

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO PANSENSOY, ACCUSED-APPELLANT.

G.R. No. 140634. September 12, 2002

Ponente: CARPIO, J.

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CARPIO, J.:

Before this Court is an appeal from the Decision[1] dated September 13, 1999 in Criminal Case No. 94-11527 of the Regional Trial Court of Antipolo City, Branch 73, convicting appellant Roberto Pansensoy (“appellant” for brevity) of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua. The trial court also ordered appellant to pay the heirs of the victim P50,000.00 as civil indemnity, P40,000.00 as actual damages and P20,000.00 as moral damages.

The Charge

Asst. Provincial Prosecutor Rolando L. Gonzales filed an Information[2] charging appellant with the crime of murder, committed as follows:

“That on or about the 8th day of May, 1994, in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a handgun, with intent to kill and by means of treachery and evident premeditation, did, then and there willfully, unlawfully and feloniously attack, assault and shoot one Hilario Reyes y Inovero, hitting him on his forehead, thereby inflicting upon him a mortal gunshot wound, which directly caused his death.

CONTRARY TO LAW.”

Arraignment and Plea

When arraigned on February 20, 1995, the appellant, assisted by his counsel, entered a plea of not guilty.[3] Thereafter, trial on the merits followed.

The Trial

The prosecution presented the following witnesses: (1) Analie Pansensoy, eyewitness to the actual shooting of the victim; (2) Dr. Emmanuel Aranas, the medico-legal officer who conducted the autopsy on the victim; (3) SPO1 Reynaldo Ancloste, the police officer who conducted the investigation of the incident; (4) Gregoria Reyes, mother of the victim; and (5) Rogelio Fullente, neighbor of the victim. For its part, the defense presented the appellant as its lone witness.

Version of the Prosecution

Analie Pansensoy (“Analie” for brevity), twenty-eight years old, is the legitimate wife of appellant. She testified that she had been living-in with the victim, Hilario Reyes (“Hilario” for brevity), since February 1994. On May 8, 1994, she and Hilario were in the house they were renting at Lumang Bayan, Antipolo, Rizal. Hilario was lying down inside the house. She stood up when she heard a knocking on the door. As she opened the door, she saw

appellant holding a gun. She embraced appellant and tried to wrest the gun away from him but she failed. Hilario went out of the house and sat on a bench. Appellant approached Hilario and asked him if he really loves his wife. Hilario answered in the affirmative. Appellant next asked Hilario if he was still single. Hilario answered yes. Appellant counted one to three and at the count of three shot Hilario. Hilario was hit on the forehead and sprawled on the ground.[4]

Dr. Emmanuel Aranas, physician, conducted the autopsy on the victim at the St. James Funeral Parlor at past midnight on May 9, 1994. He found a single gunshot wound on the forehead which was the cause of death. He opined that the entry shows the area of smudging which indicates that Hilario was shot at close range. The distance of the muzzle of the gun from the forehead could be less than three inches. He also opined that the person who fired the shot and Hilario were facing each other.[5]

SPO1 Reynaldo Ancloste, member of the Philippine National Police, conducted the investigation on the shooting of Hilario. He took the statements of Gregoria Reyes and Analie in the police station a day after the incident. He did not conduct an ocular inspection at the scene of the crime.[6]

Gregoria Reyes (“Gregoria” for brevity), mother of Hilario, testified that she came to know about the death of her son through a neighbor, Roger. She found out that her son was dead upon arrival at the hospital and was taken to the funeral parlor. She saw the gunshot wound on the forehead of her son. On the same night of May 8, 1994, she went to the police station where she saw Analie give her statement to the police. She also gave her statement to the police. As a result of the death of her son, she incurred expenses in the amounts of P10,000.00 and P30,000.00 for the funeral and the burial, respectively. At the time of his death, her son was managing two passenger jeepneys, one of which he was also driving. He was earning P800.00 a day.[7]

