

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. TOMAS VISPERAS JR. ALIAS “BOY SAKSAK”; JACINTO CRUZ ALIAS “BOY LAGARE” (ACQUITTED); AND AVELINO CABLAYAN ALIAS “WILLY” (ACQUITTED), ACCU...

G.R. No. 147315. January 13, 2003

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Once again, we rule that the credible and positive testimony of a single eyewitness is sufficient to sustain a conviction. Where the guilt of the accused is firmly established by the lone eyewitness’ unwavering and unequivocal testimony that positively identifies him as the assailant, the defense of denial and alibi must inevitably collapse. Without any proven qualifying circumstance, however, the killing constitutes homicide only, not murder.

The Case

Tomas Visperas Jr. appeals the December 15, 2000 Decision[1] of the Regional Trial Court (RTC) of Dagupan City (Branch 42) in Criminal Case No. 99-03076-D, finding him guilty of murder as follows:

“WHEREFORE, premises considered, accused AVELINO CABLAYAN alias ‘Willy’ and JACINTO CRUZ alias ‘Boy Lagare’ are hereby acquitted of the offense charged. Accused TOMAS VISPERAS, JR. alias ‘Boy Saksak’, on the other hand, is hereby found guilty beyond reasonable doubt of the offense charged, which is MURDER as defined by Article 248 of the Revised Penal Code and penalized by RA No. 7659, otherwise known as the Heinous Crime Law, and there being no aggravating and mitigating circumstance to be considered, he is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. In addition, he is to indemnify the death of Tito de Guzman in the amount P50,000.00, and to pay the heirs of the said victim P130,000.00 as actual and compensatory damages, P20,000.00 as temperate damages, P50,000.00 as moral damages, and costs.”[2]

In the Information dated September 2, 1999, appellant, together with Jacinto Cruz and Avelino Cablayan, was charged in these words:

“That on or about June 23, 1999 at around 10:45 o’clock in the evening at [B]arangay Embarcadero, [M]unicipality of Mangaldan, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed gun, with intent to kill, with treachery and evident premeditation and taking advantage of nighttime, conspiring, confederating and mutually helping each other, did then and there, willfully, unlawfully and feloniously attack and shot TITO DE GUZMAN y PIDLAOAN causing his death shortly thereafter due to ‘CARDIORESPIRATORY ARREST SECONDARY TO MASSIVE BRAIN INJURY DUE TO GUNSHOT WOUND’, as per Certificate of Death issued by Dra. Ophelia Rivera, Rural Health Officer I, RHU, Mangaldan, Pangasinan, to the damage and prejudice of the legal heirs of said deceased TITO DE GUZMAN y PIDLAOAN and other consequential damages relative

thereto.”[3]

Upon his arraignment on September 27, 1999,[4] appellant, assisted by his counsel de oficio,[5] pleaded not guilty. After trial in due course, the court a quo rendered the assailed Decision.

The Facts

Version of the Prosecution

In its Brief, the Office of the Solicitor General (OSG) presents the prosecution’s version of the facts as follows:

“On June 23, 1999, around 10:45 o’clock in the evening, Elmadona de Guzman was in the kitchen of their house in [B]arangay Emba[r]cadero, Mangaldan, Pangasinan, waiting for her husband to enter their abode. As she was thirsty, she went to a table in the kitchen on which a pitcher of glass water was. She was drinking water when she heard gunbursts. Shocked, she was temporarily immobilized, but after a few seconds, she moved towards the eastern window of the kitchen and peeped outside to where the sound of the gunbursts came from. With the outside illumined by the light from her mother’s house which was near their house, she saw accused Jacinto Cruz alias ‘Boy Lagare’ holding a long gun, with its nozzle still smoking, pointed at the bloodied and falling body of her husband. Appellant Tomas Visperas ran towards the falling body of her husband and shot him at close range, on the forehead. Accused Avelino Cablayan alias ‘Willy’ then ‘touched’ the victim’s body, apparently to see if he was dead and said ‘let’s go’.

