

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RICARDO GARCIA @ CARDING, CHRISTOPHER GARCIA AND ANDREW TOMELDEN @ ANDUT DULING, ACCUSED,

G.R. No. 145505. March 14, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is an automatic review of the Decision[1] dated August 30, 2000 of Branch 42 of the Regional Trial Court of Dagupan City, in Criminal Case No. 99-02815-D, convicting accused-appellant Ricardo Garcia @ Carding of murder and meting on him the supreme penalty of death. He was also ordered to pay damages to the heirs of the victim Ismael dela Cruz.

The Antecedents

When Barangay Captain Jaime (Boy) Garcia of Barangay Pugaro, Dagupan City, was shot to death, his nephew Christopher Garcia took over as barangay captain. PO3 Wilfredo Sanoy was then assigned to the Pugaro Police Substation of Dagupan City and came to know of Jaime Garcia and his son Christopher and his brother, accused-appellant Ricardo Garcia.

Sometime in 1998, Wilfredo was ordered by the Dagupan City Chief of Police to act as security guard-driver of Assistant City Engineer Ismael dela Cruz of Dagupan City. Wilfredo was told by the chief of police that Engr. dela Cruz had been receiving death threats from the Garcia family in Barangay Pugaro. Engr. dela Cruz likewise told Wilfredo that he had received death threats from Jaime and his brother Ricardo and their nephew Christopher because of a family feud.

On February 24, 1999, at around 9 a.m., Engr. dela Cruz was on board his Mitsubishi Gallant car with Plate No. NTN 951 driven by Wilfredo along A.B. Fernandez (West) Street on his way to the City Engineer's Office at Careenan Street, Dagupan City. Engr. dela Cruz sat beside Wilfredo on the front seat of the car. The windows on both sides of the front section of the car were rolled down. Wilfredo saw a motorcycle parked in front of the Red Cross building with Christopher Garcia, his uncle Ricardo Garcia and Andrew (alias Andut) Tomelden seated on the motorcycle. Wilfredo noticed that the motorcycle driven by Andrew was following the car. He also noticed that Christopher was seated on the motorcycle behind Andrew and that Ricardo was seated behind Christopher. The car slowed down when it reached the intersection of A.B. Fernandez West and Careenan Streets preparatory to turning left towards Careenan Street where the City Engineer's Office was located. As the car was on its way towards Careenan Street, a passenger jeepney with the words "Lingayen-Dagupan" painted on its panel board was travelling across Careenan Street on its way to the intersection of A.B. Fernandez West and Careenan Streets suddenly stopped about two meters away from the hood of the car and blocked the path of the car.[2] Wilfredo was forced to stop the car to avoid a collision with the jeepney. Momentarily, the motorcycle driven by Andrew stopped about a meter away on the right side of the car where Engr. dela Cruz was seated. Wilfredo turned his gaze towards the motorcycle and saw Ricardo turn his body towards Engr. dela Cruz, raise his two hands holding

a .45 caliber gun and shoot Engr. dela Cruz, hitting the latter on the forehead. The victim instinctively raised his right hand to cover his head. Ricardo fired again hitting the right forearm of Engr. dela Cruz. Wilfredo was also hit on his upper thigh. Wilfredo drove the car towards the City Engineer's Office for refuge.[3] Andrew momentarily drove the motorcycle and followed the car but drove on when the car had stopped in front of the City Engineer's Office. Engr. dela Cruz and Wilfredo were brought to the Lyceum-Northwestern Hospital for immediate medical treatment. Dr. Arturo de Vera performed surgical incision on the head of Engr. dela Cruz. A few hours later, Engr. dela Cruz was transferred to the Villafor Hospital of Dagupan City, where he was operated on by Dr. Ferdinand Florendo, a neuro-surgeon. The doctor issued a Clinical Abstract of the injuries of the victim and the procedures he performed on him.[4] Engr. dela Cruz remained in comatose condition. Despite the operation, Engr. dela Cruz died on March 11, 1999. Acting on the request of Germinia dela Cruz, the widow of Engr. dela Cruz, Dr. Winston Tan, the Medico-Legal Officer of the PNP Crime Laboratory performed an autopsy[5] on the cadaver of Engr. dela Cruz. Dr. Tan drew a sketch depicting a human body where he indicated the locations and number of the wounds sustained by the victim.[6] Dr. Tan prepared and signed a Medico-Legal Report No. M-494-99 indicating his postmortem findings, namely:

