REYNALDO CRISTE UNIDAD, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 129201. March 11, 2003

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court. Petitioner, Reynaldo Criste Unidad, appeals from a decision[1] of the Court of Appeals dated November 14, 1996 and the resolution[2] denying the motion for reconsideration dated April 30, 1997, in CA-G.R. No. 17129.

Said decision affirmed an amended decision[3] of the Regional Trial Court of Manila, Branch 14, dated September 5, 1994.

The dispositive portion of the trial court's amended decision reads, as follows:

> WHEREFORE, finding the accused guilty of the crime of Homicide as charged in the Information defined and penalized under Article 249 of the Revised Penal Code, he is hereby sentenced to suffer an indeterminate penalty of TWELVE (12) YEARS of PRISION MAYOR, as its minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of RECLUSION TEMPORAL, as its maximum, and to pay the cost.
>
> He is further sentenced to indemnify the heirs of the deceased:
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> - P50,000.00 for the death of the victim;
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> - P192,000.00 as unearned income; and
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> - P132,000.00 for actual expenses pursuant to Articles 104 and 105 of the Revised Penal Code.
>
> **SO ORDERED.**

Petitioner was, at the time material to this case, the Chief Operations Officer of the Western Police District of the Philippine National Police, with headquarters at U.N. Avenue, Manila.

On January 29, 1993, petitioner was charged of the crime of homicide, in an information that alleged, as follows:

> That on or about January 26, 1993, in the City of Manila, Philippines, the said accused with intent to kill did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of IRENEO DELA CRUZ Y VARGAS by then and there shooting the latter hitting him on the left portion of his chest thereby inflicting upon him mortal gunshot wound which was the direct and immediate cause of his death thereafter.
>
> Contrary to law.

Arraigned, petitioner entered a plea of not guilty. Trial followed.

The Prosecution's Evidence

The prosecution's witnesses were Rosita dela Cruz, Grace dela Cruz Baltazar, Dr. Manuel Lagonera and SPO2 Norberto Obrero.

Rosita dela Cruz testified[4] that: At the time of his death, her son Ireneo dela Cruz, Jr. was employed as Jail Officer-1, as shown by the certification[5] of the Bureau of Jail Management and Penology, with a monthly salary of P3,120.00. They incurred funeral and other expenses, due to said death, in the total amount of P131,500.00.[6] At the time of his death, Ireneo dela Cruz, Jr. had a common law wife and three children, namely: Julie, 7 years old; Jojo, 6 years old; and April, 5 years old, all living with them in their house in Kamuning, Quezon City, and she is the one supporting them now.

She further testified that: On January 26, 1993, at about 8:30 o'clock in the evening, Ireneo dela Cruz, Jr. was on official mission at Ma. Cristina St., Sampaloc, Manila. She was aware of this because whenever he was on a special mission which was dangerous, he used to ask permission before leaving because his father is a policeman. At around 10:00 o'clock that same evening, they received an information concerning the death of Ireneo. Hence, they proceeded to the International Funeral Homes. Upon arriving thereat, at about 11:00 o'clock in the evening, she saw her son embalmed. She asked the caretaker why she did not inform them first, considering that the victim had an I.D. card on his chest, and they answered that it was the instruction of Dr. Manuel Lagonera, the Medico-Legal Officer. She has a picture of her son in the newspaper when he fell down at the gate.[7]

Grace Cruz-Baltazar testified[8] that: On January 26, 1993, at about 8:40 o'clock in the afternoon, she, her mother and the common law wife of the victim, were in their house in 14-K 1st Kamuning St., Quezon City.

Ireneo dela Cruz, who was her brother, was not with them as he was in an official mission pursuant to the order of the Warden of Quezon City. She learned about the order because on January 24, 1993 at about 8:00 o'clock in the morning, she received a call asking for her brother. At first, she was hesitant to give the call to her brother but the caller was insistent and according to him, he was an informer, so she called her brother and gave the telephone. After their conversation, her brother told him that the informer told him that the convict he was looking for was hiding at Ma. Cristina St.

