

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EMMANUEL MANA-AY, ANTHONY MANA-AY, JULIUS MANA-AY AND NILBERT BANDERADO, APPELLANTS.

G.R. No. 132717. November 20, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In resolving this appeal, the Court iterates the following doctrines: (1) mere relationship of the chief prosecution witness to the victim does not necessarily cast doubt on the former's testimony; (2) positive identification prevails over denial and alibi; (3) without unlawful aggression on the part of the victim, defense of a relative cannot prosper; and (4) criminal conspiracy may be inferred from the acts of the conspirators.

The Case

Before us is an appeal from the Decision[1] of the Regional Trial Court of Iloilo City (Branch 31) in Criminal Case No. 44534, convicting herein appellants of murder and sentencing them to reclusion perpetua.

Appellants Emmanuel Mana-ay y Susana, Anthony Mana-ay y Duran, Nilbert Banderado y Mana-ay and Julius Mana-ay y Bartolome were charged in an Amended Information[2] which reads as follows:

"That on or about the 21[st] day of January 1995, in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, armed with guns and knives, conspiring and confederating among themselves, working together and helping one another, taking advantage of their superior strength, did then and there willfully, unlawfully and criminally shoot and stab to death Francisco S. Pe, Sr. with the said guns and knives with which the herein accused were provided at the time, at the different parts of his body causing his instantaneous death."

On March 6, 1995, Emmanuel and Anthony Mana-ay and Nilbert Banderado, assisted by their respective counsels,[3] entered a plea of not guilty.[4] On July 3, 1995, Julius Mana-ay made a similar plea.[5] After trial on the merits, the court a quo promulgated its assailed 24-page Decision dated December 9, 1997, the dispositive portion of which reads:

"WHEREFORE, finding the accused Anthony Mana-ay, Emmanuel Mana-ay, Julius Mana-ay and Nilbert Banderado guilty beyond reasonable doubt of the crime of [m]urder defined and penalized under Article 248 of the Revised Penal Code as amended by Rep. Act No. 7659, there being evidence of complicity, judgment is hereby rendered sentencing the said accused as principals by direct participation with the penalty of reclusion perpetua, with all accessory penalties of the law. In addition, each [of the] four above-named accused is ordered to pay the heirs of the late Francisco Salvani Pe the sum of P50,000.00 or a total of P200,000.00 as civil indemnity for the death of Francisco Pe and the further sum of P404,860.75 for actual damages and attorney's fees, P300,000.00 for moral damages and P200,000.00 for exemplary damages, jointly and severally, with costs."[6]

In view of the penalty involved, the appeal was filed directly with this Court.[7]

The Facts

According to the Prosecution

In its Brief,[8] the Office of the Solicitor General summarized the prosecution's version of the facts as follows:[9]

"On January 21, 1995, at around 5:30 p.m., Editha Pe Tan was cleaning their house located at 22-A Valeria Extension, Brgy. Kauswagan, Iloilo City, when she heard two (2) gunshots coming from Central Radio and Electronic School (CRES) which is adjacent to their house. She looked outside the gate and saw people running from Quezon Street to Valeria Street. She immediately closed the gate (pp. 4, 7 and 10, TSN, March 14, 1995).

"Thereafter, Editha's father, Francisco Pe, who was a Barangay Kagawad of Barangay Kauswagan, Iloilo City, asked her about the gunshots. She informed him that people were running in the alley. Francisco wanted to go out of the house to see what was happening but Editha advised him not to go out. Despite the advice, Francisco went out [of] their house towards Valeria Street. Editha followed him (pp. 7-8, *ibid.*).

