

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENITO MIER Y VISTAL, ACCUSED-APPELLANT.

G.R. No. 130598. February 03, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us on automatic review is the Decision[1] in Criminal Case No. 9582 of the Regional Trial Court of Tagbilaran City, Bohol, Branch 47, dated May 29, 1997 finding Benito Mier y Vistal guilty of murder for the killing and beheading of Pablito Laguros y Tasic and sentencing him to suffer the supreme penalty of death.

Appellant Benito Mier was charged with the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended, in an Information[2] which reads:

"The undersigned, Second Assistant City Prosecutor, on detail, hereby accuses Benito Mier y Vistal alias Nenic of Bagtic, Catigbian, Bohol of the crime of Murder, committed as follows:

"That on or about the 28th day of September, 1995 in the municipality of Catigbian, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a long sharp pointed bolo, with intent to kill and with evident premeditation, treachery and cruelty did then and there wilfully, unlawfully and feloniously hack several times and behead one Pablito Laguros y Tasic, hitting the victim several times at the back of his body which caused the instantaneous death of said victim; that not contented with what he had done, said accused beheaded and thereafter carried away the head of the said victim; thereby deliberately and inhumanly augmenting the pain and suffering of the victim and outraging or scoffing at the person or corpse of the said victim.

Acts committed contrary to the provisions of Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659."

On one hand, the evidence adduced by the prosecution showed that on September 28, 1995, at about 6:00 o'clock in the evening, prosecution witness Perfecto Cabreros and a certain Romy Banga were drinking liquor in front of the cooperative store in Barangay Baang, Catigbian, Bohol when appellant Mier, together with Rolando Zapatos, Ramie Zapatos, and a certain Segundino, arrived at the store in order to redeem his Kulafu crown. They were all armed with bolos. For lack of Kulafu stocks, the salesboy, Eugenio Silangan, declined to change the Kulafu crown of appellant.

Consequently, appellant bought one pocket-size Tanduay rum and drank with his companions. He also asked money from prosecution witness Cabreros to buy softdrinks, and the latter gave him P5.00 out of fear inasmuch as Mier and his companions were carrying bolos.

At around 7:30 in the evening, prosecution witness Cabreros and Romy Banga went home leaving behind appellant Mier and company.[3]

At about 9:00 o'clock in the evening, prosecution eyewitnesses Danilo Quindao and Alberto Agad, both residents

of Barangay Bagtic, Catigbian, Bohol, went to the house of Pedro Eboa, which was about 150 meters from the cooperative store, to hire his motorcycle which is locally known as "habal-habal". Prosecution eyewitnesses Agad and Quindao worked for a bus owner named Aurelio Dinorog as driver and conductor, respectively. The bus earlier broke down due to mechanical defect. They then decided to hire the "habal-habal" of Pedro Eboa to take them to the poblacion and to contact Aurelio Dinorog in Tagbilaran City to inform the latter that his bus broke down.[4]

While Agad was negotiating with Pedro Eboa in front of his house, Quindao was standing nearby. Appellant approached Quindao and asked him if he knew the person who was picking trouble with him at the cooperative store. Quindao answered that he did not know inasmuch as he had just arrived.[5]

Thereafter, appellant approached the victim, Pablito Laguros, who was by the roadside about fifteen (15) meters away from the house of Pedro Eboa. Appellant likewise asked him if he knew the person who was picking trouble with him at the cooperative store. After answering in the negative, Laguros started to leave. However, appellant followed Laguros and persisted on asking the same question to which Laguros kept replying that he knew nothing about the matter. Appellant then unsheathed his bolo and immediately hacked Laguros from behind the shoulder.[6] Laguros, who was unarmed, attempted to run but appellant chased him and hacked Laguros two more times at the back.[7] Prosecution witness Quindao clearly saw the incident inasmuch as the place was lighted by a 20-watt fluorescent lamp.[8]

