PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO DAGANI Y REYES AND OTELLO SANTIANO Y LEONIDA, ACCUSED-APPELLANTS.

G.R. NO. 153875. August 16, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

For review before the Court is the Decision dated June 20, 2002[1] of the Court of Appeals (CA) which affirmed the Decision of the Regional Trial Court of the City of Manila, Branch 12 (RTC), dated February 18, 1993, in Criminal Case No. 89-77467, finding the accused-appellants Otello Santiano y Leonida (Santiano) and Rolando Dagani y Reyes (Dagani) guilty of the crime of Murder.

The accusatory portion of the Information reads:

> That on or about September 11, 1989, in the City of Manila, Philippines, the said accused conspiring and confederating together and mutually helping each other did then and there, willfully, unlawfully and feloniously, with intent to kill, evident premeditation and treachery, attack, assault and use of personal violence upon one ERNESTO JAVIER Y FELIX by then and there shooting him with a .38 caliber revolver, thereby inflicting upon the said ERNESTO JAVIER Y FELIX mortal gunshot wounds which were the direct and immediate cause of his death thereafter.
>
> CONTRARY TO LAW.[2]

Upon arraignment, the appellants pleaded not guilty. Trial ensued where the prosecution adduced evidence to establish the following:

At about 4:45 in the afternoon of September 11, 1989, a group composed of Ernesto Javier (Javier), Lincoln Miran (Miran), and two other individuals had been drinking at the canteen located inside the compound of the Philippine National Railways (PNR) along C.M. Recto Avenue, Tondo, Manila. All of a sudden, appellants, who were security officers of the PNR and covered by the Civil Service Rules and Regulations, entered the canteen and approached the group. Appellant Dagani shoved Miran, causing the latter to fall from his chair. Dagani then held Javier while Santiano shot Javier twice at his left side, killing the latter.

The defense proceeded to prove their version of the facts:

Appellants testified that they were ordered by their desk officer to investigate a commotion at the canteen. Upon reaching the place, Santiano ordered his co-accused, Dagani, to enter, while the former waited outside.

Dagani approached Javier who had been striking a bottle of beer on the table. Javier then pulled out a .22 caliber revolver and attempted to fire at Dagani, but the gun failed to go off. Then suddenly, while outside the canteen, Santiano heard gunfire and, from his vantage point, he saw Javier and Dagani grappling for a .22 caliber gun which belonged to Javier. During the course of the struggle, the gun went off, forcing Santiano to fire a warning shot. He heard Javier's gun fire again, so he decided to rush into the canteen. Santiano then shot Javier from a

distance of less than four meters.

Appellants invoked the justifying circumstances of self-defense and lawful performance of official duty as PNR security officers. They also argued that the prosecution failed to establish treachery and conspiracy.

The RTC rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, finding both accused Otello Santiano y Leonida and Rolando Dagani y Reyes guilty beyond reasonable doubt of the crime of Murder defined and punished under Art. 248, RPC, with the presence of the mitigating circumstance of voluntary surrender and granting them the benefit of [the] Indeterminate Sentence Law, both accused are hereby sentenced to each suffer an Indeterminate prison term of TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum, to EIGHTEEN (18) YEARS and ONE (1) DAY of reclusion temporal x x x.
>
> Both accused are hereby ordered to indemnify the heirs of the victim the sum of P50,000.00 as death indemnity, the sum of P31,845.00 as funeral and burial expenses, the sum of P30,000.00 as and for [sic] attorney's fees and the further sum of P1,000.00 per appearance of counsel.
>
> Both accused shall be credited with the full extent of their preventive imprisonment. Both accused are hereby committed to the Director, National Penitentiary, Muntinlupa, Metro Manila for service of Sentence.
>
> SO ORDERED.[3]

