

CATALINA SECURITY AGENCY, REPRESENTED HEREIN BY THE PROPRIETOR PLACIDO O. URBANES, JR., PETITIONER, VS. HON. ALICIA B. GONZALEZ-DECANO PRESIDING JUDGE OF THE REGIONAL TRIAL COUR...

G.R. No. 149039. May 27, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

In G.R. No. 149362, this Court is tasked to review the decision[1] in Criminal Case No. U-10870, entitled *People of the Philippines v. Rogelio Negrillo y Nastor @ “Ilyo,”* by the Regional Trial Court of Urdaneta City, Branch 46, which found appellant Rogelio Negrillo guilty of murder and imposed on him the penalty of death. He was also ordered to pay civil indemnity, moral damages, and costs of the suit to the heirs of the victim, Mario G. Mercado.

In said criminal case, the trial court also ordered the confiscation of the firearm used in the commission of the offense in favor of the government. On September 5, 2001, Catalina Security Agency, the licensee of the confiscated firearm, filed a petition for review on certiorari docketed as G.R. No. 149039, entitled “Catalina Security Agency, represented herein by its proprietor Placido O. Urbanes, Jr. v. Hon. Alicia B. Gonzalez-Decano, Presiding Judge of the Regional Trial Court, Branch 46, Urdaneta City, and the People of the Philippines.” Catalina Security Agency (Catalina) comes before us, questioning the confiscation of the firearm in favor of the government. Per its resolution[2] dated April 1, 2003, this Court ordered that G.R. NO. 149039 be consolidated with G.R. No. 149362, as both arise from the same incident, the killing of one Mario G. Mercado, on October 7, 2000.

The facts in this case are as follows.

On November 9, 2000, appellant Rogelio Negrillo was charged with murder in an Information that read:

The undersigned accuses ROGELIO NEGRILLO Y NASTOR alias “ILYO” of the crime of MURDER committed as follows:

That on or about October 7, 2000 at Brgy. Sto. Domingo, San Manuel, Pangasinan and within the jurisdiction of this Honorable Court, the above- named accused, a security guard armed with and using illegally his service firearm, with intent to kill and treachery, did then and there willfully, unlawfully and feloniously shoot Mario G. Mercado, accused’ [sic] co-security guard inflicting upon him fatal gunshot wounds in the chest which cause his instantaneous death to the damage and prejudice of his heirs.

CONTRARY to Art. 248, Revised Penal Code as amended by R.A. No. 7659 in relation to Sec. 5 of R.A. 8294.

Urdaneta City, November 9, 2000.[3]

Upon arraignment, appellant pleaded not guilty to the charge and trial thereafter ensued. Presented as first witness

for the prosecution, SPO3 Vivencio Vinluan testified that he was the evidence custodian of the Philippine National Police (PNP) in San Manuel, Pangasinan. He said that on October 7, 2000, PO3 Avelino Sandi, Jr. turned over to his custody a .38-caliber revolver with empty shells, one live and one dud.

Next witness, PO3 Avelino Sandi, Jr., testified that on October 7, 2000, he received a report of a shooting incident, which he duly entered in the police blotter. He thus went to the Sacred Heart Hospital where one Mario Mercado, the shooting victim, was brought for treatment but found him already dead. With police companions, he proceeded to the National Power Corporation (NAPOCOR) building, where he learned that the suspected killer was no longer there. Later, according to this witness, he and his companions arrested the suspect – who turned out to be Rogelio Negrillo - in his home in San Juan, San Manuel, Pangasinan. On cross-examination, witness Sandi corroborated witness Vinluan's testimony, that Vinluan received the gun with ammunition from Sandi. Further, Sandi testified that it was from foreman Fernando Azur, officer-in-charge of the security guards of NAPOCOR, that he got said gun and ammunition.

Francisca Mercado, mother of the victim, testified that her son earned one hundred eighty (P180) pesos a day. At the time of his death he was 25 years old. She said she spent sixty thousand (P60,000) pesos for the funeral of her son.[4] She later presented to the court the receipts for the expenses she incurred during her son's wake and funeral.

