

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERASTO ACOSTA, SR. ALIAS “ATTO”, CARLO ACOSTA, RICHARD ACOSTA, ALIAS “IMBO”, SIGFREDO ACOSTA ALIAS “SIG” (AT LARGE), ARNOLD AC...

G.R. No. 140402. January 28, 2003

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before this Court for automatic review[1] is the Decision[2] of Branch 46 of the Regional Trial Court of Urdaneta City, in Criminal Case No. U-9788 promulgated on August 27, 1999 finding appellants Erasto Acosta, Sr., Arnold Acosta, Carlo Acosta, Avelino Acosta, Richard Acosta and Rosendo Tara (“appellants” for brevity) guilty beyond reasonable doubt of the crime of murder and sentencing them to suffer the death penalty.

The Charge

The Information against appellants reads as follows:

“That on or about June 14, 1998 in the evening at Brgy. Pinmaludpod, Urdaneta City, and within the jurisdiction of this Honorable Court, the above-named accused Erasto “Atto” Acosta, Sr., Carlo Acosta, Richard Acosta, Sigfredo Acosta, Arnold Acosta, Avelino Acosta and Rosendo Tara, armed with a piece of wood (dos por dos) with protruding nail, lead pipe, icepick and bamboo pole with intent to kill, treachery and taking advantage of superior strength, conspiring with one another, did then and there wilfully (sic), unlawfully and feloniously box, hit, stab and maul NESTOR ADAJAR inflicting upon him the following:

*

Body previously embalmed, in a moderate state of decomposition, with slight moldy growth at the right side of the trunk.

*

Pallor, nailbeds.

*

Head, previously autopsied.

*

Abrasions:

1.)

2.0 cms., x 1.0 cm., cheek, malar surface, left.

2.)

Linear, 6.0 cms., chest, anterior, left, level of the 7th ICS.

3.)

Linear, 8.0 cms., chest, lateral, left level of the 4th ICS.

4.)

Linear, multiple, over an area of 32.0 cms. x 19.0 cms., trunk, left, lateral surface.

5.)

5.0 cms. x 1.5 cms., deltoid, right.

6.)

3.0 cms. x 1.5 cms., scapular area, right.

7.)

Linear, 4.0 cms., hypochondriac area, left.

8.)

Multiple, over an area 16.0 cms., x 11.0 cms., left hand, dorsal surface.

9.)

Multiple, over an area of 11.0 cms. x 11.0 cms., right hand, dorsal surface.

*

CONTUSION, 36.0 cms. x 20.0 cms., thigh, antero-lateral surface, right.

*

LACERATIONS: All modified by suturing and embalming.

1)

6.0 cms., mid-frontal area extending to the left forehead.

2)

2.0 cms., forehead, left.

3)

3.0 cms., fronto-temporal area, left.

4)

3.0 cms., temporo-parietal area, left.

5)

4.0 cms., knee, left.

*

PUNCTURE WOUNDS: two (2) in number, pinpoint, almost inconspicuous in appearance, chest, lateral, left, level of the 4th and 5th ICS, posterior axillary line, both penetrating the left thoracic cavity and both puncturing the lateral surface of the upper lobe of the left lung, producing pinpoint hemorrhages, entering to an approximate depth of 5.0 cms.

*

SCALP HEMATOMA, MASSIVE, LEFT.

*

FRACTURE, cuboidal in shape, with a punched-in hole at its inner table, Temporal bone, left.

*

FRACTURE, linear, frontal bone, left.

*

Fracture, complete, 9th anterior rib, left.

*

Sub-dural Hemorrhage, moderate (about 200 cc.), left temporal area.

*

Hemothorax, moderate (about 250 cc.) left.

*

The other visceral organs are pale.

which caused the instant death of said NESTOR ADAJAR and thereafter accused Ambong Narte and Ernesto “Erning” Salazar well knowing of the commission of the criminal act of the above-mentioned principal accused and without having participated therein, with the intention of concealing or destroying the body of the crime or the effects thereof in order to prevent its discovery carried and brought the dead body of NESTOR ADAJAR and placed it on the pavement of the highway to give semblance that the latter was a victim of a “hit and run”, to the damage and prejudice of the heirs of said Nestor Adajar.

CONTRARY to Article 248 of the Revised Penal Code, as amended by R.A. 7659 in relation with Art. 19, also of the Revised Penal Code.”[3]

Arraignment and Plea

Upon arraignment, appellants Erasto, Sr., Arnold, Carlo, Avelino, Richard, all surnamed Acosta, Rosendo Tara and Ernesto Salazar, assisted by counsel, pleaded not guilty to the charge.[4] Sigfredo Acosta and Amboy Narte are at large.

The Trial

On February 8, 1999, trial on the merits commenced. On March 17, 1999, on motion of the prosecution, the trial court issued an Order[5] dismissing the case against Ernesto Salazar for insufficiency of evidence. Ernesto was presented as a witness for the prosecution.

Version of the Prosecution

Dioquino Adajar testified that at around 6:00 p.m. of June 14, 1998, her husband Nestor Adajar (“Nestor” for brevity) told her that he would visit his cousin Ernesto Salazar in the latter’s house. Dioquino slept at past 8:00 p.m. that evening. She was awakened by Civilian Volunteer Officer (“CVO” for brevity) Romeo Campos who informed her that her husband Nestor was already dead. Dioquino and her cousin Sabina found Nestor’s body lying on the side of the McArthur Highway at Pinmaludpod, Urdaneta City. His slippers were aligned near his body which bore injuries. Very little blood oozed from Nestor’s body. Dioquino noticed shattered glasses on the road near Nestor’s body.[6]

