

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL NAVARRO, ACCUSED-APPELLANT.

G.R. No. 129566. October 07, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In rejecting this appeal, the Court reiterates the following doctrines: (1) a retraction does not necessarily negate an earlier credible testimony; (2) the testimony of a single witness, if positive and clear, is sufficient to sustain a judgment of conviction, even in a charge for murder; (3) the rule on *res gestae* relates to the admissibility of evidence, not to its weight and sufficiency; (4) alleged violations of the rights against illegal arrest and seizure are deemed waived by the appellant's failure to assert them prior to arraignment; (5) where the killing is qualified by treachery, which is alleged in the information, the crime committed is murder; and (6) where the existence of the unlicensed firearm allegedly used in the killing has not been clearly established, the charge of illegal possession of firearm cannot be considered an aggravating circumstance in murder.

The Case

On January 6, 1994, two Informations, one for murder[1] and the other for violation of Presidential Decree 1866,[2] were filed at the Regional Trial Court of Alaminos, Pangasinan against Noel Navarro. On January 19, 1994, Navarro, through Counsel Romeo L. Gutierrez, filed two motions, one to remand the case to the provincial prosecutor for preliminary investigation and the other to suspend the proceedings before the court.[3] Judge Segundo B. Paz granted the motions.[4] Thereafter, on March 3, 1994, filed against the appellant was this amended Information for murder:[5]

"That on or about January 5, 1991, in the evening, near Enok Theater at Poblacion, [M]unicipality of Alaminos, [P]rovince of Pangasinan, New [sic] Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously shoot FERDINAND RABADON @ "BOYET" several times which caused his instantaneous death as a consequence, to the damage and prejudice of his heirs.

Contrary to Art. 248 of the Revised Penal Code."[6]

Affirmed, on the other hand, was this Information for violation of PD 1866:

"That on or about January 5, 1991, in the [M]unicipality of Alaminos, [P]rovince of Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused did then and there wilfully, unlawfully and feloniously have in his possession, control and custody one short firearm without first securing the necessary license and permit to possess the same and said firearm was used in the killing of Ferdinand Rabadon.

Contrary to P.D. 1866."[7]

On April 5, 1994, appellant, assisted by his aforementioned counsel, pleaded not guilty to the charges against him.[8] He then filed a petition for bail. A protracted full-blown hearing on the matter then ensued, during which the prosecution and the defense presented their respective witnesses and documentary evidence. The petition was

denied. The trial court adopted the proceedings during said hearing and thereafter, rendered the assailed 22-page Decision,[9] the dispositive portion of which reads:

"WHEREFORE, in consideration of the foregoing premises, judgment is hereby rendered declaring the accused GUILTY beyond reasonable doubt of the crime of [m]urder as described in the Information in Criminal Case No. 2762-A and, therefore, he is ordered to suffer the single and indivisible penalty of reclusion perpetua. The said accused should indemnify the heirs of the deceased in the sum of P50,000.00 as provided for by law plus another sum of P50,000.00 for actual damages that the mother of the victim has spent for the funeral services and wake.

"That the illegal possession of firearm subject of the Information in Criminal Case No. 2763-A is considered merely as an aggravating circumstance in the commission of the crime of murder, considering that the alleged firearm used was not recovered by the authorities and never presented in court.

X X X X X X X X

"SO ORDERED." [10]

Hence, this appeal.[11]

The Facts According to the Prosecution

The solicitor general narrated the People's version of the facts as follows:

"On January 5, 1991, around 9:00 in the evening, Jose Rabago went to Enoc Theater located at Poblacion, Alaminos, Pangasinan to view some stationary pictures exhibited outside the theater (p. 11, TSN, May 20, 1994). When he was about to go home on board his motorcycle, he was invited by Ferdinand Rabadon, who was drinking beer inside Adela's Restaurant, to join him. Rabago obliged (p.12, id.).

