

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICKY QUIMZON, APPELLANT.

G.R. No. 133541. April 14, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the decision[1] dated December 17, 1997 of the Regional Trial Court of Tacloban City, Branch 16, in Criminal Case No. Bn-92-7-2924, finding appellant Ricky Quimzon[2] guilty of murder and imposing upon him the penalty of reclusion perpetua.

In an Information dated July 28, 1992, appellant and three other persons, namely Salvacion Lacsarom, Canoto Cabero[3] and Edgardo Detona[4] were charged with the crime of murder allegedly committed as follows:

That on or about the 7[th] day of March, 1992, in the Municipality of Burauen, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another with treachery and abuse of superior strength, with intent to kill, did, then and there willfully, unlawfully, and feloniously attack, assault, strike, stab and wound one Marlo Casiong with short bolos locally known as ‘pisao’ which accused provided themselves for the purpose, thereby hitting and inflicting upon the said Marlo Casiong with fatal wounds on the different parts of his body which caused his death shortly thereafter.

Contrary to law.[5]

Appellant “surrendered” to the police authorities on August 18, 1994[6] while his other co-accused remain at-large. When arraigned on September 28, 1994, appellant, with the assistance of counsel, entered a plea of not guilty to the crime charged.[7] Thereafter, trial ensued.

The evidence for the prosecution established the following facts:

On the night of March 7, 1992, victim Marlo Casiong, his sister Emolyn Casiong, and one Rommel Redoña were at the social hall of Burauen, Leyte attending a benefit dance. Around 11:30 of the same evening, while dancing with one Salvacion Lacsarom, Marlo accidentally bumped his cousin, herein appellant Ricky Quimzon. Emolyn and Rommel, who were then dancing with each other and were about one meter away from Marlo and Salvacion, witnessed the incident. Thereafter, while the dance continued, Salvacion held Marlo’s hand and invited him to go outside the dance hall as she had something important to tell him. Thereupon, Marlo asked Emolyn to stay put because he was coming back. Feeling apprehensions about it, Emolyn and Rommel followed Salvacion and Marlo as they went out of the dance hall. Emolyn noticed that Canoto Cabero, Edgardo Detona and appellant Ricky also went out of the hall in a hurried manner thereby overtaking them (Emolyn and Rommel). Outside the social hall, Emolyn heard Salvacion say “ito na” then saw her push Marlo towards the group of Canoto, Edgardo and Ricky. Canoto then grabbed Marlo by the wrist and repeatedly stabbed him with a short bolo locally known as pisao. Edgardo followed suit by stabbing Marlo twice at the back. Despite being wounded, Marlo was able to get away from Canoto and Edgardo and walked fast towards the nearby health center. Marlo was about to reach the gate of

the health center when Ricky, who was behind Marlo, held the latter's hands. Marlo tried to free himself from the clutches of Ricky but in the course of his struggle he fell down. Thereupon, Ricky rode on the back of Marlo and repeatedly stabbed him on his back. Emolyn and Rommel shouted for help prompting an unidentified person to throw stones and utter, "that is enough". Thereafter, Canoto, Edgardo and Ricky fled. With the help of some persons, Emolyn brought Marlo to the Burauen General Hospital but Marlo died before reaching the hospital.[8]

In denying criminal liability, appellant interposed the defense of alibi. He claims that he does not know Salvacion Lacsarom, Canoto Cabero and Edgardo Detona. He denies that he stabbed Marlo Casiong. Appellant testified, as follows: He could not have been at the scene of the crime when the incident happened as he was in Barangay Patag attending another benefit dance. He arrived at Barangay Patag around 7 o'clock in the evening of March 7, 1992 and stayed there until 7 o'clock of the following morning. Barangay Patag is 18 kilometers away from the poblacion of Burauen where Marlo was killed and can only be reached by riding a horse or a carabao or by hiking for five hours. He only came to know of the death of Marlo when he went to the poblacion of Burauen. He was included as one of the accused because he refused to testify in favor of the prosecution.[9]

Alfredo Rellesiva, then Barangay Chairman of Barangay Patag, Burauen, Leyte; and Mauro Lobriquinto, then second Barangay Councilor of Barangay Candag-on, corroborated appellant's alibi.[10]

After trial, the court a quo rendered the assailed decision, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the evidence of the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court hereby renders the conviction of the accused Ricky Quimzon of the crime of Murder punished under Article 248 of the Revised Penal Code. The crime currently is punishable by RA 7659 classifying Murder as heinous crime to which the death penalty is to be imposed.