“Jojit Cruz, her cousin, who was then heading towards his house, also heard gunbursts and ran towards the victim’s house. When he got there, he saw the victim sprawled and bloodied on the ground of their backyard. He shouted calling for Elmadona to come down as her husband was shot dead. Crouching in the kitchen window, shocked, she went down and saw her husband’s lifeless body lying on the ground. Together with Jojit Cruz, Ullyses Fernandez (her brother-in-law), Boyet Frialde, and Boyet Fernandez, she brought her husband to the Dagupan Centrum Hospital where he was pronounced dead on arrival. They then brought the dead body to Funeraria Aguila where Dr. Ophelia Rivera conducted the autopsy. Thereafter, they brought him to the house of his parents in Bolingit, San Carlos City for the wake and burial. The following morning, on June 24, 1999, Elmadona reported the shooting of her husband to police officer Bingo de Asis, in the Mangaldan Police Station.

“Around past 10:50 in the evening of June 23, 1999, Ferdinand ‘Bingo’ Zamora de Asis, received an information through radio that there was a shooting incident in the place of the victim Tito de Guzman in [B]arangay Embarcadero, Mangaldan, Pangasinan. His team composed of SPO2 Malanum, SPO1 Socao, SPO1 Aqui, Jr., SPO1 Garcia, and himself proceeded to the crime scene. When they got there, there were many people gathered around the area that they had to secure it to preserve the physical evidence. They found out from the crowd that the victim [had already been] brought to the hospital. Within the area where the body was found, they found an empty shell of a .30 caliber bullet. One (1) meter away from where the empty bullet was, they found blood stains. About seven (7) meters away from the blood stains was a concrete fence, and on its side facing the blood stain was a shallow hole apparently caused by a bullet. Near the blood stains, they found an empty pot, ‘caldero,’ and in it were pieces of meat, bits of flesh torn from the victim’s body when he was shot.

“Dr. Ophelia T. Rivera conducted the autopsy of the victim.

x x x x x x x x

“She emphasized that the head wound caused the instantaneous death of the victim due to ‘cardiorespiratory arrest secondary to massive brain injury.’”[6] (Citations omitted)

Version of the Defense

For his part, appellant states his version of the antecedents in the following manner:

“At about 10:45 o’clock in the evening of June 23, 1999, at Barangay Embarcadero, Municipality of Mangaldan, Province of Pangasinan, Tito de Guzman was shot while walking along the pathway in an open parcel of land leading to his home. According to the Post-mortem Report, x x x, he sustained through and through wounds just about or below his armpit and on his forehead which caused his death due to ‘cardio-respiratory arrest secondary to massive brain injury’.

“The prosecution presented as its first witness the widow, Elmadona de Guzman, as an ‘eyewitness’. x x x.

x x x x x x x x

“The prosecution next presented Dr. Ophelia Rivera, Municipal Health Officer. In her direct examination, she was merely made to identify her Post-Mortem Report x x x.

x x x x x x x x

“The third and last witness for the prosecution is PO2 Ferdinand Zamora de Asis, Police Investigator, Mangaldan Police Station. The only significant testimony of PO2 de Asis are his findings that

(1)

one (1) empty shell bearing ‘caliber .30’ at the base thereof, which he assumed belonged to a .30 caliber carbine

(2)

blood stains about one (1) meter away from, and west of, the empty shell.

(3)

A shallow hole caused by a bullet on the concrete fence of Mrs. Columbres, about seven (7) meters from, and east of, the blood stain.

“All the accused, namely: TOMAS VISPERAS, Jr., JACINTO CRUZ AND AVELINO CABLAYAN interposed their separate and individual defense of alibi.

“On the basis of the alibi of Jacinto Cruz x x x and the alibi of Avelino Cablayan, both accused were acquitted of the charge against the three (3) accused of ‘conspiring, confederating and mutually helping each other, did then and there attack and shot TITO DE GUZMAN Y PIDLAOAN causing his death shortly thereafter due to cardio-respiratory arrest secondary to massive brain injury due to gunshot wound’.

“On the other hand, accused-appellant Tomas Visperas, Jr. was convicted of the crime charged.”[7] (Citations omitted)

Ruling of the Trial Court

The RTC found Prosecution Witness Elmadona de Guzman’s positive identification of appellant as one of the gunmen to be sufficient and convincing. It likewise upheld the investigation conducted by PO2 Ferdinand de Asis, which had affirmed the participation of appellant in the killing. Further, the trial court ruled that the defense of alibi lacked credibility, because it was not impossible for appellant to have been at the crime scene on that fateful night. It also found it odd that he did not even attend the wake and the burial of the victim who, he claimed, was his compadre and friend.

Hence, this appeal.[8]

Issues

In his Brief, appellant raises for our consideration the RTC's alleged errors:

I

"The trial court erred in convicting the accused appellant Tomas Visperas, Jr. on the basis of the testimony of the widow, Elmadona de Guzman.