Quindao and Agad went inside the house of Pedro Eboa for fear that appellant might also hack them. Later that evening, Quindao and Agad saw the decapitated body of Laguros, which was still clad in the same white t-shirt and brown short pants, on the road about fifteen (15) meters from the house of Pedro Eboa with its head nowhere in the vicinity.[9]

Meanwhile, prosecution witness Claro Suarez was in the house of a certain Alicia Udtohan in Brgy. Baang, Catigbian, Bohol on September 28, 1995. At about 9:00 o'clock in the evening, he observed people running and passing by the house of Alicia Udtohan. He then went upstairs to observe. From the window, he saw a person around thirty (30) meters away in the act of hacking another person who was already lying on his side near a lamp post. Subsequently, the attacker picked up something that turned out to be a human head. He passed by the house of Alicia Udtohan and came as close as five (5) meters. Prosecution witness Suarez failed to recognize the person carrying the decapitated human head. However, he testified that the same person had more or less the same body built and height of appellant Benito Mier.[10]

Prosecution witness Dr. Vito B. Inting, M.D., Municipal Health Officer of Catigbian, Bohol, testified in court that he conducted post mortem examination on the body of the victim at the Catigbian District Hospital on September 29, 1995 upon the request of SPO3 Modesto Renoblas of the Catigbian Municipal Police. His findings are embodied in his Post Mortem Report,[11] to wit:

- Decapitation - Head was separated at the level of the neck. Head was allegedly taken by the suspect.
- Hacking wound - shoulder, right - The wound is about 3 inches in length. All the muscular layer are involved.
- Hacking wound - Scapular area, right, following the medial border of the scapula is a wound about 5 inches in length. The wound is up to the scapular bone.
- Hacking wound - Scapular area, right, about one inch laterally from wound No. 3 is a wound about 6 inches in length. The wound is up to the scapular bone.
- Hacking wound - at the deltoid area, right, is a wound about 2 ½ inches in length. The muscular area is involved.

- Hacking wound - Spinal column, lumbo sacral area is a wound about 3 ½ inches in length. The bone of the spinal column is exposed.
- Hacking wound - Wrist, left. The hand is nearly separated from the forearm except for a flap of skin.
- Hacking wound - Knee, left, is a perpendicular wound about 2 ½ inches in length. The knee bone is split.

CAUSE OF DEATH - Irreversible shock secondary to massive hemorrhage secondary to decapitation and multiple hacking wounds."

Dr. Inting also testified that from the nature of the wounds sustained by the victim, he believed a sharp bladed weapon was used by the attacker and that two (2) of those wounds which were sustained by the victim on the scapular area, measuring about five (5) and six (6) inches, respectively, were inflicted from behind by the attacker and were fatal.[12]

Prosecution witness SPO3 Modesto Renoblas, Chief of Police of Catigbian, Bohol, testified that he led the police team from Catigbian, in coordination with other police teams from the Municipality of Batuan and Tagbilaran City, in effectuating the arrest of appellant on January 24, 1996. The three (3) police teams were armed with a warrant of arrest[13] dated October 20, 1995 which was issued by Judge Aldrico Melicor of the 20th Municipal Circuit Trial Court, Catigbian, Bohol. Among the articles seized from the appellant during his arrest were a long sharp bolo believed to have been used in killing Pablito Laguros, a .22 caliber rifle and a fragmentation grenade which had no safety pin.[14]

On February 4, 1996, appellant Benito Mier, upon the advice of his father, Samuel Mier, drew a sketch of the place where he allegedly buried the head of Pablito Laguros. After obtaining the said sketch from appellant's father, prosecution witness SPO3 Renoblas, PO3 Eborra and PO2 Ramirez, together with some relatives of the victim and the accused, proceeded to the spot situated between two mahogany trees near the house of the appellant in Sitio Behind the Clouds, Barangay Casingi, Batuan, Bohol as indicated in the sketch, and dug up the skull of the victim.[15]