FINDINGS:

POSTMORTEM FINDINGS:

Fairly developed, fairly nourished, male cadaver in rigor mortis with postmortem lividity at the dependent portions of the body. Conjunctivae are pale, lips and nailbeds are cyanotic. There is a postcraniotomy incision at the parietal and occipital region, measuring 14.5 cm and 28 cm respectively. There are bore holes at the occipital and interparietal regions. Cut-down incision at the distal third of right arm.

HEAD, TRUNK AND EXTREMITIES:

- 1) Hematoma, right infraorbital region, measuring 7 x 5 cm, 7 cm from the anterior midline.
- 2) Hematoma, left supraorbital region, measuring 4 x 2 cm, 4 cm from the anterior midline.
- 3) Hematoma, left infraorbital region, measuring 4 x 2 cm, 4.5 cm from the anterior midline.
- 4) Area of multiple abrasion, left scapular region, measuring 26 x 14 cm, 24 cm from the posterior midline.
- 5) Lacerated wound, right cubital fossa, measuring 4.5 x 0.3 cm, 3 cm lateral to its anterior midline with 5 stitches applied.
- 6) Lacerated wound, right elbow, measuring 2 x 0.5 cm, 3 cm lateral to its posterior midline.
- 7) Lacerated wound, proximal third of right forearm, measuring 3 x 0.5 cm 5 cm medial to its posterior midline with 3 stitches applied.
- 8) Abrasion, proximal third of right forearm, extending to the middle third, measuring 15 x 1 cm, 2 cm medial to its posterior midline.[7]

Dr. Tan concluded that the victim sustained three gunshot wounds and died because of intracranial hemorrhage secondary to gunshot wound on the head.[8] He found no gunpowder residue in the periphery of the wounds of the victim. The doctor signed a postmortem certificate of death of the victim.[9] Wilfredo was discharged from the hospital after 12 days.

In the meantime, PO1 Gaspar Dacpano conducted an on-the-spot investigation of the incident and found three empty bullets of a .45 caliber gun at the scene of the crime.[10] The policeman took the sworn statement of Wilfredo at the hospital in the course of his investigation. The incident and investigation conducted in connection therewith were recorded in the police blotter.[11]

On May 4, 1999, an Information[12] was filed with the Regional Trial Court charging Ricardo Garcia, Christopher Garcia and Andrew Tomelden with murder which reads:

That on or about the 24[th] day of February, 1999, in the City of Dagupan, Philippines, and within the

jurisdiction of this Honorable Court, the above-named accused, RICARDO GARCIA @ Carding, CHRISTOPHER GARCIA and ANDREW TOMELDEN @ Andut duling, being then armed with guns, with treachery, evident premeditation and with intent to kill one ENGR. ISMAEL DELA CRUZ, confederating together, acting jointly and helping one another, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter, by shooting him, hitting him on the chest and head, thereby causing his death shortly thereafter due to 'Intracranial hemorrhage as a result of a gunshot wound of the head' as per Postmortem Certificate of Death issued by Dr. Winston S. Tan, Medical Legal Officer, Biological Science Division, Crime Laboratory, Camp Crame, Quezon City, to the damage and prejudice of the legal heirs of said deceased, ENGR. ISMAEL DELA CRUZ, in the amount of not less than FIFTY THOUSAND PESOS (P50,000.00), Philippine currency, and other consequential damages.

Contrary to Article 248 of the Revised Penal Code.