However, the crime was committed on March 7, 1992 and the effectivity of RA 7659 is January 1994. This act therefore cannot apply in the case at bench.

Two qualifying circumstances are alleged in the Information; namely, treachery and abuse of superior strength. However, the latter circumstance is absorbed by the former.

There is no other aggravating nor mitigating circumstance. The penalty therefore to be applied is reclusion perpetua being the medium of the penalty from minimum which is the maximum of reclusion temporal to death.

The accused is therefore sentenced to suffer an imprisonment of Reclusion Perpetua.

On the civil aspect, the defense admitted the expenses incurred for the wake and burial of the victim and neither did he controvert the moral damages suffered by the mother of the victim. The accused is ordered to pay the sum of P53,000.00 as actual expenses for the wake and burial, and P75,000.00 as moral damages payable to the mother of the victim Erlinda Casiong.

The Philippine National Police and the NBI are urged to exert efforts to bring the at large co-accused to justice for their complicity in the crime. Furnish them a copy. Meanwhile, until they are placed under the custody of the law, archived the case.

SO ORDERED.[11]

Hence, the present petition with the following Assignment of Errors.

I

IT IS SUBMITTED BY THE APPELLANT THAT THE REGIONAL TRIAL COURT OF BURAUEN, LEYTE ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME OF MURDER WITHOUT A

CORPUS DELICTI.

II

IT IS SUBMITTED BY THE APPELLANT THAT THE REGIONAL TRIAL COURT OF BURAUEN, LEYTE ERRED IN GIVING CREDENCE TO THE TESTIMONY OF EMOLYN CASIONG THE LONE PROSECUTION EYE WITNESS, LEADING TO THE CONVICTION OF APPELLANT ON THE CRIME CHARGED IN THE ABOVE ENTITLED CASE.[12]

In support of his first assigned error, appellant contends that the testimony of prosecution witness Dr. Adelaida Asperin on the report of the autopsy conducted on the body of the victim Marlo Casiong was designed to prove the corpus delicti. Appellant, however, claims that Dr. Asperin is incompetent to testify, as she was not the one who personally examined the body. Instead, it was a certain Dr. Amparo Villanueva who conducted the autopsy on the body of Marlo Casiong. Appellant asserts that the trial court should have regarded the testimony of Dr. Asperin as inadmissible for being hearsay; and, in the absence of such testimony, the prosecution would not have been able to prove the corpus delicti.

A review of the oral and documentary evidence presented before the trial court reveals that it was indeed Dr. Amparo Villanueva, not Dr. Adelaida Asperin, who conducted the autopsy taken on the body of Marlo Casiong. As the attending physician, Dr. Villanueva was the one who signed the autopsy report.[13] In fact, Dr. Asperin herself admitted in her testimony that she never saw the victim, Marlo Casiong, and that it was Dr. Villanueva who conducted the autopsy and was the one who prepared the autopsy report.[14] However, Dr. Villanueva died before the prosecution was able to present her as witness.

Nonetheless, even if Dr. Asperin is an incompetent witness as to the autopsy report and her testimony could not have probative value for being hearsay, we still find that the prosecution was able to sufficiently establish by competent evidence the corpus delicti in the instant case.

Corpus delicti is defined as the body, foundation or substance upon which a crime has been committed, e.g. the corpse of a murdered man.[15] It refers to the fact that a crime has been actually committed.[16] Corpus delicti does not refer to the autopsy report evidencing the nature of the wounds sustained by the victim nor the testimony of the physician who conducted the autopsy or medical examination.[17] It is made up of two elements: (a) that a certain result has been proved, for example, a man has died and (b) that some person is criminally responsible for the act.[18]

Proof of corpus delicti is indispensable in prosecutions for felonies and offenses.[19] While the autopsy report of a medico legal expert in cases of murder or homicide is preferably accepted to show the extent of the injuries suffered by the victim, it is not the only competent evidence to prove the injuries and the fact of death.[20] It may be proved by the testimonies of credible witnesses. Even a single witness' uncorroborated testimony, if credible, may suffice to prove it and warrant a conviction therefor. [21]

Based on the foregoing jurisprudence, it is clear that the testimony of Dr. Asperin is not indispensable in proving the corpus delicti. Even without her testimony, the prosecution was still be able to prove the corpus delicti by establishing the fact that the victim died and that such death occurred after he was stabbed by appellant and his co-accused. These facts were established by the testimony of prosecution witness Emolyn Casiong.[22]

The question that remains, therefore, is whether the trial court erred in giving credence to Emolyn's testimony over and above the testimonies of the defense witnesses.

