

**JOHN ANGACACO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.***G.R. No. 146664. February 28, 2002*

Ponente: MENDOZA, J.

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This is a petition for review on certiorari of the decision,[1] dated November 29, 2000, of the Court of Appeals, which affirmed with modification the decision,[2] dated January 31, 1996, of the Regional Trial Court, Branch 1, Puerto Princesa City, finding petitioner John Angcaco guilty of murder and sentencing him accordingly.

Petitioner John Angcaco and his co-accused in the trial court, namely, Ramon Decosto, Protacio Edep, Lydio Lota, and Mario Felizarte, were members of the Integrated National Police of Taytay, Palawan. At the time of the incident, they were serving a warrant of arrest issued by the Municipal Trial Court of Taytay on Restituto Bergante, who was wanted in connection with a robbery case. Edep was acting station commander, while Restituto Bergante was the barangay captain of Bato, Taytay, Palawan. The information against petitioner and his co-accused alleged —

That on or about the 25[th] day of September, 1980, more or less 4:00 o'clock in the morning in barangay Bato, municipality of Taytay, province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, armed with guns, and with treachery and evident premeditation and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, fire at and shoot FREDDIE GANANCIAL, hitting the latter with gunshots on vital parts of his body and inflicting upon him multiple gunshot wounds which were the direct and immediate cause of his instant death.[3]

When arraigned on June 3, 1981, all of the accused, with the exception of Ramon Decosto, entered a plea of not guilty to the crime charged.[4] Decosto, who failed to attend the hearing on that date, was later arraigned on June 23, 1981, during which he entered a plea of not guilty. Thereafter trial ensued.

The prosecution presented seven witnesses: Noe Bergante,[5] Noel Bergante, Dr. Alberto Lim, Honorato Flores, Henry Pulga, Antonio Arosio, and Adolfo Jagmis. The gist of their testimonies is as follows:

At around 4 o'clock in the morning of September 25, 1980, Noe Bergante and his brother Noel Bergante and his cousin Freddie Ganancial were awakened by the sound of gunfire while they were asleep in their house in Bato, Taytay, Palawan. Their mother, who was frightened, fainted and had to be helped by Noe. Noel went to the kitchen and, from there, saw Protacio Edep fire his carbine, as he shouted, "Kapitan, you come down, this is [a] peace officer." He was apparently referring to Restituto Bergante. Noel answered that his father was not in the house, having gone to Puerto Princesa. Edep then ordered the men in the house to come out. Noel accordingly went to the gate and later called Noe to also come out of the house. Noe and his cousin, Freddie Ganancial, did as bidden.

Once they were outside the house, Noe and Freddie were flanked by petitioner Angcaco on the right side and

accused Ramon Decosto on the left side. Decosto pointed an armalite at the two and warned them not to run. Noe and Freddie joined Noel Bergante. Protacio Edep approached Freddie saying, "You are tough," and pushed him. Then, shots rang out from the armalite and short firearm of Decosto and Edep, as a result of which Freddie Ganancial turned around and dropped to the ground face down. Decosto was around three meters away from Freddie.

In fright, Noe and Noel ran inside the house. After a few seconds, Noe saw, through the window, Lota and Angcaco turning over the body of Freddie Ganancial. After briefly leaving the body, both came back 15 minutes later. Noe said Lota brought with him an object wrapped in a newspaper, which Noe surmised was a knife. Lota placed the object in the right hand of Freddie Ganancial. Noel, on the other hand, said that he returned to the crime scene and recovered two empty shells which he gave to a certain Major Silos. Noe reported the matter to Barangay Tanods Sabino Mahinay and a certain Ramon.[6]

Antonio Arosio, a neighbor of the Bergantes, corroborated the testimonies of Noe and Noel Bergante. According to Arosio, at around 4:30 a.m. of September 25, 1980, while he was asleep in his house in Bato, Taytay, Palawan, he was awakened by the sound of gunfire. He said he heard a commotion outside, followed by another volley of shots. He claimed he recognized by their voices some of the persons involved, namely, Protacio Edep, Noel Bergante, and Freddie Ganancial.

