

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ORLANDO JAVIER, ACCUSED-APPELLANT.

G.R. No. 142996. July 11, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

On automatic review is the decision dated March 2, 2000 of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, in Criminal Case No. R-4231, finding herein accused-appellant Orlando Javier guilty beyond reasonable doubt of the crime of murder and imposing upon him the penalty of death.

In an Information filed on September 4, 1997, accused-appellant was charged with murder committed as follows:

That on or about 2nd day of September, 1997 at around 6:30 o'clock in the evening, in Barangay San Roque II, Municipality of San Jose, Province of Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the accused being then armed with a .45 Caliber, with intent to kill, did then and there willfully, unlawfully and feloniously, with treachery, attack, assault and shot with the said weapon one Roberto Sunga y Revero, thereby inflicting upon the latter serious gunshot wound in the chest, through and through, which caused his untimely death..[1]

On arraignment, accused-appellant entered a plea of "Not Guilty." Trial ensued thereafter.

The prosecution presented eight witnesses namely: Benedict Sta. Maria, Bobby Matira, Louie Lingas, SPO2 Federico Reguyal, SPO4 Rolando Ungria, Dr. Nuela Manzanida, Rodrigo Quirante, and Josephine Sunga.

Benedict Sta. Maria testified that around 6:30 in the evening of September 2, 1997, he was on his way home from the Seventh Day Adventist Church together with Bobby Matira, Louie Lingas, and Roberto Dulay on board a Kawasaki-100 motorcycle.[2] When they were in front of the San Roque II Elementary School, Sta. Maria saw accused-appellant shoot the victim, Roberto Sunga, while both were on board a tricycle. Accused-appellant was on the passenger side while the victim was the one driving.[3] After the first shot, the victim fell down from the tricycle. While sprawled on the ground, the victim raised his hand as if pleading for his life. Accused-appellant then approached the victim and pointed a short black gun at him. He pulled the trigger but the gun did not discharge. At the time, Sta. Maria and his companions were about six arms length away from the scene.[4] Thereafter, accused-appellant went inside his house, came out and walked towards Sta. Maria and his companions. When they saw accused-appellant approaching them with the gun still in his hand, Sta. Maria and his companions left.[5] When accused-appellant was no longer around, Sta. Maria and his companions approached the victim who had a wound at the left side of his chest. They looked for the victim's relatives to inform them about the incident. The victim was later on brought to the Funeral Parlor.[6]

Bobby Matira corroborated Sta. Maria's testimony. He narrated that around 6:00 to 6:30 in the evening of September 2, 1997, he was in the premises of the Seventh Day Adventist Church in San Roque II together with his friends Benedict Sta. Maria, Roberto Dulay and Louie Lingas.[7] They were on their way home on board a motorcycle when they heard a gunshot in front of the San Roque II Elementary School. When he looked at the

direction where the shot came from, he saw somebody sprawled on the ground and another man holding a short black gun whom he later identified in court as accused-appellant.[8] When witness and his companions saw accused-appellant approaching them, they immediately left for fear that he might harm them. After a while, they returned to the scene and found Robert Sunga lying on the ground already dead.[9]

Louie Lingas also gave a similar testimony. He stated that on September 2, 1997, around 6:30 in the evening, he was having a snack at a store near the Seventh Day Adventist Church together with Sta. Maria, Matira and Dulay. After eating, the four of them proceeded to go home on board a Kawasaki-100 motorcycle.[10] On the way, Lingas and his companions saw accused-appellant shoot the victim, Roberto Sunga, in front of the San Roque II Elementary School. The victim fell to the ground. While the victim was sprawled on the ground begging for mercy, accused-appellant again pointed the gun at him and pulled the trigger, but the gun did not discharge. When it appeared to witnesses and his companions that accused-appellant was about to approach them, they fled from the scene. After a while, they went back. The victim was still there but there was blood on his chest and he was no longer moving. The victim was later on brought to the hospital.[11] Witness admitted that he did not know the accused-appellant's name but he was able to identify him because he was only about five meters away from him when the incident happened.[12]

