

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO CABANDE, ACCUSED-APPELLANT.

G.R. No. 132747. February 08, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The arguments and the issues raised in an appellant's brief must pertain to errors allegedly committed by the trial court, not to those matters that are no longer in dispute. Although herein appellant did not strictly adhere to this rule and despite his anemic Brief, this Court carefully pored over the entire records of this case in the interest of substantial justice, and it is thoroughly convinced that the trial court did not err in convicting him of the crimes charged. However, pursuant to current jurisprudence, we are motu proprio modifying the award of civil liabilities.

The Case

Appellant Alfredo Cabande appeals the July 24, 1997 Decision[1] of the Regional Trial Court (RTC) of Malolos, Bulacan (Branch 16) in Criminal Case Nos. 1568-M-90 and 1569-M-90, finding him guilty of two counts of murder and sentencing him to two terms of reclusion perpetua.

Assistant Provincial Prosecutor Edsel N. Rutor filed two Informations both dated July 31, 1990, charging appellant with murder. The Information in Criminal Case No. 1568-M-90 reads as follows:

"That on or about the 20th day of May, 1990, in the [M]unicipality of San Ildefonso, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun and with intent to kill one Vicente Trinidad, did then and there wilfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and shoot with the said gun he was then provided the said Victor Trinidad, hitting the latter, on his body, thereby causing him serious physical injuries which directly caused his death." [2]

The Information in Criminal Case No. 1569-M-90 was similarly worded, except for the name of the victim, who was Victor Trinidad in lieu of Vicente Trinidad. [3]

In an Order dated August 28, 1990, the RTC ordered the consolidation of the two cases. [4] The proceedings were stalled because appellant surrendered only in 1993. When arraigned on July 28, 1993, appellant, with the assistance of counsel, [5] entered a plea of not guilty. Trial on the merits ensued. On August 26, 1997, [6] the trial court promulgated its assailed Decision dated July 24, 1997, the dispositive portion of which reads as follows:

"WHEREFORE, premises considered, herein accused is hereby found guilty beyond reasonable doubt of the crime of double murder and pursuant to Article 248 of the Revised Penal Code, he is hereby sentenced to suffer the penalty of 'RECLUSION PERPETUA' for each offense charged against him under Criminal Cases Nos. 1568-M-90 and 1569-M-90. The period for accused's preventive detention shall be deducted from his sentence.

"FURTHER, accused has to pay the heirs of victims Victor and Vicente Trinidad, the following damages:

a)

P50,000.00 for each victim, as death indemnities;

b)

P1.5 [m]illion and P337,000.00 for victim Victor and Vicente Trinidad, respectively, as loss of income for 5 years;

c)

P100,000.00 for each victim, as wake and burial (including lots) expenses;

d)

P150,000.00 for each victim, as moral damages;

e)

P40,000.00 for each victim, as exemplary damages; and

f)

costs of litigation."

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

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General summarizes the prosecution's version of the facts in this wise:[8]

"Seventy-four year old Vicente Trinidad lived in Sapang Putol at San Ildefonso, Bulacan, with his wife Dolores as well as with his thirty-eight year old son Victor, and the latter's wife Lucia and three children named Christopher, Daryl and Lawrence. (pp. 2 & 4, tsn, August 4, 1993; pp. 3-5, tsn, September 30, 1993; p. 2, tsn, January 20, 1994; pp. 3-4, tsn, June 16, 1994; p. 7, tsn, July 14, 1994) Forty-year old appellant, who worked as a security guard, resided in San Juan, also at San Ildefonso, Bulacan. (p. 3, tsn, July 25, 1995; p. 3, tsn, December 14, 1995)

"Victor and appellant both claimed ownership over Lot 1990 of the Buenavista Estate located in Mataas na Parang, San Ildefonso, Bulacan. In an order issued by the Department of Agrarian Reform (Exhibit B), however, forty thousand (40,000) square meters of the lot was adjudicated in favor of Victor while only eight thousand (8,000) square meters of the lot was granted to appellant. Notwithstanding the order, appellant wanted to occupy the entire lot and thus threatened Victor and Vicente that blood will [be] shed if they continue constructing a fence around the lot. (pp. 5-6, 10, tsn, September 30, 1993)