On January 25, 1993 at around 8:00 o'clock in the evening, her brother arrived very happy and told them that what the informer told him that the escapee Pedrito Oroños was there at Ma. Cristina St. is true. However, he had a problem as he learned that Pedrito Oroños is being cuddled by a "siga-siga" who is likewise being protected by a WPD officer. She got scared and told him to take care. Her brother assured her not to worry because he had undergone training and that his co-policeman could understand him. On January 26, 1993, at about 10:00 o'clock in the evening, their father sent someone to inform them that her brother was killed. She had executed an affidavit.[9]

Dr. Manuel Lagonera testified[10] that: On January 26, 1993, he performed an autopsy of the body of Ireneo dela Cruz, Jr. He performed the autopsy at 9:15 o'clock in the evening after receiving a verbal request of the Homicide Section of the police department. He prepared a Post Mortem Report.[11] The cause of death[12] was a gunshot wound with the entry at the left antero-lateral thorax, as shown on the sketch of a human body[13] and the exit[14] at the middle of the right side of the back.

At the time he conducted the autopsy at 9:30 o'clock in the evening, he determined that the person died three hours before said time, as the body was then at the state of primary lapcidity and pale. Considering the injuries sustained by the victim, the victim could have survived from 5 to 10 minutes after the infliction of the first shot. Even if the victim had been rushed to the nearest hospital, he could not have survived considering that the injuries sustained in the left lung was so intensive. His estimate is that the nozzle of the gun was about two feet away from the point of entry.

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SPO2 Norberto Obrero testified[15] that: He was the investigator on duty from 3:00 to 11:00 o' clock in the evening on January 26, 1993. He received a call from Chief Inspector Reynaldo Unidad who informed their office that he was involved in a shootout wherein he gunned down his quarry along Ma. Cristina St. near the corner of Fajardo St., Sampaloc, Manila.

He took the picture of the [cadaver] and made a sketch of [the same]. Then he gathered information concerning the identity of the victim and witnesses to the incident. He found out that the victim was wearing a sleeveless vest jacket, sporting an ID Card, a holster and a wallet and some pertinent paper belonging to the victim. He then instructed the personnel of the International Funeral Homes to bring the body to the morgue for autopsy. He prepared a report of the incident.[16] He also prepared an affidavit of arrest[17] dated January 27, 1993 to the Inquest Prosecutor. At the time he took the picture[18] from the waist up of the victim, there was an empty holster as the firearm of the victim was then in the possession of the accused.

He was able to recover from the body of the victim an ID which states: BJMP, DILO, Bureau of Jail Management and Penology, Quezon City Jail, EDSA, Quezon City; C-054 Security Control Tag No. QC-054, Quezon City Jail with the name of the owner/holder, Jail Officer 1 Ireneo dela Cruz; designation: Escort Security, and purportedly signed by Temistocles Jamisolamin, Quezon City Warden.[19] He also found a Mission Order[20] dated January 15, 1993 which indicates the service firearm of the victim, Cal .38 Armscor Revolver, Serial No. 31091 with 18 rounds of ammunition. Another paper that he found was a Memorandum Receipt[21] covering the firearm .38 Caliber Armscor, Phil. Model 201, and a US-made handcuff, signed by JO1 Jorge dela Rosa, supply Sergeant, DILG. He also found an ammo pouch, a lighter case, a bunch of keys, an NBI Clearance[22] and a Special Order.[23]

The Defense's Evidence

The defense witnesses were Nelson T. Fuggan, Demelen Renton dela Cruz, Eduardo Herrera, Norma Payawal, petitioner himself, and three others.

Nelson T. Fuggan, the Chief Ballistician of the Criminal Investigation Division of the Manila Police Department's Western Police District, testified[24] that: He prepared the Laboratory Report No. B-939261,[25] dated February 3, 1993. His findings were that only one shot was fired from the firearm of the petitioner (a .357 caliber magnum revolver with Serial No. KE-440312), and three shots were fired from that of the victim (a .38 caliber revolver with Serial No. 31091).

