

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLERIE AVENDAÑO, ACCUSED-APPELLANT.

G.R. No. 137407. January 28, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On automatic review is the decision[1] dated January 29, 1999 of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, in Criminal Case No. R-4227. Appellant Willerie Avendaño was found guilty of murder and accordingly sentenced to suffer the penalty of death.

The facts of this case, culled from the records, are as follows:

In an information dated August 18, 1997, Willerie Avendaño was charged with two counts of murder allegedly committed as follows:

That on or about the 29[th] day of July, 1997 at night time (sic) in Purok Bagong Silang, Barangay Aguas, Municipality of Rizal, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused being then armed with a jungle knife, with intent to kill, with treachery, did then and there willfully, unlawfully and feloniously, attack, assault and stab with the said weapon Remedios Castillo and Melvin Castillo inflicting upon the victims serious wounds which caused their untimely death.

CONTRARY TO LAW.[2]

Upon arraignment, the accused pleaded not guilty. Thereafter, trial on the merits ensued.

The principal witness for the prosecution was JEFFRE CASTILLO, an eight-year-old son of the victim Remedios Castillo and brother of the victim Melvin Castillo. In his testimony, he stated that his parents were named Remedios and Boyet; that they were six children in the family, namely, Michael, Dikong, Ape, Manolito, the victim Melvin and himself; and that he was a Grade I pupil at the Aguas Elementary School. He testified that he knows appellant, having known him for about three or four years before the incident of July 29, 1997. On said date, at around 6:00 P.M., he saw appellant in their house, looking for his plow and asking if he knew who got it, to which he replied that he did not. While appellant was in their house, his mother was upstairs and his Kuya Melvin was also inside the house. His father and the rest of his brothers and sisters were in Cabanatuan City. He recalled that appellant was then wearing a green t-shirt and shorts, the color of which he could not remember.[3] Thereafter, appellant left. After dinner, he, his mother and brother went to sleep. Before they slept, he recalled they had a pangmagdamagan or overnight lamp which was turned on.

That night, according to Jeffre, they slept in the same room. He was suddenly awakened when he heard a commotion (kalambugan). However, by the time he woke up, the room was very dark because the lamp was already turned off. He heard his mother shout, “Dikong, tulungan mo kami.” When he heard the kalambugan he immediately eased his way to where they kept their pillows and tried to hide. Then, there was silence. Then he heard somebody going downstairs. His brother Melvin lit the lamp, while Jeffre stayed where he was. He then

heard the person downstairs going up again.[4] He saw through his blanket that the person had come up: “Naaninag ko po sa kumot yung tao.”[5] That was when he distinctly heard his Kuya Melvin say, “Kuya Willie, tama na, tama na!” That was just before Melvin was killed.[6]

Jeffre recalled that someone coughed and he recognized the cough as that of his Kuya Willie. He recognized it because he had heard a similar cough on several occasions in the past when appellant frequented their house. He remained where he was until appellant left.

Jeffre said he fell asleep and was awakened only the following morning by persistent knocking on their door. He opened the door to find his Ate Annie (Juliana Castillo), Ate Norma (Roldan) and Ate Ann (Roldan) looking for his mother. He then told his Ate Annie that Willerie Avendaño killed both his mother Remedios and his Kuya Melvin. He remembered that thereafter, their relatives as well as some policemen arrived.[7]

Jeffre recounted that he was brought to the police station where his sworn statement was taken and he signed it in the presence of Mayor Bartolome Miranda of Rizal town.[8] He said he was accompanied by his Lola Nena who read to him what was written in the statement because he did not know how to read. He said no one coached him to answer the way he did, particularly to the question: “Sino ang taong umubo na yon?” His answer was: “Hindi ko po nakita pero kilala ko ang boses niya na si Kuya Willie.”[9]

In the course of his testimony, Jeffre was shown a green t-shirt and a pair of shorts which he recognized as those appellant wore the night of July 29, 1997, when appellant went to their house earlier in the evening.[10]

