

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. AMADOR SAPIGAO (AT LARGE); JOSE SAPIGAO (AT LARGE); SAMUEL SAPIGAO (AT LARGE); ELPIDIO MAMERTO; ARTURO MAMERTO, SR. (AT LARGE); ROBE...*G.R. No. 144975. June 18, 2003*

Ponente: VITUG, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-144975/>**VITUG, J.:**

On 24 December 1998, around eleven o'clock in the evening, full-swing preparations for the Christmas Eve festivities among the residents of Barangay Carusocan Sur, Asingan, Pangasinan, were just about in their final stages. Neighbors and friends had by then gathered together in anticipation of the much-awaited noche buena to be partaken at the stroke of midnight. The Christmas air, however, gave no warning of an impending bloody incident which would shatter an otherwise pervading yuletide festivity.

Emmanuel Sapigao and his brother Gem Sapigao were on their way on board a motorcycle, driven by Gem Sapigao, towards Zone III of the barangay to collect a "compadre's contribution" for the Christmas party. When the two brothers reached the place fronting the residence of barangay captain Arturo Mamerto, Sr., his nephew Reynaldo Sapigao and Elpidio Mamerto blocked their path. Minutes later, Reynaldo Sapigao, then holding a carbine rifle, began firing at them. Alarmed, the brothers jumped off the motorcycle. Gem Sapigao promptly parked the vehicle on one side of the street, and the two scampered for safety. Emmanuel hid behind a concrete wall, approximately ten to twelve meters away, while Gem Sapigao hid in the nearby house of a certain Shirley Pisalvo. From their hiding places, the brothers saw Reynaldo running and shouting, "Uncle, uncle, sinugod si Kapitan." Almost immediately, they then saw Elpidio Mamerto, Verson Mamerto, and Robert Obillo, all armed trooping into the house of the barangay captain obviously in response to Reynaldo's call. Elpidio Mamerto and Robert Mamerto were both holding M-16 armalite rifles. Verson Mamerto had a carbine. The barangay captain, Arturo Mamerto, Sr., was armed with a Caliber .45 pistol. Emmanuel Sapigao heard Arturo Mamerto giving instructions to the group to shoot anyone who would come near the abandoned motorcycle. Momentarily, Emmanuel Sapigao saw from his hidden perch his cousin Lauro Sapigao passed by in an owner-type jeepney. About half an hour later, Lauro Sapigao, together with George Cabanilla and Puroy Valdez, returned and stopped near the abandoned motorcycle. Emmanuel wanted to warn Lauro but he was too afraid of being seen. Moments after they alighted from the jeepney, the group composed of Elpidio Mamerto, Arturo Mamerto, Sr., Verson Mamerto, Robert Obillo, Amador Sapigao, Jose Sapigao, Reynaldo Sapigao, Francis Sapigao and Samuel Sapigao rained fire on Lauro Sapigao. Gem Sapigao saw Jose Sapigao fire the first shot. Amador Sapigao approached the fallen Lauro Sapigao, got hold of the latter's Caliber .45 and, with it, again shot the hapless victim. One of those in the group shouted — "One is gone, many more will follow."

Terrified at what they had seen, the two brothers, Emmanuel and Gem, ran towards the rice field and proceeded to the north where they flagged down a tricycle, which took them to the Asingan police station. Fearing for their lives, the two subsequently went into hiding. It was only two months later when they finally decided to report the

incident to the National Bureau of Investigation office in San Fernando, La Union.

The autopsy conducted by Dr. Leonardo Guerrero, the rural health physician of Asingan, showed that Lauro Sapigao sustained seven gunshot wounds. The cause of death was severe intracranial injury and hypovolemic shock secondary to gunshot wounds. The 39-year old Lauro Sapigao, a member of the Philippine marines with a rank of corporal, was survived by his wife and two minor children.

On 14 July 1999, following an investigation, an accusatory information for murder was filed against the several accused —

"That on or about 24 December 1998, in the evening, at Barangay Carusocan Sur, Asingan, Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with each other, armed with long and short firearms, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously, lay in wait, attack, assault and shoot LAURO SAPIGAO, inflicting upon him fatal gunshot wounds in the vital parts of his body which caused his instantaneous death, to the damage and prejudice of his heirs.

