

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GERRY CUENCA Y MEDRANO, JACKSON CUENCA (AT LARGE), CRISANTO AGON Y MAGPANTAY, AND BERNIE AGON (AT LARGE), ACCUSED,

G.R. No. 143819. January 29, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The testimony of a single eyewitness, if credible and positive, is sufficient to support a conviction for murder. Truth is established by the quality, not necessarily by the quantity, of the evidence.

The Case

Gerry Cuenca and Crisanto Agon[1] appeal the February 7, 2000 Decision[2] of the Regional Trial Court (RTC) of Lipa City (Branch 12) in Criminal Case No. 0132-98, which found them guilty of murder beyond reasonable doubt.

The RTC disposed of the case as follows:

“WHEREFORE, the Court finds the accused GERRY CUENCA and CRISANTO AGON, guilty beyond reasonable doubt, both as principals by direct participation for having conspired and confederated with one another in the commission of the crime of [m]urder, as alleged in the Information dated March 27, 1998, and defined and penalized under Article 248 of the Revised Penal Code, as amended by Republic Act 7659 and sentences each of them to suffer the penalty of RECLUSION PERPETUA, to pay the heirs of Wilfredo Castillo the sum of P50,000.00 as indemnity for his death, the sum of P38,800.00, as actual damages, the sum of P4,800,000.00 for loss of earning capacity, the sum of P20,000.00, as moral damages and to pay their proportionate share of the costs.

“The period during which both accused are under preventive imprisonment shall be deducted from their sentence.

“Finally, let also warrants of arrest be issued against the accused Jackson Cuenca and Bernardo ‘Bernie’ Agon for their immediate apprehension.”[3]

On March 17, 1998, Lipa City Assistant City Prosecutor Mario G. Mayuga filed the Information charging appellants and their co-accused as follows:

“That on or about the 14th day of February, 1998 at about 9:30 o’clock in the evening, at Barangay Tambo, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, then armed with bladed/pointed and hard instruments, conspiring and confederating together, acting in common accord and mutually aiding one another, with intent to kill, with treachery and grave abuse of superior strength and taking advantage of nighttime, did then and there wilfully, unlawfully and feloniously attack, assault, beat and stab with the use of said bladed/pointed and hard instruments, suddenly and without warning, one Wilfredo Castillo, thereby inflicting upon the latter stab wounds, which directly caused his death.”[4]

When arraigned on April 27, 1998, appellants -- with the assistance of their lawyers -- entered a plea of not guilty.[5] Because their co-accused were at large, trial on the merits proceeded only as against them.

The Facts

Version of the Prosecution

In its Brief,[6] the Office of the Solicitor General summarized the prosecution's version of the facts as follows:

"On February 14, 1998, around 9:30 in the evening, while lying down with his wife and family in his house at Module Subdivision, Barangay Tambo, Lipa City, Batangas, Marcial Morillo[7] heard a commotion taking place outside his house. Dogs were barking loudly, so he decided to go out of the house to see what was happening outside. He then saw a man being mauled and beaten by four (4) persons. Upon seeing the incident, he hid himself behind a PLDT telephone post. From a distance of about ten (10) meters, he recognized the four (4) assailants as Gerry Cuenca, Jackson Cuenca, Crisanto Agon and Bernie Agon, while the person being mauled was Wilfredo 'Edok' Castillo. Marcial knew the four assailants and the victim for eight (8) years since they were all neighbors, Gerry and Jackson being brothers and Crisanto and Bernie being father and son. He witnessed Crisanto hold Edok's left hand while Bernie held his right hand. Gerry was at Edok's front and to the right while Jackson was at Edok's front and to the left and both were beating Edok continuously. Gerry and Jackson each used a piece of wood in hitting Edok several times on the face, head, chest and other parts of his body. Edok tried to struggle but his efforts proved futile. Edok then gave in, stooped down and eventually lost consciousness (Lumug[m]ok na po siya). The four (4) assailants then carried Edok's body with one holding on to his right arm, the other one x x x his left arm and the other two each held the right and left leg[s] of Edok towards the direction of Calabarzon Highway.

"Thereafter, Marcial returned to his house but did not tell his wife about the incident because she was 'nerbiyosa'. He did not want the members of his family to get involved in the incident because he feared for their safety. The mauling incident lasted approximately twenty (20) minutes. The place where the incident happened was illuminated by the light coming from the moon and the electric bulb at the electric post which was at the top of the roof of a house near the place of the incident.