In brief, the RTC held that appellants failed to prove that Javier attempted to squeeze the trigger of the .22 caliber gun when he pointed it at Dagani; that during the course of the struggle for the possession of the .22 caliber gun, the danger to the life of the accused ceased to be imminent; that in grappling for the weapon, Dagani "controlled" the hands of Javier and pushed them away from his body; that the appellants failed to produce the two empty shells as physical evidence of the gunfire allegedly caused by Javier; that no points of entry or bullet markings on the walls of the canteen were shown; that, in light of these findings, no unlawful aggression was present on the part of the victim; that the appellants failed to prove that they were on official duty at the time of the incidence; that, since it was not established that Javier actually fired his gun, the injury inflicted upon him cannot be regarded as a necessary consequence of the due performance of an official duty; that the appellants were acting in conspiracy; that the qualifying circumstance of treachery attended the killing, considering that Javier had been shot while his hands were being held by Dagani and as his body was out of balance and about to fall; and that the mitigating circumstance of voluntary surrender should be appreciated in favor of the appellants.

The appellants appealed to the CA and assigned the following errors:

> I
>
> THE LOWER COURT GRAVELY ERRED IN NOT APPRECIATING SELF DEFENSE ON THE PART OF THE ACCUSED.
>
> II
>
> THE LOWER COURT ERRED WHEN IT FAILED TO CONSIDER THE FACT THAT THE ACCUSED-APPELLANTS WERE IN LAWFUL PERFORMANCE OF AN OFFICIAL DUTY.
>
> III
>
> THE LOWER COURT GRAVELY AND SERIOUSLY ERRED IN RULING THAT THERE WAS CONSPIRACY.
>
> IV

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> THE LOWER COURT GRAVELY ERRED IN FINDING THAT THE PROSECUTION WAS ABLE TO ESTABLISH BEYOND REASONABLE DOUBT THAT THE ACCUSED ARE GUILTY OF MURDER.[4]

The CA rendered its Decision, the dispositive portion of which states:

> WHEREFORE, the appealed judgment of conviction is MODIFIED. Appellants are hereby sentenced to reclusion perpetua. The award for attorney's fees and appearance fees for counsel are hereby deleted. In all the other aspects, the appealed decision is maintained.
>
> Let the entire records of the case be elevated to the Supreme Court for the mandated review.
>
> SO ORDERED.[5]

The CA affirmed the findings of fact as well as the salient portions of the RTC Decision, but deleted the award of attorney's fees and the per appearance fees of counsel since, the CA reasoned, the instant case is criminal in nature which is under the control of the public prosecutor, and, additionally, the RTC failed to justify this award in the body of its Decision. And last, the CA found that the RTC erroneously applied the Indeterminate Sentence Law since the penalty for Murder, at the time of the incident, was reclusion perpetua which is an indivisible penalty to be imposed in its entirety, regardless of the attending mitigating circumstance of voluntary surrender.

Appellants are now before this Court submitting for resolution the same matters argued before the CA. Through their Manifestation dated February 11, 2003,[6] appellants prayed to dispense with the filing of additional briefs.

As of date, the records show that despite the efforts exerted by the surety and the responsible law officers to locate the appellants, the latter could not be found and have jumped bail.[7]

The appeal is partly meritorious.

Appellants argue that the courts a quo misappreciated the facts and erred in finding that there was no unlawful aggression on the part of the victim. They insist that the victim, Javier, had been armed with a revolver at the time he was struggling with appellant Dagani; that the former "could have easily killed the latter;" that, given the fact that Javier had been drinking, "it is quite probable for Javier to act harshly and aggressively towards peace officers such as the accused;"[8] and that Javier actually fired three shots from his .22 caliber gun.[9]

We are not convinced.

When self-defense is invoked, the burden of evidence shifts to the accused to show that the killing was legally justified. Having owned the killing of the victim, the accused should be able to prove to the satisfaction of the Court the elements of self-defense in order to avail of this extenuating circumstance. He must discharge this burden by clear and convincing evidence. When successful, an otherwise felonious deed would be excused, mainly predicated on the lack of criminal intent of the accused. Self-defense requires that there be (1) an unlawful aggression by the person injured or killed by the offender, (2) reasonable necessity of the means employed to prevent or repel that unlawful aggression, and (3) lack of sufficient provocation on the part of the person defending himself. All these conditions must concur.[10]

Unlawful aggression, a primordial element of self-defense, would presuppose an actual, sudden and unexpected attack or imminent danger on the life and limb of a person – not a mere threatening or intimidating attitude[11] – but most importantly, at the time the defensive action was taken against the aggressor.[12] To invoke self-defense successfully, there must have been an

unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.[13]