On May 10, 1999, the trial court issued a warrant of arrest for the arrest of all the accused. Ricardo was arrested on December 10, 1999. It turned out that he was also facing a murder charge before Branch 44 of the Regional Trial Court of Dagupan City in Criminal Case No. 2031 and an attempted murder charge before Branch 41 of the same court in Criminal Case No. 99-02816-D.[13] Andrew and Christopher remain at large.

On December 22, 1999, Ricardo, assisted by counsel de parte, was arraigned before the trial court and pleaded not guilty to the charge. Thereafter, trial ensued.

The prosecution also adduced testimonial and documentary evidence to prove actual damages. At the time of his death, Engr. dela Cruz was 52 years old and was receiving an annual gross salary of P208,008 effective January 1, 1997.[14] He was survived by his wife, Germinia dela Cruz and their two children, 23 and 27 years old, respectively. Germinia and her two children who have been residing in the United States of America, did not anymore testify for the prosecution.

Ricardo interposed the defenses of denial and alibi. He testified that on February 22, 1999, he left Barangay Pugaro and proceeded to Barangay Angio of San Fabian, Pangasinan, where he worked as a mason in the construction of the house of Emilia Baldonade, the daughter of Sinforoso Baldonade, located about 20 meters from the house of the latter. Ricardo and Sinforoso were members of the Iglesia Ni Cristo. Ricardo informed Sinforoso that his brother Jaime Garcia was shot to death on February 10, 1999 and that he learned that he, Ricardo and his brothers would be liquidated by those who killed his brother Jaime. Ricardo mentioned the name of Willy alias Sanoy as one of the suspects. Ricardo worked in the construction site the whole day of February 24, 1999. He stayed in San Fabian until almost the end of May 1999 because he noticed men spying on him and his life was in danger. Ricardo had to leave San Fabian to avoid being killed.

The Verdict of the Trial Court

After trial, the court rendered judgment on August 30, 2000 convicting Ricardo of murder qualified by treachery and with the aggravating circumstance of the use of motor vehicle in the commission of the crime, the decretal portion of which reads:

WHEREFORE, premises considered, accused RICARDO GARCIA alias "Carding" is hereby found guilty beyond reasonable doubt of the crime of MURDER defined by Article 248 of the Revised Penal Code, penalized by Republic Act 7659 otherwise known as the Heinous Crime Law and aggravated by the use of a motor vehicle and he is hereby sentenced to suffer the extreme penalty of death to be administered by lethal injunction. In addition, he is ordered to indemnify the heirs of the late Engr. Ismael dela Cruz the amount of P50,000.00 and to pay the following sums: P309,640.36 as actual and compensatory damages which include expenses for medical attendance and religious services during the burial of the victim; P1,941,336.00 for lost earnings of victim; P20,000.00 as moderate damages; plus costs.

SO ORDERED.[15]

Appellant assails the decision of the trial court contending that:

The Lower Court erred in believing hook, line and sinker the testimony of prosecution witness Wilfredo Sanoy thus concluding the existence of positive identification.[16]

