

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JENELITO IBAÑEZ @ “JEN”, JOVY IBAÑEZ, DANILO IBAÑEZ @ “TABUNO”, AND FERNANDO DELA PAZ @ “NENE CALVO”, APPELLANTS.

G.R. No. 148627. April 28, 2004

Ponente: PUNO, J.

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PUNO, J.:

If it were not so lamentable, the situation would be considered beyond absurd. Belardo Pagapulan lost his life because of an altercation over a fighting cock. It is shocking to what depths the premium placed on human life has plummeted.

Before us is an appeal filed by appellants JENELITO IBAÑEZ and DANILO IBAÑEZ of the decision of the lower court finding them guilty beyond reasonable doubt of the crime of murder. Earlier, the two appellants and two other accused, JOVY IBAÑEZ and FERNANDO DELA PAZ @ “NENE CALVO[1], were charged for the murder of Belardo Pagapulan. The Information[2] against them reads, viz:

That on or about the 10th day of December, 1991, in the evening, at Barangay Ocayan, in the Municipality of Bataraza, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with evident premeditation and treachery, while armed with bladed weapon and with intent to kill, and by means of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab one BELARDO PAGAPULAN, hitting him in the various vital parts of his body and inflicting upon him mortal injuries which were the direct and immediate cause of his instantaneous death.

CONTRARY TO LAW.

The cases against accused Jovy Ibañez and Fernando de la Paz were archived as they continue to remain at large. Trial ensued in the cases against appellants.

During the trial, the prosecution presented as its first witness CRISTETA GARCENIEGO, 29 years old, married, and daughter of the victim Belardo Pagapulan. Cristeta testified that on 10 December 1991, at about 7:00 pm, she was with her five little children in their her house in Ocayan, Bataraza, Palawan. Her father, Belardo came to stay and stayed with them while as Cristeta’s husband was away at Wescom undergoing training as a CAFGU.[3] As they were eating their dinner, they heard some persons approaching their house. Some 250 meters away, these persons started bellowing in Ilonggo, “Patyon namon ang Tatay mo.”[4] (Meaning, “We will kill your Father.”) Cristeta bade her father to hide under the house.[5] Under the light of the moon, Cristeta identified the persons making the threat as appellant Jenelito Ibañez, appellant Danilo Ibañez, accused Jovy Ibañez, and accused Fernando dela Paz. She was very familiar with all of them, as they were her neighbors and they frequently came and ate at her house.[6] Appellant Danilo hurled objects at their house and ordered Belardo to come down. His companions, who were standing beside him, threatened to go up the stairs of the house and shoot Belardo if he did not come down. Cristeta stood at the door of the house,[7] around 1 ½ armslength away from the four assailants.[8] She asked them why they were looking for her father when he did not do anything to them, and

informed them that they were trespassing.[9] Still, they insisted that Belardo come out of the house. Belardo went out, stood about an arms-length away from the four men, and asked them what they wanted. The four assailants, all carrying bolos, encircled the victim. Appellant Jenelito Ibañez positioned himself at Belardo's back and immediately hacked him from behind. Appellant Danilo Tabuno followed suit, then the other two assailants also hacked at the victim. Cristeta continuously shouted "Tulungan ninyo ako para maawat sila." Belardo fell to the ground, but the four men continued hacking him. After they left, Cristeta approached her father and ascertained that he was dead. He had sustained twenty-four (24) hackwounds and some small wounds on his arms.[10] She ran across the road to her godfather's house. He met her and assisted her in shouting for help. Some people came, looked at Belardo's dead body, and reported the incident at the police station in Rio Tuba. The next morning, policeman Arthur Casiple came and examined the body. Upon their request, a certain Mr. Bardago took four pictures[11] of her father. Casiple told Cristeta that there was no doctor available to conduct the autopsy of the body. As two days had already passed by then, and , and Belardo's body remained unembalmed,. Cristeta was advised to bury him.[12] She surmises that the four accused slew her father because they were the culprits fingered for the loss of Belardo's fighting cock which they had allegedly loosened. The cock was later found at a neighbor's house.