In his second assigned error, appellant questions Emolyn's credibility as a witness by pointing out that Emolyn did not execute an affidavit regarding the events that she allegedly witnessed on March 7, 1992; that she did not

present herself as a witness during the preliminary investigation conducted by the Municipal Trial Court of Burauen, and that she only appeared as a witness when the case was already being tried before the trial court. Appellant posits that Emolyn's delay, which consisted in her failure to execute an affidavit and her belated appearance as a witness, puts the trustworthiness of her testimony in serious doubt.

We are not persuaded by appellant's arguments.

When the credibility of witnesses is in issue, appellate courts generally defer to the findings of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[23]

It is doctrinally settled that the assessment of the credibility of a witness is a function that is best discharged by the trial judge whose conclusion thereon is accorded much weight and respect that will not be disturbed on appeal unless a material or substantial fact has been overlooked or misappreciated which if properly taken into account could alter the outcome of the case.[24]

After going over the records of the case, we find no compelling reason to disturb the findings of the trial court with respect to the credibility of Emolyn. Contrary to appellant's assertion, we find that she took no delay in relating the killing of her brother to the police authorities. Emolyn testified that shortly after the killing of her brother, she submitted herself for investigation before the police authorities of Burauen, Leyte. However, the chief of police informed her that she could not execute an affidavit because she is a sister of the victim, but if the court would need her, then she can execute an affidavit. Unschooled on the rules on evidence, it is but natural for Emolyn to have readily accepted the explanation of the chief of police. In her direct examination, she testified, thus:

Q

Now, shortly after the killing of your brother were you investigated by the police in connection with the killing of your brother?

A

We were investigated by the Chief of Police of Burauen, Leyte.

Q

When you said 'we', to whom are you referring?

A

Me and Rommel Redoña because we were the companions of my brother Marlo Casiong.

Q

It is clear now that only you and Rommel Redoña were the companions of Marlo Casiong on that fateful evening?

A

Yes sir.

Q

In the course of your investigation by the Chief of Police of Burauen relative to the killing of your brother, was that investigation conducted on your person reduced into writing?

A

The Chief of Police told me that when needed I might be investigated by the Court, I was not asked to execute an affidavit, it was only Rommel Redoña who executed an affidavit.

Q

So no affidavit was made by the police when you were investigated?

A

None because the Chief of Police informed me that Rommel Redoña would only be the one to execute an affidavit but if the Court would need me then I will execute an affidavit because I am a sister of the victim and I may not be allowed.[25]

And on her cross-examination, to wit:

Q

Being the witness will you tell us were you the one who reported this incident to the police?

A

My mother.

Q

Being an alleged eye witness did you submit yourself for investigation by the police?

A

My affidavit was not prepared because according to the chief of police of Burauen, Leyte I cannot have my affidavit because I am the sister of the victim and only Rommel Redoña was prepared.

Q

Sister of whom?

A

Marlo Casiong.

....

COURT:

Q

Who is the police who said because you are the sister of the victim you cannot have an affidavit?

A

The Chief of Police Nuevarez, the one who prepared the affidavit of Rommel was sir Juanico.

ATTY SAY:

Q

Will you still insist that Nuevarez refused to take your affidavit because you are a sister of the victim?

A

Yes, sir.

Q

Even if we present Nuevarez in the witness stand you will still insist?

A

Yes, sir.

Q

Is it not a fact that your affidavit could not be taken because you were still in Manila?

A

I was in Burauen, Leyte when that incident occurred.

Q

But one thing is you have been in Manila?

A

I went to Manila in 1994 already I went after Rommel Redoña.

Q

The deceased Marlo Casiong was a very close, aside from being your brother you were very closely associated with him?

A

Yes, sir.

Q

And you want to do anything for him?

A

I will do everything because I was there when the incident took place.[26]

As to her apparent delay in testifying, Emolyn explained that she would not have appeared as a witness if Rommel Redoña testified. However, she clarified that she only appeared as a witness when the case was being tried by the trial court because she was left with no choice but to testify in place of Rommel Redoña who told her that he no longer wanted to be a witness because he was being threatened by appellant, to wit:

Q

What was your purpose in going after Rommel Redoña in Manila?

A

Because a subpoena reached us informing us that the one who killed my brother had already been apprehended and because he was one of the eye witness I have to fetch him in Manila and I even went there twice and my mother went there third time, only last November.

Q

Do you know the reason why he went to Manila despite the fact that he is one of the witnesses in this case?

A

When I went to Manila I met him and he told me Molin I really cannot testify because I have been threatened by Ricky and company.