Eyewitness Rodrigo dela Cruz, a carpenter and a resident of Pinmaludpod, Urdaneta City, testified that at around 11:00 p.m. of June 14, 1998, he was resting at his house. Rodrigo went outside to urinate and heard a commotion. He went near the place of the commotion, which was about twenty (20) meters away from his house. He hid himself and watched a fist fight among a group who had been drinking. He saw Arnold Acosta, Richard Acosta, Erasto Acosta, Sr. and Carlo Acosta physically assaulting the victim, Nestor. Arnold hit Nestor on the head with a piece of wood (*dos por dos*) with a protruding nail on one end. Then, Avelino struck Nestor with a pipe hitting the left side of his forehead. Nestor fell down. Rosendo Tara thrust an ice pick on the left side of Nestor’s body. Sigfredo Acosta followed by hitting the left side of Nestor’s body with a bamboo pole. Erasto, Sr. then uttered, “Are you sure that he is dead?” Erasto told his sons to carry the victim’s body and bring it to the road. Carlo, Sigfredo and Arnold carried the victim’s body to the road going to Dagupan City, in front of Rodrigo’s house. Rodrigo knew the victim because Nestor was his neighbor.[7]

Ernesto Salazar, a farmer and a resident of Barangay Pinmaludpod, Urdaneta City, testified that at around 11:00 p.m. of June 14, 1998, he was watching television at his house. Arnold Acosta invited Ernesto to drink at the back of Avelino Acosta’s house, which was five (5) meters away from Ernesto’s house. Ernesto agreed and they drank gin with Rosendo Tara, Sigfredo Acosta, Richard Acosta, Avelino Acosta, Carlo Acosta, Erasto Acosta, Sr., Junior dela Cruz and two visitors. After drinking three shots, Ernesto went home and watched television again. After thirty minutes, Ernesto heard a commotion at the back of Avelino’s house and so he went out. Ernesto heard people shouting and he saw Arnold, Richard, Rosendo, Sigfredo, Avelino, Carlo and Erasto, Sr. lifting the body of Nestor who was unconscious (*nakalupaypay*). Ernesto heard Erasto, Sr. utter, “Be sure he is dead.” Then Ernesto went home. The following day, he heard that Nestor was run over by a vehicle.[8]

Leonora Talvo, a resident of Pinmaludpod, Urdaneta City, testified that in the early morning of July 15, 1998, she was awakened by the barking of dogs. Leonora noticed three persons near her gate. She heard these words uttered, “Are you sure that he is already dead?” Leonora remarked “*wa*” and they ran away. Then Leonora saw Ambong Narte placing a trunk of “*seneguelas*” in the middle of the national road to Dagupan which was lighted by a passing vehicle. She also saw Richard Acosta pulling a dead person to the road. She called Ambong and asked him who they were pulling and Ambong answered that Nestor was run over. Afterwards, Barangay Kagawad Beatriz Abian, the parents of the victim and other people arrived at the road.[9]

On June 15, 1998, Dr. Ramon B. Gonzales, rural health physician, conducted the autopsy of the victim and prepared this Autopsy Report:[10]

“SIGNIFICANT EXTERNAL FINDINGS:

- Lacerated wound forehead, 6 cms. x 1 cm.
- Lacerated wound forehead, 1 cm. x ¼ cm.
- Lacerated wound forehead, 1.5 cm. x ¼ cm.
- Abrasion right malar region.

- Left anterior chest wall, anterior axillary line 4th intercostal space.
- Left anterior chest wall anterior axillary line 7th intercostal space.
- Left hypochondriac region.
- Left knee
- Left hand, dorsum

-Lacerated wound, left temporal region just above left ear 6 cms. x 1 cm.

SIGNIFICANT INTERNAL FINDINGS:

- Fracture temporal bone 1 cm. x ¼ cm. (rectangular in shape).
- Fracture frontal bone 1.5 cm. x ¼ cm.
- Cerebral hemorrhage and injury, frontal lobe and left temporal lobe, brain.

CAUSE OF DEATH:

- Cerebral hemorrhage and injury, frontal lobe and left temporal lobe, brain due to fracture, skull.”

Upon the request of the victim’s wife, Dr. Ronald R. Bandonill, medico-legal officer of the National Bureau of Investigation (“NBI” for brevity), Baguio City, conducted on June 24, 1998 a second autopsy of the victim’s body to determine whether his death was caused by a vehicular accident or foul play.[11] Dr. Bandonill prepared Autopsy Report No. 98-14-P[12] with the following findings:

“POSTMORTEM FINDINGS

*

Body previously embalmed, in a moderate state of decomposition, with slight moldy growth at the right side of the trunk.

*

Pallor, nailbeds.

*

Head, previously autopsied.

*

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2.0 cms., x 1.0 cm., cheek, malar surface, left.

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SCALP HEMATOMA, MASIVE, LEFT.

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FRACTURE, cuboidal in shape, with a punched-in hole at its inner table, Temporal bone, left.

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FRACTURE, linear, frontal bone, left.

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Fracture, complete, 9[th] anterior rib, left.

*

Sub-dural Hemorrhage, moderate (about 200 cc.), left temporal area.

*

Hemothorax, moderate (about 250 cc.) left.

*

The other visceral organs are pale.

CAUSE OF DEATH:

*

INTRACRANIAL HEMORRHAGE secondary to TRAUMATIC HEAD INJURY, LEFT

*

PUNCTURE WOUNDS, CHEST, LEFT, Contributory”

The victim’s father, Jesus Adajar, testified that due to his son’s death, he incurred expenses totaling P74,000.00 broken down as follows: funeral, P17,000.00; tomb, P6,000; video, P4,000.00; snacks for the wake, P15,000.00; candles, P2,000.00; prayers (padasal), P10,000.00; and miscellaneous expenses, P20,000.00.[13] However, Jesus failed to adduce in evidence the receipts to substantiate these expenses.[14]

Version of the Defense

Appellants denied killing Nestor and attributed his death to a vehicular accident (hit and run) along Pinmaludpod road going to Dagupan City.