Finally, she testified that at the time of her father's death, he was 48 years old, and he earned his living by farming and harvesting corn and selling the fighting cocks he raised. He had net earnings of P10,000.00 per year from the corn and P50,000.00 from the fighting cocks.[13] Aside from the loss of Pagapulan's prospective income, she and her three brothers suffered hurt feelings and grief because of the violent and untimely demise of their father.[14]

As its second witness, the prosecution presented Police Investigator Arturo P. Casiple. Casiple testified that in the morning of 11 December 1991, he received a report from the Marine Detachment in Rio Tuba regarding a killing in Barangay Ocayan, Bataraza, Palawan. He proceeded to the crime scene, and saw the victim lying on the ground, having, more or less twenty hack wounds[15] on different parts of his body. The victim was identified as Belardo Pagapulan. To record the wounds and the fact of death, pictures were taken of the cadaver.[16] Casiple requested an autopsy be conducted by the Rural Health Officer D. Gasparel. However, the said doctor was in Manila at the time. Next, he requested that an autopsy be conducted by any doctor at the Brooke's Point District Hospital, but the doctors were all busy with a surgical operation. Thus, no autopsy was conducted, and no physician examined the corpse before it was buried. Neither was the body exhumed later for examination, as the trial court did not give any order for such.[17] On 13 December 1991, Casiple took down Cristeta's statement as the sole eyewitness to the crime.[18]

The parties agreed to stipulate that Belardo Pagapulan's death was not registered with the Local Civil Registrar's Office, as Cristeta had been told there would be registration only after an autopsy of the body had been conducted.[19]

In his defense, appellant Jenelito Ibañez testified that on 10 December 1991, at around 6:30 to 7:00 p.m., he was going home after plowing a farm lot located around 3 kilometers away. He had with him his bolo, an implement in his work. When he reached the road near the house of Belardo Pagapulan, he was suddenly hacked by Pagapulan.[20] He was hit on the right side of his face.[21] Appellant stepped backward, but again, Pagapulan hacked him on his right shoulder bone. Appellant fought back, and was subsequently hit twice by Pagapulan, inflicting one wound on the left side portion near his armpit, and another on the second finger(sic) of his foot.[22] Using his bolo, appellant parried blows from the bolo of Pagapulan many times.[23] He later received medical treatment at a hospital in Brooke's Point.[24]

Appellant avers that he had no misunderstanding with the victim to warrant Pagapulan's sudden attack on him.

However, he supposes the reason for the unprovoked assault was his cousin, accused Fernando de la Paz' conflict with Pagapulan Belardo regarding their "parawakans" or fighting cocks. He narrated that on 5 December 1991,[25] while he was ten armslength away from his house, he saw accused De la Paz having a heated argument with Pagapulan on the road, 25-30 meters away from Pagapulan's house.[26] Immediately after, accused De la Paz informed appellant that Pagapulan was accusing them of letting their fighting cock roam around freely, thus allowing it to wander near Pagapulan's house and fight with his own parawakan.[27]

For his part, appellant Danilo Ibañez foisted the defense of denial and alibi. He testified that on the evening of 10 December 1991, he was at his home in Barangay Ocayan. With him were accused Jovy Ibañez and accused De la Paz. They were resting while listening to the radio. Appellant Jenelito Ibañez arrived, with wounds on his right cheek and on his right shoulder. He was weak from loss of blood. They immediately brought him for first-aid treatment to Barangay Captain Flora Ordillas at her house in Barangay Gangud, Bataraza. Appellant Jenelito Ibañez told them that at around 10 p.m., near his house (Pagapulan's),[28] Pagapulan hacked him[29] because he was angry at accused Dela Paz. He fought back, and they hacked at each other. [30] Appellant Danilo Ibañez denied he had any first-hand knowledge of the killing of Pagapulan and claimed that he was only implicated by the children of Pagapulan after his brother had been charged with the commission of the crime. [31]

Unpersuaded by the appellants' defense, on 8 December 2000, the trial court rendered judgment, the dispositive portion[32] whereof reads:

WHEREFORE, premises considered, judgment is hereby rendered finding both accused JENELITO IBAÑEZ and DANILO IBAÑEZ guilty beyond reasonable doubt as principal of the crime of murder and are hereby sentenced to pay the heirs of Belardo Pagapulan the following:

1. Civil Indemnity

P 50,000.00

2. Actual and compensatory damages

P 10,000.00

3. Moral damages

P100,000.00

4. Loss of earning capacity

P630,000.00

It appearing from the records of the case that both accused Jenelito Ibañez and Danilo Ibañez were detained since February 3, 1994, the period of their preventive imprisonment shall be credited in the imposition of the penalty which is Reclusion Perpetua or forty (40) years imprisonment.