II

"The trial court erred [in] relying on the hearsay testimony of police officer De Asis x x x [regarding] an allege[d] statement of unidentified persons who were not called to the witness stand.

III

"The trial court erred in theorizing that a bullet fired from a '30-caliber' x x x handgun, after plowing through the ground, ricocheted and hit the forehead of the victim while 'falling down'[,]

IV

"The trial court erred in theorizing that the place where the empty 30-caliber cartridge was found is also the place where the gunman stood, hence the absence of tat[t]ooing on the forehead of the victim.

V

"The trial court erred in not acquitting the accused-appellant Tomas Visperas, Jr."[9]

In the main, the Court is called upon to determine whether the testimony of Elmadona de Guzman was credible and sufficient to convict appellant of murder. We will likewise ascertain whether the physical evidence lends credence to her account, and whether the trial court erred in accepting hearsay evidence.

The Court's Ruling

The appeal is partly meritorious. Appellant is guilty of homicide, not murder.

Main Issue:

Sufficiency of Prosecution Evidence

This Court is convinced that through the staunch, positive and credible testimony of Elmadona, the prosecution was able to prove the guilt of appellant. Despite the grueling cross-examination, she testified repeatedly and unwaveringly that he had indeed shot her husband at close range. Specifically, she narrated that after her husband had faced a hail of bullets from a rifle, appellant approached him and shot him on the forehead.[10] Her testimony was corroborated by the Post-mortem Report of Dr. Ophelia T. Rivera, the medicolegal officer who had conducted the autopsy. According to the Report, the victim sustained three gunshot wounds, of which the head wound was the fatal one. The Report reads as follows:

"Findings:

x x x x x x x x

- Point of entry: Gunshot wound, 1.2 [cm] x 1.2 cm, stellate in shape, edges inverted, frontal area, left
Point of Exit: Gunshot wound, 5 cm x 1.5 cm, irregular in shape, edges everted, occipital area, Right, with brain
eviscerating from the wound.

Depressed fracture of the skull, frontal area, left Comminuted fracture of the skull.

CAUSE OF DEATH;

CARDIORESPIRATORY ARREST SECONDARY TO MASSIVE BRAIN INJURY DUE TO GUNSHOT WOUND.”[11]

Well-settled is the rule that the testimony of a single eyewitness, if credible and positive, is sufficient to support a conviction, even in a charge of murder.[12] The trial court’s evaluation of the credibility of witnesses will not be disturbed by this Court on appeal, absent any arbitrariness or oversight of facts or circumstances of weight and substance.[13] After thoroughly reviewing the records of the case, we find no cogent reason to reverse the findings of the trial court, which believed in Elmadona’s testimony.

Appellant also asks how, on the basis of her testimony, the RTC could convict him but acquit his co-accused. Appellant berates the court a quo for giving credence to the testimony in order to convict him, while at the same time discounting it to acquit his co-accused.

It is a well-entrenched rule that the accused are convicted on the strength of the evidence presented against them. Their conviction may or may not be dependent on evidence proffered against their co-accused. In the present case, the conviction of appellant did not rest upon exactly the same evidence used to acquit his two co-accused; thus, the latter’s acquittal should not necessarily benefit him. We will discuss the damning evidence against him later.

Denial and Alibi

Against Elmadona de Guzman’s straightforward, convincing and credible eyewitness account, appellant interposes the defense of denial and alibi. He disowns participation in the crime, claiming to have been with his uncle during its occurrence and to have headed straight home to his wife thereafter.

To merit credibility, denial must be buttressed by strong evidence of non-culpability.[14] Unable to show such evidence, herein appellant fails to overcome Elmadona’s testimony, which positively identified him as one of the perpetrators of the crime.

As for his alibi, he should have proven that it was physically impossible for him to have been at the scene of the crime when it was committed.[15] By physical impossibility we refer to the distance and the facility of access between the situs criminis[16] and the place where he says he was when the crime was committed.