Demelen Renton dela Cruz testified[26] that: She has been a forensic chemist since 1981. She had examined the left and right hands of Ireneo dela Cruz in order to determine the presence of nitrates. She stated her findings in Chemistry Report No. C-93-61.[27] She affirmed the truth and correctness of her findings, particularly that the presence of nitrates on the left and right hands of Ireneo dela Cruz means that he had fired a gun.

She also examined petitioner's black American eagle shoulder bag, and one light brown necktie, one folded umbrella and a pair of gray socks. She put her findings in Chemistry Report No. C-93-91.[28] She examined these specimen in order to determine the appropriate gun shot range, which she determined to be as follows: for the necktie, 6 inches; bag, 36 inches; umbrella, 2 to 8 inches; the right sock, over 30 inches; and the left sock, 30 inches.

Eduardo Herrera testified[29] that: He is a vendor residing at 732 Ma. Cristina St., Sampaloc, Manila. He executed a statement before the police on January 26, 1993 at 10:30 o'clock in the evening. He stated in his affidavit that he heard four shots. The first and second shots that he heard came from the gun of the victim while third gunshot came from the gun of the accused and the fourth gunshot came from the gun of Ireneo dela Cruz.

He knows that the first shot that he heard was fired by Ireneo dela Cruz because he was then two arms length away from him when he fired his gun. The accused fired his gun because the victim was about to shoot him. The victim was only 1-1/2 arms length from the accused when the latter fired his gun. The victim was about two arms length away from the accused when he shot the accused. When he fired two successive shots at the accused, the victim and the accused were then facing each other. The victim fired two shots at the accused while the victim and the accused were facing each other at a distance of about two meters after which he saw the victim fall down. The accused was not hit by the victim. When the accused shot the victim, the victim fell down at the gate of Mrs. Payawal, then the victim fired another shot at the accused. Then he went to disarm the victim and he gave the gun of the victim to the accused. The accused then went to call for a policeman while he guarded the victim. When the accused left to call for a policeman by telephone, the victim was not moving. He did not talk to the victim nor did he touch him while he was with him. Among the many people who were then present were Barangay Chairman Abes, Mr. Selda and Mr. Awak.

Norma Payawal testified[30] that: She owns a store at 719 Ma. Cristina St., Sampaloc, Manila. On January 26, 1993 in the evening, Ireneo dela Cruz alias George arrived very drunk and holding a gun in front of her store. George bought a bottle of beer which he drunk inside a jeepney. While he was drinking the beer inside the jeepney, two men who looked liked policemen, as that they had guns tucked in their waists, suddenly arrived and held George at the back of his waistline. George was then drinking beer, shouting and creating trouble.

After a few minutes, Jojo passed by and George blocked his way and poked his gun to Jojo. Somebody said, “Pag-usapan na lang ninyo iyan.” He does not know the person who uttered those words; however, he later learned that it is Mang Rey, Reynaldo Unidad. After Reynaldo Unidad told George, “Pare, pag-usapan na lang ninyo iyan,” George turned his gun towards Jojo saying, “Putang Ina mo Jojo, papatayin kita.” Reynaldo Unidad then identified himself as a policeman and told him to put away his gun, saying, “Pare, ibaba mo iyan baka makadisgrasya ka, pulis ako.” George then turned his gun and poked it to Mang Rey saying, “Isa ka pa, huwag kang makialam.” George then fired a shot. The victim shot the accused by holding the gun with both hands. She heard two successive shots almost simultaneously.

After hearing the two successive shots, she went inside her store and while inside her store, she heard another shot and then she heard somebody shouting, “Dalhin sa ospital, tulungan ninyo ako.” All in all, she heard four shots.

Reynaldo Unidad, petitioner, testified[31] that: He is the Chief Operations Officer of the Western Police District and his duties are to attend conferences regarding operations, prepare reports for the District Director, prepare the Oplan which is the operational plan, the IMPLAN which is the implementing plan and operational order, and other administrative and staff work.

While he was walking on his way home on January 26, 1993, he was approached by Eduardo Herrera who volunteered to carry his bag of dirty clothes and accompanied him home. But while they were walking along Ma. Cristina St., he heard a shout coming from his back saying, “Putang Ina mo, Jojo, bakit mo ako isinuplong, bakit mo ako kinakalaban, pati nanay ko, kinakalaban mo.”