Appellant Erasto Acosta, Sr., 52 years old, a metal fabricator and a resident of Barangay Pinmaludpod, Urdaneta City, testified that Avelino, Carlo, Arnold, Richard, all surnamed Acosta, are his sons, while Rosendo Tara is his nephew. Erasto, Sr. knows the victim Nestor who was his neighbor. In the evening of June 14, 1998, Erasto, Sr. was in his house together with his wife and three grandchildren. At around 11:00 p.m., Erasto, Sr.’s wife woke him up because of a knocking at their door. Erasto, Sr. opened the door and Arnold came in. Erasto, Sr. slept again and woke up at 5:30 a.m. the following day. Erasto, Sr. denied killing Nestor. On April 5, 1999, Erasto, Sr. voluntarily surrendered to the PNP at Urdaneta City.[15] Erasto Sr.’s wife, Susana Acosta, corroborated his testimony.[16]

Appellant Carlo P. Acosta, 29 years old, a helper, mechanic and a resident of Barangay Pinmaludpod, Urdaneta City, testified that from 7:00 a.m. to 5:00 p.m. of June 14, 1998, he was working at the shop of Tito Abenajar in Laoac, Pangasinan where he was a stay-in worker. In the evening of June 14, 1998 and the following day, June 15, 1998, he was also at the shop. On June 14, 1998, Carlo did not see his brothers (Avelino, Richard, Arnold, Sigfredo), his father Erasto, his cousin Rosendo Tara, Ambong Narte and Ernesto Salazar. Carlo denied killing

Nestor and reiterated that on the date of the incident, he was at Laoac, Pangasinan.[17]

Appellant Avelino Acosta, 32 years old, a welder and a resident of Barangay Pinmaludpod, Urdaneta City, testified that on June 14, 1998, a Sunday, he was at his house with his family the whole day, from morning until night. Avelino did not leave his house. Avelino slept at past 8:00 p.m. and woke up the following day, June 15, 1998, at 5:00 a.m. Avelino denied killing Nestor. Avelino learned when he reported for work that Nestor was a victim of a hit and run. Avelino executed a counter-affidavit[18] dated August 20, 1998.[19] Avelino's wife, Bonifacia Acosta, corroborated his testimony.[20]

Appellant Arnold Acosta, 19 years old, and a resident of Pinmaludpod, Urdaneta City, Pangasinan, testified that at 7:00 p.m. of June 14, 1998, his uncle Ernesto Salazar invited him to a drinking session. Later, Rodrigo dela Cruz arrived followed by two visitors, Jay and Jeffrey. At around 9:00 p.m., Nestor arrived already drunk manifested by the way he talked and walked. They finished drinking at past 11:00 p.m. and then parted ways. Nestor and Ernesto left together. Arnold went home. Arnold denied the allegation of prosecution witness Rodrigo dela Cruz that he was one of the assailants of Nestor. Arnold executed a counter-affidavit.[21]

Appellant Richard Acosta, 21 years old, a window glass installer and a resident of Barangay Pinmaludpod, Urdaneta City, testified that from 7:00 p.m. to 12:00 midnight of June 14, 1998, he was in the house of his friends Rizalina Mainis and Bernalie Mainis at Barangay Pinmaludpod, Urdaneta, Pangasinan. On his way home, Richard came across the dead body of Nestor lying on the road. Richard proceeded to the house of his grandmother, Lourdes Pagaduan, and woke up his cousin Rosendo Tara. Richard told Rosendo that Nestor was run over by a car. On their way to the house of Barangay Kagawad Beatriz Abian to report the incident, they met Barangay Tanod Campos and asked him to accompany them. They informed Barangay Kagawad Beatriz Abian that Nestor was run over by a vehicle. Then they went to the house of Nestor's parents to inform them about the incident and proceeded to the location of Nestor's body. Richard assumed that Nestor was a victim of hit and run because he saw many broken glasses near his body. Richard denied involvement in the killing of Nestor.[22]

Appellant Rosendo Tara, 19 years old, an assistant welder and a resident of Barangay Pinmaludpod, Urdaneta City, testified that he lives in the house of his cousin, Carlo Acosta. At past 12:00 midnight, Richard woke up Rosendo and told him that Nestor was run over by a vehicle. They went out and Rosendo saw the body of Nestor lying in the middle of the road. There were broken glasses near Nestor's body so Rosendo assumed that Nestor died due to a vehicular accident. Then Rosendo, Richard and CVO Romeo Campos, whom they met along the way, went to the house of Barangay Kagawad Beatriz Abian to inform the latter that Nestor died in a vehicular accident. CVO Romeo Campos, Richard and Barangay Kagawad Beatriz Abian proceeded to Nestor's house while Rosendo went near Nestor's body. Rosendo executed a counter-affidavit.[23]

Beatriz Abian, Barangay Kagawad of Barangay Pinmaludpod, Urdaneta City, testified that about 1:00 a.m. of July 15, 1998, she was in her house talking with her aunt Rosario Cresencia and four barangay CVOs. Then CVO Romeo Campos, with Arnold Acosta and Rosendo Tara, arrived and told her that Nestor, a victim of hit and run, was dead. Beatriz went to the house of the parents of Nestor and informed them about their son's death.[24] She also reported the incident to the police of Urdaneta City and executed a sworn statement.[25]

SPO1 Alfredo M. Eslava, member of the PNP, Urdaneta City, testified that in the early morning of June 15, 1998, Desk Officer Danny Prado informed him that he received a report of a hit and run incident from Barangay Kagawad Beatriz Abian of Barangay Pinmaludpod, Urdaneta City. SPO1 Eslava, with Chief Investigator SPO2 Ernesto Ganceña and station driver Arellaga, immediately proceeded to the place of the incident and found Nestor's body. SPO1 Eslava made a rough sketch,[26] which showed that the victim's body was found lying in front of the house of Bonifacio Talvo at the northern portion of the road, and there was bloodstain on the

cemented pavement of the highway. Barangay Kagawad Beatriz Abian told SPO1 Eslava that Nestor was a victim of a hit and run, which was reflected in his spot report.[27] SPO1 Eslava did not notice a “seneguelas” tree trunk in the middle of the road because it was dark then.[28]

SPO3 Ernesto Ganceña corroborated the testimony of SPO1 Eslava. SPO3 Ganceña testified that he found broken glass debris at the place of the incident and also bloodstain, both of which were about five (5) to six (6) meters away from the victim. SPO3 Ganceña found bloodstain on the victim’s head and right forearm.[29]

The Trial Court’s Ruling

The trial court ruled that the positive testimony of prosecution witness Rodrigo dela Cruz prevailed over the denial and alibi of appellants. The trial court found that the injuries sustained by the victim were consistent with the testimony of Rodrigo dela Cruz and supported by the postmortem findings of Dr. Ronald Bandonill. The trial court noted that all the accused fled from their respective homes after the killing of Nestor which is an indication of guilt. The trial court found that conspiracy was present in the killing of Nestor. The trial court appreciated treachery in the commission of the crime which qualified the killing to murder. The trial court also appreciated the aggravating circumstance of abuse of superior strength against the appellants to warrant the imposition of the death penalty.