The case as against co-accused Jovy Ibañez and Fernando dela Paz alias "Nene Clavo" who are both at-large is ordered ARCHIVED, to be reinstated upon their arrest or voluntary surrender. The alias warrant of arrest previously issued last January 18, 1996 is hereby reiterated.

In their Brief,[33] appellants assigned two errors to the decision of the trial court, viz:

FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN HOLDING THAT THE KILLING OF THE DECEASED WAS ATTENDED BY TREACHERY.

SECOND ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN CONVICTING APPELLANT DANILO IBAÑEZ NOTWITHSTANDING THAT NEITHER HIS IDENTITIY NOR HIS PARTICIPATION IN THE KILLING OF THE DECEASED WAS ESTABLISHED BEYOND REASONABLE DOUBT BY THE UNCORROBORATED AND BIASED TESTIMONY OF THE VICTIM'S OWN DAUGHTER.

Appellants assailed the judgment of the trial court on several grounds. First, they allege that there was no treachery attendant to the killing of Pagapulan. On the occasion of that fateful day when Pagapulan was confronted by the appellants and the other accused, he did not run away but chose to approach them. Pagapulan even took off his white shirt when he purportedly went down to hide under the house. In the minds of the appellants, this should be seen by the Court as a “recognized local fact”[34] indicative that Pagapulan was readying himself to fight the appellants. The victim was therefore not caught unaware and unable to defend himself, and instead of being cautious, chose to be courageous. On the other hand, the plaintiff-appellee contends that the trial court properly appreciated the existence of treachery. The attack on Pagapulan had been executed in such a manner so as to make it impossible for him to retaliate. The appellants deliberately resorted to the use of superior strength, by employing their superiority in number and in the bolos they used as weapons against the unarmed victim. According to the appellee, there being abuse of superior strength, there must be treachery as the former circumstance is absorbed in the latter.[35]

The Court sustains the argument of the appellants that no treachery attended the killing of Pagapulan. Contrary to the asseverations of the appellee, we must distinguish the existence of the qualifying circumstance of treachery from abuse of superior strength. Although treachery absorbs abuse of superior strength when both are attendant to the crime committed, the presence of one of these circumstances does not necessarily automatically result in the presence of the other. The essence of treachery is the sudden and unexpected attack by aggressors on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby insuring its commission without risk to the aggressors.[36] In the case at bar, the victim Pagapulan had sufficient warning of the appellants' nefarious intentions against him. Even before they reached Cristeta's house, they had already been bellowing their threats to kill him. Perhaps out of concern for his daughter and grandchildren, Pagapulan chose to stay and hide, instead of fleeing. Later, when the aggressors were threatening to climb the stairs into the house to ferret him out, it was also his choice to face them unarmed. Whether or not he removed his white shirt to prepare himself to fight the appellants is no longer of any significance at this point, as what is important is that he had sufficient warning of the threat to his life. Even if the first blow was landed from behind him by appellant Jenelito Ibañez, Pagapulan was fully cognizant that he and the others were encircling him to attack. There was no treachery involved.

There was, however, abuse of superior strength through superiority in the number of the aggressors and in the weapons they used against the victim. Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressors, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime.[37] It must be shown by clear and convincing evidence that this qualifying circumstance was consciously sought by the assailants.[38] Four men to one, the appellants outnumbered the victim. All armed with bolos, they ganged up on the unarmed Pagapulan. The appellants' actions clearly show that they consciously sought to overwhelm the victim by their superiority in number. This was illuminated in the testimony of Cristeta Garceniego, the lone eyewitness:

Q.

You said that your father went out and faced the four in (sic) a distance of one meter and asked why and he

was immediately hacked, who first hacked?

A.

Jen Ibañez Sir and followed by Tabuno Ibañez.

Q.

How about the two others, what did they do?

A.

They helped one another in hacking my father.

Q.

The first time your father was hacked, where was your father hit?

A.

At his back.

Q.