Rogelio Fullente (“Rogelio” for brevity), fifty-six years old, is a co-driver of Hilario in the Antipolo-Marikina route. He was the neighbor referred to by Gregoria in her testimony as Roger, who reported to her the shooting incident. He has known Hilario for ten to fifteen years. In the evening of May 8, 1994, he was in his home in Lumang Bayan which was about ten meters away from where Hilario was staying. According to him, their houses were separated by a driveway which could accommodate one jeep. He heard several knocks and opened the door of his house. When he opened the door he found out that somebody was knocking on the door of Hilario and ordering him to come out. The first time he saw the man knocking on Hilario’s door, the man was not carrying anything. When he heard a gunshot, he opened the door again and saw the man carrying something before he left. Rogelio further narrated that when the man asked Hilario to come out, Hilario was standing by the door. The man asked Hilario if he loved his wife and Hilario answered yes. The man then fired a shot and Hilario’s head bent forward before he fell down. He does not know the caliber of the gun but just heard the gunshot. He went to the parents of Hilario to report the incident. On cross-examination, Rogelio testified that when appellant knocked on the door, it was Hilario who opened the door. Hilario sat on the bench by the door. When Hilario answered yes to appellant’s question of whether he loved his wife, appellant immediately fired a shot. Rogelio testified that he watched appellant fire the shot and then left to report the incident to the parents of Hilario.[8]

Version of the Defense

As expected, the defense had a different version as told by the appellant himself.

Appellant, twenty-eight years old and a security guard, invoked self-defense in his testimony. He testified that Analie is his wife and they have three children. According to him, their relationship as husband and wife was normal.

On May 8, 1994, at about 6:30 p.m., a certain Amadong Bisaya (“Bisaya” for brevity) told him that he saw his

wife with their youngest child and “Tisoy”, referring to Hilario, board a jeep on their way to Lumang Bayan. He had met Bisaya before when the latter told him some time in April 1994 that he always saw appellant’s wife with another man. He asked Bisaya to accompany him to Lumang Bayan where Bisaya pointed to the room where his wife and “Tisoy” entered.

The appellant kicked the door of the room and there he found his wife and “Tisoy” lying beside each other. They were only clad in their underwear. He dragged his wife out of the room by her hair and while doing so, he saw “Tisoy” pull a gun from the table which was covered with clothes. He let go of his wife and jumped on “Tisoy” to grab the gun.

While they struggled for possession of the gun he hit the testicles of “Tisoy” with his knees. “Tisoy” fell on his knees but was still holding the gun. Still grappling for possession of the gun, appellant held on to the back portion of the gun and part of the trigger, while his other hand held Hilario’s hand which was holding the butt of the gun. When Hilario knelt down, appellant was able to twist Hilario’s hand and to point the barrel of the gun towards the latter.

The gun suddenly went off. At that moment, “Tisoy” was holding the trigger of the gun. “Tisoy” was shot on the head and fell down. It was “Tisoy” who was holding the trigger when the gun fired and hit him on the head. “Tisoy” was still holding the gun when he fell to the floor.

He confronted his wife and pulled her hair and slapped her. His wife was just seated in the corner of the room. He asked her where their child was. But before she could answer, their child went inside the room and embraced her mother very tightly. He tried to pull their daughter away from Analie but the latter did not let go of the child. He told Analie that he would kill her too if she did not release the child. He started to count “one, two”, which made his wife release their daughter. He left the room with the child and proceeded to their house. “Tisoy” was still sprawled on the ground face down when he left.”[9]

The Trial Court’s Ruling

The trial court accorded full faith and credence to the testimony of Analie and rejected the version of the appellant that he acted in self-defense. It found the testimony of Analie credible and observed that she remained unperturbed during the cross-examination. The trial court also noted that appellant, who was then a security guard, was charged by his employer with the crime of qualified theft for the loss of a .38 caliber revolver. Appellant allegedly committed the theft on May 8, 1994, the very same day the shooting incident happened. The gun used in shooting the victim was not found at the scene of the crime but the slug recovered was that of a .38 caliber revolver. Although appellant was subsequently acquitted of the charge, the trial court considered this as “evidence of a circumstance connected with the crime.” The trial court further noted that appellant went into hiding from the time the shooting incident happened until the case was filed in court on August 24, 1994.

The trial court pronounced judgment thus:

“WHEREFORE, premises considered, the accused is hereby found guilty beyond reasonable doubt with the crime of murder and is hereby sentenced to the penalty of reclusion perpetua. The accused is hereby further ordered to pay the heirs of Hilario Reyes y Inovero the amount of P50,000.00 as death indemnity and P40,000.00 and P20,000.00 as actual or compensatory and moral damages, respectively.

Costs against the accused.

SO ORDERED.”[10]

Hence, the instant appeal.