SPO2 Federico Reguyal, who was assigned to the alert team of the San Jose Police on the night of the incident, testified that in the evening of September 2, 1997, he received a telephone report about a shooting incident in San Roque II.[13] Together with his team, they boarded a PNP service vehicle and proceeded to San Roque II Elementary School. When the team arrived at the scene, they saw a parked tricycle and a dead man sprawled on the ground. They found the dead man's driver's license identifying him to be Roberto Sunga.[14] The body was brought to the hospital. On the same night, SPO2 Reguyal returned to the crime scene where he recovered an empty .45 caliber shell, about three meters away from where the victim was found and two meters away from the house of accused-appellant. He marked this empty shell and turned it over to the desk sergeant of the San Jose Police.[15]

Dr. Nuela Manzanida, the doctor who conducted the physical examination of the body of the victim, testified that her post-mortem findings disclosed the following:

Wound of entrance - 6 cm. in size, oval with abrasion collar, (regular) and injury at the right anterior chest.

Exact location - 3.5 inches from end of mamubrium going to the right end 1 inch from perpendicular line drawn from right nipple upward, going to the left.

Wound of exit - 7 cm in size, irregular located at spinal vertebre (thorasic) at the level of inferior angle of right scapular area.

Cause of death - Cardio respiratory arrest, secondary to hypovolemic shock, secondary to gunshot wound.[16]

Dr. Manzanida opined that the gunshot wound was more or less caused by a .45 caliber gun and that based on its location, the assailant was at the right side of the victim when the gun was fired.[17]

Rodrigo Quirante, also testifying for the prosecution, recounted that around two o'clock in the afternoon of September 2, 1997, he saw accused-appellant in a drinking spree in front of his (witness) house. Accused-appellant asked him to join them.[18] While they were drinking, he noticed that accused-appellant kept on drawing a .45 caliber gun tucked on his waist.[19] Around five p.m., Quirante excused himself and went home. The following day, he found an empty .45 caliber shell in front of his house. He was told by his wife and children that before accused-appellant left the premises the day before, he fired his gun several times. He gave the empty shell to Fiscal Levitico Salcedo.[20]

SPO4 Rolando Ungria, Firearms and Explosives Officer, Philippine National Police, San Jose, Occidental Mindoro, testified that based on the records of the PNP Provincial Headquarters in Mindoro, accused-appellant's name was not included in their list of holders of licensed firearms.[21]

Finally, the wife of the victim, Josephine Sunga, stated on oath that her husband was employed as a security guard at the National Food Authority and was earning P2,200.00 a month.[22] When he was not on duty, he worked as a tricycle driver earning around P100.00 a day. She and the victim had two children, aged 12 and 14.[23] Witness also testified that they incurred P20,000.00 in connection with the death and burial of her husband and these expenses were duly supported by receipts.[24]

On the other hand, the defense presented two witnesses: Rommel Acosta and accused-appellant himself.

Rommel Acosta, neighbor of accused-appellant, testified that around 6:30 in the evening of September 2, 1997, he was resting in front of his house when a tricycle arrived bearing accused-appellant.[25] The driver, whom he later learned to be the victim Roberto Sunga, called out to him asking him if he knew the passenger. He answered that it was "Kuya Orlie." The victim told him that they came from Caminawit. When he saw that accused-appellant was drunk, Acosta helped him alight from the tricycle.[26] Upon reaching the door of accused-appellant's house, the victim told him that accused-appellant had not yet paid the ten-peso fare. When Acosta asked accused-appellant for the fare, the latter gave him his wallet which contained only three pesos. Accused-appellant then asked the victim if he could pay the fare the next day.[27] At this point, the victim got angry and remarked "Iyon ang sinasabi ko sa mga lasing eh, sasakay-sakay, wala namang pamasahé, hindi nagtatago ng pamasahé...Maaari ba namang utangin sa driver ang pamasahé? Putang ina niya, sasakay-sakay wala namang pera," at the same time kicking his tricycle.[28] While the victim was uttering these words, Acosta turned his back and left. After about five steps, he heard a gunshot. When he turned around, he saw the victim already sprawled on the ground.[29]