"Francisco talked to people passing at Valeria Street. Suddenly, Editha, who was then more or less 8 meters from her father, saw people running towards her father. Then, she saw Victorio and Anthony, both surnamed Mana-ay, carrying guns (pp. 10-11, *ibid.*). Victorio shouted: "[S]ons of bitches, you are too much!" Francisco turned around while the people whom he was talking to moved away. Then, Victorio shot Francisco followed by Anthony with another shot. Wounded, Francisco leaned on the gate of the CRES. Still, Anthony approached Francisco and pointed his gun at the latter's head. Francisco held Anthony's arm and they grappled for possession of the gun. (pp. 13-14, *ibid.*)

"Editha then heard successive shots and saw Victorio jump on her father while appellants Julius and Emmanuel Mana-ay, Nilbert Banderado with 2 or 3 others ganged up on her father and stabbed him (p. 14, *ibid.*).

"Editha ran towards their house and sought help. Her husband, Romulo Tan, responded and they went out of the house. She saw her bloodied father lying lifeless on the street. She returned to the house to get their Nissan pick-up to bring her father to St. Paul's Hospital where her father died (pp.15-16, *ibid.*).

"Dr. Tito D. Doromal conducted an autopsy on the cadaver of Francisco Pe x x x." [10]

According to the Defense

In his 19-page Brief,[11] Emmanuel Mana-ay adopted the trial court's narration of facts as follows:

"Emmanuel Mana-ay, younger brother of Victorio Mana-ay testified that after 5:30 o' clock in the afternoon of January 21, 1995, on arriving at the house of their mother in Barangay Kauswagan, Iloilo City, where he [had been] boarding [since] January, he heard three shots. At first, he ignored them, but later he saw his brother Victorio Mana-ay lying on his back and bloodied. He, together with Nilbert Banderado, carried Victorio [to a] tricycle and brought him to St. Paul's Hospital. He stayed in the hospital while Banderado went home. While in the hospital, a policeman arrived and asked him to go with them to a house in Quezon Street. They went inside the house and looked for Nilbert Banderado but did not find him. When they found Anthony Mana-ay, they picked him up and brought him to the police precinct. He never executed an affidavit containing the things that he is testifying [to] in court during the preliminary investigation at the City Prosecutor's Office in connection with this case. He said he never told his lawyer about what he is [saying] in the court on the witness stand. He personally knows the victim Francisco Pe being a kagawad member in their barangay and his daughter Editha Pe Tan. So far he does not know of any reason [why] Editha Pe Tan would pinpoint him and the other accused as the killer of her father, since he knows of no misunderstanding or grudge whatsoever between him and the family of Editha Pe Tan or with the late Francisco Pe. He admits tha[t] [o]n the afternoon of January 21, 1995, he saw Victorio Mana-ay drinking beer at his mother's house with his friends. In the same [breath], he is sure

he also went to the place where Victorio Mana-ay was allegedly shot [while] already lying on his back. From his mother's house where he was boarding, CRES can be negotiated in a matter of three (3) minutes more specifically to the place where he saw his brother lying fifteen (15) meters afar.[sic] When he saw his brother lying on his back it never entered his mind to inquire who shot his brother, but he learned from the people that it was Francisco Pe who shot his brother." [12]

In his 20-page Brief,[13] Anthony Mana-ay denied any participation in the killing of Francisco Pe and presented the following facts:

"1. On or about 4:30 o'clock [o]n the afternoon of January 21, 1995, accused-appellant Anthony Mana-ay was [waiting] for a ride of trisikad at Block 6, Barangay Sinikway, Lapuz, Iloilo City (TSN, p. 3, November 17, 1997);

"2. However, there was no available trisikad at the time, so, he was forced to walk to Block 8 of the same Barangay. While he was walking, he met Alberto Fabellar who was likewise going to the city proper and [so], they went together by riding in a jeep (Ibid; also TSN, pp. 7-8, November 10, 1997);

"3. They alighted at Ledesma Street and walked towards the house of her grandmother Leonisa located at Valeria Street, Barangay Kauswagan. While they were walking, Alberto Alvior called them up and offered a bottle of beer x x x which they willingly accepted (TSN, p. 9, November 10, 1997);

"4. All of a sudden, appellant Anthony Mana-ay heard three (3) gunshots, but he did not mind [them] considering that it was then Dinagyang Festival (TSN, p. 11, November 10, 1997);