When your father went out and faced the four, how was he hacked from the back?

A.

He was hacked at the back because the four encircled my father and Jenelito Ibañez situated himself behind my father who hacked my father first.

Q.

You said after Jenelito Ibañez hacked your father at the back Tabuno Ibañez likewise hacked your father and the four hacked-helped one another in hacking your father, what instrument did they use in hacking your father?

A.

Bolo, Sir.

Q.

How many of the four have bolos?

A.

Four of them have bolos.

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Q.

When the four helped one another in hacking your father when they were able to encircle him, what happened to your father?

A.

He fell to the ground, Sir.

Q.

When your father fell to the ground, what did the four do?

A.

They still kept on hacking him.[39]

Anent the second error assigned to the decision of the trial court, appellants claim that the lower court erred in convicting appellant Danilo Ibañez notwithstanding that neither his identity nor his participation in the killing of Pagapulan was established beyond reasonable doubt by the uncorroborated and biased testimony of Cristeta, the victim's daughter. Appellant Danilo Ibañez avers he did not kill Pagapulan, as on that night, he was home with his brothers and cousin, resting and listening to the radio, after making sawali shingles all day.[40] He claims that his conviction was a mistake, as the sole basis for such was Cristeta's testimony that he was one of the assailants who killed her father. As a daughter of the victim, her testimony could not be as unbiased as a disinterested witness, and she could only be expected to strengthen, and not weaken the evidence against the appellants. Moreover, her testimony should be suspect as it had already been shown to be flawed with regard to the hackwounds sustained by the victim at his back. She testified on these wounds while in the witness stand, but never stated them in the sworn affidavit she executed 3 days after the killing before the policeman Casiple. The photographs[41] presented by the prosecution as proof of the victim's injuries never showed any part of Pagapulan's back sustaining hack wounds. Finally, appellant avers it would have been very difficult for Cristeta to identify the appellant as she depended only on the illumination of a setting half moon, and Pagapulan's attackers had their backs to her.[42]

We are unconvinced by appellant's arguments. Alibi is one of the weakest, if not the weakest, of defenses in criminal prosecution because it is easy to fabricate and difficult to disprove. The appellants' barefaced denial of the crime charged cannot prevail over the straightforward, positive and spontaneous testimony[43] of Cristeta. Cristeta's testimony is worthy of full credence. When she executed the sworn affidavit before Casiple, she unequivocally stated how appellant Danilo Ibañez, also known as "Tabuno Ibañez," had participated in the crime:

-05. Noong petsa 10 ng Disyembre 1991 humigit kumulang alas 7:00 ng gabi sila Jane (sic) Ibañez, Alias Tabuno Ibañez, Juvy Ibañez at Alias Nene Calvo ay pumunta sa bahay at pagkatapos ay hinagis nila ang aming bahay ng kaputol na kahoy at sumigaw na pababain ang aking tatay na si Belardo Pagapulan dahil papatayin raw nila...sabi ni Alias Tabuno Ibañez na ilawan mo para makita namin ang iyong tatay at sumigaw muli si Alias Tabuno Ibañez na "Nong" akyatin na natin at doon na natin tadtarin sa itaas ng bahay nila...at tinaga nila agad...at pinagtataga pa nila ng husto...[44]

At no time during the course of the trial did Cristeta's testimony regarding the complicity of appellant Danilo Ibañez ever change. From the onset, Cristeta had testified that appellant Danilo Ibañez was one of the four men who threw objects at her house and demanded for her father to go down.[45] When she went out of their house, she saw the men making the commotion, and clearly identified appellant Danilo Ibañez among them. [46] Aided by the light of the moon and standing barely 2 meters away, she identified him and recognized his voice easily, as he was familiar to her. She knew him and the other three aggressors as neighbors who frequently came and ate at her house.[47] She unequivocally testified that appellant Danilo Ibañez was the second man to hack her father after appellant Jenelito.[48] An eyewitness account, coupled with the fact of the victim's death, are sufficient proof of the guilt of the appellant beyond cavil of doubt, for the crime of murder.[49]

Despite the appellants' efforts to the contrary, Cristeta's testimony remains unimpinged and deserving of full faith and credit, even with regard to the existence of back hackwounds on the victim. She had testified that appellant Jenelito Ibañez inflicted the first hackwound upon her father's back.[50] Her testimony had been fully corroborated by the police investigator Casiple, and he satisfactorily explained the inadvertence to take pictures of

these back hackwounds:

Q.

