

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NIÑO GARIN, APPELLANT.

G.R. No. 139069. June 17, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an appeal of the Decision of the Regional Trial Court of Caloocan City, Branch 127, convicting the appellant, Niño Garin, of murder and sentencing him to suffer the penalty of reclusion perpetua.

The Information against the appellant reads:

That on or about the 3[rd] day of April 1997 in Caloocan City, M.M. and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with deliberate intent to kill, treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously stab one ELEAZAR GALANG, thereby inflicting upon the victim serious physical injuries which injuries caused his death.

CONTRARY TO LAW.[1]

Upon arraignment, the appellant, assisted by counsel, entered a plea of not guilty.[2]

The Case for the Prosecution[3]

Eleazar Galang, a fourteen-year-old student, lived with his parents at Barangay 176, Zone 15, Phase 8-C, Lot 19, Block 5, Bagong Silang, Caloocan City.[4] His father eked out a living as a Metro Aide,[5] while his mother, Florencia, was a plain housewife.[6]

In the afternoon of April 3, 1997, Eleazar and his younger brother Mario, along with their friends Jonathan, Demdem, Ikot, and Marlon,[7] went swimming in a river at Phase 7, Bagong Silang, Caloocan City, to beat the scorching heat of the noonday sun.[8] As they were bathing in the river at around 3:30 p.m., they espied the appellant, a toughie in the community, and his notorious friends[9] coming towards their direction.[10] Sensing danger, the boys hurriedly came out of the water half-naked, and made a dash for safety uphill, leaving behind Eleazar, who opted to get dressed first. Mario, realizing that he had left his older brother behind, stopped short and waited for the latter.[11]

Meanwhile, the appellant slowly[12] approached Eleazar, drew out his seven-inch butcher's knife[13] and poked it at the latter.[14] Eleazar attempted to break away and run for his life, but he lost his balance, causing him to fall prostrate on the ground.[15] Seeing Eleazar's hapless condition, the appellant seized the moment, went on top of the victim's back, and stabbed him.[16] Mario, who was about six to seven meters away, could only watch helplessly at his kuya being mercilessly stabbed to death by the appellant.[17]

Thereafter, the appellant dismounted from Eleazar, checked out his victim, looked at Mario and shouted in the vernacular "Boy, ang kapatid mo patay na, doon mo siya makikita sa ilog." (Your brother is dead, you'll see him in the river).[18]

Whereupon, Mario ran home and related the incident to his parents.[19] Upon hearing the terrible news, the latter immediately proceeded to the place where the aforesaid incident took place, and found the bloodied corpse of Eleazar sprawled by the riverbank. Florencia could not believe her eyes. She embraced the lifeless body of his son.[20] They got a tricycle and brought the victim to the Tala Hospital, where he was pronounced dead on arrival.[21] The victim's father reported the incident to the Caloocan Police Station 6.[22]

The cadaver was autopsied at the St. Matthew Funeral Homes by Dr. Dominic Aguda, a Medico-Legal Officer of the National Bureau of Investigation. His post-mortem examination showed the following findings:

Cyanosis, lips and fingernail beds

Brain – pale

Heart – chambers, contain a small amount of clotted blood

Stab wound

- 2.5 cms. gaping, located at the back, right, 6.0 cms. from the posterior median line, 115.0 cms. from the right, one end is sharp, the other is contused, directed forward then upwards, involving the skin, causing a clean-cut fracture on the 11th rib, posterior entering the right thoracic cavity and severing the lower lobe of the right lung with a depth of 8.0 cms.

Hemothorax – 2,000 cc.

Visceral organs – pale

Stomach – 1/3 filled with partially digested food particles

...

CAUSE OF DEATH:

STAB WOUND, BACK, RIGHT[23]

Dr. Aguda opined that the assailant used a sharp, single-bladed instrument. He added that the assailant must have been behind the victim at the time the stabbing occurred, considering that the stab wound was located at the back. The doctor could not tell, however, whether the assailant was a southpaw or right-handed.[24]

Florencia Galang, the bereaved mother of the victim, testified that she experienced anxiety by reason of her son's death. The entire family felt despondent and could not accept that Eleazar was no longer with them.[25] For the week-long wake, they spent P5,000.[26] As shown by the certification of St. Matthew Funeral Homes, the Galangs spent P12,500 for funeral services.[27] They paid the amount of P1,500 to El Ruaro Funeral Homes where the cadaver was first brought. They also spent P12,000 for the burial lot, and paid P800 for vehicles they hired during the occasion. However, no receipts were issued for these amounts.[28]