Arosio claimed that accused Decosto and Felizarte fetched him from his house a short time later and took him to Edep, who was then in the house of the barangay captain. Arosio was asked about the whereabouts of the barangay captain. He told Edep that Restituto Bergante, the barangay captain, had gone to Puerto Princesa two days earlier.

Arosio testified that on his way home he saw a person lying on the ground in a prone position. He later learned it was Freddie Ganancial. Arosio identified in court the policemen whom he saw that morning, that is, Edep, Decosto, Felizarte, Lota, and Angcaco.

On cross-examination, Arosio claimed that he was investigated by a police officer, whose name he could not remember, three years after the incident. The investigation was held in the house of Barangay Captain Restituto Bergante, who told him that he would testify in this case. Although he was reluctant to testify because of fear, Arosio said he finally agreed to do so in 1984. Prior to the incident, he had not heard Edep's voice but only assumed that the voice he heard that morning was that of Edep as the latter was the highest-ranking policeman he later saw.[7]

Although Dr. Romeo D. Valino conducted the postmortem examination on the body of Freddie Ganancial, it fell to Dr. Alberto H. Lim, Assistant Provincial Health Officer in Palawan, to identify the medico-legal report of Dr. Valino and to explain its contents in view of Dr. Valino's death pending the trial of the case.

Dr. Valino's report stated in pertinent parts:

Physical Examination:

- Gunshot wound lateral aspect D/3[rd] arm right (entrance) with contusion collar thru and thru passing thru the medial aspect arm right, entering to the lateral aspect mid axillary line at the level of the 9[th] rib hitting ascending colon and small intestine.
- Gunshot wound at the level of the 7[th] rib at anterior axillary line right with contusion collar (entrance) to the epigastric region (exit) 10 cm[s]. x 3 cm[s]. hitting the liver (mascerated).
- Gunshot wound subcostal region right at the level of mid clavicular line (entrance) right side to the subcostal region left side (exit at the level of mid mammary line).

- Stomach with alcoholic smell.
- Clotted blood at abdominal cavity, about 500 cc.

Cause of Death:

- Shock secondary to internal and external hemorrhage due to gunshot wounds - body and abdomen.[8]

Dr. Lim identified the medical report signed by Dr. Valino because he was familiar with the handwriting of the latter. As regards the contents of the medical certificate, Dr. Lim stated that Freddie Ganancial, alias Edgar Gallego, 25 years of age, died as a result of shock secondary to internal and external hemorrhage due to gunshot wounds on the body and abdomen, which means that the victim died because of loss of blood resulting in shock due to a gunshot wound in the abdomen. He testified that the victim sustained three gunshot wounds. The first gunshot entered the body at the lateral aspect distal third arm with contusion collar, the bullet entering the lateral aspect midaxillary line at the level of the ninth rib and hitting the colon and small intestine. The second gunshot wound was located at the right side of the body at the seventh rib at right anterior axillary line with contusion collar (entrance), the bullet passing through the epigastric region and hitting the liver, which was mascerated. The third gunshot wound was in the right subcostal region at the level of the midclavicular line (entrance) right side to the left side of the subcostal region, the bullet exiting below the nipple.

On cross-examination, Dr. Lim said that based on the findings of the medical report, the victim had been taking liquor prior to his death. He also admitted that he had not undertaken studies on the identification of handwriting. Dr. Lim claimed that he identified the signature of Dr. Valino in the medical report on the basis of the other reports the latter had submitted to their office.[9]

Honorato Flores, senior ballisticsian of the National Bureau of Investigation (NBI) in Manila, identified the ballistics report he had prepared and the shell fragments presented to him for examination. He said that the fragments could have possibly been caused by the impact of the bullet on a human being.

