

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIANO TOYCO, SR., ACCUSED-APPELLANT.

G.R. No. 138609. January 17, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the Decision[1] dated September 18, 1998, of Branch 7 of the Regional Trial Court of Bayugan, Agusan del Sur, convicting accused Mariano Toyco, Sr. of the crime of murder, the dispositive portion of which reads:

"WHEREFORE, viewed from the above insights, this Court finds Mariano Toyco, Sr. guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code.

He is accordingly sentenced:

- 1) to a penalty of Reclusion Perpetua;
- 2) to indemnify the heirs of the victim the amount of P50,000.00;
- 3) to pay the sum of P30,000.00 as exemplary damages;
- 4) to pay P14,500.00 as actual damages;
- 5) to indemnify the heirs of the victim P30,000.00 for moral damages; and
- 6) to pay the costs.

For insufficiency of evidence, the case against Norman and Mariano Toyco, Jr. is DISMISSED.

SO ORDERED."

The information[2] for murder against the accused Mariano Toyco, Sr. and his two sons, Norman and Mariano, Jr. reads -

"That on or about 11:30 o'clock in the evening of January 5, 1995, in the premises and vicinity particularly at Silovia, Talacogon, Agusan del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to kill, conspiring, confederating and helping one another did then and there, willfully, unlawfully and feloniously attack, assault and hack one Jay-Ar Sumadia with the use of a bolo, hitting the victim at the different parts of his body which caused his instantaneous death, to the damage and prejudice of the victim's heirs which damage consists of actual, moral and compensatory damages.

CONTRARY TO LAW. Article 248 of the Revised Penal Code."

The accused were tried after a plea of not guilty.

The prosecution presented one witness, eyewitness Primito Sumadia, the victim's father. On the other hand, the defense offered the testimonies of four witnesses, namely, Eduardo Canones, Bienvenido Escrin, Acroy

Dogmocan, and Norman Toyco. The facts as gathered by the trial court from the testimonies of the said witnesses as well as the documentary exhibits presented were summarized as follows:

"The excerpt of the People's scenario established that Primito Sumadia, the private complainant, was formerly a member of the 56 Infantry Battalion of the Philippine Army. He resigned in 1989 because his wife objected and was averse to his being in the military.

Primito Sumadia, at the time of the incident, had a house beside the road in Km. 1, Silovia, Talacogon. He is married to Leonarda Boneda and they have three children, Jenlyn, Jovilyn and Jay Ar.

The accused are their neighbors for more than a year before 1995, their respective houses distanced only at about 50 meters.

On January 5, 1995 at around 11:30 in the evening while the Sumadia family were at home, accused Mariano Toyco, Sr. and his two sons, Norman and Mariano, Jr., asked for a glass of water. Sumadia did not bother to ask the accused why and where they came from because he knew them. They were not wearing any mask. The three donned white t-shirts and were all barefooted. Mariano, Sr. and Norman were in maong pants. Sumadia commanded his 10 year old son, Jay Ar to give them water. Jay Ar gave the canteen cup to Norman and Mariano, Jr. below at the side of their stairs. When Jay Ar said that the two refused to accept the water, Primito Sumadia told his son to run.

Accused Mariano Toyco, Sr., who was hiding beneath the house, then chased Jay Ar and hacked him with a twelve-inch bolo. Toyco's two sons were only less than a meter. Sumadia jumped from upstairs and chased them but they ran away. He went back to their house to attend to Jay Ar who sustained 6 wounds.

Sumadia, with Eduardo Canones' assistance, brought Jay Ar to the Provident Tree Farm Clinic in their motorized vehicle but since the victim could not be attended to for lack of facilities, Sumadia was advised to bring his son to Patin-ay Provincial Hospital. After Jay Ar was examined in Patin-ay, however, he died. Sumadia cannot fathom, comprehend or divine of any explanation why his son was killed by the accused. In fact, Jay Ar used to play with the Toyco children.

Sumadia reported the abomination to the police of Talacogon on January 12, 1995, after his son's burial.

To brace their asseverations, the prosecution put up the following documentations:

- 1) Testimony of Complaining witness Primito Sumadia;
- 2) Exhibit "A" - Death Certificate of Jay Ar Sumadia;
- 3) Exhibit "B" - Joint Affidavit of Primito Sumadia and Leonarda Sumadia.

