

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO PERALTA @ WILLIE, ACCUSED-APPELLANT.

G.R. No. 133267. August 08, 2002

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

On appeal is the decision[1] dated November 10, 1997 of the Regional Trial Court of Quezon City, finding Wilfredo Peralta alias “Willie” guilty of murder and sentencing him to suffer an imprisonment term of reclusion perpetua and to pay the heirs of Chief PNP Inspector Arthur Rivera the sum of One Hundred Eighty Four Thousand Seven Hundred Fifteen Pesos (P184,715.00) as actual damages, Two Hundred Thousand Pesos (P200,000.00) in moral damages, and Fifty Thousand Pesos (P50,000.00) in indemnity damages.

The Information filed on September 22, 1994 accuses Wilfredo Peralta alias “Willie,” Severo Espinosa, Jr., alias “Jun Berong” and several John Does for murder committed as follows:

“That on or about 02 April 1993 at around 5:30 o’clock in the afternoon at Sitio Tabane, Brgy. Agus, Tarlac, Tarlac and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, qualified by treachery, evident premeditation, 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, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously attack, assault and use violence upon the person of Chief Insp. Arthur Rivera by firing shots at him thereby causing his instantaneous death.

“CONTRARY TO LAW.”[2]

Upon arraignment on October 21, 1994, accused Wilfredo Peralta and Severo Espinosa, Jr. entered pleas of not guilty.[3] Thereafter, trial ensued.[4]

The prosecution presented the following witnesses: Myrna Borromeo, Francisco Rivera, Conrado Capitulo, Myrna Rivera, Danilo Castañeda, and Carlos Rocha.

Myrna Borromeo testified that accused Severo Espinosa, Jr. alias “Jun Berong” was her live-in partner from December 1990 to July 1994 while accused Wilfredo ‘Willie’ Peralta was their compadre who often visited their house in Brgy. Tibag, Tarlac, Tarlac[5] ; that around the third week of March 1993, while serving Berong, Willie and two (2) others in one of their drinking sessions, she heard accused Willie Peralta say that Major Rivera was already scheduled to be killed;[6] that on April 2, 1993, she noticed that Berong and their stainless owner jeep were not at their house; that later in the evening, she heard that Major Rivera was killed;[7] that a week after the death of Rivera, Willie went to their house and she heard him say to Berong that they needed to hide the vehicle while it was still hot (“mainit pa”); that Berong then hid the vehicle at the back of their house.[8]

On cross-examination, Myrna admitted that Berong used to beat her up.[9] This according to the defense was the reason why she wanted to get back at Berong by implicating him in the death of Rivera.[10]

On redirect, Myrna admitted that on July 22, 1994, she filed a complaint before the police where she told them that if only she would be given a chance to tell the truth, she would report that “they used (Berong’s) vehicle in killing Major Rivera.”[11]

Francisco Rivera, one of the four children of the victim, was thirteen (13) years old at the time of his testimony. He testified that on April 2, 1993 at around 4 o’clock in the afternoon, he and his brother Ferdinand went with their father to the town proper of Tarlac to get his bike; that with them was one of their helpers, Tano Basa; that they were riding their father’s Ford Cortina and arrived at Tarlac, Tarlac at around 4:20 p.m.[12] ; that he and his brother rode the bike alternately while the other stayed in the car together with their father and Tano Basa; that they passed through Kingburger, Matatalaib, Crisca Resort until they reached the sub-station going to Villa Soliman, where the car stopped; that there, his father decided to go to Tabane; that upon reaching Tabane, he saw the car of his father park along the shoulder of the road in front of the house of Apong Capitulo; that his father was still at the driver’s seat; that soon after, he saw a man alight from a stainless owner jeep and shoot at his father;[13] that a light green Sarao type passenger jeep without any plate number followed;[14] that when the passenger jeep stopped, fires were shot from said vehicle; that the shots came from an armalite rifle;[15] that the gunman was standing sideways with the gun placed beside his abdomen; that he was at least ten (10) meters from his father’s car when the two (2) jeeps arrived; that he was only about five (5) meters from his father’s car when he saw the gunman from the stainless jeep board the same which then sped away; that while Francisco admitted that he may not be able to identify the stainless jeep again nor the driver and the gunman from said vehicle,[16] he was able to take a look at the man who shot his father from the passenger jeepney and identified accused Wilfredo Peralta;[17] that after the vehicle sped away, he ran towards the car and saw his father with his face down covered with blood;[18] that he had seen accused Peralta previously before the incident; that he saw him on the same day, at around noon, outside their gate on board a motorcycle with another man.[19]