He looked back and, at that instance, a man wearing a black chaleco, maong pants and a pair of white rubber shoes intercepted them, shouting, and then poked his gun directly at Jojo. Jojo answered, “Putang Ina mo, hindi naman ako ang nag-ano eh, kayo nga ang nagwawalanghiya sa nanay ko, vendor lang, hinihingian mo ng P20.00, tapos pinakulong mo pa sa presinto.” He advised the man to put down his firearm and said, “Pare, baka naman puwede mong ibaba ‘yan at pag-usapan ninyo na lang and problema ninyo.” He thought then that he was only joking as they may be acquainted with each other. However, the man turned his ire at him and aimed the firearm towards him but when he remained silent and did not move, the man again aimed the gun at Jojo. While holding

the firearm with both hands pointed at Jojo, the man said, “Putang Ina mo, Jojo, papatayin kita.”

At this juncture, he introduced himself as a policeman saying, “Pare, pulis ako, pakibaba mo ang baril mo, baka pumutok iyan, baka tumama iyan, makapatay ka pa.” Then the man directed the cocked firearm at him saying, “Putang Ina mo, isa ka pa,” and then, bang! Believing that he was hit and that his life was actually in danger, he drew his gun and exchanged fire with the man. He saw the man slump on his back towards the gate of 719-E Ma. Cristina St., while firing another shot and then Jojo Herrera dived upon the man and took his firearm which he gave to him.

He left the victim and then went to look for a telephone nearby in order to call for police assistance. He was able to contact the desk officer of the Mobile Bay Patrol and the desk officer of the Homicide Section of the WPD. Then he returned to the crime scene and he saw that the place was already milling with hundreds of people including policemen of the Ramon Magsaysay Detachment, the press people and the crew of the Mobile Bay Patrol, and the investigator of the homicide section. He immediately turned over to the latter the firearm of the victim and his service firearm.

The first shot directed at him hit his lower left forearm and then hit his bag, then the second shot hit the bottom portion of his bag. The first shot hit his left forearm and then hit the bag with entry[32] and exit at the other side of the bag.[33] The second shot hit the bottom of his bag.[34] After the second shot which was directed at him, thinking that he was hit and that his life was in actual danger, petitioner, who is left-handed, fired his gun from the level of his waist by bending his body at the left side, making a hurried “hip shot.” After shooting the victim, the victim slumped at the gate of Mrs. Payawal.

The defense also presented police officer Alejandro Diego, Barangay Captain Alfredo Abes and a neighbor of the victim, Ernesto Awak.

The police officer testified[35] that: At around 7:15 o’clock in the evening of January 26, 1993, he proceeded to Ma. Cristina St. after being informed by Mr. Selda and Mr. Awak of that place that a man posing as a police officer was creating trouble thereat; that upon arrival there, he escorted the victim and brought him to the detachment office to verify his identification; that he found out that he was a member of the Quezon City Jail Police and had an ID Card and Memorandum Receipt but could not produce a Mission Order; that he released the suspect thereafter. He further testified that, subsequently, at about 8:15 o’clock that evening, the same persons, Selda and Awak, reported to their detachment the shooting incident and he informed the homicide section about the report and together with SPO1 Robert Tong, he responded and went to the same place where they cordoned off the area; that the victim was already dead when they arrived; that the homicide section investigator was already there, namely, SPO2 Norberto Obrero; that a lot of people were there, including those from the media; and that he left the scene before the body was removed.

The Barangay Captain testified[36] that: He saw the victim before the incident happened and that the victim was there holding a gun in his hand in the place of the incident.

The neighbor testified[37] and identified his affidavit[38] and added, on cross-examination, that he saw the victim 5 or 6 times before the incident, conversing and drinking with his friends at the store of Norma Payawal or at parked jeeps in the street.

The Decisions of the Trial Court and the Court of Appeals

On August 31, 1994, the trial court promulgated its decision, but subsequently, under date of September 5, 1994, it made an amended decision, which petitioner now claims was promulgated only on September 16, 1994, after he had perfected his appeal.