Determined to impugn and overturn the evidence for the prosecution, one of the three accused, Norman Toyco took the witness stand. He testified that, at 8:00 o'clock in the morning of January 5, 1995, he and his co-accused brother, Mariano Toyco, Jr., were at the rice field of Eduardo Canones planting rice. They finished their job at 11:00 o'clock that morning, went home to rest, ate their lunch and rest again. Together with fellow worker Mario Lumbago, Norman and Mariano, Jr. started threshing palay at 2:00 o'clock that afternoon until past 4:00. They then proceeded to the owner of the threshed palay at Purok 5, got their compensation, bought viand and came home after 6:00.

Norman, Mariano, Jr. and Lumbago slept in one room at past 8:00 that evening. His parents, sisters were also there but his father, Mariano Toyco, Sr., slept in the sala because their house had no division.

Tired from their work the previous day, they woke up late. Norman was surprised upon seeing many people in their house and that of the Sumadias. Their respective abode are only less than 100 meters apart.

Norman went near the house of the Sumadias. He came to know that Jay Ar was hacked and an investigation

was conducted. He saw Leonarda, Toyco's wife, some of their farm laborers and Barrio Kagawad, Dodong Magdasal. Norman, beside Magdasal, heard Leonarda say that she did not recognize the assailant because it was dark and they had only one kerosene lamp. Norman did not stay long because he was requested by Leonarda Sumadia to accompany the farm laborers to their rice field. Norman learned of his father's arrest through people when they passed by Purok 6.

Norman knew personally Jay Ar because the latter used to visit their house daily to play with his younger sister Lalay, 8 and brothers, Nitoy and Cocoy, ages 7 and 5, respectively. The Sumadias are related to them by blood through his mother side. He suspected that the Sumadias filed this case against them because of their failure to render help and assistance during the incident.

Defense witness, Bienvenido Escrin, averred that, at 9:00 o'clock in the morning of January 5, 1995, while he was in his house at Purok 5, Silovia, Talacogon, he saw 4 people drinking in a nearby store owned by a former Talacogon Councilor Muntajos. He recognized the four as Romulo Potenciano, Berto Petronilo, Jessie Amado and Acoy Dogmocan. Seeing that they were bringing bolos and observing their actuations to be different, Escrin warned them not to do anything. Escrin even confiscated Berto Petronilo's bolo. After finishing their drinking, the four went away.

Escrin proceeded to the nursery at the mountain to visit his men and to check the sawn log products. He waited for his men until 9:00 o'clock in the evening then left for home. He was only hiking and the nursery was about 12 kilometers from his residence. When Escrin reached Purok 6, kilometer 1, at around 11:00 that evening, he heard men voices. Escrin saw Romulo Potenciano asking for a glass of water at the Sumaria residence. He saw a child, bringing light, handed the glass.

After Romulo Potenciano drank the water, he hacked the child twice, one in the head and the other, in the arm. Escrin was only fifteen meters from Potenciano.

Potenciano was with Acoy Dogmocan, Jessie Amado and Berto Petronilo. The three were only 8 meters away from Potenciano. When they heard Primito Sumadia's shout, the three ran away. The mother of Acoy Dogmocan is his niece.

Escrin admitted, professed and confessed that he executed an Affidavit regarding the gory incident on August 22, 1996 only because 3 days thereafter, he left for Davao City to stay with his son, who was studying as a seaman and also, to rest. All these, not to mention his having secured employment in a banana plantation, made him come home in May, 1996.

Escrin knew Primito Sumadia 3 years before January 5, 1995 but he did not bother to see the Sumadias, any member of his family or the Barrio Captain. He did not go to the police station to report the incident, either. The reason advanced was that he was afraid and wanted to avoid trouble.

On August 20, 1996, he saw Mariano Toyco, Sr. near the plantation of the Philippine match building bringing firewood together with fellow prisoners. Toyco told him that he was a suspect of the hacking incident.

Thereupon, Escrin went to Patin-ay headquarters on August 22, 1996 to have his statements taken on what he witnessed that evening of January 5, 1995

Acoy Dogmocan, a resident of Kumota, La Paz, was in Silovia at 9:00 in the morning of January 5, 1995 just to roam around. It was his first time to be at Silovia although he has a relative in the place named Carding Dogmocan. Dogmocan met Romulo Potenciano and together with Berto Petronilo, they were drinking.

Romulo Potenciano got wild because of his conflict with one Romeo Jumayan whom he hacked the previous day.