On the other hand, the defense invoked self-defense. Appellant Benito Mier testified that he arrived at the house of his mother-in-law in Barangay Bagtic, Catigbian, Bohol, in the afternoon of September 28, 1995 and that about 7:00 o'clock in the evening, he went to the cooperative store in Barangay Baang, which is adjacent to Barangay Bagtic, in order to redeem his Kulafu crown and also to buy kerosene and some spices. Upon his arrival at the store, he heard the four (4) persons who were drinking liquor there say, "Ato ning birahin," which means, "We will assault this person." After hearing the remark, appellant retraced his way to the road to avoid any untoward incident but the four (4) persons followed and told appellant to wait because they have something to ask him. As the four (4) got close, one (1) of them tried to stab him. But since appellant was able to parry the thrust with the umbrella which he was carrying, the tip of the weapon merely grazed the lower right portion of his breast just below the nipple. Appellant attempted to run but he stumbled. As he rose to his feet, one of the pursuers stabbed him on his left thigh. This time appellant retaliated by hacking the said attacker several times with his bolo, but he denied having beheaded said attacker. Thereafter, he fled toward his house in Sitio Behind the Clouds, Batuan, Bohol, located nine (9) kilometers from Barangay Baang, Catigbian, Bohol, where his wounds were treated by his mother and his wife.[16]

The testimony of appellant was corroborated by Uldarico Milar who is his neighbor in Sitio Behind the Clouds, Batuan, Bohol. Defense witness Milar testified that he was in Barangay Baang, Catigbian, Bohol at around 7:00 o'clock in the evening on September 28, 1995 to borrow some rice from Isabel Otom. Before he reached the house of Isabel Otom, he saw appellant being pursued by four (4) persons who were carrying bolos. Upon catching up with him, they attacked appellant who retaliated by hacking one (1) of his pursuers.[17]

Subsequently, defense witness Milar proceeded to the house of Isabel Otom where he passed the night. On the following day, Milar visited appellant in his house and saw the latter's wife treating his wounds on the right chest and left leg. When asked by Milar about the incident the night before, appellant related that he was ganged up by four (4) persons.[18]

Eusebia and Regina Mier, mother and wife of the appellant, respectively, testified that on September 28, 1995 appellant arrived bloodied at 11:00 o'clock in the evening. Appellant, according to them, was allegedly stabbed when four (4) persons ganged up on him. They did not bring the appellant to the doctor for treatment. Likewise, they did not report the incident to the barangay captain or to the police for fear that the appellant might be arrested.[19]

After evaluating the evidence, the trial court convicted appellant as charged. It ruled, thus:

"The court can not give credence to the claim of the accused that at the time of the incident there were four persons (including the one whom he killed - apparently referring to the victim) who pursued him were armed with bolos considering that until the accused testified in his behalf he never reported to any law enforcer the fact that the victim at the time of the incident, was armed with [a] bolo. Neither did the accused present the alleged bolo of the victim as his evidence in this case nor explain why the alleged bolo of the victim could not be presented as evidence. The failure to account for the non-presentation of the bolo allegedly used by the victim is fatal to the plea of self-defense xxx.

The accused testified that he could not recall how many times he hacked the victim although he admitted that he hacked the victim twice and thereafter hacked him again and many times thereafter, as indicated in the Post Mortem Report xxx.