Meanwhile, the appellant could not be located. In February 1998, the appellant was arrested for illegal possession of firearm and detained in the Caloocan City jail for investigation. When the Galangs learned of the appellant's arrest, they wasted no time and proceeded to the police station. Florencia and Mario executed their respective Sinumpaang Salaysay[29] before SPO1 Emilio B. Mabalot concerning the stabbing incident. After the usual preliminary investigation, Assistant City Prosecutor Aurelio R. Ralar, Jr. recommended the filing of an information for murder against the appellant.[30]

The Case for the Appellant[31]

Appellant Niño Garin claimed that he was born on June 5, 1981 and adduced in evidence a birth certificate under the name of "Noe Garing." He denied any participation in the crime, contending that he was misidentified as the culprit. He added that he did not know the Galang family from Adam.[32]

The appellant testified that he was seventeen years old. At about 1:00 p.m. on April 3, 1997, he went on swimming with his barkadas, Larry Perito, Jeffrey Mendoza, Junior Bron and Dennis Manalo, at the neighboring Barangay of Tungko, San Jose del Monte, Bulacan. After an hour of swimming in the river, they headed for

home. Along the way, they indulged picking mangoes from trees. When they reached Phase 7, Bagong Silang, Caloocan City, at about 3:00 p.m., they passed by a teenage boy who turned out to be Eleazar, fetching water from an artesian well. One of their companions, Dennis, played with Eleazar but before they knew it, the two were already quarreling with each other. Eleazar punched Dennis, who retaliated. But, when Eleazar was about to hit Dennis with his pingga (a carrying pole), the appellant intervened to separate the protagonists.[33]

Meanwhile, Eleazar's father, angered by what he saw, immediately stepped out of his nearby house and called for reinforcements. Moments later, ten persons, eight males and two females, who were all armed, ran after them. He and his companions ran downhill, jumped into the water and swam away for safety. Children who were also bathing in the river panicked and hurriedly got out of the water.[34]

Across the river, the appellant and Larry stopped. They saw a man approach Eleazar, and suddenly stab the latter. Thereafter, the assailant dumped Eleazar's body in the river and shouted, "Maghanda na kayo ng kabaong" (Better be ready with a coffin).[35] When the dust settled down, he passed the day at Larry's place. Thereafter, Larry saw him off to his house.[36]

Larry Perito corroborated the appellant's testimony and recounted that he himself saw Eleazar being stabbed by an unidentified assailant. He was with the appellant from the time they went swimming, up to the time of the commotion and the stabbing and, thereafter, the two of them stayed in their house. When they crossed the river after being chased by a number of armed persons, he and the appellant stopped uphill. When they looked back, they saw the assailant stab Eleazar at the back. Eleazar was then naked and in the process of putting on his shorts. After stabbing Eleazar, the assailant threw the poor boy's body onto the river. Thereafter, the assailant shouted at them, saying, "Be ready with a casket." Before they proceeded home, he saw someone take Eleazar's body out of the water. Upon returning home, he reported the incident to their purok leader and the police authorities. He accompanied the lawmen to the place of the incident and, thereafter, to the house of the assailant. When they reached the latter's house, they were too late because the assailant was no longer around.[37] He described the killer as "Kulot, maitim, semi-flat top, long hair up to the nape and a small person with a muscular body." [38]

Rosario Sabalza, a vegetable vendor, corroborated Larry's testimony. On the same afternoon that Eleazar was killed, at about 3:30 p.m., while washing her goods, she saw the lifeless body of a boy floating on a river very near her house. At the same time, she saw a man wielding a knife walking away from the cadaver. She saw the assailant, but the latter's back was turned against her. She was, however, certain that it was not the appellant.[39] The appellant did not fit the description of the killer: "maitim na mama (black man), pandak (short), and medium built." [40] After the killer left, she asked someone to report the crime to the barangay and to take the body out of the water.[41] She volunteered to testify because she was sympathetic to the appellant's plight.[42]

Rodrigo Resurreccion, a barangay purok leader, was the last to testify for the defense. He testified that when he got wind of the incident in the late afternoon of April 3, 1997, he recorded the same in the barangay blotter. The next day, policemen came into his house, and the victim's father asked to be accompanied to the crime scene. He was also told that it was a person with an alias "Togo" who killed the child. They proceeded to the crime scene and, thereafter, to the suspect's place, but the latter was, by then, nowhere to be found.[43]

After trial, the lower court, in its Decision[44] dated June 2, 1999, convicted the appellant of murder qualified by treachery. The dispositive portion of the decision reads:

WHEREFORE, premises considered, and the prosecution having established the guilt of Accused NIÑO GARIN @ NIÑO GALIS of the crime of Murder as defined and panalized (sic) under Art. 248 of the Revised Penal Code, as amended by RA 7659, this Court, in the absence of any generic aggravating or mitigating circumstance, hereby sentences him to suffer the penalty of Reclusion Perpetua; to indemnify the legal heirs of

the deceased the civil indemnity of P50,000.00; to pay the private complainant actual damages of P12,500.00 plus moral damages of P60,000.00 and to pay the costs without any subsidiary imprisonment in case of insolvency.