Appellant avers that Wilfredo is not a credible witness. His testimony is barren of probative weight, pockmarked as it is with inconsistencies. More so when his testimony is juxtaposed with his sworn statement to PO1 Dacpano.[17] Appellant asserts that Wilfredo stated in his sworn statement that Engr. dela Cruz was hit on the head and chest but on direct examination, the policeman declared that Engr. dela Cruz was hit on the forehead and right arm. Likewise, in his sworn statement, Wilfredo declared that when he was driving the car along A.B. Fernandez West Street, he noticed a passenger jeepney travelling on the same street in front of the car of Engr. dela Cruz. However, when Wilfredo testified, he said that the passenger jeepney travelled from the direction of Careen Street toward the intersection of said street and A.B. Fernandez West Streets and blocked the way of the car when it was turning left towards the City Engineer's Office along Careenan Street. It is incredible, appellant says, that he, Christopher and Andrew did not flee from the scene of the shooting but tarried and followed the car towards the City Engineer's Office where the NBI and Narcom offices are situated. Moreover, Wilfredo testified that he heard five gunshots, however, PO1 Dacpano was able to recover only three empty shells of a .45 caliber gun at the scene of the crime. Appellant states that it is hard to believe that the assailants would wait for the car of Engr. dela Cruz to pass by in front of the Red Cross building, in full view of commuters and passersby. If appellant, Christopher and Andrew were bent on killing Engr. dela Cruz, it is incredible that only appellant fired his gun and shot Engr. dela Cruz and Wilfredo but Christopher and Andrew did not. The testimony of Wilfredo that Engr. dela Cruz was shot by appellant on board the motorcycle which stopped beside his car is belied by the physical evidence showing that Engr. dela Cruz was shot on the front portion of his forehead and not on the right side of the head. Considering the trajectory of the bullets, the assailant of Engr. dela Cruz must have been in front of the car and not beside the car. Contrary to the testimony of Wilfredo, Engr. dela Cruz was shot from a far range because when Dr. Tan performed an autopsy of the cadaver of the victim, the doctor did not see any gunpowder residue on the wound of the victim. Wilfredo did not even conduct any investigation of the driver of the passenger jeepney.

The contention of accused-appellant is not convincing. This Court has consistently held that the findings of facts of the trial court, its calibration of the testimonies of witnesses, its assessment of the probative weight of the evidence of the contending parties, and its conclusions anchored on said findings are accorded by the appellate court great respect if not conclusive effect because of the unique advantage of the trial court in observing and monitoring at close range, the conduct, deportment and demeanor of the witness.[18] If the trial court overlooked, ignored or misconstrued misinterpreted facts and circumstances of substance which if considered would warrant a modification or reversal of the outcome of the case, the appellate court may formulate its own findings and conclusions. In this case, this Court carefully reviewed the record and it is convinced beyond cavil of the credibility of Wilfredo and the verisimilitude of his testimony. The number of empty shells found at the scene of the crime by PO1 Dacpano is not conclusive of the number of times appellant fired his .45 caliber gun. Indeed, appellant must have fired his gun more than three times because Wilfredo was shot in the thigh and Engr. dela Cruz sustained three or four gunshot wounds as evidenced by the Medico-Legal Report[19] and the testimony of Dr. Winston Tan, thus:

Q

From the injuries that you have seen at the body of the victim, how many times was the victim shot?

A

We can consider the lacerated wounds as possible gunshot wounds, there were three or four possible gunshot wounds, Your Honor.

Q

How many on the head?

A

It's possible that one gun shot wound is on the head, one at the right arm and one on the left, sir.

Q

And that could [be] cause by a bullet?

A

The proximity of the lacerated wounds located at the right arm and the one located at the elbow, it is possible that there was a thru and thru laceration, Your Honor.

.....[20]

Moreover, errorless testimony cannot be expected from Wilfredo as he recounted the details of a harrowing and life-threatening experience.[21] Witnesses, including policemen, are not expected to recall every single minute detail of a startling occurrence, such as the number of times the assailant fired his gun, with perfect or total recall taking into account the treachery of human memory and the lapse of time from the time of the shooting and his testimony.[22] On the contrary, such minor lapses tend to justify rather than debilitate the credibility of Wilfredo because they show that he was not coached or his answers contrived.[23]

Admittedly, Wilfredo erred when he stated in his affidavit[24] that Engr. dela cruz was shot on the chest when in fact he was shot on the forehead and right forearm as shown by the physical evidence. However, he clarified the error when he testified that:

ATTY. BELEN

Q

What part of the body of the victim, Engr. dela Cruz, was hit?

A

He was hit on the right arm and forehead, sir.

Q

Are you very sure of that?

A

Yes, sir.

Q

A perusal again of your statement on question No. 14 you declared that Engr. dela Cruz who was seated beside you was hit on the chest and on the forehead, which is which, he was hit on the right arm and forehead or he was hit on the chest?

