

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL GONZALES, JOSEPH BERNALDEZ, AND ROMEO BERNALDEZ, ACCUSED,

G.R. No. 142932. May 29, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision,[1] dated February 10, 2000, of the Regional Trial Court, 11th Judicial Region, Branch 6, Mati, Davao Oriental, insofar as it finds accused-appellants Joel Gonzales and Romeo Bernaldez guilty as principals of the complex crime of robbery with homicide and sentences each of them to suffer the penalty of reclusion perpetua, with the accessory penalties provided by law, and to indemnify jointly and severally the heirs of the victim Nicanor Suralta in the amounts of P50,000.00 as civil indemnity and P2,425.00, plus the costs of the proceedings.

Accused-appellants Joel Gonzales and Romeo Bernaldez were charged with Joseph Bernaldez with robbery with homicide under Art. 294(1) of the Revised Penal Code in an information which alleged —

That on or about July 5, 1992, in the Municipality of San Isidro, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of violence and intimidation, with intent to gain, in conspiracy with one another, did then and there wilfully, unlawfully and feloniously take, steal and carry away “Seiko” diver’s watch valued at P1,000.00, one “Sanyo” cassette valued at P600.00 and cash amounting to P2,725.00, with a total value of FOUR THOUSAND THREE HUNDRED TWENTY FIVE (P4,325.00) PESOS, Philippine Currency, belonging to Nicanor Suralta to the damage and prejudice of his heirs, represented by his widow, Carolita U. Suralta in the aforestated sum; and on the occasion thereof, the said accused, armed with an unlicensed handgun and a knife, with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with said firearm one NICANOR SURALTA, thereby inflicting upon the latter wounds which caused his death.

CONTRARY TO LAW.[2]

When arraigned on December 1, 1992, the three entered a plea of not guilty, whereupon they were tried.[3]

On June 4, 1992, the accused filed a Joint Petition with Leave of Court for Reinvestigation, which the court granted. As a result of the reinvestigation, a Motion to Dismiss with respect to accused Joseph Bernaldez was filed. On September 9, 1993, the court issued an order stating —

On record is a motion to dismiss dated September 7, 1993 filed by OIC 1st Asst. Prov’l. Prosecutor Pableo B. Baldoza. Finding the grounds stated therein to be well-taken and in order, said motion is granted.

WHEREFORE, the case against accused Joseph Bernaldez only is hereby ordered dismissed. The Provincial Warden is hereby directed to release immediately from custody the person of Joseph Bernaldez, if there is no other case that will warrant his further confinement in jail.

SO ORDERED.[4]

Thereafter, trial proceeded against accused-appellants Joel Gonzales and Romeo Bernaldez.

The facts are as follows:

At about 9:30 o'clock in the evening of July 5, 1992, the spouses Nicanor and Carolita Suralta had visitors at their house in Bagsac, Manikling, San Isidro, Davao Oriental. Nicanor was having drinks with Arsenio Abonales, Bobong Lamanilao, and Nicasio Lamanilao when two armed men, one carrying a gun and the other a knife, suddenly entered the house through the kitchen door. The one carrying a gun had a bonnet over his face, with only his eyes exposed, while the other one carrying a knife had the lower half of his face covered with a handkerchief. The knife-wielder held Chona, the third child of the Suralta spouses, and announced a holdup. All persons in the house were ordered to go inside the bedroom, about two meters away from the sala. There, the man with a gun demanded a gun and money from Nicanor. Nicanor answered that he had no gun, but asked his wife to give money to the holduppers. Carolita gave P2,100.00, which was intended to be deposited in the bank, to the knife-wielder, who placed it in his pocket. Then the knife-wielder ransacked the cabinet and took the remaining amount of P325.00, which was intended for the school expenses of the Suralta children. In addition, he took the family's Sanyo cassette recorder and some clothes. The holduppers also divested Arsenio Abonales, one of the guests, of his Seiko diver's wristwatch and then left.[5]

As the holduppers were leaving, two gunshots rang out. Carolita thought that the first one was a mere warning shot, but later Nicanor was heard moaning. Carolita became hysterical after seeing her husband lying in a pool of his own blood. Nicanor was immediately brought to the Lupon Emergency Hospital where he was given first aid. Thereafter, he was transferred to the Tagum Regional Hospital but he eventually died.[6] The death certificate (Exh. B) states the cause of his death as —