The preventive imprisonment suffered by the Accused shall be credited in full in the service of his sentence in accordance with Article 29 of the Revised Penal Code.

SO ORDERED.[45]

In convicting the appellant, the trial court gave full credence to the eyewitness account of the victim's brother, Mario Galang, who positively identified the appellant as the killer. The court a quo also noted that the medical findings jibed with Mario's narration. The court made short shrift of the defense of denial raised by the appellant for being weak, and concluded that the killing was qualified by treachery, because the victim was totally defenseless and had no opportunity to defend himself or to retaliate when stabbed.

Hence, this appeal.

The appellant seeks a reversal of the appealed decision asserting as follows:

I

THE TRIAL COURT ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF TREACHERY IN THE CASE AT BAR.

II

ASSUMING THE ACCUSED-APPELLANT IS GUILTY, HE SHOULD ONLY BE HELD LIABLE FOR THE CRIME OF HOMICIDE AS THE AGGRAVATING CIRCUMSTANCE OF TREACHERY WAS NOT ALLEGED WITH SPECIFICITY SO AS TO QUALIFY THE KILLING TO MURDER PURSUANT TO SECTIONS 8 AND 9 OF THE REVISED RULES ON CRIMINAL PROCEDURE.[46]

In criminal cases, an appeal throws the whole case open for review and the appellate court may correct such errors it may find in the appealed judgment, even if they have not been specifically assigned.[47] Thus, the Court shall address the following matters: (1) the sufficiency of the prosecution's evidence; (2) the presence of qualifying circumstances; (3) the award of damages; and, (4) the proper penalty.

The Sufficiency of the Prosecution's Evidence

We have carefully examined the records of the case and find no cogent reason to disturb the findings of the trial court that the appellant is guilty beyond reasonable doubt of killing Eleazar Galang. A detailed account of the killing was furnished by the fourteen-year-old prosecution eyewitness, Mario Galang. His testimony regarding the identity of the assailant, the assault, and the weapon used, was direct, positive and categorical. Thus, Mario testified:

Prosecutor Sison/Witness:

...

q In the stabbing incident, will you tell the Honorable Court how it happened?

a While taking a bath at the river, the group of Niño Garin came and then we decided to get dress (sic).

q After dressing up, what happened?

a Niño Garin approached my brother and drew out a knife and poked it to my brother, Sir.

q And then what happened?

a “Nagpumiglas ang kuya ko, at nadapa po siya.”

q What happened after that?

a That was the time he stabbed my brother, Sir.

q While your brother was on the ground?

a Yes, Sir.

q How did your brother fall, is (sic) it face down?

a Face downward, Sir.[48]

...

q What part of the body was hit by that stab thrust?

a At the back, right side, Sir.

q Was that (sic) followed by other stab thrust?

a Only one, Sir.[49]

...

COURT

q

We go back to that time you left your brother after Niño Garin stabbed your brother, did the accused say anything?

a

When he saw me uphill, he said, “Boy, ang kapatid mo, patay na, doon mo siya makikita sa ilog.”[50]

q Mr. Witness, can you describe the weapon used by accused Niño Garin in stabbing your brother?

a Butcher’s knife, Sir.

q Can you demonstrate how long is (sic) that knife used by Niño Garin?

a (Witness demonstrating about 7 to 8 inches.)[51]

And on cross-examination, he elaborated as follows:

Atty. Espa/Witness:

q How long did you know the accused, Niño Garin?

a Two (2) years, Sir.

q At the time you allegedly saw your brother being stabbed by the accused, Niño Garin also saw you, isn’t it?

a Yes, Sir.

q How far were you then from the position where your brother was stabbed?

a About 5 to 6 meters, Sir.[52]

Not only was Mario's testimony convincing and unequivocal, the same was backed up by the physical evidence, which is a mute but eloquent manifestation of truth.[53] The congruence between the testimonial and the physical evidence leads to the inevitable conclusion that the prosecution did not prevaricate its case.[54]