On cross examination, Francisco was shown the sworn statement he executed on June 9, 1993 at Brgy. Aguso, Tarlac.[20] When asked what he did when he heard the gunshots, he answered that he alighted from his bike. When asked if he hid, he answered no and said he looked at the person who was firing at his father. At this point, counsel for the accused quoted from Francisco’s previous statement, thus: “T - Nakarating ka ba at nakalapit sa paghihintayan sa iyo ng iyong Papa na si Maj. Rivera? S – Hindi po at bigla akong huminto at bumaba sa bisikleta, at nagtago sa damuhan.” Francisco admitted that he hid because he was frightened and got confused.[21]

Upon redirect, the witness described the grass where he took cover as only about eight (8) inches to two (2) feet tall.[22]

The next witness presented by the prosecution was Conrado Capitulo. He testified as follows: In the afternoon of April 2, 1993, he and his wife were at the balcony of their house entertaining visitors when he noticed a car parked in front of their house more or less ten (10) meters from where they were. He saw a boy alight from the car and go to the rear portion of the car. When he went inside to get softdrinks for his visitors, he heard around three (3) successive shots coming from a gun. He immediately went to the balcony where his wife, visitors and grandchildren were. Then he saw a Sarao jeepney parked in front of his gate, on the right side of the road, with the engine on. There were five (5) passengers in the jeep, two (2) on both sides, plus the driver. Then he saw one of the occupants of the jeepney, the one seated at the right side of the Sarao at the rear portion, aim his M-16 armalite at the car parked in front of his house. After the man fired at the car, Conrado went near his gate because one of his grandchildren was there. He then shouted “dapa, dapa, dapa.”[23] The gunfire stopped for a while and the one firing the gun looked at him. Thereafter, the gunman removed his gaze from Conrado and continued firing successively until he ran out of bullets.[24] All in all, there were three (3) initial shots followed by the shots from

the armalite before the jeepney sped away.[25] After the jeepney sped away, Conrado hurriedly went to the street because he wanted to see the plate number of the jeep.[26] Then he flagged down an L-300 van going the direction of Baguio and asked its driver to go after the Sarao jeepney and get the plate number. Conrado called a tricycle which was going the direction of Manila and asked the driver to report the incident to the police sub-station at Salapungan. Afterwards, he went near the car and saw the driver with his face on the steering wheel. He recognized the victim as Major Rivera. The victim had his left hand on the steering wheel with blood oozing from his forehead and below the nape. The windshield of the victim's car was broken with the rear glass and the body of the car riddled with bullets. There was a hole at the doorknob beside the driver, and the rear tire was flat.[27] Conrado was invited to Camp Crame in connection with the death of Major Arthur Rivera. There he identified accused Wilfredo Peralta, in a line up, as the one who shot an armalite from the passenger jeepney. A witness also pointed to Wilfredo Peralta in court as the man who fired at the victim.[28]

Myrna Rivera, wife of the victim testified as follows: She and her husband had four (4) children namely, Ferdinand, Francisco, Imee and Mayavi. On April 2, 1993, at around 5:00 in the afternoon, she was on board a tricycle on her way to Agusong, Tarlac, Tarlac when she saw many people and several policemen along the highway. She told the tricycle driver to slow down and upon seeing the car of her husband, told the driver to stop. She ran toward the car and saw her husband at the driver's seat full of blood. She pulled the head of her husband and saw a big hole on his forehead. She cried upon seeing her husband dead.[29] They incurred several expenses in relation to the death of her husband, as follows: Twenty Five Thousand Pesos (P25,000.00) for the casket and funeral service; Seventy Seven Thousand Two Hundred Fifteen Pesos (P77,215.00) for the food during the wake; and Eighty Two Thousand Five Hundred Pesos (P82,500.00) for the burial expenses. Immediately before the death of her husband, they were earning Sixty Thousand Pesos (P60,000.00) a month from their business of buying and selling slightly used cars.[30] As chief inspector, the victim was also receiving a monthly pay of Seven Thousand Seven Hundred Twenty Four Pesos (P7,724.00).[31] At the time of the death of her husband, her children were studying at Trinity College. Ferdinand was in second year college while Francisco was first year in high school.[32] Because of the death of her husband, she suffered sleepless nights which if quantified would amount to One (1) Million Pesos (P1,000,000.00).[33]