Immediate Cause: CARDIO-RESPIRATORY ARREST

Antecedent Cause: MULTIPLE [GUNSHOT WOUNDS] PENETRATING ABDOMEN PERFORATING WITH MASSIVE CONTAMINATION, PERFORATING CECUM, APPENDECIAL TRANSECTION MESENTERIC VESSEL, ILEUM, JEJUNUM & SIGMOID

Other significant conditions contributing to death: HYPOVOLEMIA.[7]

The incident was reported to the San Isidro Police on the same night. Carolita Suralta and Arsenio Abonales gave descriptions of the holduppers and told the responding police investigators that they would be able to recognize the suspects if they saw them again.[8]

On July 12, 1992, there was another holdup inside the ACF passenger bus compound in the neighboring municipality of Magdug, Governor Generoso, Davao Oriental. The police team sent to investigate the incident was able to pick up suspects,[9] one of whom was accused-appellant Joel Gonzales. He was wearing a wristwatch (Exh. A) and had a handgun (Exh. H). Other items, consisting of watches, a cassette recorder (Exh. D), a chain saw, and spare parts, were recovered from his house, some of which were claimed by passengers of the ACF bus line.[10]

Police Inspector Arnold Malintad of Governor Generoso, head of the team investigating the robbery of the ACF bus compound, informed Capt. Adane Sakkam, Police Chief of San Isidro, about the apprehension of accused-appellant Gonzales and the recovery of the items from him. Accordingly, on July 14, 1992, Capt. Sakkam, Carolita Suralta, and Arsenio Abonales proceeded to the Governor Generoso Police Station. Carolita and Arsenio identified accused-appellants Joel Gonzales and Romeo Bernaldez as the holduppers. Joel Gonzales was identified as the man armed with a gun who wore a bonnet to cover his face, while Romeo Bernaldez was

identified as the knife-wielder who wore a handkerchief to cover the lower portion of his face.[11]

Carolita volunteered that accused-appellant Bernaldez is in fact her nephew. Carolita and Arsenio said that they were able to recognize the suspects despite their disguises because they were only one to two meters away from each other during the holdup, and the rooms of the house were well-lighted.[12] In addition, Carolita was able to identify the Sanyo cassette recorder (Exh. D) as the one taken from their house because of the broken antennae and the name "Nick Suralta" written inside the battery compartment. On the other hand, Arsenio likewise identified the Seiko diver's watch (Exh. A) as his.[13]

Accused-appellants put up the defense of denial and alibi.

Accused-appellant Joel Gonzales testified that he was in Tandang Sora, Governor Generoso, Davao Oriental the whole day of July 5, 1992 working in his mother-in-law's farm, piling coconut palm leaves together with his brother-in-law. In the evening, he had supper in his house and slept there together with his family.[14]

On July 13, 1992, Gonzales was suffering from a fever. While he was sleeping, he was awakened by Policeman Danny Cabanilas, Inspector Arnold Malintad and Eddie Tano, who took him to the Governor Generoso police station in connection with a robbery in the ACF bus compound. At the police station, he was investigated by Inspector Malintad and thereafter put in jail. While inside the jail, people came to see him. Malintad pointed at him and asked a woman companion if he was one of the persons who committed the robbery in San Isidro. The woman answered, "I do not know them." For this reason, both Malintad and the woman left. However, upon their return, the woman said that she recognized the men and pointed to him and accused-appellant Romeo Bernaldez as those who were involved in the robbery.[15]

On July 31, 1992, accused-appellant Gonzales was taken to Mati by Policemen Ernesto Bahan and Alfredo Castro, but, before reaching Mati, somewhere in Bañas, they alighted from the jeep and he was made to kneel. He was beaten up by Bahan and Castro with the use of an armalite and hit on the chest and the back. He was then brought to the Mati Cemetery and there forced to confess. Thereafter, he was placed inside an open tomb for 12 minutes and then he was taken to the Mati Municipal Jail. After three days, he was taken to Governor Generoso. He denied participation in the crime and stated that the cassette recorder and other items were not confiscated from him.[16]

For his part, accused-appellant Romeo Bernaldez claimed that at around 9:30 o'clock in the evening of July 5, 1992, he was sleeping in his house in Tibanban, Governor Generoso together with his father, mother, and two sisters. On July 13, 1998, he went to the Municipal Jail of Governor Generoso to answer accusations by the police that he was concealing a firearm. At the police station, he was investigated by Inspector Malintad for the firearm he allegedly kept, which he denied. He was later placed in jail.[17] Inspector Malintad, however, testified that Bernaldez was actually arrested in his house in Tibanban.[18]

