

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CRISTITO LATASA, APPELLANT.***G.R. No. 144331. August 19, 2003*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-144331/>**PER CURIAM:**

CRISTITO LATASA was found guilty of murder by the Regional Trial Court of Digos, Davao del Sur, and sentenced to reclusion perpetua and ordered to pay the heirs of his victim P50,000.00 in civil indemnity, P60,000.00 as actual damages, P200,000.00 as moral damages and P100,000.00 as exemplary damages.[1] Latasa now comes to us appealing his conviction.

The assailed Decision is the culmination of events which began early morning of 11 August 1996 when an intruder shot Atty. Dominador "Nenen" Calamba V in his house in Quezon Avenue, Digos, Davao del Sur. The circumstances of his death were testified to by his wife Joyce who witnessed the tragic incident.

According to Joyce, Nenen was roused from his sleep at about 1:00 o'clock in the morning of 11 August 1996 when he heard someone prowling outside his house. He woke Joyce up and told her to follow him outside to check if his law office situated right next to the house had been burglarized. With a .38 caliber revolver and a flashlight, he left their bedroom with Joyce trailing a few paces behind.

Unknown to the couple, the prowler was already inside the house lurking behind a cabinet in the living room. As Nenen was about to open the front door, the intruder emerged from his hiding place with his right arm outstretched and a gun aimed at the back of Nenen's head. Joyce who stood about ten (10) feet away from her husband saw the armed man and immediately shouted to her husband, "Pang," to warn him of the impending danger. But just about that precise time, the intruder fired his gun and Joyce could only watch in horror as her husband's legs buckled down and he fell flat on his back.

Terrified that she would be next, Joyce rushed back to their bedroom, locked the door and screamed out the window for help. Moments later, she retrieved a gun from their cabinet and summoned up enough courage to leave the room. She cautiously proceeded back to where her husband lay on the floor and at one time even crawled under a table. She also shouted at her children who were in the second floor of the house not to leave their rooms. When she finally got near Nenen, she shook his body while calling out, "Pa pang." Nenen remained deathly still.

Joyce ran towards the kitchen pausing once to fire a shot in the air to warn the gunman in case he was still hiding somewhere inside the house. She exited through the back door and started shouting for help from her brothers-in-law who lived in neighboring houses.

Dominador "Doring" Calamba IX was the first to respond. He found his older brother Nenen sprawled on the floor and bleeding from a wound on the head. Dominador "Didong" Calamba VII and Dominador "Lotlot" Calamba VI arrived shortly after, accompanied by police officers who happened to be in the vicinity and were alerted by the gunshots. Despite the fact that Nenen was no longer breathing, Didong and the police officers rushed him to the hospital in a patrol car hoping to revive him. On their way to the hospital, Didong noticed a man

on a motorcycle following the patrol car.

Their efforts to save Nenen were futile. The autopsy showed the cause of death to be a gunshot wound near the mandibular area.[2] The bullet entered through the lower portion of the ear and lodged in the foramen magnum, the large opening in the base of the skull through which the spinal cord passes.[3] According to Dr. Salud Pablo-dela Cruz, the Rural Health Officer of the Digos Rural Health Unit who conducted the post-mortem examination, such injury was fatal and death could have been instantaneous.[4] She also opined that from the nature of the wound the victim was shot from the back and at a close range of ten (10) inches.[5]

On 13 August 1996, upon request of Atty. Dominador Calamba II, the Director of the Commission for Human Rights for Region XI, a cartographic sketch of the gunman and the man on a motorcycle who followed the patrol car was made by an NBI artist. The Regional Office of the Commission on Human Rights likewise conducted an investigation regarding the death of Atty. Dominador Calamba V in coordination with the Philippine National Police.