In the instant case, the assertions that it was "quite probable" that Javier, during the course of the struggle for the firearm, "could have easily killed" the appellants are uncertain and speculative. There is aggression in contemplation of the law only when the one attacked faces real and immediate threat to one's life. The peril sought to be avoided must be imminent and actual, not just speculative.[14]

To sum up the matter, we quote the findings of the CA:

> The defense was unable to prove that there was unlawful aggression on the part of Javier. They were unable to present evidence that the victim actually fired his gun. No spent shells from the .22 caliber pistol were found and no bullets were recovered from the scene of the incident. Javier also tested negative for gunpowder residue. Moreover, the trial court found appellant Dagani's account of the incident to be incredible and self-serving. In sum, the defense presented a bare claim of self-defense without any proof of the existence of its requisites.[15]

Even if it were established that Javier fired his gun as the appellants so insist, the imminence of the danger to their lives had already ceased the moment Dagani held down the victim and grappled for the gun with the latter. After the victim had been thrown off-balance, there was no longer any unlawful aggression that would have necessitated the act of killing.[16] When an unlawful aggression that has begun no longer exists, the one who resorts to self-defense has no right to kill or even to wound the former aggressor.[17] When Javier had been caught in the struggle for the possession of the gun with appellant Dagani, the grave peril envisaged by appellant Santiano, which impelled him to fire at the victim, had then ceased to a reasonable extent,[18] and undoubtedly, Santiano went beyond the call of self-preservation when he proceeded to inflict the excessive and fatal injuries on Javier, even when the alleged unlawful aggression had already ceased.[19]

The second element of self-defense demands that the means employed to neutralize the unlawful aggression are reasonable and necessary. It is settled that reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is rational equivalence.[20] The circumstances in their entirety which surround the grappling of the firearm by Dagani and Javier, such as the nature and number of gunshot wounds sustained by the victim[21] which amounted to two fatal wounds,[22] that Dagani was able to restrain the hands of Javier and push them away from his body,[23] that Dagani was larger than Javier and had finished Special Weapons and Tactics (SWAT) hand-to-hand combat training,[24] and Javier, as admitted by the appellants, was inebriated at the time of the incident,[25] do not justify appellant Santiano's act of fatally shooting the victim twice.[26]

All things considered, the appellants' plea of self-defense is not corroborated by competent evidence. The plea of self-defense cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but is in itself extremely doubtful.[27] Whether the accused acted in self-defense is a question of fact. Like alibi, the affirmative defense of self-defense is inherently weak because, as experience has demonstrated, it is easy to fabricate and difficult to disprove.[28] This Court, therefore, finds no reversible error on the part of the courts a quo in rejecting the claim of self-defense.

Appellants set up the defense that they were in the lawful performance of their official duties. They specifically aver that they had been ordered by their desk officer to proceed to the canteen in response to a telephone call stating that there was a group "creating trouble;" that they were in the call of duty and exercising their functions and responsibilities as members of the PNR Civil Security Office to preserve peace and order and protect the lives and property in the PNR Compound;[29] and that, invoking jurisprudence, as security officers in the performance of duty, like the police, they must stand their ground and overcome the opponent, and the force that may be exerted must differ from that which ordinarily may be offered in self-defense.[30]

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Article 11 of the Revised Penal Code provides that a person who acts in the fulfillment of a duty or in the lawful exercise of a right or office does not incur any criminal liability. Two requisites must concur before this defense can prosper: 1) the accused must have acted in the performance of a duty or in the lawful exercise of a right or office; and 2) the injury caused or the offense committed should have been the necessary consequence of such lawful exercise.[31] These requisites are absent in the instant case.