"Later, Rabadon borrowed Rabago's motorcycle which he used in going to the bus terminal to check if his wife had already arrived from Zamboanga (p. 13, id.) Upon his return, Rabadon invited Rabago to Five Doors Disco but the latter opted to go home (p. 14, id.). Rabadon, who was still on the motorcycle holding its handle bars, offered to drive Rabago home. (id.).

"When Rabago was about to mount the motorcycle, he was pushed by one Ming Basila, causing him to fall on his buttocks, after which Basila shot Rabadon twice at the back. While Rabadon was already lying down with his leg pinned by the motorcycle, appellant shot him three (3) times (pp. 14-15, id.).

"Rabago ran away, but after noticing that appellant and Basila [had] left the scene, he returned and saw Rabadon dying and gasping for breath (pp. 17-18, id.).

"Rabago saw Virgilio "Itlog" Rabadon, a policeman, to whom he reported Rabadon's killing (pp. 19-20, id.). On January 6, 1991, Rabago was investigated by policeman Rolando Rabadon but he said that he did not see anything (p. 3, TSN, June 13, 1994).

"During the hearing of the case, Rabago explained that he did not divulge the identities of the assailants for fear of his life (p. 37, TSN, May 20, 1994). He claimed that some policemen in Alaminos, Pangasinan [were] members of the Aguila Gang which kill[ed] people (pp. 41-42, TSN, June 13, 1994). The gang [was] allegedly led by one Ramon Navarro, appellant's brother.

"The National Bureau of Investigation (NBI) interrogated Rabago on January 3, 1994, at which time, Rabago named appellant and Ming Basila as the authors of Rabadon's killing (p. 20, TSN, June 13, 1994).

"Dr. Francisco Viray, who autopsied Rabadon's cadaver, found five (5) gunshot wounds and concluded that the immediate cause of death [was] "cardio-respiratory arrest; antecedent cause: brain injury and underlying cause: gunshot wounds" (p. 11, TSN, August 8, 1994)." [12]

According to the Defense

Appellant Noel Navarro denied any participation in the killing of Rabadon in his 16-page Brief,[13] which we quote:

"On January 5, 1991, in the evening, one Ferdinand Rabadon was shot to death near the Enoc Theater at Poblacion, Alaminos, Pangasinan. Almost immediately after the shooting incident, Jose Rabago reported the incident to one policeman, Virgilio "Itlog" Rabadon, who was inside a restaurant near the Victory Liner Terminal that his (Jose Rabago) companion was shot without him telling the policeman Virgilio "Itlog" Rabadon who shot his companion. Policeman Rabadon responded by going to the place pointed to by Jose Rabago, but the victim was no longer at the place of the incident as he was brought to the hospital. Later, Jose Rabago was investigated by policeman Rolando "Lando" Rabadon regarding the shooting incident, but Jose Rabago, when asked, told policeman Rolando[14] 'Lando' Rabadon that he did not see anything. Considering the negative result of the police investigation, no case was filed by the police against anybody for the shooting to death of Ferdinand Rabadon.

"Three (3) years later, on January 5, 1994, at about 8:00 o'clock in the evening, a composite team of the National Bureau of Investigation led by Atty. Teofilo Gallang served a search warrant and warrant of arrest to one Ramon Navarro, brother of accused-appellant in his residence and failing to find Ramon Navarro, the composite team of the NBI went to the house where accused-appellant was staying where they saw him (Noel Navarro). Accused-appellant was searched, but [nothing was found] in his body. Accused-appellant was arrested right then and there without any warrant of arrest shown to him by the NBI. In fact, it was admitted that the NBI composite team at the time [had] no warrant of arrest against accused-appellant.

"The NBI composite team boarded accused-appellant in a white van and was brought to the house of now Congressman Hernani Braganza in Alaminos, Pangasinan. Later, the NBI composite team went to Lucap, Alaminos, Pangasinan to fetch Fiscal Rabina and from there, they all proceeded to the police station of Alaminos, Pangasinan. Accused-appellant inquired from Fiscal Rabina if there [was] a warrant for his arrest and Fiscal Rabina simply said, 'sorry, my son, I cannot do anything, okay?'