Fernando Azur, OIC of NAPOCOR substation's security guards, testified that at about 7:45 a.m. on October 7, 2000, he was at his post. He was then cleaning his firearm under a duhat tree, about eight to ten meters away from the guardhouse. He said he saw the victim, Mercado, sitting on a monobloc chair facing the gate and holding his cellular phone. At that moment he saw appellant Negrillo come out of the guardhouse adjacent to the gate. Suddenly, according to Azur, Negrillo pulled out a .38-caliber revolver from his waist and fired thrice at Mercado. The first hit the chair. The second hit Mercado on the chest. As Mercado was attempting to run, Negrillo again fired and hit Mercado at the back. The victim fell with his face to the ground. At this juncture, Azur said, he ran towards Negrillo and disarmed him. Azur added that, along with his companions, he brought the victim to the hospital.[5]

On cross-examination, Azur testified that about five minutes before the shooting begun, appellant Negrillo approached him and reported that Mercado had a grudge against him. Azur advised Negrillo to resolve with Mercado their problem on their own. Although immediately before the shooting he did not hear any heated exchange of words between the two, Azur said he recalled hearing Negrillo utter, "Agpayso," which meant, "It is true." [6] Azur also testified that the victim Mercado was issued a shotgun when the victim reported for duty, but at the time of the shooting the shotgun was being cleaned to be deposited inside the guardhouse.[7]

Another security guard, Manolo Velasco, testified that in the morning of the incident, he was biking towards the guardhouse. He intended to change the battery pack of his ICOM radio and was already in front of the guardhouse, about four to five meters away from Negrillo, when he saw Negrillo shoot Mercado. Mercado was hit on the chest, said Velasco. According to him, after being hit, Mercado stood up and had his back to Negrillo, when Negrillo fired his gun a second time, hitting Mercado on the left side of the back. When Mercado fell to the ground, said the witness, appellant approached Mercado, pointed the gun at Mercado's head, and again pulled the trigger. But according to witness Velasco, for some reason the gun jammed and failed to fire. He then saw Azur disarm appellant Negrillo. Velasco said he himself approached the victim, lifted him unto a tricycle, and brought him to a hospital.[8]

SPO2 Leonardo S. Marilag, an officer of the Records of Firearms and Explosives Division of the PNP in Camp Crame, testified that appellant Negrillo was not a licensed/registered firearm holder. He added, however, that an

employer or a security agency could get a license for a gun for use by its security guards.[9]

For the defense, appellant Rogelio Negrillo was the sole witness. He interposed self-defense. According to appellant, he had known Mario Mercado since January 1999, and they treated each other like brothers. But on October 7, 2000, early in the morning, Mercado and he had an argument. He explained that Mercado wanted to bring home an electric line extension, but he objected to it since the line belonged to NAPOCOR. Mercado resented his refusal and began to rattle off the favors that the victim had previously given appellant, including coffee and sugar. Thereafter, appellant went to OIC Azur and reported his problem. He returned to the rear of the guard post and busied himself. After a call from an engineer of NAPOCOR, according to appellant, the heated exchange of words between Mercado and him resumed. The victim was about five meters away from him. At one point, appellant said he told Mercado that he would report the matter to the manager. It was then that the victim's taunting words became insulting. Appellant Negrillo pertinently testified on their exchange of words thus:

Q:

What was the reaction of Mario Mercado?

A:

"You report it if you have the nerve to do it," he said.

Q:

So what did you do then?

A:

I said, "True?"

Q:

What happened next after that?

A:

"Negrillo, I do not have mats to roll. I did not leave my balls in La Union," Mercado said.

Q: What happened next after that statement of Mario Mercado that he had no mats to roll and he did not leave his balls in La Union?

A: He said, "If you say it, do it."

Q: What did you do upon hearing these words of Mario Mercado?

A: After telling the words, "If you say it, do it," he said, "as if you are not a man."

Q: What was your reaction to that?

A: I was trembling with fear, sir.

Q: Why were you trembling with fear?

A: Because of the way he uttered the words.

Q: By the way what was the appearance of Mario Mercado when he was uttering those words?

A: He was mad, sir.

Q: What happened next?

A: When he said, “as if you are not a man,” he got his firearm that was placed on a board with a writing, “register here.”

Q: Can you recall if that is a short firearm or a long firearm?

A: It is a 12-gauge shotgun, sir.

Q: Is that considered a service firearm?

A: Yes, sir.

Q: Whose service firearm was that?

A: That is issued to the security guard but owned by the Catalina Security Agency.

Q: Who is the security guard in particular [to whom] it was issued?

A: Mario Mercado, sir.

Q: You said that Mario Mercado got hold of the shotgun, what happened next Mr. Witness?

A: He loaded it and pointed it to me.