As found by the CA:

> The defense failed to prove that the security officers were in fact on duty at the time they were at the canteen. The trial court gave weight to the fact that the appellants were unable to submit their daily time records to show that they were on duty at the time. Appellants' assertion that they were ordered to go on 24-hour duty was belied by PNR Security Investigator Rolando Marinay's testimony that PNR security officers work in two 12-hour shifts, from 7:00 a.m. to 7:00 p.m. and from 7:00 p.m. to 7:00 a.m.
>
> Moreover, since it was not established that Javier fired his gun, the injury inflicted upon him cannot be regarded as a necessary consequence of appellants' due performance of an official duty.[32]

As stated, considering that the imminent or actual danger to the life of the appellants had been neutralized when Dagani grappled with Javier and restrained his hands; that Javier had been thrown off-balance; that Dagani had been specially trained for these purposes; and that Javier had been drinking immediately prior to the scuffle, this Court holds that the fatal injuries that appellant Santiano inflicted on the victim cannot be deemed to be necessary consequences of the performance of his duty as a PNR security officer.[33] While it is recognized that police officers – if indeed the appellants can be likened to them – must stand their ground and overwhelm their opponents, in People v. Ulep,[34] this Court counseled:

> The right to kill an offender is not absolute, and may be used only as a last resort, and under circumstances indicating that the offender cannot otherwise be taken without bloodshed. The law does not clothe police officers with authority to arbitrarily judge the necessity to kill. It may be true that police officers sometimes find themselves in a dilemma when pressured by a situation where an immediate and decisive, but legal, action is needed. However, it must be stressed that the judgment and discretion of police officers in the performance of their duties must be exercised neither capriciously nor oppressively, but within reasonable limits. In the absence of a clear and legal provision to the contrary, they must act in conformity with the dictates of a sound discretion, and within the spirit and purpose of the law. We cannot countenance trigger-happy law enforcement officers who indiscriminately employ force and violence upon the persons they are apprehending. They must always bear in mind that although they are dealing with criminal elements against whom society must be protected, these criminals are also human beings with human rights.[35]

But this Court cannot agree with the findings of the courts a quo that the appellants were in conspiracy.

The RTC simply held:

> The Information cited conspiracy of the accused. Since it can also be committed thru simultaneous/concerted action and considering that Javier was shot by Santiano while being held by Dagani, under jurisprudence, conspiracy is present.[36]

The tenor of the factual findings of the CA is equally unsatisfactory:

> Moreover, the facts show that Javier was shot by appellant Santiano as he was being subdued by appellant Dagani. The trial court held that the manner of the attack was indicative of a joint purpose and design by the appellants.[37]

Courts must judge the guilt or innocence of the accused based on facts and not on mere conjectures, presumptions, or suspicions.[38] Other than the plain fact that the victim had been shot by one of the accused while being held

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by a co-accused, there is no other evidence that the appellants were animated by the same purpose or were moved by a previous common accord. It follows that the liability of the accused must be determined on an individual basis. While no formal agreement is necessary to establish conspiracy because conspiracy may be inferred from the circumstances attending the commission of the crime, yet, conspiracy must be established by clear and convincing evidence.[39]

This Court has held that even if all the malefactors joined in the killing, such circumstance alone does not satisfy the requirement of conspiracy because the rule is that neither joint nor simultaneous action is per se sufficient proof of conspiracy. Conspiracy must be shown to exist as clearly and convincingly as the commission of the offense itself.[40] Thus, even assuming that Javier was simultaneously attacked, this does not prove conspiracy. No evidence was presented to show that the appellants planned to kill Javier or that Dagani's overt acts facilitated that alleged plan. The prosecution did not establish that the act of Dagani in trying to wrestle the gun from Javier and in the process, held the latter's hands, was for the purpose of enabling Santiano to shoot at Javier. The prosecution had the burden to show Dagani's intentional participation to the furtherance of a common design and purpose[41] or that his action was all part of a scheme to kill Javier. That Dagani did not expect Santiano to shoot the victim is established when Santiano testified that Dagani "seem[ed] to be shocked, he was standing and looking at the victim" as Javier gradually fell to the ground.[42] And since Dagani's conviction can only be sustained if the crime had been carried out through a conspiracy duly proven, in view of the failure of the prosecution to discharge that burden, this Court is constrained to acquit him.