Soon it was discovered that a person was seen near the house of the victim days before the shooting. Dominador "Didong" Calamba VII recalled seeing a person observing the house of Nenen one morning sometime in late July of 1996 while he was driving towards the Provincial Capitol.[6] Didong further recounted an incident at the Provincial Treasurer's Office on 15 August 1996 when a person whose name he did not know approached him and inquired about a case being handled by the victim. The man later advised him to tell Nenen to go to Manila for his safety.[7]

Mariane Calamba, niece of the victim, also noticed a suspicious-looking man in a store near the house of the victim at about 9:00 o'clock in the evening of 2 August 1996. She stopped by the store and had a good look at the person whom she also noticed had something tucked in his waist.[8]

Eventually, the search for the killer led to two (2) men who were detained in the municipal jail of Digos, Davao del Sur, for their involvement in a robbery. When asked to see the suspects, Joyce Calamba positively identified one of them as the man who shot her husband. Mariane and Didong Calamba who accompanied Joyce also recognized the same person as the suspicious-looking man they saw loitering in the vicinity of the victim's house days before the shooting. The man's name, they learned later, was Cristito Latasa.

In addition, Didong recognized Latasa's companion in detention as the man who followed the police patrol car on a motorcycle the night they were taking his brother to the hospital. The man was identified as Rodolfo Morales.

Suspecting the two (2) to be part of a conspiracy in the killing of Nenen Calamba, the Commission on Human Rights investigators endorsed a report to the Provincial Prosecutor recommending the filing of a case for murder against Cristito Latasa and Rodolfo Morales.

On 21 November 1996 an Information for murder aggravated by the circumstances of nighttime and dwelling was filed with the Municipal Trial Court of Digos for preliminary investigation, but the court subsequently endorsed the same to the Office of the Provincial Prosecutor for completion. On 25 March 1997, an Information was filed anew with the Regional Trial Court accusing Cristito Latasa of murder under Art. 248 of The Revised Penal Code, as amended by RA 7659. Because of insufficiency of evidence, the case against Rodolfo Morales was dismissed.

With the aid of a counsel de oficio, the accused entered a plea of not guilty upon his arraignment on 29 April 1997 and trial ensued on 9 June 1997. The prosecution presented Joyce Calamba, Dominador "Didong" Calamba VII, Mariane Calamba, Dr. Salud Pablo-dela Cruz, NBI Ballistician Hiyasmin Abarientos, and Atty. Dominador Calamba II as witnesses. Atty. Dominador Calamba II also entered his appearance as private prosecutor and actively prosecuted the case.

The accused raised the defense of denial. He took the witness stand and denied shooting the victim or ever seeing Joyce, Mariane and Didong at any time before the case. He also denied being near the vicinity of the victim's house prior to the incident. He claimed never to have grown his hair long similar to that shown in the artist's sketch of the assailant. The defense called as witnesses the police officers who took part in the investigation of the crime.

According full faith and credence to the testimonies of the prosecution witnesses, the trial court found the accused Cristito Latasa guilty as charged.

The thrust of the instant appeal is that the prosecution failed to prove accused-appellant's guilt beyond reasonable doubt as his identity as the author of the crime was not satisfactorily established.

Accused-appellant avers that Joyce had not sufficiently seen the culprit the night her husband was fatally shot to make a reliable identification. He points out that Joyce admitted seeing the gunman for a mere split second before she turned her attention to her husband. Considering that she was unfamiliar with the culprit as that was the first time she had seen him, and that she failed to take a second and better look at him as she immediately ran to her room after her husband slumped to the floor, her brief look at him was not enough to leave an accurate imprint of his appearance. Accused-appellant posits that the implausibility of Joyce's identification is evidenced by the NBI artist's sketch of the gunman which was drawn from the description furnished by Joyce. He claims the sketch of the gunman did not resemble him at all.

It is an aphorism that to overcome the presumption of innocence the commission of the crime as well as the identity of its perpetrator must be established beyond reasonable doubt. Indeed, as this Court has previously observed, the first duty of the prosecution is not to prove the crime but to prove the identity of the criminal. For even if the commission of the crime can be established, without proof of identity of the criminal beyond reasonable doubt there can be no conviction.[9]

Hence, this Court has not hesitated to acquit an accused when the circumstances under which the malefactor was sighted by the witness rendered identification impossible as when the distance from where the witness observed the incident was quite far[10] or illumination was poor.[11] An acquittal was also ordered where evidence indicating the accused's complicity was weak as when testimonies of the witnesses were deemed unreliable because of their mental and physical conditions when they gave their initial statements and the prosecution failed to present other proof which could have corroborated or strengthened their weak testimonies.[12]

Accused-appellant points out that the testimonies of Didong and Mariane Calamba, the brother and niece of the victim, do not corroborate the widow's identification of the culprit. They merely attest to accused-appellant's presence within the proximity of the victim's house weeks before the slaying. With no corroborative evidence, the conviction of accused-appellant is entirely contingent on the credibility of Joyce's story. Perforce, a scrutiny of Joyce's account of the shooting as well as the particulars of the case is necessary to guarantee that the person now being held accountable for the crime is the actual offender.