When cross-examined, Flores said that no armalite rifle was given to him but only shell fragments were presented to him for examination. He said that the gun and the lead would have to be examined by using the bullet comparison microscope to determine whether the lead was fired from the same gun. A bone or a cement flooring could have caused the shell fragments to break, according to Flores. Upon inquiry by the trial court, he said it was possible that a piece of copper and the lead formed part of one bullet, but it was also possible that they did not.[10]

Sgt. Henry Pulga, acting station commander of Taytay, Palawan, testified that on October 6, 1980, he investigated the complaint filed by Barangay Captain Bergante regarding the killing of the latter's nephew, Freddie Ganancial. He identified the affidavits of Mario Felizarte (Exh. H) and Ramon Decosto (Exh. I), which he himself prepared. According to Pulga, he informed Felizarte and Decosto of their rights to counsel and to remain silent and explained to them the import of these rights. He said that Felizarte and Decosto voluntarily gave their statements before him, although Pulga also admitted that the two did not have counsel to assist them during the investigation.[11]

The last witness for the prosecution was Adolfo D. Jagmis, the chief investigator of the Palawan Constabulary based in Tiniguiban. He testified that on October 6, 1980 he investigated Edep, Lota, and Angcaco. He said that after Angcaco was apprised of his constitutional rights, the latter executed a statement (Exh. J),[12] which Jagmis identified in court. But Jagmis admitted that the statement was made without the assistance of counsel.[13]

On cross-examination by counsel for accused Decosto, Jagmis was confronted with the affidavit of Angcaco, in which the latter identified an armalite which he allegedly used at the time of the incident. Jagmis said the armalite

and the lead recovered from the scene were both given to the Provincial Fiscal's Office.

The defense presented as its witnesses Protacio Edep, Ramon Decosto, John Angcaco, and Lydio Lota, whose testimonies are as follows:

In the early morning of September 25, 1980, petitioner and his co-accused, led by Edep, went to the house of Restituto Bergante in Bato, Taytay, Palawan to serve a warrant for the latter's arrest. When they reached the house, Edep and his men took positions as they had been warned that Restituto Bergante might resist arrest. Decosto and Angcaco were each armed with armalites, Lota had a carbine, Felizarte a revolver, and Edep a carbine and a revolver. Decosto was on the left side of Edep, around seven to 10 meters from the latter. Angcaco, on the other hand, was on right side of Edep, around four to seven meters from the latter. Edep called Restituto Bergante to come out of the house as he (Edep) had a warrant for his arrest. Restituto's wife replied that her husband was not in the house, having gone to Puerto Princesa. A commotion then took place inside the house and, shortly after, petitioner saw a man coming down the house. They fired warning shots to stop the man, but petitioner saw another person with a bolo near Edep. He shouted, "Sarge, this is the man who tried to hack you!," and shot the unidentified man, who fell to the ground face up. At the time of the incident, Decosto was on the left side of Edep, while petitioner, Felizarte, and Lota were on the right side of Edep. They later learned that the person killed was Freddie Ganancial.

Edep conducted an investigation and recovered from the scene of the crime empty shells from armalite bullets, which he turned over to the provincial fiscal. Edep and his men were then taken to Taytay and investigated by P/Sgt. Adolfo Jagmis. Thereafter, Edep and his men learned that they were charged with murder. An administrative complaint for grave misconduct was likewise filed against them in the National Police Commission, but the case was dismissed.[14]

On January 31, 1996, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, after a careful evaluation of the evidence on record, this court is of the considered opinion, and so holds, that accused John Angcaco, is GUILTY beyond reasonable doubt of the crime of Murder defined and penalized in Article 248 of the Revised Penal Code. With the presence of the mitigating circumstance of lack of intention to commit so grave a wrong and with the application of the Indeterminate Sentence Law, this Court hereby imposes upon him the penalty of imprisonment ranging from seventeen (17) years and four (4) months of reclusion temporal as minimum, to twenty (20) years of reclusion temporal, as maximum, and to pay the heirs of Freddie Ganancial the amount of fifty thousand pesos (P50,000.00) as death indemnity.