Romeo Bernaldez further testified that on July 14, 1992, Carolita Suralta, accompanied by Policemen Sakkam and Malintad, went to the jail and made the prisoners stand up, after which they went to Malintad's office. Then, the two returned to the jail cell after a few minutes and Carolita pointed to him as among those involved in the robbery.[19]

Romeo Bernaldez also said that his residence was approximately 25 kilometers from Manikling, San Isidro, where the robbery with homicide took place, and could be reached by several means of land transportation.[20]

Except for accused-appellants, no other witness was presented by the defense.

Thereafter, SPO4 Ernesto Bahan was presented to rebut accused-appellant Joel Gonzales's testimony. According

to Bahan, at around 5 o'clock in the morning of July 21, 1992, he left for Governor Generoso on official mission together with SPO3 Castro, SPO1 Lindo, PO3 Jaljis, and PO3 Hassan, upon order of his superior to fetch Joel Gonzales, per letter-request of Assistant Provincial Director Supt. Melchisedeck Barggio. Acting on said letter-request, Judge Rodolfo Castro of Municipal Trial Court of Mati ordered Inspector Malintad, the Chief of Police of Governor Generoso, to turn over Joel Gonzales. The party left Sigaboy, Governor Generoso at past 11 o'clock in the morning and arrived in Mati at around 1:30 o'clock in the afternoon of July 21, 1992. To support his statement, SPO4 Bahan read to the court page 362 of the police blotter for July 21, 1992, 1350H, to wit:

SPO3 Bahan, SPO3 Castro, SPO1 Lindo, PO3 Jaljis, PO3 Azan arrived [at the] Police Station from Governor Generoso and brought in the person of Joel Gonzales regarding the request of Chief Inspector Melchisedeck C Bargio PNP Davao Or Provincial Command, Mati Dvo Or to Mun. Trial Court of Governor Generoso, Province of Davao Or duly signed by [Judge] Rodolfo Castro to turn over the custody of accused to Mati Police Station for investigation, in relati[on] to CC No. 7183 for Robbery with Homicide which is now pending in the Mun. Trial Court of Mati, same the Chief of Police of Governor Generoso granted to be brought at Mati Police Station provided that maximum security must be implemented and to be returned said to Governor Generoso Police Station within three (3) days same said Joel Gonzales also involved in Robbery with Homicide in CC No. 7183 as pinpointed by two witnesses subject is hereby placed under police custody as per verbal order of OIC SPO1 Fortuna to the Jailer guard "BJMP" SPO3 Cabillada.[21]

SPO4 Bahan denied having taken accused-appellant Joel Gonzales to the Mati Cemetery. He said that when they arrived in Mati, he immediately turned over Joel Gonzales to the Chief of Police, who then turned him over to the investigating section.[22]

He further testified that accused-appellant Joel Gonzales was taken to Mati in connection with Criminal Case No. 7183. Although SPO4 Bahan admitted he had been administratively charged with maltreating detention prisoners, he said the case was later dismissed and he was exonerated.[23]

After trial, judgment was rendered by the trial court finding accused-appellants guilty beyond reasonable doubt as principals of the crime of robbery with homicide. The dispositive portion of its decision reads:

WHEREFORE, the Court finds accused Joel Gonzales and Romeo Bernaldez guilty beyond reasonable doubt as Principal[s] of the crime of Robbery with Homicide and hereby sentences each of them to suffer RECLUSION PERPETUA, with the accessory penalties provided by law, to indemnify jointly and severally, the Heirs of the victim, Nicanor Suralta, the sum of P50,000.00, to indemnify also jointly and severally said heirs the sum of P2,425.00, plus the costs of the proceedings.

The cassette [recorder] (Exhibit "D") is ordered returned to the Suralta family, while the wristwatch (Exhibit "A") to Arsenio Abonales.

SO ORDERED.[24]

Counsel for accused-appellant Joel Gonzales assigns the following errors allegedly committed by the trial court:

- THAT THE TRIAL COURT SERIOUSLY ERRED IN DECIDING THAT THE ACCUSED WERE POSITIVELY IDENTIFIED BY PROSECUTION WITNESSES;
- THAT THE EVIDENCE ADDUCED BY THE PROSECUTION DURING THE TRIAL ARE INADMISSIBLE IN LAW.[25]

On the other hand, the Public Attorney's Office, on behalf of both accused-appellants, assigns the following errors:

- THE COURT A QUO GRAVELY ERRED IN CONVICTING BOTH ACCUSED OF THE CRIME

CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE IDENTITIES OF THE ASSAILANTS BEYOND REASONABLE DOUBT.

- THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME CHARGED BASED ON CIRCUMSTANTIAL EVIDENCE.[26]

We find accused-appellants' contentions to be without merit.

After reviewing the records of this case, we find that the prosecution evidence establishes the guilt of accused-appellants beyond reasonable doubt. A conviction for robbery with homicide requires proof of the following elements: (a) the taking of personal property with violence or intimidation against persons or with force upon things; (b) the property taken belongs to another; (c) the taking be done with *animus lucrandi* (intent to gain); and (d) on the occasion of the robbery or by reason thereof, homicide in its generic sense is committed. The offense becomes the special complex crime of robbery with homicide under Art. 294 (1) of Revised Penal Code if the victim is killed on the occasion or by reason of the robbery. Even the Public Attorney's Office concedes that the prosecution was successful in proving the commission of the crime, questioning only the identification made by the prosecution witnesses of accused-appellants as the perpetrators of the crime.[27]

First. Accused-appellants contend that the trial court erred in giving credence to the identification made by the two prosecution witnesses, Carolita Suralta and Arsenio Abonales. They argue that the manner by which accused-appellants were identified was suggestive and showed partiality. They argue further that, most often, the bereaved families of victims are not concerned with the accuracy of identification because they are overwhelmed by passion for vindication, regardless of whether or not the suspect is the real culprit.

This contention is without merit. We find no reason for setting aside the lower court's conclusion on the accuracy and correctness of the witnesses' identification of the accused-appellants as the persons who robbed the Suralta spouses and the couples' guest Arsenio Abonales and killed Nicanor Suralta. It is the most natural reaction of victims of criminal violence to strive to ascertain the appearance of their assailants and observe the manner in which the crime was committed. Most often, the face and body movements of the assailants create a lasting impression on the victims' minds which cannot be easily erased from their memory.[28] There is no evidence to show that the eyewitnesses were so paralyzed with fear that they mistook accused-appellants for the men who robbed and killed the victims. On the contrary, fear for one's life may even cause the witness to be more observant of his surroundings.[29] Experience shows that precisely because of the unusual acts of bestiality committed before their eyes, eyewitnesses, especially the victims to a crime, attain a high degree of reliability in identifying criminals.[30] The desire to see that justice is done will not be served should the witness abandon his conscience and prudence and blame one who is innocent of the crime.[31]

Indeed, prosecution witnesses positively and categorically identified accused-appellants as the armed men who held them up on July 5, 1992 and killed the victim. There was no possibility of mistaken identification because prosecution witnesses were able to observe their movements and their body built and height despite the fact that accused-appellants covered their faces.[32] As Carolita Suralta testified:

COURT TO THE WITNESS:

Q

You stated that one of the robbers was wearing a bonnet, is that right?

A

Yes, Your Honor.

Q

And at that time when he was wearing a bonnet, you were not able to identify him?

A

I cannot recognize him, but I can recognize his voice and his actions.

Q

Why is it that you can recognize his voice and his actions?

A

When they got inside, Your Honor.

...

Q

How is it that you can recognize his voice and his movements that he is the accused Joel Gonzales, considering that he was wearing a bonnet and he is not even your neighbor?

A

Because at the time he said, "silence", I recognized his voice, Your Honor.[33]

Accused-appellants' counsels attempted to confuse prosecution witnesses during the trial by using the word "recognize" to simultaneously mean identification of face and knowledge of the name. But the witnesses were able to stand their ground. We agree with private prosecutor that a mistake is likely when one equates knowing the person by his movements and by his voice with knowing a person by his name. Although the names of accused-appellants were supplied by the police, the witnesses nevertheless recognized accused-appellants when they visited them in the Governor Generoso jail.[34] What is important is not the ability of an eyewitness to give the true and correct names of the accused, but rather his ability to identify the persons actually seen committing the offense.[35]

Moreover, in the absence of proof that a witness is moved by improper motive, it is presumed that he was not so moved and, therefore, his testimony is entitled to full faith and credit.[36] That presumption has not been overcome in this case. Consequently, the identification of accused-appellants as the killers of Nicanor Suralta stands. Nor is motive for the killing important when there is no doubt as to the identity of the perpetrators of the crime.[37] But here the motive is plain: the victim was killed to rob him of his possessions.