We have reviewed the testimonies and the evidence passed upon by the trial court and see no reason to depart from its findings. We reiterate the doctrine that the matter of appreciating evidence and assessing credibility of witnesses rests primarily with the trial court. In the absence of a clear showing that the court has ignored, overlooked or failed to properly appreciate matters of significance or substance likely to affect the eventual outcome of the case, its findings thereon are entitled to great respect and accorded the highest consideration by the appellate courts.[13]

We are convinced that the brief span of time by which Joyce was able to view the gunman was enough to commit

his face to memory. Contrary to the assertions of accused-appellant, it was not improbable for the witness to sufficiently remember his face despite the brevity of the encounter. We find several factors which attest to the accuracy of her identification of accused-appellant.

First, the circumstances under which the crime was executed gave Joyce a plain and unobstructed view of the gunman. While the incident transpired in the small hours when the country was still in darkness, the tragedy unfolded in an amply illuminated area of the house where the principal actors could distinctly see each other. Right above them, a 20-watt bulb affixed to the elevated ceiling of the sala was turned on at that time.[14] The area was further illuminated by the light from a 40-watt bulb at the nearby kitchen.[15]

No less remarkable was Joyce's proximity to the gunman. She was only about three (3) meters from where he was positioned as he came out of hiding and aimed the gun at Nenen Calamba.[16] She was also facing him.[17] Moreover, the gunman was not wearing a mask nor did he make any attempt to conceal his face.

Second, Joyce gave a detailed description of her husband's killer soon after the incident. This was contained in a sworn statement taken by the investigators from the Commission on Human Rights and was also the reason why the victim's brother requested an NBI artist to make a sketch of the killer. We believe this evinced spontaneity and veracity which lend credence not only to Joyce's recital of the incident but also to her portrait of the attacker.

In her sworn statement, Joyce reported that the assailant was male, slim with muscles, more or less five (5) feet in height, with wavy hair, a lean face with prominent cheekbones and big bulging eyes. He was wearing a grey sando or undershirt with black "edging-stripe" on the sleeves and short pants. He had a bonnet on his head and used a black snub-nose revolver.[18] At the trial she again described him as having a not-so-slim but muscular body.

She recalled that he wore a grey sando with black piping at the shoulders, short pants and a black bonnet. He also had a sunken face with prominent cheekbones, bulging eyes and heavy wavy hair. The man was armed with a black snub-nose revolver.[19]

These descriptions are salient not only in their specificity but they also matched the physical features of accused-appellant from pictures appearing in the records which exhibit a gaunt face, prominent cheekbones and bulging eyes.

Third, her recognition of the gunman is further reinforced by the fact that accused-appellant was singled out by Joyce in a police lineup. Accused-appellant was unknown to the witness at the time of the killing and no ill motive could be shown to have instigated her to falsely implicate him for such a serious offense. Perhaps more than anyone else, Joyce has the most reason to find the killer inasmuch as it was her husband who was the victim of the crime and whose death had left her with four (4) children to take care of.

Accused-appellant was not the only suspect. A few days after the shooting of Nenen, the police investigators detained a suspect at the Digos municipal jail and charged him for the murder. However, when Joyce went to identify him, she promptly informed the authorities that they had the wrong man. The case was dismissed and the suspect released. Consequently, she cannot be criticized of having recklessly inculpated accused-appellant in a heedless rush to find her husband's killer.

