

## PEOPLE OF THE PHILIPPINES, APPELLEE, VS. QUIRICO DAGPIN Y ESMADE, APPELLANT.

*G.R. No. 149560. June 10, 2004*

Ponente: CALLEJO, SR., J.

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### CALLEJO, SR., J.:

This is an appeal from the Decision[1] of the Regional Trial Court of Dipolog City, Branch 8, convicting the appellant Quirico Dagpin y Esmade of murder and sentencing him to suffer the penalty of reclusion perpetua.

The appellant was charged with murder in an Information, the accusatory portion of which reads:

That on March 20, 1996, at about 1:00 o'clock dawn, in Sitio Bababon, Barangay Diwa-an, City of Dapitan, within the jurisdiction of this Honorable Court, the above-named accused, armed with a home-made shotgun, with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shot with the use of a home-made shotgun one NILO CAERMARE thereby resulting to his instantaneous death thereafter.

That as a result of the criminal acts of the accused, the heirs of the victim suffered the following damages to wit:

1. Loss of earning capacity

P20,000.00

2. Death Indemnity

50,000.00

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Total ... P70,000.00

### CONTRARY TO LAW.[2]

The appellant was arraigned, assisted by counsel, and entered a plea of not guilty.

#### The Case for the Prosecution

On November 10, 1991, Danilo Taruc and his friend, Nilo Caermare, went to Barangay Tamion, Dapitan City, because it was a market day. The appellant was a resident of the place. Late in the afternoon, Nilo and Danilo saw the appellant, who was with his friends. Suddenly, the appellant boxed Nilo. As Nilo and Danilo were outnumbered, they could not retaliate.

At 7:00 p.m. on February 29, 1996, Nilo, along with Jose Bulagao and Reynaldo Bantayana, arrived at the Sulangon National High School to attend a dance party later that evening. To pass the time, they had a drinking spree and consumed six bottles of Tanduay rum. At 11:00 p.m., while in the premises of the school, the appellant arrived, armed with a shotgun, and punched Nilo on the mouth. Nilo fled. The appellant aimed his gun at the fleeing Nilo and pulled the trigger three times, but the gun did not fire. Nilo returned, while the appellant fled towards the direction of Sitio Tamion where he resided. Nilo did not report the incident to the police nor filed charges against the appellant for any crime.

Randy Labisig, one of Nilo's nephews, had seen the appellant during fiestas in Barangay Diwa-an, Dapitan City. Randy's sister, Rona Labisig, also used to see the appellant in Sulangon when she was still studying at the Sulangon National High School. The appellant used to ride a bicycle and would pass by the house of her aunt where she stayed.

In the evening of March 19, 1996, Randy attended a dance party at the feeding center in Sitio Bababon, Barangay Diwa-an. At about 1:00 a.m., March 20, 1996, Randy, in the company of his Uncle Nilo, his sisters Rena and Rona, and Mario Aliman, were on their way home from the party. They walked along a narrow trail, single file, with Aliman walking first, followed by Rona; the latter was followed by Rena and Nilo who walked side by side, with Randy at the tail end. Momentarily, a man who wore a dark shirt with a baseball cap on his head came from Randy's left side and inserted himself between Nilo and Randy, in the process pushing the latter to the right side. The man was armed with a long shotgun. Suddenly, the man raised his gun, and, with the muzzle only about a foot away from Nilo's back, pulled the trigger. Nilo fell to the ground.

When they heard the gunfire, Rona and Rena fled, but stopped at a short distance and looked back. In the meantime, Randy was so shocked at the sudden turn of events and attempted to help his uncle. However, the assailant returned, this time, holding an unlighted flashlight and pressed it hard on Randy's chin. Randy then saw the face of the malefactor and recognized him as the appellant, although he did not know the latter's name at the time. The appellant left and returned shortly, this time, armed with the same long shotgun which he used to shoot Nilo. When Randy saw the appellant cock his gun, he fled, fearing that he was about to be shot next. After a short distance, he stopped near where his sisters Rona and Rena were, and looked back. They saw the appellant with three other men, each holding a lighted flashlight which illumined the left side of the appellant's head. Randy, Rona and Rena then fled to the house of Melborga Taruc, about a kilometer away from the place of the shooting, where they spent the rest of the morning.