On his part, accused-appellant Orlando Javier declared on the witness stand that he was a retired NAPOLCOM employee and an LLB graduate. After his retirement in 1997, he stayed at San Roque II, Occidental Mindoro with his two sons, aged 13 and 15, while his wife lived with their married children in Manila to follow up his retirement benefits.[30]

Around nine o'clock in the morning of September 2, 1997, he went to Caminawit on a bicycle to look for food (magdelihensiya ng ulam) because he did not have any money.[31] When he arrived at the place, he saw some friends in a drinking spree and joined them. The drinking session lasted up to twelve noon.[32] When he was already drunk, accused-appellant fired his .45 caliber gun upwards, emptying the cartridge. Accused-appellant claimed that this gun was licensed in his name and he had a permit to carry the same. However, he surrendered his license and permit to a policeman in Nueva Ecija.[33] Because he was so drunk, he dozed off and woke up around six o'clock in the afternoon. Assisted by a certain Reneng Reyes, he hailed a tricycle and placed his bicycle at the back. He instructed the driver to go to San Roque II where he lived.[34] Upon arriving at said destination, the driver (who was later identified as the victim Roberto Sunga) tried to collect the fare. Because he did not have money with him, accused-appellant asked the victim if he could pay the following day. The victim got mad and approached Ramil Acosta, his neighbor, and asked the latter if he knew accused-appellant.[35] Acosta tried to talk the victim into collecting the fare the following day but the latter did not accede. Instead, the victim got angry. He shouted and kicked (kinalampag) his tricycle while accused-appellant was still on board. Accused-appellant was still seated on the passengers' side of the tricycle when all of a sudden, the victim struck him with a stone from behind.[36] Although he was feeling dizzy, he jumped out of the tricycle and ran towards the Guerrero Rice Mill. After a while, accused-appellant returned and saw the victim standing as if waiting for him.[37] As accused-appellant was taking out his gun, the victim suddenly fell down and looked as if he was suffering from

epilepsy. Accused-appellant then approached the victim, cocked the gun and pulled the trigger several times but the gun did not fire.[38] Accused-appellant then got his bike and went inside his house. While cooking the fish he brought with him from Caminawit, his son noticed blood oozing from his head. He instructed his son to get some cotton and treat his injury.[39] After a while, he went back to the scene of the incident to look around (nakipa-usyoso). He ate dinner, played chess with his son for a while and then went to sleep.[40]

The following morning, September 3, 1997, accused-appellant was buying cigarettes from the neighborhood store when the owner, Mr. Artienda, told him that he had a check for P200.00 from his daughter in Manila. He encashed the check, gave P100.00 to his son, and left for Manila to follow up his retirement papers.[41] On September 4, 1997, he had his head injury examined and treated at the Ospital ng Sampaloc at G. Tuazon Street, Manila upon the advice of his co-employees at NAPOLCOM as he might be implicated in the shooting of Robert Sunga.[42] He stayed in Manila while waiting for his retirement papers until his arrest on February 9, 1998.[43]

On cross-examination, accused-appellant admitted that prior to his arrest and upon information that a case for murder was filed against him, he gave the victim's wife P35,000.00 as financial assistance.[44]

On March 2, 2000, the trial court rendered a decision finding accused-appellant guilty beyond reasonable doubt of the crime of murder and sentencing him as follows:

WHEREFORE, and in the light of all the foregoing considerations, the Court finds that the accused ORLANDO JAVIER is GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER, as defined and penalized under Article 248 of the Revised Penal Code, and Section 6 of Republic Act 7659, otherwise referred to as the Death Penalty law, and is HEREBY SENTENCED TO DEATH.

The accused is ordered to indemnify the heirs of the victim Roberto Sunga in the amount of FIFTY THOUSAND PESOS (P50,000.00) and to furthermore pay said heirs the amount of ONE HUNDRED THOUSAND PESOS, (P100,000.00) as moral damages.

The Provincial Warden is hereby directed to cause the immediate transfer of the accused from the Provincial Jail at Magbay, San Jose, Occidental Mindoro to the New Bilibid Prison, Muntinlupa City, Metro Manila.