And this Court cannot say that treachery attended the attack. The RTC declared:

> [T]he Court believes that Javier was shot while his body was out-balanced and about to fall to the right side and while his hands were being held by Dagani. Javier, therefore, was shot at when he has no means to defend himself, hence, the killing was attended by the qualifying circumstance of treachery.[43]

which the CA affirmed as follows:

> The findings of the court a quo clearly showed that Javier was being held down and could not effectively use his weapon. As such, the trial court held that Javier could not be considered to be an armed man as he was being held down and was virtually helpless.
>
> It has been held that when an assault is made with a deadly weapon upon an unarmed and unsuspecting victim who [was] given no immediate provocation for the attack and under conditions which made it impossible for him to evade the attack, flee or make [a] defense, the act is properly qualified as treachery, and the homicide resulting therefrom is classified as murder.[44] x x x

Treachery under par.16 of Article 14 of the Revised Penal Code is defined as the deliberate employment of means, methods or forms in the execution of a crime against persons which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the intended victim might raise. Treachery is present when two conditions concur, namely: (1) that the means, methods and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and (2) that such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person.[45]

This Court has held that the suddenness of the attack, the infliction of the wound from behind the victim, the vulnerable position of the victim at the time the attack was made, or the fact that the victim was unarmed, do not by themselves render the attack as treacherous.[46] This is of particular significance in a case of an instantaneous attack made by the accused whereby he gained an advantageous position over the victim when the latter accidentally fell and was rendered defenseless.[47] The means employed for the commission of the crime or the mode of attack must be shown to have been consciously or deliberately adopted by the accused to insure the

consummation of the crime and at the same time eliminate or reduce the risk of retaliation from the intended victim.[48] For the rules on treachery to apply, the sudden attack must have been preconceived by the accused, unexpected by the victim, and without provocation on the part of the latter.[49] Treachery is never presumed. Like the rules on conspiracy, it is required that the manner of attack must be shown to have been attended by treachery as conclusively as the crime itself.[50]

The prosecution failed to convincingly prove that the assault by the appellants had been deliberately adopted as a mode of attack intended to insure the killing of Javier and without the latter having the opportunity to defend himself. Other than the bare fact that Santiano shot Javier while the latter had been struggling with Dagani over the possession of the .22 caliber gun, no other fact had been adduced to show that the appellants consciously planned or predetermined the methods to insure the commission of the crime, nor had the risk of the victim to retaliate been eliminated during the course of the struggle over the weapon, as the latter, though struggling, had not been completely subdued. As already stated, this Court must emphasize that the mere suddenness of the attack, or the vulnerable position of the victim at the time of the attack, or yet even the fact that the victim was unarmed, do not by themselves make the attack treacherous.[51] It must be shown beyond reasonable doubt that the means employed gave the victim no opportunity to defend himself or retaliate, and that such means had been deliberately or consciously adopted without danger to the life of the accused.[52]

For these reasons, the Court is inclined to look upon the helpless position of Javier as merely incidental to the attack, and that the decision to shoot Javier was made in an instant.[53]

Considering the rule that treachery cannot be inferred but must be proved as fully and convincingly as the crime itself, any doubt as to its existence must be resolved in favor of Santiano. Accordingly, for failure of the prosecution to prove treachery to qualify the killing to Murder, appellant Santiano may only be convicted of Homicide.[54] The penalty, therefore, under Article 249 of the Revised Penal Code, as amended, is reclusion temporal.

The Office of the Solicitor General is correct in that the courts a quo failed to consider the aggravating circumstance of taking advantage of official position under Article 14 (1) of the Revised Penal Code, since the accused, a PNR security officer covered by the Civil Service, committed the crime with the aid of a gun he had been authorized to carry as such.[55] Considering that the mitigating circumstance of voluntary surrender, as duly appreciated by the courts a quo, shall be offset against the aggravating circumstance of taking advantage of official position, the penalty should be imposed in its medium period, pursuant to Article 64 (4) of the aforesaid Code.

Applying the Indeterminate Sentence Law, the sentence of appellant Santiano will consist of a minimum that is anywhere within the full range of prision mayor, and a maximum which is anywhere within reclusion temporal in its medium period. This Court hereby fixes it to be from eight (8) years and one (1) day of prision mayor as minimum, to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, as maximum.