Furthermore, alibi is an inherently weak defense which cannot prevail over the positive identification of accused-appellants. The defense of denial and alibi, unsubstantiated by clear and convincing evidence, is self-serving and cannot be given greater evidentiary weight than the positive testimonies of credible

witnesses.[38]

Second. Accused-appellant Gonzales contends that during the interrogation and investigation, he and his co-appellant Romeo Bernaldez were not informed of their rights to remain silent and to secure the services of counsel, in violation of §§2 and 12, Art. III of the Constitution. Hence, their admission of the commission of the crime is inadmissible in evidence against them.

This contention lacks merit.

Inspector Arnold Malintad testified that on July 14, 1992, accused-appellant Joel Gonzales was picked up at around 8:00 a.m. near his residence in Tandang Sora, Governor Generoso. Accused-appellant Gonzales had a handgun tucked in his waistline and was wearing a wristwatch. According to Inspector Malintad, accused-appellant Gonzales admitted participation in the crime upon interrogation and voluntarily surrendered the stolen goods to him.

ATTY. LADERA:

Q

Where did you pick up Joel Gonzales?

A

At Barangay Tandang Sora, Governor Generoso.

....

Q

In his residence?

A

In the vicinity of his residence.

Q

Where?

A

At the barangay road.

Q

Was he sitting or standing?

A

He was standing.

Q

He was not bringing anything?

A

A handgun and a wristwatch.

Q

When did you recover the cassette [recorder]?

A

I told him to turn over the loot of the ACF.

Q

You told the accused to turn over the loot[?]

A

Yes.

....

Q

Where?

A

He was apprehended with the gun and the wristwatch and I brought him to the police station and interrogated him and after the interrogation, he accepted the commission of the crime and he told me that he will voluntarily surrender the items in his house.

....

Q

When you went to the house of Joel Gonzales, when was that that you said he voluntarily turned over the loot?

A

On that date.

Q

The time when you went to the house?

A

Yes.

....

Q

Did you have any search warrant?

A

I did not go inside the house.

Q

How many of you went to the house?

A

About ten (10).

Q

You were armed?

A

Yes.

Q

You surrounded the house of Joel Gonzales?

A

No, because it is only a matter of asking his wife to surrender the items.[39]

To be sure, accused-appellants were already under custodial investigation when they made their admissions to the police. At that point, the investigation had ceased to be a general inquiry into an unsolved crime and had begun to focus on the guilt of a suspect and for this reason the latter were taken into custody or otherwise deprived of freedom in a substantial way.[40] Hence, the admissions made by accused-appellants are inadmissible in evidence pursuant to Art. III, § 2(1) and (3) of the Constitution. However, the defense failed to raise its objections to the admissibility of these statements immediately, as required by Rule 132, §36, when Inspector Malintad was presented as a witness for the prosecution or when specific questions concerning the confession were asked of him. Consequently, accused-appellants are deemed to have waived their right to object to the admissibility of Inspector Malintad's testimony.[41] Indeed, it was even the defense counsel who provided the opportunity for Inspector Malintad to elaborate on the circumstances of accused-appellant Gonzales' admission in the course of his cross-examination of the said witness.

Inspector Malintad also claimed that accused-appellant Joel Gonzales told him that one of his companions was Romeo Bernaldez. He said:

ATTY. LOPEZ: (CROSS EXAMINATION)

For accused Romeo Bernaldez.

....

Q

So, this Romeo Bernaldez was not a suspect in the Robbery?

A

He was picked up later.

Q

Where did you pick him up?

A

At Tibanban.

Q

Why did you pick him up?

A

It was Joel Gonzales who told me.

Q

You mean to tell us that Joel Gonzales told you that Romeo Bernaldez is one of his companions?

A

Yes and he told us that he is in Barangay Tibanban and we picked him up.[42]

On the other hand, Capt. Sakkam testified that when he was in the Municipal Jail at the Police Station of Governor Generoso in order to identify the suspects, he asked them who killed the victim and accused-appellant Romeo Bernaldez answered that it was accused-appellant Joel Gonzales.

COURT:

....

Q

Were you able to talk with all the accused?