...

RE-CROSS BY ATTY. SAY:

Q

Now since Rommel Redoña refused to testify you have to testify despite the fact that you were told by the chief of police Nuevarez that you cannot testify in this case being a sister of the victim?

A

The chief of police there Nuevarez told me that if ever I will be needed by this Court I could testify but only, my affidavit cannot be prepared then because I was the sister.

Q

Then how did you know that the court needed your testimony?

COURT:

Q

Were you subpoenaed by the Court?

A

No.

ATTY. SAY:

Q

So it was not the court actually required your testimony because you did not receive subpoena?

A

I did not receive any subpoena but Rommel Redoña whom I met many times was firm that he cannot testify because he would be killed by the accused and because it was only the three of us, Rommel, myself and the victim who went to the dance.

Q

It is only reason why you testified in this case because Rommel Redoña has manifested that he will not testify?

A

Yes, sir.

COURT:

Q

So if Rommel Redoña would have testified in Court you do not need to testify?

A

I will not anymore because I have no affidavit.

Q

It was your lawyer Atty. Adaza who adviced you to testify in this case?

A

He did not, because we could not find any other witness I have to testify.

Q

Your lawyer did not advice you to testify?

A

No, Your Honor.

Q

Your lawyer did not say that you are not qualified to testify in this case because you are a sister?

A

No, Your Honor.

Q

So you are testifying to substitute only the testimony of Rommel Redoña?

A

Yes, your Honor, because Rommel Redoña did not want to testify anymore and we could not find any other witness and since I was with them when the incident occurred, I testified here. [27]

Moreover, we agree with the observation of the Office of the Solicitor General (OSG) that the apparent delay in Emolyn's appearance as a witness is explained by the fact that while a complaint against appellant and his co-accused was filed as early as May 7, 1992, the case was archived because all the accused remained at-large.[28] It was only on August 18, 1994 that appellant was arrested, which sufficiently explains why Emolyn was only able to appear as a witness on February 21, 1995. Appellant further attacks the veracity of Emolyn's testimony by calling our attention to some purported inconsistencies and improbabilities in her account of the events that took place prior to and during the stabbing of Marlo. Appellant contends: It could not have been possible for Emolyn to overhear the conversation that took place between Salvacion and Marlo while they were dancing because the music was loud, the beat was fast and furious, and Emolyn was engrossed in her dancing. It was impossible for Emolyn to hear Edgardo Detona, Canoto Cabero and appellant ask permission from their respective dancing partners before going out of the dance hall because Emolyn went out of the dance hall ahead of them. Emolyn failed to accurately recall the sequence of events that led to the stabbing of Marlo. She could not have witnessed Marlo's stabbing as she admitted that it was dark where the incident took place. We are not convinced by appellant's contentions. First, it is not improbable for Emolyn to overhear the conversation between Salvacion and Marlo while they were dancing because she (Emolyn) testified that she was just one meter away from Salvacion and Marlo at that time. The fact that they were dancing, that the music is loud and that there is another couple between them and her does not discount the possibility that she could have heard them talking. Given the above circumstances, it is expected of Salvacion and Marlo to have raised their voices in order to hear each other, which then enabled Emolyn to hear their conversation. Second, while Emolyn admitted that she and Rommel started to go out of the dance hall ahead of Edgardo, Canoto and appellant, she sufficiently explained that she was able to hear the three men talk to their respective partners because she was still near them when they asked permission from their partners. Emolyn explained thus:

Q

How about Canuto Cavero when he went out together with Ricky Quimson, Edgardo Detuna, did Canuto Cavero also leave his partner?

A

He told his partner to wait for a while because he will be going out.

Q

How about Edgardo Detuna he also left his partner when he went out?

A

He also told his partner to wait for a while because he will be going out.

Q

And likewise, Ricky Quimson also told his partner to wait for a while because he will be going out?

A

Yes.

Q

So, in other words the three gentlemen Canuto Cavero, Edgardo Detuna and Ricky Quimson left their partners because they will be going out for a while?

A

Yes.

Q

You are sure of that, you cannot be mistaken?

A

I will not be mistaken.

Q

You are very sure because you heard each one of them, Canuto Cavero, Edgardo Detuna, and Ricky Quimson left their respective partners and told them, 'Wait because I am going out for a while', you cannot be mistaken.

A

Yes because we were close to each other.[29]

As to who went ahead of whom, Emolyn satisfactorily explained as follows:

Q

In other words it is very clear that after Salvacion Lacsarom and your brother left you immediately followed because you were were deeply alarmed leaving inside the hall Edgardo Detuna, Canuto Cavero and Ricky Quimson?