The trial court pronounced judgment thus:

“WHEREFORE, JUDGMENT OF CONVICTION beyond reasonable doubt is hereby rendered against ERASTO ACOSTA, SR., ARNOLD ACOSTA, CARLO ACOSTA, AVELINO ACOSTA, RICHARD ACOSTA and ROSENDO TARA of the crime of aggravated MURDER as charged in the Information and the Court hereby sentences ERASTO ACOSTA, SR., ARNOLD ACOSTA, CARLO ACOSTA, AVELINO ACOSTA, RICHARD ACOSTA and ROSENDO TARA to suffer the penalty of DEATH to be implemented in the manner as provided for by law; to indemnify the heirs of Nestor Adajar, jointly and solidarily, the sum of P74,000.00 as actual damages; the further sum of P75,000.00 as moral damages and another sum of P20,000.00 as exemplary damages and all accessory penalties of the law.

Sigfredo Acosta and Amboy Narte are still at-large.

The Branch Clerk of Court is hereby ordered to prepare the mittimus after fifteen days from date of promulgation.

The Warden, Bureau of Jail Management and Penology (BJMP) Urdaneta District Jail, Urdaneta City, is hereby ordered to deliver the persons of ERASTO ACOSTA, SR., ARNOLD ACOSTA, CARLO ACOSTA, AVELINO ACOSTA, RICHARD ACOSTA and ROSENDO TARA to the National Bilibid Prisons, Muntinlupa City after fifteen (15) days from receipt of this Decision.

SO ORDERED.”[30]

Hence, this automatic review.

The Issues

Appellants ascribed to the trial court the following errors:

“I

THE COURT A QUO GRAVELY ERRED IN FINDING THE APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DESPITE INSUFFICIENCY OF EVIDENCE.

II

THE COURT A QUO ERRED IN FINDING THAT THE APPELLANTS CONSPIRED IN KILLING VICTIM NESTOR ADAJAR.

III

THE COURT A QUO ERRED IN ORDERING APPELLANTS TO INDEMNIFY THE HEIRS OF NESTOR ADAJAR, JOINTLY AND SOLIDARILY, THE SUM OF P74,000.00 AS ACTUAL DAMAGES; THE FURTHER SUM OF P75,000.00 AS MORAL DAMAGES AND ANOTHER SUM OF P20,000.00 AS EXEMPLARY DAMAGES AND ALL ACCESORY PENALTIES OF THE LAW.”[31]

The Court’s Ruling

The Court sustains the conviction of appellants for the crime of murder, but the death penalty imposed by the trial court should be reduced to reclusion perpetua.

First Issue: credibility of witnesses and sufficiency of evidence.

Appellants contend that the trial court erred in finding them guilty beyond reasonable doubt based on the testimonies of the prosecution witnesses whose credibility they question because the prosecution witnesses allegedly made inconsistent statements and omitted important details. Appellants pointed out that in his sworn statement, prosecution eyewitness Rodrigo dela Cruz stated that he heard the commotion while he was urinating, while he testified in court that he heard the commotion while he was lying down.

As observed by the Solicitor General, there is no inconsistency on the precise time when Rodrigo dela Cruz heard the commotion. A review of the transcript of stenographic notes reveal that Rodrigo dela Cruz testified on direct examination that he heard the commotion while he was already outside his house urinating, thus:

“COURT:

While lying down, what happened?

A:

I heard commotion outside, because I went out purposely to urinate, sir.

Q:

Upon hearing this commotion outside, what did you do?

A:

I went near the place where the commotion was, sir.”[32]

During cross-examination, Rodrigo dela Cruz clarified this point:

“Q:

Which is now correct the one you heard the commotion while you were lying or the one you heard the commotion while you were urinating?

A:

The one I was urinating.”[33]

Assuming that there is any inconsistency, the question of whether Rodrigo dela Cruz heard the commotion while

still in bed or outside the house urinating refers merely to collateral matters. Such minor inconsistency does not touch upon the commission of the crime itself or detract from the positive identification of appellants as the assailants. Therefore, such minor inconsistency does not affect the substance of the prosecution witness' declarations, their veracity, or weight of his testimony.[34]

Moreover, appellants contend that Rodrigo dela Cruz stated in his sworn statement that at the back of Avelino Acosta's house, he saw Erasto Acosta, Sr., Avelino Acosta, Carlo Acosta, Imbo Acosta, Arnold Acosta, Rosendo Tara, Ambong Narte, Ernesto Salazar, Nestor and Jay-R dela Cruz. However, on direct examination, Rodrigo only mentioned five names, omitting his son Jay-R dela Cruz.

Admittedly, Rodrigo dela Cruz mentioned in his sworn statement[35] that he saw the following persons at the crime scene: Erasto Acosta, Sr., Carlo Acosta, Richard Acosta, Sigfredo Acosta, Nestor, Arnold Acosta, Avelino Acosta, Rosendo Tara, Ambong Narte, Ernesto Salazar and Jay-R de la Cruz. In his testimony before the trial court, Rodrigo mentioned the same persons, except Ernesto Salazar and Jay-R dela Cruz, Rodrigo's son. The Solicitor General correctly opined that Rodrigo's failure to mention Ernesto and Jay-R in his testimony is insignificant to appellants' cause considering that there is no evidence showing that Ernesto and Jay-R participated in the killing of Nestor. The case was dismissed against Ernesto because the witnesses for the prosecution failed to identify him as one of the assailants of the victim.[36] No evidence was also adduced implicating Jay-R in the commission of the crime. Rodrigo affirmed his sworn statement in which he declared that Jay-R ran away when appellants started assaulting Nestor,[37] clearly showing Jay-R's non-concurrence with their criminal design. Moreover, it is a settled rule that discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him.[38]

Although the testimony of Rodrigo dela Cruz is uncorroborated by another eyewitness, it is no less trustworthy. The Court has ruled in a number of cases that the testimony of a single witness, if credible and positive, is sufficient for conviction because truth is established not by the quantity, but by the quality of the evidence.[39]

Appellants insinuate that Rodrigo dela Cruz sought to protect his son, Jay-R, by failing to disclose his name thus casting serious doubt on the credibility of Rodrigo. However, the Solicitor General correctly stated that there is no law which disqualifies a person from testifying in a criminal case in which his relative is involved if the former was at the scene of the crime and witnessed the execution of the criminal act.[40]

Moreover, appellants contend that prosecution witness Leonora Talvo testified that she did not recognize the three persons who went near her gate. Leonora also testified that Ambong Narte placed a trunk of "seneguelas" in the middle of the road. Appellants, however, point out that SPO1 Alfredo Eslava, who investigated the incident, testified that he did not notice a "seneguelas" trunk lying on the road.