"The following day, January 6, 1994, Prosecutor Rabina filed the [I]nformation charging accused-appellant of [m]urder, x x x for allegedly killing Ferdinand Rabadon on January 5, 1991, three (3) years earlier, without conducting a preliminary investigation. Also filed [was] an [I]nformation for [violation] of P.D. 1866 x x x." [15]

The defense presented three witnesses: Jose Rabago, who recanted his previous testimony; NBI Director Teodoro Galang, who testified as to the circumstances surrounding the arrest of the appellant without warrant; and Noel Navarro, the appellant himself.

The Ruling of the Trial Court

The trial court found the appellant guilty of murder, based on Jose Rabago's testimony as a prosecution witness, which it found to be positive, credible and sufficient to support a judgment of conviction. It ratiocinated as follows:

"Jose Rabago was positive about the identity of the killers of the victim. He was just one (1) meter away from Ming Basila and he was facing Ming Basila when he fell down. He saw the gun firing when it was Noel Navarro's turn to [shoot] the victim, and he [had] already taken three steps to [run] away towards the Philippine Rabbit Bus Station, but he claim[ed] that he looked back.

"There is no doubt from his testimony that Jose Rabago recognized Noel Navarro. He knew Noel Navarro when they were both students of the Royal Carpenter Academy. [In spite] of the hour of the night, he recognized Noel Navarro because there were three lights x x x [h]is distance [was] just three steps away from Noel Navarro. Even assuming that he [had] his back turned toward the accused, because he scampered away,

Jose Rabago testified that upon reaching the bus station, he looked at the two who lingered at the scene of the shooting. He also saw them [leave] and disappear at the corner." [16]

Rabago's recantation of his testimony as a prosecution witness was disregarded by the court a quo in this wise:

"x x x the Court cannot find any evidence or any indications that Jose Rabago [had] a sinister scheme to prevaricate and therefore this Court must respect as trustworthy, and with full faith and credence, his testimony as eyewitness for the prosecution." [17]

Citing jurisprudence, the lower court further declared that "mere retraction by [the] prosecution witness does not necessarily deshape the original testimony, if credible," and that "[courts] look with disfavor upon retractions of testimonies previously given in court. The rationale for the rule is obvious; the retraction can easily be secured from witnesses usually through intimidation or monetary consideration." [18]

In all, the trial court convicted the appellant of murder, after finding that the killing was qualified by treachery and merely aggravated by illegal possession of firearms. [19]

The Assigned Errors

The appellant contends that the lower court committed the following errors:

"1. In not considering the report of Prosecution Witness Jose Rabago to policeman Virgilio "Itlog" Rabadon that his companion was killed, but did not tell policeman Virgilio "Itlog" Rabadon that accused-appellant and one Ming Basila killed the deceased, as part of the 'res gestae';

"2. In not considering the result of the investigation conducted by Policeman Rolando 'Lando' Rabadon when Witness Jose Rabago was asked if he saw the assailant and did not mention the name of the accused-appellant and one Ming Basila, but instead, answered he did not see anything, as part of the 'res gestae';

"3. In giving credence to the testimony of witness Jose Rabago despite the fact that he narrated three (3) versions of the incident, in his report to the police authorities and the investigation conducted by the police authorities later immediately after the incident, and in his testimony as a prosecution witness and as a defense witness;

"4. In finding accused-appellant guilty beyond reasonable doubt of the crime of murder despite serious and material inconsistencies in the testimony of Jose Rabago, the lone witness of the prosecution who [claimed] to have [witnessed] the killing of Ferdinand Rabadon." [20]

In sum, the defense disputes the trial court's ruling identifying appellant as one of the authors of the crime. To resolve the appeal fully, the following issues will be discussed: (1) credibility and sufficiency of the prosecution evidence, (2) *res gestae*, (3) the defenses of denial and illegality of arrest and (4) the characterization of the killing. In addition, the Court will discuss the validity of the lower court's ruling that illegal possession of firearms should be appreciated as an aggravating circumstance in the killing.

