

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ADONES ABATAYO, APPELLANT.

G.R. No. 139456. July 07, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

On appeal is the Decision[1] of the Regional Trial Court of Mandaue City, Branch 56, in Criminal Case No. DU-4381 finding appellant Adones Abatayo guilty beyond reasonable doubt of two counts of murder and sentencing him to suffer reclusion perpetua for each count.

The appellant was charged with the crime of double murder in an Information dated January 31, 1994. The indictment reads:

That on or about the 10[th] day of September 1993, in the City of Mandaue, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent to kill and with treachery and evident premeditation, did then and there wil[l]fully, unlawfully and feloniously attack, assault and strike Dominador Basalan and Teofredo Basalan with the use of a GI pipe, thereby inflicting upon them mortal wounds in (sic) their head[s] which caused their instantaneous death.

CONTRARY TO LAW.[2]

Upon arraignment, the appellant, assisted by counsel, pleaded not guilty.[3]

The first witness for the prosecution was Juanito Gutang, whose direct examination was terminated during the trial of November 22, 1994. The appellant's counsel commenced with his cross-examination of the witness, but later prayed for a resetting as he still had many questions for the said witness. The court granted the motion. However, during the continuation of the trial on January 23, 1995, Juanito failed to appear due to fever. The public prosecutor then asked the court to defer the further cross-examination of Juanito until he recovered from his illness, and that he be allowed to present his second witness, Apolonio Quilag. The appellant did not object. The court granted the motion, but warned the public prosecutor that if Juanito would not appear to continue with his testimony by the next trial date, his testimony would be stricken off the record.[4] However, such warning was not contained in the order issued by the court on even date.

During the trial on March 2, 1995, the public prosecutor presented PO2 Alfredo Andales, and thereafter, the victims' mother, Silvina Basalan. Both testimonies were completed. The hearing of April 17, 1995 was cancelled, after the parties admitted the authenticity of Dr. Ladislao Diola, Jr.'s necropsy report and agreed to dispense with his testimony thereon. The public prosecutor announced that he would rest his case on May 22, 1995.[5]

During the trial on May 22, 1995, the public prosecutor manifested that he was ready to offer his documentary evidence and rest his case thereafter. He offered in evidence the affidavit of Juanito as part of his documentary evidence. The appellant objected to the admission of the affidavit for the purpose for which it was offered. The court nevertheless admitted the affidavit and the public prosecutor rested his case. On motion of the appellant,

trial was set at 8:30 a.m. of June 26, 1995 for the presentation of the witnesses for the defense.

The Case for the Prosecution[6]

Teofredo Basalan and his brother Dominador Basalan, aged 24 and 26, respectively, lived with their mother Silvina Basalan in Colon, Naga, Cebu City.[7] They were stay-in construction workers at the construction site of the Gaisano FCDC at Ibabao, Mandaue City.[8]

At around 7:00 p.m. of September 9, 1993, after a hard day's work at the construction site, laborers Juanito Gutang, Apolonio Quilag and Pedro Esconia, as well as an unidentified co-worker, retired early in their quarters.[9]

At around 3:00 a.m. the following day,[10] Juanito was awakened by an unusual thud, similar to that produced by someone "striking somebody." [11] He got up and saw the appellant, from a distance of about three (3) meters,[12] hitting Teofredo and Dominador with a lead pipe.[13] Juanito woke up his co-workers and told them what he had just witnessed.[14] Apolonio saw the victims, already lying in a pool of blood.[15] Juanito and his co-workers immediately reported the incident to the security guards on duty who, in turn, called up the Mandaue City police station.[16]

Meanwhile, the appellant hurriedly left the job site, bringing with him his personal belongings.[17]

PO2 Alfredo Andales, who was assigned to the case, forthwith conducted an on-the-spot investigation. At the crime scene, he found the victims' bloodied corpses, with their respective heads smashed. He also found a galvanized iron (G.I.) pipe, the weapon used to kill the victims.[18] His investigation revealed that the night before the victims were killed, they had an acrimonious quarrel with the appellant over some misplaced construction tools which were later recovered.[19] The policemen had the incident recorded in the police blotter[20] with the appellant as the prime suspect.

