day of prision mayor maximum, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal maximum, as maximum.[26] The awards for moral and exemplary damages are disallowed while the awards for indemnification and burial expenses are affirmed. No costs.

SO ORDERED.

Pardo, and Ynares-Santiago, JJ., concur.

Davide, Jr., C.J., (Chairman), and Kapunan, J., on official business abroad.

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[1] Information dated May 3, 1991, Original Records, p. 2.

[2] TSN, July 6, 1993, pp. 3-4.

[3] TSN, February 23, 1993, p. 6; March 22, 1994, pp. 13-14.

[4] TSN, February 23, 1993, p. 8; August 23, 1995, p. 4; February 28, 1995, p. 8.

[5] TSN, August 23, 1995, p. 4; February 23, 1993, p. 8; July 6, 1993, p. 4.

[6] Exhibit "A".

[7] TSN, July 6, 1993, pp. 4-5; February 23, 1993, pp. 8-9; March 22, 1994, p. 7; August 23, 1995, p. 5.

[8] Exhibits "D", "D-1".

[9] Exhibit "E".

[10] TSN, March 26, 1996, pp. 4-6; July 6, 1993, pp. 5-6; March 22, 1994, pp. 8-9.

[11] People vs. Sambulan, 289 SCRA 500, 512 (1998); Section 1, Rule 131 of the Rules of Court.

[12] People vs. Cawaling, 293 SCRA 267, 303 (1998).

[13] TSN, July 6, 1993, pp. 3-5.

[14] TSN, August 23, 1995, pp. 3-6.

[15] TSN, March 22, 1994, pp. 4-7.

[16] TSN, February 23, 1993, pp. 6-10.

[17] People vs. Bautista, 254 SCRA 621 (1996).

[18] Ibid.

[19] Exhibit "A".

[20] People vs. Solis, 291 SCRA 529 (1998), citing People vs. Escoto, 244 SCRA 87.

[21] 233 SCRA 46 (1994).

[22] Article 248, Revised Penal Code.

[23] Article 22, Revised Penal Code.

[24] The range of prision mayor maximum to reclusion temporal medium is 10 years and 1 day to 17 years and 4 months.

[25] The range of reclusion temporal maximum is 17 years, 4 months and 1 day to 20 years.

[26] People vs. Unarce, 272 SCRA 321 (1997).

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