A

That he was hit on the arm and forehead, sir.

Q

When you stated in your statement that he was hit on the chest is one again of your lapses when you give your statement?

A

I thought he was hit on the chest because of the blood that comes from his head.

.....[25]

That Wilfredo did not state in his affidavit at the hospital that Engr. dela Cruz was also shot on his forearm is of de minimis. It bears stressing that Wilfredo gave his affidavit in the hospital shortly after he was shot. He was still in daze when PO1 Dacpano interrogated him. And case law has it that:

A Sinumpaang Salaysay or a sworn statement is merely a short narrative subscribed to by the complainant in question and answer form. Thus, it is only to be expected that it is not as exhaustive as one's testimony in open court. The contradictions, if any, may be explained by the fact that an affidavit can not possibly disclose the details in their entirety, and may inaccurately describe, without deponent detecting it, some of the occurrences narrated. Being taken ex-parte, an affidavit is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries. It has thus been held that affidavits are generally subordinated in importance to open court declarations because the former are often executed when an affiant's mental faculties are not in such a state as to afford her a fair opportunity of narrating in full the incident which has transpired. Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to her.[26]

Wilfredo never claimed in his sworn statement that before the shooting, the car he was driving was following the passenger jeepney. He merely stated that the car had to stop because of a passenger jeepney ahead of the car:

12-Q-Before the group of Carding fired upon you, do you know where did they come from?

A- I first saw them in front of Phil. National Read Cross Bldg. along ABF Ave West and tailed us until we reached the corner of Careenan where they fired upon us while we were momentarily stranded caused by a passenger jeepney, ahead of us.[27]

The sworn statement of Wilfredo is consistent with his testimony in court that the passenger jeepney blocked the path of the car when the passenger-jeepney suddenly stopped or before completing its turn towards Fernandez Street from Careenan Street.

Wilfredo's testimony that appellant was perched on the motorcycle on the right side of the car when he shot the victim and the testimony of Dr. Tan that when he examined the victim on March 11, 1999 that he did not see any gunpowder residue are not inconsistent with the physical evidence and the doctor's testimony that the victim was shot on the forehead. Dr. Tan testified that the assailant could have been in front of the victim or at the side of the victim when the latter was shot:

Q

What was the position of the arm of the assailant when the body of the victim was hit by a bullet?

A

Since the lacerated wound noted was located at the anterior aspect of the body it is possible that the assailant could have been looking in front of the victim, Your Honor.

Q

What is the position of the hand of the assailant at the time the bullet hit the body of the victim and at the time the bullet hits him at the front portion?

A

For the lacerated wounds on the right, the hand could have been brought down at a normal position but the lacerated wound noted at the right elbow measuring 2 x 0.5 cm, 3 cm lateral to its posterior midline.

Q

Where was the assailant?

A

Considering the projectile, it's possible that assailant positioned himself in front of the victim having an injury at the back of the elbow it's possible that the elbow could have been raised, sir.

Q

And the lower part of the arm was placed in front of the driver's seat?

A

It is possible, Your Honor.

Q

What else or what other injuries which are minors?

A

Here is also a lacerated wound proximal third right forearm measuring 3. X 0.5 cms., 9 cms lateral midline. This is our arm there is laceration at the middle portion. (Witness pointing to his upper right arm).

Q

What made that cause that injuries?

A

It is possible, Your Honor.

Q

If that is the cause, where is the assailant?

A

It is possible that the victim was standing, facing down, the assailant is at the back of the victim but if the assailant is in front or at the side of the victim, it's possible that the victim could have raised his left arm, sir.[28]

What must have happened was that, when the motorcycle stopped on the right side of the car driven by Wilfredo, he and Engr. dela Cruz looked towards the motorcycle. Momentarily, appellant aimed at Engr. dela Cruz and shot

him on the forehead. The victim instinctively raised his right hand to cover his forehead. Appellant fired his gun anew, hitting the right forearm of the victim.

