

## THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LAMBERTINO PRIETO, APPELLANT.

*G.R. No. 141259. July 18, 2003*

Ponente: CALLEJO, SR., J.

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### CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court (RTC) of Danao City, Branch 25, convicting appellant Lambertino Prieto of murder, sentencing him to reclusion perpetua and directing him to indemnify the heirs of the victim Geraldo Prieto in the amount of P75,000.00.

On July 7, 1995, an Information was filed with the RTC, charging Lambertino with murder:

That on or about July 4, 1995 at 9 o'clock in the evening more or less, in Sibacan, Danao city [sic], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together with the other three persons whoes [sic] identities are at present still unknown, with intent to kill and treachery, did then and there willfully, unlawfully and feloniously suddenly and unexpectedly stab Geraldo Prieto with the use of stainless knife several times thereby inflicting upon him - stab wounds in the abdomen of protusion [sic] of small intestine umentum - causing his death minutes later.

CONTRARY TO LAW.[2]

The accused was arrested on July 25, 1995. On January 19, 1996, with the assistance of counsel, he was duly arraigned of the charge and entered a plea of not guilty.[3]

The Evidence of the Prosecution[4]

The Spouses Geraldo and Dulcesima Prieto and their sixteen-year- old daughter Liliosa resided in their farm at Sitio Titip, Barangay Sibacan, Danao City. The couple cultivated mango trees, bananas and cassava. About thirty meters away from their house lived Geraldo's nephew, accused Lambertino (Bentong) Prieto, the son of Ciriaco Prieto, Geraldo's first cousin. The accused frequented his uncle's house and had drinking sprees with the latter. Since 1992, he had been residing with his mother Dolores Prieto at Lapu-lapu corner Bonifacio Street, Danao City, but also maintained a house near his farm. Once a week, the accused went to his farm to work in the fields.

By the end of June 1995, the Prieto spouses were able to sell the produce from their farm and earned P40,000. They kept the amount in their house. On July 2, 1995, Dulcesima was working in their farm. The accused, on the other hand, was spraying the mango trees in his farm. He inquired from Dulcesima what she was doing, and the latter replied that she was just weeding grasses.

At 7:00 p.m., of July 4, 1995, Geraldo and Dulcesima were sleeping in their bedroom, on the ground floor of their house. Liliosa was sleeping in her bedroom upstairs. The sala was lit by a kerosene lamp placed on a wrought iron stand about three feet high, and a meter away from the door of the couple's bedroom. Before they slept, they dimmed the light of the kerosene lamp. Outside, it was raining hard.

At about 9:00 p.m., the couple were awakened by someone calling: "Tay, tay, abli, kay mopalit kog lamas!" (Tay,

tay, open, I want to buy spices!)).[5] Dulcesima recognized the voice of the accused. She also heard their dogs barking. Dulcesima cautioned her husband not to open the door because it was the accused calling. Geraldo ignored his wife's warning and went out of the bedroom. Dulcesima was barely a meter behind her husband. To her left was the kerosene lamp.

Geraldo forthwith unbolted the door. Dulcesima was shocked when she saw the accused, armed with a stainless knife. A white handkerchief was tied on the lower part of his face, covering his mouth. Before Dulcesima could utter a word, the accused barged through the door and stabbed Geraldo on the abdomen and the lower part of the chest. Geraldo fell to the floor. The accused faced Dulcesima and punched her on the face. Another male person followed Lambertino into the house while two more persons stood outside the door. Dulcesima tried to pull the bolo placed on the wall of the house from its scabbard to defend herself. The handkerchief covering the face of the accused fell from his face. Dulcesima was able to confirm that, indeed, the assailant of her husband was the accused.[6]

In a belated attempt to hide his identity, the accused kicked the chair on which the kerosene lamp was placed. The lamp fell to the floor. The accused then attempted to get Dulcesima's earrings but failed to do so. Dulcesima shouted for help: "Ay tabang kamo mga silingan kay gitulis kami" (Hay, neighbors help us because we are being robbed).[7] The accused and his cohort forthwith exited from the house through one of the windows, leaving Geraldo sprawled on the floor, mortally wounded, and Dulcesima trembling with fear. Meanwhile, Toribia, the couple's neighbor, heard Dulcesima's cries for help, and herself shouted: Tabangan nato his Dulce ug Geraldo kay gisaka sila ug mga tawo (Let us help Dulce and Geraldo because there are persons intruding into their house).[8] She thereafter ran to the house of her nephew Francisco Ejolen, who in turn rushed to the Prieto residence.