"5. After a minute or two, he heard again several gunshots emanating from the alley of Central Radio and Electronic School (CRES, for brevity). There were noises that were heard and people all over the place were running towards Valeria and De Leon Streets. And somebody shouted that a shooting incident [was] taking place (TSN, p. 11-12, November 1997);

"6. When the commotion started to calm down, he, together with Alberto Fabellar, slowly edged towards the alley because they have to pass through it in going to his lola's house. There, he saw three (3) persons, x x x two (2) of w[hom] were watching while the other one was stabbing somebody (TSN, pp. 7-8, November 17, 1997);

"7. He noticed that [one of] the two (2) persons who were watching [was] a tall man wearing a long sleeve jacket and maong pants and the other one was wearing a white T-shirt with maong pants. He learned that these two persons were Arnold Palacios and Abdon Bartolome. And, the other person who was stabbing [someone] turn[ed] out to be Julius Mana-ay, his first cousin (TSN, pp. 8-11, November 17, 1997);

"8. He recognized Julius Mana-ay when the latter stood up after stabbing the person lying down, and likewise saw that the latter dropped the knife and picked up the gun which he found lying nearby. He then shouted to Julius, "Julius, don't" and immediately r[a]n towards the latter, held the hand that was holding the gun and they grappled for the possession of the same, and in the process the gun fired [at] the air after Julius accidentally squeezed the trigger (TSN, pp. 9, 10, 11, 12, November 17, 1997);

"9. The gun fell down to the ground after it was fired and he saw his uncle, Victorio Mana-ay, lying near the gate of CRES. He told Julius, "we should help [bring] Uncle Bikil (Victorio) to x x x to the hospital" but, Julius answered back "I am wounded" (TSN, p. 12, November 17, 1997);

"10. After Julius rejected his plea, he raised his uncle from the ground, [and] carried him on his shoulder in order to be brought to the hospital. Because, he was tired, he was not able to bring his uncle to the hospital, so he decided to place him beside Bernal Funeral Homes (TSN, p. 14, November 17, 1997);

"11. Thereafter, he proceeded to the house of his Lola Leonisa, and there, saw his other Uncle Emmanuel

Mana-ay [go] inside the room of his Lola and [ask] for money in order that Victorio Mana-ay might be brought to the hospital (TSN, p. 15, November 17, 1997);

"12. He did not accompany his Uncle Emmanuel in bringing Victorio to the hospital because his Lola prevailed [upon] him so he just stayed at his Lola's house (TSN, p. 15, November 17, 1997);

"13. Moments later, Emmanuel arrived with police officers and they asked him x x x his name x x x which he voluntarily gave. After they learned that his family name [was] Mana-ay, he was immediately handcuffed and pulled outside together with Emmanuel and herded to a waiting police car in order to be brought to the police station (TSN, p. 17, November 17, 1997). At the police station, they were investigated and queried as to who shot Victorio Mana-ay and Francisco Pe, to which they answered that they ha[d] no knowledge of the same. As such, the police officers told them that they [would] be brought to the hospital in order to see Victorio. But, instead of bringing them to Victorio, they were brought to a room in the hospital with a woman inside. The police officers told this woman to point to them as the perpetrators of the killing incident to which this woman voluntarily turned down. [sic] This woman turn[ed] out to be Editha Pe Tan, the daughter of Francisco Pe. (TSN, pp. 17, 18, November 17, 1997);

"14. Then they were returned x x x to the police station where they were detained and ultimately charged with murder."[14]

On the other hand, Julius Mana-ay admits having stabbed the deceased, but interposes defense of his father. In his 8-page Brief,[15] he submits the following narration of facts:

"During the presentation of evidence for the defense, accused Julius Mana-ay set up the theory of defense of relative. He averred that while resting in their house located at Barangay Kauswagan, Iloilo City, at around 5:50 o' clock in the afternoon of January 21, 1995, he was informed that his father Victorio Mana-ay was shot outside of their residence, prompting him to get out of their house and proceed to the place where his father was shot. Upon arriving at the alley between Central Radio and Electronic School and its annex building, he saw his father being shot. He actually saw this person who shot his father and his name was Francisco Pe. His father was in the act of falling down when he saw Francisco Pe shoot his father at a distance of four (4) meters). He was about to help his father stand up when he saw a knife beside the place where his father fell. Seized with anger, Julius Mana-ay took the knife and stabbed Francisco Pe. However, he cannot recall how many times he stabbed the latter. After he stabbed Francisco Pe, the latter shot him thereby hitting him at the level of his right nipple, then he felt that somebody was shooting him from behind when the back part of his right arm was hit. Later, he saw that the person shooting him from the back was Romulo Tan, the son-in-law of Francisco Pe."[16]

Lastly, Nilbert Banderado's Brief[17] contained the following narration of facts:

"On January 21, 1995, at around 5:30 in the afternoon, the accused Nilbert Banderado was at his boarding house at Barangay Kauswagan, Quezon St., Iloilo City preparing for dinner. At the same boarding house, he was with Emmanuel Mana-ay who was eating his dinner. While there at the time, Nilbert Banderado heard shouts coming from way outside that Victoria Mana-ay met an accident. Nilbert Banderado followed Emmanuel Mana-ay, the brother of Victorio Mana-ay, who went through the footwalk towards the alley connecting Quezon Street and Valeria Street, Iloilo City. At the corner of the foot walk and the alley where there was a post, he saw Victorio Mana-ay lying in his back and covered with blood over his body surrounded by people. Upon seeing Victorio Mana-ay in such condition, Nilbert Banderado and Emmanuel Mana-ay carried Victorio Mana-ay, with the help of two other persons, to the tricycle and brought him to St. Paul's Hospital. After Victorio Mana-ay was brought to the emergency room, Nilbert Banderado took some rest and later went back to his boarding house to tell his "Lola" - Leonisa Mana-ay - that they brought Victorio Mana-ay to St. Paul's Hospital. About five minutes later, the policeman came and brought Nilbert Banderado to the police station for investigation and later charged him for the killing of Francisco Pe."

Trial Court's Ruling

The trial court upheld Editha Pe Tan's testimony identifying appellants as the persons responsible for the death of her father. It rejected their respective defenses and debunked their narrations of events leading to the victim's death.

The court a quo concluded that the killing of Francisco Pe was qualified by abuse of superior strength and was done in pursuit of a conspiracy amongst appellants.

The Assigned Errors

Emmanuel Mana-ay imputes this sole error to the trial court:

"The honorable trial court erred in holding all accused including Emmanuel Mana-ay guilty beyond reasonable doubt of the crime of murder defined and penalized under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659, x x x." [18]

Anthony Mana-ay alleges the following errors:

"I. The trial court erred in not applying in this case the well-settled rule that where the evidence gives rise to two probabilities, one consistent with the accused's innocence and another indicative of his guilt, the presumption of innocence must prevail and the court must acquit.

"II. The trial court erred when it concluded that the prosecution has proven the guilt of accused-appellant Anthony Mana-ay beyond reasonable doubt of the crime of murder and that the existence of conspiracy between the appellants was sufficiently established." [19]

Julius Mana-ay assigns this lone error:

"The court a quo erred in not applying the justifying circumstance of defense of relative to accused Julius Mana-ay." [20]

Lastly, Nilbert Banderado faults the court a quo with the following errors:

"I

The trial court erred in giving full faith and credence to the testimony of the prosecution witness Editha Pe Tan despite existing serious flaws that create doubt [about] its truthfulness and credibility.

"II

The trial court erred in finding Nilbert Banderado guilty beyond reasonable doubt of the murder of Francisco Pe, with the admission of one of the accused and the tumultuous circumstances surrounding the incident." [21]

Distilling the foregoing, the Court will resolve the following issues: (1) credibility of the chief prosecution witness, (2) alibi and denial, (3) defense of a relative, and (4) appellants' criminal and civil liabilities.

The Court's Ruling

The appeal has no merit.