These four pictures that you identified, the front part of the body is shown in the pictures. Now, since your purpose in having the pictures taken was to capture the image and present the pictures of the body of the deceased with the wound, and since these pictures are all frontal pictures, may I conclude that there was no wound at the back of the deceased?

A.

There were multiple wounds at the back but the photographer did not take them anymore.

Q.

Mr. Witness, the photographer who was under your direction and control, under your instruction, failed to take pictures of the back of the deceased?

A.

That was my instruction, but some other wounds were not taken. I forgot to instruct the photographer to take pictures of all wounds of the victim.

Q.

Mr. Witness, so you are telling us that the failure to present pictures of the wounds at the back of the deceased was because you forgot to instruct the photographer to do that?

A.

Yes, sir. [51]

It is of no moment that in her sworn affidavit,[52] she omitted to mention the hackwounds which her father sustained at his back. Ex parte affidavits, which are often incomplete and inaccurate, need not prevail over credible statements of a witness on the stand, particularly when the defense had the full opportunity to cross-examine the witness,[53] such as in the case at bar. Moreover, even if she was a daughter of the victim, it does not follow that her testimony was biased. The trial court, having had the opportunity to observe the mien of the all the witnesses presented by the prosecution and the defense, chose to believe Cristeta's testimony over that of the appellants'. The unbending jurisprudence is that findings of trial courts on the matter of credibility of the witnesses are entitled to the highest degree of respect and will not be disturbed on appeal. The private complainant's relationship with the victim does not disqualify her from testifying in the criminal case involving her relative or automatically sully her testimony with the stain of bias.[54] It would be unnatural for an aggrieved relative to falsely accuse someone else other than the actual culprit himself. Nothing was shown to indicate in any way that the witness was impelled by improper motive in testifying against appellant.[55] In fact, appellant Jenelito Ibañez testified that they had a good relationship with Cristeta.[56] This underscores her credibility as a witness.

Appellants claim[57] that Cristeta cannot identify her father's attackers as they had their backs to her. This is specious and misleading. As correctly stated by the plaintiff-appellee, she never testified that for the entirety of the attack, the four aggressors had their backs to her. During the cross-examination by counsel for the defense, she only stated that one or two of them encircled her father and had their backs to her.[58] At this stage, she already knew the identities of the four malefactors, as she had recognized and talked to them, even before they had seen or attacked her father.[59]

Finally, appellants aver that appellant Danilo Ibañez' participation in the killing of the deceased was not established beyond reasonable doubt. The Court disagrees. As the lower court correctly held:

While it does not appear from the evidence of the prosecution what particular wounds were inflicted by accused Jenelito and Danilo each of them shall be responsible for the wounds inflicted by the other accused because of the existence of conspiracy between the accused. It is well settled that when a conspiracy is established, the act of one becomes the act of all.

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In the case at bar, the conspiracy among the accused to kill the victim was clearly proven. The mutual acts of both accused showed their unity of mind to kill the victim. As shown by the evidence for the prosecution which this court gives credence, accused Jenelito and Danilo with two other companions armed with bolos went to the house of Belardo Pagapulan that particular evening and helped one another in hacking Belardo to death. Thus, from the foregoing evidence, it can be inferred that both accused Jenelito Ibañez and Danilo Ibañez have a unity of purpose, intent and sentiment in the commission of the crime against the victim Belardo Pagapulan.[60]

Conspiracy may be shown through circumstantial evidence; deduced from the mode and manner in which the offense was perpetrated; or inferred from the acts of the accused pointing to a joint purpose and design, a concerted action, and a community of interest.[61] In this case, the prosecution adduced sufficient evidence to prove that indeed the appellants killed Pagapulan. It does not matter who of the two appellants actually killed him. As correctly held by the trial court, the appellants conspired to kill Pagapulan. The act of one is the act of both.[62]

All these points inescapably converge at the nexus that appellant Danilo Ibañez was at the crime scene and was a direct participant in killing Belardo Pagapulan. Appellant Danilo Ibanez' defenses of denial and alibi did not bear up against the evidence presented by the prosecution to prove his contumacy.