Felix Capuno lived about sixty meters away from the Prieto's. He was resting in his house that fateful night when he heard his neighbor Toribia shouting: Felix, tabangan ta si Geraldo ug Dulce kay gisaka sila ug mga tawo (Let us help Geraldo and Dulce because there are persons who intruded into their house).[9] Felix took his flashlight, and together with his son Romulo, rushed to Geraldo's house. When they were about five arm's length away from the place, Felix saw two persons jumping through the window, one after the other. With his flashlight focused on the intruders, Felix recognized the accused as the second man. Felix stood still as he observed the accused and saw that he was armed with a knife. When Felix saw Dulcesima coming out of the house holding a kerosene lamp, he called her and rushed to the house to help. Felix saw Geraldo sprawled on the floor, his hands bloodied, covering the wounds he sustained in the abdomen.

For his part, Romulo rushed to the house of Uldarico Esteros, which was about ten meters away. Uldarico had died and was lying in state. A pamuhat was being held in his house. Romulo informed Angelino Prieto, Geraldo's nephew, and Pepito Prieto, Geraldo's son, that Geraldo had just been stabbed. Pepito and Angelino rushed to the scene of the crime, and saw Felix Capuno, Francisco Ejolen, and other neighbors already in the house.

Angelino and about ten others made a hammock out of a blanket and bamboo poles. Geraldo was gingerly carried on the make-shift stretcher to the Danao General Hospital. Dulcesima went with the group carrying with her the clothes of her husband. During the trip, blood oozed from Geraldo's wounds, his nose and his face, visibly weakening him. However, he managed to tell Angelino and Dulcesima that he was stabbed and nearly robbed by the accused. Geraldo died before they could reach the hospital.[10]

On July 5, 1995, Dr. Jose Arturo Allego, the Assistant City Health Officer of Danao City, performed an autopsy on the cadaver of the victim and submitted a postmortem certificate on his autopsy containing the following findings:

- (1) Stab wound in the left antero-lateral portion of the chest; pre-axillary area & 12 cm. from the left nipple.

- 6 cm in length [sic] & 0.5 cm in width

- 0.5 cm. in depth

(2)

Stab wound in the abdomen & located 3 cm. from the umbilicus

- 5 cm. in length

- 2.5 cm. in width

- protrusion +[sic] of the small intestine omentum

Cause of Death:

Internal Hemorrhage 2° to Stab wound in the abdomen with protrusion [sic] of the small intestine & omentum.[11]

On July 6, 1995, Dulcesima gave a sworn statement to SPO1 Manuel M. Buot of the Danao City Police Station where she identified the accused as the assailant of her husband.[12]

The Evidence of the Accused[13]

The accused denied killing his uncle Geraldo. He stated that when Geraldo was stabbed to death, he was at the house of Atty. Exuperio Gonzales, a retired Clerk of Court of the RTC, at Villa Socorro, Danao City, about thirty kilometers away from Sibacan. He adduced evidence that in the afternoon of July 4, 1995, he left their house at the corner of Bonifacio and Lapulapu Streets to make a chicken cage for Atty. Gonzales. He passed by the New Danao Public Market where he saw his aunt Angeles Matugas, who had just alighted from a passenger jeepney coming from her house in Sacsac, Asturias, Cebu, about twenty kilometers away from Danao City. She asked the accused where he was going and the latter replied that he was on his way to the house of Atty. Gonzales. They agreed to meet later in the evening in the house of the accused. He arrived in the house of Atty. Gonzales at 5:00 p.m. and worked until 10:00 p.m. When he finished the chicken cage, he left and boarded a tri-sicad driven by Manuel Dayon. When he got home, Angeles was waiting for him. The accused told his aunt that he arrived late because he had to finish the chicken cage for Atty. Gonzales. He was arrested on September 6, 1995.[14]

The accused further testified that he and the Prieto spouses were not in good terms. Sometime in 1992, the couple tied their farm animals near his farm, and consequently, close to a hundred corn plants were eaten. He admonished the couple, but did not report the incident to the barangay officials.[15]

He also had differences with Angelino, Geraldo's nephew. Sometime in April 1993, he mortgaged his land to Angelino for P8,000 but when he was paying his debt, Angelino refused to accept the amount insisting that his debt was P10,000. He sold his property to Lucio Perez who in turn redeemed the property from Angelino in the amount of P8,000.[16]