"In the morning of May 20, 1990, at about 8:00 o'clock, Vicente and Victor with his three children were on their way to Mataas na Parang to fence their property. Aboard an owner-type jeep, Vicente took the front seat beside Victor who was driving. Directly behind Victor was Daryl while Lawrence sat behind his grandfather. Sitting between Daryl and Lawrence was their eldest brother, Christopher, then almost five (5) years old. (pp. 5-7, tsn, August 4, 1993) Suddenly, apparently out of nowhere, two persons, one of whom was appellant, blocked their way. Victor did not have much choice but to stop the jeep. As appellant was positioned at the side of the jeep nearer the driver's seat, appellant, without fanfare, shot Victor at the left side of the body. Despite Victor's entreaties: 'huwag Gatse, huwag Gatse' (p. 10, Id.), appellant again mercilessly shot Victor while he was on his knees, this time hitting him at the left temple. Meanwhile, Vicente tried to take cover at the right side of the jeep but he, too, was shot subsequently by appellant at the chest and the head. (pp. 7, 12, Id.)

"Shocked, christopher, Daryl and Lawrence neither shouted for help nor said anything but remained at the back seat of the jeep. As appellant fled a few minutes later, however, they went closer to their father who, covered with blood, lay prostrate beside the jeep. (pp. 12-13, tsn, August 4, 1993; pp. 13-14, tsn, August 18, 1993) Shortly, onlookers arrived at the scene of the crime. Efren C. Reyes, then a councilor, was passing through in his jeep when he saw the bodies of Vicente and Victor sprawled on the ground. Seeing that Vicente was already dead and only Victor appeared to be still breathing, Efren, with the help of then Barangay Captain Bobot Caraballo, brought Victor to the San Miguel Hospital where he was declared dead on arrival. Another jeep arrived, which was driven by an unidentified person who brought Christopher and his brother home (p. 15, tsn, August 4, 1993; pp. 22-23, tsn, August 18, 1993; pp. 6-7-, tsn, October 20, 1994)."

Version of the Defense

In his Brief, appellant presents the following statement of facts:[9]

"Vicente Trinidad and Victor Trinidad, father and son, respectively, and herein accused-appellant, had serious misunderstanding over Lot No. 1990 of the Buenavista Estate located at Mataas na Parang, San Ildefonso, Bulacan.

"Shortly prior to May 20, 1990, Vicente and Victor were confronted by accused-appellant herein ' . . WHILE THEY WERE ON THE SUBJECT LOT AND WERE TOLD THAT IF THEY CONTINUED TO CONSTRUCT THE FENCE, BLOOD WILL [BE] SHED AND ALFREDO CABANDE THREATENED THE 2 MEN AT GUNPOINT.' (Emphasis supplied, Tsn, Sept 30, 1993, Pp 4-10, Decision dated July 24, 1997, Pp 5 to 6 and Pp 32)

"On May 20, 1990, at or about 8:00 o'clock in the morning, Victor was driving an owner-type jeepney in San Ildefonso, Bulacan, going to said Lot No. 1990. He was with his father Vicente, was s[ea]ted at his right and three (3) children of Victor, one of whom is Christopher Trinidad, born on February 28, 1985, and who at that time was barely four (4) years and nine (9) months old, more or less.

"Victor and company were later blocked by two (2) men. Victor was shot by one of the two men. Vicente who hid himself at the other side of the jeep was likewise shot. This incident resulted in the death of Victor Trinidad and Vicente Trinidad (Tsn, Pp. 3-8, August 4, 1993, Christopher Trinidad)

"On the very same day, Virgilio Cabande and Themistocles Cabande, Jr., both residing in San Juan, San Ildefonso, Bulacan, and brothers of accused-appellants herein, were invited to the Police authorities of San Ildefonso, Bulacan, relative to the death of Victor Trinidad and Vicente Trinidad. As suspects, the brothers were subjected to paraffin tests in Camp Olivas, Pampanga, which however, yielded negative results (Tsn, February 2, 1995, Pp. 2-10).

"Henceforth, the charges were shifted against accused-appellant herein."