On March 27, 1996, Randy, Rona and Rena went to the police station and saw the appellant, whom they pointed to the police as the person who shot their uncle. It was only then that they learned the name of their uncle's assassin, Quirico Dagpin. They executed sworn statements of their respective accounts of the killing.

City Health Officer Dr. Bernardino D. Palma performed an autopsy on the cadaver of Nilo and signed a necropsy report containing the following findings:

- Gunshot wounds with fracture of the left fronto-parietal bones.
- Gunshot wounds 9 – with powder burns at left infrascapular area directed downward and anteriorly – 2 pilets (sic) removed at the right chest, one was lost along transit.[3]

The doctor found powder burns on each of the wounds sustained by the victim, signifying that he was shot at close range, at a distance of six inches to two feet.

#### The Case for the Appellant

The appellant denied killing Nilo. He testified that he was from Sitio Tamion which was adjacent to Barangay

Sulangon. He knew Nilo because the latter had a girlfriend in Sulangon, whose name was Reina. He saw Nilo whenever the latter was with his girlfriend in Sulangon. He disliked Nilo's actuations because although the latter was not from Sulangon, he acted as if he was "the king of Saudi Arabia" every time he was there.

On March 19, 1996, Pedro Elcamel came by and told the appellant that his daughter was going to graduate the following day, and that he was giving a party for her at his house. Pedro asked him to come along and butcher pigs for the occasion. He agreed, and went with Pedro to Brgy. Burgos near the boundary of Tamion, about two kilometers from his own house. They arrived at Pedro's place at about 7:00 p.m. The appellant, Falconere, Elcamel and several others butchered a pig and made preparations for the party. The appellant slept at Pedro's house that evening, and went home only in the morning of the next day. He was already at home by 8:00 a.m.

Pedro Elcamel testified that at 6:00 a.m. on March 19, 1996, the appellant was with him at his house in Barangay Tamion, about two kilometers away from that of the appellant. They were there to butcher a pig for the graduation of his daughter, Maricel, the next day. With the help of Falconere and his son, he and the appellant finished butchering the pig at 10:00 p.m. They cooked the meat at 1:00 a.m. He left his house at 6:00 a.m. for his daughter's graduation at the Rizal Memorial Institute in Dapitan City at 8:00 a.m. He and his daughter arrived back home at 1:00 p.m. and saw the appellant helping in serving food to the guests, including the Barangay Captain of Barangay Oyan, his sister's husband. Neither the appellant nor any of the guests told him that there had been a killing the night before.

Rene Jauculan, the Barangay Captain of Barangay Diwa-an, testified that when he learned of the shooting at Sitio Bababon, he was in the company of policemen. Dr. Bernardino Palma arrived at Nilo's house at about 12:00 midnight. The policemen then inquired from the people around who the perpetrators were, but no one knew. He learned from the companions of the victim, Randy and his sisters, Rona and Rena, Reynaldo Bantayana and Danilo Taruc, that they knew the culprits but that they were afraid to divulge the latter's identities as they had not yet been arrested. He then learned that the appellant had been arrested for the crime a month later. He also testified that on February 16, 1996, he received a complaint from the husband of a woman, and a confrontation ensued between Nilo and the complainant. The matter was then settled. The victim was also rumored to be the paramour of his cousin's wife.