The accused also had differences with Felix Capuno. In February 1993, Felix tied his carabao to a mango tree in the accused's farm. Consequently, the carabao ate the leaves of one of the mango trees in the farm of the accused, destroying a branch thereof.[17]

Manuel Dayon, a tri-sicad driver, testified that at 9:00 p.m. of July 4, 1995, the accused boarded his tri-sicad near the house of Atty. Gonzales. They talked along the way, and the accused told him that he was working late because Atty. Gonzales wanted his chicken cage finished. He brought the accused to the corner of Bonifacio and Lapu-lapu Streets.[18] Dolores Prieto, the mother of the accused, told him on the same day that the latter had been charged for the killing of Geraldo.[19]

Francisco Ejolen testified that Geraldo and his mother were cousins. In the evening of July 4, 1995, it was raining hard and the area in the neighborhood was flooded. It was so dark that one could hardly see through the rain. Toribia Prieto, Francisco's aunt, arrived in his house and asked for help because the Prieto spouses were being robbed. He and Toribia rushed to Geraldo's house and saw him wounded on the solar plexus. He did not see any other person in the house. Pepito, Geraldo's son, arrived later followed by Felix Capuno and other neighbors. Francisco asked Dulcesima what happened and she replied that she could not identify the culprit because he was wearing a mask. When he asked Geraldo, the latter made a similar reply - - he was robbed but because it was dark and the culprit was wearing a mask, he could not identify the latter.[20]

Dolores testified that on July 4, 1995, her son, the accused, left their house at 5:00 p.m. He was on his way to the house of Atty. Gonzales to construct a chicken cage and brought along with him a saw and a hammer. He arrived home at 10:00 p.m. that same night.[21] At 5:00 a.m. of July 5, 1992, policemen arrived at their house looking for her son, but were unable to arrest him.[22]

On August 11, 1999, the trial court rendered judgment convicting the accused of murder, the decretal portion of which reads:

WHEREFORE, for proof beyond reasonable doubt, the Court finds accused Lambertino Prieto GUILTY for the crime of Murder as charged. The Court, therefore, hereby sentences accused to suffer the penalty of reclusion perpetua.

Accused is further ordered to indemnify the heirs of the victim the sum of P75,000.00.

SO ORDERED.[23]

The trial court gave credence and full probative weight to the testimonies of Dulcesima, Angelino and Felix.

The accused, now the appellant, appealed from the decision. He contends that the prosecution failed to prove beyond reasonable doubt that he killed the victim and that the trial court erred in rejecting his defense of alibi.

The appellant avers that the trial court erred in giving credence and probative weight to Dulcesima's testimony. It was impossible for her to have identified the appellant as her husband's assailant because (a) there was a heavy downpour that night and it was pitch black; (b) the assailant was masked and the kerosene lamp carried by the victim gave little illumination to the interior of the house; (c) the handkerchief masking the face of the assailant could not have fallen down from his face unless Dulcesima pulled it down. Even if the assailant had been unmasked, Dulcesima could not have seen the faces of the appellant and his cohort as they were jumping out of the window because the area of the stabbing was in total darkness; (d) it was incredible that the appellant would ask the couple to open the door to their house for the purpose of buying spices when in fact the Prietos were not selling them; (e) Geraldo and Dulcesima did not reveal to Francisco and Felix the assailant's identity when the two arrived at the victim's house; and (f) the testimony that the victim was stabbed only once is belied by the physical evidence. Equally incredible is the testimony of Felix that when he was on his way to the house of Geraldo, he saw the appellant and his cohort jumping out of the window. By the time Felix arrived at the scene, the assailant and his cohort must have been far away from Geraldo's house, given the lapse of time between Dulcesima's shouting for help and the arrival of Felix and his son Romulo.