Co-accused Protacio Edep, Ramon Decosto, Lydio Lota and Mario Felizarte are ordered ACQUITTED for insufficiency of evidence.[15]

Petitioner Angcaco filed an appeal with the Court of Appeals, which affirmed with modification the trial court's decision. The dispositive portion of the Court of Appeals decision reads:

WHEREFORE, with the modification only that the mitigating circumstance of incomplete fulfillment of a lawful duty should be appreciated in determining the imposable penalty, not lack of intention to commit so grave a wrong, the trial court had correctly imposed the penalty of imprisonment ranging from seventeen (17) years and four (4) months of reclusion temporal as minimum, to twenty (20) years of reclusion temporal as maximum the questioned decision is affirmed in all other respects.

Costs against the accused.

SO ORDERED.[16]

Hence this appeal. Petitioner raises the following issues —

- WHETHER OR NOT THE COURT OF APPEALS OVERLOOKED AND/OR MISCONSTRUED THE EVIDENCE FOR THE DEFENSE THAT ALL THE ELEMENTS OF DEFENSE OF [THE] PERSON OR RIGHTS OF A STRANGER ARE PRESENT.
- WHETHER OR NOT DUE PROCESS OR THE RIGHTS OF PETITIONER-ACCUSED HAS BEEN VIOLATED WHEN THE HONORABLE COURT OF APPEALS OVERLOOKED OR FAILED TO APPRECIATE THE WEAKNESS OF THE PROSECUTION'S EVIDENCE AND ITS FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.
- WHETHER OR NOT THE APPELLATE COURT ERRED IN NOT ACQUITTING [PETITIONER] APPELLANT.[17]

First. Petitioner Angcaco argues that the prosecution evidence failed to prove his guilt beyond reasonable doubt. He points out inconsistencies and contradictions in the testimonies and affidavits of prosecution witnesses Noel and Noe Bergante.

We agree with accused-appellant's contention. Generally, contradictions between the contents of the witness' affidavit and his testimony in court do not impair his credibility because affidavits are usually taken ex parte and, for that reason, often incomplete and inaccurate.[18] An affidavit will not always disclose all the facts and will even at times, without being noticed by the witness, inaccurately describe the occurrences related therein. Thus, we have time and again held that affidavits are generally inferior to testimonies in court. Affidavits are often prepared only by the investigator without the affiant or witness having a fair opportunity to narrate in full the incident which took place, whereas in open court, the latter is subjected to cross-examination by counsel for the accused.[19]

However, where the discrepancies between the affidavit and the witness' testimony on the stand are irreconcilable and unexplained and they refer to material issues, such inconsistencies may well reflect on the witness' candor and even honesty and thus impair his credibility.[20] Hence, we have recognized as exceptions to the general rule instances where the narration in the sworn statement substantially contradicts the testimony in court or where the omission in the affidavit refers to a substantial detail which an eyewitness, had he been present at the scene at the time of the commission of the crime, could not have failed to mention.[21] The case at bar is such an instance.

Noe Bergante pointed to Decosto and Edep as the ones who shot Freddie Ganancial.[22] However, in his affidavit, dated November 24, 1980, Noe pointed to Decosto as the lone assailant. Noe also failed to mention the presence of Angcaco at the scene at the time of the commission of the crime.[23] Noe tried to explain these material omissions in his affidavit by claiming that he mentioned these details to the fiscal but the latter must have forgotten to include them in the affidavit because he (the fiscal) was in a hurry to leave that day.[24] This explanation is too pat to be accepted. To begin with, Noe admitted that the investigating fiscal, Fiscal Vergara, explained to him the contents of the affidavit before he (Noe) signed it.[25] Noe, therefore, could have noticed the omission of such vital matters which concerned the identification of the persons responsible for his cousin's death and called attention to such omission. The identity of the malefactors is too important a detail for anyone who allegedly witnessed the incident to overlook its omission in the very statement of the incident one is giving. The omissions suggest Noe's ignorance of the details of the incident as well as his readiness to perjure himself in order to implicate all of the accused in this case.