SO ORDERED.[45]

Before us, accused-appellant now raises the following errors in his Brief:

THE TRIAL COURT ERRED IN NOT EXPLICITLY STATING WHAT AGGRAVATING CIRCUMSTANCES WERE PRESENT TO JUSTIFY THE IMPOSITION OF THE DEATH PENALTY.

ASSUMING ARGUENDO THAT THE ACCUSED IS GUILTY, HE IS ONLY GUILTY OF THE CRIME OF HOMICIDE.

Article 248 of the Revised Penal Code defines the crime of murder as follows:

Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment of or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other

means involving great waste and ruin;

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

These circumstances must be specifically alleged in the information in order to qualify the crime to murder; otherwise the killing may be considered merely as homicide.[46]

To justify its finding that accused-appellant was guilty of the crime of murder, the trial court appreciated the special qualifying circumstance of treachery. It reasoned, thus:

The victim was not afforded the opportunity to defend himself while the accused ensured that the crime would be consummated with the least risk to his person. The victim had no inkling at all that he would be shot by the accused. The victim was totally surprised by the attack and not afforded an opportunity to raise any defense against his attacker. Even when the victim was already sprawled on the ground and praying for his life, the accused still poked the gun at him and squeezed the trigger several times, however, the gun did not go off (t.s.n. July 15, 1999, p. 19). This is indicative of treachery that qualifies the crime to murder. In fact, the accused, while inside the tricycle sidecar, shot the unarmed and unsuspecting victim seated on the driver (sic) seat (t.s.n. March 20, 1998, page 7), a circumstance indubitably showing treachery.

The guilt of the accused having been proven beyond reasonable doubt by the prosecution, attended by treachery, he deserves nothing less than the supreme penalty of DEATH.

It is well-settled that treachery as a qualifying circumstance should be proven fully as the crime itself and cannot be simply deduced from presumption.[47] To constitute treachery, two conditions must concur: (1) it must be shown that at the time of the attack, the victim was not in a position to defend himself; and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.[48]

After a careful review of the records of the case, we find that the facts fail to establish that treachery attended the killing of Robert Sunga.

Although the fact of death, the identity of the victim and the identity of the assailant were established, there is no proof at all how the killing of the victim was done. Witness Sta. Maria testified that he saw accused-appellant shoot the victim while both were on board a tricycle:

Q On your way from the 7th Day Adventist Academy with he intention of going home the way you just narrated, what happened, if anything happened?

A Roberto Sunga was shot, sir.

Q Who shot Roberto Sunga?

A Mr. Orlando Javier, sir.

XXX

Q How did Orlando Javier shot Roberto Sunga?

A When Orlando Javier shot Roberto Sunga, he was riding in a tricycle, sir.

XXX

Q Who was the driver of the tricycle?

A Roberto Sunga is the driver, sir.

Q Where was Roberto Sunga at the time he was shot by Orlando Javier?

A When Roberto Sunga was shot by Orlando Javier he was at the driver's seat. He was the one driving the tricycle, sir.[49]

The foregoing testimony, however, failed to detail how the aggression started or how the victim was killed. It must be noted that at the time of the incident, Sta. Maria was on board a motorcycle coming from the Adventist Church.[50] He chanced upon the victim and accused-appellant while the latter was already in the act of shooting the former. He did testify on the events immediately preceding the shooting.

The other prosecution witnesses, Matira and Lingas, did not actually see accused-appellant shoot the victim. Matira declared that he heard a gunshot and when he looked in the direction where the shot came from, he saw a man already sprawled on the ground and another man standing near him holding a gun.

Q On your way home from the 7th Day Adventist was their (sic) anything unusual that happened?

A Yes, I heard a shot, sir.

Q Where did you hear the shot?

A At San Roque II at the house in front of the school.

Q When you heard the shot what did you notice?

A I look (sic) at the direction where the shot came from.

Q What did you find out?

A I saw somebody sprawled on the ground and I saw somebody holding something.