The ruminations of the appellant are bereft of merit. By arguing that the prosecution failed to prove that he was the assailant, the appellant thereby assails the credibility of Dulcesima and Felix, the probative weight of their testimonies, the findings of the trial court, as well as its conclusions based on the said findings. However, it has been the constant ruling of this Court that the findings of facts of the trial court, its conclusions anchored on the said findings, its calibration of the testimonial evidence of the parties and the probative weight thereof, are

accorded by the appellate court high respect, if not conclusive effect precisely because of its unique advantage of being able to observe and monitor, at close range, the demeanor, conduct and deportment of the witnesses as they testify, unless the trial court ignored, misconstrued, or misinterpreted facts and circumstances of substance which, if considered, would alter the outcome of the case.[24]

We have no reason to deviate from the findings and conclusions of the trial court on the credibility of the witnesses for the prosecution. In *People v. Adoviso*,[25] we ruled that it is the natural reaction of relatives of victims to strive to observe the faces and appearance of the assailants, if not ascertain their identities, the manner in which the crime is committed and to approximate the assailant's next move either as an instinctive reaction or as a recourse to help fend off any further attack. A relative will naturally be interested in identifying the malefactor to secure his conviction to obtain true justice for the death of his relative.[26]

In this case, Dulcesima recognized the appellant through his voice when he asked Geraldo: "Tay, please open the door, I will buy spices!" She testified, thus:

Q

Now, while your husband was sleeping at 9:00 in the evening, tell this court, was there any unusual incident that had [sic] happened?

A There was, sir.

Q Tell the court.

A There was somebody who was calling, sir.

Q Somebody was calling, please tell this court, the words which they uttered?

A Tay! please, open the door, I will buy spices.

Q Please tell this court, can you identify the owner of that voice?

A Yes, sir, I can.

Q Who was the owner of that voice?

A Lambertino Prieto.

Q If this Lambertino Prieto is present before this court, can you point to him?

A Yes, sir, I can point to him.

Q Please point to him?

A That one, sir. (Witness is pointing to accused Lambertino Prieto.)

...[27]

ATTORNEY FAJARDO continues:

That is correct.

Q

And when you heard this calling, did you notice that your husband was awakened already or was still asleep?

A My husband was already awakened, sir.

Q

All right. When your husband was awakened and you were also awakened, both of you tried to figure out who was calling outside, did you not?

A Yes, sir, and it was the voice of Lambertino Prieto.

Q How was the call made?

A The call was made in this manner, sir: "Tay, Tay, open, I want to buy spices!"

ATTORNEY FAJARDO:

I see.

ATTORNEY DE DIOS:

May we request, Your Honor, that the Cebu Visayan words be entered first into the record?

COURT INTERPRETER:

"Tay, tay, abli, kay mopalit kog lamas!" Which when translated into English, it says: "Tay, Tay, open, I want to buy spices!"

...[28]

The evidence on record shows that the appellant was the nephew of the victim. He frequented his uncle's house for drinking sprees, and on the said occasions, Dulcesima saw and talked with the appellant. The appellant and the couple had been neighbors for years before the stabbing. On July 2, 1995, Dulcesima talked with the appellant when they were working in their respective farms. The widow of the victim gained familiarity with the physical built, face and voice of the appellant. Once a person has gained familiarity with another, identification becomes quite an easy task even from a considerable distance.[29] This Court has ruled that identification by the sound of the voice of a person identified, is a sufficient and acceptable means of identification where it is established that the witness and the accused had known each other personally and closely for a number of years.[30]

Contrary to the contention of the appellant, the area from the door to the sala of the house was not in total darkness. The place was lit by the kerosene lamp placed on a chair about three feet high, less than a meter from the door to the house of the victim to Dulcesima's left who, at the time, was less than a meter behind her husband, as the latter opened the door to let the appellant in:

ATTORNEY FAJARDO continues:

All right.

Q Now, your husband was holding the kerosene lamp, did I get you right? Is that correct?

A The kerosene lamp was placed on top of the chair, sir.

Q

All right. Before your husband went to the door to open, did not your husband picked [sic] up the lamp, carried [sic] it with him towards the door?

A

It was just placed on top [sic] the chair, sir.

...

Q This chair on which this kerosene lamp was placed was quite far from the door, is that not correct?

A Around one (1) meter, sir.

Q

Around one (1) meter. All right. At the moment when your husband opened the lock of the door, in relation to you, how close were you to him at the moment he opened the door?

A Less than a meter, sir.[31]

When the victim opened the door, Dulcesima saw the appellant. After the victim was stabbed and had fallen to the floor, the appellant and Dulcesima were face to face with each other:

ATTORNEY FAJARDO continues:

Q

Now, Mrs. Prieto, you heard this sound from that person whom you alleged to be Lambertino. You merely heard this; you did not see the face of Lambertino?

A I saw the face of Lambertino because we were facing each other, sir.