The Trial Court's Ruling

In convicting appellant, the trial court relied on the eyewitness account of Christopher Trinidad, who was five years old when the crime was committed and who was then riding the jeepney together with the two victims, his father and paternal grandfather, Vicente. The court a quo also noted that there was a feud between appellant and the victims over the ownership of a parcel of land. It further observed that appellant did not surrender to the police for three years, although he knew that there was a standing warrant for his arrest. It concluded that the killing was qualified by treachery, because the victims "were totally defenseless and had no opportunity to defend themselves or retaliate when shot."

Issues

In his Brief, appellant submits the following as "ground for acquittal":[10]

"A.

The State miserably failed to prove the crimes charged against herein accused-appellant."

In discussing this argument, he invoked three "sub-topics germane to said ground":[11]

"A

Abuse of superior strength is absorbed in treachery.

"B

Prosecution evidence is absolutely wanting of the qualifying circumstance of evident premeditation.

"C

Similarly situated alevosia was not present and the court a quo erred in appreciating the same as qualifying circumstance for murder [of] both counts."

Considering that an appeal throws the criminal case wide open for review and is not limited to the issues raised by the appellant,[12] the Court will address the following matters: (1) sufficiency of the prosecution evidence, (2) presence of qualifying circumstances and (3) damages.

This Court's Ruling

The appeal is devoid of merit. Nonetheless, after going through the records of this case, the Court resolves to modify appellant's civil liability.

First Issue:

Sufficiency of Evidence

The conviction of appellant was based on the testimony of Christopher Trinidad, the five-year-old boy who was then seated at the back of the jeep when his father and grandfather were shot. The narration of the boy was straightforward, clear, guileless and positive. Its pertinent portions are reproduced hereunder:[13]

"Q

You stated that you were then bound to the construction of [the] fence, what if any happened on the way?

A

We were blocked sir (hinarang).

Q

How many persons blocked your way?

x x x x x x x x

A

Two persons, sir.

Q

When the two persons blocked your way, what if any did your father do? I'm referring to your father Victor Trinidad.

A

My father stopped, sir.

Q

While the jeep was on the road?

A

Yes sir.

Q

What did the two persons who blocked your way do after your father stopped the jeep?

A

My father was shot, sir.

Q

Where was your Daddy when, according to you, he was shot?

A

He was at the driver's seat, sir.

Q

You said that your father was shot, did you recognize the person who shot your father?

A

Yes sir.

Q

Do you know his name?

A

Yes sir.

Q

Can you point to him if you will see him again?

A

Yes sir.

Q

Will you please look around this Court room and will you point to that person whom you said shot your father?

A

Yes sir.

Q

Please point to him, you may step down on the witness stand and tap him on his shoulder[.]

INTERPRETER:

Witness went out [of] the witness stand and tap[ped] the shoulder of a person sitting at the bench reserved for the accused who when asked identified himself as Alfredo Cabande, sir.

Q

Where was Cabande at the precise moment when you said he shot your father?

A

He was at the side of the jeep, sir.

Q

At the left portion of your father?

A

Yes sir.

Q

On what part of the body was your father shot by that Cabande?

A

On the left side of his body and also on the left portion of his head, sir.

Q

When your father Victor Trinidad was shot on the left by Cabande, what happened to your father?

A

My father kneeled (lumuhod), sir.

Q

Where was your father when he kneeled?

A

He was at the side of the jeep, sir.

Q

At the time when your father was kneeling by the side of the jeep, where was Cabande?

A

He was [beside] my father, sir.

Q

What if any did your father say at the time [when] according to you he was kneeling?

A

He uttered [the] words 'huwag Gatchie, huwag Gatchie', sir.

Q

What if any did Gatchie do?

A

He shot my father, sir.

Q

In what part of the body?

A

Left portion of the body[.]

Q

At the time your father was first shot on the left side of his body, did you notice what your grandfather [did]?

A

Yes sir.

Q

What?

A

He hid himself under the jeep, sir.

Q

On what side of the jeep?

A

At the rear, sir.

Q

And what if any did Cabande do after shooting your father Victor on the head?

A

He shot my grandfather, sir.

Q

Where was your grandfather at the time when you said Cabande shot him?

A

He was under the jeep, sir.

Q

At the right side?

A

Yes sir.

Q

At the time Cabande shot your father, [where] was he in relation to your grandfather?