The appellant's defense is a palpably weak one. The probability that Mario misidentified the appellant is remote. Mario knew the appellant because they lived in the same barangay. He positively identified him in court.[55] The crime was committed in broad daylight and Mario was merely five to six meters away from where the stabbing incident occurred.[56] The appellant even boastfully faced Mario and shouted at him that his brother is lying dead in the river.[57] Accordingly, where conditions of visibility are favorable, and the witness does not appear to be biased, his assertion as to the identity of the malefactor should be accepted as trustworthy.[58] Jurisprudence further recognizes that for witnesses of criminal violence, it is even more natural to strive to see the faces and general appearance of the assailants and to observe the manner in which the crime was committed.[59]

The records also show that no ill motive could be attributed to Mario for imputing such a grave offense against the appellant. The absence of evidence of improper motive on the part of the prosecution witnesses to testify against the appellant strongly tends to sustain the conclusion that no such improper motive exists and that their testimonies are worthy of full faith and credit.[60] Moreover, Mario, being the younger brother of the victim, would naturally be interested in having the real culprit punished.[61]

Neither can the appellant take refuge in the testimonies of the defense witnesses Larry Perito, Rosario Sabalza, and Rodrigo Resurreccion. There are strong indications that Larry is a biased witness. A witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false.[62] Larry would naturally testify in favor of the appellant since he is the latter's close friend.

The negative testimony of Rosario is open to doubt. Rosario saw the alleged assailant for only a fleeting moment as the latter walked away from the corpse of the victim. In fact, she admitted that she merely saw the back of the killer.[63] As between the straightforward and positive testimony of Mario and Rosario's negative testimony, the former undeniably is entitled to credence and deserves great weight. Under the rules of evidence, a negative testimony cannot prevail over the positive statement of a witness.[64]

As to the testimony of Rodrigo, the same cannot be given too much weight coming from a party who is not an eyewitness. He only heard about the identity of the assailant from whispered rumors.[65]

Worth reiterating here are the words of Vice Chancellor Van Fleet of New Jersey:[66]

Evidence to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself – such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation and experience. Whatever is repugnant to these belongs to the miraculous, and is outside of judicial cognizance.

At the court below, the appellant made much of the fact that it took the Galangs months to report the crime and to execute their respective affidavits. He also noted the discrepancies between the affidavit of Florencia and her testimony in court regarding the reason why it took them time to formally charge the appellant.

We have held that affidavits are generally subordinate in importance to open court testimonies. Affidavits are not complete reproductions of what the affiants have in mind because they are generally prepared by the administering officer and the affiants simply sign them after the same have been read to them.[67]

There was no delay in reporting the incident because the victim's father reported the killing right after it

happened. As testified to by SPO1 Emilio Mabalot of the Caloocan City Police, the case was reported sometime in April 1997, and was investigated by a certain PO3 Silvino,[68] though he had not monitored the progress of the case. Indeed, more than eight months had elapsed before Florencia and Mario executed their respective Sinumpaang Salaysay. But, as explained by Florencia in her testimony, the family feared for their safety, since the appellant, a notorious toughie, was still at large.[69] Verily, this alleged delay which was explained by the witness herself, is too inconsequential to dent the prosecution's compelling evidence against the appellant.

On the whole, we have found nothing in the records that would compel us to disturb the findings of fact and assessment of credibility of the witnesses by the trial court. There is nothing to indicate that the trial court overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could have affected the result of the case. Thus, we must yield to the oft-repeated rule that the trial court's evaluation of the testimony of a witness is accorded the highest respect because it had the direct opportunity to observe the witnesses on the stand and to determine if they were telling the truth or not. Appellate magistrates, on the other hand, do not have this privilege. As this Court has reiterated often enough, the matter of assigning values to declarations at the witness stand is best and most competently performed or carried out by a trial judge who, unlike appellate magistrates, can weigh such testimony in light of the accused's behavior, demeanor, conduct and attitude at the trial.[70]

The Presence of Qualifying/ Aggravating Circumstances

According to the appellant, if he were to be held criminally liable, it should only be for homicide, and not for murder. He maintains that treachery was not proven, being unsupported by the evidence on record. He argues that the evidence on record disclosed that (1) the victim had been forewarned of the danger to his life and had even attempted, albeit unsuccessfully, to escape from his attacker; (2) there was absolutely no evidence to show that appellant consciously and deliberately employed a particular method or manner of killing the victim that would eliminate any risk to himself; and, (3) the killing was done impulsively or on the spur of the moment.[71]

The appellant's arguments are unpersuasive.