Noel Bergante fared no better than his brother on the witness stand. On direct examination, Noel, like his brother, identified Edep and Decosto as the assailants of Freddie Ganancial.[26] However, Noel's affidavit, dated November 24, 1980, only mentioned Decosto as the person responsible for the killing of Freddie Ganancial.[27] Worse, Noel executed an affidavit earlier on September 26, 1980, in which he identified Jardiolin,[28] Mario Toledo, Lydio Lota, and Mario Gonzales as the companions of Decosto at the time of the commission of the

crime.[29] But, in his testimony, Noel said that Decosto's companions were Edep, Angcaco, Felizarte, and Lota.[30] When confronted with the discrepancy, Noel said that he really meant to refer to Angcaco, instead of Jardiolin, and to Ramon Decosto instead of Toledo. When further questioned, Noel said that he was referring to Lota when he mentioned the name of Toledo,[31] thus creating more confusion with his answers. These contradictions, when taken together with Noel's claim that he had known Jardiolin, Felizarte, and Angcaco for a long time, cast serious doubts on his credibility.

Thus, prosecution witnesses Noel and Noe Bergante failed to give a credible and consistent account of the identity of the person or persons responsible for the killing of Freddie Ganancial. There is apparent from a reading of their testimonies a manifest tendency to improvise, modify, and even contradict themselves in order to implicate each of the accused. It is in fact doubtful whether Noe and Noel saw what they testified about. Even the trial court disregarded the testimonies of Noe and Noel Bergante and acquitted Edep and Decosto in spite of their identification by these witnesses.

We are thus left with no clear picture of the events that transpired on September 25, 1980 and of the identity of the shooter or shooters. It cannot be overemphasized that the constitutional presumption of innocence demands not only that the prosecution prove that a crime has been committed but, more importantly, the identity of the person or persons who committed the crime.[32] But in the case at bar, what passed for the prosecution evidence was a befuddling amalgamation of half-truths and lies obviously fabricated by these supposed eyewitnesses to hold responsible each of the accused in this case for the killing of their cousin. For this reason, we hold that the prosecution evidence failed to meet the quantum of proof beyond reasonable doubt necessary for conviction in a criminal case.

Second. The conviction of petitioner Angcaco must, however, be upheld in view of his admission that he shot Freddie Ganancial. The rule is that while the prosecution has the burden of establishing the guilt of the accused, once the defendant admits commission of the act charged, although he invokes a justification for its commission, the burden of proof is shifted to him to prove the said justifying circumstance.[33] Petitioner Angcaco cannot rely on the weakness of the evidence for the prosecution, for even if it is weak, it cannot be disbelieved after he has admitted the killing itself.[34] This is because a judicial confession constitutes evidence of a high order. It is presumed that no sane person would deliberately confess to the commission of an act unless moved by the desire to reveal the truth.[35]

Petitioner claims that he acted in defense of Sgt. Protacio Edep, whom Freddie Ganancial was about to strike with a bolo. We do not agree. For petitioner to successfully claim the benefit of Art. 11, par. 3 of the Revised Penal Code, there must be proof of the following elements: (1) unlawful aggression; (2) reasonable necessity of the means employed to prevent or repel it; and (3) the person defending be not induced by revenge, resentment, or other evil motive.

Unlawful aggression on the part of the victim, which must be sufficiently proven by the defense,[36] is present when there is actual or imminent peril to one's life, limb, or right. There must be actual physical force or actual use of a weapon by the victim himself.[37] In this case, it is contended that the victim, who was armed with a bolo, approached Edep menacingly. But, there is no other competent evidence to corroborate this self-serving claim. Edep testified that he heard petitioner's warning that an armed man was behind him.[38] However, when asked about the weapon allegedly held by the victim, Edep replied that he did not see any as he turned around to face his supposed assailant.[39] It was only later that Edep claimed seeing a knife in the area where the victim fell.[40] One is thus led to suspect that Edep's claim that he saw a knife was a mere afterthought designed to exculpate his fellow officer from the charges against him.