That Dr. Tan did not notice any gunpowder residue in the periphery of the wounds of the victim is not inconsistent with the testimony of Wilfredo that accused-appellant shot Engr. dela Cruz at a distance of about one meter. The records show that on February 24, 1999, surgical incisions were made on the forehead of the victim by Dr. de Vera. Whatever gunpowder residue may have been in the periphery of the wounds must have been obliterated when Dr. de Vera made surgical incision on the forehead of Engr. dela Cruz:

Q

What did you find out in your autopsy examination of the cadaver of Ismael dela Cruz?

A

It was noted during the autopsy that there were surgical incisions on the head. One at the parietal region and one at the occipital region measuring 14.5 cm. and 28 cms. respectively, sir.

...

Q

Now, would you explain your post-mortem findings in reference to this drawing you have shown to the Hon. Court?

A

Yes, the victim underwent an operation procedure at the hospital wherein the holes was (sic) made in the scalp to evacuate the blood clot inside his head which is alive (sic) saving procedure, sir.[29]

It was only on March 11, 1999 or long after Engr. dela Cruz was shot and operated on by Dr. de Vera that the latter prepared an autopsy on the victim. The absence of gunpowder at or near the entrance of the wounds will not preclude near fire because other factors might have intervened.[30]

That Andrew followed the car after the shooting as it sped towards the City Engineer's Office and tarried for a while when the car reached the City Engineer's Office is not incredible. In the first place, appellant failed to adduce evidence that the NBI and Narcom offices were in the periphery of the situs of the crime. Neither did the trial court take discretionary judicial notice thereof. There is no standard behavior of criminals before, during and after the commission of a crime. Some may be so bold and daring at the point of recklessness in committing a crime in broad daylight in full view of bystanders and shoot it out with officers to consummate their crime. Others may be so cunning such that they commit crime in the darkness of the night to avoid detection and arrest by peace officers.

Wilfredo cannot be blamed for not conducting after the shooting an investigation of the whereabouts of Andrew and procuring his arrest. It must be noted that Wilfredo was confined in the hospital for 12 days. The Dagupan City police had assigned PO1 Dacpano to conduct an investigation. Wilfredo had not been tasked to himself conduct a parallel investigation of the incident.

The Crime Committed by Appellant and Appropriate Penalty of the Crime

The trial court convicted appellant of murder qualified by treachery and appreciated against him the generic aggravating circumstance of use of a motor vehicle (motorcycle) in the commission of the crime.

Although appellant used a .45 caliber gun to commit the crime, the trial court did not consider such circumstance

as a special aggravating circumstance in the commission of the crime. While this Court agrees with the trial court that indeed appellant is guilty of murder qualified by treachery, however, the use of said motorcycle cannot be considered as a generic aggravating circumstance because the same was not alleged in the information as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure, which reads:

SEC. 8. Designation of the offense. - The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Although the rule took effect only on December 1, 2000, the same may, however, be given retroactive effect because it is more favorable to the appellant.

This Court, likewise, agrees that the use of the .45 caliber gun is not a special aggravating circumstance because there is no allegation in the information that appellant had no license to possess the .45 caliber gun, which allegation is an essential element of the crime.[31] The prosecution even failed to prove that appellant had no license to possess the said firearm.

Under Article 248 of the Revised Penal Code, the penalty for murder is reclusion perpetua to death. Since there is no modifying circumstance in the commission of the crime, the appellant should be meted the penalty of reclusion perpetua, conformably with Article 63 of the Revised Penal Code.

Civil Liability of Appellant

The prosecution proved that the heirs of the victim spent the total amount of P349,640.36 for hospital and doctor's fees.[32] In the summary of expenses adduced by the prosecution, it appears that the heirs spent the total amount of P40,000 during the wake.