"The following morning, February 15, 1998, Marcial met Feliciano Castillo, Edok's brother, who told him that they were looking for Edok. Marcial did not mention to Feliciano that he had witnessed the mauling of Edok because he was afraid that he might be implicated and involved in the incident.

"On February 15, 1998, around 2:30 in the afternoon, a neighbor named Silo passed by Marcial's house and told him that they were looking for Edok's body. Marcial joined in the search in the forest for about one hour and then he went home.

"About 4 o'clock in the afternoon of February 15, 1998, Feliciano dropped by the house of Marcial and said that Edok's body had been found and borrowed Marcial's flashlight in order to help in the recovery of Edok's body which was found inside a well in the forest. The body was retrieved from the well which was about fifteen (15) meters deep. There were blood stains around the well. Coconut trees surrounded the area. The body was recovered between Masagana Subdivision and Adelina Subdivision, which was a forested area and about one-half (1/2) kilometer from where the mauling incident took place.

"Around 4:30 in the afternoon of February 15, 1998, Feliciano reported to the Desk Officer, SPO2 Alberto Libao of the Lipa Police Satation, that the body of his brother, Wilfredo Castillo, had been found in the forested area in Barangay Tambo. Thereafter, Police Inspector Romeo Mitra, PO2 Enrico Tapalla, SPO4 Renaldo Saludo and SPO3 Pablo de Luna were dispatched to the crime scene to investigate the incident. Feliciano went with them. When Edok's body was retrieved, SPO4 Saludo noticed the presence of stab wounds, blows and hematomas on his body. The cadaver was then taken to Funeraria San Sebastian at Balagbag, Lipa City.

“About 7:30 in the evening of February 15, 1998, Dr. Corazon Sabile, Health Officer of Lipa City, conducted an autopsy on Edok’s body. The physical examination yielded the following results: there were nine (9) injuries on the head, two (2) of which were stab wounds, one stab wound on the right frontal area of the right ear which reached the skull and the second stab wound also at his right ear; one (1) lacerated gaping wound on the head; there were several contusions and hematoma on both eyes which could have been caused by mauling, and hematomas on the middle mandibular area and the lateral mandibular area (chin) which could have been caused by mauling or the dumping of the cadaver in to the well; there are also linear abrasions on the right lateral neck area that could have been caused by forcible contact; there were nine (9) wounds on the body, that is, four (4) stab wounds and five (5) abrasions; the first stab wound was on the third intercostal space midclavicular area, the second on the fifth intercostal space, right midclavicular area, the third on the 8th intercostal space midclavicular area, and the fourth [was] on the right lumbar area; the said wounds were almost of the same depth, that is 5 cms; all of the said wounds could have been caused by a sharp pointed instrument; she also found five (5) abrasion on the body, i.e., in the left midscapular area, left infrascapular area, on the vertebral line, on the right midscapular area and on the vertebral line; that the abrasions are called ‘gasgas’ and could have been caused by forcible contact; she also found in the extremities of the cadaver two (2) stab wounds on the right anterior thigh 4 to 5 cms. deep; she also found three (3) abrasions on the right forearm, left posterior arm and left posterior hand which could have been caused by forcible contact. The internal examination on the victim’s body revealed that 200 ml. of blood were found in the pleural cavity which could have come from the perforations of the right ventricle of the heart; the liver and upper lobe of the right lung were perforated; there were complete fractures on the 2nd, 3rd, 4th, 5th, 6th, 7th of both ribs which alone were sufficient to cause death. The mauling was aggravated by the dumping of the Edok’s body in the well. Considering the nature and number of injuries Edok sustained, no medical attention and assistance could have saved his life. The cause of Edok’s death was Hypovolemia secondary to multiple stab wounds.

“On February 16, 1998, Marcial Morillo told Ruben Castillo about the mauling incident which (Morillo) had witnessed on the night of February 14, 1998.