Petitioner's own testimony suffers from inconsistencies and improbabilities on material points.

First, there was no reason for the victim, Freddie Ganancial, to attack Sgt. Edep, who was looking for Restituto, because the latter was not there in his house, having earlier gone to Puerto Princesa. In fact, Edep admitted he was about to order his men to leave the premises when they found that their quarry was not there. The victim himself was not wanted by the police. Dr. Lim said Ganancial was drunk. In that condition, he could have easily have been overpowered by any member of the arresting team, if he made any aggressive move, without shooting him to prevent him from doing harm to the latter.

Second, when cross-examined about the bolo, petitioner said he could not remember who took it away.[41] However, at a later hearing, petitioner stated that it was he who picked up the bolo and turned it over to Edep, his superior officer.[42] But how could he not remember who took the bolo if he was the one who did so? Once again, petitioner was prevaricating.

Third, petitioner said that he merely intended to fire a warning shot when he saw Ganancial. This claim is belied by the fact that the victim sustained three gunshot wounds on the chest and abdomen. It is apparent that petitioner intended to kill the victim and not merely to warn him.

Indeed, even assuming that the victim was charging at Sgt. Edep, it would have been sufficient for petitioner to warn Sgt. Edep of the danger. Not that petitioner was not expected to pause for a moment while his colleague was in danger.[43] However, the rules of engagement do not, on the other hand, require that he should immediately draw or fire his weapon if the person accosted did not heed his call.[44] But rather than confront the victim as to his intended purpose, petitioner immediately shot the former without further thought.

Petitioner claims the victim was armed with a bolo. The circumstances, however, indicate otherwise. Petitioner was questioned by the prosecutor on the existence of the bolo during the hearing held on October 7, 1986. The bolo was presented in court only on October 17, 1986. At the hearing on that date, petitioner and Lydio Lota both claimed that they could identify the bolo by the markings placed on it by Sgt. Edep.[45] But Sgt. Edep made no mention of having recovered a bolo, much less of marking it. In fact, Edep at one point testified that he did not see any weapon near the victim. It is doubtful, therefore, that the bolo offered in evidence by the defense was the one actually recovered from the scene of the crime.[46] It is more likely that the idea to offer the bolo in question was a mere afterthought by the defense brought about by the fiscal's own reminder that the presentation of the weapon was crucial to petitioner's plea of defense of stranger.[47]

Nor can petitioner's claim that the killing was done in fulfillment of a lawful duty be sustained, as the Court of Appeals ruled. For this justifying circumstance to be appreciated, the following must be established: (1) that the offender acted in the lawful exercise of a right or a duty; and (b) that the injury or offense committed be the necessary consequence of the due performance of such right or office.[48]

In this case, the mission of petitioner and his colleagues was to effect the arrest of Restituto Bergante. As Edep himself explained, the standard procedure in making an arrest was, first, to identify themselves as police officers and to show the warrant to the arrestee and to inform him of the charge against him, and, second, to take the arrestee under custody.[49] But, it was not shown here that the killing of Ganancial was in furtherance of such duty. No evidence was presented by the defense to prove that Ganancial attempted to prevent petitioner and his fellow officers from arresting Restituto Bergante. There was in fact no clear evidence as to how Freddie Ganancial was shot. Indeed, as already stated, any attempt by the victim to arrest the wanted person was pointless as Restituto Bergante was not in his house. As regards the second requisite, there can be no question that the killing of Freddie Ganancial was not a necessary consequence of the arrest to be made on Restituto Bergante.