On cross-examination, Jeffre said his father talked to him about the case four times, and that before coming to court, several of his relatives also talked to him about the case and told him to point to appellant as the person who killed his mother and brother.[11] The child further testified that on the night his brother and mother were killed, he heard his Kuya Willie cough four times – three times downstairs and once upstairs, after which he again pointed to appellant as the culprit behind the deaths of his mother and brother.[12]

Witnesses JULIANA CASTILLO[13] and VIRGILIO CASTILLO[14] testified that they were neighbors and relatives of the victims. They lived in a compound in Brgy. Aguas, Rizal, Occidental Mindoro where the houses of three brothers were built: the house of Ramon Castillo, Juliana’s husband; the house of Virgilio Castillo, who was still single and lived alone; and the house of Benedicto Castillo, his wife Remedios, and their children.

According to witnesses, appellant was the adopted son (or palaki) of an aunt of the Castillo brothers. Appellant had four children. His wife lived in San Roque I, Occidental Mindoro, and seldom visited him.[15] He owned and worked on a seven-hectare farm adjacent to the lot where the witnesses and the victims lived. He frequented the neighborhood while he bought food and supplies from the store of Juliana.[16] He spoke with Virgilio at times, although Virgilio said that they were not close because Virgilio was not used to having a barkada.[17]

Both witnesses claimed that when appellant was working on his farm, he frequented the house of Remedios, dropping by almost three times a day, especially when the victim’s husband was not around. He sometimes had coffee or left some of his farm implements there. They claimed that appellant had spent a night there. Juliana further testified that on two occasions prior to the incident,[18] the victim Remedios confided to her that she was angry at appellant because he was courting her. Witness Juliana added she already suspected that fact even before Remedios confided in her, but she did not tell appellant’s wife because the wife might not believe her.[19]

Juliana recalled that at about 7:00 P.M. on July 29, 1997, appellant arrived at her store and bought a cigarette. After that he invited Virgilio, who was then having dinner, for a drink. The latter declined.[20] She recalled that on that night, she and her children slept at around 8:30 P.M. She did not recall hearing any noise coming from Remedios’ house because it was raining heavily then and she was also listening to the radio.[21] The next day, at

about 7:00 A.M., her neighbor Norma Roldan and her daughter, Ann, arrived and asked her to accompany them to Remedios, to ask the latter for their wages for planting palay. Remedios was their kabisilya at that time. They knocked for about 30 minutes, calling “Nanie”. Jeffre then opened the door and told them that his mother and brother were both dead and that the killer was his Kuya Willie.[22]

In his testimony,[23] Virgilio Castillo stated that, at approximately 7:00 to 7:10 P.M. of July 29, 1997, while he was seated in the terrace of Juliana Castillo’s house, he saw appellant with a lighted cigarette enter the kitchen door of the victims’ house. At that time, he saw Remedios washing clothes in the poso (water pump), about six arms-length from her house where her two sons were. Appellant inquired where his plow was. After about three minutes, he left. Virgilio recalled that appellant returned at about the same time he went out of Juliana’s house. Appellant followed and invited him to “go around”. According to Virgilio, he declined because he was tired. He could not recall where appellant went after. He remembered appellant wore a green t-shirt with the words “Landbank” printed in front and back, and a pair of dark green shorts. When shown a green t-shirt and short pants (marked as Exhibit “C”), witness identified the clothes as those worn by appellant the night of July 29, 1997. He said he learned of Remedios and Melvin’s death the following morning. He said he did not hear anything the previous night as it was raining hard and because a cement wall separated his house from that of Remedios.

The fourth witness for the prosecution was SPO2 ESTEBAN MARIANO DIMALALUAN,[24] Chief of the Police Relations Section and Chief Investigator assigned at the Rizal Police Station. He testified that on July 30, 1997, his office received a radio report of an incident in Sitio Bagong Silang, Barangay Aguas, Rizal, Occidental Mindoro. Upon arrival at the scene he and three other policemen found the bodies of Remedios and Melvin Castillo, soaked in blood. They bore numerous stab wounds. The room where the bodies were found measured about three meters by four meters. After they took pictures of the bodies, and after further inspection, he noticed fresh footprints with mud on the toilet bowl and on the wall made of light materials. He also took pictures of the footprints but the negatives got exposed prematurely.