A

Edgardo Detuna and Canuto Cavero were already outside ahead of us.

Q

Do you mean to tell us that Edgardo Detuna and Canuto Cavero left the hall ahead of Salvacion Lacsarom and Marlo Casiong?

A

The two, Canuto Cavero and Edgardo Detuna were able to reach outside ahead of Marlo Casiong and Salvacion Lacsarom because they walked fast.

Q

But the fact is, Salvacion Lacsarom and Marlo Casiong left the dancing hall ahead of everybody?

A

They went out ahead but they were overtaken by Canuto Cavero and Edgardo Detuna.

Q

So it is not correct to say that you were the one who immediately followed Salvacion Lacsarom and Marlo Casiong because according to you Edgardo Detuna and Canuto Cavero followed Salvacion Lacsarom and Marlo Casiong, you were not the one who immediately followed the pair but Edgardo Detuna and Canuto Cavero, is that correct?

A

No because Edgardo Detuna and Canuto Cavero were faster and they went out the shorter way while I followed Marlo Casiong and Salvacion Lacsarom who took a little slower in going out.

...

Q

How about Ricky Quimson, was he still dancing when you immediately followed Salvacion Lacsarom and Marlo Casiong outside?

A

He was already outside the dancing hall because he followed Canuto Cavero and Edgardo Detuna.

Q

But he was behind Edgardo Detuna and Canuto Cavero?

A

Yes.[30]

Third, we find that the alleged probabilities and inaccuracies committed by Emolyn in recounting the events that took place prior to and during the stabbing of Marlo refers to trivial matters that do not refer to material points and do not detract from Emolyn's clear and positive testimony that she saw appellant and the other accused stab and kill her brother.

Settled is the rule that inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony.[31] In fact, such minor flaws may even enhance the worth of a testimony, for they guard against memorized falsities.[32]

Fourth, while Emolyn testified that it was dark inside the dance hall, it is also clear from her testimony that the stabbing took place outside the hall and there were fluorescent bulbs near the places where Marlo was stabbed by Canoto, Edgardo and appellant. When cross-examined, she testified as follows:

Q

How many times did you meet the accused in dances?

A

Several times because we meet at dances whenever there is one.

Q

This incident happened outside the dancing hall, is that correct?

A

Yes.

Q

But the alleged bumping of Ricky Quimson by Marlo Casiong happened inside the dancing hall?

A

Yes.

Q

And it happened while the dance was going on?

A

The dance was in progress but the four of them went out.[33]

Emolyn testified further:

Q

What kind of light was illuminating the dancing hall?

A

Fluorescent bulbs.

Q

How many fluorescent lamps were there?

A

There were two outside and one was at the gate of the health center and one at the gate of the dancing hall.

Q

How far was the nearest fluorescent lamp where the first stabbing of the victim was made?

A

Witness points to a distance which indicated 4 meters when measured.

Q

How high was the fluorescent lamp from the ground?

A

About 2 meters and 35 cms. high from the floor.

Q

At the health center where Marlo Casiong was attacked by Ricky Quimson, how far was the fluorescent light?

A

Witness points to a distance which indicated 4 meters when measured.

Q

How about the lamp from the ground, how high?

A

The same height, about 2 meters and 35 cms. from the ground.[34]

We have held that kerosene lamp, flashlight, even moonlight or starlight may, in proper situations, be considered sufficient illumination.[35] In the instant case, the fluorescent bulbs situated near the places where appellant and his companions attacked Marlo enabled Emolyn to witness the killing of her brother.

Thus, we reiterate the well-entrenched rule that in assessing the credibility of witnesses, the factual findings of the trial court should be respected. The judge a quo was in a better position to pass judgment on the credibility of

witnesses, having personally heard them when they testified and observed their deportment and manner of testifying.[36]

Appellant interposes the defense of alibi. However, alibi, like denial, is an inherently weak defense as it is easy to concoct and difficult to prove.[37] While appellant's testimony is corroborated by defense witness Rellesiva and Lobriquito, the trial court correctly gave more probative weight to the lone testimony of prosecution witness Emolyn who positively identified appellant as one of the perpetrators of the crime.