Q: How far were you when Mario Mercado pointed the gun at you?

A: Near the wall where I was seated which is estimated to be 4 to 5 meters in distance.

Q: What was your reaction when you saw Mario Mercado loa[d]ed the shotgun and pointed the same to you?

A: Because I was frightened, I was able to draw my gun and shot him.

Q: What happened next, Mr. Witness?

A: Because I was nervous, I do not know how many times I squeezed the trigger of my gun.[10]

...

Appellant claims that he only shot Mercado in self-defense because he felt his life was in danger. He also said that at the time of the shooting, Mercado and he were each armed with the firearms issued to them.[11]

During cross-examination, appellant reiterated that after their heated argument, Mercado pointed the 12-gauge shotgun at him while he was near the back of the guardhouse. He had a .38-caliber pistol tucked in his waist, appellant said. He added he had no opportunity to evade Mercado’s aim because he still had to go around a table that blocked his way. Also, according to appellant, the gate where he could make an escape was closed. [12] Mercado was not able to fire the shotgun, according to appellant, since he beat Mercado to the draw. Appellant said he fired three successive shots at Mercado. When asked if he was insulted by Mercado’s utterances, appellant answered, “A little bit insulted, Ma’am.”[13] Towards the end of his testimony, appellant claimed he shot Mercado accidentally.[14] His counsel later disputed the fact that appellant said “accidental,” and asked that the word “accidental” be stricken from the records. Finally, when asked in re-direct if he shot the victim in self-defense, appellant replied, “Yes, sir, because I did not have the intention to kill him.”[15]

In its decision, the trial court found Negrillo guilty beyond reasonable doubt of the crime of murder. It ordered the firearm used in the commission of the offense confiscated in favor of the government. The decretal portion of the

decision reads:

WHEREFORE, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of Murder with the use of unlicensed firearm and the court imposes upon him the penalty of DEATH and to pay the heirs of the victim the following without the benefit of subsidiary imprisonment:

- P50,000 by way of civil indemnity;
- P50,000 as moral damages;
- P22,660 as actual expenses with receipts;
- P30,000 in the discretion of the Court for expenses of the wake; and
- P40,000 in the discretion of the Court for the hospital bills; and
- P1,234,240 the amount of death indemnity for the forced heirs;
- With costs.

The firearm used in the commission of the offense is hereby confiscated in favor of the government. Let the weapon be forwarded to the Firearms and Explosive[s] Unit, Camp Crame, Quezon City, through the Provincial Command, PNP, Lingayen, Pangasinan duly receipted.

SO ORDERED.[16]

In his Brief, appellant Negrillo assigns the following errors:

- I.
THE TRIAL COURT ERRED IN NOT CONSIDERING IN FAVOR OF THE ACCUSED-APPELLANT THE JUSTIFYING CIRCUMSTANCE OF SELF- DEFENSE.
- II.
THE TRIAL COURT ERRED IN CONSIDERING THE ALLEGED USE OF UNLICENSED FIREARM AS AN AGGRAVATING CIRCUMSTANCE DESPITE WANT OF EVIDENCE.
- III.
THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED NOTWITHSTANDING THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.
- IV.
GRANTING FOR THE SAKE OF ARGUMENT THAT THE ACCUSED- APPELLANT IS GUILTY, NONETHELESS, THE TRIAL COURT ERRED IN CONVICTING HIM OF MURDER INSTEAD OF HOMICIDE.[17]

Four issues in our view must be resolved. First, is there adequate proof of self-defense by appellant? Second, absent such proof of self-defense, is there sufficient proof of appellant's guilt beyond reasonable doubt for the victim's death? Third, is the offense murder or homicide? Fourth, was the penalty of death properly imposed? We shall discuss these issues successively.

To prove self-defense, appellant must establish three concurring requisites, namely, (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to repel the aggression; and (c) lack of sufficient provocation on the part of the accused.[18]

As counsel for appellant, the Public Attorney's Office contends that appellant shot Mario Mercado in

self-defense. The PAO avers that the aggression initially came from Mercado, who relentlessly insulted, taunted and provoked appellant. According to the PAO, Mercado had a reputation for being quarrelsome, that he wanted appellant to be an accessory to theft, and that he relentlessly insulted appellant's sense of manhood (*machismo*). The PAO insists that Mercado had his 12-gauge firearm pointed at appellant, and that was why appellant fired at the victim. In brief, PAO contends, there was unlawful aggression on Mercado's part, and not on the part of the accused who did not provoke the victim at all.