In the afternoon of that same day, the bodies of the victims were brought to the Cosmopolitan Funeral Homes where Dr. Ladislao V. Diola, Jr., conducted a post mortem examination. He signed a necropsy report stating that the victims died due to "cardio respiratory arrest due to shock and hemorrhage secondary to injuries to the head." [21] By agreement of the parties, the testimony of Dr. Diola was dispensed with after the defense admitted the findings contained in the doctor's post mortem report.[22] On September 16, 1993, Juanito and Apolonio subscribed and swore to the truth of their respective affidavits before the public prosecutor.[23]

Silvina testified that she fainted when she learned of the death of her two sons. She spent around P50,000.00 for the wake and funeral. She also testified that the death of her two sons caused her emotional pain, but when asked to translate her pain into monetary terms, she left it for the court to determine.[24]

The Evidence of the Appellant[25]

The appellant testified that he started working for Super Metro Gaisano as a construction worker sometime in mid-August 1993. On September 9, 1993, after rendering overtime work for two hours, he decided to go home. He left the job site at around 7:00 p.m., and hitched a ride home in the company's vehicle driven by Charmel Ralago, who happened to be his neighbor. He finally arrived home at about 9:00 p.m. The following morning, his uncle dropped by his place and asked to be accompanied to Carcar, Cebu, as it was the town's fiesta. The appellant readily acquiesced. Consequently, he absented himself from work, and requested a co-worker to get his salary. After the fiesta, he went back home but no longer reported for work. Instead, he went to Bohol. He returned home in December 1993 in time for the holiday season. He was surprised when he was arrested in August 1994 for the killings of the Basalan brothers.[26]

Bernabe Hinario, 23 years old, erstwhile taho peddler and next-door neighbor of the appellant, corroborated the latter's alibi. He testified that at about 9:00 p.m. on September 9, 1993, as he was whiling away the time in the neighborhood, he saw the appellant arrive from work as usual. The appellant greeted him and invited him to attend the fiesta in Carcar, Cebu, the next day. He declined because of his work. Thereafter, they parted ways, as the appellant proceeded to his house.[27]

Leonora Abatayo, the appellant's mother, testified that she was in their house when the appellant arrived home at about 9:00 p.m. on September 9, 1993. After taking his dinner, the appellant slept. The following morning, after breakfast, the appellant left with his uncle, Fransico Malubay, to attend the fiesta in Carcar, Cebu.[28]

After trial, the court rendered a decision, the dispositive portion of which reads:

Foregoing considered and in the light of Prosecution witness Juanito Gutang's positive identification and eyewitness account of the killing, the Court is constrained and so finds the Accused GUILTY of the crime of two counts of Murder. Accordingly, Accused is sentenced to suffer the penalty of Reclusion Perpetua for each count of Murder. Accused is, likewise, ordered to:

- Reimburse the victim's kin for actual expenses in the sum of Seventeen Thousand Pesos (P17,000.00);
- Pay damages in the total sum of Two Hundred Thousand Pesos (P200,000.00) plus costs.

SO ORDERED.[29]

In convicting the appellant, the trial court relied on the testimony of Apolonio and eyewitness Juanito Gutang, which were corroborated by the medical findings showing the nature and the location of the wounds inflicted on the victims. The court brushed aside as dubious and weak the denial and alibi interposed by the appellant. According to the court, such defenses could not prevail over the positive identification made by Juanito of the appellant as the perpetrator of the crime.[30]

The appellant now assails his conviction, asserting that:

I

THE TRIAL COURT ERRED IN NOT ORDERING THE STRIKING OUT OF THE ENTIRE TESTIMONY OF THE PROSECUTION[S] ALLEGED EYEWITNESS JUANITO GUTANG ANENT THE CRIME CHARGED IN VIEW OF HIS UNJUSTIFIED FAILURE TO ALLOW HIMSELF TO BE FURTHER CROSS-EXAMINED PURSUANT TO ITS ORDER DATED JANUARY 23, 1995.

II

THE TRIAL COURT ERRED IN GIVING PROBATIVE VALUE TO THE UNFINISHED TESTIMONY OF THE PROSECUTION WITNESS JUANITO GUTANG DESPITE ITS INHERENT IMPLAUSIBILITY AND IN DISREGARDING THE EVIDENCE INTERPOSED BY [THE] ACCUSED-APPELLANT WHICH WAS AMPLY CORROBORATED ON MATERIAL POINTS.