"Contrary to Article 248, Revised Penal Code, as amended by Republic Act 7659."[1]

On 12 January 2000, the information was amended to state that the killing was committed with the use of unlicensed firearms. Except for Elpidio Mamerto, the eight other accused remained at large and yet to be brought to justice.

Against the evidence submitted by the prosecution, heretofore narrated, Elpidio Mamerto raised the defense of alibi. He said that he was in his house the entire fateful evening with numerous friends and relatives preparing for the noche buena. While his house was but twenty meters from the place of the incident, he, however, was unaware of the shooting that took place because he and his relatives were busy enjoying themselves. He denied having seen Lauro Sapigao on the date of the incident. Corroborating Mamerto's alibi were his neighbors and relatives who gave testimony to the effect that Mamerto did not, even for a second, leave his residence around the time when Lauro Sapigao was shot to death.

On 17 July 2000, the Regional Trial Court of Urdaneta City, Branch 46, rendered its decision holding Elpidio Mamerto guilty of murder and imposing on him the extreme penalty of death; it concluded:

"WHEREFORE, judgment is hereby rendered, CONVICTING ELPIDIO MAMERTO of the crime of Murder qualified with aggravated murder, and the Court sentences him to suffer the penalty of DEATH to be implemented in the manner as provided for by law; ordering Elpidio Mamerto to indemnify the heirs of Lauro Sapigao the sum of P70,000.00 as actual damages, another sum of P75,000.00 for moral damages and the further sum of P50,000.00 as exemplary damages.

"The Clerk of Court is hereby ordered to prepare the mitimus and to transmit the entire records of the case to the Supreme Court of the Philippines for automatic review.

"The jail warden, Bureau of Jail Management and Penology (BJMP), Urdaneta District Jail, Urdaneta City, is hereby ordered to deliver the living body of Elpidio Mamerto to the National Bilibid Prisons, Muntinlupa City, immediately upon receipt of this decision."[2]

In the instant automatic appeal, Elpidio Sapigao has raised, by way of issues, his assignment of errors thusly:

"WHETHER, NOTWITHSTANDING THE INCONSISTENCIES IN THE TESTIMONIES OF THE WITNESSES, THE PARTICIPATION OF ACCUSED IN THE COMMISSION OF THE CRIME WAS ESTABLISHED BEYOND REASONABLE DOUBT

"WHETHER THE TRIAL COURT WAS JUSTIFIED IN FINDING THAT TREACHERY ATTENDED THE KILLING OF LAURO SAPIGAO

"WHETHER THERE IS PROOF BEYOND REASONABLE DOUBT THAT APPELLANT MAMERTO PARTICIPATED IN THE SHOOTING OF LAURO SAPIGAO WITH THE USE OF AN UNLICENSED FIREARM."[3]

The defense of alibi, like denial, is easily rendered dubious and weak where, such as in this instance, positive identification has been made by eyewitnesses.

Emmanuel Sapigao, at the witness stand, detailed the participation of Elpidio Mamerto in the killing of Lauro Sapigao. He testified:

"Q. And after hiding yourself in that cemented wall, what happened next?

"A. I tried to peep and I saw Reynaldo Sapigao running towards the South shouting something, sir.

"Q. What did he shout?

"A. He shouted, `Uncle, uncle, dinarop da ni kapitan,' meaning `uncle, uncle, sinugod si kapitan.'

"Q. Do you know who this uncle Reynaldo was calling?

"A. Yes, sir.

"Q. Who?

"A. It was Elpidio Mamerto, sir.

"Q. Who is this Kapitan?

"A. Arturo Mamerto, Sr., sir.

"x x x x x x x x

"Q. After Reynaldo Sapigao called `uncle, uncle, sinugod si Kapitan,' what happened next?

"A. I saw Elpidio Mamerto, Verson Mamerto, and Robert Obillo going [towards] the house of the barangay captain, sir.

"Q. You mean Arturo Mamerto, Sr.?

"A. Yes, sir.

"Q. What did you notice with Verson Mamerto, Elpidio Mamerto, and Robert Obillo when they were going towards the house of Arturo Mamerto, Sr.?

"A. They were all armed with a long rifle.

"Q. Will you please describe to the Honorable Court what Elpidio Mamerto was holding at that time?