The PAO attaches no significance to the fact that appellant shot the victim thrice. According to the PAO, appellant could not be expected to think clearly and reflect coolly, because he was blinded by fear and fury. The PAO concluded that appellant was justified in killing Mercado because appellant was exposed to an imminent danger, and it was merely his instinct for self-preservation that made him shoot Mercado.

While we find credible the testimony of defense witness Azur that appellant reported Mercado's grudge against appellant and that appellant and Mercado were shouting angrily at each other, we cannot accept the assertion that a grudge and heated exchange of words are sufficient reasons to justify appellant's shooting of the victim three times. We have ruled before that neither an imagined impending attack nor an intimidating or threatening attitude is sufficient to constitute unlawful aggression.[19] The records of this case reveal that when the victim was shot first, he was sitting on a chair, fiddling with his cellular phone. Witness Azur categorically testified that when he saw appellant shoot Mercado the first time, Mercado was indeed seated on a chair tinkering with his cellular phone. According to Azur, appellant shot the victim thrice. The first hit the chair; the second, the victim's chest; the third, his back. Moreover, in his sworn statement, Azur stated it was appellant who dared the victim, "Paltogan kan to pay"[20] (You want me to shoot you?) and uttered, "Agpayso"[21] (That's true). Unlawful aggression presupposes an actual, sudden, and unexpected attack, or imminent danger.[22] In our view, the evidence on record debunks appellant's assertion that there was unlawful aggression on the part of the victim.

Another impartial witness, Manolo Velasco, corroborated Azur's testimony that appellant shot Mercado in the chest and at the back. More significantly, Velasco testified he saw appellant aim a fourth time at Mercado's head, but for some reason the gun did not fire.

These two testimonies by the eyewitnesses to the incident are corroborated by physical evidence. The victim, according to the autopsy report, suffered gunshot wounds at "the post axillary line about one cm. in diameter penetrating at the right chest just 1 ½ inches above the right nipple about one cm. in diameter, at the anterior axillary line at the level of 6th and 7th inter costal space about 2 ½ cm. x 1 cm. in length, and at the left anterior axillary line at the level of the 5th and 6th inter costal space about 2 ½ cm. x 1 cm. in length." [23] He also had internal injuries, lacerated wounds in the "middle lobe of the right lung, at the right ventricle of the heart, and on the upper lobe of the left lung." [24] The locations of the gunshot wounds on the body of the deceased eloquently refute appellant's plea of self-defense.

Further, if there is no unlawful aggression or if the unlawful aggression had ceased to exist, there is no necessity to take a defensive course of action for there is nothing at all to prevent or repel. In the instant case, impartial witnesses declare that when they saw appellant shoot, the victim was sitting on a chair. Even if the taunting words by the victim earlier could be considered some form of verbal aggression, the sequence of events shows that the supposed aggression had ceased already. The victim already sat down, without signs that he anticipated appellant's armed assault. At that time, there appears no necessity for appellant to ward off any danger by shooting thrice the victim.

Well established is the doctrine that in the absence of unlawful aggression, there can be no self-defense, complete or incomplete.[25] Unlawful aggression is an essential and primary element of self-defense, without it, there can

be no self-defense. [26] Appellant's claim thereto is utterly baseless in fact and in law.

Moreover, where self-defense is pleaded, reasonableness of the necessity for taking action and reasonableness of the means employed to prevent or repel the unlawful aggression must be taken into account.[27] Here, it is significant that, according to un rebutted testimony for the prosecution, after appellant fired thrice at his victim, he still aimed his gun at the fallen victim's head, although for some reason it jammed.

The PAO argues that appellant's use of a gun should not negate the claim of self-defense inasmuch as the victim was also armed with a shotgun, and the danger to appellant's life was imminent. Unfortunately for appellant, this claim is refuted by eyewitness Azur who testified that the victim was unarmed. The 12-gauge shotgun referred to by the appellant was, at that time, not in the possession of the victim. It was inside the guardhouse being cleaned.[28] Azur's testimony is not refuted by the defense. Given this circumstance, appellant's version of self-defense appears as a mere concoction.