Although the accused did not categorically admit that he was responsible in inflicting all the seven (7) wounds suffered by the victim, he impliedly admitted having inflicted all the said wounds. This is further bolstered by the testimony of Danilo Quindao, an eyewitness who testified that there was no other person who helped Benito Mier in hacking the victim. The testimony of Danilo Quindao is corroborated by the testimony of Alberto Agad, another eyewitness.

xxx

The evidence for the prosecution has established the qualifying aggravating circumstance of treachery. Prosecution eyewitness Danilo Quindao demonstrated before the court the respective positions of the victim Pablito Laguros and accused Benito Mier at the time the latter hacked the former. The victim was standing, folding his two (2) arms around his breast and the accused was at the back of the victim not able to evade the first hacking blow because he was not aware that he would be hacked and was thereafter hit on the back portion xxx of his right shoulder. This was corroborated by prosecution eyewitness Alberto Agad xxx. It is abundantly clear that the prosecution was able to establish treachery on the part of the accused as defined in Art. 14, No. 16, of the Revised Penal Code. xxx. The victim could not do anything to defend himself except to run away as he did not have a weapon at the time of the incident. The accused must have been irritated by the repeated "I do not know" of the victim on his repeated questions as to the identity of the persons who were allegedly making trouble with him at the Cooperative Store of Baang, Catigbian, Bohol. But this will not serve as a warning of an impending danger on the victim as he was hacked on the back and was entirely defenseless risking nothing to accused from any retaliation the victim might have xxx.

The accused chased the victim when he tried to run away from the accused. This fact was testified to by eyewitness[es] Quindao and Agad. xxx.

It was also established by direct evidence supported by a series of circumstantial evidence of the prosecution that the accused was the one responsible for beheading the victim as the testimony of prosecution eyewitnesses Quindao and Agad disclosed that there was no other person who hacked and chased the victim.

Prosecution witness Claro Suarez declared that from a distance of about thirty (30) meters, he saw [that] a person hacked twice another person lying on the ground and that same person who caused the hacking picked up something from the ground appearing to be the head of the person lying on the ground. The person who caused the hacking walked along the road passing through the house of Alicia Udtohan bringing with him the head of the victim. Claro Suarez was about five meters away when the person passed by the house of Alicia Udtohan. He was able to describe the height of the person who hacked as five feet and four inches and his body was thinly built. When asked to compare the height and the body built of the accused with the person whom witness Suarez saw at the time of the incident, Suarez positively declared that the accused and the person whom he saw hacking another, are of the same height and body built. xxx. Just like prosecution eyewitnesses Quindao and Agad, Suarez declared that during the time he saw the person hacking another on the ground, there was no other person seen at the place.

Prosecution rebuttal witness SPO3 Modesto S. Renoblas declared that on February 4, 1996 when the accused was already inside the PNP jail of Catigbian, Bohol, the accused drew a sketch of a place in Casingi, Behind the Clouds, Batuan, Bohol where he buried the skull of the victim. The sketch guided the police authorities and the parents of the accused in recovering the said skull.

An accused could be convicted on circumstantial evidence when the circumstances constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused to the exclusion of all others as the guilty person xxx.

xxx. Prosecution witnesses have clearly and convincingly established that it was only the accused who hacked the victim as it was only the accused who chased the victim. The inescapable conclusion is that the accused was the one who beheaded the victim. To admit a version that it was the victim who beheaded himself and thereafter walked away and buried his head somewhere inasmuch as the same was not found where the headless body of the victim was located, is incredible. xxx.

It has to be determined as it is important to know whether the victim was beheaded by the accused before or after the former's death for this will determine whether there was cruelty or whether outraging or scoffing at the person or corpse of the accused is in attendance. Although the prosecution has not presented any direct evidence to establish this particular issue, the declaration of Dr. Vito B. Inting, the Municipal Health Officer of Catigbian, Bohol who conducted the post mortem examination on the victim at about 11:30 o'clock in the morning of September 29, 1995 or less than 24 hours from the time of the incident on September 28, 1995 at about 9:00 o'clock in the evening marked as Exhibit "D" with the pertinent portion marked as Exhibit "D-1", stated as follows,