SPO2 Ildefonso Jamolod of the Dapitan police station testified that at 9:00 a.m. on March 20, 1996, he and Police Investigator Jonathan Bolado and Dr. Bernardino Palma arrived at the house of Nilo where his cadaver was brought from Sitio Bababon. He talked to Nilo's sister, who told him that before his death, Nilo had two or three enemies. He was also told that the suspect was the appellant, and relayed the information to SPO3 Manuel Acabal. He and Acabal left the next day, March 21, 1996, and stopped by a store beyond the hanging bridge. They asked the store owner where the appellant's house was, and they were told that the appellant stayed up all night in a drinking spree in a house about ten meters away from the store. They looked for the appellant but failed to find him. They told the barangay captain that they wanted to talk to the appellant and would bring the latter to the police station. The following day, March 22, 1996, the barangay captain and the appellant arrived at the police station. SPO2 Jamolod took custody of the appellant and turned him over to SPO3 Acabal. Acabal later told him that there was no sufficient evidence against the appellant.

SPO3 Manuel Acabal testified that he was informed by his subordinates that Nilo and the appellant were known enemies. In the afternoon of March 20, 1996, he and his operatives left the police station, coordinated with the barangay captain and saw the appellant in his house. He was then brought to the police station for identification. The appellant was in the company of police officers when he was identified by the complainant, and was then turned over to Police Investigator SPO3 Julio Galleposo and SPO4 Segundo Balladares.

Gil Dagpin testified that he was a farmer and a carpenter, and the appellant's third cousin. He and Nilo had a disagreement sometime in 1990. During the third week of June 1996, Barangay Captain Tarcisio Bayron told him that there had been a killing, and instructed him to go to the police station. The appellant was also invited for questioning, and the two of them went to the police station in the company of the barangay captain. There were persons in the police station who stayed with the appellant. He and the appellant were entrusted to SPO3 Acabal, who brought them to someone who told them that Nilo had been killed. SPO3 Acabal then investigated them for about an hour. They were allowed to go back home afterwards, but the appellant was later arrested for the killing.

Police Inspector Pepe Nortal testified that per the police blotter entry at 1:00 a.m. of March 20, 1996, the victim's assailant was still unidentified. A team of police investigators and the Assistant City Health Officer proceeded to the crime scene to investigate the killing.

After trial, the court rendered judgment finding the appellant guilty beyond reasonable doubt of murder. The decretal portion of the decision reads:

Wherefore, for all of the foregoing considerations and finding the guilt of the accused established beyond reasonable doubt, herein accused Quirico Dagpin y Esmade is convicted of the crime of MURDER charged against him, as principal by direct participation, and in the light of Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act 7659, hereby sentenced to suffer the penalty of Reclusion Perpetua, to indemnify the heirs of the deceased victim Nilo Caermare, the sum of P50,000.00 by way of civil damages for (sic) death of the victim and the added sum of P20,000.00 for consequential damages, and to pay the cost.

SO ORDERED.[4]

The appellant now assails the decision of the trial court contending that:

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED BASED ON REASONABLE DOUBT.[5]

The appellant avers that the trial court erred in convicting him of the crime charged on the basis mainly of his having been identified by Randy, Rona and Rena at the police station on March 27, 1996. He was not assisted by counsel when the three pointed to him as the culprit in the police station. Hence, according to the appellant, such identification is inadmissible in evidence.

The appellant also contends that the trial court erred in not sentencing him to an indeterminate penalty, since reclusion perpetua is now a divisible penalty with a range of from twenty (20) years and one (1) day to forty (40) years.

For its part, the Office of the Solicitor General asserts that Randy, Rona and Rena, saw and recognized the appellant as the person who shot the victim at the situs criminis. It also maintains that the appellant was not deprived of his constitutional rights when he was identified by the prosecution witnesses at the police station without counsel, because he was not then under custodial investigation. It avers that the penalty meted by the trial court on the appellant is correct.

The Ruling of the Court

The appeal has no merit.