Case law holds that the prosecution must prove actual or compensatory damages with the best available proof.[33] The only evidence adduced by the prosecution is the testimony of Engr. Ricardo dela Cruz, the brother of the victim. Since the prosecution failed to adduce any documentary evidence to prove the claim of P40,000, the heirs of the victim are not entitled to said amount. However, temperate damages in the amount of P25,000 may be awarded by the Court in lieu of actual damages.[34] Conformably with the ruling of the Court in *People vs. Catubig*,[35] the heirs are entitled to exemplary damages in the amount of P25,000. The heirs of the victim are, likewise, entitled to the unearned income of the victim. Following case law, the heirs of the victim are entitled to the total amount of P1,941,754.68 computed as follows:

Age of victim = 52 years old

Life expectancy = $\frac{2}{3} \times (80 - \text{age of the victim at the time of his death})$

= $\frac{2}{3} \times (80 - 52)$

= $\frac{2}{3} \times 28$

= 18.67 years

Gross Annual Income = P208,008

Living Expenses = 50% of Gross Annual Income

= P208,008 $\times$ 0.5

= P104,004

Lost Earning Capacity = Life expectancy x [Gross Annual Income-Living expenses]

= 18.67 x [P208,008 – P104,004]

= 18.67 x P104,004

= P1,941,754.68

The accused-appellant is also obliged to pay to the heirs of the victim the amount of P50,000 by way of civil indemnity. However, since none of the heirs testified for the prosecution, they are not entitled to moral damages.[36]

IN LIGHT OF ALL THE FOREGOING, judgment is rendered AFFIRMING with MODIFICATION the Decision of the Regional Trial Court of Dagupan City, Branch 42 in Criminal Case No. 99-02815-D. Appellant RICARDO GARCIA @ Carding is found guilty of murder defined in Article 248 of the Revised Penal Code and there being no modifying circumstances in the commission of the crime, is hereby meted the penalty of reclusion perpetua. He is also ordered to pay to the heirs of the victim, Engr. Ismael dela Cruz, the amounts of P50,000 by way of civil indemnity, P25,000 as temperate damages, P25,000 as exemplary damages and P1,941,754.68 as unearned income of the victim. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales and Azcuna, JJ., concur.
Ynares-Santiago, J., on leave.

[1] Penned by Judge Luis M. Fontanilla.

[2] Exhibits “L-3” and “L-4.”

[3] Exhibit “L-2.”

[4] Exhibit “H.”

[5] Exhibit “I.”

[6] Exhibit “B.”

[7] Exhibits “B,” and “B-3.”

[8] Exhibit “B-4.”

[9] Exhibit “A.”

[10] Exhibit “J” to “J-2.”

[11] Exhibit “F.”

[12] Records, p. 2.

[13] Exhibit “V.”

[14] Exhibit “S.”

- [15] Records, p. 202.
- [16] Rollo, p. 55.
- [17] Exhibit “K.”
- [18] People vs. Marquez, et al., 365 SCRA 200 (2000).
- [19] Exhibit “B.”
- [20] TSN, March 7, 2000, p. 14.
- [21] People vs. Osorio, 330 SCRA 576 (2000)
- [22] People vs. Ebrada, 296 SCRA 353 (1998).
- [23] Id.
- [24] Exhibit “K.”
- [25] TSN, April 3, 2000, p. 17.
- [26] People vs. Liwanag, 363 SCRA 62 (2001).
- [27] Exhibit “K.”
- [28] TSN, March 7, 2000, pp. 12-13.
- [29] Id., at 6-7.
- [30] SOLIS LEGAL MEDICINE, 1964 ed., p. 259.
- [31] People vs. Cerveto, 315 SCRA 611 (1999).
- [32] Exhibit “N.”
- [33] People vs. Guillermo, 302 SCRA 257 (1999).
- [34] People vs. Tongga, 336 SCRA 687 (2000).
- [35] 363 SCRA 621 (200).**
- [36] People vs. Pirame, 327 SCRA 557 (2000).

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