Dr. Saturnino Ferrer, the Municipal Health Officer of Tarlac, Tarlac who conducted the post-mortem examination on the body of Major Arthur Rivera, testified that the cause of death was a gunshot wound.[34] He prepared the post mortem findings marked as Exhibit "B".[35]

The prosecution also presented as witness, Danilo Castañeda, a self-confessed gun for hire.[36] He testified that he knows the accused Wilfredo Peralta because they are both residents of Barangay Barsolingan in Tarlac; that Wilfredo Peralta, Aser Agosto, Ben Galo, and Severo Espinosa alias Ka Berong often met at his house to talk about a lot of things, one of which was the killing of Major Rivera at around March of 1993; that present during these conversations were Bong Pasuquin, Conrad Domingo, Anding Pineda, Jess Ilonga, and Boy Peralta;[37] that a certain Nelson Torres, a minister of the Iglesia ni Cristo, who gave them assignments who to kill;[38] that his group planned on killing Major Rivera at the house of Carlos Rocha, a neighbor, "Pinag-usapan po namin ang pagpatay kay Rivera;"[39] that they planned on killing Rivera because accused Peralta was mad at him for driving them out of Barangay Agusong;[40] that Willie Peralta, John Pasuquin, Conrad Domingo, Alvin Pineda and Jess Ilonga got their arms, two (2) M-16 Armalite and one (1) M-1, from a Recto Salvador of Barangay Agusong in the second week of March;[41] that on April 2, 1993, his group went to their meeting place at Midway, which was the crossing going to Baguio, Makabulos and Mata Talahib Maliwalu; that one of the vehicles they used was actually a San Francisco passenger jeepney owned by the father of Bong Pasuquin which had a yellow and green stripes and a panel where the routes were written in black;[42] that this passenger jeepney was parked in front of Shell Gasoline station along the highway; that meanwhile, Bong Pasuquin ordered him to park the other vehicle facing

Makabulos while he waited for Major Rivera; that Bong then asked him to be a look out; that Bong Pasuquin was with him while they were waiting for Major Rivera from 5 to 6 p.m.;[43] that upon seeing Major Rivera's car, Bong Pasuquin went to the passenger jeepney and told their companions "Parating na si Major" and to follow behind; that Major Rivera turned left at the Midway intersection and stopped at the City Trans Bus Station, formerly known as Pantrans, going to Baguio; that Bong Pasuquin followed the car and the witness followed him about a distance of one post away; that at the boulevard, Major Rivera stopped from time to time to assist his son who was riding a bike; that Major Rivera then moved forward stopping at Crisca Resort and at Villa Suliman; that afterwards, he went to Brgy. Aguso and stopped in front of the house of Brgy. Kagawad Capitulo; that Bong Pasuquin drove his jeep forward overtaking the car of Maj. Rivera and started firing at the car;[44] that Aser Agosto, Willie Peralta, Conrad Domingo, Carding Pineda, Jessie Longa, Boy Peralta and Recto Salvador fired at Major Rivera; that later they went to the house of John Pasuquin where they talked about the killing of Rivera.[45]