“Bothered by his conscience, on February 17, 1998, Morillo went to the Lipa Police Station to report the incident.”[8] (Citations omitted)

Version of the Defense

Appellants gave the following narration of the facts:[9]

“The defense maintained that in the evening of February 14, 1998 accused Jackson Cuenca and Bernie Agon together with three [V]isayan [C]alabarzon workers identified as Obet, Nognog and Ruel were in the house of Yolanda Cuenca in the evening of February 14, 1998 at Brgy. Tambo, Lipa City about one kilometer away from the place of Marcial Morillo, the alleged eyewitness, in whose place according to Marcial Morillo the crime was committed. While these persons were in said house of Yolanda Cuenca, they heard a voice calling for Jackson who was identified as Wilfredo Castillo. Jackson Cuenca came out [of] the house and asked Wilfredo Castillo what was the problem[;] however, Wilfredo Castillo immediately hacked him who was wounded at the right side of his back. Witness Yolanda Cuenca brought him inside her house and attended to his wound. While bringing him inside the house, Jackson was struggling to be free, [and] the three Visayan [C]alabarzon workers visitors went outside and thereafter a commotion took place. During the commotion, Yolanda Cuenca heard somebody [utter] the words ‘sobra-sobra na ang ginagawa mo sa mga tao dito’. The following day, February 15, 1998, two of the three Visayan Calabarzon Workers namely Obet and Nognog arrived at the house of Yolanda Cuenca and told her that she [would] say that she saw and heard nothing about the commotion.

“Accused Gerry Cuenca and Crisanto Agon were not in the house of Yolanda Cuenca where the commotion took place [o]n the evening of February 14, 1998 and they were not also near the house of Marcial Morillo

where the crime took place allegedly [o]n the evening of February 14, 1998. On that time and date, they were at the house of Roger Dimaculangan at Normanz Village, Tambo, Lipa City helping in the preparation of food for the baptismal party on February 15, 1998. Other than accused-appellants Andy Obille, Benjamin Anterola and Romy Anterola and other people were there. Accused-appellants vehemently denied that they were the ones who killed Wilfredo Castillo alias 'Edok' in the evening of February 14, 1998.”[10]

The Trial Court's Ruling

The RTC convicted appellants because the lone prosecution witness, Marcial Morcillo, was credible. It said: “the Court believes and gives weight to the candid, vivid and detailed account of the incident and positive identification of all the accused by Marcial Morcillo, not only because it is clear, straight-forward and devoid of any signs of artificiality, but also because it vibrates with truth and sincerity.”[11]

The court a quo held that conspiracy attended the killing:

“In this case, Crisanto and Bernie Agon were each holding the hands of Wilfredo Castillo, while the brothers Gerry and Jackson Cuenca helped each other in beating him with a piece of [wood] about one (1) meter long x x x. After Castillo slumped and lost consciousness, the four (4) accused helped each other in carrying Wilfredo Castillo towards the Calabarzon Highway going to the direction of Batangas City. Verily, at the precise moment of the execution of the crime, the accused acted in concert to accomplish a common objective to take the life of Wilfredo Castillo. The fact that Marcial Morillo did not witness the actual stabbing and killing of Wilfredo Castillo is of no moment.”[12]

It disbelieved the defenses of denial and alibi.

Hence, this appeal.[13]

Issues

In their Brief, appellants fault the trial court with the following alleged errors:

“1.

The honorable trial court erred in giving weight to the testimony of the alleged lone eyewitness, Marcial Mor[c]illo.

“2.

The honorable trial court erred in not considering that the victim died of multiple stab wounds and not due to injuries caused by a piece of wood.

“3.

The honorable trial court erred in not considering the defense of alibi of accused-appellants in the appreciation of the whole evidence presented by the prosecution and defense.”[14]

This Court's Ruling

After reviewing the records of this case, we find no cogent basis to reverse appellants' conviction. We however modify the award of civil liabilities.

First Issue:

Credibility of Lone Prosecution Witness

Appellants assail the credibility of Marcial Morcillo, the lone prosecution witness. They contend that the trial court erred in giving full credence to Morcillo's testimony, because it was not "in accordance with common experience and observation of mankind."^[15] We disagree.

We carefully reviewed the testimonies of both the prosecution and the defense witnesses, as well as the other pieces of evidence on record. We are convinced that the trial court did not err in giving full faith and credence to Morcillo's testimony, which we reproduce in part as follows:

"Q

On February 14, 1998, around 9:30 o'clock in the evening, do you remember where you were?

A

I was inside my house sir.

Q

Where was your house on that date, February 14, 1998, 9:30 o'clock in the evening?

A

At Module Subdivision, Tambo, Lipa City sir.

Q

What were you doing around that time, 9:30 o'clock in the evening of February 14, 1998 inside your house in Module Subdivision, Tambo, Lipa City?