Contrary to the appellant's claim, the trial court correctly appreciated treachery as a qualifying circumstance. There is treachery when the offender commits any of the crimes against a 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.[72] For treachery to be appreciated, two elements must concur: (1) the employment of means of execution that would insure the safety of the accused from retaliatory acts of the intended victim and leaving the latter without an opportunity to defend himself or retaliate; and (2) the means of execution employed were deliberately or consciously adopted by the offender.[73] 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 without risk to himself.[74]

Indeed in the case at bar, the victim seemed to have expected trouble, considering that upon seeing the appellant and the latter's friends, they got out of the river and moved away. Nevertheless, treachery may still be appreciated even when the victim was warned of danger to his person; what is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[75]

There is no question that the elements of alevosia were proven by the prosecution. As vividly narrated by the prosecution witness, the victim, Eleazar, had absolutely no opportunity to defend himself from the appellant's aggression. He was unarmed and the appellant gave no warning. Eleazar was then totally unprepared to even guess that the appellant was carrying a knife. That the victim tripped and fell prostrate on the ground before the

appellant mounted him and stabbed him at the back, does not mean that he had an opportunity to escape. He had none. At this point, Eleazar was distracted, hurt and helpless. He was caught by surprise and unaware of the fatal attack that befell him.

For sure, the appellant deliberately sought the manner of attack. He approached the victim, armed with a butcher's knife. As earlier mentioned, the deceased was already rendered completely helpless and defenseless when he was stabbed at the back by the appellant. Although the victim was able to evade the attack at half a moment, he had absolutely no means of defending himself from the appellant, who was armed with a butcher's knife and bent on finishing him off. The victim had nothing, absolutely nothing, to parry off the fatal blow. To repeat, the victim was defenseless, had no opportunity to escape and posed no risk to the appellant when he was stabbed.

In sum, the assault was indisputably sudden and the victim's premonition of peril did not negate the treacherous nature of the attack.

The appellant next argues that, assuming that treachery was duly proven, the same, notwithstanding, cannot qualify the killing to murder as treachery was not alleged in the information with specificity. He cites as bases for his argument the cases of *People v. Alba*[76] and *People v. Manlansing*,[77] wherein the Court disregarded the qualifying circumstances of treachery for the reason that it failed to specify treachery as a circumstance, qualifying the killing to murder pursuant to Section 9, Rule 110 of the Revised Rules of Criminal Procedure. In the said cases, treachery was considered only a generic aggravating circumstance; thus, the crime committed was only homicide and not murder.[78]

We do not agree.

The appellant can no longer rely on our ruling in these cases because in the recent case of *People v. Aquino*,[79] we held that qualifying circumstances need not be expressly stated as such to qualify the offense. It is enough that the same is stated in the information, whether it be as qualifying or generic aggravating. In the much recent case of *People v. Paulino*,[80] this Court, citing *Aquino*, held that:

[T]he Court has repeatedly held, even after the recent amendments to the Rules of Criminal Procedure, that qualifying circumstances need not be preceded by descriptive words such as "qualifying" or "qualified by" to properly qualify an offense.

...

Section 9, Rule 110 of the Revised Rules of Criminal Procedure states that the –

"... qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know ... (the) qualifying and aggravating circumstances ..."

Thus, even the attendant circumstance itself, which is the essential element that raises the crime to a higher category, need not be stated in the language of the law. With more reason, the words "aggravating/qualifying circumstances" as used in the law need not appear in the Information, especially since these words are merely descriptive of the attendant circumstances and do not constitute an essential element of the crime. These words are also not necessary in informing the accused that he is charged of a qualified crime. What properly informs the accused of the nature of the crime charged is the specific allegation of the circumstances mentioned in the law that raise the crime to a higher category.

The rules require the qualifying circumstances to be specifically alleged in the Information in order to comply with the constitutional right of the accused to be properly informed of the nature and cause of the accusation against him. The purpose is to allow the accused to prepare fully for his defense to prevent surprises during the

trial.

...

Section 8 of Rule 110 requires that the 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.” (Emphasis supplied). Section 8 merely requires the Information to specify the circumstances. Section 8 does not require the use of the words “qualifying” or “qualified by” to refer to the circumstances which raise the category of an offense. It is not the use of the words “qualifying” or “qualified by” that raises a crime to a higher category, but the specific allegation of an attendant circumstance which adds the essential element raising the crime to a higher category.

...

We, therefore, reiterate that Sections 8 and 9 of Rule 110 merely require that the Information allege, specify or enumerate the attendant circumstances mentioned in the law to qualify the offense. These circumstances need not be preceded by the words “aggravating/qualifying,” “qualifying,” or “qualified by” to be considered as qualifying circumstances. It is sufficient that these circumstances be specified in the Information to apprise the accused of the charges against him to enable him to prepare fully for his defense, thus, precluding surprises during the trial. When the prosecution specifically alleges in the Information the circumstances mentioned in the law as qualifying the crime, and succeeds in proving them beyond reasonable doubt, the Court is constrained to impose the higher penalty mandated by law. This includes the death penalty in proper cases.