Carlos Rocha testified that he is a resident of Barsolingan, Gerona, Tarlac;[46] that he knows Danilo Castañeda, Aser Agosto, Wilfredo Peralta, Recto Salvador and Conrado Domingo;[47] that in the last week of January 1993, Willie Peralta went to his house with Aser Agosto, Conrad Domingo, Recto Salvador, Carding Pineda, a certain Gary from Dau, Jessie Longa and Bong Pasuquin to plan the killing of Benjamin Rivera, the father of Major Rivera; that Benjamin Rivera is the barangay chairman of Aguso Tarlac, Tarlac; that they wanted to kill Benjamin so that Recto Salvador will become the barangay chair;[48] that the reason why the group later decided to kill Major Rivera instead of Benjamin was because the group thought if they killed Benjamin first, Major Rivera will investigate the crime; that by killing Major Rivera, there will be no one anymore who will investigate the killing;[49] that four (4) meetings took place in his house regarding the killing of Major Rivera; that the last one took place sometime in March, about two (2) weeks before the killing of Major Rivera; that present in these meetings were Aser Agosto, Willie Peralta, Conrad Domingo, Bong Pasuquin, Carding Pineda, Jessie Longa, Danilo Castañeda, Recto Salvador and a certain Ray;[50] that after the killing of Major Rivera, the group came to his house and asked him to keep their firearms, three (3) armalites and one (1) M-14; that the group would get these firearms from time to time until the PACC searched the houses in his barangay;[51] that when the group suspected that he might squeal the matter to the police, they sprayed his house with bullets.[52]

On cross-examination, Carlos admitted that he agreed to have the group use his house for the plotting of Major Rivera's killing;[53] that he did not have any part in the killing nor did he propose any method, system or means in the killing of Arthur Rivera; that among those who attended the meetings, the most vocal was Aser Agosto;[54] that after the killing, Aser, Willy Peralta, Conrad Domingo, Recto Salvador, Carding Pineda, Jessie Longa and Bong Pasuquin, and a certain Gary, went to his house, around 8 p.m., and stayed for about 30 minutes; that the group said, "patay na si Major. Tumahimik ka na lang, wag kang kikibo";[55] that the wife of Castañeda is the niece of his wife.[56]

For its part, the defense presented accused-appellant Wilfredo Peralta.

He testified as follows: He was at Barangay Barsolingan at the chapel of the Iglesia ni Cristo inviting friends on April 2, 1993, from 4:30 in the afternoon until 8 o'clock in the evening. At around 6 p.m., a woman arrived saying there was an accident at Barangay Aguso.[57] However, he came to know about the details of the incident only two (2) or three (3) weeks after April 2. When he found out that it was Major Arthur Rivera who was killed, he even asked around what the possible reason could be since he knew that he was a good man.[58] He and Major Rivera knew each other because he stayed in Brgy. Aguso for about a year and a half, but, they were not talking to each other.[59] He did not kill Major Rivera. He did not know anything about his death nor about any suspect or investigation concerning his death. He was arrested by the PACC after searching his house and finding

ammunitions there. He was then brought to Camp Crame for illegal possession of firearms. Later, a case was filed against him regarding the death of Major Rivera.[60] Michael Rocha approached him and said several cases will be filed against him and it would be best for him therefore to turn state witness. He was also offered to be a state witness several times by Arman Rivera, brother of the victim. Arman told him that if he helped them, he will be released. Helping meant testifying against Recto Salvador, Atty. Millo and Thelmo Estanola.[61] Mrs. Rivera, the mother of the victim talked to him about this case and told him that he should cooperate and help because she knew he had nothing to do with this case.[62] Recto Salvador, is from Barangay Aguso and an opponent of the Rivera family in politics. He said he could not turn state witness against Recto Salvador and the others since he was not sure if indeed they were the ones who committed the crime.[63]

On cross-examination, appellant testified that before he resided in Barangay Barsolingan, he was staying in Brgy. Aguso; that he transferred to Brgy. Barsolingan in August 1990, while his parents were left in Brgy. Aguso; that in 1992 they sold the house to the Riveras;[64] that it would take ten (10) minutes from Sitio Tabane[65] in Brgy. Aguso Tarlac to Barsolingan by vehicle;[66] that he and Major Rivera talked very often since he would go to their house together with friends practically every evening; that he was welcomed at the Rivera's residence;[67] that on May 10, 1995, on their way to the hearing in Tarlac, he escaped and was only recaptured almost one (1) year later, that is on January 12, 1996.[68]