In the course of his investigation, said SPO2 Dimalaluan, he met eight-year-old Jeffre Castillo, who had survived the carnage. The boy told him that he heard his mother shout “Dikong, tulungan mo kami” and also his brother shouting “...Kuya Willie,” and “Tulungan nyo kami, hindi na po ako uulit.” According to Jeffre, the last time he saw appellant in their house was before nighttime of the day of the crime.[25] Dimalaluan added that Juliana and Virgilio also saw appellant then.

Later, according to Dimalaluan, they went to the house of appellant 150 meters away from the crime scene. There they found appellant who had just taken a bath. They asked him what he wore the day of the incident, and appellant pointed to the clothes he was wearing. Doubting appellant, Dimalaluan went inside the house. In the bathroom, a green t-shirt with “Landbank” print and dark short pants, newly washed and still wet, were hanging from the clothesline. He said he noticed dark stains on them. These were brought to the police station. During Dimalaluan’s testimony he marked the stains found on the clothes.[26] These, however, were not subjected to laboratory examination.

Appellant voluntarily went with the police to the police station, according to Dimalaluan. While detained, appellant made an oral admission that he killed the victims and that he used a knife, said the police officer. Hence, on July 31, 1997, Dimalaluan accompanied appellant back to his house, where appellant got from the cabinet a hunting knife with scabbard and then handed it over to him.[27] According to Dimalaluan, appellant’s admission was not reduced into writing[28] because when appellant made the admission, he was not assisted by a lawyer. The knife was likewise not subjected to any laboratory examination.

The last prosecution witness, DR. MICHAEL C. JIMENEZ,[29] Municipal Health Officer of Rizal, testified that

he conducted the autopsy on the bodies of the victims. He issued their respective death certificates.[30]

Appellant WILLERIE AVENDAÑO[31] was presented by the defense as its sole witness. He denied committing the crimes and interposed an alibi. He said the deceased Remedios and he had no disagreements.[32] He did admit that in the late afternoon of July 29, 1997, he bought cigarettes from Juliana's store and there saw Virgilio Castillo. He denied he invited him for a drink.[33]

According to appellant, he learned of the stabbing incident the following day, July 30, 1997, at about 8:00 A.M. He then went to the place where the victims were killed.

Thereafter he went back home. A few moments later five policemen, headed by SPO2 Dimalaluan, arrived. They asked him to accompany them to Remedios' house. After taking them there, he returned home to cook. He later went back to Remedios' house and SPO2 Dimalaluan no longer allowed him to go home. Accompanied by policemen, he was allowed to go home only to lock the door of his house. There, they took one t-shirt and a pair of shorts. Thereafter, he was brought to the Rizal police station and detained.

According to appellant, he was told to admit to the killings but he refused, saying he did not do it. He did not give a written statement while under detention. The following day, July 31, 1997, the policemen brought him back to his house using a service jeep. They took a knife from his house and before they left, took a photograph of him pointing to the knife. He did not protest or say anything at the time because he was afraid.[34]

On the witness stand, he admitted ownership of the t-shirt and short pants taken from his house but denied having worn them in the afternoon of July 29, 1997. He averred he did not wash them and said that these were hanging for sometime when the police found them. Later, however, he said he hanged said clothes on July 29, 1997.[35]

On January 29, 1999, the RTC convicted appellant as follows:

WHEREFORE, and in the light of all the foregoing considerations, the Court finds that the accused Willerie (Willy) Avendaño is guilty beyond reasonable doubt of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, and Section 6 of Republic Act Number 7659, otherwise referred to as the Death Penalty Law, and is hereby sentenced to DEATH.

The accused is ordered to indemnify the heirs of the victims Remedios Hilario Castillo and Melvin Hilario Castillo in the amount of FIFTY THOUSAND PESOS (P50,000.000) for each victim, and to furthermore pay said heirs the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00) for each victim as and for moral damages.

The Provincial Warden is hereby directed to cause the immediate transfer of the accused from the Provincial Jail at Magbay, San Jose, Occidental Mindoro to the New Bilibid Prisons, Muntinlupa City, Metro Manila.