First Issue: Credibility of Chief Prosecution Witness

As a rule, the assessment by a trial court of the credibility of witnesses and their testimonies is entitled to the highest respect because it had the opportunity to observe their behavior on the witness stand.[22] In the present case, however, this rule finds no application because the ponente[23] heard only some of the witnesses.[24] In fact, the case had been heard by three other judges[25] who preceded him. Thus, we examined all the transcripts

of stenographic notes, but found no reason to overturn the trial court's conclusion that the prosecution's pivotal witness, Editha Pe Tan, was credible.

Editha's Clear, Positive
and Guileless Testimony

Editha said that on January 21, 1995, while she was cleaning the ground floor of their house at approximately five thirty in the afternoon, she heard gunshots. The ensuing commotion outside constrained her to close their gate. Thereafter she noticed her father, Francisco Pe, come down from the upper floor of their house and inquire about the commotion. In her testimony, she narrated the succeeding events leading to his death as follows:

"Q

And what happened when you saw your father?

A

He asked me about the two (2) shots.

Q

What did you answer?

A

I told him that there was a commotion, that people were running in our alley.

Q

And what did your father do?

A

Since the gate was closed, he wanted to go out.

Q

Before your father went out, did you tell him anything?

A

I told him that the commotion was already finished and that he should not go out.

x x x x x x x x

Q

What did he say?

A

He told me that he had to go out because of his position in our barangay. That he should know what was happening in his vicinity.

Q

What was his position at that time?

A

He was a barangay kagawad.

x x x x x x x x

Q

At the time your father went out, please tell us the illumination of the light?

A

It was still well lighted.

Q

When your father insisted and went out of the gate, what did you do?

A

When he went out I was following him and I also went out of the gate.

Q

And where did your father go?

A

He went directly to the left side of the gate of CRES.

Q

This direction in which your father went was towards what place?

A

Going to Valeria St.

x x x x x x x x

Q

Now, before he crossed from the left side to the right side of the gate of CRES, did you see what your father was doing on the left gate?

A

He was talking to people passing Valeria St., while his back was turned towards me.

Q

And at that time, how far were you from your father?

A

More or less 8 meters.

Q

Now you said that your father was talking with some people on the left side of the alley towards the left gate of CRES and later on he crossed the right side of the alley[;] what did he do?

A

There were people there to whom he was talking.

x x x x x x x x

Q

Mrs. Tan, a while ago, you testified that your father went out of the gate, went to the alley towards the direction of Valeria St, and talked to people there and later on transferred to the right gate and talked to some other people or persons, is that correct?

A

Yes, sir.

Q

Now, at that time that your father was there with his back turned towards you and talking with some other people [at a] distance of eight (8) meters more or less[, at] that time where [were] you x x x situated in relation to your house?

A

Facing towards Valeria St., I was on the left side of the gate.

Q

Inside or outside?

A

Outside.

Q

And while you were there, what happened?

A

I saw people running from Quezon St.

Q

And to what direction were they going?

A

Going towards Valeria St.

Q

Towards the place where your father was talking with some persons?

A

Yes, sir.

Q

What did you observe about the people coming from Quezon St.?

A

I saw two persons following one another and the other person, the first one was holding a gun, which was covered, and the other person following him was carrying a gun.

x x x x x x x x

Q

And aside from these two (2) persons you saw, were there other persons following them?

A

There were.

Q

How many?

A

Five (5) or six (6) persons.

Q

What did you observe [about] these five (5) or six (6) persons?

A

They were holding knives.

Q

I will call back your attention to the first person you saw holding a gun covered with a cloth, do you know that [person]?

A

I knew him by face.

x x x x x x x x

Q

What is his name?

A

Victorio Mana-ay.

x x x x x x x x

Q

The second person you saw following Victorio Mana-ay who was also holding a gun, do you know his name?

A

Yes, sir.

Q

What is his name?

A

Anthony Mana-ay.

x x x x x x x x

Q

You also mentioned that there were five (5) or six (6) persons following the first two (2) persons, did you know any of that five (5) or six (6) persons holding knives?