"A. M-16 armalite, sir.

"x x x x x x x x

Q. "So what happened next when you saw Verson Mamerto, Robert Obillo and Elpidio Mamerto going towards the house of Brgy. Captain Arturo Mamerto, Sr.?

"A. They were met by the barangay captain Arturo Mamerto, Sr. in front of their house, sir.

"Q. What did you notice with barangay captain Arturo Mamerto, Sr. when he met them in front of his house?

"A. He was also armed, sir.

"x x x x x x x x

"Q. So, what transpired then when barangay captain Arturo Mamerto, Sr., met Verson Mamerto, Robert Obillo and Elpidio Mamerto in front of his house?

"A. I heard him instructing them, he was telling them in Ilocano, 'if anyone gets near the motorcycle, shoot him.'

"Q.

So what happened next after the barangay captain instructed the three to shoot anyone who gets near the motorcycle?

"A. That was the time I saw my cousin riding on his own type jeep going towards south, towards Villasis, sir.

"Q. You saw your cousin passing by?

"A. Yes, sir.

"x x x x x x x x

"Q. What was the name of your cousin?

"A. Lauro Sapigao, sir.

"Q. So, what happened next when you saw your cousin driving his owner type jeep going towards Villasis?

"A. I was about to get near him but I was afraid because they might shoot me.

"COURT:

"Q. You did not stop him?

"A. No sir, I did not stop him.

"Q.

So, he passed by?

"A. Yes, sir.

"PROSECUTOR TOMBOC:

"Q. What transpired next after your cousin Lauro Sapigao passed by driving his owner type jeep?

"A. After a few minutes, Lauro Sapigao came back, sir.

"Q. So, where did he return at that time?

"A. Going to North towards Asingan, sir.

"Q. And while your cousin was going North, what happened?

"A. He suddenly stopped his jeep, sir.

"Q. Where?

"A. At the western side of the street, sir.

"COURT:

"Q. How far was it from the house of Arturo Mamerto, Sr.?

"A. More or less 10 meters, sir.

"Q. So, what else transpired after your cousin Lauro Sapigao stopped his jeep?

"A. When Lauro Sapigao stopped his jeep, he alighted from the jeep, sir.

"COURT:

"Q. Was he alone?

"A. No, sir, with two companions.

"Q. Do you know who were these companions of Lauro Sapigao in that jeep?

"A. Yes, sir, they were George Cabanilla and Puroy Valdez, sir.

"Q. After Lauro Sapigao alighted from the jeep, what else happened?

"A. Lauro Sapigao walked around towards the back of the jeep, sir.

"Q.

What happened next?

"A. After having three steps, that was the time he was shot, sir.

"Q. Who shot Lauro Sapigao?

"A. The group of Arturo Mamerto, Sr., sir.

x x x x x x x x

"Q. Who composed the group?

"A. Elpidio Mamerto, Verson Mamerto, Robert Obillo, Amador Sapigao, Jose Sapigao, Reynaldo Sapigao, Francis Sapigao and Samuel Sapigao, sir.

"Q. You mean all of them [fired a] shot?

"A. Yes, sir.

"Q. What was the firearm used by Elpidio Mamerto?

"A. Baby armalite, sir.

"Q. About Reynaldo Sapigao?

"A. Carbine rifle, sir.

"Q.

About Verson Mamerto?

"A. Carbine rifle, sir.

"Q. About Robert Obillo

"A. Armalite, sir.

"Q. About Amador Sapigao?

"A. Armalite, sir.

"Q. About Jose Sapigao?

"A. Armalite, sir.

"Q. About the barangay captain Arturo Mamerto, Sr.?

"A. Cal. .45, sir.

"Q. You have mentioned Amador Sapigao, Jose Sapigao, Reynaldo Sapigao, Francis Sapigao and Samuel Sapigao. When for the first time did you notice them before Lauro Sapigao was shot?

"A. When Elpidio Mamerto went to the house of barangay captain Arturo Mamerto, Sr., they were already there, sir.

"Q.

Mr. Witness, what happened then to Lauro Sapigao when he was shot?

"A. He fell to the ground, sir.

"Q. At that time, Lauro Sapigao fell to the ground, what happened?