While the Court sustains the appellants' argument that there was no treachery in the killing of Bernardo Pagapulan, the Court must deny appellant's second prayer that the killing be adjudged as simple and plain homicide. Since the aggravating circumstance of abuse of superior strength was properly alleged in the Information against appellants, the dearth left by the absence of treachery has been filled, thus qualifying the crime to murder. Article 248(1) of the RPC, as amended, penalizes a person who commits the crime of murder attended by the qualifying circumstance of taking advantage of superior strength, with reclusion perpetua to death. There being no generic aggravating circumstance attendant, the lesser penalty of reclusion perpetua should be imposed.[63] We therefore maintain the penalty imposed by the trial court on appellants.

We now review the award of damages.

The award of P50,000.00 as civil indemnity ex delicto is proper. No other proof is needed for such other than the death of the victim.[64]

We cannot, however, sustain the lower court's decision to award actual and compensatory damages of P10,000.00. For actual damages to be awarded, the amount of loss must be proven with a reasonable degree of certainty, based upon competent proof and the best evidence obtainable to the injured party.[65] The prosecution never presented any receipt to substantiate Cristeta Garceniego's claim as to the amount she and her family spent for their father's funeral expenses. However, we are cognizant of the fact that expenses were indeed incurred by the victim's family. Thus, in lieu of actual damages, the Court orders appellants to pay the sum of P25,000.00 as temperate damages. Temperate damages may be awarded when the Court finds that some pecuniary loss has been suffered, but the actual amount cannot be established with certainty.[66]

Cristeta Garceniego had testified that she and her brothers had suffered emotionally because of the brutal death of their father. Thus, the award of P50,000.00 as moral damages is proper. The purpose of the award of moral damages is not to enrich the heirs of the victim but to compensate them for their wounded feelings. A violent death brings about emotional pain and anguish to the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. For this reason, moral damages must be awarded even in the absence of any proof of the heirs' emotional suffering.[67]

Under Article 2206 of the Civil Code, the heirs of the victim are entitled to indemnity for loss of earning capacity. Indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven[68] by competent proof and the best obtainable evidence thereof.[69] By way of exception, testimonial evidence may suffice if the victim was either (1) self-employed, earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws.[70] Cristeta testified that her father was self-employed and earned his living by harvesting corn twice a year for which he had a gross income of P5,000 per harvest. He also sold around 100 fighting cocks a year, for which he received a minimum of P500.00 per cock net of expenses or a total income of P50,000.00.[71] These statements remain unchallenged and uncontroverted by the appellants. Thus, the Court affirms that Belardo Pagapulan's gross annual income is P60,000.00. In *People vs. Napalit*,[72] we set the formula for computation of loss of earning capacity, thus:

Net earning capacity – $2/3 \times$

(80 – age of the victim at the time of his death)

$\times$

a reasonable portion of the annual net income which would have been received by the heirs for support

In the absence of proof of living expenses, the net income is deemed to be 50% of the gross income.[73] As Belardo Pagapulan was 48 years old at the time of his death,[74] the correct amount to compensate for the loss of his earning capacity is P640,000.00 ($2/3 \times [80-48] \times [P60,000.00-P30,000.00]$).

IN VIEW WHEREOF, the judgment of conviction of the Regional Trial Court of Palawan and Puerto Princesa City in Criminal Case No. 10985 is hereby **AFFIRMED** with **MODIFICATION**. Appellants JENELITO IBAÑEZ and DANILO IBAÑEZ are found guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code, and are sentenced to suffer the penalty of reclusion perpetua. They are ordered to pay to the heirs of the victim Belardo Pagapulan, the amounts of P50,000.00 as civil indemnity ex delicto; P25,000.00 as temperate damages; P50,000.00 as moral damages; P25,000.00 as exemplary damages; and P640,000.00 for loss of earning capacity. Costs against the appellants.

SO ORDERED.

Quisumbing, Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Jenelito, Jovy and Danilo Ibañez are brothers. Fernando dela Paz is their first cousin.

[2] Original Records, pp. 1-2.

[3] TSN, 16 April 1996, p. 8.

[4] Id. at 9.