As to the award of damages, prevailing jurisprudence entitles the heirs of the deceased to the amount of P50,000.00 as civil indemnity for the death of the victim without need of any evidence or proof of damages.[56]

The CA erred in deleting the attorney's fees and per appearance fees for lack of factual basis. Although the CA is correct in noting that the RTC failed to justify these awards in the body of its Decision, this appeal opens the entire case for review and, accordingly, the records show that the foregoing amounts had been stipulated by the parties,[57] thereby dispensing with the need to prove the same.[58]

As to moral damages, however, the widow of the victim, Erlinda Javier, is not entitled to the same. She did not

testify on any mental anguish or emotional distress which she suffered as a result of her husband's death. No other heirs of Javier testified in the same manner.[59]

Inasmuch as the aggravating circumstance of taking advantage of official position attended the killing, the Court awards exemplary damages in the amount of P25,000.00 in accordance with Articles 2230 and 2234 of the Civil Code and prevailing jurisprudence.[60]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR No. 15304 dated June 20, 2002 is MODIFIED. Appellant Otello Santiano y Leonida is found GUILTY beyond reasonable doubt of Homicide and is sentenced to suffer the penalty of an indeterminate sentence from eight (8) years and one (1) day of prision mayor as minimum to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal as maximum. Appellant Santiano is further ordered to pay the heirs of the victim the amounts of P50,000.00 as death indemnity, P31,845.00 as funeral and burial expenses, P25,000.00 as exemplary damages, P30,000.00 as attorney's fees and P1,000.00 per appearance of counsel. Appellant Santiano shall be credited with the full extent of his preventive imprisonment.

Appellant Rolando Dagani y Reyes is hereby ACQUITTED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Eugenio S. Labitoria and Mariano C. Del Castillo, concurring, CA rollo, pp. 203-210.

[2] Records, p. 1.

[3] CA rollo, pp. 88-89.

[4] Id. at 121.

[5] Id. at 209.

[6] Rollo, pp. 6-7.

[7] Id. at 3-87.

[8] CA rollo, pp. 121-122.

[9] Id. at 123-124.

[10] People v. Dela Cruz, 400 Phil. 872, 878 (2000); Cabuslay v. People, G.R. No. 129875, September 30, 2005, 471 SCRA 241, 253.

[11] People v. Dela Cruz, supra note 10; Toledo v. People, G.R. No. 158057, September 24, 2004, 439 SCRA 94, 109; People v. Escarlos, 457 Phil. 580, 596 (2003).

[12] People v. Dela Cruz, supra note 10.

[13] People v. Escarlos, supra note 11, at 595; People v. Sarmiento, G.R. No. 126145, April 30, 2001, 357 SCRA 447, 457.

[14] People v. Escarlos, supra note 11, at 596; People v. Damitan, 423 Phil. 113, 123 (2001).

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[15] CA rollo, p. 206.

[16] People v. Escarlos, supra note 11, at 597; People v. Calabroso, 394 Phil. 658, 670 (2000); People v. Maalat, 341 Phil. 200, 206 (1997).

[17] People v. Escarlos, supra note 11, at 597; People v. Rabanal, 402 Phil. 709, 715 (2001).

[18] People v. Escarlos, supra note 11, at 597; People v. Geneblazo, 414 Phil. 103, 110 (2001).

[19] People v. Escarlos, id.

[20] Cabuslay v. People, supra note 10, at 262.

[21] See Senoja v. People, G.R. No. 160341, October 19, 2004, 440 SCRA 695, 708; People v. Escarlos, supra note 11, at 597; People v. Ubaldo, 419 Phil. 718, 730 (2001); People v. Basadre, G.R. No. 131851, February 22, 2001, 352 SCRA 573, 585; People v. More, 378 Phil. 1153, 1161 (1999); People v. Real, 367 Phil. 524, 535-536 (1999).

[22] CA rollo, p. 51.

[23] Id. at 75.

[24] Id.

[25] Id. at 120.

[26] See People v. Escarlos, supra note 11; People v. Dela Cruz, supra note 10, at 879; People v. Babor, 330 Phil. 923, 930-931 (1996).

[27] Toledo v. People, supra note 11, at 110.