A

We were already lying down sir.

Q

You said we, who were with you in your house?

A

My wife and my family sir.

Q

While you were then already lying down on that date, February 14, 1998 around 9:30 o'clock in the evening, do you remember x x x any unusual incident that transpired?

A

Yes sir.

Q

What was that unusual incident that transpired?

A

There was a commotion of people sir.

Q

How did you come to know that there was a commotion of people?

A

My dog and the dogs of my neighbors were barking sir.

Q

What did you do when you heard this commotion of people and barking of the dog and the dogs of your neighbors?

A

I went out of the house and looked for [what] the commotion was all about[,] sir.

Q

What did you see when you looked [for] where this commotion [was] coming [from] or what was causing this commotion?

A

I saw a person being beaten by four (4) persons sir.

Q

Were these four (4) persons or in what place in relation to your house where these four (4) persons beating one person?

A

In the street sir.

Q

How far is that place from your own house?

A

About ten (10) meters sir.

Q

Where were you when you saw four (4) persons beating one (1) person?

A

I was hiding behind [a] PLDT Telephone post sir.

Q

From the place where you were hiding behind a PLDT Telephone Post, how far [away from you] were these four (4) persons who were beating another person x x x?

A

10 meters sir.

Q

Were you able to recognize these four (4) persons who were beating another person?

A

Yes, sir.

Q

Who were these four (4) persons whom you saw were beating another person.

A

Crisanto Agon, Bernie Agon, Jackson Cuenca and Gerry Cuenca sir.

Q

Of these (4) persons whom you named Gerry Cuenca and Crisanto Agon were the persons whom you pointed [to] a while ago [among them]?

A

Yes sir.

Q

Were you able to recognize the person whom these four (4) accused were beating?

A

Yes, sir. I recognized him.

Q

Who was that person who was being beaten by these four (4) accused, Gerry Cuenca, Jackson Cuenca, Crisanto Agon and Bernie Agon?

A

Edok Castillo sir.

Q

Do you know the complete name of this Edok Castillo?

A

I quite remember, it is Alfredo Castillo, sir.

Q

And how were Gerry Cuenca, Jackson Cuenca, Crisanto Agon and Bernie Agon beating this Edok Castillo?

A

The father and son were holding Edok Castillo and the brothers were beating him sir.

Q

When you said that the father and son were holding Edok Castillo while the brothers were beating him, who are you referring to when you said the father and son?

A

Crisanto Agon and Bernie Agon sir.

Q

How was Crisanto Agon holding Edok Castillo while the brothers were beating Edok Castillo?

A

The father and son were holding [both hands of] Edok Castillo.

Q

What hand was Crisanto Agon holding?

A

Left hand sir.

Q

How about Bernie Agon, what hand of Edok Castillo was he holding?

A

The right hand sir.

Q

How about Gerry Cuenca? Where was he positioned in relation to Edok Castillo when he was beating Edok?

A

Right front portion of Edok Castillo sir.

Q

How about Jackson Cuenca, where was he positioned in relation to Edok Castillo while he was beating Edok Castillo?

A

He was standing towards the left front of Edok Castillo sir.

x x x x x x x x

Q

Aside from stooping down, what else was Edok Castillo doing while he was being beaten by Gerry Cuenca and Jackson Cuenca and while Bernie Agon and Crisanto Agon were holding his two hands?

A

He lost consciousness sir.

Q

Why do say that he lost consciousness?

A

‘Lumugmok na po siya’.

Q

But before Edok Castillo actually fe[l]l or ‘lumugmok’ what was he doing while he was being beaten up?

A

He could not do anything anymore sir.

Q

After Wilfredo Castillo [fell] or lumugmok, what did Gerry Cuenca, Jackson Cuenca, Crisanto Agon and Bernie Agon do to him if they did anything more?

A

[T]hey carried him towards Calabarzon, sir.

Q

By the way, how many times did Gerry Cuenca and Jackson Cuenca hit Edok Castillo?

A

I could not remember, but he was hit several times, sir.

Q

In what part or parts of the body of Edok Castillo was he hit by th[o]se beating [him up], if he was ever hit?

x x x x x x x x

Witness pointing his face, to his head, to his chest and to his right face below the eye.

Q

You said that after Gerry Cuenca and Jackson Cuenca [beat] up Edok Castillo while he was being held [by] his two (2) hands by Crisanto and Bernie Agon, he fell down or 'lumugmok' [and] he was carried to Calabarzon[;] what do you mean by this Calabarzon?