"A. I saw Lauro Sapigao fall to the ground and he tried to crawl but Amador Sapigao got near him and got the Cal. .45 of my cousin and shot him with it, sir.

"COURT:

"Q. You mean Lauro Sapigao had a gun?

"A. Yes, sir.

x x x x x x x x

"Q. How was his body positioned?

"A. He remained on the ground, facing down, sir.

"Q. How about the group of Verson Mamerto, Robert Obillo, Elpidio Mamerto, Jose Sapigao, Reynaldo Sapigao, Francis Sapigao, Samuel Sapigao after Amador Sapigao shot Lauro Sapigao?

"A. They remained in front of the house of the barangay captain, sir.

"Q. How about you, what did you do then?

"A. We ran with Gem Sapigao going to the rice field, sir."[4]

Gem Sapigao corroborated the testimony of his brother and described with equal clarity the participation of Elpidio Mamerto in the killing of Lauro Sapigao. He declared:

"Q. What did you do when Reynaldo Sapigao blocked your way holding a carbine firearm?

"A. We were surprised when we were met by Reynaldo Sapigao with carbine being carried by him and my brother jumped from the motorcycle while I was left because I had my motorcycle stand at the side of the road.

"Q. After that, what happened next?

"A. After having my motorcycle stand at the side of the road, a jeep passed by and after the jeep passed by that was the time Reynaldo Sapigao hit me, sir.

"Q. Were you hit?

"A. No, sir.

"Q. About the jeep, do you know who owned that jeep that passed by?

"A. No, sir.

"Q. After that, what happened next when you were not hit?

"A. Of course, I hid myself, ran to a culvert and passed over the culvert going the house of a certain Shirley Pisalvo.

"Q.

x x x. Did you notice your brother Emmanuel?

"A. My brother went ahead of me and sought cover in the same compound, because I was cornered, I hid myself to a wall.

"Q. After seeking cover in the compound of Shirley Pisalvo, what happened next?

"A. Reynaldo Sapigao came out shouting going to the south.

"Q. What was he shouting at that time?

"A. He was shouting that we attacked the house of Captain Mamerto.

"Q. To whom was Reynaldo Sapigao directing those shouts?

"A. The shouts were directed to the cousins of Reynaldo Sapigao because their names were being mentioned.

"COURT:

"Q. Who were the cousins he mentioned?

"A. What I heard was, 'Cousins, you come.'

"x x x x x x x x

"FISCAL TOMBOC;

"Q. After that Mr. Witness, what happened after Reynaldo Sapigao shouted, 'cousins, you come?'

"A. I saw coming from the south Elpidio Mamerto, Verson Mamerto, Robert Obillo, Jose Sapigao, Amado Sapigao, Francis Sapigao, Samuel Sapigao and Michael Orines.

"Q. Who else, Mr. Witness?

"A. Brgy. Captain Arturo Mamerto, Sr.

"X X X X X X X X

"Q. So after you saw these persons you mentioned coming from the south, what transpired next?

"A. At that time, the jeep of my cousin passed by.

"X X X X X X X X

"Q.

What was the name of your cousin who passed by?

"A. Lauro Sapigao, sir.

"Q. Did you notice how many persons were on board that jeep?

"A. I did not notice because the jeep was closed.

"Q. So, where did that jeep proceed?

"A. It proceeded to Villasis.

"Q. After the jeep passed by, what happened next?

"A. About 30 minutes, more or less, the jeep of my cousin returned because we cannot come out from where we were because persons were still there.

"Q. When that jeep returned, what happened, Mr. Witness?

"A. The owner jeep stopped near the place where I left my motorcycle.

"COURT:

"Q. Does your cousin Lauro know your motorcycle?

"A. Yes, sir.

"Q. So, your cousin stopped because he saw your motorcycle?

"A. I do not know, sir.

"FISCAL TOMBOC:

"Q. So when that jeep stopped, what happened next?

"A. Lauro Sapigao alighted from the jeep, sir.

"Q. Where did he go?

"A. He moved three to four steps behind the jeep, sir.

"Q. While your cousin Lauro was proceeding behind the jeep taking about 3 to 4 steps, what happened next?

"A. There was a series of gunfire, sir.

"Q.

Where did the gunfire come from?