III

THE TRIAL COURT ERRED IN RENDERING A VERDICT OF CONVICTION NOTWITHSTANDING THE FACT THAT ACCUSED-APPELLANT'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[31]

The Ruling of the Court

We affirm the findings of the trial court and sustain the conviction of the appellant with modifications.

The Incomplete Cross-Examination of Juanito Gutang

The appellant insists that the trial court should not have given credence to the story of the lone eyewitness for the prosecution, Juanito Gutang, considering that his counsel was not able to continue cross-examining the witness. He strongly argues that his constitutional and procedural right to confront the witness against him was thereby impaired. Citing *Ortigas, Jr. v. Lufthansa German Airlines*[32] as the case in point, the appellant faults the trial court for relying on Juanito's testimony despite the warning it made during the trial of January 23, 1995, that it would consider the entire testimony of Juanito stricken off the record for lack of proper cross-examination.[33]

The Office of the Solicitor General (OSG), for its part, asserts that while the appellant has the constitutional right to cross-examine the witnesses against him, he waived such right when he failed to invoke the same after his initial cross-examination of Juanito.

We agree with the OSG.

Under Article III, Section 14(2) of the 1987 Constitution, the appellant has the right to meet the witnesses against him face to face. Under Rule 115, Section 1(f) of the Rules of Court, he has the right to confront and cross-examine the witnesses against him at the trial, a fundamental right which is part of due process. However, the right of confrontation and cross-examination is a personal one. It is not an absolute right which a party can claim at all times.[34]

In *Savory Luncheonette v. Lakas ng Manggagawang Pilipino*,[35] we ruled that the right to confront the witness may be waived by the accused, expressly or impliedly.

The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. However, the right is a personal one which may be waived, expressly or impliedly, by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.

The conduct of a party which may be construed as an implied waiver of the right to cross-examine may take various forms. But the common basic principle underlying the application of the rule on implied waiver is that the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone.[36]

In the later case of *Fulgado v. Court of Appeals*,[37] we ruled that the task of recalling a witness for cross-examination is imposed on the party who wishes to exercise said right, and stressed that it should be the opposing counsel who should move to cross-examine the plaintiff's witness. Thus:

The task of recalling a witness for cross-examination is, in law, imposed on the party who wishes to exercise said right. This is so because the right, being personal and waivable, the intention to utilize it must be expressed. Silence or failure to assert it on time amounts to a renunciation thereof. Thus, it should be the counsel for the opposing party who should move to cross-examine plaintiff's witnesses. It is absurd for the plaintiff himself to ask the court to schedule the cross-examination of his own witnesses because it is not his obligation to ensure that his deponents are cross-examined. Having presented his witnesses, the burden shifts to his opponent who must now make the appropriate move. Indeed, the rule of placing the burden of the case on plaintiff's shoulders can be construed to extremes as what happened in the instant proceedings.[38]

In this case, we are convinced that the appellant waived his right to further cross-examine Juanito. The records show that Juanito testified for the prosecution on direct examination on November 22, 1994. Thereafter, the appellant's counsel cross-examined the witness on the corpus delicti. He then moved for a resetting as he still had many questions to ask the witness. Juanito failed to attend the trial on January 23, 1995 for the continuation of his cross-examination because he had a fever. The appellant did not object to the deferment of Juanito's cross-examination; neither did he object to the public prosecutor's presentation of Apolonio Quilag as its second witness. The trial was reset to March 2, 1995 for the continuation of Juanito's cross-examination.[39] However, no subpoena ad testificandum was issued to Juanito for the said trial. There is, likewise, no showing whether Juanito was in court on March 2, 1995 when the case was called. Furthermore, the appellant did not object when the public prosecutor presented PO2 Andales and Silvina Basalan as witnesses.