'Decapitation - Head was separated at the level of the neck. Head was allegedly (sic) taken by the suspect,'

is significant. Inasmuch as the hacking wounds suffered by the victim at the scapular area indicated as Nos. 3 and 4 in the Post Mortem Report, Exhibit "D", were both fatal injuries, it was his considered opinion that the decapitation took place after the victim died. The testimony of Dr. Inting, though uncorroborated, stands un rebutted. It is believed, therefore, that the prosecution has established the fact that the victim already died at the time his head was decapitated and the beheading is considered as outraging or scoffing at the person or corpse of the victim as the victim was beheaded after he was killed. There is no other alternative except to conclude that the beheading was done after the victim had died thereby establishing outraging or scoffing at the victim's corpse as an aggravating circumstance. xxx." [20]

Accordingly, the trial court meted the following penalty:

"WHEREFORE, in view of all the foregoing, accused Benito Mier y Vistal is found guilty beyond reasonable doubt of the crime of Murder defined and penalized by Article 248 of the Revised Penal Code, as amended by Republic Act 7659, with the qualifying aggravating circumstance of treachery. In view of the beheading proven done after the victim's death an aggravating circumstance of outraging or scoffing at the victim's

person or corpse qualifies the accused to be sentenced to the supreme penalty of death to be carried out in the manner prescribed by law, with the inherent accessory penalties provided by law; to indemnify the heirs of the deceased, Pablito Laguros, in the amount of Fifty Thousand (P50,000.00) Pesos; moral and exemplary damages in the amount of One Hundred Thousand (P100,000.00) Pesos; actual compensatory damages representing funeral and incidental expenses in the amount of Fifty Thousand (P50,000.00) Pesos and to pay the costs.

SO ORDERED."[21]

In assailing the foregoing decision, appellant cited the following errors by the trial court, to wit:

"I

THE COURT A QUO GRAVELY ERRED IN THE APPRECIATION OF THE TESTIMONIAL EVIDENCES BOTH FOR THE PROSECUTION AND THE DEFENSE.

II

THE COURT A QUO COMMITTED GRAVE ERROR IN THE APPRECIATION OF THE TESTIMONIAL EVIDENCES FOR THE PROSECUTION REGARDING THE BEHEADING OF THE VICTIM WHICH THE HONORABLE PRESIDING JUDGE CONSIDERED THE AGGRAVATING CIRCUMSTANCE OF OUTRAGING OR SCOFFING AT THE VICTIM'S PERSON OR CORPSE, AMOUNTING TO GRAVE ABUSE OF DISCRETION."[22]

Appellant invoked the justifying circumstance of self-defense. Having invoked self-defense, appellant is deemed to have admitted having killed the victim, and the burden of proof thereupon is shifted to him to establish and prove the elements of self-defense.[23]

The elements of self-defense are: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[24]

To show the existence of unlawful aggression, appellant Benito Mier testified that on September 28, 1995 he was assaulted by four (4) persons who were armed with bolos at the cooperative store for no apparent reason. The four (4) persons were drinking liquor when he arrived at the cooperative store in order to redeem his Kulafu crown and to buy kerosene and some spices. He was allegedly able to parry the first blow from one (1) of the attackers with an umbrella but the tip of the bolo nevertheless grazed the lower right portion of his chest just below the nipple. His attempt to run away from his attackers proved futile as he stumbled. As he rose to his feet, one of the attackers stabbed him on the left leg, to which he retaliated by hitting the said attacker with his bolo several times.

But the claim of self-defense by appellant is not convincing.

Accused-appellant did not report the incident to the police authorities. After he fatally hacked the victim several times, appellant fled from the scene of the crime and remained at large until January 24, 1996 when he was arrested by a composite team of police authorities on the strength of a valid warrant of arrest. It is axiomatic that flight negates self-defense and indicates guilt.[25]

Self-defense, like alibi which is inherently a weak defense, can easily be concocted.[26] At the time of his arrest and in the subsequent period prior to the trial of this case on the merits, there was no evidence on record that appellant ever indicated to the authorities that he was allegedly attacked by four (4) persons armed with bolos and that he killed the victim in self-defense. Hence, there is reason to believe that the idea of self-defense was a mere afterthought of the appellant to escape criminal liability.