Indeed, Leonora Talvo testified that she failed to recognize the three persons who went near her gate in the early morning of July 15, 1998. However, Leonora recognized appellant Richard Acosta as the person who dragged Nestor's body to the side of the road because the lights of passing vehicles illuminated the road.[41] Leonora Talvo and Rodrigo dela Cruz know appellants being their neighbors and barangaymates. Hence, identification became an easy task for them.[42] Leonora merely corroborated the testimony of Rodrigo who positively identified appellants as the culprits. SPO1 Alfredo Eslava testified that he did not notice the presence of the "seneguelas" trunk on the road because it was dark. In any event, any discrepancy on these minor details and not on the basic aspects of the crime does not impair the credibility of Leonora.[43]

Appellants also question the credibility of prosecution witness Ernesto Salazar by pointing out the discrepancy between his testimony before the court and his version of the incident in paragraph no. 2 of his affidavit,[44] thus:

"2. That what really happened is this, to wit:

In the evening of June 14, 1998 before the hour of 9:00 p.m., I was with Arnold Acosta, Jay-R (son of Rodrigo de la Cruz, witness in the case) and with two visitors at the back of the house of Avelino Acosta having a drink. At about 9:00 p.m. of that evening of June 14, 1998, Nestor Adajar arrived in the place joining the group but he was already drunk upon arrival. At about 11:00 p.m. of that said evening of June 14, 1998, we finished drinking and so we dispersed. This Nestor Adajar, who happened to be a cousin, said and asked me to accompany him and so I did but only up to the road which is 100 meters from the place where we had a drink. The late Nestor Adajar told me he will go home already and so I went home also. On the following morning of June 15, 1998 at about 7:00 a.m. I learned that this Nestor Adajar was a victim of hit and run vehicle.”

On cross-examination, Ernesto clarified that his version of the incident in paragraph no. 2 of his affidavit was not true because he was threatened by Erasto Acosta, Sr. who went to his house on June 15, 1998 after the incident.[45] He also did not mention in his affidavit that appellants were present when they were drinking at the back of Avelino Acosta’s house because Erasto Acosta, Sr. told him that if he told the truth and included Erasto Sr.’s sons in his statement, they would kill him.[46] When he executed his affidavit before Notary Public Juan A. Soliven, Erasto Acosta, Sr. was with him and he did not have the chance to rectify his affidavit.[47] Significantly, Notary Public Juan A. Soliven testified that indeed Erasto Acosta, Sr. accompanied Ernesto when the latter executed his affidavit before him.[48]

Appellants insist that Nestor died due to a vehicular accident, which possibility the NBI Medico-Legal Officer Dr. Ronald Bandonill did not completely rule out.

We disagree.

No one witnessed that Nestor was run over by a vehicle. It was appellants Richard Acosta and Rosendo Tara, with CVO Romeo Campos (whom they met along the way), who informed Barangay Kagawad Beatriz Abian that Nestor was a victim of a hit and run. In turn, Barangay Kagawad Abian informed the police authorities, particularly SPO1 Alfredo Eslava, that Nestor was a victim of a hit and run. Hence, the victim’s wife requested the NBI for a second autopsy to determine whether the victim’s death was caused by a vehicular accident or foul play. We share the view of the Solicitor General that the two separate autopsy reports submitted by Dr. Ramon Gonzales and Dr. Ronald Bandonill support the testimony of eyewitness Rodrigo dela Cruz.

In his autopsy report,[49] Dr. Gonzales found three (3) lacerated wounds on the victim’s forehead, one (1) lacerated wound on the left temporal region just above the left ear, and five (5) abrasions on different parts of Nestor’s body. He opined that said injuries could have been caused by a hard object.[50] He also found internal injuries on the “temporal bone,” “frontal bone,” and “cerebral hemorrhage and injury, frontal lobe and left temporal lobe, brain.”

On the other hand, Dr. Bandonill found nine (9) abrasions, a contusion, five (5) laceration wounds, two (2) puncture wounds, scalp hematoma, and several fractures on different parts of Nestor’s body.[51] Four of the laceration wounds were found on the forehead and the left side of the head.[52] In part, Dr. Bandonill explained his findings, thus:

“WITNESS:

A

My 7[th] entry is puncture wounds.

Q

What is that all about?

A

This (sic) puncture wounds were two in number, pinpoint, almost inconspicuous in appearance, chest lateral, left, level of the 4th and 5th intercostal surface, posterior axillary line, both penetrating the left thoracic cavity, and both puncturing the lateral surface of the upper lobe of the left lung, producing pinpoint hemorrhages, entering to an approximate depth of 5.0 cms.

Q

Where is that?

A

Here below the armpit, sir.

Q

What could have caused the puncture wounds?

A

This caused by sharp edged instrument inflicted on that area.

Q

Example of sharp edged instrument?

A

Piece of nail, or icepick.

Q

These puncture wounds could caused (sic) death of a victim?

A

No sir, and they are not even marked mortal wounds.

Q

How about the 8th entry doctor?

A

Scalp hematoma, massive, left.

Q

What is that about?

A

This means that there was a “bukol” or elevation of the left side of the head which was on that side.

Q

What could have caused that scalp injuries?

A

Hard blunt instrument coming into contact with that area and caused massive bleeding when inflicted with force.

Q

Will you give example of hard blunt instrument?

A

It could be a piece of wood, or stone or cement block.

Q

How about your 9[th] findings?

A

Fracture, cuboidal in shape, with a punched-in hole at it's (sic) inner table, temporal bone, left.