Fourth, Joyce gave a clear and categorical testimony during the trial that accused-appellant was the person who shot her husband. We detect nothing in her testimony to hint that she had any doubt nor did accused-appellant suggest any. Her certitude could not have been better expressed than when she slapped accused-appellant on the head when asked by the court to tap the person responsible for her husband's death if he was in the courtroom.[20]

As the Court held in one case, the accused cannot capitalize on the failure of the witness to get a long, hard look at him during the incident when circumstances render the same unnecessary.[21] While evidence as to the identity of accused-appellant as the person who committed the crime should be carefully analyzed, this Court has consistently held that where conditions of visibility are favorable and the witness does not appear to be biased against the man on the dock, his or her assertions as to the identity of the malefactor should be normally accepted.[22] Jurisprudence further recognizes that victims of criminal violence have a penchant for seeing the faces and features of their attackers and remembering them.[23]

Accused-appellant makes a feeble attempt to discredit the witness by submitting the NBI artist's sketch of the gunman as an indication of her unreliability. No doubt, the sketch of the gunman did not "exactly jibe" with the facial features of accused-appellant; it depicts a man with a sharp or elongated chin. In contrast, the photographs of accused-appellant show him as having a square jaw.

Despite the dissimilarity in that one facial trait, we nonetheless agree with the trial court's observation that accused-appellant has a striking resemblance to the man in the artist's sketch whose pronounced features are also his sunken face and prominent eyes. Considering the apparent limitations facing an artist when rendering the portrait of the culprit from the oral account of an eyewitness, a completely faithful illustration is impossible. Verily, a disparity between the artist's depiction and the witness' description is to be expected due to the difficulty of making known one's perception so as to fully bring out an accurate representation. It is also worthy to note that while the drawing showed a man with a pronounced chin, the sworn statement and the testimony in court of the eyewitness did not mention such an obvious attribute.

In light of Joyce's positive identification of accused-appellant, the latter's bare denial of the crime charged, which is inherently weak, cannot prevail.[24]

The court a quo correctly held that the killing was qualified by treachery as two (2) elements concurred: (a) the employment of means of execution that gave the person attacked no opportunity to defend himself or retaliate; and, (b) the means of execution were deliberately or consciously adopted.[25] Nenen Calamba was totally unaware of accused-appellant's presence inside his house and was shot from behind. Obviously, accused-appellant purposely hid behind the cabinet in order to ensure his safety and give the victim no chance to evade his assault much less retaliate. Since the qualifying circumstance of treachery was expressly alleged in the Information, the conviction for murder is proper.

We however disagree with the penalty of reclusion perpetua imposed by the trial court. Under Art. 248 of The Revised Penal Code, as amended by RA 7659, the penalty for murder is reclusion perpetua to death. As the trial court itself found, the aggravating circumstances of dwelling and nighttime attended the commission of the crime, in which case the lower penalty of reclusion perpetua cannot certainly be imposed. To be sure, after meticulously reviewing the case record, the aggravating circumstance of dwelling was duly alleged in the Information and adequately proved by evidence, hence regrettably under Art. 63 of The Revised Penal Code the proper penalty must be death. While no longer material in the imposition of the appropriate penalty, we find that nighttime is absorbed in the qualifying circumstance of treachery.

As to the civil liability, the award of P50,000.00 in civil indemnity is proper and in keeping with prevailing jurisprudence. The award of moral damages is also warranted but the amount of P200,000.00 must be reduced. The current case law is that in homicide or murder cases, moral damages should now be fixed at P50,000.00 to be automatically awarded to the family of the victim.[26] It must be stressed however that the purpose of the award is not to enrich the heirs of the victim but to compensate them for the injuries to their feelings.[27]

In criminal cases, the presence of an aggravating circumstance, whether ordinary or qualifying, also entitles the

victim to an award of exemplary damages. But we find the award of P100,000.00 excessive, hence, we reduce the amount to P25,000.00 in accordance with prevailing jurisprudence.[28]

We find no evidence to support the award of actual damages. To justify actual damages, it is necessary to show the amount of actual loss with the best evidence obtainable.[29] The brother of Nenen Calamba V testified that he spent for the wake and burial but failed to present receipts or documents to substantiate the expenses allegedly incurred. Hence, the award of P60,000.00 for actual damages must be deleted for insufficiency of evidence. Nonetheless, since it cannot be denied that the offended parties must have disbursed their resources to give their deceased relative a decent memorial service and other related expenses due to the wrongful act of accused-appellant although the amounts thereof were not proved, we must award P25,000.00 as temperate damages.