The Issues

Appellant is before this Court raising the following assignment of errors:

“I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER DESPITE FAILURE OF THE PROSECUTION TO PROVE ANY OF THE QUALIFYING CIRCUMSTANCES.”

The Court’s Ruling

The appeal is partly meritorious.

First Issue: Self-Defense

Appellant insists that he acted in self-defense. Self-defense as a justifying circumstance may exempt an accused from criminal liability when the following requisites are met, namely: (1) there has been an unlawful aggression on the part of the victim; (2) the means employed to prevent or repel such aggression are reasonably necessary; and (3) the person defending himself has not provoked the victim into committing the act of aggression.[11] The burden of proving by clear and convincing evidence that the killing was justified is on the accused.[12] In doing so, he must rely on the strength of his own evidence and not on the weakness of that of the prosecution.[13]

Appellant asserts that the unlawful aggressor was the victim and his death could be attributed to himself alone. By his own testimony, appellant tried to prove unlawful aggression on the part of Hilario. According to him, he kicked the door, and when it opened he saw his wife and Hilario inside the room clad in their underwear. He pulled the hair of his wife and dragged her outside while she was embracing him. At this point, Hilario pulled a gun from the table. He let go of his wife, jumped on Hilario and grappled for possession of the gun. While trying to wrest the gun from Hilario, he hit Hilario’s testicles with his knees. Hilario fell on the floor but was still holding the gun. When Hilario knelt down, appellant was able to hold and twist Hilario’s hand, pointing the gun towards the latter. The gun suddenly went off and Hilario was hit on the head.

On the other hand, Analie testified that when she opened the door to their room, she saw appellant holding a gun. She embraced appellant and tried to wrest the gun from him but failed. Hilario went out and sat on a bench. Appellant approached him and asked him questions. Appellant counted and, at the count of three, shot Hilario in the head.

The conflicting versions of the prosecution and of the defense as to who initiated the aggression was settled by the trial court which gave full faith and credence to the testimony of Analie over that of appellant. The trial court, which had the opportunity to observe the demeanor of the witnesses on the stand, was convinced of the truthfulness of Analie’s testimony and not that of appellant’s.

Undeterred, appellant’s first assignment of error is focused on the sufficiency of the evidence for the prosecution, questioning in particular the trial court’s assessment of the credibility of the prosecution’s eyewitness, Analie. According to him, Analie’s testimony is flawed as she insisted that she and appellant had been separated for more than three years but this is belied by the fact that their youngest daughter is barely a year old. He also points out

that appellant's version that he dragged his wife outside by pulling her hair was more believable and in accord with human behavior rather than Analie's version that appellant took time to interrogate the victim regarding how much the latter loved his wife and other personal circumstances before shooting him.

We find no reason to reverse or alter the evaluation of the trial court. We reiterate the time tested doctrine "that a trial court's assessment of the credibility of a witness is entitled to great weight – even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence." [14] The alleged flaws in the testimony of Analie do not serve to impair her credibility or diminish the truthfulness of her remarks as to who initiated the aggression and fired the shot.

The allegedly incredible statements do not pertain to the act of killing, but rather to minor or incidental matters which happened before and after the fact of killing. Analie's testimony that she had been separated from appellant for three years which, as pointed out by appellant, was belied by the age of their youngest daughter, does not necessarily impair her credibility. Analie's 3-year separation from appellant does not preclude Analie's still having a child with appellant. As to Analie's version that appellant interrogated Hilario before shooting him, suffice it to say that it is a matter of common observation that the reaction of a person when confronted with a shocking or unusual incident varies. [15] As admitted by appellant himself, it was the first time he saw his wife and Hilario together, veritably confirming what Bisaya had told him some time in April 1994 that Bisaya always saw his wife with someone else. It was not at all strange for appellant to have asked Hilario if he really loved his wife. Were we to agree with the appellant and treat each strange or unusual event in the occurrence of a crime, such as appellant's interrogation of the victim, as basis for reasonable doubt, no criminal prosecution would prevail. [16]

In any event, a thorough evaluation of the transcript of stenographic notes indicates that Analie, as observed by the trial court, testified in a candid and straightforward manner as follows:

“Q: Why do you know said Hilario Reyes?

A: He is my live-in partner.

Q: When did you start to be the live-in partner of Hilario Reyes?

A: February 1994.