A

He was at the side of my grandfather, sir.

Q

Now after your grandfather was shot, did you notice what happened to your grandfather?

A

Yes sir.

Q

What?

A

He died, sir.

Q

How about you what if any did you do?

A

We all alighted from the jeep, sir.

Q

When you said 'we,' you are referring [to] your two brothers?

A

Yes sir.

Q

Where did you go?

A

We went to Daddy, sir."

Well-settled is the rule that the trial court's findings on the credibility of witnesses and their testimonies are accorded great weight and respect, in the absence of a clear showing that some facts or circumstances of weight or substance that could have affected the result of the case have been overlooked, misunderstood or misapplied.[14] This is because the lower court had the opportunity to observe directly the demeanor of the witnesses as they testified. In the present case, the witness was only eight years old when he testified and positively identified appellant as the gunman. Despite a grueling cross-examination,[15] he remained steadfast in declaring that he saw his father and grandfather shot by appellant. There is no indication at all that his testimony was tainted with

mendacity. Thus, we find no reason to reverse or modify the trial court's assessment.

Moreover, appellant fails to cite any reason for this Court to reject the testimony of the boy. In fact, his Brief contains no argument challenging the credibility of the said witness or the sufficiency of the prosecution evidence.

The trial court's conclusion that appellant was the perpetrator was bolstered by the fact that he eluded arrest for three years, although he knew that he had already been charged. Indeed, flight is an indication of guilt.[16]

Appellant's Alibi

In this appeal, appellant also fails to raise the defense of alibi which he narrated during the trial. Nonetheless, we have examined the records *motu proprio*, and we hold that this defense is devoid of merit.

Appellant testified that when the crime was committed, he was in Baguio City for an appointment in connection with his business as a lumber dealer. When informed that the person he was supposed to meet could not make it, he left around 10:00 a.m. that day and proceeded to Alilem, Ilocos Sur, to meet his wife.

It is axiomatic that alibi, which is inherently weak and easily fabricated, must be established by clear and convincing evidence.[17] We agree with the trial court, however, that appellant's defense was "unworthy of belief and full of inconsistencies." The trial court explained:

"x x x. Why was it so sudden that he (accused) had to absent himself without permission from his job where he had been reporting daily since May 5 until May 19, 1990, the eve of the killing of the two victims and had to leave for Baguio City that night, to go to the office of the Benguet Consolidated Mining Corporation on a Sunday for a business transaction? If his purpose [in] transacting business in Baguio City was true, he should have sent on office days his manager and attorney-in-fact Edgardo Castro instead. It is of public knowledge that offices are closed on Sundays. x x x Another doubt on the accused's alibi is the fact that both accused and Edgardo Castro could not tell the numbers and streets of the house where they stayed in Baguio City and of the office of Held Lumber. On top of them all is the fact that Benguet Consolidated Mining Corporation with whom the accused and Edgardo Castro had allegedly gone to transact business in Baguio City at that time was no longer existing because it had already been dissolved since 1962. x x x." [18]

In any event, alibi cannot prevail over the positive identification of the accused by credible witnesses.[19]

Second Issue:

Qualifying Circumstances

In asking for his acquittal, appellant, for reasons known only to him and his defense counsel, argues mainly that no evidence supported the three qualifying circumstances alleged in the two Informations: abuse of superior strength, evident premeditation and treachery. In other words, he is putting forth arguments which, even if accepted, would result only in a modification of the crime and a reduction of the corresponding penalty.

Evident Premeditation and

Abuse of Superior Strength

He argues that the prosecution failed to prove evident premeditation. Likewise, he points out that abuse of superior strength should not be appreciated, because it is deemed absorbed by treachery.

We find no reason to discuss these arguments further. Arguments in an appellant's brief must pertain to errors allegedly committed by the trial court.[20] In this case, the court *a quo* did not hold that these two circumstances, evident premeditation and abuse of superior strength, were proven by the prosecution. Rather, it ruled that the crime committed was murder because of the qualifying circumstance of treachery.