During the trial on April 17, 1995, the public prosecutor manifested, following the stipulation of the parties on the authenticity of Dr. Ladislao Diola, Jr.'s necropsy report, that he would be ready to rest his case by the next trial. Again, the appellant did not call the attention of the court on the fact that he had not yet finished his cross-examination of Juanito. He did not ask to be allowed to terminate the cross-examination of the witness first before allowing the prosecution to rest its case. Neither did the appellant ask the court to strike Juanito's testimony on direct and cross-examination from the records. When the case was called for trial on May 22, 1995, the public prosecutor announced that he had no more witness to present and was ready to formally offer his documentary evidence. There was no objection from the appellant. Neither did the appellant object to the offer of Juanito's affidavit[40] as part of his testimony, on the ground that he was deprived of his right to complete his cross-examination of the said witness. Moreover, when he testified, the appellant disputed the testimony of Juanito that he killed the victims, claiming that he was at home when the victims were killed. The appellant adduced testimonial evidence corroborating his alibi.

All the foregoing instances conclusively show that the appellant had waived his right to further cross-examine Juanito. From the conduct of the appellant's counsel, it can be fairly inferred that he considered the initial cross-examination of Juanito adequate, and that there was no longer a need to further cross-examine the witness.

Credibility of Witnesses and Sufficiency of Prosecution's Evidence

Reviewing the records, we find that the prosecution has proven beyond doubt that the appellant killed the victims. He was positively identified by the lone eyewitness, Juanito Gutang. The testimony of this lone eyewitness is clear, straightforward, categorical and consistent, without any tinge of falsehood or sign of fabrication. In his testimony, he narrated the nightmarish events that transpired in that unholy hour of 3:00 a.m. on September 10, 1993, thus:

...

Q Mr. Juanito Gutang, you are a construction worker of what company?

A FCDC.

...

Q On the said date, September 10, 1993, at around 3:00 o'clock in the evening (sic)

where were you?[41]

...

ATTY. SURALTA

Misleading, there is no such time.

FISCAL MATA

Q At 3:00 o'clock dawn or in the morning?

A In our bunk house.

Q What do you mean by bunk house?

A The place where we slept.[42]

...

Q Do you know of any incident on September 10, at around 3:00 o'clock early in the morning?[43]

...

Q Now, what was that incident you mentioned all about?

A I was awakened by a sound striking somebody, and when I got up, I saw Adones holding a pipe.

Q You mentioned Adones, who is this Adones?

A Adones Abatayo.[44]

...

COURT (to witness)

Q What was he doing with the pipe?

A He was striking it against my companions who were sleeping?

COURT:

Proceed.

Q Who are these companions you mentioned?

A The brothers, Teofredo and Dominador.

Q What are their family names?

A Basalan.

Q Where are these Teofredo and Dominador Basalan now?

A They are already dead.[45]

No evil motive has been imputed against Juanito Gutang for testifying against appellant. As a matter of fact, the latter admitted that no bad blood existed between them, and he knew of no reason why the former would testify against him.[46] In such a situation, the rule is that where there is no evidence, and nothing to indicate that the principal witness for the prosecution was actuated by improper motives, the presumption is that he was not, and

his testimony is entitled to full faith and credit.[47] Furthermore, it is unlikely that this witness could relate all the details of the crime with clarity and lucidity if he had not actually witnessed the killings of the Basalan brothers.

It is well-established that the trial court's calibration of the credibility of witnesses should not be disturbed on appeal since the said court is in a better position to decide the question, having itself heard and observed the demeanor of the witnesses on the stand, unless it has plainly overlooked certain facts of substance and value, which, if considered, could alter and affect the result of the case.[48] In the case at bar, we find no reason to depart from this rule, given the trustworthiness of the testimony of the witness.

The Prosecution Failed
To Prove Treachery and
Evident Premeditation
Beyond Reasonable Doubt

The trial court found the appellant guilty of murder and sentenced him to suffer the penalty of reclusion perpetua in each case, without finding any circumstance attendant to the crime to qualify the killings to murder. Section 1,[49] Rule 120 of the Revised Rules of Court, requires that after an adjudication of guilt by the court, it should impose the proper penalty and civil liability provided for by law. Further, Section 2[50] of the same Rule mandates that the judgment of conviction should state, among others, the aggravating or mitigating circumstances attendant to the commission of the crime, if there are any, to enable the Court to determine the proper penalty on the appellant. Judges who faithfully observe this duty contribute to the orderly administration of justice.[51]