Q: Up to what time did you become to be the live-in partner of Hilario Reyes?

A: Three months.

Q: What was the reason why your live-in relationship lasted only three months?

A: Because Roberto killed Hilario Reyes.

Q: When was this Hilario Reyes killed?

A: May 8, 1994.

Q: Where was he killed?

A: At Lumang Bayan.

Q: In what municipality?

A: Lumang Bayan, Antipolo, Rizal.

Q: How did you know that he was killed?

A: He was shot by Roberto Pansensoy.

Q: How did you know that he was shot by Roberto Pansensoy?

A: Because Roberto went there and he was holding a gun.

Q: On May 8, 1994 that you said Hilario Reyes was shot by Roberto Pansensoy, where were you?

A: Inside the house, sir.

Q: Whose is that house you are referring to?

A: We are renting that house.

Q: With whom?

A: Hilario Reyes.

Q: Before this Hilario Reyes was shot, what was he doing?

A: He was already lying down.

Q: Lying down where?

A: Inside the house, sir.

Q: How long was he lying down?

A: Around fifteen minutes.

Q: After lying down for fifteen minutes, what did you do next?

A: I stood up because Roberto knocked on the door.

Q: What happened next after this Roberto knocked on the door?

A: I opened the door and I saw Roberto holding a gun.

Q: After you opened the door and you saw Roberto holding a gun, what happened next?

A: I embraced Roberto and tried to wrestle the gun away from him but I did not succeed.

Q: When you were not able to succeed in taking the gun away from him, what happened next?

A: Hilario went out, sat on the bench and Roberto approached him.

Q: And after Hilario went out and sat on the bench and Roberto approached him, what happened next?

A: Roberto asked Hilario; do you really love my wife? And Hilario said, Yes.

Q: Who was this wife Roberto was referring to when he asked Hilario?

A: That's me.

Q: After Hilario answered that he really loved his wife which is you that is being referred to, what happened next?

A: Roberto asked Hilario; are you still single, are you not married?

Q: What was the response of Hilario if there was any?

A: He answered yes.

Q: What happened next?

A: Roberto counted one to three and at the count of 3 he shot Hilario.

Q: Was Hilario hit by the shot that was made by Roberto?

A: Hilario was hit on the forehead and he sprawled on the ground.”[17]

Analie remained straightforward and consistent all throughout her cross-examination:

Q: Madam witness, you stated that you are the wife of the accused Roberto Pansensoy, is that correct?

A: Yes, sir.

Q: Are you legally married to accused Roberto Pansensoy?

A: Yes, sir.

Q: And if you remember, when were you married?

A: 1990.

Q: Where were you married?

A: At Negros Occidental.

Q: You stated that on May 8, 1994, you were at Lumang Bayan, Antipolo, Rizal, am I correct?

A: Yes, sir.

Q: In what particular place at Lumang Bayan is that?

A: Inside the village.

Q: What were you doing then inside the village?

A: We are renting a house there.

Q: Who is your companion while renting that house?

A: Hilario Reyes.

Q: And who is this Hilario Reyes?

A: The victim.

Q: What is your relation with the victim?

A: Live-in partner.

Q: How long have you been living in together, Madam Witness?

A: Three months.

Q: On that date May 8, 1994 you stated a while ago that you were resting together with Hilario Reyes, is that correct?

A: Yes, sir.

Q: Inside the room of the house being rented by Hilario Reyes?

A: Yes, sir.

Q: What was Hilario Reyes doing then?

A: He was laying (sic).

Q: Lying where?

A: Inside.

Q: Thereafter, what happened next while Hilario Reyes was resting?

A: I heard Roberto knock on the door.

Q: After which, what happened next, Madam Witness?

A: I opened the door and I saw Roberto.

Q: What did you do upon seeing Roberto on the door?

A: He was holding a gun and I embraced him, because I wanted to take the gun away from him.

Q: Is it not because you feel that Roberto Pansensoy might inflict harm on your living in partner, is that correct?

A: Yes, sir, I wanted to avoid trouble.”[18]

From Analie’s testimony, it is all too apparent that the first requisite of self-defense is absent. The unlawful aggression did not come from the victim but from appellant himself. The aggression not having come from the victim, appellant’s claim of self-defense cannot prosper. The trial court relied on Analie’s testimony to convict appellant and we find that her testimony is sufficient to support appellant’s conviction.