A

I knew them by their faces.

Q

Do you know any of them by name?

A

Yes, sir.

Q

Please tell the court who was that [person] following Victorio and Anthony Mana-ay[.]

A

Nilbert Banderado.

x x x x x x x x

Q

Aside from Nilbert Banderado, do you know any other persons by name following Victorio and Anthony Mana-ay?

A

Yes, sir.

Q

Who else?

A

Emmanuel Mana-ay.

x x x x x x x x

Q

Mrs. Tan, you testified a while ago that Victorio Mana-ay was holding a gun covered x x x [with] cloth and Anthony Mana-ay was holding a gun followed by five (5) or six (6) persons going towards your father. Later on, when they passed by you, what happened?

A

Victorio Mana-ay was shouting "son[s] of bitches you are too much."

Q

A while ago, you mentioned that your father was talking to some persons when Victorio and Anthony Mana-ay arrived and Victorio shouted[;] what happened to those persons your father was talking to?

A

They started to move away.

Q

After your father turned around, did he turn towards Victorio Mana-ay?

A

Yes, sir.

Q

After your father turned around, what happened?

A

He was then shot by Victorio Mana-ay, and followed by Anthony Mana-ay.

Q

And after Victorio and Anthony Mana-ay shot your father, what happened to your father?

A

He was able to lean on the gate of CRES.

Q

And as he was leaning on the gate of CRES, what did Anthony Mana-ay do?

A

Anthony Mana-ay went very near him and pointed his gun towards his head.

Q

And what happened after that?

A

My father was able to hold the arm of Anthony Mana-ay in [the] hand x x x holding the gun and they grappled with each other.

Q

During the time that Anthony Mana-ay and your father Francisco Pe were grappling with each other, where was Victorio Mana-ay?

A

Victorio Mana-ay was at the right side of my father, watching.

Q

And later on, while Francisco Pe and Anthony Mana-ay were grappling with each other, what happened?

A

My father, who was leaning on the gate of CRES was gradually falling down and I heard successive shots.

Q

After you heard those successive shots, what happened to your father?

A

My father was jumped upon by Victorio Mana-ay.

Q

Now, during the time that your father and Anthony Mana-ay were grappling with each other, where were those five or six other persons?

A

Some were on the right side of my father, and some were on his left.

Q

After Victorio Mana-ay jumped on your father, what did these other five or six persons do?

x x x x x x x x

A

They ganged up on my father and they stabbed him.

Q

Do these five or six other persons include Emmanuel Mana-ay and Nilbert Banderado?

A

Yes, sir."[26]

During the lengthy cross-examination, the lawyers for appellants harped on several points to discredit Editha. First, they pointed out that she did not mention Julius Mana-ay as one of the malefactors in the direct examination. Second, they denounced her seemingly selective recollection of people and faces, as she could not remember the people whom her father was talking to just before he was attacked. Third, they insisted that she had learned of the names of appellants, only because the police investigators had given these to her beforehand.

After a careful scrutiny of the records, the court is convinced that Editha's answers were cohesive and candid. She clearly testified that Julius Mana-ay was one of those who had stabbed her father. Moreover, she explained that she was able to identify appellants because they had passed in front of her just before they assaulted him. She emphatically averred that although she did not know the names of appellants, she was familiar with them. Having seen them in their neighborhood before the incident, she clearly remembered them as her father's attackers.[27]

In this light, we sustain the trial court's ruling that Editha's positive and straightforward testimony sufficiently established appellants' identities as the culprits.

No improper or ill motive was attributed to Editha. That she was the daughter of the victim did not render her testimony dubious. On the contrary, her chief interest as such was to seek justice for her father's death. Hence, in

the normal course, she would not testify falsely against appellants, for doing so would exculpate the real culprits.[28]

Second Issue:

Alibi and Denial

Appellants Emmanuel Mana-ay, his nephew Anthony and Nilbert Banderado deny any participation in the killing of Francisco Pe.

