

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EUSEBIO DUBAN Y DOMINGO @ &#8220;JUN,&#8221; APPELLANT.

*G.R. No. 141217. September 26, 2003*

Ponente: CARPIO MORALES, J.

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### CARPIO MORALES, J.:

From the decision[1] of the Regional Trial Court, Branch 18, Manila finding appellant Eusebio Duban y Domingo guilty beyond reasonable doubt of murder for the killing of Dionisio Barboza (the victim) and sentencing him to suffer the penalty of reclusion perpetua, he comes to this Court on appeal.

In an information[2] dated October 28, 1997, appellant was indicted as follows:

That on or about October 9, 1997 at 11:00 am, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon DIONISIO BARBOZA by then and there striking him with a stone at the back of his head, thereby causing traumatic head injury which cause (sic) his death thereafter.

Contrary to law.

Upon arraignment[3] on November 18, 1997, appellant, assisted by counsel de oficio, entered a plea of not guilty. Thereafter, trial on the merits ensued.

On October 9, 1997, at 11:00 a.m., appellant admittedly hurled at the victim a stone estimated to weigh one kilo, hitting the victim at the right rear portion of his head and ear, causing him to fall on the ground unconscious. The victim died hours later after he was brought to the Jose Reyes Memorial Medical Center.

Appellant claimed self-defense, however. The prosecution claimed otherwise, alleging that it was plain murder.

From the evidence of the prosecution, the following version is established. While prosecution witness Dionisio Poquiz, a jeepney driver, was outside his house at Ramon Magsaysay Boulevard, Sta. Mesa, Manila, the victim, a coconut vendor, passed by, pushing a cart loaded with coconuts. Poquiz bought coconut juice and repaired to the rear seat of his parked jeepney where he sat. As Poquiz was drinking the coconut juice, appellant approached the victim who was standing and waiting for a customer beside his cart. When appellant, a jeepney "barker," was about a meter away from the victim, he suddenly hurled the stone which hit the right rear portion of his head and ear. Appellant then speedily left, foiling Poquiz's attempt to apprehend him.

The postmortem examination conducted on the victim by Dr. Ravell Ronald R. Baluyot of the National Bureau of Investigation Medico-Legal Division showed the following findings:

Cyanosis, lips and nailbeds  
Blood, oozing from right ear.  
Lacerated wound, stellate 2.6 x 1.5 cms., scalp, post-auricular area, right.  
Scalp Hematoma, right, extensive.  
Fracture, skull bones: middle and posterior fossae, linear, right.

Intracranial hemorrhage: Epidural, right parietal area; Subdural and subarachnoid right cerebral hemisphere, extensive.

Visceral organs, congested.

Stomach, contains a small amount of brownish fluid.[4] (Underscoring supplied)

Upon the other hand, appellant detailed his self-defense as follows:

At about 12:00 noon of October 9, 1997, after alighting from a jeepney at the "de la Fuente jeepney station," as he was walking on his way home, a jeepney driver whose name he no longer remembers, asked him to drink liquor with him. He declined the invitation as he had not yet eaten. The drunk companion of the driver (the victim) whom he met for the first time got a glass of gin, however, and echoed the offer, but he just the same declined it, prompting the victim to throw the contents of the glass at his face.

Appellant thus shouted invectives at the victim who then took a bolo from the jeepney which he tried to hit him with, but which he (appellant) was able to evade.

[ATTY. OSORIO:]

Q: So what did you do when that somebody tried to hit you but missed it (sic)?

A: They were inside the jeepney at the time drinking and they alighted from the jeep.

COURT

Q: How about you what did you do?

A: I also got off from the jeep and I evaded the blows of the bolo aimed at me.[5]

Continuing, appellant claimed that as the victim ran after him, he ran around the jeepney because there was an obstruction. Appellant thus took a stone "placed under the tire of the jeep" and with his right hand he threw it at the victim while the latter was approaching him at a distance of about 3 meters. The stone hit the victim on the "[r]ight side of his head,"[6] thus causing him to fall down. Appellant thereafter ran away and went home.