The evidence on record shows that even before the killing of Nilo on March 26, 1996, Randy and Rona had already seen the appellant, although they did not know his name. This can be gleaned from the testimony of Randy:

Q

You said that you have seen the accused prior to the incident at Diwa-an. Can you tell the Honorable Court how many times have you seen him in that place?

A We used to see each other always, Sir.

Q In what occasion (sic) you used to see him?

A I saw him especially during fiestas, Sir.

Q How many fiestas have you seen Quirico Dagpin at Diwa-an?

A Everytime there is (sic) a fiesta, we used to see each other, Sir.

Q In what place (sic) you used to see him at Diwa-an during fiestas?

A In the “Tabo” of that place.

Q

But despite that fact that you used to see him at the “tabo” at Diwa-an, Dapitan City, you don’t know that this guy was actually Quirico Dagpin?

A Yes, Sir.[6]

Rona’s testimony on this matter reads:

Q Prior to the incident at dawn of March 20, 1996, have you ever seen the accused Quirico Dagpin?

A Yes, Sir. There were times when I saw him riding on a bicycle.

Q In what particular place have you seen him in the past?

A In Sulangon, Sir.

Q Where else?

A I used to see him in Sulangon because I once studied in Sulangon.

Q In what particular place did you usually see the accused Quirico Dagpin?

A

I used to see him passing by the house of my aunt Lingling because at the (sic) time, when I was studying in Sulangon, I was staying with my aunt Lingling.

Q Because you usually saw him in the past, that was the reason why you are familiar with his face?

ATTY. PALPAGAN

I object to the question, Your Honor. That is an opinion.

COURT:

Sustain, Compañero.

Q Can you inform the court how many times, more or less, have you seen the accused prior to the incident on March 20, 1996?

A Maybe four (4) times, Sir.[7]

Randy and Rona recognized their uncle’s assassin; they were certain it was the appellant. Randy testified how

he recognized the appellant:

Q

Okay, let's clarify this. The first time you observed (sic) that man, I am referring to the assailant, was when he inserted (sic) between you and the victim while holding the rifle and shot the victim at his back. Then he went away and went back to his place. The next time around, he got a flashlight, pressing it at your chin, forcing you to stand, then he went away again. This time you don't know where he placed the flashlight, got the rifle and cocked it and you ran away. Then he went to your uncle again and shot him the second time. Is that your stand?

A

Yes, Sir. After that I ran away but when I ran away, I turned my face and I saw him because he was lighted by the light coming from the flashlight. He was bringing (sic) with him a rifle and he shot my fallen uncle again.

Q

But in the direct examination, when you were confronted several times even by the Honorable Court, you said you were not able to recognize the person who shot first your uncle and the person who shot again your uncle. Do you recall that?

ATTY. BALISADO:

Your Honor, please, that is (sic) well explained by the witness already. There is no use propounding the same trend of questioning because that is (sic) already explained by the witness.

COURT:

Witness may answer.

A

What I mean is that, at (sic) the first time he inserted himself between us and Nilo Caermare, I was not able to recognize him very well but the second time when he came back, because he was being lighted by the flashlight, that was the time when I was able to recognize him and also the hat he was wearing.

Q

You said in the direct examination that you cannot tell whether that person who shot first your uncle was the same person who pressed the flashlight to your chin, forcing you to stand up?

A

The first time he came near us, I was not able to recognize him. But the second time when he came near us when he came back, because of the hat he was wearing, I was able to recognize him as the very person who went first near us and inserted himself between myself and Nilo Caermare.

Q

But all you have told to this Honorable Court in my questions a while ago is that part of the body of the assailant, especially the back part of his body was lighted, do you still recall that?

A It is not exactly the center but at the back of his neck that was lighted. Also on the left side of his head.

Q

All those times, from the time he inserted (sic) between you and the victim to the time you held or he held the

flashlight and pressed it to your chin and the next time you observed him shot again your uncle, he was wearing a hat?

A Yes, Sir.