Coming now to the second and third issues, which we shall discuss together. Once the accused invokes self-defense, the burden of evidence shifts to the accused to show that the killing was justified and that he incurred no criminal liability.[29] In this case, appellant clearly failed to discharge his burden. His uncorroborated, self-serving declaration of self-defense pales in the light of the testimonies of two impartial eyewitnesses as well as the medical evidence presented by the prosecution. As observed by the Solicitor General, when the appellant claimed self-defense, he must prove that the killing was justified clearly and convincingly on the strength of his own evidence.[30] Appellant can not rely on the weakness of the prosecution's evidence.[31] To say that the prosecution should have rebutted appellant's claim of self-defense, when appellant failed in his task of proving it, would be a procedural heresy.

However, counsel for appellant submits that even granting *arguendo* that he is guilty of a crime, the crime he committed was only homicide and not murder. He calls attention to *People v. Alba*,[32] and the more recent case of *People v. Manlansing*,[33] which opined that:

...the information should state not only the designation of the offense and the acts and omissions constituting it but shall also specify its qualifying and aggravating circumstances. Guided by the established rule that when a penal statute, whether substantive or remedial and procedural, is favorable to the accused, the courts shall give it a retroactive application. Thus, we held that since the information in this case failed to specify treachery as a circumstance qualifying the killing to murder, under the present Revised Rules of Criminal Procedure, treachery has to be considered a generic aggravating circumstance only.

But the Solicitor General replies that the PAO erred in relying in the aforementioned cases, for they were already overtaken by *People v. Aquino*, [34] a *per curiam* resolution, which held that –

...qualifying circumstances need not be preceded by descriptive words such as “qualifying” or “qualified by” to properly qualify an offense. The Court has repeatedly qualified cases of rape where the twin circumstances of minority and relationship have been specifically alleged in the Information even without the use of descriptive words “qualifying” or “qualified by.”

...

Section 9, Rule 110 of the Revised Rules of Criminal Procedure states that the –

... qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know...(the) qualifying and aggravating circumstances....

Thus, even the attendant circumstance itself, which is the essential element that raises the crime to a higher category, need not be stated in the language of the law. With more reason, the words “aggravating/qualifying

circumstances” as used in the law need not appear in the Information, especially since these words are merely descriptive of the attendant circumstances and do not constitute an essential element of the crime. These words are also not necessary in informing the accused that he is charged of a qualified crime. What properly informs the accused of the nature of the crime charged is the specific allegation of the circumstances mentioned in the law that raise the crime to a higher category.

...

Section 8 of Rule 110 requires that the Information shall “state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances.” . . . Section 8 merely requires the Information to specify the circumstances. Section 8 does not require the use of the words “qualifying” or “qualified by” to refer to the circumstances which raise the category of an offense. It is not the use of the words “qualifying” or “qualified by” that raises a crime to a higher category, but the specific allegation of an attendant circumstance which adds the essential element raising the crime to a higher category.

...

We therefore reiterate that Sections 8 and 9 of Rule 110 merely require that the Information allege, specify or enumerate the attendant circumstances mentioned in the law to qualify the offense. These circumstances need not be preceded by the words “aggravating/qualifying,” “qualifying,” or “qualified by” to be considered as qualifying circumstances. It is sufficient that these circumstances be specified in the Information to apprise the accused of the charges against him to enable him to prepare fully for his defense, thus precluding surprises during the trial. When the prosecution specifically alleges in the Information the circumstances mentioned in the law as qualifying the crime, and succeeds in proving them beyond reasonable doubt, the Court is constrained to impose the higher penalty mandated by law. This includes the death penalty in proper cases.

...

To guide the bench and the bar, this Resolution clarifies and resolves the issue of how to allege or specify qualifying or aggravating circumstances in the Information. The words “aggravating/qualifying,” “qualifying,” “qualified by,” “aggravating,” or “aggravated by” need not be expressly stated as long as the particular attendant circumstances are specified in the Information.[35]

In the present case, the Information alleged that the circumstance of treachery attended the commission of the crime which would qualify the killing to murder. The essence of treachery is the unexpected and sudden attack on the victim which renders the latter unable and unprepared to defend himself by reason of the suddenness and severity of the attack.[36] Here, it is undisputed that an altercation or heated exchange of words between appellant and the victim preceded the shooting. The verbal tussle had degenerated into a reciprocal challenge concerning the parties’ machismo. Threats were openly aired between them. Witness Azur testified that appellant officially reported a grudge between him and the victim. The working place reeked of mutual menace. We cannot conclude in these circumstances that the attack on the victim, Mario Mercado, was sudden or unexpected and the victim had no means within reach to defend himself. Where the manner of attack was not convincingly proven, the accused should be given the benefit of the doubt and the crime should be considered homicide only.[37] On this point, we are not persuaded that treachery attended Mercado’s killing. Absent this qualifying circumstance, the proper offense for which the appellant is liable is only homicide not murder.