Brushing aside appellant's claim of self-defense, the trial court found him guilty beyond reasonable doubt of murder by Decision of November 15, 1999, the dispositive portion of which is quoted verbatim:

WHEREFORE, the Court finds the accused, Eusebio Duban y Domingo, guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code and hereby sentences him to suffer the penalty of reclusion perpetua with all the accessory penalties provided by law and to pay the costs.

On the civil liability of the accused, the Court further sentences him to pay the legal heirs of the victim, Dionisio Barboza, moral and nominal damages in the respective sums of P200,000.00 and P70,000.00, and an additional sum of P50,000.00, for the loss of the victim's life with interest thereon at the legal rate of 6% per annum from today until fully paid.

SO ORDERED.

Hence, the present appeal anchored on the following assigned errors:[7]

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT WHEN HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

ASSUMING ARGUENDO THAT ACCUSED-APPELLANT IS GUILTY, THE TRIAL COURT ERRED IN CONVICTING HIM WITH THE CRIME OF MURDER WHEN THE QUALIFYING CIRCUMSTANCE OF TREACHERY HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT. (Underscoring supplied)

Appellant contends that the testimony of eyewitness Poquiz, even if he was not shown to have been actuated by

any improper motive, is full of improbabilities, hence, it cannot prevail over his (appellant's) testimony.[8]

Appellant cites Poquiz's testimony that he (appellant) was one arm's length away from the victim as was Poquiz from the victim. If that were the case, appellant argues, there would have been no need for him to throw the stone at the victim[9] and Poquiz could have easily apprehended him (appellant).

Whether Poquiz estimated the correct distance from where he was in relation to where appellant and the victim were is immaterial, however, appellant having himself admitted throwing the stone at the victim.

Admittedly, Poquiz was not prompted by ill motive to falsely testify against appellant, hence, his testimony should be entitled to full faith and credit.[10]

Additionally, by appellant's account, he, who is right-handed,[11] threw the stone at the victim who was about 3 meters away, while the latter was facing and approaching him with a bolo. But the victim was admittedly hit at the right rear portion of the head,[12] a fact confirmed by the above-stated result of the postmortem examination of the victim. As thus observed by the trial court, appellant's version cannot be believed. For, it is highly improbable that the victim could be hit at the right rear portion of his head if he and appellant were facing each other and appellant threw the stone with his right hand,[13] or that the victim could be hit at the same right rear portion of his head if he were chasing appellant.

Neither can appellant's claim that the victim was very drunk and armed with a bolo be believed. The result of the postmortem examination of the victim gave no indication that he was drunk. As for the claim that the victim was armed with a bolo, why appellant did not take the bolo, if indeed he had, after the victim fell down on being hit, is contrary to human experience. For an innocent man under similar circumstances would naturally take it with him to prove his claim of self-defense. Such course of action is fatal to such claim of appellant.[14] And so is his running away from the scene of the incident, for a truly innocent person would normally report the matter to the police.[15] But appellant did not. Instead, he immediately fled.

And while appellant claimed during direct examination that he told his side of the incident when he was arrested two weeks later,[16] the police progress report[17] accomplished on his arrest shows that he, after being apprised of his constitutional rights and of the charge against him, "opted to remain silent."

Persons who act in legitimate defense of their persons or rights invariably surrender themselves to the authorities and describe fully and in all candor all that has happened with a view to justify their acts.[18] But appellant did not.

In fine, appellant's version of the incident and his actuations soon after do not speak of his innocence.

The trial court did not err thus in not crediting appellant's claim of self-defense. Neither did it err in appreciating the presence of treachery in the killing.

The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner of execution, affording the hapless and unsuspecting victim no chance to resist or escape.[19] In the case at bar, the victim was standing and selling coconut,[20] totally oblivious of any impending harm when appellant suddenly threw the stone from behind him.