A

The highway going to Batangas sir.

Q

How did the four (4) carry Edok Castillo towards the Calabarzo[n] which is the road according to you going to Batangas City?

A

They help[ed] each other in carrying him sir.

Q

How did they carry actually this Edok Castillo?

A

The two (2) were carrying him by [both his] hands[,] one [holding] on each hand and the other two (2) were holding on [both his] feet sir.[16]

On cross-examination Morcillo consistently maintained, despite intense grilling and repeated attempts of the defense counsel to discredit him, that appellants were the ones who had mauled the victim. True, the defense counsel tried to impeach his credibility during the cross-examination by leading him through an intricate and annoying maze of questions that resulted in minor inconsistencies in his testimonial declarations. Nevertheless, Morcillo remained steadfast in his narration of what he had witnessed on the night of February 14, 1998.

So long as the witnesses' testimonies agree on substantial matters, inconsequential inconsistencies and contradictions dilute neither their credibility nor the verity of their testimonies.[17] In the instant case, the inconsistencies cited by appellants are insignificant and immaterial to the essential fact testified to -- the killing of the victim.[18]

As a rule, this Court will not disturb the factual findings of the trial court, because it had a better opportunity to observe the demeanor and conduct of the witnesses while they were testifying. Indeed, its assessment of the witnesses and their credibility is entitled to great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of significance and value.[19]

This Court has ruled in a number of cases[20] that the testimony of a single witness, if credible and positive, is sufficient for conviction because truth is established not by the quantity, but by the quality of the evidence.

Second Issue:

Cause of the Victim's Death

Appellants also contend that Morcillo did not see how the victim was stabbed. All he said was that he saw them beat up the victim with a piece of wood. Thus, they said that the trial court erred in concluding that the deceased had succumbed, not to multiple stab wounds, but to injuries caused by a piece of wood.[21]

In the absence of direct evidence, appellants may be convicted on the basis of circumstantial evidence. The latter is defined as "that which indirectly proves a fact in issue through an inference which the factfinder draws from the evidence established. Resort thereto is essential when the lack of direct testimony would result in setting a felon free." [22]

Circumstantial evidence suffices to convict if the following requisites concur: (1) more than one circumstance is present, (2) the facts from which the inferences are derived are proven, and (3) the combination of all the circumstances produces a conviction beyond reasonable doubt. The totality of the evidence must constitute an unbroken chain showing beyond reasonable doubt the guilt of the accused, to the exclusion of all others. [23]

To require direct eyewitness testimony when circumstantial evidence is sufficiently established would, in many cases, expose society to felons who would be unreasonably set free.[24]

In the present case, the postmortem examination shows that the victim sustained multiple lacerations and abrasions plus eight stab wounds.[25] The following pieces of circumstantial evidence show beyond reasonable doubt that appellants are responsible for the killing:

First, Morcillo positively identified appellants as members of the group that had ganged up on the victim and

mauled him near his residence around 9:30 in the evening on February 14, 1998.

Second, the witness saw appellants acting in unison -- beating up then carrying towards the Calabarzon Highway -- the unconscious body of the victim.

Third, the victim's corpse was recovered the next day inside a well, which was less than a kilometer away from the place of the mauling.

Fourth, the victim suffered from multiple stab wounds, abrasions, contusions and lacerations, all of which indicated that he had been heavily beaten up. This was consistent with the narration of Morcillo on how he saw appellants maul the victim less than 24 hours before the dead body was discovered.

Fifth, appellants were the last persons seen with the victim before he died.

Sixth, the other accused, Jackson Cuenca (brother of Appellant Gerry Cuenca) and Bernie Agon (son of Appellant Crisanto Agon) fled from their residence in Lipa City, and they have continuously evaded arrest up to the present.

Finally, Morcillo had no ill motive to testify against appellants.

From the foregoing circumstances, it is undisputed that appellants were physically present at the locus criminis and its immediate vicinity, and that an eyewitness positively identified them to be members of the group that had mauled and removed the victim from the crime scene prior to the discovery of his corpse.