...[32]

Considering the illumination from the kerosene lamp, and Dulcesima's proximity to her husband, to the door, and to the appellant, Dulcesima could easily see and recognize the appellant when the latter stabbed the victim and punched her in the face. In *People v. Adoviso*,<sup>[33]</sup> we ruled that the illumination produced by kerosene lamp or wicklamps, and flashlights, moonlight or starlight may in proper situations be considered as sufficient illumination, making the attack on the credibility of witnesses solely on that ground unmeritorious.

When Dulcesima pulled the bolo from its scabbard on the wall in the sala of their house after the appellant had stabbed the victim and punched Dulcesima in the face, the handkerchief covering half of appellant's face fell off.<sup>[34]</sup> She saw the face of the appellant, without the mask. It was only then that the appellant kicked the stand on which the kerosene lamp was placed:

Q - After Lambertino Prieto stabbed your husband what transpired next?

A -

When my husband fell to the cement floor Lambertino Prieto rain me with fistic blows using his left hand and attempted to get my earring [sic] but because I did not loss [sic] conciousness [sic] he was not able to get my earrings. I then try [sic] to grabbed [sic] my bolo which I placed at the wall and at this juncture the white handkerchief which Lambertino Prieto used as mask to hide his face fell and I clearly saw his face and recognized him. Lambertino Prieto then kicked the chair and the kerosene lamp on it fell to the cement floor. Both Lambertino Prieto and his companion jumped through the window and they all run [sic] away to [sic] the dark.<sup>[35]</sup>

When asked during her testimony to point to the assailant of her husband, Dulcesima positively and spontaneously pointed to the appellant as the culprit.<sup>[36]</sup>

The appellant's insistence that Dulcesima did not divulge to the barangay and police authorities the identity of her husband's killer, is doubtful. Dolores Prieto, the mother of the appellant, had admitted that in the early morning of July 5, 1995, a few hours after the stabbing, policemen arrived in their house to arrest the appellant. Since the only

eyewitness to the crime was Dulcesima, she must have been the one who informed the authorities that the appellant killed her husband.

Moreover, Dulcesima gave her sworn statement to the police investigator, pointing to and identifying the appellant as the assailant in the afternoon of July 6, 1995, or barely two days after the stabbing incident.

Admittedly, the victim and his wife did not sell spices in their house. It was, however, not impossible for the appellant to have said: "Tay, tay, abli, kay mopalit kog lama," as he stood by the door to the house of the victim. Obviously, the appellant pretended to be buying spices to inveigle the Prieto spouses to open the door and at the same time hide his identity, not realizing that he could be identified by his voice alone. The ploy of the appellant worked. But Dulcesima, at the outset, had suspected that it was the appellant who was at the door and was up to something sinister, because she warned her husband not to open the door. Her husband ignored her warnings and answered the call. After all, the appellant was his nephew:

ATTORNEY FAJARDO continues:

Q - How did you tell your husband?

A -

I told my husband in this manner, sir: "Why did you open the door when in fact it was Lambertino Prieto?"

Q -

You mean you were blaming your husband why he opened that door because that voice calling outside was Lambertino Prieto?

A - Yes, sir, I blamed my husband why he opened the door.

Q -

You blamed your husband because you had known before that if Lambertino would be allowed to enter the house, he would do harm to you and your husband?

A - Yes, sir.[37]

Before Dulcesima could ask the caller why the appellant was in their house at such an ungodly hour, her husband opened the door. Dulcesima was speechless when she saw the appellant armed with a knife, a white handkerchief covering half of his face from the mouth down; and before she could recover her bearings, the appellant stabbed her husband, thus:

ATTORNEY FAJARDO continues:

Q -

Mrs. Witness, so your husband picked up the kerosene lamp and went to the door to open it, is that correct?

A - Yes, sir.

Q - Now, what about you, were you immediately behind your husband as he opened the door?

A - Yes, sir.

Q -

Before your husband opened the door, did it not occur to your mind to ask him why he was there at that time at the wee hour of the night; asking to be opened or asking to enter your house, did you not ask that person

outside?

A - I did not, sir.

Q -

Your husband did not also ask that person outside as to why he wanted to buy spices during that wee hour of the night?

A - He did not, sir.

Q - Neither did your husband ask why that person outside . . . Withdrawn.

Neither did your husband ask for what did that person outside use the spices he wanted to buy?

A - He did not, sir.