Emmanuel insists that he was eating supper at his mother's house when the incident in question happened. He went to the crime scene, only because he had been summoned to bring his older brother Victorio to the hospital. Nilbert corroborates this assertion, adding that he went to the scene of the crime, only to help Emmanuel do so. On the other hand, Anthony confirms his presence at the crime scene, but declares that he had in fact tried to prevent his cousin, Julius, from further harming Francisco.

Their arguments are not convincing. At the outset, we must stress that denial and alibi are the weakest defenses. Appellants must prove that it was physically impossible for them to be present at the scene of the crime or its immediate vicinity at the time of its commission. In this case, their defenses must fail because of their proximity to the locus criminis at the time. Emmanuel and Nilbert said that they were in a house in Quezon Street, Barangay Kauswagan, which was accessible by foot to the crime scene. Anthony who was near the place allegedly even witnessed the tail end of the incident. Most tellingly, their alibi cannot prevail over the clear and positive testimony of Editha identifying them as the culprits.[29]

Third Issue:

Defense of a Relative

Julius Mana-ay pleads defense of a relative. For this plea to succeed, the following elements must be proven: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) if the provocation was made by the person attacked, the one making the defense had no part therein.[30]

Julius utterly failed to show unlawful aggression on the part of the victim. His assertion that he stabbed Francisco because he had seen the latter shoot his father, Victorio, cannot be given much credence. Editha declared that her unarmed father had been attacked by a group that included Julius. More significant, the numerous wounds on Francisco's head, neck, abdomen and extremities supported Editha's assertion. Besides, they negated the claim of Julius that he had employed reasonable means to repel the victim's alleged aggression.

We note that Julius suffered injuries and that his father, Victorio, died during the incident. We must stress, however, that after admitting participation in the crime, he has the burden to show that the victim was the aggressor. He miserably failed to substantiate his claim.

Fourth Issue:

Crime and Punishment

The crime committed was murder. In attacking Francisco Pe, appellants clearly took advantage of their collective superior strength. Moreover, it is clear that there was a conspiracy, as manifested in the way the attack was carried out, as well as by the number and the location of gunshot and stab wounds on the body of the deceased. Hence, the act of one is considered the act of all.

Damages

Pursuant to current jurisprudence, the amount of indemnity ex delicto is P50,000. Under Article 2206 of the Civil

Code, the amount of indemnity for death was initially fixed at P3,000. Through the years, however, it was increased jurisprudentially until it reached the present amount of P50,000.[31] In this light, the trial court erred in ordering each appellant to pay P50,000, or a total of P200,000. It should be stressed that the heirs are entitled to an indemnity of P50,000, for which the four appellants are solidarily liable.[32]

The trial court also ordered appellants to pay the amount of P404,860.75 representing hospital bills, funeral expenses and attorneys' fees incurred by the victim's heirs. We find the expenses for the hospitalization and the interment, amounting to P304,860.75, to be duly supported by receipts.[33] We also uphold the award of attorney's fees, because the heirs were compelled to retain two private prosecutors.

Considering the anguish and distress of the victim's heirs, we sustain the trial court's award of moral damages. Under the circumstances, however, the award should be reduced from P300,000 to P50,000.[34]

We delete the grant of exemplary damages, considering the absence of aggravating circumstances that would justify it.[35]

WHEREFORE, the APPEAL is DENIED and the assailed Decision AFFIRMED, with the modification that appellants are jointly and solidarily ORDERED to pay the heirs of the victim P50,000 as indemnity ex delicto, P50,000 as moral damages, P304,860.75 as actual damages and P100,000 as attorney's fees. The award of exemplary damages is DELETED. Costs against appellants.

SO ORDERED.

Melo, (Chairman), Vitug, and Gonzaga-Reyes, JJ., concur.

[1] Written by Judge Recaredo P. Barte; rollo, pp. 29-51.

[2] Records, p. 16. It was dated February 23, 1995 and signed by Prosecutor I Douglas Edwin D. Del Rosario.