Treachery cannot be appreciated in this case where the lone eye-witness to the killing, Juanito Gutang, was not able to see how the assault started. The fact that the incident happened in an unholy hour, around 3:00 a.m., did not prove that the victims were sleeping when they were killed. As Juanito Gutang testified, he was asleep when appellant started the attack on his victims and he was only awakened by thudding sounds, as the appellant struck the victims with a pipe. The importance of such testimony cannot be overemphasized, considering that treachery cannot be presumed nor established from mere suppositions.[52]

Under our penal law, there is treachery when the offender commits any of the crimes against persons, 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.[53] It requires the concurrence of two conditions: 1) employment of means of execution that gives the person attacked no opportunity to defend himself, much less to retaliate; and, 2) deliberate or conscious adoption of the means of execution.[54] 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.[55]

It is settled that if the victim, when killed, was sleeping or had just awakened, the killing is with treachery because in such cases, the victim was not in a position to put up any form of defense.[56] However, when the lone eyewitness for the prosecution did not see how the attack commenced, the trial court cannot presume from the circumstances of the case that there was treachery. Circumstances which qualify criminal responsibility cannot rest on mere conjectures, no matter how reasonable or probable, but must be based on facts of unquestionable existence.[57] Thus, treachery cannot be deduced from mere conjectures, presumption or sheer speculation.[58] Mere probabilities cannot substitute for proof required to establish each element necessary to convict. Settled is the rule that treachery cannot be presumed but must be proved by clear and convincing evidence, or as conclusively as the killing itself.[59]

Like treachery, evident premeditation should be established by clear and positive evidence. Mere inferences or

presumptions, no matter how logical and probable they might be, would not be enough. In the case at bar, evident premeditation was, likewise, not proven. 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.[60] A police report of a prior spat[61] between the appellant and the victims is not enough, as nothing in the records show that the appellant planned in advance the commission of the crime. The principal eyewitness was not even aware of any prior incident or possible reason which could have led the appellant to attack the victims.

The Defenses of Alibi and Denial

The appellant insists that the trial court erred in disbelieving his alibi. He contends that the testimony of Bernabe Hinario, a neighbor, being a disinterested witness, should have been given more weight than the untested words of Juanito Gutang.[62]

The trial court certainly could not be faulted for not giving probative weight to the appellant's alibi. Besides being inherently weak for not being airtight, the appellant's alibi cannot prevail as against the positive identification made by the prosecution witness. On top of its inherent weakness, alibi becomes less plausible as a defense when it is corroborated only by a relative or a close friend of the accused.[63] At any rate, it was for the trial judge, using his discretion and his observations at the trial, to determine whom to believe among the witnesses who disputed the whereabouts of the appellant in the unholy morning of September 10, 1993.

On the appellant's denial, suffice it to say, that said defense cannot prevail over the positive identification by the eyewitness who had no improper motive to falsely testify against him as we have mentioned above.[64] It is negative and self-serving, and cannot be given greater evidentiary weight over the testimony of a credible witness who testifies on affirmative matters.[65]

The appellant's flight after the said incident could be taken as a clear and positive indication of guilt. It is a sage observation that the flight of an accused from the scene of the crime and his act of hiding himself until he is arrested are circumstances highly indicative of guilt.[66] For, as wisely said, the "wicked flee even when no man pursueth but the righteous are as bold as a lion." The appellant's sudden and unexplained trip following the killing of the victims was unmistakably a flight from justice.

Duplicity of the Information and the Proper Penalty

It must be noted that only one Information (for double murder) was filed with the trial court. The records are bereft of any showing that the appellant objected to the duplicity of the information by filing a motion to quash before his arraignment. Hence, he is deemed to have waived such defect.[67] In this connection, Section 3 of Rule 120 of the Rules of Court provides:

SEC. 3. Judgment for two or more offenses. – When two or more offenses are charged in a single complaint or information, and the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.

Under Article 249 of the Revised Penal Code, homicide is punishable by reclusion temporal which has a range of

twelve (12) years and one (1) day to twenty (20) years. There being no mitigating nor aggravating circumstance that attended the commission of the crimes, the maximum period of the imposable penalty should be taken from the medium period of reclusion temporal, the range of which is from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months. The minimum of the indeterminate penalty should be taken from the full range of prision mayor, which is one degree lower than reclusion temporal. Applying the Indeterminate Sentence Law,[68] the appellant may be meted an indeterminate sentence of from eight (8) years and one (1) day of prision mayor, in its medium period, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal in its medium period, as maximum, for each count of homicide.