But was the homicide aggravated by the case of an unlicensed firearm? Appellant’s counsel contends that the trial court erred in considering the gun used in the killing as unlicensed. The firearm, according to the PAO, was duly licensed to the security agency that employed appellant. Hence, it is not correct to say the gun used by appellant is unlicensed.

To this contention, the Solicitor General replies that Section 1, par. 3 of Republic Act No. 8294, An Act

Amending the Provisions of Presidential Decree No. 1866, as Amended Entitled “Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes,” specifically states that if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered an aggravating circumstance.[38] Furthermore, Section 5 (2) of the same Act enumerates, “unauthorized use of licensed firearm in the commission of the crime” as covered by the term “unlicensed firearm.”[39]

The applicable law on this matter is found in Section 1, par. 3 and Section 5 (2) of Rep. Act No. 8294. Pursuant to Section 1 in relation to Section 5, the firearm used in an unauthorized manner shall be considered an aggravating circumstance. We are in agreement that even if the firearm used was properly licensed to the security agency, its unauthorized use by the appellant aggravated his offense.

Unlike treachery which was not proved by adequate evidence, the unauthorized use of a firearm by appellant was properly proved. Thus, we hold that the offense committed is homicide, aggravated by “the use of an unlicensed firearm.”

The impossible penalty for homicide under Article 249 of the Revised Penal Code[40] is reclusion temporal. Since appellant’s crime homicide is aggravated, without any mitigating circumstance to offset it, the impossible penalty for the offense is reclusion temporal in its maximum period. Applying the Indeterminate Sentence Law, the penalty that could be properly imposed as maximum is reclusion temporal in its maximum period, or 17 years, 4 months and 1 day to 20 years. Whereas, the minimum of the sentence shall be within the range of the penalty next lower to that prescribed by the Code, which is prision mayor, or from 6 years and 1 day to 12 years. Hence, the penalty imposed on appellant should be modified by reducing it to an indeterminate sentence of eight years and one day of prision mayor as minimum to seventeen years, four months and one day of reclusion temporal as maximum.

Now, as to the award of damages. On review, the entire case must be scrutinized, and it becomes the duty of this Court to correct an error that may be found in the judgment below, regardless of whether the error is assigned or not.[41]

In the present case, regarding actual damages, receipts presented and attached to the records amount to only P25,820.50. That should be the amount awarded, since actual damages must be proven by competent evidence, such as receipts.[42]

The trial court awarded P50,000 by way of civil indemnity for the victim’s death, and another P50,000 as moral damages. Since these amounts accord with prevailing case law,[43] they should be sustained.

The award of P30,000 for expenses of the wake and P40,000 for hospital bills have not been adequately proved in the absence of corresponding receipts. Both ought to be deleted.

Considering the evidence at hand, an amount representing loss of the victim’s earning capacity should be awarded to the victim’s heirs. The victim’s mother testified that her son was 25 years old and earning P180 a day, at the time of his premature death. The formula consistently used by the Court in determining life expectancy is, $\frac{2}{3} \times [80 - \text{age of the victim at the time of death}] \times [\text{reasonable portion of the victim’s annual income}]$. [44] The net earning is also ordinarily pegged at half of the gross earnings,[45] which in this case is P90 or half of P180 a day. Thus the annual net earning is $P90 \times 365 \text{ days} = P32,850$ as reasonable portion of the victim’s annual income. Applying the formula, $\frac{2}{3} (80 - 25) \times P32,850 = P1,204,499.80$, which is the amount representing damages due the heirs for victim’s loss of earning capacity.

Finally, we shall now look into the consolidated petition, G.R. No. 149039, Catalina Security Agency v. Hon. Alicia B. Gonzalez-Decano.

It is undisputed that the firearm used by appellant in killing of Mario Mercado, subject of Crim. Case No. U-10870, People of the Philippines v. Rogelio Negrillo, on October 7, 2000, was a caliber .38 revolver with serial number 1092903, duly licensed to and owned by Catalina Security Agency (hereafter Catalina, for brevity). During trial of Crim. Case No. U-10870, said firearm was offered as evidence before the court below. In its decision convicting herein appellant, the trial court ordered the confiscation of the firearm in favor of the government.[46] Dissatisfied with the order, herein petitioner Catalina filed a motion for reconsideration seeking reversal of the order of confiscation.