Appellant's defense of alibi fails in the face of Emolyn's positive identification of him as one of her brother's killers. Positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.[38] The defense of denial is unavailing when placed astride the undisputed fact that there is positive identification of the felon.[39]

We affirm the trial court's finding that there was treachery in the killing of Marlo. There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[40] The essence of treachery is the sudden and unexpected attack by an aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself and thereby ensuring its commission with no risk to the aggressor.[41] In the present case, Marlo accepted Salvacion's invitation for them to go outside the dance hall on the impression that the latter has something important to tell him. He has no inkling of any impending danger on his life as he even told his sister, Emolyn, to wait for him because he will be coming back.[42] Outside the dance hall, as soon as Salvacion pushed Marlo towards them, Canoto and Edgardo immediately attacked him without warning, inflicting wounds on the front and back portions of his body with the use of bolos. Although this initial assault on Marlo was frontal it may still be considered treacherous because the attack was sudden and unprovoked. There is no evidence showing that the attack was preceded by any exchange of words or any untoward incident between the assailants and Marlo, sufficient to warn Marlo of the impending attack on him. The mode of execution was in such a manner that Marlo was left with no opportunity to repel the attack or avoid it. Moreover, he was unarmed while all three assailants were carrying deadly weapons. The treachery continued when appellant held the hands of Marlo as the latter was running away from the initial stabbings of Canoto and Edgardo, rode on Marlo's back when the latter fell down and repeatedly stabbed Marlo who had already been rendered weak by the multiple stab wounds inflicted by Edgardo and Canoto. Appellant attacked Marlo from behind and repeatedly stabbed Marlo when he was already in a defenseless position.

In any criminal prosecution, the only requisite is that the prosecution proves the guilt of the accused beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof that, excluding the possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.[43]

Hence, we uphold the trial court's judgment declaring appellant guilty of murder beyond reasonable doubt. The attendant circumstance of treachery qualified the killing to murder as defined under paragraph 1, Article 248 of the Revised Penal Code. Since treachery attended the killing, abuse of superior strength alleged in the Information is absorbed by said circumstance.[44]

Aside from abuse of superior strength, no other aggravating circumstance was alleged and proved by the prosecution.

In a criminal case, an appeal throws open the entire case wide open for review, and the appellate court can correct errors, though unassigned, that may be found in the appealed judgment.[45]

It appears in the Commitment Order, dated August 14, 1994, issued by the Municipal Trial Judge of the Municipal Trial Court of Burauen, Leyte, that appellant “voluntarily surrendered to SPO1 Josefino Agustin of PNP Burauen, Leyte on August 18, 1994”.[46] An examination of the records reveals that it can not be considered as a mitigating circumstance. For the mitigating circumstance of voluntary surrender to be appreciated, the accused must satisfactorily comply with three requisites: (1) he has not been actually arrested; (2) he surrendered himself to a person in authority or the latter’s agent; and (3) the surrender is voluntary. There must be a showing of spontaneity and an intent to surrender unconditionally to the authorities, either because the accused acknowledges his guilt or he wishes to spare them the trouble and expense concomitant to his capture.[47]

The “surrender” of appellant was far from being spontaneous and unconditional. The warrant of arrest is dated June 17, 1992 and all the accused, including appellant, remained at-large, which prompted the Executive Judge of the Regional Trial Court of Palo, Leyte to archive the case.[48] It took appellant two years before he finally “surrendered” to the police. In between said period, appellant, through counsel, filed a Motion to Fix Bail Bond[49] without surrendering his person to the jurisdiction of the trial court. Records do not reveal that the motion had been acted upon by the trial court. This act of appellant may be considered as a condition set by him before he surrenders to proper authorities, thus preventing his subsequent act of surrendering from being considered as a mitigating circumstance.

Moreover, we noted in the Motion to Fix Bail Bond, filed on July 9, 1992, that counsel for appellant alleged that appellant “is barely 15 years of age”. When appellant was called to the witness stand on August 2, 1996, or four years thereafter, appellant asserted that he was 21 years old. The stabbing incident took place on March 7, 1992, thus placing appellant to be 17 years old, a minor, when he committed the crime. The records do not show that the prosecution refuted appellant’s minority; and absent any evidence to the contrary, the trial court should have applied in favor of appellant the benefits under Article 68 of the Revised Penal Code, to wit:

Art. 68. Penalty to be imposed upon a person under eighteen years of age. –

...

- Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. (Emphasis supplied)

Under Article 248 of the Revised Penal Code, the perpetrator of the crime of Murder shall be punished by reclusion perpetua to death. Applying the express provision of the aforequoted Article 68 and pursuant to Article 61, paragraph 2, of the same Code, to wit:

Art. 61. Rules of graduating penalties. - . . .

- When the penalty prescribed for the felony is single and indivisible, the penalty next lower in degree shall be that immediately following that indivisible penalty in the respective graduated scale prescribed in Article 71 of this Code.