Amount of Damages

The amount of damages awarded by the trial court must be modified, as it awarded P17,000.00 for actual damages despite the absence of any documentary evidence to prove the same. The award shall be deleted. However, temperate damages may be recovered under Art. 2224 of the Civil Code, when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. In this case, the amount of P25,000.00 would be sufficient, considering that it is undisputed that the family incurred expenses for the wake and burial of the victims.[69]

Under Article 2206 of the Civil Code, the heirs of the victims are entitled to indemnity for loss of earning capacity. Ordinarily, documentary evidence is necessary for the purpose. By way of exception, testimonial evidence may suffice if the victim was either (1) self-employed, earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws.[70] In the case at bar, however, while the victims' mother testified that her sons remitted to her their income, she did not indicate how much her sons were then earning.[71] Thus, this case does not fall under any of the exceptions.

In its decision, the trial court, likewise, awarded the sum of P200,000.00 by way damages without specifying the amount of each item. In accordance with prevailing jurisprudence relative to Article 2206 of the Civil Code, the heirs of the victims are entitled to the total amount of P100,000.00 by way of civil liability. Civil indemnity is automatically imposed upon the accused without need of proof other than the fact of the commission of murder or homicide.[72]

Proof of moral damages was presented through the testimony of the mother of the victims. Moral damages may be awarded in favor of the heirs of the victims upon sufficient proof of physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.[73] Considering the pain and anguish of the victims' family brought about by their death, the award of P50,000.00 for each offense is justified.[74]

WHEREFORE, the Decision of the Regional Trial Court of Mandaue City, Branch 56, is hereby **AFFIRMED** with **MODIFICATIONS**. The appellant is found **GUILTY** beyond reasonable doubt of two (2) counts of homicide as defined and penalized in Article 249 of the Revised Penal Code, as amended, and is sentenced to suffer an indeterminate penalty of Eight (8) Years and One (1) day of prision mayor, in its medium period, as minimum, to Fourteen (14) Years, Eight (8) Months and One (1) Day of reclusion temporal in its medium period, as maximum, for each count of homicide. The appellant is **ORDERED** to pay the heirs of each of the victims, Teofredo Basalan and Dominador Basalan, the sums of P50,000.00 representing temperate damages; P100,000.00 as indemnity ex delicto; and, P100,000.00 as moral damages.

No costs.

SO ORDERED.

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

[1] Penned by Judge Augustine A. Vestil.

[2] Records, p. 1.

[3] Id. at 11.

[4] TSN, 23 January 1995, p. 3.

[5] Records, p. 24

[6] The prosecution presented four witnesses, namely, Juanito Gutang, Apolonio Quilag, PO2 Alfredo Andales, and Silvina Basalan.

[7] TSN, 2 March 1995, p. 5 (Silvina Basalan).

[8] TSN, 22 November 1994, p. 3 (Juanito Gutang).

[9] Id. at 12.

[10] Id. at 3-4.

[11] Id. at 5 and 14.

[12] Id. at 14.

[13] Id. at 5.

[14] Id. at 8.

[15] TSN, 23 January 1995, p. 11 (Apolonio Quilag).

[16] TSN, 22 November 1994, p. 9 (Juanito Gutang).

[17] TSN, 2 March 1995, p. 4 (PO2 Alfredo Andales).

[18] Id. at 3-4.

[19] Exhibit "C," Records, p. 25.

[20] Ibid.

[21] Exhibits "F" and "G." Records, pp. 28-29. Necropsy Report on the cadaver of Teofredo Basalan.

Fairly developed, fairly nourished male cadaver, in rigor mortis with post mortem lividity on the dependent portions of the body. Lips and nail beds are cyanotic, the conjunctivae are pale. There is a massive hematoma on the left and right side of the scalp. An extensive fracture of the occipital and the anterior cranial fossa was also noted.

Head:

- Lacerated wound, right eyebrow measuring 4 x 105 cms., 5 cms. from the anterior midline.
- Contusion, just above the right eye, measuring 5.5 x 2.5 cms., 5 cms. from the anterior midline.