In this case, the Information clearly passes the test as it specified treachery as an attending circumstance in the commission of the crime. The allegation, although not preceded by the words “aggravating/qualifying,” “qualifying,” or “qualified by,” is sufficient to apprise the appellant of the charge against him as to enable him to prepare fully his defense.[81]

As to the qualifying circumstance of evident premeditation, we also affirm the trial court’s finding that it was not present in the commission of the crime. The prosecution did not even attempt to prove the three elements necessary before evident premeditation may be appreciated as a qualifying aggravating circumstance, namely, (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and (c) a sufficient lapse of time between such a determination and execution to allow him to reflect upon the consequences of his act.[82] The principal eyewitness was not even aware of any prior incident or possible reason which could have led the appellant to attack the victim.

As to Damages

The trial court had ordered the appellant to pay the heirs of Eleazar Galang civil indemnity of P50,000; actual damages of P12,500; and P60,000 as moral damages.

In line with current jurisprudence, we sustain the award of civil indemnity. This may be granted without need of proof other than the fact that a crime has been committed and that the accused was responsible therefor.[83]

In support of the claim for actual damages, the victim’s mother testified that she spent a total P31,800 for the funeral service and other expenses during the wake. To justify an award of actual damages, it is necessary to prove with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, the actual amount of loss. Of the expenses allegedly incurred, the only receipt presented by the prosecution was for the payment made to St. Matthew Funeral Homes in the amount of P12,500.[84]

However, in the case of *People v. Dela Cruz*,[85] it was held that when actual damages proven by receipts during the trial amount to less than P25,000, as in the present case, the award of temperate damages for P25,000 is justified in lieu of actual damages for a lesser amount. This Court ratiocinated that it was anomalous and unfair

that the heirs of the victim who tried but succeeded in proving actual damages amounting to less than P25,000 would be in a worse situation than those who might have presented no receipts at all but would be entitled to P25,000 temperate damages.

Sufficient evidence was given by Mrs. Florencia Galang, the victim's mother, to prove that she suffered sleepless nights, anxiety, moral shock and wounded feelings. Hence, the award for moral damages is proper. However, the trial court's award of P60,000 is excessive, and should be reduced to P50,000.[86]

The trial court, likewise, erred in not awarding exemplary damages. Exemplary damages must be awarded too in accordance with Article 2230[87] of the Civil Code, the qualifying circumstance of treachery being present. Current case law pegged it at P25,000.[88]

The Proper Penalty

In its decision, the court a quo found the appellant's birth certificate doubtful because there was a discrepancy between the name stated thereon and the name being used by the appellant. It also took into consideration the fact that the document was belatedly registered by the appellant's father, who appeared to have supplied the necessary information so that his son may avail of the privileged mitigating circumstance of minority. The trial court ratiocinated as follows:

It needs to stress at this juncture that this Court is not convinced to accord to the Accused the beneficent provision of P.D. 603 otherwise known as the Child and Youth Welfare Code re suspension of sentence on youthful offenders considering that the Certificate of Birth (Exh. "I") presented by the defense in support of its stance that the Accused was born on 5 June 1981 or less than 18 years of age at the time of the commission of the offense, bears the name "NOE GARING" and no further evidence was presented to prove that the Accused NIÑO GARIN and this "NOE GARING" are one and the same person. Further, the timing in which the "Late registration" of the said birth certificate was effected on 28 February 1998 when Accused was already brought behind bars, casts doubt on the veracity of the fact it purports to prove. In *Peo. vs. REYES, et. al*, C.A. 48, O.G. 1022, the appellate court held that "in cases where the age of the culprit is at issue as a basis for claiming an exempting or mitigating circumstance, it is incumbent upon the accused to establish that circumstance as any other element of defense.[89]

We do not agree with the conclusion reached by the trial court. The mitigating circumstance of minority, being favorable to the appellant, all doubts should be resolved in his favor.[90] The Court notes that the birth certificate adduced in evidence by the appellant to prove his minority is that of "Noe Garing." Hence, the said certificate does not prove the appellant's minority when he committed the crime. However, when he testified on April 6, 1999, he stated that he was only seventeen years old.[91] No contradictory evidence was presented by the prosecution. Thus, when the crime was committed on April 3, 1997, the appellant was about sixteen years of age. As such, the appellant is entitled to the privileged mitigating circumstance of minority under the second paragraph of Article 13 of the Revised Penal Code.