As the legitimate wife of appellant, Analie’s testimony would have been disregarded had appellant timely objected to her competency to testify under the marital disqualification rule. Under this rule, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter’s direct descendants or ascendants.[19] However, objections to the competency of a husband and wife to testify in a criminal prosecution against the other may be waived as in the case of other witnesses generally.[20] The objection to the competency of the spouse must be made when he or she is first offered as a witness.[21] In this case, the incompetency was waived by appellant’s failure to make a timely objection to the admission of Analie’s testimony.

We note that Rogelio was presented to corroborate Analie’s testimony, but he gave a rather confusing account of what he allegedly saw or heard on the night of the shooting. During his direct examination, he claimed that he heard a gunshot, but on cross-examination he claimed that he opened the door of his house and actually saw appellant shoot Hilario. In any event, it is well-settled that the testimony of a lone eyewitness, if credible and positive, is sufficient to convict an accused.[22] On the other hand, a plea of self-defense cannot be justifiably appreciated, if it is not only uncorroborated by independent and competent evidence, but also extremely doubtful by itself[23] as in the instant case.

Moreover, appellant’s behavior after the incident runs contrary to his proclaimed innocence. Appellant’s act of fleeing from the scene of the crime instead of reporting the incident to the police authorities are circumstances highly indicative of guilt and negate his claim of self-defense.[24]

Lastly, we find it unnecessary to consider as corroborative evidence the charge of qualified theft for the loss of a .38 caliber revolver filed against appellant by his employer security agency. The trial court discussed at length

that the offense was committed on the same day the shooting incident happened and that the slug recovered from the scene of the crime was from a .38 caliber revolver. According to the trial court, while the gun was not recovered from the scene of the crime, it was “safe to assume that the accused had a gun when he went to the place of the victim.” While SPO1 Ancloste testified regarding the nature of the slug, he admitted that he never inspected the scene of the crime and that the slug was merely handed to him by SPO2 Catanyag who was not presented in court to testify. Hence, reliance on this as evidence of a circumstance connected with the crime rests on shaky ground and is superfluous in light of Analie’s credible eyewitness account.

Second Issue: Passion and Obfuscation

Appellant argues for the appreciation of the mitigating circumstance of passion and obfuscation in his favor. According to appellant, when he confirmed with his own two eyes that his wife was cheating on him, he lost his self-control and that his actuation arose from a natural instinct that impels a husband to protect his wounded feelings. There is basis for this claim.

In order to be entitled to the mitigating circumstance of passion and obfuscation, the following elements should concur: (1) there should be an act both unlawful and sufficient to produce such condition of mind; (2) the act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.[25]

Appellant was on his way home from his duty as a security guard when he met Bisaya who told him that he saw his wife and youngest child board a jeepney with the victim, Hilario. Appellant and Bisaya followed them. Appellant claims that he saw his wife and the victim lying beside each other, clad only in their underwear. Analie claims that they were just resting inside the house at the time appellant arrived. Under any of these two circumstances, it is easy to see how appellant acted with obfuscation because of jealousy upon discovering his legitimate wife in the company of another man and the brazen admission by this man that he loved his wife. The situation was aggravated by the fact that Analie brought their child along to her trysting place with Hilario. Extreme emotional pain could result from such a situation and produce such passion and anguish in the mind of a betrayed husband as to deprive him of self-control. To be blinded by passion and obfuscation is to lose self-control.[26] In this case, there is a clear showing that there were causes naturally tending to produce such powerful passion as to deprive the accused of reason and self-control.[27]

Furthermore, the act producing the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the appellant might have regained his equanimity. It appears that only a few minutes elapsed between the time appellant discovered the two in the room and the killing. Thus, appellant can be given the benefit of this mitigating circumstance.

Third Issue: Qualifying Circumstances

The Information alleges two qualifying circumstances: treachery and evident premeditation. If appreciated, any one of these will qualify the killing to murder. However, the trial court convicted appellant of murder without stating the circumstance which qualified the killing to murder.