- Contusion, lower lip measuring 3 x 1.5 cms. bisecting the anterior midline.
- Lacerated wound, occipital area, right, measuring 5 x 1½ cms., 7 cms. from the midsagittal line.
- Lacerated wound, occipital area, left, measuring 5 x 5 cms., 4 cms from the midsagittal line.
- Lacerated wound, below the above wound, measuring 3.5 x 2 cms., 3 cms. from the midsagittal line.

There's a massive hemorrhage of the brain substance.

[22] Records, p. 24.

[23] Exhibits "A" and "B," Id. at 2-3.

[24] TSN, 2 March 1995, pp. 11-13.

[25] The defense presented three witnesses, namely, Adones Abatayo, Bernabe Hinario, and Leonora Abatayo.

[26] TSN, 26 June 1995, pp. 4-8 (Direct-examination).

[27] TSN, 8 February 1996, pp. 5-7.

[28] TSN, 29 February 1996, pp. 3-4.

[29] Records, p. 66.

[30] Id. at 65-66.

[31] Rollo, p. 72.

[32] 64 SCRA 610 (1975).

[33] Rollo, pp. 75-76.

[34] De la Paz, Jr. v. Intermediate Appellate Court, 154 SCRA 65 (1987).

[35] 62 SCRA 258 (1975).

[36] Id. at 263-265.

[37] 182 SCRA 81 (1990).

[38] Id. at 89.

[39] TSN, 23 January 1995, p. 13.

[40] Exhibit "A," Records, p. 3.

[41] TSN, 22 November 1994, p. 3 (Adones Abatayo).

[42] Id. at 3-4.

[43] Id. at 4.

[44] Id. at 5.

[45] Id.

[46] TSN, 26 June 1995, p. 6 (Adones Abatayo – Direct-examination).

[47] *People v. Gayomma*, 315 SCRA 639 (1999).

[48] *People v. Sotes*, 260 SCRA 353 (1996).

[49] SECTION 1. Judgment; definition and form. – Judgment is the adjudication by the court that the accused is guilty or is not guilty of the offense charged and the imposition on him of the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based.

[50] SECTION 2. Contents of the judgment. – If the judgment is of conviction, the judgment shall state (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances attending the commission; (2) the participation of the accused in the commission of the offense, whether as principal, accomplice, or accessory; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by the wrongful act to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate action has been reserved or waived.

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.

[51] *People v. Bonito*, 342 SCRA 405 (2000).

[52] *People v. Salvador*, 224 SCRA 819 (1993).

[53] Article 14, par. 16, Revised Penal Code, as amended.

[54] *People v. Lopez*, 313 SCRA 114 (1999).

[55] *People v. Reyes*, 287 SCRA 229 (1998).

[56] *People v. Cotas*, 332 SCRA 627 (2000).

[57] *People v. Rapanut*, 263 SCRA 515 (1996).

[58] *People v. Lopez*, *supra*.

[59] *Ibid*.

[60] *People v. Academia Jr.*, 307 SCRA 229 (1999).

[61] Exhibit “C,” Records, p. 25.

[62] Rollo, pp. 78-79.

[63] *People v. Datingginoo*, 223 SCRA 331 (1993).

[64] *People v. Espina*, 361 SCRA 701 (2001).

[65] *People v. Acala*, 307 SCRA 330 (1999).

[66] *People v. Delmendo*, 296 SCRA 371 (1998).

[67] Section 9, Rule 117, Revised Rules of Court.

[68] Section 1 of Act No. 4103, as amended by Act No. 4225 reads:

SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or

its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same (Emphasis supplied).

[69] *People vs. Delim*, 396 SCRA 386 (2003).

[70] *People of the Philippines v. Raul Oco @ Boy Usher*, G.R. Nos. 137370-71, September 29, 2003.

[71] TSN, 2 March 1995, p. 12 (Silvina Basalan).

[72] *People of the Philippines v. PO3 Roger Roxas*, G.R. No. 140762, September 10, 2003.

[73] Art. 2217, New Civil Code of the Philippines.

[74] *People v. Leal*, 358 SCRA 794 (2001).

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