The prosecution presented Myrna and Francisco Rivera as rebuttal witnesses to deny certain allegations in the direct testimony of appellant. Myrna denied that appellant always attended the hearings at Tarlac, particularly the hearing on May 10, 1995 when appellant escaped. To support her claim, witness Myrna presented a letter from the Office of the Custodian of Records in Camp Crame.[69] Francisco Rivera testified that contrary to the claim of accused, the latter did not frequent their house in Tarlac.[70]

Earlier on, accused Severo Espinosa filed a Demurrer to Evidence.[71] This was granted by the trial court on March 3, 1997 and ordered the dismissal of the criminal charge for murder against him.[72]

On November 10, 1997, the trial court rendered a decision, the dispositive portion of which reads:

“ACCORDINGLY, judgment is hereby rendered finding the herein accused WILFREDO PERALTA (a.k.a.) WILLIE, GUILTY beyond reasonable doubt as Principal in the crime of Murder charged in this case, and said accused is hereby sentenced to suffer an imprisonment term of RECLUSION PERPETUA.

“On the civil aspect said accused is ordered to pay the heirs of Chief PNP Inspector Arthur Rivera the sum of P 184,715.00 as actual damages, P200,000.00 in moral damages, and P50,000.00 in indemnity damages.

“SO ORDERED.”[73]

Hence, the present appeal.

In his Brief, appellant claims that:

“I

“THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF PROSECUTION'S WITNESSES NOTWITHSTANDING SERIOUS FLAWS, CONTRADICTIONS AND INCOHERENCE (IN) THE TESTIMONIES AS TO THE IDENTITY AND PARTICIPATION OF ACCUSED IN THE KILLING OF MAJOR ARTHUR RIVERA.

“II

“THE LOWER COURT ERRED IN CONVINCING (sic) THE ACCUSED DESPITE CLEAR ABSENCE OF PROOF BEYOND REASONABLE DOUBT.”[74]

Appellant posits that the conviction has no sufficient basis as the prosecution has not established clearly his guilt beyond reasonable doubt. He points out that there were serious flaws, contradictions and incoherence as to his identity and actual participation in the killing of Major Rivera;[75] that his being identified by Francisco Rivera is fabricated and concocted to suit the theory that he is among the group that shot and killed Major Rivera; that the prosecution failed to present evidence that would corroborate Francisco's testimony; that the prosecution failed to present the testimony of Francisco's elder brother Ferdinand, and, Tano Basa who were also present when the incident occurred; that there was no direct statement as to the identity of the accused both on the direct and cross examination of Conrado Capitulo.[76]

Appellant also questions the presentation of two (2) state witnesses who were placed under the Witness Protection Program of the Department of Justice. He argues that the provisions of Section 9, Rule 119 is the applicable law and not the Witness Protection Program; that Danilo Castañeda and Noel Reyes should have been indicted together with him; that the presence of this error is a ground for the acquittal of accused-appellant.[77]

The Solicitor General on the other hand states that contrary to appellant's contention, the prosecution was able to establish his identity as one of the assailants; that the testimonies of Francisco Rivera, Conrado Capitulo, Danilo Castaneda and Carlos Rocha were clear, positive and consistent in pointing to the accused-appellant as one of those who killed Major Rivera;[78] that the guilt of accused-appellant has been proved beyond reasonable doubt and that all the elements of murder were present and proved in this case.[79]

We find the appeal of Wilfredo Peralta to be devoid of merit.

This Court has held in a long line of cases that the credibility of witnesses as assessed by the trial court will generally not be disturbed.[80]

As we explained in *People vs. Bolivar, et al.*[81]

“Well-entrenched in our jurisprudence is the doctrine that the assessment of the credibility of witnesses lies within the province and competence of trial courts. Said doctrine is based on the time-honored rule that the matter of “assigning values to declarations on the witness stand is best and most competently performed by the trial judge who, unlike appellate magistrates, can weigh such testimony in the light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between truth and falsehood. Thus, appellate courts will not disturb the credence, or lack of it, accorded by the trial court to the testimonies of witnesses, unless it be clearly shown that the lower court had over looked or disregarded arbitrarily the facts and circumstances of significance in the case.”