"A. The gunfire came from the persons that I noticed coming from the south.

"Q. You mean these persons have firearms when you saw them?

"A. Yes, sir.

"Q. You said you saw that Elpidio Mamerto [was] one of those persons who came from the south direction, what was Elpidio Mamerto holding at that time?

"A. Armalite, sir.

"x x x x x x x x

"Q. You mentioned that the gunfire came from these persons who were holding firearms. Will you name those persons whom you said the gunfire came from?

"A. The first one who [fired] his gun was Jose Sapigao.

"Q. Whose direction was he firing at?

"A. To my cousin Lauro Sapigao, sir.

"Q. Do you know how many gunshots were fired by Jose Sapigao?

"A. I cannot count how many because the gunshots were numerous.

"x x x x x x x x

"Q. How about Elpidio Mamerto what was he doing then?

"A. Almost all of them simultaneously fired their guns.

"Q. To whom were they directing their fire?

"A. To my cousin Lauro Sapigao, sir.

"Q. What happened to Lauro Sapigao when you saw these persons fired their firearms at him?

"A. When I saw Lauro Sapigao was hit at both of his legs, he fell facing the ground.

"Q. Were these persons still firing at him when he fell down?

"A. Yes, sir, they continued firing at him when he fell down."[5]

Appellant would call attention to the supposed discrepancy in the statements of eyewitness Emmanuel Sapigao. During direct examination, Emmanuel Sapigao stated that eight persons had fired shots at Lauro Sapigao.[6] This inadvertence, however, might be explained by the fact that the name of the ninth malefactor, Arturo Mamerto, Sr., whose name Emmanuel missed to give, was earlier mentioned by him as being the leader of the group. On cross-examination, Emmanuel Sapigao made it clear that Arturo Mamerto, Sr., was one of the group of nine malefactors.[7] Emmanuel remained unwavering in pointing to appellant Elpidio Mamerto as among those who had fired at Lauro Sapigao. His testimony was similar to the account given by Gem Sapigao that also undeniably placed appellant at the scene of the crime acting in concert with the other members of the group.

The conspiracy to kill Lauro Sapigao was implicit from the conduct of the assailants. Upon the call made by Reynaldo Sapigao, the malefactors, including appellant Elpidio Mamerto, immediately converged at the latter's residence. All were carrying firearms. Appellant Elpidio Mamerto, as well as the rest of the conspirators, appeared to be acquiescent to the instructions of Arturo Mamerto, Sr., the brother of Elpidio, to shoot at anyone who would come near the abandoned motorcycle of Gem Sapigao. The succeeding events bespoke of a unity of and singularity in the design to kill. While it might be doubtful that appellant Elpidio Mamerto himself had hit Lauro Sapigao, considering that the slugs which caused the latter's death were not examined nor matched with the firearms from which they were fired, the act of one being the act of all in conspiracy, appellant Elpidio Mamerto was equally liable with the rest of the group. Undeniably, all of the suspects made themselves scarce from the clutches of the law. Elpidio Mamerto himself was arrested more than a year after the incident, on 12 January

2000, and only after attempting to evade capture by fleeing to a cornfield. This conduct would not bespeak well of the character of an innocent man.

In the amended information filed against him, appellant Elpidio Mamerto was charged with the Murder of Lauro Sapigao, with the aggravating and qualifying circumstances of treachery, evident premeditation and use of unlicensed firearms.

Apparent from the testimony of the witnesses was the bad blood between the families of the victim and the perpetrators of the crime. Emmanuel Sapigao ran against, but lost to, appellant Arturo Mamerto, Sr., for the position of barangay captain of Carusocan. Mariano Sapigao, Jr., brother of Emmanuel and Gem Sapigao, was incarcerated in Muntinlupa for the murder of the son of Romeo Torralba, a nephew of appellant Elpidio and Arturo Mamerto. Elpidio Mamerto had accompanied the police in raiding the house of witnesses Emmanuel and Gem Sapigao in connection with the murder case which led to the filing of charges of Illegal Possession of Firearms and Assault against the brothers before the Regional Trial Court of Urdaneta City. It was appellant, as barangay kagawad, and his brother, Arturo Mamerto, as barangay chairman, who monitored the movements of the brothers. The incident that fateful night of 24th of December 1998, from all indications, was not an isolated occurrence but that it was another scenario in a deep-seated history of violence between two warring factions in barangay Asingan. Reynaldo Sapigao, upon seeing Emmanuel and Gem Sapigao, called his cousins and shouted, "Uncle, Uncle, sinugod si kapitan," apparently convinced that the two brothers had come to do them harm. At Reynaldo's alarm call, the cohorts immediately converged, each with a firearm, in a defensive posture, as if expecting and readying for an armed attack from Emmanuel and Gem Sapigao. Lauro Sapigao later stopped near the abandoned motorcycle to possibly render succor to his cousins. No less than Emmanuel and Gem Sapigao had admitted that Lauro was also armed at that time. It was more likely than not that he somehow anticipated an armed encounter. These circumstances render doubtful the attendance of treachery in the killing of Lauro Sapigao.