At about 11:00 o'clock that evening, Dogmocan saw Romulo Potenciano hacked Jay Ar. He was only 5 meters distance, more or less, from the locus criminis. He does not know why the child was hacked but before that,

Potenciano and Petronilo asked for a glass of water. Dogmocan does not know the owner of the house but it was located at Purok 6. A child carrying a pitcher and a kerosene lamp was the one who gave the water.

The victim was hit twice. The child was able to shout. Upon hearing the shout, the child's father, whose name he does not know even up to the present, chased him and Potenciano.

Dogmocan has not executed any Affidavit to support his avowals because of fear. However, when he met Toyco in 1997 in jail, where he is also confined for charges of Murder, he decided to testify.

The last witness for the Defense is Eduardo Canones. He is a Kagawad of Barangay Silovia, Talacogon, a Production Supervisor and Chief Concession Guard.

Canones said that on January 5, 1995 at around 12:00 in the evening, he was in his house situated at Purok 6, Silovia. He was awakened by Primito Sumadia, with 2 companions, Florencio Dohoy and another whose name he forgot, requesting him to bring Jay Ar to the clinic of PTFI.

On their way to the checkpoint, Canones asked Primito Sumadia who hacked his son. He got a negative answer from Sumadia.

The child, after being given first aid at the clinic, was brought by them to Patin-ay.

As chairman of the Committee on peace and order of their Barangay, he investigated the case on January 6 by going to the victim's house at 8:00 in the morning. Canones queried Mrs. Sumadia anent the identity of the culprit but she answered that she does not know. He prepared an "Incident Report" and submitted the same to the Barangay Office. The Report, among others, stated that the culprit is "un-identified".

The following exhibits were tendered:

1) Exhibit "1" and series

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Incident Report;

2) Exhibit "2" and series

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Sworn Statement of Bienvenido Escrin;

3) Exhibit "3"

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Subpoena issued by Prosecutor Diaz dated January 18, 1995.

Undoubtedly, a crime has been perpetrated that evening of January 5, 1995 at Km. 1, Silovia, Talacogon, Agusan del Sur - the butchery of Jay Ar Sumadia.[3]

The trial court believed the version of the prosecution and accordingly found accused Mariano Toyco, Sr. guilty of murder. His two sons were acquitted for insufficiency of evidence. Mariano Toyco, Sr. is now before this Court raising the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF LONE PROSECUTION WITNESS PRIMITO SUMADIA DESPITE THE OVERWHELMING EVIDENCE ON RECORD SUSTAINING A CONTRARY FINDING.

II

THE COURT A QUO LIKEWISE ERRED IN NOT FINDING AS CREDIBLE THE TESTIMONIES OF DEFENSE EYEWITNESSES, BIENVENIDO ESCRIN AND ACOY DOGMOCAN, WHO POSITIVELY IDENTIFIED A CERTAIN ROMULO POTENCIANO AS THE REAL CULPRIT OF THE DASTARDLY KILLING.

III

THE COURT A QUO, MOREOVER, COMMITTED A REVERSIBLE ERROR IN DISCARDING THE DEFENSES OF DENIAL AND ALIBI RAISED BY THE ACCUSED-APPELLANT, ALTHOUGH THE PROSECUTION'S EVIDENCE IS PATENTLY WEAK.[4]

Basically, appellant's assignment of errors is focused on the trial court's assessment of the credibility of the prosecution's lone eyewitness, Primito Sumadia. According to him, the trial court should have given credence instead to the testimonies of the defense witnesses. He points out that Norman Toyco corroborated his father's defense of denial and alibi; Bienvenido Escrin identified a certain Romulo Potenciano as the killer; Acoy Dogmocan likewise disclosed that it was Romulo Potenciano who killed the boy; while Eduardo Canones testified that when he assisted Primito in bringing the wounded Jay Ar to the clinic, the latter intimated that he had no idea who did the dastardly act and that the next morning when he inquired from Leonarda Sumadia, mother of Jay Ar, she likewise said that she did not know the identity of the killer. Appellant contends that the statements of Primito and Leonarda to Bienvenido are admissible as part of the *res gestae* and should be accorded greater probative value.

Appellant's submissions fail to persuade. The trial court, which had the opportunity of observing the demeanor of the witnesses on the stand, was convinced of the truthfulness of prosecution witness Primito Sumadia's testimony and not that of the defense witnesses. We find no reason to reverse or alter the evaluation of the trial court, reiterating the time tested doctrine "that a trial court's assessment of the credibility of a witness is entitled to great weight - even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence." [5]

In giving full faith and credence to the testimony of prosecution witness Primito Sumadia over those of defense witnesses Bienvenido Escrin, Acoy Dogmocan, Eduardo Canones and Norman Toyco, the trial court observed that Primito positively identified appellant as the perpetrator of the crime. Primito was positive that appellant was the assailant because he knows him having been neighbors for a year, their houses being less than 100 meters apart. The trial court further noted that no reason or motive has been shown to doubt the truthfulness of Primito other than his sincere and unadulterated desire to seek justice for his slain 10-year old son.