In *People v. Calpito*,[92] a case on all fours with the issue of this case, we held that the minority of the appellant may be proved by his own declaration before the trial court:

At the outset, it must be borne in mind that in assessing the attendance of the mitigating circumstance of minority, all doubts should be resolved in favor of the accused, it being more beneficial to the latter. In fact, in several cases, this court has appreciated this circumstance on the basis of a lone declaration of the accused regarding his age.

This Court emphasizes that while the submitted birth certificate is not entirely satisfactory, a careful review of the records reveals other evidence of appellant's minority. In the December 19, 1994 hearing, upon being

asked by the trial court, appellant declared that he was 20 years old, consequently indicating that on November 21, 1990, he must have been only 16 years old ... This Court held that the claim of minority by an appellant will be upheld even without any proof to corroborate his testimony, especially so when coupled by the fact that the prosecution failed to present contradictory evidence thereto. In this case, the prosecution only questioned the submitted birth certificate, but did not adduce any evidence to disprove appellant's claim of minority when he committed the crime. Accordingly, the mitigating circumstance of minority should, as a matter of fairness, be appreciated in favor of appellant, especially in light of the compassionate liberality this Court has granted to minors involved in serious crimes.

Parenthetically, inasmuch as the appellant is now almost twenty-three years old, he is no longer entitled to a suspended sentence under Section 5 of Republic Act No. 8369, otherwise known as the Family Court Act of 1997. In *People v. Clores, Jr.*,^[93] we said –

We are not impervious of Section 5, Republic Act No. 8369, otherwise known as the Family Courts Law, which took effect on November 23, 1997. It provides that the sentence of the youthful offender shall be suspended without need of application pursuant to P.D. No. 603:

Sec. 5. Jurisdiction of Family Courts. – The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:

a) Criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age, or where one or more of the victims is a minor at the time of the commission of the offense: Provided, That if the minor, if found guilty, the court shall promulgate sentence and ascertain any civil liability which the accused may have incurred. The sentence, however, shall be suspended without need of application pursuant to Presidential Decree No. 603, otherwise known as the “Child and Youth Welfare Code;”...

As a general rule, the said provision may be applied retroactively, considering that it is favorable to the accused. However, we can no longer do so because the appellant is by now, more than twenty-four (24) years old.

Article 68(2) of the Revised Penal Code provides:

Art. 68. Penalty to be imposed upon a person under eighteen years of age. – When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

...

- 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.

Murder is punishable with reclusion perpetua to death under Art. 248 of the Revised Penal Code, as amended by Republic Act No. 7659. Because the killing of Eleazar Galang, although qualified by treachery, was not attended by any other aggravating circumstance, the proper imposable penalty is reclusion perpetua. Considering the privileged minority of the appellant, the proper imposable penalty is reclusion temporal, which is the penalty next lower than that prescribed. There being no other modifying circumstances attendant to the crime, the maximum of the indeterminate penalty shall be taken from the medium period of reclusion temporal, the duration of which is from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. Under the Indeterminate Sentence Law, the minimum of the penalty shall be taken from the full range of prision mayor, the penalty next lower in degree to reclusion temporal, the duration of which is from six (6) years and one (1) day to twelve (12) years.

WHEREFORE, the Decision of the Regional Trial Court of Caloocan City, Branch 127, in Criminal Case No. C-54178 is AFFIRMED WITH MODIFICATIONS. The appellant, Niño Garin, is found guilty beyond reasonable

doubt of murder qualified by treachery, defined in Art. 248 of the Revised Penal Code, as amended by Republic Act No. 7659. There being a privileged mitigating circumstance of minority in his favor, he is sentenced to an indeterminate prison term of from nine (9) years, four (4) months and one (1) day of prison mayor, in its medium period, as minimum, to seventeen (17) years and four (4) months of reclusion temporal in its medium period, as maximum, and ordered to pay the heirs of the victim, Eleazar Galang, Fifty Thousand Pesos (P50,000) as civil indemnity ex delicto; Fifty Thousand Pesos (P50,000) as moral damages; Twenty-Five Thousand Pesos (P25,000) as temperate damages; and Twenty-Five Thousand Pesos (P25,000) as exemplary damages. Costs against the appellant.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Records, p. 1.

[2] Id. at 15.

[3] The prosecution presented four witnesses, namely, Mario Galang, Dr. Dominic Aguda, SPO1 Emilio Mabalot and Florencia Galang.

[4] Exhibit "E," Folder of Exhibits, p. 5.

[5] TSN, 10 February 1999, p. 5.

[6] TSN, 2 February 1999, p. 2.