Third Issue:

Defense of Alibi

Well-settled is the rule that alibi is the weakest of all defenses, because it is easy to concoct and difficult to disprove. For alibi to prosper, it is not enough for the accused to prove that they were somewhere else when the crime was committed; they must likewise demonstrate that it was physically impossible for them to have been at the scene of the crime at the time.[26]

In the case before us, appellants claim that at the time the crime happened, they were at the residence of Roger Dimaculangan, which was located also at Barangay Tambo, Lipa City. Dismissing this claim, the RTC said:

“Alibi and denial are inherently weak and easily contrived. This is why the accused must prove with clear and convincing evidence that it was physically impossible for him to have been present at the place and time the felony was committed. This the accused failed to do. The distance between the house of Roger Dimaculangan, where both accused claimed to be at the time the f[e]lony was committed and the locus criminis is just a few kilometers away. It can be travelled in a few minutes by bicycle. Thus, it was not impossible for Gerry Cuenca and Crisanto Agon to leave and, after killing Wilfredo Castillo, return to the house of Dimaculangan without anybody noticing their absence. In any event, alibi and denial cannot overcome the categorical and credible testimony of Marcial Morcillo identifying both accused as among those whom he saw helping each other in holding and beating Wilfredo Castillo and thereafter carrying him towards [C]alabarzon Highway going to the direction of Batangas City. Basic is the rule that positive identification prevails over denial and alibi.”[27]

Thus, it was not physically impossible for appellants to have been at the scene of the crime on the evening of February 14, 1998, notwithstanding their friends' testimonies that they were also at the Dimaculangan residence.

Conspiracy and Treachery

The trial court did not err in finding appellants guilty of murder because treachery, which was alleged in the Information, had attended the killing.

On this point, the trial court aptly explained:

“Article 14 (16) of the Revised Penal Code provides that there is treachery when the offender commits any of the crimes against persons, employing means, methods o[r] forms in the execution thereof which tend directly and specifically to insure its execution without risk to himself arising from the defense which the offended party might make. In the instant case, Crisanto and Bernie Agon were holding both hands of Wilfredo Castillo, while Gerry and Jackson Cuenca were beating him with a piece of wood on the different parts of his body. Wilfredo Castillo was unarmed and defenseless. Hence, treachery was present.”[28]

Treachery is present when the following conditions are present: (1) the means of execution employed gives the victims no opportunity to defend themselves or to retaliate, and (2) the means of execution are deliberately or consciously adopted. In this case, the prosecution succeeded in showing that appellants, together with their co-accused (who are still at large), helped each other in ensuring the execution of their nefarious intention to beat up and kill the victim who was unarmed and with no opportunity to defend himself.

The prosecution was likewise able to show that there was conspiracy. Conspiracy exists when two or more persons come to an agreement and decide on the commission of a felony.[29] It is not necessary that there be direct proof that the co-conspirators had any prior agreement to commit the crime; it is sufficient that they acted in concert pursuant to the same objective.[30]

Despite affirming appellants’ conviction, we nonetheless modify the monetary awards.

The award of P50,000 as indemnity ex delicto for the loss of the victim’s life is in accord with prevailing jurisprudence.[31] Likewise, the award of P20,000 as moral damages is reasonable. However, the actual damages granted is improper and should be reduced from P38,800 to P7,300 considering that only the latter amount, representing burial expenses, was duly supported by receipts. The unsubstantiated balance of P31,500 should be deleted.[32]

We also find the court a quo’s award of P4,800,000 for loss of earning capacity to be improper. True, in *People v. Verde*,[33] we granted an award for the loss of earning capacity to the heirs of the deceased despite the absence of documentary evidence to substantiate such claim. We deemed the testimony of the victim’s wife sufficient to establish the basis for the grant. However, the new ruling in *People v. Panabang*[34] modifies this principle and now precludes an award for loss of earning capacity without adequate proof. The bare testimony of the brother of the deceased Felicisimo Castillo that, at the time of his death, Wilfredo Castillo was earning P250.00 daily as carpenter[35] is not sufficient proof.

In *Panabang*, we held that the indemnification for loss of earning capacity must be duly proven. Justice Jose C. Vitug, expressing the current view of the Court, wrote:

“Indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven. A self-serving statement, being unreliable, is not enough. The father of the victim has testified on the latter’s monthly income of P12,000.00. But for lost income to be recovered, there must likewise be an unbiased proof of the deceased’s average, not just gross, income. An award for lost of earning capacity refers to the net income of the deceased, i.e., his total income net of expenses. x x x.”[36] (Emphasis in the original, citations omitted)

WHEREFORE, the assailed Decision is **AFFIRMED** but the actual damages awarded by the RTC is **REDUCED** from P35,850 to P7,300 while the grant of P4,800,000 for loss of earning capacity is **DELETED**.