In any event, a thorough evaluation of the transcript of stenographic notes indicates that Primito Sumadia testified in a candid and straightforward manner as follows:

"Q: Now, can you recall where were you on January 5, 1995 at about 11:30 o'clock in the evening?

A:

I can recall, sir.

Q: Where were you?

A: In our house.

Q: Where is your house located?

A: Beside the road, sir.

Q: Particularly in what place?

A: In Km. 1.

Q: In what Barangay and Municipality?

A: Zellovia, Talacogon, Agusan del Sur.

Q: Who were your companions in the house at that time?

A: My wife and my children, sir.

Q: What is the name of your wife?

A: Leonarda Bonida Sumadia.

Q: Your children, how many of them?

A: Three (3), sir.

Q: Please mention their names?

A: Jay Ar Sumadia, sir, the victim in this case, Jennlyn and Jovilyn.

Q:

And while you were in your house at about 11:30 o'clock in the evening, of January 5, 1995, could you recall of any unusual incident that happened?

A: There were persons who asked for a drink of glass of water.

Q: Who were those persons if you know?

ATTY. CAUPAYAN:

May we request, your Honor, that the witness will first answer the question.

COURT:

That's why.

ANSWER:

His two sons, Norman Toyco and Mariano Toyco, Jr.

PROSECUTOR PAG-ONG:

Q: When you mentioned "his" to whom are you referring to?

A: Mariano Toyco, Sr.

Q:

When you mentioned of Norman Toyco and Mariano Toyco, Jr. are you referring to the two accused Norman Toyco and Mariano Toyco, Jr.?

A: Yes, sir.

Q: What did you do when Norman Toyco and Mariano Toyco, asked for a drink of water?

A: I commanded my child to get a glass of water to be given to them.

Q: Who is that child of yours?

A: Jay Ar, sir.

Q: How old is that son of your Jay Ar?

A: Ten (10) years and five (5) days.

Q: Now, did your son Jay Ar give water to the two accused as commanded by you?

A: Yes, sir.

Q: Now, where particularly in your house did your son Jay Ar give the water?

A: Below upstairs, at the side of the stairs.

Q:

Now, what happened if any when your son Jay Ar gave the glass of water to Norman Toyco and Mariano Toyco, Jr.?

A:

My child said that the two persons did not accept the glass of water and so I told my son to run and that was the time that Mariano Toyco, Sr. who was hiding beneath the house and chased my son and hacked him.

COURT:

Let us clarify this. Glass of water or glasses of water? How many?

PROSECUTOR PAG-ONG:

Q: How many glasses of water did your son Jay Ar gave the accused?

A: It is a canteen cup, sir.

Q: Now, who hacked your son Jar Ar?

A: It was Mariano Toyco, Sr.

Q:

At the time Mariano Toyco, Sr. hacked your son where were the two other accused, his sons Norman and Mariano Toyco, Jr.?

ATTY. CAUPAYAN:

Your Honor please, we request that the witness be admonished to answer the question. The answer is not responsive to the question, your Honor.

ANSWER:

Beside the house, sir, they were running.

PROSECUTOR PAG-ONG:

Q:

When Mariano Toyco, Sr. hacked your son Jay Ar, how far were his sons, Mariano Toyco, Jr. and Norman Toyco to the place where the hacking took place?

A: Less than a meter, sir.

Q: Now, upon seeing Mariano Toyco, Sr. hacked your son Jay Ar, what did you do, if any?

A: Since I was upstairs, I went around and jumped and chased them.

Q: Were you able to catch up the accused?

A: No, sir, because they ran away.

Q: Because you failed to catch up the accused, what did you do?

A: I went back to our house to save the life of my son.

Q: How many times did Mariano Toyco, Sr. hacked your son Jay Ar?

A: My son sustained six wounds.

Q: What weapon was used?

A: A bolo, sir.

Q: Could you described the Honorable Court that bolo?

COURT:

How many inches? Twelve inches?