Q - Did not your husband also ask that person outside whether he has other companions outside?

A - He did not, sir. He just immediately opened the door.

Q -

What about you, did you not ask or you did not utter the name of Lambertino, like saying, "Lambertino, why are you here at this wee hour of the night," you did not also?

A - I did not, sir, because when my husband opened the door, he immediately stabbed my husband.

Q -

I was asking before your husband opened the door. What about you, did you not ask that person outside, "Why are you here, Lambertino?"

A - I did not, sir, because I was speechless.

Q -

You were speechless. Did you not tell that person outside that we don't have spices in the house for sale; as [a] matter of fact, spices alone we do not have?

ATTORNEY DE DIOS:

Already answered, Your Honor. She was speechless.

COURT:

Speechless.

ATTORNEY FAJARDO continues:

Speechless. All right.

Q -

Now, as a precaution, Mrs. Prieto, considering that the night was dark and your place is remotely situated from the barangay population center, did you not caution your husband not to open the door for that person outside might be bad elements?

A - I cautioned my husband, sir.

Q -

Did you not caution your husband that they wanted --- this person outside -- wanted to buy spices, you might as well give the spices through the door or through the window?

A - I did not, sir.

Q -

Now, so before that main door was opened, you will admit, Mrs. Witness, that nothing at all was ever said by you or your husband inquiring or mentioning the name of Lambertino, asking him, "Why you are [sic] here?"

ATTORNEY DE DIOS:

Already answered, Your Honor. [W]itness said that she was speechless.

ATTORNEY FAJARDO:

I mean throughout that process, Your Honor.

COURT:

Witness may answer.

WITNESS continues:

A - No, I did not, sir.[38]

It would be unnatural for Dulcesima to impute to her nephew, the appellant, the heinous crime of murder if he could be sentenced to death if he was innocent, exposing him to the ultimate penalty of death and thereby allow the real culprit to escape prosecution and conviction.[39] The appellant's claim that Dulcesima testified against him and imputed to him the killing of her husband because he admonished the couple for tying their farm animals near his farm three years before the incident is incredible. Aside from his testimony, the appellant offered no corroborating evidence. He admitted that he did not report the incident to the barangay or police authorities.

The trial court correctly rejected the appellant's defense of alibi. Such a defense cannot prevail over the positive and straightforward identification of the appellant as the assailant. It bears stressing that alibi is the weakest of all defenses because it is facile to fabricate and difficult to disprove, and is generally rejected.[40] The appellant was burdened to prove with clear and convincing evidence that at the time of the commission of the crime charged, he was in a place other than the situs of the crime such that it was physically impossible for him to have been at the situs criminis when the crime was committed.[41]

In this case, as early as July 5, 1995, the appellant, through his mother, alleged that policemen had arrived at their house to arrest him for the killing of Geraldo. However, the appellant and his mother did not bother going to the police station to inform the police authorities that he was in the house of Atty. Gonzales when the crime was committed. Equally incredible is the testimony of Manuel Dayon that Dolores had told him in the evening of July 5, 1995 that the appellant was charged for the killing of Geraldo when it was only in the morning of September 5, 1995 that Dolores learned that her son was a suspect in the killing.

#### The Crime Committed by the Appellant

The trial court convicted the appellant of murder qualified by treachery, with the aggravating circumstance of dwelling. We agree. The prosecution failed to adduce proof that the appellant ever attempted to divest Dulcesima of her earrings. Indeed, she even failed to describe her earrings or testify on the value thereof. Treachery was attendant because the appellant suddenly and without provocation, stabbed Geraldo twice on the chest and

abdomen when the unarmed victim opened the door to his house. The bare fact that the appellant was facing the victim when the latter was stabbed does not preclude treachery.[42] The appellant killed the victim in his house; hence, dwelling is aggravating.[43] However, because the said aggravating circumstance was not alleged in the information as mandated by Section 9, Rule 110 of the Revised Rules of Criminal Procedure, it cannot be considered against the accused. Although the crime was committed before the effectivity of the said Rule, the same should not be applied retroactively as it would be unfavorable to the appellant.[44] Murder is penalized, under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, with reclusion perpetua to death. Since there is no modifying circumstance attendant in the commission of the crime, the impossible penalty on the appellant is reclusion perpetua.