The Court's Ruling

The appeal is devoid of merit.

First Issue: Credibility and Sufficiency of Prosecution Evidence

In the present controversy, the judge who penned the assailed Decision did not hear all the evidence presented by the parties. In fact, three judges handled the case: Judge Segundo B. Paz, in whose court the Informations were filed and the evidence of the parties was heard until August 17, 1994; Judge Leo M. Rapatalo, who took over on December 7, 1994 and resolved the petition for bail; and Judge Jules A. Mejia, who presided over the case from February 26, 1997 onwards. Hence, the rule granting finality to the factual findings of trial courts is inapplicable to this case. Accordingly, the Court meticulously pored over the records, especially the transcript of stenographic

notes, but after a careful study and deliberation, the Court finds no reason to disturb the factual findings of Judge Mejia.

Appellant contends that the testimony of Prosecution Witness Jose Rabago was filled with serious and material inconsistencies, allegedly because he gave three versions of the incident. First, he did not mention appellant's name when he reported the incident to SPO2 Virgilio Rabadon; and when asked by Patrolman Rolando Rabadon, he said that he did not see anything. Second, he identified the appellant as one of Rabadon's killers only when he was questioned by agents of the National Bureau of Investigation three years after the incident. As a prosecution witness, he maintained this assertion. Third, when presented as a defense witness, he changed his testimony and swore that it was not the appellant who had shot Rabadon, but a "short and stout man." [21]

The argument does not persuade. True, Rabago did not mention the name of the appellant when he reported the killing to both SPO2 Virgilio Rabadon and Patrolman Rolando Rabadon; [22] however, he explained that he was apprehensive about talking to the police, as he suspected that some of them were members of the dreaded Aguila Gang, viz.:

"x x x x x x x x

Q

Mr. Witness, when you were asked by policeman Lando Rabadon about what you learned of the shooting to death of Boyet Rabadon, you told him you did not see anything, why did you tell policeman Lando Rabadon that you did not see anything?

A

I was afraid, sir.

Q

And why were you afraid?

A

I did not have confidence [in] the police.

Q

Didn't you have confidence [in] the police?

A

Because some policemen are members of Aguila.

Q

And what is Aguila?

x x x x x x x x

A

Aguila gang, sir.

x x x x x x x x

Q

What is the Aguila gang?

A

It is killing people, sir.

.x x x x x x x x"[23]

He further testified to the pervasive climate of fear engulfing his town:

"x x x x x x x x

Q

In your affidavit, Mr. Witness, you mentioned that there were other witnesses [to] the killing. [A]ccording to you, on January 5, 1994, there were other witnesses x x x, and your answer was "yes", but nobody there talked anymore due to fear for their lives.

A

Yes, sir.

x x x x x x x x

Q

And what about your statement that these other witnesses fear for their lives, was that not your statement in your sworn statement?

A

Yes, sir, they are afraid.

Q

And what about you, are you not afraid of the Navarros?

A

I am afraid, sir.

Q

Are you saying, Mr. Witness, that a lot of people here in Alaminos are afraid of the Navarros?

A

Yes, sir.

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

With regard to Rabago's recantation of his previous testimony as a prosecution witness, narrating the killing of Rabadon and identifying the appellant as one of the malefactors, suffice it to say that this earlier testimony was clear, candid and consistent, as shown hereunder:

"x x x x x x x x

Q

After Ming Basila shot Boyet Rabadon, what happened next?

A

Noel Navarro followed.

Q

What did Noel Navarro do after Ming Basila shot Rabadon from behind?

A

Boyet Rabadon was already lying down and he [shot] him.

x x x x x x x x

Q

You said that Noel Navarro shot Ferdinand Rabadon, how many times did Noel Navarro shoot Boyet Rabadon?