Evident premeditation may be appreciated when the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.[8] As its name suggests, evident premeditation must be clearly shown. Before it can be considered, its elements, i.e., 1) the time when the accused has decided to commit the crime, 2) an overt act manifestly indicating that the accused has clung to his determination to commit the crime, and 3) sufficient lapse of time between the decision to commit the crime and the execution thereof to allow for reflection upon the consequences of the act,[9] must be established with equal certainty and clarity as the criminal act itself.[10] The existence of conspiracy notwithstanding, evident premeditation cannot be presumed. Only where conspiracy is directly established, as opposed to its being merely implied, can this aggravating circumstance itself be possibly assumed to be attendant.[11]

It was unlikely that the assailants knew beforehand that Emmanuel and Gem Sapigao would pass through the residence of Arturo Mamerto, Sr., that fateful night, let alone that the deceased Lauro Sapigao would come to their aid. Their response to what was perceived to be a dangerous situation was immediate, virtually allowing them no sufficient time to coolly reflect on the consequences of their action. Evident premeditation was not adequately shown.

Republic Act No. 8294, which took effect on 06 July 1997, would allow the use of an unlicensed firearm to be taken as an aggravating circumstance "if homicide or murder was committed with the use of an unlicensed firearm." The use of unlicensed firearms was proved by the testimony of prosecution witness SPO4 Elmer Dedicatoria, Sr., from the Firearms and Explosives Division at Camp Crame, Quezon City. SPO4 Dedicatoria testified and presented before the court a certification that appellant was only licensed to carry a pistol, Armscor, caliber .45 with Serial No. 7662248 covered by computerized license issued on 08 May 1998 with expiration date

on December 2000. It was clear from the testimony of Emmanuel and Gem Sapigao, however, that appellant Elpidio Mamerto shot at Lauro Sapigao not with a pistol but with an unlicensed armalite.

The killing of Lauro Sapigao, not having been attended by any circumstance qualifying the act to murder, appellant Elpidio Mamerto can be held liable for the crime of homicide, defined by Article 249 of the Revised Penal Code, viz:—

"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."

There being one aggravating circumstance of use of unlicensed firearms, the penalty of reclusion temporal is to be applied in its maximum period. Applying the Indeterminate Sentence Law, the minimum of the penalty to be imposed is anywhere within the penalty one degree lower than the prescribed penalty, without regard to the modifying circumstances, or prision mayor. Appellant could thus be held subject to the penalty of anywhere from six (6) years and one (1) day to twelve (12) years of prision mayor, as minimum, to anywhere from seventeen (17) years, four (4) months and one (1) day to twenty (20) years of reclusion temporal maximum, as maximum.

Consistently with the prevailing jurisprudence, the award made by the trial court of civil indemnity should be reduced to P50,000.00 and the award of actual damages not having been sufficiently proved is deleted and, in lieu thereof, an award of P25,000.00 temperate damages would be in order.

WHEREFORE, the Court finds appellant Elpidio Mamerto GUILTY of the crime of homicide and imposes upon him an indeterminate sentence of eight (8) years, ten (10) months and one (1) day of prision mayor as minimum to eighteen (18) years and eight (8) months of reclusion temporal maximum, as maximum. The award by the trial court of civil liability is modified by reducing the civil indemnity to fifty thousand pesos (P50,000.00) and, in lieu of actual damages which is deleted, an award of P25,000.00 temperate damages is made in favor of the heirs of Lauro Sapigao. Costs de oficio.