- [5] Id. at 10.
- [6] Id. at 12.
- [7] Id.
- [8] Id. at 11.
- [9] Id.
- [10] Id. at 17.
- [11] Exhibits “A”, “B”, “C”, and “D”.
- [12] TSN, 16 April 1996, p. 18.
- [13] Id. at 19-21.
- [14] TSN, 16 April 1996, p. 22.
- [15] TSN, 9 September 1996, p. 84.
- [16] Exhibits “A”, “B”, “C”, and “D”.
- [17] TSN, 9 September 1996, pp. 4-5.
- [18] Id. at 8.
- [19] Id. at 5-6.
- [20] TSN, 1 July 1998, pp. 5-7.
- [21] Id. at 8.
- [22] Id. at 9-11.
- [23] Id. at 11-12.
- [24] TSN, 1 July 1998, p. 23.
- [25] Id. at 16.
- [26] Id. at 12-13.
- [27] Id. at 14-15.
- [28] Id. at 10.
- [29] TSN, 18 March 1999, pp. 4-8.
- [30] Id. at 8.
- [31] Id. at 9.
- [32] Rollo, p. 28.
- [33] Id. at 55-66.
- [34] Id. at 58.
- [35] Id. at 86-88.

- [36] *People vs. Romero, et al.*, G.R. No. 145166, 8 October 2003; *People vs. Delada, Jr.*, G.R. No. 137406, 26 March 2003; *People vs. Rubiso*, G.R. No. 128871, 18 March 2003.
- [37] *People vs. Daquipil*, 240 SCRA 314 (1995).
- [38] *People vs. Casingal*, 243 SCRA 37 (1995).
- [39] TSN, 16 April 1996, pp. 13-14.
- [40] TSN, 18 March 1999, p. 5.
- [41] *Supra* at 11.
- [42] TSN, 16 April 1996, pp. 60-66.
- [43] *People v. Molina*, 311 SCRA 517 (1999).
- [44] *Sinumpaang Salaysay ni Cristeta Garciniego*, marked as Exhibit “E”, Original Records, p. 69.
- [45] TSN, 16 April 1996, p. 9.
- [46] *Id.* at 11.
- [47] *Id.* at 12.
- [48] *Id.* at 13.
- [49] *People vs. Gumayao*, G.R. No. 138933, 28 October 2003; *People v. Lotoc*, 307 SCRA 471 (1999).
- [50] TSN, 16 April 1996, p. 13.
- [51] TSN, 9 September 1996, pp. 10-11.
- [52] Original Records, p. 69.
- [53] *People vs. Cabasag*, G.R. No. 140762, 10 September 2003.
- [54] *Balunueco vs. Court of Appeals, et al.*, G.R. No. 126968, 9 April 2003.
- [55] *Supra* at 50.
- [56] TSN, 2 July 1998, p.2.
- [57] *Rollo*, p. 65.
- [58] TSN, 16 April 1996, p. 32.
- [59] *Id.* at 9-12.
- [60] *Decision, Rollo*, p. 23.
- [61] *People vs. Gregorio, et al.*, G.R. No. 153781.
- [62] *People v. Taliman*, 342 SCRA 534 (2000).
- [63] Revised Penal Code, Article 63, paragraph 3.
- [64] *People vs. Romero, et al.*, G.R. No. 145166, 8 October 2003; *People vs. Aliben, et al.*, G.R. No. 140404, 27 February 2003.

[65] People vs. Almoguerra, et al., G.R. No. 121177; People vs. Solamillo, G.R. No. 126131, 17 June 2003.

[66] People vs. de los Santos, G.R. 135919, 9 May 2003.

[67] People vs. Rubiso, G.R. No. 128871, 18 March 2003.

[68] People vs. Panabang, G.R. Nos. 1137514-15, 16 January 2002; People vs. De Vera, 312 SCRA 640, 670 (1999).

[69] Chan vs. Maceda, Jr., G.R. No. 142591, 30 April 2003.

[70] People vs. Duban, G.R. No. 141217, 26 September 2003; People vs. Mallari, G.R. No. 145993, 17 June 2003; People vs. Caraig, G.R. Nos. 116224-27, 28 March 2003.

[71] TSN, 16 April 1996, pp. 19-21.

[72] G.R. Nos. 142919 and 143876, 4 February 2003.

[73] Ibid.

[74] Id. at 18.

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