PROSECUTOR PAG-ONG:

Yes, your Honor."[6]

The foregoing testimony clearly shows that Primito was present at the locus of the crime and was able to identify the appellant as the assailant. The details of the incident were narrated in a simple, candid and straightforward manner that they could not have been fabricated or concocted. There is thus no doubt in the mind of this Court that Primito Sumadia who was steadfast in his testimony throughout the trial is credible.

The nine-day delay in reporting to the police the murder of his son as pointed out by the defense is not too significant as to give rise to any doubt on the veracity thereof. It has been adequately explained by the prosecution that the family of the slain son opted to wait until after the burial to report the same, which is understandable under the circumstances.

As regards the contention that Primito is an interested or biased witness being the father of the victim, this Court has held that, "[b]lood relationship between a witness and the victim does not, by itself impair the credibility of witnesses. On the contrary, relationship strengthens credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit. The earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence and blame one who is innocent of the crime." [7] In the instant case, we agree with the trial court's observation that Primito was impelled by a natural desire to seek justice for his son.

As for the testimonies of the defense witnesses, we agree with the trial court's evaluation thereof as follows:

"x x x, after an in-depth assay, evaluation and assessment of the above mise-en-scene, it is the sense of the Court that the evidence of the Defense is lacking in persuasiveness.

At the first place, the "Investigation Report" of Eduardo Canones was undated. He could have prepared it at any time to tailor to the Defense' stance. His apparent closeness and attachment to the Toycos could be

manifested by his Affidavit of Recognizance dated April 29, 1996 for accused-minor Norman Toyco to be placed in his custody (see p. 49 of case folio and Court Order dated May 3, 1996).

The Court in the same breath, is not impressed by Bienvenido Escrin's claim that his failure to effectuate a Sworn Statement regarding the incident, despite his still being in Silovia three days after its occurrence, was due to fear. His testimonies are punctured with serious doubts and are composites of half-truths and innuendoes equally subversive of the truth.

Acoy Dogmocan said that it was his first and only occasion to be in Silovia that January 5, 1995. How convenient! This and his averment of not executing an Affidavit, due to fear and of being implicated, are falsehoods being hoisted on the Court. They do not sway. In fact, Dogmocan's credibility is open to dangerous implications - not to mention that he himself has a pending case for Murder (Crim. Case No. 1045).

x x x x x x x x.

It is as plain as one's nose in the face that accused Norman Toyco's defense for himself, his father and Mariano, Jr. is Denial and Alibi. He asseverated that the whole evening of January 5, 1995, the three of them, together with the other members of the family, were at home. They slept at past 8:00. As a matter of fact, they woke up late in the morning of January 6, 1995 because of their burdensome work the previous day in the ricefield.

Alibi is defense inherently weak. It can easily be contrived and may only be accepted with great caution and not with precipitate credulity. In the case at bar, Norman Toyco's alibi, which is uncorroborated, does not inspire a scintilla of belief. His acknowledgment that their house and that of the Sumadias are merely less than 100 meters apart (TSN, p. 5, direct of Norman Toyco, Dec. 8, 1997) should be given great weight. They being neighbors at such a short distance, it would not be physically impossible for the accused to be at the crime scene that evening of January 5, 1995."^[8]

Evidently, the defense sought to establish the innocence of appellant by four witnesses vis-a-vis that of the prosecution's lone eyewitness. Nevertheless, it is axiomatic that truth is established not by the number of witnesses but by the quality of their testimonies.^[9] The testimony of a single witness if positive and credible is sufficient to support a conviction even in charge of murder.^[10] Moreover, appellant's twin defenses of denial and alibi have been consistently classified by the Court as weak. For alibi to prosper, the accused must establish the physical impossibility of his presence at the scene of the crime at the time of its commission.^[11] Appellant who claimed to be asleep in his house which is less than a hundred meters from where the crime happened has not shown said physical impossibility.

However, we note that the trial court convicted appellant of murder without stating the circumstance which qualifies the killing to murder. Nevertheless, it readily appears that alevosia attended the killing of 10-year old Jay Ar Sumadia, for the bolo attack upon the unarmed child-victim was sudden and unexpected, without any chance of defending himself. The essence of treachery is the sudden and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim.^[12]

Be that as it may, alevosia cannot be used to qualify the killing to murder. While the information charged appellant with murder, it contained no allegation of treachery. Where treachery was not alleged in the information, it cannot be used to qualify the killing to murder.^[13] Accordingly, treachery in this case may be treated only as a generic aggravating circumstance.^[14] In addition, while the information alleged that the killing was committed at 11:30 o'clock in the evening, there is no showing that nocturnity was deliberately sought to facilitate the commission of the crime. It is settled that by and itself, nighttime is not an aggravating circumstance. It becomes so only when it is especially sought by the offender, or taken advantage of by him to facilitate the commission of the crime or to insure his immunity from capture.^[15]