...

the imposable penalty is reclusion temporal or 12 years and 1 day to 20 years.

Considering the actual penalty to be imposed upon appellant, as prescribed by law, is not reclusion perpetua or death, appellant is entitled to the application of the Indeterminate Sentence Law.[50] Thus, from the penalty of reclusion temporal, one degree lower is prision mayor or 6 years and 1 day to 12 years from which will be drawn the MINIMUM period of the indeterminate sentence; while pursuant to paragraph 2, Article 64 of the Revised Penal Code, in the absence of any modifying circumstance, the penalty prescribed by law should be imposed in its

medium period, or anywhere between 14 years, 8 months and 1 day to 17 years and 4 months, as the MAXIMUM period of the indeterminate sentence.

We now come to the civil liability of appellant.

As to actual damages, we find that the evidence presented by the prosecution do not adequately provide a concrete basis for the amount of P53,000.00 awarded by the trial court to the victim's mother, Erlinda Casiong. She testified that her family incurred expenses amounting to P50,206.00, during the wake and burial of her son. As proof, she presented seven official receipts amounting to P4,490.00 only.[51] Other evidence consisting of small pieces of paper which were properly identified by Erlinda as having been signed by the persons from whom she bought the merchandise that were used or consumed during Marlo's wake and burial, amounting to P4,020.00[52] may be considered competent evidence and admitted under Section 22, Rule 132 of the Rules of Court.[53] Thus, the prosecution was able to prove only a total of P8,510.00. The other receipts presented were not properly identified and therefore inadmissible under the Rules of Court.

Nonetheless, in our recent rulings, we have held that in cases where the heirs of the victim failed to prove their claim for actual damages, but have shown that they have suffered pecuniary loss by reason of the death of the victim, an award of P25,000.00 by way of temperate damages is justified in lieu of an award of actual or compensatory damages.[54] In *People vs. Villanueva*,[55] we held that in cases where actual damages was proven by receipts during the trial but said damages amounted to less than P25,000.00, as in the present case, the award of temperate damages in the amount of P25,000.00 is justified in lieu of said actual damages. The rationale for such an award of temperate damages is that it would be anomalous and unfair for the heirs of the victim, who by presenting receipts, tried and succeeded in proving actual damages but in an amount less than P25,000.00, to be placed in a worse situation than those who might not have presented any receipts at all but would be entitled to P25,000.00 for temperate damages.[56]

Erlinda Casiong testified that her son was single when he died;[57] that she felt sad when her son was killed.[58] We find her testimony sufficient to sustain the trial court's award of moral damages but we reduce the amount of P75,000.00 to P50,000.00 in line with current jurisprudence.[59]

Erlinda Casiong further testified that her son was working as a helper in a passenger bus.[60] The indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proved.[61] In the absence of competent evidence to prove how much the victim was earning, the heirs of the victim are not entitled thereto.

The trial court did not award civil indemnity. In consonance with prevailing jurisprudence, we award the amount of P50,000.00 to the heirs of Marlo Casiong as civil indemnity for his death. The amount is awarded without need of proof other than appellant's commission of the crime which resulted in the death of the victim.[62]

WHEREFORE, the decision of the Regional Trial Court of Tacloban City (Branch 15) is AFFIRMED with MODIFICATIONS. Appellant Ricky Quimzon is found GUILTY beyond reasonable doubt of the crime of MURDER and after applying The Indeterminate Sentence Law, and there being no modifying circumstance, he is sentenced to suffer imprisonment, from eight (8) years and one (1) day of prison mayor as MINIMUM up to fourteen (14) years and ten (10) months of reclusion temporal as MAXIMUM. He is ordered to pay Erlinda Casiong, the mother of the deceased Marlo Casiong, the amounts of P50,000.00 as civil indemnity for the victim's death; P25,000.00 as temperate damages; and P50,000.00 as moral damages.

Costs de oficio.

SO ORDERED.

Puno, (Chairman), Quisumbing, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Judge Leocadio H. Ramos, Jr.

[2] Quimson in other portions of the Rollo, Records and TSNs. In appellant's letters addressed to this court, he alternately signed his family name as Quimson and Quimzon (Rollo, pp. 176, 180 and 183).

[3] Spelled as Canuto Cavero in other portions of the Rollo and TSNs.

[4] His family name is spelled as Detuna in other portions of the Rollo and TSNs.

[5] Original Records, p. 1.

[6] Commitment Order, OR, p. 24.

[7] Certificate of Arraignment, OR, p. 32.