Q

What do you mean by that?

A

It mean (sic) that the left side of the temporal bone had been fractured like a cube shape or square shape it was inward fracture going inside the head.

Q

With that injury it will caused (sic) death to the victim?

A

Yes, sir.

Q

What caused that kind of injury?

A

Sharp pointed instrument inflicted to the area with force.

Q

Like what kind of sharp pointed instrument?

A

Could be a piece of nail, icepick and sharp iron.

COURT:

Q

Is that a mortal wound?

A

Fatal wound, sir.

Q

It will cause the death?

A

Yes, sir.

PROS. TOMBOC:

Q

How about your finding at the second page what is this doctor?

A

Fracture, linear, frontal bone, left.

Q

What injury is that?

A

It mean (sic) that the front part of the left skull was fractured.

Q

Is that injury fatal wound?

A

It could be mortal.

Q

What could have caused that injury?

A

Hard blunt instrument inflicted to the area with force.

Q

Like what kind of instrument?

A

Piece of wood, stone and iron.

Q

This second findings in the second page?

A

Fracture, complete, 9[th] anterior rib, left.

Q

What do you mean by that?

A

I found out that the 9[th] rib at the front part of the left chest was completely fractured.

Q

What part of the body is that?

A

Here sir. (witness pointing at the left side below the breast)

Q

How about your third findings?

A

Sub-dural hemorrhage, moderate (about 200 cc) left temporal area.

Q

What do you mean by that?

A

It means that there was accumulation of blood at the left side of the brain.

Q

How were you able to measure that accumulated blood?

A

I collected all the blood clot inside the brain and placed inside the container and estimated that amount.

Q

What caused the injury?

A

Caused by breaking of blood vessels inside the brain as a result of a traumatic injury of the head.

Q

Like example of what doctor?

A

Hit on the head could caused (sic) the blood vessels of the brain burst and caused massive bleeding.

Q

How about your fourth findings doctor?

A

Hemothax, moderate (about 250 cc), left.

Q

What do you mean by that injury?

A

It mean (sic) that there is accumulation of blood about 250 cc will admit at the left chest cavity.

Q

What caused by (sic) that?

A

Caused by the bleeding of the left lung.

Q

What caused the bleeding of the left lung?

A

Caused by puncture wounds.

Q

You mean the two puncture wounds?

A

Yes, sir.

Q

What caused the puncture wounds?

A

Caused by sharp pointed instrument inflicted in that area.”[53]

The foregoing shows that the location of the injuries sustained by the victim, specifically on the head, left side of the forehead, left part of the body below the armpit and chest, and the instruments that could have caused these injuries, jibe with the testimony of eyewitness Rodrigo dela Cruz who narrated thus:

“FISCAL TOMBOC:

Q

What did you observe in that fist fight?

A

I observed that Adajar was being boxed.

Q

Who boxed Adajar?

A

Carlo, Arnold, Sig, Erasto and Richard Acosta, sir.

Q

When these five accused boxed the victim, what did they do next?

A

He was clubbed with a 2 x 2 wooden club with protruding nail.

COURT:

Q

You mean, Adajar was clubbed?

A

Yes, sir.

FISCAL TOMBOC:

Q

Who struck Adajar with that piece of wood?

A

Arnold Acosta, sir.

Q

Will you step down and point to the person of Arnold Acosta if he is present in the courtroom now?

A

(Witness steps down from the witness stand and pointed unto a person, who, when his name was asked, answered Arnold Acosta).

Q

Where was Adajar hit with that 2 x 2 piece of wood with protruding nail?

A

On top of the head, sir.

Q

What happened to Adajar when he was hit?

A

He was about to fall down to the ground, sir.

COURT:

Q

Did he fall?

A

No, sir.

FISCAL TOMBOC:

Q

After Adajar was hit with that wood, what happened next, Mr. Witness?

A

He was again hit with a pipe on the forehead, left side, sir.

Q

Who hit him?

A

Avelino Acosta (Witness pointing to a person seated on a bench inside the courtroom, who, when his name was asked, answered Avelino Acosta).

Q

And what happened then to Adajar when he was hit with a pipe on his forehead?

A

He fell down, sir.

Q

After being hit by a pipe, what happened next to Adajar?

A

Rosendo Tara thrust an icepick at the left side of the body of Nestor Adajar.

Q

If this Rosendo Tara is inside the court room, will you please point to him?

A

(Witness pointed unto a person seated on the bench inside the courtroom, who, when his name was asked, answered Rosendo Tara).

Q

After that, what happened next?

A

Sig Acosta thrust a bamboo pole at the left side of the body of Adajar, sir.

Q

Where is this Sig Acosta, Mr. Witness?

A

He is not around, sir.

Q

After the hitting by Sig Acosta with bamboo pole, what happened next?

A

Erasto uttered, “Are you sure that he is dead?”

COURT:

Q

To whom was it directed?

A

To all of them, sir.

FISCAL TOMBOC:

Q

Is this Erasto Acosta inside the courtroom now, Mr. Witness?

A

No, sir.

Q

After Erasto uttered these words, what else happened, Mr. Witness?

A

He said “you carry the body and bring it to the road.”

COURT:

Q

Who carried the body?

A

They helped one another to carry the body, sir.

Q

You specify?

A

Carlo, Sig, and Arnold, sir.”[54]

There is no evidence of improper motive on the part of the principal witnesses for the prosecution, Rodrigo dela Cruz, Leonora Talvo and Ernesto Salazar. This strongly supports the conclusion that their testimonies are worthy of full faith and credit.[55]

Further, it is a well-settled doctrine that findings of trial courts on the credibility of witnesses deserve a high degree of respect. Such findings will not be disturbed on appeal absent any clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of appellants.[56] We have carefully reviewed the records of this case and we have found no reason to disturb the findings of the trial court.