Moreover, the bolo which was allegedly used by the victim in attacking accused-appellant was never presented in evidence by the defense during the trial. The non-presentation thereof and the failure of the defense to account for its non-presentation are fatal to appellant's plea of self-defense.[27] The defense also significantly failed to present a medical certificate to support its claim that the appellant sustained injuries from the alleged attack by the victim with the use of a bolo. The mere exhibition of scars by appellant Mier does not meet the required quantum of proof of unlawful aggression by his victim.[28]

It has been established by evidence that the victim suffered seven (7) hacking wounds on different parts of his body. In addition, his head was severed from the body. The nature, location and number of the wounds inflicted on the victim belie and negate accused-appellant's claim of self-defense.[29]

The testimonies of the other defense witnesses were correctly found by the trial court to be unworthy of credence. Uldarico Milar testified that he covered the distance of nine (9) kilometers on foot from Barangay Casingi, Batuan, Bohol to Barangay Bagtic, Catigbian, Bohol merely to borrow rice from the mother-in-law of appellant, Isabel Otom, who is not even his relative, purportedly to feed his children. Despite the urgency of the matter, Milar opted to stay overnight in the house of Otom. Moreover, it was shown that he had friends from whom he could readily seek help in his own barangay and in the three other barangays through which he had to pass before he could reach the house of Otom in Barangay Bagtic, but for some reason, he chose to go to Otom.[30] Besides, his testimony that he visited the appellant in his house on the day following the incident was belied by the appellant himself.[31] The testimonies of appellant's mother and his wife were likewise dismissed by the trial court as biased. We perceive no arbitrariness on the part of the trial judge in arriving at his findings, and so his evaluation on the credibility of witnesses is well-nigh conclusive upon this court.[32]

On the other hand, the prosecution has satisfactorily established that on September 28, 1995, at about 6:00 o'clock in the evening, appellant and three (3) other persons arrived at the cooperative store in Barangay Baang to redeem the Kulafu crown of the former. For lack of available stock, the salesboy declined to change the Kulafu crown. Appellant instead bought one (1) pocket-size Tanduay rum and drank the same with his companions. He even asked for P5.00 from Perfecto Cabrereros, who happened to be drinking liquor with a companion at the same store, to buy softdrinks.

At about 9:00 o'clock in the evening, appellant was at the vicinity of the house of Pedro Eboa asking about the identity of the person who allegedly offended him at the cooperative store. Among the persons he initially asked were prosecution eyewitnesses Danilo Quindao and Alberto Agad who were then negotiating with Pedro Eboa for the services of the latter's motorcycle. After eliciting negative responses from the two (2), appellant approached the victim, Pablito Laguros, who gave the same negative reply. However, this time appellant was not satisfied and pressed Laguros who turned to walk away. Without any warning, appellant unsheathed his bolo and immediately hacked Laguros from behind several times until the latter fell to the ground.

From the foregoing established facts, it is clear that the appellant killed Pablito Laguros with treachery so as to qualify the killing to murder under Article 248 of the Revised Penal Code, as amended. Said provision reads:

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

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
- In consideration of a price, reward or promise.

- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
- With evident premeditation.
- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse."

To appreciate treachery, two conditions must be present, to wit: 1) employment of means of execution that give the person attacked no opportunity to defend himself and retaliate; and 2) the means of execution were deliberately and consciously adopted.[33] In the case at bench, the attack was sudden, unexpected and continuous when the back of unarmed Laguros was toward the appellant, thus ensuring the commission of the criminal act without risk of any defense from the victim.