Q Did you notice what was that something holding by somebody?

A A black short gun, sir.[51]

On the part of Lingas, he admitted that his basis for saying that it was accused-appellant who shot the victim was the fact that he saw the former holding a gun.[52] He did not actually see accused-appellant fire the gun.[53]

Q Where were you at the time you saw Obet Sunga was killed?

A We were motoring on the road.

Q How did you notice the killing of Obet Sunga?

A Because Roberto Sunga was lying down and the killer was repeatedly roaming around the killed person and tried to fire again at the killed body of Roberto Sunga.

Q And did the gun fire?

A No more, sir.

XXX

Q What is your basis in saying that it was the accused Orlando Javier who shot or killed Roberto Sunga when according to you when he was tricking his gun, it did not fire?

A Because he was the one holding the gun.

Q Now before you saw this Orlando Javier pointing that gun towards Obet Sunga, did you hear any sound of gunshot?

A None, Sir.[54]

Like Sta. Maria, Matira and Lingas failed to provide the details on the particular means, method or form of attack employed by accused-appellant that led to the victim's death. This is precisely because both arrived at the scene of the crime after the victim was shot and was already sprawled on the ground.

In the case of *People vs. Edison Plazo*,^[55] we ruled that where no particulars are known regarding the manner in which the aggression was made or how the act which resulted in the death of the victim began and developed, it cannot be established from mere supposition that the accused perpetrated the killing with treachery. Likewise in *People vs. Oscar Oliva*,^[56] we said that absent any particulars as to the manner in which aggression was commenced or how the act which resulted in the death of the victim unfolded, treachery cannot be appreciated against accused-appellant.

While it may be admitted that at the time of the attack, the victim was not in a position to defend himself because he was driving the tricycle, there was no proof that accused-appellant consciously or purposely adopted the mode of attack employed by him. Indeed, accused-appellant's attack was sudden; however, mere suddenness of the attack is not enough to constitute treachery.^[57] It must be shown that the means of attack was consciously adopted^[58] and the accused reflected on the means and made some preparation to kill the victim.^[59]

On the other hand, there is enough evidence to show that the shooting of the victim was made on the spur of the moment brought about by a stinging provocation from the victim. Ramil Acosta testified that prior to the shooting, there was an altercation between accused-appellant and victim because the former could not pay the ten-peso tricycle fare.

Q In the time that you mentioned, 6:30 o'clock in the evening, have you noticed something unusual?

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A I noticed that the tricycle where Orlando Javier was boarded arrived and the tricycle driver called me.

Q And who is this tricycle driver that you said called you?

A For what I know, the surname is Sunga, Sir.

xxx

Q And what was the reason why this Robert Sunga, Jr. called you up.

A He asked me if I know his passenger, Sir.

Q Who is the passenger that you are referring?

A I recognized that the passenger is Orlando Javier.

xxx

Q What other things tell (sic) you by Robert Sunga after knowing that his passenger is Orlie?

A He told me that they came from Caminawit, Sir.

Q And what was your answer, if any, if you answered him?

A I told Roberto Sunga that I will just help Kuya Orlie because he was drunk at that time?

Q After that what happened next?

A When I assisted Kuya Orlie in alighting the tricycle, when we were at the door, Roberto Sunga told me that Kuya Orlie has not yet paid.

Q So, what was your answer when Roberto Sunga told you that Orlando Javier has not yet paid the fare?

A What I did, I asked for the fare from Kuya Orlie.

Q And what was the response of Orlando Javier?

A Kuya Orlie took his wallet and I saw that only P3.00 coins were inside his wallet.

Q What happened next when you saw the P3.00 coins from the wallet of Orlando Javier?

A I asked the driver how much is the fare, Sir.

Q And what was the answer of Roberto Sunga, the driver?

A He told me that the fare from Caminawit to San Roque is P10.00.

Q And what was the answer of Orlando Javier or your answer?

A Kuya Orlie said that if possible, he will just pay the fare tomorrow and told to the driver that I will be the one to collect from him.

Q And what was the response of Roberto Sunga?