Treachery

Arguing that the trial court should not have appreciated treachery as a circumstance that qualified the killing to murder, appellant maintains that the two victims were not unarmed at the time.[21] Furthermore, he contends that they had opportunities to defend themselves. They could have retreated, sped away or otherwise made themselves "ready for the consequences." [22]

We are not convinced. There is treachery when one commits any of the crimes against persons by employing means, methods or forms in the execution thereof without risk to oneself arising from the defense which the offended party might make.[23]

In the present case, it was clear that appellant, together with an unidentified companion, blocked the path of the jeep. When it stopped, he approached Victor and shot him pointblank. The latter was already kneeling on the ground when appellant shot him once more in the head. The latter then approached Vicente, who was cowering at the back of the jeep, and shot him too. We reject the submission of appellant that there was no conclusive proof that the victims were unarmed at the time. The manner in which he carried out the attack spoke only too well of their inability to defend themselves.

Moreover, the mere fact that there was a feud between appellant and the victims did not necessarily prove that the attack was expected. If the victims had been expecting an attack, they should not have brought the youngsters with them. In any event, an accused cannot escape the appreciation of alevosia by threatening the victims in advance. As the solicitor general pointed out, what was decisive was the suddenness of the attack which made it impossible for the victims to retaliate, flee, or defend themselves.

Clearly, the trial court did not err in appreciating the qualifying circumstance of treachery.

Third Issue:

Damages

In line with current jurisprudence,[24] we affirm the award of indemnity ex delicto to the heirs of each victim in the sum of P50,000 or a total of P100,000. This may be awarded without need of proof other than the commission of the crime. Likewise, we sustain the award of P100,000 to the heirs of each victim for the wake and burial expenses, for these were duly proven.[25] Although the records show that they were entitled to moral damages,[26] we hold that the award should be reduced to P100,000 or P50,000 for each set of heirs of the victims.

We cannot sustain, however, the award of exemplary damages, which are awarded only in the presence of one or more aggravating circumstances.[27] None was established in this case.

Likewise, we hold that the trial court erred in awarding "P1.5 million and P337,000.00 for victims Victor and Vicente Trinidad, respectively, as loss of income for 5 years." The amount of indemnity for loss of earning capacity is based on the income at the time of death and the probable life expectancy of the victim.[28] It should be stressed that the amount recoverable is not the entire earnings, but only that portion which the beneficiaries would have received.[29] Thus, indemnity for lost income refers to the victim's total earnings minus the necessary living expenses. In computing this award, the Court has used the following formula:

" $\frac{2}{3} \times (80 - \text{age of the victim at the time of death}) \times (\text{reasonable portion of the annual net income which would have been received as support by the heirs})$ "[30]

In the case of Victor, his wife testified that the annual income from their piggery business was P300,000. Considering that the two of them operated and managed the business, the profits should be divided equally

between them. Accordingly, the annual income of Victor, who was 39 years old at the time of his death, was P150,000. Considering that his living expenses have not been proven, the Court exercises the discretion to ascertain and fix the same.[31] Under the circumstances, we find the amount of P50,000 as reasonable living expenses.[32] Hence, the lost earnings of Victor Trinidad should be computed as follows:

$$= [2/3 \times (80-39)] \times (P100,000)$$

$$= P2,733,333.33.$$

On the other hand, the wife of Vicente testified that the latter was earning P50,000 a year from his business. From this amount, P25,000 may be deducted as reasonable and necessary living expenses. Hence, the lost earnings of Vicente, who was 74 years old at the time, should be computed as follows:

$$= [2/3 \times (80-74)] \times (P25,000)$$

$$= P100,000.$$

WHEREFORE, the appealed Decision of the Regional Trial Court of Malolos, Bulacan is AFFIRMED, except in regard to the civil liabilities which are MODIFIED; accordingly, appellant is hereby ordered to pay the heirs of the victims as follows:

- Indemnity ex delicto in the sum of P50,000 for each victim
- Actual damages in the sum of P100,000 for each victim
- Moral damages in the amount of P50,000 for each victim
- Lost income of P2,733,333.33 for Victor plus P100,00.00 for Vicente
- Costs of suit

SO ORDERED.

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

[1] Written by Judge Andres S. Maligaya.

[2] Records, p. 9.

[3] Records, p. 1.

[4] Records, p. 6.

[5] Atty. Sergio E. Bernabe; records, p. 45.

[6] Records, p. 405.