In view of our earlier pronouncement crediting in favor of appellant the mitigating circumstance of passion and obfuscation, we have to rule out treachery and evident premeditation as qualifying circumstances. Treachery cannot co-exist with passion and obfuscation.[28] The reason for this is that in passion, the offender loses his control while in treachery the means employed are consciously adopted. One who loses reason and self-control cannot deliberately employ a particular means, method or form of attack in the execution of the crime.[29]

Similarly, the aggravating circumstance of evident premeditation cannot co-exist with the circumstance of passion

and obfuscation.[30] The essence of premeditation is that the execution of the criminal act must be preceded by calm thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a composed judgment.[31]

In its Brief, the Office of the Solicitor General (“OSG” for brevity) submits that evident premeditation is present to qualify the killing to murder. According to the OSG, premeditation is apparent from the fact that appellant went to the scene of the crime already carrying the gun which he used to shoot the victim. The OSG argues that while appellant may have been a security guard, he had no legal justification for bringing the gun to the victim’s residence. His act of bringing the gun to the crime scene is a clear indication of his preconceived plan to kill his wife’s lover. The elements of evident premeditation as a qualifying circumstance are: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.[32]

Verily, a finding that there was a preconceived plan to kill would negate passion and obfuscation.

However, nothing in the records shows how and when appellant hatched his plan to kill, or how much time had elapsed before appellant carried out his plan. On the contrary, appellant was on his way home from his duty as a security guard when he chanced upon Bisaya who told him that he saw his wife and child with Hilario. The mere fact that he brought his gun along or happened to have it in his person does not, by itself, necessarily indicate a preconceived plan to kill. The carrying of arms, if customary, does not indicate the existence of the second requisite. In *People vs. Diokno*,[33] the Court held that the accused being from the province of Laguna and it being customary on the part of the people of Laguna to carry knives, it cannot be inferred with certainty that the intention of the accused who carried knives was to look for the deceased in order to kill him. In like manner, it cannot be inferred with certainty that appellant already had the intention to kill Hilario when appellant carried his gun on his way home after his duty as a security guard.

Fourth Issue: Damages and Penalty

In view of the foregoing, the crime proven in this case is not murder, but only homicide[34] with the mitigating circumstance of passion and obfuscation. The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. With the mitigating circumstance of passion and obfuscation, the penalty which may be imposed pursuant to the second paragraph of Article 64 of the Revised Penal Code is reclusion temporal in its minimum period. Appellant is entitled to the benefit of the Indeterminate Sentence Law as well, which allows the imposition of an indeterminate sentence, with the minimum period within the range of the penalty next lower to that prescribed by law and the maximum period within the range of the latter after appreciating any modifying circumstances. Appellant can thus be sentenced to an indeterminate penalty ranging from eight (8) years of prision mayor as minimum to fourteen (14) years and eight (8) months of reclusion temporal as maximum.[35]

As for damages, the trial court ordered appellant to pay the heirs of the victim the following amounts: P50,000.00 as indemnity; P40,000.00 as actual damages; P20,000.00 as moral damages; and to pay the costs.

Consistent with prevailing jurisprudence, we sustain the award of P50,000.00 to the heirs of Hilario. The amount is awarded without need of proof other than the commission of the crime[36] and the consequent death of the victim.

An appeal in a criminal proceeding throws the whole case open for review and it becomes the duty of this Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not.[37] Therefore, we delete the award of P40,000.00 as actual damages. To seek recovery of actual damages, it is

necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable.[38] Since the prosecution did not present receipts to prove the actual losses suffered, such actual damages cannot be awarded. We raise the award of moral damages from P20,000.000 to P50,000.00 in line with current jurisprudence[39] for the pain wrought by Hilario's death as testified to by Gregoria, mother of the victim.[40]

The trial court overlooked the award for loss of earning capacity despite the testimony of Gregoria on her son's daily income. The absence of documentary evidence to substantiate the claim for the loss will not preclude recovery of such loss.[41] Gregoria testified that her son had been earning P800.00 daily as manager and driver of two passenger jeepneys.[42] This amounts to P19,200.00 monthly excluding Sundays. The defense did not object to Gregoria's testimony on her son's earning capacity. The rule is that evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[43] It was also established that at the time of his death, Hilario was thirty-six (36) years old.[44] Loss of earning capacity is computed based on the following formula:[45]

Net = life expectancy x Gross Annual - living expenses

Earning Income (GAI) (50% of GAI)

Capacity [2/3(80-age

at death)]