There is no doubt then that appellant is guilty of murder, penalized under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7569. There being neither mitigating nor aggravating circumstance, the lesser penalty of reclusion perpetua was correctly imposed by the trial court, pursuant to Article 63(2) of the Revised Penal Code.[21]

As to the civil aspect of the case, in line with prevailing jurisprudence, the award of indemnity to the heirs of the

victim in the amount of P50,000.00 is affirmed, it being awarded without need of proof other than the fact that a crime was committed resulting in the death of the victim and that the accused was responsible therefor.[22]

As for the award by the trial court of moral damages to the legal heirs of the victim in the amount of P200,000.00, not only is the amount exorbitant, there is also no evidence to show that the legal heirs of the victim suffered any mental anguish or serious anxiety arising from the victim's death.

The award of P70,000.00 for nominal damages must be deleted for lack of factual and legal basis.

This Court notes that while Rolly Barboza, the victim's brother, testified that the victim's family incurred medical and funeral expenses in the amount of P65,000.00, he, in support thereof, presented a list[23] of expenses. Only substantiated and proven expenses, however, or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized in court.[24] A list of expenses is not considered a competent proof and cannot replace the official receipts necessary to justify the award of actual damages. [25] Neither can the funeral contract[26] submitted in evidence by the prosecution be sufficient, it not being proof that what was stipulated therein was eventually paid.[27]

Nonetheless, where no sufficient proof of actual damages is presented in the trial court (or when the actual damages proven is less than P25,000.00), the amount of P25,000.00 as temperate damages may be awarded, it being reasonable to presume that when death occurs, the family of the victim necessarily incurs expenses for the wake and funeral.[28]

Under Article 2206 of the Civil Code, the heirs of the victim 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.[29] In the case at bar, however, while the victim's brother testified that the victim earned P300.00, he did not indicate whether the same referred to the victim's hourly, daily, monthly or annual income.[30]

Indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven[31] by competent proof and the best obtainable evidence thereof.[32]

Exemplary damages must be awarded too in accordance with Article 2230 of the Civil Code, the qualifying circumstance of treachery being present.[33]

Finally, the award by the trial court of interest on damages at the legal rate of 6% per annum is in accordance with Article 2211 of the Civil Code which states that in crimes and quasi-delicts, interest as part of damages may, in proper cases, be adjudicated in the discretion of the court, and none has been shown that there has been abuse in the exercise thereof.[34]

WHEREFORE, the decision of the Regional Trial Court of Manila, Branch 18, finding appellant EUSEBIO DUBAN y DOMINGO guilty beyond reasonable doubt of Murder and sentencing him to suffer the penalty of reclusion perpetua is hereby AFFIRMED. The civil aspect of the case is MODIFIED to read as follows: Appellant is hereby ORDERED to pay the heirs of Dionisio Barboza the amounts of P50,000.00 as civil indemnity for his death, P25,000.00 as temperate damages, and P25,000.00 as exemplary damages, with legal interest to be paid at SIX PERCENT (6%) on the amount due computed from the promulgation of the decision of the trial court on November 15, 1999.

**SO ORDERED.**

Puno, (Chairman), Panganiban, and Sandoval-Gutierrez, JJ., concur.  
Corona, J., on leave.

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[1] Records at 63-65.

[2] Id. at 1-2.

[3] Id. at 12.

[4] Exhibit "D," Records at 33.

[5] TSN, September 30, 1999 at 3.

[6] Ibid.

[7] Rollo at 26.

[8] Id. at 29-30.

[9] Id. at 31.

[10] People v. Caritativo, G.R. Nos. 145452-53, June 10, 2003; People v. Clidoro, G.R. No. 143004, April 9, 2003; People v. Diaz, G.R. No. 133737, January 13, 2003; People v. Cariño, 363 SCRA 768, 775 (2001); People v. Ortiz, 361 SCRA 274, 295-296 (2001).