Three (3) Justices of the Court maintain their position that RA 7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority that the law is constitutional and that the death penalty can be lawfully imposed in the case at bar.

WHEREFORE, the Decision of the court a quo finding accused-appellant CRISTITO LATASA guilty of murder is **AFFIRMED** but the penalty he must suffer should be **DEATH**. Accused-appellant or his estate is also ordered to pay the heirs of the victim, Atty. Dominador "Nenen" Calamba V, P50,000.00 as civil indemnity, another P50,000.00 (instead of P200,000.00) as moral damages, P25,000.00 (instead of P100,000.00) as exemplary damages, and P25,000.00 as temperate damages in lieu of the award of actual damages which is deleted for insufficiency of evidence.

Conformably with Sec. 25 of RA 7659 amending Sec. 83 of The Revised Penal Code, upon finality of this Decision, let the records of this case be forwarded forthwith to the Office of the President for the possible exercise of her pardoning power.

Costs against accused-appellant.

### **SO ORDERED.**

Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Azcuna, and Tinga, JJ., concur.

Davide, Jr., C.J., Austria-Martinez, Corona, Carpio-Morales, and Callejo, Sr., JJ., on official leave.

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[1] Decision penned by Judge Hilario I. Mapayo, RTC-Br. 19, Digos, Davao del Sur.

[2] Exh. "J-2," Exhibits for the Prosecution Folder No. 2, p. 4.

[3] The British Medical Association A-Z Family Health, (Dorling Kindersley, London: 1999), p. 458.

[4] TSN, 10 June 1997, p. 21.

[5] Ibid.

[6] TSN, 6 June 1997, pp. 15-16.

[7] Id., pp. 17-18.

[8] TSN, 9 June 1997, pp. 3-9.

[9] Tuason v. Court of Appeals, G.R. Nos. 113779-80, 23 February 1995, 241 SCRA 695.

- [10] *People v. Agustin*, G.R. No. 114681, 18 July 1995, 246 SCRA 673.
- [11] *People v. Dunig*, G.R. No. 101799, 6 November 1992, 215 SCRA 469; *People v. Sabado*, G.R. No. 76952, 22 December 1988, 168 SCRA 681.
- [12] *People v. Somontao*, Nos. L-45366-68, 27 March 1984, 128 SCRA 415.
- [13] *People v. Sumalpong*, G.R. No. 124705, 20 January 1998, 284 SCRA 464; *People v. Villaruel*, G.R. Nos. 110803-04, 25 November 1994, 238 SCRA 408.
- [14] TSN, 10 June 1997, pp. 43-44; TSN, 11 August 1997, pp. 7, 34-35.
- [15] *Ibid.*
- [16] TSN, 11 August 1997, p. 10.
- [17] Exh. "M-61," Exhibits for the Prosecution Folder No. 1, p. 62.
- [18] Exh. "L," Records, p. 16.
- [19] TSN, 10 June 1997, p. 42; TSN, 11 August 1997, pp. 20-21.
- [20] TSN, 11 August 1997, p. 27.
- [21] *People v. Tagolimot*, G.R. No. 124128, 18 November 1997, 282 SCRA 231, citing *People v. Salazar*, G.R. No. 109943, 20 September 1995, 248 SCRA 460.
- [22] *People v. Java*, G.R. No. 104611, 10 November 1993, 227 SCRA 668.
- [23] *People v. Amania*, G.R. No. 108598, 21 September 1995, 248 SCRA 486.
- [24] *People v. Salazar*, see Note 21.
- [25] *People v. Samudio*, G.R. No. 126168, 7 March 2001, 353 SCRA 746, citing *People v. Albacin*, G.R. No. 133918, 13 September 2000, 340 SCRA 249.
- [26] *People v. Samson*, G.R. No. 124666, 15 February, 2002.
- [27] *People v. Galves*, G.R. No. 130397, 17 January 2002.
- [28] *People v. Dela Torre*, G.R. No. 98431, 15 January 2002.
- [29] *People v. Domingo*, G.R. No. 131817, 8 August 2001, 362 SCRA 338; *People v. Navarro*, G.R. No. 129566, 7 October 1998, 297 SCRA 331.

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