A

Thrice, sir.

x x x x x x x x

Q

Mr. Witness, considering that it was about nine o' clock in the evening when Ming Basila and Noel Navarro shot Boyet Rabadon, how were you able to see Basila and Noel Navarro shoot Boyet Rabadon?

x x x x x x x x

A There was a light, sir.

x x x x x x x x

Q

How many lights were there?

A

About three.

x x x x x x x x

Q

How far were you from Boyet Rabadon when Ming Basila and Noel Navarro shot him?

A

About three steps, sir.

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

It must be stressed also that Rabago's testimony was compatible with the findings of Dr. Francisco E. Viray,[26] the medicolegal officer who autopsied the victim's body. Rabago said that Rabadon had been shot five times, once in the nape and four times in other parts of his body.[27] Such details of his testimony as a prosecution witness, aside from the fact that no ill motive or bias was ascribed to him by the appellant, lends earmarks of truth to said

testimony.

In contrast, Rabago's testimony as a defense witness was bereft of particulars that should have indicated, at the very least, that his testimony as a prosecution witness was false. His testimony as a defense witness, albeit brief, did point out that it was not the appellant but a "stout and short" man, along with Ming Basila, who shot the victim. He claimed that he was testifying anew because he was bothered by his conscience; however, he did not state any reason why he had previously identified the appellant as one of Rabadon's killers. Also suspect was the way he parried questions regarding his appearance as a defense witness. Worth repeating is the trial court's elucidation on the matter:

"The Court wonders why of all things, Rabago will apply for witness protection program of the government, if it [was] not true that he had witnessed the occurrence of the events as he related them when he was presented as [a] prosecution witness.

"And later on, after giving his version of the incident that happened as a witness for the prosecution, why of all things, will he come to know the date of the trial or hearing for [the] defense when according to him, not even the accused, not even the lawyer of the accused, not even the subpoena had reached him, and yet, surprisingly, he was present on June 16, 1995 to given again his testimony in favor of the accused.

xxx xxx xxx

"His only reason why he [had] to testify for the defense [was] that his conscience bothered him, but this Court cannot buy that kind of explanation and believe it." [28]

Because the prosecution was able to substantiate its charge of murder against the appellant through the detailed, clear and consistent testimony of Rabago as a prosecution witness (pointing to the appellant as one of the malefactors), the defense should have emphatically and clearly established that such testimony was false and ill-motivated. Appellant failed to do this.

The Court has held in a number of cases that a recantation of a testimony is exceedingly unreliable, for there is always the probability that such recantation may later on be itself repudiated.[29] Courts look with disfavor upon retractions, because they can easily be obtained from witnesses through intimidation or for monetary consideration.[30] A retraction does not necessarily negate an earlier declaration.[31] Where a witness who testified for the prosecution subsequently testifies for the defense by retracting his previous testimony, as in the present case, the test to decide which testimony to believe is a comparison coupled with the application of the general rules of evidence.[32]

In all, we agree with the court a quo in upholding the detailed, clear and straightforward testimony of Jose Rabago as a prosecution witness and in debunking his brief and indecisive recantation of such testimony.

It is a legal truism that in criminal cases, the guilt of the accused must be proven beyond reasonable doubt. To sustain conviction, the prosecution must stand or fall on its own evidence; it cannot draw strength from the weakness of that of the defense.

In the case at bar, the prosecution was able to prove the guilt of Appellant Noel Navarro with moral certainty. Indeed, the Court has held that the testimony of a single witness, if positive and credible, is sufficient to sustain a judgment of conviction, even in a charge for murder.[33]

Second Issue: Res Gestae

The appellant contends that, in considering the statements which Rabago gave to both SPO2 Virgilio Rabadon and Patrolman Rolando Rabadon, the trial court erred in concluding that such statements were not part of res gestae.[34]

At the outset, it must be stated that *res gestae* pertains to the admissibility of evidence, and not to its weight and sufficiency,[35] as the Office of the Solicitor General correctly pointed out. The admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.[36]

Res gestae is defined as follows:

"Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*." [37]

Rabago's statement to SPO2 Rabadon that someone had killed his companion can be considered part of the *res gestae*, and is thus admissible in evidence as an exception to the hearsay rule. It was a spontaneous statement that was made right after a startling occurrence and that refers to such occurrence. However, the same cannot be said of his statement to Patrolman Rabadon, as it lacked the requisite spontaneity, having been given in answer to questions propounded in an investigation, a day after the incident in question.