A review of the records of this case shows that the trial court did not err in giving credence to the testimonies of the witnesses. Conrado Capitulo, who saw the gunman up close, was very categorical and frank in his testimony. He identified accused Wilfredo Peralta as the man who shot Major Rivera. The defense also failed to impute any ill-motive on said witness which would discredit his positive identification of the accused. Absent any reason or motive for a prosecution witness to perjure, the logical conclusion is that no such proper motive exists and his testimony is thus worthy of full faith and credit.[82]

Francisco Rivera, son of the deceased, also identified the accused as the man who shot his father from the passenger jeepney. It would be very unnatural for him, as a son who is determined to vindicate the death of his father, to falsely accuse anyone other than the real culprit.[83] While the defense tried to discredit the testimony of witness Francisco Rivera, they were not able to prove the impossibility of his testimony because while Francisco admitted to have hid among the grass, it was only at most two (2) feet tall, and Francisco at the time was thirteen years old.[84]

Moreover, this Court has held that discrepancies between the affidavit and the testimony of the witness in open

court do not necessarily impair the credibility of the testimony, since affidavits are usually taken ex parte and are often incomplete for lack of searching inquiries by the investigating officer.[85]

The only defense offered by accused-appellant is his claim that he was at the Iglesia ni Cristo chapel in his barangay when the crime happened on April 2, 1993.

Between alibi and positive identification, this Court has given weight in favor of identification especially when it is categorical and consistent and without any showing of ill-motive on the part of the eyewitness to impute so grave a wrong on the accused.[86]

Alibi is inherently weak and generally not given much credence by the courts due to the facility with which it can be concocted.[87] For this kind of defense to prosper it is not enough to show that the accused was somewhere else when the crime was committed. He must further demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of the commission thereof.[88] By the accused's own admission he was only one (1) barangay away from the scene of the crime which was only ten (10) minutes away by vehicle. His alibi failed to show the physical impossibility of his presence at the locus delicti. Moreover, he failed to present any witness who would support his claim that he was indeed at the chapel of the Iglesia ni Cristo at Barangay Barsolingan at that period of time.

The trial court correctly found the accused guilty of murder. The killing of Major Rivera was attended with evident premeditation and treachery.

For evident premeditation to be appreciated, the following elements must be proved: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that he clung to his determination; and, (c) a sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act. These elements must be established with equal certainty and clarity as the criminal act itself before it can be appreciated.[89]

In the case at bar, evident premeditation was shown by the testimonies of Myrna Borromeo, Danilo Castañeda and Carlos Rocha where they narrated how several men, including herein accused, planned on several occasions the ambush-slay of Rivera. The group met several times to plan the killing of Major Rivera, which plan they held on to and finally executed on April 2, 1993.

Treachery was also proved in this case. As previously held by this Court, treachery is present when the offender commits any crime against persons employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to the offender arising from any defense which the offended party might make.[90] In this case, the victim was caught defenseless and manifestly overpowered when he was gunned down by the accused and his co-conspirators while he was in the driver's seat of his car. This circumstance however absorbs the other circumstances mentioned in the Information, i.e. 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.

Conspiracy was also proven beyond reasonable doubt. Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It can be proven by evidence of a chain of circumstances and may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.[91]

In the case at bar, the testimonies of Francisco Rivera and Conrado Capitulo as to the manner of the execution of the crime clearly show unity of intent and purpose. The group utilized two (2) vehicles which followed the victim,

and upon getting the opportunity, those with firearms shot at the victim before speeding away. The testimonies of Danilo Castañeda, Carlos Rocha and Myrna Borromeo also show that the group planned on killing Major Rivera weeks before the ambush. It is just unfortunate that only Wilfredo Peralta was brought to justice and proved guilty of the crime.

As to the assertion of accused-appellant that the two (2) state witnesses should have been indicted with him applying Section 9, Rule 119 of the Rules of Court instead of the Witness Protection Act which was used by the Department of Justice, we also find the same to be without merit.