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Both decisions, however, contained the same dispositive portion earlier quoted. As aforementioned, the Court of Appeals, in its decision and resolution under review, affirmed the amended decision of the trial court.

Petitioner's Grounds

Petitioner advances the following grounds [39] for review:

A.

RESPONDENT COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR OF LAW IN ACTING UPON THE AMENDED DECISION (ANNEX "B") INSTEAD OF THE ORIGINAL DECISION (ANNEX "A") OF JUDGE MALIAMAN, NOTWITHSTANDING THAT SAID AMENDED DECISION WAS NOT PROMULGATED, AND THAT, EVEN IF THERE WAS PROMULGATION, THE APPEAL OF UNIDAD HAD BEEN ALREADY PERFECTED AND THE 15-DAY REGLEMENTARY PERIOD HAD ALREADY EXPIRED.

B.

RESPONDENT COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR OF LAW IN HOLDING THAT UNIDAD'S SHOOTING OF IRENEO, WHICH RESULTED IN THE LATTER'S DEATH, DID NOT MEET THE REQUIREMENT OF REASONABLE NECESSITY OF THE MEANS EMPLOYED TO REPEL THE ATTACK.

C.

RESPONDENT COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR OF LAW IN REJECTING COMPLETE SELF-DEFENSE, ON THE BASIS OF ADDITIONAL SURMISES AND NON-SEQUITUR CONCLUSIONS.

D.

RESPONDENT COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR OF LAW IN NOT ACQUITTING UNIDAD.

E.

RESPONDENT COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR OF LAW IN NOT AT LEAST GIVING UNIDAD THE BENEFIT OF OBVIOUS MITIGATING CIRCUMSTANCES.

F.

RESPONDENT COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR OF LAW IN SUSTAINING THE AWARD OF BASELESS AND EXORBITANT DAMAGES FOR THE DEATH OF IRENEO.

The Court's RulingA. The Amended Decision

A comparison of the decision and amended decision of the trial court readily shows that no substantial variance exists. The trial court merely made more clear which side presented which witness, but the contents of their testimonies remained the same. As stated, the dispositive portions are identical, and the same is consistent with the rest of both the decision and the amended decision.

It can, therefore, be concluded that no prejudice resulted to any party from the amendment, and that it referred only to insubstantial matters. The same is clearly well within the inherent powers of courts to amend and control their processes and orders to make them conformable to law and justice.[40] Furthermore, there is no showing that the records had been forwarded to the Court of Appeals at the time said amendment was effected.

B. The Merits of Petitioner's Case

In any event, we have reviewed the entire records of the case to determine the merits of petitioner's appeal.

To start with, petitioner claimed self-defense, thereby shifting upon him the burden of the evidence to prove that: (1) the victim unlawfully attacked him; (2) he took the necessary means to repel the attack; and (3) he did not provoke said attack. Petitioner had to prove these by clear and convincing evidence. [41]

The first element, that of an unlawful aggression upon him by the deceased, has not been proved by such required quantum of evidence.

The defense's version, as recounted principally by petitioner himself, is that: Petitioner shot the victim while the two were facing each other. In fact, petitioner described his shot as a "hip shot," i.e., from the level of his waist. Petitioner's firearm must have to be pointed upwards, to hit the victim at the site of the entry wound, the upper part of his left chest. And yet, the bullet exited at the lower part of the victim's right back, showing a downward trajectory.

The trial court, therefore, correctly found that the physical evidence did not square with petitioner's version of the event, thus:

> In demonstrating how he shot the victim, the accused held his gun with his left hand at the level of his waist at his left side. Then, he bent his body at his left side thereby causing his gun to point upward. Consequently, the trajectory of the bullet should have been upward and the entry of the bullet at the body of the victim should have been lower than its exit. However, the entry of the bullet Exhibit A-6 located at the breast of the victim at the level of the armpit is much higher than the exit of the bullet Exhibit A-7 at the back of the victim. This is evident from the Autopsy Report (Exhibit A-2) which states:
>
> 1. Gunshot wound, thru and thru, with the following points of entry and exit:
> Point of entry – at the left antero-lateral thorax, at the level of left 2nd inter-costal space, 51-1/4 inches from heel, 15 cms. from anterior midline, measuring 0.5X0.7 cm. and contusion collar measures 1.2x1 cms.
>
> Point of exit – at the right posterior thorax, 47-1/4 inches from heel, 4 cms. From posterior midline, measuring 1.5x1 cms.
>
> Trajectory – the bullet course was directed obliquely downwards, backwards crossing midline, severely lacerating the upper lobe of the left lung, primary bronchus and pulmonary blood vessels, then it crossed the midline before [it] exited at the right posterior thorax at the level of the 7th cervical vetebra. A copper jacketed slug was recovered upon removal of the clothing.
>
> INTERNAL FINDINGS
>
> - Injuries to organs and tissues as indicated in the internal extension of the gunshot wound, with massive bleeding in the thoracic cavity.
>
> - The rest of the internal organs were pale.
>
> - About one cup of partially digested food particles with alcoholic odor was recovered from the stomach.
>
> **CAUSE OF DEATH**
>
> Shock secondary to gunshot wound, left antero-lateral thorax.

From the foregoing findings of Dr. Lagonera as testified to by him and as stated in the foregoing Autopsy Report, the point of entry of the bullet is 51 and ¼ inches from the heel which is higher by 3 and ¾ inches than the point of

exit which is 47 and ¼ inches from the heel.

This would mean that the accused was then in a higher elevation when he shot the victim. However, the evidence adduced shows that when the accused shot the victim, they were on the same level.

Considering that both the accused and the victim were facing each other and standing at the same level, the trajectory of the bullet that hit the victim should have been upward as according to the accused he tilted his gun which he held at his left wrist upward.

Considering the trajectory of the bullet which is downward, the exit of which is 3 and ¾ inches lower than its entry, the inescapable conclusion is that the victim must have been then in a kneeling or sitting position in front of the accused with the accused standing over him when the accused shot the victim.

x x x x x x x x x.[42]

Such being the case, we cannot sustain even an incomplete self-defense in petitioner's favor, there being no clear and convincing showing that the victim was attacking him when he shot and killed him. The rule is established that unlawful aggression is a primordial element in self-defense. [43] Its absence precludes a reduction of the penalty.

However, petitioner voluntarily surrendered. This was testified to by prosecution witness SPO2 Norberto Obrero.[44] The Solicitor General concedes that this mitigating circumstance should be appreciated in petitioner's favor.[45]

As to the award of damages, P50,000.00 as civil indemnity for the death of the victim in homicide is correct.[46] The grant of P192,000.00 for unearned income of the victim is also supported by the evidence, according to the formula set forth in People v. Silvestre,[47] The record shows that the victim was 32 years old and was earning at least P1,120.00 a month.[48] Finally, the actual damages for funeral expenses should be reduced from P131,000.00 to P54,500.00, as only the latter amount is supported by receipts.[49]

The crime of homicide is punished by Article 249 of the Revised Penal Code with reclusion temporal (12 years and 1 day to 20 years). With the mitigating circumstance of voluntary surrender the penalty should be imposed in its minimum, which is, 12 years and 1 day to 14 years and 8 months.

Thus, petitioner should serve an indeterminate sentence the maximum of which is anywhere within one degree lower than the above prescribed penalty of reclusion temporal; hence, anywhere within prision mayor (6 years and 1 day to 12 years). The maximum of the indeterminate sentence can be anywhere within the properly imposable penalty abovementioned, reclusion temporal in its minimum period (12 years and 1 day to 14 years and 8 months). [50]

WHEREFORE, the decision and resolution of the Court of Appeals are MODIFIED, so as to reduce the penalty to an indeterminate sentence of from six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum. The award of damages is AFFIRMED except that of actual damages for funeral expenses, which is hereby reduced to P54,500.00. Costs de oficio.

SO ORDERED.

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

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[1] Annex "E," Petition; Rollo, pp. 153-171.

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[2] Annex “G,” Resolution; Rollo, pp. 236-237.

[3] RTC Record, pp. 259-276.