SO ORDERED.[36]

Hence, this appeal. Appellant, in his brief, assigns the following errors for our consideration:

- THAT THE HONORABLE LOWER COURT ERRED IN GIVING DUE COURSE TO THE TESTIMONY OF JEFFRE (sic) CASTILLO WHO IS ONLY EIGHT YEARS OLD.
- THAT THE HONORABLE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF JEFFRE CASTILLO WHO PLAYS IN THE COURTROOM AND UNMINDFUL OF THE TRIAL AND WHO DOES NOW (sic) UNDERSTAND THE VALUE OF AN OATH.
- THAT THE HONORABLE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF JEFFRE CASTILLO WHO WAS COACHED BY THE FATHER AND MANY RELATIVES.

- THAT THE HONORABLE COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE POLICE OFFICER THAT ACCUSED ADMITTED THE OFFENSE VERBALLY TO HIM.
- THAT THE LOWER COURT ERRED IN NOT TAKING INTO CONSIDERATION THAT THE ACCUSED WAS ARRESTED WITHOUT ANY WARRANT AND PUT TO JAIL UP TO THE PRESENT.
- THAT THE LOWER COURT ERRED IN GIVING DUE COURSE TO THE CONFISCATED T-SHIRT AND SHORT PANTS WHICH THE PROSECUTION CLAIMED TO HAVE BLOOD STAINS WITHOUT LABORATORY EXAMINATION.
- THAT THE TESTIMONY OF THE CHILD IS CONTRARY TO HUMAN BEHAVIOR, EXPERIENCE, OBSERVATION AND NATURAL COURSE OF THINGS.[37]

From the foregoing, the main issue for resolution is whether the prosecution's evidence suffices to convict appellant of murder beyond reasonable doubt, and impose on him the death penalty. We must, for this purpose, inquire (1) whether the testimonies of prosecution witnesses are credible; (2) whether the arrest and the confinement of appellant are legal; and (3) whether the T-shirt and short pants taken from appellant are admissible in evidence.

Appellant assails the credibility of the prosecution's witness, Jeffre Castillo. According to appellant, the boy is only a playful eight-year-old who could not possibly understand the value of an oath. Appellant points out that during Jeffre's testimony, the defense counsel called the attention of the court that Jeffre was playing with a rubber band while testifying and appeared to be inattentive to the questions propounded to him.[38] Moreover, appellant states that Jeffre did not understand his oath because he did not even know his birthday, did not know how to read and write even in Tagalog, and did not know where he was born.[39] According to the appellant, based on these observations, Jeffre's credibility is questionable.

In previous cases, the Court has held that a witness is not incompetent to give testimony simply because he or she is of tender age. The requirements of a child's competence as a witness are: (1) capacity of observation; (2) capacity of recollection; and (3) capacity of communication.[40] It is the degree of a child's intelligence that determines the child's competence as a witness. If the witness is sufficiently mature to receive correct impressions by his senses, to recollect and narrate intelligently, and to appreciate the moral duty to tell the truth, he is competent [41] to testify. A minor's testimony will suffice to convict a person accused of a crime so long as it is credible.[42]

The determination of a child's intellectual preparedness to be a witness rests primarily with the trial judge, who assesses the child's manners, his apparent possession or lack of intelligence, as well as his understanding of the obligations of an oath. These abstract matters cannot be photographed into the record. The judgment of the trial judge will not be disturbed on review, unless from that which is preserved, it is clear that it was erroneous.[43]

In the case at bar, the trial court found that despite Jeffre's age, his testimony was delivered in a firm, candid, and straightforward manner and that his demeanor while at the witness stand was credible.[44] On this point, we see no reason to depart from the evaluation by the trial judge, who had the advantage of directly observing the witness' deportment and manner of testifying, as well as having certain potent aids in understanding and weighing the testimony of the witness.[45]

Moreover, the alleged inconsistencies in Jeffre's testimony were only on minor details and trivial matters that serve to strengthen rather than destroy Jeffre's credibility.