A Roberto Sunga did not agree with the suggestion. I told Roberto Sunga that I have no money and I will just pay it tomorrow but this Roberto Sunga did not agree and he got angry, Sir.

Q And what was the reaction of Roberto Sunga when you said that he got angry because of the answer given by you and the accused Orlando Javier?

A He told me that “iyon ang sinasabi ko sa mga lasing eh, sasakay-sakay, wala namang pamasahé, hindi nagtatago ng pamasahé.”

Q So, after that what happened?

A After that Roberto Sunga uttered bad words “minura niya si Kuya Orlie” and told him “maaari ba namang utangin sa driver ang pamasahé?”

Q When you said “minura”, can you remember those words uttered by Roberto Sunga?

A “Putang ina niya, sasakay-sakay wala namang pera” and he was kicking his tricycle, Sir.

Q After that what happened?

A When he was getting angry and uttering bad words to Kuya Orlie, I turned my back and left.

Q When you turned your back and left, where was Orlando Javier?

A Orlando Javier was beside the tricycle, Sir.

Q What was he doing there?

A I don't know what he was doing because after I turned my back, after five (5) steps, I heard a gunshot, Sir.

Q And when you heard the gunshot, what things did you do, if any?

A When I heard the shots, I turned and I saw the tricycle driver lying down.[60]

Witness Sta. Maria himself admitted that accused-appellant and victim seemed to be conversing prior to the shooting although he did not actually hear what they were talking about.

Q You saw the shooting of the victim by the accused, is that correct?

A Yes, sir.

Q Before the accused shoot (sic) the victim, was there any conversation between the accused and the victim?

A We did not witness anymore their conversation, sir.

Q I am asking whether you heard them conversing?

A We saw them conversing but I did not hear, sir.[61]

We have ruled that provocation of the accused by the victim negates the presence of treachery even if the attack may have been sudden and unexpected.[62] When the assault upon the victim is preceded by a heated argument, treachery cannot be appreciated.[63]

The Solicitor General claims that the trial court was justified in imposing the penalty of death. It is argued that while the decision was indeed silent on what aggravating circumstance merited the imposition of the death penalty upon accused-appellant, it was nonetheless established during trial that an unlicensed firearm was used in the killing. The Solicitor General relies on the records of the Provincial Firearms Licensing Agency of the PNP which did not include the name of accused-appellant in the list of licensed firearms holders.

The contention is untenable. Not having been alleged in the Information, the use of an unlicensed cannot be appreciated against accused-appellant.[64]

Absent the qualifying circumstance of treachery, the crime committed in this case is only homicide under Art. 249 of the Revised Penal Code with the corresponding penalty of reclusion temporal.[65] Further, there being no aggravating nor mitigating circumstance shown, the penalty should be fixed in its medium period.[66] Applying the provisions of the Indeterminate Sentence Law,[67] the maximum of the penalty shall be taken from the medium period of reclusion temporal, which ranges from a minimum of 14 years, 8 months and 1 day to a maximum of 17 years and 4 months, while the minimum shall be taken from the penalty next lower in degree which is prision mayor, in any of its periods, the range of which is 6 years and 1 day to 12 years.

The Court affirms the award of P50,000.00 as indemnity for the death of Roberto Sunga. In addition, we grant the award of actual damages in the amount of P20,000.00. The Court, however, finds the award of moral damages in the amount of P100,000.00 to be excessive. Considering that moral damages are not intended to enrich the prevailing party,[68] the amount of P50,000.00 would be in keeping with the purpose of the law.

WHEREFORE, the decision of the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, is hereby MODIFIED and accused-appellant ORLANDO JAVIER is declared GUILTY OF HOMICIDE, and sentenced to an indeterminate prison term of 8 years and 1 day of prision mayor medium as minimum, to 17 years and 4 months of reclusion temporal medium as maximum. Accused-appellant is ordered to indemnify the heirs of the victim in the amount of P50,000.00 as moral damages.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corono, JJ., concur.

[1] Records, p. 1.

[2] TSN of March 20, 1998, pp. 4-5.

[3] Id., at 6-7.