#### The Civil Liabilities of the Appellant

The trial court awarded P75,000 to the heirs of the victim Geraldo Prieto as civil indemnity. The court did not award moral and exemplary damages. The prosecution did not adduce any testimonial or documentary evidence to prove the expenses for the burial and the wake of the victim. Hence, the decision of the trial court must be modified. The award for civil indemnity is reduced to P50,000, conformably to current jurisprudence.[45] The heirs are entitled to moral damages in the amount of P50,000, considering the pain and anguish of the victim's family.[46] The said heirs are likewise entitled to exemplary damages in the amount of P25,000.[47]

IN LIGHT OF ALL THE FOREGOING, the Decision of the Regional Trial Court of Danao City, Branch 25, in Criminal Case No. DNO-1446, is **AFFIRMED** with **MODIFICATION**. The appellant is found guilty beyond reasonable doubt of murder qualified by treachery, defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659. There being neither aggravating nor mitigating circumstances attendant in the commission of the crime, appellant Lambertino Prieto is hereby sentenced to suffer the penalty of reclusion perpetua. He is directed to pay the heirs of the victim Geraldo Prieto the amount of P50,000 as civil indemnity; P50,000 as moral damages; and P25,000 as exemplary damages. With costs against the appellant.

#### **SO ORDERED.**

Bellosillo, (Chairman), Austria-Martinez, and Tinga, JJ., concur.  
Quisumbing, J., on official leave.

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[1] Penned by Judge Esperidion C. Rivalal.

[2] Records, p. 1.

[3] Id. at 12.

[4] The prosecution presented four witnesses, namely, Dr. Jose Arturo Allego, Dulcesima Prieto, Angelino Prieto and Felix Capuno.

[5] TSN, 25 January 1996, p. 2 (Dulcesima Prieto).

[6] Exhibit "B," Records, p. 2.

[7] TSN, 25 January 1996, p. 5 (Dulcesima Prieto).

[8] TSN, 22 April 1996, pp. 4-5 (Felix Capuno).

[9] Id. at 10.

[10] TSN, 15 March 1996, pp. 3-6 (Angelino Prieto); Exhibit "C," Records, p. 5.

[11] Exhibits "A" to "A-1-C," Records, p. 35.

[12] Exhibit "B," Id. at 2.

[13] The defense presented six witnesses, namely, Atty. Exuperio Gonzales, Francisco Ejolen, Manuel Dayon, Lambertino Prieto, Dolores Prieto and Angeles Matugas.

[14] TSN, 1 July 1998, pp. 5-12; TSN, 9 July 1997, pp. 4-6.

[15] TSN, 9 October 1996, pp. 4-6.

[16] Id. at 6-9.

[17] Id. at 10-11.

[18] TSN, 25 August 1997, pp. 3-6.

[19] TSN, 29 September 1997, p. 21.

[20] TSN, 14 August 1996, pp. 6-9.

[21] TSN, 21 January 1998, pp. 6-9.

[22] TSN, 8 April 1998, pp. 7-8.

[23] Records, p. 119.

[24] People v. Peralta, 353 SCRA 329 (2001).

**[25] 309 SCRA 1 (1999).**

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

[27] TSN, 25 January 1996, p. 3.

[28] TSN, 5 February 1996, pp. 28-29.

[29] People v. Alagon, 325 SCRA 297 (2000).

[30] People v. Reynaldo, 291 SCRA 701 (1998).

[31] TSN, 5 February 1996, pp. 47-48.

[32] Id. at 53.

[33] Supra.

[34] Exhibit "B," Records, p. 2.

[35] Ibid.

[36] TSN, 25 January 1996, p. 4 (Dulcesima Prieto).

[37] TSN, 5 February 1996, p. 31 (Dulcesima Prieto).

[38] Id. at 43-47.

[39] People v. Alipayo, 324 SCRA 447 (2000).

[40] People v. Ramos, 309 SCRA 643 (1999).

[41] People v. Dela Cruz, 335 SCRA 620 (2000).

[42] People v. Mindanao, 335 SCRA 200 (2000).

[43] Article 14, par. 3 of the Revised Penal Code reads:

...

- That the act be committed with insult or in disregard of the respect due to the offended party on account of his rank, age, or sex, or that it be committed in the dwelling of the offended party, if the latter has not given provocation.

[44] People v. Gallego, 338 SCRA 21 (2000).

[45] People v. Tropa, 374 SCRA 42 (2002).

[46] Ibid.

[47] People v. Catubig, 363 SCRA 621 (2000).

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