Q That is (sic) why you were able to identify him because of the hat that he was wearing?

A

That includes also the left side of his face that was being lighted by the flashlight.[8]

...

Q Aside from the flashlight, was the man holding a gun?

A No, Sir, he was not bringing (sic) a gun but he was bringing (sic) a flashlight.

Q You said you recognized the man. Who was that whom you recognized?

ATTY. PALPAGAN:

I pray, Your Honor, that the question be clarified. It is vague. It was not said that if that person identified by the witness first was the one who shot the victim.

C O U R T :

Not actually the man who shot but the person who pressed the flashlight to his chin.

A Yes, Sir, I recognize the person.

Q Who was that person whom you recognized who pressed the flashlight to your chin?

A The man who came to me was that man.

COURT INTERPRETER:

Witness pointing to a man whom he recognized just a while ago as Quirico Dagpin, the accused in this case.

Q

According to you, when that man whom you pointed to as Quirico Dagpin pressed his flashlight to your chin, you were forced to stand up, is that correct?

A Yes, Sir.

Q What did you do when you were forced to stand up?

A

When that man pressed the flashlight to my chin, I was forced to stand up and when I was standing, the man stepped backward and when he returned, he was bringing (sic) with him a gun.

Q How did that man hold the gun?

A

When he came near me, he was bringing (sic) the gun holding it with his two hands but the muzzle was pointed downward.

Q What was your reaction when you saw that he was holding a gun pointed downwards?

A

When that man who was bringing (sic) that gun with the muzzle pointed downward came near me and because I noticed that there was a sound cocking the gun, I was so afraid that he might fire the gun again. That was the time when I ran away.[9]

Randy testified that the man who returned with the flashlight and with the gun was the same man who shot his uncle:

Q And that person was not holding an arm or weapon?

A At that time, he was bringing (sic) with him a flashlight.

C O U R T :

You have not noticed him carrying a firearm?

A

But after he pressed that flashlight to my chin, Your Honor, he moved away again and when he returned, he was bringing (sic) with him a gun.

C O U R T :

Proceed.

Q

Do you mean to say that the person who pressed the flashlight to your chin was the same person who got again with (sic) a gun?

A The same person, Sir.

Q

So, because of the pressure exerted to your chin by that person holding the flashlight, you stood up and when you heard the cocking of the rifle, you ran away?

A Yes, Sir, I moved forward.

Q Have you actually seen the person cocking his rifle?

A Yes, Sir, because he was very near.[10]

Rona testified that she herself recognized the appellant, thus:

Q You said you heard a gunfire and you turned your back and ran forward and stopped at a little distance?

A

Yes, Sir. I ran at a little distance and then I turned my back to the place where the gunburst occurred and then I saw a man wearing [a] black t-shirt and dark pants and a hat at the time.

Q What happen (sic) while you were looking back, what did you see?

A

When I looked back to the place, I saw that man at the time and he was bringing (sic) with him a flashlight and so I just kept looking and when he returned back (sic), he was bringing (sic) with him a gun and there were lights of flashlights coming from his back (sic).

Q Towards what direction was the flashlight directed?

A

The lights of the flashlights (sic) were directed to the place where my Uncle Nilo was but I did not see my uncle and the light lighted the left side of the face of that man wearing a hat.

Q What did that man wearing, a hat, dark t-shirt and pants do?

A

I noticed that the man wearing a hat and dark t-shirt and pants was holding a gun and pointed it downward to the place where my Uncle Nilo was and my brother Randy ran away and when that gun burst or fired, I also ran away.

Q Did you recognize that man who fired the gun?

A Yes, Sir.

Q Can you point to that man if he is in court?

A Yes, Sir.

COURT INTERPRETER:

Witness pointing to a man who is sporting a wrist watch with his hands folded in front of him and is known already to the court as (sic) accused Quirico Dagpin.