A

When I saw them, I asked one of them as to who killed the victim, and the other one answered - I was not responsible in the killing - and he said, "Joel Gonzales killed the victim".

Q

Who was the one who told you that the one who shot the victim was Joel Gonzales?

A

It was Romeo Bernaldez, the short one.[43]

Such admission by accused-appellant Bernaldez may be taken as evidence against his co-appellant Joel Gonzales. For the constitutional provision on custodial investigation does not apply to a spontaneous statement, not elicited through questioning by the authorities, but given in an ordinary manner whereby the accused orally admitted having committed the crime.[44]

Accused-appellant Joel Gonzales also contends that Inspector Malintad had no warrant when the latter conducted a search of his residence. He contends that the alleged items taken during the robbery in the ACF bus compound and the cassette recorder and wristwatch are inadmissible in evidence against him.

This contention deserves no merit. As explained by Inspector Malintad, accused-appellant Joel Gonzales voluntarily surrendered the stolen goods to him. When he went to the house of accused-appellant Joel Gonzales, the watches, cassette recorder, chainsaw, and spare parts were given to him. What thus happened was a consented search, which constitutes a waiver of the constitutional requirement for a search warrant. It has been held that the right to be secure from an unreasonable search may be waived either expressly or impliedly.[45] And when the accused himself waives his right against unreasonable search and seizure, as in this case, the exclusionary rule (Art. III, §3(2)) in the Constitution does not apply.

Third. Accused-appellant Joel Gonzales denies that the stolen goods had been taken from him. Inspector Malintad testified that he recovered watches, a cassette recorder, a chainsaw, and spare parts from accused-appellant Joel Gonzales when he arrested the latter in his house. There is no reason to doubt Inspector Malintad's claim that the stolen items were indeed recovered from accused-appellant Gonzales. These items were definitively identified by

the owners as those taken from them. Between the testimonies of the police officers, who enjoy the presumption of regularity in their duties, and the bare denials of accused-appellants, we are more inclined to believe the police officers. This is true especially considering that the police officers have not been shown to have any motive to testify falsely against accused-appellants.

Rule 131, §3(j) of the Revised Rules on Evidence provides “that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him.” Since the subject items were found in the possession of accused-appellant Joel Gonzales, he is then presumed to be the taker of the stolen items. Accused-appellant Gonzales was unable to satisfactorily explain his possession of the stolen items.

All told, we hold the evidence in this case establishes the guilt of accused-appellants beyond reasonable doubt. Under Art. 294(1) of the Revised Penal Code, as amended by R.A. No. 7659, the penalty for robbery with homicide ranges from reclusion perpetua to death. In view of the absence of aggravating and mitigating circumstances attending the commission of the crime, the penalty of reclusion perpetua was correctly imposed by the trial court on accused-appellants.

The Court likewise sustains the award of P50,000.00 as civil indemnity for the death of the victim, Nicanor Suralta, the same being in line with prevailing jurisprudence.[46] An additional amount of P50,000.00 as moral damages should also be awarded in favor of the heirs of the victim. Such damages require no further proof other than the death of the victim.[47] The restitution of the cash and of the stolen items to their respective owners ordered by the trial court is affirmed.

WHEREFORE, the decision, dated February 10, 2000, of the Regional Trial Court, 11th Judicial Region, Branch 6, Mati, Davao Oriental is AFFIRMED, with the modification that accused-appellants Joel Gonzales and Romeo Bernaldez are sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of Nicanor Suralta the amounts of P50,000.00 as civil indemnity, P50,000.00 as moral damages, and P2,425.00 as restitution for the stolen cash, plus costs of the proceedings. The cassette recorder is ordered returned to the heirs of Nicanor Suralta, and the wristwatch to Arsenio Abonales.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, De Leon, Jr., and Corona, JJ., concur.

[1] Per Acting Presiding Judge Ricardo M. Berba.

[2] Rollo, pp. 18-19.

[3] Records, p. 61.

[4] Id., p. 167.

[5] TSN (Arsenio Abonales), pp. 6-8, 15-16, 18-19, Aug. 17, 1994; TSN (Carolita Suralta), pp. 5-8, Feb. 7, 1995.

[6] TSN (Arsenio Abonales), pp. 9-10, Aug. 17, 1994; TSN (Carolita Suralta), pp. 8-9, 14-15, 19-20, 24, 30-32, Feb. 7, 1995.

[7] Records, p. 7.