$x = \frac{2(80-36) \times \text{GAI} - [50\% \text{ of GAI}]}{3}$

3

$x = \frac{2(44) \times \text{P } 230,400 - \text{P } 115,200}{3}$

3

$x = 88 \times \text{P } 115,200$

3

$x = 29.33 \times \text{P } 115,200$

Net earning capacity = P 3,379,200.00

WHEREFORE, the judgment of Branch 73 of the Regional Trial Court of Antipolo City in Criminal Case No. 94-11527 is MODIFIED. Appellant ROBERTO PANSENSOY is found guilty beyond reasonable doubt of the crime of HOMICIDE as defined and penalized under Article 249 of the Revised Penal Code, instead of murder. Applying the Indeterminate Sentence Law and taking into account the mitigating circumstance of passion and obfuscation, appellant is hereby sentenced to suffer an indeterminate penalty ranging from Eight (8) years of prision mayor minimum, as minimum, to Fourteen (14) years and Eight (8) months of reclusion temporal minimum, as maximum. The award of actual damages of P40,000.00 is DELETED, but appellant is ordered to pay the heirs of the victim moral damages in the amount of P50,000.00 and loss of earning capacity in the amount of P3,379,200.00.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Ynares-Santiago, JJ., concur.

- [1] Penned by Judge Mauricio M. Rivera, Rollo, pp. 18-24.
- [2] Original Records, pp. 1-2.
- [3] Ibid., p. 17.
- [4] TSN, January 31, 1996, pp. 3-6.
- [5] TSN, September 6, 1994, pp. 3-10.
- [6] TSN, October 20, 1995, pp. 2-12.
- [7] TSN, December 22, 1995, pp. 3-19.
- [8] TSN, January 26, 1999, pp. 2-16.
- [9] TSN, December 9, 1997, pp. 2-18; TSN, March 19, 1998, pp. 2-7.
- [10] Rollo, p. 24.
- [11] *People vs. Dorado*, 303 SCRA 61 (1999).
- [12] *People vs. Tadeje*, 310 SCRA 426 (1999).
- [13] *People vs. Mendoza*, 284 SCRA 705 (1998).
- [14] *People vs. Reduca*, 301 SCRA 516 (1998); *People vs. Jimenez*, 302 SCRA 607 (1998).
- [15] *People vs. Aranjuez*, 285 SCRA 466 (1998).
- [16] *People vs. Calma*, 295 SCRA 745 (1998).
- [17] TSN, January 31, 1996, pp. 3-6.
- [18] TSN, January 31, 1996, pp. 9-11.
- [19] Section 22, Rule 130 of the Revised Rules on Evidence provide as follows:
- SEC. 22 Disqualification by reason of marriage.- During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants.
- [20] Ricardo J. Francisco, BASIC EVIDENCE, 1991 Ed.
- [21] Ibid.
- [22]] *People vs. Ferras*, 289 SCRA 94 (1998).
- [23] *People vs. De la Cruz*, 291 SCRA 164 (1998).
- [24] *People vs. Macuha*, 310 SCRA 14 (1999).
- [25] *People vs. Javier*, 311 SCRA 576 (1999).
- [26] *People vs. Leonor*, 305 SCRA 285 (1999).
- [27] Ibid.
- [28] *People vs. Germina*, 290 SCRA 146 (1998).

[29] Ibid.

[30] *People vs. Pagal*, 79 SCRA 570 (1977).

[31] Luis B. Reyes, *THE REVISED PENAL CODE CRIMINAL LAW*, 378 (1981).

[32] *People vs. Caisip*, 290 SCRA 451 (1998).

[33] 63 Phil. 601 (1936).

[34] ART. 249. Homicide. – Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[35] *People vs. Peña*, 291 SCRA 606 (1998); *People vs. Galapin & Beira, Jr.*, 293 SCRA 474 (1998); *People vs. Pepito et al.*, 310 SCRA 128 (1999).

[36] *People vs. Adoc*, 330 SCRA 626 (2000); *People vs. Solis*, 291 SCRA 529 (1998).

[37] *People vs. Juachon*, 319 SCRA 761 (1999).

[38] *People vs. Oliano*, 287 SCRA 158 (1998).

[39] *People vs. Silvestre*, 307 SCRA 68 (1999).

[40] TSN, December 22, 1995, p. 11.

[41] See Note 36.

[42] TSN, December 22, 1995, p. 12.

[43] *People vs. Barellano*, 319 SCRA 567 (1999).

[44] Original Records, p. 7.

[45] *Silvestre*, supra.

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