Alibi as defense

Appellants' defense of alibi is the weakest of all defenses for it is easy to contrive and difficult to prove.[57] For alibi to prosper, one must not only prove that he was somewhere else when the crime was committed but must also show that it was physically impossible for him to have been at the scene of the crime.[58] In this case, appellants Avelino Acosta, Richard Acosta, Arnold Acosta, Erasto Acosta, Sr. and Rosendo Tara were barangaymates of the victim Nestor in Barangay Pinmaludpod, Urdaneta City where the incident happened. Richard declared that at the time of the incident, he was at his friends' residence within the barangay from 7:00 p.m. to 12:00 midnight. Avelino, Erasto, Sr. and Rosendo testified that they were in their homes at the time Nestor was killed. Arnold claimed that on that fateful day, he was drinking with Ernesto Salazar, Rodrigo dela Cruz, two visitors and Nestor from 7:00 p.m. until 11:00 p.m. after which they parted ways and he went home. Since these appellants were just within Barangay Pinmaludpod when the incident happened, they failed to show that it was physically impossible for them to have been at the scene of the crime. On the other hand, appellant Carlo Acosta testified that at the time of the incident he was in Laoac, Pangasinan. Considering the available means of transportation that could easily take Carlo to Barangay Pinmaludpod, Urdaneta City, which is still part of Pangasinan, there was no physical impossibility for him to be also at the crime scene. Like the defense of alibi, appellants' denial is inherently weak and crumbles considering the positive declarations of truthful witnesses who testified on affirmative matters that appellants were at the scene of the incident and they were the ones who killed the victim.[59] Positive identification prevails over denial and alibi.[60]

Flight evidences guilt

Moreover, after the incident, the appellants fled from their respective residences. In January 1999, Avelino Acosta, Carlo Acosta, Richard Acosta, Rosendo Tara and Arnold Acosta were arrested by the police in Tarlac.[61] As found by the trial court, Erasto Acosta, Sr. did not voluntarily surrender but was apprehended by SPO3 Rodolfo Mamaba on a bus going to Dagupan City on April 15, 1999.[62] Sigfredo Acosta and Ambong Narte are still at large. Flight evidences guilt and a guilty conscience:[63] the wicked flee, even when no man pursues, but the righteous stand fast as bold as a lion.[64]

Second Issue: Conspiracy

Appellants contend that the trial court erred in finding that they conspired in killing the Nestor.

Appellants' contention is without merit.

The trial court correctly ruled that conspiracy was present in the instant case. Conspiracy exists when two or more persons come to an agreement and decide on the commission of a felony.[65] While direct evidence is not necessary, conspiracy may be inferred from and proven by the acts of the accused themselves when the acts point to a joint purpose and design, concerted action and community of interest.[66] In this case, prosecution witness Rodrigo dela Cruz saw appellants Arnold Acosta, Richard Acosta, Erasto Acosta, Sr. and Carlo Acosta physically assaulting Nestor. Arnold struck Nestor on the head with a piece of wood, then Avelino hit him with a pipe on the left side of his forehead. When Nestor fell down, Rosendo thrust an icepick on the left side of his body. Sigfredo Acosta also hit the left side of Nestor's body with a bamboo pole. Then Erasto, Sr. uttered, "Are you sure that he is dead?" Erasto, Sr. told his sons to bring the victim's body to the road. Clearly, the appellants were united in the execution of a common criminal design showing the presence of conspiracy. Where conspiracy is established, the act of one is the act of all.[67] All the conspirators are liable as co-principals.[68]

Treachery and Abuse of superior strength

The trial court also correctly held that treachery was present in the commission of the crime. 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 the offender arising from the defense which the offended party might make.[69] In this case, appellants' concerted and successive attack on Nestor, who was unarmed, ensured his death without giving him an opportunity to defend himself. The attendant circumstance of treachery thus qualified the killing to murder under Article 248 of the Revised Penal Code:

“Art. 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 perpetua 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; x x x.”

However, as pointed out by the Solicitor General, the attendant aggravating circumstance of abuse of superior strength is necessarily included in treachery.[70] Hence, the trial court erred in still appreciating abuse of superior strength apart from treachery, which warranted the imposition of the death penalty. Consequently, there being neither mitigating nor aggravating circumstances in the commission of the crime, the death penalty imposed by the trial court should be reduced to reclusion perpetua under Section 63 (2)[71] of the Revised Penal Code.

Third Issue: Damages

The trial court erred in awarding Nestor's heirs actual damages[72] of P74,000.00 considering that the prosecution failed to present the receipts to substantiate the same. The trial court can only grant actual damages if supported by receipts.[73] Nevertheless, instead of actual damages, temperate damages under Article 2224[74] of the Civil Code may be recovered as it has been shown that the victim's family suffered some pecuniary loss but the amount thereof cannot be proved with certainty.[75] An award of P15,000.00 as temperate damages should suffice.[76]

The trial court correctly awarded moral damages for the anguish suffered by the victim's wife because of the victim's death.[77] However, the amount of P75,000.00 should be reduced to P50,000.00 following prevailing jurisprudence.[78] The purpose for making such award is not to enrich the heirs of the victim but to compensate them for injuries to their feelings.[79]

The trial court erred in awarding exemplary damages of P20,000.00. In criminal offenses, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances.[80] In this case, no aggravating circumstances attended the commission of the crime. Hence, the award of exemplary damages should be deleted.

Further, the heirs of the victim are entitled to civil indemnity of P50,000.00, which needs no proof other than the commission of the crime.[81]

WHEREFORE, the assailed decision of the Regional Trial Court of Urdaneta City, Branch 46, in Criminal Case No. U-9788, finding appellants Erasto Acosta, Sr., Arnold Acosta, Carlo Acosta, Avelino Acosta, Richard Acosta and Rosendo Tara GUILTY beyond reasonable doubt of the crime of murder is AFFIRMED with MODIFICATION. The death penalty imposed is reduced to reclusion perpetua, and appellants are jointly and severally ordered to pay the heirs of the victim, Nestor Adajar, P50,000.00 as civil indemnity, P15,000.00 as temperate damages, and P50,000.00 as moral damages. Actual damages of P74,000.00 and exemplary damages of P20,000.00 awarded by the trial court to the victim's heirs are deleted.

SO ORDERED.

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

[1] Pursuant to Article 47 of the Revised Penal Code, as amended by Section 11 of R.A. No. 7659.

[2] Penned by Judge Modesto C. Juanson.

[3] Records of Criminal Case No. U-9788, p. 1.

[4] Records of Criminal Case No. U-9788, pp. 87, 123, 203.

[5] Ibid., p. 174.