When asked to comment on the motion, Asst. Provincial Prosecutor Restituto A. Dumlao, Jr. interposed no objection to the motion. Nonetheless, the court a quo denied the motion, stated that the case was still subject to automatic review.

In G.R. No. 149039, the sole issue for our resolution is whether or not the RTC committed a reversible error of law when it ordered the confiscation in favor of the government of the firearm used in Criminal Case No. U-10870.

Petitioner Catalina contends that the confiscation was contrary to law, specifically Article 45 of the Revised Penal Code.[47] According to petitioner, although the firearm was illegally used, the firearm was not illegal per se, or better said, ownership and possession thereof by petitioner Catalina is not unlawful. It was duly licensed to Catalina Security Agency for use in a legitimate business of providing security services to its clients. Petitioner stresses that the agency had no knowledge nor participation in appellant's shooting of the victim, Mario Mercado. It would be grossly unfair to Catalina if its firearm would be confiscated, considering that the purpose for which it was kept in the custody of the police and then the court, had already been served. Petitioner concludes that to deprive the agency of the firearm's use amounts to deprivation of property without due process. This had already resulted to irreparable business loss to Catalina, says the petitioner. More significantly, Catalina fears that the continued lack of maintenance of the firearm might render the firearm beyond repair, hence useless and worthless later.

The Office of the Solicitor General, for the State, shares the petitioner's contention. According to the OSG, the confiscation of the firearm is not only contrary to Article 45 of the Revised Penal Code, it also runs afoul the constitutional guaranty of due process since petitioner was never indicted nor even made a party in the case. The OSG cites People v. Delgado[48] where we ruled that the trial court cannot order the forfeiture of goods, the owner of which is not indicted. Likewise, he cites Ang Ping v. Court of Appeals,[49] that before a person can be deprived of his property, he should first be informed of the claim against him and the reason upon which such claim is premised. The OSG concludes that there are no grounds, legal or logical, to justify the decision of the respondent judge directing the confiscation of petitioner's firearm after the completion of appellant's trial and his conviction.

In the light of the clear and unequivocal provision of law in Article 45, R.P.C., and our ruling in Ang Ping, we are constrained to rule that the order of the respondent trial judge to confiscate in favor of the government the firearm belonging to Catalina Security Agency has no sufficient legal basis. We are, therefore, obliged to restore its possession to petitioner.

WHEREFORE:

A. In G.R. No. 149362, *People of the Philippines v. Rogelio Negrillo y Nastor @ "Ilyo"*, the Decision dated May 30, 2001, of the Regional Trial Court in Criminal Case No. U-10870, is **AFFIRMED WITH MODIFICATIONS**. Appellant **ROGELIO NEGRILLO Y NASTOR @ "ILYO,"** is **GUILTY** beyond reasonable doubt of the crime of **HOMICIDE** aggravated by the use of unlicensed firearm. Pursuant to the Indeterminate Sentence Law, he is hereby sentenced to an indeterminate sentence of eight years (8) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum, with all applicable accessory penalties. Appellant is also ordered to **PAY** the heirs of Mario G. Mercado, P50,000.00 as civil indemnity and another P50,000.00 for moral damages. The award of P22,660.00 for actual damages is **INCREASED** to P25,820.50 as actual damages duly substantiated by receipts, to be paid to the heirs of Mario G. Mercado. The award of P1,234,240 as death indemnity is **DELETED**, but appellant is ordered to **PAY** the heirs of Mario G. Mercado P1,204,499.80 for loss of his earning capacity.

B. In G.R. No. 149039, *Catalina Security Agency, et al. v. Hon. Alicia B. Gonzalez-Decano, et al.*, as prayed for by petitioners, and without opposition by the Office of the Solicitor General, the order of the trial court in its decision dated May 30, 2001, concerning the confiscation of the firearm used in the commission of the offense in favor of the government and forwarding said weapon to the Firearms and Explosives Unit in Camp Crame, Quezon City through the Provincial Command PNP, Lingayen, is **VACATED** and **SET ASIDE**. The custodian of the subject firearm is hereby ordered to release said firearm to petitioner Catalina Security Agency within 15 days from receipt of this decision, unless it is being kept by the custodian for some other lawful reason. *Cost de oficio*.