[11] TSN, September 30, 1999 at 6.

[12] Id. at 3.

[13] Records at 64.

[14] People v. Camacho, 359 SCRA 200, 207-208g (2001); People v. Alfaro, 119 SCRA 204, 211 (1982); People v. Labisig, 105 Phil. 1345, 1346 (1959).

[15] People v. Rivera, 221 SCRA 647, 654 (1993).

[16] TSN, September 30, 1999 at 4.

[17] Exhibit "H," Records at 5; Exhibit "J," Records at 8.

[18] People v. Castellano, Sr., G.R. No. 139412, April 2, 2003; People v. Figuracion, 362 SCRA 606, 617 (2001); Calim v. Court of Appeals, 351 SCRA 559, 571 (2001); People v. Manes, 303 SCRA 231, 240 (1999); People v. Caras, 234 SCRA 199, 210 (1994).

[19] People v. Caritativo, supra; People v. Caballero, G.R. Nos. 149028-30, April 2, 2003; People v. Alcodia, G. R. No. 134121, March 6, 2003.

[20] TSN, May 29, 1999 at 3.

[21] Art. 63. Rules for the application of indivisible penalties.

x x x

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:

x x x

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

[22] *People v. Gomez*, G.R. No. 128378, April 30, 2003; *People v. Astudillo*, G.R. No. 141518, April 29, 2003; *People v. Aliben*, G.R. No. 140404, February 27, 2003; *People v. Acosta, Sr.*, G.R. No. 140402, January 28, 2003; *People v. Diaz*, *supra*.

[23] Exhibit "F," Records at 44.

[24] *People v. Nicolas*, G.R. No. 137782, April 1, 2003; *People v. Avillana*, 332 SCRA 19, 27 (2000).

[25] *People v. Cabical*, G.R. No. 148519, May 29, 2003; *People v. Delos Santos*, G.R. No. 135919, May 9, 2003; *People v. Nicolas*, *supra*; *People v. Wad-As*, G.R. No. 146103, November 21, 2002; *People v. Bulfango*, G.R. No. 138647, September 27, 2002; *People v. Hate*, G.R. No. 145712, September 24, 2002; *People v. Bonifacio*, G.R. No. 133799, February 5, 2002.

[26] Exhibit "F-2," Records at 45.

[27] *People v. Manalad*, G.R. No. 128593, August 14, 2003; *People v. Baniega*, G.R. No. 139578, February 15, 2002.

[28] *People v. Caritativo*, *supra*; *People v. Astudillo*, *supra*; *People v. Buayaban*, G.R. No. 112459, March 28, 2003; *People v. Abrazaldo*, G.R. No. 124392, February 7, 2003.

[29] *People v. Mallari*, G.R. No. 145993, June 17, 2003; *People v. Caraig*, G.R. Nos. 116224-27, March 28, 2003.

[30] TSN, February 26, 1999 at 5.

[31] *People v. Panabang*, G.R. Nos. 137514-15, January 16, 2002; *People v. De Vera*, 312 SCRA 640, 670 (1999).

[32] *Chan v. Maceda, Jr.*, G.R. No. 142591, April 30, 2003; *People v. Wad-As*, *supra*; *Citytrust Banking Corporation v. Villanueva*, 361 SCRA 446, 456 (2001); *Manufacturers Building, Inc. v. Court of Appeals*, 354 SCRA 521, 532-533 (2001); *Development Bank of the Philippines v. Court of Appeals*, 284 SCRA 14, 29-30 (1998).

[33] *People v. Montemayor*, G.R. Nos. 124474 & 139972-78, January 28, 2003; *People v. Hamton*, G.R. Nos. 134823-25, January 14, 2003; *People v. Catubig*, 363 SCRA 621, 635 (2001).

[34] *People v. Torellos*, G.R. No. 143084, April 1, 2003; *People v. Pastrana*, G.R. No. 143644, August 14, 2002; *People v. De Vera*, *supra*.

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