Appellant argues that he was drinking gin with his uncle in Barangay Apaya when the killing occurred. However, the former himself testified that Barangay Apaya was only 14 kilometers away from Barangay Embarcadero, where the victim’s house was located.[17] As correctly observed by the trial court, he could have readily reached Embarcadero on his uncle’s motorcycle.[18]

Further, for the Court to give credence to the alibi of appellant, he must provide clear and credible evidence that he was in another place at the time the crime was perpetrated.[19] However, no witnesses -- other than his wife, Lyra Visperas; and his uncle, Jose Bronuela Jr. -- were presented to support his alibi. Jose testified that he had been at home drinking with appellant between 6:30 p.m. and 10:30 p.m.,[20] while Lyra testified that appellant had come home around 11:00 p.m. on June 23, 1999.[21]

Alibi is the weakest of all defenses, as it is easy to contrive and difficult to disprove. Thus, it is viewed with caution especially when, as in the instant case, it is corroborated only by relatives of appellant.[22] Truly unconvincing is his alibi, which is supported only by his and his relatives’ testimonies, not by more credible witnesses.[23]

Collateral Issues

Inconsistent Testimony

Appellant maintains that several inconsistencies in the testimony of Elmadona diminishes her credibility. She testified to having been immobilized by fear when she first heard the gunfire. He contends that she could not have peeped through the window and witnessed the succeeding events, as she later said in court, if she had indeed been paralyzed by fear.[24]

Such seeming inconsistency, which at first glance may raise doubts on the truthfulness of her statements, was satisfactorily explained. A review of her testimony shows that while she froze in fear, she was still able to look out through the window[25] without being seen from the outside. Appellant's assertion that she could not have done so is purely argumentative and speculative. It collapses in the face of her repeated and consistent testimony, first during direct and later during cross-examination, that she actually witnessed the shooting.[26]

Motive

Appellant insinuates that Elmadona was ill-motivated in accusing him of killing her husband. Appellant's allegation, however, is unsubstantiated. As the widow of the victim, she was the most aggrieved party. Her motive -- to put his killers behind bars -- cannot be considered improper.[27] We have held that it is unnatural for an aggrieved relative who earnestly seeks justice to falsely accuse someone other than the actual culprit.[28] Thus, since no improper motive on her part has been shown, the sound conclusion is that no such motive existed. Her testimony is worthy of full faith and credence.[29]

Hearsay

Appellant contends that the RTC improperly accepted hearsay evidence when it convicted him. This evidence pertains to the interviews PO2 de Asis elicited from persons near the crime scene who declared appellant as one of the gunmen.[30]

We agree. The interviews are hearsay and thus lack probative value, because the persons interviewed by PO2 de Asis were never presented in court.[31] It is of no moment that no timely objection was raised during the trial in the face of such evidence.[32] A conviction can never be rooted thereon, because it is not grounded on the personal knowledge of the witness, but on the knowledge of some other person who was not cross-examined on the witness stand.[33] Thus, the court a quo erred when it used the interviews conducted by PO2 de Asis.

Nonetheless, we emphasize that appellant's guilt was proven by Elmadona's testimony, which was in turn buttressed by the physical evidence.

Physical Evidence

At this point, it is worthwhile to discuss the lower court's assessment of the physical evidence. First, the RTC theorized that because the bloodstains of the victim were one meter away from the recovered shell, he had been at the same distance away from one of the gunmen. Second, no tattooing appeared on the head wound of the victim, because he was about a meter away from the assailant; not less than three feet, which is the distance at which tattooing appears.[34] Third, the slug recovered from his head was deformed, because it had merely ricocheted after hitting the ground.

Appellant avers that the above theory is erroneous. First, he says that tattooing should still have surrounded the head wound, because the assailant -- firing his gun a meter away -- would have extended his arm. Thus, the distance between the gun and the victim would have been less than three feet. Second, no deformed bullet or slug, which had purportedly hit the head of the victim, was ever introduced in evidence. He The victim was hit on the head with a .30 caliber bullet that ricocheted, not from the ground as the trial court theorized, but from the wall

seven meters behind him. Appellant claims that these circumstances all lead to a single conclusion: he could not have shot the victim at close range with a handgun, because it was a .30 caliber rifle from which came the bullet that killed and fully went through the latter's head and then through the wall behind.

We clarify. First, we sustain the contention of appellant that no deformed bullet or slug was presented in evidence. Neither was there any extracted from the head or body of the victim, the ground, or the wall behind him. The trial court may have been confused with the testimony of the expert witness, Dr. Bu Castro, who had testified that a deformed high velocity object could have caused the head injury.[35] Established from the evidence were merely "soil disturbance" and a hole in the wall behind the victim, both allegedly caused by bullets. However, we cannot sustain the theory of the defense that a .30 caliber bullet hit him on the head, because no bullet was ever recovered either from his body or from the crime scene. Thus, the kind of bullet that hit him cannot possibly be established.