[6] TSN, March 4, 1999, pp. 3-7.

[7] TSN, February 10, 1999, pp. 4 -11; TSN, February 11, 1999, p. 30.

[8] TSN, May 20, 1999, pp. 2-13.

[9] TSN, February 24, 1999, pp. 2-7; TSN, February 25, 1999, p. 5.

[10] Records of Criminal Case No. U-9788, Exhibit "A", p. 55.

[11] TSN, February 11, 1999, pp. 4-6.

[12] Records of Criminal Case No. U-9788, Exhibit "G", pp. 161-162.

[13] Records of Criminal Case No. U-9788, Exhibits "B," "B-1", p. 157.

[14] TSN, February 9, 1999, pp. 2-7.

[15] TSN, June 22, 1999, pp. 2-5; TSN, June 23, 1999, p. 3.

[16] TSN, June 1, 1999, pp. 2,7, 9.

[17] TSN, March 22, 1999, pp. 2-7.

[18] Records of Criminal Case No. U-9788, Exhibits "6", "6-A", pp. 34-35.

[19] TSN, April 6, 1999, pp. 2-5.

[20] TSN, April 5, 1999, pp. 2-7.

[21] Supra, see note 18; TSN, April 21, 1999, pp. 2-7.

[22] TSN, April 13, 1999, pp. 2-12.

[23] Supra, see note 18; TSN, April 19, 1999, pp. 2-9.

[24] TSN, March 24, 1999, pp. 3-4.

[25] Records of Criminal Case No. U-9788, Exhibit "3", p. 25.

[26] Records of Criminal Case No. U-9788, Exhibit "4", p. 11.

[27] Ibid., Exhibit "5", p. 42.

- [28] TSN, March 15, 1999, pp. 3-10.
- [29] Ibid., pp. 8, 11.
- [30] Rollo, p. 65.
- [31] Rollo, pp. 92-93.
- [32] TSN, February 10, 1999, p. 4.
- [33] TSN, February 11, 1999, p. 30.
- [34] *People v. Irinea*, 164 SCRA 121 (1988).
- [35] Records of Criminal Case No. U-9788, Exhibit “C”, p. 27.
- [36] Ibid., p. 174.
- [37] TSN, February 11, 1999, p. 33.
- [38] *People v. Reduca*, 301 SCRA 516 (1999).
- [39] *People v. Cuenca*, G.R. No. 143819, January 29, 2002.
- [40] *People v. Andales*, 312 SCRA 738 (1999).
- [41] TSN, February 24, 1999, pp. 4-6.
- [42] *People v. Reyes*, 309 SCRA 622 (1999).
- [43] *People v. Lising*, 285 SCRA 595 (1998).
- [44] Records of Criminal Case No. U-9788, Exhibit “7”, p. 38.
- [45] TSN, May 24, 1999, pp. 8-10.
- [46] TSN, May 24, 1999, pp. 6-8.
- [47] Ibid., pp. 6-10.
- [48] TSN, June 29, 1999, pp. 2-6.
- [49] Records of Criminal Case No. U-9788, Exhibit “A”, p. 55.
- [50] TSN, February 8, 1999, pp. 5-6.
- [51] Records of Criminal Case No. U-9788, Exhibits “G”, “G-1”, pp. 161-162.
- [52] TSN, February 11, 1999, p. 12.
- [53] TSN, February 11, 1999, pp. 13-16; underscoring supplied.
- [54] TSN, February 10, 1999, pp. 9-11; underscoring supplied.
- [55] *People v. Ravanes*, 284 SCRA 634 (1998); *People v. Garcia*, 361 SCRA 598 (2001).
- [56] *Espano v. Court of Appeals*, 288 SCRA 558 (1998); *People v. Castellano*, G.R. No. 130596, February 15, 2002.
- [57] *People v. Juan*, 322 SCRA 598 (2000).

[58] Ibid.

[59] *People v. Juan*, supra, see note 57, citing *People v. Baniel*, 275 SCRA 472 (1997).

[60] *People v. Andres*, 296 SCRA 318 (1998); *People v. Zamora*, 278 SCRA 60 (1997).

[61] Records of Criminal Case No. U-9788, p. 79.

[62] Rollo, p. 64.

[63] *People v. Rabanal*, 349 SCRA 655 (2001); *People v. Gregorio*, 255 SCRA 380 (1996).

[64] *U.S. v. Sarikala*, 37 Phil. 486 (1918).

[65] *People v. Cuenca*, G.R. No. 143819, January 29, 2002, citing *People v. Tan*, 359 SCRA 283 (2001).

[66] *People v. Lising*, supra, see note 43; *People v. Sion*, 272 SCRA 127 (1997); *People v. Cadevida*, 219 SCRA 218 (1993).

[67] *People v. Pablo*, 349 SCRA 79 (2001); *People v. Sortes*, 260 SCRA 353 (1996).

[68] Ibid., *People v. Pablo*.

[69] Article 14, paragraph 16, The Revised Penal Code.

[70] *People v. Lab-eo*, G.R. No. 133438, January 16, 2002; *People v. Ampo-an*, 187 SCRA 173 (1990); *People v. Manzanares*, 177 SCRA 427 (1989); *People v. Tajon*, 128 SCRA 656 (1984).

[71] Section 63 (2) of the Revised Penal Code provides: "In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

xxx xxx xxx

- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied."

[72] Art. 2199 of the Civil Code provides: "Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages."

[73] *People v. Plazo*, 350 SCRA 433 (2001); *People v. Go-od*, 331 SCRA 612 (2000).

[74] Art. 2224 of the Civil Code provides: "Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty."

[75] *People v. Sumibcay*, G.R. Nos. 132130-31, May 29, 2002; *People v. Plazo*, supra, see note 73.

[76] Ibid.

[77] TSN, March 4, 1999, pp. 8-9.

[78] *People v. Domingo*, G.R. No. 143660, June 5, 2002; *People v. Dela Cruz*, G.R. No. 139970, June 6, 2002.

[79] *People v. Silvestre*, 307 SCRA 68 (1999); *People v. Guzman*, G.R. No. 132750, December 14, 2001.

[80] Article 2230, Civil Code.

[81] People v. Cabareño, 349 SCRA 297 (2001).

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