The appellant seems to imply that when Rabago reported the incident to SPO2 Rabadon, Rabago's silence regarding the identity of the killers created doubt as to the appellant's culpability for such killing and, thus, should have been likewise considered by the lower court in appellant's favor as part of the *res gestae*. [38] This proposition deserves scant consideration. Such omission cannot be taken to mean that appellant was not the culprit. The witness was simply silent as to the identity of the assailant. Such omission, as has been discussed, can be attributed to Rabago's fear of the Navarros.

Witnesses' delayed reporting of what they know about a crime does not render their testimonies false or incredible, for the delay may be explained by the natural reticence of most people and their abhorrence to get involved in a criminal case. But more than this, there is always the inherent fear of reprisal, which is quite understandable, especially if the accused is a man of power and influence in the community. [39] In *People v. Viñas*, [40] it was held that "[t]he natural reluctance of a witness to get involved in a criminal case, as well as to give information to the authorities is a matter of judicial notice."

Third Issue: Denial and Illegal Arrest

While the appellant denied that he killed Ferdinand Rabadon, [41] he did not offer any evidence to prove his assertion; instead, his testimony focused on the circumstances surrounding his alleged illegal arrest and subsequent detention.

Contrary to the appellant's assertion that he was denied due process by virtue of his alleged illegal arrest, such claim is negated by his voluntary submission to the jurisdiction of the trial court, as manifested by the voluntary and counsel-assisted plea he entered during arraignment and by his active participation in the trial thereafter. [42]

Faced with the detailed, clear and consistent testimony of Jose Rabago, against whom no ill motive was imputed, Appellant Navarro, whom the former pointed to as one of the killers of Ferdinand Rabadon, cannot escape conviction merely by issuing an unsubstantiated denial and resorting to constitutional guarantees which he has already voluntarily waived.

Fourth Issue: The Crime

The crime committed was murder. As alleged in the Information, the trial court correctly concluded that the killing of Ferdinand Rabadon was qualified by treachery.

The essence of treachery is the sudden and unexpected attack, without the slightest provocation on the part of the

person attacked.[43] Treachery exists when any of the crimes against persons is committed with the employment of means, methods or forms that tend directly and especially to insure its execution, such that the offender faces no risk that may arise from the defense which the offended party might make.[44] In the present case, not only was the victim caught off guard by the unexpected attack of the appellant and Ming Basila, but the testimony of Jose Rabago likewise indubitably established that the appellant shot the victim when the victim was already lying prostrate and defenseless.[45]

Illegal Possession of Firearms

While we affirm the trial court's conviction of the appellant for murder, we do not agree with its disquisition finding the charge of illegal possession of firearms to have aggravated the killing.

To prove illegal possession of firearms, the prosecution must establish two things: first, the existence of the subject firearm; second, the fact that the accused, who owned or possessed the firearm, did not have the corresponding license or permit to carry the same outside his residence.[46]

In the case at bar, the Information alleged that on January 5, 1991, the appellant had in his possession an unlicensed firearm which he used in killing Ferdinand Rabadon. This firearm was allegedly recovered on January 5, 1994, when appellant was arrested. However, said firearm was not presented in court or offered as evidence against the appellant. Although Rabago testified that he saw the appellant with a "short" firearm when the latter shot Rabadon on January 5, 1991, no other proof was presented to show that such gun, allegedly used on January 5, 1991, was the same one recovered on January 5, 1994. The prosecution was not able to establish sufficiently the existence of the subject firearm, and this fact was not offset by SPO1 Edmund Garcia of the PNP Firearms and Explosives Unit, who testified that appellant was not a licensed firearm holder in Pangasinan. Since the charge of illegal possession of firearms was not proven, the same could not be considered to have aggravated the killing of Ferdinand Rabadon.