Thus, the appellant should be convicted only of homicide under Article 249^[16] and not of murder under Article

248[17] of the Revised Penal Code. The penalty for homicide is reclusion temporal the range of which is twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence law and with the aggravating circumstance of alevosia, without any mitigating circumstance, the maximum of the penalty to be imposed shall be taken from the maximum period of reclusion temporal which is from seventeen (17) years, four (4) months and one (1) day to twenty (20) years, while the minimum shall be taken from the penalty next lower in degree which is prision mayor or from six (6) years and one (1) day to twelve (12) years, in any of its periods.[18] Consequently, we impose upon appellant an indeterminate prison term of eight (8) years, four (4) months and twenty (20) days of prision mayor medium as minimum, to seventeen (17) years, six (6) months and twenty (20) days of reclusion temporal maximum as maximum.

As for the damages, the trial court ordered the appellant to pay the heirs of the victim the following amounts: P50,000.00 as indemnity; P30,000.00 as exemplary damages; P14,500.00 as actual damages; P30,000.00 for moral damages; and to pay the costs.

Consistent with prevailing jurisprudence, we sustain the award of P50,000.00 to the heirs of Jay Ar Sumadia as indemnity for his untimely demise.[19] We cannot, however, sustain the award of actual damages in the amount of P14,500.00. To seek recovery of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party. There is no such proof to sustain the award of actual damages other than the testimony of the sole prosecution witness. The prosecution did not present any receipt or other evidence to support the claim. We sustain the award of moral damages in the amount of P30,000.00 considering that there is evidence that the father experienced moral suffering.[20] Moral damages may be awarded in favor of the heirs of the victim upon sufficient proof of "physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.[21] As the aggravating circumstance of treachery attended the commission of the crime, the award of exemplary damages pursuant to Article 2230 of the Civil Code is sustained, [22] however, the amount is reduced to P20,000.00 in accordance with prevailing jurisprudence.[23]

WHEREFORE, the appealed DECISION is MODIFIED. Appellant Mariano Toyco, Sr. is hereby CONVICTED of homicide. Applying the Indeterminate Sentence Law, Appellant Toyco, Sr. is SENTENCED to serve eight (8) years, four (4) months and twenty (20) days of prision mayor medium as minimum, to seventeen (17) years, six (6) months and twenty (20) days of reclusion temporal maximum as maximum and ordered to pay the heirs of the victim P50,000 as death indemnity, P30,000.00 as moral damages and P20,000.00 as exemplary damages.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Per Judge Zenaida P. Placer, Rollo, pp. 10-22.

[2] Rollo, pp. 2-3.

[3] Rollo, pp.64-70.

[4] Rollo, pp. 44-45.

[5] People vs. Reduca, G.R. Nos. 126094-95, January 21, 1999; People vs. Benito, G.R. No. 128072, February 19, 1999.

[6] TSN dated August 26, 1996, pp. 4-8.

- [7] People vs. Realin, G.R. No. 126051, January 21, 1999.
- [8] Rollo, pp. 71-73.
- [9] People vs. Benito, G.R. No. 128072, February 19, 1999.
- [10] Ibid.
- [11] People vs. Quinao, 169 SCRA 495 [1997].
- [12] People vs. Oliano, 287 SCRA 158 91998).
- [13] People vs. Salazar, 277 SCRA 252 (1997).
- [14] People vs. Agunias, 279 SCRA 52 (1997).
- [15] People vs. Amamangpang, 291 SCRA 638 (1998).
- [16] Article 249. Homicide. - Any person who, not falling within the provisions of Article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and punished by reclusion temporal.
- [17] Article 248. Murder. -Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:
- With treachery, 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.
- [18] Austria vs. Court of Appeals, 273 SCRA 296 (1997).
- [19] People vs. Cayabyab, G.R. No. 123073, June 19, 1997; People vs. Sol, G.R. No. 11850, May 7, 1997.
- [20] People vs. Adora, 275 SCRA 441 (1997).
- [21] People vs. Zamora, 278 SCRA 60 (1997).
- [22] People vs. Nialda, G.R. No. 115946, April 24, 1998.
- [23] People vs. Gutierrez, Jr., G.R. No. 116281, Feb. 8, 1999.

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