[4] TSN, September 15, 1993, pp. 3-26; TSN, September 17, 1993, pp. 3-15.

[5] Exhibit “B,” Folder of Exhibits, p. 6.

[6] Exhibits “C,” “C-1” to “C-8,” Folder of Exhibits, pp. 7-14.

[7] Exhibit “F,” Folder of Exhibits, p. 19.

[8] TSN, September 17, 1993, pp. 16-29.

[9] Exhibit “L,” Folder of Exhibits, pp. 25-26.

[10] TSN, November 5, 1993, pp. 3-25.

[11] Exhibit “A-2,” Folder of Exhibits, pp. 2-5.

[12] Exhibit “A-3,” Folder of Exhibits, p. 2.

[13] Exhibit “A-6,” Folder of Exhibits, p. 3.

[14] Exhibit “A-7,” Folder of Exhibits, p. 3.

[15] TSN, November 5, 1993, pp. 25-63.

[16] Exhibits “M,” “M-1,” and “M-2,” Folder of Exhibits, pp. 27-29.

[17] Exhibits “O, ” Folder of Exhibits, p. 31.

[18] Exhibit “Q,” Folder of Exhibits, p. 32.

[19] Exhibit “R,” Folder of Exhibits, p. 33.

[20] Exhibits “S,” and “S-1,” Folder of Exhibits, p. 34.

[21] Exhibit “T,” Folder of Exhibits, p. 35.

[22] Exhibit “V,” Folder of Exhibits, p. 37.

[23] Exhibit “W,” Folder of Exhibits, p. 38.

[24] TSN, April 29, 1994, pp. 5-23.

[25] Exhibit “4,” Folder of Exhibits, p. 52.

[26] TSN, June 15, 1994, pp. 3-38.

[27] Exhibit “1,” Folder of Exhibits, pp. 43-44.

[28] Exhibit “2,” Folder of Exhibits, pp. 45-50.

[29] TSN, June 13, 1993, pp. 3-57.

[30] TSN, June 28, 1994, pp. 3-42.

[31] TSN, June 28, 1994, pp. 42-92; TSN, July 7, 1994, pp. 2-40.

[32] Exhibit “19-a,” Folder of Exhibits, p. 78.

[33] Exhibit “19-b,” Folder of Exhibits, p. 78

[34] Exhibit “19-c,” Folder of Exhibits, p. 78.

[35] TSN, May 5, 1994, pp. 3-26.

[36] TSN, May 5, 1994, pp. 26-41.

[37] TSN, Ibid, pp. 46-68.

[38] Exhibit “7,” Folder of Exhibits, p. 55.

[39] Petition for Review, pp. 15-17; Rollo, pp. 24-26.

[40] Sec. 5 (g), Rule 135, Revised Rules of Court.

[41] People v. Cahindo, 266 SCRA 554 (1997); People v. Libed, 14 SCRA 410 (1965).

[42] Amended Decision, pp. 14-15; Records, pp. 272-273.

[43] U.S. v. Navarro, 7 Phil. 713 (1907); U.S. v. Carrero, 9 Phil. 544 (1908).

[44] TSN, November 5, 1993, pp. 35-57.

[45] Respondent’s Memorandum, pp. 16-17.

[46] People v. Sison, 189 SCRA 643 (1990).

[47] 307 SCRA 68 (1999).

[48] As stated by the Solicitor General, the formula and its application are:

Net Earning Capacity = Life Expectancy
(2/3 [80 – age at death]) X Gross
Annual Income (GAI) - Living
Expenses
(50% of GAI)

> The evidence presented shows that the victim was earning P1,120.00 a month and he died at the age of thirty two (32). Based on the above formula, his earning capacity would be:

Net Earning Capacity = 2/3 (80 - 32) X (12xP1,120 – 12xP560)

= 32 X P6,720

= P215,040.

> Respondent’s Memorandum, p. 18; Rollo, p. 472.

[49] Exhibits “C-2,” “C-3,” “C-4,” “C-7” and “C-8,” Folder of Exhibits, pp. 8-10, 13-14.

[50] Sec. 1, Indeterminate Sentence Law, Act No. 4103 as amended by Act No. 4225.

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