The Court, in passing, expresses the hope that the law-enforcement agencies have not relented in their efforts to have all the suspects in the killing of deceased Lauro Sapigao ultimately brought to justice.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

Panganiban, J., I reiterate my Separate Opinion in *People v Raquino* 274 phil 283, September 30, 1999.

Austria-Martinez, J., on leave.

[1] Rollo, p. 10.

[2] Rollo, pp. 41.

[3] Rollo, p. 70.

[4] TSN, Emmanuel Sapigao, Direct Examination, 07 February 2000, pp. 5-13.

[5] TSN, Gem Sapigao, Direct Examination, 09 February 2000, pp. 5-11.

[6]

Q. Who shot Lauro Sapigao?

A. The group of Arturo Mamerto, Sr., sir.

Q. Who are those in that group of Arturo Mamerto Sr. at the time Lauro Sapigao was shot? x x x

A. Elpidio Mamerto, Verson Mamerto, Robert Obillo, Amador Sapigao, Jose Sapigao, Reynaldo Sapigao, Francis Sapigao and Samuel Sapigao, sir. (TSN, Emmanuel Sapigao, Direct Examination, 07 February 2000, pp. 10-12.)

[7]

Q.

You also testified yesterday that you saw eight (8) persons in the group of Captain Mamerto?

A. Nine (9) including Mamerto, sir.

Q. All in all there were nine (9) persons that you saw that night?

A. Yes, sir.

Q. Are you sure?

A. Yes, sir. x x x

Q. Those persons that you mentioned to have been seen by you, is that all that you saw that night?

A. There were so many persons considering that it was Christmas Eve, sir.

Q. But the persons that you allegedly saw carrying guns they were the only persons that you saw?

A. They were the persons carrying guns, sir.

Q.

Are you sure?

A. Yes, sir.

Q. (Atty. Florendo referring to the Sinumpaang Salaysay marked Exhibit "A" executed by Emmanuel Sapigao before the NBI of Urdaneta, Pangasinan, on 07 January 1999). (Supplied). In answer No. 3, last portion - x x x Mula sa kalsada, nakita ko si Francis Sapigao, Michael Osias-Mamerto na may dalang .45 pistol at hindi ko alam kung anong klase naman kay Michael." Do you know one by the name of Michael Osias-Mamerto?

A. I know his name but I don't know his face, sir.

Q. Why is it that you did not mention the name Michael Osias Mamerto when you identified the persons you allegedly saw?

A. I forgot, sir.

Q. Why do you forget that easily?

A. I cannot remember their names, sir.

Q.

You said that there were nine (9) persons that you saw that evening, showing to you this sworn statement on "Tanong No. 5 - Mula sa iyong pinagtataguan, nakita mo ba kung sinu-sino and bumaril kina Lauro Sapigao? Sagot - Oo, sina Reynaldo Sapigao, Elpidio Mamerto, Robert Obillo, Verson Mamerto, Amador Sapigao and si Jose Sapigao." There were only six (6) names of persons you mentioned in this affidavit but yesterday, you mentioned eight (8) persons. Why is that so? Which is correct, the six names of persons you mentioned in this affidavit or the eight persons that you named yesterday?

A. There were nine (9) persons carrying guns but I am sure that six (6) fired their guns at my cousin, sir.

Q. In other words you added three (3) persons from the six (6) you mentioned in your sworn statement?

A. Yes, sir.

Q. In your sworn statement, you acknowledged that?

A. Yes, sir. x x x

COURT:

Q. How many persons did you include?

A. Six, sir.

Q. Now you are telling the Court nine (9)?

A. Six persons fired their guns and what I saw nine (9) persons, sir. (TSN, Emmanuel Sapigao, cross-examination, 08 February 2000, pp. 16-18.)

[8] People vs. Bibat, G.R. No. 124319, 13 May 1998, 290 SCRA 27.

[9] People vs. Timblor, G.R. No. 118939, 27 January 1998, 285 SCRA 64.

[10] People vs. Reyes, G.R. No. 118649, 09 March 1998, 287 SCRA 229.

[11] People vs. Padlan, G.R. No. 111263, 21 May 1998, 290 SCRA 388.

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