[3] Atty. Juanito M. Acanto for Emmanuel Mana-ay, Atty. Leonardo A. Engado of the Public Attorney's Office for Anthony Mana-ay and Atty. Rodolfo S. Convocar for Nilbert Banderado.

[4] Records, p. 38.

[5] Records, p. 73. Atty. Alfredo Fama assisted him.

[6] Rollo, pp. 50-51.

[7] The case was deemed submitted for decision on April 19, 2000, upon receipt by this Court of the Consolidated Brief for the Appellee. The Court received the Brief for Appellant Julius Mana-ay on December 7, 1998, while the Briefs for Appellants Emmanuel Mana-ay, Nilbert Banderado, and Anthony Mana-ay were received on January 4, January 25 and November 15, 1999, respectively. The filing of a reply brief was deemed waived, as appellants had not submitted one within the reglementary period.

[8] Signed by Sol. Gen. Ricardo P. Galvez, Asst. Sol. Gen. Amparo M. Cabotaje-Tang and Sol. Cinchona C. Cruz-Gonzales.

[9] Consolidated Brief for the Appellee, pp. 2-4; rollo, pp. 282-284.

[10] Dr. Doromal wrote that the victim sustained 16 stab and pellet wounds in addition to several contusions and abrasions.

[11] Signed by Atty. Ruben M. Maca; rollo, pp. 118-137.

- [12] Emmanuel Mana-ay's Brief, p. 14; rollo, p. 131.
- [13] Signed by Atty. Albert L. Tria; rollo, pp. 243-262.
- [14] Anthony Mana-ay's Brief, pp. 3-5; rollo, pp. 245-247.
- [15] Signed by Atty. Eldrid C. Antiquera; rollo, pp. 69-76.
- [16] Julius Mana-ay's Brief, pp. 1-2; rollo, pp. 69-70.
- [17] Signed by Atty. Rodolfo S. Convocar; rollo, pp. 182-197
- [18] Rollo, p. 118.
- [19] Rollo, p. 247.
- [20] Ibid., p. 70.
- [21] Ibid., p. 185.
- [22] See *People v. de la Cruz*, 276 SCRA 191, July 24, 1997; *People v. Corea*, 269 SCRA 76, March 3, 1997; *People v. Cupino, et al.*, GR No. 125688, March 31, 2000; *People v. Estorco*, GR No. 111941, April 27, 2000; *People v. Sultan*, GR No. 132470, April 27, 2000; *People v. Mendoza*, GR No. 128890, May 31, 2000.
- [23] Judge Recaredo P. Barte.
- [24] *People v. Daraman*, 294 SCRA 27, August 7, 1998.
- [25] Judges Nicolas Monteblanco, Lolita Besana and Ricardo Ilarde.
- [26] Testimony of Editha Pe Tan, TSN, March 14, 1995, pp. 8-15.
- [27] TSN, April 3, 1995, pp. 3-27.
- [28] *People v. Batidor*, 303 SCRA 335, February 18, 1999.
- [29] *People v. Pallarco*, 288 SCRA 151, March 26, 1998; *People v. Quinao*, 269 SCRA 495, March 13, 1997; *People v. Azugue*, 268 SCRA 711, February 26, 1997; *People v. Dinglasan*, 267 SCRA 26, January 28, 1997.
- [30] Article 11 (2), Revised Penal Code. See *People v. Manes*, 303 SCRA 231, February 17, 1999; *People v. Amamangpang*, 291 SCRA 638, July 2, 1998; *People v. De Gracio*, 264 SCRA 201, November 14, 1996; *People v. Broncano*, 260 SCRA 724, August 22, 1996.
- [31] See *People v. Nilo Bautista et al.*, GR No. 131840, April 27, 2000.
- [32] See *People v. Ramon Ortiz et al.*, GR No. 118624, October 8, 1999.
- [33] Exhibits "L" to "Q"; records, pp. 209-214.
- [34] See *People v. Ragundiaz et al.*, GR No. 124977, June 22, 2000.
- [35] Art. 2230 of the Civil Code provides: "In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party."

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