[4] Id., at 8-9

[5] Id., at 10-11.

[6] Id., at. 11-13.

[7] TSN of May 7, 1999, pp. 2-3.

[8] Id., at 3-4.

[9] Id., at 5-6.

[10] TSN of May 8, 1998, pp. 3-4.

[11] Id., at 6-8.

[12] Id., at 5-6.

[13] TSN of July 9, 1998, pp. 3-4.

[14] Id., at 4-6.

[15] Id., at 6-7.

[16] Records, p. 154.

[17] TSN of July 14, 1998, pp. 5-6.

[18] TSN of July 29, 1998, pp. 4-5.

[19] Id., at 5.

[20] Id., at 6.

[21] TSN of November 26, 1998, pp. 4-5.

[22] TSN of March 30, 1999, pp. 4-5.

[23] Id., at 5-6.

[24] Id., at 4.

[25] TSN of June 3, 1999, pp. 3-4.

[26] Id., at 4-6.

[27] Id., at 6-7.

[28] *Id.*, at 7-8.

[29] *Id.*, at 8.

[30] TSN of July 13, 1999, pp. 2-4.

[31] *Ibid.*

[32] *Id.*, at 5-6.

[33] *Id.*, at 6-7.

[34] TSN of July 15, 1999, pp. 2--3.

[35] *Id.*, at 3-4.

[36] *Id.*, at 4-5.

[37] *Id.*, at 5-6.

[38] *Id.*, at 6-7.

[39] *Id.*, at 7-8.

[40] *Id.*, at 9-10.

[41] *Id.*, at 10-11.

[42] *Id.*, at 11-13.

[43] *Id.*, at 13-14.

[44] *Id.*, at 30-31.

[45] Records, pp. 265-266.

[46] *U.S. vs. Campo*, 23 Phil. 369; *People vs. Toledo*, G.R. 139961, May 9, 2001.

[47] *People vs. Narit*, 197 SCRA 334 (1991); *People vs. Tiozon*, 198 SCRA 368 (1991); *People vs. Lubreo*, 200 SCRA 11 (1991).

[48] *People vs. Mabuhay*, 185 SCRA 675 (1990); *People vs. Sabado*, 168 SCRA 681 (1988); *People vs. Rellon*, 167 SCRA 75 (1988); *People vs. Marciales*, 166 SCRA 436 (1988); *People vs. Estillo*, 141 SCRA 456 (1986).

[49] TSN of March 20, 1998, pp. 6-7

[50] *Id.*, at 16-17.

[51] TSN of May 7, 1999, p. 4.

[52] *Id.*, at 9.

[53] TSN of May 8, 1998, p. 11.

[54] *Id.*, at 5-6.

[55] G.R. No. 120547, January 29, 2001.

[56] G.R. No. 106826, January 18, 2001.

[57] *People vs. Macalisang*, 22 SCRA 699 (1968)

[58] *People vs. Caldito*, 182 SCRA 66 (1990); *People vs. Manalo*, 148 SCRA 98 (1987).

[59] *People vs. Iligan*, 191 SCRA 643 (1990); *People vs. Saez*, 1 SCRA 937 (1961); *People vs. Tumaob*, 83 Phil. 738.

[60] *supra*, Note 25, pp. 4-8.

[61] *supra*, Note 2, p. 17.

[62] *People vs. Peralta*, G.R. 128116, January 24, 2001

[63] *People vs. Gonzales*, 76 Phil. 473; *People vs. Rillorta*, 180 SCRA 102 (1989); *People vs. Macalino*, 177 SCRA 185 (1989).

[64] *People vs. Arrojado*, G.R. No. 130492, January 31, 2001.

[65] 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.

[66] Under par 1, Rule 64 of the Revised Penal Code, when there are neither aggravating nor mitigating circumstances, the penalty prescribed in its medium period shall be imposed.

[67] Republic Act No. 4103.

[68] *People vs. Padlan*, 290 SCRA 388 (1998); *People vs. Wenceslao*, 212 SCRA 560 (1992); *People vs. Quilaton*, 205 SCRA 279 (1992).

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