Reliance by the Court of Appeals on the case of *People v. Oanis*[50] is misplaced. In *Oanis*, the accused, who were police officers, shot and killed the victim under the erroneous notion that the latter was the person they were charged to arrest. The Court held that the first requisite - that the offenders acted in performance of a lawful duty - was present because the offenders, though overzealous in the performance of their duty, thought that they were in fact killing the man they have been ordered to take into custody dead or alive. In this case, petitioner did not present evidence that he mistook Freddie Ganancial for Restituto Bergante and, therefore, killed him (Ganancial) perhaps because he placed the lives of the arresting officers in danger.

Third. On the other hand, we think the Court of Appeals erred in appreciating the qualifying circumstance of treachery against petitioner. There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might take.[51] For treachery to exist, two conditions must be present: (1) there must be employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or consciously adopted.[52] As has been discussed, the testimonies of prosecution witnesses Noe and Noel Bergante cannot be given credence. As we already stated, even the trial court acquitted accused Decosto and Edep, both of whom were implicated as the assailants. Without evidence of the manner the aggression was made or how the act resulting in the death of the victim began and developed, it is not possible to appreciate the qualifying circumstance of treachery.[53]

Nor can evident premeditation be appreciated in this case. Evident premeditation requires proof of the following elements: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) a sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act.[54] None of these elements has been shown in this case.

For the foregoing reasons, petitioner is liable only for homicide, for which the penalty under Art. 249 of the Revised Penal Code is reclusion temporal. As neither mitigating nor aggravating circumstances attended the commission of the crime, the penalty must be imposed in its medium period, pursuant to Art. 64(1) of the Revised Penal Code. Applying the Indeterminate Sentence Law, the minimum imposable penalty on accused-appellant falls within the range of the penalty next lower in degree, i.e., prision mayor, or from six (6) years and one (1) day to twelve (12) years. Accordingly, the penalty to be imposed on accused-appellant must be fixed within the range of prision mayor, or from six (6) years and one (1) day to twelve years (12) years, as minimum, to reclusion temporal medium, or from fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months, as maximum.

Petitioner should also be made to pay the heirs of the victim, Freddie Ganancial, the amount of P50,000.00 as moral damages,[55] in addition to the amount of P50,000.00 awarded by the trial court and the Court of Appeals as indemnity.[56] The purpose of making such an award of moral damages is not to enrich the heirs of the victim but to compensate them for injuries to their feelings.[57]

WHEREFORE, the decision of the Court of Appeals, dated November 29, 2000, is **AFFIRMED** with the **MODIFICATION** that petitioner is found guilty of the crime of homicide and is sentenced to suffer the penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, as maximum, and to pay the heirs of the victim, Freddie Ganancial, P50,000.00 as civil indemnity and P50,000.00 as moral damages.

SO ORDERED.