However, we do not find that the generic aggravating circumstance of cruelty by outraging or scoffing at the person or corpse of the victim, is obtaining in this case. The trial court simply relied on the testimony of prosecution witness Dr. Vito Inting that the decapitation of the body of the victim may have taken place after the said victim had already died inasmuch as the hacking wounds sustained by the latter at the scapular area were both fatal injuries.[34] That opinion of Dr. Inting is merely speculative, and it does not constitute a valid basis or reason to hold that the generic aggravating circumstance is present in this case. It is a well settled rule that an aggravating circumstance must be proved as fully as the crime itself and any doubt as to its existence must be resolved in favor of the accused.[35]

The prosecution also failed to adduce evidence to prove the existence of evident premeditation as alleged in the Information. Evident premeditation may not be considered where, as in the case at bench, there is no direct evidence of any plan or preparation to kill the victim.[36]

Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, the crime of Murder is punishable by reclusion perpetua to death. There being neither mitigating nor aggravating circumstance attendant in this case, the proper penalty is reclusion perpetua. The amount of P50,000.00 by way of civil indemnity and another amount of P50,000.00 as moral damages were correctly awarded by the trial court. However, the award of exemplary and actual compensatory damages should be deleted due to the absence of evidence on record to support the same.

WHEREFORE, the decision of the Regional Trial Court of Tagbilaran City, Bohol, Branch 47, convicting Benito Mier y Vistal of the crime of Murder is hereby AFFIRMED subject to the MODIFICATION that the penalty to be imposed on him is reclusion perpetua and the award for civil liability is limited to civil indemnity of P50,000.00 and moral damages in the amount of P50,000.00.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

[1] Penned by Judge Raineldo T. Son, Records, pp. 96-135.

- [2] Rollo, p. 8.
- [3] TSN dated March 14, 1997, pp. 4-8.
- [4] TSN dated May 17, 1996, pp. 5-6; TSN dated June 7, 1996, pp. 3-5.
- [5] TSN dated May 17, 1996, p.6.
- [6] TSN dated May 17, 1996, pp. 7-9,16.
- [7] Ibid, pp. 11-12.
- [8] Ibid, p.18.
- [9] Ibid, pp. 14-17.
- [10] TSN dated June 18, 1996, pp. 4-7.
- [11] Exhibit "D", Records, p. 41.
- [12] TSN dated June 17, 1996, pp. 5-7.
- [13] Records, p. 8.
- [14] TSN dated August 1, 1996, pp. 4-6.
- [15] TSN dated February 7, 1997, pp. 11-12.
- [16] TSN dated December 3, 1996, pp. 5-10.
- [17] TSN dated September 25, 1996, pp. 3-5.
- [18] Ibid, pp. 5-6.
- [19] TSN dated October 4, 1996, pp. 3-6; TSN dated October 7, 1996, p. 5.
- [20] Decision of the Regional Trial Court dated May 29, 1997, pp. 26-36, Rollo, pp. 53-63.
- [21] Rollo, p. 66.
- [22] Brief for Accused-Appellant dated May 26, 1998, p. 2, Rollo, p.101.
- [23] People vs. Cabindo, 266 SCRA 554, 558 (1997)
- [24] Jacobo vs. Court of Appeals, 270 SCRA 270, 285 (1997)
- [25] People vs. Gregorio, 255 SCRA 380, 392 (1996)
- [26] People vs. Ocsimar, 253 SCRA 689, 695 (1996)
- [27] People vs. Alfaro, 119 SCRA 204, 211(1982)
- [28] People vs. Alba, 256 SCRA 505, 514 (1996)
- [29] People vs. Unarce, 270 SCRA 756, 764 (1997)
- [30] TSN dated September 26, 1996, pp. 5-6.
- [31] TSN dated December 13, 1996, p. 6.
- [32] People vs. Belga, 258 SCRA 583,595 (1996)

[33] People vs. Hubilla, Jr., 252 SCRA 471, 481 (1996)

[34] TSN dated June 17, 1996, p.6.

[35] People vs. Maturgo, Sr., 248 SCRA 519, 529 (1995)

[36] People vs. Manuel, 234 SCRA 532, 544 (1994)

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