[8] TSN (P/Capt. Adane S. Sakkam), pp. 9-10, 23, Oct. 13, 1994.

[9] Id., pp. 11-12.

- [10] TSN (Police Inspector Arnold Malintad), pp. 5-10, Apr. 3, 1996.
- [11] TSN (Arsenio Abonales), pp. 11, 15-16, 19-21, 27-31, Aug. 14, 1994; TSN (P/Capt. Adane S. Sakkam), pp. 15-17, Oct. 13, 1994; TSN (Carolita Suralta), pp. 26-29, Feb. 7, 1995; TSN, pp. 5-8, Oct. 4, 1995.
- [12] TSN (Carolita Suralta), pp. 6, 17, 28-29, Feb. 7, 1995; TSN, p. 5, Oct. 4, 1995.
- [13] TSN (Arsenio Abonales), p. 8, Aug. 14, 1994; TSN (P/Capt. Adane S. Sakkam), pp. 21, 35-39, Oct. 13, 1994; TSN (Carolita Suralta), pp. 11, 17, Feb. 7, 1995; TSN (Police Inspector Arnold Malintad), p. 5, Apr. 3, 1996.
- [14] TSN (Joel Gonzales), pp. 7-8, 24-27, Feb. 4, 1999.
- [15] *Id.*, pp. 9-12, 27-28.
- [16] *Id.*, pp. 13-16.
- [17] TSN (Romeo Bernaldez), pp. 3-5, Apr. 14, 1999.
- [18] TSN (Police Inspector Arnold Malintad), p. 14, Apr. 3, 1996.
- [19] TSN (Romeo Bernaldez), pp. 11-12, Apr. 14, 1999.
- [20] *Id.*, pp. 4, 8.
- [21] TSN (SPO4 Ernesto Bahan), pp. 7-8, July 22, 1999.
- [22] *Id.*, p. 9.
- [23] *Id.*, p. 11.
- [24] Decision, p. 16; Rollo, p. 45.
- [25] Brief for Accused-Appellant Joel Gonzales, p. 3; *id.*, p. 101.
- [26] Brief for the Accused-Appellants, p. 7; *id.*, pp. 141.
- [27] *Id.*
- [28] *People v. Martinez*, 274 SCRA 259, 269 (1997).
- [29] *Id.*, p. 270 citing *People v. Salazar*, 248 SCRA 460 (1995).
- [30] *People v. Teehankee, Jr.*, 249 SCRA 54 (1995) citing *People v. Campa*, 230 SCRA 431 (1994) and *People v. Apawan*, 235 SCRA 355 (1994).
- [31] *People v. Realin*, 301 SCRA 495 (1999).
- [32] TSN (Arsenio Abonales), pp. 12, 28, Aug 14, 1994; TSN (Carolita Suralta), pp. 4-13, 16-21, Oct. 4, 1995.
- [33] TSN (Carolita Suralta), pp. 5-6, Oct. 4, 1995.
- [34] TSN (Arsenio Abonales), p. 19, Aug. 17, 1994; TSN (Carolita Suralta), pp. 16, 23, 25, Feb. 7, 1995; TSN, pp. 9, 11-12, Oct. 4, 1995.
- [35] *People v. Salazar*, 205 SCRA 314, 319 citing *People v. Auditor*, 152 SCRA 613 (1987).
- [36] *People v. Celis*, 317 SCRA 79 (1999); *People v. Lopez*, 249 SCRA 610 (1995).

- [37] *People v. Tan*, 315 SCRA 375 (1999).
- [38] *People v. Mores*, 311 SCRA 342 (1999).
- [39] TSN (Police Inspector Arnold Malintad), pp. 8-10, Apr. 4, 1996.
- [40] *People v. Evangelista*, 256 SCRA 611, 624 (1996).
- [41] See *People v. Escordial*, G.R. Nos. 138934-35, Jan. 16, 2002; *People v. Hermoso*, 343 SCRA 556 (2000).
- [42] TSN (Police Inspector Arnold Malintad), p. 14, Apr. 4, 1996.
- [43] TSN (P/Capt. Adane Sakkam), p. 16, Oct. 13, 1994.
- [44] *People v. Cabiles*, 284 SCRA 199 (1998).
- [45] *People v. Sotto*, 275 SCRA 191, 205 (1997).
- [46] *People v. Verde*, 302 SCRA 690 (1999).
- [47] *People v. Cambi*, 333 SCRA 305 (2000).

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