ATTY. BALISADO:

If your Honor, please, may we ask that the accused be made to stand up for identification purposes?

COURT:

He is already known to the court.

ATTY. BALISADO:

How far were you from that man who fired the gun?

A

I was only very near because I was situated at the lower portion of the trail which has a distance of about one (1) fathom from the man who fired the gun.

Q

You said that the left side of the face of the man was lighted by a flashlight directed towards the ground where your uncle was. How many flashlights did you notice?

A Three, Sir.

Q From what direction did the lights come from in relation to the gunman?

A

The two (2) lights coming from the flashlights were situated at an upper portion and the third flashlight was situated on the left side which caused the lighting of the left side of the man who fired the gun.

Q

You said after hearing the second gunburst and seeing that person who fired the gun, you ran away. Towards what direction did you run?

A

Towards our road because I was left behind in that place because my brother was already ahead of me.

Q

All right, you said you heard the gunburst and saw that (sic) man who fired the gun. The gun was pointed down. That was the second gunfire. To whom was that gunfire directed?

A

As I narrated a while ago, the gun was pointed downward to the ground.[11]

No less than the appellant's witness, Barangay Captain Rene Jauculan, testified that when he talked with Rona and Randy after the shooting, they confirmed to him that they knew the suspects, but were afraid to divulge their identities before they were arrested:

Q

Now, you said that the victim in this case had companions in going home, did you try to ask who were his companions at the time of the incident when you were already in (sic) the scene of the incident?

A Yes, Sir.

Q Who were they, if you did ask his companions?

A

The two Labisigs.

Q Rona Labising (sic) and Randy Labisig, right?

A Yes, Sir.

Q Did you ask also Joselito Bantayana?

A I do not know.

Q How about Danilo Taroc (sic)?

A Yes, I think he was with me.

Q How about Reynaldo Matugan?

A I am not very certain, Sir.

Q How about Reina Labisig?

A She was with him.

Q Now, did you ask them, what really happened if they were there at the scene of the incident?

A Yes, Sir, I asked them.

Q Where did you ask them, in the house or at the scene of the incident?

A In the house.

Q

You mean, when you went to a certain place, these persons I mentioned or his companions were no longer there?

A They were not there anymore.

Q Now, you had an occasion to ask them in what house?

A In the house of the father of the victim.

Q

Did they tell you that they have now the suspects but they were still afraid to arrest them because there were no policemen around?

A Yes, Sir.

Q And that was what they told you, right?

A Yes, Sir.

Q

And, of course, they told you that they could not tell you because they were afraid because the suspects were not yet arrested?

A Yes, Sir.

Q And because of that you did not insist in asking them the name of the suspects, right?

A I did not.

Q Because you leave (sic) this matter to the police?

A Yes, Sir.[12]

We have ruled that illumination produced by a kerosene lamp or a flashlight is sufficient to allow identification of persons.[13]

The trial court gave credence and probative weight to the testimonies of Randy and Rona. The well-settled rule is that findings of a trial court on the credibility of witnesses deserve great weight, as the trial judge has a clear advantage over the appellate magistrate in appreciating testimonial evidence. The trial judge is in the best position to assess the credibility of the witness as he had the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination. Where, as in this case, there is no showing that the trial court ignored, misconstrued or misinterpreted cogent facts and circumstances of substance which, if considered, will alter the outcome of the case. The findings of the trial court are accorded high respect, if not conclusive effect.[14]

The appellant's denial of the crime charged cannot prevail over the positive declarations of prosecution witnesses Randy and Rona. The defense of alibi is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters. Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law.[15]

The appellant was not deprived of his right under the Constitution to be assisted by counsel because the appellant was not subjected to a custodial investigation where he was identified by the prosecution's witnesses in a police line-up.[16] Indeed, the appellant even denied that there was no police line-up and that he was merely with the police officers when the prosecution's witnesses arrived in the police station.