Appellant avers that Jeffre's father and relatives coached him on what to say and that his testimony and identification of appellant appeared rehearsed. He points out that Jeffre's father was allowed to sit near him while

he was testifying. He also places emphasis on the admission made by Jeffre in open court [46] that on several occasions, including the night before he was to testify, his father and relatives talked to him about the case and taught him what to say and who to point to as the culprit. These, according to appellant, strip the testimony of the child of any shred of credibility.

The records of this case, however, do not support appellant's claim. As found by the trial court, Jeffre's testimony was delivered in a firm, candid, and straightforward manner. There is no showing that Jeffre wavered from the basic facts of his testimony, even when he was subjected to rigorous cross-examination.

If we are to believe the defense's assertion that the child was coached before he testified, wouldn't his coaches also teach him to vehemently deny that such was the fact? Being a child of tender age, Jeffre naturally needed guidance to face the ordeal of testifying before the court on a matter as gruesome as the death of his own mother and brother. His spontaneous admission that his elders talked to him beforehand did not diminish, but rather bolstered, his truthfulness. With regard to the proximity of his father to him while he was testifying, the records bear out that the defense had the opportunity to manifest its objection. Such proximity was duly noted by the trial court yet upon its own judgment allowed it, with the observation that any improper behavior would be readily observed by the judge as he was close enough to do so.[47]

When it comes to the issue of credibility, this Court ordinarily defers to the assessment and evaluation given by the trial court, for only the trial judge has the unique opportunity to observe that elusive and incommunicable evidence of the witness' deportment on the witness stand while testifying, an opportunity denied to the appellate courts which usually rely on the cold pages of the records of the case.[48] Only when such assessment is tainted with arbitrariness or oversight of some significant fact or circumstance will the appellate court depart from the trial court's factual conclusions.[49]

The records reveal that the trial court duly noted the objections, closely observed the proceedings, and propounded its own questions to satisfy itself of the accuracy of the witness' testimony. We find no reason to disturb the factual findings of the trial court.

Jeffre's credibility is also being assailed on the ground that his testimony, particularly his reaction to what transpired in his presence, was contrary to human behavior, experience, observation and the natural course of things. Appellant alleges that the natural reaction of a child his age is to be afraid and either shout for his mother or brother or hide, or else run away outside the house. This Court observes that was exactly how this child witness reacted. He was afraid and realized something was definitely wrong, which then prompted him to inch his way to a place where he felt safer and out of harm's way. He hid where he could not be found, in the dark but safe area for pillows, and escaped the bloody carnage that took her mother's and his brother's lives.

We have long recognized that different people react differently to a given situation and there is no standard form of behavioral response when one is confronted with a strange, startling or frightful experience.[50] Witnessing a crime is one novel experience that elicits different reactions from witnesses for which no clear-cut standard of behavior can be drawn.[51] This is especially true if the assailant is physically near.[52] Moreover, it is not proper to judge the actions of children who have undergone traumatic experiences by the norms of behavior expected under the circumstances from mature persons.[53]

Appellant questions the child's testimony with respect to his recognition of the coughing made by the assailant as that of appellant himself. Appellant contends this is unbelievable, and that any identification made in this manner is subject to mistakes.

In *People vs. Reyes*,[54] however, the Court held that once a person has gained familiarity with another,

identification becomes quite an easy task even from a considerable distance. The sound of a person's voice is an acceptable means of identification where it is established that the witness and the accused knew each other personally and closely for a number of years.[55]

In this case, Jeffre has known appellant for about three to four years. The latter lived in the same barangay and his farm was right beside the house where the witness lived. They were in close contact with each other, especially since appellant often came to the house of the Castillos. Such day-to-day familiarity and close proximity lend credence to the child's testimony that he would indeed recognize the distinctive cough of appellant. The child testified that on that fateful night, the assailant coughed not only once but a total of four times. Taking into account all the other circumstances of this case, this Court is convinced that Jeffre's identification of appellant's coughing is credible.