[7] The case was deemed submitted for decision on November 5, 1999, when this Court received the Appellee's Brief. The filing of a reply brief was deemed waived, as none was submitted within the reglementary period.

[8] Appellee's Brief, pp. 3-5; rollo, pp. 163-165. This was signed by Solicitor General Ricardo P. Galvez, Assistant Solicitor General Nestor J. Ballacillo and Solicitor Ma. Ana C. Rivera.

[9] Appellant's Brief, pp. 1-2; rollo, pp. 94-95. This was signed by Atty. Joselito R. Enriquez.

[10] Appellant's Brief, p. 4; rollo p. 97.

- [11] Appellant's Brief, pp. 4-6, 8; rollo, pp. 97-99, 101.
- [12] *People v. Llaguno*, 285 SCRA 124, January 28, 1998.
- [13] TSN, August 4, 1993, pp. 7-12.
- [14] *People v. Ferrer*, 255 SCRA 19, March 14, 1996; *People v. Lua*, 256 SCRA 539, April 26, 1996.
- [15] TSN, August 18, 1993, pp. 1-26.
- [16] *People v. Salvame*, 270 SCRA 766, April 4, 1997; *People v. Cloud*, 265 SCRA 472, December 10, 1996.
- [17] *People v. Lapay*, 298 SCRA 62, October 14, 1998; *People v. Cabanela*, 299 SCRA 153, November 24, 1998; *People v. Jose*, 250 SCRA 319, November 24, 1995.
- [18] RTC Decision, p. 33; rollo, p. 67.
- [19] *People v. Grefaldia*, 298 SCRA 337, October 30, 1998; *People v. Marollano*, 276 SCRA 84, July 24, 1997; *People v. Espanola*, 271 SCRA 689, April 18, 1997.
- [20] Rule 44, Section 13 (f), in relation to Rule 125, Section 1.
- [21] Appellant's Brief, p. 10; rollo, p. 103.
- [22] *Ibid.*, p. 12; rollo, p. 105.
- [23] *People v. Caritativo*, 256 SCRA 1, April 1, 1996; *People v. Torrefiel*, 265 SCRA 369, April 18, 1996.
- [24] *People v. Vermudez*, GR No. 119464, January 28, 1999; *People v. Albao*, 287 SCRA 129, March 6, 1998.
- [25] Exhibit P, P1-21, Q, R, R1-17.
- [26] TSN, July 14, 1994, pp. 2-7; TSN, January 20, 1994, pp. 4-6.
- [27] Article 2230 of the Civil Code provides that "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.
- [28] *People v. Espanola*, 271 SCRA 689, April 18, 1997.
- [29] *People v. Delmendo*, 296 SCRA 371, September 25, 1998.
- [30] *People v. Cawaling*, 293 SCRA 267, 310, July 28, 1998. See also *People v. Villamor*, 284 SCRA 184, January 16, 1998; *People v. Marollano*, 276 SCRA 84, July 24, 1997; *Sanitary Steam Laundry v. CA*, 300 SCRA 20, December 10, 1998; *Metro Manila Transit Corporation v. CA*, 298 SCRA 495, November 16, 1998.
- [31] *People v. Ronnie Reyes and Nestor Pagal*, GR No. 120642, July 2, 1999.
- [32] There appears to be no fixed rule in the determination of the amount of reasonable and necessary living expenses. In *People v. Espanola* (supra), the victim's gross annual income was P39,146.25, and the Court deducted from it living expenses in the sum of P15,600 per annum. In *People v. Delmendo* (supra), the victim was earning P250,000 a year and the Court deducted the amount of P100,000 as living expenses. In *People v. Cawaling* (supra), the annual income of the victim was P36,000, and the Court allowed P12,000 as living expenses. In a recent case, *People v. Ronnie Reyes and Nestor Pagal* (supra), the Court held that one half of the gross earnings (P120,000) constituted necessary living expenses (P60,000). The same computation was also applied in *People v. Alberto Nullan* (GR No. 126303, April 14, 1999) and in *People v. Jose Silvestre* (GR No. 127573, May 12, 1999). On the other hand, in *People v. Jerez* (285 SCRA 393, January 29, 1998), living expenses

were not deducted from the gross earnings.

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