The killing was qualified by treachery. There is treachery when the offender commits any of the crimes against persons, employing means or methods in the execution thereof which tend, directly and specifically, to insure its execution, without risk to the offender, arising from the defense which the offended party might make.[17] The essence of treachery is that the attack is deliberate and without warning, done in swift and unexpected manner of execution, affording the hapless and unsuspecting victim no chance to resist or escape.[18] In this case, the victim was shot from behind, at close range, impervious to the peril to his life. The victim was unarmed and had no chance or means to defend himself or avert the appellant's assault.

Although the Information alleges that the appellant used a gun in killing the victim, there is no allegation therein that the appellant had no license to possess the firearm. Neither is there proof that he had no such license. Under Rule 110, Section 8 of the Revised Rules of Criminal Procedure, an aggravating circumstance must be alleged in the Information. While the rule became effective after the crime was committed, the same must be applied retroactively because it is favorable to the appellant.[19]

Under Article 248 of the Revised Penal Code, as amended by Rep. Act No. 7659, murder is punishable by reclusion perpetua to death. Where no mitigating or aggravating circumstance attended the commission of the crime, the proper penalty is reclusion perpetua, conformably to Article 63 of the Revised Penal Code.

We sustain the award of P50,000 as civil indemnity to the heirs of the victim without need of any proof.[20] Exemplary damages in the amount of P25,000[21] must, likewise, be awarded, in accordance with Article 2230 of the Civil Code, the qualifying circumstance of treachery being present. The heirs of the victim are entitled to moral damages of P50,000,[22] the prosecution having proved, through the father of the victim, the factual basis therefor. The heirs are not entitled to actual damages in the form of the victim's unearned income because the prosecution failed to present any documentary evidence to prove the victim's employment and the amount of his monthly salary.

IN LIGHT OF ALL THE FOREGOING, the appealed Decision of the Regional Trial Court of Dipolog City, Branch 8, finding the appellant Quirico Dagpin y Esmade guilty beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, as amended, is hereby **AFFIRMED** with **MODIFICATIONS**. The appellant Quirico Dagpin y Esmade is **ORDERED** to pay the heirs of the victim, Nilo Caermare, Fifty Thousand Pesos (P50,000) as civil indemnity; Fifty Thousand Pesos (P50,000) as moral damages; and Twenty-Five Thousand Pesos (P25,000) as exemplary damages. The award of actual damages is deleted.

**SO ORDERED.**

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

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[1] Penned by Judge Pacifico M. Garcia.

[2] Records, p. 1.

[3] Id. at 79.

[4] Rollo, p. 36.

- [5] Id. at 48.
- [6] TSN, 9 January 1997, pp. 6-7.
- [7] TSN, 10 January 1997, pp. 19-21.
- [8] TSN, 9 January 1997, pp. 21-25.
- [9] TSN, 8 January 1997, pp. 18-21.
- [10] TSN, 9 January 1997, pp. 15-16.
- [11] TSN, 10 January 1997, pp. 11-15.
- [12] TSN, 29 March 2000, pp. 26-28.
- [13] *People vs. Penillos*, 205 SCRA 546 (1992); *People vs. Loste*, 210 SCRA 614 (1992).
- [14] *People vs. Caabay*, G.R. No. 129961-62, August 25, 2003.
- [15] *People vs. Errol Rollon*, G.R. No. 131915, September 3, 2003.
- [16] *People vs. Amestuzo*, 361 SCRA 184 (2001).
- [17] *People vs. Ruben Cañete, et al.*, G.R. No. 138366, September 11, 2003.
- [18] *People vs. Eusebio Duban*, G.R. No. 141217, September 26, 2003.
- [19] *People vs. Caabay*, *supra*.
- [20] *People vs. Errol Rollon*, *supra*.
- [21] *People vs. Nicolas*, 400 SCRA 217 (2003).
- [22] *People vs. Caabay*, *supra*.

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