SO ORDERED.

Vitug, (Acting Chief Justice), Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Davide, Jr., C.J., and Puno, J., on official leave.

[1] Records, pp. 37-38.

[2] Rollo, p. 89.

[3]Id. at 1.

[4] TSN, 14 February 2001, p. 3 (Francisca Mercado).

[5] TSN, 20 February 2001, pp. 6-10 (Fernando Azur).

[6]Id. at 22.

[7]Id. at 24.

[8] TSN, 21 February 2001, pp. 4-6 (Manolo Velasco).

[9] TSN, 12 March 2001, pp. 3-4 (SPO2 Leonardo S. Marilag).

[10] TSN, 21 March 2001, pp. 11-13 (Rogelio Negrillo).

[11]Id. at 17.

[12]Id. at 17-18.

[13]Id. at 20.

[14] Id.

[15] Id. at 21.

[16] Records, p. 158.

[17] Rollo (G.R. No. 149362), pp. 51-52.

[18] Revised Penal Code, Article 11, No. 1.

[19] *People v. Arnante*, G.R. No. 148724, 15 October 2002, 391 SCRA 155, 161 citing *People v. Langres*, G.R. No. 128754, 13 October 1999, 316 SCRA 769, 785.

[20] Records, p. 7.

[21] Id.

[22] *People v. Cabiles, Sr.*, G.R. No. 115216, 5 July 1996, 258 SCRA 271, 278 citing *People v. Galit*, G.R. No. 97432, 1 March 1994, 230 SCRA 486, 496.

[23] Records, p. 13.

[24] Id.

[25] *People v. Bautista*, G.R. No. 109800, 12 March 1996, 254 SCRA 621, 627.

[26] *People v. Alba*, G.R. No. 107715, 25 April 1996, 256 SCRA 505, 512.

[27] *People v. Viernes*, G.R. No. 118091, 3 October 1996, 262 SCRA 641, 652-653.

[28] TSN, 20 February 2001, p. 24 (Fernando Azur).

[29] *People v. Deopante*, G.R. No. 102772, 30 October 1996, 263 SCRA 691, 704-705.

[30] *People v. Balamban*, G.R. No. 119591, 21 November 1996, 264 SCRA 619, 630; *People v. Isleta*, G.R. No. 114971, 19 November 1996, 264 SCRA 374, 388.

[31] *People v. Escandor*, G.R. No. 95049, 9 December 1996, 265 SCRA 444, 452.

[32] G.R. No. 130523, 29 January 2002, 375 SCRA 69, 79.

[33] G.R. Nos. 131736-37, 11 March 2002, 378 SCRA 685, 699-700.

[34] G.R. Nos. 144340-42, 6 August 2002, 386 SCRA 391.

[35] Id. at 395, 397-399.

[36] *People v. Lopez*, G.R. Nos. 141112-13, 14 January 2003, 395 SCRA 210, 221.

[37] *People v. Agcaoili*, 206 SCRA 606 (1992).

[38] Section 1. Section 1 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:

SECTION. 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms and Ammunition.— . . .

. . .

If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.

[39] Section 5. Coverage of the Term Unlicensed Firearm.—The term unlicensed firearm shall include:

- 1) firearms with expired licenses; or
- 2) unauthorized use of licensed firearm in the commission of the crime.

[40] ART. 249. Homicide. – Any person, who not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by reclusion temporal.

[41] See *People v. Medina*, G.R. No. 126575, 11 December 1998, 300 SCRA 98, 114.

[42] *People v. Jakosalem*, G.R. No. 130506, 28 February 2002, 378 SCRA 254, 264-265.

[43] *People v. San Pascual*, G.R. 137746, 15 October 2002, 391 SCRA 49, 64-65; *People v. Dorio*, G.R. No. 130660, 5 September 2002, 388 SCRA 398, 408.

[44] *People v. Cortezano*, G.R No. 140732, 29 January 2002, 375 SCRA 95, 118.

[45] *People v. San Pascual*, supra, note 42 at 65.

[46] Supra, p. 2.

[47] Art. 45. Confiscation and forfeiture of the proceeds or instruments of the crime.—Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and instruments or tools with which it was committed.

Such proceeds or instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed.

[48] No. 05510-CR, 28 June 1966, 64 O.G. 785.

[49] G.R. No. 126947, 15 July 1999, 310 SCRA 343, 352.

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