The court a quo would have been correct in considering illegal possession of a firearm an aggravating circumstance, if such possession had been established beyond reasonable doubt. This is in line with RA 8294 (amending PD 1866), which regards the use of an unlicensed firearm simply as an aggravating circumstance in murder or homicide.[47]

In any case, since the killing was qualified by treachery, the crime committed was murder. Whether with or without this alleged generic aggravating circumstance, the penalty, reclusion perpetua, would still be the same, because the killing was committed in January 1991, when the imposition of the capital penalty was still proscribed by the Constitution, and RA 7659 had not yet been enacted.

Damages

While we affirm the award of P50,000 as indemnity for the death of Ferdinand Rabadon, we have found no evidence in the records that can support the lower court's additional award of P50,000 as actual damages. To justify a grant of actual damages, it is necessary to show the amount of actual loss with the best evidence obtainable.[48] In the present case, while Ofelia Rabadon testified that P25,000 was spent for the wake and burial of her son, she did not present receipts or any other documents to substantiate such claim.

WHEREFORE, the appeal is hereby DENIED. The assailed Decision is AFFIRMED, but the award of actual damages is DELETED. Costs against the appellant.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, Vitug, and Quisumbing, JJ., concur

[1] Dated January 6, 1994, signed by Asst. Provincial Prosecutor Emiliano A. Rabina and docketed as Criminal Case No. 2762-A. Records of said criminal case, p. 1.

[2] Appellant was accused of "aggravated illegal possession of firearm" in the Information likewise dated January 6, 1994, signed by Asst. Provincial Prosecutor Rabina and docketed as Criminal Case No. 2763-A. Records of said criminal case p. 1.

[3] Records of Criminal Case No. 2762-A, pp. 19-23.

[4] Ibid., p. 25.

[5] Dated March 3, 1994 and signed by Asst. Prosecutor Genebin V. Finez.

[6] Records, p. 47.

[7] Rollo, p. 12.

[8] Records of Crim. Case No. 2762-A, p. 62; records of Crim. Case No. 2762-A, p. 43.

[9] Dated June 30, 1997 and penned by Judge Jules A. Mejia.

[10] Decision, p. 22; Rollo, p. 49.

[11] The case was deemed submitted for resolution upon receipt by the Court of the Appellee's Brief on June 10, 1998. The filing of a reply brief was deemed waived, as none was submitted within the reglementary period.

[12] Appellee's Brief, pp. 4-6; rollo, pp. 91-93. The Appellee's Brief was signed by Assistant Solicitor General Carlos N. Ortega, Assistant Solicitor General Amparo M. Cabotaje-Tang and Associate Solicitor Cristopher B. Arpon.

[13] Signed by Atty. Romie V. Braga.

[14] Referred to as "Orlando" Rabadon in the records.

[15] Appellant's Brief pp. 2-4; rollo, pp. 41-43.

[16] Decision, p. 13.

[17] Ibid., p. 18

[18] Ibid.

[19] Ibid., p. 22

[20] Appellant's Brief pp. 1-2; Rollo, pp. 40-41

[21] Appellants Brief, pp. 10-11; rollo, pp. 49-50.

[22] The Court wonders why Rabago did not mention either to SPO2 Virgilio Rabadon or to Patrolman Rolando Rabadon the identities of Ferdinand Rabadon's killer. We note SPO2 Rabadon's revelation that the victim's grandfather and his own were cousins. A careful perusal of the records of the case further shows that SPO2 Rabadon was seemingly indifferent to the plight that had be fallen his distant kin -- he did not report the matter to

his station, pursue the case or even participate in the investigation (TSN, June 27, 1994)? Likewise, Patrolman Rabadon's questioning of Rabago was perfunctory (TSN, August 10, 1994). These facts would seem to strengthen Witness Rabago's statement that he heard the local police.