[7] TSN, 17 February 1999, p. 11.

[8] Id. at 3.

[9] TSN, 10 February 1999, p. 11.

[10] TSN, 17 February 1999, p. 9.

[11] Id. at 6.

[12] Id. at 9.

[13] Id. at 6.

[14] Id. at 4.

[15] Id.

[16] Id. at 10.

[17] Id.

[18] Id. at 6.

[19] Id. at 5.

[20] TSN, 2 February 1999, pp. 5-6.

[21] TSN, 17 February 1999, p. 5.

[22] TSN, 10 February 1999, p. 6.

[23] Exhibit “E,” *supra*.

[24] TSN, 15 February 1999, p. 7.

[25] TSN, 2 February 1999, pp. 9-10.

[26] *Id.* at 8.

[27] Exhibit “G-1,” Folder of Exhibits, p. 8.

[28] TSN, 10 February 1999, 2-5.

[29] Exhibits “A,” “B” and “C,” Folder of Exhibits, pp. 1-3.

[30] Records, p. 4.

[31] The defense presented four witnesses, namely, Niño Garin, Larry Perito, Rosario Sabalza and Rodrigo Resurreccion.

[32] TSN, 6 April 1999, p. 17.

[33] *Id.* at 4-7.

[34] *Id.* at 7-11.

[35] *Id.* at 12-13.

[36] *Id.* at 16-17.

[37] TSN, 17 March 1999, pp. 4-10.

[38] *Id.* at 20.

[39] TSN, 16 March 1999, pp. 3-5.

[40] *Id.* at 15.

[41] *Id.* at 5.

[42] *Id.* at 6.

[43] TSN, 14 April 1999, pp. 3-12.

[44] Penned by Judge Myrna Dimaranan Vidal.

[45] Records, p. 90.

[46] Rollo, p. 56.

[47] *People v. Taño*, 331 SCRA 449 (2000).

[48] TSN, 17 February 1999, p. 4.

[49] *Ibid.*

[50] *Id.* at 6.

[51] *Id.*

[52] Id. at 8.

[53] People v. Antonio, 383 SCRA 751 (2002).

[54] People v. Tuson, 330 Phil. 443 (1996).

[55] TSN, 17 February 1999, p. 3.

[56] Id. at 8.

[57] Id. at 6.

[58] People v. Montero, Jr., 277 SCRA 194 (1997).

[59] People v. Apongan, 270 SCRA 713 (1997).

[60] People v. Ravanes, 284 SCRA 634 (1998).

[61] People v. Ansus, G.R. No. 149784, July 14, 2003.

[62] People v. Dones, 254 SCRA 696 (1996).

[63] TSN, 16 March 1999, p. 17.

[64] People v. Murillo, 352 SCRA 105 (2001).

[65] TSN, 14 April 1999, p. 11.

[66] People v. Mahinay, 302 SCRA 455 (1999), citing Daggers v. Van Dyck, 37 N.J. Eq., 130.

[67] People v. Sanchez, 313 SCRA 254 (1999).

[68] TSN, 3 February 1999, pp. 13-14.

[69] TSN, 10 February 1999, pp. 10-12.

[70] People v. Pelen, 313 SCRA 683 (1999).

[71] Rollo, pp. 64-68.

[72] Art. 14(16), Revised Penal Code.

[73] People v. Bumer, 319 SCRA 539 (1999).

[74] People v. Tampon, 258 SCRA 115 (1996).

[75] People v. Panganiban, 241 SCRA 91 (1995).

[76] 375 SCRA 69 (2002).

[77] 378 SCRA 685 (2002).

[78] Id. at 69.

[79] 386 SCRA 391 (2002).

[80] G.R. No. 148810, November 18, 2003.

[81] Ibid.

[82] *People v. Orcula, Sr.*, 335 SCRA 129 (2000).

[83] *People of the Philippines v. Gonza*, G.R. No. 138612, November 11, 2003.

[84] Exhibit “G-1,” *supra*.

[85] G.R. No. 152176, October 1, 2003.

[86] *People v. Dela Cruz*, G.R. Nos. 138931-32, July 17, 2003.

[87] ART. 2230. In criminal offenses, exemplary damages, as a part of the civil liability, may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[88] *People v. Romero*, G.R. No. 145166, October 8, 2003.

[89] Records, p. 90.

[90] *People v. Regalario*, 220 SCRA 368 (1993), citing *U.S. v. Bergantino*, 3 Phil. 118 (1903).

[91] TSN, 6 April 1999, p. 3.

[92] G.R. No. 123298, November 27, 2003 (Emphasis supplied).

[93] G.R. No. 130488, June 8, 2004.

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