When there is no evidence to indicate that the witness against the accused has been actuated by any improper motive, and absent any compelling reason to conclude otherwise, the testimony given by a witness is ordinarily accorded full faith and credit.[56] As a whole, we find the prosecution's witnesses and their testimonies credible.

With regard to the legality of the arrest and confinement of appellant, it was shown that upon arraignment, appellant voluntarily entered a plea of "not guilty" without first questioning the legality of his arrest. By so pleading, he has submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest. Such act amounted to a waiver of the right to question any irregularity in his arrest.[57]

It was error on the part of the trial court, however, to give probative value to the alleged verbal admission made by appellant to SPO2 Dimalaluan. The alleged admission was not reduced into writing. It was obtained in violation of appellant's right under custodial investigation.[58] As regards the items of clothing as well as the knife found in and taken from the house of appellant, a search warrant should have been obtained as required under Article III, Section 3 (2) of the Constitution.[59] Failing thus, the exclusionary rule applies. Hence neither the knife with scabbard nor the T-shirt with shorts ought to be allowed in evidence.

Appellant denies the commission of the crime and interposes the alibi that he was in his house on the night of July 29, 1996. For alibi to stand, it must be shown that not only was appellant somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed. Appellant failed in this regard. His house was only about 150 to 200 meters from the house of Remedios; it was not impossible for him to have been at the scene of the crime.

Alibi is inherently weak and unreliable, unless corroborated by disinterested witnesses. Since appellant is unable to substantiate his alibi with the testimony of a credible witness, it is reduced to self-serving evidence undeserving of any weight in law.[60]

In sum, we find appellant's defense of denial and alibi unavailing. Given the testimonial evidence for the prosecution which we find credible, we entertain no doubt as to his criminal liability for the death of Remedios and Melvin Castillo. The only remaining question is whether these killings were attended by qualifying and aggravating circumstances.

The qualifying circumstance of treachery was found present by the trial court, resulting in appellant's conviction for two counts of murder. Under the Revised Penal Code, 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." [61] For treachery to exist, two conditions must be found: (1) that at the time of the attack the victim was not in a position to defend himself; and (2) the offender consciously adopted the particular means, method or

form of attack employed by him.[62]

In this case, we find no adequate proof of treachery. Evidence on record does not show that appellant consciously and purposely adopted means and methods to ensure the commission of the crime without any risk to himself. Thus, absent treachery or any circumstance that would otherwise qualify an offense to murder, the crime committed is only homicide. Hence, appellant should only be held for two counts of homicide, not double murder.

The trial court appreciated the aggravating circumstances of nighttime, dwelling, and unlawful entry. Of the three, however, only nighttime was properly alleged in the information. The Revised Rules of Criminal Procedure which took effect on December 1, 2000, requires that every complaint or information should state not only the qualifying but also the aggravating circumstances.[63] This rule may be given retroactive effect in the light of the settled doctrine that statutes regulating the procedure of the court will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense and to that extent.[64] Hence, following this new rule, we cannot appreciate the aggravating circumstances of dwelling and unlawful entry, since they were not alleged in the information.

As to nighttime, this circumstance is considered aggravating only when (1) it was especially sought by the offender; or (2) the offender took advantage of it; or (3) it facilitated the commission of the crime by ensuring the offender's immunity from identification or capture.[65] In this case, the prosecution did not adduce evidence that the appellant deliberately sought the cover of the night to commit the offense. The mere fact that the killing was committed at night would not suffice to sustain nocturnity for, by, and of itself.[66] Aggravating circumstances must be established with the same quantum of proof as fully as the crime itself, and any doubt as to their existence must be resolved in favor of appellant.[67]

At this juncture, we note the observation of the trial court that only one criminal information was filed for the two deaths, in violation of Rule 110, Section 13 [68] of the Rules of Court which mandates that one information for each crime should be filed, except in cases for which the law prescribes a single punishment for various offenses. This observation, however, should not stop the court from imposing a penalty for each crime committed in the light of appellant's failure to object to the defect in the information. As held in *People vs. Ramon*:[69]

Regrettably for the accused-appellant, however, he has failed to timely question the above defect, and he may thus be deemed to have waived his objection to the multiplicity of charges. In *People vs. Conte*, this Court has ruled:

...Under Sections 1 and 3(e) of Rule 117, the appellant, before entering his plea, should have moved to quash the complaint for being duplicitous. For his failure to do so, he is deemed to have waived the defect. Hence, pursuant to Section 3 of Rule 120, the court could convict him of as many offenses as are charged and proved, and impose on him the penalty for each and every one of them. (Citations omitted)

The penalty for homicide is reclusion temporal. There being neither mitigating nor aggravating circumstances, the appropriate penalty therefore is reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, appellant's sentence for each homicide should be an indeterminate penalty of eight years and one day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.

Finally, on the award of damages. For each count of homicide, the award of P50,000 as civil indemnity for the death of the victim, is in accord with prevailing jurisprudence.[70] Given the facts of this case, where mother and son perished in a shocking carnage from numerous wounds inflicted by the malefactor, the amount of P50,000 as moral damages for the death of each victim should also be awarded.

WHEREFORE, the decision of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, in Criminal Case No. R-4227, is hereby MODIFIED. Appellant WILLERIE AVENDAÑO is found GUILTY of two counts of homicide. For each count, there being no aggravating nor mitigating circumstance, he is sentenced to suffer the indeterminate penalty of eight years and one day of prision mayor, as minimum, to fourteen years, eight months and one day of reclusion temporal, as maximum, with all the accessory penalties prescribed by law. Appellant is also ordered to pay the heirs of each victim the amount of P50,000.00 as civil indemnity and another sum of P50,000.00 as moral damages, together with the costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Mendoza, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.
Bellosillo, J., on leave.

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- [1] Rollo, pp. 15-45.
[2] Id. at 6.
[3] TSN, September 23, 1997, pp. 3-8.
[4] Id. at 12-15.
[5] Id. at 15; TSN, October 21, 1997, p.12.
[6] Supra, note 4.
[7] TSN, September 23, 1997, pp. 13-19.
[8] Id. at 19-21.
[9] TSN, October 21, 1997, pp. 16-18.
[10] TSN, September 23, 1997, pp. 7, 8, 22-24.
[11] TSN, October 21, 1997, pp. 6-8.
[12] Id. at 13.
[13] TSN, September 22, 1997, pp. 2-36.
[14] TSN, October 22, 1997, pp. 2-34.
[15] Supra note 13 at 33.
[16] Id. at 23.
[17] Supra, note 14 at 21.
[18] Specifically the dates July 27 & 28, 1997.
[19] TSN, September 22, 1997, pp. 34-35.
[20] Id. at 18-19.
[21] Id. at 30.

- [22] Id. at 6-9.
- [23] TSN, October 22, 1997, pp. 5-11.
- [24] TSN, November 26, 1997, pp. 3-59.
- [25] Id. at 11-17.
- [26] Id. at 18-23.
- [27] Id. at 23-24.
- [28] Id. at 57.
- [29] TSN, January 7, 1998, pp. 2-20.
- [30] Records, pp. 52-53.
- [31] TSN, October 2, 1998, pp. 2-31.
- [32] Id. at 7.
- [33] Id. at 19.
- [34] Id. at 7-12.
- [35] Id. at 21-23.
- [36] Rollo, pp. 44-45.
- [37] Id. at 64-75.
- [38] TSN, September 23, 1997, p. 16; TSN, October 21, 1997, p. 8.
- [39] Id. at 2-3.
- [40] *People vs. Gonzales*, G.R. No. 130507, 311 SCRA 547, 559 (1999).
- [41] *People vs. Pearson*, 126 Ill App. 2d 166, 261 N.E.2d 519.
- [42] *People vs. Tumaru*, G.R. Nos. 95751-52, 319 SCRA 515, 527 (1999).
- [43] *People vs. Mendoza*, G.R. No. 113791, 254 SCRA 18, 32-33 (1996).
- [44] Rollo, p. 42.
- [45] See *People vs. Villanueva*, G.R. No. 122746, 302 SCRA 380, 398 (1999), citing *People vs. Lorenzo*, G.R. No. 110107, 240 SCRA 624, 635 (1995) and *People vs. Malunes*, G.R. No. 114692, 247 SCRA 317, 324 (1995).
- [46] TSN, October 21, 1997, pp. 6-8.
- [47] Id. at 3-4.
- [48] *People vs. Garcia*, G.R. Nos. 137379-81, 341 SCRA 502, 509 (2000), citing *People vs. Castillo*, G.R. No. 130205, 335 SCRA 100, 111-112 (2000) and *People vs. Babera*, G.R. No. 130609, 332 SCRA 257, 266 (2000).
- [49] *People vs. Garcia*, supra at pp. 509-510, citing *People vs. De Guzman*, G.R. No. 124368, 333 SCRA 269, 279-280 (2000) and *People vs. Balgos*, G.R. No. 126115, 323 SCRA 372, 380 (2000).
- [50] *People vs. Palma*, G.R. Nos. 130206-08, 308 SCRA 466, 481 (1999).