In the case of *Webb vs. De Leon*,^[92] where, as in this case, the petitioners questioned the non-inclusion of Alfaro in the Information considering her alleged conspiratorial participation in the crime, this Court explained:

“xxx the prosecution of crimes appertains to the executive department of government whose principal power and responsibility is to see that our laws are faithfully executed. A necessary component of this power to execute our laws is the right to prosecute their violators. The right to prosecute vests the prosecutor with a wide range of discretion---the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasboard of factors which are best appreciated by prosecutors. We thus hold that it is not constitutionally impermissible for Congress to enact R.A. No. 6981 (Witness Protection Security and Benefit Act) vesting in the Department of Justice the power to determine who can qualify as a witness in the program and who shall be granted immunity from prosecution. Section 9 of Rule 119 does not support the proposition that the power to choose who shall be state witness is an inherent judicial prerogative. Under this provision, the court is given the power to discharge a state witness only because it has already acquired jurisdiction over the crime and the accused. The discharge of an accused is part of the exercise of jurisdiction but is not a recognition of an inherent judicial function....”^[93]

Clearly, no error was committed by the Department of Justice when it placed witnesses in this case under the Witness Protection Program.

As to damages, the trial court correctly awarded to the heirs of the deceased Fifty Thousand Pesos (P50,000.00) as civil indemnity for the death of Major Rivera. However, the amount of Two Hundred Thousand Pesos (P200,000.00) as award for moral damages must be reduced to Fifty Thousand Pesos (P50,000.00) following jurisprudence.^[94]

We also reduce the amount of actual damages to Twenty Five Thousand Pesos (P25,000.00) for this was the only expense evidenced by a receipt.^[95]

Finally, we award to the heirs of the deceased One Million Ninety Two Thousand Six Hundred Eighteen and Forty Five Centavos (P1,092,618.45) for loss of earning capacity, computed as follows: Seven Thousand One Hundred Ninety Seven Pesos and Seventy Five Centavos (P7,197.75) representing the monthly income of Major Rivera multiplied by 12 to get the annual income of Major Rivera immediately prior to his death which is Eighty Six Thousand Three Hundred Seventy Three Pesos (P86,373.00), minus necessary and incidental expenses, or 50% equals P43,186.50 multiplied by his life expectancy which is 25.3 ($\frac{2}{3} \times [80 - 42]$, the age of the victim at the time of his death).^[96]

WHEREFORE, the decision of the Regional Trial Court of Quezon City convicting accused-appellant of the crime of Murder and sentencing him to suffer reclusion perpetua is AFFIRMED with the MODIFICATION that the accused-appellant is ordered to pay to the heirs of Major Arthur Rivera, in addition to the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity for the victim's death, Fifty Thousand Pesos (P50,000.00) for moral damages, Twenty Five Thousand Pesos (P25,000.00) for actual damages, and One Million Ninety Two Thousand Six Hundred Eighteen and Forty Five Centavos (P1,092,618.45) for loss of earning capacity.

SO ORDERED.

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

[1] RTC Records, Vol. 2, pp. 332-337.

[2] RTC Records, Vol. 1, p. 1.

[3] Id. at p. 71.

[4] Initially, the hearing of the case was conducted in Tarlac where the incident occurred. However, upon the request for change of venue, filed by State Prosecutor Ferdinand R. Abesamis dated January 6, 1996, the Supreme Court on February 6, 1996 issued a Resolution ordering the transfer of the case to the RTC of Quezon City; RTC Records, Vol. 2, p. 141.

[5] TSN, November 11, 1994, pp. 5-6

[6] Id. at pp. 8-10.

[7] Id. at pp.10-12. In the TSN the date was erroneously typed as April 3, 1994.

[8] Id. at pp. 12-13.

[9] Id. at p. 20.

[10] Id. at p. 21.

[11] Id. at p. 28.

[12] TSN, December 9, 1994, pp. 4-5.

[13] Id. at pp. 6-8.

[14] Id. at pp. 9,14.

[15] Id. at pp. 11-14.

[16] Id. at pp. 8-9.

[17] Id. at pp. 17, 19-20.

[18] Id. at p. 20.

[19] Id. at pp. 21-22.

[20] RTC Records, Vol. 1, pp. 32-35.

[21] TSN, December 9, 1994, pp. 41-42.

[22] Id. at pp. 45-46.