Second, it is true that the policemen recovered from the ground -- one meter away from the victim's bloodstains -- not a bullet but a .30 caliber empty shell or bullet casing,[36] which was the only one recovered from the crime scene.[37] As testified to by SPO2 de Asis, the shell had been fired from a .30 caliber carbine and not from a pistol.[38] Later on, however, he clarified that the shell had been found about four meters away from the bloodstains of the victim.[39] This fact indicates that the carbine may have been fired about four meters, not one meter, away from the latter.

Third, at a distance of four meters, tattooing would not characterize a victim's wounds. Accordingly, the absence of tattooing from the head wound did not contradict the testimony of Elmadona. After all, the distance between the victim and appellant when the latter fired his gun was not specified by her.

The theories of appellant and the court a quo may not be clear as to some of the circumstances surrounding the killing. We are certain, however, that the victim had been shot on the head, and that appellant was positively identified as the culprit who had fired the fatal shot at close range. These facts remain steadfast and are not by any means diminished by the differing theories discussed.

Qualifying Circumstance

We note that the trial court's assailed Decision failed to pronounce which circumstance, among those alleged in the Information, qualified the killing to murder. More important, the prosecution failed to prove any such circumstance.

It is well-settled that a qualifying circumstance must be proven with equal certainty and clearness as the crime itself.[40] There being no proven qualifying circumstance, appellant should have been convicted of homicide only, not murder.

The penalty for homicide under Article 247 of the Revised Penal Code is reclusion temporal. Because no aggravating or mitigating circumstances were proven, the appropriate penalty is reclusion temporal in its medium period.[41] Appellant is likewise entitled to the benefits of the Indeterminate Sentence Law.

Civil Liabilities

Hereby sustained are the amounts of P50,000 for proven moral damages, and P50,000 for indemnity ex delicto awarded by the RTC. However, the award of P130,000 as actual and compensatory damages is hereby deleted in line with the rule that only actual damages supported by evidence on record shall be allowed.[42] Elmadona presented, not funeral and burial expense receipts, but merely order slips[43] and a Deed of Absolute Sale[44] for a burial plot. This Deed, however, did not indicate as the buyer Elmadona or any of the victim's heirs, but a certain Dionisio de Guzman whose relationship to the heirs remains unknown. We likewise delete the award for

temperate damages for lack of basis.

Finally, the heirs of the victim are entitled to P1,800,000 by way of loss of earning capacity.[45] As testified to by Elmadona, his average monthly net income at the time of his death was P10,000.[46] His annual net income -- computed at the rate of P10,000 per month multiplied by 12 months -- was P120,000. From this amount will be deducted his necessary and incidental expenses estimated at 50 percent thereof, leaving a balance of P60,000. As he was 35 years old at the time of his death,[47] his life expectancy of 30 more years is derived using this formula: $\frac{2}{3} \times [80 - (\text{age of victim at the time of death})]$. Multiplying the balance of P60,000 by his life expectancy of 30 years, we arrive at P1,800,000 as his loss of earning capacity.

WHEREFORE, the appealed Decision is hereby MODIFIED. Appellant is CONVICTED of homicide and SENTENCED to an indeterminate penalty of eight years of prision mayor medium, as minimum; to fourteen years and eight months of reclusion temporal medium, as maximum. The award for civil damages is hereby MODIFIED to P50,000 for moral damages, P50,000 for indemnity ex delicto, and P1,800,000 for loss of earning capacity. No costs.

SO ORDERED.

Puno, (Chairman), Sandoval-Gutierrez, Corona, and Carpio Morales, JJ., concur.

[1] Written by Judge Luis M. Fontanilla.

[2] RTC Decision, p. 24; rollo, p. 52.

[3] Rollo, p. 4; records, p. 2; signed by 3rd Assistant Provincial Prosecutor Gonzalo P. Marata.

[4] Certificate of Arraignment, records, p. 68; Order, records, p. 69.

[5] Atty. Antonio M. Belen.

[6] Appellee's Brief, pp. 5-11; rollo, pp. 152-158; signed by Assistant Solicitor General Carlos N. Ortega and Associate Solicitor Ma. Almira M. Tomampos.

[7] Appellant's Brief, pp. 4-17; rollo, pp. 70-83; signed by Atty. Numeriano Tanopo Jr. of Tanopo & Serafica.