[51] *People vs. Reyes*, G.R. No. 120642, 309 SCRA 622, 634 (1999); *People vs. Taclan*, G.R. No. 123109, 308 SCRA 368, 381-382 (1999); *People vs. Palma*, supra; *People vs. Carullo*, G.R. Nos. 129289-90, 311 SCRA 680, 690-691 (1999); *People vs. Quilang*, G.R. Nos. 123265-66, 312 SCRA 314, 327 (1999); *People vs. Sevilla*, G.R. No. 126199, 320 SCRA 107, 114 (1999).

[52] *People vs. Alquizalas*, G.R. No. 128386, 305 SCRA 367, 374 (1999).

[53] *People vs. Villanos*, G.R. No. 126648, 337 SCRA 78, 85 (2000).

[54] Supra, note 51 at 634-635.

[55] *People vs. Gayomma*, G.R. No. 128129, 315 SCRA 639, 646 (1999); *People vs. Preciados*, G.R. No. 122934, 349 SCRA 1, 16 (2001), citing *People vs. Avillano*, G.R. No. 111567, 269 SCRA 553, 561 (1997).

[56] *People vs. Dacibar*, G.R. No. 111286, 325 SCRA 725, 737-738 (2000); *People vs. Galido*, G.R. No. 128883, 326 SCRA 187, 194 (2000); *People vs. Platilla*, G.R. No. 126123, 304 SCRA 339, 351-352 (1999), citing *People vs. Agunias*, G.R. No. 121993, 279 SCRA 52, 65 (1997).

[57] *People vs. Lagarto*, G.R. Nos. 118828 & 119371, 326 SCRA 693, 749 (2000).

[58] See Art. III, Section 12 (1), 1987 Constitution:

SEC. 12 (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

[59] See Article III, Section 3 (2), 1987 Constitution:

SEC. 3. (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[60] See *People vs. Galido*, supra, note 56 at 195-196.

[61] Revised Penal Code, Art. 14.

[62] *People vs. Dacibar*, supra, note 56 at 744.

[63] Rule 110, Section 8 states in pertinent part: Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[64] *Ocampo vs. CA*, G.R. No. 79060, 180 SCRA 27, 33 (1989); *Alday vs. Camilon*, G.R. No. L-60316, 120 SCRA 521, 523 (1983); *People vs. Sumilang*, 77 Phil. 764, 765-766 (1946).

[65] *People vs. De la Cruz*, G.R. Nos. 109619-23, 291 SCRA 164, 185 (1998).

[66] *People vs. Belo*, G.R. No. 109148, 299 SCRA 654, 666-667 (1998).

[67] *People vs. Cayago*, G.R. No. 128827, 312 SCRA 623, 637-638 (1999), cited in *People vs. Cabug*, G.R. No. 123149, March 27, 2001, p.28.

[68] SEC. 13. Duplicity of Offenses. - A complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses.

[69] 320 SCRA 775, 783 (1999); *People vs. Lucena*, G.R. No. 137281, 356 SCRA 90, 105-106.

[70] *Id.* at 107-108; *People vs. Verde*, G.R. No. 119077, 302 SCRA 690, 706 (1999).

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