[23] TSN, June 13, 1994, pp. 41-42. Italics supplied.

[24] TSN, May 20, 1994, p. 37.

[25] TSN, May 20, 1994, pp. 15-17. Italics supplied.

[26] Exh. "C"; record in Crim. Case No. 2762-A, p. 124. The medico legal certificate signed by Dr. Francisco E. Viray reads as follows:

"xxx xxx xxx

GUNSHOT WOUND - Point of Entry (L) occipital area; Point of Exit: (R) Temporo-parietal area

GUNSHOT WOUND - Gracing (R) shoulder - Point of Entry (R) latero-anterior neck; Point of Exit - anterior neck

GUNSHOT WOUND - Gracing the right nipple.

GUNSHOT WOUND - Right Upper Thigh - Point of Entry - lateral aspect; Point of Exit - Medical Aspect of the knee

GUNSHOT WOUND - Point of Exit (Left) 6-8 thoracic level; Point of Entry - Left 6-8 Thoracic level"

[27] TSN, May 20, 1994. Direct Testimony of Jose Rabago, pp. 15-16.

"Q How many times did Ming Basila shoot Boyet?

A Twice, sir.

Q xxx [w]here was Boyet Rabadon hit if you know when he was shot by Ming Basila?

A At his back, sir. [Witness pointing to his nape]

x x x x x x x x

Q You said that Noel Navarro [shot] Ferdinand Rabadon also after Ming Basila [shot] Rabadon. How many times did Noel Navarro shoot Boyet Rabadon?

A Thrice, sir."

[28] Ibid., pp. 18-19.

[29] People v. Soria, 262 SRCA 739, October 4, 1996; People v De Leon, 245 SCRA 538, July 3, 1995; People v Liwag, 225 SCRA 46, August 3, 1993.

[30] People v Turingan, GR No. 121628, December 4, 1997.

[31] People v Ballabare, 264 SCRA 350, November 19, 1996.

[32] People v Peralta, 237 SCRA 219, September 28, 1994; People v Mindac, 216 SRCA 558, December 14, 1992; People v Clamor, 198 SRCA 642, July 1, 1991, citing Reano et. al., v Court of Appeals 165 SRCA 525, September 21, 1988.

[33] People v. Hayahay et al., GR No. 120550, September 26, 1997; People v. Tuvilla, 259 SCRA 1, July 15,

1996; *People v. Panganiban*, 241 SCRA 91, February 6, 1995.

[34] Appellant's Brief pp. 8-10; rollo, pp. 48-50.

[35] *Pantranco North Express, Inc. v. Court of Appeals*, 224 SRCA 477, July 5, 1993.

[36] Ricardo J. Francisco, *Evidence*, Rules 128-134, 3rd ed., p. 11.

[37] § 42, Rule 130, Rules of Court.

[38] Appellant's Brief, p. 9; rollo, p. 48.

[39] *People v. Basilan*, 174 SRCA 115, June 20, 1989.

[40] 245 SCRA 448, June 29, 1995, Per Vitug, J.

[41] TSN February 26, 1997, p. 18.

[42] *People v. Tidula*, GR No. 123273, July 16, 1998; *People v. Montilla*, GR No. 123872, January 30, 1998; *People v. Rivera*, 245 SRCA 421, June 29, 1995; *People v. Codilla*, 224 SRCA 104 June 30, 1993.

[43] *People v. Cawaling*, GR No. 117970, July 28, 1998.

[44] Article 14, par. 16 Revised Penal Code.

[45] TSN, May 20, 1994, p. 15.

[46] *People v. Molina*, GR. Nos. 115835-36, July 22, 1998, citing *People v. Lualhati*, 234 SCRA 325, July 21, 1994 and *People v. Solayao*, 262 SCRA 255, September 20, 1996.

[47] *Ibid.*

[48] *People v. Rosario*, 246 SCRA 658, July 18, 1995.

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