[28] Senoja v. People, supra note 21, at 703; People v. Noay, 357 Phil. 295, 308 (1998).

[29] CA rollo, p. 124.

[30] Id. at 125, citing, e.g., People v. Mojica, 42 Phil. 784.

[31] People v. Catbagan, G.R. Nos. 149430-32, February 23, 2004, 423 SCRA 535, 553; People v. Peralta, 403 Phil. 72, 89 (2001); People v. Ulep, 395 Phil. 78, 87 (2000); People v. Belbes, 389 Phil. 500, 509 (2000).

[32] CA rollo, p. 207.

[33] See People v. Catbagan, supra note 31, at 554.

[34] Supra note 31.

[35] Id. at 92.

[36] CA rollo, p. 88.

[37] Id. at 207-208.

[38] See People v. Legaspi, 387 Phil. 108 (2000).

[39] Crisostomo v. Sandiganbayan, G.R. No. 152398, April 14, 2005, 456 SCRA 45, 73; People v. Agda, 197 Phil. 306, 314 (1982).

[40] Crisostomo v. Sandiganbayan, supra note 39, at 73-74; People v. Dorico, 153 Phil. 458, 475 (1973).

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[41] Crisostomo v. Sandiganbayan, supra note 39, at 74.

[42] TSN, Hearing of June 18, 1990, p. 10.

[43] CA rollo, pp. 87-88.

[44] Id. at 208.

[45] People v. Caratao, 451 Phil. 588, 606-607 (2003); People v. Gonzalez, Jr., 411 Phil. 893, 915 (2001); People v. Cabodoc, 331 Phil. 491, 510 (1996); People v. Malabago, 333 Phil. 20, 34 (1996).

[46] People v. Gonzalez, Jr., supra.

[47] Id.; People v. Cadag, 112 Phil. 314, 319 (1961); People v. Ardisa, 154 Phil. 229, 243 (1974); People v. Genial, G.R. No. 105692, December 7, 1993, 228 SCRA 283, 291.

[48] People v. Gonzalez, Jr., supra note 45, at 915-916; People v. Caratao, supra note 45, at 607; Luces v. People, 443 Phil. 636, 646 (2003).

[49] People v. Gonzalez, Jr., supra note 45, at 916; Sison v. People, 320 Phil. 112, 135 (1995); People v. Abapo, G.R. Nos. 93632-33, December 28, 1994, 239 SCRA 469, 479.

[50] People v. Gonzalez, Jr., supra note 45, at 917; People v. Manalo, G.R. No. L-55177, February 27, 1987, 148 SCRA 98, 108.

[51] People v. Gonzalez, Jr., supra note 45.

[52] People v. Caratao, supra note 45, at 607; People v. Gonzalez, Jr., supra note 45; People v. Cabodoc, supra note 45, at 510-511; People v. Malabago, supra note 45.

[53] See People v. Ulep, supra note 31, at 88.

[54] People v. Caratao, supra note 45, at 608; People v. Fernandez, 434 Phil. 224, 239 (2002).

[55] See People v. Tabion, G.R. No. L-32629, October 23, 1979, 93 SCRA 566, 572; People v. Madrid, 88 Phil. 1, 15 (1951); Antonio L. Gregorio, Fundamentals of Criminal Law Review 114 (1997).

[56] People v. Malinao, G.R. No. 128148, February 16, 2004, 423 SCRA 34, 53; People v. Solamillo, 452 Phil. 261, 281 (2003).

[57] TSN, April 20, 1990, pp. 1-2; TSN, April 30, 1990, pp. 1-2; Exhibit "X;" RTC Decision, CA rollo, p. 59; Formal Offer of Evidence of the Prosecution dated April 26, 1990, p. 6.

[58] Moreover, under Article 2208 of the Civil Code, attorney's fees may be recovered when exemplary damages have been awarded. See, e.g., Nueva España v. People, G.R. No. 163351, June 21, 2005, 460 SCRA 547, 560.

[59] People v. Ibañez, 455 Phil. 133, 166-167 (2003).

[60] Nueva España v. People, supra note 58, at 558; People v. Malinao, supra note 56, at 55.

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