SO ORDERED.

Melo, (Chairman), Vitug, Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Co-accused Jackson Cuenca and Bernie Agon remain at large.

[2] Written by Judge Vicente F. Landicho; rollo, pp. 112-137; records, pp. 182-207.

[3] Assailed Decision, pp. 25-26; rollo, pp. 136-137; records, pp. 206-207.

[4] Ibid., p. 1.

[5] Order dated April 27, 1998; records, p. 19.

[6] Appellee's Brief was signed by Asst. Sol. Gen. Carlos N. Ortega, Asst. Sol. Gen. Mariano M. Martinez and Asso. Sol. Flordeliz A. Elizaga.

[7] Also spelled "Morcillo" in the assailed Decision.

[8] Appellee's Brief, pp. 4-10; rollo, pp. 169-175.

[9] Appellants' Brief was signed by Atty. Dominador M. Mauhay.

[10] Ibid., pp. 2-3; rollo, pp. 91-92.

[11] RTC Decision, p. 22; rollo, p. 133.

[12] Ibid., p. 22-23; id., pp. 133-134.

[13] This case was deemed submitted for resolution on September 11, 2001, upon receipt by this Court of Appellee's Brief. Appellants' Brief was received by the Court on April 3, 2001. The filing of a Reply Brief was deemed waived, as none had been submitted within the reglementary period.

[14] Appellants' Brief, p. 3; rollo, p. 92.

[15] Ibid., p. 5; id., p. 94.

[16] TSN, June 23, 1998, pp. 9-22.

[17] *People v. Agomo-o*, 334 SCRA 279, June 23, 2000.

[18] *People v. Monieva*, 333 SCRA 244, June 8, 2000, citing *People v. Pandiano*, 232 SCRA 619, May 30, 1994; see also *People v. Antonio*, 333 SCRA 201, June 8, 2000.

[19] *People v. Sabado*, 345 SCRA 269, November 20, 2000.

[20] Ibid.; *People v. Toyco*, GR No. 138609, January 17, 2001; *People v. Pascual*, 331 SCRA 252, April 28, 2000; *People v. Pirame*, 327 SCRA 552, March 9, 2000.

[21] The trial court resorted to circumstantial evidence, as follows:

"Gerry Cuenca and Crisanto Agon were positively identified as present at the place of the incident at the time of its commission; that Crisanto was positively identified as one of the two (2) persons holding one of the hand[s] of Wilfredo Castillo; that Gerry Cuenca was also positively identified as the person at the right front of Wilfredo Castillo and one of the two (2) persons who beat Wilfredo Castillo with a piece of wood; that Gerry Cuenca and Crisanto Agon were also identified as two (2) of the four (4) persons who carried the unconscious Wilfredo Castillo towards the Calabarzon Highway going to the direction of Batangas City; and [that], the next

day, the victim was found dead with several stab wounds and abrasions. All told the circumstantial evidence for the prosecution surmounted the constitutional presumption of innocence.”

[22] *People v. Rendaje*, 344 SCRA 738, 746-747, November 15, 2000, per Panganiban, J.

[23] *Ibid.*, p. 747; *People v. Espina*, 326 SCRA 753, February 29, 2000.

[24] See *People v. Roa*, 167 SCRA 116, November 8, 1988.

[25] Records, pp. 135-136.

[26] *People v. Patalin Jr.*, 311 SCRA 188, July 27, 1999; *People v. Gallarde*, 325 SCRA 835, February 17, 2000.

[27] Rollo, pp. 135-136.

[28] RTC Decision, p. 24; rollo, p. 135.

[29] *People v. Tan*, GR Nos. 116200-02, June 21, 2001.

[30] *Ibid.*

[31] *People v. Silvestre*, 307 SCRA 68, May 12, 1999; *People v. Verde*, 302 SCRA 690, February 10, 1999.

[32] *People v. Goling*, GR No. 135936, September 19, 2001.

[33] *Supra*, pp. 706-707; *People v. Pantranco North Express, Inc. v. Baesa*, 179 SCRA 384, 394-395, November 14, 1989.

[34] GR Nos. 137514-15, January 16, 2002.

[35] TSN, January 28, 1999, p. 11.

[36] *People v. Panabang*, pp. 20-21.

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