[8] TSN, Testimony of Emolyn Casiong, February 21, 1995, pp. 4-42.

[9] TSN, Testimony of Ricky Quimzon, August 2, 1996, pp. 3-12.

[10] TSN, April 12, 1996, pp. 4-21; TNS, April 19, 1996, pp. 3-16.

[11] OR, p. 329.

[12] Rollo, p. 106.

[13] Exhibit "A", Records, pp. 7-8.

[14] TSN, August 2, 1995, pp. 14-15.

[15] People vs. Cariño, 390 SCRA 215, 220 (2002).

[16] People vs. Oliva, 341 SCRA 78, 86-87 (2000).

[17] People vs. Cariño, *supra*.

[18] People vs. Cabodoc, 263 SCRA 187, 202 (1996).

[19] People vs. Oliva, *supra*.

[20] People vs. Barro, Sr., 338 SCRA 312, 326 (2000).

[21] Rimorin, Sr. vs. People, G.R. No. 146481, April 30, 2003; People vs. Oliva, *supra*.

[22] TSN, February 21, 1995, pp. 4-42; TSN, June 16, 1995, pp. 3-7.

[23] People vs. Panganiban, 359 SCRA 509, 519 (2001).

[24] People vs. Villanueva, G.R. No. 138364, October 15, 2003.

[25] TSN, February 21, 1995, pp. 20-21.

[26] TSN, June 16, 1995, pp. 3-5.

[27] TSN, June 16, 1995, pp. 5-7.

- [28] OR, p. 23.
- [29] TSN, February 21, 1995, pp. 29-30.
- [30] Id., pp. 32-33, 37.
- [31] *People vs. Nardo*, 353 SCRA 339, 356 (2001).
- [32] Ibid.
- [33] TSN, February 21, 1995, pp. 22-23 (emphasis ours).
- [34] Id., pp. 16-17.
- [35] *People vs. Mansueto*, 336 SCRA 715, 729 (2000).
- [36] Id., supra case.
- [37] *People vs. Silongan*, G.R. No. 137182, April 24, 2003.
- [38] *People vs. Casitas, Jr.*, 397 SCRA 382, 397 (2003).
- [39] *Talay vs. Court of Appeals*, 398 SCRA 185, 200-201 (2003).
- [40] Art. 14, par. 16 (2), Revised Penal Code.
- [41] *People vs. Dijan*, 383 SCRA 15, 21(2002).
- [42] TSN, February 21, 1995, p. 31.
- [43] *People vs. Jonathan Crisanto y Opin*, 358 SCRA 647, 657 (2001).
- [44] *People vs. Carriaga*, G.R. No. 135029, September 12, 2003; *People vs. Baldogo*, 396 SCRA 31, 56 (2003).
- [45] *People vs. Feliciano*, 365 SCRA 613, 629 (2001).
- [46] Records, p. 24.
- [47] *Roca vs. Court of Appeals*, 350 SCRA 414, 425 (2001); *People vs. CastaHeda*, 93 SCRA 71 (1979).
- [48] Records, p. 23.
- [49] Rollo, p. 19.
- [50] *People vs. Moises*, No. L-32495, Aug. 13, 1975, 66 SCRA 151, 164; *People vs. Cempron*, G.R. No. 66324, July 6, 1990, 187 SCRA 248, 256.
- [51] Exhibits “B”, “B-10”, “B-17”, “B-21”, “B-26”, “B-31”, “B-33”, OR, p. 154-A series.
- [52] Exhibits “B-1” to “B-9”, “B-11” to “B-16”, “B-18” to “B-20”, “B-22” to “B-25”, “B-27” to “B-30”, “B-32”, OR, p.154-A series.
- [53] SEC. 22. How genuineness of handwriting proved. – The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has been writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

[54] People vs. Bajar. G.R. No. 143817, October 27, 2003; <....2003jun2003142467.HTM>People vs. Reyes, G.R. No. 142467, June 10, 2003.

[55] G.R. No. 139177, August 11, 2003.

[56] Ibid.

[57] TSN, March 19, 1997, p. 4; Exhibit “D”, Records, p. 296.

[58] TSN, October 12, 1995; p. 7.

[59] People vs. Sayaboc, G.R. No. 147201, January 15, 2004; People vs. Latasa, G.R. No. 144331, August 19, 2003.

[60] TSN, supra.

[61] People vs. De Vera, 312 SCRA 640 (1990).

[62] People vs. Delim, 396 SCRA 386, 419 (2003); People vs. Magalona, G.R. No. 143294, July 17, 2003.

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