[8] This case was deemed submitted for decision on March 6, 2002 upon receipt by this Court of appellee's Brief. Appellant's Brief was received by this Court on November 14, 2001. The filing of a reply brief was deemed waived, as none had been filed within the reglementary period.

[9] Appellant's Brief, pp. 1-2; rollo, pp. 67-68; original in upper case.

[10] TSN, November 5, 1999, p. 3.

[11] Exhibit "A", Folder of Exhibits for the Prosecution, p. 1.

[12] People v. Hinaut, GR No. 143764, February 15, 2002; People v. Coscos, GR No. 132321, January 21, 2002.

[13] People v. Puedan, GR No. 139576, September 2, 2002; People v. Magnabe Jr., GR No. 143071, August 6, 2002; People v. Obordo, GR No. 139528, May 9, 2002; People v. Bertulfo, GR No. 143790, May 7, 2002.

[14] People v. Coscos, *supra*.

[15] People v. Navales, 266 SCRA 569, January 23, 1997; People v. Alib, 322 SCRA 93, January 18, 2000; People v. Juan, 322 SCRA 598, January 20, 2000; People v. Rendoque, 322 SCRA 622, January 20, 2000.

- [16] *People v. Navales*, supra.
- [17] TSN, October 12, 2000, p. 2.
- [18] RTC Decision, p. 21; rollo, p. 49.
- [19] *People v. Navales*, supra; *People v. Alib*, supra; *People v. Juan*, supra; *People v. Rendoque*, supra.
- [20] TSN, August 29, 2000, pp. 4-5.
- [21] TSN, September 29, 2000, pp. 7-8.
- [22] *People v. Vallejo*, GR No. 144656, May 9, 2002.
- [23] Ibid.
- [24] Appellant's Brief, pp. 24-25; rollo, pp. 90-91.
- [25] TSN, November 11, 1999, p. 42.
- [26] TSN, November 5, 1999, pp. 4-6; TSN, November 11, 1999, pp. 39-42, 47-51; TSN, November 25, 1999, pp. 20-21; TSN, December 2, 1999, pp. 6-9, pp. 23-25.
- [27] *People v. Navales*, supra.
- [28] *People v. Rendoque*, supra.
- [29] *People v. Lachica*, GR No. 143677, May 9, 2002.
- [30] TSN, January 10, 2000, pp. 48-49.
- [31] *People v. Canlas*, GR No. 141633, December 14, 2001.
- [32] *People v. Parungao*, 265 SCRA 140, 147, November 28, 1996; citing *People v. Valero*, 112 SCRA 661, March 19, 1982.
- [33] *People v. Licayan*, GR No. 144422, February 28, 2002.
- [34] As testified to by Dr. Bu Catro, medico legal and forensic expert; TSN, August 15, 2000, pp. 12-13.
- [35] TSN, August 15, 2000, p. 11.
- [36] TSN, December 16, 1999, pp. 7-8.
- [37] TSN, January 10, 2000, p. 3.
- [38] TSN, December 16, 1999, p. 17.
- [39] TSN, January 10, 2000, p. 3.
- [40] *People v. Alvarado*, GR No. 145730, March 19, 2002.
- [41] As provided for under paragraph 1 of Article 64 of the Revised Penal Code.
- [42] *People v. Manlansing*, GR Nos. 131736-37, March 11, 2002; *People v. Magnabe Jr.*, supra; *People v. Ricafranca*, 323 SCRA 652, January 28, 2000.
- [43] Exhibits "B" to "B-16", Folder of Exhibits for the Prosecution, pp. 2-17.
- [44] Exhibit "C", Folder of Exhibits for the Prosecution, p. 18.

[45] As provided for by Article 2206 (1) of the Civil Code. Following *People v. Laut* (351 SCRA 93, February 1, 2001), the formula in computing for loss of earning capacity is as follows:

annual income

=

(monthly income) x (12 months) or (weekly income) x (48 weeks)

balance

=

(annual income) – (necessary and incidental expenses computed at 50% of annual income)

life expectancy

=

$(2/3) \times [80 - (\text{age of victim at the time of death})]$

loss of earning capacity

=

(net annual income) x (life expectancy)

[46] TSN, November 5, 1999, p. 16.

[47] Certificate of Death, Folder of Exhibits for the Prosecution, p. 19; TSN, November 5, 1999, p. 14.

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