[23] TSN, March 15, 1995, pp. 4-11.

[24] Id. at p. 12.

[25] Id. at pp. 12-13.

[26] Id. at p. 13.

[27] Id. at pp. 17-20.

[28] Id. at pp. 14-16.

[29] TSN, September 21, 1995 pp. 3-8.

[30] Id. at pp. 14-18.

[31] Id. at p. 20.

[32] Id. at p. 19.

[33] Id. at pp. 21-22.

[34] TSN, December 2, 1994, pp. 3, 9-10.

[35] Id. at p. 12; RTC Records, Vol. 2, p. 356.

[36] TSN, August 26, 1996, p. 10.

[37] Id. at pp. 4-9.

[38] Id. at p. 10.

- [39] Id. at p. 13.
- [40] Id. at p. 11.
- [41] Id. at pp. 13-14.
- [42] Id. at pp. 15-17.
- [43] Id. at pp. 17-19.
- [44] Id. at pp. 21-24.
- [45] Id. at pp. 25-26.
- [46] TSN, October 11, 1996, p. 6.
- [47] Id. at pp. 11-20.
- [48] Id. at pp. 21-26.
- [49] Id. at p. 28.
- [50] Id. at pp. 29-32.
- [51] Id. at pp. 34-40.
- [52] Id. at p. 26.
- [53] Id. at p. 52.
- [54] Id. at pp. 55-57.
- [55] Id. at pp. 60-64.
- [56] Id. at p. 69.
- [57] TSN, August V8, 1997, pp. 9-13.
- [58] Id. at pp. 17-19.
- [59] Id. at pp. 7-8
- [60] Id. at pp. 20
-28.
- [61] Id. at pp. 45-49.
- [62] Id. at p. 53.
- [63] Id. at pp. 49-50.
- [64] TSN, August 15, pp. 6-7.
- [65] The TSN erroneously typed it as Sitio Cabane.
- [66] Id. at p. 18.
- [67] Id. at pp. 20-21.
- [68] Id. at pp. 32-36; RTC Records, Vol. 1, pp. 108-109.
- [69] Exhibit A-Rebuttal, TSN, September 26, 1997, pp. 26-30.
- [70] TSN, September 26, 1997, p. 64.
- [71] RTC Records, Vol. 2, pp. 204-209.
- [72] Id. at p. 210.
- [73] Id. at p. 337.
- [74] Brief for Accused-Appellant, rollo, p. 58.
- [75] Id. at pp. 58-59.
- [76] Id. at pp. 80-81.
- [77] Id. at pp. 91-92.
- [78] Brief for Appellee, rollo, p. 121.
- [79] Id. at p. 128.
- [80] People vs. Baltazar, 352 SCRA 678, 685 (2001).
- [81] 352 SCRA 438, 451 (2001).
- [82] People vs. Mendoza, 332 SCRA 485, 493 (2000).

- [83] *People vs. Suitos*, 329 SCRA 440, 447-448 (2000).
- [84] TSN, December 9, 1994, p. 1.
- [85] *People vs. Sabredo*, 331 SCRA 663, 669 (2000).
- [86] *Barrera vs. People*, 352 SCRA 207, 212 (2001).
- [87] *People vs. Visaya*, 352 SCRA 713 (2001).
- [88] *Ibid*; *People vs. Cawayan*, 353 SCRA 62, 68 (2001); *People vs. Bolivar et al*, 352 SCRA 438, 451 (2001).
- [89] *People vs. Capitle*, G.R. No. 137046, February 26, 2001.
- [90] *People vs. Bayod*, 352 SCRA 727, 737 (2001).
- [91] *People vs. C2C Porras*, G.R. No. 103550 and *People vs. Tajores et al.*, G.R. No. 103551, July 17, 2001.
- [92] 247 SCRA 652 (1995).
- [93] *Id.* at pp. 685-686.
- [94] *People vs. Hapa*, G.R. No. 125698, July 19, 2001.
- [95] Exhibit "H," RTC Records, Vol. 2, p. 360.
- [96] *People vs. Laut, et al.*, 351 SCRA 93, 99 (2001); *People vs. Templo*, 346 SCRA 626, 646 (2000).

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