Bellosillo, J., (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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- [1] Per Justice Bienvenido L. Reyes and concurred in by Justices Ramon A. Barcelona and Rodrigo V. Cosico.
- [2] Judge Amor A. Reyes tried the case, but the decision was written by Assisting Judge Romulo T. Arellano, pursuant to Supreme Court Adm. Order 153-94, as amended.
- [3] Records, p. 1.
- [4] Id., p. 21.
- [5] Also referred to as Vigonte or Vergonte in the transcript of stenographic notes.
- [6] TSN (Noe Bergante), pp. 3-24, Nov. 18, 1981; TSN (Noel Bergante), pp. 4-26, March 25, 1982.
- [7] TSN (Antonio Arosio), pp. 3-35, July 18, 1984.
- [8] Exh. E; Records, p. 959.
- [9] TSN (Dr. Alberto H. Lim), pp. 4-12, Aug. 30, 1983.
- [10] TSN (Honorato Flores), pp. 5-14, Nov. 17, 1983.
- [11] TSN (Sgt. Henry Pulga), pp. 3-13, Dec. 14, 1983.
- [12] Records, pp. 968-969.
- [13] TSN (Adolfo D. Jagmis), pp. 36-44, July 18, 1984.
- [14] TSN (John Angcaco), pp. 3-18, Oct. 7, 1986; TSN (Protacio Edep), pp. 3-36, Oct. 3, 1986; TSN (Ramon Decosto), pp. 3-10, Sept. 4, 1986; TSN (Lydio Lota), 9-15, Oct. 17, 1986.
- [15] RTC Decision, pp. 11-12; Records, pp. 1001-1002.
- [16] CA Decision, p. 17; Rollo, p. 69.
- [17] Petition, p. 7; id., p. 32.
- [18] See *Cariage v. Court of Appeals*, G.R. No. 143561, June 6, 2001.
- [19] *Sarabia v. People*, G.R. No. 142024, July 20, 2001.
- [20] *People v. Tampon*, 258 SCRA 115 (1996) citing *People v. Aniscal*, 228 SCRA 101 (1993); *People v. Casim*, 213 SCRA 390 (1992); *People v. Tulagan*, 143 SCRA 107 (1986).
- [21] *People v. Castillo*, 261 SCRA 493 (1996).
- [22] TSN (Noe Bergante), p. 12, Nov. 18, 1981.
- [23] Exh. A; Records, pp. 953-954.
- [24] TSN (Noe Bergante), pp. 20-22, March 24, 1982.
- [25] Id., pp. 29-30.
- [26] TSN (Noel Bergante), p. 12, March 25, 1992.

- [27] Exh. C; Records, p. 956.
- [28] Spelled as Hardiolen in the affidavit.
- [29] Exh. D; Records, pp. 957-958.
- [30] TSN (Noel Bergante), p. 14, March 25, 1982.
- [31] TSN (Noel Bergante), pp. 4-14, Dec. 16, 1982.
- [32] *People v. Milan*, 311 SCRA 461 (1999).
- [33] *Balanay v. Sandiganbayan*, 344 SCRA 1 (2000).
- [34] *People v. Mendoza*, 327 SCRA 695 (2000).
- [35] *People v. Samolde*, 336 SCRA 632 (2000).
- [36] See *People v. Basadro*, G.R. No. 131851, Feb. 22, 2001.
- [37] *People v. Peralta*, G.R. No. 128116, Jan. 24, 2001; See *People v. Basadro*, G.R. No. 131851, Feb. 22, 2001.
- [38] TSN (Protacio Edep), p. 11, Sept. 3, 1986.
- [39] *Id.*, p. 28
- [40] *Id.*, p. 33.
- [41] TSN (John Angcaco), p. 17, Oct. 7, 1986.
- [42] *Id.*, p. 2.
- [43] *People v. Ulep*, 340 SCRA 688 (2000).
- [44] *People v. Tan*, G.R. Nos. 116200-02, June 21, 2001.
- [45] TSN (John Angcaco), pp. 2-3, Oct. 17, 1986; TSN (Lydio Lota), p. 13, Oct. 17, 1986.
- [46] See *People v. Besana*, 64 SCRA 84 (1975).
- [47] TSN, p. 17, Oct. 7, 1986.
- [48] *People v. Belbes*, 334 SCRA 161 (2000).
- [49] TSN (Protacio Edep), p. 17, Sept. 3, 1986.
- [50] 74 Phil. 257 (1943).
- [51] *People v. Natividad*, G.R. No. 138017, Feb. 23, 2001.
- [52] *People v. Samudio*, G.R. No. 126168, March 7, 2001.
- [53] *People v. Mationg*, G.R. No. 137989, March 27, 2001.
- [54] See *People v. Tan*, G.R. Nos. 116200-02, June 21, 2001.
- [55] *People v. Gano*, G.R. No. 134373, Feb. 28, 2001.
- [56] See e.g., *People v. Gano*, *supra*.
- [57] See e.g., *People v. De la Cruz*, G.R. No. 128362, Jan. 16, 2001.

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